



STATUTORY INSTRUMENTS.

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EUROPEAN UNION (INSURANCE DISTRIBUTION) REGULATIONS
2018

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CONTENTS

Regulation

Part 1

PRELIMINARY AND GENERAL

1. Citation and commencement
2. Interpretation
3. Scope

Part 2

COMPETENT AUTHORITY

4. Competent authority
5. 'General good' rules

Part 3

REGISTRATION REQUIREMENTS

6. Bank to establish and maintain Insurance Distribution Register
7. Bank to establish online registration system
8. Registration of persons already registered or authorised to carry out insurance or reinsurance activities
9. Application for registration as an insurance, reinsurance or ancillary insurance intermediary
10. Grant and refusal of applications for registration
11. Power of Bank to obtain further information
12. Review of registration
13. Withdrawal of registration and removal from the register
14. Consequences of withdrawal of registration under this Part as regards other Member States

Part 4

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

15. Exercise of the freedom to provide services
16. Carrying on business in the State
17. Requirement to notify Bank of branch or permanent presence in another Member State
18. Establishment of branch or permanent presence in the State
19. Refusal to process notification

Part 5

ORGANISATIONAL REQUIREMENTS

20. Competence requirements
21. Indemnities, protections and policies
22. Complaints procedures

Part 6

COOPERATION WITH MEMBER STATES

23. Cooperation and exchange of information with competent authorities of Member States
24. Division of competence between home and host Member States
25. Cooperation between competent authorities on freedom to provide services — host member state
26. Cooperation between competent authorities on freedom to provide services — home member state
27. Cooperation between competent authorities on freedom of establishment — host member state
28. Cooperation between competent authorities on freedom of establishment — home member state
29. Out-of-court redress

PART 7

INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES

Chapter 1

Information

30. Information requirements and conduct of business rules
31. Information and transparency requirements for insurance intermediaries
32. Information and transparency requirements for insurance undertakings
33. Information requirements for ancillary insurance intermediaries
34. Advice, and standards for sales where no advice is given
35. Information exemptions and flexibility clause
36. Information conditions
37. Cross-selling
38. Product oversight and governance requirements

Chapter 2

Additional requirements in relation to insurance-based investment products

39. Additional information and transparency requirements for insurance-based investment products
40. Commissions, fees and non-monetary benefits paid in respect of independent advice
41. Information to customers
42. Assessment of suitability and appropriateness, and reporting to customers
43. Record keeping and reporting obligations for insurance-based investment products

Part 8

SANCTIONS AND OTHER MEASURES

44. Sanctions in Regulations 46 and 47, and Act of 1942
45. Contraventions
46. Sanctions — contravention of Regulation 45(e)
47. Sanctions — contravention of Regulation 45(a) to (d) and (f)
48. Relevant annual turnover

- 49. Exercise of supervisory powers and imposition of sanctions
- 50. Right of appeal
- 51. Delegations, etc.

Part 9

PUBLICATION

- 52. Publication of information

Part 10

ARRANGEMENTS FOR REPORTING OF BREACHES

- 53. Reporting of breaches

Part 11

CONSEQUENTIAL AMENDMENTS

- 54. Amendment of Central Bank Act 1942
- 55. Amendment of Investment Intermediaries Act 1995

Part 12

OFFENCES

- 56. Offence — false, etc., information
- 57. Offence — person carrying on insurance or reinsurance distribution other than where registered
- 58. Penalties
- 59. Summary prosecutions by Bank

Part 13

REPEALS AND TRANSITIONALS

- 60. Revocations
- 61. Transitional

SCHEDULE

MINIMUM PROFESSIONAL KNOWLEDGE AND COMPETENCE REQUIREMENTS

EUROPEAN UNION (INSURANCE DISTRIBUTION) REGULATIONS
2018

I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2016/97¹ of the European Parliament and of the Council of 20 January 2016 on insurance distribution, hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Insurance Distribution) Regulations 2018.

(2) These Regulations shall come into operation on 1 October 2018.

Interpretation

2. (1) In these Regulations—

“Act of 1942” means the Central Bank Act 1942 (No. 22 of 1942);

“Act of 1995” means the Investment Intermediaries Act 1995 (No. 11 of 1995);

“Act of 2013” means the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013);

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

“ancillary insurance intermediary” means a person, other than a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013² who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met:

(a) the principal professional activity of that person is other than insurance distribution;

¹OJ No. L 26, 02.02.2016, p. 19

²OJ No. L 176, 27.06.2013, p. 1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 3rd July, 2018.*

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

“approved professional body” means a body approved under section 56 of the Act of 1995;

“authorised officer” means a person appointed under section 24 of the Act of 2013;

“Bank” means the Central Bank of Ireland;

“branch” means an agency or a branch of an insurance intermediary, ancillary insurance intermediary or a reinsurance intermediary, which is located in the territory of a Member State other than the home Member State, and any permanent presence of an intermediary in a Member State other than its home Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch but consists merely of an office managed by the staff of the intermediary or by a person who is independent but has permanent authority to act for the intermediary as an agency would;

“close links” has the same meaning as in the Regulations of 2015;

“Commission” means the European Commission;

“Directive 2009/138/EC” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009³ on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

“Directive of 2016” means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016¹ on insurance distribution;

“durable medium” means any instrument which—

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

“EIOPA” means the European Insurance and Occupational Pensions Authority;

“general good rules” has the meaning given to it in Regulation 5;

“home Member State” means—

³OJ No. L 335, 17.12.2009, p. 1

- (a) where the intermediary is a natural person, the Member State in which his or her residence is situated, or
- (b) where the intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

“host Member State” means the Member State, other than the home Member State, in which an insurance, reinsurance or ancillary insurance intermediary—

- (a) has a permanent presence or establishment, or
- (b) provides services;

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

- (a) non-life insurance products as listed in Annex I to Directive 2009/138/EC (Classes of non-life insurance);
- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
- (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
- (d) officially recognised occupational pension schemes falling under the scope of—
 - (i) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003⁴, or
 - (ii) Directive 2009/138/EC;
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;

“insurance distribution” means any activity involved in advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when

⁴OJ No. 235 L 23.09.2003, p. 10

the customer is able to directly or indirectly conclude an insurance contract using a website or other media; but does not include the following:

- (a) the provision of information on an incidental basis in the context of another professional activity where—
 - (i) the provider does not take any additional steps to assist in concluding or performing an insurance contract, or
 - (ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- (b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;
- (c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
- (d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;

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

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

“Insurance Mediation Regulations” means the European Communities (Insurance Mediation) Regulations 2005 (S.I. No. 13 of 2005);

“insurance undertaking” has the same meaning as in the Regulations of 2015;

“large risks” has the same meaning as in the Regulations of 2015;

“Member State” means Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993), as amended;

“Minister” means the Minister for Finance;

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

“qualifying holding” means a direct or indirect holding of shares or other interest in an insurance, reinsurance or ancillary insurance intermediary—

- (a) which represents 10 per cent or more of the capital or the voting rights, or
- (b) which represents less than 10 per cent of the capital or voting rights but which, in the opinion of the Bank, makes it possible to control or exercise a significant influence over the management of the insurance, reinsurance or ancillary insurance intermediary concerned;

“Regulation (EU) No 1094/2010” means Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010⁵;

“Regulations of 2015” means the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015);

“reinsurance distribution” means any activity involved in advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary, but does not include the following:

- (a) the provision of information on an incidental basis in the context of another professional activity where—
 - (i) the provider does not take any additional steps to assist in concluding or performing an insurance contract, or
 - (ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- (b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;
- (c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
- (d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential

⁵OJ No. L 331, 15.12.2010, p. 48

policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;

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

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

“reinsurance undertaking” has the same meaning as in the Regulations of 2015;

“remuneration” means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance or reinsurance distribution activities.

(2) A word or expression that is used in these Regulations and is also used in the Directive of 2016 shall, unless the context otherwise requires, have the same meaning in these Regulations that it has in that Directive.

Scope

3. (1) These Regulations lay down rules for undertaking insurance distribution and reinsurance distribution by persons who undertake or wish to undertake either or both of those activities.

(2) Subject to paragraph (3), these Regulations shall not apply to ancillary insurance intermediaries carrying out insurance distribution activities where—

- (a) the insurance is complementary to the good or service supplied by a provider, where such insurance covers—
 - (i) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider, or
 - (ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider,

and

- (b) the amount of the premium paid for the insurance product does not exceed €600 calculated on a pro rata annual basis or, where the duration of that service is equal to, or less than, 3 months, the amount of the premium paid per person does not exceed €200.

(3) An insurance undertaking or insurance intermediary distributing insurance through an ancillary insurance intermediary exempt from the application of these Regulations in accordance with paragraph (2) shall ensure that the ancillary insurance intermediary—

- (a) informs the customer, prior to the conclusion of the contract, about the identity, address and complaints procedures of the insurance undertaking or insurance intermediary concerned,
 - (b) has in place appropriate and proportionate arrangements to comply with Regulations 30 and 37 and to consider the demands and needs of the customer before the proposal of the contract, and
 - (c) provides the customer with the insurance product information document referred to in Regulation 34(6) prior to the conclusion of the contract.
- (4) These Regulations do not apply to or in respect of—
- (a) insurance and reinsurance distribution services provided in relation to risks and commitments arising in a country other than a Member State, or
 - (b) insurance and reinsurance distribution activities carried out in third countries.
- (5) These Regulations do not affect the law of the State relating to insurance and reinsurance distribution undertaken by insurance and reinsurance distributors established in a third country and operating within the State under the principle of freedom to provide services, so long as equal treatment is guaranteed to all persons carrying out or authorised to carry out insurance and reinsurance distribution activities in the State.
- (6) (a) As soon as practicable after becoming aware that an insurance or reinsurance distributor is encountering difficulties in establishing itself or carrying out insurance or reinsurance distribution activities in a third country, the Bank shall notify those difficulties to the Minister.
- (b) The Minister shall, without delay, inform the Commission and EIOPA of any difficulties notified to him or her in accordance with subparagraph (a).
- (7) The Bank shall monitor the insurance market, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, the State.

Part 2

COMPETENT AUTHORITY

Competent authority

4. (1) The Bank is designated as the competent authority in the State for the purpose of the Directive of 2016.

(2) The Bank is designated as the single point of contact responsible for providing information on general good rules for the purpose of these Regulations and the Directive of 2016.

(3) Insurance or reinsurance distributors, or approved professional bodies, may cooperate with the Bank in accordance with Regulation 9(6).

General good rules

5. (1) The Bank shall publish on its website the national legal provisions (in these Regulations referred as the “general good rules”) concerning consumer protection which govern the carrying on of insurance and reinsurance distribution in the State.

(2) The Bank shall ensure that the administrative burden stemming from the general good rules is proportionate and shall update and monitor, on a regular basis, the general good rules to ensure they remain in conformity with this Regulation.

(3) The Bank shall have the power, where strictly necessary, to take appropriate and non-discriminatory measures to penalise irregularities committed in the State which are contrary to their general good rules, including the possibility of preventing the insurance, reinsurance or ancillary insurance intermediary concerned from carrying out new business in the State.

(4) The Bank, after informing the competent authority of the home Member State, shall have the power to take appropriate measures to prevent an insurance distributor established in that other Member State from carrying out activity in the State under the freedom to provide services or, where applicable, the freedom of establishment, where—

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

(5) Where the Bank and the competent authority of the home Member State disagree on the measures to be taken in accordance with paragraph (4), the Bank may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Part 3

REGISTRATION REQUIREMENTS

Bank to establish and maintain Insurance Distribution Register

6. (1) The Bank shall establish and maintain a register to be known as the Insurance Distribution Register (in this Part referred to as the “Register”) of

all insurance, reinsurance and ancillary insurance intermediaries for which the Bank is the competent authority.

(2) The Bank may subdivide the Register into 2 or more registers if it thinks fit to do so.

(3) The Register shall—

(a) be compiled electronically and be available in a form that is readily accessible to the public, and

(b) contain information (in this Regulation referred to as “relevant information”) relating to registered insurance intermediaries, registered ancillary insurance intermediaries and registered reinsurance intermediaries, including, in the case of those intermediaries that are companies or partnerships, the names of the persons within the management of those intermediaries that are responsible for the insurance or reinsurance distribution.

(4) The Bank shall ensure that the Register—

(a) specifies the Member States in which each registered insurance intermediary, each registered ancillary insurance intermediary and each registered reinsurance intermediary has notified its intention to the Bank to carry on cross-border business in accordance with Part 4, and

(b) is kept up to date.

(5) The Bank shall provide the relevant information to EIOPA to enable EIOPA to establish, publish on its website and keep up-to-date a single electronic register containing records of insurance, reinsurance and ancillary insurance intermediaries which have notified their intention to the Bank to carry on cross-border business in accordance with Regulations 15 and 17.

Bank to establish online registration system

7. The Bank shall establish an online registration system for the purpose of this Part that—

(a) is easily accessible to the public generally, and

(b) allows completion of the registration form directly online.

Registration of persons already registered or authorised to carry out insurance or reinsurance activities

8. (1) A holder of a registration issued under the Insurance Mediation Regulations continues to be registered under these Regulations, other than where the registration has been withdrawn by the Bank.

(2) Subject to paragraph (3), a person who—

- (a) is a certified person who has been deemed an authorised investment business firm in accordance with section 63 of the Act of 1995,
- (b) is carrying out insurance distribution activities, and
- (c) has not been registered as an insurance intermediary under the Insurance Mediation Regulations,

is not required to comply with Regulation 57.

(3) Paragraph (2) shall only apply—

- (a) where a certified person referred to in that paragraph submits an application for registration for the purposes of Regulation 9 on or before 30 September 2018, and
- (b) until such time as the Bank determines whether to grant or refuse the application for registration in accordance with Regulation 10.

Application for registration as an insurance, reinsurance or ancillary insurance intermediary

9. (1) A person who wishes to be registered as an insurance, reinsurance or ancillary insurance intermediary shall make an application to the Bank in accordance with this Regulation where—

- (a) in the case of a natural person, they are resident in the State, or
- (b) in the case of a legal person, it has its registered office in the State, or if it is not required to have a registered office, it has its head office in the State.

(2) An application to the Bank under paragraph (1) shall—

- (a) be in a form approved by the Bank and published on its website from time to time,
- (b) contain such information and be accompanied by such documentation as the Bank requires, and
- (c) be accompanied by the fee (if any) prescribed under section 32E of the Act of 1942 for the purposes of this Regulation.

(3) Paragraph (1) shall not apply to—

- (a) insurance undertakings and their employees,
- (b) reinsurance undertakings and their employees,
- (c) persons, activities or operations, excluded from the application of these Regulations by virtue of Regulation 3, or

(d) the holder of a registration issued under the Insurance Mediation Regulations who is automatically registered under these Regulations by virtue of Regulation 8.

(4) The Bank shall take all reasonably practicable measures to ensure that persons who fail to comply with paragraph (1) cease to undertake insurance distribution or reinsurance distribution within the State and within other Member States.

(5) An insurance or reinsurance undertaking, or intermediary, which is supervised by the Bank, shall apply to register insurance, reinsurance or ancillary insurance intermediaries for which it is responsible with the Bank and shall ensure that the insurance, reinsurance or ancillary insurance intermediary concerned meets the conditions for registration set out in these Regulations.

(6) Insurance and reinsurance undertakings and intermediaries and approved professional bodies shall, on request of the Bank, cooperate with the Bank in registering insurance and reinsurance and ancillary insurance intermediaries and in the application of the requirements set out in Regulations 20 and 21.

(7) The Bank shall ensure that registration of insurance, reinsurance and ancillary insurance intermediaries is made subject to the fulfilment of the requirements set out in Regulations 20 and 21.

(8) The Bank shall not grant an application for registration by an insurance, reinsurance or ancillary insurance intermediary unless the following information has been provided:

- (a) the identities of shareholders or members, whether natural or legal persons, that have a qualifying holding in the intermediary, and the amounts of those holdings;
- (b) the identities of persons who have close links with the intermediary;
- (c) information that shows that those holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.

(9) Insurance and reinsurance undertakings and intermediaries shall only use the insurance and reinsurance distribution services of registered insurance and reinsurance intermediaries or ancillary insurance intermediaries including those referred to in Regulation 3(2).

(10) Nothing in this Regulation shall prevent—

- (a) a person from making applications for registration as an insurance intermediary and registration as a reinsurance intermediary, or
- (b) an intermediary from entering into a tied agency arrangement with an insurance or reinsurance undertaking or other intermediary, thereby acting as a tied insurance intermediary.

(11) In this Regulation, “tied insurance intermediary” means any person who—

- (a) undertakes insurance or reinsurance distribution for and on behalf of one or more insurance or reinsurance undertakings or other intermediaries, in the case of insurance products that are not in competition,
- (b) acts under the responsibility of those insurance or reinsurance undertakings or other intermediaries, and
- (c) is subject to oversight of compliance with conditions for registration by the insurance or reinsurance undertaking or other intermediary on whose behalf it is acting.

Grant and refusal of applications for registration

10. (1) On considering an application made under Regulation 9, the Bank shall register an applicant as an insurance, reinsurance or ancillary insurance intermediary, as the case may be, where it is satisfied that the applicant is, or will be, able to undertake the responsibilities that are imposed on insurance, reinsurance or ancillary insurance intermediaries by or under these Regulations but, if not so satisfied, it shall refuse the applicant’s application.

(2) The grant of a registration under paragraph (1) may be given unconditionally or subject to conditions or requirements other than those set out in Regulation 9(7).

(3) The Bank may, from time to time, remove or vary the conditions or requirements referred to in paragraph (2).

(4) On accepting a registration in respect of an application under paragraph (1), the Bank shall record the appropriate particulars of the applicant in the Register.

(5) The Bank shall refuse to register an insurance, reinsurance or ancillary insurance intermediary if the laws, regulations or administrative provisions of a third country governing one or more of the persons with which the insurance, reinsurance or ancillary insurance intermediary has close links, or the practical difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of the Bank’s supervisory functions.

(6) The Bank may not refuse an application without giving the applicant an opportunity to make representations in writing as to why the application should not be refused.

(7) Where the Bank refuses an application, it shall promptly give to the applicant a written notice of refusal, which shall include a statement setting out the reasons for the refusal.

(8) The Bank shall consider applications made under these Regulations—

- (a) within 3 months after the date of receipt by the Bank of the duly completed application, or
- (b) where further information or records have been requested by the Bank in relation to the application, within 3 months after the date of receipt by the Bank of further information or records previously requested under Regulation 11.

(9) The Bank shall inform the applicant without delay whether an application has been granted or refused.

(10) A refusal by the Bank of an application for registration under paragraph (1), or the grant of an authorisation subject to a condition or requirement under paragraph (2), shall be an appealable decision for the purpose of Part VIIA of the Act of 1942.

Power of Bank to obtain further information

11. (1) At any time before the grant or refusal of an application for registration in accordance with Regulation 10, the Bank may request by notice, giving not less than 14 calendar days from the date of the notice, such further information or records relating to the insurance, reinsurance or ancillary insurance intermediary as may be necessary for the purpose of properly evaluating the application.

(2) Where a request referred to in paragraph (1) is not complied with within the period specified in the notice, the Bank may reject the application.

Review of registration

12. (1) A registered insurance, reinsurance or ancillary insurance intermediary shall comply at all times with the requirements of its registration.

(2) The Bank shall regularly review the compliance by a registered insurance, reinsurance or ancillary insurance intermediary with its obligations under paragraph (1).

(3) An insurance, reinsurance and ancillary insurance intermediary or, where applicable, an insurance or reinsurance undertaking, shall notify the Bank in writing without undue delay of any material change in the information provided under Regulation 9(8).

Withdrawal of registration and removal from the Register

13. (1) The Bank may withdraw the registration of, and remove from the Register, an insurance, reinsurance or ancillary insurance intermediary that ceases to fulfil the requirements set out in Regulations 20 and 21.

(2) Subject to paragraph (4), the Bank may withdraw the registration of, and remove from the Register, an insurance, reinsurance or ancillary insurance intermediary on any of the following grounds:

- (a) the intermediary has not undertaken insurance distribution or reinsurance distribution within the immediately preceding 6 months;

- (b) the registration was obtained by means of a false or misleading representation;
- (c) the intermediary has become subject to an insolvency process such as winding-up or bankruptcy;
- (d) since the intermediary was registered, the circumstances under which the registration took place have changed to the extent that an application for registration would be refused had it been made in the changed circumstances;
- (e) the intermediary, or if it is a body corporate or partnership, any person concerned in its direction or management, is convicted of—
 - (i) an offence under these Regulations or under any enactment or statutory instrument specified in Part 2 of Schedule 2 to the Act of 1942, or
 - (ii) an offence involving fraud, dishonesty or breach of trust;
- (f) where the Bank is satisfied that it is appropriate to do so, on the application of the intermediary concerned.

(3) An insurance, reinsurance or ancillary insurance intermediary whose registration is withdrawn and removed from the Register under this Regulation shall not undertake insurance or reinsurance distribution.

(4) The Bank may withdraw the registration of, and remove from the Register, an insurance, reinsurance or ancillary insurance intermediary under this Regulation only after it has, given notice in writing to the intermediary informing the intermediary of its intention to withdraw that registration.

(5) The notice referred to in paragraph (4) shall specify—

- (a) the grounds on which it is proposed to withdraw the intermediary's registration, and
- (b) that the intermediary may, not later than 21 calendar days after the giving of the notice make written representations to the Bank showing why the registration should not be withdrawn.

(6) Not later than 21 calendar days after being given a notice under paragraph (4), the insurance, reinsurance or ancillary insurance intermediary concerned may make written representations to the Bank as to why the intermediary's registration should not be withdrawn.

(7) As soon as practicable after withdrawing the registration of an insurance, reinsurance or ancillary insurance intermediary under this Regulation, the Bank shall give written notice of the withdrawal to the intermediary.

(8) The notice referred to in paragraph (7) shall include a statement of the reasons for the withdrawal.

(9) The Bank may publish information on the withdrawal of the registration of an insurance, reinsurance or ancillary insurance intermediary under this Regulation in such form and manner as it thinks appropriate.

(10) A withdrawal by the Bank of a registration in accordance with paragraph (1) or (2) shall be an appealable decision for the purpose of Part VIIA of the Act of 1942.

Consequences of withdrawal of registration under this Part as regards other Member States

14. On withdrawing the registration of an insurance, reinsurance or ancillary insurance intermediary under this Part, the Bank shall notify the withdrawal to the relevant competent authorities of the other Member States.

Part 4

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

Exercise of the freedom to provide services

15. (1) An insurance, reinsurance or ancillary insurance intermediary registered in the State intending, for the first time, to undertake insurance distribution or reinsurance distribution in another Member State shall notify the Bank in writing of the following:

- (a) the name, address and, where applicable, the registration number of the intermediary;
- (b) the host Member States in which the intermediary intends to operate;
- (c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;
- (d) the relevant classes of insurance, if applicable.

(2) The Bank shall, not later than one month after the date of receiving the information referred to in paragraph (1), send that information to the competent authority of the host Member State, which shall pursuant to the Directive of 2016 acknowledge its receipt without delay.

(3) When the Bank receives an acknowledgement of receipt of the information sent in accordance with paragraph (2) from the competent authority of the host Member State, the Bank shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of the host Member State and that the intermediary may begin to undertake insurance distribution or reinsurance distribution in that host Member State.

(4) The Bank shall inform the intermediary, where applicable, that information concerning the general good rules of a host Member State is available on the EIOPA website and from the point of contact responsible for providing information on the general good rules in that host Member State and that the intermediary shall comply with those provisions in order to undertake insurance distribution or reinsurance distribution in that host Member State.

(5) An insurance, reinsurance or ancillary insurance intermediary shall notify the Bank of any material change to the information provided in accordance with paragraph (1) at least one month before implementing the change.

(6) The Bank shall inform the competent authority of the host Member State of any change notified in accordance with paragraph (5) not later than one month from the date of receipt of the information by the Bank.

Carrying on business in the State

16. (1) An insurance, reinsurance or ancillary insurance intermediary registered in a Member State other than the State may carry on business by way of services into the State on or after the date on which it is informed by the competent authority of its home Member State that it has communicated to the Bank the information referred to in Article 4(1) of the Directive of 2016.

(2) Where the Bank receives information sent in accordance with Article 4(2) of the Directive of 2016 from the competent authority of another Member State, the Bank shall acknowledge receipt of that information without delay.

Requirement to notify Bank of branch or permanent presence in another Member State

17. (1) An insurance, reinsurance or ancillary insurance intermediary intending to establish a branch or permanent presence in another Member State shall notify the Bank and provide it with the following information in writing:

- (a) the name, address and, where applicable, the registration number of the intermediary;
- (b) the Member State within the territory of which the intermediary plans to establish a branch or permanent presence;
- (c) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;
- (d) the relevant classes of insurance, if applicable;
- (e) the address in the host Member State from which documents may be obtained;
- (f) the name of the person responsible for the management of the branch or permanent presence.

(2) Subject to Regulation 19, the Bank shall, not later than one month after receiving the information specified in paragraph (1), communicate that information to the competent authority of the host Member State, which shall pursuant to the Directive of 2016 acknowledge its receipt without delay.

(3) Where the Bank receives an acknowledgement of receipt of the information sent in accordance with paragraph (2) from the competent authority of the host Member State, the Bank shall inform the insurance, reinsurance or ancillary insurance intermediary concerned in writing that the information has been received by the competent authority of the host Member State.

(4) In accordance with the Directive of 2016, the competent authority of the host Member State shall, not later than one month after the date of receipt of the information sent by the Bank in accordance with paragraph (2), inform the Bank of the general good rules of that host Member State that are available on the EIOPA website and the point of contact responsible for providing such information.

(5) When the Bank receives information from the competent authority of the host Member State of the general good rules and point of contact referred to in paragraph (4), the Bank shall inform the insurance, reinsurance or ancillary insurance intermediary in writing of those rules and that the intermediary may begin to undertake insurance distribution or reinsurance distribution in that host Member State provided it complies with the general good rules of the host Member State.

(6) An insurance, reinsurance or ancillary insurance intermediary may establish a branch and commence its business on the occurrence of the earlier of the following:

- (a) as soon as it is informed by the Bank under paragraph (5) of the matters to which that paragraph relates;
- (b) on the expiry of a 2 month period from the date on which the intermediary gives a notification to the Bank under paragraph (1).

(7) An insurance, reinsurance or ancillary insurance intermediary shall notify the Bank of any material change to the information provided in accordance with paragraph (1) not later than one month before implementing the change.

(8) The Bank shall inform the competent authority of the host Member State of any change notified in accordance with paragraph (7) no later than one month from the date of receipt of the information.

Establishment of branch or permanent presence in the State

18. (1) Where the Bank receives information sent in accordance with Article 6(2) of the Directive of 2016 from the competent authority of another Member State, the Bank shall acknowledge receipt of that information without delay.

(2) Before the branch or permanent presence of an insurance, reinsurance or ancillary insurance intermediary registered in a Member State other than the

State begins to undertake insurance or reinsurance distribution in the State, the Bank shall not later than one month after the date of receipt of the information referred to in paragraph (1), notify the competent authority of the home Member State of the conditions under which, in the interest of the general good, that business shall be pursued in the State.

(3) The insurance, reinsurance or ancillary insurance intermediary may establish the branch or permanent presence and start to undertake insurance or reinsurance distribution in the State on the occurrence of the earlier of the following:

- (a) as soon as it is informed by the relevant competent authority of the home Member State, that the competent authority of the home Member State has received the notification referred to in paragraph (2);
- (b) on the expiry of a one month period from the date on which information is sent in accordance with Article 6(2) of the Directive of 2016 from the competent authority of its home Member State.

Refusal to process notification

19. (1) The Bank may refuse to communicate the information in accordance with Regulation 17(3) if the Bank has reason to doubt the adequacy of the organisational structure or the financial situation of the insurance, reinsurance or ancillary insurance intermediary, taking into account the distribution activities envisaged.

(2) Where the Bank refuses to communicate the information referred to in paragraph (1) of Regulation 17 to the competent authority of a host Member State, it shall give reasons for its refusal to the insurance, reinsurance or ancillary insurance intermediary concerned not later than one month after receiving the information referred to in that paragraph.

(3) A refusal or failure by the Bank to communicate the information referred to in Regulation 17(1) shall be an appealable decision for the purpose of Part VIIA of the Act of 1942.

Part 5

ORGANISATIONAL REQUIREMENTS

Competence requirements

20. (1) Insurance and reinsurance distributors and the employees of insurance and reinsurance undertakings who are involved in insurance or reinsurance distribution activities shall possess appropriate knowledge and ability necessary to complete their tasks and perform their duties adequately.

(2) The Bank shall—

- (a) ensure that insurance and reinsurance intermediaries and, where applicable, their employees and the employees of insurance and reinsurance undertakings, comply with continuing professional training

and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market, and

- (b) have in place and publish on its website, mechanisms to control effectively and assess the knowledge and competence of insurance and reinsurance intermediaries and, where applicable, their employees and the employees of insurance and reinsurance undertakings based on, not less than, 15 hours of professional training or development per year, taking into account the nature of the products they sell, the type of insurance they distribute, the role they perform and the activity carried out within the insurance or reinsurance distributor.

(3) Insurance and reinsurance intermediaries shall demonstrate to the Bank their compliance with the relevant professional knowledge and competence requirements specified in the Schedule.

(4) The Bank may adjust, where appropriate, the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance distributors and the products they distribute.

(5) An insurance or reinsurance undertaking, or insurance or reinsurance intermediary, shall ensure the good repute of its employees and, where appropriate, of its insurance or reinsurance intermediaries, who are involved in insurance or reinsurance distribution activities and shall ensure, at least, that such undertakings, intermediaries or employees have—

- (a) a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities, and
- (b) they shall not have previously been declared bankrupt, unless they stand discharged from bankruptcy in accordance with the Bankruptcy Act 1988 (No. 27 of 1988).

(6) Paragraph (5) shall not apply to natural persons who work in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary provided that they are not—

- (a) directly involved in insurance or reinsurance distribution, and
- (b) within the management of the insurance or reinsurance undertaking, or insurance or reinsurance intermediary and responsible for insurance or reinsurance distribution.

(7) An ancillary insurance intermediary shall ensure—

- (a) the good repute of the persons who are responsible for ancillary insurance distribution, and
- (b) that such persons shall have—

- (i) a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities, and
- (ii) they shall not have previously been declared bankrupt, unless they stand discharged from bankruptcy in accordance with the Bankruptcy Act 1988 (No. 27 of 1988).

Indemnities, protections and policies

21. (1) Insurance, reinsurance and ancillary insurance intermediaries shall hold ring-fenced professional indemnity insurance covering the whole territory of the Member States or some other comparable guarantee against liability arising from professional negligence, for not less than €1,250,000 applying to each claim and in aggregate €1,850,000 per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.

(2) Every insurance, reinsurance or ancillary insurance intermediary shall take all necessary steps to protect customers against the inability of the intermediary, in an appropriate case, to—

- (a) transfer to the relevant insurance or reinsurance undertaking premiums paid by those customers,
- (b) transfer the amounts of claims payable to those customers, and
- (c) return premiums payable to those customers.

(3) Without limitation of paragraph (2), the following provisions apply for the purpose of providing protection to customers of an insurance, reinsurance or ancillary insurance intermediary:

- (a) premiums paid by a customer to the intermediary are taken to have been paid to the relevant insurance or reinsurance undertaking;
- (b) money paid by an insurance or reinsurance undertaking to the intermediary for a customer are taken not to have been paid to the customer until the customer actually receives it;
- (c) the intermediary shall ensure that premiums and other monies paid to the intermediary by customers or by an insurance or reinsurance undertaking are held in, and only transferred by means of, strictly segregated client premium accounts and that the money held in those accounts cannot be used to reimburse other creditors should the intermediary become insolvent.

(4) Insurance and reinsurance undertakings shall approve, implement and regularly review their internal policies and appropriate internal procedures to ensure compliance with the requirements in Regulation 20 and this Regulation.

(5) Insurance and reinsurance undertakings shall identify a function to ensure the proper implementation of the endorsed policies and procedures.

(6) Insurance and reinsurance undertakings shall establish, maintain and keep up-to-date records of all the relevant documentation regarding the application of Regulation 20 and this Regulation.

(7) Insurance and reinsurance undertakings shall, upon request, make available the name of the person responsible for the function referred to in paragraph (5) to the Bank.

(8) In this Regulation, “ring-fenced” means the cover or portion thereof, provided by the professional indemnity insurance or comparable guarantee, that is strictly reserved in respect of liability arising from professional negligence in connection with insurance or reinsurance distribution activities, including those activities previously described as insurance or reinsurance mediation activities, and no other activities, where an aggregate limit applies to the cover.

Complaints procedures

22. (1) Insurance and reinsurance distributors shall have in place internal procedures for complaints from customers and other interested parties, such as consumer associations.

(2) Insurance and reinsurance distributors shall provide a written reply to all complaints received from their customers by them.

Part 6

COOPERATION WITH MEMBER STATES

Cooperation and exchange of information with competent authorities of Member States

23. (1) The Bank shall cooperate and exchange any relevant information with the competent authorities of other Member States relating to insurance distributors or reinsurance distributors registered in the State or in any of the other Member States, in order to ensure the proper application of these Regulations.

(2) The Bank shall, particularly in the process of registration and on an ongoing basis, share with the competent authorities of other Member States any relevant information concerning the good repute, professional knowledge and the competence of insurance and reinsurance distributors registered in the State or in any of the other Member States.

(3) Without limitation of paragraph (1), the Bank shall notify the competent authorities of other Member States concerned of particulars of—

- (a) any penalty or administrative sanction that has been imposed on an insurance or reinsurance intermediary, or ancillary insurance intermediary, under Regulation 57 or the Act of 1942, as the case may be, or
- (b) any sanction that has been imposed on the intermediary by the Bank in accordance with Part IIIC of the Act of 1942,

but only if notification of those particulars is likely to lead to withdrawal of the intermediary's registration.

(4) All persons required to receive or divulge information in connection with the Directive of 2016 and these Regulations shall be bound by professional secrecy, in the same manner as is set out in section 33AK of the Act of 1942.

Division of competence between home and host Member States

24. (1) Where an insurance, reinsurance or ancillary insurance intermediary, registered in the State, has its primary place of business located in a Member State other than the State, the competent authority of that other Member State may agree with the Bank that that other Member State may act as if it were the home Member State competent authority with regard to Chapters IV to VII of the Directive of 2016.

(2) Where an insurance, reinsurance or ancillary insurance intermediary, registered in another Member State, has its primary place of business located in the State, the Bank may agree with the competent authority of the other Member State that the Bank may act as if it were the home Member State competent authority with regard to Chapters IV to VII of the Directive of 2016.

(3) The Bank shall notify the insurance, reinsurance or ancillary insurance intermediary concerned and EIOPA without delay upon reaching an agreement in accordance with paragraph (1).

(4) Upon reaching an agreement in accordance with paragraph (1), the Bank shall no longer—

- (a) have responsibility for ensuring that the services provided by the insurance, reinsurance or ancillary insurance intermediary outside the State comply with the obligations set out in Chapters V and VI of the Directive of 2016 and with these Regulations, and
- (b) have the right to examine establishment arrangements and to request such changes as are needed to enable the Bank to enforce the obligations under Chapters V and VI of the Directive of 2016 or these Regulations with respect to the services or activities provided by the establishment outside the State.

(5) Upon reaching an agreement in accordance with paragraph (2), the Bank shall—

- (a) have responsibility for ensuring that the services provided by the insurance, reinsurance or ancillary insurance intermediary within the State comply with the obligations set out in Part 7, and
- (b) have the right to examine establishment arrangements and to request such changes as are needed to enable the Bank to enforce the obligations under these Regulations with respect to the services or activities provided by the establishment within the State.

Cooperation between competent authorities on freedom to provide services — host member state

25. (1) The Bank shall furnish the competent authority of the home Member State of an insurance, reinsurance or ancillary insurance intermediary distributing insurance in the State under the freedom to provide services with any information the Bank considers relevant where the Bank has reason to consider, based on reasonable grounds, that the intermediary is in breach of any obligation set out in the Directive of 2016.

(2) Where, despite action being taken by the competent authority of the home Member State pursuant to paragraph (1), the insurance, reinsurance or ancillary insurance intermediary continues to act in a manner that is detrimental to the interests of consumers in the State on a large scale or to the orderly functioning of insurance and reinsurance markets, the Bank may, after informing the competent authority of that home Member State, take appropriate action to prevent further irregularities, including, in so far as it is strictly necessary, preventing that intermediary from continuing to carry on new business within the State.

(3) The Bank may refer the matters referred to in this Regulation to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(4) Nothing in this Regulation shall affect the power of the Bank to take such immediate action as it deems appropriate or necessary to prevent or penalise irregularities committed by an insurance, reinsurance or ancillary insurance intermediary in the State in order to protect the rights of consumers, including, in so far as it is strictly necessary, preventing that intermediary from continuing to carry on new business within the State.

(5) Any action taken by the Bank under this Regulation shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned setting out the reasons for the action and notified without undue delay to the competent authority of the intermediary's home Member State, EIOPA and the Commission.

Cooperation between competent authorities on freedom to provide services — home member state

26. (1) The Bank may, where appropriate, after assessing any information received from the competent authority of another Member State in respect of an insurance, reinsurance or ancillary insurance intermediary that carries out

insurance or reinsurance distribution in that other Member State under the freedom to provide services, take such action as it deems necessary to remedy a breach of any obligation set out in the Directive of 2016 by that intermediary.

(2) The Bank shall inform the competent authority of the host Member State of any action taken pursuant to paragraph (1).

(3) The Bank may refer the matters referred to in this Regulation to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Cooperation between competent authorities on freedom of establishment — host member state

27. (1) The Bank may take appropriate measures where it finds that an insurance, reinsurance or ancillary insurance intermediary that has established a branch or permanent presence in the State is in breach of Part 7.

(2) Where the Bank has reason to consider that an insurance, reinsurance or ancillary insurance intermediary that has established a branch or permanent presence in the State is in breach of any obligation set out in the Directive of 2016, and where the Bank does not have responsibility in accordance with Regulation 24(2), it shall refer those findings to the competent authority of the home Member State.

(3) Where, despite action being taken by the competent authority of the home Member State pursuant to Article 8(1) of the Directive of 2016, the insurance, reinsurance or ancillary insurance intermediary continues to act in a manner that is detrimental to the interests of consumers in the State on a large scale or to the orderly functioning of insurance and reinsurance markets, the Bank may, after informing the competent authority of the home Member State, take appropriate action to prevent further irregularities, including, in so far as it is strictly necessary, preventing that intermediary from continuing to carry on new business within the State.

(4) The Bank may refer the matters referred to in this Regulation to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(5) Nothing in this Regulation shall affect the power of the Bank to take such immediate action as it deems appropriate or necessary to prevent or penalise irregularities committed by an insurance, reinsurance or ancillary insurance intermediary in the State in order to protect the rights of consumers and where equivalent measures of the home Member State are inadequate or lacking, including, in so far as it is strictly necessary, preventing that intermediary from continuing to carry on new business within the State.

(6) Any action taken by the Bank under this Regulation shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned setting out the reasons for the action and notified without undue delay to the competent authority of the intermediary's home Member State, EIOPA and to the Commission.

Cooperation between competent authorities on freedom of establishment — home member state

28. (1) Where the competent authority of a host Member State has reason to consider that an insurance, reinsurance or ancillary insurance intermediary that has established a branch or permanent presence in that Member State is in breach of any obligation set out in the Directive of 2016, and where the competent authority does not have responsibility in accordance with Article 7 of the Directive of 2016 it shall refer those findings to the Bank and the Bank shall—

- (a) assess the information received from the competent authority in the host Member State,
- (b) where necessary, at the earliest opportunity take appropriate measures to remedy the situation, and
- (c) inform the competent authority in the host Member State of any such measures taken.

(2) The Bank may refer the matters referred to in this Regulation to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(3) Any action taken by the Bank under this Regulation shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned setting out the reasons for the action and notified without undue delay to the competent authority of the intermediary's home Member State, EIOPA and to the Commission.

Out-of-court redress

29. (1) The Financial Services and Pensions Ombudsman shall have the authority to investigate, mediate and adjudicate any dispute between a consumer and an insurance distributor that is alleged by the consumer to have arisen by virtue of the operation of any provision of these Regulations.

(2) The Financial Services and Pensions Ombudsman shall cooperate with relevant bodies in other Member States in the resolution of cross-border disputes concerning rights and obligations arising under the Directive of 2016.

PART 7

INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES

Chapter 1

*Information**Information requirements and conduct of business rules*

30. (1) Insurance distributors carrying out insurance distribution shall ensure that they act honestly, fairly and professionally in accordance with the best interests of their customers.

(2) Without prejudice to the Consumer Protection Act 2007 (No. 19 of 2007), all information related to insurance distribution, including marketing communications, addressed by the insurance distributor to customers or potential customers shall be fair, clear and not misleading and all marketing communications shall be clearly identifiable as such.

(3) Insurance distributors shall not be remunerated, or remunerate or assess the performance of their employees, in a way that conflicts with their duty to act in accordance with the best interests of their customers and, in particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

Information and transparency requirements for insurance intermediaries

31. (1) In good time before the conclusion of an insurance contract with a customer, an insurance intermediary shall, whether or not the intermediary provides the customer with any other information, provide the customer with the following information in writing:

- (a) the intermediary's identity and address and that it is an insurance intermediary;
- (b) whether the intermediary provides advice about the insurance products sold;
- (c) the complaints procedures and the ability of the customer to make a complaint to the Financial Services and Pensions Ombudsman;
- (d) the register in which the intermediary has been included and the means for verifying that it has been registered;
- (e) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking;
- (f) whether the intermediary has a holding, direct or indirect, representing 10 per cent or more of the voting rights or of the capital in a given insurance undertaking;
- (g) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing 10 per cent or more of the voting rights or of the capital in the insurance intermediary;
- (h) in relation to the contracts proposed or advised upon, whether—
 - (i) the intermediary gives advice on the basis of a fair and personal analysis,

- (ii) the intermediary is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, in which case it is to provide the names of those insurance undertakings, or
 - (iii) the intermediary is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis, in which case it is to provide the names of the insurance undertakings with which it may and does conduct business;
- (i) the nature of the remuneration received by the intermediary in relation to the insurance contract;
 - (j) whether in relation to the insurance contract, the intermediary works—
 - (i) on the basis of a fee, that is the remuneration paid directly by the customer,
 - (ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium,
 - (iii) on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract, or
 - (iv) on the basis of a combination of any type of remuneration set out in clauses (i), (ii) and (iii).

(2) An insurance intermediary shall inform the customer of the amount of any fee to be directly paid by the customer or, where that is not possible, of the method for calculating the fee.

(3) An insurance intermediary shall also provide the information in accordance with subparagraphs (f) to (j) of paragraph (1), and paragraph (2), for any payments made by the customer under the insurance contract after its conclusion, other than the ongoing premiums and scheduled payments.

Information and transparency requirements for insurance undertakings

32. (1) In good time before the conclusion of an insurance contract with a customer, an insurance undertaking shall, whether or not the undertaking provides the customer with any other information, provide the customer with the following information in writing:

- (a) that it is an insurance undertaking;
- (b) the undertaking's identity and address;

- (c) whether the undertaking provides advice about the insurance products sold;
- (d) the complaints procedures and the ability to make a complaint to the Financial Services and Pensions Ombudsman.

(2) An insurance undertaking shall communicate to its customer the nature of the remuneration received by its employees in relation to the insurance contract in good time before the conclusion of an insurance contract.

(3) An insurance undertaking shall also provide the information in accordance with paragraphs (1) and (2) for any payments made by the customer under the insurance contract after its conclusion, other than the ongoing premiums and scheduled payments.

Information requirements for ancillary insurance intermediaries

33. Ancillary insurance intermediaries shall comply with the information requirements in Regulation 31(1)(a), (c), (d) and (i).

Advice, and standards for sales where no advice is given

34. (1) In good time before the conclusion of a contract with a customer relating to the provision of a particular insurance product, an insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision, taking into account the complexity of the insurance product being proposed and the type of customer.

(2) An insurance distributor shall only propose a contract that is consistent with the customer's insurance demands and needs, taking into account the complexity of the insurance product being proposed and the type of customer.

(3) Where an insurance distributor is providing advice to a customer prior to the conclusion of a contract with that customer relating to the provision of a specific insurance product, the insurance distributor shall provide the customer with a recommendation that explains why a particular product would best meet the customer's demands and needs taking into account the complexity of the insurance product being proposed and the type of customer.

(4) An insurance intermediary who informs a customer that the intermediary gives advice on the basis of a fair and personal analysis shall give that advice based on 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 adequately meets the customer's needs.

(5) Without prejudice to Regulations 192 and 193 of the Regulations of 2015, the insurance distributor shall, prior to the conclusion of a contract, provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of

customer, irrespective of whether or not advice is given and the insurance product is part of a package pursuant to Regulation 37.

(6) The information referred to in paragraph (5) shall be provided by way of a standardised insurance product information document on paper or on another durable medium drawn up by the manufacturer of the non-life insurance product, when dealing with the distribution of non-life insurance products specified in Schedule 1 to the Regulations of 2015.

(7) The insurance product information document referred to in paragraph (6) shall—

- (a) be a short and stand-alone document,
- (b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size,
- (c) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white,
- (d) be written in the English language or, if agreed by the customer and the distributor, in another language,
- (e) be accurate and not be misleading,
- (f) contain the title ‘Insurance Product Information Document’ at the top of the first page, and
- (g) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

(8) The insurance product information document referred to in paragraph (6) shall be provided together with information required pursuant to other relevant European Union legislative acts or national law on the condition that all the requirements set out in paragraphs (1) to (3) are met.

(9) The insurance product information document referred to in paragraph (6) shall contain the following information:

- (a) information about the type of insurance;
- (b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
- (c) the means of payment of premiums, the frequency of payments and the duration and number of payments;
- (d) the main exclusions specifying where claims cannot be made;
- (e) the obligations at the commencement of the contract;

- (f) the obligations during the term of the contract;
- (g) the obligations in the event that a claim is made;
- (h) the term of the contract including the start and end dates of the contract;
- (i) the means of terminating the contract.

Information exemptions and flexibility clause

35. (1) An insurance distributor carrying out distribution activities in relation to the insurance of large risks is not required to provide the information required under Regulations 31, 32 and 34.

(2) Where the insurance distributor is responsible for the provision of mandatory occupational pension arrangements and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the insurance distributor shall provide the information referred to in this Part to the employee promptly after their enrolment in the arrangement concerned.

Information conditions

36. (1) An insurance distributor shall ensure that all the information to be provided in accordance with Regulations 31, 32, 34 and 41 shall be communicated to the customer in writing—

- (a) on paper or other durable medium, where the conditions set out in paragraph (3) are met or a website where the conditions set out in paragraph (4) are met,
- (b) in a clear and accurate manner, comprehensible to the customer,
- (c) be written in the English language or, if agreed by the customer and the distributor, in another language, and
- (d) free of charge.

(2) Where the information referred to in paragraph (1) is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.

(3) The information referred to in paragraph (1) may be provided using a durable medium other than paper where the following conditions are met:

- (a) the use of the durable medium is appropriate in the context of the business conducted between the insurance distributor and the customer;
- (b) the customer has been given the choice between information on paper and on a durable medium, and has chosen the latter medium.

(4) The information referred to in paragraph (1) may be provided by means of a website if it is addressed personally to the customer or if the following conditions are met:

- (a) the provision of that information by means of a website is appropriate in the context of the business conducted between the insurance distributor and the customer;
- (b) the customer has consented to the provision of that information by means of a website;
- (c) the customer has been notified electronically of the address of the website, and the place on the website where that information can be accessed;
- (d) it is ensured that that information remains accessible on the website for such period of time as the customer may reasonably need to consult it.

(5) The provision of information in accordance with paragraphs (3) and (4) shall only be regarded as appropriate in the context of the business conducted between the insurance distributor and the customer where the customer has provided an electronic address for the purposes of that business to the insurance distributor.

(6) If an insurance distributor uses telephone selling to sell an insurance product to a customer, the insurance distributor shall ensure that the information given to the customer complies with the requirements of the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853 of 2004) or with the corresponding law of the relevant Member State concerned and, even if the customer has chosen to obtain prior information on a durable medium other than paper in accordance with paragraph (3), information shall be provided by the insurance distributor to the customer in accordance with paragraph (1) immediately after the conclusion of the insurance contract.

Cross-selling

37. (1) Where an insurance product is offered together with an ancillary product or service which is not insurance as part of a package or the same agreement, the insurance distributor shall—

- (a) specify the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement,
- (b) inform the customer whether it is possible to buy the different components separately, and
- (c) where subparagraph (b) applies, shall provide an adequate description of the different components of the package or agreement as well as separate evidence of the costs and charges of each component.

(2) In the circumstances referred to in paragraph (1) and where the risk or the insurance coverage resulting from such a package or agreement offered to a customer is different from that associated with the components taken separately, the insurance distributor shall provide an adequate description of the different components of the package or agreement and the manner in which their interaction modifies the risk or the insurance coverage.

(3) Where an insurance product is ancillary to a good or a service which is not insurance as part of a package or the same agreement, the insurance distributor shall—

- (a) specify the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement, and
- (b) offer the customer the possibility of buying the good or service separately, other than where an insurance product is—
 - (i) ancillary to an investment service or activity as defined in Regulation 3(1) of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017),
 - (ii) a credit agreement as defined in Regulation 3(1) of the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (S.I. No. 142 of 2016), or
 - (iii) a payment account as defined in Regulation 2(1) of the European Union (Payment Accounts) Regulations 2016 (S.I. No. 482 of 2016).

(4) Nothing in this Regulation shall prevent the distribution of insurance products which provide coverage for various types of risks.

Product oversight and governance requirements

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

- (2) The process for product approval referred to in paragraph (1) shall—
- (a) be proportionate and appropriate to the nature of the insurance product,
 - (b) specify an identified target market for each product,
 - (c) ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and

(d) take reasonable steps to ensure that the insurance product is distributed to the identified target market.

(3) An insurance undertaking shall understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether each product remains consistent with the needs of the identified target market and whether its intended distribution strategy remains appropriate.

(4) Insurance undertakings and intermediaries which manufacture insurance products, shall make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.

(5) An insurance distributor who advises on, or proposes, insurance products which it does not manufacture shall have in place adequate arrangements to obtain the information on the insurance product and the product approval process, including the identified target market of the insurance product and to understand the characteristics and identified target market of each insurance product.

(6) Any policies, processes or arrangements pursuant to this Regulation shall be without prejudice to all other requirements under these Regulations including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

(7) This Regulation shall not apply to insurance products which consist of the insurance of large risks.

Chapter 2

Additional requirements in relation to insurance-based investment products

Additional information and transparency requirements for insurance-based investment products

39. (1) An insurance intermediary or insurance undertaking carrying out insurance distribution in relation to the sale of insurance-based investment products shall be subject to requirements additional to those pursuant to Regulations 30, 31, 32 and 34.

(2) Notwithstanding Regulation 30, an insurance intermediary or insurance undertaking carrying out the distribution of insurance-based investment products shall maintain and operate effective organisational and administrative arrangements proportionate to the activities performed, the insurance products sold and the type of the distributor in order to take all reasonable steps designed to prevent conflicts of interest, as determined under paragraphs (3) and (4), from adversely affecting the interests of its customers.

(3) An insurance intermediary or insurance undertaking shall take all appropriate steps to identify conflicts of interest between themselves, including their

managers and employees, or any person directly or indirectly linked to them by control, and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.

(4) An insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of a conflict of interest, in good time before the conclusion of an insurance contract where the organisational or administrative arrangements made by the insurance intermediary or insurance undertaking, as the case may be, in accordance with paragraph (2) to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented.

(5) An insurance intermediary or insurance undertaking making a disclosure under paragraph (4) shall do so—

(a) on a durable medium, and

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

(6) Where an insurance intermediary provides advice on an insurance-based investment product and informs a customer that such advice is provided on an independent basis, the intermediary shall assess a sufficient range of insurance products available on the market which shall be sufficiently diverse with regard to their type and product providers to ensure that the customer's objectives can be suitably met and shall not be limited to insurance products issued or provided by entities having close links with the intermediary.

Commissions, fees and non-monetary benefits paid in respect of independent advice

40. (1) Insurance distributors providing advice in relation to insurance-based investment products on an independent basis shall return to customers or offset against fees to be paid by customers, any fees, commissions, or non-monetary benefits paid or provided by any third party or person acting on behalf of a third party in relation to the services provided to that customer as soon as reasonably possible after receipt.

(2) Insurance distributors shall formulate and implement a policy to ensure that any fees, commission or non-monetary benefits paid or provided by any third party, or a person acting on behalf of a third party, in relation to the provision of independent advice are allocated and transferred to each individual customer.

Information to customers

41. (1) Notwithstanding the information requirements in Regulations 31(1) and (2), and 32(1), prior to the conclusion of an insurance contract with a customer, an insurance intermediary or insurance undertaking who distributes insurance-based investment products shall provide customers or potential customers in good time with at least the following information:

- (a) when advice is provided, whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer in accordance with Regulation 42;
- (b) as regards the information on insurance-based investment products and proposed investment strategies, appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;
- (c) all costs and related charges of the insurance-based investment product recommended or marketed to the customer, including the cost of advice, where relevant, and how the customer may pay for it, also including any third party payments.

(2) Where an insurance intermediary or insurance undertaking is providing information in respect of costs and related charges, in accordance with paragraph (1)(c), that are not caused by the occurrence of underlying market risk, those costs and related charges shall be provided in an aggregated form that allows the customer to understand the overall cost as well as the cumulative effect on the return of the investment and, where the customer so requests, an itemised breakdown of the costs and charges shall be provided.

(3) Where applicable, information referred to in paragraph (2) shall be provided to the customer on a regular basis, at least annually, during the life cycle of the investment.

(4) The information referred to in paragraphs (1) and (2) shall be provided in a comprehensible form in such a manner that customers or potential customers are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis.

(5) Notwithstanding the obligations on insurance intermediaries set out in Regulation 31(1)(i) and (j), and (3), and the obligations on insurance undertakings set out in Regulation 32(3), an insurance intermediary or insurance undertaking shall be regarded as having fulfilled their obligations under Regulations 30(1) and 39(2) to (5) where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer only where the payment or benefit—

- (a) does not have a detrimental impact on the quality of the relevant service to the customer, and
- (b) does not impair compliance with the insurance intermediary's, or insurance undertaking's, duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

(6) Information to be provided for the purposes of paragraph (1) or (2) may be provided in a standardised format.

Assessment of suitability and appropriateness, and reporting to customers

42. (1) In addition to the requirements set out in Regulation 34(1), (2) and (3), an insurance intermediary or insurance undertaking providing advice on an insurance-based investment product shall also obtain the following necessary information in order to enable the insurance intermediary or the insurance undertaking, as the case may be, to recommend to the customer or potential customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with that person's risk tolerance and ability to bear losses:

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

(2) Where an insurance intermediary or insurance undertaking provides investment advice recommending a package of services or products bundled in accordance with Regulation 37, the insurance intermediary or insurance undertaking, as the case may be, shall ensure the overall bundled package is suitable.

(3) Notwithstanding Regulation 34(1), (2) and (3), an insurance intermediary or insurance undertaking carrying out insurance distribution activities other than those referred to in paragraph (1) shall, in relation to sales where no advice is given, ask the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking, as the case may be, to assess whether the insurance service or product envisaged is appropriate for the customer.

(4) Paragraph (3) shall not apply where all of the following requirements are satisfied:

- (a) the activities refer to either of the following insurance-based investment products:
 - (i) contracts which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014⁶ and do not incorporate a structure which makes it difficult for the customer to understand the risks involved;

⁶OJ No. L 173, 12.06.2014, p. 349

- (ii) other non-complex insurance-based investments for the purpose of paragraph (3) and this paragraph;
- (b) the insurance distribution activity is carried out within the State and at the initiative of the customer or potential customer;
- (c) the customer or potential customer has been clearly informed that, in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking, as the case may be, is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules; such a warning may be provided for in a standardised format;
- (d) the insurance intermediary or insurance undertaking complies with its obligations under Regulation 39.

(5) Where an insurance intermediary or insurance undertaking carries out an assessment in accordance with paragraph (3) in respect of a package of services or products bundled in accordance with Regulation 37, the insurance intermediary or insurance undertaking, as the case may be, shall determine whether the overall bundled package is appropriate.

(6) Where the insurance intermediary or insurance undertaking determines, on the basis of the information received under paragraph (3), that the product is not appropriate for the customer or potential customer, the insurance intermediary or insurance undertaking, as the case may be, shall warn the customer or potential customer to that effect.

(7) If a customer or potential customer does not provide the information referred to in paragraph (3), or where they provide insufficient information regarding their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that it is not in a position to determine whether the product envisaged is appropriate for them.

(8) Prior to the conclusion of a contract for an insurance-based investment product, an insurance intermediary or the insurance undertaking providing advice on the product shall provide the customer with a suitability statement on a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer in accordance with the requirements set out in Regulation 36(1), (2) and (3).

(9) If an insurance intermediary or the insurance undertaking enters into a contract for an insurance-based investment product with a customer using a means of distance communication, which prevents the prior delivery of the suitability statement, the insurance intermediary or the insurance undertaking, as the case may be, shall provide the suitability statement on a durable medium immediately after the customer is bound by any contract, provided both of the following conditions are met:

- (a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract;
- (b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of such conclusion.

(10) Information to be given for the purposes of paragraphs (6) and (7) may be provided in a standard format and shall be provided on a durable medium.

Record keeping and reporting obligations for insurance-based investment products

43. (1) An insurance intermediary or insurance undertaking shall establish a record that includes the document or documents agreed between the insurance intermediary or insurance undertaking, as the case may be, and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer.

(2) The rights, obligations and terms, referred to in paragraph (1), of the parties to the contract may be incorporated by reference to other documents or legal texts.

(3) An insurance intermediary or insurance undertaking shall provide the customer with adequate reports on the service provided on a durable medium that includes—

- (a) periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer, and
- (b) where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

(4) Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the insurance intermediary or insurance undertaking, as the case may be, shall provide a periodic report that contains an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the customer.

Part 8

SANCTIONS AND OTHER MEASURES

Sanctions in Regulations 46 and 47, and Act of 1942

44. (1) Notwithstanding Part IIIC of the Act of 1942 and the sanctions set out in section 33AQ of that Act, any of the sanctions referred to in Regulations 46 and 47 may be imposed by the Bank—

- (a) following an inquiry under section 33AO, or
- (b) in accordance with section 33AR or section 33AV,

of the Act of 1942 in respect of any contravention by a person falling within Regulation 45.

(2) The Bank shall take all measures necessary to ensure that any such sanction is implemented.

Contraventions

45. Each of the following shall be a contravention, referred to in Regulation 44, of these Regulations:

- (a) a failure by a person to register insurance or reinsurance distribution activities in accordance with Part 3;
- (b) use by an insurance or reinsurance undertaking or insurance or reinsurance intermediary of the insurance or reinsurance distribution services of a person referred to in subparagraph (a);
- (c) obtaining a registration as an insurance, reinsurance or ancillary insurance intermediary through false statements or any other irregular means in contravention of Part 3;
- (d) failure by an insurance distributor to meet the professional and organisational requirements set out in Part 5;
- (e) failure by an insurance undertaking or insurance intermediary to comply with conduct of business requirements set out in Part 7, in relation to the distribution of insurance-based investment products;
- (f) failure by an insurance distributor to comply with conduct of business requirements set out in Regulations 30 to 38, in relation to any insurance product other than those referred to in subparagraph (e).

Sanctions — contravention of Regulation 45(e)

46. (1) In the event of a contravention of Regulation 45(e), the sanctions mentioned in Regulation 44 are those specified in paragraph (2).

(2) The sanctions specified, for the purpose of paragraph (1), are the following:

- (a) a public statement, which states the person responsible for the contravention and the nature of the contravention;
- (b) an order requiring a person responsible for the contravention to cease, and desist from, the conduct concerned;
- (c) in the case of an insurance intermediary, withdrawal of its registration under these Regulations;

- (d) in respect of any person who is discharging managerial responsibilities in an insurance intermediary or insurance undertaking that is held responsible for a contravention, a temporary ban on that person from the exercise of managerial responsibilities in any insurance intermediary or insurance undertaking;
- (e) in the case of a legal person—
 - (i) a direction to pay to the Bank a monetary penalty not exceeding €5,000,000, or not exceeding 5% of the total annual turnover of the legal person according to the last available accounts approved by the management body, and Regulation 48 supplements this subparagraph, or
 - (ii) a direction to pay to the Bank a monetary penalty not exceeding twice the amount of the profits gained or losses avoided as a result of an infringement where that amount can be determined even if the amount determined is greater than the amount specified in clause (i);
- (f) in the case of a natural person—
 - (i) a direction to pay to the Bank a monetary penalty not exceeding €700,000, or
 - (ii) a direction to pay to the Bank a monetary penalty not exceeding twice the amount of the profits gained or losses avoided as a result of an infringement where that amount can be determined even if the amount determined is greater than the amount specified in clause (i).

Sanctions — contravention of Regulation 45(a) to (d) and (f)

47. In the event of any contravention referred to in paragraphs (a) to (d) and (f) of Regulation 45, the sanctions mentioned in Regulation 44 are—

- (a) an order requiring a person responsible for the contravention to cease, and desist from, the conduct concerned, or
- (b) in the case of an insurance, reinsurance or ancillary insurance intermediary, withdrawal of its registration under Part 3.

Relevant annual turnover

48. Where a legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013⁷, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

⁷OJ No. L 182, 29.06.2013, p. 19

Exercise of supervisory powers and imposition of sanctions

49. The Bank, when determining the appropriate sanction or sanctions under Regulation 45, shall take into account all relevant circumstances including, where appropriate, the following:

- (a) the gravity and duration of the contravention;
- (b) the degree of responsibility of the person responsible for the contravention;
- (c) the financial strength of the person responsible for the contravention, as indicated, for example, by total turnover where the person is a body corporate or unincorporated body, or by annual income where the person is a natural person;
- (d) the importance of the profits gained or losses avoided by the person responsible for the contravention, insofar as they can be determined;
- (e) the losses for customers and third parties caused by the contravention, insofar as they can be determined;
- (f) the level of cooperation of the person responsible for the contravention with the Bank;
- (g) measures taken by the person responsible for the contravention to prevent repetition of the contravention;
- (h) any previous contraventions or prescribed contraventions within the meaning of the Act of 1942 by the person responsible for the contravention.

Right of appeal

50. A decision, taken in accordance with this Part, imposing a sanction or other measure on a person, or to give a direction to a person under these Regulations is an appealable decision for the purpose of Part VIIA of the Act of 1942.

Delegations, etc.

51. (1) The Bank may perform any of its functions under these Regulations—

- (a) directly,
- (b) in collaboration with other authorities, or
- (c) by application to the High Court.

(2) Notwithstanding paragraph (1), the final responsibility for supervising compliance with the Directive of 2016 and these Regulations shall be with the Bank.

(3) In the exercise of its powers to impose administrative sanctions and other measures, the Bank shall cooperate closely with the competent authorities in other Member States, as appropriate, to ensure that those sanctions and

measures produce the desired results and coordinate their action when dealing with cross-border cases, while ensuring that the conditions are met for legitimate data processing in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016⁸ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000⁹.

Part 9

PUBLICATION

Publication of information

52. (1) The Bank shall publish any decision, taken in accordance with Part 8, imposing an administrative sanction or other measure for a contravention of these Regulations and against which no appeal was lodged in time without undue delay.

(2) The publication mentioned in paragraph (1) shall include at least information on the type and nature of the contravention and the identity of the person responsible for it.

(3) Where the Bank imposes a sanction under Part IIIC of the Act of 1942 in respect of a contravention of these Regulations, and it considers that the publication of the identity of the legal persons, or identity or personal data of natural persons to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data or where publication would jeopardise the stability of financial markets or an ongoing investigation, it may decide to defer publication, not to publish, or to publish the sanctions on an anonymous basis.

(4) Where the decision to impose a sanction or measure for a contravention of these Regulations is the subject of an appeal, the Bank shall also publish, immediately, on its website such information and any subsequent information on the outcome of such appeal.

(5) Any decision annulling a previous decision to impose a sanction or other measure for a contravention of these Regulations which has been published shall also be published.

(6) The Bank shall inform EIOPA of all sanctions imposed but not published in accordance with paragraph (3) including any appeal in relation to them and the outcome of any such appeal.

(7) The Bank shall provide EIOPA annually with aggregated information regarding all administrative sanctions and other measures for a contravention of these Regulations imposed in accordance with Regulation 44.

(8) Where the Bank has disclosed an administrative sanction or other measure for a contravention of these Regulations to the public, it shall at the same time report that fact to EIOPA.

⁸OJ No. L 119, 04.05.2016, p. 1

⁹OJ No. L 8, 12.01.2001, p. 1

Part 10

ARRANGEMENTS FOR REPORTING OF BREACHES

Reporting of breaches

53. (1) The Bank shall establish effective mechanisms to enable and encourage the reporting to it of possible or actual breaches of these Regulations.

(2) The mechanisms referred to in paragraph (1) shall include at least—

- (a) specific procedures for the receipt of reports and their follow-up,
- (b) in relation to the protection of employees of insurance or reinsurance distributors or persons in comparable positions, who report potential or actual breaches committed within the institution against retaliation, discrimination or other types of unfair treatment, these Regulations are made subject to, and without prejudice to, the Protected Disclosures Act 2014 (No. 14 of 2014) and Part 5 of the Act of 2013, and the protections for employees contained in those Acts, and
- (c) protection of the identity and personal data of both the person who reports the potential or actual breach and the natural person who is allegedly responsible for a breach, at all stages of the procedures unless such disclosure is required by law or in the context of further investigation or subsequent administrative or judicial proceedings in accordance with the Data Protection Act 2018 (No. 7 of 2018).

Part 11

CONSEQUENTIAL AMENDMENTS

Amendment of Central Bank Act 1942

54. The Act of 1942 is amended—

- (a) in paragraph (at) (inserted by Regulation 2 of the European Union (Detailed Technical Measures Designation) Regulations 2018 (S.I. No. 130 of 2018)) of section 2(2A), by substituting “2018 and the European Union (Insurance Distribution) Regulations 2018” for “2018”,
- (b) in section 33AK(10) (amended by the Data Protection Act 2018 (No. 7 of 2018)) in the definition of “supervisory EU legal acts” by inserting after paragraph (ac) the following paragraph:

“(ad) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016¹⁰ on insurance distribution.”,

¹⁰OJ No. L 26, 02.02.2016, p. 19

- (c) in section 33BC (amended by Regulation 131 of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017)), by inserting after subsection (13) the following subsection:

“(14) This section shall not apply where Regulation 52 of the European Union (Insurance Distribution) Regulations 2018 applies.”,

- (d) in Part 2 of Schedule 2 (amended by Regulation 145 of the European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018)) by inserting after item 71 the following:

“

72	S.I. No. ___of 2018	European Union (Insurance Distribution) Regulations 2018	The whole instrument
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”, and

- (e) in Schedule 10 (inserted by Regulation 2 of the European Union (Detailed Technical Measures Designation) Regulations 2018 (S.I. No. 130 of 2018))—

(i) in paragraph (81) by substituting “2016;” for “2016.”, and

(ii) by inserting after paragraph (81) the following paragraphs:

“(82) Commission Implementing Regulation (EU) 2017/1469 of 11 August 2017¹¹;

(83) Commission Implementing Regulation (EU) 2017/2358 of 21 September 2017¹²;

(84) Commission Implementing Regulation (EU) 2017/2359 of 21 September 2017¹³.”.

Amendment of Investment Intermediaries Act 1995

55. The Act of 1995 is amended—

(a) in section 2(1)—

(i) by deleting the definitions of “insurance agent”, “insurance broker”, “insurance intermediary”, “insurance undertaking”, “life assurance”, “life assurance intermediary”, “non-life insurance”, “non-life insurance intermediary” and “tied insurance agent”,

(ii) in the definition of “investment business firm”, by deleting “or an insurance undertaking” and “, insurance undertaking”,

(iii) in the definition of “investment instruments”, by deleting paragraph (m),

¹¹OJ No. L 209, 12.08.2017, p. 19

¹²OJ No. L 341, 20.12.2017, p. 1

¹³OJ No. L 341, 20.12.2017, p. 8

- (iv) in the definition of “investor”, by deleting “or of an insurance intermediary”, and
 - (v) in the definition of “product producer”, by substituting “ or investment company” for “ , investment company or insurance undertaking”,
- (b) in section 2(6)—
- (i) in paragraph (m), by substituting “client, or” for “client.”, and
 - (ii) by inserting after paragraph (m) the following paragraph:
 - “(n) persons carrying on the distribution of insurance or reinsurance products referred to in Council Directive 2016/97/EC¹⁴, including the following products provided by an insurance undertaking:
 - (i) tracker bonds;
 - (ii) Personal Retirement Savings Accounts within the meaning of Part X of the Pensions Act 1990 (No. 25 of 1990).”,
- (c) by deleting section 13A,
- (d) in section 25(b)—
- (i) in subparagraph (vi), by substituting “tracker bonds, or” for “tracker bonds,”, and
 - (ii) by deleting subparagraph (vii),
- (e) by deleting sections 25A, 25B, 25C, 25D, 25E, 25F and 25G,
- (f) in section 26—
- (i) in subsection (1)(a)(i), by deleting “, insurance policies,”,
 - (ii) in subsection (1B)(c), by substituting “of clients.” for “of clients, or”,
 - (iii) by deleting subsections (1A)(h), (1B)(d), (1B)(e), (1C), (2A) and (3), and
 - (iv) in subsection (4), by substituting “Subsection 2” for “Subsections 2 and (2A)”,
- (g) in section 27(1)(c), by deleting “and, insofar as he is acting as an insurance intermediary, with the provisions of the Insurance Acts,”,

¹⁴OJ No. L 26, 02.02.2016, p. 19

(h) in section 28—

- (i) by deleting subsection (1)(a)(v),
- (ii) in subsection (1)(c), by deleting “, or any insurance placed,”,
- (iii) in subsection (2)(b), by deleting “and, where the product producer is an insurance undertaking, is also in compliance with the Insurance Acts”,
- (iv) in subsection (3), by deleting “and with the Insurance Acts”, and
- (v) in subsection (7)(d), by deleting “and, if the firm is an insurance intermediary, also complies with the Insurance Acts”,

(i) in section 30—

- (i) in subsection (2)(e), by substituting “made.” for “made;”, and
- (ii) by deleting subsection (2)(f),

(j) by deleting section 31A, and

(k) in section 37, by deleting subsection (2A).

Part 12

OFFENCES

Offence — false, etc., information

56. A person who gives to the Bank a notification pursuant to a requirement under these Regulations that the person knows, or ought reasonably to know, is false or misleading in a material particular, or that the person does not believe to be true, commits an offence.

Offence — person carrying on insurance or reinsurance distribution other than where registered

57. (1) A person shall not undertake, or purport to undertake, insurance or reinsurance distribution in the State unless the person—

- (a) is registered as an insurance intermediary, reinsurance intermediary or ancillary insurance intermediary in the State or in another Member State, or
- (b) is exempt from registration under these Regulations.

(2) A person who contravenes paragraph (1) commits an offence.

Penalties

58. A person who commits an offence under Regulation 56 or 57(2) shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years, or both.

Summary prosecutions by Bank

59. Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Bank.

Part 13

REVOCATIONS AND TRANSITIONALS

Revocations

60. (1) The following Regulations are revoked:

- (a) the European Communities (Insurance Mediation) Regulations 2005 (S.I. No. 13 of 2005);
- (b) the European Communities (Insurance Mediation) (Amendment) Regulations 2008 (S.I. No. 161 of 2008).

(2) References to, or to any provision of, the Regulations, referred to in paragraph (1), in any enactment have effect as references to the corresponding provision of, or to, these Regulations.

(3) References to terms as defined in the Regulations, referred to in paragraph (1), in any enactment have effect as references to the equivalent terms defined in these Regulations.

Transitional

61. The revocation of any enactment, or part of enactment, by these Regulations—

- (a) shall not affect any direction given by the Bank, any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and
- (b) shall not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.

SCHEDULE*Regulation 20(3)*

Minimum Professional Knowledge and Competence Requirements

1. Non-life risks classified under classes 1 to 18 in Part A of Annex I to Directive 2009/138/EC:

- (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks if covered by such policies;
- (b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
- (c) minimum necessary knowledge of claims handling;
- (d) minimum necessary knowledge of complaints handling;
- (e) minimum necessary knowledge of assessing customer needs;
- (f) minimum necessary knowledge of the insurance market;
- (g) minimum necessary knowledge of business ethics standards;
- (h) minimum necessary financial competency.

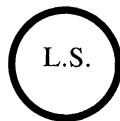
2. Insurance-based investment products:

- (a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
- (b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;
- (c) minimum necessary knowledge of financial risks borne by policyholders;
- (d) minimum necessary knowledge of policies covering life risks and other savings products;
- (e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;
- (f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
- (g) minimum necessary knowledge of the insurance market and of the saving products market;

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

3. Life risks classified in Annex II to Directive 2009/138/EC:

- (a) minimum necessary knowledge of policies including terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
- (b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;
- (c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;
- (d) minimum necessary knowledge of the insurance and other relevant financial services markets;
- (e) minimum necessary knowledge of complaints handling;
- (f) minimum necessary knowledge of assessing consumer needs;
- (g) conflicts of interest management;
- (h) minimum necessary knowledge of business ethics standards;
- (i) minimum necessary financial competency.



GIVEN under my Official Seal,
27 June 2018.

PASCHAL DONOHOE,
Minister for Finance.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The Insurance Distribution Directive “IDD” (Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution) is a recast of the Insurance Mediation Directive “IMD” (Directive 2002/92/EC) and is designed to ensure a level playing field across all participants selling insurance products. Amongst other things the IDD introduces enhanced information and conduct of business requirements.

These Regulations transpose the IDD into national law and will enter into force on 1 October 2018. As the IDD replaces the IMD, accordingly these Regulations revoke the European Communities (Insurance Mediation) Regulations 2015 (S.I. No. 13 of 2005), which transposed the IMD.

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