

## Professional competence under the Act on Insurance and Reinsurance Distribution in the transition period

- Regulations
- Act No. 170/2018 Coll., on Insurance and Reinsurance Distribution, as amended (AoIRD)
  - Decree No. 195/2018 Coll., on professional competence for insurance distribution (the “Decree”)

- Provisions
- Article 122(1) of the AoIRD
  - Articles 55–57 of the AoIRD
  - Articles 71 and 72 of the AoIRD

Question

**What is “proof of expertise and skills pursuant to Article 18 of Act No. 38/2014 Coll.” in Article 122(1) of the AoIRD and what professional competence is required in the transition period?**

Answer

Article 18 of Act No. 38/2004 Coll. (Act on Insurance Intermediaries, AoII) laid down several levels of professional competence – basic, medium and higher – depending on the type of insurance intermediary. Insurance intermediaries took corresponding professional examinations for these levels, or proved that they had completed secondary school or university studies in insurance, financial services and related fields. In this context, the basic professional examination could only be taken under the previous legal framework, including implementing regulations, not under the new legislation.

Article 122(1) of the new AoIRD, which replaced the AoII on 1 December 2018, lays down a transition period of 24 months during which expertise and skills can be proved with a document pursuant to the AoII. Since Article 122 of the AoIRD does not contain any further specification of what documents can be assigned to which insurance intermediary roles under the AoIRD (independent intermediary, tied agent, ancillary insurance intermediary), any document is sufficient to prove professional competence for any category of insurance intermediary.

At the same time, however, Articles 71 and 72 of the AoIRD apply, under which insurance companies and insurance intermediaries must distribute insurance with professional care and deal with customers in a competent manner. Such persons cannot meet these requirements without possessing the necessary knowledge and ability. Accordingly, it cannot be assumed that it might be sufficient for an independent intermediary, who should have the expertise and skills necessary to carry on insurance business independently, to possess knowledge at the level of a subordinate role under the previous AoII in order to take professional care. In the opposite case, the professional level would be reduced in the transition period and there would therefore be a risk of non-compliance with the customer protection rules set out in Part Six of the AoIRD.

Article 122(1) is a transitional provision for proving professional competence. This proof must be understood as being a term based on an administrative procedure associated with the inclusion of insurance intermediaries in the CNB’s register. It must be distinguished that

1. pursuant to Article 55(3), an independent intermediary who is a natural

person is obliged to intermediate insurance or reinsurance only in such a way that they comply continuously with the requirements for professional competence pursuant to Article 56, while

2. pursuant to Article 56(3), the *acquisition* of expertise and skills for insurance distribution is proved by a certificate of having passed a professional examination pursuant to this Act.

As stated in the explanatory memorandum to Article 122 of the AoIRD, the purpose of the transition period is to resolve the temporary situation where persons organising professional examinations will not have been accredited by the date of effect of the new Act. The transitional provision therefore replaces the manner of *proving the acquisition* of professional competence (i.e. a one-off fact), not *continuous compliance* with the requirements (i.e. a continuous situation), necessary to carry on activities with professional care and in a competent manner (Articles 71 and 72 of the AoIRD).

In this sense, **although proof of having passed a professional examination may be replaced initially, i.e. on registration, with any document pursuant to the Aoll, the continuous requirement to maintain the relevant material professional competence for carrying on activities with professional care is applicable to the carrying on of activities of insurance intermediaries.** According to the explanatory memorandum to Articles 55–57 of the AoIRD: “*Due, continuously maintained, expertise of persons distributing insurance is an important condition for the proper provision of services to customers...*”

In line with this is the Decree, Article 2(1) of which specifies in more detail the duty to comply continuously with the requirements for professional competence pursuant to Article 55(1) of the Aoll as follows: “*The person’s scope of expertise and skills pursuant to Article 55(1) of the Act must be consistent with the material content of the activities of this person for the distribution of insurance in order to ensure competent performance of those activities.*” The material categories of expertise and skills are defined in an annex to the Decree.

The scope of expertise and skills corresponds to the categories referred to in Article 3 of the Decree, i.e. each category of competence requires the ability

*“a) to competently obtain information from the customer so that a proper analysis can be performed pursuant to Article 78(2)(a) of the Act,*

*b) to provide information in a competent and comprehensible manner when communicating with the customer so that the customer can assess for themselves whether the insurance product offered is in accordance with that person’s demands, objectives, needs, financial situation, knowledge and experience, risk tolerance and ability to bear losses, and be aware of the risks to which they may be exposed over the life of the insurance,*

*c) to properly assess the customer’s demands, objectives, needs, financial situation, knowledge and experience, risk tolerance and ability to bear losses and the customer’s legal relations concerning other financial market products, and to consider the insurance risks to which the customer may be exposed over the life of the insurance, and to offer the customer a suitable insurance product, and*

*d) to duly conclude insurance contracts on behalf of and on the account of the insurance company or the customer.”*

It should be added that the distribution of insurance by insurance companies and independent intermediaries in a manner non-compliant with the requirement for professional care (Article 114(1)(e) of the AoIRD) constitutes an administrative offence. The same holds for the distribution of insurance through other persons.

Nature of the answer	This answer expresses the opinion of Czech National Bank staff members. The courts and the Bank Board of the Czech National Bank may be of a different opinion.
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