

Club: UK P&I
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Circular Title: Insurance Mediation Directive (Ref: 16/04)

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Insurance Mediation Directive

Outline

- The European Union Directive on Insurance Mediation applies to all EEA-domiciled intermediaries.
- UK legislation will implement this Directive to regulate all firms carrying out Insurance Mediation (“IMD”) from 14th January 2005.
- The Club is in the process of being granted the necessary authorisation by the UK regulator (Financial Services Authority) for dealing direct with Members.
- The Directive defines insurance mediation activities very widely and may apply to parties who may not up until now have considered themselves to be intermediaries.
- The Club is required to ensure that it only transacts with intermediaries that are properly authorised to transact business with it.
- This circular sets out the process of confirmation required by all International Group clubs.

October, 2004

Ref: 16/04

TO THE MEMBERS

Dear Sirs

INSURANCE MEDIATION DIRECTIVE

Introduction

Following the European Union's Directive (2002/92/EC) on Insurance Mediation ("IMD"), legislation has been enacted in the United Kingdom to implement the terms of the Directive and to regulate those businesses that fall within its scope. The Financial Services Authority ("FSA") as the UK regulator has provided guidance on the types of business to which the IMD applies, marine insurance being one. Other Member States within the European Economic Area ("EEA") have introduced or are in the process of introducing legislation to implement the Directive within their own jurisdiction.

Insurance Mediation Activities

The purpose of the Directive is to regulate the activities of firms carrying out Insurance Mediation Activities. Insurance Mediation Activities have been categorised by the FSA as;

- advising on contracts of insurance
- arranging deals in contracts of insurance
- making arrangements with a view to transacting in contracts of insurance
- dealing as an agent in contracts of insurance
- assisting in the administration and performance of contracts of insurance and
- agreeing to carrying on a regulated activity.

In the United Kingdom, the IMD will apply to all brokers and other insurance intermediaries who perform Insurance Mediation Activities. If you use an intermediary to place your business with the Association and that intermediary is domiciled in the EEA, the IMD will require that intermediary to be authorised to carry out intermediary activities by the regulatory authority of its domicile. If the intermediary is unsure of whether or not its activities will fall under the terms of the Directive, it should check the position with the relevant regulator as soon as possible.

In the United Kingdom the IMD will apply to the Association as it falls within the scope of the Directive when it deals directly with a Member without the involvement of an intermediary and, accordingly, the Association has applied for authorisation by the FSA.

The Association's requirements from Intermediaries

The legislation also imposes on the Association a legal responsibility to ensure that when transacting with intermediaries domiciled in the EEA, it ensures that those intermediaries have the necessary authorisation. In order to discharge that responsibility, the Association intends moving to a system of self-certification, whereby intermediaries based in the EEA introducing business to the Association will be expected to confirm that they are authorised in the country of their domicile for IMD purposes and that they have a "passport" (freedom of services authorisation) to do so. In order to simplify the process for intermediaries the International Group Clubs have agreed a common approach. Regulated intermediaries will be expected to confirm that they have the necessary approval from the regulator of their domicile by including the appropriate form of certification from the suggested examples below.

The proposed wordings are:

a) for intermediaries regulated in the UK by the FSA:

“(Name of intermediary) is registered for IMD purposes with the Financial Services Authority, and will advise you of any change in that status.”

b) for intermediaries regulated in the EEA and introducing EEA business (excluding UK business):

“(Name of intermediary) is registered for IMD purposes with (Name of Regulator) in (Country of Regulation), and will advise you of any change in that status.”

c) for intermediaries regulated in the EEA and introducing UK business:

“(Name of intermediary) is registered for IMD purposes with (Name of Regulator) in (Country of Regulation), has permission under that country's freedom of service legislation to perform intermediary activities within the UK, and will advise you of any change in that status.”

In order for the Association to accept a risk placed with it by an intermediary to which the Directive applies one of the forms of certification from those listed above must be provided by the intermediary. Without that certification the Association will not be able to accept the risk.

The Association will be writing to EEA-based intermediaries advising them of the requirements and seeking confirmation of their regulatory position under the IMD.

The purpose of this circular is to draw Members' attention to the legislation which has been enacted or is in the process of being enacted and of the Club's requirements in connection with it. It is, however, a matter for Members and others who may be affected by the IMD and the relevant legislation to determine how the IMD and the legislation applies to them and how they need to comply with it.

Yours faithfully

THOMAS MILLER (BERMUDA) LTD.

A similar circular will be sent by the other members of the International Group of P&I Associations.

Contact

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