



GENERAL GOOD PROVISIONS APPLICABLE TO INSURANCE AND REINSURANCE DISTRIBUTORS.

Article 211 of Royal decree-law 3/2020 that transposes into Spanish national law the Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution, provides:

- "1. Insurance and reinsurance distributors established or domiciled in other Member States of the European Union carrying out distribution activities in Spain shall comply with the provisions laid down for reasons of general interest and those of supervision which, where appropriate, may be applicable.*
- 2. In any event, the provisions on reporting obligations, conduct of business and those regarding to additional information requirements in insurance based in investment products, as referred in Section 6ª of Chapter III shall be regarded as general good rules in Spanish territory.*
- 3. The general good rules shall be duly published on the website of the Directorate General for Insurance and Pension Funds."*

In application of the above provisions, here you can find the general good provisions listed by selecting the rules which contain additional requirements to the minimum provisions envisaged by the Directive (EU) 2016/97 of 20 January 2016 on insurance distribution.

The list is not exhaustive. Therefore, insurance and reinsurances distributors are not exempted from the duty to comply with the rest of provisions regulating insurance distribution activity and those concerning criminal law, tax law, money laundering law, competition law, rules on personal data protection, as well as the other provisions envisaged by the Spanish legislation.

I. PROHIBITIONS APPLICABLE TO INTERMEDIARIES ESTABLISHED IN ANOTHER MEMBER STATE PURSUING DISTRIBUTION ACTIVITIES IN SPAIN

- 1) To assume directly or indirectly the coverage of the insured risk or risk's.
- 2) To carry out the activity in favour of entities that do not obey the legal requirements for doing business in Spain or transgressing the granted authorization.
- 3) To add an extra charge on the premium receipt issued by the insurance company.
- 4) To sign or modify, in the name of the customer, a contract without his consent.
- 5) To impose the execution of the insurance contract on the customer.



II. GENERAL OBLIGATIONS APPLICABLE TO INTERMEDIARIES ESTABLISHED IN ANOTHER MEMBER STATE WHO WISH TO PURSUE DISTRIBUTION ACTIVITIES IN SPAIN

- 1) The insurance intermediary shall, in any case, be considered as the depositary of the amounts received from its customers as payment of the insurance contract premiums, as well as the amounts delivered by the insurers in compensation or reimbursement of premiums intended for their customers.
- 2) The amounts paid by the client to the insurance agent shall be considered to be paid to the insurance company, while the amounts paid by the insurance company to the agent shall not be considered to be paid to the customer until the latter actually receives them.

In addition, communications made by the policyholder to the agent shall have the same effects as if they had been made to the insurance company.

- 3) All advertising and commercial documentation of insurance distribution shall include the category of intermediary, his identity and registration number in the competent authority of the home Member State.
- 4) Insurance brokers should offer independent advice based on an objective and personalized analysis of a sufficiently large number of insurance contracts available on the market, to those who demand risk coverage. They must inform whoever tries to arrange the insurance, about the conditions of the contract that, in their opinion, should be signed and offer the coverage that, according to their professional criteria, best suits their needs. Besides, they shall ensure the concurrent application of the requirements that the insurance policy must meet for its effectiveness and full effect. They also will be obliged during the term of the insurance contract which they have concluded, to provide the policyholder, the insured and the beneficiary of the insurance with the information they claim about any of the clauses of the policy and, in the event of a claim, to provide their assistance and advice.
- 5) The remuneration that the insurance broker may receive from the insurance company for its insurance distribution activity will take the form of commissions. The broker and the client may agree in writing that the broker's remuneration may include professional fees that would be charged directly to the customer. In this case, an independent invoice for such fees separately from the premium receipt issued by the insurance company.



- 6) Brokers (natural or legal person), the intermediaries' branches and EEA intermediaries who act in Spain by Freedom to Provide Services, should deal with and resolve the customer claims related with their interests and rights

Brokers and intermediaries resident in other Member States who pursue distribution activities in Spain by Freedom to Provide Services or Freedom of Establishment should have a customer service (accountable to the directorate-general, having full independence to guarantee autonomy in order to avoid conflicts of interest) to deal with and to solve their customer claims or entrust this service with the insurance company who could designate an ombudsman (who would act with total independence in relation to companies and with total autonomy as for the value judgements and guidelines applied in the exercise of his function, being a person outside insurer companies organization). The ombudsman's favourable decision to the customer will bind the intermediary or the company.

For these purposes, the intermediary may outsource the performance of the functions of the customer service department or service with another person or entity outside the structure of their organization, provided that they meet the requirements set in the regulations on financial services customer protection.

The customer service department or service could be common to other companies of the same economic group.

The customer service and the ombudsman are developed in the ORDEN ECO/734/2004, 11th march 2004, on customer's departments and attention services and customer's ombudsman of the financial entities (published on the Boletín Oficial del Estado 24th march 2004).

III. INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES APPLICABLE TO INSURANCE DISTRIBUTORS ESTABLISHED IN ANOTHER MEMBER STATE WHO WISH TO PURSUE DISTRIBUTION ACTIVITIES IN SPAIN

Additional requirements in relation to insurance-based investment products.

1. Information to customers.

- I. When the client is informed that the advice on insurance-based investment products, in which the policyholder assumes the risk of the investment, is given independently and based on an objective and personalized analysis, the insurance intermediaries will not accept or retain fees, commissions or other monetary or



non-monetary benefits paid or provided by a third party or by a person acting on behalf of a third party in connection with the distribution of these types of products. Small non-monetary benefits that do not have a detrimental impact on the quality of the service provided to the customer and whose scale and nature are such that they cannot be considered to affect compliance by the insurance intermediary in behaving with honesty, fairly and professionalism, in accordance with the best interest of its customers, will be clearly communicated and excluded from the previous limitation.

- II. The entitled person of the Ministry of Economic Affairs and Digital Transformation may establish, in relation to investment products based on insurance in which the policyholder assumes the risk of the investment, additional information requirements to the client before signing the contract and, once it has been signed, in particular on the duty to disclose to the client, in a complete, exact and understandable way, the existence, nature and amount of the payments or benefits referred or, when this amount cannot be determined, the method of calculating that amount.

2. Analysis of suitability and appropriateness

When no advice is given in relation to insurance-based investment products, insurance intermediaries or insurance undertakings may carry out insurance distribution activities without the need to obtain the information regarding that person's knowledge and experience in the investment field relevant to the specific_type of product or service offered or demanded, where all the following conditions are met:

- a) The activities refer to either of the following insurance-based investment products:
 - 1º Contracts which only provide investment exposure to the financial instruments deemed non-complex under according to Real Decreto Legislativo 4/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Mercado de valores, and that does not incorporate a structure which makes it difficult for the customer to understand the risk involved, or;
 - 2º Other non-complex investments based on insurance.
- b) The insurance distribution activity is carried out at the initiative of the customer or potential customer
- c) The customer or potential customer has been clearly informed that, in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based



investment product or insurance distribution activity provided or offered and that the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning may be provided in a standardised format;

- d) The insurance intermediary or insurance undertaking complies with its obligations of management and prevention of conflicts of interest.

3. Information exemption.

In the case of distribution to a professional client of insurance-based investment products, the additional information referred to in Articles 29 and 30 of Directive (EU) 2016/97 need not to be provided.