

## IMPLEMENTING THE INSURANCE MEDIATION DIRECTIVE A TRANSPOSITION NOTE

| Article | Objectives   | Implementation  | Responsibility   |
|---------|--|---|--|
| 1(1)    | <b>Purpose of the Directive</b>  | No implementation needed  |  |
| 1(2)    | <b>Exclusions:</b> The Directive does not apply to the mediation activities of a provider of certain goods or services where the insurance is complementary to the good or service being provided and where certain conditions are satisfied. One of these conditions provides that the annual premium must not exceed €500.                           | <p>Article 72B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544 – “the RAO”), as inserted by article 11 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (“RAO amendment Order”) excludes these activities from regulation.</p> <p>However, the Government has decided motor warranties with annual premiums of less than €500 will be regulated by the FSA.</p>  | The Treasury.  |
| 1(3)    | The Directive does not apply to insurance and reinsurance mediation services provided in relation to risks and commitments located outside the Community. Nor does the Directive apply to insurance mediation activities of intermediaries established in a third country or activities carried on by Community insurance or reinsurance undertakings. | <p>Article 72D of the RAO (as inserted by article 11 of the RAO amendment Order) excludes activities in relation to insurance relating to large risks located outside the EEA. (“Large risks” is defined in the same way as in Community law – in very broad terms “large risks” means large commercial risks).</p> <p>Article 72 of the RAO (as amended by article 10(6) of the RAO amendment Order) excludes from regulation the activities of certain intermediaries who are established outside the UK and who do not have a branch in the UK.</p> <p>The insurance mediation activities of insurance and reinsurance undertakings are not excluded from the scope of regulation.</p> | The Treasury.  |
| 2       | <p><b>Definitions</b></p> <p>This article defines the following terms:</p> <ul style="list-style-type: none"> <li>- insurance and reinsurance undertaking</li> <li>- insurance and reinsurance mediation</li> <li>- insurance and reinsurance intermediary</li> </ul>  | <p>The definitions in the RAO already reflect the definitions of insurance and reinsurance undertaking.</p> <p>The first paragraph of the definitions of insurance and reinsurance mediation is implemented by amending the RAO (in particular, articles 21, 25 and 53) and by the insertion of a new article</p>   | <p>The Treasury are responsible for amending the RAO, the Business Order and Schedules 3 and 6 to FSMA.</p> <p>The FSA are responsible for making FSA rules.</p> |

|      |  |   |               |
|------|--|---|---------------|
|      | <ul style="list-style-type: none"> <li>- tied insurance intermediary</li> <li>- large risks</li> <li>- home member state</li> <li>- host member state</li> <li>- competent authorities</li> <li>- durable medium.</li> </ul>   | <p>39A. The third paragraph of the definition is implemented by the insertion of articles 39B and 72C in the RAO by articles 7 and 11 of the RAO amendment Order.</p> <p>The definitions of insurance and reinsurance intermediary are implemented by amendments to the RAO (see above) and by amendments to the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by way of Business) Order 2001 (S.I. 2001/1177 “the Business Order”) made by article 18 of the RAO amendment Order.</p> <p>The definitions of tied insurance intermediary and competent authority do not require implementation.</p> <p>The definitions of large risks and durable medium will be implemented by the FSA via rules.</p> <p>The definitions of home Member State and host Member State are implemented by amendments to Schedule 6 to FSMA made by article 19 of the RAO amendment Order and by amendments to Schedule 3 to FSMA made by regulation 2 of the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (“the IMD Regulations”).</p> |               |
| 3(1) | <p><b>Registration requirements:</b><br/>All insurance and reinsurance intermediaries must be registered with a competent authority in their home Member State. Insurance undertakings and other bodies may collaborate with the competent authorities in registering intermediaries. The register must specify the names of the natural persons in the management who are responsible for the mediation business.</p> | <p>By making insurance and reinsurance mediation a regulated activity (by amendments to the RAO), all firms (unless exempt or persons to whom section 19 FSMA does not apply) must obtain authorisation from the FSA to carry on such activities (see section 19 FSMA). Under section 347 of FSMA, the FSA is required to keep a record of every authorised person. The FSA is also required to maintain a record of all approved persons. In broad terms, individuals who are responsible for the management of authorised persons require approval under section 59 of FSMA.</p>  | The Treasury. |

|              |  |  |  |
|--------------|--|--|--|
|              |  | In relation to appointed representatives (who are exempt and so do not require authorisation) and members of a professional body which is designated under Part XX of FSMA (to whom section 19 of FSMA does not apply and so who do not require authorisation) Part V of the RAO (as inserted by article 13 of the RAO amendment Order) requires the FSA to maintain a record of every appointed representative or member of a professional body who carries on an insurance mediation activity. A record must also be kept of the individuals responsible for the management of the business, so far as it relates to mediation activities. |  |
| 3(2)         | A single information point must be established by each Member State. The information point must also provide the details of the countries in which the intermediary provides business.                       | Paragraph 25 of Schedule 3 to FSMA (as inserted by regulation 7 of the IMD Regulation) requires the FSA to maintain a record of all countries in which an insurance intermediary carries on mediation activities.<br><br>The other provisions of this paragraph do not require implementation.   | The Treasury.  |
| 3(3)         | Registration is subject to fulfilment of the requirements laid down in Article 4. Intermediaries who cease to fulfil these requirements must be removed from the register.                                   | Schedule 6 to FSMA sets out in broad terms conditions which must be satisfied by a firm before it is granted authorisation. These conditions reflect, at a high level of abstraction, the provisions of Article 4. The more detailed requirements will be implemented by FSA rules. Under section 45 of FSMA, the FSA can cancel the authorisation of a firm who fails, or is likely to fail, to satisfy the conditions set out in Schedule 6.   | The Treasury are responsible for amendments to Schedule 6 to FSMA.<br><br>The FSA is responsible for making FSA rules. |
| 3(4) and (5) | Competent authorities may provide the intermediary with a document verifying registration. Intermediaries may take up or pursue mediation activities by means of establishment or the provision of services. | These provisions do not require implementation.  |  |
| 3(6)         | Insurance undertakings must use only the mediation services of registered intermediaries.  | This provision will be implemented by FSA rules.   | The FSA is responsible for making FSA rules  |
| 4            | <b>Professional requirements:</b>  | Schedule 6 to FSMA sets out the  | The Treasury are   |

|   |  |   |  |
|---|--|---|--|
|   | <p>This article sets out the professional requirements which insurance and reinsurance intermediaries must satisfy. (Under Article 3(1), insurance undertakings and other bodies may collaborate with the competent authority in the application of the requirements of Article 4 to insurance and reinsurance intermediaries.)</p>  | <p>conditions which a firm must satisfy to be/remain authorised. These conditions reflect, at a high level of abstraction, the provisions of Article 4. The more detailed requirements will be implemented by FSA rules.</p> <p>In relation to appointed representatives who carry on insurance mediation activities, the FSA will make rules requiring the principal of the appointed representative to ensure that the representative complies with these provisions. In relation to members of a professional body which is designated under Part XX of FSMA, the professional body will make rules applying to its members.</p> | <p>responsible for Schedule 6 to FSMA.</p> <p>The FSA is responsible for making FSA rules.</p> <p>Each professional body designated under Part XX of FSMA is responsible for making its own rules.</p> |
| 5 | <p><b>Retention of acquired rights:</b> Member States may provide, subject to certain requirements, that those persons who exercised mediation activities prior to 1 September 2000 shall be automatically entered on the register.</p>  | <p>This Article does not require implementation.</p>  |  |
| 6 | <p><b>Notification of establishment or provision of services in other Member States:</b> Firms wishing to carry on insurance or reinsurance business in another Member State must notify the competent authority of the home Member State of their wish to do so. Where the host Member State wishes to know of the intention of firms to carry on business in its territory, the home Member State must inform the host Member State of the firm's intention.</p> | <p>Part II of Schedule 3 to FSMA (as amended by regulations 2-4 of the IMD Regulations) provide for intermediaries established in another EEA State to establish a branch or to provide services in the UK. Part III of Schedule 3 (as amended by regulations 2, 5 and 6 of the IMD Regulations) and FSA rules provide for UK intermediaries to establish a branch or provide services in another EEA State.</p>  | <p>The Treasury are responsible for amendments to Schedule 3 to FSMA.</p> <p>The FSA is responsible for making FSA rules.</p>  |
| 7 | <p><b>Competent authorities:</b> Member States must designate competent authorities who are empowered to ensure implementation of this Directive.</p>  | <p>This Article does not require implementation.</p>  |  |
| 8 | <p><b>Sanctions:</b> Member States must provide for appropriate sanctions in the event that an unregistered person carries on insurance or reinsurance mediation. Sanctions must also be available should an</p>   | <p>No specific implementation is needed for this article. FSMA already provides for these sanctions.</p> <p>Section 19 of FSMA provides that carrying on a regulated activity without being authorised or exempt</p>  |  |

|           |  |   |  |
|-----------|--|---|--|
|           | insurance or reinsurance undertaking use the mediation services of an unregistered intermediary. Such sanctions must be subject to the right to apply to the courts.   | is a criminal offence. The FSA have a number of sanctions in relation to those who contravene FSA rules (see sections 205 and 206 of FSMA in particular). Firms affected by such sanctions have the right to refer the matter to the Financial Services and Markets Tribunal.   |  |
| 9         | <b>Exchange of information between Member States:</b> Competent authorities must cooperate to ensure the proper application of the Directive, in particular through the exchange of information. Persons who receive information in connection with the Directive must be bound by professional secrecy. | No specific implementation is needed for this article.<br><br>Under section 354 of FSMA, the FSA must co-operate with other competent authorities. Under Regulations made under section 349 of FSMA, the FSA may provide information to other competent authorities in certain circumstances. Information received by the FSA for the purposes of, or in the course of the discharge of, its functions under FSMA is subject to restrictions on disclosure under section 348 of FSMA.   |  |
| 10        | <b>Complaints:</b> Member States shall ensure that procedures are set up to allow customers and other interested parties to register complaints about insurance and reinsurance intermediaries.  | To a large extent, no specific implementation is needed for this article.<br><br>In accordance with Part XVI of FSMA, complaints which relate to certain acts or omissions of authorised persons, may be referred to the Financial Ombudsman Scheme. The professional bodies designated under Part XX of FSMA already provide mechanisms under which complaints can be made about the actions of their members. In addition, FSA rules will provide that all authorised persons must have mechanisms for receiving and dealing with complaints. Such mechanisms will also deal with complaints relating to the actions of intermediaries who are appointed representatives. | The FSA is responsible for making FSA rules. |
| 11        | <b>Out of court redress:</b> Member States should encourage the establishment of appropriate out-of-court settlements of disputes between insurance intermediaries and customers.  | This provision does not require implementation. But as noted above, certain complaints which relate to the actions of intermediaries who are authorised persons may be referred to the Financial Ombudsman Scheme.  |  |
| 12 and 13 | <b>Information provided by the insurance intermediary:</b> Insurance intermediaries must   | The FSA will implement these provisions in relation to authorised persons and appointed   | The FSA is responsible for making FSA rules. |

|    |   |   |  |
|----|---|---|--|
|    | provide certain information to their customers, in most cases, prior to the conclusion of any insurance contract. Article 13 sets out the manner in which this information must be provided.                          | representatives by way of FSA rules. In relation to members of professional bodies designated under Part XX of FSMA, these provisions will be implemented by rules made by those bodies.  | Professional bodies designated under Part XX of FSMA are responsible for making their rules. |
| 14 | <b>Right to apply to the courts:</b> Insurance or reinsurance intermediaries and insurance undertakings that are affected by decisions taken by the competent authority should have the right to apply to the courts. | No specific implementation is required in relation to authorised persons or members of a professional body designated under Part XX of FSMA; FSMA already provides for decisions taken by the FSA to be referred to the Financial Services and Markets Tribunal and professional bodies are amenable to the jurisdiction of the courts.<br><br>In relation to appointed representatives, article 95 of the RAO (as inserted by article 13 of the RAO amendment Order) provides that an appointed representative who is removed from the register by the FSA may refer the matter to the Tribunal. | The Treasury.  |

## Declaration

*I have read and approved this Transposition Note.*

*[Signed]*

Paul Boateng  
Chief Secretary to the Treasury  
HM Treasury

4 June 2003