**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