**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