

All firms



What is a contract of insurance?

- How can I find out if the products I want to sell are contracts of insurance?

The factsheet 'FSA regulation of insurance selling and administration – do I need to be authorised' (www.fsa.gov.uk/pages/Doing/small_firms/mortgage/Factsheets/factsheet8.pdf) summarises the regulated activities, such as arranging and advising, for insurance' intermediation' business. These activities are regulated when they are carried out in connection with a contract of insurance. So, certain intermediary firms that want to deal with specialist products (for example, some types of service warranties sold by motor dealers), will need to establish whether the products they deal with are contracts of insurance.

This factsheet sets out:

- what the law tell us about a contract of insurance; and
- some practical steps you can take to establish whether the products you want to deal with are contracts of insurance and what you need to do to be involved in selling and/or administering such contracts.

In this factsheet:

What the law tells us about a contract of insurance



Some practical steps to take



What the law tells us about a contract of insurance

Is a contract of insurance defined in law?

The law provides no exhaustive definition of a contract of insurance. Nor, because of the dynamic nature of insurance business, is it ever likely to do so. However, the courts have provided useful guidance in the form of descriptions of contracts of insurance. These state that the ultimate tests of any contract are its individual terms and conditions and the context of the particular contract.

Can the FSA tell me if something is a contract of insurance?

No; While we have an obligation to give guidance, we cannot give a legally definitive view on individual contracts. Only the courts can authoritatively determine the law in relation to a specific contract.

Has the FSA consulted on the definition of a contract of insurance?

No; although we have issued guidance for firms, in Chapter 6 of our Perimeter Guidance manual (at <http://fsahandbook.info/FSA/handbook.jsp?doc=/handbook/PERG>) to help them identify what is a contract of insurance. This guidance has been produced by bringing together the case law descriptions

about features of a contract of insurance. It does not define what a contract of insurance is. Firms will still need to make a judgement on whether a particular contract is a contract of insurance, based on the case law available and, where appropriate, on their own legal advice.

What happens if I decide, after taking legal advice, that I am not subject to regulation – but the advice is later found to be wrong?

Section 23(3) of the Financial Services and Markets Act 2000 provides a defence where someone carries on a regulated activity without authorisation in circumstances where they had reasonable grounds for believing (e.g. because of legal advice received) that they were not contravening the general prohibition. The courts would determine the merits of a particular defence.

back

How can I find out if the products I want to sell and provide administration for are contracts of insurance?

Some practical steps to take

Establish who provides the product and their regulatory status

It is the responsibility of the product provider to establish whether the contracts it is providing are contracts of insurance. If they are, the provider should already be authorised by us as an insurance company to do this or it is breaking the law. We started to regulate the selling and administration of contracts of insurance in January 2005.

If you want to deal directly with a product provider

There are two ways to identify if the product provider is authorised by us to make contracts of insurance. You can either approach the provider for information about the status of its contracts directly or use the FSA register, which is on our website www.fsa.gov.uk.

If you want to deal with an administrator or other third party

Wherever your business may be within the distribution chain for a product, you need to establish who has ultimate responsibility for the contract. If you want to deal with a scheme administrator, or other third party, rather than directly with the insurance company, you may need to approach that intermediary first, to establish who has ultimate responsibility. Again, if the product is an insurance contract, the provider should already be authorised by us as an insurance company. You can establish

whether it is authorised by either approaching the provider directly or checking the FSA register.

If you want to offer warranties yourself

Some firms, such as car dealerships, offer their own warranties to cover repairs or mechanical faults as part of the sale of the goods. This includes car dealers who offer additional warranties to extend manufacturers' guarantees on new cars, or mechanical guarantees on used vehicles. We have concluded that contracts of this kind are unlikely to be insurance. This is because the warranty is a consequence of the contract of sale, under which the substance of the provider's obligation is the sale of goods that meet the required (often statutory) quality standard, not the provision of insurance. In this situation, the warranty does not involve a transfer of risk, but a recognition (and crystallisation) of an existing responsibility.

Next steps

If any of the contracts you want to deal with are contracts of insurance, you need to consider whether the business you want to do is regulated, and if so consider your options and act now. To help you do this, please use our other factsheets and information on our website at www.fsa.gov.uk.

[back](#)

How can I find out if the products I want to sell and provide administration for are contracts of insurance?