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Whose passport is it anyway?

by Rachael Griffin

I am often asked about the effect of residency on an adviser's ability to practice in Europe, the rights to passport under the Insurance Mediation Directive (IMD) and what advisers need to be mindful of when working from different countries.

The IMD was implemented into the local law of each EU Member State on 15th January 2005 and then updated in 2009. IMD is a "minimum harmonisation" directive and therefore it is the responsibility of each Member State to adapt the directive in a way that suits their own regulations, potentially making the rules more stringent if they chose to.

Broadly, the IMD covers all natural and legal persons who for remuneration purposes carry out an insurance mediation activity, such as providing financial advice. The directive requires that these professionals be registered with their Home State regulator (the country in which they are resident) in order to operate a legal business. There is an exemption for professionals whose principle activity is not insurance mediation, e.g. lawyers and accountants.

The IMD requires that those practicing an insurance mediation activity fulfil a set of minimum standards and must:

- possess the appropriate knowledge and ability to perform their role (the rules and qualification levels will be determined by the Home State authority).
- be of good repute. This includes a clean police record in respect of serious crimes against property or relating to financial activities.
- hold a minimum level of Professional Indemnity cover amount applicable throughout the EU. This level of cover is determined by the Home State.

Passporting from one member state to another is relatively easy and can be done by notifying the regulator in the Home State about the intention to passport into a different member state. The old regulator will notify the new regulator and a 'passport' will be granted.

So how does the IMD work in practice?

Consider Andrew, an intermediary who is registered as a Cypriot resident and fulfils the IMD requirements as they have been enacted in Cyprus. Andrew would like to passport into another EU state, for example, Spain.

The process to achieve this is prescribed and straight forward. To start with, Andrew would need to contact the Cypriot Regulator and explain his intention to provide services in Spain. The Cypriot regulator must then advise the Spanish regulator within one month (this includes confirmation that the intermediary has the necessary authorisation in the Home State). The



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Cypriot Regulator will then advise Andrew it has made the notification and Andrew will then be able to conduct insurance business in Spain.

As Andrew is resident in Cyprus and meets the appropriate regulatory criteria in Cyprus, he does not need any further regulatory approvals, although he will need to consider any general good requirements. For example, in Spain all passporting intermediaries have to have a “customer services” function to deal with complaints (which is accountable to the Spanish Regulator) or have appointed an independent ombudsman to provide the service.

There may be some confusion where it is a company with employees resident in another member state who wishes to passport. While the process is similar to the one outlined above, there are some points to be aware of.

For example, if French resident company ‘Intermediaries-R-us’ has registered intermediaries in France and would like to passport into Spain, it will follow the approval process and within a couple of months it could be conducting insurance business in Spain.

If Intermediaries-R-us would like to expand into another Member State such as Spain, there are two options available. Intermediaries-R-us could either employ another intermediary in France who could then passport into Spain or the company could employ a Spanish resident who is authorised in their own right as an intermediary in Spain therefore meeting any requirements set out in the Spanish law.

The EU Commission is shortly due to review the IMD and has asked the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) to provide technical advice on areas where the directive could be improved and potentially tightened up. This review will culminate in a new Directive (IMD2), which is likely to happen in 2011.

Some of the areas up for review include:

- Professional requirements; the EU Commission is looking to further harmonize the requirements on knowledge and the capability of insurance intermediaries involved in the selling of insurance products. These requirements could include the recognition of a set number of qualifications throughout the EU. Currently the IMD does not regulate the qualifications needed by an insurance intermediary and as a result there is no guarantee the qualifications obtained in one country, would be recognised in another. It is possible the 2005 Directive on recognition of professional qualifications could be stated to be applicable to IMD2.

The scope of the IMD; the current directive has been left open to interpretation and greater clarity is likely. The EU Commission’s view is that the IMD2 should guarantee a level playing field for anyone selling insurance products whether they are independent intermediaries or direct salespersons.

For those who are currently considered to be insurance intermediaries practicing in Europe, it is important to keep updated on the review as any amendments to the IMD could result in additional legislation and further adaptations to their business practice.

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