

**INSURANCE MEDIATION (MISCELLANEOUS AMENDMENTS)
INSTRUMENT 2004**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making powers);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 14 January 2005.

Amendments to the Handbook

- D. The Integrated Prudential sourcebook is amended in accordance with Annex A to this instrument.
- E. The Insurance: Conduct of Business sourcebook is amended in accordance with Annex B to this instrument.
- F. The Client Assets sourcebook is amended in accordance with Annex C to this instrument.
- G. The Supervision manual is amended in accordance with Annex D to this instrument.
- H. The Professional Firms sourcebook is amended in accordance with Annex E to this instrument.

Citation

- I. This instrument may be cited as the Insurance Mediation (Miscellaneous Amendments) Instrument 2004.

By order of the Board
16 December 2004

Annex A

Amendments to the Integrated Prudential sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

(This Annex amends in part the text made in the Insurance Mediation and Mortgage Mediation, Lending and Administration (Prudential Provisions) Instrument 2004 (2004/1).)

Insert a transitional rule as follows:

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions coming into force
5A	<u>PRU 9.4.5 R</u> and <u>PRU 9.4.7R</u>	R	<u>PRU 9.4.5R and PRU 9.4.7R have effect in respect of the use by a firm of the services of another person consisting of insurance mediation and provided from an establishment in an EEA State that has not implemented Article 3 (Registration) of the IMD, as if the condition in paragraph (4) of PRU 9.4.5R and the condition in paragraph (2) of PRU 9.4.7R were a condition that the firm has no reason to doubt the good repute, competence and financial standing of that person.</u>	<u>14 January 2005 to 14 January 2006</u>	<u>14 January 2005</u>

...

9.4.7 R The second condition in *PRU 9.4.4R* is that the *firm* takes all reasonable steps to ensure that the person in *PRU 9.4.5R* in relation to the activity, is not, directly or indirectly, carrying out the activity as a consequence of the activities of another person which:

...

(1) contravene section 19 of the *Act* (The general prohibition); or

(2) in the case of activities provided from an establishment in an EEA State, contravene the IMD registration requirements.

...

Annex B

Amendments to the Insurance: Conduct of Business sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

(This Annex amends in part the text made in the Insurance: Conduct of Business Sourcebook Instrument 2004 (2004/6).)

Amend ICOB transitional rules as follows:

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
7	<i>ICOB 5</i>	R	<p>(1) ...</p> <p>(2) If a <i>non-investment insurance contract</i> is concluded before 14 January 2005 and the <i>customer</i> has not previously received a <i>policy document</i>, the <i>insurer</i> or <i>insurance intermediary</i> (as the case may be) must ensure that the <i>customer</i> is provided with a copy of the <i>policy document</i> in good time prior to the commencement of any <i>renewal</i> of or mid-term change to the <i>policy</i> <u>but in respect of any mid-term change requested by a commercial customer on or before 30 April 2005, the insurer or insurance intermediary (as the case may be) may provide the commercial customer with the policy document promptly after the mid-term change.</u></p>
...					
9	<u><i>ICOB 5.5.5R (12)</i></u>	<u>R</u>	<u><i>A firm may comply with ICOB 5.5.5.R(12) without including in the policy summary, if it be the case, the fact that there is no compensation scheme.</i></u>	<u>14 January 2005 to 31 July 2005</u>	<u>14 January 2005</u>
...					

...

1.2.10 R *ICOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for:

...

(4) those sections in *ICOB* which implement articles 12 and 13 of the *IMD*, unless:

(a) the *designated professional body* of the *firm* has made rules which implement some or all of the provisions of articles 12 and 13 of the *IMD*;

(b) those rules have been approved by the *FSA* under section 332(5) of the *Act*; and

(c) the *firm* is subject to the rules in the form in which they were approved;

in which case those sections of *ICOB* which implement articles 12 and 13 of the *IMD* are disapplied to the extent that these articles are implemented by the rules of the *designated professional body*.

...

5.5.5 R Table: Policy summary content

(1) ...

(12) that, should the *insurance undertaking* be unable to meet its liabilities, the *retail customer* may be entitled to compensation from the *compensation scheme*, or from any other applicable named compensation scheme, or that there is no compensation scheme, should the *insurance undertaking* be unable to meet its liabilities; and

...

...

5.5.15A G If the *non-investment insurance contract* contains optional elements of cover, the total amount of *premium*, or the basis for the calculation of the *premium*, required under requirements of *ICOB* 5.5.14R(1) should include all also apply to each optional elements of cover selected by the *retail customer*.

...

Annex C

Amendments to the Client Assets sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

(This Annex amends in part the text made in the Client Assets sourcebook (Amendment No 2) Instrument 2004 (2004/92).)

...

- 5.1.4A R (1) ~~A firm which, in relation to service charge, receives or holds *client money* and is required to segregate and account for such *money* in accordance with section 42 of the Landlord and Tenant Act 1987 ("the 1987 Act") will, if it complies with that provision and with (3), be deemed to comply with CASS 5.3 to 5.6.~~
- A firm will, subject to (3), be deemed to comply with CASS 5.3 to CASS 5.6 if it receives or holds *client money* and it either:
- (a) in relation to a service charge, complies with the requirement to segregate such money in accordance with section 42 of the Landlord and Tenant Act 1987 ("the 1987 Act"); or
- (b) in relation to money which is clients' money for the purpose of the Royal Institution of Chartered Surveyors' Rules of Conduct ("RICS rules") in force as at 14 January 2005, it complies with the requirement to segregate and account for such money in accordance with the RICS Members' Accounts rules.
- (2) Paragraph (1)(a) also applies to a *firm* in Scotland or in Northern Ireland if in acting as a property manager the *firm* receives or holds a service charge and complies (so far as practicable) with section 42 of the 1987 Act as if the requirements of that provision applied it.
- (3) In addition to complying with (1), a *firm* must ensure that an account in which *money* held pursuant to the trust fund mentioned in section 42(3) of the 1987 Act or an account maintained in accordance with the RICS rules satisfies the requirements in CASS 5.5.49R to the extent that the *firm* will hold money as trustee or otherwise on behalf of its clients.

...

- 5.5.18 R ...
- (4) (1) to (3) do not apply in relation to an *appointed representative, field representative* or other agent to which (if it were a *firm*) CASS 5.1.4AR(1) or (2) would apply, but subject to the *representative* or agent maintaining an account which satisfies the requirements of CASS 5.5.49R to the extent that the *representative* or agent will hold *client money* on trust or otherwise on behalf of its clients.

...

Annex D

Amendments to the Supervision manual

In this Annex underlining indicates new text and striking through indicates deleted text.

(This Annex amends in part the text made in the Insurance Mediation and Mortgage Mediation, Lending and Administration (Prudential Provisions) Instrument 2004 (2004/01).)

...

13.3.2B G *An appointed representative appointed by a firm to carry on insurance mediation activity on its behalf may establish a branch in another EEA State under the Insurance Mediation Directive. In this case, the notice of intention in SUP 13.3.2G(1) should be given to the FSA by the firm on behalf of the appointed representative.*

...

13.4.2A G *An appointed representative appointed by a firm to carry on insurance mediation activity on its behalf may provide cross border services in another EEA State under the Insurance Mediation Directive. In this case, the notice of intention in SUP 13.4.2G(1) should be given to the FSA by the firm on behalf of the appointed representative.*

SUP Appendix 3 Guidance on passporting issues

...

3.10.11 G *Although the Insurance Directives are concerned with the regulated activities of effecting and carrying out contracts of insurance, an incoming EEA firm passported under the Insurance Directives ~~Consolidated Life Directive~~ will be entitled to carry on certain other regulated activities without the need for top-up permission. This is where the regulated activities are carried on for the purposes of or in connection with ~~the~~ the incoming EEA firm's insurance business. These regulated activities may include:*

...

Annex E

Amendments to the Professional Firms sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

(This Annex amends in part the text made in the Distance Marketing Directive Instrument 2004 (2004/39).)

...

- 5.4.1 R (1) ...
- (2) Paragraph (1) does not apply in relation to regulations 6 to 7 and 14 to 15(2) if the *designated professional body* of the *authorised professional firm* has rules equivalent to some or all of those regulations and:
- (a) those rules have been approved by the *FSA* under section 332(5) of the *Act*; and
 - (b) the *authorised professional firm* is subject to those rules in the form in which they have been approved;
- in which case those regulations are disapplied to the extent that they are implemented by the rules of the *designated professional body*.

...