

MARKET BULLETIN

REF: Y4790

Title	Belgium: Changes to intermediary regulations.
Purpose	To inform the market of recent changes to the regulation of insurance intermediaries in three Royal Decrees.
Type	Event
From	Giles Taylor, Senior Manager International Regulatory Affairs
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Deadline	Effective 30 April 2014
Related links	

Summary

The Belgian government published three Royal Decrees on 7 March 2014 that introduce new requirements regarding the activities of insurance intermediaries. The purpose of this package of regulations is to increase protection for customers through greater transparency in the transaction process and ensuring that insurers and insurance intermediaries act with regard to their customers' interests. The Royal Decrees introduce a level playing field between the investment services sector and the insurance sector regarding conduct of business rules, which, in the view of the Financial Services and Markets Authority (FSMA)¹, is necessary to achieve these aims.

Scope

The Royal Decrees apply to insurance undertakings (including their tied insurance agents) and insurance intermediaries in respect of transactions carried out, or mediated, in Belgium on or after 30 April 2014. Therefore, they apply to intermediaries (including coverholders and service companies) located in Belgium and intermediaries in another EEA member state (including coverholders, service companies and Lloyd's brokers) that are conducting insurance mediation in Belgium on a freedom of services or establishment basis, regardless of whether the risk is located in Belgium. Insurance intermediaries in Belgium that are on the FSMA's register of intermediaries who are not able to demonstrate their compliance with

¹ The FSMA is the conduct of business regulator in Belgium.

the new regulations by 1 May 2015 will be removed from the register. The Royal Decrees do not apply to reinsurance business.

The new regulations

The three Royal Decrees are as follows:

- Royal Decree amending the law dated 27 March 1995 regarding insurance and reinsurance mediation and distribution of insurance. (Hereafter referred to as “Royal Decree on mediation”).
- Royal Decree on the rules for the application of Articles 27 to 28bis of the Act of 2 August 2002 concerning the supervision of the financial sector and financial services. (Hereafter referred to as “Royal Decree on supervision”).
- Royal Decree on the rules of conduct and on rules for the management of conflicts of interest, established under the law, regarding the insurance sector. (Hereafter referred to as “Royal Decree on conflicts of interest”).

The new regulations apply certain measures in the Markets in Financial Instruments Directive (MiFID)² to insurers and insurance intermediaries and they also amend existing regulations on insurance mediation. The changes are in six main areas:

- A. Remuneration of intermediaries.
- B. Conflicts of interest.
- C. New definition of insurance mediation.
- D. Tied agents.
- E. Provision of information to the customer.
- F. Record keeping.

This market bulletin provides a summary of the new provisions that apply to insurers and insurance intermediaries. However, the provisions are very detailed and managing agents and coverholders are advised to refer to the original legislative text for full details and seek their own legal advice if necessary. Further guidance from the FSMA is expected in due course and Lloyd’s will inform the market of this once it is available.

A. Remuneration of intermediaries

The following applies to the insurance mediation of mass and large risks, except where it is carried out by tied agents.

Type and source of remuneration

Insurance intermediaries are only permitted to pay or receive a fee or commission or non-monetary benefit if it is one of the following:

² Level 1 MiFID rules in EU Directive 2004/39/EC and Level 2 MiFID rules in EU Directive 2006/73/EC.

- A fee, commission or non-monetary benefit paid to, or provided by, the customer or a person acting on behalf of the customer.
- A fee, commission or non-monetary benefit paid to, or provided by, a third party or a person acting on behalf of a third party when the following conditions are fulfilled:
 - Prior to the provision of the insurance mediation service, the customer is notified of the existence, nature and amount of the fee, commission or non-monetary benefit, or, if the amount cannot be ascertained, the method by which the amount will be calculated; and,
 - The payment of the fee, commission or non-monetary benefit benefits the quality of the service provided to the customer and does not affect the obligation of the insurance intermediary to act in the best interests of the customer.
- Proper fees which enable the provision of insurance mediation services or are necessary, e.g., legal costs, taxes, and that do not conflict with the insurance intermediary's duty to act honestly, fairly and professionally.

Disclosure of remuneration

Prior to the provision of the insurance mediation service or the expiry date of an insurance contract, the insurance intermediary must provide the customer or potential customer with information about the costs and associated charges. The FSMA may provide further clarification on the information that must be provided in this regard.

B. Conflicts of interest

There are detailed requirements regarding the measures that an insurance intermediary, including a tied agent, must take concerning the identification, management and disclosure of (potential) conflicts of interest when dealing with mass risks. These requirements do not apply to insurance mediation services that are exempt from the EU Insurance Mediation Directive³.

C. New definition of insurance mediation

The definition of “insurance mediation” in Article 1 of the Law of 27 March 1995 on insurance and reinsurance mediation has been amended to include the provision of advice regarding insurance contracts. “Advice” is defined as the provision of a personalised recommendation that is presented as suitable for the customer or is based on an examination of the customer's circumstances in relation to one or more contracts of insurance.

D. Tied agents

A new category of intermediary, called a tied agent, is created. A tied agent is an insurance agent who exercises insurance mediation activities in the name and on behalf of, either:

³ As defined in Article 1(2) of EU Directive 2002/92/EC.

- one insurance undertaking⁴, or,
- several insurance undertakings as long as the insurance contracts of those insurance undertakings are not in competition with each other. (Contracts that are in the same class of insurance (Non-Life Classes 1-18 and Life Class I⁵) are considered to be in competition with each other.)

The insurance undertaking on whose behalf the tied agent acts is entirely responsible for the acts and omissions of its tied intermediaries and the compliance of the tied intermediaries with the Royal Decrees on mediation, on supervision and on conflicts of interest, in respect of the business written on its behalf. The insurance undertaking is responsible for informing the FSMA of the details of its tied agents and similarly the tied agent must inform the FSMA of the insurance undertaking(s) for whom it acts. Tied agents are regulated as a part of an insurance undertaking and not as a separate intermediary. They must disclose the capacity in which they act prior to doing business with a customer.

E. Provision of information to the customer

When providing an insurance mediation service in respect of a mass risk, an insurance intermediary, including a tied agent, must provide the following information to the customer.

- Name, address and company number of the intermediary and the contact details for communication with that intermediary.
- Details of the services provided by the intermediary.
- The types of insurance offered and relevant coverage and conditions.
- The costs and associated charges of the insurance mediation service.
- The terms of agreement between the intermediary and the customer for the insurance mediation service as well as other terms on which it will provide services to the customer.
- The languages in which the client can communicate with the intermediary and in which documents will be issued.
- Methods of communication between the customer and the intermediary, including the one for the conclusion of insurance contracts.
- Details of the intermediary's licence or registration and the contact address of the competent authority that granted the licence.
- A brief description of intermediary's conflicts of interest policy. The customer has the right to request further details of this policy.
- The nature, frequency and timing of reports that will be given to the customer regarding the insurance mediation service or insurance contract provided. Where appropriate, such reports must include the costs of the mediation service and the insurance contract, where appropriate. The FSMA may promulgate further regulations regarding the content of these reports.

⁴ All Lloyd's underwriters are, collectively, one insurance undertaking.

⁵ Lloyd's underwriters are not authorised to underwrite Life Classes II-IX.

F. Record keeping

Insurance intermediaries, including tied agents, must keep a record of every activity of insurance mediation carried out so that the FSMA can check whether it has complied with the provisions of the Royal Decrees on mediation, on supervision and on conflicts of interest.

Further information

If you require further information or wish to discuss this matter in more detail, please contact:

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