THE INSURANCE DISTRIBUTION DIRECTIVE 2018: THE 6 THINGS YOU NEED TO KNOW

The Insurance Distribution Directive deadline is 1st October 2018.

A recast of the existing Insurance Mediation Directive, it is designed to ensure that there is a level playing field across all intermediaries selling insurance products.

With a scope that is much broader than just the traditional insurance industry, we asked Associates Mary Smith and Cathie Shannon from Beale and Company Solicitors to give us an overview.

The IDD Regulations transpose into Irish law the Insurance Distribution Directive "IDD", which establishes requirements applicable to insurance intermediaries, ancillary insurance intermediaries, insurance and reinsurance undertakings (collectively "Distributors").

The IDD Regulations have a compliance deadline of 1 October 2018, by which date Distributors will be required to have taken all necessary steps to comply. The IDD replaced the Insurance Mediation Directive ("IMD") and like the IMD, is a "minimum harmonisation" directive meaning that each member state is free to introduce more stringent provisions provided these are consistent with the IDD. The IDD applies to all sales of insurance products, including direct selling. It makes significant changes, with insurance-based investment products being subject to more prescriptive rules.

The ambit of the IDD Regulations is broader than the traditional insurance industry and includes those for whom the distribution of insurance is an ancillary service, such as travel agents and car rental firms, save in certain limited instances. Those working in claims, loss adjusting, and those who review insurance contracts such as lawyers, are outside the scope of the IDD.

The IDD Regulations merit reading in full by those in the industry, as they impact how insurance business is conducted day-to-day. Some notable features are addressed in more detail below:

1 REGISTRATION WITH CBI

The IDD Regulations provide that whilst insurance and reinsurance intermediaries must register with the CBI, insurance undertakings do not have to. Not all employees of an intermediary are obliged to register, but those in management must. The CBI must ensure that an on-line registration system is set up, with the registration process to take no more than three months. Undertakings and intermediaries who are responsible for other intermediaries (including ancillary intermediaries) should ensure that the relevant intermediary meets the conditions for registration and that they are registered. The Regulations provide that those already registered or authorised to carry out insurance activities issued under the IMD are automatically registered under these Regulations

2 PROFESSIONAL KNOWLEDGE / GOOD REPUTE

The IDD Regulations (Part 5) provide that the professional knowledge of management and employees working in insurance distribution should match the level of complexity of their activities. At least 15 hours relevant CPD must be completed (in keeping with the current Minimum Competency Code). The requirements of integrity mean that those working in distribution are obliged to have a clean criminal record in respect of certain dishonesty offences. Distributors will be allowed to check their employees' good repute. These good repute requirements apply only to those working in distribution roles and not to all employees.

Regulation 21 stipulates that intermediaries are to have ring-fenced professional indemnity insurances in place against liability to customers arising from professional negligence with the minimum limits as stated therein. This section also requires distributers to have internal complaints procedures in place for customers.

3 CUSTOMER PREMIUMS

The IDD Regulations provide that monies paid by a consumer to an intermediary are treated as having been paid to the insurance undertaking, whereas monies paid by the insurance undertaking to the intermediary will be treated as having been paid to the customer only when the customer actually receives them. The transfer of customer monies is regulated via client accounts, the content of which is protected in the event of bankruptcy.

4 ADVICE AND STANDARDS / INSURANCE PRODUCT INFORMATION DOCUMENT

The IDD Regulations provide that the Insurance Product Information Document "IPID" for non-life products is to be provided to customers, alongside the existing Consumer Protection Code and Solvency II disclosure requirements, the intention being to allow the customer to make an informed decision. The IPID is a short, standardised document, providing information about the type of insurance, summary of cover, contractual obligations and length, termination and other provisions. The IPID should be drawn up by the relevant insurance undertaking or by the insurance intermediary that manufactures the insurance product.

5 CROSS SELLING

The IDD sets out a number of requirements applicable to cross-selling. In the IDD Regulations, it is a requirement to disclose whether it is possible to purchase the components separately.

6 INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS

These are set out at Part 7 of the Regulations. As may be expected, insurance distributors are to act in the interest of customers and shall not be remunerated in a way that impacts upon this. The IDD Regulations also lay down the information that must be provided to the customer by intermediaries and undertakings, in good time, prior to the conclusion of the insurance contract.

WHAT NEXT?

As 1 October 2018 draws nearer, it is important that businesses involved directly or indirectly in insurance sales consider the changes, to ensure they are prepared for the new regime as soon as it comes into force. At present, the CBI is considering the key question of commission payments and consumer protection, having sought submissions from interested parties. The outcome of this process is eagerly awaited, at which point the Minister will review the discretions allowed in the IDD regarding whether to limit or prohibit commission as a means of payment in insurance distribution. ●

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