

FOURTH MOTOR INSURANCE DIRECTIVE INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (the "Act"):
 - (a) section 138 (General rule-making power);
 - (b) section 150(2) (Actions for damages);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (Guidance); and
 - (2) regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706) (Power of the Authority to make rules under section 138 of the Financial Services and Markets Act 2000).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 19 January 2003.

Amendments to the Handbook

- D. (1) COND is amended in accordance with Annex A to this instrument.
- (2) GEN is amended in accordance with Annex B to this instrument.
 - (3) COB is amended in accordance with Annex C to this instrument.
 - (4) AUTH is amended in accordance with Annex D to this instrument.
 - (5) SUP is amended in accordance with Annex E to this instrument.
 - (6) The Glossary is amended in accordance with Annex F to this instrument.

Remaking of the General Provisions and Glossary

- E. The rules in GEN 2, other than GEN 2.1.8R, and the Glossary are made under the powers at paragraph A(2) (in addition to the powers under which they are already made).

Citation

F. This instrument may be cited as the Fourth Motor Insurance Directive Instrument 2002.

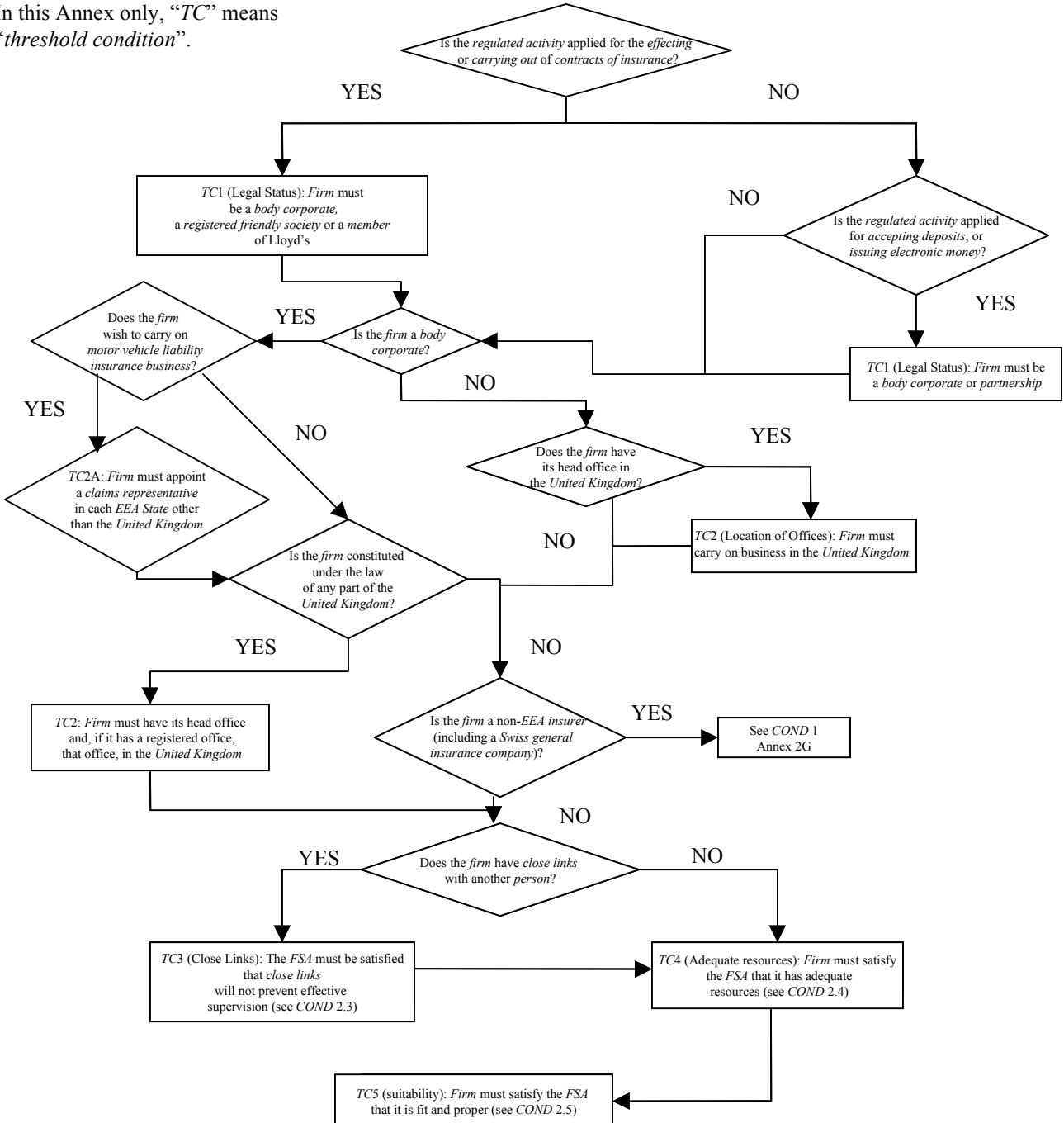
By order of the Board
21 November 2002

Annex A

Amendments to the Threshold Conditions

COND 1 Annex 1G Replace the flowchart at Annex 1G with the following new chart:

In this Annex only, “TC” means “threshold condition”.



Insert after COND 2.2, the following new section:

2.2A Threshold condition 2A: Appointment of claims representatives

2.2A.1 Table Paragraph 2A, Schedule 6 to the Act

“Appointment of claims representatives

2A - (1) If it appears to the Authority that –

(a) the regulated activity that the person concerned is carrying on, or is seeking to carry on, is the effecting or carrying out of contracts of insurance, and

(b) contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land (other than carrier’s liability) are being, or will be, effected or carried out by the person concerned,

that person must have a claims representative in each EEA State other than the United Kingdom.

(2) For the purposes of sub-paragraph (1)(b), contracts of reinsurance are to be disregarded.

(3) A claims representative is a person with responsibility for handling and settling claims arising from accidents of the kind mentioned in Article 1(2) of the fourth motor insurance directive.

(4) In this paragraph “fourth motor insurance directive” means Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC.”

2.2A.2G *Threshold condition 2A (Appointment of claims representatives), provides that if it appears to the FSA that any person is seeking to carry on, or carrying on, motor vehicle liability insurance business, that person must have a claims representative in each EEA State other than the United Kingdom.*

2.2A.3G *Rules and guidance concerning a motor vehicle liability insurer’s obligations in relation to the appointment of its claims representatives,*

and the responsibilities and duties that the *motor vehicle liability insurer* must give to, or impose on, its *claims representatives* are set out in *COB* 6.8.19G to *COB* 6.8.29G.

Annex B

Amendments to the General provisions

In this Annex, underlining indicates new text.

Schedule 4 The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *GEN*.

...

The following articles of the *Regulated Activities Order*:

...

Regulation 3 of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I 2002/1775).

Regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706).

6.8.20R The *Society* must ensure that no *member* carries on *motor vehicle liability insurance business* at Lloyd's unless a *claims representative* has been appointed to act for that *member* in each *EEA State* other than the *United Kingdom*, with responsibility for handling and settling claims arising from an accident in the cases referred to in article 1 of the *Fourth Motor Insurance Directive*.

6.8.21R (1) When a *motor vehicle liability insurer* appoints a *claims representative*, it must give the *MIIC* and each other *information centre* the *claims representative's* name, business address, telephone number and effective date of appointment within ten *business days* of that appointment being made.

(2) If the information at (1) changes in any material way, the *motor vehicle liability insurer* must give the *MIIC* and each other *information centre* details of that change within ten *business days* of that change.

6.8.22R A *motor vehicle liability insurer* must ensure that each *claims representative* is:

(1) resident or established in the *EEA State* for which it is appointed;

(2) capable of examining cases in the official language or languages of the *EEA State* of residence of the *injured party*;

(3) responsible for, and has sufficient delegated authority from the *motor vehicle liability insurer* for which it is appointed, to be able to:

(a) handle and settle;

(b) collect all information, and take all measures, reasonably necessary to negotiate a settlement of; and

(c) represent, or arrange appropriate representation for, the *motor vehicle liability insurer* (whether in negotiations, in court or otherwise) in relation to;

claims, arising from an accident occurring in an *EEA State* other than the *EEA State* of residence of the *injured party*, involving the use of a vehicle insured and normally based in an *EEA State*.

6.8.23G *COB* 6.8.22R (3) does not prevent a *claims representative* from seeking additional authority or instructions from a *motor vehicle liability insurer*, if its existing authority or instructions are insufficient to allow it to handle and settle a claim. However, it does prevent a *claims representative* from purporting to decline to deal with, or

transfer responsibility for, claims properly referred to that *claims representative* by an *injured party*, or an *injured party's* representative.

6.8.24G Nothing in the *rules* and *guidance* at COB 6.8.19G to COB 6.8.29G prevents, or is intended to prevent:

- (1) a *motor vehicle liability insurer* from appointing more than one *claims representative* in one, or more than one, *EEA State*; or
- (2) a *claims representative* from acting for more than one *insurer* or *member*; or
- (3) a representative, appointed by a *motor vehicle liability insurer* under SUP 13.5.2R or regulation 3(d) of the *EEA Passport Rights Regulations*, from acting as that *motor vehicle liability insurer's claims representative* as well.

6.8.25G The appointment of a *claims representative* does not in itself constitute the opening of a branch or the creation of an establishment (see article 4(8) of the *Fourth Motor Insurance Directive*).

Motor Vehicle Liability Insurers: claims handling

- 6.8.26R
- (1) Within three months of receipt of a claim for damages from an *injured party*, or his representative, the *motor vehicle liability insurer* must (directly, or through a *claims representative*):
 - (a) make a reasoned offer of settlement, if liability is admitted and damages have been fully quantified; or
 - (b) provide a reasoned reply to the points made in the *injured party's* claim, if liability is denied, or not admitted, or the claim for damages has not been fully quantified.
 - (2) If liability is initially denied, or not admitted: within three months of any subsequent admission of liability, the *motor vehicle liability insurer* must (directly, or through a *claims representative*) make a reasoned offer of settlement, if, by that time, the relevant claim for damages has been fully quantified.
 - (3) If an *injured party's* claim for damages is not fully quantified when it is first made: within three months of the subsequent receipt of a fully quantified claim for damages, the *motor vehicle liability insurer* must (directly, or through a *claims representative*) make a reasoned offer of damages, if liability is admitted at that time.

- (4) A claim for damages will be fully quantified under (1)(a), (2) or (3) when the *injured party* provides written evidence which substantiates or supports the amounts claimed.

6.8.27R

- (1) If the *motor vehicle liability insurer*, or its *claims representative*, does not comply with COB 6.8.26R(1)(a), (2) or (3), the *motor vehicle liability insurer* must pay simple interest on any damages eventually paid, unless interest is awarded by any tribunal which determines the *injured party's* claim.
- (2) If (1) applies, the amount of interest that the *motor vehicle liability insurer* must pay must be calculated as follows:
- (a) the interest calculation period:
- (i) begins three months after:
- (A) receipt of the claim for damages, if the *motor vehicle liability insurer* or its *claims representative* breaches COB 6.8.26R(1)(a); or
- (B) any subsequent admission of liability, if the *motor vehicle liability insurer* or its *claims representative* complies with COB 6.8.26R(1)(a) but breaches COB 6.8.26R(2); or
- (C) the subsequent receipt of a fully quantified claim for damages, if the *motor vehicle liability insurer* or its *claims representative* complies with COB 6.8.26R(1)(a) and (2) but breaches COB 6.8.26R(3); and
- (ii) ends on the date when the *motor vehicle liability insurer* pays compensation to the *injured party*, or the *injured party's* authorised representative;
- (b) the interest rate to be applied throughout the period in (a) is the Bank of England's base rate (from time to time), plus four per cent.

6.8.28R

A *motor vehicle liability insurer* will be taken to have received a claim, or a fully quantified claim, for damages when that claim, or fully quantified claim, for damages is delivered to the *motor vehicle liability insurer*, or a *claims representative*, by any person by any method of delivery which is lawful in the *motor vehicle liability insurer's*, or its *claims representative's*, respective State of residence or establishment.

- 6.8.29G
- (1) *COB* 6.8.26R to *COB* 6.8.28R apply only to claims for damages for loss or injury suffered in, or as a result of, an accident which occurs in an *EEA State* other than an *injured party's* usual state of residence, which is caused by the use of a motor vehicle insured and normally based in an *EEA State*.
 - (2) *COB* 6.8.19G to 6.8.28R are not intended to, and do not, restrict any rights which the *injured party*, or its *motor vehicle liability insurer*, or any other *insurer* acting on its behalf, may have and which would enable any of them to begin legal proceedings against the *person* causing the accident or that *person's*, or the motor vehicle's, *insurers*.

...

COB Schedule 4 - Powers exercised

1 Table G

~~1~~ The following powers and related provisions in or under ~~relating to~~ the *Act* have been exercised by the *FSA* to make the *rules* in *COB*:

- ~~2~~ Section 118(8) (Market abuse)
- ~~3~~ Section 138 (General rule-making power)
- ~~4~~ Section 139(1) and (4) (Miscellaneous ancillary matters)
- ~~5~~ Section 145 (Financial promotion rules)
- ~~6~~ Section 147 (Control of information rules)
- ~~7~~ Section 149 (Evidential provisions)
- ~~8~~ Section 156 (General supplementary powers)
- ~~9~~ Section 238(5) (Restrictions on promotion)
- ~~10~~ Section 247 (Trust scheme rules)
- ~~11~~ Regulation 6(1) of The Open-Ended Investment Companies Regulations 2001
Regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706)

~~12~~ The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *COB*:

- ~~13~~ Section 157(1) (Guidance)

COB Schedule 5 - Rights of actions for damages

4 Table

| | | | Right of action under section 150 | | | |
|--|-------------------|-----------|-----------------------------------|-----------|-------------------|-------------------------|
| Chapter/ Appendix | Section/ Annex | Paragraph | For private | | For other person? | |
| | | | Person? | Removed? | | |
| ... | | | ... | | | |
| Any <i>rule</i> in <i>COB</i> which is directed at ensuring that transactions in <i>designated investments</i> are not effected with the benefit of unpublished information that, if made public, would be likely to affect the price of that <i>designated investment</i> | | | Yes | No | Yes | Any other <i>person</i> |
| <u>COB 6.8.27R</u> | | | <u>Yes</u> | <u>No</u> | <u>Yes</u> | <u>Any other person</u> |
| All other <i>rules</i> in <i>COB</i> | | | Yes | No | No | |

Annex D

Amendments to AUTH

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 3.8.2G (1) There are ~~five~~six *threshold conditions* and certain additional conditions applying to a *firm* with *Part IV permission*:
- ...
- (c) *threshold condition 2* (Location of offices) provides that:
- (i) a *body corporate* constituted under the law of any part of the *United Kingdom* must have its head office and, if it has one, its registered office, in the *United Kingdom*; and
- (ii) a non body corporate with its head office in the *United Kingdom* must carry on business in *United Kingdom*;
- (ca) *threshold condition 2A* (Appointment of claims representatives) provides that if it appears to the *FSA* that any person is seeking to carry on, or carrying on, motor vehicle liability insurance business, that person must have a claims representative in each *EEA State* other than the *United Kingdom*.
- ...
- (2) *Threshold conditions* ~~2.A~~, 3, 4, and 5 enable the *FSA* to assess the applicant in the light of the activities it wishes to carry on and, in particular, make it clear that suitability to carry on one *regulated activity* does not mean that the applicant is suitable to carry on all *regulated activities*. ~~These~~ ~~Threshold conditions~~ 3, 4 and 5 do not apply to *Swiss general insurance companies*.

Annex E

Amendments to SUP

In this Annex, underlining indicates new text.

6.3.13G The application for variation of *Part IV permission* will need to provide information about the *classes of contracts of insurance* for which variation of *Part IV permission* is requested and also those *classes* qualifying to be carried on on an ancillary or supplementary basis. For example, an insurer applying to vary its permission to include class 10 (motor vehicle liability, other than carrier's liability) must satisfy the FSA that it will meet, and continue to meet, threshold condition 2A (Appointment of claims representatives). Firms should note that, as explained in *AUTH 3.9.29G(3)*, the *FSA* will not use the power described in *AUTH 3.9.29G(2)* to grant *Part IV permission* for *insurance business* which has not been included in the application.

...

6.3.25G Table Information which may be required. See SUP 6.3.24G

| <i>Type of business</i> | Information which may be required |
|---------------------------|--|
| ... | ... |
| <i>Insurance Business</i> | <ol style="list-style-type: none">1. A <i>Scheme of operations</i> in accordance with <i>SUP Appendix 2</i>2. <u>(If the application seeks to vary a permission to include motor vehicle liability insurance business) details of the claims representatives required by threshold condition 2A (Appointment of claims representatives), if applicable.</u> |
| ... | ... |

...

10.9.20G The significant management (settlements) function does not include claims representatives.

Annex F

Amendment to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

| | |
|---|---|
| <u>claims representative</u> | <u>a person appointed by a motor vehicle liability insurer to satisfy the requirements of threshold condition 2A or COB 6.8.20R.</u> |
| <u>Fourth Motor Insurance Directive</u> | <u>the Directive of the European Parliament and the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (No 2000/26/EC).</u> |
| <u>information centre</u> | <u>a centre established by an EEA State to meet its obligations under article 5 of the Fourth Motor Insurance Directive (Information Centres).</u> |
| <u>injured party</u> | <u>(in COB 6.8) a person who claims damages as a result of any loss or injury suffered in, or as a result of, an accident which occurs in an EEA State other than his usual EEA State of residence which is caused by the use of a motor vehicle insured and normally based in an EEA State.</u> |
| <u>MIIC</u> | <u>the Motor Insurers' Information Centre.</u> |
| <u>Motor Insurers' Information Centre</u> | <u>the information centre appointed to meet the United Kingdom's obligations under article 5 of the Fourth Motor Insurance Directive (Information Centres).</u> |
| <u>motor vehicle liability insurance business</u> | <u>general insurance business of class 10, other than:</u> <u>(a) carrier's liability;</u> <u>(b) pure reinsurance of that class.</u> |
| <u>motor vehicle liability insurer</u> | <u>(a) a firm with permission to carry on motor vehicle liability insurance business;</u> <u>(b) any person carrying on the regulated activity of managing the underwriting capacity of a Lloyd's syndicate in respect of members whose insurance business at Lloyd's includes motor vehicle liability insurance business.</u> |