

Unregulated Self-Employed Agents

In its February 2016 edition of the *Intermediary Times*, the Central Bank of Ireland has provided clarification in relation to regulated entities engaging self-employed agents in the conduct of insurance mediation, including customer facing roles. It points out that there are a number of issues that regulated entities and agents should be aware of in terms of registration under Insurance Mediation Regulations 2005 and the Consumer Protection Code 2012 (payment of remuneration and Terms of Business).

Registration under the European Communities (Insurance Mediation) Regulations 2005 (the IMR)

To participate in insurance mediation, persons must be registered as an Insurance Intermediary under the IMR. To carry out such business without registration is an offence.

The Investment Intermediaries Act 1995 permits an individual to provide limited services under the “full and unconditional responsibility” of an investment firm. However, such permission does not exist under the IMR. Therefore, any self-employed agent dealing with insurance products must be registered in their own right under the IMR i.e. registered independently of the regulated firm.

As a registered intermediary, such agents are responsible for their compliance with regulatory requirements such as submitting their annual returns online to the Central Bank, arranging their own professional indemnity insurance and providing their own Terms of Business.

Consumer Protection Code And Payment of Remuneration

Remuneration to a self-employed agent can only be paid under the following circumstances and in accordance with Provision 3.25 of the Consumer Protection Code 2012:

A regulated entity may pay a fee, commission other reward or remuneration in respect of the provision of regulated activities, only to a person that is:

- (a) A regulated entity
- (b) A certified person
- (c) An individual for whom a regulated entity has taken full and unconditional responsibility under the Investment Intermediaries Act 1995;**cont'd below**

Contact us

E-MAIL: advisoryservices@irishlife.ie

WEBSITE: www.irishlife.ie

WRITE TO: Irish Life, Lower Abbey Street, Dublin 1

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- (d) An agent, branch or entity to which activities are outsourced in accordance with the European Communities (Payment Services) Regulations 2009 where the regulated entity remains fully liable for the acts of that agent, branch or entity to which activities are outsourced ;*
- (e) A distributor, agent, branch or entity to which activities are outsourced in accordance with the European Communities (Electronic Money) Regulations 2011 where the regulated entity remains fully liable for the acts of that distributor, agent, branch or entity to which activities are outsourced;*
- (f) An entity specifically exempted by law from requiring an authorisation, license or registration to carry out the regulated activity in respect of which the fee, commission, other reward or remuneration is to be paid;*
- (g) A credit intermediary (within the meaning of the Consumer Credit Act 1995 and the European Communities (Consumer Credit Agreements) Regulations 2010); or*
- (h) No longer providing a regulated activity, where the fee, commission, other reward or remuneration is in respect of a regulated activity that the person provided when the person fell within any of the descriptions at a) to g) above*

Remuneration paid by a regulated entity to a self-employed agent who is not registered as an insurance intermediary under the IMR while providing insurance mediation services, is considered to be contravening provision 3.25 of The Code. Firms must ensure that individuals conducting insurance mediation on behalf of the firm are either employees of the firm or registered in their own right as insurance intermediaries under the IMR.

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Consumer Protection Code And Terms Of Business

Provision 4.12 of the Code relates to the obligation to provide a Terms of Business letter to the consumer before providing any financial service to that consumer. This provision also applies to self-employed agents who work exclusively for another broker firm.

The obligations under the Code apply to the regulated entity that has the “point of sale” relationship with the consumer. If a regulated entity is a self-employed agent and acts for another brokerage, they may make reference to this fact in their literature.

As mentioned above, there is no facility under the IMR for a broker to take “full and unconditional responsibility” for another intermediary. A self-employed agent that is authorised in their own right is therefore responsible for their own compliance with the Code.

“A regulated entity must draw up its terms of business and provide each consumer with a copy prior to providing the first service to that consumer” (provision 4.12 of the Code)

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