

**SECOND SUPPLEMENT TO THE GIBRALTAR  
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LEGAL NOTICE NO. 41 OF 2018.

**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY  
SERVICES) ACT**

**INTERPRETATION AND GENERAL CLAUSES ACT**

**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY  
SERVICES) ACT (AMENDMENT) REGULATIONS 2018**

**ARRANGEMENT OF REGULATIONS**

Regulation

1. Title and commencement.
2. Amendment of the Financial Services (Investment and Fiduciary Services) Act.
3. Amendment of the Financial Services (Licensing) Regulations 1991.

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**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY SERVICES) ACT (AMENDMENT) REGULATIONS 2018**

In exercise of the powers conferred upon the Minister by section 53 of the Financial Services (Investment and Fiduciary Services) Act, as read with section 23(g)(i) of the Interpretation and General Clauses Act and upon the Government by section 23(g)(ii) of that Act, and in order to transpose into the laws of Gibraltar Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), the Minister and the Government have made the following Regulations–

**Title and commencement.**

1.(1) These Regulations may be cited as the Financial Services (Investment and Fiduciary Services) Act (Amendment) Regulations 2018.

(2) This regulation comes into operation on 23 February 2018.

(3) Regulations 2 and 3 come into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different purposes.

**Amendment of the Financial Services (Investment and Fiduciary Services) Act.**

2.(1) The Financial Services (Investment and Fiduciary Services) Act is amended as follows.

(2) For Part V(A) of the Financial Services (Investment and Fiduciary Services) Act substitute–

**“PART V(A)  
INSURANCE AND REINSURANCE DISTRIBUTION**

*Preliminary*

**Overview.**

38A. This Part regulates the taking up and pursuit of the controlled activity of insurance and reinsurance distribution, which is more specifically defined in Paragraph 3 of Schedule 3.

**Interpretation of Part.**

38B.(1) In this Part–

“advice” means the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts;

“ancillary insurance intermediary” means a person, other than a credit institution or investment firm who, for remuneration, takes up or pursues insurance distribution on an ancillary basis, provided that all the following conditions are met–

- (a) the person’s principal professional activity is not insurance distribution;
- (b) the person only distributes certain insurance products that are complementary to a product or service; and
- (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the product or service which the person provides as its principal professional activity;

“branch” means an agency or a branch of an intermediary which is located in the territory of an EEA State other than the home State;

“close links” has the meaning given in the Article 13(17) of EUS2D;

“durable medium” means any instrument which–

- (a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
- (b) allows the unchanged reproduction of the information stored;

“EEA State” means a Member State of the European Economic Area listed in Schedule 3 to the European Communities Act and, where the context requires, includes Gibraltar;

“EUIDD” means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution;

“EUS2D” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

“home State” means–

- (a) where the intermediary is an individual, the EEA State in which his or her residence is situated;
- (b) where the 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;

“home State competent authority” means the competent authority in an intermediary’s home State;

“host State” means the EEA State in which an insurance or reinsurance intermediary has a permanent presence or

establishment or provides services, and which is not its home State;

“host state competent authority” means the competent authority in an intermediary’s host State;

“insurance-based investment product” means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include–

- (a) non-life insurance products;
- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
- (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
- (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or EUS2D; or
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;

“insurance distributor” means any insurance intermediary, ancillary insurance intermediary or insurance undertaking;

“insurance intermediary” means a person, other than an insurance or reinsurance undertaking or their employees and other than an ancillary insurance intermediary, who, for remuneration, takes up or pursues insurance distribution;

“insurance undertaking” means an insurance undertaking within the meaning of Article 13(1) of EUS2D;

“large risks” has the meaning given in Article 13(27) of EUS2D;

“non-life insurance products” means the non-life insurance products listed in Annex I to EUS2D;

“primary place of business” means the location from where the main business is managed;

“reinsurance distributor” means any reinsurance intermediary or reinsurance undertaking;

“reinsurance intermediary” means any person, other than a reinsurance undertaking or its employees, who, for remuneration, takes up or pursues reinsurance distribution;

“reinsurance undertaking” means a reinsurance undertaking within the meaning of Article 13(4) of EUS2D; and

“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.

**Competent authority.**

- 38C.(1) The Authority is designated as the competent authority for the purposes of this Part and Article 12 of EUIDD.
- (2) The Authority must monitor the insurance distribution market, including the market for ancillary insurance products which are marketed, distributed or sold in or from Gibraltar.
  - (3) The Minister must inform the European Commission of the Authority’s designation under this section.

**Use of intermediaries.**

38D.(1) Insurance and reinsurance undertakings and intermediaries must only use the distribution services of–

- (a) insurance, reinsurance or ancillary insurance intermediaries licensed under section 8 and registered under this Part;
  - (b) insurance, reinsurance or ancillary insurance intermediaries authorised in accordance with EUIDD in an EEA State other than Gibraltar; or
  - (c) ancillary insurance intermediaries carrying out the insurance distribution activities in paragraph 3(4) of Schedule 3.
- (2) When carrying out a distribution activity through an ancillary insurance intermediary who is exempted from the application of this Part by paragraph 3(4) of Schedule 3, an insurance undertaking or insurance intermediary must ensure that–
- (a) information is made available to the customer, prior to the conclusion of the contract, about its identity and address and about the procedures referred to in section 38Q allowing customers and other interested parties to lodge complaints;
  - (b) appropriate and proportionate arrangements are in place to comply with sections 38S and 38Z and to consider the demands and needs of the customer before the proposal of the contract; and
  - (c) the insurance product information document referred to in section 38V(8) is provided to the customer prior to the conclusion of the contract.

*Registration requirements*

**Registration.**

- 38E.(1) The Authority must maintain a register of insurance, reinsurance, and ancillary insurance intermediaries who are licensed under section 8 to carry on a controlled activity which falls within paragraph 3 of Schedule 3.
- (2) The register must—
- (a) specify the names of the individuals within the management of an insurance or reinsurance distributor who are responsible for insurance or reinsurance distribution; and
  - (b) indicate the EEA States in which an intermediary conducts business in exercise of the freedom of establishment or the freedom to provide services.
- (3) Insurance and reinsurance undertakings and intermediaries must co-operate with the Authority in relation to—
- (a) the registration of insurance, reinsurance and ancillary insurance intermediaries; and
  - (b) the application of sections 38K to 38M.
- (4) Insurance and reinsurance undertakings and their employees are not required to be registered under this Part.
- (5) An insurance or reinsurance intermediary or ancillary insurance intermediary may act under the responsibility of an insurance or reinsurance undertaking or another intermediary.
- (6) An insurance or reinsurance undertaking or intermediary—
- (a) must ensure that any insurance, reinsurance or ancillary insurance intermediary for which it is responsible meets the conditions for registration,

including the condition set out in subsection (9)(c);  
and

- (b) is responsible for registering that insurance, reinsurance or ancillary insurance intermediary.
- (7) The Authority must promptly provide relevant information to EIOPA and provide it with access to data and any other assistance it may reasonably and lawfully require for the purposes of establishing and maintaining its register of insurance, reinsurance and ancillary insurance intermediaries under Article 3(4) of EUIDD.
- (8) The Authority must establish an online system which is easily accessible and allows licensing applications made in accordance with this section to be completed online.
- (9) An application for a licence under section 8 to carry on a controlled activity which falls within paragraph 3 of Schedule 3 must be made in the form and manner which the Authority directs and, in addition to complying with any other requirements imposed by or under this Act, must include all of the following information—
- (a) the identities of shareholders or members, whether natural or legal persons, that have a holding of more than 10% in the intermediary, and the amounts of those holdings;
  - (b) the identities of persons who have close links with the intermediary;
  - (c) information confirming that those holdings or close links do not prevent the effective exercise of the Authority's supervisory functions.
- (10) The Authority must determine a licence application within three months of a complete application being submitted in accordance with subsection (9) and promptly notify the applicant of its decision.

- (11) An applicant must promptly inform the Authority of any change in any information provided as part of an application submitted in accordance with subsection (9).
- (12) The Authority must not grant a licence if it would be prevented from exercising its supervisory functions effectively by—
  - (a) the laws, regulations or administrative provisions of a territory outside of the EEA governing any person with which the intermediary has close links; or
  - (b) any difficulties involved in the enforcement of those laws, regulations or administrative provisions.
- (13) Any licence granted under section 8 to carry on a controlled activity which falls within paragraph 3 of Schedule 3 is subject to the condition that the holder meets the applicable requirements of sections 38K to 38M.
- (14) The validity of registration under this section is subject to regular review by the Authority.
- (15) Where a person who is licensed as an insurance, reinsurance or ancillary insurance intermediary ceases to meet the requirements of sections 38K to 38M, the Authority must—
  - (a) revoke that person's licence;
  - (b) remove the person's name from the register maintained under this section; and
  - (c) where relevant, inform any host State competent authority.
- (16) This Part does not affect any other Gibraltar law in respect of insurance and reinsurance distribution activities pursued by insurance and reinsurance undertakings or intermediaries which are established in a third country and operating in Gibraltar under the principle of freedom to provide services, where equal treatment is guaranteed to all persons carrying on or authorised to carry on insurance and reinsurance distribution activities in Gibraltar.

- (17) The Authority must inform the European Commission of any general difficulties which insurance or reinsurance distributors in Gibraltar encounter in becoming established or carrying on insurance or reinsurance distribution activities in any third country.

*Freedom to provide services and freedom of establishment*

**Exercise of the freedom to provide services.**

- 38F.(1) An insurance, reinsurance or ancillary insurance intermediary licensed under section 8 that proposes to carry on business in another EEA State under the freedom to provide services must provide the Authority, in the form and manner it may direct, with the following information–
- (a) the intermediary's name, address and registration number (if any);
  - (b) the EEA States in which it intends to operate;
  - (c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented; and
  - (d) the relevant classes of insurance, if applicable.
- (2) The Authority, within one month of receiving the information referred to subsection (1), must send it to the host State competent authority.
- (3) The Authority must inform the intermediary in writing that–
- (a) the host State competent authority has acknowledged receipt of the information sent to it in accordance with subsection (2);
  - (b) the intermediary may commence business in that EEA State; and

- (c) in doing so the intermediary must comply with any general good rules which, under Article 11 of EUIDD, apply in that EEA State, the details of which can be obtained through the means referred to in that Article.
- (4) If an intermediary proposes to change any of the particulars provided under subsection (1), it must notify the Authority, in the form and manner it may direct, at least one month before implementing the change.
- (5) Where the Authority receives a notice under subsection (4) it must inform the relevant host State competent authority as soon as practicable and in any event within one month of receiving the notice.
- (6) Where the Authority receives information of the kind in subsection (1) from a home State competent authority concerning an insurance, reinsurance or ancillary insurance intermediary that proposes to carry on business in Gibraltar under the freedom to provide services, the Authority must promptly acknowledge receipt of that information.

**Breach of obligations when exercising the freedom to provide services.**

- 38G.(1) The Authority, where it considers that an insurance, reinsurance or ancillary insurance intermediary acting in Gibraltar under the freedom to provide services is in breach of an obligation under this Part or EUIDD, must inform the intermediary's home State competent authority.
- (2) Where, despite the measures taken by the home State competent authority or because those measures prove to be inadequate or are lacking, an intermediary persists in acting in a manner that is clearly detrimental to the interests of Gibraltar consumers on a large scale or to the orderly functioning of insurance and reinsurance markets, the Authority, after informing the home State competent authority, may take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing the intermediary from carrying on new business in Gibraltar.

- (3) Subsection (2) does not affect the Authority's power to take appropriate measures to prevent or penalise irregularities committed in Gibraltar where immediate action is necessary in order to protect the rights of consumers, including preventing an intermediary from carrying on new business in Gibraltar.
- (4) Where the Authority takes any action under subsection (3) it must promptly inform the intermediary concerned of its decision and the reasons for it and provide that reasoned decision to—
  - (a) the intermediary's home State competent authority;
  - (b) EIOPA; and
  - (c) the European Commission.
- (5) Where the Authority receives information of the kind in subsection (1) from a host State competent authority concerning an intermediary that is licensed under this Act, the Authority must—
  - (a) assess the information received;
  - (b) if applicable, promptly take steps to remedy the situation; and
  - (c) inform the host State competent authority of any steps taken.
- (6) The Authority and the home State or host State competent authority (as the case may be) may refer any matter arising under this section to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

**Exercise of the freedom of establishment.**

38H.(1) An insurance, reinsurance or ancillary insurance intermediary licensed under section 8 that proposes to exercise its freedom of establishment by establishing a branch or permanent presence in another EEA State must provide the

Authority, in the form and manner it may direct, with the following information–

- (a) the intermediary's name, address and registration number (if any);
  - (b) the EEA States in which it intends to establish a branch or permanent presence;
  - (c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;
  - (d) the relevant classes of insurance, if applicable;
  - (e) the address in each of those EEA States from which documents may be obtained; and
  - (f) the name of the person responsible for the management of each branch or permanent presence.
- (2) An intermediary's permanent presence in another EEA State which is equivalent to a branch must be treated in the same way as a branch, unless the intermediary lawfully establishes that permanent presence in another legal form.
- (3) Subject to subsection (6), within one month of receiving the information referred to subsection (1), the Authority must send it to the host State competent authority.
- (4) The Authority must inform the intermediary in writing that–
- (a) the host State competent authority has–
    - (i) acknowledged receipt of the information sent to it in accordance with subsection (3);
    - (ii) provided details of the legal provisions ('general good rules') which, under Article 11 of EUIDD, apply in that EEA State and with which the intermediary must comply; and

- (b) the intermediary may commence business in that EEA State provided it complies with those legal provisions.
- (5) If the host State competent authority fails to provide a response of the kind in subsection (4)(a) within one month of receiving the information sent by the Authority under subsection (3), the intermediary is entitled to establish its branch and commence business in that EEA State.
- (6) The Authority may refuse to send information provided to it under subsection (1) to the host State competent authority where, taking account of the distribution activities envisaged, it has reason to doubt the adequacy of the organisational structure or financial situation of the insurance, reinsurance or ancillary insurance intermediary.
- (7) The Authority must provide an intermediary with a reasoned decision for a refusal under subsection (6), and a refusal under that subsection or any other failure by the Authority to send information provided under subsection (1) to a host State competent authority in accordance with subsection (3) may be the subject of an appeal under section 38ZR.
- (8) If an intermediary proposes to change any of the particulars provided under subsection (1), it must notify the Authority, in the form and manner it may direct, at least one month before implementing the change.
- (9) Where the Authority receives a notice under subsection (8), it must inform the relevant host State competent authority as soon as practicable and in any event within one month of receiving the notice.
- (10) Where the Authority receives information of the kind in subsection (1) from a home State competent authority concerning an insurance, reinsurance or ancillary insurance intermediary that proposes to carry on business in Gibraltar under the freedom of establishment, the Authority must promptly acknowledge receipt of that information and, if applicable, provide that competent authority with information of the kind in subsection (4)(a)(ii).

**Division of competence between home and host States.**

- 38I.(1) The Authority may enter arrangements under subsection (2) or (3) with a competent authority in another EEA State.
- (2) Where an insurance, reinsurance or ancillary insurance intermediary is licensed under this Act but its primary place of business is in an EEA State other than Gibraltar, the Authority may arrange for the competent authority in that EEA State to act as if it was the home State competent authority for that intermediary with regard to the provisions of sections 38D(1) and 38K to 38ZU.
- (3) Where an insurance, reinsurance or ancillary insurance intermediary is authorised in another EEA State but its primary place of business is Gibraltar, the Authority may agree to act as if it was the home State competent authority for that intermediary with regard to the provisions of sections 38D(1) and 38K to 38ZU.
- (4) The Authority must promptly notify EIOPA and the intermediary concerned of any agreement reached under subsection (2) and the home State competent authority has a similar notification obligation in respect of any agreement reached under subsection (3).
- (5) The Authority, as the host State competent authority—
- (a) is responsible for ensuring that the services provided by an establishment in Gibraltar comply with the obligations in sections 38S to 38ZF and any measures adopted under them; and
  - (b) is entitled to examine an establishment's arrangements and request any changes to them which are needed to enable the Authority to enforce those obligations with respect to the services or activities provided by the establishment in Gibraltar.

**Breach of obligations when exercising the freedom of establishment.**

- 38J.(1) The Authority may take appropriate measures where it considers that an insurance, reinsurance or ancillary insurance intermediary acting in Gibraltar under the freedom of establishment is in breach of any of sections 38S to 38ZF.
- (2) Where the Authority considers that such an intermediary is in breach of an obligation under any other provision of this Part or EUIDD, it must refer its findings to the home State competent authority.
- (3) Where, despite the measures taken by the home State competent authority or because those measures prove to be inadequate or are lacking, the intermediary persists in acting in a manner that is clearly detrimental to the interests of Gibraltar consumers on a large scale or the orderly functioning of insurance and reinsurance markets, the Authority, after informing the home State competent authority, may take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing the intermediary from carrying on new business in Gibraltar.
- (4) Subsections (2) and (3) do not affect the Authority's power as host State competent authority to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed in Gibraltar, including preventing an intermediary from carrying on new business in Gibraltar, where—
- (a) immediate action is strictly necessary to protect the rights of consumers in Gibraltar; and
  - (b) the home State competent authority has not taken equivalent measures or those it has taken are inadequate.
- (5) Where the Authority imposes any measure under subsection (4) it must promptly inform the intermediary concerned of its decision and the reasons for it and provide that reasoned decision to—

- (a) the intermediary's home State competent authority;
  - (b) EIOPA; and
  - (c) the European Commission.
- (6) Where the Authority receives information of the kind in subsection (2) from a host State competent authority concerning an intermediary that is licensed under this Act, the Authority must—
- (a) assess the information received;
  - (b) if applicable, promptly take steps to remedy the situation; and
  - (c) inform the host State competent authority of any steps taken.
- (7) The Authority and the home State or host State competent authority (as the case may be) may refer any matter arising under this section to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

*Professional and organisational requirements*

**Knowledge, ability and continuing development requirements.**

- 38K.(1) Insurance and reinsurance distributors must possess, and must ensure that relevant individuals possess, appropriate knowledge and ability in order to complete their tasks and perform their duties adequately, having regard to the distribution activities which they undertake and the products distributed.
- (2) In subsection (1) a “relevant individual” means—
- (a) an individual within the distributor's management structure who is responsible for distribution in respect of insurance and reinsurance products;

- (b) an employee of the distributor who carries out insurance or reinsurance distribution activities; or
    - (c) any other individual who is directly involved in the distributor's insurance or reinsurance distribution activities.
  - (3) Insurance and reinsurance intermediaries must demonstrate compliance with the relevant professional knowledge and competence requirements in Schedule 5.
  - (4) In order to maintain an adequate level of performance corresponding to the role they perform and the relevant market—
    - (a) insurance and reinsurance intermediaries;
    - (b) employees of insurance and reinsurance undertakings; and
    - (c) employees of insurance and reinsurance intermediaries;
- must complete a minimum of 15 hours of continuing professional training and development in each 12 month period.
- (5) Continuing professional training and development may encompass various types of facilitated learning opportunities, including courses, e-learning and mentoring, and must take account of—
    - (a) the role and activity carried out by the person concerned; and
    - (b) the type of distribution and the nature of the products sold.
  - (6) An insurance or reinsurance undertaking or intermediary whose employees are engaged in insurance or reinsurance distribution must—

- (a) take appropriate steps to verify that the knowledge and ability of those employees, having regard to the distribution activities which they undertake and the products distributed, meet the requirements of subsection (1); and
- (b) where necessary, provide those employees with appropriate training or professional development in order to meet those requirements.

**Fit and proper requirements.**

38L.(1) Individuals who–

- (a) work for–
  - (i) an insurance, reinsurance or ancillary insurance intermediary; or
  - (ii) insurance or reinsurance undertaking; and
- (b) are directly involved in insurance or reinsurance distribution or form part of the management structure responsible for any staff directly involved in insurance or reinsurance distribution;

must be of good repute and, as a minimum, must not have been convicted of a serious criminal offence in respect of crimes against property or crimes related to financial activities or be an undischarged bankrupt.

- (2) The Minister may, by regulations, supplement the good repute requirements in subsection (1).
- (3) The Authority may establish arrangements under which insurance and reinsurance distributors are permitted to verify and certify the good repute of their employees and, where appropriate, their insurance or reinsurance intermediaries.
- (4) To ensure compliance with the requirements of this section and section 38K, insurance and reinsurance undertakings must–

- (a) approve, implement and regularly review their internal policies and appropriate internal procedures;
- (b) identify a function to ensure the proper implementation of those policies and procedures, and inform the Authority at its request, of the name of the person responsible for that function; and
- (c) establish and maintain up-to-date records of all relevant documents regarding the application of this section and section 38K.

**Indemnity arrangements.**

38M.(1) Insurance and reinsurance intermediaries must hold professional indemnity insurance covering the whole of the EEA or some other comparable guarantee against liability arising from professional negligence, for at least–

- (a) EUR 1,250,000 for each claim; and
- (b) EUR 1,850,000 in aggregate per year for all claims;

unless that insurance or a comparable guarantee is provided by an insurance or reinsurance undertaking or other undertaking for which the intermediary is acting or is empowered to act, or such an undertaking has assumed full responsibility for the intermediary's actions.

- (2) Ancillary insurance intermediaries must hold professional indemnity insurance or comparable guarantees at a level prescribed by the Minister in regulations, taking into account the nature of the products sold and the activity carried out.
- (3) An insurance, reinsurance or ancillary insurance intermediary must, on a permanent basis–
  - (a) ensure that money paid–
    - (i) by the customer to the intermediary is treated as having been paid to the undertaking; and

- (ii) by the undertaking to the intermediary is not treated as having been paid to the customer until the customer actually receives it;
- (b) have financial capacity amounting to 4% of the sum of annual premiums received, subject to a minimum of EUR 18,750; and
- (c) ensure that customers' money is only transferred via strictly segregated client accounts which cannot be used to reimburse other creditors in the event of insolvency or bankruptcy.

(4) This section applies subject to any regulatory technical standards adopted by the European Commission under Article 10(7) of EUIDD.

**Publication of 'general good' laws.**

38N.(1) The Authority is designated as the single point of contact responsible for providing information about any domestic legislation protecting the general good which—

- (a) applies to the carrying on of insurance and reinsurance distribution in Gibraltar; and
- (b) imposes specific requirements which are—
  - (i) additional to those imposed under this Part; or
  - (ii) stricter than those required under EUIDD including, in particular, information about whether and how any stricter provisions under Article 29(3) of EUIDD apply in Gibraltar.

(2) The Authority must publish on its website, in an appropriate form, information about any legislation to which subsection (1) applies and ensure that the information is updated on a regular basis.

**Authority's powers in relation to 'general good' laws.**

38O.(1) The Authority may take appropriate measures to prevent an insurance distributor established in another EEA State from carrying out activity in Gibraltar under the freedom to provide services or (where applicable) the freedom of establishment where the relevant activity–

- (a) is entirely or principally directed towards Gibraltar with the sole purpose of avoiding legal provisions which would apply if that insurance distributor had its residence or registered office in Gibraltar; and
- (b) seriously endangers the proper functioning of insurance and reinsurance markets in Gibraltar with respect to the protection of consumers.

- (2) In subsection (1) “appropriate measures” means all the appropriate measures needed in order to protect the rights of consumers in Gibraltar.
- (3) The Authority, before it takes any appropriate measures under subsection (1), must inform the relevant insurance distributor's home State competent authority.
- (4) If any disagreement arises between the Authority and an insurance distributor's home State competent authority in relation to any action taken by the Authority under subsection (1), those authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

**Cooperation and exchange of information with competent authorities of EEA States.**

38P.(1) The Authority must take steps to cooperate with competent authorities in other EEA States and to exchange information with them on insurance and reinsurance distributors in order to ensure the proper application of EUIDD.

- (2) In particular, the Authority must share information on–

- (a) the good repute, professional knowledge and competence of insurance and reinsurance distributors, whether derived from the registration process or on an ongoing basis; and
  - (b) any insurance and reinsurance distributor that has been subject to a sanction or other measure under sections 38ZG to 38ZM which is likely to lead to its removal from the register.
- (3) Any person who receives or divulges information in connection with this Part is bound by the obligation of professional secrecy in section 3 of the Financial Services (Information Gathering and Co-Operation) Act 2013.

**Complaints.**

- 38Q.(1) Customers and other interested parties may make complaints about insurance and reinsurance distributors to the Authority or any other entity that the Minister may designate by regulations (the “complaints authority”).
- (2) The complaints authority must register and reply to any complaint received in relation to insurance and reinsurance distributors.
  - (3) The Minister may make rules which set out the procedure for making complaints and for their investigation, consideration and determination by the complaints authority.

**Out-of-court redress.**

- 38R.(1) Insurance and reinsurance distributors must ensure that they have adequate mechanisms for receiving and dealing with complaints from customers.
- (2) An insurance and reinsurance distributor which is licensed under section 8 but carries on insurance distribution business by means of a branch or appointed representative in another EEA State must—

- (a) have in place and operate appropriate and effective procedures for registering and responding to complaints from customers in that EEA State; and
  - (b) adhere to an appropriate alternative dispute resolution entity in that EEA State in respect of consumer disputes arising from its insurance distribution business in that State.
- (3) The Financial Services Ombudsman Act 2016 applies to disputes arising between a consumer and an insurance distributor under this Part as it applies to a financial service dispute within the meaning of that Act.
- (4) The Financial Services Ombudsman must cooperate in the resolution of cross-border disputes concerning rights and obligations arising under EUIDD.

*Information requirements and conduct of business rules*

**General principle.**

- 38S.(1) Insurance distributors, when carrying out insurance distribution, must always act honestly, fairly and professionally, in accordance with the best interests of their customers.
- (2) Any information related to insurance distribution, including marketing communications, addressed by an insurance distributor to customers or potential customers must be fair, clear and not misleading and, in the case of marketing communications, must be clearly identifiable as such.
  - (3) subsection (2) applies without limiting the Consumer Protection (Unfair Trading) Act 2008.
  - (4) An insurance distributor must not–
    - (a) be remunerated in a way that conflicts with its duty to act in the best interests of its customers; or

- (b) remunerate or assess the performance of its employees in a way which conflicts with that duty;

and, in particular, must not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to it or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

**General information provided by insurance intermediary or undertaking.**

38T.(1) An insurance intermediary must disclose the following to a customer in good time before an insurance contract is concluded—

- (a) its identity and address and that it is an insurance intermediary;
- (b) whether it provides advice about the insurance products sold;
- (c) the procedures under sections 38Q and 38R enabling customers and other interested parties to make complaints and seek out-of-court redress;
- (d) the register in which it has been included and the means for verifying that it has been registered; and
- (e) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.

(2) An insurance undertaking must disclose the following to a customer in good time before an insurance contract is concluded—

- (a) its identity and address and that it is an insurance undertaking;
- (b) whether it provides advice about the insurance products sold; and

- (c) the procedures under sections 38Q and 38R enabling customers and other interested parties to make complaints and seek out-of-court redress.

**Conflicts of interest and transparency.**

38U.(1) An insurance intermediary must provide a customer with the following information in good time before an insurance contract is concluded–

- (a) whether it has a holding (direct or indirect) representing 10% or more of the voting rights or capital in a given insurance undertaking;
- (b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding (direct or indirect) representing 10% or more of the voting rights or capital in the insurance intermediary;
- (c) in relation to any contract proposed or advised upon–
  - (i) whether it gives advice on a fair analysis basis;
  - (ii) whether it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and, if so, the names of those insurance undertakings; or
  - (iii) where it does not give advice on a fair analysis basis and is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, the names of the insurance undertakings with which it may and does conduct business;
- (d) the nature of the remuneration received in relation to the insurance contract;

- (e) whether in relation to the insurance contract, it works on the basis of–
  - (i) a fee (remuneration paid directly by the customer);
  - (ii) a commission of any kind (remuneration included in the insurance premium);
  - (iii) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or
  - (iv) any combination of the types of remuneration in sub-paragraphs (i) to (iii).
- (2) In subsection (1)(c)(i) and (iii) a “fair analysis basis” means a fair and personal analysis conducted in accordance with section 38V(4).
- (3) Where a fee is payable directly by the customer, the insurance intermediary must inform the customer of the amount of the fee or, where that is not possible, of the method for calculating the fee.
- (4) If any payments are made by a customer under an insurance contract after it is concluded (other than the ongoing premiums and scheduled payments) the insurance intermediary must, in respect of each payment, make the disclosures required under subsections (1) and (3).
- (5) An insurance undertaking must inform a customer, in good time before an insurance contract is concluded, of the nature of any remuneration which the insurance undertaking’s employees will receive in relation to the insurance contract.
- (6) If any payments are made by a customer under an insurance contract after it is concluded (other than ongoing premiums and scheduled payments) the insurance undertaking must, in respect of each payment, make the disclosure required under subsection (5).

**Advice and sales where no advice is given.**

38V.(1) Before concluding an insurance contract, an insurance distributor must—

- (a) specify the demands and needs of the customer, based upon information obtained from that customer; and
- (b) provide the customer with objective information about the insurance product in a comprehensible form, to allow the customer to make an informed decision,

and any contract proposed must be consistent with the customer's insurance demands and needs.

- (2) Where advice is provided before a specific contract is concluded, the insurance distributor must provide the customer with a personalised recommendation explaining why the particular product would best meet the customer's demands and needs.
- (3) The level of detail provided under subsections (1) and (2) may be varied according to the type of customer and the complexity of the insurance product being proposed.
- (4) Where an insurance intermediary informs a customer that it gives advice on the basis of a fair and personal analysis, it must do so 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, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.
- (5) Before an insurance contract is concluded, and regardless of whether or not advice is given or whether the insurance product is part of a package to which section 38Z applies, an insurance distributor must provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision about the contract.

- (6) The information provided under subsection (5) may be varied according to the type of customer and the complexity of the insurance product being proposed.
- (7) Subsection (5) applies without limiting sections 80 and 81 of the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015.
- (8) In relation to the distribution of non-life insurance products, the information required under subsection (5) must be provided by means of a standardised insurance product information document drawn up by the manufacturer of the non-life insurance product.
- (9) A standardised insurance product information document must—
  - (a) be a short and stand-alone document provided on paper or on another durable medium;
  - (b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
  - (c) be no less comprehensible if, having been originally produced in colour, it is printed or photocopied in black and white;
  - (d) be written in an official language used in the part of the EEA State where the insurance product is offered or, if agreed by the consumer and the distributor, in another language;
  - (e) be accurate and not misleading;
  - (f) contain the title “insurance product information document” at the top of the first page; and
  - (g) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.
- (10) An insurance product information document must contain the following—

- (a) information about the type of insurance;
- (b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
- (c) the means of payment of premiums and the duration of payments;
- (d) the main exclusions where claims cannot be made;
- (e) the obligations—
  - (i) at the start of the contract;
  - (ii) during the term of the contract; and
  - (iii) in the event that a claim is made;
- (f) the term of the contract, including its start and end dates; and
- (g) the means of terminating the contract.

(11) This section applies subject to any implementing technical standards adopted by the European Commission under Article 20(9) of EUIDD.

**Information provided by ancillary insurance intermediaries.**

38W. An ancillary insurance intermediary must comply with sections 38T(1)(a), (c) and (d) and 38U(1)(d).

**Information exemptions and flexibility.**

38X.(1) The information referred to in sections 38T to 38V does not need to be provided when an insurance distributor carries out distribution activities in relation to the insurance of large risks.

- (2) The information referred to in sections 38ZE and 38ZF does not need to be provided to a professional client within the meaning of the Financial Services (Markets in Financial Instruments) Act 2018.
- (3) Where an insurance distributor is responsible for the provision of mandatory occupational pension arrangements and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the information referred to in sections 38S to 38ZA must be provided to the employee promptly after the employee's enrolment in the arrangement concerned.
- (4) The Minister may by regulations—
  - (a) make the provision by insurance distributors of the advice referred to in section 38V(2) mandatory for the sale of any insurance product or insurance products of a specified type; or
  - (b) limit or prohibit the acceptance by insurance distributors of fees, commissions or other monetary or non-monetary benefits paid or provided by or on behalf of any third party in relation to the distribution of insurance products.
- (5) Any regulations made under subsection (4)(a) apply, in respect of the products to which the regulations relate, to all insurance distributors, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers who reside or are established in Gibraltar.
- (6) The Minister must ensure that the European Commission and EIOPA are informed of any regulations made under subsection (4).

**Information conditions.**

- 38Y.(1) Any information which is provided in accordance with sections 38T to 38V and 38ZE must be communicated to the customer—

- (a) free of charge;
  - (b) in a clear and accurate manner, comprehensible to the customer;
  - (c) in an official language of the EEA State in which the risk is situated, the EEA State of the commitment or in any other language agreed upon by the parties; and
  - (d) on paper or, subject to subsection (2)–
    - (i) another durable medium, where the conditions in subsection (3) are met; or
    - (ii) a website, where the conditions in subsection (4) are met.
- (2) Where the information is provided using a durable medium other than paper or by means of a website, a paper copy must be provided to the customer upon request and free of charge.
- (3) The information may be provided using a durable medium other than paper if the following conditions are met–
- (a) the use of that durable medium is appropriate in the context of the business conducted between the insurance distributor and the customer; and
  - (b) the customer has been given the choice between information on paper and on that durable medium, and has chosen the latter medium.
- (4) The information may be provided by means of a website if–
- (a) it is addressed personally to the customer; or
  - (b) the following conditions are met–
    - (i) the provision of that information by means of a website is appropriate in the context of the

- business conducted between the insurance distributor and the customer;
- (ii) the customer has consented to the provision of that information by means of a website;
  - (iii) the customer 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 information will remain accessible on the website for such period of time as the customer may reasonably need to consult it.
- (5) For the purposes of subsections (3) and (4), the provision of information using a durable medium other than paper or by means of a website is to be regarded as appropriate in the context of the business conducted between the insurance distributor and the customer if there is evidence that the customer has regular access to the internet, and the provision by the customer of an e-mail address for the purposes of that business is to be regarded as such evidence.
- (6) In the case of telephone selling, the information given to the customer by the insurance distributor before the contract is concluded, including the insurance product information document, must be provided in accordance with the Financial Services (Distance Marketing) Act 2006 and, even if the customer has chosen to receive prior information on a durable medium other than paper in accordance with subsection (3), information must be provided by the insurance distributor to the customer in accordance with subsections (1) and (2) immediately after the insurance contract is concluded.

**Cross-selling.**

- 38Z.(1) When an insurance product is offered together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the insurance distributor must inform the customer whether it is possible to buy the different components separately and, if so, must provide an adequate

description of the components of the agreement or package and the costs and charges for each component.

- (2) Where the risk or insurance coverage resulting from such an agreement or package offered to a customer is different from that associated with the components taken separately, the insurance distributor must provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or insurance coverage.
- (3) Where an insurance product is ancillary to a product or service which is not insurance, as part of a package or the same agreement, the insurance distributor must offer the customer the possibility of buying the product or service separately.
- (4) Subsection (3) does not apply where an insurance product is ancillary to—
  - (a) an investment service or activity within the meaning of the Financial Services (Markets in Financial Instruments) Act 2018;
  - (b) a mortgage credit agreement within the meaning of the Financial Services (Mortgage Credit) Regulations 2016; or
  - (c) a payment account within the meaning of the Financial Services (Payment Accounts) Regulations 2016.
- (5) In any case where subsection (1) or (3) applies, the insurance distributor must specify the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement.
- (6) Nothing in this section prevents the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).
- (7) The Authority, acting on a case-by-case basis, may prohibit the sale of insurance together with an ancillary service or product

which is not insurance, as part of a package or the same agreement, where it can demonstrate that such sales are detrimental to consumers.

- (8) This section must be applied having regard to any guidelines on the assessment and supervision of cross-selling practices issued by EIOPA under Article 24(4) of EUIDD.

**Product oversight and governance requirements.**

38ZA.(1) Insurance undertakings and intermediaries that manufacture insurance products for sale to customers must maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

- (2) A product approval process must be proportionate and appropriate to the nature of the insurance product.
- (3) A product approval process must–
- (a) specify an identified target market for each product; and
  - (b) ensure that–
    - (i) all relevant risks to that identified target market are assessed;
    - (ii) the intended distribution strategy is consistent with the identified target market; and
    - (iii) reasonable steps are taken to ensure that the insurance product is distributed to the identified target market.
- (4) An insurance undertaking must understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified

target market and whether the intended distribution strategy remains appropriate.

- (5) Insurance undertakings and intermediaries that manufacture insurance products must make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.
- (6) Where an insurance distributor advises on or proposes insurance products which it does not manufacture, it must have in place adequate arrangements to obtain the information referred to in subsection (5) and to understand the characteristics and identified target market of each insurance product.
- (7) This section—
  - (a) applies without limiting any other requirements under this Part, including those relating to disclosure, suitability or appropriateness, inducements and the identification and management of conflicts of interest; and
  - (b) does not apply to insurance products which consist of the insurance of large risks.
- (8) This section applies subject to any delegated acts adopted the European Commission under Article 25(2) of EUIDD.

*Additional requirements: insurance-based investment products*

**Scope of additional requirements.**

38ZB. Where an insurance intermediary or insurance undertaking carries on the distribution of insurance-based investment products, the requirements of sections 38ZC to 38ZF apply in addition to those of sections 38S to 38V.

**Prevention of conflicts of interest.**

- 38ZC.(1) An insurance intermediary or insurance undertaking carrying on the distribution of insurance-based investment products must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest (as determined under section 38ZD) from adversely affecting the interests of its customers.
- (2) Any arrangements under subsection (1) must be proportionate to the type of distributor, the activities performed and the insurance products sold.
- (3) This section applies without limiting section 38S.

**Conflicts of interest.**

- 38ZD.(1) Insurance intermediaries and insurance undertakings must take all appropriate steps to identify conflicts of interest between themselves (including their managers, employees or any person directly or indirectly linked to them by control) and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.
- (2) Where organisational or administrative arrangements made by an insurance intermediary or insurance undertaking under section 38ZC to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking must clearly disclose to the customer the general nature or source of the conflict of interest, in good time before an insurance contract is concluded.
- (3) Despite section 38Y, any disclosure under subsection (2) must—
- (a) be made on a durable medium; and

(b) include sufficient detail, taking into account the nature of the customer, to enable that customer to reach an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

(4) This section applies subject to any delegated acts adopted by the European Commission under Article 28(4) of EUIDD.

**Information to customers.**

38ZE.(1) Without limiting sections 38T or 38U(1) and (3), customers or potential customers must be provided with appropriate information in good time, prior to the conclusion of a contract, with regard to the distribution of insurance-based investment products and all costs and related charges.

(2) That information must include—

- (a) when advice is provided, whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer, referred to in section 38ZF;
- (b) as regards the information on insurance-based investment products and proposed investment strategies, appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;
- (c) as regards the information on all costs and related charges to be disclosed, information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.

- (3) The information about all costs and charges, including costs and charges in connection with the distribution of the insurance-based investment product, which are not caused by the occurrence of underlying market risk must—
  - (a) be provided in aggregated form to allow the customer to understand the overall cost as well as the cumulative effect on the return of the investment;
  - (b) where the customer so requests, include an itemised breakdown of the costs and charges; and
  - (c) where applicable, be provided to the customer on a regular basis, at least annually, during the life cycle of the investment.
- (4) The information in subsections (1) to (3), which may be provided in a standardised format, must be provided in a comprehensible form in such a manner that customers or potential customers are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis.
- (5) Without limiting sections 38U(1)(d) and (e), (4) or any regulations made under section 38X(4)(b), an insurance intermediary or insurance undertaking is regarded as fulfilling its obligations under section 38S(1), 38ZC or 38ZD where—
  - (a) in connection with the distribution of an insurance-based investment product or an ancillary service, it—
    - (i) pays or is paid any fee or commission to or by any party other than the customer or a person acting on the customer's behalf; or
    - (ii) provides or is provided with any non-monetary benefit to or by any party other than the customer or a person acting on the customer's behalf; and
  - (b) the payment or benefit—

- (i) does not have a detrimental impact on the quality of the relevant service to the customer; and
  - (ii) does not impair the insurance intermediary's or insurance undertaking's compliance with the duty to act honestly, fairly and professionally in accordance with the best interests of its customers.
- (6) The Minister may, by regulations–
  - (a) impose further requirements on distributors in respect of the matters within this section; or
  - (b) make the provision of the advice referred to in section 38ZF mandatory for sales of any or specified types of insurance-based investment products.
- (7) Without limiting subsection (6), regulations under that subsection may, in particular–
  - (a) further restrict or prohibit the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice; and
  - (b) require any such fees, commissions or non-monetary benefits to be returned to the client or offset against fees paid by the client.
- (8) Any regulations made under subsection (6) apply to all insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers who reside or are established in Gibraltar.
- (9) This section applies subject to any delegated acts adopted by the European Commission under Article 29(4) of EUIDD.

**Assessment of suitability and appropriateness and reporting to customers.**

38ZF.(1) Without limiting section 38V(1) and (2), when providing advice on an insurance-based investment product, an insurance intermediary or insurance undertaking must obtain information regarding the customer's or potential customer's—

- (a) knowledge and experience in the investment field relevant to the specific type of product or service;
- (b) financial situation, including the ability to bear losses; and
- (c) investment objectives, including the person's risk tolerance;

which is necessary to enable the insurance intermediary or insurance undertaking to recommend to the customer or potential customer insurance-based investment products that are suitable for that person and, in particular, accord with that person's risk tolerance and ability to bear losses.

- (2) An insurance intermediary or insurance undertaking must ensure that, where it provides investment advice recommending a package of services or products bundled as provided for in section 38Z, the overall bundled package is suitable.
- (3) Without limiting section 38V(1) and (2), when carrying out insurance distribution activities other than those in subsections (1) and (2), in relation to sales where no advice is given, an insurance intermediary or insurance undertaking must ask the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, in order to enable the insurance intermediary or insurance undertaking to assess whether—
  - (a) the insurance service or product envisaged is appropriate for the customer; and

- (b) where a package of services or products bundled as provided for in section 38Z is envisaged, the overall bundled package is appropriate for the customer.
- (4) Where, on the basis of information received under subsection (3), an insurance intermediary or insurance undertaking considers that the product is not appropriate for the customer or potential customer, the insurance intermediary or insurance undertaking must give the customer or potential customer a warning to that effect.
- (5) Where a customer or potential customer does not provide the information requested under subsection (3) or provides insufficient information regarding the person's knowledge and experience, the insurance intermediary or insurance undertaking must warn the person that it is not in a position to determine whether the product envisaged is appropriate for that person.
- (6) Without limiting section 38V(1) and (2), an insurance intermediary or insurance undertaking may carry out insurance distribution activity without the need to obtain the information or make the determination provided for in subsections (3) to (5) where no advice is given in relation to insurance-based investment products and all the following conditions are met—
  - (a) the customer or potential customer resides or is established in Gibraltar;
  - (b) the activity relates to either of the following insurance-based investment products—
    - (i) contracts which only provide investment exposure to financial instruments which are deemed to be non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or
    - (ii) other non-complex insurance-based investments;

- (c) the activity is carried out at the initiative of the customer or potential customer;
  - (d) the customer or potential customer has been clearly informed that, in the providing the activity–
    - (i) the insurance intermediary or insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered; and
    - (ii) the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules; and
  - (e) the insurance intermediary or insurance undertaking complies with its obligations under sections 38ZC and 38ZD.
- (7) A warning under subsection (4), (5) or (6)(d) may be provided in a standardised format.
- (8) An insurance intermediary or insurance undertaking must establish a record that includes any document agreed between the insurance intermediary or insurance undertaking and a customer that sets out–
- (a) the rights and obligations of the parties; and
  - (b) the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer;
- and the rights and duties of the parties may be incorporated by reference to other documents or legal texts.
- (9) An insurance intermediary or insurance undertaking must provide the customer, on a durable medium, with adequate reports on the service provided and those reports must include–

- (a) periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer; and
  - (b) where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.
- (10) An insurance intermediary or insurance undertaking, when providing advice on an insurance-based investment product and before the contract is concluded, must provide to the customer, on a durable medium and in compliance with section 38Y(1) to (3), a suitability statement specifying the advice given and how that advice meets the customer's preferences, objectives and other characteristics.
- (11) Where a contract is concluded using a means of distance communication which prevents the suitability statement being provided in advance, the insurance intermediary or insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by the contract if the following conditions are met—
  - (a) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement before the contract is concluded; and
  - (b) the customer has consented to receiving the suitability statement without undue delay after the contract is concluded.
- (12) Where an insurance intermediary or insurance undertaking has informed a customer that it will carry out a periodic assessment of suitability, the periodic report must contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics.

- (13) This section must be applied–
- (a) subject to any delegated acts adopted by the European Commission under Article 30(6) of EUIDD; and
  - (b) having regard to any guidelines issued by EIOPA under Article 30(7) or (8) of EUIDD.

*Sanctions and other measures*

**Administrative sanctions and other measures.**

38ZG. For the purpose of performing its functions under this Part, the Authority may–

- (a) act directly or in collaboration with other competent or statutory authorities; or
- (b) institute legal proceedings.

**Sanctions for infringements.**

38ZH.(1) The Authority may take any of the actions specified in sections 38ZI to 38ZM if it is satisfied that an insurance undertaking or insurance intermediary has failed to comply with any conduct of business requirement in sections 38S to 38ZF, in relation to the distribution of insurance-based investment products.

(2) The Authority may take any of the actions specified in sections 38ZJ and 38ZK if it is satisfied that–

- (a) a person has failed to register their insurance or reinsurance distribution activities in accordance with section 38E;
- (b) an insurance or reinsurance undertaking or insurance or reinsurance intermediary has used or is using the distribution services of a person who is not registered under section 38E;

- (c) an insurance, reinsurance or ancillary insurance intermediary has obtained registration through false statements or other irregular means in breach of section 38E;
  - (d) an insurance distributor has failed or is failing to meet the requirements of sections 38K to 38M;
  - (e) an insurance distributor has failed to comply with any conduct of business requirements in sections 38S to 38ZA, in relation to any insurance product other than an insurance-based investment product.
- (3) The Authority may take any of the following actions if it is satisfied that an infringement of this Part, other than one specified in subsection (1) or (2), is being or has been committed–
- (a) to publish a statement under section 38ZI;
  - (b) to issue a cease and desist order under section 38ZJ;  
or
  - (c) to impose a civil penalty of an amount not exceeding £10,000.
- (4) Section 38ZM(4) applies to the recovery of a penalty imposed under subsection (3)(c).
- (5) Where an obligation under this Part applies to an insurance or reinsurance distributor, in addition to any action taken against that entity, action may be taken against–
- (a) the members of its management or supervisory body;  
and
  - (b) any other person who is responsible for the infringement.

**Public statement.**

38ZI.(1) The Authority may publish a statement specifying–

- (a) the nature of the infringement; and
  - (b) the identity of the person who has committed it.
- (2) Publication under this section may take any form, or combination of forms, that the Authority thinks appropriate.

**Cease and desist order.**

38ZJ. The Authority may order a person–

- (a) to cease any conduct which constitutes an infringement; and
- (b) to desist from any repetition of that conduct.

**Licence revocation.**

38ZK.(1) The Authority may by order revoke any licence under section 8 which it has issued to an insurance, reinsurance or ancillary insurance intermediary.

- (2) Subsection (1) applies without affecting the Authority's powers under section 11.

**Temporary prohibition order.**

38ZL.(1) The Authority may by order (“a temporary prohibition order”) prohibit a specified individual, who is a member of the management body of an insurance intermediary or insurance undertaking and is responsible for an infringement, from exercising management functions–

- (a) within a specified insurance intermediary or insurance undertaking; or
  - (b) in insurance intermediaries or insurance undertakings.
- (2) A temporary prohibition order must specify a period during which it has effect.

**Civil penalties.**

38ZM.(1) The Authority may by order impose a penalty for an infringement of an amount not exceeding the higher of the following—

(a) in the case of a legal person—

- (i) EUR 5,000,000 or up to 5% of the total annual turnover according to the last available accounts approved by the management body; or
- (ii) up to twice the amount of the profits gained or losses avoided because of the infringement, where those can be determined;

(b) in the case of an individual—

- (i) EUR 700,000; or
- (ii) up to twice the amount of the profits gained or losses avoided because of the infringement, where those can be determined.

- (2) A penalty under subsection (1)(a)(i) or (b)(i) may be imposed as an equivalent amount expressed in Sterling, based upon the exchange rate as at 22 February 2016.
- (3) Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts under Directive 2013/34/EU, the relevant total turnover for the purpose of subsection (1) is the total annual turnover according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.
- (4) A penalty imposed under this section may be enforced as if it was a civil debt owed to the Authority.

**Effective application of sanctions and other measures.**

38ZN. When determining the type of administrative sanctions or other measures and the level of any civil penalty, the Authority must take account of all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible;
- (c) the financial strength of the person responsible, for example, as indicated by a legal person's total turnover or an individual's annual income;
- (d) in so far as they can be determined, the importance of profits gained or losses avoided by the person responsible;
- (e) in so far as they can be determined, the losses for customers and third parties caused by the infringement;
- (f) the level of cooperation of the responsible person with the Authority;
- (g) previous infringements by the responsible person; and
- (h) measures taken by the person responsible to prevent repetition of the infringement.

**Warning notices.**

38ZO.(1) Before taking action under section 38ZH(3)(c) or sections 38ZI to 38ZM in respect of an infringement, the Authority must give the person concerned a warning notice, stating the action proposed and the reasons for it.

(2) Subsection (1) does not apply if the Authority is satisfied that a warning notice—

- (a) cannot be given because of urgency;
  - (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
  - (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.
- (3) A warning notice–
- (a) must give the recipient not less than 14 days to make representations; and
  - (b) must specify a period within which the recipient may decide whether to make oral representations.
- (4) The period for making representations may be extended by the Authority.

**Decision notices.**

38ZP.(1) This section applies where the Authority has–

- (a) issued a warning notice; or
  - (b) dispensed with the requirement to do so under section 38ZO(2).
- (2) After considering any representations made in accordance with section 38ZO, the Authority must issue–
- (a) a decision notice stating that the Authority will take the action specified in the warning notice;
  - (b) a discontinuance notice stating that the Authority does not propose to take that action; or
  - (c) a combined notice consisting of a decision notice stating that the Authority will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

- (3) A decision notice takes effect, and the specified action may be taken—
  - (a) at the end of the period for bringing an appeal if no appeal is brought; or
  - (b) when any appeal is finally determined or withdrawn.

**Interim orders.**

38ZQ. The Authority may apply to the Supreme Court for permission to take action under this Part where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

**Appeals.**

- 38ZR.(1) The person on whom a decision notice is served may appeal to the Supreme Court.
- (2) An appeal must be brought within the period of 28 days beginning with the date of the decision notice.

**Publication of sanctions and other measures.**

- 38ZS.(1) The Authority must promptly publish on its official website details of any administrative sanction or other measure that has been imposed for an infringement of this Part.
- (2) The information published under subsection (1) must include—
  - (a) the type and nature of the infringement; and
  - (b) the identity of the person responsible for it.
- (3) The Authority must take one of the steps in subsection (4) where—
  - (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with subsection (1)–

- (i) the identity of the legal person involved; or
    - (ii) the personal data of the individual involved; or
  - (b) it considers that publication in accordance with that subsection would jeopardise the stability of financial markets or an ongoing investigation.
- (4) Those steps are–
- (a) to defer publication until the reasons for non-publication cease to exist;
  - (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
  - (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure–
    - (i) that the stability of the financial markets would not be put in jeopardy; or
    - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.
- (5) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.
- (6) Subsection (1) does not apply while an appeal could be brought or is pending.
- (7) Despite subsection (6), the Authority may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal and, if permission is granted, the Authority must without undue delay–

- (a) publish the decision together with a statement which–
    - (i) states that the decision may be the subject of an appeal and the time in which any appeal must be made; and
    - (ii) confirms whether it is the subject of an appeal; and
  - (b) amend the information published under paragraph (a)–
    - (i) if an appeal is submitted after its initial publication; or
    - (ii) to reflect the outcome of any appeal.
- (8) The Authority must inform EIOPA of any administrative sanction or other measure imposed under this Part but not published in accordance with this section, including any appeal against that sanction or measure and the outcome of the appeal.

**Reporting of breaches.**

38ZT.(1) The Authority must establish effective mechanisms to enable and encourage the reporting to it of possible or actual breaches of this Part.

- (2) Those mechanisms must include–
- (a) specific procedures for the receipt and follow-up of reports;
  - (b) access for employees and other persons who report breaches committed within insurance or reinsurance distributors to–
    - (i) information and advice on the legal procedures and remedies available to protect the person against retaliation, discrimination or other types of unfair treatment, including on the procedures for seeking compensation; and

- (ii) effective assistance from the Authority before any relevant authority involved in the person's protection against unfair treatment, including certification by the Authority in any employment dispute of the reporting person's status as a person who has reported a breach.
- (c) protection of the identity of both the person who reports the breach and the individual who is allegedly responsible for the breach, at all stages of the procedure unless disclosure is required by law in the context of further investigation or subsequent administrative or judicial proceedings.

**Submitting information to EIOPA on sanctions and other measures.**

38ZU.(1) The Authority must inform EIOPA of any administrative sanction or measure imposed under this Part but not published in accordance with section 38ZS.

- (2) The Authority must provide EIOPA annually with aggregated information regarding all administrative sanctions and other measures imposed in accordance with section 38ZG.
- (3) Where the Authority has disclosed an administrative sanction or other measure to the public, it must at the same time report it to EIOPA.

**Data protection.**

38ZV. The Data Protection Act 2004 applies to the processing of personal data under this Part.

*Transitional provision*

**Transitional period.**

38ZW. A general insurance intermediary's or life assurance intermediary's licence which was granted under this Act and had effect on the day before this section comes into operation

is to continue to have effect and be treated as if it was granted under this Part but the holder of that licence must comply with section 38K by no later than 23rd February 2019.”.

(3) In section 48, after subsection (1) insert–

“(1A) Subsection (1) does not apply to an infringement of Part V(A) to which section 38ZH applies.”.

(4) In Schedule 3, for paragraph 3 substitute–

**“3. Insurance and Reinsurance Distribution.**

(1) Carrying out, for remuneration, any one or more of the following activities–

- (a) advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance;
- (b) concluding contracts of insurance or reinsurance;
- (c) assisting in the administration and performance of contracts of insurance or reinsurance; in particular in the event of a claim;
- (d) providing–
  - (i) information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media; or
  - (ii) an insurance product ranking list, including price and product comparison or a discount on the price of an insurance contract, through a website or other media;

where the customer is able to directly or indirectly conclude an insurance contract using a website or other media;

- (2) Insurance and reinsurance undertakings and their employees may also perform the controlled activities in paragraph (1) in accordance with Part V(A) without the need to hold a licence under that Part.
- (3) The following activities do not constitute insurance or reinsurance distribution—
  - (a) the provision of information on an incidental basis in the context of another professional activity where—
    - (i) the provider does not take any additional steps to assist in concluding or performing an insurance contract; and
    - (ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
  - (b) claims management, expert appraisal of claims or loss adjusting on behalf of an insurance or reinsurance undertaking;
  - (c) the mere provision of data and information on potential policyholders to insurance or reinsurance intermediaries or insurance or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
  - (d) the mere provision of information about insurance or reinsurance products, an insurance or reinsurance intermediary or an insurance or reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.
- (4) Paragraph (1) does not apply to insurance distribution activities carried out by ancillary insurance intermediaries where the following conditions are met—

- (a) the insurance is complementary to the product or service supplied by a provider and covers–
    - (i) the risk of breakdown, loss of or damage to the product or non-use of the service supplied by that provider; or
    - (ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider; and
  - (b) the premium paid for the insurance product does not exceed–
    - (i) EUR 600 a year; or
    - (ii) where the insurance is complementary to a service of not more than three months' duration, EUR 200 a person.
- (5) Paragraph (1) does not apply to insurance and reinsurance distribution activities carried on outside the EEA or in relation to risks and commitments located outside the EEA.”.
- (5) After Schedule 4 insert–

**“SCHEDULE 5**

**PART V(A): MINIMUM PROFESSIONAL KNOWLEDGE  
AND COMPETENCE REQUIREMENTS**

**I. Non-life risks classified under classes 1 to 18 in Part A of Annex I  
to EUS2D–**

- (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks if 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 competency.

II. Insurance-based investment products–

- (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 of the saving products market;

- (h) minimum necessary knowledge of complaints handling;
- (i) minimum necessary knowledge of assessing customer needs;
- (j) conflicts of interest management;
- (k) minimum necessary knowledge of business ethics standards; and
- (l) minimum necessary financial competency.

III. Life risks classified in Annex II to EUS2D–

- (a) minimum necessary knowledge of policies including 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 the insurance and other relevant financial services markets;
- (e) minimum necessary knowledge of complaints handling;
- (f) minimum necessary knowledge of assessing consumer needs;
- (g) conflicts of interest management;
- (h) minimum necessary knowledge of business ethics standards; and

- (i) minimum necessary financial competency.”.

**Amendment of the Financial Services (Licensing) Regulations 1991.**

3.(1) The Financial Services (Licensing) Regulations 1991 are amended as follows.

(2) In Schedule 1, for the entry in the table in respect of Insurance or Reinsurance Mediation substitute—

Insurance or Reinsurance Distribution (Paragraph 3, Schedule 3 of the Act)	VI(a) VI(b) VI(c)	General Insurance Intermediary Life Assurance Intermediary Ancillary Insurance Intermediary
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Dated 22nd February, 2018.

A J ISOLA,  
Minister with responsibility for financial services  
and for the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations amend Part V(A) of, and Schedule 3 to, the Financial Services (Investment and Fiduciary Services) Act and add a new Schedule 5 to that Act, in order to transpose Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast). The Regulations also make consequential amendments to the Financial Services (Licensing) Regulations 1991.

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