



FINANCIAL
SERVICES
AND
MARKETS
AUTHORITY

Chairman

Commissariat aux Assurances

Chairman
7, boulevard Joseph II
1840 Luxembourg
Grand Duchy of Luxembourg

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our reference LC_CDT/125/DKE/VaV
your reference
correspondent Els De Keyser
T +32 2 220 54 53
AssurMiFID@fsma.be

Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance

Dear Sir or Madam,

We write with reference to

- the list of companies governed by the law of a Member State of the European Economic Area other than Belgium, which, pursuant to Chapter Vter of the Law of 9 July 1975 on the regulation of insurance undertakings in Belgium, are permitted to carry on insurance business in Belgium, as well as to
- the list of insurance and reinsurance intermediaries entered in the register of a Member State of the European Economic Area other than Belgium which are authorised to pursue their activities via a branch or by the free provision of services.

As from 30 April 2014, all insurance companies and insurance intermediaries that provide insurance intermediation services on Belgian territory are required to comply with new conduct of business rules. These provisions protect the general good and are therefore applicable to foreign service providers as well. The FSMA has published the list of provisions protecting the general good on its website (under the heading Supervision / Financial service providers / Insurance and reinsurance companies / Legislation) (some available in French or Dutch only).

The FSMA wishes hereby to inform you of a number of documents and obligations which apply to insurance companies and insurance intermediaries that are under your supervision and that have notified us that they provide insurance intermediation services on Belgian territory.

1. Royal decrees

The rules of conduct that apply to the insurance sector are specified in three royal decrees published in the Belgian Official Gazette on 7 March 2014 and that can also be found on the website of the FSMA (under the heading Supervision / Financial service providers / Insurance and reinsurance companies / Legislation) (in French and Dutch only).

These are, in particular:

- the Royal Decree of 21 February 2014 on the rules governing the application to the insurance sector of Articles 27 to 28bis of the Law of 2 August 2002 on the supervision of the financial sector and on financial services;
- the Royal Decree of 21 February 2014 on the legally mandated rules of conduct and rules governing the management of conflicts of interest as applicable to the insurance sector; and
- the Royal Decree of 21 February 2014 amending the Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance.

2. Circular

The FSMA has provided explanations of the new rules in a circular published on its website (under the heading Supervision / Financial service providers / Insurance and reinsurance companies / Overview of circulars and communications) (available in Dutch and French only). The circular addresses the new regulations by topic, providing concrete examples. It also sets out to whom and to what types of insurance contract the rules apply.

3. Clarification regarding tied insurance agents

The new legislation introduces the concept of 'tied insurance agent'. Tied insurance agents do not constitute a new category of insurance intermediaries, but rather a subcategory of insurance agents that is defined in view of determining where the responsibility lies for compliance with the rules of conduct. An insurance intermediary who, under contract or via a mandate in respect of certain or all types of insurance contracts, acts in the name and on behalf of a single insurance company, falls under the responsibility of that insurance company for the application of the rules of conduct as regards those insurance contracts. A more detailed explanation of the conditions that must be met in order to be considered a tied insurance agent can be found under point 4 of this letter.

3.1 Mandatory notification by the insurance company

Insurance companies that work with tied insurance agents on Belgian territory must notify the FSMA of this by **30 June 2014**. The notification must include:

- the full name of the insurance intermediary that is tied to the insurance company;
- the registration number of the said insurance intermediary;
- the classes or categories of classes for which the intermediary is tied to them; and
- the date as from which the intermediary has been a tied insurance agent (given that the concept of "tied insurance agent" has been in effect only since 30 April 2014, that date is the earliest possible starting date).

Insurance companies must submit the information to the FSMA via AssurMiFID@FSMA.be.

An insurance company that has not notified the FSMA at the latest by **30 June 2014** of a tied relationship with one or more insurance intermediaries will be presumed by the FSMA not to work with tied insurance agents for purposes of providing insurance intermediation services on Belgian territory.

Any subsequent changes to this information must immediately be notified to the FSMA in writing via AssurMiFID@FSMA.be.

3.2 Mandatory notification by the insurance intermediary

Insurance intermediaries who are tied insurance agents of one or more insurance companies for purposes of their activities on Belgian territory must notify the FSMA of this by **30 June 2014**. The notification must include the following information:

- the full name of the insurance companies to which the insurance intermediary is tied;
- the registration number of the said insurance company(ies);
- the classes or categories of classes for which they are tied to that company or companies;
and
- the date as from which they have been a tied insurance agent (given that the notion of "tied insurance agent" has been in effect only since 30 April 2014, that date is the earliest possible starting date).

Insurance intermediaries must submit the information to the FSMA via AssurMiFID@FSMA.be. An insurance intermediary that has not notified the FSMA at the latest by **30 June 2014** of any tied relationship with one or more insurance companies will be presumed by the FSMA not to be a tied insurance agent for purposes of providing insurance intermediation on Belgian territory.

Any subsequent changes to this information must immediately notified to the FSMA in writing via AssurMiFID@FSMA.be.

4. When is an insurance intermediary tied to an insurance company?

An insurance intermediary is tied to an insurance company if he or she may pursue insurance intermediation exclusively in the name and on behalf of:

- one insurance company;
- or
- several insurance companies, in respect of insurance contracts that are not in competition with each other.

The following insurance contracts are considered to be in competition with each other:

1. savings or investment insurance policies:

- insurance contracts that relate to classes 21, 22 or 26 of the 'life' assurance activities group as set out in Annex I to the Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies, and that contain a savings component, as well as insurance contracts as referred to in points I, II or VI of Annex I to Directive 2002/83/EC of the European Parliament and the Council of 5 November 2002 concerning life assurance or in Annex II to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (Solvency II) that contain a savings component;
- insurance contracts that belong to class 23 of the 'life' assurance activities group as set out in Annex I to the Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies, as well as insurance contracts as referred to in point III of Annex I to Directive 2002/83/EC of the European Parliament and the Council of 5 November 2002 concerning life assurance or in Annex II to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (Solvency II);

2. other life assurance contracts:

all other insurance contracts, other than those referred to in point 1, that belong to the 'life' assurance activities group as set out in Annex I to the Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies, as well as insurance contracts belonging to life assurance classes as determined in Annex I to Directive 2002/83/EC of the European Parliament and the Council of 5 November 2002 concerning life assurance or in Annex II to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (Solvency II);

3. non-life insurance contracts, per class:

insurance contracts that belong to the 'non-life' group, provided they belong to the same class within the meaning of Annex I of the Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies, of point A of the Annex to Directive 73/239/EEC of the Council of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, or of Part A of Annex I to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (Solvency II).

The tied nature of the relationship between an insurance intermediary and an insurance company must be defined in a contract with or a mandate from the insurance company in question. The contents of the contract or mandate are decisive in this regard: even if the term 'exclusivity' or an equivalent term does not appear in the text, the relationship may still be of a tied nature. If there is any uncertainty in this regard, the intermediary and the insurance company involved must make clear arrangements on the matter.

The tied relationship between an insurance company and an insurance intermediary has important consequences when it comes to the allocation of responsibility for compliance with the rules of conduct. Such a relationship means that the insurance company is responsible for ensuring that its tied insurance intermediaries comply with the conduct of business rules, as regards the insurance contracts they conclude, when providing insurance intermediation services on Belgian territory.

We therefore invite you to take the measures you deem appropriate in order to inform the insurance companies and insurance intermediaries under your supervision, and which carry out their activities on Belgian territory via a branch or by the free provision of services, of the contents of this letter.

Sincerely yours,

Chairman



Jean-Paul SERVAIS