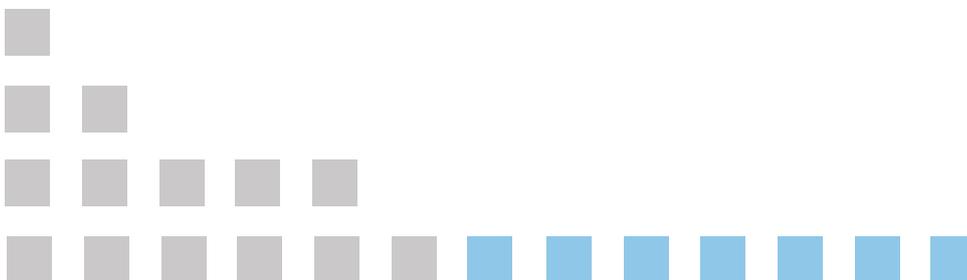


Insurance Distribution Directive

Questions and Answers

Version 1.2

June 2018



Insurance Distribution Directive Q&A

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Introduction

In this question and answer paper we set out some of the most frequently asked questions and provide answers and references to assist firms in ensuring compliance with the Insurance Distribution Directive (IDD).

This document is meant to be a quick aid for common questions received by the GFSC and will at times make reference to other documentation. It is not meant to be a standalone document as it should be read in the context of the IDD and supporting Regulations and technical advice issued by EIOPA.

Any advice or interpretation given represents the views of the GFSC as to its expectations of how the requirements of the relevant legislation are to be complied with and/or how it might be applied. This, however, is not intended as a definitive interpretation of the applicable legislation which is ultimately a matter for the courts to determine. The GFSC does not provide, or purport to offer, legal advice.

Key words

IDD Insurance Distribution Directive

GDPR General Data Protection Regulation

FCA Financial Conduct Authority

PRIIPs Packaged Retail and Insurance-based Investment Products

KID Key Information Document

IBID Insurance-based investment products

MiFID II Markets in Financial Instruments Directive II

General

Are Insurance Companies caught by IDD?

Insurance Companies are caught by the IDD. Insurance Companies have specific requirements that they need to meet, namely; Corporate Governance and Product Governance as well as requirements on disclosures.

Corporate Governance/Product Governance

Who is the product manufacturer and what are the key responsibilities?

For the purposes of Article 25(1) of IDD, insurance intermediaries shall be considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.

For the avoidance of doubt, we consider, in line with the interpretation by other European regulators, that an insurance undertaking selling their products in the open market, will be a product manufacturer

As per Recital 55 of the IDD, in order to ensure that insurance products meet the needs of the target market, insurance undertakings and, in the Member States where insurance intermediaries manufacture insurance products for sale to customers, insurance intermediaries, should maintain, operate and review a process for the approval of each insurance product.

Where an insurance distributor advises on, or proposes insurance products which it does not manufacture, it should in any case be able to understand the characteristics and must have identified the target market for those products. The IDD should not limit the variety and flexibility of the approaches which undertakings use to develop new products.

The requirements for insurance distributors that are selling insurance products that they do not manufacture, are based on having product distribution arrangements that:

- allow them to obtain from the manufacturer all the information required to understand the product
- comprehend the identified target market, and;
- distribute the product in accordance with the best interests of the customers.

As per the technical advice issued, each co-manufacturer remains independently responsible to comply with the product oversight and governance arrangements of a manufacturer as laid down in Article 25 of the IDD.

What is a co-manufacturer?

For the purposes of IDD, insurance intermediaries are considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.

A decision-making role shall be assumed, in particular, where insurance intermediaries autonomously determine the essential features and main elements of an insurance product, including its coverage, price, costs, risk, target market and compensation and guarantee rights, which are not substantially modified by the insurance undertaking providing coverage for the insurance product.

An insurance intermediary and an insurance undertaking that are both manufacturers shall sign a written agreement which specifies their collaboration to comply with the requirements for manufacturers

referred to in Article 25(1) of IDD, the procedures through which they shall agree on the identification of the target market and their respective roles in the product approval process.

Manufacturers and Co-manufacturers - who is responsible for what elements of IDD?

As mentioned in the previous answer, an agreement between manufacturers should be in place. The agreement should set out the specific split of functions. However, the responsibility for governance should be clearly set out in the agreement.

How is oversight exercised on distribution channels?

We expect firms to have a level of oversight that ensures that firms are satisfied that all parts of their distribution channels are compliant with the IDD requirements and work within the remits of the product features as determined by the insurance company. We will be providing further details of our expectations in due course.

For motor insurers with bulk of business written in the UK, does this Directive include any new requirements?

Product oversight and management is very important and it is imperative that firms are compliant with the latest practice in this area. The IDD is clear about proportionality and depending on lines of business, the requirements are more or less onerous. It is expected for firms to review the IDD in full and ensure that its policies and practices are fully compliant.

Does IDD apply when the ultimate 'beneficiary' is not the policy holder?

As per Recital 11, IDD should apply to persons whose activity consists in providing insurance or reinsurance distribution services to third parties. As the provision of services that fall within the remit of IDD are being provided i.e. an insurance product, IDD therefore applies in this instance.

What is the approval process for existing products?

The requirements are not entirely clear on this, however, it is expected that new IDD practices are incorporated into firms' processes and products, including where key change is made to the product. It is expected that via ongoing monitoring, firms can fulfil this objective. The GFSC will be setting out further details of its expectations in regards to this point in due course.

How do you express the market share being covered in the product governance requirements?

This will vary by product. We expect firms to have introduced a product governance and oversight policy and review the approval and oversight process. As part of the firm's ongoing monitoring it would also need to ensure that the market share is in line with the firm's guidelines.

If the market that my company sells to is the entire UK? Who is the target market?

In this case, the firm would need to have the target market identified to a level which is sufficient to split the needs of that market and in some circumstances it may be this broad as e.g. selling travel insurance to the UK market.

Some firms will also be selling products on an eligibility basis, particularly motor, and therefore this ensures that the product is only sold to the target market.

Supervision

How will the GFSC supervise us?

As set out in the GFSC's Approach to Insurance Supervision document, we focus our resources on the highest risk firms. For further details of the approach to supervision, including details of the approach to conduct of business supervision please see our Approach to Insurance Supervision document published on our website in February 2018. More information will follow in due course.

Will the GFSC implement any other ongoing reporting requirements under IDD?

The GFSC will seek confirmation of firms' compliance with the requirements introduced under the IDD. This may be done via the SICR (Supervisory Information Capture Return) where specific IDD questions will be incorporated (into the SICR). We are also considering information requests as part of regular reporting on areas such as training, complaints etc. For those subject to Professional Indemnity Insurance or capital requirements under IDD, we will seek firms' compliance to these requirements via submission of a periodic return.

Conduct

The directive refers to 'customer' and 'consumer'. The interpretation of the term 'customer' can have an impact on a firm's approach to IDD, particularly in the provision of IPIDs, what is the GFSC's view?

IDD aims to provide the same level of protection to all consumers of insurance products. The IDD aims to do this by ensuring that all information, including marketing communications, addressed by the insurance distributor to customers or potential customers shall be fair, clear and not misleading.

As per Solvency II (Directive 2005/29/EC) under Article 2(a) 'consumer' means any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession. Firms should ensure that all consumers receive the same level of protection.

When passporting into other jurisdictions, the firm will need to ensure that the relevant rules and definitions in place each jurisdiction are applied..

The information requirements in the IDD do not apply to "large risks," however the IDD does not define "large risks", we would welcome your views on this?

IDD refers to the definition of large risks in Solvency II – which is as follows:

27) 'large risks' means:

(a) risks classified under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex I;

(b) risks classified under classes 14 and 15 in Part A of Annex I, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;

(c) risks classified under classes 3, 8, 9, 10, 13 and 16 in Part A of Annex I in so far as the policy holder exceeds the limits of at least two of the following criteria:

(i) a balance-sheet total of EUR 6,2 million;

(ii) a net turnover, within the meaning of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of certain types of companies(1)

(1), of EUR 12,8 million;

(iii) an average number of 250 employees during the financial year.

If the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC are drawn up, the criteria set out in point (c) of the first subparagraph shall be applied on the basis of the consolidated accounts.

Member States may add to the category referred to in point (c) of the first subparagraph the risks insured by professional associations, joint ventures or temporary groupings;

How will the GFSC consider if our training takes into account compliance with IDD conduct issues?

The general training on conduct related policies, or job-specific training on specific conduct related systems or processes, may indicate the extent to which relevant staff of an insurer or intermediary have been trained on conduct of business issues. Ultimately, the GFSC would expect firms to have effective policies and procedures which cover all aspects of conduct and that all staff are provided training covering the policy and process requirements on an ongoing basis. In addition, firms should regularly assess their training programmes to ensure these are effective.

How can I align remuneration requirements to conduct risk?

Having policies in place to align staff and management behaviour with customer interests is more likely to indicate effective management of conduct of business risk, than those where such alignment is lacking. Such policies may include; recruitment, remuneration, incentive and reward, performance management and disciplinary.

The extent to which such policies are applied should be at all appropriate organisational levels. This includes the most senior levels of management and particular members of the Board or Board committees, may indicate the degree of alignment within an insurer or intermediary.

An assessment of the effectiveness of the above policies in mitigating conduct of business risk may identify areas where there is a potential misalignment with customer interests.

PRIIPs

This section will apply to both IDD and MiFID II.

In relation to Article 8 of PRIIPs Regulation, it would be useful to clarify what obligations do distributors (e.g. insurance distributors for IDD or Banks and MiFID firms for MiFID II) have to ensure that the provisions of Article 8 are met before distributing the KID?

Article 8 is a requirement applicable to manufacturers, not distributors. Manufacturers will need to refer to the Commission Delegated Regulation (EU) 2017/653 for further information on what is required in the actual development of the PRIIP. Distributors, be it insurance distributors or banks and MiFID firms, are expected to understand if the product meets the clients' needs and the target market matches their intended target market.

Where the manufacturer of the product is not EU based, does the distributor have an obligation to ensure the KID meets PRIIPs requirements?

All PRIIPs sold in the EU need to meet the information requirements as set out in the PRIIPs Regulation and the underlying regulations and standards. The KID should be drawn up by the PRIIP manufacturer, as they are in the best position to know the product. The manufacturer should be responsible for the accuracy of the key information document.

It may be useful to liaise with non-EU based manufacturers to establish how they are ensuring that they meet EU requirements and then establishing the best approach. In some cases, co-manufacturing is an option, but this will not be practical in every case. Please refer to co-manufacturing questions for further information.

In reference to Article 13 of the PRIIPs Regulation –As there are delays by some Manufacturers used by Gibraltar firms in producing the KIDs, how should we proceed when advising clients on such products.

Distributors can only provide a PRIIP if a KID is provided to them by the manufacturer. However, whilst the requirements are being considered, we understand that there are some delays and we are in contact with the industry associations to provide flexibility to distributors in the short term, whilst manufacturers understand the requirements and produce KIDs.

Bearing in mind the requirements of Article 13 of the PRIIPs Regulation, when a client executes a trade on an execution only basis what obligation does the Bank / MiFID firm have in providing the KID?

It is expected that KIDs are provided to clients even when selling a product on an execution only basis. Depending on how the execution takes place (e.g. directly by the client), arrangements in place should make it possible for the KID to be sent without delay after conclusion of the transaction. For insurance distribution they should specifically consider limitations and requirements on execution only business as set out in the IDD and in the underlying regulations relating to complex transactions.

As per Article 19(a) of the PRIIPs Regulation, retail investors must have an effective way of submitting a complaint against the PRIIP manufacturer. Would the provision of contact details for the manufacturer suffice?

The KID should have details of the complaints approach with different methods for sending complaints to a manufacturer e.g. dedicated line, e-mail etc. The manufacturer should also have an established process to deal with complaints.

Consumers should also be provided with information on the intermediary/distributor to deal with complaints on for example, the advice provided - this needs to be provided on the IBID.

Training and Competence

What types of qualifications do staff require to meet the training and competence requirements?

The GFSC is issuing a paper setting out its approach to this, this will be available on our website shortly. The GFSC has essentially established a benchmark which sets out a sample of qualifications, against which firms can assess their staff.

Do internal courses count towards CPD to comply with IDD requirements?

CPD should cover a range of areas as set out in Annex 1 of IDD, and this includes understanding the firm's own procedures and products so it is expected that an element of CPD is internal. The level of CPD that forms part of internal courses will depend on the set-up of the firm and ability to provide meaningful and up to date information on the key areas required by the IDD to constitute CPD.

The specific requirements in the IDD for training and competence apply to sales staff and management involved in the sales process.

Are insurers caught by the training and competence requirements?

IDD refers to training and competency requirements applying to relevant staff, essentially management and sales staff. Insurers are expected to provide training and competence for all staff, the specific requirements set out by the IDD are relevant for all sales staff and management involved in selling the insurance products.

Please refer to the definition set out in the Directive and the GFSC paper on Training and Competence for further information on our approach in terms of creating a benchmark

Passporting

Is a firm considered to be passporting services if it calls a customer in France? How does this change if a meeting with the same client takes place in Gibraltar?

In case the firm is calling the customer based in France (Country B), this means that the French rules would apply.

Essentially the firm needs to consider that every regulator will take a different view on issues such as reverse solicitation. It would need to be very clear that the customer initiates the sale in all documentation and discussions for it not to be considered 'Passporting'. Furthermore, any reviews or updates would also need to be clearly done in Gibraltar. This is not an option, in our view, to avoid dealing with other regulators' rules.

What happens when the Host state regulator rules are different from the GFSC's expectations?

The host regulator's rules would apply when conducting activity in that jurisdiction unless the home regulator's rules are more stringent.

Where host state regulator rules are different from the GFSC's but not necessarily more onerous "just different" – which rules would apply?

When providing services in a different jurisdiction, the host regulator rules would apply.

IDD allows for there to be an agreement host/home state for IDD purposes - is there an intention to do that? This agreement could allow the host regulator to become the competent authority for IDD purposes.

The GFSC has not made an agreement in this respect. The GFSC aims to maintain its position as a home regulator in respect of the IDD and it expects to, for example, have regular contact with the FCA to discuss firms that conduct cross border activities from Gibraltar into the UK and vice versa.

Is the GoG taking advantage of derogations permitted by the IDD?

The GFSC shared a paper with the industry setting out its proposals in relation to all the derogations in the IDD. This has been reflected in the transposing legislation (Part V(A) of the Financial Services (Investment and Fiduciary Services) Act 1989 (the "Act").

Will the GFSC be imposing higher requirements than those on the IDD?

IDD is a minimum harmonising Directive and Gibraltar has implemented it without adding further requirements.

What would happen if there is an issue with an MGA in the UK?

This would depend on where the customer is based, if in the UK then the UK regulator would act. We as regulators of the insurance company would be looking at the controls that the insurer has to observe.

Other

Has the October delay in IDD implementation been confirmed?

The transposition deadline has been delayed to July 2018 and the effective date is 1st October 2018.

If a firm is closing down and not issuing new business, does it need to comply with IDD?

If the firm is no longer writing business prior to implementation of the IDD, then it does not need to meet the requirements. It should however be aware of any ongoing requirements until the business is closed down.

When different Directives have slightly different requirements such as IDD and the GDPR – what is the priority?

The more onerous requirements would apply

What are an Insurance firms' responsibilities in terms of Ancillary Intermediaries?

Many Insurance products will be distributed via an Ancillary Intermediary. The IDD focuses on ensuring that a customer receives the same level of information and rights no matter how they purchase the product. The onus is therefore on Insurance firms to ensure that Ancillary Intermediaries, that do not require licensing, comply with the minimum conduct requirements.

Who is responsible for providing information to consumers?

It is essentially the insurers responsibility to create an IPID/PRIIP as well as other product documentation. In many cases as discussed above this is done in conjunction with the intermediary. It is then the intermediary's responsibility to ensure that the customer is provided with the document. Intermediaries are expected to offer products that a client needs, with this in mind, the IDD provides details of requirements on the approach of offering advice on products to consumers.

IDD Preparedness

Examples of best practice:

- Having an advisor or someone senior internally to conduct an independent review on current approach and way to make this IDD compliant. A need to properly consider the IDD requirements and changes needed. This may require revisiting policies and reviewing approach to IDD. Have Board engagement in the process.
- Training across all areas of staff on IDD in respect of awareness of the directive and its impact on the business. This is separate to the knowledge and competence requirements but to assist in appropriate IDD implementation all staff need to be aware of how the requirements affect them. For example, Underwriters need to know how they fit into the product governance processes.
- Establishment / redefining of all the relevant committees and the applicable Terms of Reference
- Review of internal policies and processes to ensure that the firm is IDD compliant

Examples of poor practice:

- Not conducting an analysis of new requirements, including underlying Regulations and establishing how to be compliant.
- Not considering the appropriateness of the products to the existing target market.
- Not defining the target market
- No amendments to internal policies and processes where these are not IDD compliant

Published by:

Gibraltar Financial Services Commission
PO Box 940
Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar

www.gfsc.gi

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