



FSA Registration of Dual Qualified CIL A Members

The Insurance Mediation Directive (IMD) requires those of us carrying on insurance mediation activities to be authorised and regulated by the FSA.

The regulated activity is 'assisting in the administration and performance of a contract of insurance'. This includes negotiations a claim on behalf of an insured but not on behalf of insurers. Note that it is the negotiation activity that is regulated and that simply providing information is not regulated.

A professional firm (solicitors, accountants, chartered surveyors) is exempt from authorisation if its carrying out of regulated activities is incidental to its main business.

FSA register

This is where the FSA lists all those who can carry out the regulated activity of 'assisting in the administration and performance of a contract of insurance'. There are two groups:

Financial services firms - these are firms which are directly authorised and regulated by the FSA.

Exempt professional firm (EPF) - it is this area which requires clarification.

It is very clear from reading the 'professional firms' part of the FSA handbook that an EPF is NOT authorised by the FSA.

FSA Professional Firms 4.1.3 (2) states:

An exempt professional firm must before it provides a service which includes the carrying on of an insurance mediation activity for a client make the following statement in writing to the client and no less prominent than any other information provided to the client at the same time:

'We are not authorised by the Financial Services Authority. However we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong is regulated by [designated professional body]'

4.1.4 (3) goes on to say:

Exempt professional firms should also ensure that any statement that makes reference to the FSA does not lead a client to suppose that the FSA has direct regulatory responsibility for the exempt professional firm. This could be a breach of PROF 4.1.2. This consideration is particularly



important in relation to insurance mediation activity where clients may well fail to appreciate the difference between authorisation under the Act and being included on the register maintained by the FSA so as to permit the exempt professional firm to carry on insurance mediation activity.

Next we need to look at the permissions / protection given by the designated professional body. The following three examples have been reviewed.

Chartered accountants - ICAEW

The ICAEW designated professional body (DPB) handbook provides full details of the institutes licensing arrangements. It includes the agreement between the firm and the institute for a licence, the regulated activities that can be conducted under a licence and how regulated work should be conducted.

The ICAEW guide to its DPB handbook states:

The regulated activities that a licensed firm can undertake are known as 'exempt regulated activities'. However to be an exempt regulated activity consideration is needed of how that activity is carried out. If the regulated activity does not derive from or is not complimentary to another non regulated (professional) activity provided to that client, FSA authorisation is needed. An exempt regulated activity cannot be provided in isolation to other professional services in respect of a particular client.

Part 3 of the ICAEW DPB handbook states that:

*a) provision of services in the course of carrying out exempt regulated services must be incidental to the provision of professional services and
b) the exempt regulated activities must arise out of or be complimentary to the provision of a professional service to the client in question.
A licensed firm that carries on a regulated activity in breach of these regulations which contain all the requirements of section 327 of the Act may be in breach of the general prohibition under the Act and committing a criminal offence. In addition breach of these Regulations amounts to a matter that leaves a member, affiliate, regulated non-member or firm open to disciplinary action by the Institute.*

Chartered Surveyors - RICS

The RICS designated professional body rules state at clause 11:

*The applicant firm must satisfy the Conduct Committee or its Nominate Representative on application for a DPB licence that it complies with the following conditions, and must continue to comply with them at all times during the period of the DPB licence:
b) its main business is surveying and any regulated activities it carries on are incidental to the provision of surveying services to the client*



Solicitors - The Law Society

The Law Society Financial Services and Solicitors Information Pack addresses insurance mediation activities in section 8. Point 1.4 states:

The government has recognised the need for firms to be able to carry out certain insurance mediation activities where they are incidental to their other services. For this reason the government has decided to extend Part XX of the Act so that professional firms can undertake insurance mediation activities from within the DPB regime. This will allow exempt professional firms to undertake regulated activities for their clients where they are incidental to their core professional activities. Such firms will however need to be shown on the FSA Register as carrying on insurance mediation activities and have a designated individual within their management structure with overall responsibility in order to benefit from this exemption.

Point 3.3.4 states:

There has been speculation as to whether such firms will be able to operate under the DPB regime given the need to satisfy the 'incidental manner' condition. The FSA considers that the following factors are relevant to this condition:

- *The scale of regulated activity in proportion to other professional services provided*
- *Whether and to what extent activities that are regulated activities are held out as separate services*
- *The impression given of how the firm provides regulated activities, for example, through its advertising or other promotion of its services.*

Conclusion

From review of the FSA handbook and the guidance provided by the designated professional bodies it is clear that one can only carry out claims presentation work if one is either authorised and regulated directly by the FSA as a financial services firm or has a licence from one of the designated professional bodies in which case claims preparation work must only be INCIDENTAL to other services offered to that specific client.

It is therefore the view of this Institute that any Chartered Loss Adjuster who is dual qualified as an accountant, a surveyor or a solicitor and who presents him or herself as doing claims preparation work other than alongside other professional work for that same client must be authorised and regulated directly by the FSA.

It is appreciated that the way in which claims professionals are regulated will change under the 'new approach to regulation' but this will not come in until 2013 and it will be very surprising if the spirit of regulation changes.

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