

Implementation of the Insurance Mediation Directive in the EU Member States (+ Norway & Switzerland)

BIPAR 9th update

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➤ Austria	p. 2
➤ Belgium	p. 4
➤ Cyprus	p. 6
➤ Czech Republic	p. 7
➤ Denmark	p. 10
➤ Estonia	p. 12
➤ Finland	p. 15
➤ France	p. 18
➤ Germany	p. 23
➤ Greece	p. 26
➤ Hungary	p. 28
➤ Ireland	p. 33
➤ Italy	p. 37
➤ Latvia	p. 39
➤ Lithuania	p. 41
➤ Luxembourg	p. 43
➤ Malta	p. 47
➤ Poland	p. 52
➤ Portugal	p. 54
➤ Romania	p. 57
➤ Slovakia	p. 60
➤ Slovenia	p. 62
➤ Spain	p. 63
➤ Sweden	p. 65
➤ The Netherlands	p. 67
➤ UK	p. 70
➤ Norway	p. 73
➤ Switzerland	p. 75

AUSTRIA

1. State of implementation of the IMD

Federal Law modifying the Trade and Commercial Regulations Act, the Broker Statute, the Insurance Contract Act and the Banking Act)

- *Publication reference in the Official Journal:*
Bundesgesetzblatt für die Republik Österreich, Nr 131/2004, Teil I, 29/11/2004
- *Entry into force:* 30/11/2004

2. Scope

All insurance intermediaries (brokers and agents) and financial services providers. Article 1 of the IMD was implemented literally. Selling travel insurances and extended warranties will be exempted.

3. Definitions of intermediaries' categories

The law uses the term insurance intermediary. This term covers different categories, in particular agent and insurance brokers, consultants in the field of insurance, but also persons carrying out insurance mediation as an ancillary profession. Note: each insurance intermediary is entitled to act in one case as agent and in another as broker.

Main profession

- a) brokers and consultants in the field of insurance (note: one authorization is valid for both brokers and consultants), acting on behalf of clients
- b) agents acting on behalf of one or more insurers
- c) banks
- d) financial services providers (authorized only for the lines life and personal accident)

Ancillary profession (for instance in addition to car selling)

- a) brokers and consultants
- b) agents

Note: All these professions are allowed to act as brokers in one case and as agents in another case.

4. Registers

➤ **Number of registers:** a central register of insurance intermediaries, for which the Ministry of economic affairs is the competent authority. Upon request, the public can obtain information on this central register.

Competent authority: Each insurance intermediary has to be registered at the local authorities in charge of commercial activities. The local authorities report the data to a central register, the central register informs the public upon request.

See: <http://versicherungsvermittler.bmwa.gv.at>

➤ **Cost:** It is not supposed to add extra charges for intermediaries. Since 15 January 2005, a new and free electronic insurance intermediary register is available. Insurance brokers and agents had to be initially registered by the end of May 2005. The deadline has been extended.

5. Professional requirements

5.1 Knowledge and ability requirements

Each insurance intermediary and each financial service provider has to have an authorization, these professions are regulated professions. To get an authorization you have to prove a successful examination or having worked for 4 years in the insurance market, ...

See: http://portal.wko.at/wk/dok_detail_file.wk?angid=1&docid=293622&dstid=165&stid=155708

5.2 PI cover requirement

Minimum €1m per claim, €1,5m in aggregate per year. Loss occurrence basis policies. Insurers do not provide PI cover for agents.

5.3 Financial guarantee

Segregated clients accounts

5.4 Additional requirements to those of the IMD

No

AUSTRIA

6. Information requirements

The Austrian law has the same requirements as the Directive.

6.1 Implementation of Article 12.3 of the IMD in practical terms

The Austrian law uses the same terms as those in the IMD. In practice, brokers use a form (prepared by the *Fachverband Versicherungsmakler und Berater in Versicherungsangelegenheiten*) in which they include clients' demands and needs and explain why they have chosen a particular product to fit best their clients' requirements.

7. Acquired rights (grandfathering clause)

Yes, when they confirm with the authority that they have an existing PI cover.

8. Sanctions

Sanctions against intermediaries are laid down in current legislation.

If the broker does not fulfil the requirements for the mediation, especially for the information and documentation during the consultation process, he will be fined (from € 2.180,00 up to €3.600,00). If the broker works without an existing PI cover, his authorization will be withdrawn and he will be struck off the register.

9. Complaints

The Ministry of Commerce and Labour deals with complaints.

10. Out-of-court redress

There are currently no details available on the out-of-court redress. An arbitration institute is being established.

11. Notification of establishment and services in other Member States

The Austrian competent authority must be advised of an Austrian intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Austrian provisions to be fulfilled by EU non-Austrian intermediaries doing FOS/FOE in Austria (general good provisions, stricter information requirements, ...)

There are no differences for Austrians and non-Austrian intermediaries with regard to the fulfilment of requirements of the law.

13. Other specific comments

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14. Useful links

- National legislation website: www.ris.bka.gv.at
- DG Internal Market/Transposition of the IMD by Austria:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/austria/f_d15_at_en.htm
- Austrian Chamber of Commerce's website:
http://portal.wko.at/wk/startseite_dst.wk?AngID=1&DstID=165

Back to top

BELGIUM

1. State of implementation of the IMD

Wet tot wijziging van de wet van 25 juni 1992 op de landverzekeringsovereenkomst en van de wet van 27 maart 1995 betreffende de verzekeringsbemiddeling en de distributie van verzekeringen/ Loi modifiant la loi du 25 juin 1992 sur le contrat d'assurance terrestre et la loi du 27 mars 1995 relative à l'intermédiation en assurances et à la distribution d'assurances

(Law amending the Law of 25 June 1992 on the land insurance agreement and the Law of 27 March 1995 concerning insurance mediation and distribution of insurance)

- *Publication reference in the Official Journal:*
Belgisch Staatsblad/Moniteur Belge of 15 March 2006, page 15374
- *Entry into force:* 15/03/2006

2. Scope

The law is applicable to insurance and reinsurance intermediaries whose home country is Belgium or who have their activities in Belgium.

The whole distribution of insurance is regulated. The exemptions of the law are the same as those mentioned in the IMD.

3. Definitions of intermediaries' categories

The law refers to 3 categories of insurance intermediaries:

- *Insurance broker:* the insurance or reinsurance intermediary who puts the consumer in contact with insurers or reinsurers, without being tied to these insurers or reinsurers.
- *Insurance agent:* the insurance or reinsurance intermediary who mediates in insurance or reinsurance, on behalf of one or several insurers or reinsurers, and this as the result of one or more contracts or mandates.
- *Insurance subagent:* the insurance or reinsurance intermediary, other than a broker or an agent, who is active under the responsibility of a broker or an agent.

4. Registers

- *Number of registers:* There is one register of insurance and reinsurance intermediaries with three categories: broker, agent and subagent.
- *Competent authority:* Banking, Finance and Insurance Commission (CBFA).
<http://www.cbfa.be/fr/vt/vt.asp>
- *Cost:* Intermediaries have to pay to the Banking, Finance and Insurance Commission (CBFA) a yearly registration amount that depends on the CBFA's **financial needs**. A new law stipulates that the total operation costs of the CBFA will be divided between insurers and intermediaries.
There is a payment per CBFA registration number and per responsible person for the distribution.

5. Professional requirements

5.1 Knowledge and ability requirements

Intermediaries who are active in 'life' also need to have a knowledge of the anti-money laundering regulation. For intermediaries who are a legal person, the persons who have the effective leadership need to have a knowledge of business administration.

5.2 PI cover requirement

The law does not mention the limits. According to the royal decree: minimum 1.000.000 € per each claim, 3.000.000 € per year.

5.3 Financial guarantee

The law mentions the obligation to have a financial guarantee, but does not mention the forms. The two forms are specified in the existing royal decree and are the guarantee of a bank and the security of a bank or an insurer.

A second paragraph has been added to Article 13 of 25 June 1992 on the non-marine insurance contract. From now on, the insured is fully discharged when he has paid the premium to the intermediary, but the amounts paid by the insurer to the intermediary are considered as paid to the insured or his beneficiary only when the latter has actually received these amounts.

5.4 Additional requirements to those of the IMD

No

BELGIUM

6. Information requirements

The law has exactly the same obligations as in the IMD.

6.1 Implementation of Article 12.3 of the IMD in practical terms

Professional organisations have drawn up standard documents (*will be available on POI website*). The CBFA considers these standard documents as good guides that are to be followed. Standard questionnaires are used.

7. Acquired rights (grandfathering clause)

A registration already exists for insurance brokers. A grandfathering clause is not necessary for them (for some new obligations there is a transitional phase). For reinsurance brokers, there is a grandfathering clause in the law. According to the requirements, reinsurance intermediaries must be active since five years.

8. Sanctions

Several penal (imprisonment and fine) and administrative sanctions by the CBFA (Banking, Finance and Insurance Commission).

When the CBFA notices an insurance intermediary's failure to comply with the provisions of the law or the enforcement decrees and rules, it identifies the breaches and sets a deadline within which the intermediary has to remedy the situation. The CBFA can forbid the intermediary to carry out part of or all his activities during this period and can also suspend his registration. If the intermediary fails to remedy the situation within the set deadline, it can strike the intermediary off the register.

The CBFA can impose a penalty of up to €25.000 per breach and make public the intermediary's failure to comply with its injunctions. It can impose an administrative fine that can vary between €25 and €25.000.

9. Complaints

There is the possibility to make an appeal to "the insurance ombudsman". At the moment there is no particular procedure yet.

10. Out-of-court redress

The handling of complaints via 'the insurance Ombudsman' is considered as an out-of-court procedure. The Ombudsman's competence will be extended in the future. This ombudsman has just received a new legal status.

The insurance intermediary must be part of an out-of-court complaint handling system (article 10 6 bis). This new obligation will enter into force on a date set in a royal decree. The insurance intermediary must join this system himself or be a member of a professional association that has joined such a system. This out-of-court system aims at resolving disputes between insurance companies, between insurance intermediaries and clients, by giving an opinion or by acting as an ombudsman.

The mode of enforcement and the financing of this system – in which companies and intermediaries will have to take part – must still be set in a royal decree.

11. Notification of establishment and services in other Member States

The Belgian competent authority must be advised of an Belgian intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Belgian provisions to be fulfilled by EU non-Belgian intermediaries doing FOS/FOE in Belgium (general good provisions, stricter information requirements, ...)

Not known yet

13. Other specific comments

No

14. Useful links

- National legislation website: www.ejustice.just.fgov.be
- DG Internal Market/Transposition of the IMD by Belgium:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/belgium/f_d15_be_en.htm

Back to top

CYPRUS

1. State of implementation of the IMD

The Functioning of Insurance Services and other Related Issues (Amendment) Regulations 2004

Οι περί της Ασκήσεως Ασφαλιστικών Εργασιών και Άλλων Συναφών Θεμάτων (Τροποποιητικοί) Κανονισμοί του 2004.

- *Publication reference in the Official Journal:*
Cyprus Gazette issue 3926 (Law 806(I)/2004)
- *Entry into force:* 26/11/2004

14. Useful links

- National legislation website: www.cygazette.com
- DG Internal Market/Transposition of the IMD by Cyprus:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/cyprus/f_d15_cy_en.htm

(No other information available on the implementation of the IMD in Cyprus as BIPAR does not have any member association in Cyprus.)

Back to top

1. State of implementation of the IMD

Act No. 38/2004 Coll., on Insurance Intermediaries and on Independent Loss Adjustors and on amendment to the Trade Licensing Act (Act on Insurance Intermediaries and Loss Adjustors (Zákon č. 38/2004 Sb., o pojišťovacích zprostředkovatelích a samostatných likvidátorech pojistných událostí a o změně živnostenského zákona (zákon o pojišťovacích zprostředkovatelích a likvidátorech pojistných událostí)

- *Publication reference in the Official Journal:*
Sbírka zákonů ČR, year: 2004, section 12, page 600
- *Entry into force:* 01/01/2005

2. Scope

The law a) lays down the conditions for the activities of insurance intermediaries and independent loss adjusters; b) lays down the conditions for the taking-up of activities of insurance intermediaries in the Czech Republic under the freedom of establishment and freedom to provide services; c) establishes the register of insurance intermediaries and independent loss adjusters; d) lays down the pursuit of the state supervision over the activities of the insurance intermediaries and independent loss adjusters.

Exemptions: the same as in IMD, Article 1.2 and 2.3.

3. Definitions of intermediaries' categories

Insurance intermediaries are defined as “*any natural or legal person who, for remuneration, takes up or pursues insurance mediation*”. The following nomenclature is included:

§ 4 Insurance intermediaries

(1) Under the conditions set out by this law, the insurance mediation on the territory of the Czech Republic can be pursued by any legal or natural person as

- (a) tied insurance intermediary (§ 5),*
- (b) subordinate insurance intermediary” (§ 6),*
- (c) insurance agent (§ 7),*
- (d) exclusive insurance agent*
- (e) insurance broker” (§ 8), or*
- (f) insurance intermediary from the home Member State other than the Czech Republic.*

4. Registers

- **Number of registers:** One register with internal itemization (7 segments: tied insurance intermediaries, subordinate insurance intermediaries, exclusive insurance agents, insurance agents, insurance brokers, insurance intermediaries from another Member State /notification/, independent loss adjusters).

Brokers who will act as agents in some cases, must have double registration

For registration purposes of the tied insurance intermediary, the insurance undertaking issues a written declaration that the applicant meets the requirements of the professional knowledge and ability and the undertaking takes full responsibility for his/her activities carried out on its behalf.

A similar declaration is issued by the insurance intermediary for his “subordinate” insurance intermediary.

- **Competent authority:** Czech National Bank
<http://ispoz.mfcr.cz/RegistrVyhledavani.aspx>
- **Cost:** CZK 2,000 (appr. €62) for the tied or subordinate intermediary, CZK 10,000 (appr. €310) for the agent or broker as an administrative fee which must be paid before the registration. It is a unique fee, to be paid once, and is the same for all brokers and agents.

CZECH REPUBLIC

5. Professional requirements

The law introduced 3 levels of professional knowledge which entitle persons to pursue the activity of insurance mediation in a certain range: basic for the tied and “subordinate” intermediaries, medium for the agents, high for the brokers.

The system of professional knowledge has been set up in the procedural regulations.

5.1 Knowledge and ability requirements

As far as professional knowledge and ability are concerned, it has to be proven a) by a certificate of a university or a high school specialised in the insurance training programme plus at least two years of professional practice in the insurance industry, or b) by two years of professional practice in the insurance industry plus the professional examination passed before a ministerial commission. The intermediary who does not meet condition (a) is obliged to pass the exam within two years from the time the law enters into force.

5.2 PI cover requirement

PI cover requirements as in the IMD: PI insurance with an indemnity limit of at least €1m applying to each claim and €1.5m per year for all claims, which is applicable to the whole territory of the EEA.

The insurers do not provide PI cover for their agents.

5.3 Financial guarantee

They correspond to the IMD requirements in Article 4.4 (b) and (c):

obligation to keep permanent liquid financial capital amounting to 4% of the annual premiums received or to only use a special account for transfers of premiums or indemnities if the broker is authorised to collect these.

Special provision also stipulates in general the same which is required by IMD in the Article 4.4 (a)

5.4 Additional requirements to those of the IMD

No

6. Information requirements

All the provisions of Articles 12 and 13 are implemented in detail (Article 21 “Duties of the insurance intermediaries and independent loss adjusters”).

6.1 Implementation of Article 12.3 of the IMD in practical terms

Professional organisations are not dealing with the implementation of the precontractual obligation.

The supervisory authority is not trying to guide intermediaries in this matter. Standard questionnaires are not used. The practical solution is solely up to the intermediary.

7. Acquired rights (grandfathering clause)

Grandfathering clause: concerns only brokers.

8. Sanctions

- Penalty up to CZK 10m (€330,000). (It also applies to the pyramid system of insurance sales)

- Penalty up to CZK 100m (€3.3m).

(above-mentioned penalties are set forth in the amendments of the Insurance Act)

- Hold-up in the activities of insurance intermediary up to 6 months if the PI cover has expired or if the requirement for the financial capacity is not supplied; the Ministry of Finance can break the activities of the insurance intermediary for one year;

- Penalty up to CZK 1m (€33,000) in case of presenting false statements to the Office, or breaking secrecy;

- Penalty up to CZK 10m (€330,000) in case the intermediary pursues his activities contrary to his/her registration.

9. Complaints

Customers can send complaints about intermediaries to the Czech National Bank. More details are not stipulated.

10. Out-of-court redress

This issue is not taken up in the law. The law only stipulates that the intermediary has to provide the customer with information on out-of court-settlements, on how to lodge a complaint against him and on how to go to court if need be.

The Ministry of Finance is going to initiate negotiations on how to establish an ombudsman in insurance. It is now under discussion.

11. Notification of establishment and services in other Member States

The Czech competent authority Must be advised of a Czech intermediary's intention to conduct services business or establish a branch in another EU Member State. (see §14.1 of Act nr.38/2004Coll.). 14.3 of the Act: "the insurance intermediary who's home Member State is other than the Czech Republic and who intends to start his/her activities on the territory of the Czech Republic shall advise this intention to the competent authority of his/her home Member State".

12. Czech provisions to be fulfilled by EU non-Czech intermediaries doing FOS/FOE in the Czech Republic (general good provisions, stricter information requirements, ...)

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13. Other specific comments

The requirements of the law apply also to insurance intermediaries who sell on the Internet on the territory of the Czech Republic. They have to be registered in the Czech Republic.

The new regime also imposes additional requirements to those set out in the IMD. Specific rules and obligations beyond the scope of the IMD are as follows:

- only the following categories of insurance intermediaries are allowed to collect premiums:
 - insurance intermediaries with Home States other than the Czech Republic if the regulation of their Home States authorises them to collect premiums;
 - insurance agents, if specifically agreed with the insurer; and
 - insurance brokers, if specifically agreed with the insurer and the customer;
- obligations to notify the regulator are imposed; and
- specific requirements as to the form and content of agreements between intermediaries and insurers.

14. Useful links

- National legislation website: www.mvcr.cz/sbirka/index.html
- DG Internal Market/Transposition of the IMD by the Czech Republic:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/czech/f_d15_cz_en.htm

Back to top

DENMARK

1. State of implementation of the IMD

Consolidated Act, Act on insurance mediation
(Bekendtgørelse af lov om forsikringsformidling)

- *Publication reference in the Official Journal:*
LBK nr 767 af 05/08/2005 (Gældende)
- *Entry into force:* 05/08/2005

2. Scope

It sets up rules and conditions for pursuing the activities of brokers, reinsurance brokers, agents, subagents and insurance distributors.

Exemptions: IMD Cpt. 1, Art. 1,2

Advice, given by lawyers and accountants

Distributors of insurance who occasionally give advice on insurance matters in connection with other commercial activities, provided that the purpose for this piece of advice does not consist of proposing, concluding or performing an insurance contract.

3. Definitions of intermediaries' categories

- Brokers
- Agents (tied) and subagents
- Reinsurance brokers
- Insurance distributors

4. Registers

➤ *Number of registers:* in principle two:

- Insurance/Reinsurance brokers and sub-agents will be registered directly with the Finance Supervision authority.
- Agents will be registered with the respective insurance company. Each insurance company will make its own register, which means that an agent co-operating with more insurance companies will be registered in many registers.

➤ *Competent authority:* Finance Supervision authority

<http://www.ftnet.dk/sw1342.asp>

➤ *Cost:* So far there has been no cost at the point of registration. At present an annual fee is collected from brokers based on the commission-turnover.

5. Professional requirements

5.1 Knowledge and ability requirements

In case of tied agents, the requirements will vary in proportion to the complexity of the insurance offered.

5.2 PI cover requirement

Dkr.10m (±€1,341,000) per claim, max. dkr.11.250.000 (±€1,5m) per year. Cover area enlarged from Denmark to Europe.

5.3 Financial guarantee

Either a declaration from an insurer that payments made to the broker is to be regarded as paid to the insurer or a fidelity insurance or a financial guarantee (bank etc.)

5.4 Additional requirements to those of the IMD

No

6. Information requirements

▪ *For agents:* before a contract is concluded the client shall receive written information about the primary content. At least:

1. Name & address of the agent.
2. In what register the agent is registered and how the registration can be controlled.
3. Whether the agent has a share of more than 10% of the votes in an insurance company.
4. Whether an insurer has more than 10% of the votes/capital in the Agent.

DENMARK

5. Whether the agent has agreement with one or more insurers and that the client at request can have information about which insurers.
6. Relevant rights according to the Law of Purchase.
7. Other possible insurance protection.
8. Cover under the insurance agreement.
9. Expiry date of the insurance agreement.
10. Conditions for cancellation of the insurance agreement.
11. Provision for Complaints and body to send complaints to.

If the agent receives a commission, the client shall be informed and shall upon request receive information about the size of the commission.

The above-mentioned information shall be provided to the clients in Danish and in an understandable form.

- *For brokers:* same as for agents, but brokers shall inform clients whether they act on the basis of a broad analysis of the insurance products available on the market or of products from a specific limited number of insurers.

Brokers shall formulate clients' needs and their advice on the basis of clients information and adjust this advice in accordance with the complexity of the insurance solution.

7. Acquired rights (grandfathering clause)

All brokers who have been active since 1 January 2000 have been evaluated by the Financial Supervisory Authority. Some have been required to extend their education before 2005.

8. Sanctions

The Financial Supervisory Authority can withdraw registration.

Sanctions are fines or in cases where other laws are breached stronger penalties.

9. Complaints

A Board consisting of relevant experts will be established to handle complaints against brokers.

Complaints against agents will be handled by an existing organisation formed by the insurance companies.

10. Out-of-court redress

The above-mentioned board will handle claims, the procedures has not been as yet decided.

11. Notification of establishment and services in other Member States

The Danish competent authority must not be advised of a Danish intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Danish provisions to be fulfilled by EU non-Danish intermediaries doing FOS/FOE in Denmark (general good provisions, stricter information requirements, ...)

13. Other specific comments

Insurance companies representing more than 85% of the non-life market have introduced netquoting, replacing commission. At the same time, they have cancelled cooperation with the majority of small brokers with the effect that these small brokers will neither have commission nor net premiums. The Danish Competition Authorities cannot interfere, they have not found the proof that insurance companies have cancelled contracts with brokers. Smaller brokers willing to adapt their business to the new situation are merging with larger brokers and survive; the others close.

14. Useful links

- National legislation website: www.retsinfo.dk
- DG Internal Market/Transposition of the IMD by Denmark:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/denmark/f_d15_dk_en.htm

Back to top

ESTONIA

1. State of implementation of the IMD

Insurance Activities Act

(Kindlustustegevuse seadus)

- *Publication reference in the Official Journal:*
Riigi Teataja, part I, year of publication: 2004, booklet No 90, article No 616 (RT I 2004, 90, 616)
- *Entry into force:* 01/01/2005

2. Scope

All insurance intermediaries (agents and brokers).

3. Definitions of intermediaries' categories

(1) An insurance broker is a person engaged in intermediation in the interests of a policyholder or of an insurer in case of re-insurance (*the Insurance Activities Act makes a distinction between an insurance undertaking (insurer) and a reinsurance undertaking. In case of reinsurance, the insurance undertaking is considered as a policyholder*) with an aim of offering an insurance contract which meets the client's insurance interests and needs.

(2) An insurance agent is a person who is engaged in intermediation on behalf of one or more insurers or re-insurers under a mandate. The representation of one or more insurers or re-insurers is allowed only on the condition that their insurance contracts are not competing. Insurance contracts are not competing if they deal with different classes or subclasses of insurance activities.

4. Registers

- **Number of registers:** One register, which is divided into two (brokers and agents) held by the Insurance Supervision.
- **Competent authority:** The Finance Supervision will register insurance companies and brokers. Agents are registered by insurance companies, but in practice this is done in collaboration with Finance Supervision <http://www.fi.ee/?id=771>
- **Cost:** There are no register costs. Brokers will be charged by the Supervision Authority a supervision fee, which is based on commission turnover.

5. Professional requirements

5.1 Knowledge and ability requirements

An insurance broker who is a natural person, a member of the management board of an insurance broker (legal person) and a natural person directly engaged in mediation (hereinafter representative of insurance broker) must have an impeccable professional and business reputation.

The following persons shall not act as a representative of insurance broker:

- 1) persons whose activities have caused the bankruptcy of a company or the termination or revocation of the activity licence of a company on the initiative of a state agency or a financial supervision authority or who are subject to a prohibition on business;
- 2) persons who have been punished for an economic offence, official misconduct or offence against property and information concerning the punishment has not been expunged pursuant to the Punishment Register Act.

An insurance broker who is a natural person and a member of the management board of an insurance broker (legal person), responsible for mediation, must have experience of working in the field of insurance or other financial services and must have received training in the field of insurance. A representative of an insurance broker must also have received training in the field of insurance.

Insurance agents are subject to similar requirements.

5.2 PI cover requirement

PI cover is required only for brokers and agents; approved by the Insurance Supervision; coverage area: minimum €1m per damage and €1,5m. Agents must not have PI coverage if the insurance company takes responsibility of agents' activities.

5.3 Financial guarantee

- 1) Money paid to the intermediaries are considered as been paid to the insurer and money paid by the insurer to the intermediary are not treated as having been paid to the customer until the customer actually receives them
- 2) Separation of client funds

5.4 Additional requirements to those of the IMD

No

6. Information requirements

Prior to the conclusion of any insurance contract, an intermediary shall provide the following information, either in writing or in a format which can be reproduced in writing. At the policyholder's request, or if need be, information may be provided orally but immediately after concluding an insurance contract, this information has to be given to the policyholder in writing or in a format which can be reproduced in writing as well.

§ 141. Requirements for brokers

(1) Prior to the conclusion of an insurance contract, and if need be, prior to the amendment or extension of an existing insurance contract, an insurance broker shall:

- 1) inform the customer of his/her contact details;
- 2) inform the customer that he/she offers insurance contracts based on an independent analysis and refer to the register in which the Financial Supervision Authority has included him/her and the means for verifying that he/she has been registered;
- 3) inform the customer whether he/she has a holding in an insurance undertaking, and whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the insurance intermediary;
- 4) on the basis of information provided by the customer, identify the customer's needs and requirements with regard to the insurance contract;
- 5) present to the customer an adequate number of insurers' offers;
- 6) on the basis of the offers above-mentioned, recommend an insurance contract which meets the most adequately the customer's needs and requirements;
- 7) specify the underlying reasons for any advice or recommendations given to the customer, according to the complexity of the insurance contract being proposed;
- 8) inform the customer about the terms and conditions of the proposed insurance contract, in particular the premiums, restrictions and exclusions related to that contract;
- 9) inform the customer of the procedure for compensation, including the court where he may file a claim for insurance indemnity on the basis of the insurance contract;
- 10) advise the customer on other issues relating to insurance
- 11) inform the customer of his right to demand that the insurance broker disclose the amount of the commission charged for the insurance contract he/she intermediates.

§ 148. Requirement for agents

(1) Prior to the conclusion of an insurance contract, and if need be, prior to the amendment or extension of an existing insurance contract, an insurance agent shall:

- 1) inform the customer of his/her contact details;
- 2) inform the customer that he/she is acting as an insurance agent and refer to the list in which the insurer has included him/her and the means for verifying this information;
- 3) inform the customer about the categories of contracts of the insurer who he/she represents and the extent of the authorisation received from the insurer;
- 4) submit an offer to the customer prior to the conclusion of an insurance contract (*An offer is a proposal to enter into a contract in a manner which is sufficiently defined and which indicates the intention of the offeror to be legally bound by the contract to be entered into if the proposal is accepted (Law of Obligations Act, § 16)*);
- 5) inform the customer of the terms and conditions of the proposed insurance contract, in particular the premiums, restrictions and exclusions related to that contract;
- 6) inform the customer of the procedure for compensation, including the court where he may file a claim for insurance indemnity on the basis of the insurance contract.

ESTONIA

6.1 Implementation of Article 12.3 of the IMD in practical terms

Each time before the entry into an insurance contract and, if necessary, also before the amendment or extension of an insurance contract which has been entered into, an insurance broker shall specify, on the basis of information provided by the customer, the insurable interests and the demands for the insurance contract of that customer (Insurance Activities Act, § 141(1) p 4).

7. Acquired rights (grandfathering clause)

All registered brokers must meet the new regulations otherwise they will be struck off the list.

8. Sanctions

Insurance Supervisory has a right to deny insurance mediation and to impose a conditional fine; brokers or agents may be struck off from the register, special indemnity for brokers and the responsible manager of a broker.

9. Complaints

No special procedures

10. Out-of-court redress

Insurance arbitration.

11. Notification of establishment and services in other Member States

The Financial Supervision Authority must be informed of an Estonian intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Estonian provisions to be fulfilled by EU non-Estonian intermediaries doing FOS/FOE in Estonia (general good provisions, stricter information requirements, ...)

13. Other specific comments

Brokers anticipate serious problems with obtaining the appropriate PI cover. As well as the required coverage (at least €1m applying to each claim and in aggregate €1,5m per year for all claims) is too big for smaller brokers and for brokers who do not intermediate insurance contracts from where these kind of risks can arise.

14. Useful links

- National legislation website: <http://www.riigiteataja.ee>
- DG Internal Market/Transposition of the IMD by Estonia:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/estonia/f_d15_ee_en.htm

Back to top

1. State of implementation of the IMD

Act on Insurance mediation
(Laki vakuutusedustuksesta)

- *Publication reference in the Official Journal:*
Act No. 570/2005
- *Entry into force:* 01/09/2005

2. Scope

All insurance intermediaries (agents and brokers).

Exemptions:

- non-profit activity (consumer advice organisations)
- insurers (and their employees),
- giving information about insurance products/advice occasionally complementing other activities
- Article 1 (2) of the Directive and in practice for instance travel agencies, opticians, mobile phone sales and house appliance sales;
- certain provisions are excluded from the scope for insurance intermediaries who are registered in another Member State;

Definitions: the definition of intermediaries includes both agents and brokers

- an *agent* is a legal or natural person carrying out insurance intermediation activity for the benefit and under the responsibility of the insurer;
- a *broker* is a legal or natural person carrying out insurance intermediation activity based on an agreement with someone else than the insurer. The broker will work on behalf of this person. The broker shall not have such interdependence with an insurer that may effect on his performance to the customer's disadvantage.

3. Definitions of intermediaries' categories

- brokers acting for and on behalf of insureds or other clients.
 - agents acting for and on behalf of insurers.
- to be noted: agents cannot act without the responsibility of an insurer

4. Registers

- **Number of registers:** One register, which is divided into two (brokers and agents) held by the Insurance Supervision.
- **Competent authority:** Insurance Supervision Authority
- <http://www.vakuutusvalvonta.fi>
- **Cost:** Intermediaries shall bear the cost of registration and supervision. The amount will be determined in accordance with another statute (insurance supervision). The amount for intermediary registration is €265. Supervisory amount is €770 per insurance broker company + €163 per broker. Agent amounts for supervision will be determined by the insurance supervisory.

5. Professional requirements**5.1 Knowledge and ability requirements****5.2 PI cover requirement**

PI cover requirements (only for brokers):

- approved by Insurance Supervision Authority;
- coverage area: whole EEA;
- minimum €1m per damage and €1,5m per year;

Additional conditions:

- obligation to inform if claims exceed 50 % of coverage of the period of insurance;
- insurance may end at earliest 2 years when Insurance Supervision Authority has received notice from the insurer;
- if there is an own risk, it may not be deducted from the compensation of the claimant;
- the insurer must reside in a state within EEA (unless exempt by the Insurance Supervision Authority);
- coverage to include 36 month claims made period after termination of insurance;

Agents do not need to have PI cover as insurers are directly responsible.

FINLAND

5.3 Financial guarantee

Only separation of client funds. No right to hold consumers' funds (with specific exception).

5.4 Additional requirements to those of the IMD

No

6. Information requirements

For agents and brokers:

- name and visiting address;
- register where the agent/broker is registered and information on how the registration may be verified;
- does the agent/broker own directly or indirectly more than 10 % of votes or equity of any insurer;
- in the event the agent/broker is a legal entity, does any insurer or its parent company directly or indirectly over 10 % of the equity or votes of the agent/broker;
- procedures including out-of-court procedures for complaints and claims.

Agents must clearly inform that they are agents and must identify the insurer whose insurance they are offering and in case of specific insurance product specify who is the insurer.

Brokers need to inform the customer clearly that they are insurance brokers (agents are not allowed to use the term "broker" in their activity). Brokers may not state that they are representing a specific insurance company. Brokers have to disclose the principles and the amount of their commissions to their customers. Brokers have to make sure that, prior to the conclusion of the insurance contract, the client is given all relevant information (forms, payments and terms of different available policies) about the insurance and specifically its restrictions in order for the client to determine and select among available insurances. Brokers have to evaluate customers' needs and based on that evaluation make a proposal for the insurance coverage for the benefit of customers. The agreement between the broker and his customer shall be made in writing and it must contain the amount or principles of the fee, period of the contract and the content of the assignment.

6.1 Implementation of Article 12.3 of the IMD in practical terms

The Insurance Supervisory Authority is mainly dealing with contracts and giving guidelines on what should or should not be included in contracts. Standard questionnaires are not in use as brokers are very different (national/global).

7. Acquired rights (grandfathering clause)

Since 1 September 2005 all registered brokers and persons who have passed the exam or started to study for the degree of insurance broker after January 1, 2004 (provided they have started before the law takes effect) will be registered as brokers, provided they apply for registration within two years after the law has taken effect. Agents who have been acting as agents before the law takes effect will have a right to continue their business until they are registered (or registration has been rejected) provided they apply within 6 months after the law takes effect. All such agents are exempt from the requirements of professional skills. A broker who has been a broker in the past must pass a new exam.

8. Sanctions

Insurance Supervisory has a right to deny insurance mediation and has a right to impose a conditional fine; broker or agent may be struck off from the register, special indemnity for the brokers and the responsible manager of a broker.

9. Complaints

No special procedures set up. The opinion is that there are already enough special procedures allowing access to justice for consumers which may be used.

10. Out-of-court redress

Insurance arbitration is common in Finland as the Consumers Insurance Office helps clients to solve problems with insurance companies.

FINLAND

11. Notification of establishment and services in other Member States

The Insurance Supervisory Authority must be informed. of a Finnish intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Finnish provisions to be fulfilled by EU non-Finnish intermediaries doing FOS/FOE in Finland (general good provisions, stricter information requirements, ...)

Few stricter requirements expected.

13. Other specific comments

- Collecting any money from insurers is prohibited.
- Compulsory disclosure of fee for brokers is, according to brokers, discriminatory since agents or insurance companies do not need to disclose their commissions/costs/other sales remunerations,
- Prohibition to hold/transfer customers funds was upheld and shall remain so even if brokers accept a security to be placed in accordance with the Supervisory Authority's discretion.
- Brokers' independence is scoped very narrowly and will de facto mean that it will be tightened;
- Multi-agents could fall outside the scope of the law (even if registered in another Member State) if they do not operate under the responsibility of a certain insurer;
- It is now up to a broker to prove that he has acted professionally and with due care.
- Long transition period of three years for new contracts regarding fees etc.
- The new law does not apply to old contracts (before 1st September 2005), this issue is now in the hands of the Parliamentary Ombudsman brought by the Finnish Insurance Broker Association.

14. Useful links

- National legislation website: www.finlex.fi
- DG Internal Market/Transposition of the IMD by Finland:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/finland/f_d15_fi_en.htm

Back to top

FRANCE

1. State of implementation of the IMD

- Law no° 2005-1564 of 15/12/2005 concerning various provisions of adaptation to the Community legislation in the field of insurance
(Loi no° 2005-1564 du 15/12/2005 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de l'assurance)
 - *Publication reference in the Official Journal:*
O.J. of 16 December 2005
 - *Entry into force:* within the 3 months following the set-up of the insurance intermediaries register, i.e. by 30 April 2007 at the latest.
- Enforcement decree (31 August 2006) of the law of 15 December 2005
- Publication on 3 November 2006 of 3 implementing orders regarding respectively the by-laws of ORIAS (registering body of insurance intermediaries), the registration fee and registering and renewal procedures

2. Scope

According to the law of 15 December 2005, *“Insurance or reinsurance mediation means the activities of introducing, proposing or helping to conclude insurance or reinsurance contracts or carrying out other work preparatory to the conclusion of such contracts. The activity which consists exclusively in managing, assessing and settling claims is not considered as insurance or reinsurance mediation.”*

“An insurance or reinsurance intermediary is a person, who, for remuneration, takes up or pursues insurance or reinsurance mediation”.

The decree also implements the Directives’s exemption of persons proposing insurance mediation services complementary to their main professional activity and for strictly defined contracts (essentially certain product warranties and travel insurance contracts).

The decree expands the basic definition of “insurance mediation” set out in the *législatif* part of the IC. Specifically, the act, by any natural or corporate person, of introducing, proposing or assisting in the conclusion of an insurance transaction includes the following: (i) soliciting a person to enter into a contract (whether individual or group); (ii) collecting applications for such contracts; or (iii) setting out orally or in writing the conditions for coverage under a contract to a future policyholder or group member with a view to entering into such contract.

The decree also provides a definition of “...work preparatory to the conclusion of contracts of insurance”: this includes all analytical and advisory work carried out by any natural or corporate person who introduces, proposes or assists in the conclusion of an insurance transaction. The provision of information or advice on an incidental basis in the context of another professional activity is not, however, mediation activity.

In sum, the decree closely follows the provisions of the Directive itself, but with certain linguistic and technical amendments to reflect the previous drafting in the IC.

3. Definitions of intermediaries’ categories

The decree defines a list of 6 categories of persons who are authorised to pursue the activity of insurance or reinsurance:

- insurance or reinsurance brokers;
- general agents (*“agents généraux”*);
- agents of insurers (*“mandataires d’assurance”*), other than general agents;
- agents of insurance intermediaries (*“mandataires d’intermédiaires d’assurance”*);
- salaried persons duly mandated either by insurers or by intermediaries (*“saliés commis en tant qu’intermédiaires”*);
- insurance intermediaries registered on the register of another EU Member State who have exercised passport rights into France, together with their salaried employees.

4. Registers

- **Number of registers:** one (with 6 sub-categories as above). The decree allows an intermediary to carry on a mediation activity under one or more of the above categories.
- **Competent authority:** “*Organisme pour le Registre des Intermédiaires d’Assurance*” (ORIAS) - Registering body of insurance intermediaries.
ORIAS will be in charge of the set-up, management and update of the insurance intermediaries register. It receives applications to register and to renew registration, decides upon such applications, carries out deletions from the register, receives and sends the notification to the other Member States of the EEA.
- **Cost:** Registration, which must be renewed each year, is subject to prior payment to the register of an annual registration fee set at €50 by a ministerial order of 3 November 2006. The register will have to be set up by 31 January 2007 at the latest.

5. Professional requirements

There are three levels of professional knowledge.

Principle: within a legal person, the professional knowledge requirements must be fulfilled by the natural person who runs the legal person.

For brokers, agents, credit institutions and employees who run a production office or a production network: 150 hours minimum of professional training or two consecutive years in a managerial capacity with insurance agents, brokers or undertakings or 4 years running insurance contracts with insurance agents, brokers or undertakings or diploma listed by the ministries of Education and Economy.

For agents of insurance companies and agents of insurance intermediaries and their employees: professional training of minimum 150 hours with insurance undertakings, agents or brokers or training centre or one year in a managerial capacity with insurance agents, brokers or undertakings or 2 years running insurance contracts with insurance agents, brokers or undertakings or diploma listed by the ministries of Education and Economy.

For agents of companies and of intermediaries and their employees, when they practice insurance mediation as an ancillary activity to their main professional activity and only present contracts on insurance products that complement the product they provide within the framework of their professional activity and contracts that do not include any PI cover; and for employees working at the headquarters or in a production office: either a professional training of a reasonable duration that is adapted to the products and contracts they present or propose; or a six-month experience in a job related to production or management of insurance contracts or capitalization in an insurance company or with an intermediary: or a degree, mentioned on a list from the Ministry of Economy and Education.

5.1 Knowledge and ability requirements

In all cases, professional requirements can be fulfilled by:

- a training for some intermediaries and a training of a reasonable duration for others;
- professional experience in a job related to production or management of insurance contracts or capitalization;
- or a degree, title or certificate mentioned on a list set in a decree by the Ministries of Economy and Education.

The duration of trainings and professional experience vary according to the levels.

5.2 PI cover requirement

Any insurance intermediary must take out an insurance policy that covers him against financial risks arising from his professional liability. However, this obligation does not apply to insurance agents, insurance representatives and representatives of insurance intermediaries insofar as the persons who have mandated them are fully responsible for all their insurance mediation activities.

The PI insurance contract must cover the whole of the European Economic Area. Minimum of €1,5m per claim and €2m per year per intermediary. The excess per claim cannot exceed 20% of the total amount of compensation owed. This excess is not opposable to the victims.

The contract, the guarantees of which take effect on 1 March for a 12-month period, is renewed by tacit agreement on 1 January of each year.

5.3 Financial guarantee

A financial guarantee is required when the insurance intermediary

- collects, even on an occasional basis, funds that have to be paid either to an insurance company or to insureds. However, this obligation does not apply when the intermediary has a written mandate from an insurance company, requesting him to collect premiums and possibly settle claims;
- asks a representative to pay these funds, unless the latter can justify himself of such a guarantee. Those who are referred here are persons who are mandated by a broker, an insurance agent or an insurance representative.

This guarantee can only result from a guarantee commitment issued by a credit institution or an insurance company, must be at least equal to €115,000 and cannot be inferior to the double of the monthly average amount of the premiums collected by the intermediary, calculated on the basis of premiums collected during the last 12 months preceding the month of the subscription date or of renewal of the guarantee commitment.

The guarantee commitment which takes effect on 1 March for a 12 month period is renewed by tacit agreement on 1 January of each year. The amount of the guarantee is revised at the renewal.

5.4 Additional requirements to those of the IMD

No

6. Information requirements

- *Information to be provided by the intermediary prior to the conclusion of the first insurance contract*
 - his name, company name and business address
 - his registration number and details of how to check this registration
 - disclose holdings held, directly or indirectly, which are in excess of 10 % of the voting rights or capital of an insurance undertaking
 - provide details of holdings of more than 10% which an insurer may hold in the intermediary's capital
 - set out details for the procedure for claims, including complaints to the ACAM.
- *Information to be provided by the intermediary prior to the conclusion of the proposed insurance contract*
 - a) if he is not under a contractual obligation to conduct business exclusively with one or more insurance undertakings and if he uses advice based on an objective analysis of the market, he has to analyse a sufficiently large number of insurance contracts available on the market in order to enable him to recommend an insurance contract that meets adequately the policyholder's needs or
 - b) if he is under a contractual obligation to conduct business exclusively with one or more insurance undertakings, he shall provide at the policyholder's request the name(s) of the insurance undertaking(s) or
 - c) if he is not under a contractual obligation to conduct business exclusively with one or more insurance undertakings, and if he is not in a position to make a fair analysis of the market, he shall provide at the policyholder's request the names of the insurance undertakings he is working with.
- *Information with regard to the duty of advice*
Specify the potential policyholder's demands and needs as well as the underlying reasons for any advice given on a specific insurance contract. These details, based in particular on information provided by the potential policyholder, shall be adjusted according to the complexity of the insurance contract being proposed.
- *Information to be provided by insurance brokers*
Brokers, who provides advice on the basis of a fair analysis of the market, have to inform potential policyholders of the amount of their remuneration when the annual premium exceeds €20,000, but only at the policyholders' request and only for professional and corporate risks.

6.1 Implementation of Article 12.3 of the IMD in practical terms

Articles L520-1 and R520-1 of the code of insurance implement this obligation. The customer's requirements and needs as well as the underlying reasons for any advice given to the customer must be provided on paper or on any other durable medium available and accessible to the customer. The enforcement of this obligation in practical terms is not defined.

AGEA (French Association of Insurance Agents) is helping insurance agents to implement the new legislation by preparing "advice sheets".

A working party within the legal commission of the CSCA (French Association of Insurance Brokers) is now preparing documents that would help brokers to meet their information and advice requirements. Such documents can be drawn up for certain risks such as mass risks. For intermediaries' risks (that are neither mass risks nor large risks), the working party is preparing guides according to the nature of risks. These guides should help brokers to meet their obligations and to better know their customers' needs.

7. Acquired rights (grandfathering clause)

Insurance or reinsurance intermediaries have three months starting from the set up of the register to comply with the provisions of the law.

Intermediaries registered during this period on the list of insurance brokers are automatically registered on condition that they pay their yearly registration fees.

The persons who have a mandate of insurance agent are registered on this same register through the companies that have given the mandate, on condition that they pay their yearly registration fees.

8. Sanctions

- Penal sanctions:

- any breach of provisions of the law with regard to registration requirement or conditions of access to and pursuit of the mediation activity is punishable by a 2-year imprisonment and/or a fine of €6,000;
- proposing or concluding contracts on behalf of a French, EU or non-EU insurance or reinsurance company which is not authorised in France is punishable by a fine of minimum €3,000 and maximum €6,000 per contract.

- Administrative sanctions:

Legal or natural persons carrying out insurance or reinsurance mediation activities are supervised by ACAM ("*Autorité de contrôle des assurances et des mutuelles*"- Insurance and mutual supervisory authority). ACAM has the authority to reprimand, forbid the pursuit of insurance mediation activities, issue a warning, forbid certain insurance mediation activities, demand the automatic resignation of one or several managers and strike anyone who breaks the law off the register. These sanctions can be replaced or accompanied by a fine of maximum €37,500.

ACAM has to inform ORIAS of any sanction it has taken against an intermediary. ORIAS has to provide ACAM with any information it deems useful or give specific information asked for by ACAM.

9. Complaints

Insureds can lodge complaints with ACAM or directly with the competent courts.

A draft law on consumers' protection, which introduces class-action lawsuits, was submitted to the Council of Ministers in November 2006 and is being now discussed at the French Parliament.

10. Out-of-court redress

CSCA (French Association of Insurance Brokers) is currently examining how to have its own internal mediator who would solve disputes between insureds and brokers.

Some insurance companies already have their own internal mediators. A body called "Médiateur assurances" ("Insurance mediator") is in charge of helping insureds when they have exhausted all possible internal remedies existing within the insurance company.

New legal provisions on the out-of-court settlement of disputes are not on the agenda.

FRANCE

11. Notification of establishment and services in other Member States

1) Any intermediary registered in France intending to carry on business for the first time in one or more Member States of the European Union or in a EEA country under the freedom to provide services or the freedom of establishment shall inform the competent body which holds the intermediary register.

Within a period of one month after such notification, that body shall inform the competent authorities of any host Member States wishing to know, of the intention of the insurance or reinsurance intermediary and shall at the same time inform the intermediary concerned.

The insurance or reinsurance intermediary may start business one month after the date on which he was informed by the body mentioned in the first indent of the notification referred to in the second subparagraph. However, that intermediary may start business immediately if the host Member State does not wish to be informed of the fact.

2) France is one of the Member States which requires receipt of notification from the competent authority of another Member State of an insurance intermediary's intention to operate in the French market on a services or branch basis. When an intermediary registered in an EU Member State or in a EEA country wishes to operate in France under the freedom to provide services or the freedom of establishment, the competent body in the home country informs the body which holds the intermediary register mentioned at I of article L.512-1.

When an intermediary who operates under the freedom to provide services or the freedom of establishment in one or more EU countries is struck off the register, the body that keeps the register informs the authorities in charge of keeping the register in those countries.

Article L515-1 of the code of insurance provides that only the body that runs the insurance intermediaries register has to be informed of an EU non-French intermediary's intention to operate under FOS/FOE.

12. French provisions to be fulfilled by EU non-French intermediaries doing FOS/FOE in France (general good provisions, stricter information requirements, ...)

13. Other specific comments

The number of infringements has been increased in order to be consistent with those provided for in the Monetary and Financial Code (e.g. money laundering; active or passive corruption, influence peddling, embezzlement of properties) forgery, falsification of securities or other paper securities issued by the public authorities; bankruptcy; breach of the legislation and the regulation concerning financial relations with foreign countries; tax evasion. No one may, on any account, start, run, manage a company that is subject to the control of the State, nor an insurance group, if one was sentenced less than ten years ago for a crime or sentenced to imprisonment without remission or given a suspended sentence of at least six months for certain offences.

In case of a sentence pronounced by a foreign jurisdiction, the magistrate's court of the place of residence of the convicted person states that these incapacities apply to this person. These incapacities also apply to any non rehabilitated person who has been declared bankrupt by a foreign jurisdiction and when this judgment is enforceable in France).

The representative who is not an agent (mandataires non agents) shall benefit from the PI cover and the financial guarantee of the person who has given him a mandate (broker or general agent).

14. Useful links

- National legislation website: www.legifrance.gouv.fr
- DG Internal Market/Transposition of the IMD by France:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/france/f_d15_fr_en.htm

Back to top

GERMANY

1. State of implementation of the IMD

The Ministry of Economy and Technology presented a draft legislation on 24 March 2006, which was approved by the government on 3 May.

The German law on intermediaries is likely to be adopted early in 2007 and to come into force on 1 June 2007.

The draft law follows in general the guidelines of the former proposals.

2. Scope

All insurance intermediaries (brokers and agents). The draft legislation mainly deals with the following issues:

- intermediaries have to prove that they have a PI cover
- set-up of an arbitration board
- intermediaries have to follow information and documentation requirements.

Brokers and multiple agents have to pass an examination with the Chambers of Commerce (there are 82 regional chambers of commerce). In the case of tied agents it is sufficient if the insurance company takes care of the appropriate qualification and assumes full responsibility for their activities.

Tied agents will only be registered for the purpose of the freedom of services.

3. Definitions of intermediaries' categories

There is a clear polarisation with regard to brokers on the one side and agents (including tied agents) on the other.

Definitions for brokers and agents:

- brokers acting for and on behalf of insureds (§ 42a (2) VVG, law on insurance contracts).
- agents acting for and on behalf of insurers (§ 42 (3) VVG). The agent is defined as self-employed business, which/who is authorised by one insurer or one intermediary to act on its/his behalf. This definition leaves aside multiple agents.

4. Registers

- **Number of registers:** one
- **Competent authority:** The register will be located with the Chambers of Commerce, supervised by the Federal Länder.
- **Cost:** The estimation given now by the Ministry ranges from €400 to 1500.

5. Professional requirements

There is a discussion on professional requirements. The authority wants to have the same professional requirements for tied agents, agents in general and insurance brokers. Minimum professional knowledge should be the so-called "Versicherungsfachmann/-fachfrau" (222-hour lesson, private line business).

For the Ministry, this should also be compulsory for part-time agents if they intermediate the whole range of products of a carrier.

Everybody exercising the activity of an insurance intermediary needs the permission by the competent authority and must be registered. To be registered they need i.a. to be qualified and have to pass an examination conducted by the Chambers of Commerce. However, tied agents – full-time and part-time – must be exempted from permission if they wish so, provided they do not handle clients' money and the insurance company accepts full responsibility (liability) for their activities.

The training of these tied agents is up to the companies with no examination by the Chambers of Commerce.

If the intermediary is a legal entity it is sufficient, if one employee fulfils the qualification/examination requirements, provided he/she is authorized to represent the legal entity and is in supervision of those exercising the intermediation. *To our understanding this is clearly in breach of Article 4. I of the IMD. Furthermore it leaves the question open, what shall count in case this legal entity acts as a tied agent? To be exempted?*

If the above described exemption is widely exercised in the German market, and many insurers with no doubt will heavily promote it, the result would be that only about 13000 brokers and multiple-agents will need the full-fledged permission, leaving aside nearly 450000 intermediaries: full- and part-time tied agents, multi-level distribution channels, banks etc.

GERMANY

5.1 Knowledge and ability requirements

At least the level of „Versicherungsfachmann/-fachfrau”(“insurance specialist). The requirements for this are regulated in detail.

5.2 PI cover requirement

Minimum €1m per damage and €1,5m per year

Additional conditions:

- the PI insurance company must be accredited to do business in Germany
- the PI insurance must cover damages in the EU and in the European Economic Area

Insurance undertakings give a comparable guarantee for intermediaries acting on their behalf (agents). The requirements on the PI cover are not yet defined for all individual cases.

5.3 Financial guarantee

Monies paid by the customer to the intermediary are considered as paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not considered as paid to the customer until the customer actually receives them.

The draft legislation provides that brokers are only allowed to receive money (from the insurance company) if they had a PI cover before or provided security and the minimum sum amount is 4% of the annual received bonus. The security has to be for minimum €15,000.

Agents and brokers, who do not have the permission to collect money, do not have to provide security. Customer monies paid to the agent is considered as paid to the insurer.

5.4 Additional requirements to those of the IMD

6. Information requirements

- name and address
- distribution type
- if the intermediary acts on behalf of an insurance company
- place of register, number of register and dates of register
- whether an insurance undertaking has a holding of rights in the insurance intermediary
- information on the arbitration board

6.1 Implementation of Article 12.3 of the IMD in practical terms

Article 12.3 of the IMD is implemented almost literally and is a core duty of insurance brokers, who are regulated in §34b VVG. Standard questionnaires and software solutions are mainly developed by insurance companies or private service providers.

With regard to the documentation, insurers and intermediaries associations are developing standard forms.

The insured may, in writing, renounce advice and documentation. In this case, the intermediary must inform the insured in writing that the insured might face problems regarding burden of proof in case he seeks redress from the intermediary.

7. Acquired rights (grandfathering clause)

The draft foresees that intermediaries who have been active before the coming into force of the new law will not need a license for the next two years after the coming into force. Those who have passed the programme “Versicherungsfachmann/-fachfrau” will be treated as qualified.

8. Sanctions

Regarding Art.8.3. IMD sanctions are written down in § 12 Verordnung über Versicherungsvermittlung (regulation on insurance intermediation) and refer to §§ 144 – 148 GewO (Trade, Commerce and Industry Regulation Act). The maximum fine is € 250,000 § 148 GewO stipulates imprisonment up to 1 year.

9. Complaints

Complaints of customers can be brought to an arbitration board (§ 42j VVG (law on insurance contracts)). This can be a private organisation authorised by the ministries or if there is no private organisation a ministry itself.

GERMANY

10. Out-of-court redress

The above-mentioned arbitration board (so-called “Ombudsman”) will also be competent for the out-of-court redress, § 42j VVG (law on insurance contracts).

Arbitration board under private law:

- has to be independent
- does not act upon instructions
- it is able to fulfil the duties professionally and organisationally.

11. Notification of establishment and services in other Member States

German intermediaries are currently hindered from cross-border business. However, the Ministry of Economy and Labour and the intermediaries associations have found a solution to this problem for the British market by a special notification process with the FSA. Bilateral provisional agreements have also been agreed with Belgium, Denmark, Latvia, Poland, Czech Republic, Hungary.

12. German provisions to be fulfilled by EU non-German intermediaries doing FOS/FOE in Germany (general good provisions, stricter information requirements, ...)

Not clear yet.

13. Other specific comments

The Ministry of Economy and Labour clearly sees that there is or will be interaction between the IMD and the Investment Services Directive but wants to keep regulation on these issues as separate as possible.

As far as the documentation requirements are concerned, the respective part of the “Discussion Paper” needs to be clarified. Roughly translated it reads:

Taking into account a reasonable relation between the investment for the advice, the premium to be paid by the customer, the difficulty to understand the proposed insurance contract and the situation of the client according to the information provided by him, the intermediary should indicate the reasons given for each insurance contract.

Only in writing, the customer can renounce the advice and documentation.

Consequences of the two-step legislation:

- insecurity about the qualification requirements
- internal market blocked for German intermediaries
sanctions for non/late implementation

It is foreseen, that brokers – not agents – will be allowed to agree on fees with customers.

14. Useful links

- National legislation website:
www.gesetze-im-internet.de
www.bafin.de

Back to top

GREECE

1. State of implementation of the IMD

- *Publication reference in the Official Journal:* No196/issueA/14.9.2006
- *Entry into force:* 14 September 2006

2. Scope

All insurance and reinsurance intermediaries as per Article 1 of the Directive. The concept of the tied intermediary is introduced for the first time in the Greek law (as per the Article 2 of the Directive)

3. Definitions of intermediaries' categories

Brokers represent clients. Agents represent companies only. Insurance advisors do not represent companies and have no right to sign insurance policies. They introduce and propose the conclusion of insurance policies. Tied agents cannot receive/collect money.

4. Registers

- *Number of registers:* 1 central register for all certified intermediaries and 1 register per category of intermediaries.
- *Competent authority:* The chambers and the Supervising Commission of Insurance Market, which is the responsible supervisory authority for both insurance undertakings and intermediaries, will cooperate together.
- *Cost:* no register costs, only a small fee on renewal of license every 3 years.

5. Professional requirements

5.1 Knowledge and ability requirements

- At least a High School diploma
- 100 hours at an authorised educational centre
- Certificate of examination from the Ministry of Development
- Certificate that he/she has not gone bankrupt
- Certificate that he/she has a clean record
- 6 months of training in an insurance office (insurance advisors)
- 2 years experience for insurance advisors
- 4 years experience for agents and brokers

5.2 PI cover requirement

€1m per occurrence and €1,5m in the aggregate (IMD requirements).

5.3 Financial guarantee

Nothing included in the law other than the implementation of provision of Article 4.4.a. of the Directive, which refers to all insurance intermediaries.

5.4 Additional requirements to those of the IMD

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6. Information requirements

As per the provisions of the Directive.

6.1 Implementation of Article 12.3 of the IMD in practical terms

Professional organisations are preparing standard questionnaires (*will be available on POI website*). to implement in practical terms precontractual information requirements.

7. Acquired rights (grandfathering clause)

Exactly as per Article 5 of the Directive.

8. Sanctions

According to the existing draft, in relation to Articles 8.1. and 8.2, sanctions are as per the penal code of Greece providing for imprisonment up to 1 year and fines up to €50,000. In relation to Article 8.3. sanctions include fines up to €1500 and suspension or even permanent revocation of the intermediaries license.

GREECE

9. Complaints

There are three ways for the insurance buyer to introduce a complaint: the normal court route; addressing the issue to the “Supervising Commission of the Insurance Market” (SCIM); the Ombudsman

10. Out-of-court redress

Ombudsman

11. Notification of establishment and services in other Member States

The Greek competent authority must be informed of a Greek intermediary’s intention to conduct services business or establish a branch in another EU Member State.

A non-Greek intermediary must have his license from his country of origin. A copy of this license must be given to the Greek ministry of development. The license of a non-Greek intermediary is recognised as being equal to the Greek license.

12. Greek provisions to be fulfilled by EU non-Greek intermediaries doing FOS/FOE in Greece (general good provisions, stricter information requirements, ...)

13. Other specific comments

The Ministry of Development supervises the insurance intermediaries as well the insurance companies until the new established Supervision Commission of Insurance Market starts operating.

PSAS, the Greek association of insurance agents, in collaboration with a British company has launched a PI cover for its members and anyone who wishes to be insured individually or in a group policy, at a very reasonable price.

14. Useful links

- National legislation website: www.gge.gr

Back to top

1. State of implementation of the IMD

Act No. LX of 2003 on Insurers and Insurance Activities (*Insurance Act*)

- *Publication reference in the Official Journal:*
Magyar Közlöny No. 2003/84 (VII. 15.)
- *Entry into force:* 01/05/2004

Three secondary regulations contain more detailed provisions for certain aspects of the insurance mediation activity:

Government Decree No. 319 of 2004 on the Minimum Content of Indemnity Insurance Contracts for the Activity of Independent Insurance Intermediaries and Insurance Advisors

- *Publication reference in the Official Journal:*
Magyar Közlöny No. 2004/181 (XII. 1.)
- *Entry into force:* 01/01/2005

Ministry of Finance Decree No. 33 of 2004 on the Reporting Requirements of Independent Insurance Intermediaries (Broker and Multiple Agent)

- *Publication reference in the Official Journal:*
Magyar Közlöny No. 2004/88 (VI. 23.)
- *Entry into force:* 01/07/2004

Ministry of Finance Decree No. 2/1995 on the Professional Requirements of Qualifications falling under the Administration of the Finance Minister

- *Publication reference in the Official Journal:*
Magyar Közlöny No. 1995/14 (II. 22.)
- *Entry into force:* 27/02/1995

2. Scope

The scope of the Insurance Act complies with the scope of the IMD as laid down in Article 1. For persons providing mediation services for insurance contracts meeting the conditions stipulated in Article 1.2. of the IMD, rather than explicitly excluding such persons from the scope of the provisions of the Insurance Act, the provisions state that such persons are not subject to registration, and consequently are exempt from the pre-requisites on professional requirements.

3. Definitions of intermediaries' categories

Section 33(4) of the Insurance Act provides for two main categories of intermediaries, each with two sub-categories: (i) independent intermediary (broker or multiple agent), and (ii) tied intermediary (tied agent or principle agent).

The broker enters into a legal relationship with the client, and is obliged to make a fair analysis of available insurance products from insurers in order to meet the client's insurance needs.

The multiple agent enters into a legal relationship with several insurers and mediates their insurance products.

The tied agent enters into a legal relationship with only one insurer for the mediation of that insurer's products, or may enter into a legal relationship with several insurers, provided that only the non-competing products of the involved insurers are mediated.

The principle agent is a tied agent qualifying to perform certain activities of the insurer such as conclusion of the insurance contract, issue of the policy, acceptance of premium. The principle agent may only enter into a legal relationship with one insurer.

4. Registers

Sections 34 and 36 of the Insurance Act provide that, except where the Act provides for otherwise (such as those persons meeting conditions compliant with Articles 1.2 of IMD, or the employees of the insurer), the activity of insurance mediation may only be performed by persons registered by the Hungarian Financial Supervisory Authority.

All intermediaries (tied and independent, natural or legal person) are required to be registered. Independent intermediaries (the broker and the multiple agent), as well as the principle agent require the prior approval of the Hungarian Financial Supervisory Authority to start their activities. Registration of independent intermediaries is the responsibility of the independent intermediary company. Registration of tied intermediaries is the responsibility of the insurer(s) on whose behalf the intermediary acts.

- **Number of registers:** one (<https://fogado.pszaf.hu/regisztrer/default.aspx> – English version available)
- **Competent authority:** Hungarian Financial Supervisory Authority (<http://www.pszaf.hu>).
- **Cost:** none

5. Professional requirements

5.1 Knowledge and ability requirements

Both tied and independent intermediaries are required to attain and prove either a tertiary educational qualification or the necessary qualification stipulated in Schedule No. 13 of the Insurance Act within 24 months of registration in the insurance intermediary registry managed by the Hungarian Financial Supervisory Authority.

A person performing insurance mediation activity without valid registration may be subject to a fine imposed by the Supervisory Authority pursuant to Section 196(1a).

Schedule No. 13 of the Insurance Act lists those qualifications which are deemed adequate for the commencement or continuation of insurance intermediary activities. The provisions on the curriculum are laid down in Ministry of Finance's Decree No. 2/1995 on Professional Requirements of Qualifications falling under the Administration of the Finance Minister.

5.2 PI cover requirement

Section 39 of the Insurance Act provides that the independent intermediary, in order to acquire a licence to start his activities, shall prove that he has a professional indemnity insurance valid for the territory of the European Union for a minimal cover of HUF 250m (approx. €1m) per claim event and HUF 375m (approx. €1.5m) per insurance year, or the existence of a financial guarantee with a minimal value of HUF 375m.

Technical provisions are regulated in the Government Decree No. 319 of 2004 on the Minimum Content of Indemnity Insurance Contracts for the Activity of Independent Insurance Intermediaries and Insurance Advisors. Accordingly the maximum franchise for insurance intermediaries is HUF 2m.

Furthermore, pursuant to Sections 71(1i) and 74(2a) of the Insurance Act, both the insurer providing the professional indemnity insurance and the independent intermediary have to report within 2 days to the Supervisory Authority the termination of such an insurance contract. The Supervisory Authority shall suspend the activity of the independent intermediary without professional indemnity insurance or appropriate financial guarantee pursuant to Section 202 of the Insurance Act

5.3 Financial guarantee

Professional indemnity insurance for independent intermediaries may be substituted by any financial guarantee with a minimal value of HUF 375m (see point 5.2 above). Given that the commencement of insurance mediation activities by independent insurance intermediaries is subject to prior approval of the Hungarian Financial Supervisory Authority, it is entitled to decide on the acceptance of such a financial guarantee.

Independent intermediaries are also required pursuant to Sections 38(1b) and 38(4) of the Insurance Act to maintain a minimal equity of HUF 5m (approx. €20.000), and supplement this equity should it decrease throughout the course of activities.

Furthermore, premiums collected by the independent intermediary are to be accounted for on a separate account which, pursuant to Section 42(2) of the Insurance Act is exempt from execution by creditors, even in the case of bankruptcy or liquidation proceedings.

5.4 Additional requirements to those of the IMD

Civil law obligation of carrying out activities with due care and in good faith, or the provisions on consumer protection.

6. Information requirements

Section 37(1) of the Insurance Act provides that all intermediaries shall provide for information in writing in the language of the policy or in any other language agreed with the client) on the following:

- a) his/her name, address, the state and the supervisory authority,
- b) whether he/she acts as a tied or an independent intermediary,
- c) in case of tied intermediaries, the name(s) of the insurance company(ies) on whose behalf he/she is acting,
- d) all the direct and indirect shareholding relations with insurance companies, insurance intermediaries, insurance consultancies,
- e) details about who shall be liable for indemnity for claims caused by the intermediary acting in his professional capacity,
- f) the possibility of filing complaints and the bodies responsible for making decisions
- g) that he/she is a registered intermediary and the forms confirming this fact

Furthermore Section 166(1) of the Insurance Act requires that prior to concluding a life assurance contract, the intermediary makes an assessment or at least defines the client's needs based on the information provided, and pursuant to Section 166(3) shall provide the client with the appropriate product information as stipulated by Schedule No. 10 of the Insurance Act, including a justification for the insurance product recommended. This does not apply to pure term assurance recommended in relation to financial services provided by financial institutions or to life assurance contracts with a sum assured not exceeding HUF 1m (approx. €4,000).

Also Sections 46(3) and 46(4) of the Insurance Act provide that brokers shall analyse a sufficient number of insurance contracts available on the market, shall also specify the insurance needs of their clients and the professional reasons underlying their advice.

6.1 Implementation of Article 12.3 of the IMD in practical terms

The Life Assurance Workgroup of the Hungarian Financial Supervisory Authority has prepared a detailed guidebook on the methodology of assessing insurance requirements and providing product information for life assurance business. The guidebook outlines and categorises the different types of sales situations and the possibilities of assessing insurance needs, provides guidelines as to the structure and contents of the insurance requirement assessment and product information, explains the importance and the nature of the relationship between the insurance requirement assessment and the product information provided, and provides guidelines for the preparation of internal procedures.

The guidelines, though not mandatory, reflect the Supervisory Authority's approach to the issue and shall serve as the methodology adopted by the Supervisory Authority during its future investigations. It is anticipated therefore that insurers shall align their operations accordingly.

7. Acquired rights (grandfathering clause)

Intermediaries who were aged 55 or more when the Insurance Act came into force (01/05/2004) are given 7 years to have the necessary qualifications. To a degree these provisions can be considered to be a partial recognition by the Insurance Act of the need to retain acquired rights.

8. Sanctions

Section 40(1) of the Insurance Act provides that the Hungarian Financial Supervisory Authority shall withdraw the licence of the independent intermediary and cancel his registration if (i) at any time the conditions for commencing or continuing the activity as stipulated by the Insurance Act are not met, (ii) his registration details or annual report prove to be false, (iii) his operation severely or repeatedly impose a detriment to the interest of the insured persons, (iv) an investigation finds that he has severely or repeatedly infringed legal regulations related to his activities, (v) he fails to commence with activities within 1 year of being granted a licence or he suspends its activities for more than 6 months without approval, or (vi) the action taken by the Supervisory Authority in order to restore the compliant operation of the independent intermediary under suspension has no effect.

The Supervisory Authority may also prohibit the independent intermediary or the principle agent from continuing his activity, and may order the removal from the register of any intermediary, whether independent or tied (Sections 195(1k) and 195(1l) of the Insurance Act). Independent intermediaries who fail to comply with the minimal equity requirements, the Supervisory Authority shall order them to take the necessary steps (Section 195(1m) of the Insurance Act).

Furthermore Section 196(1a) of the Insurance Act provides that the independent intermediary, or the person directing his activities, as well as any person performing the activity of insurance mediation without valid registration shall be subject to a fine imposed by the Supervisory Authority.

9. Complaints

Section 11/R of Act CXXIV of 1999 on the Hungarian Financial Supervisory Authority provides that all written complaints must be examined within 15 days to see whether action is required by the Supervisory Authority; if not, the complaint is forwarded for further action to the insurer involved. The insurer shall provide his comments within 30 days to the Supervisory Authority, otherwise he can be fined. The Supervisory Authority shall, after having considered the comments of the insurer, inform the consumer of the result within 15 days.

If on the other hand the Supervisory Authority considers that the consumer complaint possibly substantiates that the Insurer is not complying with legal regulations, it shall initiate an investigation and notify the consumer about this within 30 days.

Consumers can also file complaints with the Consumer Protection Agency.

10. Out-of-court redress

Customers may make use of a mediation procedure before dispute settlement bodies organised by the Chambers of Commerce.

11. Notification of establishment and services in other Member States

If an independent intermediary intends to take up insurance mediation activities for the first time in another Member State, either through freedom of services or the establishment of a branch office, he shall, pursuant to Section 54(1) of the Insurance Act, inform the Hungarian Financial Supervisory Authority. Within one month, the Supervisory Authority shall inform the competent authority in the other Member State, and notify the independent intermediary thereof. On receiving the Conditions of General Good, the Supervisory Authority shall inform the independent intermediary thereof. The independent intermediary may start his activities immediately but at the latest following the 1 month period provided for such notification.

HUNGARY

12. Hungarian provisions to be fulfilled by EU non-Hungarian intermediaries doing FOS/FOE in Hungary (general good provisions, stricter information requirements, ...)

The Conditions of General Good are available on the website of the Hungarian Financial Supervisory Authority:

For the establishment of a branch office in the insurance sector

http://english.pszaf.hu/resource.aspx?ResourceID=pszafeng_guide_ins_branch

For the provision of cross-border services in the insurance sector

http://english.pszaf.hu/resource.aspx?ResourceID=pszafeng_guide_ins_crossborder

13. Other specific comments

No

14. Useful links

- National legislation website:
www.magyarorszag.hu/ugyintezo/jogszabalyok?mohu_location=C_Advisor
- DG Internal Market/Transposition of the IMD by Hungary:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/hungary/f_d15_hu_en.htm
- Hungarian Financial Supervisory Authority (English language version)
<http://english.pszaf.hu>
- Association of Hungarian Insurance Companies (English language version)
<http://www.mabisz.hu/english/index.html>

[Back to top](#)

1. State of implementation of the IMD

European Communities (Insurance Mediation) Regulations 2005

- *Publication reference in the Official Journal:*
Statutory Instrument No. 13 of 2005
- *Entry into force:* 14/01/2005

2. Scope

Law states:

The objective of these Regulations is to give effect to Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

These Regulations lay down rules for undertaking insurance mediation and reinsurance mediation by persons who undertake or wish to undertake either or both of those activities.

Non-application of these Regulations

These Regulations do not—

(a) apply to or in respect of insurance mediation services and reinsurance mediation services provided in relation to risks and commitments arising in a country elsewhere than in a Member State, or

(b) apply to insurance mediation activities carried out in third countries or to activities of insurance or reinsurance undertakings, as defined in—

(i) the First Council Directive 73/239/EEC of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, and

(ii) First Council Directive 79/267/EEC of 5 March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance, carried out through insurance intermediaries in third countries.

3. Definitions of intermediaries' categories

- "Reinsurance intermediary" means a person who, for remuneration, undertakes or purports to undertake reinsurance mediation;

- "tied insurance intermediary" means any person who undertakes insurance mediation for and on behalf of one or more insurance undertakings in the case of insurance products that are not in competition, and who acts under the direction of those undertakings.

4. Registers

➤ ***Number of registers:*** one

➤ ***Competent authority:*** the Irish Financial Regulator: <http://www.financialregulator.ie>

➤ ***Cost:***

The cost of regulation is covered by levies, outlined in the Central Bank Act 1942 Section 33J and 33K, paid by the following groups:

Credit Institutions, Insurance Undertakings, Intermediary Firms, Securities and Investment firms, Collective Investment Schemes (CIS), Service Providers to CIS, Credit Unions, Moneylenders, Approved Professional Bodies, Exchanges, Mortgage Intermediaries and Bureaux de Change.

The 2,500 investment, insurance and mortgage intermediaries regulated by the Financial Regulator were charged €2.6m in total during 2005.

The table below illustrates how the levy is calculated for intermediaries. The levy is based on income – this refers to commission and fees earned by the broker and not to overall turnover.

Band	Income Range €	Levy Amount €
1	0 – 5,000	150
2	5,001 – 50,000	200
3	50,001 – 150,000	500
4	150,001 – 400,000	800
5	400,001 – 700,000	1,600
6	700,001 – 1,500,000	3,400
7	1,500,001 – 3,000,000	8,000
8	3,000,001 – 6,000,001	14,000
9	over 6,000,001	18,000

5. Professional requirements

5.1 Knowledge and ability requirements

The Financial Regulator's Minimum Competency Requirements were published July 2006. The requirements apply to all individuals who on a professional basis, as for, or on behalf of a regulated firm:

- Provide advice to consumers on retail financial products,
- Arrange or offer to arrange retail financial products for consumers, or
- Undertake certain specified activities (e.g. solicitors and barristers).

The recognised qualifications are:

General Insurance Policies, one of the following:

- CIP (*The IBA's CIP Programme and The Insurance Institute of Ireland's CIP Programme*)
- QFA plus Bridge Examination in General Insurance Policies (*Institute of Bankers in Ireland, LIA and The Insurance Institute of Ireland*)
- Associate/Fellow of the Chartered Insurance Institute

Life Assurance Protection Policies, one of the following:

- QFA (*Institute of Bankers in Ireland, LIA and The Insurance Institute of Ireland*)
- CIP plus Bridge Examination in the Life Assurance Protection Policies (*The Irish Brokers Association and the Insurance Institute of Ireland*)
- Member/Associate/Fellow of the Irish Institute of Pensions Managers (*post 2006 syllabus*)

Shares and Bonds and other Investment Services, one of the following:

- QFA (*Institute of Bankers in Ireland, LIA and The Insurance Institute of Ireland*)
- Registered Representative (*Irish Stock Exchange*)
- Member/Associate/Fellow of the Irish Institute of Pensions Managers (*post 2006 syllabus*)

Savings, Investments and Pension Products, one of the following:

- QFA (*Institute of Bankers in Ireland, LIA and The Insurance Institute of Ireland*)
- Member/Associate/Fellow of the Irish Institute of Pensions Managers (*post 2006 syllabus*)

Housing Loans and Associated Insurances, one of the following:

- QFA (*Institute of Bankers in Ireland, LIA and The Insurance Institute of Ireland*)
- Mortgage Diploma (LIA)
- Certificate in Mortgage Practise (ROI) (*Institute of Bankers in Ireland*)
- Certificate in Mortgage Practise (*Institute of Bankers in Ireland and LIA*)

Consumer Credit and Associated Insurances, one of the following:

- QFA (*Institute of Bankers in Ireland, LIA and The Insurance Institute of Ireland*)
- Foundation Course in Consumer Credit (*Institute of Bankers in Ireland*)

Individuals who have not spent longer than four years in the eight-year period 1st January 1999 to 1st January 2007, and those who are new to the industry, will be required to obtain the recognised qualification in respect of each category of retail financial product for which they are acting as an accredited individual within four years.

It is the responsibility of the regulated firm to retain a register of all accredited individuals acting for, as, or on behalf of the regulated firm. The register must include details of those who have availed of the grandfathering arrangements and those who have obtained the recognised qualifications.

All accredited individuals, either by grandfathering or through obtaining the recognised qualifications, must complete Continuous Professional Development (CPD). A total of 60 hours must be completed within a three-year cycle, with at least 40 hours of formal CPD and 20 hours of informal CPD. A minimum of 15 hours must be completed within any one year.

5.2 PI cover requirement

€1.5m aggregate and €1m per individual claim, as set out in IMD

5.3 Financial guarantee

- All monies paid by a client of an insurance or reinsurance intermediary shall be deemed to have been received by the insurance or reinsurance undertaking.
- All client monies paid to an insurance or reinsurance intermediary by the insurance or reinsurance undertaking, will not be regarded as having been received by the client until such time as the client receives those monies.
- Customers' monies shall be transferred via strictly segregated client accounts. These accounts shall not be used to reimburse other creditors in the event of bankruptcy, or otherwise inability of the firm to pay its debts.

5.4 Additional requirements to those of the IMD

No

6. Information requirements

The bill strictly follows the provisions of the IMD.

19. (1) Before entering into an initial insurance contract with a customer, or a contract varying or renewing such a contract, an insurance intermediary shall, whether or not the intermediary provides the customer with any other information, provide the customer with the following information:
- (a) the intermediary's identity and address;
 - (b) particulars of the register in which the intermediary is registered and the means for verifying that the intermediary is registered;
 - (c) whether the intermediary holds, directly or indirectly, more than 10 per cent of the voting rights or of the capital in a given insurance undertaking;
 - (d) whether any particular insurance undertaking, or any parent undertaking of a particular insurance undertaking, holds, directly or indirectly, more than 10 per cent of the voting rights or the capital in the intermediary;
 - (e) the procedures under which customers of insurance intermediaries and other interested parties can make complaints to, and seek redress through, the Financial Services Ombudsman concerning insurance intermediaries.
- (2) The insurance intermediary shall also inform the customer whether the intermediary—
- (a) gives advice based on the obligation in paragraph (3) to provide a fair analysis, or
 - (b) is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings, or
 - (c) is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in paragraph (6) to provide a fair analysis.
- (3) An insurance intermediary who is under a contractual obligation of the kind referred to in paragraph (2)(b) shall, if asked to do so by the customer, provide the customer with the names and addresses of those undertakings.
- (4) An insurance intermediary who is under a contractual obligation of the kind referred to in paragraph (2)(c) shall, if asked to do so by the customer, provide the customer with the names and addresses of the insurance undertakings with which the intermediary may and does conduct business.
- (5) An insurance intermediary who is required to provide information to the customer only when the customer asks for it shall tell the customer of the requirement.
- (6) An insurance intermediary who informs a customer that the intermediary gives advice on the basis of a fair analysis shall give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable the intermediary to make a recommendation, in accordance with professional criteria, as to which insurance contract would be adequate to meet the customer's needs.
- (7) Before entering into a contract with a customer relating to the provision of a particular insurance product, an insurance intermediary shall, on the basis of information provided by the customer, specify to the customer both the customer's demands and needs and the reasons underlying any advice given to the customer. The intermediary shall, so far as necessary, modify the information according to the complexity of the insurance contract being proposed.
- (8) Nothing in this Regulation prevents an insurance intermediary from providing a customer with additional information so long as that information is not inconsistent with the information required to be provided under this Regulation.

IRELAND

- (9) An insurance intermediary need not provide information in accordance with this Regulation if information relates to mediation in the insurance of large risks.

6.1 Implementation of Article 12.3 of the IMD in practical terms

Currently awaiting revised regulations from the Financial Regulator

7. Acquired rights (grandfathering clause)

The Financial Regulator's Minimum Competency Requirements, which were published July 2006, states that:

Individuals who would otherwise be accredited individuals on 1st January 2007, but who do not at that date hold a recognised qualification in respect of the specified categories of retail financial products for which they are acting as an accredited individual on that date, may continue to act as an accredited individual in respect of those activities PROVIDED they have carried on the same activity for a period of at least four years in the eight-year period 1st January 1999 to 1st January 2007.

8. Sanctions

An outline of Administrative sanctions guidelines was published on October 7th 2005 followed by an outline of Administrative sanction procedures on October 10th 2005.

9. Complaints

The Financial Services Ombudsman was set up to allow customers to register complaints relating to financial services firms. Intermediaries come under the scope of the ombudsman's powers.

10. Out-of-court redress

Customers can address complaints against intermediaries to the Financial Services Ombudsman.

11. Notification of establishment and services in other Member States

Taken from Section 18 of the Statutory Instrument Number 13 of 2005: A registered insurance intermediary or registered reinsurance intermediary that intends, for the first time, to undertake insurance mediation in another Member State shall notify its intentions to the Central Bank and Financial Services Authority of Ireland in writing. Within one month of being notified that an insurance intermediary or reinsurance intermediary intends, for the first time, to undertake insurance mediation in another Member State, the Central Bank and Financial Services Authority of Ireland shall notify the competent authority of the other Member State concerned and shall at the same time tell the intermediary that it has notified that competent authority.

12. Irish provisions to be fulfilled by EU non-Irish intermediaries doing FOS/FOE in Ireland (general good provisions, stricter information requirements, ...)

An insurance intermediary or registered reinsurance intermediary of another Member State shall not undertake insurance mediation in Ireland until the competent authority of their own Member State has notified the Central Bank and Financial Services Authority of Ireland that the intermediary is registered in that other Member State. Before imposing additional conditions with which insurance intermediaries or reinsurance intermediaries of another jurisdiction must comply before they may undertake insurance mediation in Ireland, it shall publish those conditions in such publications as the Central Bank and Financial Services Authority decides.

13. Other specific comments

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14. Useful links

- National legislation websites:
www.irishstatutebook.ie
www.finance.gov.ie/ViewDoc.asp?fn=/documents/publications/main5.htm&CatID=3&m=p
- DG Internal Market/Transposition of the IMD by Ireland:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/ireland/f_d15_ie_en.htm

Back to top

ITALY

1. State of implementation of the IMD

Legislative decree of 7 September 2005, n. 209 – Code of private insurance
(Decreto legislativo 7 settembre 2005, n. 209 - Codice delle assicurazioni private)

- *Publication reference in the Official Journal:*
Gazzetta Ufficiale della Repubblica Italiana ("Official Journal of the Italian Republic") – Serie Generale ("General Series") n. 239 – Supplemento Ordinario ("Ordinary Supplement") n. 163, published on 13 October 2005
- *Entry into force:* 01/06/2006

2. Scope

Rules refer to insurance intermediaries. Exemptions: those who occasionally give advice on insurance matters in connection with other commercial activities, provided that the purpose for this piece of advice does not consist in proposing, concluding or performing an insurance contract.

3. Definitions of intermediaries' categories

Single register divided into 5 sections:

- a) Agents; b) Brokers; c) Producers who, alongside to their main activity, sell policies on behalf of companies (exclusively life and health insurance); d) Banks, financial intermediaries, post offices
- e) co-workers of a), b) and d).

4. Registers

- *Number of registers:* Single register divided into 5 sections.
- *Competent authority:* Isvap – The Italian Insurance Supervisor Authority
<http://isvapweb.isvap.it> (click on the left side on "Albo Mediatori" and "Albo Agenti")
- *Cost:* Registration will cost €100 for persons and €500 for companies each year. Banks, post offices and financial promoters will pay €10,000. Brokers will also have to pay a contribution to a special guarantee fund calculated on the 0.50% (maximum) of all commissions acquired in a year.

5. Professional requirements

5.1 Knowledge and ability requirements

The law establishes an examination only for agents and brokers. All contents will subsequently be established.

5.2 PI cover requirement

€1,000,000 for each claim, €1,500,000 in aggregate per year

5.3 Financial guarantee

- Money paid to the intermediaries are considered as been paid to the insurer
- Separation of client funds
- Guarantee fund (brokers only)

5.4 Additional requirements to those of the IMD

No

6. Information requirements

The Code follows on the whole what the IMD provides.

6.1 Implementation of Article 12.3 of the IMD in practical terms

Art. 120 of the new Code of Insurance provides for all information according to the IMD. The ISVAP regulation adds new obligations for intermediaries. For example, intermediaries have to sell the policy which is the most appropriate to the customer's needs. There are also rules that are more detailed than in the IMD with regard to conflict of interests. All these rules are favourable to consumers.

ITALY

7. Acquired rights (grandfathering clause)

All agents and brokers working actively have been included directly in the new register.

8. Sanctions

Heavy sanctions on persons and companies who work as intermediaries without being registered and on those who do not observe the rules.

9. Complaints

The ISVAP draft regulation provides the possibility for customers and consumer organisations to inform the ISVAP of any misconduct of an intermediary.

10. Out-of-court redress

11. Notification of establishment and services in other Member States

The Italian competent authority must be advised of an Italian intermediary's intention to conduct services business or establish a branch in another EU Member State

Yes. If it does not see any obstacle, ISVAP will give its green light to the intermediary within 30 days and inform the foreign authority of this authorisation.

12. Italian provisions to be fulfilled by EU non-Italian intermediaries doing FOS/FOE in Italy (general good provisions, stricter information requirements, ...)

13. Other specific comments

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14. Useful links

- National legislation website:
www.parlamento.it
gazzette.comune.jesi.an.it
- DG Internal Market/Transposition of the IMD by Italy:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/italy/f_d15_it_en.htm

[Back to top](#)

LATVIA

1. State of implementation of the IMD

Law on Activities of Insurance and Reinsurance Intermediaries
(Apdrošināšanas un pārapdrošināšanas starpnieku darbības likums)

- *Publication reference in the Official Journal:*
Latvijas Vēstnesis Nr. 52 01.04.2005
- *Entry into force:* 15/04/2005

2. Scope

The law covers all insurance and reinsurance intermediaries. It is a law on insurance mediation. Article 1 of the IMD was implemented literally.

3. Definitions of intermediaries' categories

Besides the IMD nomenclature in the Law, there are three categories:

- *the insurance broker* is defined as a person acting as an insurance and reinsurance intermediary on behalf of and in favour of the client, based on comprehensive offers analyses, and has insured his civil liability as it is stated in this Law.
- *the insurance agent* is defined as a person acting as an intermediary on behalf of and in favour of just one insurance company, non-member state insurer branch or insurers associated in one concern, which has insured its PI cover as it is stated in this Law or about which professional activities responsibility has taken insurance company, non-member state insurer branch or insurers associated in one concern.
- *the tied insurance agent* is defined as a person who does not collect insurance premiums and other payments, and is acting as an intermediary on behalf of and in favour of one or more insurance companies and non-member state insurer branches if retailed services of several insurance companies and non-member state insurer branches are not the same kind and about which professional activities responsibility has taken insurance company and non-member state insurer branch regarding the services retailed.

4. Registers

- *Number of registers:* One register for insurance brokers and insurance agents. Separate for tied insurance agents.
- *Competent authority:*
<http://www.fktk.lv/market/insurance/intermediaries/>
- *Cost:* No registration fees. The fee for insurance supervision is paid by insurance companies as a certain percent from their turnover.

5. Professional requirements

5.1 Knowledge and ability requirements

5.2 PI cover requirement

The PI cover is the same as in the IMD. Insurance companies may provide comparable guarantees for agents or let the agents have their own PI.

5.3 Financial guarantee

Segregated accounts for insurance premiums.

5.4 Additional requirements to those of the IMD

Minimum fixed capital for brokers is €50,000.

6. Information requirements

Same as in the IMD

6.1 Implementation of Article 12.3 of the IMD in practical terms

7. Acquired rights (grandfathering clause)

No

LATVIA

8. Sanctions

The Latvian Financial and Capital Market Commission can withdraw registration.

9. Complaints

Each insurance and reinsurance intermediary is required to set up an effective complaint system. Complaints should normally be dealt with within a month. Complaints that concern insurance and reinsurance mediation can be referred also to the Latvian Financial and Capital Market Commission and the Centre of Consumer Rights Protection.

10. Out-of-court redress

Complaints that concern insurance and reinsurance mediation can be referred also to the Latvian Financial and the Capital Market Commission and the Centre of Consumer Rights Protection.

11. Notification of establishment and services in other Member States

12. Latvian provisions to be fulfilled by EU non-Latvian intermediaries doing FOS/FOE in Latvia (general good provisions, stricter information requirements, ...)

13. Other specific comments

The Law prohibits insurance broker companies to provide any other services besides insurance mediation services and services directly linked to insurance mediation services.

14. Useful links

- National legislation website:
www.ttc.lv
www.likumi.lv/
www.fm.gov.lv
- DG Internal Market/Transposition of the IMD by Latvia:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/latvia/f_d15_lv_en.htm

Back to top

(BIPAR does not have any member association in Latvia.)

LITHUANIA

1. State of implementation of the IMD

Draudimo įstatymas Nr. IX-1737

(Law on insurance)

- *Publication reference in the Official Journal:*
Valstybės žinios, 2003 10 08, Nr. 94-4246
- *Entry into force:* 01/01/2004

2. Scope

Activities of insurance intermediaries in the Republic of Lithuania

3. Definitions of intermediaries' categories

Dependent intermediaries, brokers, reinsurance intermediaries

4. Registers

- *Number of registers:* 3
- *Competent authority:* Insurance Supervisory Commission (www.dpk.lt/en)
- *Cost:* LTL 200 (app. €60) registration fee + other state taxes

5. Professional requirements

5.1 Knowledge and ability requirements

Reputation, license of Authority concerning passed exams, membership in Chamber of Brokers

5.2 PI cover requirement

€1 m/ €1,5 m

5.3 Financial guarantee

min €15,000 and not lower than 4% from premiums signed

5.4 Additional requirements to those of the IMD

Written information for each client regarding independence (stocks) of brokers' enterprise, order of review of complaints, official register (links to sites of Supervision and State Centre of Registers also)

6. Information requirements

6.1 Implementation of Article 12.3 of the IMD in practical terms

Professional organisations are dealing with this problem and proposing solutions. The supervisory authority is partially trying to guide intermediaries in this matter. Standard questionnaires are used. (will be available on POI website)

7. Acquired rights (grandfathering clause)

8. Sanctions

Few financial sanctions in 2005 (total amount app. €10,000), two brokers' Ltd licences revoked

9. Complaints

None, competent Authority - Insurance Supervisory Commission of Lithuania

10. Out-of-court redress

<http://www.dpk.lt/en/gincai.statistika.phtml>

LITHUANIA

11. Notification of establishment and services in other Member States

The Lithuanian competent authority must be advised of a Lithuanian intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. National provisions to be fulfilled by other EU intermediaries doing FOS/FOE in Lithuania (general good provisions, stricter information requirements, ...)

<http://www.dpk.lt/en/files/General%20good%20conditions%20for%20insurance%20intermediaries.doc>

13. Other specific comments

Official list of brokers - http://www.dpk.lt/files/brokeriai/DB_sarasas.xls

<http://www.dpk.lt/en/drinkos.tarpininkai1.php>

14. Useful links

- National legislation website: www3.lrs.lt/pls/inter/w5_show?p_r=3984&p_k=1
- National legislation: <http://www.dpk.lt/en/teises.aktai.php>
- Official data concerning brokers activity: <http://www.dpk.lt/en/drinkos.tarpininkai.php>
- Brokers' quarterly activity results: <http://www.dpk.lt/en/rezultatai.statbrokeriu.phtml>
- Annual insurance market overviews: <http://www.dpk.lt/en/apzvalga.metines.phtml>
- DG Internal Market/Transposition of the IMD by Lithuania:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/lithuania/f_d15_lt_en.htm

[Back to top](#)

1. State of implementation of the IMD

Law of 13th July 2005 amending Law of 6 December 1991 on insurance sector

(Loi du 13 juillet 2005 portant modification de la loi modifiée du 6 décembre 1991 sur le secteur des assurances)

- *Publication reference in the Official Journal:*
Mémorial grand-ducal A n° 103 of 21/07/2005, page 1832
- *Entry into force:* 25/07/2005

Regulation of 24th November 2005 on the licensing and the pursuit of the business of insurance and re-insurance intermediaries

(Règlement grand-ducal du 24 novembre 2005 concernant les modalités d'agrément et d'exercice des intermédiaires d'assurances et de réassurances)

- *Publication reference in the Official Journal:*
Mémorial grand-ducal A n° 188 of 02/12/2005, page 314
- *Entry into force:* 06/12/2005

2. Scope

The law governs all intermediaries providing insurance mediation services. Are considered as insurance mediation services:

- the activities of introducing, proposing or carrying out other work preparatory to the conclusion of insurance contracts, or
- the activities of concluding such contracts, or
- the activities of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.

Apart from insurance mediation services, the bill also refers to reinsurance mediation services. Are considered as re-insurance mediation services:

- the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or
- the activities of concluding such contracts, or
- the activities of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by a reinsurance undertaking or an employee of a reinsurance undertaking who is acting under the responsibility of the reinsurance undertaking are not considered as reinsurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation.

Persons offering mediation service do not need to obtain a prior authorisation if all the following conditions are met:

- The nature of the insurance contract is such that only knowledge on the insurance cover provided is required;
- The insurance contract is not a life assurance contract;
- The insurance contract does not cover any liability risks;
- The principal professional activity of the person is other than insurance mediation;

LUXEMBOURG

- The insurance is complementary to the product or service supplied by any provider, either for the risk of breakdown, loss or damage to goods supplied by that provider or, damage to or loss of baggage and other risks linked to the travel booked with that provider, even in situations where the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;
- The amount of the annual premium does not exceed €500 and the total duration of the insurance contract does not exceed five years.

3. Definitions of intermediaries' categories

The bill uses the term '*insurance intermediary*' which is defined as any legal or natural person carrying out an intermediation activity for remuneration. The bill also uses the term '*reinsurance intermediary*' which is defined as any legal or natural person carrying out a reinsurance intermediation activity for remuneration.

The term insurance intermediary comprises different categories of intermediaries, i.e. the agent, the insurance broker and the insurance sub-broker, Luxembourg intermediary (= any intermediary whose home country is Luxembourg).

The **agent** is defined as any natural or legal person carrying on the activity of insurance mediation for and on behalf of one or more insurance undertakings in the case of insurance products which are not in competition, and who act under the responsibility of such insurance undertakings for their respective products.

Any person who carries out the activity of insurance mediation in addition to his principal professional activity is also considered as an agent acting under the responsibility of one or several insurance undertakings for the products which concern them respectively and which are not in competition if the insurance is complementary to the goods or services supplied in the framework of the principal professional activity.

The insurance **broker** is defined as any natural person managing an insurance brokerage company or acting on its own behalf or any legal person who without being linked to one or several insurance companies act as intermediary between the policyholder whom they represent and insurance undertakings authorised in Luxembourg or abroad.

The insurance **sub-broker** is defined as any natural person working under the responsibility of an insurance broker who without being linked to one or several insurance undertakings acts as an intermediary between the policyholders whom the broker represents and the insurance undertakings authorised in Luxembourg or abroad.

The **reinsurance broker** is defined as any natural person managing a reinsurance brokerage company or acting on its own behalf or any legal person who without being linked to one or several reinsurance companies act as intermediary between the insurance company whom they represent and reinsurance undertakings.

4. Registers

- **Number of registers:** 1
- **Competent authority:**
The register is held by the "Commissariat aux Assurances" (control authority).
<http://www.commassu.lu/search.asp>
- **Cost:** administrative tax: 200.-€ (except for FOS notifications that are exempt from tax)
yearly tax: 400.-€

5. Professional requirements

5.1 Knowledge and ability requirements

The law establishes an examination for Luxembourg intermediaries.

Article 105 §3: "*In order to check their professional knowledge, the persons referred to in paragraph 1 are required to take an aptitude test regarding the legislation on the control of insurance companies, on insurance contracts and insurance techniques for insurance sectors referred to in annexes I and II of the current law. In addition, insurance brokers are required to have knowledge on the general principles of business management. The detailed programme and the details of the exam are defined in a Luxembourg regulation.*" (translated by the BIPAR Secretariat)

5.2 PI cover requirement

According to Article 105 (2) paragraph 2 of the bill, insurance brokers must provide evidence of an insurance cover (€1,240m per sinister and €1,5m per year, as defined in the regulation).

Insurance companies remain liable for all acts of their agents.

5.3 Financial guarantee

Luxembourg has chosen options a) and c) of article 4.4 of the IMD.

- monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives the monies.
- customers' monies must be transferred via strictly segregated client accounts and such accounts cannot be used to reimburse other creditors in the event of bankruptcy.

5.4 Additional requirements to those of the IMD

No

6. Information requirements

The bill strictly follows the provisions of the IMD.

6.1 Implementation of Article 12.3 of the IMD in practical terms

The “Commissariat aux Assurances” refers to articles 108, 108-1 and 108-2 of the law. Standard questionnaires are not used, but brokers have their own information documents and agents have prepared appropriate information documents for their customers.

7. Acquired rights (grandfathering clause)

The intermediaries authorised before 1st September 2000 will be automatically included in the register. Those authorised thereafter will have to prove that they satisfy all the conditions for being authorised.

8. Sanctions

Case described in article 8.1 and 8.3 of the IMD: the bill provides for a fine to be imposed by the supervisory authority which may not exceed €2,500. In the event of a second offence, the fine may be doubled.

Other sanctions are:

- a warning; a reprimand;
- a prohibition against the carrying on of certain operations and the imposition of any other restrictions on the business activity;
- the temporary suspension of one or more managers of the undertaking;
- the withdrawal of the licence.

Case described in article 8.2 of the IMD: the prohibition is contained in article 107 paragraph 3 of the bill. The sanction is imposed on the insurance company. Such sanctions are provided for in article 46 of the law of 6 December 1991 on the insurance sector, as amended. The sanctions are:

- a fine to be imposed by the supervisory authority which may not exceed €25,000. In case of repetition, the fine may be doubled;
- a warning; a reprimand;
- a prohibition against the carrying on of certain operations and the imposition of any other restrictions on the business activity;
- the temporary suspension of one or more managers of the undertaking;
- the withdrawal of the licence of them insurance company and/or of the authorised manager.

9. Complaints

The supervisory authority is competent to deal with customer complaints.

10. Out-of-court redress

The supervisory authority is competent to deal with customer complaints.

A body called insurance mediator (“Médiateur en assurance”), which is composed among others of members of the consumer organisation, has been set up. Its task is to make proposals to settle disputes between companies and insureds.

This same body but with one or several members of the Commissariat aux Assurances and one or the other national association of intermediaries should also deal with problems between companies and intermediaries.

LUXEMBOURG

11. Notification of establishment and services in other Member States

The « Commissariat aux Assurances » has to be informed (art.68 of the amended law of 6 December 1991, coordinated version of 27 April 2006) of the intention of an intermediary of Luxembourg to conduct services business or establish a branch in another EU Member State.

12. National provisions to be fulfilled by other EU intermediaries doing FOS/FOE in Luxembourg (general good provisions, stricter information requirements, ...)

The « Commissariat aux Assurances » has to inform the competent authorities of the intermediary's home Member State about the conditions – for general good reasons - under which the intermediary must carry out his activities in Luxembourg. (These general good reasons are not specified in the law).

13. Other specific comments

No

14. Useful links

- National legislation website: <http://www.legilux.public.lu/>
- DG Internal Market/Transposition of the IMD by Luxembourg:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/luxembourg/f_d15_lu_en.htm

[Back to top](#)

1. State of implementation of the IMD

Implemented the IMD partially on 14 January 2005.

European Passport Rights for Insurance Intermediaries Regulations

- *Publication reference in the Official Journal:*
Chapter 403.18 of the Laws of Malta
- *Entry into force:* 15/01/2005

Distance Selling (Retail Financial Services) Regulations

- *Publication reference in the Official Journal:*
Chapter 330.07 of the Laws of Malta
- *Entry into force:* 15/01/2005

Att ta' l-2006 dwar l-Intermedjarji fl-Assigurazzjoni

(Insurance Intermediaries Act 2006)

- *Publication reference in the Official Journal:*
Supplement to "The Malta Government Gazette" No. 17,947, page 309
- *Entry into force:* 01/10/2006

2. Scope

To regulate insurance intermediaries' activities and their registration.

3. Definitions of intermediaries' categories

- (a) **"insurance agent"**: a person appointed by an authorised company to be its agent and who is authorised to enter into insurance contracts on behalf of the company under the terms of the appointment. In relation to Lloyd's, an insurance agent is a person who is appointed by or on behalf of a member of Lloyd's to be his cover holder in Malta and authorised to enter into insurance contracts on behalf of that member under the terms of a binding authority agreement.
- (b) **"insurance broker"** – means a person carrying on business of insurance broking, that is, a person acting with complete freedom as to his choice of insurers; a person who brings together, with a view to the insurance or reinsurance of risks or commitments, persons seeking insurance or reinsurance and insurers or reinsurers, who carries out work preparatory to the conclusion of contracts of insurance or reinsurance and, where appropriate, who assists in the administration and performance of such contracts, in particular in the event of a claim.
- (c) **"insurance manager"**: a person carrying out professional activities which consist of accepting an appointment from:
 - (i) an insurer or reinsurer to manage any part of his business, or to exercise managerial functions therein, or to be responsible for maintaining accounts or other records of such insurer or reinsurer and in this context, "management" includes authority to enter into insurance contracts on behalf of the insurer or reinsurer under the terms of the appointment; and
 - (ii) an insurance broker dealing with insurance contracts related to risks situated outside Malta, to manage any part of his business, or to exercise managerial functions therein, or to be responsible for maintaining accounts or other records for the broker;
- (d) **"tied insurance intermediary"**: a person carrying out insurance intermediaries activities for or on behalf of one or more authorised companies in the case of insurance products which are not in competition, acting under the full responsibility of those authorised companies for the products which concern them respectively and who may collect premiums or amounts intended for the policyholder, provided that no insurance commitments towards or on the part of the public are given as part of these activities.

4. Registers

- **Number of registers:** 4
- **Competent authority:** The Malta Financial Services Authority (“MFSA”).
<http://www.mfsa.com.mt/mfsa/default.asp> (click on the left on “insurance”, “intermediaries”, “licence holders”)
- **Cost:**
 1. Registration of a person in the Agents Register, Managers Register or Brokers Register:
 - (a) submission of application fee: Lm25 (±€58)
 - (b) acceptance of application: Lm25
 2. Registration of a person in the Agents List, or Brokers List:
 - (a) submission of application fee: Lm200 (±€466)
 - (b) acceptance of application fee: Lm200.
 3. Registration of a person in the Managers List:
 - (a) submission of application fee: Lm100 (±€233)
 - (b) acceptance of application fee: Lm100
 4. Registration of a person in the Tied Insurance Intermediaries List:
varies between Lm35 (±€81) to a max of Lm75 (±€174) depending on whether the person seeking registration is an individual or not.

5. Professional requirements**5.1 Knowledge and ability requirements**

- *Qualifications for registration in the Agents, Managers or Brokers Register:*
 - (a) the applicant is an individual;
 - (b) the applicant is a fit and proper person to be so registered and to ensure the company’s sound and prudent management;
 - (c) the applicant possesses the required qualifications
- *Qualifications of individuals who effectively direct the business of insurance carried out by authorised insurance companies, or companies authorised to act as insurance agents or insurance managers or manage the affairs of such companies:*
 - (a) the individual is a fit and proper person;
 - (b) the individual demonstrates the ability and willingness to assume responsibilities relevant to his position so that the criteria of sound and prudent management are fulfilled with respect to the company issuing the appointment.
 - (c) the individual is capable of displaying professional skills in advising policyholders or prospective policyholders on their insurance requirements, and:
 - (d) either the individual holds a qualification in business of insurance recognised by the Authority, being a qualification granted to him from a local or foreign institution, in each case, the institution is also recognised by the Authority for such purpose; or
 - (e) the individual, in relation to insurance business, satisfies the Authority that he possesses adequate general, commercial and professional knowledge and ability.

Where, in relation to an insurance manager, an appointment held by an individual is in respect of maintenance of accounts, the individual must hold a warrant to practice the profession of accountant either as certified public accountant or certified public accountant and auditor issued under the Accountancy Profession Act;

Where, in relation to an insurance manager, an appointment held by an individual is in respect of exercising managerial functions of maintenance of records, the individual must have at least obtained a degree or diploma recognised by the Authority.

Where, in relation to an insurance manager, an appointment held by an individual is in respect of the management of a company enrolled in the Brokers List, the individual’s registration in the Brokers Register is a required qualification for such appointment.

The Authority accepts as sufficient evidence of the knowledge and ability of an individual who effectively directs the business of insurance carried out by an authorised company or a company authorised to act as an insurance agent, or insurance manager – evidence which demonstrates that the individual has pursued locally or overseas business of insurance or insurance broking for any of the following periods:

- (a) not less than 4 consecutive years during the last eight years in an independent capacity or managerial capacity; or
- (b) not less than two consecutive years during the last five years in an independent capacity or managerial capacity, where the individual proves that he has worked for at least 3 years with one or more companies acting as an insurance agent or carrying on business as an insurance broker or with one or more companies carrying on business of insurance; or
- (c) not less than one year during the last three years in an independent capacity or managerial capacity, where the individual proves that he has received tuition or undergone practical training in insurance business or business of insurance broking attested by reference acceptable to the Authority.

➤ *Qualifications for registration in the Brokers Register:*

- (a) The applicant holds a qualification recognised by the MFSA, being a qualification granted from a local or foreign institution, in each case, the institution also recognised by the MFSA for this purpose; or
- (b) the applicant must have carried on business of insurance broking for a period of not less than five years during the last ten years; or
- (c) The applicant holds a qualification recognised by the MFSA and has carried on business of insurance broking for a period of not less than three years during the last seven years; or
- (d) That applicant has been employed in a managerial capacity by a company carrying on business as an insurance manager for a period of not less than five years during the last ten years; or
- (e) That the applicant holds a qualification recognised by the MFSA and has been employed in a managerial capacity by a company carrying on business as an insurance broker or carrying on business of insurance or acting as an insurance agent or insurance manager for a period of not less than three years during the last seven years; or
- (f) That the applicant has knowledge and practical experience of business of insurance which is comparable to that of a person who has carried on business of insurance broking in a managerial capacity for a period of not less than five years during the last ten years; or
- (g) That the applicant holds a qualification recognised by the MFSA and has knowledge and practical experience of business of insurance which is comparable to that of a person who has carried on business of insurance broking in a managerial capacity for a period of not less than three years during the last seven years.
- (h) That the applicant is a fit and proper person; and
- (i) That the applicant demonstrates the ability and willingness to assume responsibilities and to ensure the company's sound and prudent management; and
- (j) That the company is capable of displaying appropriate skill in advising clients on their insurance requirements.

5.2 PI cover requirement

€ 1 m applying to each claim and €1.5 m in the aggregate per year for all claims.

5.3 Financial guarantee

The fidelity bond will cover the event of the inability or failure of the intermediary to meet his financial obligations in relation to any sums of money received from or on behalf of his clients. This requirement does not apply to a person registered as an insurance manager for so long as such person holds no appointment from any insurer or an insurance broker for acting so.

5.4 Additional requirements to those of the IMD

The MFSA may require the approved person, if an individual, to complete a personal questionnaire and provide all due diligence documentation to the satisfaction of the MFSA. Where the approved person is not an individual, the person may be required to submit a copy of the last financial statements or any other documentation which it may deem necessary.

6. Information requirements

Before any conclusion of insurance contract, the intermediary must provide the client with the following information:

- (a) his name and address;
- (b) the list on which he is registered and the means for verifying this information;
- (c) the procedure for submitting a complaint to the intermediary or to the Consumer Complaints Manager appointed by the Competent Authority (MFSA).
- (d) if he is connected with an authorised company, he must disclose that connection to a client.

The intermediary must also inform the client in relation to the contract that is provided, whether:

- (a) he gives advice based on the obligation to provide a fair analysis; or
- (b) he is under a contractual obligation to carry out insurance intermediaries activities exclusively with one or more authorised companies. In that case, he shall provide the names of those authorised companies; or
- (c) he is not under a contractual obligation to conduct insurance intermediaries activities exclusively with one or more authorised companies and does not give advice based on the obligation to provide a fair analysis. In that case, he shall, at the client's request provide the names of the authorised companies with which he may and does contact business. Provided that, where information is to be provided solely at the client's request, the client shall be informed that he has the right to request such information.

Any disclosure as required above must be communicated to the client:

- (a) on paper or in some other durable medium that is accessible to the client;
- (b) in a clear and accurate manner, comprehensible to the client; and
- (c) in the Maltese or English language or in a language agreed to by the parties.

The intermediary is bound to verbally provide the above required information:

- (a) whenever the client asks for the information; or
- (b) whenever immediate cover is needed.

Article 12.3 of the IMD is being implemented by Rule 3 of the 2006 Act. In order to assess the client's demands and needs, the intermediary has to:

- (a) ask information about the client's circumstances and objectives, including any facts that would affect the type of insurance recommended, such as any relevant existing insurance;
- (b) have to check any relevant details about the client that are readily available and accessible to the intermediary, for example, in respect of other contracts of insurance on which the intermediary had provided advice or information.

7. Acquired rights (grandfathering clause)

Any person or company licensed under the Insurance Business Act to act as an insurance agent or an insurance manager, or licensed under the Insurance Brokers and Other Intermediaries Act to act as an insurance broker or sub-agent, must not later than six months from the entry into force of the Insurance Intermediaries Act, 2006 conform with the provisions of the new Insurance Intermediaries Act, 2006 or otherwise cease to act as an insurance intermediary, and shall until such time, continue to be governed by the provisions of the Insurance Business Act or the Insurance Brokers and Other Intermediaries Act.

8. Sanctions

The competent authority has the powers to strike intermediaries off the register and suspend their registration.

The following penalties may also be imposed in the event of breach of the provisions under the Maltese Insurance Intermediaries Act, 2006:

- (a) Court penalties – enforceable by prosecution before the Maltese courts;
- (b) Administrative penalties

The Insurance Intermediaries (Penalties for Offences and Infringements) Regulations 2000 lists a number of offences for contravening a provision of the Insurance Intermediaries Act, 2006 and their corresponding applicable penalties.

MALTA

9. Complaints

When a client is unsatisfied with the way his complaint has been handled by the intermediary, he can refer the matter to the Consumer Complaints Manager appointed by the Competent Authority (MFSA).

10. Out-of-court redress

Any person upon whom the Authority has imposed an administrative penalty may appeal in writing to the Financial Services Tribunal against the decision of the Authority.

11. Notification of establishment and services in other Member States

The Maltese competent authority must be notified of a Maltese intermediary's intention to carry out insurance business or establish a branch in another EU Members State.

12. Maltese provisions to be fulfilled by EU non-Maltese intermediaries doing FOS/FOE in Malta (general good provisions, stricter information requirements, ...)

13. Other specific comments

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14. Useful links

- National legislation website:
www2.justice.gov.mt/lom/
- DG Internal Market/Transposition of the IMD by Malta:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/malta/f_d15_mt_en.htm

Back to top

POLAND

1. State of implementation of the IMD

Act of 22 May 2003 on insurance mediation
(USTAWA z dnia 22 maja 2003 r. o pośrednictwie ubezpieczeniowym)

- *Publication reference in the Official Journal:*
Journal of Laws 2003, No 124, Item 1154
- *Entry into force:* 01/01/2004

Amendment of Act 25.03.2005

2. Scope

Same as in the IMD.

3. Definitions of intermediaries' categories

Strict division between agents and brokers. These two categories of intermediaries are the only persons allowed to perform the mediation activities.

4. Registers

Intermediaries are subject to mandatory registration. All agents (both tied agents and so-called multiple agents) are subject to mandatory registration. Agents will be registered by the Financial Supervision Commission (*Komisja Nadzoru Finansowego – KNF*)*

On 18 October 2006, a new regulation regarding the register of insurance intermediaries and access to information from this register entered into force in Poland. This regulation aims at protecting insurance companies against fraudulent intermediaries. The newly set up register (data base) will enable insurance companies to check the past of an intermediary before starting cooperation with him. Thanks to this register, insurance companies will gain access to all information concerning the intermediary's last representation contract, and particularly to information about the reasons of its termination.

The register will be set up on the basis of the information gathered and transferred by insurance companies to the Polish Financial Supervision Commission, which will forward data that it receives to the Polish Chamber of Insurance and the latter will customize data to interested insurance companies.

- **Number of registers:** one register for insurance agents and brokers. The register is a public document, accessible to all interested parties.
- **Competent authority:** the Financial Supervision Commission (*Komisja Nadzoru Finansowego – KNF*) becomes the only body authorised to supervise the financial market. The supervision performed by this Commission includes banking, pension schemes, insurance, the capital market, electronic money institutions' and complementary supervision.

The register of insurance agents is managed by the KNF. All new entries, amendments and updates are made on the basis of information provided by insurance companies. Insurance companies are mandated to advise the KNF of all facts subject of registration, immediately, but not later than within 7 days from their occurrence.

Brokers are mandated to advise the KNF of all material changes relating to their activities within 7 days of the occurrence of such changes.

- **Cost:** A license fee of PLN1000 (about €250) is required for brokers, whereas a modest registration fee is collected by KNF from each applicant for registration.

5. Professional requirements**5.1 Knowledge and ability requirements**

The law established an Examination Commission for insurance and reinsurance brokers. A decree from the Ministry of Finance (6.04.2005.) specified the composition of the examination Commission and the scope of applicable examination topics.

Insurance brokers and agents are required to develop their professional knowledge. This requirement is understood as an obligation of continuing (permanent) education. The decree by Ministry of Finance (4.07.2005) requires 50 hours of lectures, during 3-years period.

5.2 PI cover requirement

Same as in the IMD

5.3 Financial guarantee

The amended law will follow provisions of art. 4.4. "A" of the IMD.

5.4 Additional requirements to those of the IMD**6. Information requirements**

The Act on Insurance Mediation incorporates precisely the requirements of articles 11 and 12 of the IMD.

7. Acquired rights (grandfathering clause)**8. Sanctions**

Agents and brokers who act in violation of any of the requirements set up in the Act on Insurance Activity are subject to fine or imprisonment for a period of maximum two years and may also be struck off the register.

9. Complaints

None

10. Out-of-court redress

None

11. Notification of establishment and services in other Member States

The Polish competent authority must be informed of a Polish intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Polish provisions to be fulfilled by EU non-Polish intermediaries doing FOS/FOE in Poland (general good provisions, stricter information requirements, ...)**13. Other specific comments**

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14. Useful links

- National legislation website: http://www.abc.com.pl/serwis/akty_prawne.php
- DG Internal Market/Transposition of the IMD by Poland:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/poland/f_d15_po_en.htm

Back to top

PORTUGAL

1. State of implementation of the IMD

Decreto-Lei n.º 144/2006

- *Publication reference in the Official Journal:*
Diário da República n.º 146, Iª Série, of 31st July 2006
- *Entry into force:* 28 January 2007

2. Scope

The new law defines under which conditions the insurance mediation activity can be accessed and practiced in the EU territory by intermediaries - both natural and legal persons - established in Portugal. It will also apply to pension funds mediation, although in this case, the «European passport» will not be provided. As far as exemptions are concerned, the law establishes more or less the same ones as in articles 1 & 2 of the IMD and in paragraph 12 of the introduction.

Article 2.º

Exemptions

1. This law will not apply to:

- a) activities similar to insurance or reinsurance mediation activities undertaken by an insurance or reinsurance undertaking or an employee of an insurance or reinsurance undertaking who is acting under the responsibility of the insurance or reinsurance undertaking;
- b) the provision of information on an incidental basis in the context of another professional activity, provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract or involves activities of claims settlement provided by an insurer on a professional basis;
- c) to insurance and reinsurance mediation services provided in relation to risks and commitments located outside the European Union.

2. This law shall not apply to persons providing mediation services for non-compulsory insurance contracts as long as all the following cumulative conditions are met:

- a) the insurance contract only requires knowledge of the insurance cover that is provided;
- b) the insurance contract is not a life assurance contract;
- c) the insurance contract does not cover any liability risks;
- d) the principal professional activity of the person is other than insurance mediation;
- e) the insurance is complementary to the product or service supplied by any provider, where such insurance covers:
 - i) the risk of breakdown, loss of or damage to goods supplied by that provider, or
 - ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;
- f) the amount of the annual premium does not exceed €500 and the total duration of the insurance contract, including any renewals, does not exceed five years.

3. Definitions of intermediaries' categories

There is a nomenclature approach. The law divides all insurance intermediaries in tied intermediaries, agents and brokers.

- Tied intermediaries are the intermediaries who act for and on behalf of the insurer and under his full responsibility and cannot handle clients' money. This category is divided in exclusive and non-exclusive tied intermediaries.

- Agents are the intermediaries who act for and on behalf of a non-limited number of insurers, can handle client's money and they are responsible for their acts.

- Brokers are the independent intermediaries, can handle clients' money and are fully responsible for their acts.

4. Registers

- **Number of registers:** one
- **Competent authority:** ISP-Instituto de Seguros de Portugal. The supervisory body will exclusively be in charge of the registration in itself, but insurers will be exclusively competent for verifying in particular if tied intermediaries comply with professional requirements before registering. Insurers will be exclusively competent for verifying in particular if tied intermediaries comply with professional requirements before registering.
- **Cost:**
 Tied insurance intermediaries: No registration cost
 Individual agents: € 125
 Enterprise agents: € 250
 Brokers: € 500

5. Professional requirements

5.1 Knowledge and ability requirements

Knowledge and ability are considered as a general professional requirement applicable to all insurance intermediaries regardless of their category.

To be a tied intermediary and an agent, the candidate will have to pass an examination, which will be held by the entities authorised by the supervisory body but the latter will still define the programme of the education programme. To be a broker, besides the examination, one needs 5 years of experience in the mediation sector.

5.2 PI cover requirement

The PI cover requirements where applicable (agents and brokers) are exactly the same as those set in the Directive. Tied intermediaries are exempted from PI cover because they will work under insurers' full responsibility. The law foresees the possibility for insurers to offer PI cover for their agents.

5.3 Financial guarantee

The financial requirements for brokers are:

- provisions laid down whereby monies paid by the customer to the broker are treated as having been paid to the undertaking as long as the broker delivers simultaneously the receipt of the premium issued by the insurer to the policyholder, and also provisions whereby monies paid by the undertaking to the broker are not treated as having been paid to the customer until the customer actually receives them;
- credit insurance or bank guarantee, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of €15,000;
- a requirement that customers' monies shall be transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy.

5.4 Additional requirements to those of the IMD

All intermediaries have to have Portuguese nationality or another EU nationality; they must have legal capacity for practising commercial operations, and some incompatible situations have been laid down. In particular, for tied intermediaries, a written contract has to be presented to the supervisory body in which the insurer accepts full responsibility for their activity.

For agents, a written contract has also to be presented to the supervisory body in which the insurer mandates the agent to work for and on his behalf; agents must have technical, commercial, administrative and accountant organization and adequate economic and financial structure (which will be further developed by future regulation).

Brokers must not practice any other activity that might affect their independence and can only do business in the financial sector; must have technical, commercial, administrative and accountant organization and adequate economic and financial structure (which will be further developed by future regulation and will be different from the one required for agents); must have a minimum capital stock of €50,000; people in their board should guarantee a prudent and sound management like the one which is legally required for insurers' board members; brokers should suggest to policyholders adequate measures to prevent and reduce risk; their portfolio must be spread in some conditions which will be laid down by future regulation and they should have at their service a highly qualified accountant (e.g. auditor, fiscal and account consultant).

PORTUGAL

6. Information requirements

Generally speaking, the Portuguese law follows quite closely the information requirements laid down by the Directive. Additionally it obliges insurance intermediaries to inform if he or she can handle clients' money. Insurance intermediaries and insurers have the legal duty to inform clients of their right to know how much the intermediary will earn with the placement of the insurance contract and, upon client's request, to provide them with that concrete information.

6.1 Implementation of Article 12.3 of the IMD in practical terms

As far as APROSE is concerned, they will assist their associated members and propose some predefined models for them to fulfil this legal obligation.

7. Acquired rights (grandfathering clause)

All insurance intermediaries will be officially registered by the supervisory body in the new categories as long as they have PI cover, are not in a situation of incompatibility and for brokers only if they comply with the credit insurance or bank guarantee requirement. All the other requirements will have to be fulfilled in one to two years' time.

8. Sanctions

Art. 8°-1: sanctions: It is considered a very serious infringement and a fine can be applied which can vary between € 1,500 and € 150,000 for individuals and from € 3,000 to 750,000 for companies (legal persons).

Art. 8°-2: sanctions: It is considered a very serious infringement and a fine can be applied which can vary between € 1,500 and € 150,000 for individuals and from € 3,000 to 750,000 for companies (legal persons).

Art. 8°-3: sanctions: It depends on the requirement which was not respected; the fine can vary between €250 and 150,000 for individuals and from €750 to €750,000 for legal persons.

9. Complaints

The supervisory body will have the competence to appreciate all the complaints presented against insurance intermediaries. A complaint book for insurance intermediaries has been made compulsory.

10. Out-of-court redress

Although a provision provides for the possibility of out-of-court settlement of disputes between insurance intermediaries and customers, the fact is that no special extrajudicial body is in place at the moment with competence in this area.

11. Notification of establishment and services in other Member States

The Portuguese competent authority must be informed of a Portuguese intermediary's intention to conduct services business or establish a branch in another EU Member State.

Foreign intermediaries who operate in FOS or FE regime on the Portuguese territory will appear on the online register.

12. Portuguese provisions to be fulfilled by EU non-Portuguese intermediaries doing FOS/FOE in Portugal (general good provisions, stricter information requirements, ...)

Generally speaking they will be the same ones which are applicable to Portuguese intermediaries and stated on the previous point 6. Nevertheless there is a provision saying that the ISP will inform the foreign competent authorities about the conditions – general good provisions – under which foreign insurance intermediaries must act if they operate in Portugal.

13. Other specific comments

14. Useful links

- National legislation website: <http://dre.pt/>
- DG Internal Market/Transposition of the IMD by Portugal: http://ec.europa.eu/internal_market/finances/actionplan/transposition/portugal/f_d15_pt_en.htm
- ISP-Instituto de Seguros de Portugal: www.isp.pt
- APROSE: www.aprose.pt
- APS-Portuguese Insurers Association: www.apseguradores.pt

Back to top

1. State of implementation of the IMD

The IMD was adopted in Romania by Law no 403/2004, which implements many EU Directives¹. This law was published on 25.01.2005.

Law no. 32/2000 on insurance business and supervision was modified and completed by Law no. 76/2003, Law no. 403/2004 and Law no. 113/2006.

- *Publication reference in the Official Journal:*

Law 32/2000, ref. 148/10.04.2000; Law 76/2003, ref. 193/26.03.2003; Law 403/2004, ref. 976/25.10.2004; Law 113/2006, ref. 421/16.05.2006

- *Entry into force:* 25/1/2005

All provisions relating to FOS/FOE will enter into force as of 7 January (date of accession of Romania in the EU)

2. Scope

The law deals with the activity of insurance and brokerage companies, mutual insurance companies, insurance intermediaries (brokers and insurance agents).

3. Definitions of intermediaries' categories

In Romania, insurance brokers and insurance agents, natural and legal persons are clearly defined in the law. The authorising conditions are clearly specified for each category.

Insurance agents and brokers are defined in Law no. 32/2000 modified as follows:

- *Insurance agent:* natural or legal person, authorised by an insurer or reinsurer to negotiate or to contract, on behalf of and for the Insurer or reinsurer, insurance/reinsurance contracts, with a third part, according to the conditions stipulated in the mandate contract without having the quality of Insurer/reinsurer, insurance /reinsurance broker.

- *Insurance broker:* legal person (a broker cannot be a natural person), Romanian or foreigner, authorised according to the conditions of the present law, who negotiate for the clients, natural or legal person, insurers or potential insurers, contracts insurance or reinsurance and offers assistance during the contracts' performance to his insured or potentially insured clients regarding risk protection or claim adjustment.

4. Registers

- *Number of registers:*

There is one register of insurance companies, one register of insurance broker companies and on 01.01.2007 will be created the register of insurance agents.

- *Competent authority:* the Insurance Supervisory Commission (ISC)

Insurance agents will be registered from 01.01.2007 (draft application of provisions) in the registers of insurance companies; registers will be also edited in electronic format.

Insurance companies will communicate to ISC monthly, in accordance with the application of provisions, the list of "their" registered insurance agents who will then be registered in the register of insurance agents.

- *Cost:* The authorisation fee for insurance brokers is established at the level of ROL50m (= €1,300) (unique fee). Insurance agents do not have to pay such a fee.

For insurance agents, such a fee is not established.

¹ DIRECTIVES(ROMANIA)

1.Directive 73/239/EEC of 24 July 1973; 2.Directive 2001/17/EC of 19 Marth 2001; 3.Directive 2002/83/EC of 5 November 2002; 4. Directive 2002/87/EC of 16 December 2002; 5.Directive 2002/92/EC of 9 December 2002; 6. Directive 92/49/EEC of 18 June 1992; 7. Directive 98/78/EC of 27 October 1998; 8.Directive 83/349/EEC of June 1983; 9.Directive 2000/26/EC of 16 May 2000; 10.Directive 2004/39/EC of 21 April 2004

ROMANIA

5. Professional requirements

5.1 Knowledge and ability requirements

University degree, at least a 3-year managerial experience in insurance industry or a 5-year experience in banks. The professional certificate will probably be implemented after 1 January 2007.

5.2 PI cover requirement

As of 01.01.2006: €700,000./per each claim, €1m/year

As of 01.01.2007: €1m/per each claim, €1,5m/year

5.3 Financial guarantee

As of 31.03.2005 the minimal equity for insurance brokers will be ROL 250m (€6,500) .

Now the minimal equity for insurance brokers is ROL 150m (€3,800).

5.4 Additional requirements to those of the IMD

6. Information requirements

Art. 40 of law 172/2004 stipulates that insurers and intermediaries must provide clients with information on the insurance contract. Currently, information provision requirements refer only to private individuals and not to companies. Details on information requirements are included in a regulation issued by the ISC (3111/2004). Information should be provided by insurers and intermediaries on the definition of insured events, inception and expiry dates, premium payment terms, litigation procedures, applicable law. Brokers should, in addition to this, provide clients with information on their name, registration details, if their proposal is made based on a comprehensive and professional market search.

6.1 Implementation of Article 12.3 of the IMD in practical terms

UNSICAR has offered its members guidance on the interpretation of these regulations. The ISC has issued the above-mentioned regulations and has answered questions received from intermediaries.

7. Acquired rights (grandfathering clause)

No

8. Sanctions

The sanction could be written warning; limitation of operation; insurance and/or reinsurance intermediaries legally established as share companies, between 3% and up to 6%; insurance and/or reinsurance brokers legally established as limited companies, between 10% and up to 20% applied to their shared capital; forbidden activity temporally or definitely.

9. Complaints

Article 68

(1) Insurance Supervisory Commission and professional bodies shall encourage the setting-up of appropriate and effective complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries and customers.

(2) Member States shall encourage professional associations that are active in the insurance industry to cooperate in the resolution of cross-border disputes.

UNSICAR has had no experience in this field until now.

10. Out-of-court redress

See (1) of Article 68 above

UNSICAR has had no experience in this field until now.

11. Notification of establishment and services in other Member StatesArticle 36¹

(1) Insurance and/or reinsurance intermediaries authorized and/or registered with the Insurance Supervisory Commission to carry on insurance mediation in Romania may pursue insurance mediation in any other Member State.

(2) Insurance and/or reinsurance brokers may carry on activity according to paragraph (1) with the prior notification of the Insurance Supervisory Commission

(3) Insurance and/or reinsurance brokers submit the following documentation and information to the Insurance Supervisory Commission:

- a) the Member State where it wishes to intermediate insurance;*
- b) its structural organization;*
- c) the address in the host Member State from which documents may be obtained and to which they may be submitted;*
- d) name, qualification and the expertise of the executive director who has the competence to represent and to imply the intermediary in relation to third parties in the respective Member States, including the proof that he has a clean police record in relation to crimes against property or other crimes related to financial activities;*

(4) The Insurance Supervisory Commission sends this information within 30 days to the competent authority of the Member State, only if that Member State notified the European Commission of its wish to be informed about such intentions.

(5) If the Member State has not notified the European Commission about his wish to be informed, as provided by par. (4), the insurance/reinsurance broker can initiate its activity immediately

Article 36²

If the Insurance Supervisory Commission wishes to be informed of the intention of any insurance and/or reinsurance intermediary from a Member State to carry on insurance and/or reinsurance mediation in Romania it will notify this to the European Commission. The insurance and/or reinsurance intermediary shall submit through the competent authority of the home Member State the required documentations and information according to the provisions of the legislation in force.

12. Romanian provisions to be fulfilled by EU intermediaries doing FOS/FOE in Romania (general good provisions, stricter information requirements, ...)

Law 32/2000 with its updates provides that:

Article 36³

(1) The insurance and/or reinsurance intermediary having the residence and, by case, the head office in a Member State, under the right of establishment and freedom to provide services, who wishes to pursue mediation activity in Romania, shall comply with the Romanian legislation,.

(2) The Insurance Supervisory Commission requires an insurance and/or reinsurance intermediary pursuing mediation activity in Romania, any legal information and documents necessary to verify the compliance with the national legislation.

13. Other specific comments

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14. Useful links

- National legislation website:
www.monitoruloficial.ro

Back to top

SLOVAKIA

1. State of implementation of the IMD

Act No 340/2005 Coll., on insurance and assurance mediation and amending of some other acts (Zákon č. 340/2005 Z.z., o sprostredkovaní poistenia a sprostredkovaní zaistenia a o zmene a doplnení niektorých zákonov)

- *Publication reference in the Official Journal:*
Zbierka zákonov, year: 2005, section 144, page 3474
- *Entry into force:* 01/09/2005

2. Scope

The law lays down conditions for taking up or pursuing insurance and reinsurance mediation, for Slovak intermediaries as well as for foreign intermediaries based on the freedom of establishment and freedom to provide services; establishes the register of insurance and reinsurance intermediaries and determines supervision over those activities.

Exemptions are the same as those set by the IMD.

3. Definitions of intermediaries' categories

The law defines the activity of insurance and reinsurance mediation, defines insurance and reinsurance intermediaries and insurance intermediaries from a Member State other than Slovakia.

It uses a nomenclature approach for insurance intermediaries, specifying subordinate insurance intermediaries (individuals on an exclusive contractual basis with an agent or a broker), exclusive insurance intermediaries (individuals on an exclusive contractual basis with one insurance company), insurance agents (working on a basis of a contract/contracts with one or several insurance companies) and insurance brokers (having contracts with clients). The law excludes the possibility for one subject to be registered in more than one category at a time.

4. Registers

- *Number of registers:* one central register with sections/lists for 7 specified categories - according to the nomenclature approach.
- *Competent authority:* the National Bank of Slovakia
Those entities that have contractual co-operation with exclusive insurance intermediaries or subordinate insurance intermediaries will be responsible for a part of the registration process to have their collaborators registered.
- *Cost:* €25 (for this fee, the registration sheet can comprise up to 1000 entries for multiple registration application). No particular tax (referring to the profession), other than income tax, is expected from intermediaries/insurers.

5. Professional requirements

5.1 Knowledge and ability requirements

The law introduced 3 levels of professional knowledge which entitle persons to pursue the activity of insurance mediation in a certain range: basic for exclusive insurance intermediaries, subordinate insurance intermediaries and all employees of an intermediary except those of a broker, medium for agents and employees of a broker and high for brokers and reinsurance intermediaries. The specification of the content of those levels is done by a Decree.

Every 5 years an intermediary will have to "re-prove" his/her/its knowledge in the required level by passing a relevant exam.

5.2 PI cover requirement

PI cover is required for every intermediary; the law sets the IMD limits. No comparable guarantee is allowed. There are at least 4 insurance undertakings that are offering the cover.

5.3 Financial guarantee

The form of IMD 4/4/a) and c) are required.

5.4 Additional requirements to those of the IMD

No

SLOVAKIA

6. Information requirements

The provisions of IMD Article 12 and 13 were transposed into the law.

7. Acquired rights (grandfathering clause)

Intermediaries active before the date by which the law came into force will have to register and to comply with the professional requirements requested by the law by the end of 2006.

8. Sanctions

Measures, remedy, fine or calling off the registration/erasure from the register can be used for misconduct of an intermediary or for doing re/insurance mediation without being registered.

9. Complaints

Customary procedures are to be used, they are not explicitly specified in the law.

10. Out-of-court redress

Customary procedures are to be used; they are not explicitly specified in the law.

11. Notification of establishment and services in other Member States

Insurance intermediaries must inform the National Bank of Slovakia. (Article 16 (1) of the Act No.340/2005 Coll.) of their intention to conduct services business or establish a branch in another EU Member State.

Article 8 of the Act No.340/2005 Coll. reads as follows:

Insurance Intermediaries from other Member States

- 1) An insurance intermediary from another Member State, whose home Member State is a different Member State than the Slovak Republic, shall be authorised to carry out insurance mediation on the territory of the Slovak Republic within the scope in which he/she/it is authorised to carry out insurance mediation in his/her/its home Member State and shall do so through a branch office or on the basis of the right of freedom to provide services.
- 2) On the basis of a notification given by the relevant supervisory body of the home Member State of the intention of an Insurance Intermediary from the other Member State to carry out insurance mediation on the territory of the Slovak Republic under Paragraph 1, the Financial Market Authority (hereinafter only "Authority") shall inform such supervisory body of the conditions for carrying out insurance mediation on the territory of the Slovak Republic pursuant to this Act.
- 3) An insurance intermediary from another Member State shall be authorised to start to carry out insurance mediation on the territory of the Slovak Republic after a period of one month from the date when he/she/it was informed by the relevant supervisory body of the home Member State about the delivery of the notification to the Authority in accordance with Paragraph 2.

12. National provisions to be fulfilled by other EU intermediaries doing FOS/FOE in Slovakia (general good provisions, stricter information requirements, ...)

13. Other specific comments

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14. Useful links

- National legislation website:
www.zbierka.sk
www.nrsr.sk
- DG Internal Market/Transposition of the IMD by Slovakia:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/slovakia/f_d15_sk_en.htm

Back to top

SLOVENIA

1. State of implementation of the IMD

Act amending the Insurance Act

(Zakon o spremembah in dopolnitvah zakona o zavarovalništvu)

- *Publication reference in the Official Journal:*
Uradni list RS, number 50/2004, date 06/05/2004, page 6681
- *Entry into force:* 07/05/2004

14. Useful links

- National legislation website: <http://www.dz-rs.si/index.php?id=101>
- DG Internal Market/Transposition of the IMD by Slovenia:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/slovenie/f_d15_sl_en.htm

(No other information available on the implementation of the IMD in Slovenia as BIPAR does not have any member association in Slovenia.)

Back to top

SPAIN

1. State of implementation of the IMD

Law 26/2006, of 17 July, on insurance mediation and private reinsurance
(Ley 26/2006, de 17 de julio, de mediación de seguros y reaseguros privados)

- *Publication reference in the Official Journal:*
BOE nº 170 de 18/07/2006 p. 26959-26983
- *Entry into force:* 19/07/2006

2. Scope

The law is applicable to insurance and reinsurance intermediaries whose home country is Spain or who have their activities in Spain. The exemptions of the law are the same as those mentioned in art. 1.2 of the IMD.

3. Definitions of intermediaries' categories

Insurance intermediaries are divided in two categories: insurance agents and insurance brokers. Agents might be exclusive or "tied" (the word "tied" in the Spanish law does not have the same meaning as defined in the IMD. He is like a multicontract or multiple agent). The exclusive agent can operate only for one insurance company. The "tied" agent can operate without exclusivity with more than one insurance company. The operators of the bancassurance will have to choose between one of these two categories of agents to operate in the insurance market. Insurance brokers are the individual or legal persons who carry on commercial private insurance activity without links implying association with insurance companies or a loss of independence in respect thereof, giving advice based on the obligation in paragraph 2 of art. 12 IMD to provide a fair analysis. Reinsurance brokers are regulated too. They are the individual or legal persons who, for remuneration, take up or pursue reinsurance mediation. Each category is being disqualified to carry on the other categories.

4. Registers

- **Number of registers:** one central register of insurance and reinsurance intermediaries
- **Competent authority:** the Ministry of Economy and Finance (Directorate-General of Insurance and Pensions Fund). Upon request, the public can obtain free information on this central register. Central register have connections with regional registers.
<http://www.dgsfp.mineco.es/Sector/registrospublicos.asp>
Insurance companies register their exclusive agents only.
- **Cost:** Tax is only for registration and it is not necessary to renew each year. Exclusive agents (natural persons) will pay €10. Tied agents, insurance and reinsurance brokers (natural persons) will pay €60. Insurance brokers, reinsurance brokers firms (legal persons) and bancassurance operators will pay €140.

5. Professional requirements

5.1 Knowledge and ability requirements

The Law and the Resolution of 28 July 2006 have introduced 3 levels of professional knowledge which entitle persons to pursue the activity of insurance mediation in a certain range: a) for tied agents, insurance brokers, reinsurance brokers, and directors, managers, delegates or the majority of the administrators of such legal person b) for exclusive insurance agents and directors, managers, delegates or the majority of the administrators of such legal persons; employees of distribution networks of bancassurance operators and employees of all intermediaries in direct contact with clients; and c) for auxiliaries of intermediaries, and others employees of intermediaries.

The specifications of the contents of those levels are included in the Resolution.

5.2 PI cover requirement

PI cover requirements are the same as those of IMD for brokers and "tied" agents. Insurance undertakings give a comparable guarantee for intermediaries acting on their behalf (exclusive agents).

5.3 Financial guarantee

The law establishes the requirements of art. 4.4. b) of IMD for insurance and reinsurance brokers and for "tied" agents.

5.4 Additional requirements to those of the IMD

No

SPAIN

6. Information requirements

The law strictly follows the provisions of articles 12 and 13 of IMD, but it varies depending on the intermediary's category. Exclusive agents shall inform the customer that they are under a contractual obligation to conduct insurance mediation business exclusively with one insurance undertaking; "tied" agents shall inform the customer that they are under a contractual obligation to conduct insurance mediation business with one or more insurance undertaking; and brokers shall inform the customer that they give advice based on the obligation to provide a fair analysis.

6.1 Implementation of Article 12.3 of the IMD in practical terms

This precontractual obligation is implemented in article 42. Consejo and other professional organisations are dealing with this problem and are proposing standard questionnaires to their members (*will be available on POI website*). The supervisory authority does not guide intermediaries in this matter.

7. Acquired rights (grandfathering clause)

Only for brokers active before the date by which the law came into force. All registered brokers must comply with PI cover requirements and financial capacity.

8. Sanctions

Sanctions: withdrawal of the license; suspension of a maximum of 10 years of insurance intermediary activities; publication of the infringement; fine from €15,000 to €30,000.

9. Complaints

All intermediaries must have written procedures to handle and resolve customer complaints.

10. Out-of-court redress

The Law establishes that a financial and insurance services Ombudsman will allow customers to register complaints related to insurance intermediation services.

11. Notification of establishment and services in other Member States

The Spanish competent authority must be advised of a Spanish intermediary's intention to conduct services business or establish a branch in another EU Member State

12. Spanish provisions to be fulfilled by EU non-Spanish intermediaries doing FOS/FOE in Spain (general good provisions, stricter information requirements, ...)

Article 66.1 stipulates that EU non-Spanish intermediaries doing FOS/FOE in Spain must respect provisions on general goods and insured protection.

13. Other specific comments

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14. Useful links

- National legislation websites:
 - www.boe.es/g/es
 - www.todalaley.com
 - www.cnmv.es/index.htm
- DG Internal Market/Transposition of the IMD by Spain:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/spain/f_d15_es_en.htm

Back to top

1. State of implementation of the IMD

Act (2005:405) on the Activity of Offering Insurance
(Lag (2005:405) om försäkringsförmedling)

- *Publication reference in the Official Journal:*
Svensk författningssamling SFS (2005:385) of 14/06/2005
- *Entry into force:* 01/07/2005

2. Scope

All insurance intermediaries. Same exemptions as in the IMD.

3. Definitions of intermediaries' categories

A distinction is made between tied and untied intermediaries but there is no mention of brokers.

The new law does not dictate any particular form of compensation but goes beyond the IMD with regard to transparency, which now fully applies to intermediaries, but not to direct selling. This results in an unbalanced information to customers.

4. Registers

- **Number of registers:** one central register, Bolagsverket for the intermediaries who are legal persons and natural persons who are not employed by a legal person. Those who are employed by a legal person are to be found in a register at Finansinspektionen
- **Competent authority:** Finansinspektionen
- **Cost:** for a legal person: 12500 SEK (€1,325) and for a natural person: 8300 SEK (€880). Then to be registered by Bolagsverket costs 850 SEK (€90) per each.

5. Professional requirements

5.1 Knowledge and ability requirements

Each intermediary needs an extra education and to pass a test before being registered under the new regulation. Sfm has produced an information package and offers to its members this education and follow up certification test at a price of SEK 2000-2500 (€209-261) per person. More than 50% of members have chosen the Sfm alternative for this compulsory education.

Requirements regarding knowledge will vary in proportion to the complexity of the insurance offered.

5.2 PI cover requirement

Minimum is still per claim €1m. If a mediating company has less than 10 intermediaries (natural persons), the minimum per year is €2m. If the insurance company has 11-20 intermediaries (natural persons), the minimum per year is €3m and finally if a company has more than 20 mediators (natural persons), the minimum per year is €4m.

5.3 Financial guarantee

Only separation of client funds

5.4 Additional requirements to those of the IMD

6. Information requirements

For intermediaries:

- name and address
- in what register the intermediary is registered and how the registration can be controlled
- name of the supervisory authority
- if the intermediary has qualified ownership in an insurer or if an insurer has a qualified ownership in the intermediary
- the price for the service rendered by the intermediary
- PI-cover
- the possibilities to make a complaint
- the possibilities for out-of court procedures
- whether the intermediary makes an impartial analyse of the market
- whether the intermediary has obligations through contract/contract with an insurer/insurers
- neither of the two above, which means that the intermediary does not make an impartial analyse of the market but he has no contracts with insurers.

SWEDEN

6.1 Implementation of Article 12.3 of the IMD in practical terms

Professional organisations are not dealing with this problem and proposing solutions. The supervisory authority is trying to guide intermediaries in this matter. Standard questionnaires are used (will be available on POI website).

7. Acquired rights (grandfathering clause)

No

8. Sanctions

The Finansinspektionen can:

- decide that the intermediary shall act in a certain way
- forbid a decision made by the intermediary
- make a remark
- withdraw the licence
- issue a warning

There are also sanctions laid down for the insurers that are almost the same as those for intermediaries.

9. Complaints

Intermediaries or insurers shall follow specific procedures to handle complaints lodged by customers.

10. Out-of-court redress

Only out-of-court procedures for consumers.

11. Notification of establishment and services in other Member States

The Swedish competent authority must be informed of a Swedish intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Swedish provisions to be fulfilled by EU non- Swedish intermediaries doing FOS/FOE in Sweden (general good provisions, stricter information requirements, ...)

In Sweden, the intermediary has to inform the client about the price of his service. This is considered as a general good provision in Sweden.

13. Other specific comments

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14. Useful links

- National legislation website: www.riksdagen.se/webbnav/index.aspx?nid=3910
- DG Internal Market/Transposition of the IMD by Sweden:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/sweden/f_d15_sv_en.htm

Back to top

1. State of implementation of the IMD

Law of 12 May 2005 concerning rules for the provision of financial services

(Wet van 12 mei 2005, houdende regels voor de financiële dienstverlening (Wet financiële dienstverlening))

- *Publication reference in the Official Journal:*
Staatsblad 2005, 339
- *Entry into force:* 05/07/2005

Law on financial markets (=rules on and supervision of financial markets): Act on the financial supervision (Afs).

(Wet, houdende regels met betrekking tot de financiële markten en het toezicht daarop (Wet op het financieel toezicht))

- *Entry into force:* 01/01/2007

The Financial Services Act, which is in force since 1 January 2006, will be integrated into the Afs (which was approved by the Senate on 26 September 2006). The Afs is the final chapter of a process to reform the financial supervision legislation. The Afs deals with the access to the financial market, prudential supervision, supervision of behaviour of financial ventures, and supervision of behaviour of financial markets.

2. Scope

Insurance mediation as well as advice (in a professional capacity and resulting in a recommendation of a specific product) fall under the scope of the law. But banks and insurers as providers of financial products also fall under the scope of the law. It is a very broad law, dealing not only with insurance products but with all sorts of financial products (mortgage, investment, ...)

3. Definitions of intermediaries' categories

The law applies to any one who advises or mediates in a financial product and has not been exempted from it:

- *the consultant:* recommends a certain financial product, but does not mediate for consumers.
- *the mediator:* performs as an intermediary activities aimed at reaching agreements concerning financial products between consumers and insurers, or, as far as it concerns agreements on insurance or credit, assists in the management and the implementation of such agreements;
- *the plenipotentiary representative:* concludes insurance agreements with consumers as plenipotentiary representative of an insurer.
- *the tied intermediary:* mediates on behalf of the insurer(s) without collecting premiums. The insurer is entirely responsible for the tied agent, in the sense that he has to ensure that the tied intermediary complies with all applicable law-based rules. The insurer has to report the tied agent to the competent authority. The tied agent does not need a license of his own.

4. Registers

- **Number of registers:** one register for all financial service providers, thus including banks and direct writers as well as all intermediaries.
http://www.afm.nl/registers_en/?textsize=0
- **Competent authority:**
The Authority Financial Markets (AFM) is in charge of the register of all financial services providers (including intermediaries).
- **Cost:** Registration costs: € 240 plus € 300 per member of the executive board of the intermediary for integrity research. Annual costs as of € 420 (self-employed) with a maximum of € 14.870 (>200 employees).

THE NETHERLANDS

5. Professional requirements

5.1 Knowledge and ability requirements

Requirements for intermediaries offering insurance products, mortgage products and consumer credit and investments products. The intermediary must also prove his ability in the field of management. The employees (who have are in contact with clients) must also be competent and have a degree (an adequate number of employees must have a diploma) or otherwise. And there is a requirement to educate permanently.

5.2 PI cover requirement

The general principle that the intermediary must have a PI cover as laid down in the law. Secondary legislation stipulates that the PI cover for claims related to insurance products should be at least €1m per claim and €1,5m per year for all claims.

5.3 Financial guarantee

Provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them (sub a of art. 4.4)

No financial guarantees must be given. Customers are protected by civil law

5.4 Additional requirements to those of the IMD

No

6. Information requirements

The intermediary must provide the following information:

- on how he is remunerated, i.e. fee or commission
From October 2009 the intermediary will be obliged to give transparency of the commission for complex financial products (e.g. life insurances, a mortgage in combination with a life insurance, an investment object,... there is a list of complex products). The client will have to be informed about the amount of commission that is normally (in average) paid to an intermediary for this kind of product. At the client's specific request, the intermediary has to give the exact amount of commission he receives for his mediation for this client (the commission must be split up between the commission received at the beginning of the contract and during the contract). Bonuses received by the intermediary must also be disclosed.
- information requested in Art.12.1 but only under (i), (ii) and(iii)& under 2 & 3

6.1 Implementation of Article 12.3 of the IMD in practical terms

Art. 12.3 is implemented by art. 32 of the Financial Services Act as of 1 July 2006. For certain complex financial products, the intermediary has to keep during one year a written record of his services as well as the characteristics of the financial product that he has advised to his client, so as to enable the supervisory authority to carry out inspection of the intermediary's files.

There are no standards given, but the intermediary has to keep the following information about the customer:

- his financial position
- his knowledge of and experience in financial products
- his demands and needs
- his willingness to take risk.

The advice has to take in account this information as far as reasonably necessary. The intermediary has to comment the underlying reasons for his advice if requested by the customer.

Quite a number of intermediaries are not sure if they comply with rules. NBVA and NVA organise workshops for their members and provide information on how to comply with rules at a reasonable cost.

7. Acquired rights (grandfathering clause)

There is not a real grandfathering clause. But intermediaries already operating in the market can benefit, under certain conditions, from an exemption scheme.

THE NETHERLANDS

8. Sanctions

Fine, penalty on a daily basis, publication of the sanction, withdrawal of the licence.

9. Complaints

The intermediary has to inform his customers about the complaint procedure. He must set up a complaints-handling procedure and be a member of an organisation that is recognised by the government and that settles disputes between intermediaries and customers.

There are currently several complaints-handling bodies but as of 1 January 2007 these existing bodies will be merged into a single central complaint institute for financial services.

10. Out-of-court redress

See 9.

<http://www.klachteninstituut.nl/>

<http://www.kifid.nl/>

11. Notification of establishment and services in other Member States

The Dutch competent authority must be informed of a Dutch intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Dutch provisions to be fulfilled by EU non-Dutch intermediaries doing FOS/FOE in the Netherlands (general good provisions, stricter information requirements, ...)

13. Other specific comments

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14. Useful links

- National legislation website: : <http://www.overheid.nl/op/index.html>
- DG Internal Market/Transposition of the IMD by the Netherlands:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/netherlands/f_d15_nl_en.htm

Back to top

UNITED KINGDOM

1. State of implementation of the IMD

The Financial Services and Markets Act 2000 (Exemption) (Amendment) (No. 2) Order 2003

- *Publication reference in the Official Journal:*
Statutory Instrument 2003 No. 1675

- *Entry into force:* 14/01/2005

The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2003

- *Publication reference in the Official Journal:*
Statutory Instrument 2003 No. 1676

- *Entry into force:* 31/10/2004

2. Scope

All sales, including those by insurance companies are included within the scope. The only exceptions are travel insurance when sold as part of a package and non motor extended warranty insurance. The legislation also excludes non EEA large risks (as defined in the second non-life directive) Persons only providing information to potential policyholders and persons not carrying on activities 'by way of business' do not need to be authorised.

3. Definitions of intermediaries' categories

The regulations do not differentiate between categories of intermediary. They must declare their status as per Article 12e of the IMD on a risk by risk basis.

4. Registers

- **Number of registers:** one register: FSA (Financial Services Authority)

<http://www.fsa.gov.uk/Pages/register/>

- **Competent authority:** Statutory regulation by FSA (Solicitors and accountants are subject to the same rules but overseen through their own professional bodies).

<http://www.fsa.gov.uk/Pages/register/>

- **Cost:**

For new firms an application fee of £1,500 is payable.

Annual fees are set by reference to the turnover of the firm. For example, based on an annual income of:

<i>Minimum Fee</i>	<i>Annual Fee (2006)</i>	<i>FSCS general levy</i>
£	£400 (€ 600)	£6 (€9)
£200k	£780 (€ 1160)	£30 (€45)
£1m	£3,820 (€5700)	£62 (€92)
£5m	£17,100 (€25,500)	£283 (€422)
£10m	£29,100 (€43,400)	£496 (€740)

In addition fees are payable towards:

Financial Ombudsman Service: £50 per year per firm plus £360 (€540) per personal lines complaint and £475 (€700) per commercial customer complaint. There is no charge for the first two complaints in any one year. The charge is payable irrespective of whether the firm is at fault.

The Financial Services Compensation Scheme is funded mainly by a call, after the event, based on any defaults in the general insurance intermediary sector. A small management fee (general levy) is payable each year.

5. Professional requirements

5.1. Knowledge and ability requirements

General provisions have been introduced - no prescriptive rules - no examinations. All firms must apply the FSA's "commitments" regarding training and competence. These are high level requirements to ensure that firms employees are competent, are properly supervised, that competence is regularly reviewed and that the level of competence is appropriate to the nature of the business. Firms involved in advised sales for personal customers are subject to more detailed provisions regarding recruitment, training and supervision.

5.2. PI cover requirement

The FSA has introduced a minimum PI requirement of €1m per claim, €1.5m in the aggregate. Intermediaries will need to purchase a limit based on 10% of annual income up to an upper limit of £10m. (=€14.4m). The maximum permitted excess is £5,000 or, if higher, 3% of annual income. Provisions have been established to allow the excess to be increased by holding additional own funds in line with a detailed matrix.

5.3. Financial guarantee

The FSA allows the insurer to assume the credit risk for premiums and claims held by the intermediary, the risk transfer option by agreement between an insurer and an intermediary. Alternatively a segregated trust account is required where insurance monies are protected for insurance customers in the event of liquidation of the intermediary. Detailed rules relating to the operation of the account have been laid down.

Insurance intermediaries are required to hold a minimum amount of capital and to ensure that they are able to meet their liabilities as they fall due through a solvency requirement. These rules are intended to reduce the possibility of a shortfall in funds and to provide a cushion against disruption if the firm ceases to trade. For firms holding client money, the capital resource requirement is £10,000 or if higher, 5% of the firm's annual income.

In addition the Financial Services Compensation Scheme applies to general insurance intermediaries. If an insurance intermediary fails and is unable to meet its obligations to its customers then eligible claimants (essentially individuals and business with a turnover of up to £1m) can seek compensation from FSCS for any loss. Compensation limits, where the intermediary fails, is set at 100% of the first £2,000 and 90% of the remainder (100% for compulsory classes).

5.4. Additional requirements to those of the IMD

The rules contain:

- Detailed product disclosure requirements including for personal customers, policy summary & policy, statement of price, cancellation, claims handling and renewal information. Commercial customers requirements basically follow the Directive
- Provisions relating to unfair inducements and excessive charges
- Provisions requiring prompt and fair handling of claims
- General insurance intermediaries have been brought within the scope of the Financial Ombudsman Service.
- Financial Services Compensation Scheme

6. Information requirements

As per Directive plus

- a) details of any fees
- b) compensation provisions (i.e. access to Compensation Scheme).
- c) commission disclosure on request (for commercial customers).

6.1 Implementation of Article 12.3 of the IMD in practical terms

The requirements implemented by the FSA closely follow the Directive and cover status disclosure, suitability of advice, demands and needs statement. The FSA has developed templates which firms can use to satisfy the initial disclosure requirements. www.fsa.gov.uk/disclosure

7. Acquired rights (grandfathering clause)

No grandfathering permitted, all firms had to apply for authorisation prior to 14th January 2005.

8. Sanctions

A comprehensive range of sanctions and enforcement provisions apply to all firms regulated by the FSA. Insurance intermediaries are subject to the same rules.

9. Complaints

Firms must have written procedures and keep records of all complaints.

The Financial Ombudsman service applies for individuals and business of less than £1 million turnover.

10. Out-of-court redress

Ombudsman, as above

11. Notification of establishment and services in other Member States

The FSA must be advised of a UK intermediary's intention to conduct services business or establish a branch in another EU Member State.

UNITED KINGDOM

12. UK provisions to be fulfilled by EU non-UK intermediaries doing FOS/FOE in the UK (general good provisions, stricter information requirements, ...)

Definition of when non-UK intermediaries are conducting FOS/FOE differ depending on where arranging (location where activity takes place), advising (where advice is received) or dealing (where acceptance takes place) are undertaken. The Home State regulator's measures relating to articles 12 & 13 apply. Where the Home State has not implemented any measures the IMD minimum provisions will apply (in summary as per 6.1 above). Other provisions relating to Article 6.3 are summarised in FSA Rules SUP 13A 1G Link <http://fsahandbook.info/FSA/html/handbook/SUP/13A/Annex1G>

13. Other specific comments

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14. Useful links

- National legislation website: <http://www.fsa.gov.uk/>
- FSA Guide for small intermediaries: <http://fsahandbook.info/FSA/html/handbook/MIGI>
- DG Internal Market/Transposition of the IMD by UK:
http://ec.europa.eu/internal_market/finances/actionplan/transposition/uk/f_d15_uk_en.htm

Back to top

NORWAY

1. State of implementation of the IMD

The new law on insurance supervision was approved by the Norwegian Parliament in June 2005.

- *Publication reference in the Official Journal:*
Norsk Lovtidende
- *Entry into force:*
1 January 2006

2. Scope

The new law covers both brokers, reinsurance-brokers, agents, subagents and insurance-distributors.

3. Definitions of intermediaries' categories

Brokers: natural or legal persons acting on behalf of clients without any tied connections to insurance companies

Agents: natural or legal persons offering insurance products on behalf of insurance companies

4. Registers

- **Number of registers:** In principle two: Insurance/Reinsurance brokers will be registered directly with the Kredittilsynet. Agents will be registered with the respective insurance company.
- **Competent authority:** Kredittilsynet (the Financial Supervisory Authority of Norway) is an independent government agency that builds on laws and decisions emanating from the Parliament (Stortinget), the Government and the Ministry of Finance and on international standards for financial supervision and regulation.
- **Cost:** There are no register costs.

5. Professional requirements

5.1 Knowledge and ability requirements

No additional proposed requirements for knowledge and ability.

5.2 PI cover requirement

Minimum NOK 10.000.000 (€1,200,000) per claim and total NOK 15.000.000 (€1,830,000) for all claims during one year. For broker companies with more than 10 insurance brokers employed: NOK 20.000.000 (€2,440,000) per claim and total NOK 30.000.000 (€3,661,000) for all claims during one year.

5.3 Financial guarantee

N/A

5.4 Additional requirements to those of the IMD

N/A

6. Information requirements

For intermediaries:

- name and address
- in what register the intermediary is registered and how the registration can be controlled
- whether the intermediary makes an impartial analysis of the market
- the size of commission or fees and the price for the service rendered by the intermediary
- if the intermediary has qualified ownership in an insurer or if an insurer has a qualified ownership in the intermediary (10% or more)
- information about fee to the Norwegian Naturskadeopool
- the possibilities to make a complaint

6.1 Implementation of Article 12.3 of the IMD in practical terms

The pre-contractual obligations of the broker are described in chapter 3 in special regulations issued by the authorities. These special regulations "Forskrift om forsikringsmegling" define the obligations of the broker

NORWAY

7. Acquired rights (grandfathering clause)

No

8. Sanctions

Kredittilsynet can withdraw the broker's registration.

9. Complaints

According to chapter 5 in Forskrift om forsikringsmegling, the authorities can establish a Complaint Board which consists of customers, insurance companies and broker representatives.

This Complaint Board is expected to be established from January 1st 2007.

10. Out-of-court redress

The decisions of the board are advisory to the parties. When a complaint is reviewed by the Complaint Board the parties cannot bring the case before ordinary courts.

11. Notification of establishment and services in other Member States

The Norwegian competent authority must be informed of a Norwegian intermediary's intention to conduct services business or establish a branch in another EU Member State.

12. Norwegian provisions to be fulfilled by EU intermediaries doing FOS/FOE in Norway (general good provisions, stricter information requirements, ...)

EU intermediaries must, according to § 8-2 in the law, comply with duties of the intermediaries set out in § 5-2 -§5,7, second paragraph. Exemptions from the duties in §5-2 - §n 5, 7 second paragraph can be granted if the intermediary is bound by similar regulations in the EU-country where it is registered.

13. Other specific comments

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14. Useful links

- National legislation website: <http://www.lovddata.no/info/lawdata.html>
- The new law: <http://www.stortinget.no/beso/beso-200405-082.html> (only in Norwegian)
- Special regulations (according to new law): <http://www.lovddata.no/for/sf/fd/fd-20051209-1421.html> (only in Norwegian)

Back to top

SWITZERLAND

1. State of implementation of the IMD

The New Supervision Law came into force on 1 January 2006. Art. 40-45 of this law deals with insurance intermediaries.

- *Publication reference in the Official Journal:* www.bpv.admin.ch
- *Entry into force:* 1 January 2006

2. Scope

The Swiss legislation makes a difference between independent intermediaries (brokers who are subject to compulsory supervisory for intermediaries and who therefore have to get registered in a professional register) and tied agents (agents employed by a company or working under its responsibility). Tied agents do not have the obligation to get registered but, if they wish, they can ask to be registered in the professional register.

In Switzerland, only brokers will be subject to the compulsory supervision for intermediaries. Agents act almost exclusively under the responsibility of companies to which they are tied. This a characteristic of the Swiss market. Many agents are employed by insurance companies. This is why registration in the register of intermediaries is optional.

3. Definitions of intermediaries' categories

The definitions of the different intermediaries are, on the whole, less precise and comprehensive than those contained in the Directive.

"Insurance intermediaries are persons who, irrespective of their designation, offer or conclude insurance policies in the interest of an insurance company or other person".

4. Registers

A professional register for insurance intermediaries, based on principles that are similar to those provided for in the European legislation, was also set up on 1 January 2006.

➤ **Number of registers:** a single public register.

➤ **Competent authority:** Federal Office of Private Insurance (Supervisory Authority).

The Supervisory Authority has processed applications from 1 January 2006 by means of a subsequently developed internet platform. The list of all the registered insurance intermediaries is in accordance with the federal law on data protection, published on the Internet. No licence will be delivered.

Foreign brokers with branches in Switzerland must also register as must those without branches in Switzerland if the policyholder is a person domiciled in Switzerland or if the insured object is located in Switzerland. The overseas activities of insurance intermediaries domiciled in Switzerland are not subject to Swiss supervision.

➤ **Cost:** 200 Swiss francs (€126) for legal persons and 300 Swiss francs (€188) for natural persons
Non-tied insurance intermediaries have to pay an annual supervisory tax, which corresponds to the running costs of the register and costs for intermediaries' supervisory

5. Professional requirements

5.1 Knowledge and ability requirements

Intermediaries have to pass an examination or present an equivalent title.

The supervisory authority defines the content of exams and decides whether another title/exam is equivalent.

5.2 PI cover requirement

Any registered intermediary must have a guarantee of 2 million Swiss francs (€1,292,000) for damage related to wealth over one annual period.

5.3 Financial guarantee

Instead of having a PI cover, the intermediary can have an equivalent financial guarantee. The supervisory authority decides on a case-by-case basis if this financial guarantee can be considered to be equivalent to the PI cover.

5.4 Additional requirements to those of the IMD

6. Information requirements

According to Article 45 « Duty to provide information » of the law on insurance supervision:

“1. As soon as insurance intermediaries establish contact with an insured, they shall provide him or her with at least the following information:

a. their name and address;

b. whether the insurance offered in a specific class comes from one or several insurance companies, and the identity of the insurance companies in question;

c. the nature of their contractual relationship with the insurance company/companies for which they are acting and the identity of the companies in question;

d. the person with liability for negligence, errors or incorrect information relating to their activities as intermediaries;

e. the processing of personal data, in particular the purpose, extent and recipients of these data and their retention.

2. The information referred to in Paragraph 1 shall be made available on a permanent medium accessible to the insured.

3. The Federal Council shall regulate the details.”

Remark : in the first draft revision of the Swiss legislation, an article of the implementation decree provided for an impressive list of additional information to be given by the insurer/intermediary to the client whenever a contract was signed. This gave rise to strong reactions and the article was removed.

However, this issue (as well as intermediaries’ remuneration) will be raised again in a new law on insurance contract that should be adopted in 2012.

6.1 Implementation of Article 12.3 of the IMD in practical terms

There is presently no requirement for brokers to provide information as set out in art. 12.3. of the IMD. However, in a recently published report by an Expert Commission dealing with a total revision of the Insurance Contract Law one of the recommendations made would require brokers to substantiate their advice given in written form.

7. Acquired rights (grandfathering clause)

8. Sanctions

Sanctions are laid down in case of non-compliance with the legislation, but these are not exactly the cases described in Articles 8.1, 8.2 and 8.3 of the IMD. However, by comparison, we can give the following answer:

8.1 in case of non-registration of an intermediary who has to be registered: imprisonment or fine up to 1m Swiss francs (€646,000)

8.2 No sanctions laid down officially

8.3 Fine up to 100,000 Swiss francs (€64,600)

9. Complaints

No specific recourse system. Recourse must be introduced with ordinary courts.

10. Out-of-court redress

A system of ombudsman was set up several years ago for out-of-court settlements and conciliations in disputes between insureds and insurers.

11. Other specific comments

Generally speaking, we can say that the Swiss legislation corresponds in practice to the European Directive as far as brokers are concerned, but differences exist for agents because of the distinctive characteristics of functioning of the Swiss agents market.

An insurance intermediary whose home Member State is not Switzerland can carry out insurance activities in Switzerland only if he is registered in Switzerland or if he works for a foreign insurer who has received an authorisation to operate in Switzerland.

An insurance intermediary whose residence or head office is situated in Switzerland and who carries out insurance mediation activities abroad is not subject to any control in Switzerland.

12. Useful links

- National legislation website: www.vermittleraufsicht.ch
- Supervision authorities’ website: www.bpv.admin.ch