



Financial Services Commission

Financial Services Guidance Note No. 1

Financial Services Ordinance 1989 **Insurance Mediation**

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Introduction

This guidance note applies to firms authorised to conduct insurance mediation activities.

Following the implementation of the Insurance Mediation Directive (IMD) in January 2005, the Financial Services Commission issued Newsletter 1 of 2005. The purpose of the newsletter was to set out the requirements which firms are obliged to comply with under the IMD. The Newsletter also provides useful guidance about the type of activities which the IMD applied to.

The purpose of this note is to provide additional information and guidance. Specifically this guidance note seeks to deal with four particular points – introducers, co-mingling, professional indemnity insurance and passporting.

The tables which appear in Newsletter 1 of 2005 are also reproduced here.

Insurance Mediation - definition

Section 3(1)(a) of Schedule 3 of the Financial Services Ordinance 1989 defines insurance mediation as the carrying out, for remuneration, any one or more of the following activities–

- (a) introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance;
- (b) concluding contracts of insurance or reinsurance;
- (c) assisting in the administration and performance of contracts of insurance or reinsurance, in particular in the event of a claim.

However, the following activities are not considered as insurance or reinsurance mediation–

- (i) the activities detailed in subparagraphs (a) to (c) above when undertaken by an insurance or reinsurance undertaking or an employee of an insurance or reinsurance undertaking who is acting under the responsibility of the insurance or reinsurance undertaking;
- (ii) the provision of information on an incidental basis in the context of another professional activity provided that the purpose of the activity is not to assist the customer in concluding or performing an insurance or reinsurance contract;
- (iii) claims management, expert appraisal of claims or loss adjusting on behalf of an insurance or reinsurance undertaking.

The above does not apply to–

- (a) persons providing mediation services for insurance contracts where the mediation concerned meets all of the conditions of subparagraphs (i) to (vi)–
 - (i) the insurance contract only requires knowledge of the insurance cover that is provided;
 - (ii) the insurance contract is not a life assurance contract;
 - (iii) the insurance contract does not cover any liability risks;

- (iv) the principal professional activity of the person is other than insurance mediation;
- (v) the insurance is complementary to the product or service supplied by any provider, where such insurance covers–
 - (aa) the risk of breakdown, loss of or damage to goods supplied by that provider, or
 - (bb) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel; and
- (vi) the amount of the annual premium does not exceed EUR 500 (or sterling equivalent) and the total duration of the insurance contract, including any renewals, does not exceed five years; and
- (b) insurance and reinsurance mediation services provided in relation to risks and commitments located outside the EEA.

EXAMPLES

Activities that fall within the above definition:

- A broker arranging or carrying out preparatory work for any type of insurance for a client.
- A financial adviser arranging life assurance for a client.
- A claims administration firm assisting an insured person in the performance of their contract of insurance in relation to a claim.

Activities that do not fall within above definition i.e. are excluded:

- A travel agency, where the activity is limited to arranging required standard travel insurance which covers, as a minimum, loss of – or damage to – baggage and other risks as a result of providing the travel booked, but does not cover liability risks, other than where they are ancillary to the main cover provided.
- A loss adjuster or claims appraiser, where the activity is limited to carrying out loss adjusting or claims appraisals on behalf of an insurer and not on behalf of an insured person.

Introducers

As stated above, Section 3(1)(a) of Schedule 3 of the Financial Services Ordinance 1989 refers to *introducing*, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance. In certain cases, the IMD may therefore apply to “introducers”. Tables 1 & 2 below explain that introducing, and the recommendation of a company/product, may constitute a licensable activity. This is because, in general, if an introducer is not indifferent to whether or not transactions take place after the advice has

been given because he expects to receive a commission, the introductions specifically relate to contracts of insurance, and the activity is carried on by way of business, a licence would normally be required.

Table 1

	Type of introduction	Licensable activity?
1	Introductions are purely for the purpose of the provision of independent advice – Introducer is completely indifferent to whether or not transactions take place after advice has been given.	No
2	Introduction is one-off or otherwise not part of pre-existing ongoing arrangements that envisage such introduction being made.	No
3	Introducer is not indifferent to whether or not transactions take place after advice has been given (for example, because he expects to receive a percentage of the commission), and introductions specifically relate to contracts of insurance.	Yes

The following provides practical examples of instances where a recommendation which constitutes an introduction may be considered a licensable activity if carried on for remuneration and by way of business.

Table 2

Recommendation	Licensable activity?
I recommend you take the A Insurance Company Ltd's motor insurance policy	Yes
I recommend that you take out the C Insurance Company Ltd's life insurance policy	Yes
I recommend that you do not take out the	Yes

Recommendation	Licensable activity?
A Insurance Company Ltd's motor insurance policy	
I recommend that you do not take out the C Insurance Company Ltd's life insurance policy	Yes
I recommend that you take out either the A Insurance Company Ltd's motor insurance policy or the B Insurance Company Ltd's motor insurance policy	Yes
I recommend that you take out either the C Insurance Company Ltd's life insurance policy or the D Insurance Company Ltd's life insurance policy	Yes
I recommend that you take out (or do not take out) insurance with A Insurance Company Ltd's	Possibly (depending on whether or not the circumstances relating to the recommendation, including the range of possible products, is such that this amounts to an implied recommendation of a particular policy)
I recommend that you take out (or do not take out) contents insurance	No, unless a specific insurance policy is implied by the context or where the recommendation is being made as part of a fuller assessment of the requirements of the client
I recommend that you take out (or do not take out) life insurance	No, unless a specific insurance policy is implied by the context or where the recommendation is being made as part of a fuller assessment of the requirements of the client

As indicated above, there are two elements which need to be considered in order to determine whether, an activity is carried out "for remuneration" and "by way of business". The criteria for deciding whether a regulated activity is being performed "for remuneration" and "by way of business" are factors like receiving commission or benefits in kind, the regularity with which the activity is carried out and whether the activity is carried out for commercial rather than altruistic purposes. Table 3 provides examples of such factors and the indicators of the

significance of each factor to the particular circumstances of person “A”. By analysing the factors and indicators as a whole an indication of the likely overall position can be formed. The table provides separate indicators for the two elements i.e. “for remuneration” and “by way of business”. Person “A” would need to satisfy both elements to determine whether the activity is carried out for remuneration and by way of business. Whilst this guidance cannot be expected to provide a clear conclusion for everyone it should enable individuals to assess the relevant aspects of their business and identify where changes, if necessary, can be made to make their position clearer.

Table 3

‘For Remuneration’

Factor	Indicators that “A” does <u>not</u> carry on activities “for remuneration”	Indicators that “A” does carry on activities “for remuneration”
Direct remuneration, whether received from the customer or the insurer/broker (cash or benefits in kind such as tickets for concerts, a reduction in other insurance premiums, a remission of a debt or any other benefit capable of being measured in money’s worth)	“A” does not receive any direct remuneration specifically identified as a reward for his carrying on insurance mediation activities.	“A” receives direct remuneration specifically identified as being a reward for providing insurance mediation services.
Indirect remuneration (such as any form of economic benefit as may be explicitly or implicitly agreed between “A” and the insurer/broker or “A”’s customer – including, for example, through the acceptance of “A”’s terms and conditions or mutual recognition of the economic benefit that is likely to accrue to “A”). An indirect economic benefit can include expectation of making a profit of some kind as a result of carrying on insurance mediation activities as part of other services.	“A” does not obtain any form of indirect remuneration through an economic benefit other than one which is not likely to have a material effect on “A”’s ability to make a profit from his other activities.	“A” obtains an economic benefit that: (a) is explicitly or implicitly agreed between “A” and the insurer/ broker or “A”’s customer; and (b) has the potential to go beyond mere cost recovery through fees or other benefits received for providing a package of services that includes insurance mediation activities but where no particular part of the fees is attributable to insurance mediation activities. This could include where insurance mediation activities are likely to:

- play a material part in the success of “A”’s other business activities or in “A”’s ability to make a profit from them; or
- provide “A” with a materially increased opportunity to provide other goods or services; or
- be a major selling point for “A”’s other business activities; or
- be essential for “A” to provide other goods or services.

“A” charges his customers a greater amount for other goods or services than would be the case if “A” were not also carrying on insurance mediation activities for those customers and this:

- is explicitly or implicitly agreed between “A” and the insurer/broker or “A”’s customer; and
- has the potential to go beyond mere cost recovery.

Recovery of costs

“A” receives no benefits of any kind (direct or indirect) in respect of his insurance mediation activities beyond the reimbursement of his actual costs incurred in carrying on the activity (including receipt by “A” of a sum equal to the

“A” receives benefits of any kind (direct or indirect) in respect of his insurance mediation activities which go beyond the reimbursement of his actual costs incurred in carrying on the activity.

insurance premium that “A” is to pass on to the insurer or broker)

'By way of business'

Factor	Indicators that “A” does <u>not</u> carry on activities ”by way of business”	Indicators that “A” does carry on activities ”by way of business”
Regularity/ frequency	Involvement is one-off or infrequent (for instance, once or twice a year) provided that the transaction(s) is not of such size and importance that it is essential to the success of “A”’s other business activities. Transactions do not result from formal arrangements (for instance, occasional involvement purely as a result of an unsolicited approach).	Involvement is frequent (for instance, once a week). Involvement is infrequent but the transactions are of such size or importance that they are essential to the success of “A”’s other business activities. “A” has formal arrangements which envisage transactions taking place on a regular basis over time (whether or not such transactions turn out in practice to be regular).
Holding out	“A” does not hold himself out as providing a professional service that includes insurance mediation activities (by professional is meant not the services of a layman).	“A” holds himself out as providing a professional service that includes insurance mediation activities.
Relevance to other activities/ business	Insurance mediation activities: <ul style="list-style-type: none"> • have no relevance to “A”’s other activities; or • have some relevance but could easily be ceased without causing “A” any difficulty in 	Insurance mediation activities: <ul style="list-style-type: none"> • are essential to “A” in carrying on his main activities; or • would cause a material disruption to “A” carrying on his main activities if

	<p>carrying on his main activities; or</p> <ul style="list-style-type: none"> would be unlikely to result in a material reduction in income from "A"'s main activities if ceased 	<p>ceased; or</p> <ul style="list-style-type: none"> would be likely to reduce "A"'s income by a material amount.
Commercial benefit	<p>"A" receives no direct or indirect pecuniary or economic benefit. "A" is a layman and acting in that capacity. "A" would not obtain materially less income from his main activities if they did not include insurance mediation activities.</p>	<p>"A" receives a direct or indirect pecuniary or economic benefit from carrying on insurance mediation activities – such as a fee, a benefit in kind or the likelihood of materially enhanced sales of other goods or services that "A" provides. "A" would obtain materially less income from his main activities if they did not include insurance mediation activities.</p>

Therefore in determining whether the activity requires a licence, some of the most salient factors which need to be considered are the following:

- 1) Whether the introducer is only providing clients with basic information e.g. the contact details of the insurer or intermediary;
- 2) Whether the activity is incidental to the introducer's main business activity, and in this respect;
- 3) What the regularity with which introductions are made is;
- 4) What the total amount of commission received from this activity is.

There will be particular instances where, despite receiving remuneration i.e. commission for the business introduced, the activity is not being conducted by way of business or is incidental to the main business and will not therefore require a licence.

Typical examples of this would be:

- (a) a vet who hands out or displays information about pet insurance and receive commission for each customer who takes out the insurance;
- (b) an individual who introduces others to an insurer or an insurance intermediary and receives commission for these, where the regularity with

which this is carried out is infrequent and total amount of commission received on an annual basis is such that it does not represent a material proportion of that person's annual income;

- (c) an estate agent who introduces its clients to an insurer or an insurance intermediary for the purposes of obtaining property insurance and receives commission from this, where the total amount of commission received on an annual basis is such that it does not represent a material amount proportion of the estate agent's annual income;
- (d) an estate agent who introduces its clients to an insurer of an insurance intermediary for the purposes of obtaining property insurance and receives commissions for these, and also receives renewal notices for onward transmission to clients, where these have been received by the estate agent in his capacity as property manager of the client.

The following table is designed as a user-friendly guide. In the table it is assumed that each of the activities described is carried out by way of business. The table, is not however, an exhaustive list of all the types of activities which persons may carry out.

Table 4

Type of activity	Is it a regulated activity?
MARKETING AND EFFECTING INTRODUCTIONS	
Passive display of information – for example, medical insurance brochures in doctor's surgery (whether or not remuneration is received for display)	No – if merely displaying the information.
Recommending a broker/insurance undertaking and providing customer with contact details (whether by phone, fax, e-mail, face-to-face or any other means of communication)	No – if all the intermediary does is supply information to the customer. Yes – if there is an implied recommendation to a particular policy.
Providing an insurance undertaking/ broker with contact details of customer	Yes – when undertaken in the context of regular or ongoing arrangements for introducing customers.
Marketing on behalf of insurance undertaking to intermediaries only (for example, broker consultants)	Yes – this amounts to work preparatory to the conclusion of contracts of insurance.
Telemarketing services (that is, companies specialising in marketing an insurance undertaking's products/services to	Yes – this amounts to introducing and/or other work preparatory to the conclusion of contracts of insurance.

Type of activity**Is it a regulated activity?**

prospective customers)

PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE

Discussion with client about need for insurance generally/ need to take out a particular type of insurance

Yes – if forms part of wider activities e.g. assessing requirements of a client and providing advice accordingly.

Advising on the level of cover needed

Yes – if forms part of wider activities e.g. assessing requirements of a client and providing advice accordingly.

Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several policies which suit the answers given)

Yes.

Explanation of the terms of a particular policy or comparison of the terms of different policies

Possibly. In certain circumstances this could involve an element of investment advice. Where the information is provided by a professional (e.g. lawyer, accountant) in the course of a profession this would not be considered a regulated activity.

Advising that a customer take out a particular policy

Yes – This amounts to advice on the merits of a particular policy.

Advising that a customer does not take out a particular policy.

Yes – This amounts to advice on the merits of a particular policy.

Advice by journalists in newspapers, broadcasts etc.

Generally, no.

Giving advice to a customer in relation to his buying a consumer product, where insurance is a compulsory secondary purchase and/or a benefit that comes with buying the product

Not necessarily but depends on the circumstances – Where the advice relates specifically to the merits of the consumer product, it is possible that references to the accompanying insurance may be seen to be information and not advice. If however, the advice relates, in part, to the merits of the insurance element then it may be a regulated activity.

Type of activity**Is it a regulated activity?****ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS**

Providing information to customer who fills in application form

Possibly – This could amount to carrying out work preparatory to the conclusion of a contract of insurance.

Helping a potential policyholder fill in an application form

Yes - This amounts to carrying out work preparatory to the conclusion of a contract of insurance.

Receiving completed proposal forms for checking and forwarding to an insurance undertaking (for example, an administration outsourcing service provider that receives and processes proposal forms)

Yes - This amounts to carrying out work preparatory to the conclusion of a contract of insurance.

Assisting in completion of proposal form and sending to insurance undertaking

Yes - This amounts to carrying out work preparatory to the conclusion of a contract of insurance.

NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE

Negotiating terms of policy on behalf of customer with the insurance undertaking

Yes.

Negotiating terms of policy on behalf of insurance undertaking with the customer and signing proposal form on his behalf

Yes.

Agreeing, on behalf of a prospective policyholder, to buy a policy

Yes.

Providing compulsory insurance as a secondary purchase

Yes.

COLLECTION OF PREMIUMS

Type of activity	Is it a regulated activity?
Collection of cheque for premium from the customer at the pre-contract stage	Yes - if forms part of wider activity. The mere collection/receipt of premiums from the customer is unlikely to require regulation.
Collection of premiums at post-contract stage	No - The mere collection/receipt of premiums from policyholders, is unlikely to require regulation, without more, to amount to assisting in the administration and performance of a contract of insurance.

ASSISTING POLICYHOLDER WITH MAKING A CLAIM

Merely providing information to the insured to help him complete a claim form.	No – of itself, this is unlikely to amount to assisting in the administration but not to the performance of a contract of insurance.
Completion of claim form on behalf of insured	Potentially – this activity could amount to assisting in the administration and performance of a contract of insurance if the assistance provided in filling in a claims form is material to whether the performance of the contractual obligation to notify a claim takes place.
Notification of claim to insurance undertaking and helping negotiate its settlement on the policyholder's behalf	Yes – this activity amounts to assisting in the administration and performance of a contract of insurance.

ASSISTING INSURANCE UNDERTAKING WITH CLAIMS BY POLICYHOLDERS

Negotiation of settlement of claims on behalf of an insurance undertaking	No – claims management on behalf of an insurance undertaking does not amount to assisting in the administration of a contract of insurance (see section 3(2)(c) of Schedule 3 of the FSO89).
Providing information to an insurance undertaking in connection with its investigation or assessment of a claim	No – this activity does not amount to assisting in the administration and performance of a contract of insurance.
Loss adjusters and claims management	No – claims management and loss

Type of activity**Is it a regulated activity?**

services (for example, by administration outsourcing providers)

adjusting on behalf of an insurance undertaking does not amount to assisting in the administration of a contract of insurance (see section 3(2)(c) of Schedule 3 of the FSO89).

Providing an expert appraisal of a claim

No – expert appraisal of claims on behalf of an insurance undertaking does not amount to assisting in the administration of a contract of insurance (see section 3(2)(c) of Schedule 3 of the FSO89).

Jeweller repairs customer's jewellery pursuant to a policy which permits the jeweller to carry out repairs

No – this activity amount to managing claims on behalf of an insurance undertaking and is excluded (see section 3(2)(c) of Schedule 3 of the FSO89).

Customer Money - Co-mingling

Under Part V of The Financial Services (Accounting & Financial) Regulations firms are required to segregate customer money into properly designated accounts. The IMD also specifically requires firms to ensure that customer monies are only transferred via strictly segregated client accounts and that these accounts are not used to reimburse other creditors in the event of bankruptcy. Firms are also required to ensure that money paid by the customer is treated as having been paid to the insurance provider, whereas money paid by the insurance provider to the firm is not treated as having been paid to the customer until the customer actually receives it (Section 38C, Part V(A) of the Financial Services Ordinance 1989).

What is co-mingling?

Co-mingling occurs when a firm places money held as agent for the insurer (risk transfer money) with client money in the client bank account. This account must be segregated and designated by the bank as a client account and must not hold monies belonging to the firm other than premium commissions due to it received as part of mixed remittances. A firm may find co-mingling useful where it wishes to be able to settle claims and deduct these from monies owed to the insurer from one of its accounts.

To co-mingle, a firm must obtain the insurer's agreement and, by no later than 14 July 2005, the insurer's written consent and acceptance that its interest is subordinated to the firm's clients. Once co-mingled, all the money in the client bank account (including the risk transfer money) must be treated as client money and held in line with the relevant client money rules set out in Part V of The Financial Services (Accounting & Financial) Regulations and Part V(A) of the Financial Services Ordinance 1989.

Firms will be permitted to co-mingle on a permanent basis i.e. this is not a temporary measure, as long as the above-mentioned agreements are obtained. Under these arrangements firms will not be allowed to mix customer and insurer monies with those funds that belong to the firm other than where the firm receives a mixed remittance (comprising money that is client money and the firm's own money). In these cases the firm's money must be withdrawn from the client account as soon as reasonably practicable, and no later than 25 business days of the payment clearing the client bank account.

Firms who wish to co-mingle monies must advise the Commission of their intention to do so and provide evidence that the above-mentioned agreements have been obtained.

Professional Indemnity Insurance

What level of cover must the policy provide?

In relation to the firm's insurance mediation activities, the policy must provide cover of at least €1million per claim. In addition, the policy must provide a minimum aggregate level of cover of €1.5million. Insurance intermediaries that hold a policy denominated in sterling will satisfy these limits if they are at least equivalent to their euro requirements based on the exchange rate when the policy was agreed or when the IMD was implemented.

The IMD was implemented on the 14 January 2005, and the exchange rate stood at 1.4108. The sterling equivalent of €1 million was therefore £708,017 and the sterling equivalent of €1.5 million was £1,063,226. As a guide, the Commission advises firms to use £750,000 and £1.1 million, i.e. amounts rounded up to the nearest £50,000 and £100,000 respectively, thus ensuring that cover safely meets the requirements imposed by the IMD.

The Commission does not expect firms to build in a margin or adjust cover in response to exchange rate movements throughout the duration of the annual term of the policy. Firms are required to ensure that upon renewal, the policy continues to meet the minimum requirements. For these purposes, firms should use the euro exchange rates stipulated in the Insurance Newsletters published by the Commission on an annual basis.

In addition a firm's PII policy must not contain conditions or exclusions that unreasonably limit cover, thus ensuring that a firm has adequate protection. The Commission considers it reasonable for a firm's policy to exclude cover for specific business lines if that type of business has not been carried out by the firm in the past and will not be carried out by the firm during the life of the policy; or specific claims that have been previously notified to the firm's insurer and claimed for under another policy.

Passporting

“Passporting” is the term used to describe the provision of services in other jurisdictions, either by way of cross-border services or the establishment of a branch, where the notification protocols set by the relevant EU directives have been applied.

Only those activities which relate to insurance mediation for which a firm is authorised under the Financial Services Ordinance 1989 may be passported under the IMD. Firms may commence the carrying on of activities one month after receipt of the relevant notification form by the Financial Services Commissioner, or an earlier date if advised by the Financial Services Commissioner. Firms should note, however, that the Financial Services Commissioner may exercise his powers under the 1989 Ordinance to restrict these activities.

Upon receipt of the relevant notification form, the Financial Services Commissioner will provide within one month a copy (along with other information about the firm) to the relevant supervisory authority in the Member State. The firm may be contacted by the authority concerning the authority’s supervisory powers and any regulations that may be applicable to the branch’s activities.

Notification of intention to provide cross-border services

Firms wishing to provide cross-border insurance mediation services in other EEA jurisdictions are required to complete form IMD1A.

In some instances it may not be immediately clear within which particular Member State an activity will be conducted, or whether an activity will in fact be conducted within another Member State. Firms in doubt as to whether to notify provision of services should consult their usual contact at the FSC.

Notification of intention to establish a branch

Firms wishing to establish a branch to carry on insurance mediation services in other EEA jurisdictions are required to complete form IMD2A.

Firms are strongly advised to consult the Head of Investment Services Supervision at the earliest possible opportunity before formally submitting this form.