

Non-Life Insurance Newsletter



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2005 has already been a busy year for the non-life insurance industry in Ireland, with plenty of activity on the regulation front. This newsletter, produced by HLD Actuarial Consultants, provides an update on just some of the recent developments.

Irish News

Insurance Mediation Directive transposed into Irish Law

Directive 2002/92/EEC on insurance mediation was transposed into Irish law on the 13th of January. The objective of the Directive is to allow insurance intermediaries to operate freely throughout the EU by guaranteeing that equal levels of regulation apply to intermediaries based in the EU irrespective of their country of origin. However those intermediaries who originate in another EU member state must comply with the same requirements of Irish insurance mediation

law met by local Irish intermediaries.

Insurers should note that the regulations require that every insurance undertaking take all reasonable steps to ensure that all intermediaries acting on its behalf comply with the new requirements imposed by IFSRA. Intermediaries must ensure that they have the knowledge and competence to comply with the new regulations.

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Distance Marketing Directive comes into effect

The European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 came into effect on the 15th of February. The Regulations apply to every "distance contract" for the supply of a financial service, including insurance business. The definition of a distance contract covers communications by email, telephone, post, by fax, by television / video phone or over the internet.

The Regulations require that specified information (which can vary depending on the type of communication) be provided in a durable medium to customers in advance of a distance contact being entered into.

The Regulations also prohibit suppliers from contacting customers by fax or automated dialling machines unless the customer has consented in writing to this.

IFSRA undertakes a review of Disclosure Requirements

IFSRA has issued a consultation paper (CP9) to review remuneration structures and disclosure requirements in the insurance industry. IFSRA is keen that the disclosure requirements be clear and easy to understand. The regulator is particularly concerned about certain types of remuneration. The types of questions IFSRA hopes to answer include the following:

- Should the commission structures be simplified and made more transparent to the consumer?
- Should certain types of remuneration be banned or restricted, for example, override commission, indemnity commission, soft commissions, inducements, non-cash benefits, etc.?

• What risks to the consumer do different types of remuneration structures pose, and how can these risks be minimised?

• Are there any benefits for the consumer in maintaining certain types of remuneration structures?

IFSRA intends to make submissions available on their website after the March 31st deadline for receiving submissions has passed.

Legal Challenge to PIAB upheld

The high court has found that the Personal Injuries Assessment Board's policy of dealing directly with clients, rather than through their solicitors, is outside the powers conferred on it by legislation. The Law Society had argued that the issue of the PIAB's entitlement to disregard written authorisation of an applicant to communicate solely with his or her solicitor went to the heart of the solicitor/client relationship and the ability of a solicitor to represent a client.

The judgment affects those who choose to engage a solicitor; in these cases PIAB have been directed to communicate with

solicitors. However the PIAB emphasises that solicitor costs will not be awarded by PIAB.

The decision has resulted in speculation that the next legal challenge may relate to the recovery of legal costs, as arguably a right to legal representation also includes a right to the costs of such representation if a claim is successful. If such a challenge was successfully made, the entire rationale of PIAB could be undermined.

International Developments

FSA Over-Regulation

The Financial Services Authority has been confronted by London City business leaders in an attack on the UK regulator's "heavy-handed" compliance regime. In an open letter to John Tiner, CEO of the FSA, the Centre for Policy Studies (CPS) issued a warning that the UK is in danger of losing its reputation as a world financial market leader.

The growing regulatory burden has emerged as a key issue for financial services firms. A recent poll of senior bankers conducted by UK think tank The Centre for the Study of Financial Innovation

identified over-regulation as the single biggest threat facing the financial services industry.

In a statement issued in response to the CPS, Tiner said the UK financial services industry had "consolidated its position as the world leading international financial centre" following creation of the FSA in 2001.

IAIS to develop supervisory guidance on Finite Risk Reinsurance

On the 17th March the International Association of Insurance Supervisors (IAIS) issued a press release on its intentions to develop supervisory guidance on finite risk reinsurance, citing recent publicly reported events which have highlighted the need for supervisory awareness and guidance on these specialised types of reinsurance contracts.

The paper being developed by the IAIS will outline the key areas that supervisors should focus on. Elements of the proposed guidance paper will include:

- Definition of finite risk reinsurance
- How risk transfer should be assessed, what constitutes adequate transfer

- Types, characteristics and examples of finite risk reinsurance policies
- Benefits and problems with these policies
- Accounting and disclosure
- Supervisory approaches

A survey of supervisors' current experiences with finite reinsurance will be undertaken on a world-wide basis as part of this work.

EU Gender Directive deal agreed

The EU Gender Directive has been revised to allow insurers to continue to use gender as a factor in setting premiums if objective data can justify the practice. The Directive covers equal treatment for women and men in access to, and supply of, goods and services in the EU.

Insurers had argued that the differences between the sexes for insurance purposes were based on actuarial statistics rather than sex discrimination. The argument was that if this gender risk assessment were abolished, premiums would need to have risen across the board.

However the EU Commission will monitor the implementation of the Directive, and review the situation five years after it comes into force. In future insurers will have to continually verify statistically that they are not using gender for discriminatory purposes.

