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Proposed reform of the Insurance Mediation Directive

Introduction

On July 3, 2012, as part of a wider legislative package focusing on consumer protection related issues, the European Commission (the "**Commission**") announced a proposed reform of the Insurance Mediation Directive (the "**IMD**").

The IMD, introduced in 2002, aimed to create a Europe-wide market for insurance intermediaries by imposing minimum standards of regulation and consumer protection throughout the EU. Since its implementation, however, it has become apparent that the IMD's provisions have not been applied in a consistent manner throughout the various Member States. The Commission has found that this inconsistency (combined with a general the drop in consumer confidence as a result of the financial crisis) has led to consumers having a poor understanding of the risks and features of insurance products.

In its explanatory memorandum, the Commission explains that it hopes the proposed reform of the IMD will serve to improve consumer protection in the insurance sector through the requirements for increased information provision and advice and by creating common standards for insurance sales.

Changes

The Commission's proposal contains several key changes to the IMD:

- Currently the IMD applies solely to agents and brokers. Under the new proposal, the scope of the IMD will be broadened to include all sellers of insurance products (including insurance undertakings who engage in direct selling to consumers), companies that manage claims for insurers and loss adjustors (although the latter will simply be required to complete a registration process).
 - In addition, those who sell insurance on an ancillary basis (i.e. car rental companies) will fall within the IMD's remit, although only in a manner proportionate to the business that they are engaging in.
- In an effort to combat the existence of conflicts of interest, insurance undertakings and insurance intermediaries will be obliged to disclose the fee, basis and amount of remuneration and any variable remuneration received by individual sales employees. This disclosure will be required to be made at the pre-contractual stage. While on-request disclosure will be sufficient in respect of non-life products for a transitional period of five years, full disclosure (i.e. unprompted disclosure) will be required in



respect of life insurance products from the outset. After expiration of the transitional period, full disclosure will apply to the sale of all insurance products;

- Salespersons will be required to present a business card explaining their role when selling a product;
- A new chapter will be introduced dealing with the sale of life insurance products which contain an investment element. Those who sell such products will be subject to stricter conduct of business requirements and rules similar to those contained in MiFID II.
- New requirements will be introduced in relation to the bundling of products. Those selling and providing insurance services will have to ensure that customers are made aware of the costs and charges associated with each product within a bundle together with the fact that the products may be purchased separately;
- Advice should be provided to customers where necessary in order to avoid the misselling of products;
- Insurance undertakings and insurance intermediaries will be obliged to act honestly, fairly and professionally in accordance with the best interests of their customers, replicating a requirement already imposed on MiFID firms;
- The revised IMD will provide for the mutual recognition of duly evidenced professional qualifications between Member States; and
- Under the proposal, Member States will be required to adopt effective, proportionate, and dissuasive administrative sanctions and measures to ensure compliance with the revised IMD.

Conclusion

The Commission anticipates that the revised IMD will give rise to increased consumer protection standards, ultimately resulting in increased consumer confidence to the benefit of the European insurance industry as a whole. In addition, it hopes that the revised IMD will facilitate the operation by insurance intermediaries on a cross-border basis throughout the European Union.

It is anticipated that the revised IMD will enter into force in 2015, subject to its adoption by the European Parliament and the European Council and the agreement upon various technical measures.

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