**Chapter 1- Why & how we regulate**

1. **The need for regulation**

Firm- A regulated entity that provide financial services, including insures and/or intermediaries

Reasons for regulation-

Potential for serious financial loss

Competence of advice- Insurance products are complex legal documents

Conflict of interest- Consumers are entitled to the best advice and recommendations available- not based on commission/profitability etc

Financial failure of an insurance provider

Insurance Supervision Directorate of the Central Bank (CB) is responsible for the supervision of insurance and reissuance. Reasons are:

Sustains the health of the financial system

Maintains the safety and soundness of financial institutions

Protects the consumer

Adviser- Individual involved in the advising process

Broker- A type of insurance intermediary

Client- Refers to a person, firm or organisation that has appointed a regulated entity to act on its behalf

Consumer- A person, group of persons, but not an incorporated body with an annual turnover of more than €3m in previous financial year

-Incorporated bodies with an annual turnover of €3m or less in previous year

\* This definition may be extended by the insurance Distribution Directive 2016

Customer- Any person, firm or organisation (regardless of turnover/size) to whom a regulated entity provides or offers to a provide insurance product or service

-Any, person firm or org who requests such a product/service

Regulated entity- Refers to an insurer or insurance intermediary that is authorised and regulated by the CB i.e. Firm

1. **Regulation and supervision**

1) Structural Supervision-

-Is concerned with how financial markets work, especially in terms of competition. More competition provides better value for customers

-Competition + Consumer Act 2014- mandate to enforce competition + consumer protection law and endeavours to:

Protect & strengthen competition

Empower consumers to make informed decisions

Protect consumers from harmful business practices

2) Systematic Regulation

-Regulation designed to oversee the stability of the financial system as a whole

-Failure of 1 institution could harm another and harm the economy

-Unlike banks, the risk is low as insurers hold greater amounts of capital

3) Prudential Regulation

-Requires firms to control risks by having adequate capital

-Capital adequacy- appropriate amount of capital required to support insurance providers operations

-Technical provisions- reserves held that are matched with known and estimated future claims liabilities- 3 components- Claims Provisions, Premium Provisions and the Risk Margin

4) Conduct of business rules

-Rules relating to the firm itself, its structure and its interactions with consumers

-Consumer Protection Code (CPC)- sets out requirements that regulated firms must comply with in order to ensure a minimum level of protection for consumers

-Minimum Competency Code (MCC)- sets minimum competency standards to be met by those falling within the codes scope when undertaking controlled functions

-Minimum Competency Regulations (MCR)- regulations in conjunction with MCC

1. **Impact of European Regulation**
2. Four Freedoms

Goods

Persons

Services

Capital

-EU Regulation- Legislation that is of general application, binding in its entirety and directly applicable in all member states (MS) without the need for MS to transpose it into domestic legislation

-EU Directive- Law that allows MS the choice of form and method of implementation under national law, but is binding in the results to be achieved- Must be transposed into domestic legislation

-EU Decision- Decision that is binding in its entirety, but only on those MS t whom it is addressed, usually used in competition law clearances- may be addressed to MS or individual

-EU Recommendation/Opinion- Non-binding instruments of EU law and, though without any legal force, having political weight and persuasive value

1. Implementation

Two ways of Implementing:

-Full act of Oireachtas- A bill voted through the Dail and Seanad

- Statutory Instruments- Form of delegated legislation, which provide detailed rules that implement more general provisions of European Directives or Acts of the Oireachtas

1. **EU Non-life Insurance Directives**

1)

-First non-Life Insurance Directive established classes of non-life business by which insurers could be authorised

-Second Non-Life Insurance Directive- laid down the rules for the exercise of cross-border NLIB, which balances the freedom to provide services with the need for consumer protection

-Third Non-life Insurance Directive- introduced a single authorisation system for insurers. Created an EU wide passporting system- whereby an insurer established in one MS can sell to consumer in another by either establishing a branch or by way of cross-border services

Home country- Regulator remains responsible for supervision of entities authorised in its jurisdiction

Host country- Regulator retains control in certain areas, mainly consumer protection and is entitled to impose certain obligations, restrictions or requests.

2) Reform of solvency margins

-EU insurance and reinsurance undertakings capital requirements, valuation techniques, corporate governance and reporting standards are dealt with under the Solvency II Directive 2009 and transposed into Irish Law by EU (Insurance and Reinsurance) Regulations 2015

-Requires all insurers and reinsurers keep adequate capital/cash reserves to pay for future losses. It adopts a more risk-based review of their overall financial position.

1. **Insurance Mediation**

1)

-Insurance Mediation Directive 2002 has the aim of regulating intermediaries by harmonising the rules for the practices of insurance mediation in MS

1. Scope- Insurance mediation is any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims)

Mediation does not include an activity that:

Is undertaken by an insurer or its employee

Involves the provision of information on an incidental basis in conjunction with some other professional activity, as long as the purpose of the activity is not to assist a person to enter into or perform an insurance contract

Involves the mgmt of claims of an insurance undertaking on a professional basis

Involves loss adjusting or expert appraisal of claims for RI undertakings

1. Main provisions

The IMD introduced common system of registration. Once registered, an insurance intermediary is entitled to avail of passporting arrangements in MS

It states that if an insurance intermediary claims to provide advice on the basis of Fair Analysis- providing services on the basis of sufficiently large number of contracts and insurers available on the market to enable the intermediary to make an informed recommendation

If they do not claim a fair analysis they must state either:

-That they are under a contractual obligation to conduct insurance mediation business exclusively with one or more insurers

-That they are not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurers and do not give advice based on a fair analysis, and if requested by customer, provide the name of the insurance undertakings they do not conduct business with

Every I and RI intermediary must hold Professional Indemnity Insurance (PI)(Insurance that covers claims arising from the professional activities of advisers) unless it is already provided by an insurance undertaking on whose behalf it is acting, or the insurance undertaking has taken full responsibility for the intermediaries actions e.g. Tied Agents

Minimum levels are €1.25m per individual claim and €1.85m in the aggregate for claims arising in any 1 year

The IMD also requires that an intermediary:

Demonstrate the appropriate knowledge and ability to undertake their responsibilities

Has operational procedures in place for the payment of premiums and claims payments

Has separate client trust/premium accounts

Provides certain professional information to customers e.g. their identity, registration verification and details of complaints procedure

2)

The Insurance Distribution Directive 2016- Insurance Mediation Directive and the term ‘insurance mediation’ is set to be replaced with this (IDD). It is designed to create a level playing field across all participants selling I products. Aim is to improve retail insurance regulation, establish conditions to encourage fair distribution between distributors and to strengthen policyholder protection.

Insurance Distribution are the activities of advising on, proposing, or carrying out other work in preparation or conclusion of contracts of insurance, or of assisting in the admin and performance of such contracts, including the provision on info

Scope- It is broader than IMD as it applies to any person carrying out the activity of ID, whether carried out directly by an insurer or through an intermediary. It covers 3 types of distributor:

Insurance Intermediaries- persons who pursue the activity of ID for remuneration and who are not ancillary I intermediaries

Ancillary I Intermediaries- persons who pursue the activity of ID for remuneration but whose principal professional activity is not ID and who only distribute insurance products that are complementary to their goods/services e.g. Car Rental

Main Provisions- The IDD prescribes several principles and rules for any ID, including rules regarding:

The overarching requirement to act honestly, fairly and professionally

All marketing communications to customers or potential customers, which should be fair, clear and not misleading

Remuneration policies, which should not conflict with the duty to act in the customers best interests

Standards for advised and non-advised sales, including:

Taking a statement of the customer’s demands & needs, and giving the customer objective info about the product that helps them make an informed decision

Whether or not there is advice, providing relevant info about the product in a comprehensible form in a standardised I product info document (IPID)

Cross-selling, where an ID offers any I product along with a non-insurance product, whereby the distributor must tell the customer whether they can but the components separately

Product oversight and governance, whereby all those that manufacture I products must have in place internal systems to approve the product before it is launched

The IDD focuses specifically on the need for insurers’ employees and I intermediaries to possess appropriate knowledge to perform their duties

1. **Role of the Central Bank(CB)**

The consumer protection elements of the CB’s Strategic Plan 2016-2018 include:

Working to develop a positive consumer-focused culture within regulated firms

Ensuring the consumer protection framework remains effective by reviewing, developing and enhancing the protections in place

Monitoring and enforcing compliance with the required standards through themed reviews and inspections

1. Approaches to regulation

Principles based regulations- is made up of core principles that firms must apply to their business activities. Focuses on the outcomes a firm must achieve, rather than on prescriptive rules. Senior mgmts responsibility that principles are applied.

Advantages of Principles based regulation:

New situations, products & services can be more easily assessed against principles

Firms are different in their client profiles, so each form can apply principles appropriately.

Disadvantages:

Firms may lack certainty about compliance- have they done enough?

Firms may experience difficulty in interpreting the principles. IF principles need to be expanded by guidance notes, these may become rules themselves

Mgmt needs to allocate time to expand the principles into specific rules for the firm

Advan/Disadvan of principles-based regulation are the Disadvan/Advan of rules-based regulation

A regulated entity is a financial services provider authorised, registered or licensed by the CB or other EU or EEA MS, that is providing regulated activities in the state

**Chapter 2- Impact of Regulation**

1. Authorisation of insurers and intermediaries
2. Authorisation of insurers

An insurer cannot carry out insurance business in Ireland without authorisation from the CB or from the recognised regulatory authority of another EU or EEA MS

A firm seeking authorisation with head office in Ireland must:

Be a registered company under the Companies Act 2017 and have its head office registered in Ireland

Submit details of Directors, managers and authorised agents for approval of their fitness(qualifications, experience, competence and capacity appropriate to the relevant function) and probity(persons honesty, fairness and ethical attitude)

Submit detailed scheme of operations, essentially a business plan

Hold the relevant Solvency Capital Requirement(SCR)(A level of eligible own funds that Solvency II legislation requires I/RI to hold)

Provide a plan setting out 3 years’ financial estimates for I and RI business

Submit a forecast balance sheet and estimates for the cover of its underwriting(process of risk pooling, evaluation, selection and pricing) liabilities and SCR

Hold the required minimum paid-up share capital

1. Authorisation of insurance intermediaries

Retail intermediaries- a regulated firm that receives and supplies orders for certain financial products and/or gives advice about those products

Under the Insurance Mediation Regulation (IMR) an I intermediary must be registered with the CB in order to practice I mediation

1. **Regulatory supervision of insurers and intermediaries**

1a) Risk Rating

In 2011 CB introduced a supervision framework called PRISM- Probability Rick and Impact SysteM. This is a formal risk-based framework designed by the CB to provide a structured approach to assessing financial services firms based on impact probability. PRISM recognises that the CB does not have infinite resources and selectively deploys supervisors according to a firms potential impact and probability for failure. Under PRISM, all forms are split into 4 categories- High impact(including ultra-high), medium-high, medium-low or low.

There are four models for inspection

1. Themed onsite inspections

The CBs focus on a particular area of compliance/regulation may come from market intelligence, internal sources, media etc. The CB will issue a letter to certain firms (insurers or intermediaries) indicating the nature or theme of a visit. On completion of visits to a sufficient number of firms the CB then presents its findings to all authorised firms by means of an industry letter.

The themed inspections for 2017 included:

I companies selling niche/add-on insurance

Payment institutions’ safekeeping of client funds

Retail intermediaries’ compliance with min standards

Retail intermediaries acting as managing general agents on behalf of I companies

1. Consumer protection risk assessments

In March 2017, the CB published its Consumer Protection Risk Assessment (CPRA) model. It is a model comprising of five modules: governance and controls; people and culture; product development; sales/transactions process; and post sales handling. The model assists CB supervisors in carrying out an assessment of how consumer protection risk is managed within a firm.

1. Review and correspondence

These are carried out with individual I firms, as and when required. There is a higher level of involvement with high risk or medium high risk firms

B2 Supervision of insurers

The CB supervises firms to ensure that they comply with strict solvency rules that require insurers to maintain adequate technical provisions and solvency capital requirement (SCR). I firms must be able to match assets with known and estimated future claims liabilities and associated expenses. The CB requires each regulated entity to submit relevant key info via a web-based electronic reporting system, called ‘online reporting’ (ONR). CB closely examines these returns, as they provide key info needed to monitor the insurer’s financial position and general adherence to other relevant regulatory requirements

B2a Analysis of insurance returns

This is the main means by which the CB supervises the financial soundness of individual firms. The main requirement is to maintain adequate technical provisions (reserves), and solvency capital requirement (SCR). Under Solvency II the insurer needs to set its solvency requirement based on its own assessment of risks by using either the standard formula or an ‘internal model’, which needs to be approved by the CB

B3 Supervision of intermediaries

CBs general supervision approach ensures that all regulated I and RI intermediaries meet their responsibilities to have strong mgmt, internal control and compliance procedures in place, and to place people of integrity and competence (a defined level of knowledge and ability necessary for the performance of the job) at all levels of the org.

I and RI intermediaries are supervised by a combination of on-site and off-site (desk based) monitoring. All retail intermediaries are required to submit annually a retail Intermediary Annual return (RIAR) to the CB, using ONR system. The RIAR covers 4 areas:

General info about the firm- trading name, legal status, contact details, compliance officer and auditors

Financial info- assets, liabilities, turnover, fees, commission and other key areas of financial reporting

Ownership info- owners’, qualifying shareholders and partners’ details

Conduct of business info- scope of its business activities, professional indemnity insurance and key info showing compliance with the CB Minimum competency Code (MCC) and Consumer Protection Code (CPC)

Investment intermediaries authorised under the IIA must also demonstrate compliance with the CB Handbook of Prudential Requirements for Investment Intermediaries.

B4- The role of insurers in regulation

The Investment Intermediaries Act 1995 has a number of provisions that require insurers to take responsibility for certain activities of intermediaries they deal with

Appointment of intermediaries- An insurer must to the best of its knowledge establish that the intermediary is of good character and complies with the Act. They must make ‘reasonable enquiry’ about the authorisation & registration

Termination of an agency- IF an insurer terminates the appointment of an intermediary, the following actions must be taken:

Insurer must immediately inform the CB of cancellation and the reasons for its actions

The intermediary must publish a ‘notice of discontinuance’ in a national newspaper within **14 days** of being informed of the cancellation

If the intermediary does not publish the notice, the insurer must place the notice within **28 days** of informing the intermediary of cancellation

1. Enforcement by the Central Bank

C1- Nature of sanctions

In circumstances where the CB determines that a regulated entity has committed a contravention, a range of sanctions is available. When deciding the appropriate sanctions, the inquiry will consider:

If the contravention was deliberate, dishonest or reckless

How often the contravention occurred and for how long

If the contravention revealed serious weaknesses of the mgmt systems or internal records

The extent of the loss or risk of loss caused and the effect, if any, on vulnerable consumers (a person who-a- has the capacity to make their own decisions but, who, because of individual circumstances may require assistance e.g., blind, deaf etc. Or-b- has limited capacity to make their own decisions and who requires assistance to do so e.g. intellectual disability etc)

The nature and extent of any financial crime committed

How quickly it was brought to the attention of the CB

Previous record of the regulated entity

The central bank may pose the following sanctions either individually or in combination:

A caution or reprimand

A direction to refund any charge or sum paid for the provision of the financial service

A fine payable to the CB of up to either €10m or 10% of turnover- whichever is greater, and €1m for individuals or sole traders, but not if it causes the firm/individual to cease trading

An order to pay all/part of the costs of the CBs inquiry and investigation

Revocation a regulated entity’s authorisation

An order disqualifying a person from being involved in the mgmt of a regulated entity for a specified period

All penalties imposed on regulated entities for failure to comply with the relevant codes are published on the CB website

C2- Other powers

Insurance Act 1989 affords the CB extensive powers. It may request a wide ranging info from insurers to carry out investigations. Article 150 of the EU (I & RI) Regulations 2015 provides that the CB may exercise its powers under financial services legislation to prohibit the free disposal of assets located within the state. The Insurance Act 1983 allows the CB to appoint an administrator to act on behalf of an insurer. The CB may also petition for the winding up order of an insurer on the grounds that it is unable to pay its debts under the Insurance Act 1936

1. Regulation of the private health insurance market

4 principles of the market:

* Community Rating- An insurer offering a health insurance contract for a specific level of benefit must charge the same premium to **all** policyholders regardless of age, gender, sexual orientation or current prospective health status. In May 2015 the introduced a system of Lifetime Community Rating (the older a person is when they take out private health insurance, the higher the premium they pay, premium cannot be increased to reflect persons age)
* Open enrolment- an insurer must accept all individuals regardless of the risk they pose
* Lifetime cover- Once an individual has a health insurance policy, an insurer may not cancel or refuse to renew such cover regardless of their claims experience
* Minimum benefits- all private health insurers must provide cover for a statutory minimum schedule (a single page incorporated into a policy booklet to personalise the policy) of benefits as laid down in the Health Insurance Act 1994 (Min Benefits) Regulations, 1996

D1- Regulation & supervision of private health insurers

Health Insurance Act 1994 also provided for the establishment of an independent regulator for the market- the Health Insurance Authority (HIA). Health insurers must be authorised and regulated by the CB and are subject to regulation by the HIA also

D2- Functions and powers of the HIA

All health insurers must register with the HIA annually. There are 2 types of undertaking included on the register:

* Open membership undertakings- these are VHI, Irish Life Health, Elips Insurance (LAYA) and HSF Health Plan Ltd
* Restricted membership undertakings- these provide insurance to people who are employees of a particular org e.g. an Garda Siochana, ESB, Prison Officer schemes’

The main functions of the HIA are:

* To monitor the health insurance mkt and advise the minister
* To monitor the operation of the Health Insurance Acts and, where appropriate, to issue enforcement notices to enforce compliance with the acts
* To carry out certain functions in relation to risk equalisation (process that aims to impartially neutralise differences in insurers costs that arise from differences in the age profile of consumers)
* To take action it considers appropriate to raise the public’s awareness of their rights as consumers of health I
* To maintain the ‘Register of Health Benefits Undertakings’ and ‘The Register of Health Insurance Contracts’

The HIA may serve an enforcement notice, which must state:

* The provision that has been contravened and the steps to be take to rectify
* The timeframe to do this (not less than **45 days**). If they do not believe it is a breach, they have **45 days**  to appeal to the High Court

**3- Agency and Relationship Management**

1. Creation of an agency

Anyone who acts on behalf of another person is an agent

* Broker- an insurance intermediary that provides their principal regulated activities on the basis of a fair analysis of the mkt
* Agent- one who is authorised by a principal to bring that principal into a contractual relationship with another, a third party
* Principal- a person for whom another acts as agent
* Consent- the most common means of creating an agency between a principal and an agent

1. Duties of an agent and a principal

* Obedience- The prime duty of an agent is the duty to obey instructions
* Personal performance- Agents must perform their duties imposed on them by the principal. Other than admin tasks i.e. typing, posting letters, they may not delegate their duties to someone else.
* Due care and skill- A person must exercise due care and skill in the performance of all acts undertaken in the course of their duty as an agent.
* Good faith- An agent has a fiduciary relationship (relationship that is recognised by law as being based on trust and responsibility). An agent must not allow their own interests to conflict with their duties to the principal
* Accountability- An agent must account to their principal for all monies they receive on behalf of the principal
* Remuneration- The agent has a right to remuneration (i.ie. payment) agreed by their principal. If none has been fixed, a reasonable remunerations as appropriate. In I, the remunerations unusually consists of commission
* Indemnity- Subject to any express terms in the agency agreement, an agent has the right to claim from their principal an indemnity (payment) for all expenses/losses incurred in acting on the principals behalf

1. Termination of an Agency

In the case of bankruptcy, the agency can only be terminated of the agents bankruptcy prevents them from carrying out their duties. Surprisingly, the agent’s imprisonment is not grounds for termination

The agency can be terminated in any of the following ways

* Mutual agreement by the principal and agent
* According to the terms of cancellation in the agency agreement
* Withdrawal by the principal, or revocations by the agent, other than according to the agreed terms
* Automatically on death, bankruptcy or insanity of either party

1. Agency and insurance

D1- Roles and responsibilities of insurance intermediaries

The definition of insurance mediation is any activity involved in proposing (proposer is a person, form or org applying for insurance- but not yet a policyholder/insured) or undertaking preparatory work for entering into insurance contracts, or of assisting in the administration and performance of insurance contracts that have been entered into- including dealing with claims.

An intermediary can only use the word ‘independent’ in its name, where it:

* Provides the regulated activity on the basis of a fair analysis of the market
* Allows the consumer the option to pay in full the regulated activity by means of a fee

Where an intermediary is tied to a single product producer, it must disclose this fact to the consumer in all communications in relation to that particular product or service. A tied insurance intermediary is any person who undertakes insurance mediation on behalf of insurance undertakings for products that are not in competition and, who act under the direction of those undertakings.

D2- Who is the principal of an insurance intermediary

Except in the case of a tied agent, an insurance intermediary s generally considered to be acting as an agent for their client. However, there are also some situations in which they are acting as an agent for the insurer.

D2a- Agent of the client

The intermediary is an agent of their client (the client is their principal) when:

* The intermediary gives general advice to the client as to the cover they require and the market to place their business
* The intermediary helps the client to complete a proposal form or adds info on their behalf
* The intermediary carries out a physical survey of the premises for the purpose of presenting the info, together with other risk details to the I market
* The intermediary and the client defraud the insurer
* The intermediary gives the client about how to formulate their claim

D2b Agent of the insurer

* The intermediary has express authority from the insurer to receive and handle proposal forms
* The intermediary handles the forms according to a previous course of business with the insurer and within an implied authority that has arisen
* The intermediary surveys and describes the property on the insurers behalf
* The intermediary acts without express authority, and the insurer either subsequently ratifies this action or has ratified such actions in the past
* The intermediary collects a premium for an accepted proposal or renewal of an existing policy, in which case the premium is treated as having being paid to the insurer
* The intermediary has express authority to handle claims
* The insurer has given express authority to the intermediary under the terms of a delegated authority (authority granted to the agent of an insurer, usually in the context of a scheme arrangement, to issue policy documentation and possibly carry out limited underwriting and claims functions) scheme

The implication is that, in placing any I, the intermediary (unless a tied agent) may act on behalf of both parties. IT is important to establish which of the parties, insurer or insured, is the principal at any point in the transaction

In the case of a tied agent, it is important to note that an insurer is responsible for any act or omission by an agent regarding the contract of I, as of the agent was an employee of the insured

1. Terms of business

The terms of business (AKA Terms of Business Agreement or Document) must include:

* Legal name, trading names, address and contact details of the regulated entity and the name of the group to which it belongs (if any)
* Confirmation that the firm is authorised, licensed or registered, and the name of the competent authority (e.g. CB or another European regulatory authority)
* Statement that is is subject to the B codes of Conduct
* A description of the regulated activities carried out
* Statement that the advice given to the consumer is based on a fair analysis of the mkt, a limited analysis of the mkt or, of the intermediary acts as a tied I intermediary for one or more I products
* A general statement of the charges imposed directly, e.g. charges for making changes to a policy etc
* A summary of the regulated entity’s policy on how it will use a consumers personal data, in compliance with the obligations of the Data Protection Acts and GPR
* A summary of the firms policy on conflicts of interest, usually a statement of intent that the firm will seek to avoid an conflict of interest (situation or circumstance that might lead a firm/individual to take a course of action that is not necessarily in the best interest of their client, but favours the firm/individual)
* Outline of what will happen in the event of default by the consumer, normally state that any failure to pay premiums due will result in policy cancellation or incurring a penalty
* A summary of the regulated entity complaints procedure
* If a member of a statutory compensation scheme (statutory/voluntary scheme that makes payments to affected persons following the failure of a financial services provider
* The effective date of the Terms of Business Agreement

**Chapter 4 Impact of the Central Bank Consumer Protection Code**

1. **Consumer Protection Code**

**A1 Important Terms**

A phrase used extensively in the CPC is ‘on paper or on another durable medium (any instrument that allows info to be stored and accessible for future reference, for a required period of time, and prevents the stored info from being changed or reproduced)’

* Customer- any person, form or org to whom the regulated entity provides or offers to provide an I product or service (for an intermediary term ‘client’ and ‘customer’ are interchangeable) and any person who requests such a product/service
* Consumer- any of the following:
  + A person or group of persons, but not an incorporated body with an annual turnover in excess of €3m in the previous financial year (includes partnerships and other unincorporated bodies such as clubs, charities and trusts)
  + Incorporated bodies with an annual turnover of €3m or less in the previous financial year (provided not part of a group with a combined turnover more than €3m)
* Personal consumer- a consumer who is a natural person (private individual) acting outside their business, trade or profession
* Vulnerable consumer-a natural person who:
  + Has the capacity to make their own decisions but who, because of individual circumstances, may require assistance to do so (e.g. hearing or visually impaired)
  + Has limited capacity to make their own decisions and who require assistance to do so (e.g. persons with intellectual disabilities or mental health difficulties)

The CB considers that identification of a vulnerability should be an inherent part of ‘knowing your consumer’

1. General principles (CPC)

* Act honestly, fairly and professionally in the best interest of its customers and the integrity of the mkt
* Act with due skill, care and diligence in the best interests of its customers
* Do not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages/disadvantages of any product or service
* Have and effectively employ the resources, policies and procedures, systems and controls and checks, including compliance checks, and staff training that are necessary for compliance with this Code
* Seek from its customers info relevant to the product/service requested
* Make full disclosure of all relevant material info, including all charges, in a way that seeks to inform the customer
* Seek to avoid conflicts of interest
* Correct errors and
* Handle complaints speedily, effectively and fairly
* Do not exert undue pressure or undue influence on a customer
* Ensure that any outsourced activity complies with the requirements of this Code
* Without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services
* Comply with the letter and spirit of this Code

1. General requirements

Insurers must provide a venerable consumer with reasonable arrangements and assistance as necessary. A firm must do 3 things with a person with a power of attorney, acting on behalf of a consumer.

* Obtain a certified copy of the power of attorney
* Ensure that this permits the person to act on the consumer’s behalf
* Operate with its limitations.

C1- Contingent selling

Firms are not allowed to make the sale of 1 of its p/s contingent on purchasing another. There are also requirements relating to ‘bundled’ products. The cost of the individual parts of the policy must be provided to the consumer in writing.

C2- Remuneration

An insurer (or intermediary0 may pay a fee, commission or other reward or remuneration, in respect of the provision of regulated activities, only to a person/firm that is:

* Either another regulated entity or an individual for whom a regulated entity has taken full and unconditional responsibility under the Investment Intermediaries Act 1995
* A member of, or regulated by, an approved professional body (or those regulated/qualifying at the material time)

In recent years, the CB has issued discussion and consultation papers on intermediary remuneration. Its concern is around consumer protection and ‘inducements’ that give rise to conflict of interest. The papers propose that firms should no longer be permitted to describe themselves and their regulated activities as ‘independent’ where they accept and retain inducements. Under IDD, a distributor may receive inducements if it does not:

* Have a detrimental impact on the quality of the relevant service to the customer
* Impair compliance with the I intermediary’s or I undertaking’s duty to act honestly, fairly and professionally in accordance with the best interests of its customers

C3 Personal visits and consumer contact

A regulated entity is not permitted to make an unsolicited personal visit to a consumer who is an individual- no exceptions to this rule. Personal visits are permitted only when the consumer has given informed consent, which must be obtained and recorded for each separate visit. Informed consent means the consumer knows the purpose. Where a firm makes phone contact because of a referral, it retains a record of the referral, and that contact is made between 9am and 9pm, Monday to Saturday.

* A regulated entity must not make an unsolicited personal visit, at any time, to a consumer who is an individual
* A regulated entity may only make a personal visit to a consumer who is an individual, if that consumer has given informed consent. A regulated entity must obtain consent separately for each personal visit and must maintain a record of this consent
* A regulated entity must have obtained the informed consent of a consumer who is an individual in relation to:
  + The purpose for which a personal visit is to be made, including in the case of sales and marketing, the types of products to be discussed at the visit
  + The time and date for the personal visit

A regulated entity may make telephone contact with a consumer who is an existing customer only if:

* The regulated entity has, within the previous 12 months, provided that consumer with a p/s similar to the purpose of the telephone contact
* The consumer holds a product, which requires the regulated entity to maintain contact
* The purpose of the telephone contact is limited to offering protection policies only
* The consumer has given their consent to being contacted in this way

A regulated entity may make telephone contact with a consumer other than an existing, only if

* The consumer has a signed statement, within the previous 12 months, giving the regulated entity permission to make telephone calls to them for specified purposes and the contact is in respect of such specified purposes

C3a Compulsory elements

Certain actions/components are compulsory in relation to the visit or telephone call itself:

* Identify themselves by name, the name of the regulated entity and the commercial purpose of the contact
* If the telephone contact is being recorded, the consumer must be informed
* Where relevant, disclose to the consumer the source of the business lead or referral
* Establish if the consumer wishes to proceed and, if not, end the contact immediately

C4 Handling payments

The firm must issue a receipt for every payment received detailing; the firms name/address; the name of the consumer; the amount received and the date received; the purpose of the payment; in he case of an I intermediary, that receipt of a completed insurance proposal does not automatically put a policy into effect.

1. Provision of information

D1 General requirements

Information (provision of information to a person, whether at the persons request or at the initiative of the firm, that may assist the person in the choice of retail financial product) provided to a consumer, must be clear, accurate, up to date and written in plain English. The CPC refers to any info likely to influence a consumer’s actions with regard to a p/s as ‘key information’. The info must be clearly legible and appropriate to the type of document and the info it contains. Firms must supply the info to a consumer on a timely basis, taking account of the urgency of the situation and the time necessary for the consumer to absorb and react to the info provided. Appropriate measures must be taken to secure info when communicating using electronic media.

D2 Regulatory status

The CPC sets out rules concerning both the content and disclosure of a firm’s regulator status in the following circumstances:

* On its business stationery used in connection with its regulated activities
* On a section of its website
* On electronic communications with consumers (excluding SMS messages)

D3 Terms of business

The Terms of Business Agreement sets out the basis on which a regulated firm transacts business and provides services to its clients. It must be supplied to each consumer before providing the first service and must it be a standalone document.

D4 Information about products

Before offering, recommending, arranging or providing a product, a regulated entity must provide info in writing to the consumer about the products main features and restriction’s, this is to help the consumer understand the product. The firm must also provide the terms and conditions attaching to a p/s before a contract is engaged.

The regulated entity must provide specific into to consumers at the quotation and proposal stage. The Insurance Product Information Document (IPID) should:

* Be a short and stand-alone document
* Be presented and laid out in a way that is clear and easy to read
* Be no less comprehensible in the event that, if the doc is to be printed/photocopied in black/white
* Be written in the official languages, or in 1 of the official languages of that MS
* Be accurate and not misleading
* Contain the title ‘insurance product information document at the top of the page
* Include a statement that complete pre-contractual and contractual info on the product is provided in other documents
* Info about the type of insurance
* A summary of the insurance cover, including the main risks insured, the insured sum and excluded risks
* The means of payment of premiums and the duration of payments
* Main exclusions where claims cannot be made
* Obligations at the start of the contract, during the term of the contract and in the event of a claim is made
* The term of the contract including the start and end dates of the contract
* The means for terminating the contract

D5 Information about charges

Before providing a p/s to a consumer, a regulated entity must first provide written info about all charges that will be passed on to the consumer. They must also display in its public offices in n easily accessible manner a full schedule of its fees and charges.

D6 Information about remuneration

An intermediary must explain to a consumer how they are paid for their services. Prior to the sale of a non-life I product, an I intermediary must:

* Disclose in general terms to a consumer that they are paid for the service provided by means of a remuneration arrangement (usually commission) with the product producer
* Inform the consumer of the amount of remuneration receivable in respect of that service or that details if remuneration are available on request
* Disclose in general terms to a consumer any remuneration arrangements with product producers that are not directly based on the service provided to an individual consumer but are based on levels of business introduced by the intermediary to the product producer, or that may be perceived as having the potential to create a conflict of interest

The disclosure requirement must be included in the Terms of Business Agreement

1. **Knowing the consumer and suitability**

A firm must gather and record sufficient info from the consumer prior to offering, recommending, arranging or providing a p/s. The level of info must be appropriate to the nature and complexity of the p/s. It must include:

* Personal circumstances- age, health, knowledge and experience of financial products, dependants, employment status and known future changes to circumstances. Some will be critical to specific product, e.g. critical illness, payment protection etc. The CPC only requires establishing these insofar as they are relevant
* Financial situation- for financial advisers, detailed info must be obtained from the consumer, especially when life, pensions and investment products are being sold. Unlikely to get this info for a private individual , but may be available for small firms
* Attitude to risk- some consumers may want to retain a degree of risk, while others prefer the security on an I product. Risk questionnaires are now used to assess a consumers attitude to investment risk and to advise them of their risk profile

Where a consumer refuses to provide the required information, the advising firm must let the consumer know that it does not the info required to assess suitability. It therefore cannot offer the consumer the p/s they seek. For this reason it is essential for the advising firm to:

* Be aware of what represents vital info for the purpose of giving advice
* Carry through this requirement precisely if material info is not forthcoming

E1 Assessing suitability

Having gathered the necessary info to ‘know the consumer’, the adviser must select a suitable I product. The CPC states that at a minimum the advising firm must consider and document whether:

* The p/s meets that consumer’s needs and objectives
* The consumer is:
  + Likely to be able to meet the financial commitment associated with the product on an ongoing basis
  + Financially able to bear any risks attaching to the p/s
* The p/s is consistent with the consumer’s attitude to risk

E2 Statement of suitability

Prior to providing or arranging a p/s, a firm must prepare a written statement setting out the reasons why:

* A p/s offered to a consumer is/are considered to be (most) suitable for that consumer
* A recommended product is considered to be the mist suitable product for that consumer

The reasons provided must reflect the info gathered to assist the consumer in understanding how the recommendation meets their needs and objectives, personal circumstances and financial situation. For straightforward policies e.g. motor, travel, the statement of suitability may be presented in a standard format. However, all other policies require a tailor-made statement of suitability.

E3 Exemption from know the consumer suitability

If a consumer has specified both the p/s and the product producer by name, and has not received any assistance from the adviser n the choice, the CPC requirements previously outlined to not apply. This is unlikely to happen as the adviser is under obligation to obtain a minimum amount of information from the consumer

1. **Post-sale information requirements**

F1 General Requirements

Where a firm makes a material change to its terms of business, it must provide each affected consumer with a revised Terms of Business Agreement asap.

F2 Information about insurance products

An insurer must issue policy documentation within **5 business days** from the date that all relevant info is provided by the consumer and cover is agreed. It is important to note that this requirement relates to conclusion of the contract, not the inception date of the policy (when cover starts). If all details have been agreed prior to inception (as is normally the case) the 5 business days runs from the date of conclusion.

An I intermediary must, within **5 business days** of receiving the policy documentation from an insurer, provide them to the consumer. This is a separate requirement imposed on the insurer; therefore, this allows **10 business days** in total if the intermediary receives the documents from the insurers 5 days after conclusion of the contract. If the intermediary receives them from the insurer earlier, the 5 business day’s period begins for the intermediary on receipt of the documents

F3 Information about charges

Although the rules are general in nature, they apply mainly to banking p/s’s. However, if a firm does have a charging structure, any changes to its charges would need to be notified to consumers at least **30 days** in advance of any change.

1. **Rebates**

Where the rebate is more than €10, the CPC requires a firm to refund it to a consumer within **5 business days** of the rebate becoming due. The rule works differently for insurers and intermediaries, as follows:

* For insurers- the premium rebate becomes due as soon as they are aware of the circumstances giving rise to the rebate (e.g. as soon as they are told about a change of car or a request to remove an item from a policy)
* For intermediaries- the rebate becomes due when they receive it from the insurer, or when the insurer notifies the intermediary that it is due, and permits payment by the intermediary from funds held by the intermediary on its behalf.

In both cases, the rebate must be paid to the consumer within **5 business days** of it becoming due.

Where the rebate is €10 or less, the 5-business-day rule applies, however, the consumer can be offered a choice of the following options:

* To receive the premium rebate
* To receive a reduction from a renewal premium or other premium currently due
* To permit the donation to a registered charity

The last 2 options are permitted only if the firm seeks the consumer’s consent on each occasion and a record is maintained

An intermediary may only handle premium rebates due to consumers where an express agreement exists. The agreement must state that, in doing so, the intermediary acts as the agent of the insurer.

If the cheque has not been cashed by the consumer within 6 months, the intermediary must return the rebate to the insurer. An intermediary must transfer the rebate amount tot he consumer in full. If the consumer owes the intermediary any other charges, they must be paid separately and not deducted from the rebate amount.

**Chapter 5- Insurance Documentation**

1. **Quotations**

Insurer’s relationship with the consumer usually begins with a request for quotation. The insurer is not obliges to honour the terms of the quotation after its expiry date, but they may choose to do so.

A1 Regulatory requirements for quotations

The CPC states that when providing a quotation to a consumer, the following info must be included:

* The monetary amount of the quotation
* The length of time the quotation is valid
* The full legal name of the relevant underwriter

The quotation must also state any warranties or endorsements that apply to the policy. Any discounts or loadings that have been applied in generating the quotation must also be set out. There are also some special requirements for specific classes of I:

A1a Motor Insurance

A regulated firm must set out clearly the basis on which an insurer may calculate the value of the vehicle for the purposes of settling a claim, where the vehicle is deemed to be beyond economic repair. The CPC also states that, where an insurer refuses to quote a consumer for motor I, it must advise the consumer within **5 business days** of the refusal and provide its reasons in writing and notify the consumer of their right to refer the matter to the Declined Cases Committee and how to do so.

A1b Property insurance

An insurer must inform a consumer of its reasons for refusing a quote within **5 business days** and notify them that not having insurance in place could be in breach of any loan they may have secured on that property. The insurer must also state that like in motor insurance, they have the right to appoint their own builder to carry out repairs or rebuilding work. Apart from cash payments, insurers typically have the option to repair, replace or reinstate property.

This regulatory requirement emphasises the need to identify the repair and reinstatement options.

1. Proposal forms

B1 Content of proposal forms

Proposal forms exist in most classes of I; they are a type of questionnaire. They are of varying length, depending on the nature of risk and the info needed to underwrite the risk. General questions include:

* The proposers name, age, postal and risk address
* The proposers occupation/business
* Details of past I history, including claims/accidents/convictions
* Details of other insurances
* The period of I
* The subject matter of I
* The sum insured or limit of liability

Specific questions relate to a particular class of I business.

B1a Private health insurance application forms

A very restricted application form is used for gathering info in relation to this I. The subject of the questions asked is as follows:

* Proposer’s name, address, age and gender
* Details of previous I (for adjusting loadings and waiting periods)
* Commencement and level of cover

B2 Legal significance of proposal forms

The proposal form is a legal document that forms the basis of the insurance contract. The forms contain a declaration that the policyholder must sign, declaring that to the best of their knowledge the info provided is true.

B3 Regulatory requirements for proposal forms

The CPC sets out the regulatory requirements for proposal forms. The rules state that a firm must explain, at the proposal stage, the consequence of failure to fully disclose relevant facts:

* The consumer’s medical details or history
* Previous I claims the consumer has made for the type of I they require

The explanation must include where relevant, that failure to disclose relevant facts can result in:

* Policy being cancelled or claims not being paid
* Difficulty in trying to purchase I elsewhere
* In case of property I, failing to have I in place, could lead to a breach of the terms and conditions attaching to any loan secured on that property

In January 2017, the consumer Insurance Contracts Bill 2017 was introduced in Ireland. Although in its early stages, if passed in its current form, it will lead to huge changes to Irish consumer I contracts, including the duty of disclosure.

If introduced, this legislation would apply to consumers within the definition of the Act (i.e. a natural person or a person or a group of persons having an annual turnover of **€3m or less** and includes a proposer as well as an insured) but not (as with the Insurance Ireland Non-Life Insurance General Code) to commercial risks or to marine and aviation policies

B4 Alternatives to proposal forms

B4a Statement of fact, factsheets and telephone sales

Direct insurers frequently replace proposal forms with a statement of fact (a statement provided by the insurer, after confirmation of cover by phone or online, clarifying the basis on which I is accepted and what conditions apply). This speeds up the process or arranging cover. Following the inception of the policy, the statement of fact is issued to the client. The importance of disclosing material facts is highlighted in bold print and the proposer is reminded that the statement of fact is incorporated into, and forms the legal basis of the I contract.

For online quotations, the proposal form/statement of fact may be replaced by a factsheet (electronic form asking if the statements given onscreen are correct- to which the insured clicks Yes/No). This acts in the same way as a proposal form, as the insured must confirm that the info provided online is true to the best of their knowledge.

In the case of phone sales, the statement of fact may be dispensed with, as the digital voice recording of the phone call becomes the proposal info. However, the proposer must be made aware of the recording of info from the outset.

B4b Commercial insurances

Though practice varies, proposal forms are rarely used in commercial I apart from commercial motor risks. The insurer relies on other methods to obtain material facts instead such as:

* Intermediary submission or presentation- for some commercial insurances, the risk may be too complex that it cannot be described on a proposal form. The intermediary may prepare a mkt submission, contacting full details of the risk, in a clear, concise and recognised format. This saves time for the insurer and proposer and allows risk to be presented in a form readily understood by all parties
* Risk surveys- for large/complex risks, the insurer may arrange a risk survey. The surveyor will visit the insured’s premises and prepare a detailed report on all aspects of risk. This report will either replace or supplement the use of a proposal form

Where an insurer needs more info that is provided, they can obtain this through:

* Correspondence, telephone or meetings with the proposer/intermediary
* Supplementary questionnaires for some risks which will request further info about known hazards for a particular risk type

1. Policy documentation

Policy documentation is evidence of the contract, but not the contract itself. However it ensures that both parties are clear as to the terms agreed between them

C1 Structure of insurance policies

Heading- name, logo and address of the insurer

Recital clause/preamble- scene setting clause referring to the parties to the contract, premium payments, indemnity

Definitions- list of frequently used terms

Signature- signed by the officer of the insurer

Operative clause(s)- 1 or more clauses that describe the standard scope of cover for each section

Policy schedule- normally a separate sheet, showing the policy number and all variable info about the policyholder, policy period, premium and subject matter and highlighting any special terms, conditions, warranties or exclusions that apply

Info and facilities—info on customer helplines, service standards and complaints/claims procedures

General conditions- standard conditions applied by all insurers to policies of a given type

General exclusions/exceptions- standard exclusions applied by all insurers to policies of a given type

1. Renewals

Reasons why insurers encourage renewal of existing policies is:

* The cost of renewal is much less that acquiring new business
* Statistical info is more reliable if the database of existing clients is stable

D1 Timing of insurance renewal

The Nin-life Insurance (Provision of information) (Renewal of Policy of Insurance) Regulations 2007 requires that an insurer must give written notification not less than 15 working days before the renewal date, either inviting renewal or stating that it does not wish to renew the policy

The regulations allow renewal notices be sent through an intermediary. If so, the intermediary is responsible for making sure that the renewal notice is issued within the specified timeframe.

Chapter 6- Other legal requirements

1. Financial crime

A1- Money laundering

For money laundering (process by which criminals and terrorist’s covert money that has been obtained illegally into apparently legitimate funds) to occur, the funds involved must be the proceeds of criminal conduct. These include all forms of handling or possessing funds which are known or believed to be or represent the proceeds of crime. Money laundering is particularly relevant to the financial services sector.

There are 3 stages in the money laundering process:

* Placement- the first stage involves putting cash into the financial system and converting it into other financial assets, e.g. cheques or property
* Layering- involves concealing the origins of the money by creating a series of complex transactions, possibly including fund transfers overseas or trading in stocks
* Integration- involves the gaining of access to the money as apparently legitimate funds

A2 Terrorist Financing

Involves the provision, collection or receipt of funds with the intent or knowledge that they will be used to carry out an act of terrorism or any act intended to cause death or serious bodily injury. This includes collecting or receiving funds to be used, or knowing that they will be used, for the benefit of a terrorist group. Under part 4 of the Criminal Justice Act (Money laundering and Terrorist Financing) 2017 certain credit and financial institutions are obliged to take measures to prevent money laundering by carrying out customer due diligence (CDD) ( the requirement to obtain a certain level of documentation to confirm ID in order to satisfy anti-money laundering laws) ongoing monitoring, reporting of suspicious transactions, training and having in place effective policies and procedures. To ensure compliance, it is necessary to monitor customers and transactions against both the EU and the UN Sanctions Committees’ lists relating to terrorism.

A3 Financial crime legislation

The Criminal Justice Act 2013 amended existing AML legislation to align it more closely with international standards. Credit and financial institutions are referred to as ‘designated persons’ (a category of person in a firm or org as listed in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010m who is given responsibility to guard the firm or org against being used for money laundering or terrorist financing). Notable changes to the Fourth Anti-Money Laundering Directive 2015 are:

* Provides for a more targeted and focused risk-based approach
* Requires relevant entities to maintain a register of their beneficial owners
* Clarifies and reinforces the rules on customer due diligence (CDD)
* Brings into scope all persons dealing in goods for cash payment of €7,500 or up
* Reinforces the enforcement powers of national competent authorities
* Increases the range of sanctions for AML and counter-terrorist(CTF) braches
* Introduces risk assessments at EU and national level

A4 Measures to prevent and detect financial crime

Firms should take specific measures to prevent and detect any attempt to launder money or finance terrorism, including:

* Establishing internal policies and procedures for staff to follow
* Training staff to identify transactions that may be an attempt to launder money or finance terrorism, and to know what to do in these circumstances

1. Data Protection

B1- Scope of GDPR

* Personal data- data relating to a loving individual who can be identified from this data
* Data controller- a natural or legal person who controls, and is responsible for, the keeping and use of personal info on a computer or in structured manual files
* Data processor- a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller

A data controller that wishes to appoint a data processor must use only processors that guarantee compliance with the GDPR in the form of a binding written agreement

B2 Data protection principles and the Data Protection Commission

Principles:

* Process lawfully, fairly and transparently
* Collect for specified, explicit and legitimate purposes
* Be adequate relevant and limited to what is necessary
* Be accurate and up-to-date
* Retain no longer than necessary
* Process in a secure manner
* Demonstrate compliance with the data protection legislation

The Data Protection Commissioner (DPC) is responsible for monitoring and enforcing the Data Protection Acts in Ireland.

B3 Data Protection requirements for organisations

To ensure compliance with GDPR, orgs must observe several requirements, including:

* Notification of breach- must notify individuals within 72 hours of breach
* Privacy by default & design- required to build privacy into new p/s involving personal data
* Data Privacy impact Assessments (DPIAs)- these are an integral part of a privacy-by-design approach. DPIAs allow firms to make informed decisions about the acceptability of data protection risks and to identify and mitigate risks
* Regulation by Data Protection Authorities (DPAs)- controllers or processors that only operate in a single MS are regulated by the DPA of that MS
* One-stop-shop provision- for orgs established in multiple MSs, the DPA for its ‘main establishment’ will be its ‘lead DPA’. The lead DPA has the power to regulate that controller across all MSs.
* Internal compliance- these requirements include record keeping, appointment of a DPO and certification measures
* Consent required for data processing- this must be given explicitly by clear affirmative act rather than assumed. Pre-ticked boxes no longer acceptable.
* Identity verification- the GDPR enables controllers to require data subjects to provide proof of identity. This helps limit the risk that 3rd parties gain access to personal data

B4 Data subjects’ rights

Natural persons (individuals) are data subjects and have rights in relation to their personal data. overall, the rights individuals have under GDPR are the same as those under the Data Protection Acts but with some significant enhancements:

* The right to be informed- to be given ‘fair processing info’ on how their data is used
* The right of access- to obtain confirmation that their personal data is being processed, to access their personal data and to verify lawfulness of the processing. Such info must be provided by data controllers within 1 month of receipt of request- free of charge
* The right to rectification- to have personal data rectified if it is inaccurate or incomplete
* The right to erasure- AKA the right to be forgotten, deleted or removal of personal data
* The right to restrict processing- to ‘block’ the processing of their personal data
* The right to portability- to receive data in a structured, commonly used and readable format
* The right to object- to processing based on legitimate interests or the performance of a task in the public interest/exercise of official authority
* Rights in relation to automated decision making and profiling. An individual may request that decisions about them are made by human input, rather than computer process

B5 Electronic marketing and data protection

the basic rule that applies to direct marketing is that a firm needs the consent of the individual to use their personal data for direct marketing purposes. At a min, the person must be given the right to refuse such use of their personal data.

In relation to telephone calls, the individuals may choose to be listed on the National Directory Database. The effect of this is to prevent firms from using the telephone number for direct marketing, since firms must check this database before contacting any individual by telephone.

B6 Code of Practice on Data Protection for the insurance sector

The code of practice was updated in 2013 after it emerged that personal info held by the Gardai and by the Dpt of Employment Affairs and Social Protection, was being routinely accessed by private investigators, acting on behalf of I companies. The code provides amongst others:

* Improvements in info and communication with customers regarding the use of their personal data
* Insurers to use only licensed private investigators contractually engaged on the bases that PI will comply with applicable data protection legislation
* Specific periods for which customer data may be held
* The circumstances in which personal data may be shared with other bodies
* Procedures for keeping data secure
* Ensuring that only necessary info is sought by insurance companies

1. Equality legislation

The Equal Status acts 2000-2015 prohibit discrimination on grounds of; gender, marital/civil status, family status, sexual orientation, religion, age, disability, race or membership of the travelling community. Prior to 2012 insurers were permitted to take gender into account as a risk factor in calculation premiums.

1. Consumer protection

D1- European Communities (Unfair Terms in Consumer Contracts Regulations 1995)

This act aims to protect consumers in their contractual relationships, particularly standard-form contracts. The definition of ‘consumer’ in this case is confirmed to a ‘personal consumer’. The main provisions of the regulations relate to:

* Plain language- ordinary consumers should be able to plainly understand all terms of a contract without the need for legal advice.
* Fairness- a term will be regarded as unfair if ‘contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer’.

D1a Enforcement

Complaints about unfair terms in consumer contracts should be made to the Competition and Consumer Protection Commission (CCPC)

D2 Distance selling of financial services

The EC Distance Marketing of Consumer Financial Services Regulations 2004 and the Amended 2005 Act. These acts aim to ensure that consumers who but financial services via distance selling (without face-to-face) are no worse off that using face-to-face contact, again, this just affects personal consumers. Examples of distance selling are- internet sales; telephone/call centre sales and sales by email, letter or fax, amongst others.

Distance contract for the supply of a financial service- a contract under which a supplier supplies a financial service to a consumer in an organised distance sale operated by the supplier and who, for the purpose of the contract, makes exclusive use of one or more means of distance communication (up to and when the contract is entered into).

The regulations specify the minimum info a consumer must be given in writing and within a reasonable timeframe, including details of the supplier, product, price, distance contract, relevant regulatory authority, cancellation rights and complains process.

D2a Cooling off periods

A consumer who enters into a distance non-life general insurance contract is entitled to a **14-day** cooling off period. During that time the consumer can withdraw from the contract. However, no cooling-off period is available to a face-to-face consumer, or for short-term contracts (e.g. travel or baggage I) of less than 1 month’s duration.

The consumer has the right to cancel certain contracts. In this case, the supplier is obliged to refund any monies paid by, or on behalf of, the consumer no later than **30 days after the notice of cancelation.** If a claim has been made, the cooling-off period cannot take place and no refund made.

D2a Enforcement

The CB Is the relevant authority that enforces the Regulations of Ireland. Burden of proof rests with the supplier if the CB brings an action against it. The Financial Services and Pensions Ombudsman may also investigate and adjudicate a dispute between a customer and supplier arising out of a distance selling contract

1. Record-keeping

The CPC also contains very specific requirements about record-keeping and how long kept for. In summary, a regulated entity must record all of the following details:

* All instructions from, or on behalf of, a consumer- with dates of receipt and transmission
* Any decision to use a firm’s discretion on behalf of a consumer
* Any condition attaching to an instruction from a consumer
* A list of customers who are ‘consumers’ as defined by the CPC

The CPC contains requirements about the nature of a firms’ consumer records. They must include the following in an up-to-date form:

* A copy of all documents required for consumer identification and profile
* The consumers’ contact details
* All info and documents prepared in compliance with the CPC
* Details of p/s’s provided to the consumer
* All correspondence with the consumer and details of any other info provided to the consumer
* All documents of applications completed or signed by the consumer
* Copies of all original documents submitted by the consumer when applying for supply of a service or product
* All other relevant info and documentation concerning the consumer

Details of individual transactions must be kept for **6 years after the date on which the particular transaction is discontinued or completed or from the date on which the firm ceased to provide any p/s to the consumer.** Records must be complete and readily accessible.

**Chapter 7 Ethics and competency**

1. **Fitness and probity**

Controlled function (CF)- designated role for which the CB requires regulated financial service providers to identify and maintain a record of:

* Those persons performing Cfs from the date of the application of the Fitness and Probity Standards
* Due diligence undertaken in respect of those persons

Pre-approval controlled function- designated role, mainly to do with executive or senior roles, headed up significant functional areas or regulatory roles, where the CB must approve the person for the function before they are appointed to the job.

Acts:

* The Central Bank Reform Act 2010 (sections 20 & 22) (Amendment) Regulations 2011
* The Central Bank Fitness and Probity Standards Code 2011- AKA F&P Standards
* The Central Bank Minimum Competency Code (MSS) 2017
* The minimum Competency Regulations 2017

The requirements aim to ensure that persons performing CFs or proposed for PACFs are, competent and capable; honest, ethical and to act with integrity and financially sound.

Fitness- means that a person is competent and capable of performing their duties, the F&P Standards’ states that a person shall have qualifications, experience, competence and capacity appropriate to the relevant function.

Probity- refers to a person’s honesty, fairness and ethical attitude, based on past behaviour. It also means that individuals ensure they act without being affected by conflicts of interest.

A1 Different controlled functions

A1a Controlled functions

* An advising function likely to have a significant influence on the conduct of firm’s affairs
* Ensuring, controlling or monitoring compliance
* Giving advice to a customer regarding a financial service
* Arranging, or offering to arrange, a financial service
* Assisting a customer in making an I/reinsurance claim
* Determining the outcome of an I/RI claim
* Acting In the direct management or supervision of those persons who provide a financial service
* Adjudicating on any complaint
* I and RI intermediaries who direct and manage an undertaking or are directly involved in I/RI mediation dealing in, or having control over, the property of a customer of the regulated provider
* Dealing in, or with, property on behalf of the regulated provider or giving instructions or directions relating to it

A1b Pre-approval controlled functions

PCFs are considered more significant than Cfs are they often involve top-tier management. Re-approval means that the CB must approve the person for the function, in writing **before** they are appointed. There are nearly 50 functions that fall within PCF including:

* Head of Claims
* Head of Compliance (with responsibility for AML and counter-terrorism financing legislation)
* Head of Actuarial Function
* CEO
* Chief Risk Officer
* Head of retail Sales
* Head of Underwriting
* Head of Regulation
* Chief Operating Officer

The 2011 Regulations also make employers responsible for ensuring that staff meet the Fitness and Probity Standards both when entering the Financial services industry and throughout their careers.

1. Minimum Competency

B1 Important terms

These competency requirements (Minimum Competency Code-MCC 2017 and the Minimum Competency Regulations 2017) apply to regulated firms and persons carrying out CFs. The MCC identifies the following activities as CFs:

* Providing advice (provision of a personal recommendation to a person, whether at the persons request, or at the initiative of the firm, while performing a relevant (controlled) function) or info on retail financial products (including personal and commercial I policies)
* Arranging or offering to arrange retail financial products for consumers, including charges to I cover and restructuring or rescheduling loans
* Undertaking certain specified functions- see below
  + Assisting consumers in the making of claim
  + Determining the outcome of claims by consumers
  + Direct involvement in reinsurance distribution
  + Direct management or supervision of those who provide advice or info to consumers on retail financial products, or who carry out the claims functions in 2 above
  + Adjudicating complaints about advice/info related or claims-related matter
  + Direct involvement in the design of retail financial products

B2 Giving advice

According to the MCC, ‘advice’ refers to a personal recommendation provided to a person, whether at the person’s request or at the initiative of the firm, while performing a relevant (C)F. ‘Info’ refers to the provision of info to a person whether at the persons request or at the initiative of the firm that may assist the person in the choice of a retail financial product. Advice does **not** include the following:

* Employees pointing out where info can be found
* Providing info of a general nature
* Providing a brochure or other info without giving additional info
* Info in a newspaper, journal, magazine or other (electronic) forms, which is not meant to lead the reader to a specific product or provider
* Info in a lecture, seminar etc, which is not meant to lead to a specific product or provider
* Info in sound or TV broadcasts, which is not meant to lead to a specific product or provider
* Info provided by back-office employees who do not have direct contact with consumers
* Info incidental to some other professional activity (not subject to MCC), where the purpose is not to assist a consumer with a retail financial product.

1. Minimum competency standards

Parts 1 & 2 of the MCC set out the minimum competency standards and the relevant requirements for individuals. An individual may not carry out a CF **unless** they:

* Have completed 1 or more recognised qualifications, which are relevant to the function
* Are grandfathered in respect of the position
* Are a new entrant, taking part in a training process under the supervision of a qualified person ( person with 1 or more recognised qualifications relating to the function) or a grandfathered person (a person who in the 01.01.2007, was dealing with the retail financial product or specified function in question and had 4 years relevant experience between 01.01.09 and 01.01.07 and who complies with the continuing professional development (CPD) requirement)
* Are performing a prescribed script function (a CF exercised within a narrow and rigid set of criteria and according to a prescribed script and routine), having met prescribed, more limited standards specified
* And; in the case of 1 & 2 are compliant with the CPD requirement

C1 Completing a recognised qualification

Part 3 of the MCC set outs the specific professional qualifications and relevant competencies for each product category

C2 Grandfathering arrangements

This is a mechanism used to recognise the value of hands-on experience by existing practitioners. It only applies if the following are met:

* As of 01.01.07, the person was dealing with the particular product or function
* The person has 4 years’ experience of this in the period 01.01.09 to 01.01.07
* The firm carries out an assessment for grandfathering purposes and documented this
* The firm certified the person’s compliance with the experience requirement
* The person complies with the CPD requirements on an ongoing basis, as of 01.01.08

The final date for completion of a certificate of grandfathered status was 31.12.12

C3 New entrants

A new entrant in a regulated firm must participate in a training programme that includes:

* Initial training- a relevant training programme organised by the firm, or obtaining part of a relevant recognised qualification
* Supervision- acting under the direct supervision of a qualified or grandfathered person, where all documentation relating to offering or arranging a product must be checked and signed off by above persons until that person obtains recognised qualification.
* Working towards a recognised qualification- defined as:
  + Registering for the first exam sitting available
  + Working towards obtaining qualifications on a consistent and timely basis, until complete
  + Maintaining a record of all exams completed, results obtained, and exams scheduled
* Timeframe- the max period for which a new entrant may participate in the training process is **4 years**

In limited circumstances, a pro-rata adjustment may be applied for certain statutory leave, e.g. statutory adoption, maternity leave, serious illness, career break etc. this is provided so long as the person is not carrying out any of the relevant functions while availing of the statutory leave.

C4 Prescribed script function

Certain concessions exist for those carrying out call-centre type duties, but it is important to understand the scope of the regulations to ensure that the activities fall within the definitions of ‘prescribed script function’. Where a person operates within a narrow and rigid set of criteria and according to a prescribed script and routine, they are considered to have complied with the MCC obligations of the following standards are met:

* They must operate according to a script developed by someone who meets the standards set out in the MCC
* As part of initial training, they must participate in a training programme organised by the firm, or obtain part of a recognised qualification relevant to the function
* The person must complete additional training relevant to the function on an ongoing basis
* The person must refer requests for info and advice that are outside the specific content of the script to a qualified or grandfathered person
* The person must operate under the supervision of a person who is qualified or grandfathered person for that function

1. Continuing professional development

CPD- attendance at seminars, lectures, conferences, certified completion of appropriate e-learning tutorials, workshops or courses dealing with a directly relevant topic- related to the competencies set out in the appendices to the MC

Ethics- practical analysis of objective standards of right/wrong- AKA ‘moral philosophy’

The CB insists that all people holding CF complete **15 hours** CPD each calendar year. To ensure compliance with IDD staff of:

* I undertakings involved in I distribution activities dealing with customers falling outside the definition of ‘consumer’ must complete **15 hours** CPD in relation to I
* RI undertakings involved in RI distribution activities must undertake **15 hours** CPD
* I intermediaries involved in I distribution activities dealing with customers falling outside of the definition of ‘consumer’ must undertake **15 hours** annual CPD

In addition:

* Where a person who is grandfathered for 1 function and holds a recognised qualification for other functions completes the required **15 hours** of CPD
* A min of **1 hour** of CPD each calendar year must be completed for each function falling within the Minimum Competency Standards
* A person must complete at least **1 hour** of CPD each calendar year relating to ethics

Each year is treated separately, and surplus hours cannot be carried forward. However, if a person fails to complete 15 CPD hours (and has not incurred another shortfall within the previous **5 years**) they may make up the shortfall by the end of the following year.

Records of CPD hours are subject to audit by the professional body and the CB reserves the right to check any person’s compliance with the CPD requirements.

A max of **8 hours** is allowed in any **1 day for 1 event, and 4 hours for any single topic**.

There are 2 ways to obtain CPD hours. One is to participate in a CPD scheme operated by an external professional education body that provides a recognised qualification. The other is that a person may arrange their own CPD hours. If they choose this, they must retain written records to demonstrate that they have satisfied the requirement (maintain a log, receipts from courses attended, certificates of attendance or completion) including a statement of relevance to the products or functions.

1. Responsibilities of the firm

E1 Internet services

Where services are provided over the internet, a qualified or grandfathered person for the service provided must approve and sign off on the process for selection of the p/s.

E2 Outsourcing

If a firm outsources activities, the provision of which are subject to this Code, the firm remains fully responsible for discharging all its obligations under the MCC

E3 Prescribed script function

The firm must ensure that:

* The criteria, script and routine developed by someone who meets the standards set out in MCC
* The person performing the function is properly supervised and compliant with the MCC
* The person performing the function has participated in a training programme organised by the firm, or obtain part of a relevant recognised qualification
* The person performing the function has completed additional training relevant to the function on an ongoing basis
* It maintains records to demonstrate compliance with the MCC

E4 register of accredited persons

A person who satisfies the CBs minimum competency requirements. A firm must maintain a register of all Aps acting on its behalf for a min if **6 years** after the date the person ceases to perform the relevant function. The content of the prescribed format is:

* Name
* Qualification, grandfathered status, new entrant, or prescribed script function
* Product or specified function
* Date of obtaining a recognised qualification or being grandfathered
* Whether a new entrant
* Date of commencement
* Qualifications pursued

Each branch office must have the register of all Aps working in that branch. Those removed from the register, specifically for non-compliance with the CPD requirements must be restored promptly once compliant with the requirements again.

E5 Grandfathered status

A firm must provide a statement confirming the person’s grandfathered status upon request and must retain any records and documentation needed to create and confirm any Statement of Grandfathered Status.

E6 New entrants- training and supervision

Firms have significant responsibilities for training and supervising new entrants, they must:

* Inform new entrant, before commencing the activity, of the 4-year examination requirement
* Agree a plan to achieve this and monitor progress in adhering to the plan
* Ensure that the new entrant undergoes a training programme or undertakes part of a recognised relevant qualification before dealing with consumers

Each supervisor must supervise no more than **7** new entrants.

E7 Annual review

Regulated firms must hold an annual review of employees’ qualifications, development and experience needs

E8 Certificate of competency

If a consumer wishes to confirm that the person performing a relevant function meets the MCC standards. When this happens, the form must provide the consumer with a ‘**Certificate of Competency’** on the firms headed stationery.

1. Ethics and conflicts of interest

F1 The importance of trust

The relationship between the advisor and client is one of trust, confidence and responsibility, it is known as a ‘fiduciary relationship’. The principle of utmost good faith is central to ensuring an ethical relationship is established and maintained.

F2 Conflicts of interest

Market pressures can sometimes lead to situations where an adviser or a firm is tempted to act in a way that conflicts with their ethical and regulatory duties towards a consumer.

F2a regulatory requirements

Principal 4.7 of the CPC states that a firm must, in all its dealings with customers, ‘seek to avoid conflicts of interest’.

Where a conflict cannot reasonably be avoided, the nature of the conflict should be disclosed to the consumer. The consumer may then acknowledge in writing that they wish to proceed. The firm must also ensure that the conflict does not result in damage to the interests of the consumer.

Insurers must not require an intermediary to introduce a specified (min) level of consumer business to retain an appointment. Also, if commission is based on levels of consumer business introduced, the insurer must be able to demonstrate that these arrangements do not:

* Impair the intermediary’s duty to act in the best interests of consumers
* Give rise to conflict of interest between the intermediary and the consumer

For all authorised firms, remuneration arrangements with employees acting in advising roles, must not be structured in such a way that potentially impairs the firm’s obligations to:

* Act in the best interests of consumers
* Satisfy the suitability requirements (Chapter 4E)

Where there is potential for conflict or abuse, the CPC requires that effective Chinese Walls (an arrangement within an org that requires info in 1 business area is withheld in certain circumstances from other operating units or from those with whom it deals during carrying on another part of its business) are in place between the different business areas. This must be supported by clear written procedures that include steps to be take in event of a breach. Firms must maintain a register of gifts and hospitality records:

* Gifts and hospitality (including travel costs) given (and by whom) and received (and by whom)
* Who authorised acceptance of the gift and or hospitality
* Political donations
* Charitable donations

F3 Good ethical practice

There needs to be a conscious effort on the part of management and staff to maintain appropriate levels of competency and compliance with fitness and probity standards. The CBs approach to regulation is to hold the board and management fully accountable for ethical conduct of the organisation. Senior management must lead by example and, in doing so, create a powerful culture of compliance and of ‘doing the right thing’.