PRACTICE OF GENERAL INSURANCE BROKING

CIP-08

V2

Technical contributors

Since it was first published, a number of technical contributors have updated, reviewed and verified specific and specialised sections of this textbook. Their work has been invaluable in producing such a comprehensive textbook and is much appreciated.

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Version

Version 2 of CIP-08, published in May 2022, is current at the time of its publication. Any changes (e.g. legislative, regulatory, taxation) thereafter are not included in this textbook.

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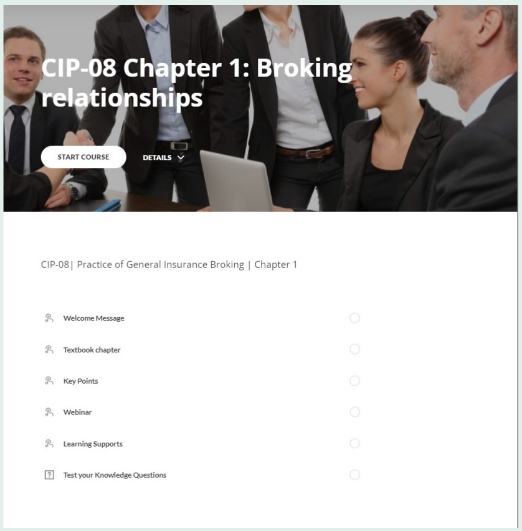
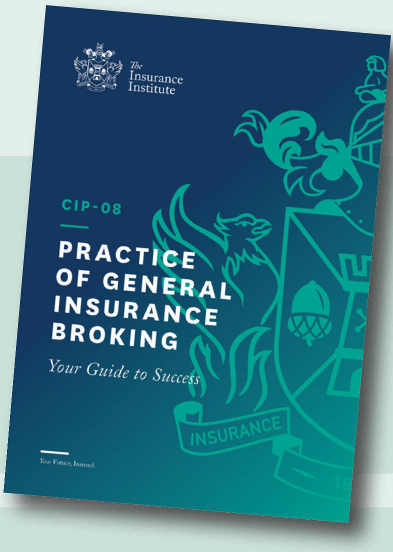
How to study this module

Before starting to study this module, you should log into the **Member Area** of www.iii.ie to access your online learning supports. Here is a snapshot of what you will see under 'My Examinations'.



Your online learning supports provide you with a welcome to the module, identify how you learn best, provide you with your Guide to Success and give you invaluable study skills tips.



Your Guide to Success

Your Guide to Success is essential to getting you started on this module. It details how to plan your study and cover all the material ahead of your exam. It will help you find the best way to approach your study, give you advice on how to manage your time and ensure you give yourself the best chance of exam success.

Online learning supports

We have a range of learning supports that can help you as you work through this module. As well as your Guide to Success, these supports include:

- an e-book
- an exam countdown timer
- webinars
- chapter-by-chapter key points
- sample/past papers with guideline answers
- microlearning resources to help with challenging topics.

You'll find these supports and more in the Member Area of www.iii.ie.

Textbook

All of the questions that feature in your exam are based on the content in this textbook. The online supports listed on the previous page are there to aid your study of the textbook, **not replace it**. The textbook includes key features designed to help you break down and remember the material as well as understand central concepts. These features work as follows:

Examples: These indicate how theories operate in simple day-to-day situations.

Just thinks: These offer you an opportunity to interact with the material by applying it to your learning.

Key terms: These appear in the margins and at the end of the textbook, and explain the meaning and context of insurance terms you may not have come across before.

Quick questions: These appear throughout the textbook and are designed to test your knowledge as you go. You can check your answers at the end of each chapter.

Reminders: These are reminders of, or references to, concepts, definitions or topics previously outlined or studied.

End of chapter questions: These are a great opportunity to test your learning and understanding of the chapter's topics. You can check your answers at the end of each chapter.

Case law: These outline the details of a case relating to the legal issue being discussed.

Case studies: These illustrate the application of the theory to more detailed real-life or practical work scenarios.

Sample exam questions: These can be found at the end of each chapter and are examples of the types of question that may appear on the CIP-08 exam paper. You should familiarise yourself with the types of question asked, the key terms used (e.g. 'state', 'explain'), the amount of marks and time to be allocated to each question, and the suggested answers. These questions and answers are provided to help you to focus your study and prepare for your exam.

Profiles: Throughout CIP-08, various sample profiles will assist you in your study of the practice of general insurance broking. Relevant to all chapters is the profile of a sample broker (Tuhill Insurance Brokers Ltd); relevant to Chapters 3 and 5 is the profile of a sample insurance client (Sean Burke); and relevant to Chapters 6 and 7 is the profile of a sample corporate client (Best BeanZ plc). These profiles are designed to help you reflect on how and why each different topic is relevant to you as a broker and to your client. The objective is to allow you to relate the material in the chapter to situations that you, as a broker, may face on a daily basis.

Useful resources: These resources provide additional context to the material you are studying and keep you up to date with current trends and developments. However, it is important to note that you will only be examined on the information contained within this textbook.

Index: At the end of the textbook, there is an index of websites, legal cases, legislation, acronyms and key terms that provide a quick and easy reference to the material featured in this textbook.

Any questions? Contact our Member Services team on **01 645 6670** or **memberservices@iii.ie**, who will be happy to help.

Table of contents

Chapter 1

Broking relationships

What to expect in this chapter

As you know from your previous studies, insurance products and services play an important part in our everyday lives. While they provide many benefits – insuring against future risk, saving for retirement and providing protection from the financial impact of accident and sickness – they can also bring unintended exposures. By their nature, insurance products are technical and expertise is required to ensure that the most suitable cover is in place for the client.

Brokers are experts in the insurance market and its products and they play a central role in ensuring that clients' insurance needs are met. In the event of a loss, they advise their client on how to best navigate the situation, and work to ensure that the policy's promise is delivered and the client is compensated. The broker should conduct themselves and their business in a way that does not expose the client to additional risks.

Your previous studies focused on the consumer-facing elements of the broker's role, in particular, their regulatory responsibilities. In contrast, this textbook explores the role of a general insurance broker once they have identified the client's needs and examines how the risk is negotiated and placed with an insurer. We will also examine how general insurance programmes are designed within larger commercial brokers and the specialist services they can offer, e.g. risk management and consultancy services.

Chapter 1 sets the scene on general insurance broking practice. It describes the role, the services offered, and the benefits of using a broker. It also explores the regulatory relationship between the different categories of brokers, their clients, and the insurers.

To help you relate the material in this chapter to a real-life situation, we will refer to the sample broker profile of Tuhill Insurance Brokers Ltd (see page 3). This will help you reflect on how and why each of the topics in this chapter impacts on brokers.

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Role of the insurance broker**	Outline the role of the broker, the services they provide and the benefits to clients and insurers.
B	**The broker as an agent**	Demonstrate how the agent-principal relationship operates within the different agency arrangements and the broking distribution channel.
C	**Agreements with clients and insurers**	Describe the types and content of agreements between brokers and clients, and brokers and insurers.
D	**Categories of brokers**	Describe the categories of insurance intermediaries operating in the Irish insurance market.

Sample broker profile

Tuhill Insurance Brokers Ltd

Tuhill Insurance Brokers Ltd (TIB) was established in 1987. It is a general insurance broker regulated by the Central Bank of Ireland (the Central Bank)[1] and prides itself on its personalised service, which is delivered by a staff of twenty-two. TIB is located in Cork City and deals mainly with commercial insurances, although it will organise personal lines insurance for its commercial clients. TIB is registered under the **Insurance Distribution Directive 2016** (IDD).

Income

TIB generates a premium income of €30 million. Its largest client is an international food manufacturing company (Best BeanZ plc), which has manufacturing plants in Ireland, the United States and France. Best BeanZ plc is an Irish-owned company with its head office in Cork. It pays an annual premium in the region of €2 million. On average, other TIB clients pay annual premiums of €30,000, with the majority of premiums ranging from €1,000 to €100,000.

TIB works hard for its clients and the client loyalty and renewal retention rate (currently over 93%) are a reflection of its efforts.

Remuneration is made up of commission paid by insurers and brokerage fees paid by clients. In some situations, TIB will not charge brokerage fees in order to help secure new business or a renewal from an existing client.

TIB is open to exploring other areas of income, in particular, offering other paid services to its clients, e.g. risk identification surveys, health and safety consultancy and motor fleet risk management. With this in mind, an experienced risk control surveyor was recently recruited to join the broking team.

Where possible, TIB operates a modern paperless office and benefits from up-to-date IT systems.

Compliance

TIB's Human Resources Director oversees the compliance function and maintains a compliance activities calendar. This ensures that TIB submits its Annual Online Returns to the Central Bank on time and that qualified staff are meeting their continuing professional development requirements. The Central Bank website provides a useful resource in the quarterly *Intermediary Times Newsletter* which outlines any upcoming regulatory changes that may impact TIB. TIB's directors attend the annual Retail Intermediary Roadshows hosted by the Central Bank, which give TIB an opportunity for face-to-face engagement with Central Bank officials. In addition, being a member of Brokers Ireland, TIB receives regular email newsletters which provide compliance updates, advice on best practice and suggested templates for various policies, procedures, forms and letters. At the moment, there are no outstanding compliance-related issues.

Agencies

TIB has agencies with a number of leading insurers, as well as four managing general agents and three Lloyd's brokers. Seventy-two percent of the business is placed in the Irish insurance market and the Lloyd's market underwrites the rest. Insurer rating is an important criterion when selecting TIB's insurance partners (see Chapter 4C1), so TIB reviews its panel of insurers on a regular basis.

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[1] Note that throughout this textbook, the Central Bank of Ireland is referred to as 'the Central Bank'.

Sample broker profile

Tuhill Insurance Brokers Ltd (contd)

Schemes

TIB operates three schemes. It has a commercial scheme for builders (underwritten by an Irish insurer), which is sub-broked to five selected brokers in Ireland. It operates two schemes only available from TIB – one for hardware shops and the other a professional indemnity scheme for accountants.

TIB staff

TIB has six commercial business executives who report to the Chief Operating Officer. Of the remaining employees, six provide support services to the business executives, four deal with personal lines, two handle claims and the remainder are involved in IT and other services. All report to the Operations Manager.

TIB aims to retain and grow its business, based on the quality and professionalism of the staff. Eight staff members have the CIP designation, two have the LCI designation[2], six are qualified to ACII level and four are qualified to FCII level. In addition, the HR and finance staff are highly qualified in their respective areas.

Claims

TIB has two staff members who deal with smaller claims in-house. Clients who suffer major losses are directed to a firm of public loss assessors, which does not pay TIB for these referrals. TIB is happy with this arrangement.

[2] LCI (Licentiate of Compliance Institute) is the designation awarded by Compliance Institute.

A Role of the insurance broker

Insurance broking is a major distribution channel for insurance in Ireland. In terms of size and legal structure, it is a very diverse sector, from one-person operations to large corporate broking firms. The **Central Bank of Ireland** (Central Bank) Register lists the insurance, reinsurance and ancillary insurance intermediaries regulated by the Central Bank.[3]

So what role do **brokers** perform, what services do they provide and what are the benefits to **clients** and **insurers**?

Brokers have a unique position in the transaction of insurance. They are positioned between their clients and the insurer, to ensure the two parties reach a contractual relationship in a binding and transparent way. In some cases, the buyer (insured) can purchase insurance products directly from the seller, if the insurer sells directly to members of the public. However, the buyer may not know all the options available or understand the complexities of the policy wording; perhaps the buyer lacks the time to make all the arrangements or simply wants to make a choice based on a wide range of options. In this case the buyer may seek assistance from a specialist **adviser**, an insurance broker, who can offer **advice** and represent them in communication with the insurer.

The insurance broker will usually earn a commission payment from the insurer based on a pre-negotiated agreement. The insurance broker may also charge the insured (client) a direct (brokerage) fee for its services. Broker remuneration is covered in Chapter 3D.

The broker's relationships with the insurer and insured are wholly dependent on trust. The broker, as an **agent**, owes a legal duty of care to its **principal** (which can be the insured or the insurer at different stages in the insurance process). The law of agency and its impact on brokers, their clients and insurers is explained in Section B. The consumer protection requirements imposed by the Central Bank, in addition to these legal duties, are examined in Chapter 2B.

Central Bank of Ireland

financial regulatory body responsible for the authorisation and supervision of financial service providers in the Republic of Ireland

broker

an insurance intermediary that provides its principal regulated activities on the basis of a fair analysis of the market

Consumer Protection Code 4.18

clients

a buyer of financial services/products. Client can include, for example, individuals, firms, organisations or clubs. The terms 'client' and 'customer' are interchangeable.

We use the term 'client' extensively in this textbook, especially when examining the activities of insurance intermediaries (and advisers working in intermediary firms).

insurer

a risk-carrying regulated entity/firm (product producer)

3 Central Bank of Ireland Register, http://registers.centralbank.ie.

adviser (advisor)
one who is involved in the advising process

advice
a personal recommendation to a person, whether at their request or at the initiative of the firm, in the course of performing a relevant function

Minimum Competency Code 2017 (Definitions)

agent
one who is authorised by a principal to bring that principal into a contractual relationship with a third party

principal
a person for whom another acts as agent

claims experience
detailed breakdown of past losses, giving details of paid and outstanding claims (ideally confirmed by the holding insurer)

A1 Services offered by brokers

Brokers perform an increasing range of different services for both their clients and the insurer.

Just think

Considering the case of TIB, what are the different services it provides to the clients?

A1a Services to the client

The essential functions that brokers perform for their clients are to:

- Review the client's insurance 'wants' and 'needs'. These are the client's insurance expectations, as well as necessary areas of cover identified by the broker and/or client. This process is fundamental to establishing the client's cover requirements before recommending an insurance policy. The broker will need to appreciate how the client's business operates and thereby identify its exposures. An overview of the business itself and of the principals within the business are relevant, along with the client's previous **claims experience**.

  These insurance wants and needs were explored in the Personal General Insurance/Commercial General Insurance/Health Insurance and Associated Insurances modules. Generally, the broker will thoroughly examine the client's business according to the various risks to be insured. For example:
  - Property (what is at risk and how it is protected)
  - Business interruption (how a property loss would affect business activity)
  - Employers' liability (number of employees, physical hazards in the workplace)
  - Public and product liability (turnover, footfall (if a public premises), intrinsic risks of the business and the type of products it buys and sells)
  - Professional indemnity (the financial consequences of an alleged breach in professional duties)
  - Cyber (costs of recovery after a cyber-related security breach)
  - Motor fleet (number and type of vehicles, drivers, approximate annual mileage)
  - Directors and Officers (D&O) and fidelity guarantee (number of company directors and employees)
  - Employment practices liability and pension trustee liability (perceived exposure).
- Decide on the most suitable market for the risk, based on the client's wants and needs.
- Obtain quotations from suitable insurers in that market. Best practice dictates that quotations be issued in advance of the inception date, highlighting the due date for payment and any special conditions.
- Negotiate premium, terms and conditions with the insurer(s). This is an essential skill for insurance brokers and an important customer service.
- Once quotations have been received and terms negotiated, the broker must decide on the suitability of an insurance policy, taking into account:
  - Level of cover
  - Cost of policy
  - Cover terms
  - Insurer's financial security (see Chapter 4C1)
  - Insurer's claims service (see Chapter 5G).

- Present these options to the client, advise on their suitability, and communicate the client's instruction to the insurer in order to incept cover.
- Continue to provide advice to the client. This is the distinguishing feature of an insurance broker and demonstrates its expertise. Advice should be offered at quotation, policy inception and renewal, and whenever the client requests it. A good broker will have accurate, timely and relevant information available in a format accessible to its clients.
- Negotiate renewals. Most brokers seek long-term relationships with their clients. They have a particular duty of care to ensure that a client's wants and needs are assessed on a regular basis and that the most suitable insurance cover is offered each year.

  Brokers should understand the client's needs at renewal (which may have changed during the insurance period) and also be up to date with emerging risks, the insurance market and the types of cover available. Treating clients fairly is a key concern of the Central Bank and an important factor in customer service. The cheapest policy may not always meet the client's wants and needs in terms of the insurance coverage. Insurers may offer premium reductions or cover enhancements to encourage renewal. This is where the broker's negotiation skills are invaluable.
- Advise and assist clients when they have a claim. The type of claims service varies between brokers (see Chapter 5G).
- Design and coordinate insurance programmes. Brokers offer this service to clients with more complex insurance needs (i.e. where a client has multiple asset types) and possibly in more than one country. Here, the broker must source a range of insurance products and place them together in an insurance programme that caters for all the different risks their clients may face (see Chapter 6).
- Provide **risk management** and added-value services. The process of managing and transferring risk is complex. Insurance brokers increasingly offer additional services to their clients to help them manage risk in non-traditional ways, e.g. surveys and business continuity planning, including business interruption (BI) reviews and disaster recovery services (see Chapter 7).

risk management
the identification, analysis and economic control of those risks that can threaten the operations, assets and other responsibilities of an organisation

Just think

Again, considering the case of TIB, what are the different services it performs for insurers?

A1b Services to the insurer

The following are the essential functions that a broker performs for insurers:

- Effective distribution of insurance products to clients
- Collecting relevant information from clients and presenting it to the insurer
- Updating the insurer on the client's needs and expectations
- Checking the accuracy of an insurer's documentation and pricing
- Issuing documentation to clients
- Collecting **premiums** from clients and passing them to the insurer
- First contact for all the client's administrative issues
- Experience and expertise in explaining cover issues to clients

premium
payment by the insured to the insurer, which compensates the insurer for bearing the insured's risk

- Supporting claims management and risk management
- Complying with regulatory responsibility in terms of handling client money
- For online quotations, a broker assumes responsibility for all regulatory disclosures, the implementation of underwriting criteria, information gathering from clients and the production and issuing of policy documents to clients.

In summary, although the broker's first responsibility is to the client, brokers also provide a number of services to insurers, both directly and indirectly. Next, we will look at the benefits enjoyed by both clients and insurers using the services of a broker.

A2 Benefits of insurance brokers to their clients and insurers

We have already mentioned that some insurers sell their products on a 'direct' basis, using internet technology and investing heavily in advertising and marketing, e.g. personal lines products such as motor, home and travel insurance.

Just think

Why do some clients buy their insurance products through brokers?

A2a Benefits to clients

The main reasons that clients buy their insurance products through brokers are:

- **Expert knowledge**. A broker can provide expert professional advice to a client on a wide range of insurance-related matters. A broker possesses up-to-date knowledge on the ever-changing insurance market, including the policies available and the risk appetite of specific insurers. For more complex products (e.g. commercial lines), brokers can explain the technical aspects of multiple covers and combined policies and can negotiate cover for extensions.

  Access to the broker's knowledge and research (undertaken in accordance with professional criteria) allows the client to make an informed choice. In addition, the broker can communicate this information to the client in a user-friendly way, ensuring that the client does not misunderstand the policy coverage.
- **Local expertise**. Clients requiring the placement of risks in specific areas of the world can avail of a broker's knowledge of local regulations and insurance requirements where the broker is local to that area or has a network of contacts in that area.
- **Convenience**. Some clients do not have the time or inclination to research the insurance market and compare quotations. Although price comparison websites make it easier to obtain a range of quotations, most brokers offer service methods to suit their clients, ranging from face to face (home or workplace visits) to phone, email or web-based methods, e.g. electronic data interchange (EDI).
- **Impartial quotation**. Brokers can, in most cases, obtain a range of quotations from insurers, without the need for the client to repeat the risk information. Due to their size and influence with insurers, brokers may be able to obtain more favourable terms than if the client searched the market directly. Brokers regularly offer a client their current insurer's renewal terms in conjunction with the best alternative quotation(s) on the market.

- **Assistance with claims**. Not all brokers offer a full claims service. However, the client may look to the broker to advocate on their behalf in the event of a claim. The client will rely on the broker's knowledge of the policy wording and familiarity with the claims process, in the hope of obtaining a more favourable outcome with the insurer (see Chapter 5G). A broker can also ensure that the claim is handled in accordance with **Consumer Protection Code** (CPC) requirements, including timeframes and provisions that may be of benefit to the client. This gives the client peace of mind and support.
- **Relationship building**. Many clients stay loyal to the same broker over several years, e.g. a family business whose broker has in-depth personal knowledge and established their trust. Clients may also wish to place their personal insurances with the same broker that looks after their commercial policies and vice versa. Brokers that spend time getting to know and understand the needs of their clients will inevitably build loyalty and long-term relationships.
- **Other services**. Brokers are increasingly offering a wider range of services to their clients. This is in the interest of the broker, as the more trust it builds, the more services and insurance business the client is likely to purchase (see Chapter 7).
- **Peace of mind**. The broker assumes the responsibility for explaining the insurer's disclosure requirements to the client (see Chapter 3A3). This saves the client worrying about the claim being rejected on the grounds of non-disclosure.

Consumer Protection Code

code issued by the Central Bank, setting out requirements that regulated firms must comply with in order to ensure a similar level of protection for consumers

A2b Benefits to insurers

There are a number of benefits to insurers in distributing their products through insurance brokers:

- **Technical expertise**. Some insurance products can be complex. The insurer can trust that the broker will explain the more technical aspects of the policy to its clients, identify any gaps in their insurance needs and prevent any 'surprises' in the event of a claim.
- **Convenience**. Clients can be demanding and time-consuming for insurers in their level of interaction (e.g. dealing with queries) and in the administration required to set up their policies. As brokers take on the responsibility of interacting with the client, insurers are better able to concentrate on their core business of **underwriting** and paying claims. In addition, brokers can present risk information to insurers in a standardised, pre-agreed format and both the broker and insurer can then negotiate and communicate from a position of knowledge.
- **Peace of mind**. Insurers can trust that the broker has disclosed the information required to underwrite the policy, knowing that the broker has explained to the client the possible consequences of non-disclosure. The broker assumes certain responsibilities from the insurer such as regulatory updates (e.g. updating the broker's proposal forms to comply with the **Consumer Insurance Contracts Act 2019**) and the provision of pre-contractual information.
- **Cost benefits**. Administering each policy directly with the client can be costly and so the services of a broker can save the insurer time and money. Insurers can delegate tasks to the broker, e.g. issuing policies and schedules and collecting premiums. Where brokers are tasked with extra workloads, they may charge a fee or negotiate an increased commission.

underwriting

process of risk pooling, selection (choosing who and what to insure) and assessment of individual risks that meet the insurer's risk criteria

In practice, these benefits are most evident when the broker has a good relationship with both clients and insurers. It takes time and effort to build these relationships, but they are the key to successful broking.

A3 Classes of business handled by brokers

We have already identified the key benefits for individuals and businesses of purchasing insurance via a broker rather than directly from insurers. However, many individuals, some small-to-medium-sized enterprises (SMEs) and even some larger organisations choose not to use insurance brokers, and may buy some of their insurance products directly from insurers. This is likely because of the standardised nature of personal lines and SME insurance risks.

The personal lines market is very competitive and consumers have many options in terms of distribution channels, e.g. direct, online, call centres and broker channels. In particular, the increased use of the internet and price comparison websites have contributed to this trend. Some insurers have specifically designed products that are only available to clients directly and have established call centres to service them.

Insurance for smaller commercial risks is often available directly from an insurer. However, larger and more complex commercial risks are most commonly sold through brokers. For specialist risks (e.g. marine, aviation or construction), clients are almost exclusively serviced by insurance brokers. As each specialist risk is unique, there is unlikely to be an 'off the shelf' solution; brokers are required to assess such risks individually and design the insurance programme on an exclusive basis.

Just think

Can you think why some classes of insurance are more suited to being distributed through insurance brokers?

While brokers can handle all classes of insurance, some classes are more suited to being handled by brokers than others. Personal lines business lends itself more easily to direct transaction with insurers, whereas commercial lines are more complex, often requiring the guidance and assistance of a broker.

A3a Classes of insurance business most suited to brokers

Some classes of insurance are only available to purchase through a broker. This is usually due to the nature of the risk. For example:

- **Complexity**. For more complex risks (e.g. those involving hazardous industries or non-standard properties), the insurer can feel confident that the broker will understand the risk exposures and the technicalities of the cover. Similarly, the insured can feel confident that the broker will have the specialist knowledge needed to ensure the risk is properly insured (see Section A2a). Other examples of complex risks include high-value jewellery or fine art, performance cars, marine, aviation, construction, manufacturing and food.

- **Size of risk**. For high-value assets, the higher sums insured take up more of the insurer's financial capacity (the total amount of risks it can accept) and may prevent it from accepting other business. This results in a concentration of risk that an insurer may not be comfortable with, unless there is a broker involved to access the **co-insurance** or reinsurance markets. For example, this is common for commercial property constructed with combustible material with high overall sums insured. Co-insurance is often the only solution available and a broker is required to structure these arrangements.
- **Location of risk**. Some risks may be located in high-risk areas such as flood plains, or in parts of the world affected by earthquake or extreme weather events. Insurers are unlikely to offer cover unless they fully understand the risk. A broker is better able to provide full and detailed risk data than a client. For example, a client seeking insurance for a new home in a flood-prone area may be unable to obtain cover online. A broker, perhaps using their in-house technology such as flood mapping, could explain to the insurer that the client's home is built on top of a low hill and has never flooded. The broker could then negotiate tailored/bespoke cover, having explained the individual circumstances. As another example, some organisations have assets in a number of different countries and may require a broker to put together an insurance programme in multiple territories.
- **Availability of cover**. Some risks are specialist in nature, e.g. latent defects, kidnap and ransom, professional indemnity insurance for the construction sector, trade credit insurance, performance cars or cyber insurance. Brokers may have specific market knowledge to identify the few insurers who specialise in these types of cover. If the risk is highly specialised, it may require a broker who has experience in the niche area and could negotiate a specialist arrangement with a chosen insurer (known as '**delegated binding authority**' – see Section C2a and Chapter 4B2).

co-insurance

proportional risk sharing between insurers

delegated binding 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

A4 Customers

The Consumer Protection Code (CPC) distinguishes between customers and consumers. It defines a 'consumer' as any of the following:

a. a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (includes partnerships and other unincorporated bodies such as clubs, charities and trusts); or

b. incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided they are not part of a group having a combined turnover of more than €3 million)

… and includes a potential 'consumer'.

When used, the term 'customer' refers to:

- Any person to whom a **regulated entity** provides or offers to provide a product or service (subject to the CPC)
- Any person who requests such a product or service.[4]

regulated entity

a financial service provider authorised, regulated or supervised by the Central Bank or other EU or EEA member state, that is providing regulated activities in the state

Just think

Can you name the various categories of customers that a broker may provide services for?

[4] CPC, Chapter 12, Definitions.

personal consumer

a consumer who is a natural person acting in their private capacity (outside their business, trade or profession)

vulnerable consumer

a natural person who:

a. has the capacity to make their own decisions but who, because of individual circumstances, may require assistance to do so (e.g. hearing impaired or visually impaired persons)

b. has limited capacity to make their own decisions and who requires assistance to do so (e.g. persons with intellectual disabilities or mental health difficulties)

Consumer Protection Code (Definitions)

In their business dealings, brokers may provide services to a:

- **Personal consumer**
- Commercial consumer (e.g. a small business, partnership, club, trust or charity)
- Corporate/commercial customer (e.g. a business with turnover greater than €3 million)
- **Vulnerable consumer**

As you know from the Compliance and Advice module, the Central Bank enforces rules that give greater protection to consumers than to other insurance buyers. However, it has been made clear that the CPC's General Principles apply to all customers and that the Central Bank expects all regulated entities to observe the 'spirit' of the CPC when dealing with all of their customers, whether or not they are defined as 'consumers'.

It is accepted that brokers use the terms 'customer' and 'client' interchangeably. Throughout this textbook, when not specifically referring to a consumer (as defined by the Central Bank or used in specific legislation), the term 'client' will be used.

B The broker as an agent

From your study of the **law of agency** in the Compliance and Advice module, you will be familiar with the roles of agent and principal. An agent brings their principal (the person they act for) into a contractual relationship with a third party. In most areas of business, an agent acts for just one of the parties to a **contract**, so identifying their principal is straightforward.

law of agency

law governing the agent–principal relationship

contract

voluntary agreement between two or more parties that is enforceable at law as a binding legal agreement

However, as we will see in Section B1, insurance contracts are more complicated, as an insurance broker acts for both parties (i.e. the client and the insurer) at different stages of the insurance process (as shown in Figure 1.1).

Figure 1.1 The broker as agent

You will also recall from the Compliance and Advice module that the duties of an agent are:

- Duty of obedience – to perform all their principal's lawful instructions in a timely manner
- Duty of skill and care – to exercise reasonable skill and care in the performance of their principal's instructions
- Duty of good faith – to act at all times in the best interests of their principal, to avoid conflicts of interest and to fully disclose any circumstances that may give rise to such conflicts
- Duty of accountability – to account to their principal for all monies received on the principal's behalf.

Quick question 1

Outline why the law imposes such onerous duties on those who act as an agent of another.

The answer is at the end of this chapter.

B1 Who is the broker's principal?

Insurance brokers provide a range of services to their clients, but their main role is to give advice about insurance cover and arrange insurance policies. In this key aspect, they are deemed to be acting on behalf of the client, i.e. the client is the broker's principal. This important point was made in the case of *Winter v Irish Life Association plc* (1995).

Case law

***Winter v Irish Life Association plc* (1995)**

It is a rule of longstanding and universal application that an insurance broker is the agent of the principal who employs [them] to carry out a specific piece of business, i.e. the placing of [their] insurance.

However, the complexity of a broker's role means that there are also situations where the broker acts on behalf of the insurer. While the client is clearly the principal during many key stages of the insurance process, there are also times where the insurer is deemed to be the broker's principal.

This distinction is outlined in Sections B1a and B1b.

B1a Client as principal

The client is the broker's principal when the broker:

- Gives general advice to the client about the cover they require and the market to place their business in, by gaining an understanding of the client's circumstances/ business and identifying their risks and exposures
- Where necessary and appropriate, provides advice or help to the client in completing a **proposal form** or in reviewing, with the client, a **statement of fact**
- Carries out a survey or fact find for the purpose of presenting the information, together with other risk details, to the insurance market
- Presents the underwriting information to a potential insurer on behalf of the client
- Gives the client advice about how to formulate their claim.

proposal form
a type of questionnaire about the subject matter of insurance, completed before an insurance contract is entered into

statement of fact
document generated by an insurer, recording the answers from a proposer to specific questions asked by a telesales operator or insurance broker or on a website, in response to an enquiry for a quotation, thus clarifying the basis on which insurance is accepted and what conditions apply

Just think

Can you think of situations where the broker is acting on behalf of the insurer?

B1b Insurer as principal

The insurer is the broker's principal when the broker:

- Has express authority from the insurer to receive and handle proposal forms
- Handles the forms according to a previous course of business with, or implied authority from, the insurer
- Acts without express authority, an action the insurer either subsequently ratifies or has ratified in the past
- Collects a premium for an accepted proposal or renewal of an existing policy, in which case the premium is treated as having been paid to the insurer
- Has express authority to handle claims
- Has express authority from the insurer under the terms of a delegated binding authority agreement
- Receives a claim payment or premium rebate for the client.

B2 Other agency arrangements

So far we have assumed that the broker (**retail intermediary**) is the agent at all times, but there are others involved in the insurance distribution chain, who sometimes undertake the role of agent. Different examples of **agency** relationships involve **a wholesale broker**, a **managing general agent** or a **reinsurance broker**. In this section, we look at these agents and their roles in the insurance process.

B2a Wholesale brokers

A wholesale broker's clients are other brokers. In this situation, the wholesale broker has no contact with the policyholder. The broker/retail intermediary approaches the wholesale broker in order to access preferential markets and policy coverage. Generally, wholesale brokers are remunerated by retaining a percentage of the overall commission available. For example, where a broker wishes to access the **Lloyd's market** (see Chapter 4B1b) using the services of a Lloyd's broker, the Lloyd's broker is referred to as a 'wholesale broker' and the broker is called a '**sub-broker**' (as in Examples 1.1 and 1.2 and Figure 1.2).

Example 1.1

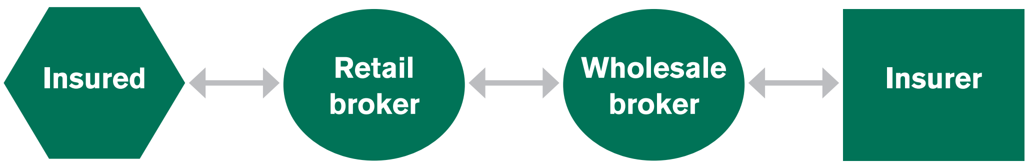
A broker who operates a specialist scheme for a certain trade makes this **scheme** available to other retail intermediaries/brokers under a wholesale broking arrangement. An example would be TIB's commercial scheme for builders (underwritten by an Irish insurer), which is sub-broked to five other brokers. TIB is the wholesale broker, while the retail intermediaries accessing the scheme via TIB are the sub-brokers.

Example 1.2

An Irish broker needs to place a risk, but the Irish market does not have the capacity to write the risk. It therefore approaches a Lloyd's broker for assistance. When this is done, the Irish broker becomes a sub-broker and the Lloyd's broker is a wholesale broker. A sub-broking agency agreement confirms the duties of either side and legalises the relationship between the two entities.

In these examples, the wholesale broker (i.e. TIB or the Lloyd's broker) acts as an agent for the insurer and the sub-broker (i.e. the retail intermediary/broker). The wholesale broker's principal (sub-broker or insurer) depends on the action being undertaken. The sub-broker acts as an agent for the insured and the wholesale broker. Similarly, the sub-broker's principal (insured or wholesale broker) depends on the action being undertaken. A wholesale broker will only have contact with the insured if the wholesale broker has a claims authority with the insurer or where the wholesale broker is responding directly to a client complaint.

Figure 1.2 Wholesale brokers



retail intermediary
a regulated entity/firm that receives and transmits orders for certain financial products and/or gives advice about those products

agency
facility that allows an individual, partnership or company to represent an insurer in terms of the distribution of insurance products, claims handling and dealing with mid-term alterations

wholesale broker
type of insurance broker that acts as an intermediary between a retail intermediary and an insurer, while having no contact with the insured

managing general agent (agency)
an intermediary that has been given delegated underwriting authority by a risk carrier or insurer to accept risks on their behalf and to perform certain functions ordinarily handled by insurers, e.g. underwriting, appointing brokers and, in some circumstances, settling claims

reinsurance broker/intermediary
any person, other than a reinsurer or its employees, who for remuneration takes up or pursues the activity of reinsurance distribution

A number of brokers operating in the Irish market (e.g. WTW, Marsh and AON) have a ‘wholesale division’. They facilitate access to a greater number of insurers for smaller retail intermediaries/brokers who may not have access to these markets. The advantage to the insurer is that it does not have to deal with hundreds of small agencies, but only with the larger brokers’ wholesale divisions and/or wholesale brokers.

The sub-broker has the same duty of care to the wholesale broker as it would to any other principal. There should also be an **Agency Agreement** between the two parties (see Section C2) to ensure both parties fully understand the service being provided and their responsibilities.[5] However, no contract is made between the insured and the wholesale broker.

B2b Managing general agents

A Managing General Agent (MGA, also known as a **coverholder**) is not a broker or wholesaler of insurance products. An MGA operates under a delegated binding authority from an insurer(s). An MGA’s primary function is to provide underwriting services and its primary **fiduciary duty** is to the insurer.[6] The MGA may issue its own policy/paperwork containing reference to the insurer and, in essence, acts as if it were the insurer. It may also provide wider services, e.g. risk management and claims handling. Typically, the management and staff of an MGA will have specific expertise in a given sector.

Some MGAs provide standard policies (e.g. motor, home), thus giving wider choice across a broad spectrum of risk types and creating competition, while others have developed specialist schemes for specific products (e.g. camper vans, classic cars, buses, motor trades, professional indemnity and other non-standard products). In these situations, insurers grant delegated binding authority to those MGAs managing the scheme.

MGAs can be owned by an insurer or a broker or can be independently owned. For example, retail intermediaries/brokers can establish an MGA as a fully-owned but separate entity (to avoid conflicts of interest) to their broking firms. When establishing an MGA, a broker looks to an insurer (or panel of insurers) to provide capacity and an agreement documents the relationship between the two entities. The MGA may compete for the business of other brokers as well as writing the business of the broker that owns it.

In this situation, the MGA acts as an agent between the broker and insurer. The MGA’s principal varies (broker or insurer) depending on the action being undertaken. The broker is acting as an agent between the insured and the MGA (see Figure 1.3). An MGA’s income is based on commission. The MGA receives the premium from the insured (or via the broker), deducts their agreed commission and passes the net premium to the insurer(s). Where claims arise, they are paid by the MGA using the insurer’s claims fund.

Lloyd’s market
insurance market founded in the 18th century to provide cover for various risk types

sub-broker
a broker that sells insurance to another broker through a scheme arrangement

scheme
exclusive arrangement a broker has with an insurer to retail specialist insurance cover to the public

agency agreement
agreement between a principal (insurer) and an agent (broker) setting out the basis on which they will conduct business and binding the insurer to later agreements made by the broker

coverholder
an entity (e.g. broker or MGA) to which an insurer gives delegated binding authority

fiduciary duty
in the insurance context, the legal duty and obligations placed on the agent as a result of having undertaken to perform certain activities on behalf of the principal; forms the basis of a fiduciary relationship that is recognised by law as being based on trust and responsibility

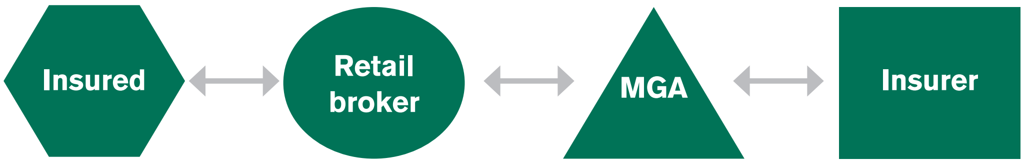
5 Agency Agreements are often referred to as Terms of Business Agreements (TOBAs). These should not be confused with the Terms of Business between an insurer/broker and insured.

6 For more information, go to the Managing General Agents’ Association (UK) website, www.mgaa.co.uk.

Example 1.3

TIB has agencies with four MGAs. When a client contacts TIB for a quotation, TIB checks if one or more of the MGAs quote for that product. If they do, and the coverage and price are suitable for the client, TIB offers that quote to the client. If the client accepts, TIB collects the premium and issues the documentation on behalf of the MGA. TIB then deducts its commission and passes the remaining premium to the MGA. The MGA then deducts its own commission and passes the remaining premium to the insurer. The insurer aims to make an underwriting profit from this premium.

Figure 1.3 Managing general agents



In Ireland, wholesale brokers and MGAs are regulated as retail intermediaries by the Central Bank (see Section D). Stringent regulatory checks aim to ensure that all parties involved (broker, wholesale broker, sub-broker) comply with the requirements imposed on them. These checks, or due diligence, should be performed by the wholesale broker or MGA as part of a regular review process.

B2c Reinsurance brokers

Reinsurance brokers specialise in the placement of reinsurance contracts. They secure business from insurers (their clients), place the business with reinsurers and service and maintain this business.

A reinsurance broker acts as an agent between insurers and reinsurers, as shown in Figure 1.4.

Figure 1.4 Reinsurance brokers

B3 The insurance broking distribution channel

Through the law of agency, Figure 1.5 shows us the insurance broking distribution channel.

Figure 1.5 Insurance broking distribution channel

Now that we are clear about the party the broker is responsible to at the various stages of the insurance process, we will next look at the contractual basis of these relationships. The following section looks at the scope and content of the agreements between clients and brokers, and insurers and brokers.

Quick question 2

When an MGA is authorised to assess and accept risks, state who its principal is.

Quick question 3

Identify the five principal/agent relationships in the following scenario.

Browns asks Ace Brokers to place its property insurance. Ace asks Lloyd's brokers (SlipCo) to place the business in the London market. SlipCo places the business 50% with the Lloyd's syndicate XYZ and 50% with the insurer, SuperCover. SuperCover asks LondonRe (a reinsurance broker) to arrange its facultative reinsurance.

C Agreements with clients and insurers

In order to meet client needs, satisfy regulatory requirements (on provision of information) and manage conflicts of interest, brokers produce formal written agreements with clients.

In order to clarify the details and scope of the relationship, insurers produce formal written agreements when offering agency appointments to brokers.

C1 Agreements with clients

C1a Terms of Business

Terms of Business
document in which a regulated entity sets out the basis on which it will conduct business with consumers

Consumer Protection Code (Definitions)

regulated activities
the provision of products or services by a regulated entity which are subject to the regulation of the Central Bank

The CPC requires a regulated entity to draw up its **Terms of Business** (TOB) with consumers and present these terms in a stand-alone document (Extract 1.1). The document must be issued before providing any service to the consumer.

1.1 Extract Regulatory imperative, CPC 4.12

A regulated entity must draw up its Terms of Business and provide each consumer with a copy prior to providing the first service to that consumer.

The TOB must set out the basis on which the regulated entity provides its **regulated activities**.

Just think

TIB has a good compliance record and provides a TOB to its clients. To comply with the Central Bank CPC, what information must be contained in its TOB?

Summary extract 1.1 shows the minimum amount of information that must be included in a TOB. Regulated entities may include additional information if needed, as long as it is consistent with CPC requirements.

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Summary extract 1.1 Terms of Business, CPC

The Terms of Business must include at least the following:

- The legal name, trading name(s), address and contact details of the regulated entity
- Confirmation that the regulated entity is authorised, licensed or registered, and the name of the competent authority, e.g. the Central Bank or other European regulatory authority
- A statement that it is subject to the Central Bank codes of conduct
- A description of the regulated activities carried out
- A statement regarding the basis on which advice is given to the consumer, e.g. fair/limited analysis of the market
- If the regulated entity is tied for any of the regulated activities, specify the name of each product/service for which it is tied and the name of the regulated entity to which it is tied for those products/services
- A general statement on the charges directly imposed
- A summary of the regulated entity's policy on how it will use a consumer's personal data (usually provided in a stand-alone privacy notice in compliance with the General Data Protection Regulation (GDPR) (see Chapter 5F))
- A summary of the regulated entity's **complaints** procedure (see Chapter 5E2)
- A summary of the regulated entity's policy on conflicts of interest, usually a statement of intent that the regulated entity will seek to avoid any **conflict of interest** and, if unavoidable, will advise the client of this in writing before providing a business service (see Example 1.4 for a sample conflicts of interest policy)
- An outline of what will happen in the event of default by the consumer, normally to state that any failure to pay premiums due will result in policy cancellation or incurring a late-payment charge
- If a member of a statutory **compensation scheme**, the nature of the scheme and the level of protection it provides
- The effective date of the Terms of Business.[7]

complaints

expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:

a. The provision or offer of the provision of a product or service to a consumer by a regulated entity

b. The failure or refusal of a regulated entity to provide a product or service to a consumer

Consumer Protection Code (Definitions)

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 its client, but favours the firm/individual

compensation scheme

a statutory or voluntary scheme that makes payments to affected persons (subject to limits and eligibility criteria) following the failure of a financial service provider

[7] Adapted from Provision 4.13, CPC.

Example 1.4

[Name of firm] will strive to avoid any conflicts of interest between the interests of the organisation on the one hand, and personal, professional, client and business interests on the other. This includes avoiding actual conflicts of interest as well as the perception of conflicts of interest. If this is not possible, clients will be notified as soon as is practicable after the conflict of interest is identified and the client can rest assured that they will be treated fairly where such a conflict is unavoidable.

The purpose of this policy is to protect the integrity of the organisation's decision-making process, to enable our stakeholders to have confidence in our integrity, to protect the integrity and reputation of staff and to protect our client's best interests.

On appointment, each [Name of firm] staff member will make a full, written disclosure of interests, such as relationships and posts held, that could potentially result in a conflict of interest. This written disclosure will be kept on file and updated as appropriate.

[Name of firm] has endeavoured (below) to identify the main conflicts of interest that may arise. However, it is impossible to foresee every eventuality and therefore [Name of firm] relies on voluntary disclosure of potential conflicts of interest by its staff members.

1. [Name of firm] must act with due skill, care, diligence and in the best interests of its clients at all times. [Name of firm] must seek to avoid conflicts of interest between a client and:

    a. [Name of firm], its managers, employees, appointed representatives and any person directly or indirectly linked to [Name of firm]

    b. Another [Name of firm] client.

2. For the purpose of identifying the types of conflicts of interest that arise, or may arise, in the course of providing a product to a client, [Name of firm] must take into account, as a minimum, whether [Name of firm] or its staff members:

    a. Possess outside interests, affiliations or relationships that could create a bias for or against the client (such as family relationships or close friendships, previous employment, past or present business or professional partnership)

    b. Are likely to make a financial gain, or avoid a financial loss, at the expense of the client

    c. Have an interest in the outcome of providing a product to the client that is distinct from the client's interest in that outcome

    d. Have a financial or other incentive to favour the interest of one client over the interests of another client

    e. Receive or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

3. Examples of conflicts of interest for a [Name of firm] staff member include:

    a. Passing large amounts of business to a particular insurer, because they previously worked for the insurer or have friends or relatives working there

    b. Receiving goods or services in return for agreeing to direct business to a particular insurer.

Example 1.4 (contd)

4. [Name of firm] must take adequate steps to maintain a clear audit trail that evidences both its consideration of the client's needs and the decision-making processes that led to a particular market being chosen.
5. The failure to properly manage and mitigate conflicts of interest potentially increases the likelihood that individual policy placement decisions may be made in the interests of [Name of firm] rather than its clients, which could result in clients:
   a. Paying more for core insurance products than they need to
   b. Purchasing add-on insurances and services that they may not need
   c. Paying more for secondary products like premium finance.
6. Where conflicts of interest arise and cannot be reasonably avoided:
   a. The [Name of firm] staff member(s) concerned must report the matter to [Name of firm] senior management or compliance function, orally or in writing, within 1 business day of becoming aware of a conflict of interest having arisen or having the potential to arise.
   b. [Name of firm] must disclose the general nature and/or source of the conflict of interest to the affected client(s) in writing. [Name of firm] will only undertake business with a client with whom it has a direct or indirect conflicting interest, where that client has acknowledged in writing that they are aware of the conflict of interest and still wants to proceed. Such disclosure to the client must include sufficient detail to enable that client to make an informed decision with respect to the service, in the context of which the conflict of interest arises.
   c. [Name of firm] must ensure that the conflict of interest does not result in damage to the interests of the client.
7. [Name of firm] must ensure that its commission arrangements with product producers:
   a. Do not impair [Name of firm]'s duty to act in the best interests of clients
   b. Do not give rise to a conflict of interests between [Name of firm] and the client.
8. [Name of firm] must ensure that its remuneration arrangements with employees, in respect of providing, arranging or recommending a product to a client, are not structured in such a way that will potentially impair [Name of firm]'s obligations to:
   a. Act in the best interests of clients
   b. Satisfy the suitability requirements set out in the Central Bank Consumer Protection Code.
9. [Name of firm] must ensure that its staff members do not accept any gifts or rewards (monetary or otherwise) likely to conflict with their duties in relation to their activities in [Name of firm].
10. [Name of firm] must undertake an appropriate analysis of the conflicts of interest situations that have arisen in the past on a regular basis, including investigating whether such conflicts of interest indicate an isolated or more widespread issue.

This policy is meant to supplement good judgement. Staff and management members should respect its spirit as well as its wording.

Date adopted: ________________

Signed: ________________

product producers

any regulated entity that produces, manufactures or packages a product of a financial or investment nature and is not limited to a product producer as defined in **the Investment Intermediaries Act 1995**

Consumer Protection Code (Definitions)

The Central Bank's 2019 *Addendum to the Consumer Protection Code 2012* introduced a requirement for intermediaries to provide consumers with a Summary of Commissions document. This contains details of all arrangements for any fee, commission, other reward or remuneration agreed with **product producers** and paid or provided to the intermediary. Where an intermediary operates a website, it must publish this document on its website. This information must be provided to the consumer before the contract is concluded and can form part of the intermediary's TOB (see Chapter 3A4d).[8]

C1b Service level agreements

Quick question 4

State when a regulated entity must supply a Terms of Business to a consumer.

service level agreement

an agreement made between the intermediary and the client for specific activities over and above the standard agreement in the Terms of Business

loss adjuster

independent expert in processing claims from start to finish (and appointed by the insurer)

general insurance programme

the design of an insurance solution for a large corporate client

For large or complex risks, there may also be a **service level agreement** (SLA) between the parties. For example, a broker may agree to assist the client with the recovery of uninsured losses or negotiate settlement of a property claim with an insurer or **loss adjuster**. Table 1.1 looks at areas that SLAs can cover.

Table 1.1 Service level agreement

Section	Example of contents
General services	• Review of the client's business and identification of key risk exposures • Assessment of the client's appetite for risk and risk retention • Design of a suitable and appropriate programme for those risks that are insurable • A detailed renewal programme • Use of financially sound insurers • Provision of risk management advice to prevent and minimise loss • Holding of regular meetings to review changes and developments, e.g. within the business, the insurance market or the law • Use of the claims department to represent them in discussions with the insurer(s), should a claim occur
Policies/programmes or services	• The client's **general insurance programme** • The client's directors and officers liability policy • The client's global liability programme • Handling of claims under the client's motor fleet policy • Management of the client's captive insurer
What is not covered	• A statement that specifically details any excesses and exclusions under the agreement, an example of which may read as follows: In dealing with insured claims under your motor fleet policy, we will not be involved in dealing with any loss within your excess (currently €X) or pursuing any uninsured loss recoveries. This excludes subsidiary XYZ and joint venture ABC.

8 Provision 4.58A, CPC Addendum 2019.

Table 1.1 Service level agreement (contd)

Section	Example of contents
How the services will be provided	• The chain of authority within the client organisation • Who the broker will accept instructions from at the client organisation • How the broker will obtain information, e.g. centrally from head office or from each subsidiary/location • Which locations will be visited and how often • Where a **durable medium** is required (e.g. under the CPC), email and other forms of communication can be used • Reporting protocols, e.g. the production of written reports and their timing, such as quarterly claims reports, annual renewal reports, mid-term reviews and/or annual stewardship reports • Where applicable, a set claims procedure manual
How claims will be dealt with	• Use of nominated loss adjusters for specific classes of insurance, size of claim or territory • Which claims will be handled by the broker and which will be handled directly between the insured and insurer/loss adjuster • Where claims are notified directly to the insurer, what will be the procedure for the broker to become involved should problems arise • Who has responsibility for monitoring claims within the client's aggregate self-insured retention and for advising the insurer that this aggregate is about to be breached • How outstanding and new claims that pre-date the broker's appointment will be handled • Contact details for each location or claim type, where the broker is handling the claim
Service standards	• Delivery of renewal terms within a specified time, e.g. 30 business days before renewal date • Completion of **premium allocation** under a global programme within a certain time and invoicing within a specified time • Issue of post-renewal documentation, e.g. insurance summaries or manuals • Production of minutes after meetings • Resolution of queries • Payment of agreed claims
Fees	• The fees or commission payable by the client to the broker. Often this is variable and based on the broker meeting identified performance metrics.

durable medium

any instrument that allows information to be stored and accessible for future reference, for a required period of time, and prevents the stored information from being changed or reproduced

premium allocation

where a client's premium is allocated across regions, countries or subsidiaries by a broker

directors and officers liability insurance

insurance cover to protect individuals when they are held personally liable for their actions as a director or officer of a company under a particular legislation

The SLA may also place some responsibilities on the client. For example, to:

- Allow access to sites and information
- Allow access to senior management as required, e.g. supply information on, and complete, **directors and officers liability insurance** (D&O) proposal forms
- Deliver information
- Pay invoices.

Following termination of a broker's contract with a client, it used to be common practice for the broker to be involved in whatever claims were dictated by the policy terms, i.e. claims occurring during the policy period. However, in most cases, the new broker now takes over the handling of all claims. It is felt that this ensures a better service to the client and closer monitoring of claims (see Chapter 5G1a).

There are many reasons why a client may consider changing their broker or accessing the services of another broker at some stage of their insurance journey, e.g. lack of specialist knowledge or claims expertise, insufficient cover options offered, no direct links and/or relationship with the appropriate insurance market, or poor customer service. To ensure a smooth transition, a number of options are available to the client, as outlined in Sections C1c and C1d.

C1c Letter of appointment

In circumstances where a client decides to change from one broker to another, while staying with the same insurer and policy cover, a letter of appointment is used. This letter must be sent to the insurer, in the correct format, prior to the policy's renewal date in order for the new broker to avail of the commission. This letter from the client instructs a broker to manage the client's insurance(s) going forward and to receive commission payments from the insurer(s) for those services. The appointment may be for all or for only specified insurances and removes the previously appointed broker from the policies.

In situations where the newly appointed broker is quoting for large business and needs the client's policy details or claims history, the letter of appointment gives the current insurer authority to give such information to the broker.

This letter of appointment can also be referred to as an 'agency transfer mandate'. Example 1.5 provides a sample letter of appointment wording.

Example 1.5 Sample letter of appointment

[Client letterhead/name and address]

Date:

To whom it may concern,

Letter of appointment

I/we confirm that I/we wish to appoint [name of broker] as my/our insurance broker with effect from dd/mm/yyyy.

[Name of broker] should be provided with all policy details including claims details – current and past.

Yours faithfully,

[Client name]

[Title/capacity]

C1d Letter of authority

A letter of authority from a client permits a broker to obtain information from insurers on the client's behalf with the aim of reviewing and quoting and/or seeking information on claims for the specified insurances currently held by another broker. This letter does not formally appoint the new broker as broker on the policy.

The letter may include certain exceptions and limits. For example, to:

- Restrict the period of time the letter of authority is operational
- Allow authority only to retrieve information on specific insurances
- Exclude details of the premiums previously paid and the terms of cover
- Forbid payment of commission to the broker who has been granted a letter of authority.

Note that only a letter of appointment activates the right of the broker to receive commission.

This letter of authority can also be referred to as a reporting mandate. Example 1.6 provides a sample letter of authority wording.

Example 1.6 Sample letter of authority

[Client letterhead/name and address]

Date:

To whom it may concern,

Letter of authority to review and quote

I/we authorise [name of insurer(s)] to provide [name and address of broker] and/or its representatives with all information, except coverage details and premiums paid, which they might request regarding my/our insurances and claims history over the [past number of, or specified (e.g. 2015-18)] years.

Carve out option – EXCEPT: [Specify exceptions and limits to be placed on authority (if any), e.g. list any excluded classes of insurance and, where appropriate, name of insurer in each case].

OR

Opt-in-option – LIMITED TO: [Select included classes of insurance and, where appropriate, name of insurer in each case].

This authorisation in no way constitutes the appointment of [name and address of the Broker] as my/our insurance broker. This authorisation is valid for the period [--/--/---- to --/--/----].

Yours faithfully,

[Client name]

[Title/capacity]

If more than one insured entity is involved, consent of other insured entities must be obtained as well.

C2 Agreement with insurers

The agreement between the broker and the insurer (or the wholesale broker/MGA) is contained in a legally binding contract. In the insurance industry, this is commonly known as a Terms of Business Agreement (TOBA), an Agency Administration Agreement or simply, an agency agreement. This should not be confused with the Terms of Business (TOB) described in Section C1, which is an agreement between the regulated entity (e.g. intermediary) and the consumer.

The agency agreement outlines the rights and obligations of both parties (the broker and the insurer or wholesale broker/MGA) regarding the insurance business introduced by the broker. In the United Kingdom, the British Insurance Brokers Association (BIBA), Lloyd's and the International Underwriting Association (IUA) provide template agency agreements (which can be tailored as required).

Within Ireland, agency agreements follow a similar style to the UK model, outlining the detail and scope of the relationship, while mindful of the regulatory requirements laid down by the Central Bank. Credit terms, remuneration, handling client money, claims, agency termination, complaints, the broker's limit of liability, the client's responsibilities, maintenance of **professional indemnity insurance** (PII) and the regulatory compliance of the broker (e.g. record keeping, anti-money laundering and data protection) are some of the areas covered in agency agreements.

An insurance broker cannot arrange a product with an insurer (on behalf of a client) unless it has an appointment in writing (agency agreement) with that insurer.

C2a Delegated binding authority agreements

Where an insurer has a **scheme** providing delegated underwriting and/or claims authority to a broker, an agreement is made between the insurer and broker. This agreement will state the renewal date, underwriting criteria (e.g. sums insured or premium limit per policy and per underwriting year), underwriting guidelines, rating structures, the claims authority, reporting requirements and commission payable by the insurer to the broker (see Chapter 4B2 for more detail).

C3 Agreements with other brokers

Similar to agency agreements, agreements between brokers perform the same function in governing the relationship where one broker is offering a product to another. In such agreements, the type of relationship between the entities, and their responsibilities and duties, are outlined in the document signed by both parties.

professional indemnity insurance

cover for civil liability arising from a breach of professional duty, including negligent or inadequate advice given by the policyholder or their predecessors (also known as 'errors and omissions insurance')

scheme

exclusive arrangement a broker has with an insurer to retail specialist insurance cover to the public

insurance intermediary

any person or firm, other than an insurer or reinsurer or their employees, but including an ancillary insurance intermediary, which for remuneration, takes up or pursues the activity of insurance distribution and is subject to the

Insurance Distribution Regulations 2018

principal regulated activities

at least 75% of a regulated firm's total turnover on an annual basis comes from regulated activities that are provided on the basis of a fair analysis of the market

Consumer Protection Code 2012 Guidance, 3.4

fair and personal analysis

advice given on the basis of an analysis of a sufficiently large number of contracts available on the market, to enable the intermediary to make a recommendation, in accordance with professional criteria, as to which insurance contract adequately meets the customer's needs

Insurance Distribution Regulations 2018 (34) (4)

D Categories of brokers

Let us remind ourselves of the regulatory categories of **insurance intermediaries** in the Irish market.

The Central Bank uses the term 'retail intermediary' to refer collectively to the various categories of intermediaries at work in the financial services market.

A broker/retail intermediary is a regulated firm that engages in intermediation activities relating to certain financial products and/or provides advice in relation to those products.

In Ireland, retail intermediaries can be divided into the following categories:

- Insurance/reinsurance intermediaries and ancillary intermediaries – under the **Insurance Distribution Regulations 2018** (IDR)
- Investment intermediaries – under the **Investment Intermediaries Act 1995** (as amended) (IIA)
- Mortgage intermediaries – under the **Consumer Credit Act 1995** (as amended) (CCA)
- Mortgage credit intermediaries – under the **Consumer Mortgage Credit Agreements Regulations 2016** (CMCAR).[9]

Just think

When is an intermediary referred to as a 'broker'?

All brokers are intermediaries, but under the CPC Provision 4.18, the term 'broker' may only be used where the intermediary's **principal regulated activities** are provided on the basis of a fair analysis of the market (or **fair and personal analysis** as defined under IDR).[10] This contrasts with intermediaries, who provide a **limited analysis of the market.**[11] Sometimes, a broker will undertake a limited analysis of a market (e.g. for travel insurance) or a broker might be tied to a single insurer for a particular product. In these circumstances, the broker must disclose to the client the names of those insurers included in its limited market analysis.

9 Adapted from Central Bank of Ireland (Regulation – Industry & Market Sectors, Brokers/Retail Intermediaries), www.centralbank.ie.

10 CPC, Chapter 12 (Definitions).

11 CPC, Chapter 12 (Definitions).

Despite these CPC restrictions on the use of the term 'broker', it is the term most frequently used by insurance clients. Therefore, when not specifically referring to a particular category of retail intermediary (as defined by the Central Bank or used in specific legislation), this textbook will use the term 'broker' throughout.

limited analysis of the market

providing services on the basis of a limited number of contracts and product producers [insurers] available on the market, i.e. while not tied to one product producer, the services are not provided on the basis of a fair analysis of the market

Consumer Protection Code (Definitions)

Just think

Tuhill Insurance Brokers Ltd (TIB) is not permitted to use the term 'independent', either in its name or when describing its activities. What does this tell us about TIB?

Provision 4.16 of the 2019 CPC Addendum states that an intermediary may only use the term 'independent' (or any other word that is similar to this term):

- In its legal/trading name if its regulated activities are all provided on the basis of a fair analysis of the market (or a 'fair and personal analysis' under the IDR), or
- To describe its regulated activities, if these activities are provided on the basis of a fair analysis of the market (or a 'fair and personal analysis' under the IDR), and only
- Where the intermediary does not accept any remuneration in respect of advice relating to these regulated activities, other than a fee paid by a consumer.[12]

The basis on which an intermediary provides **advice** must be disclosed to consumers in the Terms of Business.

advice

a personal recommendation to a person, whether at their request or at the initiative of the firm, in the course of performing a relevant function

Minimum Competency Code 2017 (Definitions)

[12] Central Bank of Ireland, *Addendum to the Consumer Protection Code* 2012, September 2019, Provision 4.16.

E Summary

By exploring the backdrop to the market in which brokers operate, this chapter sets the scene for the rest of the textbook. It looked at the categories of insurance brokers, their role and their relationship with insurers and clients.

E1 What's next?

Now that we have seen the context in which brokers operate, how exactly do the Central Bank expect brokers to conduct themselves when offering broking services to their clients? Chapter 2 considers this and the role that brokers play in the protection of consumers.

E2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in this textbook. Use the 'End of chapter questions', 'Quick questions' and 'Sample exam questions' to quickly test what you have learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

E3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned so far. The webinars, chapter-by-chapter key points and other supports will help to break down the chapter's content when revising.

Remember: This module is examined by mixed assessment, which includes:

- An online mid-semester multiple-choice question (MCQ) assessment (20 questions)
- An end-of-semester written exam paper (9 questions).

Given that your online mid-semester assessment is a multiple-choice question test, completing the online practice paper is the ideal preparation for this. You can prepare for the end-of-semester written exam and test your knowledge by completing sample and past written exam papers.

To access these online learning supports, log into your Member Area of **www.iii.ie** and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 1. It should be noted that these end of chapter questions are revision questions to test your understanding of the material in the chapter just studied. They are not sample exam questions.

1. List the essential functions that a broker might perform on behalf of an insurer.

2. From the client perspective, list five benefits of using a broker to place a commercial risk.

3. Identify who a broker is acting for as agent when placing insurance.

4. Outline five situations in which the insurer is the broker's principal.

5. List four duties that the general law of agency requires of a broker.

6. Outline the functions of a wholesale broker.

7. Outline the primary role of a reinsurance broker.

8. List the information that a Terms of Business must include for a consumer.

9. Explain what is contained in the Summary of Commissions document.

10. List the areas that might be found in a typical service level agreement.

11. State the authorisation categories that intermediaries can be divided into.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. A broker might perform the following functions on behalf of an insurer:
    - Effective distribution of insurance products to clients
    - Collecting relevant information from clients and presenting it to the insurer
    - Updating the insurer on the client's needs and expectations
    - Checking the accuracy of an insurer's documentation and pricing
    - Issuing documentation to clients
    - Collecting premiums from clients and passing them to the insurer
    - First contact for all the client's administrative issues
    - Providing experience and expertise in explaining cover issues to clients
    - Supporting claims management and risk management
    - Complying with regulatory responsibility in terms of handling client money
    - For online quotations, a broker assumes responsibility for all regulatory disclosures, the implementation of underwriting criteria, information gathering from clients and for the production and issuing of policy documents to clients.
2. Five benefits to using a broker to place a commercial risk are:
    - Convenience
    - Expert knowledge
    - Local expertise
    - Impartial quotation
    - Assistance with claims
    - Relationship building.
3. When a broker is placing insurance, they are acting as an agent for the client.
4. The insurer (rather than the client) is the broker's principal in situations where the broker:
    - Has express authority from the insurer to receive and handle proposal forms
    - Handles the forms according to a previous course of business with, or implied authority from, the insurer
    - Acts without express authority, an action the insurer either subsequently ratifies or has ratified in the past
    - Collects a premium for an accepted proposal or renewal of an existing policy, in which case the premium is treated as having been paid to the insurer
    - Has express authority to handle claims
    - Has express authority from the insurer under the terms of a delegated binding authority scheme
    - Receives a claim payment or premium rebate for the client.

5. The four duties under the law of agency are the duty of:
   - Obedience
   - Accountability
   - Good faith
   - Skill and care.

6. A wholesale broker is engaged by a retail intermediary to access preferential markets and policy coverage. Generally, wholesale brokers are remunerated by retaining a percentage of the overall commission available. A number of brokers operating in the Irish market (e.g. WTW, Marsh and AON) have a 'wholesale division'. A wholesale broker's clients are other brokers; the wholesale broker has no contact with the insured.

7. The primary role of a reinsurance broker is to secure business from insurers (their clients) and place business with reinsurers, along with servicing and maintaining the business.

8. A Terms of Business with a consumer must include at least the following:
   - The legal name, trading name(s), address and contact details of the regulated entity
   - Confirmation that the regulated entity is authorised, licensed or registered, and the name of the competent authority
   - A statement that it is subject to the Central Bank codes of conduct
   - A description of the regulated activities carried out
   - A statement regarding the basis on which advice is given to the consumer
   - If the regulated entity is tied for any of the regulated activities, specify the name of each product/service for which it is tied and the name of the regulated entity to which it is tied for those products/services
   - A general statement on the charges directly imposed
   - A summary of the regulated entity's policy on data protection
   - A summary of the regulated entity's policy on conflicts of interest
   - A summary of the regulated entity's policy on complaints
   - An outline of what will happen in the event of default by the consumer
   - If a member of a statutory compensation scheme, the nature of the scheme and the level of protection it provides
   - The effective date of the Terms of Business.

9. The Summary of Commissions document contains a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to an intermediary as agreed with product producers.

10. The areas covered by a typical service level agreement might be:
    - General services
    - Policies/programmes or services
    - What is not covered
    - How the services will be provided
    - How claims will be dealt with
    - Service standards
    - Fees.

11. Retail intermediaries can be divided into the following categories: insurance/reinsurance intermediaries, investment intermediaries, mortgage intermediaries and mortgage credit intermediaries.

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Answers to quick questions

1. A principal employs an agent because of the agent's specific skill or professional knowledge. The principal is heavily reliant on the agent and could suffer loss if the agent proved to be incompetent or dishonest. This is why the law imposes such onerous duties on those who act as an agent of another.

2. The insurer is its principal.

3. The five principal/agent relationships are as follows:

Principal	Agent
Browns	Ace Brokers
Ace Brokers	SlipCo
SlipCo	XYZ
SlipCo	SuperCover
SuperCover	LondonRe

4. Under CPC Provision 4.12, the Terms of Business must be supplied to each consumer (as a stand-alone document) before providing the first service.

Sample exam questions

Question 1

Briefly explain the main reasons why some classes of insurance are most suited to being purchased through a broker.

Total: 10 Marks

Question 2

Differentiate between the circumstances where the broker is considered to be acting as the agent of the client and those where the broker is considered to be acting as the agent of the insurer.

Total: 10 Marks

Your answers

Sample answers

The answers set out below show the main points to be considered by students in answering the question. In some cases, a well-reasoned alternative view could earn good marks.

Question 1

The main reasons why some classes of insurance are most suited to being purchased through a broker are due to the nature of the risk. For example:

- **Complexity**. For more complex risks (e.g. those involving hazardous industries or non-standard properties), the insurer can feel confident that the broker will understand the risk exposures and the technicalities of the cover. Similarly, the insured can feel confident that the broker will have the specialist knowledge needed to ensure the risk is properly insured. Other examples of complex risks include high-value jewellery or fine art, performance cars, marine, aviation, construction, manufacturing and food.
- **Size of risk**. For high-value assets, the higher sums insured take up more of the insurer's financial capacity (the total amount of risks it can accept) and may prevent it from accepting other business. This results in a concentration of risk that an insurer may not be comfortable with, unless there is a broker involved to access the **co-insurance** or reinsurance markets. For example, this is common for commercial property constructed with combustible material with high overall sums insured. Co-insurance is often the only solution available and a broker is required to structure these arrangements.
- **Location of risk**. Some risks may be located in high-risk areas such as flood plains, or in parts of the world affected by earthquake or extreme weather events. Insurers are unlikely to offer cover unless they fully understand the risk. A broker is better able to provide full and detailed risk data than a client. For example, a client seeking insurance for a new home in a flood-prone area may be unable to obtain cover online. A broker, perhaps using their in-house technology such as flood mapping, could explain to the insurer that the client's home is built on top of a low hill and has never flooded. The broker could then negotiate tailored/bespoke cover, having explained the individual circumstances. As another example, some organisations have assets in a number of different countries and may require a broker to put together an insurance programme in multiple territories.
- **Availability of cover**. Some risks are specialist in nature, e.g. latent defects, kidnap and ransom, professional indemnity insurance for the construction sector, trade credit insurance, performance cars or cyber insurance. Brokers may have specific market knowledge to identify the few insurers who specialise in these types of cover. If the risk is highly specialised, it may require a broker who has experience in the niche area and could negotiate a specialist arrangement with a chosen insurer.

Reference Chapter 1A3a **Total: 10 Marks**

Question 2

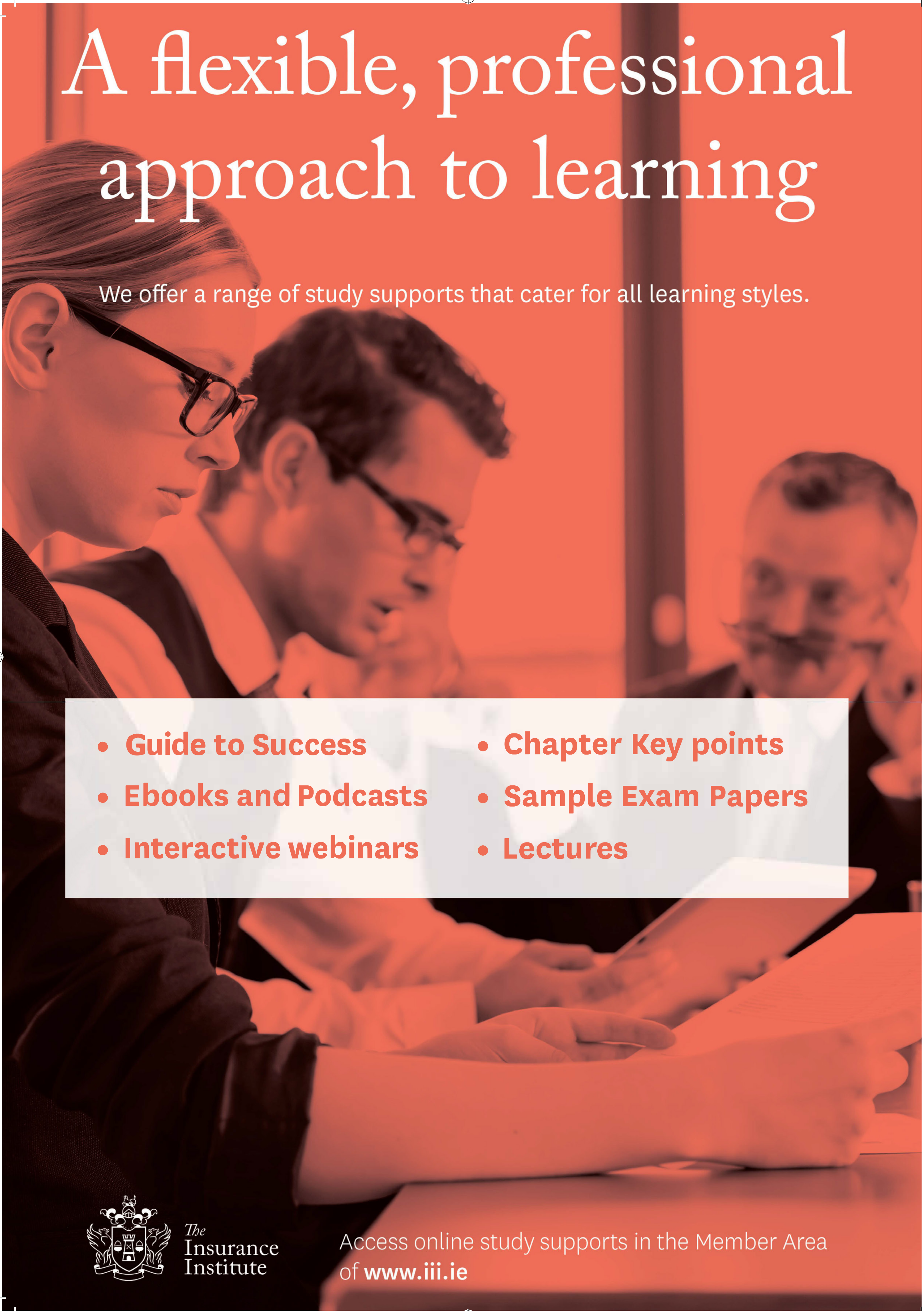
The client is the broker's principal (i.e. the broker is an agent of the client) when the broker:

- Gives general advice to the client about the cover they require and the market in which to place their business, by gaining an understanding of the client's circumstances/business and identifying its risks and exposures
- Where necessary and appropriate, provides advice or help to the client in completing a proposal form or in reviewing, with the client, a statement of fact
- Carries out a survey or fact find for the purpose of presenting the information, together with other risk details, to the insurance market
- Presents the underwriting information to a potential insurer on behalf of the client
- Gives the client advice about how to formulate their claim.

Whereas, the insurer is the broker's principal (i.e. the broker is an agent of the insurer) when the broker:

- Has express authority from the insurer to receive and handle proposal forms
- Handles the forms according to a previous course of business with, or implied authority from, the insurer
- Acts without express authority, an action the insurer either subsequently ratifies or has ratified in the past
- Collects a premium for an accepted proposal or renewal of an existing policy, in which case the premium is treated as having been paid to the insurer
- Has express authority to handle claims
- Has express authority from the insurer under the terms of a delegated binding authority scheme
- Receives a claim payment or premium rebate for the client.

Reference Chapter 1B1a & B1b **Total: 10 Marks**


A flexible, professional approach to learning
We offer a range of study supports that cater for all learning styles.
• Guide to Success
• Ebooks and Podcasts
• Interactive webinars
• Chapter Key points
• Sample Exam Papers
• Lectures
The Insurance Institute
Access online study supports in the Member Area of www.iii.ie

Chapter 2

Supervision and consumer protection

What to expect in this chapter

In Chapter 1 we looked at the role of the broker. In this chapter we will examine how the Central Bank supervises the intermediary sector. In order to demonstrate good conduct, brokers must be ethical, open, honest and transparent. This generates trust, makes good business sense and enhances a broker's reputation and brand. As a result of their position within the distribution channel, intermediaries play a key role in consumer protection. The expectations that the Central Bank has of intermediaries in the areas of ethics and consumer protection are examined in this chapter.

To help you relate the material in this chapter to a real-life situation, we will refer to the sample profile of Tuhill Insurance Brokers Ltd (TIB).

To keep up to date with regulatory developments, you should access Central Bank publications such as those referenced in this textbook.

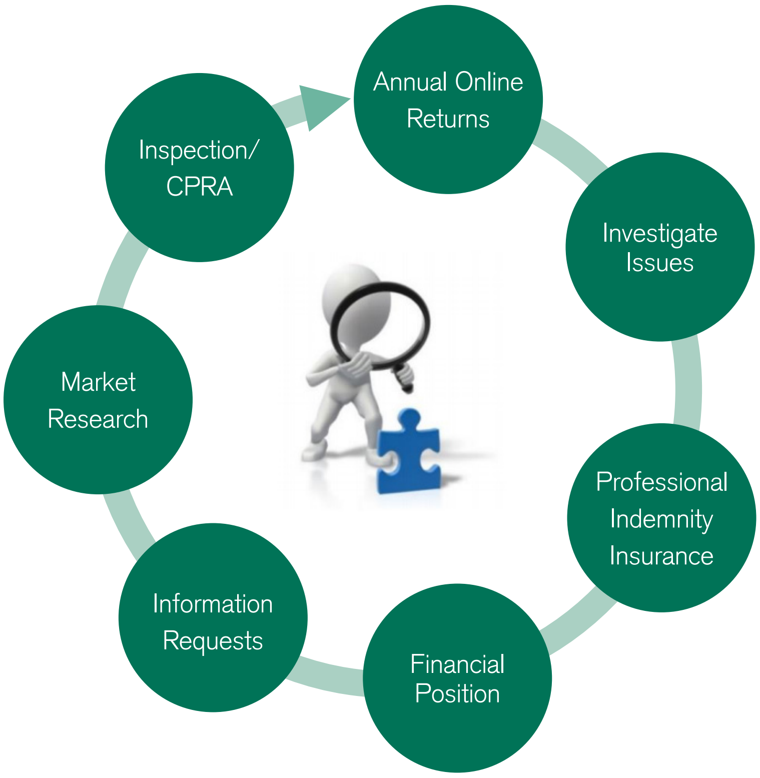
Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**How the Central Bank supervises intermediaries**	Explain how the Central Bank supervises the intermediary sector.
B	**Consumer protection**	Outline the role intermediaries play in consumer protection.
C	**Insurance Distribution**	Explain the scope and objective of the **Insurance Distribution Regulations 2018**.
D	**Ethics**	Explain the importance of ethics for intermediaries.

A How the Central Bank supervises intermediaries

As we know from Chapter 1D, a retail intermediary is a regulated firm that engages in intermediation activities relating to certain financial products and/or provides advice in relation to those products. The Central Bank supervises approximately 2,500 such firms.[13] Figure 2.1, taken from a presentation by the Central Bank to retail intermediaries, outlines its approach to the supervision of this sector.

Figure 2.1 Central Bank supervisory tools for retail intermediaries[14]



The Central Bank's approach to the supervision of this sector involves a combination of desk-based supervision and inspections.

[13] Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.21, www.centralbank.ie.

[14] Redrawn from Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.22, www.centralbank.ie.

A1a Desk-based supervision

Considering the size of the intermediary sector, increased use of technology allows Central Bank supervisory teams to use desk-based supervision to:

- Ensure that minimum standards of compliance are met. Failure to meet these standards will trigger a follow up by the Supervision Team and may result in an unannounced targeted onsite inspection (see Section A1b) and/or enforcement action (see Section A1c). These minimum standards are the:
    - Submission of annual online returns, e.g. financial, pre-approval controlled function confirmation, solvency, PII compliance.
    - Holding of appropriate levels of professional indemnity insurance (see Chapter 2C3)
    - Maintenance of financial position (i.e. a positive net asset position; a requirement for **Investment Intermediaries Act 1995** (IIA) firms only).[15]
    - Fitness and Probity declarations by staff members.
- Assess and investigate risks and issues as they arise
- Ensure Risk Mitigation Programmes (RMP) are implemented
- Manage ongoing enforcement cases
- Conduct market research, i.e. gather market intelligence in relation to specific products or themes
- Engage with stakeholders, e.g. Brokers Ireland, European Insurance and Occupational Pensions Authority, **Financial Services and Pensions Ombudsman**
- Provide ongoing communication and engage with the sector, e.g. *Intermediary Times*, relevant updates, 'annual roadshows'.[16]

Financial Services and Pensions Ombudsman

statutory office that deals independently and impartially with unresolved complaints from consumers about the conduct of pensions providers and regulated financial service providers (also referred to as the FSPO Bureau or the Office of the FSPO)

Just think

Before reading on, can you think of an area of retail intermediaries' compliance that has been the focus of the Central Bank in recent years?

As an element of its risk-based approach to supervision, the Central Bank regularly reviews the intermediary sector's compliance with disclosure requirements on fees and commissions (see Extract 2.1).

15 Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.23, www.centralbank.ie.

16 Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.24, www.centralbank.ie.

2.1

Extract 'New rules on commission for financial intermediaries'

During 2020, we will be assessing compliance with the new rules on commission for financial intermediaries introduced last year [CP116]. We introduced these rules to ensure commission payments from product providers to intermediaries do not work against consumer interests. We demanded transparency on all types of commission to reduce the risk of conflicts of interests and to protect consumers. These rules include a ban on free hospitality (such as golf trips and tickets to sporting events) for financial intermediaries, such as brokers and financial advisers.

From 31 March 2020, financial brokers will have to post on their website details of all commissions from product producers. The Central Bank will no longer allow intermediaries to describe themselves and their regulated activities as 'independent' if they accept commission for the advice they have given.[17]

A1b Inspections

Inspections may be triggered by concerns in relation to a particular firm or a market-wide issue. These inspections take several forms:

- Thematic reviews. These examine sector-wide issues across a sample of firms. Advance notice of an onsite inspection is given and the firms are asked to provide pre-inspection information for review. Following the thematic review, specific findings are issued to the firm, along with an RMP (if required). An industry letter and press release are also issued. A thematic review may result in an enforcement action for some firms involved.
- Targeted firm-specific inspections. These have a similar format to a thematic review, but are prompted by regulatory concerns or issues raised in respect of a specific firm, as opposed to an industry sector. Again, specific findings are issued which may include an RMP and/or enforcement action.
- Unannounced targeted onsite inspections. These investigate regulatory concerns or non-compliance with minimum standards (see Section A1a). No advance notice is given of such an onsite inspection. Engagement with the firm under investigation is maintained until the issue is rectified. The outcome may include enforcement action.[18]

Just think

Consider the effect that a Central Bank targeted onsite inspection would have on a small intermediary's ability to carry out its day-to-day activities.

[17] Central Bank of Ireland, *Consumer Protection Outlook 2020*, p.27, www.centralbank.ie

[18] Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.25, www.centralbank.ie.

Chapter 2

A1c Enforcement

The Central Bank's powers of enforcement were dealt with in the Compliance and Advice module. However, Extracts 2.2 and 2.3, quotes from the then Central Bank Director of Enforcement (Derville Rowland), highlight that the Central Bank's ongoing approach to enforcement goes hand in hand with its approach to regulation and supervision and that the priority is always consumer protection.

2.2

Extract Settlement agreements

In recent years, the Central Bank has allocated considerable resources to deal with firms that fail to meet the required standards of compliance in respect of their obligations relating to key priority areas, including the requirement to hold adequate PII, resulting in fines being imposed and the involuntary revocation of firms' authorisations. Firms should be aware that where consumers are put at risk through a failure to meet the required standards the Central Bank will robustly apply its supervisory and enforcement powers … The Central Bank's approach aims to act as a deterrent to others and ensures standards are met.[19]

Just think

Do the Central Bank's enforcement measures act as a deterrent to intermediaries or insurers considering setting up in Ireland or are these measures seen a sign of a strong regulator and, therefore, act as an incentive to such firms?

2.3

Extract 'The Central Bank's evolution of enforcement: building on a decade of credible deterrence and promoting effective culture and good governance'

There is no doubt in my mind that over the past decade, the Central Bank has embedded the credible threat of enforcement to support its assertive risk-based approach to supervision. Enforcement is firmly a key element of the Central Bank's regulatory toolkit, which comprises effective interaction between a series of interlocking components, namely regulation (the rules), ongoing supervision and enforcement.

In terms of overall outcomes, as at the end of September 2021, we have concluded 144 enforcement actions, imposing fines amounting to over €166.5 million. We have disqualified 26 individuals from senior roles in firms. These figures speak beyond the credible threat of enforcement to the effective use of enforcement powers to address serious wrongdoing.[20]

[19] Central Bank of Ireland, (News & Media – Press Releases), 'Settlement Agreement between the Central Bank of Ireland and Seamus Sutcliffe t/a The Mortgage Centre', July 2016, online article, www.centralbank.ie.

[20] Central Bank of Ireland, (News & Media – Press Releases), 'The Central Bank's evolution of enforcement: building on a decade of credible deterrence and promoting effective culture and good governance', 13 October 2021, online article, www.centralbank.ie.

Figure 2.2 outlines the key enforcement statistics (as of 30 September 2021) as referenced in Extract 2.3.

Figure 2.2 Key enforcement statistics[21]

€166.5 Million in fines imposed since 2006	**144** ASP cases concluded since 2006	**23** Individual sanctions imposed under ASP since 2006	**3** Suspension orders issued since 2011
4 Pre approval refusal of individuals on F&P grounds since 2011	**117** PCF applications withdrawn since 2011	**9** Prohibition notices issued since 2011	**30** Authorisation revocations since 2011
202 Protected disclosures received in 2020	**86** Warning notices published in 2020	**13** Firms refused authorisation since 2011	

Example 2.1 provides recent examples of such enforcement actions. More detail on these enforcement actions can be found on the Central Bank website.[22]

Example 2.1[23]

Regulated entities

Retail Intermediary

- Settlement reached in January 2021.
- Fined €41,000 for inadequate systems and controls to prevent overcharging and ensure fees were communicated clearly.

Individuals

CEO of a Retail Intermediary

- Prohibition notice published in May 2021.
- Providing mortgage intermediary services while unauthorised to do so, Retained clients mortgage deposits while informing them that he was using them to secure a mortgage approval.
- Prohibited identifinitely

Executive Director of a Retail Intermediary

- Prohibition notice published in July 2020.
- Provided the Central Bank with misleading information on his application for approval.
- Prohibited for 10 years.

Just think

Consider the longer-term impact on a firm of being fined by the Central Bank. Consider impacts such as the financial impact of the fine, the resulting negative publicity and non-renewals, the cost in staff time of dealing with client queries relating to the fine etc.

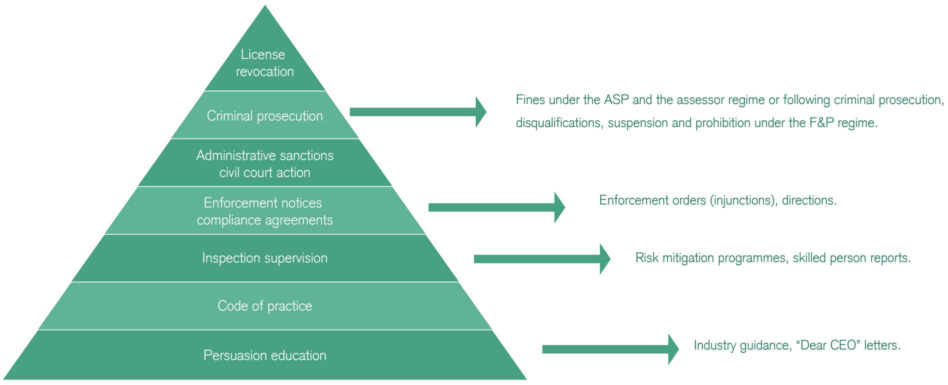
[21] Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.44, www.centralbank.ie

[22] Central Bank of Ireland, (News & Media – Legal Notices - Enforcement Actions), www.centralbank.ie.

[23] Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.46, www.centralbank.ie

Central Bank publications frequently refer to the escalation pyramid (see Figure 2.3) which is a useful representation of the hierarchy of a regulator's powers.

Figure 2.3 The Escalation Pyramid[24]



At the base of the pyramid are the most frequently used measures – the so-called 'soft powers' of education, persuasion, and other ways of seeking voluntary compliance. At the middle level are powers typically used to correct errors and to bring defaulters back into compliance. Further up are less frequently used 'hard' powers which involve increasing degrees of intrusion into firms' business and coercion of their actions. At the peak are the most coercive measures, such as administrative sanctions, criminal punishment including fines, and licence revocations.

The conclusion of Derville Rowland's speech (see Extract 2.4) highlights the Central Bank's preference for co-operative rather than adversarial relationships with firms.

2.4

Extract 'The Central Bank's evolution of enforcement: building on a decade of credible deterrence and promoting effective culture and good governance'

Whilst enforcement sits near the top of this escalation pyramid of measures available, there are other measures that the Central Bank can and does use in addressing issues that arise. So, while robust enforcement action will continue to underpin our powers, we would far rather that firms focus on preventing, identifying, and acting upon misconduct in the first place than on us punishing them after the fact.[25]

Quick question 1

List the three types of inspections that the Central Bank may conduct on an intermediary.

The answer is at the end of this chapter.

[24] Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.42, www.centralbank.ie

[25] Central Bank of Ireland, (News & Media – Press Releases), 'The Central Bank's evolution of enforcement: building on a decade of credible deterrence and promoting effective culture and good governance', 13 October 2021, online article, www.centralbank.ie.

B Consumer protection

Conduct, in an insurance broking context, refers to how brokers carry out their business and interact with their clients, insurers and regulators. The Central Bank defines conduct risk as 'the risk the firm poses to its customers from its direct interaction with them'.[26]

The Central Bank's model for assessing conduct risk recognises 'that risks to consumers can stem from a firm's strategy, business model, culture, governance (and other internal structures, systems and processes) and the behaviours of individuals at any level within the firm'.[27] The Central Bank assesses conduct risk as part of its **Probability Risk and Impact System** (PRISM), and uses its statutory codes and other supervisory tools (considered in the Compliance and Advice module) to monitor it.

Probability **R**isk and **I**mpact **S**ysteM

a formal, risk-based framework designed by the Central Bank to provide a structured approach to assessing financial service providers based on impact and probability

Consumer protection is a key priority of the Central Bank and, as far as possible, the Central Bank expects all regulated firms to understand their impact on their consumers and to take steps to protect them. This is illustrated by Extract 2.5 from Colm Kincaid's (Director of Consumer Protection) foreword to the *Consumer Protection Outlook 2022*.

2.5 Extract *Consumer Protection Outlook 2022*[28]

The Central Bank of Ireland works to ensure that the financial system operates in the best interests of consumers and the wider economy. This requires that consumers are treated fairly and that the financial system is safe and resilient for the future, recognising that we rely on financial services in our daily lives and to provide for our future needs.

Just think

Extract 2.5 notes the importance of a safe and resilient financial system. Consider the impact of an insurer being under-reserved and not being able to meet its liabilities.

Just think

Identify the other State agencies the Central Bank might work with to protect consumers.

The Central Bank works with other State agencies, e.g. the Financial Services and Pensions Ombudsman (FSPO) and the **Competition and Consumer Protection Commission** (CCPC) to deliver on their consumer protection mandate.

Competition and Consumer Protection Commission

an independent statutory body that enforces competition and consumer protection law in Ireland

[26] Central Bank of Ireland, *PRISM Explained*, February 2016, p.21, www.centralbank.ie.

[27] Central Bank of Ireland, *A Guide to Consumer Protection Risk Assessment*, March 2017, p.7, www.centralbank.ie.

[28] Central Bank of Ireland, *Consumer Protection Outlook 2022*, p.3, www.centralbank.ie.

The Central Bank's *Guide to Consumer Protection Risk Assessment* (CPRA) provides a framework to carry out an assessment of how consumer protection risk is managed within regulated entities.[29]

The *Consumer Protection Outlook* outlines the Central Bank's key identified risks and priorities in this area. These are informed by sectoral risk assessments, supervisory work and experience, and information obtained from the Central Bank's ongoing engagement with others working in the national consumer protection framework. Case study 2.1 is an example of such engagement and research and illustrates the need for consumer protection.

Case study 2.1

Listening to consumers[30]

In 2020 we conducted one of the largest ad-hoc standalone consumer surveys in Ireland as part of the Differential Pricing Review. This research surveyed 5,500 private home and car insurance customers to understand their engagement with and experience of insurance. This research was conducted in tandem with a large qualitative research programme of nearly 100 insurance customers to get an in-depth understanding of their needs and behaviours in relation to insurance buying, renewal and switching behaviours. The research to date shows that:

- Consumers frequently considered insurance in negative terms. This results in both a lack of trust and lack of interest in insurance.
- The complexity of insurance means most consumers have a limited knowledge of how the specifics of insurance operates. This can discourage more active involvement at renewal, with many consumers feeling it is better and easier to stay with their provider rather than switch.
- Consumers tend to involve themselves more in private car insurance than home insurance. With home insurance, there is a much higher level of inertia.
- Many consumers report that they compare prices with other **insurance providers** largely because it helps to negotiate a better price with their current provider, rather than switch provider.

'insurance provider/ carrier'

a regulated entity that provides insurance cover as outlined in the certificate of insurance

Many of the cross-sectoral risks and consumer protection priorities identified in the Central Bank's annual *Consumer Protection Outlook* are repeated year after year while some are more short-term in nature. Regardless, the Central Bank's focus on these risks and priorities is aimed at increasing awareness of best practice around consumer protection in the financial services market.

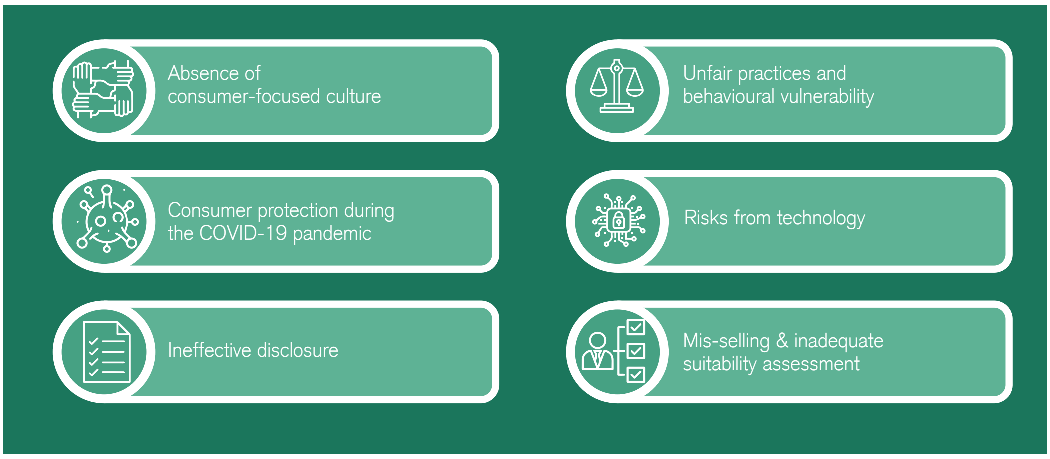
The intermediary's role (see Chapter 1A) is consumer-focused by its very nature. An intermediary is in a unique position to protect insurance consumers and influence their experience of the insurance market. The intermediary's primary duty is to provide reliable, knowledgeable advice to consumers, to help them navigate the complexities of insurance products, and to ensure that their exposure is minimised in line with their appetite for risk.

[29] Central Bank of Ireland, *A Guide to Consumer Protection Risk Assessment*, March 2017, pp.8 and 9, www.centralbank.ie.

[30] Central Bank of Ireland, *Consumer Protection Outlook 2021*, p.11, www.centralbank.ie.

Figure 2.4 outlines the key cross sectoral risks to financial services consumers as identified by the Central Bank in its *Consumer Protection Outlook 2021*.

Figure 2.4 Key cross-sector consumer protection risks[31]



This section examines these key cross-sector consumer protection risks, as identified by the Central Bank *Consumer Protection Outlook 2021*, and outlines the Central Bank's expectations of intermediaries behaviour in relation to minimising these risks.

Useful resources

The *Consumer Protection Outlook 2021* is the basis for this section. As noted, many of the cross-sectoral risks and consumer protection priorities identified are repeated year after year while some are more short-term in nature. You can keep up to date with the Central Bank's annual *Consumer Protection Outlook* on www.centralbank.ie.

B1 Absence of consumer-focused culture

According to the *Consumer Protection Outlook 2021* 'A firm shows its culture in how it makes its decisions, how it assesses risks and how it treats its consumers'.

Just think

How might a firm's culture impact on consumer outcomes?

In Extract 2.6, Derville Rowland, Central Bank Director General, Financial Conduct, noted the Central Bank's ongoing focus on culture and how it contributes to delivering better outcomes for consumers.

Quick question 2

List any three of the seven steps in the Central Bank's Escalation Pyramid.

[31] Central Bank of Ireland, *Consumer Protection Outlook 2021*, p.7, www.centralbank.ie.

2.6 Extract 'Effective culture is about people. And people are at the heart of the Fitness and Probity Regime'

Culture is, by its nature, a matter for each individual firm in the first instance.

However, those organisations with effective culture have something in common nonetheless: a commitment to high standards and practices together with values and a mindset that drive their behaviours around decision-making, leadership and so forth. These driving forces and resulting behaviours ultimately culminate in the outcomes that both we and the public experience and see.

Effective organisational culture builds on shared purpose and standards such as professionalism, honesty, integrity and accountability to deliver fair outcomes that have the interests of consumers and investors at heart.

The Central Bank expects to see such standards and values embedded in all the firms we regulate. The importance of tone from the top, and the critical role of directors, cannot be overstated. For example, the manner in which a board handles deviations from good practices, breaches of policy or procedure, or lack of respect for control functions, sets the standard within a firm ... The directors have a role in setting the culture, living by it themselves and calling out and addressing poor behaviours when observed.

Culture is developed and evolves within individual firms. As regulators, we cannot prescribe or mandate a culture for firms. We can, however, monitor, assess and seek to influence culture within firms in order to guard against conduct risk and drive better outcomes for consumers and investors. This is an area of increased focus for us in recent years and in that respect, we expect firms to understand the risks faced by their consumers and investors and develop and embed comprehensive risk management frameworks to manage such risks effectively.[32]

[32] Central Bank of Ireland (News & Media – Press Releases), 'Effective culture is about people. And people are at the heart of the Fitness and Probity Regime' (speech to the Institute of Directors), 10 June 2021, www.centralbank.ie.

Consumers will instantly benefit from a broking market that has challenged itself to maintain a consumer-focused culture.

In a 2017 speech, Bernard Sheridan, the then Central Bank Director of Consumer Protection, highlighted the role of intermediaries in assisting consumers to make the 'right financial decisions', when he noted that 'consumers rely on [intermediaries] to recommend the most suitable product from the range on offer as well as having a role in handling claims and complaints.'[33]

The following behaviours, suggested by the Central Bank in its *Consumer Protection Outlook 2021* and designed to address this consumer protection risk, are relevant for intermediaries:

- Be proactive and meticulous in ensuring that firms do business in a way that protects consumers and investors.
- Ensure that consumer-focused cultures are evident, e.g. comprehensive training for staff.
- Regularly track and monitor the behaviour and culture and reflect on any shortfalls in the understanding of what 'consumer focus' actually means for their firm.
- Ensure the right structures, processes and systems are embedded to support consumer-focused behaviours and culture.
- Demonstrate trustworthiness and focus on making sure that their people are clear about the standards expected of them in relation to individual accountability and are held to account for failing to live up to those standards.[34]

Just think

If TIB has a culture that includes all of the behaviours listed, what advantages would arise to the firm? What disadvantages would arise if TIB's culture doesn't address these behaviours?

Table 2.1 Advantages and disadvantages of different behaviours and cultures

Advantages of good behaviours and culture	Disadvantages of poor behaviour and culture
Increased business and income through referrals of existing clients.	A loss of current and potential clients because of low-client satisfaction.
Higher retention of staff who agree with the values and goals of the business.	Lower staff morale and higher staff turnover resulting from a lack of accountability from and trust in management, a lack of training for staff and client dissatisfaction.
A positive reputation in the market, allowing TIB to attain agreements with more insurers, wholesale brokers and MGAs, and also to attract good staff.	A decline in TIB's market reputation, making it more difficult to gain and retain agreements with insurers.
Lower risk of complaints and disputes.	Higher risk of time-consuming complaints and disputes and possibly, legal action.
The provision of additional insurance policies and services to existing clients, e.g. risk identification surveys.	

[33] Central Bank of Ireland, (News & Media – Speeches), 'Delivering on Consumer Protection – the Role of the Central Bank'. Speech by Bernard Sheridan, Director of Consumer Protection, 16 February 2017, www.centralbank.ie.

[34] Central Bank of Ireland, *Consumer Protection Outlook 2021*, p.17, www.centralbank.ie

Chapter 2

B1a Individual Accountability Framework

In July 2021, the **Central Bank (Individual Accountability Framework) Bill 2021** was published. This legislation was developed in response to the *Law Reform Commission's Issues Paper on Regulatory Enforcement and Corporate Offences 2017* and the *Behaviour and Culture Report into Irish Retail Banks 2018*.[35] It applies to the financial services sector and its objective is to strengthen corporate culture, drive positive behaviour and increase individual accountability.

undertaking

a regulated entity/firm (e.g. insurer, reinsurer, intermediary) holding an authorisation via the Central Bank

The four key components of the Individual Accountability Framework (IAF) are:

1. The Senior Executive Accountability Regime (SEAR): requiring firms to set out clearly and comprehensively where responsibility and decision-making lie in order to achieve transparency as to who is accountable for what within firms. SEAR will apply to those in management roles in insurance **undertakings**.
2. The enforceable Conduct Standards: setting out the behaviour expected of firms and their staff, including obligations to conduct themselves with honesty and integrity, to act with due skill, care and diligence, and in the best interest of consumers. Different elements of these Standards will apply to those in controlled functions, senior positions or to firms themselves.
3. An enhanced Fitness & Probity Regime: placing a greater onus on firms to proactively certify that certain staff are fit and proper and capable of performing their roles with integrity and competence.
4. A strengthened Administrative Sanctions Procedure: ensuring that individuals can be pursued directly for their misconduct rather than only where they have participated in a firm's wrongdoing.

This legislation will have repercussions for intermediaries and how they conduct their business.

B2 Consumer protection during the Covid-19 pandemic

The Covid-19 pandemic is an example of a time of economic disruption, uncertainty and stress for insurance consumers.

The following behaviours, suggested by the Central Bank and designed to address this consumer protection risk, are relevant for intermediaries:

- Act in the best interests of consumers and engage in a fair, efficient, and sympathetic manner during this period of continued distress.
- Ensure that any new or changed terms and conditions for products and services are fair to all consumers - including those who may potentially be the victims of fraud or scams.
- Be clear in terms of what cover is provided by insurance policies and what cover is excluded.
- Where a legal action relating to wider insurance cover has concluded and the final outcome has a wider beneficial impact for other similarly impacted customers, take urgent remedial action to ensure that those customers obtain the benefit of the final outcome (see Case study 2.2).[36]

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35 Sources: Law Reform Commission, (Publications), 'Issues Paper: Regulatory Enforcement and Corporate Offences', 2016, pdf, www.lawreform.ie. Central Bank of Ireland, (Publication – Corporate Reports), 'Behaviour and Culture of the Irish Retail Banks', July 2018, pdf, www.centralbank.ie.

36 Central Bank of Ireland, *Consumer Protection Outlook 2021*, p.19, www.centralbank.ie

Case study 2.2

Covid-19 and business interruption claims

In March 2020, all pubs and restaurants in Ireland were closed in line with the Government's Covid-19 restrictions. These restrictions were lifted intermittently over the following two years as the Government's pandemic response varied. Four pubs took legal action against FBD Insurance plc over the insurer's refusal to pay business interruption claims relating to these enforced closures. FBD claimed that the policy wordings did not provide cover. In February 2021 the High Court ruled against FBD and deemed that cover should be provided under its policy.

Several other property insurers in the Irish market refused to pay similar claims pending the High Court's decision on the policy wording. Although FBD's policies were not sold through a broker, several of the policies from the other property insurers had been. This raised a challenge for brokers, as clarification could not be provided to insureds until the legal interpretation of the policy was decided by the High Court.[37]

Following the High Court's ruling, the Central Bank identified 31,000 policies that were responsive to the circumstances of business interruption. The Central Bank urged insurers to engage with all policyholders on claims and expected retail intermediaries to assist their customers in this regard.[38]

Just think

In relation to Case study 2.2, if TIB had sold an insurance policy which was the subject of a legal action (between the insurer and the insured), would its clients be satisfied with the uncertainty of whether the claim would be paid or not?

B3 Ineffective disclosure

Transparency and effective disclosure are key to enabling consumers to make informed decisions that best suit their needs now and in the future. Poorly presented information can greatly impact the ability of consumers to assess the benefits, costs and risks of insurance products and services, and make an informed decision. This can further widen the gap in experience and knowledge between most consumers on the one hand and insurance providers and professionals on the other.

[37] Arthur Cox, 2021. *Analysis of Court's decision in publicans' business interruption test cases against FBD*, 15 February, www.arthurcox.com

[38] Central Bank of Ireland, 2021, *Intermediary Times*, p. 10, November, www.centralbank.ie.

key information

any information that is likely to influence a consumer's actions with regard to a product or service

differential pricing

where customers with a similar risk and cost of service are charged different premiums for reasons other than risk and cost of service

price walking

where customers are charged higher premiums relative to the expected costs the longer they remain with an insurer

The following behaviours, suggested by the Central Bank and designed to address this consumer protection risk, are relevant for intermediaries:

- Provide clear information in a timely manner to consumers across all engagement channels (e.g. in person, advisory, digital, etc.).
- Ensure that the information is provided in a way that is not too complex and does not overload the consumer.
- Disclose the **key information** upfront (e.g. benefits and risks, fees and costs, right to withdraw) of the products and services offered in order to support consumers to make informed decisions.
- Design communications with consumers in mind - effectively drawing their attention to the risks and costs of financial products – and ensuring that advertising has consumers' best interests in mind.
- Recommend the most suitable product where consumers ask for advice.
- Facilitate customers to switch products and services through clear and simple processes.[39]

B4 Unfair practices and behavioural vulnerability

The Central Bank's *Review of **Differential Pricing** in the Private Car and Home Insurance Markets (Final Report and Public Consultation)* concluded that the practice of **price walking** could result in unfair outcomes for some consumers in the private car and home insurance markets.[40] The Central Bank is concerned that the practices of certain firms (price walking as an example) may knowingly take advantage of consumers' behaviours and habits in an unfair manner.

The following behaviours, suggested by the Central Bank and designed to address this consumer protection risk, are relevant for intermediaries:

- Avoid behaviour and practices that unfairly take advantage of consumers' behavioural biases, and operate in a fair and transparent manner.
- Ensure that consumers are at the heart of all decisions.
- Support consumers in making good financial decisions and facilitate consumers shopping around in the fullest manner.
- Have strong internal governance arrangements and oversight ensuring transparency, accuracy, and robustness.[41]

39 Central Bank of Ireland, *Consumer Protection Outlook 2021*, p.21, www.centralbank.ie

40 Central Bank of Ireland, 2021. *Review of Differential Pricing in the Private Car and Home Insurance Markets (Final Report and Public Consultation)*, p.27, July 2021, www.centralbank.ie

41 Central Bank of Ireland, *Consumer Protection Outlook 2021*, p.23, www.centralbank.ie

B5 Risks from technology

Technology has changed how consumers interact with firms - especially during the Covid-19 pandemic – and the Central Bank is concerned that firms have failed to keep pace with the investment in technology. The impact on consumers ranges from inconvenience, privacy breaches, increased vulnerability, and financial exclusion to cybercrime and fraud.

The following behaviours, suggested by the Central Bank and designed to address this consumer protection risk, are relevant for intermediaries:

- Have an information technology and cybersecurity strategy, risk management framework and cybersecurity incident response and recovery plan in place to enable firms to achieve sufficient resilience and protection.
- Prioritise the development of a strong organisational culture of cybersecurity.
- Have adequate safety nets in place to protect consumer information, ensure that information is used to get the best outcome for all stakeholders, and not to use any advantage provided by the information to the detriment of consumers.
- When incidents occur that impact on consumers, firms must ensure that consumers are treated fairly and put back in the position they would have been in had the incident not occurred.[42]

B6 Mis-selling and inadequate suitability assessment

Financial products and services are a necessary part of all of our daily lives and can bring significant benefits. But where the right product is not sold to the right consumer in the right way, serious risks and harm can result. **Cross-selling** or **greenwashing** are examples of such mis-selling.

Extract 2.7, taken from the *Consumer Protection Outlook 2017*, discusses some of the factors that affect consumer confidence in the advice they are being given.

Quick question 3

Identify the behaviours suggested by the Central Bank as having been designed to address the risk of unfair practices and behavioural vulnerability.

cross-selling

to sell related or complementary products to a client (e.g. an insurance distributor offers an insurance product along with a non-insurance product)

greenwashing

conveying a false impression or providing misleading information about how a firm's products are more environmentally sound

[42] Central Bank of Ireland, *Consumer Protection Outlook 2021*, p.25, www.centralbank.ie

Chapter 2

2.7 Extract Consumer confidence

Consumers expect firms to act in their best interests and that they will deal with them in an open and fair way. They expect firms to understand their needs and what is important to them. This is relevant not only when a product is being sold but also throughout the ongoing customer relationship. … Consumers' confidence in firms can also be impacted when they feel they are not being offered the best product from that firm, particularly at renewal time … Financial products and services can be very complex and firms have an obligation to help consumers fully understand the associated risks and benefits before they make their decisions.[43]

The following behaviours, suggested by the Central Bank and designed to address this consumer protection risk, are relevant for intermediaries:

- Market and sell products in a responsible way, ensuring that consumers' individual needs are central to decisions.
- Ensure that they have sufficient information on the needs and objectives of the consumer, their personal circumstances, financial situation and their attitude to risk.
- Comply with the Consumer Protection Code requirements to assess the suitability of their products and services to each individual consumer.
- Be clear on the reasons why a product or service is being offered to a consumer and why it is suitable to that consumer.
- Ensure that consumer information is used appropriately in any sales context, in particular where products or services are cross-sold to consumers.[44]

[43] Central Bank of Ireland, *Consumer Protection Outlook 2017,* p.13, www.centralbank.ie

[44] Central Bank of Ireland, *Consumer Protection Outlook 2021*, p.27, www.centralbank.ie

C Insurance distribution

The **Insurance Distribution Regulations 2018** (IDR) transposed the **Insurance Distribution Directive 2016** (IDD) into Irish law. The IDR were designed to ensure that clients benefit from the same level of protection, regardless of the distribution channel chosen.

C1 Insurance distributors

The IDR apply to **insurance distribution** and therefore cover all participants in the sale of insurance products:

- Insurance intermediaries
- **Ancillary insurance intermediaries**
- Insurance undertakings.

The IDR apply not only to (re)insurance intermediaries but also to those that distribute insurance products directly to clients without the use of an intermediary (e.g. reinsurers and direct insurers) and to those that distribute insurance products on an ancillary basis.

Example 2.2 outlines some insurance distributors that fall within the scope of the IDR.

Example 2.2

- Credit institutions, credit unions and stockbrokers, when acting as insurance intermediaries
- Call centres providing services to/operating on behalf of insurers
- **Loss assessors** retained by the insured
- **Captive insurers**
- **Reinsurance brokers/intermediaries**
- Retail outlets offering insurance products e.g. Supervalu car insurance
- Ancillary insurance intermediaries, e.g. car rental firms offering insurance as part of a car rental package, garages or retailers offering payment protection insurance as part of a finance package or travel agents and airlines offering travel insurance.
- Comparison information websites (or other media) that enable clients to directly or indirectly conclude an insurance contract.

insurance distribution

any activity involved in advising on, proposing, or carrying out other work in preparation for or conclusion of contracts of insurance, or of assisting in the administration and performance of such contracts

Adapted from **Insurance Distribution Regulations 2018 (Interpretation)**

ancillary insurance intermediary

one whose principal professional activity is not insurance distribution but who provides particular insurance products that are complementary to a good or service

loss assessor

an expert in dealing with insurance claims, appointed by the insured to prepare and negotiate a claim on their behalf

captive insurer

an authorised insurer set up by a non-insurance parent company to underwrite its own insurance risks

reinsurance broker/intermediary

any person, other than a reinsurer or its employees, who for remuneration takes up or pursues the activity of reinsurance distribution

Example 2.3 outlines some activities that do not fall within the scope of insurance distribution and the IDR.

Example 2.3

Under the IDR, insurance distribution does not include any activity that:

- Is carried out by an ancillary insurance intermediary if:
  - Such insurance covers breakdown, loss of or damage to goods, or damage to or loss of baggage and other risks linked to travel booked with that intermediary; and
  - The annual premium payable does not exceed €600 or, where the duration of the service is 3 months or less, the premium payable per person does not exceed €200.[45]
- Involves the management of normal (re)insurance claims
- Involves loss adjusting or expert appraisal of claims for reinsurers
- Covers (re)insurance distribution activities in relation to risks arising outside the European Economic Area (EEA)
- Involves the provision of data and information only, if the firm does not take any additional steps to assist the client in concluding an insurance contract.

C2 Registration/authorisation

The IDR introduced a requirement for all insurance, reinsurance and ancillary intermediaries to register with the Central Bank or a competent authority in another EEA jurisdiction. (Re)Insurers were already required to be registered under previous legislation.[46] More prescriptive rules apply to distributors that sell insurance products with an investment element, e.g. unit-linked life insurance.

contract
voluntary agreement between two or more parties that is enforceable at law as a binding legal agreement

The activity of insurance distribution includes providing advice related to insurance products. An intermediary can also carry out specified activities, e.g. loss assessing and assisting consumers in dealing with claims.[47]

Intermediaries may be involved in different activities at various stages of a **contract**. However, the majority focus on advising and assisting their clients in the purchase of insurance, investment and mortgage products, and in risk and claims management.

45 The purpose of this exemption is to exclude low-value insurance transactions (occurring in the context of retails sales) from the scope of regulated insurance distribution activity.

46 More information is available at Central Bank of Ireland Registers, www.registers.centralbank.ie.

47 Adapted from Central Bank of Ireland (Regulation – Industry & Market Sectors, Brokers/Retail Intermediaries, Insurance Brokers/Intermediaries), www.centralbank.ie.

C2a Insurance intermediary passporting

Under **freedom of services**, an insurance intermediary registered in one EU/EEA member state can act as an insurance intermediary in another member state, i.e. **passporting**. If doing so on a freedom of services basis, the intermediary must inform the authorities of its home state and comply with the relevant conduct of business rules in the host state. Example 2.4 outlines how this applies to a registered Irish insurance intermediary wanting to commence insurance distribution activity in France on a freedom of services basis.

Example 2.4

An insurance intermediary registered with the Central Bank is entitled to carry on the activity of insurance distribution in France, subject to the following process:

1. The insurance intermediary notifies the Central Bank of its intention to commence providing insurance distribution services in France.
2. The Central Bank notifies the French regulator (competent authority) of the insurance intermediary's intention to commence insurance distribution activity in France.
3. Once the French regulator confirms receipt of the required information, the Central Bank notifies the insurance intermediary that it has informed the French regulator. At that stage, the insurance intermediary can commence insurance distribution activity in France.
4. The insurance intermediary continues to be prudentially supervised by its home state regulator (the Central Bank) for its cross-border activity.
5. The insurance intermediary must comply with all French conduct of business rules, including financial crime regulations, sales and marketing rules and consumer protection regulations.

freedom of services

An insurer or insurance intermediary may provide the services for which it is registered in its home country/member state, throughout the EU, through the free provision of services on a cross border basis (i.e. without establishing a permanent presence)

passporting

EU system whereby an insurer/intermediary established and authorised in one member state can sell to residents of another member state by either establishing a branch there or by way of cross-border services

Chapter 2

C2a1 Brexit

Case study 2.3 notes the impact of Brexit on passporting for UK- and Gibraltar-based insurers.

Case study 2.3

In June 2016, the United Kingdom (UK) voted to leave the EU. Article 50 of the **Treaty of Lisbon 2007** was triggered in March 2017 and the UK left the EU on 31 January 2020. The Withdrawal Agreement included a transition period until 31 December 2020 and during that period, the UK remained part of the EU's Single Market and Customs Union. On its departure, the UK (including Gibraltar) lost its right to passport within EU member states.

Post-Brexit, as the UK is regarded as a 'third country', a UK firm may use the option of setting up a third-country branch in an EEA member state. The Solvency II regime facilitates a non-EEA firm in establishing a branch operation in an EEA member state, subject to meeting specific regulatory requirements. However, this does not permit passporting into other jurisdictions; the firm must set up a separate branch in every EEA member state where it wishes to transact business.[48]

In 2019, Ed Sibley (Central Bank Deputy Governor, Prudential Regulation) said that the Central Bank had been 'delivering a proportionate, robust, efficient and effective authorisation process in line with European regulatory norms, for all firms seeking authorisation in Ireland as a result of Brexit'.[49]

Without such action being taken, there were risks that UK-and Gibraltar-based firms passporting into Ireland would no longer be able to provide insurance cover or services to EU policyholders. This included collecting premiums, making mid-term alterations and negotiating and settling claims on any outstanding insurance contracts taken out prior to the UK's departure from the EU.[50] Proactively, some UK insurers made fronting arrangements with insurers with branches in Ireland, set up branches in Ireland or moved liabilities to EU-based entities of the insurer.

In identifying Brexit as a key cross-sectoral risk to firms and their clients, the Central Bank's *Consumer Protection Outlook 2020* was likely referring to the post-Brexit risk of a reduced market and client choice.[51] However, the fact that Brexit is not mentioned in the *Consumer Protection Outlook 2021* would seem to imply that the Irish market has adapted well without any major disruption.

You are encouraged to keep up to date with Brexit-related developments and information.

[48] For more information, go to Central Bank of Ireland, *Authorisation and supervision of branches of third-country insurance undertakings by the Central Bank of Ireland*, Consultation Paper 115, pdf, November 2017.

[49] Central Bank of Ireland (News & Media – Press releases), 'Safety and soundness – Strategic Priorities for the next 3 years' (speech), 17 January 2019, www.centralbank.ie.

[50] Central Bank of Ireland (News & Media – Speeches), 'The provision of financial services in Ireland and from Ireland after Brexit', Speech by Ed Sibley, Deputy Governor, 16 May 2018.

[51] Central Bank of Ireland, *Consumer Protection Outlook 2020*, p.8, www.centralbank.ie.

Just think

Before reading on, do you think that TIB is required to hold professional indemnity insurance? If so, think about why it must hold this insurance cover and how much it might have to hold?

C3 Professional indemnity insurance

The requirement for intermediaries to hold professional indemnity insurance (PII) is another element of consumer protection (see Extract 2.8).

2.8 Extract PII settlement agreements

Having reached settlement agreements with four retail intermediaries for failure to hold PII, Brenda O'Neill (the then Central Bank Head of Enforcement) commented:

> The Central Bank views PII as a key prudential and consumer protection safeguard. It is important that the consumers know that, in the event of a valid professional negligence claim being established, there will be a source of funds available to them in connection with that claim. Ensuring compliance with PII obligations is therefore fundamental to the Central Bank's mandate of protecting consumers in the context of the regulation of the Retail Intermediaries sector.
>
> Firms should be aware that where consumers are put at risk through failures by firms to respect their obligations the Central Bank will apply its supervisory and enforcement powers. The Central Bank's approach aims to act as a deterrent to others and to ensure that standards are met.[52]

Every insurance intermediary must hold PII, unless the insurer already provides it (on the intermediary's behalf) or the insurer has taken full responsibility for the intermediary's actions (as is the case with a tied insurance intermediary). The current minimum levels of cover are €1,300,380 per individual claim, and €1,924,560 in aggregate for claims arising in any one year.[53]

Note that in relation to each regulated activity, where there is a requirement to hold PII cover, intermediaries must hold separate, ring-fenced cover. For example, a firm that is registered as an insurance intermediary (under the IDR) and also authorised as an **investment intermediary** (under the IIA) is required to hold ring-fenced aggregate PII cover of a minimum of €1,924,560 in relation to each activity.

In practice, intermediaries may hold a significantly higher limit than the minimum imposed.

Under the IDR, an insurance intermediary's PII (or other comparable guarantee against professional negligence liability) must cover the whole territory of the member states.

investment intermediary

an investment business firm (authorised by the Central Bank under the Investment Intermediaries Act 1995) to provide investment business services and investment advice to (i) product producers and/or (ii) non-product producers (e.g. a Lloyd's broker)

[52] Central Bank of Ireland, (News & Media – Press Releases), '*Settlement agreements reached with Retail Intermediary firms over failure to hold Professional Indemnity Insurance*', 4 December 2017, online article, www.centralbank.ie.

[53] These amounts were increased from those originally provided for in the IDD by the **Commission Delegated Regulation (EU) 2019/1935**.

Chapter 2

insurance product information document

documentation that contains the relevant information about the insurance product in a prescribed and simple format to allow the client to make an informed decision, while taking into account the complexity of the insurance product and the type of client

C4 Insurance Distribution Regulations and the Consumer Protection Code

As noted in Section C2, the IDR apply to the distribution of all insurance products. Its more prescriptive rules apply to those distributors that sell insurance products with an investment element, e.g. unit-linked life insurance.

Throughout this textbook, the relevant IDR requirements are outlined as topics are explored (e.g. remuneration or pre-contractual provision of information).

On a high-level, the IDR require that:

- clients benefit from simple, standardised information (e.g. **insurance product information document**, IPID (see Chapter 3A4c))
- marketing communications to clients or potential clients are fair, clear and not misleading
- key information is clearly disclosed in good time before the conclusion of any contract
- in cross-selling situations, the distributor tells the client that they can buy the components separately
- there be product oversight and governance, whereby all those that manufacture insurance products have in place internal systems to approve the product before it is launched.

The Consumer Protection Code is a statutory code, setting out many of the requirements of the IDR in a more accessible format. The overarching nature of the CPC's consumer protection requirements means that you should consider all sections of this textbook in tandem with the CPC's relevant intermediary provisions (see Compliance and Advice module and the CPC). You should also be aware that the Central Bank is undertaking a substantial review of the CPC in 2022. This review aims to ensure that the Central Bank and the CPC continue to deliver strong protections for consumers into the future against the emerging trends and risks across the rapidly changing financial services landscape. Given this pending review and update and that this textbook does not cover the entire CPC, we encourage you to stay up to date with developments in this area, while reminding you that only the content of this textbook is examinable.[54]

[54] Central Bank of Ireland, *Consumer Protection Code*, 2012, www.centralbank.ie.

C5 IDR and enforcement

Non-compliance with the IDR is an offence. The IDR provide powers of enforcement to the Central Bank (e.g. to search and inspect offices, remove and obtain records, and authority to obtain a warrant from a district court to enter a private dwelling) and also prescribe penalties and sanctions.[55]

Just think

The directors of TIB want to know the limits of the firm's financial exposure in the event of an incident of non-compliance with the IDR.

The IDR prescribe:

i. a monetary penalty not exceeding €5,000,000, or not exceeding 5% of the total annual turnover from the last available accounts, or

ii. a monetary penalty not exceeding twice the amount of the profits gained or losses avoided as a result of an infringement, even if the amount determined is greater than the amount specified in (i).[56]

[55] Full details of settlement agreements arising out of non-compliance and subsequent enforcement action taken by the Central Bank can be found on the Central Bank website, www.centralbank.ie.

[56] **Insurance Distribution Directive 2018**, Part 8, 46(1) i and ii.

D Ethics

We noted in Chapter 1 that intermediaries may face conflicts of interest that give rise to ethical challenges while conducting their business. The Central Bank places great importance on ethical behaviour in the financial services market. You should consider how the chapter on Ethics in your Compliance and Advice module applies to intermediaries.

Just think

Think about some situations that could arise that could pose an ethical challenge or dilemma for an intermediary.

Examples 2.5 and 2.6 illustrate some ethical situations that an intermediary might find themselves in.

Example 2.5

A TIB business executive is contacted by one of TIB's MGA partners. The MGA is under pressure to meet premium targets. They offer tickets to a sporting event as an incentive to the TIB business executive if they will place more business with the MGA. The TIB business executive should report this in line with TIB's Conflicts of Interest policy as placing more business with the MGA may not be in the client's best interest.

Example 2.6

A TIB support staff member is contacted on social media by a staff member of a rival intermediary firm. They ask for information on the pricing of TIB's hardware shop schemes. It is hinted that the TIB staff member could be offered a job at the rival firm if the information provided generates more business for them. The TIB staff member should report this contact in line with TIB's Conflicts of Interest policy.

D1 Ethics and culture

Ethics aligns to the organisational culture that was discussed in Section B1 as illustrated by Extract 2.9 from Grainne McEvoy's 2019 speech.

2.9

Extract *Culture and Ethics in Financial Services*[57]

You can think of a culture as a system of shared values and norms that shape behaviours and mindsets within an institution – it is often defined as "the unwritten rules or the way things are done around here".

Some suggest that an ineffective culture could lead to increasing rates of bad behaviour through the "slippery slope" effect, where small demeanours lead to more significant deviant behaviour over time. So a workplace culture that tolerates minor misdemeanours may be setting itself up for far worse.

Behavioural economist Dan Ariely has described a "what the hell" effect - once you have gone down the wrong road, you might as well really enjoy the benefits of being unethical by engaging in even more immoral behaviour.

Increasingly, the question being asked is whether unethical behaviour is driven by individual bad apples or the nature of the workplace itself – bad barrels, if you will. While the role of bad apples cannot be ignored, there is increasing interest in the role of workplace culture in driving misconduct.

Against that background, research suggests firms should focus on maintaining a "good barrel" - or an environment that influences individual choices for good.

[57] Central Bank of Ireland (News & Media – Speeches), 'Culture and ethics in financial services', Speech by Gráinne McEvoy, Director of Consumer Protection, 12 February 2019, www.centralbank.ie.

Chapter 2

E Summary

The management of conduct risk and the protection of consumers have wider social and economic benefits that go beyond the regulatory framework. An effective approach to minimising conduct risk goes above and beyond minimum compliance with relevant legislation or codes of conduct, by putting consumers' interests at the heart of what the firm does.

This chapter explored how the Central Bank supervises intermediaries, the role that intermediaries play in consumer protection and the importance of ethics. Other relevant rules that intermediaries must also comply with (e.g. data protection, anti-money laundering and counter-terrorist financing regulations) are outlined in later chapters.

E1 What's next?

Having reviewed the main compliance requirements that impact on brokers when dealing with clients, we can take up where we left off at the end of our product modules (Personal General Insurance and Commercial General Insurance).

So, we have now met with our client, listened to their wants, identified their insurance needs and provided advice on the most suitable solution, i.e. 'knowing your consumer/client'.

In the next chapter, we examine the role of a broker in placing insurance in a way that best meets the client's needs.

E2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in this textbook. Use the 'End of chapter questions', 'Quick questions' and 'Sample exam questions' to quickly test what you have learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

E3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Remember: This module is examined by mixed assessment, which includes:

- An online mid-semester MCQ assessment (20 questions)
- An end-of-semester written exam paper (9 questions).

Given that your online mid-semester assessment is a multiple-choice question test, completing the online practice paper is the ideal preparation for this. You can prepare for the end-of-semester written exam and test your knowledge by completing sample and past written exam papers.

To access these online learning supports, log into your Member Area of **www.iii.ie** and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 2. It should be noted that these end of chapter questions are revision questions to test your understanding of the material in the chapter just studied. They are not sample exam questions.

1. List three examples of Central Bank ongoing communications which relate to supervision.

2. State the two triggers of a Central Bank inspection of retail intermediaries.

3. List four components of the Central Bank's desk-based supervision.

4. State the type of insurance retail intermediaries are required by the Central Bank to hold.

5. Explain what a Central Bank targeted firm-specific inspection is.

6. Briefly explain 'conduct risk' in the context of broking practice.

7. List the two other State agencies that the Central Bank works with to deliver on their consumer protection mandate.

8. State the purpose of the Central Bank's *Guide to Consumer Protection Risk Assessment*.

9. State two of the outcomes of the 2020 ad-hoc standalone consumer survey carried out by the Central Bank.

10. State two suggested behaviours that retail intermediaries can implement which are designed to address risks from technology.

11. State the minimum levels of cover an intermediary must hold under professional indemnity insurance for each regulated activity.

Chapter 2

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. Examples of Central Bank ongoing communications which relate to supervision are the Intermediary Times, relevant updates and the Annual Retail Intermediary Roadshow.

2. Concerns in relation to a particular firm or a market-wide issue can trigger a Central Bank inspection of retail intermediaries.

3. Choose four from the following components of the Central Bank's desk-based supervision:
   - Ensuring that minimum standards of compliance are met
   - Assessing and investigating risks and issues as they arise
   - Ensuring Risk Mitigation Programmes are implemented
   - Managing ongoing enforcement cases
   - Conducting market research
   - Engaging with stakeholders
   - Providing ongoing communication and engaging with the sector.

4. Retail intermediaries are required by the Central Bank to hold professional indemnity insurance.

5. A Central Bank targeted firm-specific inspection has a similar format to a thematic review, but is prompted by regulatory concerns or issues raised in respect of a specific firm, as opposed to an industry sector. Specific findings are issued which may include an RMP and/or enforcement action.

6. Conduct, in an insurance broking context, refers to how brokers carry out their business and interact with their clients, insurers and regulators. The Central Bank defines conduct risk as 'the risk a firm poses to its customers from its direct interaction with them'.

7. The Financial Services and Pensions Ombudsman and the Competition and Consumer Protection Commission work with the Central Bank to deliver on their consumer protection mandate.

8. The Central Bank's *Guide to Consumer Protection Risk Assessment* provides the Central Bank with a framework to assist supervisors in carrying out an assessment of how consumer protection risk is managed within regulated entities.

9. Choose two from the following ad-hoc standalone consumer survey carried out by the Central Bank:
   - Consumers frequently considered insurance in negative terms.
   - The complexity of insurance means most consumers have a limited knowledge of how the specifics of insurance operates.
   - Consumers tend to involve themselves more in private car insurance than home insurance.
   - Many consumers report that they compare prices with other insurance providers largely because it helps to negotiate a better price with their current provider, rather than switch provider.

10. Choose two from the following suggested behaviours that retail intermediaries can implement which are designed to address risks from technology:

    - Have an information technology and cybersecurity strategy, risk management framework and cybersecurity incident response and recovery plan in place to enable firms to achieve sufficient resilience and protection.
    - Prioritise the development of a strong organisational culture of cybersecurity.
    - Have adequate safety nets in place to protect consumer information, ensure that information is used to get the best outcome for all stakeholders, and not to use any advantage provided by the information to the detriment of consumers.
    - When incidents occur that impact on consumers, firms must ensure that consumers are treated fairly and put back in the position they would have been in had the incident not occurred.

11. The current minimum levels of professional indemnity cover for an intermediary are €1,300,380 per individual claim and €1,924,560 in aggregate for claims arising in any one year.

Answers to quick questions

1. The three types of inspections that the Central Bank may conduct on an intermediary are:
    - Thematic reviews.
    - Targeted firm-specific inspections.
    - Unannounced targeted onsite inspections.

2. Any three of the following:
    - Persuasion education
    - Code of Practice
    - Inspection supervision
    - Enforcement notices and Compliance agreements.
    - Administrative sanctions and Civil court action
    - Criminal prosecution
    - Licence revocation

3. The following behaviours, suggested by the Central Bank and designed to address the risk of unfair practices and behavioural vulnerability, are relevant for intermediaries:
    - Avoid behaviour and practices that unfairly take advantage of consumers' behavioural biases, and operate in a fair and transparent manner.
    - Ensure that consumers are at the heart of all decisions.
    - Support consumers in making good financial decisions and facilitate consumers shopping around in the fullest manner.
    - Have strong internal governance arrangements and oversight ensuring transparency, accuracy, and robustness.

Sample exam questions

Question 1

XYZ Insurance Brokers is authorised as an insurance intermediary by the Central Bank to practise insurance distribution. XYZ intends to passport as an intermediary into France.

Briefly explain how passporting operates, and outline four steps XYZ must complete in order to carry on the activity of an insurance intermediary in France.

Total: 10 Marks

Question 2

According to the *Consumer Protection Outlook 2021* 'A firm shows its culture in how it makes its decisions, how it assesses risks and how it treats its consumers'.

Outline (i) the advantages of good behaviours and culture and (ii) the disadvantages of poor behaviours and culture for an insurer.

Total: 10 Marks

Your answers

Sample answers

The answers set out below show the main points to be considered by students in answering the question. In some cases, a well-reasoned alternative view could earn good marks.

Question 1

An insurance intermediary registered in one EU/EEA member state can act as an insurance intermediary in another member state by way of freedom of establishment or freedom of services (i.e. passporting). If doing so on a freedom of services basis, the insurance intermediary must inform the authorities of its home state and comply with the relevant conduct of business rules in the host state.

An insurance intermediary registered with the Central Bank of Ireland is entitled to carry on the activity of insurance distribution in France, subject to the following process:

1. The insurance intermediary notifies the Central Bank of its intention to commence providing insurance distribution services in France.
2. The Central Bank notifies the French regulator (competent authority) of the insurance intermediary's intention to commence insurance distribution activity in France.
3. Once the French regulator confirms receipt of the required information, the Central Bank notifies the insurance intermediary that it has informed the French regulator. At that stage, the insurance intermediary can commence insurance distribution activity in France.
4. The insurance intermediary will continue to be prudentially supervised by its home state regulator (the Central Bank) for its cross-border activity.
5. The insurance intermediary must comply with all French conduct of business rules, including sales and marketing rules and regulations.

Reference Chapter 2C2a **Total: 10 Marks**

Chapter 2

Question 2

Advantages and disadvantages of different behaviours and cultures	
Advantages of good behaviours and culture	**Disadvantages of poor behaviour and culture**
Increased business and income through referrals of existing clients.	A loss of current and potential clients because of low-client satisfaction.
Higher retention of staff who agree with the values and goals of the business.	Lower staff morale and higher staff turnover resulting from a lack of accountability from and trust in management, a lack of training for staff and client dissatisfaction.
A positive reputation in the market, allowing TIB to attain agreements with more insurers, wholesale brokers and MGAs, and also to attract good staff.	A decline in TIB's market reputation, making it more difficult to gain and retain agreements with insurers.
Lower risk of complaints and disputes.	Higher risk of time-consuming complaints and disputes and possibly, legal action.
The provision of additional insurance policies and services to existing clients, e.g. risk identification surveys.	

Reference Chapter 2B1 **Total: 10 Marks**

Chapter

3

Negotiating and placing a risk

Chapter 3

What to expect in this chapter

Brokers carry out many functions but, as noted in Chapter 1, their main role is to advise their clients on insurance solutions. To do this effectively, they need to get to know the client and the risk (see the Personal General Insurance and Commercial General Insurance modules). As you know from your study of The Nature of Insurance and Compliance and Advice modules, there are legal and regulatory requirements that impact on this process.

In this chapter, we look at the broker's role in this negotiation and placement process. We highlight best practice regarding the process of compiling and presenting the submission, negotiating with insurers and presenting recommendations to the client. All of this is undertaken while ensuring that the conduct risk is minimised.

To help you relate the material in this chapter to a real-life situation, we will refer to the sample profile of Tuhill Insurance Brokers Ltd (TIB, see Chapter 1) and to the case of Sean Burke (see Section B for sample client submission). The topics in this chapter highlight the process that a broker goes through when matching a client's insurance needs and wants with an insurer's product. It will help you reflect on how and why each stage of the process places certain requirements on brokers and their clients.

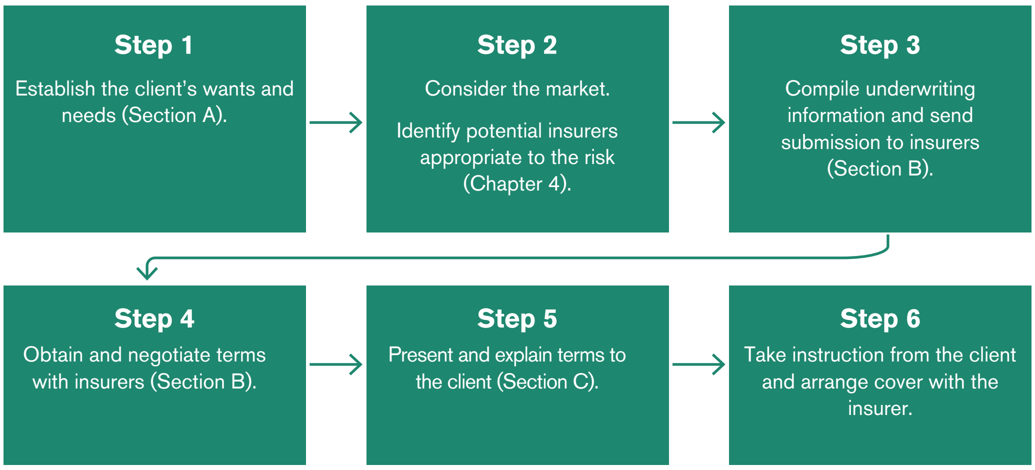
Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Compiling underwriting information**	Explain the methods by which brokers capture underwriting information for insurers. Describe the responsibilities imposed on the parties to the insurance contract by the duty of disclosure. Outline the information that regulation requires a broker to provide to the client at this stage of the insurance process.
B	**Presenting a risk to insurers and negotiating terms**	Discuss the principles and objectives of good submission drafting, outline the factors relevant to negotiating terms and the action to be taken in the case of declined proposals.
C	**Confirming terms to the client**	Describe good practice in the confirmation of terms to clients, including information on the contract.
D	**Remuneration**	Explain the various sources of brokers' income.

A Compiling underwriting information

Once a broker has collected all the relevant risk data or underwriting information, they can seek quotations from insurers and identify the most suitable insurance solution for the client – a process summarised in Figure 3.1. Note that a broker may feel there is merit in reviewing two or more options with the client in order to discuss insurers' differences in cover and costs for the same risk.

Figure 3.1 Process for seeking a quotation from insurers



A1 Data capture

It is important for brokers to fully know their clients; the more knowledge the broker obtains, the more they understand the clients' needs and the better they can present those needs to insurers. Every time a broker interacts with the client (or potential client), they can gather information that may be useful. Appendix 1 at the end of this chapter outlines the types of question to ask clients when they seek different types of insurance.

A1a Formal methods of data capture

There are a number of formal ways the broker can compile risk data or underwriting information. The Nature of Insurance module covered these but, as a reminder, Table 3.1 describes these methods and outlines their advantages and disadvantages. The method used is usually dictated by the type of insurance in question or the insurer involved.
Regardless of the method used, the broker must emphasise the importance of accuracy in providing the information to all parties to the insurance contract (see Section A3).

Chapter 3

Proposal forms are used for specialised risks and most medium-sized and smaller risks, e.g. professional indemnity insurance. The function of the proposal form is to:

- Present standardised information for the insurer to underwrite the risk
- Act as the basis for the insurance contract between the insurer and client.

The broker should not complete the form on behalf of the client. However, exceptions include clients that need assistance, e.g. elderly clients or those with specific writing difficulties. A broker may complete some or all of the questions on the form, which the client then signs.

A proposal form is the basis of the legal contract between the insured and the insurer should they proceed with cover. Therefore, it is vital that all information on it is factually correct.

A statement of fact (SOF) is used frequently for:

- Household
- Motor
- Travel
- D&O
- Straightforward SME business.

Most insurers now have a facility with brokers for offering personal lines and smaller commercial lines cover via SOFs through quotation engines, e.g. Applied Systems, SSP, Open GI, ComQuote and EDI. This facility reduces operational cost and time for both the insurer and broker. SOFs do not generally need to be signed by the insured. Any risks which would generate a premium above a certain threshold or which don't fit certain underwriting criteria will still need a proposal form to be completed.

questionnaires

specially constructed form used by insurers to deal with commonly encountered hazards for groups of risks

Insurers have developed industry-specific **questionnaires** based on their experience in particular classes of business, trades and occupations. These questionnaires allow for open-ended and non-standard questions, differentiating them from the proposal form. These questionnaires are:

- Used for risks that are too large or complex for a standardised proposal form (e.g. a wind turbine)
- Usually tailored to the needs of the particular client and risk, and may be used in conjunction with other risk information, e.g. client accounts, product information and detailed loss analysis.

A broker's role in the completion of these questionnaires is the same as for proposal forms.

Brokers have also developed questionnaires based on their experience in particular classes of business and on their experience with clients. These questionnaires vary in complexity, depending on the risk, and are used by brokers to gather specific information.

These questionnaires are used for:

- Gathering information for larger risks or where the client has many different sites
- Gathering information on certain aspects of a risk where more clarity is needed, e.g. airside cover on a motor fleet policy
- Supplementing other means of gathering information or as guides for brokers to capture all essential information.

Just think

Insurers require as much information on a risk as possible in order to assess it fully and price it accurately. Consider in what situations TIB would conduct a survey on a potential new business risk.

Survey reports may involve a site visit from a broker's technical expert who identifies the client's key risks and exposure. (Alternatively, a 'joint survey' may be used, where the insurer sends its own expert to meet the client, but the broker's risk surveyor also attends). Following a site visit, the broker presents a detailed report to the insurer.

These survey reports are used:

- For complex risks (e.g. larger property and liability), in order to fully understand the risk and the client's approach to risk management
- To explain any **risk improvements** the insurer may require before offering terms
- To identify additional risks which should also be insured
- In situations where the insurer requires a survey report, e.g. engineering insurance
- To capture client data
- To update risk information, e.g. if a factory has extended its buildings but has not increased its sums insured, the survey will make both the client and current insurer aware that the risk may be underinsured.

Table 3.1 outlines the advantages and disadvantages of these various methods of data capture.

Table 3.1 Methods of data capture

Method	Advantages	Disadvantages
Proposal form	• Provides a comprehensive method of collecting relevant data. • Allows an opportunity to remind the client about their duty of disclosure (non-consumer insurance). • Provides the opportunity to discuss the client's other insurance needs.	• Some clients dislike completing a form, which they may see as the broker's responsibility. • Forms tend to be standardised, so some questions may not be relevant or relevant questions may not be included. Clients may need reassurance and advice when completing them.
Statement of fact	• Selling and buying of insurance is made simpler.	• Information can be commonly overlooked (if a question is not posed or a prompt provided), including previous claims, dual occupations, other services offered by a business (e.g. a beauty salon that offers sunbed tanning facilities, which are often excluded) or unusual features (e.g. a leisure craft). • Pre-quotation guidelines need to be thoroughly read and understood by both the broker and client. Both insured and insurer can make incorrect assumptions that do not come to light until a claim is made.

survey report
report generated by an insurer or insurer's contractor to identify aspects of the risk on cover

risk improvement
a requirement insisted on by the insurer as a condition for accepting the risk

Chapter 3

material fact

every circumstance that would influence the judgment of a prudent insurer in fixing the premium or determining whether it will take the risk

Marine Insurance Act 1906, Section 18(2)

Table 3.1 Methods of data capture (contd)

Insurers' questionnaires	• Provides a comprehensive method of collecting relevant data. • All relevant information is requested and questions that are not relevant can be avoided. • With large and more complex risks, questionnaires capture non-standard but relevant information.	Questionnaires are tailor-made to fit the risk, so they may: • Take time to structure • Be difficult for the insured to complete. Brokers need to take extra care to ensure **material facts** or key information are disclosed.
Brokers' questionnaires	• Questionnaires may be sent in advance of a face-to-face meeting, allowing the client an opportunity to review the content and gather appropriate risk information. This provides a clear focus for the meeting. • Complementing these questionnaires with a face-to-face visit saves time and can reduce potential errors.	• The broker may become over-reliant on the questionnaire as the only source of data capture, e.g. using the questionnaire as a substitute for face-to-face meetings. • If the questionnaire is inadequately completed or does not capture all the required information, the insurer may require completion of its own questionnaire. • The process can be time-consuming.
Survey reports	• This method will generally capture the most physical risk information, as well as provide an understanding of how the risk/business is run. • It provides clarity for brokers and underwriters in relation to complex risks, e.g. a chemical plant. • It allows for photographs to be included in the broker's submission. Photographs can often describe the risk better than any text in the other methods of data capture.	• Not all insurers accept a broker's survey and may only quote based on the findings of their own surveyor. • Surveys are expensive and time-consuming. • Surveys need to be conducted by an expert and the broker may not have such expertise 'in-house'.

A1b Other methods of data capture

Insurers use various sources of information when making decisions about underwriting risks, or at other stages of the insurance process. It is important for brokers to be aware of these resources and how they are used.

A1b1 Online information sources

Insurers, especially those offering small commercial combined products, often use publicly available online sources. The client's website, Google Maps and Street View allow insurers to get an understanding of the risk being proposed and to verify if it is similar to that presented in the broker submission. (Sean Burke's submission in Section B refers insurers to Google Maps).

However, brokers and their clients must be aware that some insurers specifically state that they do not consider providing a website as a declaration of material fact, i.e. they may view it, but will not accept that 'they have been told'. Insurers also recognise that some business websites are not kept up to date, while others may exaggerate their business capabilities.

Many insurers are employing Geocoding databases to inform underwriting staff of flood-prone areas. This has allowed insurers to be selective in their choice of risks and, in some cases, restrict flood cover depending on location and exposure. Geocoding databases have also been built into quotation engines, which brokers use to quote for household insurances.

For motor insurance, Cartell.ie has become a valuable tool to identify the exact make, model and engine size of registered motor vehicles. It also checks if the vehicle has any outstanding finance. Cartell.ie's vehicle identification tool has been integrated into quote engines used by brokers, e.g. Applied Systems, SSP, Open GI and Comquote. It safeguards against placing unsuitable vehicles on cover, e.g. a car that was previously written off or a low-performance car with a high-performance engine. More recently, insurers have employed risk intelligence software to identify anomalies in their motor insurance portfolios, e.g. cars without a current NCT or road tax, or vehicles that have been written off but not declared. In some cases, insurers have identified motor policies that cover a different car from the one proposed at quotation stage. These types of risk intelligence are increasingly used in the insurance market.

A1b2 Insurer information resources

The **Road Traffic Act 2010** requires the details (registration numbers) of all motor vehicles insured in Ireland to be recorded in the National Fleet Database (NFD). The NFD allows fleet owners and the motor trade to tackle uninsured driving by registering their vehicles on the database. While the majority of motor insurances have specific certification of cover (i.e. containing the exact registration of the insured vehicle), motor trade road risk and motor fleets are often arranged on a declaration basis, usually at renewal or inception stage, and use blanket certificates of cover. The NFD allows motor fleet and motor trade policyholders to keep an online record of insured vehicles. This record is shared among other bodies, including the **Motor Insurers' Bureau of Ireland** (MIBI), the Department of Transport, and An Garda Síochána.

Chapter 3

Motor Insurers' Bureau of Ireland

body set up between motor insurers and the government, which aims to ensure that innocent victims of road accidents are properly compensated in circumstances where no effective motor insurance is in force (e.g. uninsured or untraced vehicles)

Chapter 3

InsuranceLink
a database of past claimants, maintained by Insurance Ireland

fraud
wrongful or criminal deception intended to result in financial or personal gain

loss experience
information detailing the loss sustained by an insured over a certain period of time

InsuranceLink assists insurers in the detection and defence of **fraud** and exaggerated claims.

The Integrated Information Data Service (IIDS) is a database that allows Insurance Ireland member companies to confirm the accuracy of penalty points and no-claims-discount information provided by clients when they seek to take out new motor policies or renew existing policies, thus improving the processing of information.[58]

Insurers have also used various external resources. For example, Thatcham Research (UK), the motor insurers' automotive research centre, aims to reduce the cost of motor insurance claims while maintaining safety requirements. Over the years, the centre has produced several reports on safety issues surrounding motor accidents.

A2 Loss experience

It is a broker's responsibility to represent their client to insurers. When presenting risks to an insurer, rather than simply producing the minimal claims experience details provided by the current insurer, an informed narrative on losses can assist in the overall risk presentation. As well as outlining outstanding claims, a broker must ensure that an insured's **loss experience** includes both insured and uninsured losses. Typically, most insurers will request the client's 5-year claims experience.

A2a Insured losses

Many insurers are reluctant to quote for a new risk (and particularly a liability risk), without an authenticated claims experience from the holding insurer. A typical claims experience outlines the incident date, claim type, cost (including payments and legal costs), reserve (estimated cost for an open claim) and the current status of the claim, e.g. settled/closed, open/ongoing, re-opened. This requirement may present challenges for a broker when trying to access the best terms for its client. For an open claim, some insurers believe that releasing the highly sensitive reserve figures could prejudice their position in defending the claim. For this reason insurers may only release a total reserve figure for all open claims rather than identifying reserves on a claim-by-claim or case-by-case basis. Again, this could make access to the best terms difficult.

no claims bonus/ discount
a reduction of premium for successive claim-free years, which increases to a maximum over a period of (usually) 5 years, held in the client's own name

third-party claim
a claim brought against the insured party by a person or entity (party) that was not connected with the original policy

Brokers need to consider what to do in a situation where the insurer has not produced the necessary evidence of claims experiences in time for renewal. In motor insurance, this has been addressed by the regulatory requirement to provide **no claims bonus/ discount** certificates prior to renewal date.[59] For some other risks, the CPC has improved the situation to some extent, by requiring insurers to keep the insured informed of the progress of a claim, including final settlement and breakdown of costs.[60]

Under the **Consumer Insurance Contracts Act 2019**, non-life insurance renewal notices to consumers must include a list of any claims (including **third-party claims**) paid by the insurer to or on behalf of the consumer within the last 5 years.[61] This does not confer a duty on the broker to seek the claims information from previous insurers if the consumer has changed insurers in the last 5 years.

Many insurers have improved this situation by standardising their formats in presenting claims information to clients.

58 Insurance Ireland is the representative body for the Irish general insurance, health insurance, life assurance, reinsurance and captive management sectors. It has 130 member companies which represent 95% of the domestic insurance market. See www.insuranceireland.eu.

59 **Motor Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2002, SI No. 389** Explanatory Note (b), www.irishstatutebook.ie.

60 Provisions 7.6-7.21, CPC.

61 Except, where the contract is a health insurance contract as per Section 2(1) of the **Health Insurance Act 1994**.

When presenting a client's claims experience to prospective insurers, a broker should observe the following guidelines:

- Always retain claims experiences from previous years so that the progress of claims can be tracked.
- Check claims listings for duplications and settled claims that show as 'outstanding'.
- Ask for the experience well in advance, at least two months before expiry.
- Agree a claims 'cut-off' date with the insurer so that losses after that date do not affect renewal negotiations (but inform the client that the insurer may reserve the right to amend its proposed renewal terms, should a serious claim occur before the actual renewal date).
- Review large losses in advance of submission or renewal.
- For large losses, ensure that the circumstances are clear, especially any remedial or other changes that may have reduced or eliminated the risk.
- For cases with large numbers of claims, present tables of losses with clarity. Include a value analysis of the losses, e.g. after applying deductibles sorted by level type, location and so on.
- Ensure that any factors with the potential to influence loss/claims statistics are identified and explained, e.g. closure of premises or changes in work practices.

A2b Uninsured losses

Uninsured losses can include those that are:

- Deliberately uninsured, e.g. losses absorbed by 'self-insurance' retention (which operates similar to an **excess/deductible**) or because no insurance was taken out due to affordability, availability (e.g. a flood risk on a known flood plain) or other factors
- Unintentionally uninsured, e.g. the policy did not cover the loss, the sum insured was insufficient or the risk was not identified
- Not insured under policy terms, e.g. non-natural use of property, or infestation of vermin causing damage to buildings, contents and electrical wiring.

Brokers must take particular care when obtaining details of uninsured losses, especially in the situations described in Example 3.1.

Example 3.1

Reducing a self-insured retention	If a client wants to reduce an excess from, for example, €10,000 to €1,000, it is essential that all information on all losses between €1,000 and €10,000 is provided to the insurer.
Taking out insurance	If a client is seeking cover for a previously uninsured risk (e.g. product recall), ensure that details of all incidents and circumstances that could have produced an insurance claim are provided to prospective insurers. Brokers must take care to identify costs that would and would not have been covered by such a policy.

excess/deductible

first part of each and every claim that must be paid by the insured

Quick question 1

Why would an insurer require information on uninsured losses?

The answer is at the end of this chapter.

Chapter 3

utmost good faith

the positive duty to voluntarily disclose, accurately and fully, all facts material to the risk being proposed, whether requested or not

proposer

a person, firm or organisation applying for insurance but not yet a policyholder/ an insured

basis of contract clause

a declaration on an insurance proposal form or insurance contract stating that representations made by the policyholder (insured) are true and accurate

A3 Duty of disclosure

As you know from your previous studies, insurance contracts are based on **utmost good faith**. However, the **Consumer Insurance Contracts Act 2019** abolished this longstanding principle for insurance consumers. The Act defines consumers as individuals and businesses with a turnover of €3 million or less. Therefore, when it comes to compiling underwriting information, material facts and the duty of disclosure, a broker's role will differ depending on whether they are dealing with a consumer or not.

A3a Disclosure and consumer insurance contracts

This section describes the insurer and consumer's duties under the **Consumer Insurance Contracts Act 2019**. The Act does not refer to the broker's duties. However, when a broker is acting as an agent of the insurer (see Chapter 1B), the broker assumes the insurer's duties as set out in the Act.

A3a1 Proposer

The **proposer's** (consumer's) pre-contractual duty of disclosure is confined to answering the insurer's specific questions honestly and with reasonable care. The proposer is not under any duty to volunteer any information over and above that required by the insurer's questions.

Under this Act, any term that converts a statement made by a consumer prior to entering into the contract into a warranty (**'basis of contract clause'**) is invalid. Clauses which impose continuing restrictive conditions on consumers are now referred to as suspensive conditions. In other words, the liability of the insurer is suspended only during the duration of the breach.

At renewal, the insured is not under any obligation to provide the insurer with additional information, unless the insurer expressly requires them to do so by asking a specific question or requesting them to update information previously provided concerning a specific matter. The consumer must respond honestly and with reasonable care. If the insured does not provide any new information in response to the insurer's request and continues to pay the renewal premium, it is presumed that the information previously provided has not changed.

A3a2 Insurer

The insurer:

- Must only ask specific, not general, questions when requesting information. The onus is on the insurer to ensure that these questions are written in plain and intelligible language. Any ambiguity about the meaning of a question will be interpreted in favour of the consumer.
- Must, before entering or renewing a contract of insurance, inform the consumer in writing of the general nature and effect of the pre-contractual duty of disclosure.
- Is deemed to have waived any further duty of disclosure of the consumer, where it does not investigate an absent or obviously incomplete answer to a question unless the omission is deemed to be fraudulent, intentional or reckless concealment.

In relation to mid-term changes, an insurer can refuse a claim where there is a change in the subject matter of the insurance contract (including as described in an 'alteration of risk' clause). This will apply where the circumstances have changed so much that the new risk is something that the insurer did not agree to cover.

The remedies available to insurers for pre-contractual **misrepresentation** by a consumer vary depending on whether the misrepresentation was innocent, negligent or fraudulent. They range from requiring the insurer to pay the claim (innocent misrepresentation) to the insurer avoiding the contract (fraudulent misrepresentation). The insurer's remedy in cases of negligent misrepresentation will depend on what the insurer would have done had it been aware of the full facts.

The Act also requires the insurer to provide the consumer with the completed proposal form within a reasonable time after inception of the contract.

misrepresentation
untrue statement of fact, which can be innocent, negligent or fraudulent, made during negotiations with another contracting party

A3a3 Brokers

For brokers, this Act has resulted in them updating:

- quotation packs and how quotes are issued. Quote must be provided in a durable medium.
- proposal forms/statement of facts (paper and online) to reflect the changes (e.g. more specific questions, changing of assumptions to declarations, mandatory questions and additional declarations at renewal).
- online quote platforms operated between brokers and insurers to show the premium and claims for the last 5 years and additional specific questions that an insurer might require. For example, where an insured is asked a question at renewal which they answered previously, they must be supplied with the answers they provided the previous year.
- broker staff training on the impact of the relevant provisions of the Act.[62]

A3b Utmost good faith and non-consumer insurance contracts

For insurance contracts that fall outside of the scope of the **Consumer Insurance Contracts Act 2019**, all parties (client, broker and insurer) must observe the principle of utmost good faith and be completely transparent with regard to all material circumstances.

A3b1 Proposer

The proposer has a duty to disclose all material facts about the risk to the insurer. The details of the subject matter of insurance and its circumstances are known mainly (sometimes solely) by the insured. The insurer is not generally aware of all the facts. In the UK case of *Rozanes v Bowen* (1928), the judge described the obligation on the customer as follows:

> As the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured, to make a full disclosure to the underwriter, without being asked of all the material circumstances. This is expressed by saying it is a contract of the utmost good faith.[63]

A3b2 Insurer

The insurer must also be entirely open with the proposer. An insurer cannot introduce new non-standard terms into the contract that were not discussed during negotiations; neither can it withhold information about discounts that are available for certain measures that improve a risk, e.g. the fitting of a burglar alarm for household contents insurance.

[62] Brokers Ireland, 2021. Information Document on the **Consumer Insurance Contracts Act 2019**, June, www.brokersireland.ie

[63] Quoted in RSN Pillai. *Legal Aspects of Business (Mercantile Law)*. New Delhi: Chand Publishing; 2013, p.427.

A3b3 Broker

Under Section 19(1) of the **Marine Insurance Act 1906**, an agent (e.g. broker) must disclose to the insurer every material circumstance that:

- Is known to the agent, including facts that in the ordinary course of business ought to have been known by or communicated to them
- The insured is bound to disclose, unless it comes to the insured's attention too late to communicate it to the agent.

The following case of *Dunbar v A&B Painters* (1986) illustrates both the regulatory and commercial necessity of full disclosure by brokers. It highlights TIB's significant potential exposure if it fails to obtain and disclose material facts to insurers and the necessity for TIB to have comprehensive professional indemnity insurance cover.

Case law

Dunbar v A&B Painters (1986)

An insurance broker (Whitehouse & Company) failed to accurately disclose to an insurer the full claims record of its clients (A&B Painters). A workman (Alfred James Dunbar) employed by A&B Painters was later injured in a fall. The insurer avoided the claim (£125,000) on the grounds of misrepresentation and non-disclosure. The court held that Whitehouse & Company was liable to A&B Painters for this loss, because its negligence in arranging the cover had deprived its client of the right to an indemnity under the insurer's employers' liability policy.

Quick question 2

Define 'material fact' as set out in the **Marine Insurance Act 1906.**

Generally, many insurance clients are unaware of the unique application of the law of material facts to insurance contracts. Therefore, a vital function of the broker is to explain those facts that are material and those that are not. One of the challenges for the broker is that this aspect of the law rarely comes before the courts, which means that there are no clear guidelines.

Here are some general guidelines on best practice between a broker and client relating to material facts and their disclosure:

- If in doubt about whether information is material, it is best to discuss the issue with an experienced colleague and/or with the insurer. If this does not adequately clarify the issue, then it is best to disclose the information. A general rule of thumb for brokers is: If you have to ask yourself whether the information or fact is material, then it needs to be disclosed.
- Ensure that a client is prompted for additional information if their answers are vague.

- In relation to losses, the following applies:
  - Include details on both insured and uninsured losses, where applicable.
  - Highlight particular losses that have been subject to risk management improvements (see Example 3.2).
  - Be aware that some losses, though not the fault of the client, may have a bearing on whether an insurer will accept a risk.
  - Look at the excess/deductible levels to see how the losses would have affected the risk being placed. This exercise and information may affect an insurer's assessment of the risk.
  - When business subsidiaries have been sold, it is common practice for their losses to be removed from a claims experience. While this is understandable, it is important that supporting comment be included. The simplest and best approach is to differentiate claims for a sold subsidiary from the main claims experience, but show these separately alongside the claims details, with an accompanying comment about large losses.
- It is important for the broker to maintain good records for each client, e.g. for motor insurance: driving licences, vehicle licensing certificates, current NCT/CVRT certificates, proposals and/or claims forms.

Quick question 3

Under the **Consumer Insurance Contracts Act 2019**, what is the proposer's (consumer's) pre-contractual duty of disclosure?

Just think

With regard to relevant legislation and best practice, what questions should TIB (the sample broker) consider in relation to a non-consumer client's disclosure of underwriting information?

TIB should consider whether it has:

- Explained to the client what their duties are in disclosing all material circumstances and facts
- Explained what those circumstances and facts are
- Asked the client questions to prompt disclosure of such circumstances and facts (see Appendix 1 to this chapter)
- Explained the consequences of failing to make a full disclosure.

Example 3.2 looks at a scenario in which the broker prompts the client to disclose relevant information.

Example 3.2

Four years ago, a firm manufacturing foam for use in furniture-making suffered a loss of €6 million at a major plant. The cause of the loss was spontaneous combustion, caused by the chemical process used to make the foam expand.

Your discussions with the client's management team reveal that they have since implemented procedures to monitor the temperatures in the foam blocks as they cool, so that the original cause of the loss no longer exists. When the loss is disclosed to the insurer, you can make a convincing argument that the loss will not reoccur and thus obtain better terms through demonstrating the insured's risk management procedures.

In Example 3.2, it is clear that the client has learned from its experience and its culture is one of continuous improvement, as shown through its commitment to process change. Insurers are more likely to engage with insureds that learn from their mistakes and implement appropriate measures to mitigate and/or prevent the situation from arising again.

It is worth bearing in mind, especially if you are dealing with global or foreign business, that Irish law is significantly different in this interpretation of material fact. Different approaches are taken, particularly in the United Kingdom, the United States, Canada, Australia and mainland Europe. Although it deals with a home insurance example, Case study 3.1 illustrates this difference.

Case study 3.1

A family whose house was gutted by fire face a bill of hundreds of thousands of pounds, as their insurer says the five-bedroom property actually has seven bedrooms. Paul and Sophie Weldin were on holiday with their four young children in April when they learned of the blaze at their East Devon home. They had moved in just two months earlier and had not finished unpacking. But when they made a claim on their home policy, it was declined. Insurer Ageas said the Weldins had wrongly declared that the property had five bedrooms when it had seven. Because the firm did not offer cover for homes of that size, the policy was void.[64]

A4 Provision of information to the client pre-contract

The CPC and **Insurance Distribution Regulations 2018** (IDR) specify the information that an insurance intermediary must give to its clients at different stages of the insurance process.

Where information is provided to the client, it must be:

- On paper or in some other durable medium that is accessible
- Presented in a clear, accurate and comprehensible manner
- In a language agreed by the parties
- Free of charge.

Chapter 1C1 outlined the formal written agreements that brokers have with clients in order to meet client needs, satisfy regulatory requirements (on provision of information) and manage conflicts of interest. This section examines the information that must be provided to the client in the pre-contract stage of the insurance process.

A4a Status of the intermediary

Before entering into an initial contract or renewing a contract, the IDR requires an insurance intermediary to provide its clients with the following information:

- The intermediary's identity and address
- Particulars for verifying that the intermediary is registered with the Central Bank
- Whether the intermediary holds, directly or indirectly, more than 10% of the voting rights or capital in a given insurance undertaking

[64] Bischoff, V., 'Family whose house burnt down reveals how their insurer REFUSED to pay £460,000 because 'the property had seven bedrooms not five', news article, *Daily Mail*, 27 March 2018, www.thisismoney.co.uk.

- Whether any particular insurer (or its parent undertaking) holds, directly or indirectly, more than 10% of the voting rights or capital in the intermediary
- The procedures under which clients of insurance intermediaries and other interested parties can make complaints and, if necessary, seek redress through the FSPO
- Whether or not the intermediary has entered into any written agreement with one insurer to refer all proposals for the type of insurance sought by the client to that particular insurer; in other words, whether or not it is a **tied insurance intermediary**.

CPC Provision 4.12 requires the regulated entity to provide the consumer with its Terms of Business prior to providing the first service, while the 'Information and Transparency' requirements under the IDR state that the client should be given the aforementioned information in writing, in good time, before the conclusion of a contract.

A4b Status of advice provided

Before entering into an initial contract or renewing a contract, the IDR and CPC require an insurance intermediary to provide certain information. The information must include whether the intermediary:

- Is offering advice on the basis of a fair and personal analysis of the market
- Is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurers (e.g. a tied insurance intermediary), in which case the intermediary must clearly disclose the names of those insurers
- Is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurers and does not offer advice on the basis of a fair and personal analysis, in which case, the intermediary must provide the names of the insurers that it may, and does, conduct business with.

A4c Documentation requirements

Under the CPC, before providing or arranging a product or service for a consumer (in addition to the TOB document, see Chapter 1C1a), a regulated entity must prepare a signed **statement of suitability** (on paper/other durable medium with the date of completion), setting out how a recommended product meets the consumer's:

- Needs and objectives
- Personal circumstances
- Financial situation
- Attitude to risk.[65]

Under the IDR, the insurance distributor shall, prior to the conclusion of a contract, provide the client with an **insurance product information document** (IPID) which is drawn up by the insurer/product producer.[66]

tied insurance intermediary

any intermediary who:

a. undertakes insurance or reinsurance distribution for and on behalf of one or more insurers/ reinsurers or other intermediaries in the case of insurance products that are not in competition

b. acts under the responsibility of those insurers/ reinsurers or other intermediaries, and

c. is subject to oversight of compliance with conditions for registration by the insurer/reinsurer or other intermediary on whose behalf it is acting

Adapted from **Insurance Distribution Regulations 2018**

Quick question 4

In terms of the status of advice provided, what information must TIB provide to its clients under the IDR? What information would the broker you work for provide its clients?

Chapter 3

[65] Provisions 5.1 and 5.19, CPC. A sample Statement of Suitability is provided in Appendix 3.

[66] **Insurance Distribution Regulations 2018**, Section 34 (7) to (9).

Chapter 3

statement of suitability

written statement setting out the reasons why a product or service (or options, if listed) offered to a consumer is considered to be (most) suitable for that consumer

insurance product information document

documentation that contains the relevant information about the insurance product in a prescribed and simple format to allow the client to make an informed decision, while taking into account the complexity of the insurance product and the type of client

The insurer must draw up the IPID (even where sold by an intermediary). The IPID must:

- Be a short, stand-alone document, presented and laid out in a way that is clear and easy to read
- Be accurate and not misleading
- Be written in English or, if agreed by the consumer and distributor, in another language
- Contain the title 'Insurance Product Information Document' at the top of the first page.

The IPID shall contain the following:

- Name of the insurer
- Information about the type of insurance
- A statement that complete pre-contractual and contractual information on the product is provided in other documents
- A summary of the insurance cover under the following headings:
  - What is this type of insurance?
  - What is insured?
  - What is not insured?
  - Are there any restrictions on cover?
  - Where am I covered (i.e. the geographical scope)?
  - What are my obligations (i.e. at the start and during the term of the contract, and when making a claim)?
  - When and how do I pay?
  - When does the cover start and end?
  - How do I cancel the contract?

Appendix 2 at the end of this chapter contains a template IPID.[67]

Just think

Sarah has phoned the office of her local insurance broker because she wants to take out a private motor insurance policy on a new car. She needs the new policy to be effective immediately. Sarah cannot wait for the statement of suitability to be emailed to her. Can her broker provide this information to Sarah orally?

If the broker explains the products and services offered or recommended orally to Sarah, the record of such an explanation must be included in or with her statement of suitability. In the case of policies where immediate cover is required (such as Sarah's), the broker can provide the statement of suitability to Sarah in writing immediately after the policy is put in force.[68]

Note also that if an insurance intermediary engages in telephone selling, they must comply with the **Distance Marketing of Consumer Financial Services Regulations 2004**.

67 A template IPID is provided in Commission Implementing Regulation (EU) 2017/1469.

68 Covered under Provisions 5.21 and 5.23, CPC.

A4d Provision of information about remuneration

The CPC and the IDR require insurance intermediaries to make available, in a manner that is easily accessible to consumers, a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to the intermediary by agreement with insurers (see Example 3.5). This information is often referred to as a **Summary of Commissions** document. Where an intermediary operates a website, it must publish this summary document on its website. The intermediary must bring this information to the consumer's attention before the contract is concluded and retain a record of compliance with this requirement. The summary document can form part of the intermediary's TOB (see Chapter 1C).[69]

The CPC and the IDR require that remuneration (in connection with providing a regulated activity to a consumer):

- Is designed to enhance the quality of the service to the consumer in the case of a **non-monetary benefit**
- Does not impair compliance with the firm's obligation to satisfy the conflicts of interest and suitability requirements
- Does not impair compliance with the firm's duty to act honestly, fairly and professionally in the best interests of the consumer.[70]

The Central Bank's 2019 CPC Addendum introduced enhanced consumer protection measures including measures designed to avoid conflicts of interest, particularly those that may arise in relation to:

- Remuneration linked to targets that do not consider the consumer's best interests (i.e. targets based on volume of business placed or business retention)
- Agreements under which remuneration is provided in the form of goods or services (e.g. golf trips or hotel stays) in return for business being directed through or to another person.[71]

Figure 3.2 is an example of a compliance checklist that might be used in a broker's office to ensure regulatory and legislative compliance regarding a client's policy renewal or inception.

Summary of Commissions (document)
a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to an intermediary as agreed with product producers

non-monetary benefit
a benefit (non-financial) that is capable of enhancing the quality of the service provided to a consumer

69 Provision 4.58A, CPC Addendum 2019.

70 Provision 3.25A, CPC Addendum 2019.

71 Central Bank of Ireland, *Addendum to the Consumer Protection Code 2012*, Provision 3.28A, September 2019, pdf, www.centralbank.ie.

Figure 3.2 Renewal/inception checklist

1	Client's needs/wants discussed and recorded (including whether the client is a consumer or not)	☑
2	Statement of Suitability issued	☑
3	Terms of Business (including Summary of Commissions) issued	☑
4	Duty of disclosure requirements issued	☑
5	Data protection notices issued	☑
6	Renewal terms issued at least 20 business days beforehand (on paper/other durable medium)[72]	☑
7	Insurer's original documentation issued to client	☑
8	Premium breakdown (including brokerage fees) given to client	☑
9	Client instructions confirmed in writing	☑
10	Sums insured, limits of indemnity, excesses confirmed with client in writing	☑
11	Switching cover: key differences/changes highlighted	☑
12	Premium receipt issued to client	☑
13	Underwriter's name stated in correspondence with client	☑
14	Overall cost of direct debit option given to client	☑
15	Client's correct legal name checked	☑
16	Policy documents issued within 5 business days including IPID document where applicable.	☑

Just think

As TIB practices insurance distribution, what impact does the IDR have on how the firm provides information to its clients?

[72] **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018.**

B Presenting a risk to insurers and negotiating terms

With all of this risk data or underwriting information now compiled, the task is to present the risk to insurers, by documenting:

- The cover required, i.e. class of business, cover wording, sums insured, limits of indemnity, excess/deductibles and renewal date
- All material underwriting information to support the submission, i.e. the client's personal details, business and property details, verified claims history and other information.

Refer closely to Sean Burke's following property submission as you work your way through this section, and consider the information that TIB would present to an insurer in relation to Sean's proposal.

Sample client submission

Proposer:	Sean Burke
Proposer's address:	1 Main Street, Westport, Co. Mayo
Risk address:	3 Market Street, Castlebar, Co. Mayo (Eircode: F23EW29)
Business:	Property Owner
Current Insurer:	XL Catlin
Renewal date:	1 August 202X

Overview/construction

(See attached photographs and Google Map data.)

This is a three-storey terraced property on the main street in Castlebar. The property covers approximately 190 metres squared. The property was totally refurbished in 2000 and is well maintained as the proposer is a builder. In compliance with the electrical warranty, all electrical installations were inspected and tested three years ago. The front (three-storey) portion has stone walls, timber floors and slate roof and dates back to the 1800s. The rear is concrete block with a 50-millimetre Kingspan insulated flat roof, i.e. metal cladding roof with fire-resistant insulation inside. It is approximately 3.5 x 5.5 metres squared. The premises are situated close to the River Suir, which has flooded in the last five years. The current insurer does not provide flood cover. Note that there have not been any flood losses at these premises for eighteen years.

Sample client submission (contd)

Adjoining properties

Similar three-storey properties on either side, with a newsagent on the right, a sandwich bar on the left and tenanted flats over both.

Tenants

The building is tenanted by a Chinese restaurant on the ground floor and several employees in the apartments on the two floors overhead. They have been exemplary tenants since 2005. (See photo of restaurant interior). The restaurant is open seven days a week, from 5pm to 2am. Sean Burke is the landlord and has no other financial interest in the restaurant.

Heating

Oil central heating. (See photo of tank and bund wall)

Cooking

Gas used for cooking. (See photo of external tank in metal bung frame.) There is one deep-fat fryer on the premises. The extraction system is cleaned by an independent contractor in June of each year. There is an Ansul Fire Suppression System fitted over the fryers in the kitchen.

Security

There are three external doors, all with either PVC deadlocks or deadlocks and bolts. Downstairs windows are top opening only.

Fire alarm

There are smoke detectors throughout the premises, connected to centrally monitored alarms. As previously stated, the restaurant employees reside over the premises. There are fire extinguishers under the counter upstairs. There is also a fire blanket and Class F extinguisher in the kitchen. There are no outstanding fire officers' requirements on this property.

Hazardous materials

Cooking oils and fats are stored in an external metal cabinet at the rear of the premises. (See relevant photo)

Claims experience (15 years)

No claims for current covers.

Cover required

Property damage

Material damage 'all risks' basis, including theft and glass breakage

Flood cover is also desirable (see earlier comments)

Subsidence cover not required

Buildings (reinstatement) €350,000

Landlord fixtures and fittings €0

Plus 15% day-one reinstatement inflation protection

Sample client submission (contd)

Trace and access extension for oil and water €3,000

Fire brigade charges €7,500

Current excess (each and every claim) €250

Business interruption

Same 'all risks' basis as noted under Property damage

Rent receivable €21,400

Indemnity period 12 months

Extension required for Notifiable Diseases

Public liability

Public/property owners liability

Limit of indemnity: €6,500,000

Excess (each and every third-party property damage claim) €250

Employers' liability

Not currently in force. Cover required for 'own property repairs' with a limit of indemnity of €13 million each claim. Projected wageroll for property repairs is €2,000.

Survey report

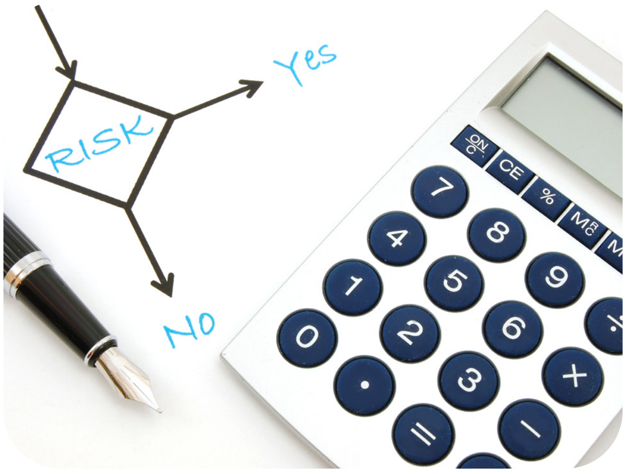
We attach XL Catlin's 202X survey report, which may assist the underwriting of this risk. It is fairly obvious from surveying the property that much work was done in accordance with the previous insurer's risk improvement requirements, none of which are outstanding.

Just think

Sean Burke's survey shows that he has implemented all of the previous insurer's risk improvement requirements. Consider what TIB would do with this information.

Although in general, any information that improves a risk is not material, it is in TIB's interest to present Sean in the best possible light. Presenting this information (Sean's risk improvements based on the previous insurer's recommendations) demonstrates TIB's skill and professionalism and will ultimately benefit Sean by demonstrating his positive approach to managing his risk exposures (see also Example 3.2).

B1 Specification of cover



One of the principal functions of the insurance broker is to obtain cover that meets its client's needs and matches its client's exposures (see Example 3.3). The complexity of the task varies with the nature of the original risk. For the majority of smaller risks, standard policies will provide adequate cover. Large multinational companies may require bespoke cover. It is vital that the cover required is clearly specified and thoroughly discussed during negotiations and before cover is put in place.

Some approaches that will help clarify details of the cover are as follows:

- Use agreed wordings.
- Specify all clauses in full.
- Separate clauses into those that will affect the premium, those that can be regarded as standard and those that will require specific negotiation.
- Review all warranties.
- Make negotiation on the wording used integral to the placing process.

These approaches will ensure that negotiations focus on the cover variation that is important to the client. They will also give a greater degree of certainty.

Example 3.3 shows TIB obtaining key information and passing it on to the insurer. This may result in more options or better terms for the insured.

Example 3.3

Sean Burke approaches TIB to obtain a quotation on his behalf for the current cover but inclusive of flood cover. During TIB's research, they discover that flood defences are due to be built in Castlebar. Using mapping and information from the local county council, TIB ascertain that the flood defences will operate at the location of Sean Burke's property.

TIB would highlight this information in their submission to the insurers and would ask the insurers to consider giving Sean Burke flood cover.

The insurers would verify the information and could:

- Issue a quote including flood cover in line with their standard terms
- Issue a quote with a higher premium rate for flood cover and with (for example) a non-standard excess of €5,000 instead of the standard excess of €250
- Issue a quote without flood cover. They may not consider the new flood defences to be adequate in the event of a major flood or may consider that the location of Sean Burke's property is not protected by the new defences.

Brokers should be aware of how insurers calculate the premium, for the purpose of both checking their accuracy and negotiating terms. For example, if a broker notices a high employers' liability premium rate for manual workers, they can refer to the company's excellent training systems and good employee health and safety record to negotiate a reduced premium rate with insurers.

B1a Claims analysis

Where a risk has a high volume of claims (e.g. employers' liability or motor fleet), it could be of benefit to analyse the claims data. For example, analysis of an employers' liability risk may identify specific areas within the client's premises where accidents have occurred, or a specific task that is the source of numerous injuries, e.g. lifting boxes. The client can then use risk management techniques to minimise the risk of a recurrence (e.g. enhanced manual handling training), which in turn should reduce the number of incidences and/or cost of claims.

Modelling the effect of varying levels of deductible can illustrate their impact on an insurer's pricing. The broker could apply a 'what if' analysis to different levels of deductible on individual claims data. A quotation is then obtained for each level of deductible, thus identifying the cost saving (premium reduction) achieved for each excess option.

As noted in Section A2, the broker must take care when presenting claims experience/loss information to insurers as past experience is not necessarily a guide to the future. For example, the client may have:

- Disposed of a subsidiary or discontinued an activity that accounted for a significant proportion of past losses
- Acquired a new business in which the historic claims experience differs
- Put in place a series of risk management measures designed to reduce the level of losses/claims in the near future
- Acquired/disposed of motor fleet vehicles
- Began exporting to areas with higher litigation rates, e.g. the United States.

B2 A broker's submission

Presenting a risk to an underwriter is a fundamental part of the broker's role. The better the submission, the better the chances of obtaining favourable terms and conditions. This also lessens the risk of a claim being declined or reduced on the grounds of non-disclosure or inadequate information.

In addition to personal lines insurances, many insurers operate online quote platforms for brokers for small commercial policies (e.g. shop, office, property owners and PII for certain occupations). However, larger, more complex risks will almost certainly need to be submitted offline. Similarly, some online quotes will generate referrals that will need offline attention.

Clearly, the method of submission and depth of information required reflect the size and complexity of the risk, but the principles remain the same. The time invested in getting it right means less work later on and a better service to the client. Also, a properly prepared submission is easier to keep up to date.

B2a Principles of a good submission

The qualities and objectives of a good submission are to:

- Engage the underwriter/insurer and make it easier to consider the risk
- Demonstrate that the broker has a sound understanding of the client's business and risks
- Contain the material and relevant information the insurer needs to rate the risk, e.g. exports to the United States for product liability, or scaffolding activity for a contractor
- Highlight and explain in detail the key features of the risk
- Be concise, but expand on areas where appropriate, e.g. physical protections to a property
- Represent the client's best interests
- Use whatever medium will best convey the key features of the risk, e.g. photos, online location maps
- Ensure that all information is recorded and acknowledged by the insurer
- Provide information highlighting the client's attitude to risk management including details of any awards/accreditations received.

The more comprehensive the submission presented, the higher the likelihood of an underwriter being more comfortable in putting terms forward for the risk.

B2b Format of a good submission

When preparing the submission, it is useful to talk to prospective underwriters about what information they need for each class of risk and the most appropriate presentation format.

In general, the submission should:

- Have a table of contents and numbered pages (obvious, but often forgotten)
- Include details of the broker who prepared the submission, who can be contacted for more information if necessary
- Be dated with a version number if there have been changes.

Generally, a broker will present a single submission, dealing with the risk details for each section of cover.

Regardless of the format chosen, there should be an 'executive summary' that conveys the key features of the risk presented, an overview of the business detailing its growth and development over recent years, what activities are undertaken, an overview of any manufacturing processes, and possibly some detail on the principals who own and/or run the business, and their experience.

B2b1 Appendices and supplementary information

The key information should always be set out in the main submission. However, supporting data and supplementary information should be contained in appendices and cross-referenced, e.g. brochures, prospectuses and website addresses. Any information that helps an underwriter to better understand the insured's business is worth including.

B3 Negotiating terms

Brokers need to consider if the risk will be covered by one insurer, shared among various insurers, or placed in a **subscription market**. They will also need to consider subjectivities that may be imposed.

B3a Single insurers (personal and commercial lines)

For personal lines (e.g. motor and home insurance), premiums are often calculated through a **broker management system**. Depending on the information input, this will list the insurers intending to quote, outline the terms and conditions and indicate the documentation needed, e.g. proposal form/statement of fact (SOF). Travel insurance websites operate in a similar fashion.

For commercial lines, when a broker is dealing with a single insurer, clarity of the terms on offer should be relatively straightforward. For those obtaining terms via an intranet facility, wordings and policy booklets are readily available, along with SOFs as part of the quotation. If the broker and insurer communicate by email, the quotation from the insurer would include relevant documentation, e.g. SOF/proposal form, wordings or summary of cover.

B3b Co-insured or subscription risks (including London and Lloyd's market)

Where more than one insurer is involved (co-insurance) or where the risk is placed at Lloyd's (a subscription market, see Chapter 4B1b), complications can arise.

Sometimes, one or more insurers (underwriters) may vary the original terms set by the leading insurer of the proposal. The broker must consider that when an insurer is negotiating a rate, it will bear the following in mind:

- The size of the client's insurance account and its probability for growth
- The volume and value of the client's business in all the insurer's departments
- The client's claims history
- The client's willingness to accept and implement recommendations and requirements for risk reduction
- Anticipated future claims costs.

Chapter 3

subscription market

type of market where risks are shared among a group of underwriters working in an insurance market, e.g. Lloyd's

broker management system

the evolution of quotation engines since the advent of electronic data interchange; term used by Applied Systems, Open GI and SSP and ComQuote

subscription risk

a risk that is covered by a number of insurance providers/ carriers with a lead insurance provider/ carrier and others

Quick question 5

Outline the factors a broker should consider when negotiating a rate in a co-insurance situation.

subjectivities
conditions placed on an insurance quote, requiring receipt and acceptance of specific items

condition precedent to contract
a condition or event that must occur before a specific contract is considered in effect or any obligations are expected of either party

continuing warranty
a warranty applied to an insurance policy where the insured promises they will continue to do something or that a state of affairs will continue to exist, i.e. to ensure that some aspect of good housekeeping or good management is observed by the insured

If all of the risk cannot be placed with an insurer(s) (i.e. is under-subscribed), the insured is their own insurer for the balance. It is essential therefore that the broker keeps the client informed on progress so that the client knows the implications of not placing the full risk and can either self-insure or find alternatives for the remaining proportion of the risk (perhaps through another broker).

If support for the risk exceeds the total required (i.e. over-subscribed), the broker must reduce each underwriter's proportion of the risk to meet the total required and then promptly inform all the insurers of their final 'line'/proportion. This is known as 'writing down' or 'signing down' the risk.

B3c Subjectivities

Insurers may impose **subjectivities** on the contract, e.g. 'subject to satisfactory survey', 'subject to receipt of a proposal form prior to inception'. These subjectivities can be a **condition precedent to contract** or a **continuing warranty** after inception. They can relate to all or part of the cover.

The client will need the full details and an explanation of the subjectivity. For example:

- Who needs to do what, by when and to what standard
- The terms and/or cover that apply until it is done
- The consequences if it is not done.

Where a client faces problems complying with the subjectivity, the broker must tell the insurer immediately, agree a practical amendment and maintain a record of all communications with the insurer and the client.

B4 Declined proposals

Not all insurance proposals are successful. This section outlines what happens in the event of a proposal being declined.

B4a Motor insurance

Although motor insurance is compulsory in Ireland, sometimes a client is unable to obtain motor insurance or is quoted a price so exorbitant that it amounts to a 'no quote'. This is generally due to bad claims experience, past convictions, high penalty points, age, driver occupation, a high grouping/category vehicle, or a combination of these.

The CPC states that where an insurer refuses to quote a consumer for motor insurance, it must advise the consumer within 5 business days of the refusal and give its reasons in writing. It must also notify the consumer of their right to refer the matter to the Declined Cases Committee and the method for doing so.[73]

[73] Provision 4.39(a), CPC.

Declined Cases Agreement

Motorists experiencing difficulty in obtaining motor insurance can apply to Insurance Ireland for cover under the **Declined Cases Agreement** (DCA). Under the DCA, an insurer will provide cover to a motorist seeking insurance if they have approached at least three insurers and have not been able to obtain cover from any of them.

In general, the insurer first approached will be required to provide the individual with a quote. If the proposer held a valid policy in their own name with any insurer within the previous 3 years, that insurer will be asked to provide a quote.

However, an insurer can refuse cover on the grounds that it would be contrary to public interest.

The DCA may also apply in cases where a quote is so high, or the terms so stringent, that it amounts to a refusal, in which case the committee can be asked to review the matter.

Declined Cases Agreement

an agreement among motor insurers, whereby motorists who experience difficulty obtaining motor insurance (after a minimum of three attempts) can apply for cover under the DCA programme as operated by Insurance Ireland

B4b Other classes of insurance

In classes of insurance other than motor, a client may also find they are unable to obtain insurance cover or may be charged an exorbitant price. Again, this is generally due to a bad claims experience, past convictions, a poor credit history, poor risk features or a combination of these.

Under the CPC, where an insurer refuses to quote for property insurance, it must inform the consumer within 5 business days of the refusal and the reasons for refusing cover. In addition, it must notify the consumer that a failure to have property insurance in place could lead to a breach of terms and conditions attaching to any loan secured on that property. The insurer must inform the consumer that they can request to have this information provided on paper or other durable medium.[74]

Other than motor insurance, there is no legislative equivalent to the Declined Cases Agreement. This is where the broker proves most valuable. The broker can trade on its established relationships with insurers and work to get the client even minimum cover, thus allowing them to build a better insurance history and improve their future insurance options.

[74] Provision 4.39(b), CPC.

Chapter 3

C Confirming terms to the client

In an ideal world, all quotes would be obtained on an identical cover basis. In practice, it is not that simple. A key part of the broker's role is to explain the different policy coverages and terms and to provide a suitable recommendation in accordance with professional criteria.

C1 Wants, needs and suitability requirements

The suitability of a contract will be assessed against the client's wants and needs. Do the level of cover provided, the cost and any exclusions, excess, limitations and conditions meet the client's requirements? The broker may also need to discuss wants and needs that cannot be met and agree a solution, e.g. self-insurance.

The principles governing the CPC's statement of suitability, which must be followed when recommending a product, are as follows:

- The retail intermediary must offer the most suitable option from those available. For insurance intermediaries, this will be based on either a fair analysis or limited analysis of the market. Tied insurance intermediaries must offer the most suitable option from their own range.
- The retail intermediary must offer a product that meets more of the consumer's needs than any other product. They can offer their professional opinion to the client regarding the product and, if relevant, why it would not be the intermediary's preference.
- If there are genuine reasons for offering options rather than recommending a single product, the retail intermediary must highlight to the consumer all relevant differences in cover levels and terms and conditions.[75]

The broker's job is to ensure that the client makes a properly informed decision, where they fully understand how the recommendation meets their needs, objectives, personal circumstances, financial situation and attitude to risk. Any recommendation by the broker must justify why it is the most suitable policy for that client.

Just think

What questions should TIB consider at this point in relation to Sean Burke's quote and policy?

[75] Provision 5.19, CPC.

The questions TIB should be asking include:

- Which of the available options provides the most suitable cover to meet Sean's wants and needs?
- Having examined the risks and exposures Sean faces, does the offered product respond adequately and will it provide Sean with the most suitable form of cover considering his wants and needs?
- How is this policy suitable for those wants and needs?
- Are there any shortfalls between Sean's wants and needs and the policy offered?

Cheapest is not necessarily best. Price can be a challenge to the broker's selection of an insurer. It is essential that a competitive price is not gained at the expense of reduced cover unless the client is made aware of this. The discount granted for a large excess may produce an apparent premium saving, but not if the client is unpleasantly surprised when a loss occurs. In the same way, an additional premium for a policy extension may prove to be very valuable in the event of a claim. Often, the broker needs to explain that a higher premium is justified for a better contract and will be in the client's best interests in the long run.

At the same time, the broker must be careful not to expose itself to accusations of mis-selling. For this reason, a broker leaves the final choice of insurer to the client, once they have all the information needed to make an informed decision.

C2 Presenting and explaining terms to the client

In presenting and explaining terms to the client, the broker must convey the terms accurately and concisely, and ensure that the client understands all aspects of the cover. This includes:

- Details on the limits of cover and sums insured for all sections
- Details on all endorsements, warranties, exclusions and conditions precedent
- Name of the **product producer** (e.g. insurer)
- Premium breakdown, including any broker fees, premium finance fees, special payment or credit terms, and whether the premium is fixed or adjustable on a declaration/'minimum and deposit' basis (see Sections A4d and D)
- A statement of suitability provided prior to arranging a product or service (as per the CPC, see Section A4c).

For personal consumer insurances (e.g. travel, motor and home), the statement of suitability may be in a standard format (see Appendix 3). However, for commercial enterprises of any size, there is no standard template and each statement of suitability must be client-specific. Example 3.4 provides a sample Statement of Suitability document from TIB to Sean Burke. Note the required 'important notice' at the beginning.

product producer

any regulated entity that produces, manufactures or packages a product of a financial or investment nature and is not limited to a product producer as defined in **the Investment Intermediaries Act 1995**

Consumer Protection Code (Definitions)

Example 3.4

Important Notice – Statement of Suitability

This is an important document, which sets out the reasons why the product(s) or service(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.

Dear Sean,
Our advice is based on the information provided by you at our pre-renewal meeting, and the products and insurers available during our research. This may vary in light of market changes or changes in your own circumstances.

Based on our understanding of your insurance requirements which you currently wish to address, we recommend Property Owners insurance arranged with your existing insurer XYZ at the premium of €1,950, inclusive of government levy and our brokerage fee, as being the most suitable and in your best interests at this time.

In making this recommendation we have considered a number of factors. They include:

- The price of the recommended product
- The extent and nature of the cover
- Your own attitude to risk
- The insurer's experience, reputation and regulatory status in this market
- The service (including claims service) provided by the insurer
- Continuity with the same insurer.

In selecting the insurance product and provider, we have done so on the basis of a fair and personal analysis of the market. This means we considered a sufficiently large number of insurers and their products to enable us to recommend the most suitable product to meet your needs. Although it would have been possible to reduce the premium slightly with another insurer (a saving of €250), this would have been at the expense of flood cover and you had made it clear that this cover is important to you.

Date: ______________________

Signed: ______________________

A broker should also keep an accurate record of all advice and quotation terms given to the client to assist with compliance.

The broker must also explain to the client the meaning and importance of:

- Disclosing all material or requested facts (see Section A3)
- Avoiding underinsurance and regularly updating sums insured
- Ensuring that wages, turnover and other projected figures are up to date.

All terms and conditions must be confirmed in writing, even if they have already been conveyed over the phone. For all cases, it is best to prepare a formal report for the client. This can take the form of the statement of suitability or be prepared in addition to it. Either way this report should emphasise the key features of the policy.

Here are some guidelines on presenting terms to clients:

- For a renewal, prepare a summary comparing:
  - Terms and sums insured last year to this year (including any differences in figures used as a basis of rating, e.g. turnover or wages)
  - Competing or alternative terms
  - Key differences between this year and last year, e.g. excesses, deductibles, cover issues
  - Key terms, conditions, warranties and endorsements that apply to the policy.
- Analyse the financial impact (of different excesses/deductibles), if possible, taking into account the loss history
- Make specific reference to important changes in cover and explain the difference
- Summarise any market research being undertaken that may be of relevance to the client.

In addition to these items of information, the following must be provided where the client is a consumer:

- (in relation to the previous 5 years), the amount of the insurance premiums paid by the consumer to the insurer(s)[76]
- A list of any claims (including third-party claims) paid by the insurer to or on behalf of the consumer[77]
- (where any mid-term amendments were made to the policy) an annualised premium figure.

[76] As per the **Consumer Insurance Contracts Act 2019**, Section 12, 'Renewal of contract of insurance'.

[77] Except where the contract is a health insurance contract as per the **Health Insurance Act 1994**, Section 2(1).

Chapter 3

D Remuneration

Insurance brokers perform a skilled and professional service. They are remunerated (paid) for the transaction and placement of business with the insurer and for services to the client and insurer.

As noted in Section A4d, the CPC and **Insurance Distribution Regulations 2018** (IDR) specify the information that an insurance intermediary must give to its clients in relation to remuneration, in particular how it impacts on consumer protection and conflicts of interest. This section examines the forms that remuneration may take.

D1 Remuneration from insurers

In Chapter 1, we explored the essential functions that a broker performs for insurers (see Chapter 1A1b) and the situations in which a broker acts on behalf of the insurer (see Chapter 1B1b). Table 3.2 outlines some of the activities a broker undertakes to assist insurers.[78]

Table 3.2 Activities undertaken by brokers on the insurer's behalf

Assessing	Using acquired skills to assess the risk, identify the most suitable insurer and advise the client accordingly.
Proposing	Proposing the risk to the insurer.
Assisting	Assisting the insurer with any information it requires in relation to the risk.
Incepting and delivering	Inception of the policy and delivering all policy documentation to the client.
Claims assistance	Receiving claims notifications from clients, handling claims forms and liaising with the client on claims progress.
Ensuring client notification	Ensuring the client is notified and advised on renewal of the policy.
Collecting	Collecting the premium.
Handling	Handling the premium in a designated client premium account for onward transmission to the insurer.
Maintaining staff competence and qualification	Ensuring staff are competent to advise on insurance products in accordance with legislation.
Bearing	Bearing all compliance and administration costs associated with transacting the business.
Assimilating	Assimilating the costs of implementing the insurer's IT, communications and security requirements, to ensure that all online activities are conducted safely on the consumer's behalf.

[78] More information regarding broker activity is available at Brokers Ireland, www.brokersireland.ie.

D1a Commission

Traditionally, the broker's work has been remunerated through commission paid by the insurer, usually an agreed percentage of the premium. Commissions are paid when the broker reconciles the account with the insurer. The levels of commission vary between insurers and the class of business. Table 3.3 illustrates typical commission rates.

Table 3.3 Typical commissions payable to insurance brokers for non-life products

Type	Percentage
Motor (car, van, motor fleet)	5-10%
Household	10-20%
Travel	20%
Health	6%
Liability	10-15%
Professional indemnity	10-20%

Along with the traditional commission payable on the sale of insurance products, other forms of remuneration have evolved which we will now discuss.

D1b Contingent commission/profit share

For large books of business, insurers may pay a **contingent commission**. As observed by the Central Bank, some insurers can pay intermediaries an uplift of 3-5% of their total commission earned. Prior to agreeing to award a contingent commission, the insurer may need to consider the broking firm's size, account performance, positive performing **loss ratio** and other metrics. The CPC requires brokers to reference contingent commission received from the insurer in their TOB.

contingent commission

a commission linked to volume of sales or profitability

loss ratio

indicator of an account in terms of whether or not it is in profit, calculated by dividing the incurred claims by the earned premium, and expressed as a percentage

As with the contingent commission, profit share (payable by the insurer to the broker) is based on performance in terms of a number of well-defined metrics, such as growth, renewals, claims process and a positive performing loss ratio for the book of business. The Central Bank requires these to be well-defined to ensure that payments across the market are fair, i.e. not anti-competitive or against consumers' best interests.

Under the CPC, the IDR and the law of agency, the broker (as an agent) has a duty of care to the client. As noted in Section A4d, the CPC requires firms (intermediaries and insurers) to avoid conflicts of interest that may arise in relation to target-linked remuneration (i.e. targets based on volume of business placed or business retention).[79] Whether or not these contingent commission/profit share arrangements relate to consumers, consideration should be given to whether they are in the client's best interests.

D1c Premium financing

A more recent source of income for brokers is premium financing, which involves the broker arranging a credit agreement for an individual or commercial organisation to pay the cost of their insurance premium. For example, some premium finance companies allow brokers to earn a percentage income from the use of premium financing. This can be a useful service to offer to clients in situations where the premium is significant and the insurer does not offer direct debit facilities, e.g. the Lloyd's market.

[79] Provision 3.28A, CPC Addendum 2019.

To obtain premium financing for a commercial client, the financing company will typically ask for the client's accounts, a company registration number, proof of tax reference number and possibly other verification documents. This is to ensure that the client is financially sound and to comply with due diligence in relation to anti-money laundering regulations.

Brokers may charge their client a fee for setting up this facility. As mentioned earlier, the broker must issue a written breakdown of such fees and commissions to the consumer prior to providing any product or service.

Brokers who offer premium financing to their clients need to register with and be authorised by the Competition and Consumer Protection Commission (CCPC) as a credit intermediary. The CCPC maintains a public register of those offering credit facilities like premium financing, and their respective product providers.

D1c1 Central Credit Register

The Central Credit Register (CCR) was established by the Central Bank in 2017 under the **Credit Reporting Act 2013**. It is a secure system for collecting credit information on loans of €500 or more by individuals and companies. The Register includes insurance premium finance facilities, which are often arranged by insurance brokers.

The establishment of the CCR contributes to financial stability and consumer protection by:

- Providing lenders with a better analysis of borrowers' creditworthiness
- Giving information to borrowers on their financial profile
- Giving the Central Bank better insight into financial markets
- Supporting the Central Bank's role of supervising the financial sector and ensuring financial stability.

The CCR places a duty on brokers to obtain certain identification and verification documents for any finance applications of €500 or more. Depending on the type of the applicant, these include proof of name, date of birth, address and/or tax reference/PPS number.

Both lenders and borrowers can request a credit report. Borrowers can request their credit report at any time free of charge (subject to fair usage). All lenders must request a report if their client has applied for a loan of €2,000 or more, but can also apply in cases of arrears on an existing loan or a request to restructure one.

D2 Remuneration from clients

Insurance brokers may also charge fees to clients for work performed on their policies, e.g. issuing duplicate policy documentation, mid-term alterations or obtaining letters.

In Chapter 1, we explored the essential functions that a broker performs for clients (see Chapter 1A1a) and the situations in which a broker acts on behalf of the client (see Chapter 1B1a). A summary of activities undertaken by brokers for clients is listed in Table 3.4.[80]

[80] More information on broker activity is available at the Irish Brokers Association website, www.brokersireland.ie.

Table 3.4 Activities undertaken by brokers for clients

Research	Researching the marketplace on the client's behalf and providing advice on the most suitable products and covers available in the market.
Recommendation	Recommending, based on the broker's insurance knowledge and expertise and in accordance with professional criteria, the best product to suit the client's needs, and aligning the client's budget where there is a financial constraint.
Explaining and educating	Explaining the terms, conditions, warranties and other issues included in the policy.
After-sales service	Handling mid-term alterations (MTAs) to existing policies and following through with insurers to ensure the MTAs are implemented.
Assisting and advocating in the event of a claim	Assisting the client and advocating for them in handling a claim and bringing it to a satisfactory outcome, assuming the risk is covered under the policy and that the policyholder has met all the terms and conditions.
Documentation	Furnishing clients with duplicate documentation where required or requested.
Customer care	Assisting with any queries the client might have in relation to a service or product.
Compliance	Complying with the Central Bank or other regulatory body.
Risk management advice	Advising clients on potential risks within their own business or how to develop a business continuity plan (see Chapter 7).

Brokers will often charge a fee for these activities. These fees, often referred to as 'brokerage charges', may be payable at inception, renewal or on mid-term policy alterations. Under the CPC, where there is an option to pay for services by means of a fee, this option and the amount of the fee must be explained in advance to the consumer. Where an intermediary charges a fee and also receives commission for the product/service provided to the consumer, it must explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.[81] This information can be contained within the TOB (see Example 3.5).

Insurance brokers must display in their offices and on their websites a schedule of fees and charges, including any third-party charges (e.g. premium finance companies), which will be passed on to the consumer. These must also be provided in writing prior to the initial product or service.

Example 3.5 outlines the schedule of remuneration and charges for TIB (the sample broker).

[81] Provision 4.61, CPC Addendum 2019.

Chapter 3

Example 3.5

Schedule of fees and charges

TIB is remunerated by commission paid by insurers/product producers and/or brokerage fees paid by you.

Details of commission received from insurers are available in the Summary of Commissions document on our website and in our office.

The level of brokerage fee paid by you is determined by a number of factors, including: the class of insurance business, the amount of commission receivable, the complexity of the cover arranged and the time spent handling the account in the course of the year. In the majority of cases, fees may be charged to you per transaction as follows:

- Personal lines: €25 to €75
- Commercial/corporate policies: 5% to 40% of insurer premium, subject to a minimum fee of €100, irrespective of size.

A processing fee of €25 will apply to any policy taken out with us and subsequently cancelled or not taken up because the information given to us was incorrect.

The amount of any commission received by TIB from insurers will not be deducted from any brokerage fee payable by you.

Where TIB arrange insurance premium finance on your behalf, a handling charge of €30 will apply. TIB also receives 1% commission from the Insurance Premium Finance Houses for the negotiation and arrangement of Insurance Premium Financing.

Quick question 6

Outline the operation of a profit share for brokers.

There is no regulatory requirement to have signed authorisation from the consumer prior to charging these fees. The exception is where a fee is to be levied on a premium rebate/return. In this situation, prior written agreement is required of the consumer in each and every instance.

E Summary

The chapter outlined the tools and information sources available to brokers when compiling underwriting information and the responsibilities on the parties to an insurance contract in terms of duties of disclosure. This chapter also discussed the principles of drafting a good submission. It looked at negotiating terms and the methods of presenting those terms to clients. Finally, it explained the various sources of brokers' income.

E1 What's next?

So far, we have established our client's insurance needs and identified a suitable insurance solution. We have compiled and submitted the underwriting information to an insurer with a view to placing the insurance contract. However, before we place the insurance contract, we have to decide which insurer we are going to deal with. The next chapter outlines what a broker needs to consider in its selection of an insurer and emphasises the importance of insurer security.

E2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in this textbook. Use the 'End of chapter questions', 'Quick questions' and 'Sample exam questions' to quickly test what you have learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

E3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter's content when revising.

Remember: This module is examined by mixed assessment, which includes:

- An online mid-semester MCQ assessment (20 questions)
- An end-of-semester written exam paper (9 questions)

Given that your online mid-semester assessment is a multiple-choice question test, completing the online practice paper is the ideal preparation for this. You can prepare for the end-of-semester written exam and test your knowledge by completing sample and past written exam papers.

To access these online learning supports, log into your Member Area of **www.iii.ie** and click on the **Connect** logo.

Chapter 3

subsidence

gradual movement or sinking of land on which premises stand

Appendix 1: Questions to ask clients

This table shows the type of information often gathered from personal general insurance clients. Brokers refer to this as developing a 'fact find'. This content may be familiar to you from the Personal General Insurance module.

General information	
Required information	**Main reason(s) for inclusion**
Client identity	• Full name of individual seeking insurance and of spouse/partner (if the insurance is to be in joint names) • Full name of any relevant dependants, e.g. to be insured under a travel, healthcare or private medical insurance policy or those living in the property to be insured • Full name of any other person who may use the item to be insured, e.g. vehicle or sports equipment
Address	• Full postal address (including Eircode) for communication and pricing and underwriting purposes, e.g. assisting with flood and **subsidence** risk checks • Address/addresses of other properties owned (e.g. holiday homes), to assist in checking on previous claims
Occupation	An important pricing factor in many classes of insurance, e.g. motor, home, personal accident
Age	Used for pricing in personal accident, travel, motor insurance and private medical insurance
Any business(es) carried on at the property	A full and accurate description of any business activities (as insurers' attitudes vary regarding their acceptability, e.g. a business extension to a household policy)
Forward plans	A proposed change of address, change in occupation, change of car or new driver (e.g. a son or daughter learning to drive), or plans to expand a business, introduce new product lines
Client experience/history, including claims and insurance history	• Previous losses and claims (as this will impact on pricing for most products, with the exception of private health insurance where previous claims do not affect the premium being quoted as a result of community rating) • Whether the client's circumstances have changed in recent years, e.g. if losses (such as flood) occurred at a different address • Whether the client has previously been refused insurance, has had special terms applied, has had insurance cancelled by an insurer or has had their premium loaded
Date of visit/contact	Time and date for receipt of all information/instructions recorded (to demonstrate that the firm adheres to its own internal requirements for customer servicing and any regulatory requirements that may apply)

General information (contd)	
Required information	**Main reason(s) for inclusion**
Reason for visit	Noting: • Whether the visit is the result of a referral or cold call • Whether regulatory requirements have been met • Other information, e.g. whether the client has had a previous bad experience with an existing insurer or broker
Introduction/verification of client identity/contact information	• Client's contact information • Steps taken to verify the client's identity, in accordance with the firm's policies and procedures
Inception/renewal date	As a basis for timing future actions
Current insurer and premium details	Commonly requested information that provides a basis for discussing why the client requires the broker's services (although the proposer may be reluctant to provide it)
Identification of broker	To ensure that the person carrying out the visit/contact is an accredited individual

This table outlines the basic information required in relation to various classes of insurance. This content may be familiar to you from the Personal General Insurance and Commercial General Insurance modules.

Private motor insurance

- Proposer and drivers
- Licence details, information on penalty point or motor convictions
- Vehicle details
- Class of use
- Previous insurance and claims history
- Cover required, including extensions

Motor fleet insurance

- Proposer and nature of business
- Drivers
- Licence details, information on penalty point or motor convictions
- Vehicle and trailer details
- Class of use
- Previous insurance and claims history
- Cover required, including extensions

Household insurance

- Ownership
- Property structure, age, construction and location
- Cover required including sums insured, limits and exclusions

Commercial property insurance

- Ownership
- Nature of business
- Property structure, age, construction and location
- Cover required including sums insured, limits and exclusions

Business interruption insurance

- Nature of business
- Basis of cover
- Details of property, plant and equipment and raw materials
- Indemnity period
- Expected gross and net profits
- Extensions required

Employers' liability insurance

- Nature of business
- Salaries/wages for categories of employees
- Number of employees
- Safety, health and welfare status, e.g. approach, statements, protective equipment, training
- Claims experience

Public liability insurance

- Nature of business
- Premises risk
- Turnover
- Work away from premises
- Claims experience

Product liability insurance

- Nature of business
- Supplier details
- Quality control
- Professional indemnity risk
- Trading territory
- Claims experience

Directors and officers liability insurance

- Business description and history
- Recent merger or acquisition activity (or future plans)
- Finance and ownership, including financial statements and business plan
- Trading territory
- Information about the board and its composition
- Financial background of directors and officers

Professional indemnity insurance

- Business description, location, history and ownership
- Details of employees and their qualifications
- Details of contracts and sub-contracts
- Finance and ownership, including financial statements and business plan
- Previous insurance and claims history

Appendix 2: Template Insurance Product Information Document

Xxxxx Insurance

Insurance Product Information Document

Company: <Name> Insurance Company **Product: <Name> Policy**

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]

What is this type of insurance?

[Description of Insurance]

What is insured?

- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx

What is not insured?

- ✕ Xxxxx
- ✕ Xxxxx
- ✕ Xxxxx
- ✕ Xxxxx
- ✕ Xxxxx

Are there any restrictions on cover?

- ! Xxxxx
- ! Xxxxx
- ! Xxxxx
- ! Xxxxx
- ! Xxxxx

Where am I covered?

- ✓ Xxxxxx

What are my obligations?

— Xxxxxx
— Xxxxxx
— Xxxxxx
— Xxxxxx

When and how do I pay?

Xxxxxx

When does the cover start and end?

Xxxxxx

How do I cancel the contract?

Xxxxxx

Source: EU Commission **Implementing Regulation 2017/1469**

Chapter 3

Appendix 3: Sample Statement of Suitability

Important notice – Household insurance statement of suitability

This is an important document that sets out the reasons why the product(s) or service(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.

Please ask us any questions you may have about the information in this document.

Dear Client

Based on our understanding of your insurance requirements, we recommend the insurance product(s) listed here as being suitable and in your best interests at this time.

In making this recommendation we have considered a number of factors. They include:

- the price of the product recommended
- the extent and nature of the cover provided
- your own attitude to risk
- the insurer's experience in this market
- the service (including claims service) provided by the insurer.

Information from you

Our advice is based on the information provided by you and the products and insurers available at a given time during our research. It may vary in the light of market changes or changes in your own circumstances.

There is an obligation to answer all questions on the proposal form honestly. The consequences of failing to do this are potentially very serious, and could invalidate the insurance policy. So, if in doubt please contact us to advise us of any changes.

Our recommendation

In selecting this product(s)/service(s) we have done so on the basis of a fair and personal analysis of the market. This means we considered a sufficiently large number of insurers and their products to enable us to recommend the most appropriate product to meet your needs.

Recommended policy

Household contents policy from XYZ Insurance DAC - cover for fire and a wide range of other perils (but not 'accidental loss or damage'). A summary of the main risks covered is attached. It is supplied for ease of reference. A full policy wording is available on request. The basis of insurance for contents is outlined here.

Replacement, except for the following if more than 4 years old:

- clothing, furs, household linen and fabrics
- TV, audio, video, computer, recording equipment and ancillary material including CDs, tapes, records and software
- floor coverings.

The sum insured on contents is €30,000 (subject to limitations for valuables individually of 5% of the contents sum insured, or 50% in total). The excess for most elements is €350. For many extensions to cover, lower levels of excess apply. The limit of liability for personal, homeowner and occupier liabilities is €3 million. The premium is €_____.

Signed ________________________for and on behalf of ________________________.

I accept the above and confirm my instructions to _____ to arrange the cover with the relevant insurers.

Signed _____________________________ Date ________

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End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 3. It should be noted that these end of chapter questions are revision questions to test your understanding of the material in the chapter just studied. They are not sample exam questions.

1. When approaching insurers for a quote, outline the problems a broker can face when relying on its own survey of a risk.

2. List the types of losses that fall under the term 'uninsured losses'.

3. Outline the material facts that a broker must disclose under Section 19(1) of the **Marine Insurance Act 1906**.

4. Before entering into an initial contract or renewing a contract, the **Insurance Distribution Regulations 2018** require an insurance intermediary to provide certain information. Briefly outline these three pieces of information.

5. Identify the qualities and objectives of a comprehensive submission.

6. In the case of a commercial client, list four areas that the broker should include in an executive summary of a submission.

7. Explain how a motorist who is experiencing difficulty obtaining motor insurance can apply for cover.

8. In presenting terms to a client, outline five items the broker will need to explain.

9. Outline the principles governing the CPC's statement of suitability that a broker must follow when recommending a product.

10. State what areas of remuneration in particular the Central Bank's 2019 CPC Addendum focused on in relation to conflicts of interest.

11. Outline the term 'contingent commission'.

12. Outline five activities that brokers will generally undertake for their clients.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. The problems of relying on the broker's survey of risk are as follows:
   - Not all insurers accept the broker's survey. Some insurers will only quote on the basis of their own survey.
   - Broker surveys are expensive and time-consuming.
   - Surveys need to be conducted by an expert and the broker may not have such expertise 'in-house'.

2. 'Uninsured losses' refers to those losses that are:
   - Deliberately uninsured
   - Unintentionally uninsured
   - Not insured under the policy terms.

3. Section 19(1) of the **Marine Insurance Act 1906** requires brokers to disclose every material circumstance:
   - Known to the broker, including facts that in the ordinary course of business ought to have been communicated to them
   - That the insured is bound to disclose, unless it comes to the insured's attention too late to communicate to the broker.

4. Before entering into an initial contract or renewing a contract, the IDR requires an insurance intermediary to provide its clients with the following information:
   - The intermediary's identity and address
   - Particulars for verifying that the intermediary is registered with the Central Bank
   - Whether the intermediary holds, directly or indirectly, more than 10% of the voting rights or capital in a given insurance undertaking
   - Whether any particular insurer (or its parent undertaking) holds, directly or indirectly, more than 10% of the voting rights or capital in the intermediary
   - The procedures under which clients of insurance intermediaries and other interested parties can make complaints and, if necessary, seek redress through the FSPO
   - Whether or not the intermediary has entered into any written agreement with one insurer to refer all proposals for the type of insurance sought by the client to that particular insurer; in other words, whether or not it is a tied insurance intermediary.

5. The qualities and objectives of a comprehensive submission are to:
   - Engage the underwriter/insurer and make it easier to consider the risk
   - Demonstrate that the broker has a sound understanding of the client's business and risks
   - Contain the material and relevant information the insurer needs to rate the risk
   - Highlight and explain in detail the key features of the risk
   - Be concise, but expand on areas where appropriate
   - Represent the client's best interests
   - Use whatever medium will best convey the key features of the risk
   - Ensure that all information is recorded and acknowledged by the insurer
   - Provide information highlighting the client's attitude to risk management including details of any awards/accreditations received.

6. Any four of the following areas should be included in an executive summary of a submission:
   - Key features of the risk presented
   - An overview of the business detailing its growth and development over recent years
   - The business activities undertaken
   - An overview of any manufacturing processes
   - Possibly some detail on the principals who own and/or run the business, and their experience.

7. A motorist who is experiencing difficulty in obtaining motor insurance can apply to Insurance Ireland for cover under the Declined Cases Agreement. Under the DCA, an insurer will provide cover to a motorist seeking insurance if they have approached at least three insurers and have not been able to obtain cover. Also, where a quote is so high, or the terms so stringent, that it amounts to a refusal, the DCA can be asked to review the matter.

8. In presenting and explaining terms to the client, the broker must convey the terms accurately and concisely, and ensure that the client understands all aspects of the cover. This includes:
   - Details on the limits of cover and sums insured for all sections
   - Details on all endorsements, warranties, exclusions and conditions precedent
   - Name of the product producer (e.g. insurer)
   - Premium breakdown, including any broker fees, premium finance fees, special payment or standard credit terms and whether the premium is fixed or adjustable on a declaration/'minimum and deposit' basis
   - Providing a statement of suitability prior to arranging a product or service (as per the CPC).

9. The principles governing the CPC's statement of suitability that must be followed when recommending a product, are as follows:

   - The retail intermediary must offer the most suitable option from those available. For insurance intermediaries, this will be based on either a fair analysis or limited analysis of the market. Tied insurance intermediaries must offer the most suitable option from their own range.
   - The retail intermediary must offer a product that meets more of the consumer's needs than any other product, even if it is not the retail intermediary's preference.
   - If there are genuine reasons for offering options rather than recommending a single product, the retail intermediary must highlight to the consumer all relevant differences in cover levels and terms and conditions.

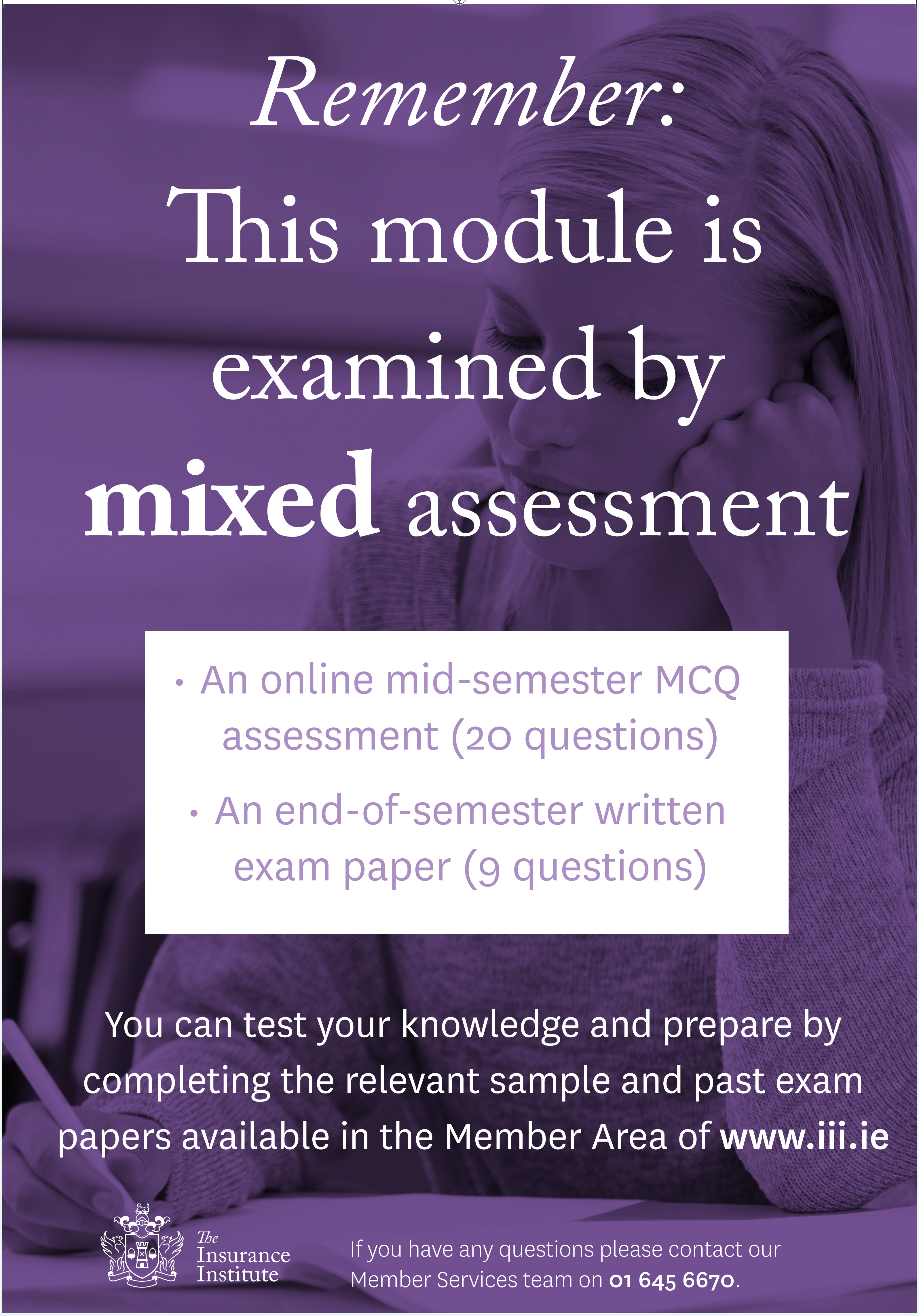
10. Provision 3.28A of the 2019 CPC Addendum focused on the following areas of remuneration in order to avoid conflicts of interest.

   - Remuneration linked to targets (i.e. based on volume of business placed or business retention) that do not consider the consumer's best interests
   - Agreements under which remuneration is provided in the form of goods or services (e.g. golf trips or hotel stays) in return for business being directed through or to another person.

11. Contingent commissions are additional commissions or profit shares payable by the insurer to the broker, which are linked to the volume of sales or profitability of a whole account.

12. The broker will undertake any five of the following activities for their clients:

Research	Researching the marketplace on the client's behalf and providing the best advice on available products and covers.
Recommendation	Recommending, based on the broker's insurance knowledge and expertise and in accordance with professional criteria, the best product to suit the client's needs as outlined, and aligning the client's budget where there is a financial constraint.
Explaining and educating	Explaining the terms, conditions, warranties and other issues included in the policy.
After-sales service	Handling mid-term alterations to existing policies and following through with insurers to ensure the MTAs are implemented.
Assisting and advocating in the event of a claim	Assisting the client and advocating for them in handling a claim and bringing it to a satisfactory outcome, assuming the risk is covered under the policy and that the policyholder has met all the terms and conditions.
Documentation	Furnishing clients with duplicate documentation where required or requested.
Customer care	Assisting with any queries the client might have in relation to a service or product.
Compliance	Complying with the Central Bank or other regulatory body.
Risk management advice	Advising clients on potential risks within their own business or how to develop a business continuity plan.


Remember:
This module is
examined by
mixed assessment
• An online mid-semester MCQ assessment (20 questions)
• An end-of-semester written exam paper (9 questions)
You can test your knowledge and prepare by completing the relevant sample and past exam papers available in the Member Area of www.iii.ie
The Insurance Institute
If you have any questions please contact our Member Services team on 01 645 6670.

Answers to quick questions

1. When providing a quote, the insurer will need information on uninsured losses to assess the risk. This information may give an indication of the insured's attitude to risk, i.e. whether they choose to self-insure or whether it is an oversight on their part or a lax attitude to insurance.

2. Under the **Marine Insurance Act 1906**, Section 18 (2), a 'material fact' is every circumstance that would influence the judgment of a prudent insurer in fixing the premium, or determining whether it will take the risk.

3. As a result of the **Consumer Insurance Contracts Act 2019** the proposer's (consumer's) pre-contractual duty of disclosure is now confined to answering specific questions posed by the insurer honestly and with reasonable care.

4. As insurance intermediaries, before entering into an initial contract or renewing a contract, the IDR require TIB to inform the client that the broker is offering advice on the basis of a 'fair and personal analysis' of the market, i.e. of a sufficiently large number of insurance contracts available. The information to be provided by the broker depends on the status of broker (e.g. tied insurance intermediary) and the status of advice provided (e.g. fair and personal/limited analysis).

5. When negotiating a rate, the broker should bear in mind:
   - The size of the client's insurance account and the probability of its growth
   - The volume and value of the client's business in all the insurer's departments
   - The client's claims history
   - The client's willingness to accept and implement recommendations and requirements for risk reduction
   - Anticipated future claims costs.

6. 'Profit share' (payable by the insurer to the broker) operates on the basis of performance, in terms of growth, renewals, claims and a positive performing loss ratio of the book of business.

Sample exam questions

Question 1

Describe the issues a broker must consider when attempting to place a risk on a co-insured basis.

Total: 10 Marks

Question 2

a) Illustrate, using a relevant case law example, how an insurance broker may become exposed to a legal liability through non-disclosure of a material fact to an insurer.

(6 Marks)

b) You are employed as a broker with ABC Advisers. XYZ Manufacturing (a business with an annual turnover of €10 million) contacts your firm seeking assistance in obtaining commercial property insurance. XYZ informs you that it suffered a substantial loss of €3 million at its main plant seven years ago. The loss was caused by defective machinery that has now been replaced. In addition to this, the replacement machinery is now routinely serviced every month.

Briefly discuss whether this information should be notified to insurers when seeking to place this risk.

(4 Marks)

Total: 10 Marks

Your answers

Sample answers

The answers set out below show the main points to be considered by students in answering the question. In some cases, a well-reasoned alternative view could earn good marks.

Question 1

Sometimes, one or more insurers (underwriters) may vary the original terms set by the leading insurer of the co-insurance proposal. The broker must consider that when negotiating a rate, the insurer will bear the following in mind:

- The size of the client's insurance account and its probability for growth
- The volume and value of the client's business in all the insurer's departments
- The client's claims history
- The client's willingness to accept and implement recommendations and requirements for risk reduction
- Anticipated future claims costs.

If all of the risk cannot be placed with an insurer(s) (i.e. is under-subscribed), the insured is their own insurer for the balance. It is essential therefore that the broker keeps the client informed on progress so that the client knows the implications of not placing the full risk and can either self-insure or find alternatives for the remaining proportion of the risk (perhaps through another broker).

If support for the risk exceeds the total required (i.e. over-subscribed), the broker must reduce each underwriter's proportion of the risk to meet the total required and then promptly inform all the insurers of their final 'line'/proportion. This is known as 'writing down' or 'signing down' the risk.

Reference Chapter 3B3b **Total: 10 Marks**

Question 2

(a)

In the case of *Dunbar v A&B Painters* (1986), an insurance broker (Whitehouse & Company) failed to accurately disclose to an employers' liability insurer the full claims record of its clients (A&B Painters). A workman (Alfred James Dunbar) employed by A&B Painters was later injured in a fall. The insurer avoided the claim (£125,000) on the grounds of misrepresentation and non-disclosure. The court held that Whitehouse & Company was liable to A&B Painters for this loss because its negligence in arranging the cover had deprived its client of the right to an indemnity under the insurer's employers' liability policy.

(6 Marks)

(b)

The most appropriate action here is to disclose the loss to the insurers, even though it is outside the 'conventional' 5-year property claims experience. However, a convincing argument should be made that the loss will not reoccur, noting the steps that XYZ has now put in place. In doing so, it may be possible to obtain better terms for XYZ by demonstrating its commitment to risk management within the organisation.

(4 Marks)

Reference Chapter 3A3b **Total: 10 Marks**

Chapter 4

Selecting an insurance provider

What to expect in this chapter

From the broker's viewpoint, we have established what our client needs and have looked at how we can assist them in placing the insurance contract. This chapter emphasises the impact of the insurance market cycle and insurer failures. It highlights the important factors a broker must consider when choosing an insurer.

To help you relate the material in this chapter to a real-life situation, we will refer to the sample broker, Tuhill Insurance Brokers Ltd (TIB). This should help you to reflect on how and why each of the issues relevant to selecting an insurer impacts on brokers.

Chapter 4

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**The insurance market cycle**	Describe the features of the insurance market cycle and its impact on brokers and their selection of insurers.
B	**Insurance provider options**	Outline the types of insurance provider with whom a broker can choose to place a risk.
C	**Selecting an insurer for a risk**	Explain the main factors a broker takes into account when selecting an insurance provider. Explain the importance of insurer security and the impact of an insurer's failure or withdrawal from the market.

A The insurance market cycle

Most industries experience cycles where periods of expansion and growth are followed by times of lower revenues and contraction. A range of factors influences these cycles, depending on the industry.

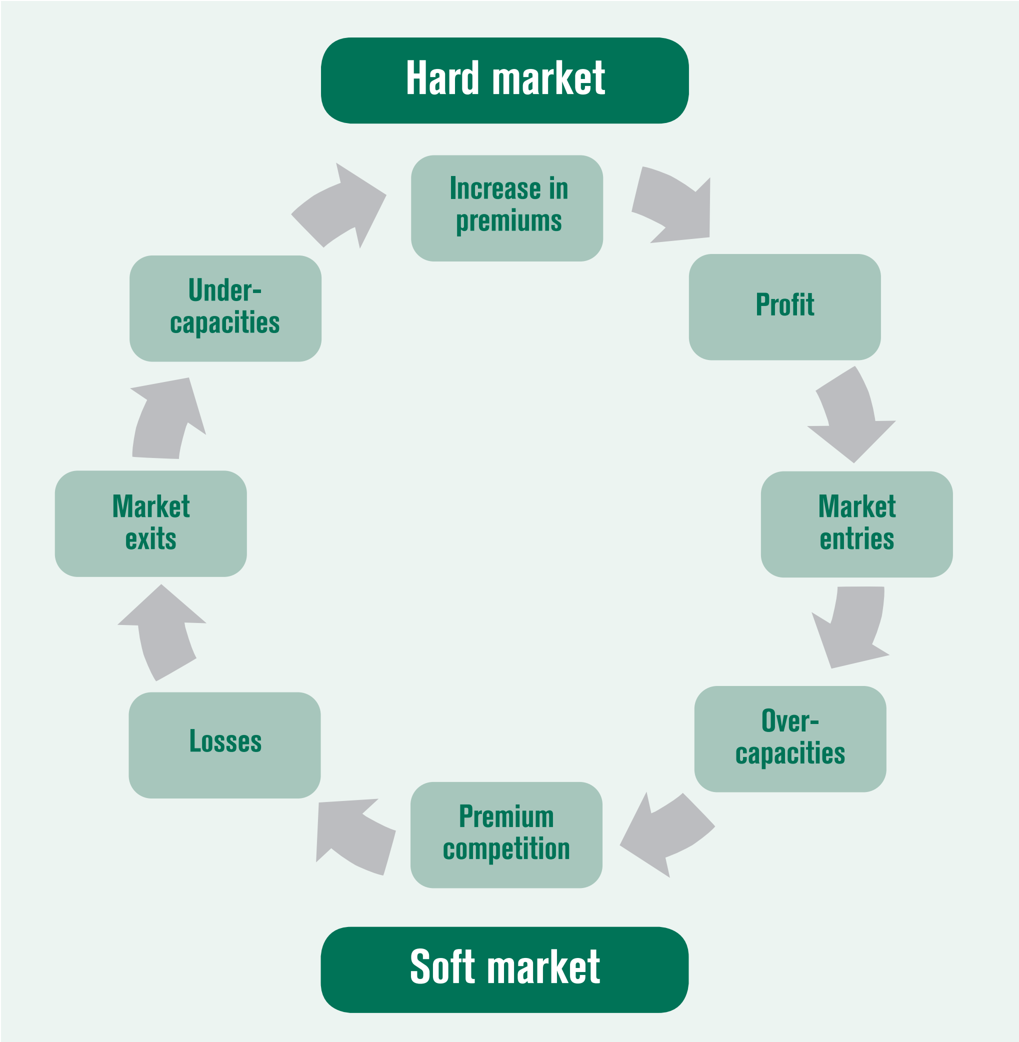
The insurance market has its own particular cycle. It moves between different phases of pricing, performance and profitability. At any particular time, practitioners view the market as either ‘hard’ or ‘soft’. As we will see, brokers need to understand the operation of the cycle and be aware of where the cycle is at any given point in time, especially when selecting an insurer.

A good broker knows that each class of business has its own cycle. For example, rates can be reducing for property risks, while at the same time increasing for liability risks. In addition, global insurance markets do not necessarily work in synchronisation, for example, the US market can be at a different stage in the cycle to the Asian market. Major events can disrupt the cycle, e.g. the World Trade Centre attacks in September 2001 (one of the largest insured losses in history and unique in the wide range of insurance covers affected), the Grenfell Tower Fire in June 2017 (which resulted in a hard market for professional indemnity insurance in the design and construction sectors) or the Covid-19 pandemic (the full effects of which are yet to be seen).

A1 Broking in hard and soft insurance markets

In this section we explore the characteristics of hard and soft markets and the implications of the market cycle for brokers selecting an insurer. But first, we will look at Figure 4.1, which illustrates the insurance market cycle at a high level.

Figure 4.1 Insurance market cycle



There is no uniform pattern in terms of duration, and cycles can be lengthened or shortened by several factors affecting the cost of claims, operating costs and investment returns. The market has many competing insurers, each with its own corporate strategy, underwriting strategies and investment plans. Some may be willing to suffer short-term loss for anticipated long-term gain and this can have a destabilising effect on premium levels and ultimate profitability. As previously noted, different classes of insurance may also be at different stages in the cycle.

A1a Hard market

A hard market is characterised by some or all of the following:

- Less insurer capacity (i.e. insurers write fewer policies and offer lower limits)
- More stringent underwriting criteria (inflexibility on terms and/or wordings)
- High premiums (upward pressure on premiums)
- Less competition
- Improvement in insurer results.

The worsening results experienced in the later stages of a soft market will eventually mean that some insurers fail or decide to exit particular markets. This causes premiums to rise as the supply of insurance reduces in relation to the demand for cover. At this stage, insurers will also adopt a tougher attitude to risk acceptance and will seek to impose stricter policy conditions and other terms that reduce their potential exposure. It is clear how this market, with its reduced pool of potential insurers, higher premiums and narrower policy coverage, impacts on the broker and its clients. This 'hard market' then leads to higher profits for insurers and the cycle begins again.

The most recent shift towards a cross-class hard market was from 2018 onwards, particularly in the areas of financial lines and cyber insurances.

Just think

Before reading on, how does a hard market impact on a broker's options when selecting an insurer?

For brokers, hard markets tend to create more difficulty in placing risks with insurers, as there are fewer insurers, less flexibility on pricing and policy cover and stricter risk acceptance criteria. In such a market, those risks considered 'less desirable' or 'less attractive' (e.g. a history of frequent claims or high-risk activities) may be difficult to place. This is currently very evident in the Irish market where it has become increasingly challenging to place leisure business risks. The process of placing the risk takes more negotiation than in a soft market. This may be a particular problem for smaller brokers. However, given the high premiums in a hard market, returns can still be good due to higher commission income.

During a hard market, it is important that brokers ensure that clients are aware of the market conditions, start the renewal process early and identify cases where the impact of a hard market will be more significant. Some considerations for a broker in a hard market are outlined in Table 4.1.

Table 4.1 Options for a broker in a hard market
Put in place a long-term agreement (LTA) or a multi-year policy (so that the insured is locked into pre-agreed rates for 2-3 years).
Advise the client to put an enhanced risk management programme in place to contain a rise in premium.
In conjunction with an effective risk management programme, present the client with options that are less expensive due to a higher retained level of risk, e.g. a higher excess.
If insurers are increasing rates on combined policies, make separate submissions for different sections of the policy/risk.
Explore different markets (e.g. Lloyd's), new/lower rated insurers, MGAs or schemes.

A1b Soft market

A soft market is characterised by:

- Plenty of capacity and client choice
- Flexibility on terms and wordings
- Lower prices (downward pressure on premiums)
- Greater competition between insurers
- Worsening insurer results.

When insurers experience higher profits in a market sector or class of business, they are likely to increase investment in that class to acquire more profitable business. New insurers will also want to enter the market. Market capacity and competition increase and there is a larger pool of investors, causing premiums to fall and create what is known as a 'soft market'. In such a market, insurers are also likely to relax their underwriting criteria and offer wider policy covers and lower premiums in order to get or retain business. This inevitably impacts on the broker and its clients.

Just think

Before reading on, how does a soft market impact on a broker's options when selecting an insurer?

Brokers will need to present risks to a greater number of insurers, as insurer responses are much less predictable in a soft market. A broker's market knowledge is an important factor here, as a soft market creates an ongoing need to check on pricing, flexibility and innovation, all of which are features of this type of market. In terms of remuneration, a soft market reduces a broker's earning capacity as lower premiums mean lower commissions. Some considerations for a broker in a soft market are outlined in Table. 4.2.

Table 4.2 Options for a broker in a soft market
Take advantage of a fall in rates, but meet the client's need for pricing stability and maintain the insurer's goodwill when rates rise again.
Determine if the client wants the lowest premium that can be achieved.
Gauge if the level of risk retention can be reduced and still achieve an acceptable premium.
Combine risks into a package or consolidate with one insurer, so that premium discounts can be maximised.
Suggest increased policy limits or new classes of insurance cover for clients, based on a cost/benefit analysis with the lower market premium rates.

global programme
an insurance solution for a large multinational client that could operate in different and diverse locations requiring a varied combination of cover

If a **global programme** is involved (see Chapter 6), a broker needs to consider these issues across all appropriate markets (particularly if one market is soft and another hard), in order to take maximum advantage of the soft market. In this case, it may be better to insure with one insurer for primary placements worldwide, especially as the insurer may provide a discount for doing so.

B Insurance provider options

In Ireland, there is a large number of insurers and managing general agents (MGAs) selling their products and services. Therefore, the broker performs a prime role in the selection of insurers, matching their products to the client's individual needs.

The broker takes account of a number of factors when selecting an **insurance provider/carrier**. However, some factors may limit their choice. For example:

- Regulation. Many countries place restrictions on the ability of insurers to write certain classes of business, primarily those that are mandatory, e.g. motor insurance or inspection cover for lifting equipment and steam vessels. In Ireland regulated intermediaries can only deal with regulated insurers – and vice versa.[82] In addition, as a result of Brexit, there are fewer providers in certain niche insurance markets, as not all UK-based insurers have set up an EU base to safeguard their existing portfolio.
- Class of business. Not all general insurers will underwrite all classes of insurance, and even those that do will specialise in certain lines. Some insurers will write primary levels of cover, while others will offer their capacity at excess (i.e. higher attachment points). Some insurers will lead risks; others will follow. Some will write insurance, others reinsurance, and some both. Some will write via brokers and others will deal directly with the public.
- Administration. No broker will deal with every single insurer. The administrative costs of maintaining an agency with each insurer is not cost-effective, particularly as a broker may only deal with an insurer for one or two risks. This presents a challenge for new brokers and has resulted in consolidation in the broker market in recent years.
- Broker selection. Insurers will not deal with every broker and may only wish to appoint those that can provide them with a realistic premium income stream and cost benefits. Insurers may prefer to focus on a limited number of brokers or those specialising in a particular market (e.g. SMEs), in order to develop and build valued, long-term relationships.

Most brokers will have agencies with a panel of insurers. This panel will include insurers that they deal with on an unrestricted basis, and others that they will only deal with depending on the type of business or size of premium income involved. A good broker will work hard to develop relationships with a range of insurers. This ensures that they have access to a range of policies and providers to meet their clients' needs.

We will now look at a broker's options in placing the client's insurance.

insurance provider/carrier
a regulated entity that provides insurance cover as outlined in the certificate of insurance

[82] More information on regulated entities is available at Central Bank of Ireland (Registers), www.centralbank.ie

Chapter 4

B1 Insurance providers (carriers)

A number of different underwriting entities, each with its own particular area of expertise and way of doing business, make up the insurance market.

B1a Insurance companies

Insurance companies (insurers) are the most well-known, particularly by the general public. Access to the underwriter is direct; that is, an individual broker can deal face to face with the insurer and/or use email, telephone, post or other means of communication.

managing agent

term used by Lloyd's to describe a company set up specifically to manage one or more syndicates on behalf of the members, having responsibility for employing and overseeing underwriters and managing the syndicate's day-to-day operations; may also authorise third parties (coverholders) to accept insurance risks directly on the syndicate's behalf (see 'managing general agent')

B1b Lloyd's

The Lloyd's market forms part of the wider London insurance market. Many sizeable or complex industrial risks from all over the world are placed in the London market, and Lloyd's has established a reputation for insuring specialist or 'unusual' risks.

The Lloyd's market is made up of syndicates (groups of private individuals or corporate members) who carry the risks by providing financial backing or capacity (an agreed limit to the amount of business an insurer can underwrite in a year). A syndicate may employ an underwriter or use a **managing agent** who then appoints an underwriter to accept or decline risks on behalf of the syndicate. Many of the syndicates specialise in certain types of business, e.g. marine, aerospace, property, construction and energy. (Our sample broker, TIB, has used Lloyd's on a number of occasions to place certain specialised risks, including a ferry boat used on dolphin-viewing excursions, drone insurance and a renewable energy plant).

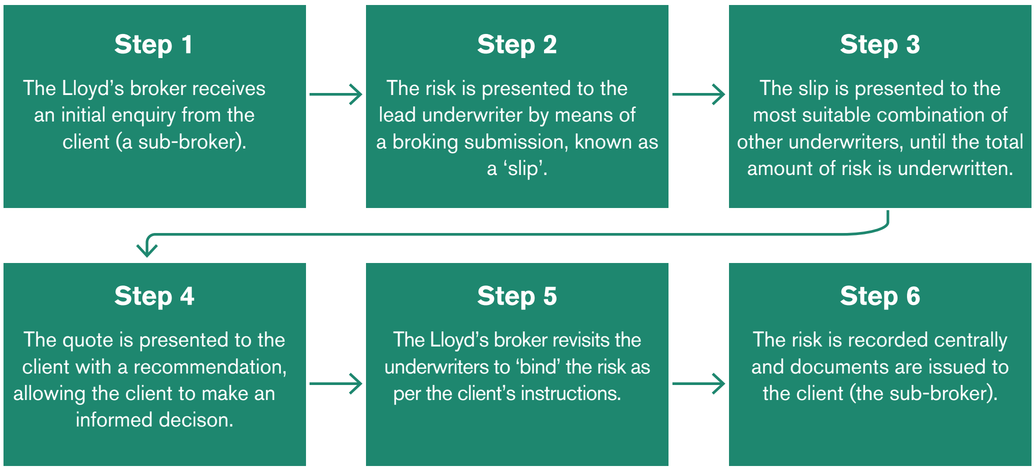
Business is transacted at Lloyd's in one of the following ways:

- 'Face to face' between the Lloyd's broker and underwriter
- Through the use of delegated binding authority (given to brokers and agents, mainly in Ireland, the United Kingdom and United States, referred to as 'coverholders')
- Through businesses set up outside Lloyd's by syndicates (which can be treated in the same way as other insurers).[83]

Many of the principles and procedures discussed in Chapters 3 and 5 apply to the way that business is transacted by Lloyd's brokers. However, there are some unique practices in the Lloyd's face-to-face placing process. Lloyd's is known as a 'subscription market', meaning that the majority of larger risks are shared among a number of participating underwriters who 'follow' the terms set by the lead underwriter. The process of placing a risk at Lloyd's is outlined in Figure 4.2.

[83] Adapted from Lloyd's (About Us – What is Lloyd's?), www.lloyds.com.

Figure 4.2 Placing a risk at Lloyd's



In this process, the Lloyd's broker's skill lies in selecting the best 'lead' for a given risk, as they will dictate the terms that other underwriters will 'follow'. The lead underwriter should be a recognised specialist in the risk area and have the right capacity, knowledge and credibility to negotiate the best terms, and the 'following' market is reassured that the risk is acceptable to an established, reputable underwriter in the field. The **slip** will show the percentage of the risk written by each underwriter, known as the 'line', and other details such as specific terms and conditions, how the claims will be handled and by whom. Although each 'following' underwriter can offer different terms, once they have initialled 'under the line', they are then 'bound' to issue the policy (i.e. the contract is made).

The process in Figure 4.2 is typical of the steps taken by the sample broker, TIB, when dealing with Best BeanZ (see the submission of TIB's sample corporate client at the start of Chapter 6). At the last portfolio renewal for Best BeanZ, two separate quotations were provided by different Lloyd's syndicates with premiums ranging from €1.74 million to €2.39 million. The terms offered (e.g. deductibles, inner limits, limits of indemnity) varied in each case.

Lloyd's has covered risks in Ireland for a number of years. Lloyd's underwriters are authorised to write all classes of insurance and reinsurance in Ireland, except permanent health. The Irish market is very important to Lloyd's. In 2008, Lloyd's appointed a country manager to Ireland and in 2009, Lloyd's Ireland (Dublin) became the permanent representative office of Lloyd's.[84] Many Lloyd's coverholders have a bespoke product or scheme that they operate, which may be distributed via the coverholders or through a panel of sub-brokers.

B1c Broker networks

Brokerline Direct Ltd. was one of Ireland's first broker networks. Other **broker networks** in Ireland include Broker Federation of Ireland (BFI), Bestquote and Source Broker Network. Euribron is an example of a Pan-European network of independent insurance brokers.

Broker networks use a distinctive business model, based on enhanced features of products and the intensive use of small panels of underwriters. They also use various forms of contingent/profit commission. These networks provide brokers with support services, including **continuing professional development** training and assistance with compliance. It is important to note that broker networks are not insurance providers.

Alongside this local broker network, there are also international or global networks that allow members to support multinational clients at a local level. While there are a number of global insurance brokers in operation in Ireland, the global network has facilitated local brokers to compete for multinational business.

slip

document created by a Lloyd's broker, showing underwriters' stamps, the percentage of the risk written by each underwriter ('lines'), underwriting references, and other details such as specific terms and conditions

broker networks

a grouping of insurance brokers who use their collective buying power to obtain better terms and conditions, improved service and higher levels of brokerage from insurers for their clients; may also develop own-branded products

continuing professional development

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 Minimum Competency Code

84 More information about Lloyd's in Ireland is available at Lloyd's (About Us – Lloyd's global offices, Europe, Ireland), www.lloyds.com.

Chapter 4

B2 Schemes

There are two main ways in which a scheme (facility) can operate, depending on whether the broker has:

- No underwriting authority
- Delegated binding authority.

If a broker is engaged with an insurer under a scheme but has no underwriting authority, the broker must obtain agreement from the insurer on each risk. The advantage of this scheme is that it provides the broker with exclusive access to an insurer for a particular product.

Under a delegated binding authority agreement, an insurer delegates authority for certain tasks to a third party, which may conduct business on its behalf in accordance with the terms of the agreement. These third parties could be brokers, managing general agents or coverholders (if the delegated binding authority is with Lloyd's). For example, an insurer might offer delegated binding authority to a broker who has built up a specialist knowledge in a certain trade/industry. In simple terms, these agreements allow insurers to use external resources to assist in the running of their business and in the generation of premium income. The extent of the delegated underwriting activity can range from full authority (to accept risks at set rates) to a 'prior submit' situation (to refer every risk to the insurer).

Underwriting is the most commonly delegated activity, but other delegated activities can include credit control, issuing documentation, and dealing with claims and recoveries. The extent to which an activity is delegated will be agreed and documented, including criteria and limits to ensure that the authority is not exceeded.

A binding authority agreement is the contract under which delegated binding authority is given to the third party (see Chapter 1C2a).

Reminder

While operating a delegated binding authority, the broker is the agent of the insurer, not the client/insured (as this can cause a conflict of interest).

As a consequence, the delegated binding authority agreement has to be clear in relation to what the third party can bind on behalf of the insurer. The agreement will deal with the risks covered/excluded, cover and wording, and limits. It will also specifically deal with:

- Rating structures. The insurer or underwriter may indicate the minimum level of rates required and would expect the authorised individual/firm to use their skills and expertise in selecting a rate that will ensure profitability. These rates could be adjusted from time to time to maintain a comparison with the rating book of the insurance provider.
- Claims. The agreement will lay down guidelines concerning claims agreements and service providers that the broker may use in the claims process.
- Renewal. The agreement will have a renewal date.

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- Reporting. On a monthly basis, the insurer or underwriter will require:
  - A total breakdown of the scheme's income, section by section, and of the individual premium income, which will provide early warning of rating integrity issues that may arise or if reappraisal is required to address deteriorating results
  - Details of any claims, paid and outstanding, together with the retention rate of the business transacted
  - (If specifically requested) other management information in order to allow them to evaluate the agency, establish its viability and complete regulatory reporting.

  The insurer may also undertake periodic audits to ensure adherence to the terms of the binding agreement.
- Commission. The broker will earn enhanced rates of commission for the extra work (e.g. issuing documentation, collecting premiums or carrying out routine endorsements) and must provide a monthly submission of the **bordereaux**, showing the business that has been written. Some claims settlement authority may also be included in the agreement, and is subject to the same submission requirements as the bordereaux.

There has to be a clear separation of duties between staff who are managing/underwriting the scheme, and the staff who are dealing with clients. Some brokers have specialist divisions set up to manage such schemes. Others have formed separate subsidiaries for this purpose.

The sample broker, TIB, operates a scheme for hardware shops, which is underwritten at Lloyd's. The rates under this scheme are very keen and TIB feels that their proactive involvement ensures that only good-quality risks are placed on this scheme. The scheme allows TIB to bind cover on risks that fit into specified criteria. The criteria are:

- Risks where turnover does not exceed €5 million.
- Claims where the total payable is under €20,000 in the last 3 years (acceptable at normal rates).

However, cases outside these criteria require prior referral to the underwriters.

The practice of delegated underwriting authority agreements is expanding in certain areas, particularly with the major brokers, albeit subject to much tighter control. This is particularly true at Lloyd's, where **lineslips** are a significant source of income.

Just think

Before reading on, can you think of the criteria a broker would use in selecting an insurer for a particular risk?

bordereaux

detailed monthly report or memorandum sent by the broker to the insurer showing details of the risks accepted, including the name, risk details (sum insured, limits of indemnity) and how the premium was calculated

Quick question 1

Explain why the insurer needs to strictly define the authority given to the third party under a delegated binding authority agreement.

The answer is at the end of this chapter.

lineslips

a scheme or facility placed with Lloyd's underwriters, with or without delegated binding authority, which consists of contract details, subscription agreements, taxation and regulatory information

Chapter 4

C Selecting an insurer for a risk

The criteria to be reviewed in selecting which insurer(s) to approach for a particular risk are outlined in Table 4.3 (not in order of significance).

Table 4.3 Selection criteria

Financial security	Price	Quality of service
Breadth of cover	Flexibility and innovation	Credit facilities
Capacity	Claims service	Technical advice and specialist expertise
Surveys and risk control	Continuity	Reputation and experience
Industry feedback	Diversity/variety	

C1 Financial security

While brokers do not guarantee the performance of the markets they use to place their client's business, a broker has a duty to exercise reasonable skill and care in selecting insurers that are financially sound with an acceptable financial security rating. The broker should also explain to the client the importance of selecting a stable insurer and the potential consequences of selecting a weak or unstable insurer.

The provision of insurance services into Ireland from abroad carries an inherent risk. If any of those insurers were to fail, this has implications for the Irish insurance market. Ed Sibley, Deputy Governor of the Central Bank, stated that 'it requires those intermediating between some of these [overseas] firms and Irish consumers to take more responsibility for assessing the financial soundness and resilience of the underlying insurer'.[85]

Under the CPC, a broker is obliged to act in the best interests of its client. The Central Bank has indicated that it expects the broker to carry out due diligence on the insurer, proportionate to the nature and scale of the brokerage. For example, the insurer's:

- Company profile
- Financial rating
- Solvency and financial condition report
- Experience and expertise in the market
- Any past regulatory actions against them.[86]

[85] Central Bank of Ireland (News & Media – Press Releases), 'Address to the Insurance Ireland Annual Lunch' (speech by Ed Sibley, Deputy Governor of Central Bank), 8 May 2019, www.centralbank.ie.

[86] Central Bank of Ireland, *Retail Intermediary Roadshow 2019*, workshop and pdf, p.18, www.centralbank.ie.

In addition to the standard due diligence on the insurer, the Central Bank expects a broker to:

- Check the protections available for policyholders (national compensation/guarantee funds).
- Arrange an independent third-party review or, in the absence of such a review, demonstrate that it has assessed the insurer's financial soundness, e.g. by viewing the insurer's Auditor's Report.
- Have in place a contingency plan in case the insurer fails or exits the Irish market.[87]

Where brokers conduct business through an MGA, the Central Bank has indicated that the broker may accept or rely on the due diligence carried out by the MGA.

The financial security of a third-party broker or intermediary can be equally important, particularly if it is operating a delegated binding authority.

It is important to note that all Lloyd's syndicates benefit from the financial security of Lloyd's Central Fund which pays any claims that cannot be paid from the capital put forward by a Lloyd's syndicate. Therefore, all syndicates enjoy the same financial rating as the Lloyd's corporation.

C1a Insurer failure

The first levy on all non-life insurance policies (see Chapter 5D4) was introduced after the 1983 insolvency and collapse of the Irish motor insurer, Private Motorists Protection Association (PMPA). The failure of an insurer has implications for brokers and their clients. Quinn Insurance, Enterprise Insurance plc and Gable Insurance AG are other examples of notable insolvencies. Example 4.1 contains more recent examples and their impact on the affected policyholders.

[87] Central Bank of Ireland, *Retail Intermediary Roadshow 2019*, workshop and pdf, p.18, www.centralbank.ie.

Example 4.1

Setanta Insurance

Setanta was a Dublin-based insurer, licensed and regulated in Malta by the Malta Financial Services Authority. The firm's liquidation in April 2014 affected 75,000 Irish policyholders (mainly car and van insurance). In May 2017, the Supreme Court ruled that the Insurance Compensation Fund would be liable for the claims of Setanta's policyholders.

Qudos Insurance A/S

Qudos Insurance was authorised and prudentially regulated by the Danish Financial Services Authority (DFSA). In Ireland, Qudos primarily provided commercial and private motor insurance. It also provided household insurance through a managing general agent and insurance brokers. In December 2018, the DFSA notified the Central Bank that Qudos had been declared bankrupt. Claims on these policies may be covered by the Danish Guarantee Fund for Non-life Undertakings; otherwise, these claims must be made to the bankruptcy estate of Qudos Insurance.[88]

Gefion Insurance A/S

In March 2020, the DFSA ordered another Danish insurer, Gefion Insurance (which operated in Ireland on a freedom of services basis), to cease writing new business including the renewal of existing insurance policies, due to its failure to comply with the Solvency Capital Requirement.[89]

C1b Insurer withdrawal

In recent years, insurers have withdrawn from particular classes of insurance in the Irish market for various reasons – bad performance, systemic risk or change of corporate strategy. For example:

- 2013 - XL Catlin withdrew from the solicitors' professional indemnity insurance market
- 2014 - RSA Insurance withdrew from the professional indemnity insurance market
- 2016 - FBD (with Clan Insurance) withdrew from the broker channel market for private motor
- 2017 – Zenith withdrew from the motor insurance market
- 2019 - Ironshore Europe withdrew from the early care/childcare insurance market
- 2020 - Liberty Insurance withdrew from the commercial liability and commercial property insurance market
- 2021 - Zavarovalnica Sava withdrew from the business interruption insurance market and Contessa withdrew from the commercial property insurance market.

Example 4.2 outlines the withdrawal of Zenith Insurance from the Irish market.

[88] Central Bank of Ireland, 'Update – Qudos Insurance A/S', (News & Media – Press Releases), 20 December 2018, news article, www.centralbank.ie.

[89] Central Bank of Ireland, 'Update – Gefion Insurance A/S', (News & Media – Press Releases), 26 March 2020, news article, www.centralbank.ie.

Example 4.2

Zenith Insurance is a Gibraltar-regulated entity that has acted as an insurance carrier in Ireland and the United Kingdom. Owned by the Markerstudy Group, Zenith grew to provide cover for up to 5% of Ireland's private motor market through a number of established Irish MGAs.[90] In August 2016, Zenith announced that it was to pull back from the Irish market. Unlike the collapse of the insurers referred to in Example 4.1, Zenith's policy obligations to its clients were met, but clients had to change insurance carriers at renewal as Zenith exited the Irish market in February 2017.

Almost 250 insurers left the Irish insurance market in the six years between 2013 and 2019 (just under half between 2017 and 2019).[91] Since 2014, the licences of 12 life and 42 non-life insurers, who had head offices or branches in Ireland, were revoked. A further 194 life and non-life insurers, operating in Ireland on a freedom of services basis, have also withdrawn from the Irish market.

Case study 4.1 contains extracts from a number of media articles which illustrate the impact of insurer withdrawals on a number of sectors. The cause of such withdrawals is tied in with numerous issues in the insurance market, such as the impact of claims costs and claims culture on the cost and availability of insurance. In such situations, a broker's concern is to be able to source other insurers to cover their clients' risks. This can be a real challenge for brokers.

Case study 4.1

Whole sectors of society struggling to get insurance cover[92]

In June 2021, the Alliance for Insurance Reform urged the Government to avoid leaving any sector behind as insurance reforms are implemented. It identified 35 sectors, sub-sectors and groups of individuals that are struggling to get cover at all or are reduced to one underwriter who is effectively in a monopolist's situation. Sectors identified included play centres, play grounds, street entertainers, bike hire, bouncy castle operators, caravan parks, ice skating venues, nursing homes, karting tracks and thatched roof hospitality venues.

Chapter 4

[90] Charlie Weston, 'Blow for drivers as Zenith pulls out of Irish motor insurance market', *Irish Independent*, 25 August 2016, news article, www.independent.ie. © Independent Newspapers.

[91] Will Goodbody, '250 insurance firms exited Irish market over six years'. *RTE*, 11 December 2019, news article, www.rte.ie.

[92] Alliance for Insurance Reform, 'Alliance urges Government "don't leave anyone behind" in insurance reform plans. Whole sectors of society struggling to get insurance cover' 24 June 2021, press release, https://insurancereform.ie/news

Case study 4.1 (contd)

SMEs left in the lurch as legal costs hit insurers hard[93]

A 2021 Central Bank report noted that 'Increasingly, insurers are exiting portfolios in certain segments of the market where the long-term finances are unsustainable, making it impossible for certain businesses to operate. Insurance costs have doubled in some sectors. Arts, entertainment and recreation businesses experienced a 105pc increase in premiums in the period 2009-2019, almost all of it in the second half of the decade. Other businesses, notably creches, have become effectively uninsurable as companies willing to provide cover have dwindled or disappeared.'

Insurance companies refuse to provide quotes to cover creches[94]

A broker has revealed it has contacted 15 Irish and UK insurers about cover for the childcare sector and each of them declined to provide quotes. Some creches across the country have reported that high insurance costs are affecting their businesses, with one major chain reporting an increase of nearly 310pc in its premium last year.

C1c Measures for brokers to take

Following the several high-profile insurer collapses and withdrawals (outlined in Sections C1a-C1b), it is clear that, while such incidences are not the broker's responsibility, it is important for a broker to keep up to date on the financial stability of the markets it recommends to clients.

Large broking firms maintain their own security departments to monitor insurers. Other broking firms will have procedures in place to:

- Consider how the insurer is licensed, i.e. by the Central Bank (if Irish) or the regulator in its home state
- Consult the information services provided by rating agencies, e.g. Standard & Poor's (S&P), AM Best, Moody's
- Follow any commentary and information about the insurer in the financial press and on relevant websites
- Monitor changes to the insurer's underwriting policy, e.g. ceasing to underwrite new business in a particular class
- Pay particular attention to the insurer's claims and customer service
- Consider other elements of an insurer's financial security as outlined in Section C1.

None of these measures are foolproof. In addition, not all insurers are rated and many failed insurers have been reasonably rated by rating agencies before disaster struck. Examples include Independent Insurance Company in 2001, AIG in 2008 and CBL Insurance Europe DAC in 2019.

93 John Ihle, 'SMEs left in the lurch as legal costs hit insurers hard, Central Bank report shows' *Irish Independent*, 14 July 2021, news article, www.independent.ie © Independent Newspapers. Note: original article refers to '2009-2029' but it is believed that this is a typing error and that '2009-2019' is the correct and intended timespan.

94 Amy Molloy, 'Insurance companies refuse to provide quotes to cover creches' *Irish Independent*, 07 June 2021, news article, www.independent.ie © Independent Newspapers.

Potential indicators of an insurer's financial instability are:

- Rapid expansion
- 'Excellent' results that are contrary to market trends
- Unexplained delays in settling claims or returning premiums
- Unusual or inadequate claims-reserving practices
- An unreasonable stance taken on large claims
- Constant pressure on the broker to increase sales volume.

It is important for the broker to obtain independent clarification and proof (in writing) that the insurer is compliant with Solvency II. This precaution is especially important if the insurer is not rated or if there are any concerns regarding its financial security.

Quick question 2

Outline the broker's responsibilities toward its clients when considering an insurer's financial security.

Reminder

It is important that brokers share their knowledge and experience of individual insurers with their colleagues and compliance officers. This shared information can often act as a key indicator or warning sign.

In the event of an insurer's failure or insolvency, a broker must contact the client immediately to explain the situation and detail how they plan to deal with the problem, which would include sourcing an alternative insurer.

C2 Price

It could be said that the most obvious factor in selecting an insurer is price, especially in relation to personal lines insurance. Price may also be the client's primary concern, particularly if they have asked the broker to find them the 'best deal' or 'cheapest cover'.

Just think

When it is obvious that the choice of most clients will be price-driven, why bother with the other criteria for insurer selection?

While price is important, it is only one factor in the decision-making process. The broker must ensure that the client considers all the relevant factors before making a decision about an insurer (or a product). These other criteria are outlined in the following sections.

C3 Quality of service

Brokers and insurers are in business to make a profit. They must not only retain their existing business, but also seek new sources of business. Essential to both outcomes is to provide a good service. A good broker will know from experience the standard of service provided by different insurers. By developing effective relationships with insurers, a broker can work to ensure a high-level service for their clients.

Just think

Before reading on, what services would TIB look for from an insurer? Think of examples you have seen of both poor and excellent service.

Table 4.4 outlines examples of the types and levels of service that TIB (or any broker) should look for when considering an insurer.

Table 4.4 Quality of service

Prompt notification of information	An insurer that keeps its clients and brokers up to date and informed of its activities saves much time-wasting on both sides. Examples include an insurer promptly notifying a broker that it cannot respond to a particular proposal enquiry, or informing brokers in advance that it is changing its market practice.
A competent survey system	An insurer should perform all surveys promptly and the surveyor should have a good understanding of the client's business.
Supportive and timely response to brokers' and clients' needs	It is important to most brokers and clients that an insurer provides easy and prompt access to help and advice, e.g. legal helplines and claims assistance.
Strong web-and email-based customer service	These could include use of: • Dedicated websites for providing quotations and other documentation • Email or website facilities for fast transmission of mid-term alterations • Email for claims notification.
Efficient issuing of accurate documentation	Returning documents for correction is time-consuming and the delay will reflect as much on the broker as the insurer. It is always better and quicker to provide a 'right first time' service.
Co-operative and speedy claims settlement	An insurer's approach to accepting claims and its speed of settlement is the ultimate test of the insurance product.
Specialist services	For example, the insurer may take responsibility to vet a potential client's creditworthiness or provide the broker with risk management assistance.

C4 Claims service

An insurer's liberal interpretation of wordings and conditions is a valuable feature for brokers and their clients. Many wordings in common use have never been the subject of legal interpretation. Therefore, it is important that a broker knows from experience how strictly an insurer is likely to apply policy wordings and conditions. Brokers will tend to favour an insurer who they feel is likely to give the client the benefit of the doubt when a loss occurs.

Another important issue is the quality of the liaison between the insurer's underwriting and claims functions. It is frustrating for a client (and their broker) when an issue they have discussed at length with an underwriter is unknown to the claims function because of poor communication. Only through experience and networking will the broker come to know the quality of the liaison between an insurer's underwriting and claims functions.

Similarly, the quality of the insurer's day-to-day claims service is of particular significance for policies with high claim volumes (e.g. motor and employers' liability) and for global programmes.

Other claims-related qualities a broker should look for in an insurer include:

- Early appointment of quality loss adjusters (in-house or outsourced)
- Accuracy of documentation, especially prompt issue settlement
- Transparency
- Quick decision making
- Fairness.

C5 Breadth of cover

Naturally, the broker's aim should be to obtain the widest cover available at the most economic cost. However, an important part of the broker's job is to evaluate differences in cover between various products. When market conditions are soft, there is a general tendency for insurers to be liberal in their cover. Conversely, when conditions are hard, they tend to reduce or even withdraw cover. In either market, the broker's role is to obtain the best cover for the client. It should advise on the availability and cost of cover and the implications of not having certain cover.

In a hard market, insurers typically introduce restrictions and limits that reduce their exposure to unexpected accumulations of loss, e.g. restrictions to extending business interruption policies and the introduction of 'event' limits on personal accident policies. In a soft market, such restrictions may only apply in specific circumstances, e.g. aircraft accumulation under personal accident policies.

Just think

After 2001, we saw the start of a hard-market cycle, directly linked to the World Trade Centre disaster. Before reading on, what other situation or event in recent years may have impacted the cover available in the market?

The Grenfell Tower Fire in June 2017 caused catastrophic losses and resulted in the deaths of 72 people. It was the worst residential fire in the United Kingdom since World War II and the rapid spread of the fire has been attributed to the exterior cladding. The fire is widely cited as a turning point for the construction industry's professional indemnity insurance (PII) market, putting underwriters on the back foot and forcing insurers to review the potential for catastrophic losses elsewhere in the construction sector. Insurers have generally moved to reduce the size of their construction PII exposure and are especially wary of contractors involved in cladding. While there is still capacity in the insurance market, underwriters are more selective on the risks they accept.

Only time will tell the impact and effect of the Covid-19 pandemic on the insurance market as a whole, but in particular on the business interruption insurance market and product scope. The withdrawal of Zavarovalnica Sava (see Section C1b) and the FBD test case (see Case study 2.2) are examples of the impact of Covid-19 on the business interruption market.

The broker also needs to understand the premium implications of providing additional cover, i.e. beyond the standard cover defined in an insurer's printed policy form. There is little point in negotiating the widest form of cover at an additional premium cost, when some of that 'additional' cover may be of little importance or value to the client. This is why it is so important for the broker to understand its clients' needs and risk appetite.

C6 Flexibility and innovation

An insurer's flexibility in its policy terms and conditions, its willingness to adapt quotes to clients' specific needs and a general sympathetic client approach are all important.

Innovation does not only mean inventing new products, although that is also important. It equally means adopting an unconventional approach or adapting established techniques, specifically to meet the needs of an individual client. Examples include:

- Offering different deductibles to a retailer who is concerned about a serious fire (but less so about storm damage)
- Packaging covers together in a bespoke manner
- Writing a tailored self-insurance programme with a large annual deductible, so that the policy only becomes operational once the full aggregate excess is reached.

C7 Capacity

Most businesses in Ireland are small or medium-sized enterprises (SMEs) and are covered under package policies, with property, business interruption and liability covers provided in one policy by one insurer. In such cases, brokers do not need to be as concerned about capacity, i.e. the total amount of risks an insurer can accept. A relatively small proportion of businesses in Ireland will be outside the capacity of most insurers. For these larger risks, capacity will definitely be a factor in decision making.

An insurer's 'capacity' is determined by:

- Its perception of the risk, e.g. good, bad or indifferent
- The risk itself, e.g. trade, construction
- Its size
- Its willingness to use, and the availability of, reinsurance

- The risk value and how maximum possible loss is evaluated
- Its current accumulation of risks in the same industry/location
- Its perception of the current market for a particular product, e.g. if an insurer perceives that it is in a hard market, it may allow more capacity as it expects policies to be profitable.

Practice varies depending on the class of insurance. For example, in commercial fire insurance, where very large risks tend to be co-insured, the lead underwriter is usually able to cover at least 20-30% of the risk. Compare this to marine or aviation risk, where the lead underwriter may only have the capacity to cover 5%.

The scope of cover required can sometimes dictate an insurer's capacity. For example, some insurers will only write certain types of public liability cover if there is a terrorism exclusion. The same will be true for global property programmes where there is exposure to earthquake and other natural perils such as hurricanes.

On the other hand, there may be particular risks that an insurer will find so attractive that it will wish to write the risk totally. The insured may find this convenient, but it also means that the whole risk is exposed to one insurer. The broker will need to exercise good judgement as to which approach offers the most suitable terms for the client.

C8 Technical advice and specialist expertise

Large brokers have the resources to generate their own support services, including sales and technical literature, but this is more difficult for medium-sized and (particularly) small brokers. In theory, all insurers should be able to provide technical advice in respect of their own policies. An insurer who is willing to support the broker's technical services to clients can gain a competitive advantage.

More importantly, some insurers have more specialist expertise in a given subject or class of risk. This means they will have experience in the special features of the risk and how these relate to the breadth of policy cover and the handling of claims. They may produce technical sales guides or broker training in such areas as:

- Cyber insurance
- Media risks, particularly defamation
- Trade credit insurance
- Employers' liability for heavy engineering risks
- Public finance initiative (PFI) contracts, e.g. motorway construction
- Asbestos removal contractors
- Construction
- Business interruption.

C9 Surveys and risk control

An insurer may provide a quotation subject to survey. In these circumstances, it is important that the insurer can carry out surveys quickly. While granting provisional cover is useful, it may create problems if the survey requires improvements (e.g. to a business premises) that are too expensive or impractical for the client to meet.

It is thus preferable for the broker to arrange surveys before cover is granted (pre-quotation surveys), while advising that there may be a cost involved if the insured does not proceed with cover. Alternatively, the broker could give the insurer enough information to allow it to anticipate any potential improvements required.

Most brokers do not generally employ their own surveyors, so the quality of the insurer's **risk control** advice is important. The advice given should be practical and reflect an understanding of the client's needs. In some cases, the broker will accompany the insurer's surveyor.

risk control

where an insured evaluates potential losses and takes action to reduce or eliminate such threats

For technically detailed risks with unusual processes (e.g. heavy engineering plants), a broker may engage an independent third-party surveyor to carry out a survey of the risk. This can then be used as part of the submission to insurers at renewal. Any cost associated with the survey can be either borne by the broker or passed back to the insured with their agreement.

Surveys are an example of where the broker's skill in selecting insurers is vital. Different insurers may have different standards, e.g. the extent of physical security required at the insured premises.

With its recent appointment of an experienced risk control surveyor, TIB (the sample broker) is hoping to be in a position to complete certain surveys on behalf of the insurer (Lloyd's) in relation to their hardware shop scheme. In return, Lloyd's are considering providing TIB with an increased authority and a set fee payment for this service.

Since insurers' resources are stretched, a number of independent specialist risk surveyors now offer their services, especially in post-loss surveys (as loss adjusters). Many insurers are happy to accept their reports and recommendations.

C10 Continuity

Continuity of cover is an important consideration where there has been poor claims experience. The broker may recommend continuing the cover with an existing insurer, who is able to take into account previous loss ratios in assessing the rate for the future. The existing insurer may therefore prove more competitive in the long run. There is no doubt that client-insurer relationships are important and if the client is happy with an insurer, this can be a significant factor in deciding on the policy renewal strategy. For this reason, it can be important for the broker to arrange meetings between the insured and the client to allow them to build up a better understanding of one another's businesses.

C11 Reputation and experience

Irrespective of whether an insurer writes a broad range of risks or is a specialist in a few niche areas, certain insurers will develop a reputation for certain types of risk. This in-depth knowledge may range from fire risks in the chemical industry to specific risks of the motor trade. When placing substantial or difficult risks, the participation of certain insurers may be essential in securing the extent of cover required. This is often beneficial to the insured, but the broker has to guard against complacency. New markets are to be encouraged and nurtured.

C12 Credit facilities

Some insurers offer credit facilities, allowing insureds to pay:

- In instalments, depending on the nature of the transaction and the client, e.g. offering an interest-free option to make it particularly attractive
- The whole premium, but deferred from the inception or renewal date.

Some insurers also use premium financing firms to offer facilities that are similar to paying in instalments.

The broker needs to take care that the client understands the credit agreement and payment schedule. Some insurers state that they will withdraw cover if the client fails to make a credit instalment or misses the payment date.

The other side of the credit-facility coin is time, i.e. the amount of time the insurer allows the broker to pay the account. Payment terms vary and may be 90 days for large broking firms and 30 days for smaller firms. Typically, **multinational programmes** are now written subject to a 60-day payment and often, for classes such as employers' liability, the premium may be required in 30 days or even on day one. In the past, insurers sometimes offered extended credit periods as a marketing tool to attract new intermediaries. This is rarely the case now, although some may offer interest-free instalments.

Generally, a premium finance provider will allow a broker to add a margin (typically 1-2%) to the base rate charged. This is paid back to the broker by way of a commission at year-end. This means that if a broker were to finance premiums of €1 million in a full year, with a 1% margin added to the base rate, the commission would be €10,000. It is important to note that the broker must clearly stipulate this activity in its TOB with the insured.

The handling of premiums is subject to Central Bank CPC requirements (see Chapter 5D2).[95]

multinational programmes

an insurance solution for a large multinational client that could operate in different and diverse locations requiring a varied combination of cover

Chapter 4

[95] Provisions 3.46-3.51, CPC.

C13 Industry feedback on insurer service

Various industry surveys attempt to rate insurers in relation to the various selection criteria described in Section C. Brokers Ireland conducts its own surveys of brokers' attitudes to and experience of insurers. They ask questions on all the selection criteria and score and weigh the results. The 'winners' of the various categories, as well as key survey findings, are made publicly available. Meanwhile, the detailed data is available to insurers, who may wish to use it to gauge their position within the broker market.

Another source of information is benchmarking data (i.e. data collected within the industry to compare against 'best practice'), available from specialists such as Advisen in the United States. In Ireland, global insurance brokers like Marsh and AON have developed analytics departments to serve their Irish clients. These departments produce data that facilitates better strategic decisions among clients about their risks. The increasing use of analytic tools in corporate insurance is making a significant difference in identifying, measuring, mitigating and transferring risk. In the past, this kind of decision-making support hardly existed. However, large commercial policyholders are now accustomed to such professional levels of decision-making support from management consultants, bankers and lawyers.

C14 Diversity

There are many reasons why a broker should deal with a wide variety of insurers, including to:

- Reduce the effect of a sudden change in underwriting philosophy
- Reduce the impact of insurer insolvency
- Provide the widest knowledge of what products and cover are available
- Ensure that competitive terms are obtained
- Ensure the availability of capacity
- Ensure the ability to deal with unusual risks.

D Summary

This chapter looked at the importance of choosing the right insurer, and conversely, the potentially disastrous consequences of choosing the wrong insurer – for both the insured and the broker. It also outlined the impact of the insurance market cycle and the criteria used in selecting the best insurer for the client's needs.

D1 What's next?

Next we look at the role of brokers in the post-placement period where the focus is on ongoing customer service and management.

D2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in this textbook. Use the 'End of chapter questions', 'Quick questions' and 'Sample exam questions' to quickly test what you have learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

D3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter's content when revising.

Remember: This module is examined by mixed assessment, which includes:

- An online mid-semester MCQ assessment (20 questions)
- An end-of-semester written exam paper (9 questions)

Given that your online mid-semester assessment is a multiple-choice question test, completing the online practice paper is the ideal preparation for this. You can prepare for the end-of-semester written exam and test your knowledge by completing sample and past written exam papers.

To access these online learning supports, just log into your Member Area of **www.iii.ie** and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 4. It should be noted that these end of chapter questions are revision questions to test your understanding of the material in the chapter just studied. They are not sample exam questions.

1. State the features of a soft market cycle.

2. Outline the factors that may limit a broker's options in selecting an insurer.

3. State three ways that business is transacted at Lloyd's.

4. List four criteria to be used in selecting an insurer for a specific risk.

5. List three examples of insurer insolvencies that have impacted the Irish market.

6. Identify the main reason why a broker may not wish to obtain the widest form of cover possible for its client.

7. Explain the term 'slip'.

8. Briefly explain how an insurer's capacity is determined.

9. Identify two sources of industry feedback on insurer service.

10. Briefly explain the benefits for a broker in dealing with a wide variety of insurers.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. In a soft market cycle, there would normally be:
   - Plenty of insurer capacity and client choice
   - Flexibility on terms and wordings
   - Lower prices
   - Greater competition between insurers
   - Worsening insurer results.

2. The following factors may limit a broker's options when selecting an insurer:
   - Regulation
   - Class of business
   - Administration
   - Broker selection.

3. Business is transacted at Lloyd's through one of the following:
   - 'Face to face' between the Lloyd's broker and the underwriter
   - Use of delegated binding authority
   - Businesses set up outside Lloyd's by syndicates.

4. Any four from the following criteria can be used in selecting an insurer for a specific risk:
   - Financial security
   - Price
   - Quality of service
   - Breadth of cover
   - Flexibility and innovation
   - Credit facilities
   - Capacity
   - Claims service
   - Technical advice and specialist expertise
   - Surveys and risk control
   - Continuity
   - Reputation and experience
   - Industry feedback
   - Diversity.

5. Examples of insurance insolvencies are (any three): PMPA, Quinn Insurance, Setanta Insurance, Enterprise Insurance, Gable Insurance AG, Qudos Insurance A/S and Gefion Insurance A/S.

6. The main reason why a broker may not wish to obtain the widest form of cover possible for its client is because the client may not require such extensive cover and it may involve extra cost.

7. A 'slip' is a document created by a Lloyd's broker showing underwriters' stamps, the percentage of the risk written by each underwriter ('lines'), underwriting references and other details such as specific terms and conditions.

8. An insurer's capacity is determined by:
   - Its perception of the risk
   - The risk itself
   - Its size
   - Its willingness to use, and the availability of, reinsurance
   - The risk value and how maximum possible loss is evaluated
   - Its current accumulation of risks in the same industry/location
   - Its perception of the current market for a particular product.

9. Sources of industry feedback on insurer service include:
   - Various industry surveys including those of Brokers Ireland
   - Benchmarking data available from specialists such as Advisen in the United States or Marsh and AON in Ireland.

10. The benefits to a broker in dealing with a wide variety of insurers are that it:
    - Reduces the effect of a sudden change in underwriting philosophy
    - Reduces the impact of an insurer's insolvency
    - Provides the widest knowledge of what products and cover are available
    - Ensures that competitive terms are obtained
    - Ensures the availability of capacity
    - Ensures the ability to deal with unusual risks.

Answers to quick questions

1. The third party's authority under a delegated binding authority agreement needs to be strictly defined because, as the insurer's agent, the third party can bind the insurer to a course of action and so the insurer will wish to make sure that it would be comfortable in being so bound.

2. Insurance brokers do not guarantee the performance of the markets they use to place their clients' business. However, when a broker is selecting an insurer, it has a duty to exercise reasonable skill and care, to ensure the insurers it deals with are financially sound and have an acceptable financial security rating appropriate to the business being written.

Sample exam questions

Question 1

a) Briefly explain how Lloyd's operates as a 'subscription market'.

(4 Marks)

b) Outline the **three** ways in which the majority of business is transacted at Lloyd's.

(6 Marks)

Total: 10 Marks

Question 2

In selecting an appropriate insurer with which to place a large commercial risk, the broker will have to consider the insurer's 'capacity'.

List **five** factors that determine an insurer's capacity, and briefly discuss market practice in accepting such risks.

Total: 10 Marks

Your answers

Sample answers

The answers set out below show the main points to be considered by students in answering the question. In some cases, a well-reasoned alternative view could earn good marks.

Question 1

(a)

Lloyd's is a subscription market, meaning that the majority of larger risks is shared among a number of participating underwriters who 'follow' the terms set by the lead underwriter. The Lloyd's market is made up of syndicates (groups of private individuals or corporate members), who carry the risks by providing financial backing or capacity (an agreed limit to the amount of business an insurer can underwrite in a year). A syndicate may employ an underwriter, or a managing agent, who then appoints an underwriter to accept or decline risks on behalf of the syndicate. Many of the syndicates specialise in certain types of business, e.g. marine, aerospace, property, construction and energy.

(4 Marks)

(b)

Business is transacted at Lloyd's in three ways:

- 'Face to face' between the Lloyd's broker and the underwriter
- Through the use of delegated binding authority (given to brokers and agents, mainly in Ireland, the United Kingdom and United States, which are referred to as 'coverholders')
- Through businesses set up outside Lloyd's by syndicates (which can be treated in the same way as other insurers).

(6 Marks)

Reference Chapter 4B1b **Total: 10 Marks**

Question 2

An insurer's 'capacity' is determined by:

- Its perception of the risk, e.g. good, bad or indifferent
- The risk itself, e.g. trade, construction
- Its size
- Its willingness to use, and the availability of, reinsurance
- The risk value and how maximum possible loss is evaluated
- Its current accumulation of risks in the same industry/location
- Its perception of the current market for a particular product.

Practice varies depending on the class of insurance. For example, in commercial fire insurance, where very large risks tend to be co-insured, the lead underwriter will usually start at 20–30%. Compare this to marine or aviation risk, where the lead underwriter could start at 5%.

The scope of cover required can sometimes dictate an insurer's capacity. For excess public liability cover, for example, many insurers only write the risk if there is a terrorism exclusion. The same will be true for global property programmes, where there is exposure to earthquake and other natural perils such as hurricanes.

On the other hand, there may be particular risks that an insurer will find so attractive that it will wish to write the risk totally.

Reference Chapter 4C7 **Total: 10 Marks**

Chapter

5

Ongoing customer service and management

What to expect in this chapter

In this chapter we look at the broker's role once a client's insurance has been placed in a way that best meets their identified needs. We highlight best practice in relation to the policy administration, errors and complaints, data protection and claims, while ensuring that the conduct risk is minimised.

To help you relate the material in this chapter to a real-life situation, we refer to the case of Tuhill Insurance Brokers Ltd (TIB, the sample broker) and to the case of Sean Burke (the sample client submission in Chapter 3B). The topics in this chapter highlight the post-placement process and will help you to reflect on how and why each stage of the process places certain requirements on brokers and their clients.

Chapter 5

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Post-placement activity**	Demonstrate the broker's responsibilities with regard to post-placement activity, mid-term administration, errors, complaints and data protection.
B	**Mid-term administration**	
C	**Renewals**	
D	**Premiums**	
E	**Errors and complaints**	
F	**Data protection**	
G	**Claims**	Describe the role of the broker in relation to claims.

A Post-placement activity

We now discuss what the broker has to do, once the client has made an informed decision regarding cover and insurance provider.

A1 Instructions to the insurer

Before the risk is put on cover, the broker should record and confirm in writing the insurer's agreement to incept cover. The quotation received from the insurer is likely to be in writing, setting out the premium, terms, conditions and whether there are any cover restrictions, e.g. increased excess or flood exclusions. However, if cover is agreed over the phone, the broker must:

- Make an immediate record of the call (written or audio)
- Send written confirmation of the agreement as soon as possible.

Many brokers' systems produce written summaries of the risk, which are issued to confirm that the insurer is on risk and at what terms. It is important that these summaries match the cover and premium agreed.

As noted in Chapter 4B1b, in the London market, cover is usually placed on a slip. By subscribing a line, the underwriter is bound to go on risk at the inception date shown. Despite this, it is good practice for the Lloyd's broker to contact all the underwriters at the time the risk attaches, or immediately after, to let them know that they are on risk and at what terms/percentage.

A2 Cover notes

In Ireland, while most insurers will confirm cover immediately and produce policy documents soon after (schedule of cover), some brokers will issue cover notes to confirm that cover is in effect. The use of intranet systems has reduced the need for cover notes; however, some policyholders, because of past practice, will still request them and use them as a summary document.

In the London market, it has been standard practice to issue an **evidence of cover** (EOC) document. This is the slip, less the subscription market proportion (which lists the various insurance carriers or Lloyd's syndicates), with a covering letter. The EOC is signed off (digital signature will suffice) by two directors of the entity issuing the policy. EOCs make the process simpler and faster.

evidence of cover

proof or acknowledgement that an insurance policy is in place at the inception of cover, while policy documentation is being prepared

Chapter 5

A3 Policy documents

This section outlines the processes for policy documents.

A3a Issuing policy documents

The policy document is evidence that the cover is in force and defines exactly what is covered. Typically, the policy document consists of the policy wording (i.e. terms that are general to all policies of this type, e.g. definitions, operative clauses, exclusions, etc.) and the policy schedule (i.e. details specific to the risk, e.g. name of policyholder, sums insured, etc.). Therefore, it is important that it is promptly and efficiently issued by the insurer to the broker, and by the broker to the policyholder. The regulatory requirements are outlined in Extract 5.1.

5.1 **Extract** Regulatory imperative, CPC 6.13

An insurance undertaking must issue policy documents within 5 business days of all relevant information being provided by the consumer and cover being underwritten, to … any insurance intermediary that has sold its insurance policy. An insurance intermediary must, within 5 business days of receiving the policy documents from an insurance undertaking, provide them to the consumer. This provision also applies in the case where the consumer renews an existing policy.

Where the insurer is preparing the policy, the broker needs to:

- Keep a diary system so that it can follow up with the insurer if necessary
- Set up a system to check that the policy is correct once received.

Practice differs on what happens when the policy is incorrect:

- Some brokers will issue the policy to the client as received from the insurers, noting the areas that will be corrected by the insurer (as agreed with them), and then forward the correct version to the client when it becomes available.
- Other brokers will only issue the policy documents to the client once they are satisfied that the documents are correct. The risk with this approach is that the client does not have the full policy wording to hand and might not be aware of all the applicable terms, conditions, warranties and endorsements. If an incident happens during this period that results in a claim, and the insurer subsequently declines the claim because of non-compliance with the policy wording, the liability may rest with the broker depending on the circumstances of the claim.

A3b Policy wordings

In most cases, the insurer can endorse or amend its standard policy wording by including additional agreed covers or amending limits. Bespoke wordings, which have become more common for larger risks, are drawn up and customised to reflect the client's exact needs. This is a complex process and it is important to determine who holds ultimate responsibility for any incorrect wording.

A3c Insurance registers/summaries

For commercial risks, including some SME businesses, most brokers prepare insurance registers or summaries of cover, which explain the client's insurance programme. In addition to brief details of each policy, the summaries include contact names, claims procedures, and advice on the client's obligation to declare material facts or **material changes**, keep sums insured up to date and other relevant facts. Summaries have become an important feature for the insured.

When summarising cover, it can be difficult to decide what to include and what to leave out. It should be highlighted to the client that the summary provides brief details only and reference should always be made to the policy document for full details of the cover being provided. However, where there is a delay in issuing a policy, the client may rely on the summary (or cover note, if applicable).

It is clear that the scope and accuracy of the summary is vitally important. For this reason, all brokers should have procedures in place to ensure that summaries (and cover notes) correctly reflect the deal agreed.

The summary of cover should include the following elements:

- Period of cover and name of insurer
- A full explanation of any warranties, conditions or clauses (quoted in full)
- Schedules of values and limits of indemnity
- Explanations of any abbreviations or acronyms used (except for those in common use)
- Full description of any variations to standard policy cover, both in the first instance and whenever repeated
- A statement about claims notification procedures
- The basis of rating (where relevant), particularly if the premium is adjustable
- An explicit description of credit and special payment terms.

It should be noted that written documents do not necessarily need to be printed and posted (this applies to the section above and subsequent sections). Scanned documents and digital signatures suffice in the majority of cases.

material changes

changes to the risk that are extensive enough to render the risk as no longer what the insurer agreed to cover

Quick question 1

State the duties of the broker where cover is agreed over the phone.

The answer is at the end of this chapter.

Chapter 5

mid-term administration

changes made to a policy between the inception/renewal date and expiry date, when a change of risk occurs

B Mid-term administration

The following sections outline some of the systems and recording processes involved during **mid-term administration** of a policy.

B1 Diary systems

Throughout the policy's duration, whether personal or commercial, many changes can take place. For example, a client may want a temporary substitution on their private motor policy while their insured car is in a garage for repairs, or a commercial client may undertake contract work for another business that wants an indemnity notification on its policy. A broker will often employ a diary system, for use by all staff, to ensure that these changes are actioned and recorded.

Effective diary systems are essential to ensure that:

- The broker is alerted to a renewal that is due
- The clients' requests (e.g. for an extension of cover) are acted on in good time
- Any relevant policy endorsements received from insurers are checked and dispatched to clients following any changes to cover
- Premiums are collected from clients and paid to the market within agreed timescales
- Any risk improvement requirements or recommendations or subjectivities are handled prior to their deadline for completion
- Any outstanding documentation from the client or the insurers is received.

All brokers now employ some system to organise their main diaries, typically lists of pending renewals, outstanding policies, outstanding premiums, claims reviews and so on. Many employees mark their own desk diaries to ensure that they carry through on follow-ups. Others use their email or broker management system. Many companies have a coordinated, computer-driven diary system within their broker management system, which allows the manager to monitor the workflow and (re)allocate diary items to relevant staff. Whatever the chosen method, it is vital that an effective diary and reminder system is in place.

Just think

Think about the possible repercussions on TIB if they failed to follow up on these tasks.

Possible repercussions could include:

- deterioration in their client retention rate
- missed regulatory deadlines
- deterioration in relationships with insurers
- professional indemnity exposure
- reputational damage.

B2 Supervision/peer review

In some countries, dual signature of all correspondence is still general practice, particularly in Germany, Switzerland and Austria. By contrast, Ireland and the United Kingdom tend toward a single signature, but with a great reliance on systems and procedures to provide checks and balances and to prevent mistakes. Some brokers operate a 'second pair of eyes' spot-check system, where any client reports, insurer submissions and the like are peer-reviewed by a colleague to minimise errors in the documentation. Where resources allow, this is an effective checking system.

Most systems of peer review demand that someone not involved in originating the work/project check it. It is more difficult for an individual to spot errors or see anything wrong when they are heavily involved in a task. The same applies when the work is fully completed, so it is common practice to have a second person sign it off.

In a broking environment, an effective system of peer review might involve checks by colleagues, who deal with similar clients or risks (so they can distinguish between good and poor practices), but who were not involved in the project/work being checked.

Although checking fundamental information is normally the focus of a detailed audit, spot-checking of information can be a vital element of peer review. This same peer review can also monitor compliance with regulatory requirements and enforce adherence to the firm's own internal procedures.

Supervision, as a quality control measure, works best in an environment where people can admit mistakes, and where senior staff regard the coaching of inexperienced staff to be a vital part of their job. Along with compliance checks, supervision can indicate the need for systems improvements or that additional skills or technical training might be necessary, either for individuals or for the business as a whole.

B3 Filing systems

The importance of an effective document filing system cannot be overemphasised. E-filing systems require a good IT infrastructure, combined with strong back-up facilities (in-house or offsite).

Reminder

In the event of a complaint being made to the FSPO, a policyholder's file will be used to respond to FSPO queries and questions.

Each client file should have a clear and comprehensive activity and audit trail of all verbal and written communications with, and instructions from, clients, insurers and other parties, either in paper or digital format. This practice (common in law firms) makes the file easier to access and read. Anyone picking up the file can see what has happened in the past and what stage the negotiations have reached. This avoids errors arising out of a situation where a person, unfamiliar with the file, only examines the more recent correspondence and may misunderstand the action to be taken. This procedure is not only effective and cost-efficient, but actually saves time.

Scanning has become a popular medium of document storage and a useful way to combine soft and hard copies under one reference. However, before implementing any scanning system, it is essential that it complies with data protection legislation and that the insurer is satisfied with the scanning procedures.

While a paperless office may be the ideal, brokers may need to retain some physical records, depending on the record-keeping requirements in their agency agreements. For example, completed and signed proposal forms and no claims bonus/discount certificates must be retained on the broker's motor underwriting file for inspection by the insurer. Large brokers who deal with large volumes of documents and operate sophisticated scanning and paperless systems might operate under special agreements with insurers that allow for scanned copies to be retained, instead of the original paperwork.

Reminder

If it is not in writing, it is very difficult to prove it happened.

B3a Record keeping

Insurers and brokers must comply with a number of requirements on how they collect, process and store information from, and about, a client. We will see in Section F how data protection legislation requires firms to have a clear policy on how they retain personal data and when this data is to be destroyed. You learned in the Compliance and Advice module that anti-money laundering and counter-terrorist financing legislation requires that such data be kept for a period of no less than 5 years from the date when the relationship with the client ends. However, for insurers and brokers, this 5-year requirement is superseded by the CPC requirement that details of individual transactions be kept for 6 years after the date the transaction is discontinued or completed, or from the date the firm ceased to provide any product or service to the consumer. Record keeping makes for good 'housekeeping' practices, but its inclusion in the CPC makes it legally binding.

C Renewals

Best practice dictates that renewal notices be accurate and issued promptly, so that the client has time to shop around, and the premium is received well in advance of the broker's account settlement date with the insurer.

C1 Provision of information to clients at renewal

C1a Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations

The renewal procedures for all general non-life insurance classes (excluding marine and health) are dictated by the **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007** as amended by the **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018**. Together, these Renewal Regulations require an insurer to give written notification (including by email) not less than 20 business days before the renewal date, either inviting renewal or stating that it does not wish to renew the policy.

The Renewal Regulations allow insurers to send renewal notices through an intermediary. If so, the intermediary is responsible for making sure the renewal notice is issued within the specific timeframes given in the Renewal Regulations.

Just think

Is a consumer at a disadvantage when dealing with an intermediary because of the delay in receiving renewal documentation?

No, because the Renewal Regulations state that the renewal information must be provided by the insurer to the intermediary in sufficient time to be forwarded to the client within the required time period.

All non-life insurance renewal notices must detail the policy cover and premium calculation.

For motor insurance, the Renewal Regulations require insurers to provide additional prescribed information on the terms of the renewal notice. These terms must include:

- The registration number of each vehicle insured under the policy (where the policy includes private motor insurance)
- The name(s) of the driver(s) insured or the classes of drivers
- Policy cover (comprehensive; third party, fire and theft; third party only; or a combination of these)
- The total premium for each policy cover option available (i.e. comprehensive; third party, fire and theft; third party only; if offered by the insurer)

- Any portion of the premium that has been charged because of the client's claim(s) history or prior convictions
- The cost of any optional cover, ancillary to the motor cover, e.g. legal expenses or breakdown assistance
- Any fees or charges applied (other than the premium)
- Any proposed changes to the policy terms, e.g. restrictions or limitations introduced
- Details of payment options
- Any discounts applied, which must include the date of issue and:
    - o discount percentage and amount
    - o point on the no claims discount scale
    - o number of years with no claims made against the policy
- (For private motor insurance policies only) The amount of the insurance premium paid in the previous year or, where any mid-term adjustments were made to the policy during the year, an annualised premium figure. (See in Section C1b that the **Consumer Insurance Contracts Act 2019** requires the renewal notice to include the amount of insurance premiums from the last **five** years).

Quick question 2

In relation to motor insurance, outline the renewal notice disclosure requirements under the **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018** regarding discounts.

Just think

Consider why the statement of no claims discount must be issued on a separate or separable piece of paper.

The statement of NCD must be issued on a separate or separable piece of paper as this provides the client with evidence of their no claims discount entitlement, in case they decide to transfer to another insurer or to another cover type before their policy renewal date. Having it as a separate document allows it to be more easily provided to the new insurer.

C1b Consumer Insurance Contracts Act 2019

The **Consumer Insurance Contracts Act 2019** requires that **all** non-life insurance renewal notices to consumers include the following information (in relation to the previous 5 years):

- The amount of the insurance premiums paid by the consumer to the insurer and, where any mid-term adjustments were made to the policy, an annualised premium figure
- A list of any claims (including third-party claims) paid by the insurer to or on behalf of the consumer (except, where the contract is a health insurance contract as per Section 2(1) of the **Health Insurance Acts 1994-2020**)
- Any alteration to the terms and conditions of the policy, including details of exclusions in the coverage.

The renewal notice must be issued no later than 20 business days before renewal and on paper/other durable medium.

Under the **Consumer Insurance Contracts Act 2019**, a consumer is not under any obligation to provide any additional information at renewal unless the insurer expressly requires them to do so by asking them a specific question or requesting them to update information previously provided concerning a specific matter. In these situations, the insurer must provide the consumer with a written copy of the information previously disclosed. The consumer must respond honestly and with reasonable care. If the consumer does not provide any new information in response to the insurer's request and pays the renewal premium, it is presumed that the information previously provided has not changed. Under the Act, the consumer has a duty to pay the premium within a reasonable time.

Quick question 3

Outline the effect on an insurer of a policy written through an intermediary in terms of compliance with the **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018**'s requirement to issue the renewal notice not less than 20 business days in advance of the renewal date.

D Premiums

As stated in Section C, issuing timely renewal notices ensures that the premium is received well in advance of the broker's account settlement date with the insurer.

annual percentage rate

calculation of the overall cost of a loan expressed as an annual rate:

- Representing the actual yearly cost of the funds borrowed
- Taking into account all the costs during the term of the loan, including any set-up charges and the interest rate

As an alternative, some clients may seek to pay premiums in instalments. This is particularly the case for personal lines business and some small businesses. Insurers may offer instalment facilities and this could be subject to an interest charge, whereby an **annual percentage rate** (APR) must be quoted. It is also possible for brokers to organise payment for one or more policies via a third-party finance provider (premium financing) (see Chapter 3D1c). It should be remembered that this is treated as a commercial loan and the broker must ensure that the client is fully aware of the terms and conditions. With premium financing, the broker can include fees in the loan, but the client must agree to this beforehand.

D1 Premiums and the Insurance Distribution Regulations

The IDR prescribe that:

- An insurance intermediary is responsible for having appropriate operational procedures in place for the payment of premiums and claims payments
- Any insurance premium paid to an insurance intermediary is taken as having been paid to the insurer
- Any money paid by an insurer to an insurance intermediary for a client (e.g. premium rebate or claim benefit) is not taken as having been paid to the client until the client actually receives it
- An insurance intermediary must ensure that all insurance premiums and monies paid to it by clients or insurers are held in a strictly segregated 'client premium account', so that those funds cannot be used to reimburse other creditors should the insurance intermediary become insolvent.

The requirements relating to the handling of premiums are also addressed by the CPC and are covered next.

D2 Premiums and the Consumer Protection Code

The CPC premium handling requirements ensure that the premium payment process is transparent. An intermediary must place all monies received in payment of a premium or premium rebate/refund into a separate bank account (known as a 'client premium account').

An intermediary must ensure that the client premium account is never overdrawn and that all payments from the account clearly state that this is where it came from. There are also strict CPC rules surrounding monies that can pass in (credit) and out (debit) of a client premium account, requiring firms to maintain a detailed monthly reconciliation.[96]

96 Provisions 3.46-3.50, CPC.

A receipt must be issued to a consumer that includes the following:

- The name and address of the regulated entity
- The name of the consumer who provided the payment, or on whose behalf the payment is made
- The value of the payment and date received
- The purpose of the payment
- In the case of an insurance intermediary, a statement that acceptance of the completed insurance proposal does not constitute the effecting of a policy.[97]

Where a premium 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'. This rule works differently for insurers and intermediaries, as follows:

- For insurers – The rebate becomes 'due' as soon as the insurer is made aware of the circumstances giving rise to the rebate, e.g. a change of car or a request to remove an item from a policy.
- For intermediaries – The rebate becomes 'due' when the intermediary receives the rebate from the insurer. Alternatively, if the intermediary holds funds on the insurer's behalf, the rebate becomes 'due' when the insurer notifies the intermediary that it is due and permits the intermediary to pay the rebate from the funds.

Where the premium rebate is €10 or less, the 5-business-day rule applies; however, the insurer/intermediary can offer the consumer a choice to:

- Receive the premium rebate
- Receive a reduction from a renewal premium or other premium currently due
- Permit the firm to donate the rebate amount to a registered charity.

The last two options are permitted only if the firm seeks the consumer's consent on each occasion and it must maintain a record of the consumer's decision. If the third option is chosen, the firm must document the donation and keep a receipt from the relevant charity.[98]

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

If the intermediary has issued a rebate cheque to a consumer and it has not been cashed within 6 months of the date of issue, the intermediary must return the rebate to the insurer.

An intermediary must transfer the rebate amount to the consumer in full. If the consumer owes the intermediary any other charges, they must be paid separately and not deducted from the rebate amount. If the consumer and intermediary agree to deduct the charges from the rebate, the Central Bank requires that the agreement be in writing and the details clearly stated.[99]

Quick question 4

List what the IDR prescribe to intermediaries regarding client funds.

Chapter 5

[97] Provision 3.5, CPC.

[98] Provisions 7.1–7.2, CPC.

[99] From Provisions 7.3–7.5, CPC.

D3 Criminal Justice (Money Laundering and Terrorist Financing) Acts

As we know from the Compliance and Advice module, measures to prevent **money laundering** and **terrorist financing** are contained in the **Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010-2021** (CJA).

In 2017, the Central Bank undertook a number of onsite anti-money laundering (AML)/counter-terrorist financing (CTF) inspections of retail intermediaries.

While general insurance brokers are exempt from carrying out customer due diligence (CDD), they have obligations in relation to CTF.[100] These CTF preventative measures are dealt with in the CJA 2010, including a specific obligation to comply with EU Council Regulations relating to **financial sanction** (FS) measures.

To prevent the financing of terrorism, in addition to complying with AML legislation, it is necessary for general insurance brokers to monitor their clients and transactions against both the EU and UN Sanctions Committees' lists relating to terrorism.[101]

If a match occurs with an EU Financial Sanction or UN Targeted Financial Sanction, the broker must stop the transaction and carry out additional identity checks (known as KYC/Know Your Client checks) to verify that its client is 'one and the same person' as stated on the Financial Sanctions list. If the client is 'one and the same person', the broker must make an immediate report to An Garda Síochána and the Central Bank. In addition, where an insurer/intermediary has knowledge or suspicion of activities that may indicate money laundering or terrorist financing, it is obliged to immediately file a Suspicious Transaction Report with the Financial Intelligence Unit in the Garda Bureau of Investigation and the Revenue Commissioners.

Just think

With the increased responsibility on TIB staff as a result of the financial crime legislation, TIB may consider hiring another compliance staff member to manage this risk.

money laundering

process by which criminals and terrorists convert money that has been obtained illegally into apparently legitimate funds

terrorist financing

the provision, collection or receipt of funds with the intent or knowledge that the funds will be used for the benefit of a terrorist group to carry out an act of terrorism (or any act intended to cause death or serious bodily injury)

financial sanctions

restrictive financial measures imposed on individuals or entities in an effort to curtail their activities and to exert pressure and influence on them (also includes restrictions on trade, travel or civil aviation)

Quick question 5

List the steps a broker should take when an EU Financial Sanction or UN Targeted Financial Sanction match occurs.

Chapter 5

[100] The **Criminal Justice Act 2010**, Chapter 1, Part 4, Section 24(d) defines a financial institution as 'an investment business firm within the meaning of the **Investment Intermediaries Act 1995** (other than non-life insurance intermediary within the meaning of that Act'.

[101] The lists are regularly updated at the Central Bank of Ireland website (www.centralbank.ie) and must be frequently checked.

D4 Policy levies and taxes

Insurance premium government levies apply to most general insurances, where the insured risk is located in Ireland. The levy is payable by the insured, although the insurer is responsible for its collection and payment to the government.

The combined levies are currently set at 5% of written premiums (i.e. premiums collected), made up of a:

- 3% **insurance premium government levy**
- 2% **Insurance Compensation Fund** levy.

These levies are in addition to a stamp duty charge of €1 on every new non-life insurance policy. This stamp duty charge is paid by the insurer and not passed on to the insured.

Under the **Insurance (Amendment) Act 2018**, an additional 2% levy applies to motor insurance premiums (all classes of motor insurance). This is the Motor Insurers' Insolvency Compensation Fund levy and it brings the total levy on motor insurance premiums to 7% plus the stamp duty charge of €1.

Reinsurance contracts, export credit insurance, private health insurance policies, certain marine policies and engineering inspection insurances are not subject to an insurance premium government levy or the Insurance Compensation Fund levy. Private health insurance policies are subject to a health insurance levy.

Both insurers and brokers are liable for levies to fund the Central Bank and FSPO. In addition, motor insurers are liable for levies to fund the MIBI. Insurers take these levies into account when calculating rates and premiums. These levies are not shown as separate items in a quotation or on other documentation.

Insurance policies do not attract other taxes such as value added tax (VAT), the exception being engineering inspection-only policies, which are considered to be service contracts as opposed to insurance contracts. Some insurers quote exclusive of taxes (more commonly known as 'exclusive of levies'). It is important when dealing with insurers that the premium breakdown is clarified.

insurance premium government levy

tax applying to most general insurances where the insured risk is located in Ireland, but does not apply to reinsurance contracts, private health insurance policies, certain marine policies and engineering inspection insurances

Insurance Compensation Fund

Irish insurance guarantee fund (financed by a levy on most non-life insurance policies), designed to protect consumers of authorised non-life insurers that go into liquidation and are unable to pay insurance claims

E Errors and complaints

As you may recall from the Compliance and Advice module, Principle 2.8 of the CPC states that a regulated entity, in all its dealings with 'customers' must 'correct errors and handle complaints speedily, efficiently and fairly'.

E1 Errors

Errors can arise in a number of ways. For example:

- Misinterpretation of the policy, which negatively affects the claims settlement
- Incorrect brokerage fee applied
- Failure to issue Terms of Business
- A pricing error that causes a product or service to be overcharged
- Omitting an element of cover a client has requested, i.e. personal accident cover on a Farm insurance policy.

The Central Bank reminds boards and senior management on an ongoing basis that they are key to setting the tone and culture in an organisation and to setting the governance processes around the handling of errors.[102]

The CPC requires firms to have effective written procedures in place that, at a minimum, allow them to:

- Identify the cause of errors
- Identify all affected consumers
- Analyse patterns of errors and investigate whether they are systemic or isolated
- Properly control the correction process
- Escalate (refer) errors to compliance/risk functions and senior management.[103]

[102] Central Bank of Ireland, (Regulation – Consumer Protection, Compliance Monitoring, Reviews), '*Feedback on Desk-Based Review on Governance of Errors' Processes within Banks and Insurers*', 2015, industry letter, pdf, www.centralbank.ie.

[103] Provision 10.1, CPC.

E2 Complaints

The CPC defines a complaint as an expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:

- The provision, or offer of provision, of a product or service by a regulated entity
- The failure or refusal of a regulated entity to provide a product or service.

Sometimes things go wrong and the client has the right to bring a complaint to the attention of the broker. For example, not receiving renewal papers in sufficient time before the renewal date or having the terms of the policy poorly explained or misrepresented. As you know from the Compliance and Advice module, the CPC details the requirements to be followed in relation to complaints. The penalties imposed by the Central Bank in cases involving a breach of these complaint-related requirements reflect the significant emphasis that the Central Bank places on the handling of consumer complaints. For example, in 2016, the Central Bank imposed a penalty of €675,000 on AXA Insurance Ltd for such breaches.

Just think

The Central Bank recommends that regulated entities analyse patterns of consumer complaints and refer these on to senior management (Provision 10.12, CPC). Why would the Central Bank recommend this?

While each complaint is important in its own right, the Central Bank emphasises that any complaints pointing to systemic weaknesses within a firm, or to a widespread effect on consumers, must be considered at a senior level and appropriate action taken.

The Financial Services and Pensions Ombudsman (FSPO) encourages all regulated entities to first engage with their clients, establish the issues and try to rectify the complaint in accordance with the entity's complaints procedure. Once the FSPO is approached, it prefers the parties to mediate, with a view to bringing about a satisfactory conclusion, before it launches a formal investigation.

Chapter 5

F Data protection

All activities undertaken by brokers and insurers must fully comply with the requirements of the **General Data Protection Regulation 2016** (GDPR) and the **Data Protection Acts 1988–2018** (DP Acts).[104]

Just think

From the Compliance and Advice module, can you recall the data protection principles under the GDPR and DP Acts?

The GDPR and the DP Acts are underpinned by a number of data protection principles, as summarised in Figure 5.1.

Figure 5.1 Data protection principles

[104] More information on data protection requirements is available at the Data Protection Commission website, www.dataprotection.ie.

As **data controllers**, insurers and brokers have key responsibilities regarding the storage of automated (computer-based) or manual (paper-based) data. Insurance brokers have unique access to client data, and therefore need to stay up to date with legislative data protection requirements and remain alert to how easily this legislation can be contravened (see Case studies 5.1-5.4).

The GDPR and the DP Acts are only concerned with the collection, use and storage of **personal data** belonging to a **data subject**. A business with even a single employee is still subject to this legislation.

The GDPR aims to introduce mainly harmonised rules in Europe on the protection of personal data in order to allow the free movement of personal data across the EU. The GDPR applies across both public and private sectors and has introduced a two-tier system of fines. Firms can be fined up to €20 million for breaches of data protection, or 4% of total annual global turnover, whichever is greater.

Data processing is defined under the GDPR as 'any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction'.[105]

A data controller that wishes to appoint a **data processor** (e.g. a third party to process personal data on its behalf, such as an external payroll provider) must use only processors that agree to comply with the GDPR. The controller must appoint the processor in the form of a binding written agreement.

The United Kingdom's exit from the EU has implications regarding guidelines for transfers of data to non-EU countries. Data flows will need to be reviewed to ensure appropriate international data transfer mechanisms are in place.

Just think

Most Irish brokers do business with UK insurers, brokers or clients. Twenty eight percent of TIB's business is placed in the Lloyd's market and TIB has agencies with three Lloyd's brokers. TIB will need to consider the impact of Brexit on the transfer of data relating to this business.

F1 Data protection case studies

In an insurance context, the objective of the **Data Protection Commission** (DPC) is to balance the rights of an individual regarding the use of their personal information with the need for the insurance industry to manage fraud. Investigations carried out by the DPC have provided clarity for the insurance industry regarding its legislative requirements. Case studies 5.1–5.4 outline examples of such investigations.

An Coimisinéir Cosanta Sonraí Data Protection Commissioner

data controller

a natural or legal person who controls, and is responsible for, the keeping and use of personal information on a computer or in structured manual files

personal data

data relating to a living individual who can be identified from this data

data subject

a living individual who is the subject of personal data

data processor

a natural or legal person, public authority, agency or any other body that processes personal data on behalf of the controller, but does not exercise responsibility for, or control over, what happens to the data

Data Protection Commission

office established under the **Data Protection Act 1988**, which is responsible for enforcing obligations placed on data controllers, regarding how they obtain and use personal data and information and upholding the rights of individuals as set out in the Act

Chapter 5

[105] **EU General Data Protection Regulation 2016**, Article 4(2), 'Definitions'.

Case study 5.1 relates to a complaint received about requests for excessive information.[106]

Case study 5.1

Motor insurance – marital status not necessary

The DPC received a complaint about a practice among motor insurers of asking applicants an excessive number of questions, especially in relation to marital status. The insurers informed the DPC that marital status was not taken into account in a decision about insurance. Under Section 2 of the DP Act, data sought should be adequate, relevant and not excessive in relation to the purpose for which it is obtained and held. The DPC considered that details of a person's marital status are irrelevant to motor insurance and requested that this question be deleted from those asked of prospective customers. However, if a person wishes to include a named driver on the policy, it is reasonable and relevant that the relationship be indicated.

Case study 5.2 relates to a complaint received about accessing information for personal use.[107]

Case study 5.2

Employee obtains data from customer file for his own use

The DPC received a complaint regarding an alleged inappropriate access to customer personal information by an employee of an insurance undertaking. The employee accessed a policyholder's data in order to contact him to discuss an incident in which he (the employee) believed that the policyholder had scratched his car and to see if the policyholder wished to settle the matter directly with him. The insurer confirmed to the DPC that the employee in question had been made aware in no uncertain terms of the seriousness of the incident. In addition, the issues raised by this complaint were used to draw the attention to other staff members to the importance of complying with data protection obligations. The insurer issued a letter to the complainant explaining what had occurred. It apologised for the distress and inconvenience caused and gave him a voucher for €100 toward his next renewal premium.

Chapter 5

[106] Data Protection Commission (Case Studies, Case study 1, 2002), www.dataprotection.ie.

[107] Data Protection Commission (Case Studies, Case study 16, 2010), www.dataprotection.ie.

Case study 5.3 addresses the insurance sector practices in relation to accessing penalty-point data.[108]

Case study 5.3

Insurance sector and penalty-point data

In 2015, the DPC investigated the data-processing activities of insurers regarding their access to penalty-point data.

Section 53(3)(c) of the **Road Traffic Act 2010** states that 'a vehicle insurer with the approval of the Minister may have access to and may inspect and examine endorsements on the entry relating to persons under this section and may take, or be supplied by the Minister with, such copies of entries or extracts from such entries as the vehicle insurer may reasonably require for the purposes of renewing approved policies of insurance, subject to such conditions as the Minister may determine.'

The audit found evidence of the retention of penalty-point data beyond 3 years (the penalty-point limit under the Road Traffic Act). The DPC engaged with the audited companies to agree on an acceptable retention period and archiving solution.

Case study 5.4 outlines a situation in which a GP disclosed sensitive personal data to an insurer without consent.[109]

Case study 5.4

Doctor discloses sensitive personal data to insurer without consent

The DPC received a complaint alleging that the complainant's medical records were released to an insurer, following a request made to her GP.

In replying to this request, the GP released data relevant to her knee injury, but also disclosed other sensitive, non-relevant medical information.

The DPC wrote to the GP and asked for an explanation as to what had occurred in this case. He responded that, inadvertently, copies of the patient's records were supplied to the insurer with some details that were not relevant to her knee injury and that this was obviously an oversight.

The DPC wrote to the complainant's solicitor outlining the GP's response and conveying the GP's apologies.

The solicitor responded, stating that their complainant wished for a formal decision by the DPC on the matter. The key issue from a data protection perspective was the issue of consent. The consent provided by the complainant to the insurer in relation to accessing her medical records was clearly limited to information relevant to the knee injury. The DPC issued a decision that the GP had contravened data protection legislation.

[108] Data Protection Commission, *Annual Report of the Data Protection Commissioner of Ireland 2015*, p.11, www.dataprotection.ie.

[109] Data Protection Commission, *Twenty-Fifth Annual Report of the Data Protection Commissioner* 2013, p.53, www.dataprotection.ie.

F2 Client’s data protection rights

A broker’s clients have rights in relation to their personal data that is processed by a broker or insurer. On the whole, the rights of individuals under the GDPR are the same as under the DP Acts, but with some significant enhancements.

Just think

Sean Burke is concerned about his data protection rights within the insurance sector. What would be TIB’s response to Sean’s query?

Figure 5.2 sets out the main rights of a data subject under GDPR.[110]

Figure 5.2 Rights of a data subject under GDPR

[110] Adapted from the Information Commissioner’s Office website, (For Organisations – Guide to the General Data Protection Regulation (GDPR), Individual Rights), online information guide, https://ico.org.uk.

Just think

Consider if there are any restrictions on or exceptions to these data protection rights within the insurance sector.

An important exception to an individual's right to access their personal data is contained within the **Data Protection (Access Modification) (Health) Regulations 1989**. This is particularly relevant to the health insurance sector. There are restrictions placed on a data subject's access to their own medical information and on the disclosure of that information in situations where the release of such information would be likely to cause serious harm to the data subject's physical or mental health. Any person who is not a health professional must not disclose health data to the data subject without first consulting the data subject's own doctor, or some other suitably qualified health professional.

F3 Data protection and consumer protection

The approach to consumer protection and data protection may need to be revised in the light of the increasing digitalisation of financial services.

In 2017 the Central Bank of Ireland published a Discussion Paper: *Consumer Protection Code and the Digitalisation of Financial Services*.[111] This sought to identify a range of key risks and opportunities from technological innovation and to provide the basis for an informed discussion around some of these issues.

Extract 5.2 contains comments from a 2019 speech by Gerry Cross, Central Bank Director of Policy and Risk.

5.2 Extract 'Financial regulation and technological innovation: a thematic approach'

Technology has of course the potential to both significantly improve and to undermine the quality of engagement between financial firms and their customers. It has the potential to significantly enhance the outcomes that consumers experience while at the same time bringing risks including around fair treatment, suitability of offering, information and disclosure, amongst others.[112]

[111] Central Bank of Ireland, (News & Media – Press Releases), 'Discussion Paper: Consumer Protection Code and the Digitalisation of Financial Services published', 29 June 2017, www.centralbank.ie.

[112] Central Bank of Ireland (News & Media – Press Releases), 'Financial regulation and technological innovation: a thematic approach' (speech), 27 November 2019, www.centralbank.ie.

Chapter 5

As noted in Chapter 2B5, the Central Bank's *Consumer Protection Outlook 2021* identified risks from technology as a priority noting:

> Innovation and new digital financial products offer many benefits, making access to financial services easier and more efficient for many consumers. However, it can also create risks of consumer and investor harm, for example, through privacy breaches, algorithmic bias in how consumer and investor information is used, or through financial exclusion of vulnerable groups. Cybercrime threats and inadequate information technology systems can lead to errors in fees and charges, put the personal data of consumers and investors at risk, and also threaten the reliability of essential financial services.
>
> It is increasingly important that firms have the ability to oversee and manage the risks associated with technology. While some firms have made good progress in certain areas we continue to be concerned by the arrangements that firms have in place to adequately oversee information technology and cybersecurity risks. It is the responsibility of the boards and leadership teams to ensure that information technology and cybersecurity is embedded correctly in their firm.[113]

It is expected that the Central Bank's 2022 review of the CPC will also focus on its appropriateness for and relevance in an increasingly digitalised world.

Just think

With the increased sophistication of data hackers and the amount of personal information held by TIB, a cyber security breach could have a major impact on the brokerage. It could also prevent TIB's staff from working if access to their computer systems was prevented by the hackers. TIB could engage a cyber security consultant to assess their cyber security risk and purchase a cyber insurance policy to mitigate the financial effects of this risk. Alternatively (or in addition), TIB could avail of the free assessments, tutorials, videos and guidance documents provided by some cyber insurers.

113 Central Bank of Ireland, *Consumer Protection Outlook 2021*, p. 24, www.centralbank.ie.

G Claims

An insurance policy is a promise to indemnify the policyholder for losses resulting from a specified event. It is good practice for the broker to play its part in ensuring that this promise is kept and that the insured is treated fairly.

You have already learned about the claims process in earlier modules. Here, we specifically look at the role and responsibilities of a broker in that process.

G1 The broker's responsibilities

In handling claims, the responsibilities of the broker will often depend on agreements entered into with insurers, the type of policy or the size of the client account.

At the initial point of contact, and after taking all the relevant details, the broker should advise the client of what is involved in the claims procedure and make the client aware of any difficulties that may arise. On receipt of the completed claims documentation, the broker then notifies the insurer and transmits the necessary documentation (within 1 business day as per CPC requirements). For complex liability, property damage or business interruption cases, the broker will usually suggest to the client that a loss assessor be appointed.

G1a Communication

The broker will usually receive the claim notification from the insured and pass it to the insurer. However, the insured is not duty bound to notify the broker and may notify a claim directly to the insurer. In that scenario, the insurer notifies the broker that they have received a claim for a policy that was placed by the broker and the broker may take over the handling of the claim, with the insured's consent.

It is often advantageous for the broker to be involved in the claims negotiations as it can provide evidence to the client of the broker's expertise and how they can add value for the client. It is common for staff from the broker's claims team to attend the client's renewal meetings to provide claims updates and a report on the insurer's view of the claims. Often, this will inform the client of the reasons for potential renewal premium increases.

However, in certain circumstances, the broker's position becomes less clear. For example, if the client changes broker mid-term, the new broker should take over the handling of all claims, both new claims and those outstanding at the time of the change. A problem may also occur if a claim arises many years after the policy was arranged. Examples include:

- Claims under liability policies written on an occurrence basis, e.g. industrial deafness
- Where the injury or damage does not manifest itself until many years after it was caused, e.g. asbestos-related disease.

Chapter 5

Also, mergers and acquisitions mean that most, if not all, broking firms will change considerably over the years. Knowledge of the (ex)client and their historic insurance policy/policies may be confined only to the firm's written records.

Some of the larger brokers have set up specific teams to deal with these 'legacy' claims; others outsource their handling to specialist companies.

As we saw in Chapter 1C1, it is crucial that the TOB/SLA contains a term clarifying who is responsible for claims after termination of the broker's contract with the client.

Nevertheless, there are two potential problems:

- The client's expectations, particularly if the TOB/SLA is unclear
- The broker's desire to protect their position, if the policy is unclear.

Even where the agreement is clear that the broker's responsibility for handling claims ceases on termination of the contract between the client and broker, it is advisable to allow access to previous records in the event of further claims. It is also prudent to give the broker taking over the claim as much assistance as possible to provide a smooth transition. In these circumstances, letters of appointment can also clarify the position for all the parties concerned.

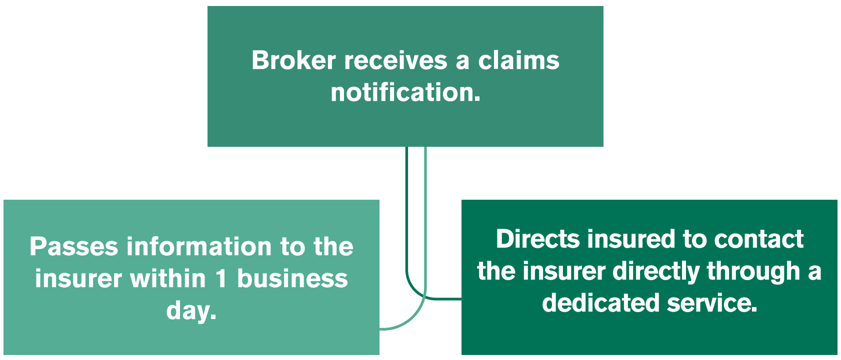
Where the broker is responsible for claim notification and/or handling, they may delegate the tasks to a third-party claims administrator or a loss adjuster. Additionally, brokers should be aware that a loss adjuster may be handling claims on the insurer's behalf and brokers may need to pass the notification to that loss adjuster instead of the insurer as well as following up with the loss adjuster when advocating for the insured.

G1b Consumer Protection Code and claims handling

An insurance intermediary that provides assistance in the making of a consumer claim must, on receipt of the completed claims documentation, transmit the documentation to the insurer within 1 business day.[114] Even if the intermediary does not intend to assist with a claim, it may become involved if a dispute or difficulty arises (presuming no conflicts of interest). However, if an insurance intermediary operates a delegated binding authority scheme on behalf of an insurer, which includes authority to settle claims, they must satisfy all the requirements outlined in CPC Provision 7.7 in relation to procedures and timings.

A simple summary of how a broker should respond when it receives a claim is shown in Figure 5.3.

Figure 5.3 Claims process for brokers



[114] Provision 7.8, CPC.

G2 Dealing with claims

Traditionally, brokers handled all claims on their clients' behalf, dealing with the claims processing and advocating for the client on problems and issues. However, now brokers have a more focused approach depending on the type of claim and the client's requirements.

Just think

It was noted that TIB employs staff to handle smaller claims internally and refers its clients to a firm of public loss assessors for major complex losses. Regardless of the approach, what is TIB's role throughout all claim negotiations?

Throughout all claim negotiations, and for the sake of client relations, TIB's role is to see that the client is treated fairly, in accordance with regulatory requirements and the terms of the policy. Whatever the claim type or the broker's approach (e.g. handling the claims in-house or referring clients to public loss assessors), the broker should monitor negotiations closely and guide the progress of the parties toward a settlement that is fair and acceptable to both.

The basic activities of the broker include the following:

- Immediately notify the loss to the insurer.
- Advise the client of their rights and obligations under the policy.
- Alert the client to policy terms and conditions that may be of benefit to them or relevant to the loss.
- Arrange and assist in the completion and provision of the appropriate claim forms and information to the insurer.
- In the case of motor insurance and property insurance claims, and other claims where relevant, advise the client that they may appoint a loss assessor to act in their interests at their own expense (usually an agreed percentage of the claim payout).
- When a major loss occurs, attend site meetings with the loss adjuster and the insurer's personnel.

Large brokers may provide additional claims-related specialised services to clients:

- Carry out post-loss surveys.
- Help the client present the claims documentation needed by the loss adjuster or insurer.
- For complex claims (e.g. business interruption), engage experienced persons to assist the client with their claim.

claims advocacy

role played by brokers, which involves assisting and advising the client if there are any problems with an individual claim or policy cover

Quick question 6

List three claims-related specialised services that a large broker may provide to its clients.

G2a Broker-managed claims

When brokers are involved in claims (no matter what the size), their role will usually combine claims management and **claims advocacy**.

The broker's first action on being advised of a claim will be to check that the loss falls under a policy it has arranged. However, the insurer has the final say. For small routine claims, many insurers outsource the work to contractors (e.g. windscreen replacement specialists, builders), so the broker would contact a helpline or enter the claim information into a web facility. For larger claims (e.g. a major road accident), insurers will seek more information such as reports on injuries, vehicle right-offs or Gardaí investigations.

Whatever the claim, the broker must immediately notify the insurer in all cases. Unless there is a special arrangement between the broker and insurer, notification to the broker is not considered to be notification to the insurer as required by a policy condition.

The skill and knowledge of the broker are important when there are questions about the validity of a claim or the extent of the loss. The broker should negotiate with the insurer to find a fair and amicable solution.

We will now look more closely at the role of the broker regarding certain types of claims.

G2a1 Personal lines claims

It is common to report consumer claims (e.g. household and motor) directly to the insurer. The insured calls the insurer, and the claim form is completed during the conversation. The insurer's in-house claims staff or third-party claims administrators and loss adjusters deal directly with the insured. Unless there is a problem, the broker usually has little to do.

Reminder

Under the CPC, if an insurer employs a loss adjuster and/or expert appraiser, it must notify the claimant of their contact details, and that the loss adjuster/appraiser acts in the interests of the insurer. It must also keep a record of this notification.[115]

However, a broker can play an important role in helping the client through what can be a distressing time, especially if the insured has limited experience in dealing with insurance matters. The very act of making a claim often follows a traumatic event (i.e. a theft, fire or accident), so the insured may be unable to think clearly, at least in the immediate aftermath.

The broker needs to quickly absorb the facts, determine whether the incident is an insured loss and provide advice and reassurance on what the client has to do. On a practical level, the broker advises the client of any action they must take or documentation that may be required. The broker will ask the client not to respond to any letters of claims, or solicitors' letters or Personal Injuries Assessment Board correspondence, but instead promptly pass those to the broker.

[115] Provision 7.9, CPC.

G2a2 Major property losses

Major property and related business interruption losses will require the insurer to appoint a loss adjuster.

The role of the loss adjuster is to investigate claims on behalf of the insurer and to:

- Ensure that any emergency action is undertaken (e.g. to protect the property)
- Check that the insurance cover was in force and adequate
- Act to minimise the extent of the loss (benefitting both the insurer and the policyholder)
- Attempt to bring about a fair and swift settlement.

The loss adjuster will visit the insured premises to examine the damage. After detailed discussion with the insured, and/or their loss assessor (if appointed) and accountant (if it is a business interruption claim), and the receipt of repair or rebuilding estimates, the loss adjuster will issue a report to the insurer. The report is confidential to the insurer and will indicate the proposed settlement figure.

The broker may accompany the loss adjuster on visits and may participate in the negotiations to ensure the client's interests are protected.

Where there is co-insurance on a large risk, the loss adjuster's report will indicate each co-insurer's proportion of the settlement and establish a date for simultaneous payment to the broker. Any related consequential loss or business interruption claim will have its own separate report.

For these major losses, some brokers may recommend the use of a loss assessor, also known as a public loss assessor (PLA). As we have seen, TIB takes this approach for all its clients who suffer a major loss. Under the CPC, the regulated entity (e.g. insurer, broker) must notify the claimant that they (the claimant) may appoint at their own expense a loss assessor to act in their interests, and the insurer must keep a record of the notification. If the claimant does employ such a third party, then at the claimant's written request, the insurer must engage with them.[116]

In recent years, the use of PLAs has increased and brokers should advise their clients to confirm that the chosen loss assessor is regulated by the Central Bank.

G2a3 Liability or specialist losses

The broker plays only a small part in third-party claims for liability and related specialist risks, e.g. professional indemnity. In these cases, negotiations are commonly in the hands of legal advisers. However, brokers should seek updates on the progress of a claim and ensure that the client understands their position under the policy and complies with any specific contractual conditions or requirements.

G2b Claims notified direct to insurers

Among many brokers, and not just the larger ones, there is a gradual withdrawal from day-to-day claims processing, particularly on volume claims such as motor and employers' liability. Here, the client notifies the claim directly to the insurer and the broker only becomes involved in individual claims if there are problems or issues, i.e. claims advocacy. This approach makes the claims process as fast, efficient and cost-effective as possible and minimises the likelihood of miscommunication.

The insurer will still need to advise the broker of any major or contentious claim, if the client has not already done so. The broker will arrange to receive periodic claims updates from the insurer, which it will review in detail, in conjunction with the insurer and client.

[116] Provision 7.10-7.11, CPC.

Chapter 5

Quick question 7

Outline the CPC requirements placed on an insurer in relation to the claimant's appointment of a loss assessor.

Chapter 5

G3 Claims records and analysis

The broker will maintain a record of those claims it is involved in, with full details of the agreed settlements. This will assist when advising on extensions or improvements in cover, and will be of value when negotiating future premium terms with the existing insurer or other insurers.

Some larger brokers offer a computerised claims analysis system, which is often essential to operating an effective risk management programme. The broker may operate the system, or the client may do so through direct entry to the broker's system. Alternatively, the broker may provide the client with claims analysis software that they can run on their own computer system.

G4 Relevant legislation

There are many pieces of legislation that impact on claims handling. Brokers need to be familiar with this legislation in order to advise and protect their clients.

G4a Insurance (Amendment) Act 2018

The **Insurance (Amendment) Act 2018** amended the **Insurance Act 1964** and clarified the role of the Insurance Compensation Fund (ICF) in light of the Setanta case (see Example 4.1). The 2018 Act:

- Increased the ICF's level of coverage for third-party motor claims to 100% for personal injuries and to €1.22 million per claim in respect of property
- Provided for a new Motor Insurers' Insolvency Compensation Fund (MIICF). The MIICF is now funded by a levy on motor insurers and reimburses the ICF for payments over and above the current level of cover for third-party claims (i.e. the lesser of 65% or €825,000).

G4b Central Bank (National Claims Information Database) Act 2018

The **Central Bank (National Claims Information Database) Act 2018** allows the Central Bank to:

- Collect and study data from insurers concerning the income and costs associated with carrying on certain classes of non-life insurance business in Ireland
- Publish a report, at least annually, to provide information on the relationship between premiums and related costs, identify current and emerging trends, and examine the factors that cause movements in the price of relevant classes of non-life insurance.

H Summary

The value of brokers to its clients comes in part from the support provided throughout the duration of the policy. This includes professional guidance and advice given in the aftermath of a claim. This chapter looked at the ongoing service provided by the broker in the post-placement period.

H1 What's next?

Most insurance client's needs can be dealt with by means of one 'standard' policy. However, as a client's risks become more complex and increase in value, it is necessary to explore other options for covering their total exposures. For most commercial clients, other than the very smallest, this will involve designing a specific insurance programme. The next chapter deals with insurance programme design.

H2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in this textbook. Use the 'End of chapter questions', 'Quick questions' and 'Sample exam questions' to quickly test what you have learned so far. Make a note of any topics/ areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

H3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter's content when revising.

Remember: This module is examined by mixed assessment, which includes:

- An online mid-semester MCQ assessment (20 questions)
- An end-of-semester written exam paper (9 questions).

Given that your online mid-semester assessment is a multiple-choice question test, completing the online practice paper is the ideal preparation for this. You can prepare for the end-of-semester written exam and test your knowledge by completing sample and past written exam papers.

To access these online learning supports, log into your Member Area of **www.iii.ie** and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 5. It should be noted that these end of chapter questions are revision questions to test your understanding of the material in the chapter just studied. They are not sample exam questions.

1. Explain the difference in effect when a client pays an insurance premium to the intermediary and when the insurer makes a payment to the client via the intermediary, as stipulated by the **Insurance Distribution Regulations 2018**.

2. List the information that must be included on a receipt issued to a consumer.

3. Identify the different levies that are applicable to most non-life insurance policies in Ireland.

4. State the elements that should be contained within a summary of cover.

5. Briefly explain the effectiveness of a diary system for a broker.

6. Outline three ways in which an error can arise on the part of a broker.

7. List five data protection principles outlined under the Data Protection Acts and the **General Data Protection Regulation 2016**.

8. State the aim of the **General Data Protection Regulation 2016**.

9. Identify two options available to a broker when responding to a claim notification received from its client.

Chapter 5

10. In relation to claims, list five basic activities a broker should undertake.

11. List some of the additional specialised services that large brokers may provide to clients.

12. State the purpose of the **Central Bank (National Claims Information Database) Act 2018**.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. Any insurance premium paid by the client to an insurance intermediary is taken as having been paid to the insurer. Any money paid by an insurer to an insurance intermediary for a client (e.g. premium rebate or claim benefit) is not taken as having been paid to the client until the client actually receives it.

2. The information that must be included on a receipt issued to a consumer is as follows:
   - The name and address of the regulated entity
   - The name of the consumer who provided the payment, or on whose behalf the payment is made
   - The value of the payment and date received
   - The purpose of the payment
   - In the case of an insurance intermediary, a statement that acceptance of the completed insurance proposal does not constitute the effecting of a policy.

3. The insurance premium levies applicable in Ireland are made up of the following:
   - Insurance premium government levy 3%
   - Insurance Compensation Fund levy 2%
   - (in the case of motor insurance premiums) Motor Insurers' Insolvency Compensation Fund levy 2%.

4. The elements that should be contained within a summary of cover are:
   - Period of cover and name of insurer
   - A full explanation of any warranties, conditions or clauses (quoted in full)
   - Schedules of values and limits of indemnity
   - Explanations of any abbreviations or acronyms used (except for those in common use)
   - Full description of any variations to standard policy cover, both in the first instance and whenever repeated
   - A statement about claims notification procedures
   - The basis of rating (where relevant), particularly if the premium is adjustable
   - Explicit description of credit and special payment terms.

5. Effective diary systems are essential to ensure:
   - The broker is alerted to a renewal that is due
   - The clients' requests are acted on in good time
   - Any relevant policy endorsements received from insurers are checked and dispatched to clients following any changes to cover
   - Premiums are collected from clients and paid to the market within agreed timescales
   - Any risk improvement requirements or recommendations or subjectivities are handled prior to their deadline for completion
   - Any outstanding documentation from the client or the insurers is received.

Chapter 5

Chapter 5

6. Broker errors may include:
   - A misinterpretation of the policy, which negatively affects the claims settlement
   - Incorrect brokerage fee applied
   - A failure to issue Terms of Business
   - A pricing error that causes a product or service to be overcharged
   - Omitting an element of cover a client has requested.

7. Any five of the following data protection 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 data protection legislation.

8. The **General Data Protection Regulation 2016** aims to introduce mainly harmonised rules in Europe on the protection of personal data in order to allow the free movement of personal data across Europe.

9. In simplest terms, once a broker receives a claims notification, they either (a) pass information straight to the insurer (within 1 business day if the insured is a consumer as defined by the CPC) or (b) direct the insured to contact the insurer directly.

10. Any five of the following activities:
    - Immediately notify the loss to the insurer.
    - Advise the client of their rights and obligations under the policy.
    - Alert the client to policy terms and conditions that may be of benefit to them or relevant to the loss.
    - Arrange and assist in the completion and provision of the appropriate claims forms and information to the insurer.
    - In the case of motor insurance and property insurance claims, and other claims where relevant, advise the client that they may appoint a loss assessor to act in their interests at their own expense.
    - When a major loss occurs, attend site meetings with the loss adjuster and the insurer's personnel.

11. Large brokers may provide additional specialised services to clients:
    - Carry out post-loss surveys.
    - Help the client present the claims documentation needed by the loss adjuster or insurer.
    - For complex claims, engage experienced persons to assist the client with their claim.

12. The **Central Bank (National Claims Information Database) Act 2018** allows the Central Bank to:
    - Collect and study data from insurers concerning the income and costs associated with carrying on certain classes of non-life insurance business in Ireland
    - Publish a report, at least annually, to provide information on the relationship between premiums and related costs, identify current and emerging trends, and examine the factors that cause movements in the price of relevant classes of non-life insurance.

Answers to quick questions

1. The duties of a broker (if cover is agreed over the phone) are to:
   - make an immediate record of the call (written or audio)
   - send written confirmation of the agreement as soon as possible.
2. In relation to motor insurance and disclosure relating to discounts on the renewal notic, the **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018** require insurers to disclose:
   - any discounts applied (percentage and amount) which must include the date of issue
   - points on the NCD scale and
   - number of years with no claims made against the policy.
3. The insurer is still required to meet the regulatory requirements. The **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018** allow insurers to send renewal notices through an intermediary. If so, the intermediary is responsible for making sure the renewal notice is issued within the specific timeframes given in the Regulations. In effect, the insurer will have to allow for this additional time when sending the renewal notice to the intermediary.
4. The IDR prescribe that:
   - An insurance intermediary is responsible for having appropriate operational procedures in place for the payment of premiums and claims payments
   - Any insurance premium paid to an insurance intermediary is taken as having been paid to the insurer
   - Any money paid by an insurer to an insurance intermediary for a client (e.g. premium rebate or claim benefit) is not taken as having been paid to the client until the client actually receives it
   - An insurance intermediary must ensure that all insurance premiums and monies paid to it by clients or insurers are held in a strictly segregated 'client premium account', so that those funds cannot be used to reimburse other creditors should the insurance intermediary become insolvent.
5. If an EU Financial Sanction or UN Targeted Financial Sanction match occurs, the transaction must be stopped and additional identity checks carried out to verify that the client 'one and the same person' as stated on the Financial Sanctions list. If they are 'one and the same person', the broker must immediately report this to An Garda Síochána and the Central Bank.
6. A large broker may provide the following claims-related additional specialised services:
   - Carry out post-loss surveys.
   - Help the client present the claims documentation needed by the loss adjuster or insurer.
   - For complex claims, engage experienced persons to assist the client with their claim.
7. Under CPC Provisions 7.10–7.11, the insurer must notify the claimant that they (the claimant) may appoint at their own expense a loss assessor to act in their interests, and the insurer must keep a record of the notification. If the claimant does employ such a third party, then at the claimant's written request, the insurer must engage with them.

Chapter 5

Sample exam questions

Question 1

AOK Brokers has employed two new apprentices to work within its consumer division. As an experienced employee of AOK Brokers you have been asked to provide the apprentices with an overview of errors.

a) Briefly discuss how errors might arise within AOK, citing relevant examples, and indicating who bears the ultimate responsibility for such errors.

(6 marks)

b) The Consumer Protection Code requires firms to have effective written procedures in place. Identify **four** obligations under the CPC regarding errors.

(4 marks)

Total: 10 Marks

Question 2

Diary systems are important for brokers in post-placement business activity. Explain how diary systems can successfully operate within a broker's office.

Total: 10 Marks

Your answers

Sample answers

The answers set out below show the main points to be considered by students in answering the question. In some cases, a well-reasoned alternative view could earn good marks.

Question 1

a) Errors can arise in a number of ways. For example:

- Misinterpretation of the policy, which negatively affects the claims settlement
- Incorrect brokerage fee applied
- Failure to issue Terms of Business
- A pricing error that causes a product or service to be overcharged
- Omitting an element of cover a client has requested.

The Central Bank reminds boards and senior management on an ongoing basis that they are key to setting the tone and culture in an organisation and the governance processes around the handling of errors.

(6 marks)

b) The CPC requires firms to have effective written procedures in place that, at a minimum, allow them to:

- Identify the cause of errors
- Identify all affected consumers
- Analyse patterns of errors and investigate whether they are systemic of isolated
- Properly control the correction process
- Escalate (refer) errors to compliance/risk functions and senior management.

(4 marks)

Reference: Chapter 5E1 **Total: 10 Marks**

Question 2

Throughout the policy's duration, whether personal or commercial, many changes can take place. For example, a client may want a temporary substitution on their private motor policy while their insured car is in a garage for repairs, or a commercial client may undertake contract work for another business that wants an indemnity notification on its policy. A broker will often employ a diary system, for use by all staff, to ensure that these changes are actioned and recorded.

Effective diary systems are essential to ensure that:

- The broker is alerted to a renewal that is due
- The clients' requests (e.g. for an extension of cover) are acted on in good time
- Any relevant policy endorsements received from insurers are checked and dispatched to clients following any changes to cover
- Premiums are collected from clients and paid to the market within agreed timescales
- Any risk improvement requirements are handled prior to their deadline for completion
- Any outstanding documentation from the client or the insurers is received.

All brokers now employ some system to organise their main diaries, typically lists of pending renewals, outstanding policies, outstanding premiums and so on. Many employees mark their own desk diaries to ensure that they carry through on follow-ups. Others use their email or their broker management system. Many companies have a coordinated computer-driven diary system within their broker management system, which allows the manager to monitor the workflow and (re)allocate diary items to relevant staff. Whatever the chosen method, it is vital that an effective diary and reminder system is in place.

Reference: Chapter 5B1 **Total: 10 Marks**

Chapter

6

Programme design and operation – large risks

What to expect in this chapter

The insurance cover required by most personal lines clients (i.e. home or motor) and many small businesses can be dealt with through 'standard' policies. However, at the other end of the spectrum, where clients' risks increase in value and are more complex, a more considered approach is necessary. This involves looking at the client's total expenditure, or total cost of risk (TCOR) to see whether there is a better, more cost-effective way to achieve the protection the client wants and needs. TCOR is made up of the client's retained risk, insurance premiums and other related expenses.

For most commercial clients, this will involve designing an insurance programme. There is no one 'correct' programme design – each will be individually tailored (bespoke) to deliver what the client wants (and needs). The design will evolve throughout the broking process, as certain knowledge replaces initial assumptions.

To help you relate the material in this chapter to a real-life situation, we will refer to the sample profile of Tuhill Insurance Brokers Ltd (TIB, profiled at the start of Chapter 1) and the case of Best BeanZ plc (the sample corporate client's submission overleaf). This should help you reflect on how and why each stage of the process of designing and co-ordinating an insurance programme impacts on brokers and their clients.

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Insurance programme design**	Discuss the factors that impact on the design of an insurance programme and the elements that can form part of an insurance programme.
B	**Global insurance programmes**	Discuss the features, formats, advantages and disadvantages of global insurance programmes.

Sample corporate client submission

Best BeanZ plc and Tuhill Insurance Brokers Ltd

Overview

Tuhill Insurance Brokers (TIB) has held this account since 2012 and would recommend this client to any insurer. The client has a dedicated insurance manager and is prepared to implement any (reasonable) measures to improve the risk.

Attachments

- Full itemised schedule of the insurance programme for Best BeanZ plc.
- Individual survey reports on each location including detail of the construction, processes, plant and particular hazards identified.[117]
- Claim details.

Insurance programme, claims and premium

The business is currently insured under a global programme with Strand Insurance DAC and is due for renewal on 1 January. The business has been claims-free for the last 5 years.

Terms from Strand Insurance DAC are not available at present but a reduction from the €1.5 million premium paid last year is expected.

Response

If you are interested in quoting for this portfolio, terms are required in 21 days. At that time, all queries will be presented to the client at a scheduled meeting.

Submission for Best BeanZ plc

Background

Best BeanZ was established in Mallow, Co. Cork in 2000 by Jonathan and Bernard Flaherty. Initially, it was set up to manufacture and distribute baked beans. However, the company has developed into a major property owner in Ireland, France and the United States and currently has two distinct businesses – food manufacturing/distribution and property ownership.

The food manufacturing plants and property businesses are located in:

- Mallow, Co. Cork, Ireland
- Lille, Northern France
- Baltimore, Maryland, United States.

Its other properties are as set out on the schedule. They are all located close to the food manufacturing plants and occupied by the insured in connection with their manufacturing business. The exception is the US properties, which are leased to Distributeall plc (wholesale food distributors). Full details are set out in the schedule.

Account handlers in Tuhill Insurance Brokers

John Murphy FCII and Brenda Tracey ACII.

[117] Commonly referred to as COPE information – construction, occupancy, protection and exposure.

Exposures

A full schedule of property, business interruption and liability exposures is attached.

In addition, the company requires the following insurance as per details on the submission:

- Global travel/personal accident policy
- Global crime/fidelity guarantee policy
- Global cyber-liability policy
- Global directors and officers liability policy
- Engineering inspection and breakdown to plant in Cork and Lille
- Local US policy to cover engineering inspection and breakdown of plant.

Schedule for Best BeanZ

Food manufacturing plants

Mallow

Insurance	Coverage	Sum insured
Property	'All risks'	€54 million
Business interruption	12 months indemnity – gross profit	€12 million
Employers' liability	Clerical wageroll Manufacturing wageroll Limit of indemnity	€2 million €4 million €13 million
Public liability	Turnover projection Limit of indemnity	€30 million €40 million

Lille

Insurance	Coverage	Sum insured
Property	'All risks'	€50 million
Business interruption	12 months indemnity – gross profit	€12 million
Employers' liability	Clerical wageroll Manufacturing wageroll Limit of indemnity	€1 million €2 million €13 million
Public liability	Turnover projection Limit of indemnity	€10 million €10 million

Baltimore

Insurance	Coverage	Sum insured
Property	'All risks'	€61 million
Business interruption	12 months indemnity – gross profit	€18 million
Employers' liability (workers compensation)	Clerical wageroll Manufacturing wageroll Limit of indemnity	€2 million €4 million €10 million
Public liability	Turnover projection Limit of indemnity	€20 million €10 million

Property owner risks

Mallow

Insurance	Coverage	Sum insured
Property	'All risks'	€15 million
Business interruption	Loss of 24 months' rent	€6 million
Employers' liability	Property repairs only Wages	 €50,000
Public liability	Limit of indemnity	€10 million

Lille

Insurance	Coverage	Sum insured
Property	'All risks'	€5 million
Business interruption	Loss of 24 months' rent	€1.6 million
Employers' liability	Property repairs only Wages	 €10,000
Public liability	Limit of indemnity	€10 million

Baltimore

Insurance	Coverage	Sum insured
Property	'All risks'	€8 million
Business interruption	Loss of 24 months' rent	€2 million
Employers' liability (workers compensation)	Property repairs only Wages	 €20,000
Public liability	Limit of indemnity	€10 million

Chapter 6

A Insurance programme design

The design of an insurance programme requires broking expertise to match the client's needs, risk appetite and budgets with insurer capabilities and preferences in the context of what is currently available in the market. Programme design is no different from any other activity an insurance broker may undertake; it is only the level of complexity that changes. The broker's obligation to provide advice combines with the strategy for broking the risk.

As we have seen in earlier chapters, this requires the broker to have a good understanding of the client's:

- business and its markets
- exposures, loss experience and risk profile, i.e. frequency and severity
- ability and appetite to retain risk and the insurance market's expectation of imposed levels of self-insurance
- appreciation for services surrounding the insurance contract, e.g. risk management, claims handling/loss administration, global co-ordination etc.
- organisation and management style, e.g. centralised versus decentralised.

Just think

What are the key factors that TIB needs to consider in the design of an insurance programme for Best BeanZ?

Table 6.1 can be used as a basis for identifying the key factors relevant to designing an insurance programme for a business such as Best BeanZ.

Table 6.1 Key factors when designing an insurance programme

Risk retention	• What level of risk (i.e. excess or deductible) is the client prepared to retain? • What level of retention (e.g. a compulsory excess/ deductible) will insurers impose? See Section A1.
Combined policies and account underwriting	• Can economies of scale (e.g. premium savings) be achieved by combining some or all of the risks? • If the risks are combined, can the premium savings be used to purchase additional cover or higher limits? • Can an insurer be encouraged to write a high risk if it is offered other profitable business from that client? See Section A2.
Contract term	• Can an insurer be engaged in a programme in a 'soft market' (see Chapter 4A1b) before premiums are expected to rise? • If the client wants stability in pricing, can this be achieved by a long-term agreement? See Section A3.
Limits/sums insured	• How can the programme be structured to achieve the limits the client needs, e.g. full-limit cover? • Where is the optimum point for completing a primary level of cover and attaching an **excess layer**, or is co-insurance an option? See Section A4.
Specialist covers	How can the programme be best structured to include special cover considerations, e.g. terrorism, environmental liability? See Section A5.
Available insurers	What markets are interested in writing the risk and how will they respond to the proposed programme structure?

excess layer

a policy designed to provide increased limit of liability over the primary insurance cover

A1 Risk retention

Table 6.2 outlines terminology relevant to risk retention.

Table 6.2 Risk retention – terminology

Excess	The amount of a claim the insured has to pay.
Deductible	Term used to describe the excess on commercial lines products.[118]
Franchise	The minimum loss incurred before insurance cover applies; similar to an excess or deductible, except that once the amount of the franchise is exceeded, the whole of the claim is paid by the insurer.
Self-insured retention	Total amounts of the excess/deductible/franchise, i.e. the amount of risk retained by the insured.
Aggregate deductible	Usually a multiple of the individual deductible. Used to limit the financial exposure of an insured who suffers several losses in a policy year.

When using these terms, it is essential to make it very clear to the client how these methods apply, as illustrated by the wordings in Example 6.1.

Example 6.1

'The insured shall be responsible for the first €10,000 of each and every claim' – the policy limit is inclusive of the excess/deductible.

'The limit of indemnity shall apply in excess of €10,000 of each and every claim' – the policy limit sits on top of the excess/deductible.

'The limit of indemnity is €2.6 million in excess of €6.5 million' (the common way that limits of indemnity are expressed on an excess layer) – the policy limit sits on top of a policy/policies with limits accumulating to €6.5 million.

Chapter 6

A1a Level of risk retention

Remember in Table 6.1, one of the key factors that need to be considered in the design of an insurance programme was risk retention. The questions relating to this were:

- What level of risk (i.e. excess or deductible) does the client wish to retain?
- What level of retention (e.g. a compulsory excess) will insurers impose?

If the client retains a higher level of risk, the insurer is less likely to have to pay a claim, less likely to be involved in smaller losses and more likely to find the risk attractive. The advantage for the client is that they are charged a lower premium to reflect that they are retaining more of the risk by way of an excess/deductible.

[118] Note that care should be taken, as the term 'deductible' is less understood by the public and, for this reason, sometimes the terms excess and deductible are used interchangeably.

Chapter 7A2a discusses how a suitable level of retention is calculated. Ultimately, however, it comes down to what the client is comfortable with or what the insurer requires as a minimum. The retention level will vary according to what the client can afford and their own (and the insurer's) perception of the risk. For a personal home insurance policy, the own-damage excess may be €300, while for a commercial property insurance policy, it may be €1,000 and above. Some commercial property owners may even decide to self-insure by taking a large aggregate deductible to reduce cost. In the case of Best BeanZ, it is most likely that a large deductible will be in place in order to reduce the overall insurance costs of its policies.

In an effort to control the cost of claims, insurers may offer more flexible pricing and conditions to clients who demonstrate their commitment to risk management which can include retaining more risk. Example 6.2 shows a scenario on how TIB might review the policy excess of another of their clients, the Rosenhill Spa and Leisure Group, for the coming year.

Example 6.2

TIB is reviewing Rosenhill's loss experience under its crime/fidelity guarantee policy. It discovers that over 90% of all claims are settled for €4,500 or less. In order to offer Rosenhill better insurance terms (both premium and policy coverage), an insurer offers Rosenhill an excess of €5,000. This would allow the insurer to avoid low-level, recurrent losses. Rosenhill are currently bearing the ultimate cost of these recurring claims in the form of increased premiums (called '**pound-swapping**' in the insurance market).

Both TIB and Rosenhill are concerned about the escalating volume and value of these crime/fidelity guarantee claims and the impact on their ability to get insurance terms from the market. As a consequence, Rosenhill have employed an investigator and risk manager, who have put in place a series of risk management measures. It is expected that losses in the coming year will reduce significantly and that, once evidence of the impact of these measures is seen in the claims payments made by both the insured (Rosenhill) and the insurers, a reduced excess of €1,000 could be obtained from the market.

The financial implications of each option should be reviewed at that time and compared with the premium discounts available.

pound-swapping

premium payments made, which return in settlements from numerous, largely avoidable small claims

A2 Package policies, commercial combined policies and account underwriting

Remember in Table 6.1, one of the key factors that need to be considered in the design of an insurance programme was the use of combined policies and account underwriting. The questions relating to this were:

- Can economies of scale (e.g. premium savings) be achieved by combining some or all of the risks?
- If the risks are combined, can premium savings be used to purchase additional cover or higher limits?
- Can an insurer be encouraged to write a high risk if it is offered other profitable business from that client?

package policy

single policy containing different types of cover, underwritten and rated on an inclusive basis

combined policy

type of policy that groups together a number of separately underwritten covers in one contract

You will remember from your earlier studies that **package policies** are common in personal lines (e.g. a household policy) and small commercial business insurance (e.g. a policy covering a shop, office or doctor's surgery). The covers provided under these policies (e.g. property, money, business interruption and liability) are not rated individually. The covers insured and limits of liability are usually pre-determined (although some flexibility may be offered). Package policies are offered mainly for administrative convenience and to achieve economies of scale for all parties – the insured, the insurer and the broker. Package policies are most suited to individuals or small businesses that do not display any unusual risk features.

However, the option that is of more relevance for larger businesses, such as those we are considering in this chapter, or for businesses requiring special risk covers (e.g. higher limits of indemnity for liability insurance) is a commercial **combined policy**. This option may offer greater flexibility. For example, in commercial business, employers' liability and public liability are commonly combined, as are property and business interruption. In the Irish market, these policies are commonly written on an 'all risks' basis.

Just think

What exactly is the difference between a commercial combined policy and a commercial package policy?

Both types of policy provide a number of different covers in a single insurance contract. The main difference is how they are underwritten and rated. Each cover provided under a combined policy is chosen by the client and is underwritten and rated separately. The underwriter generally uses separate rating tools (for each cover) to arrive at the premium. The premium is based on the various sums insured. A package policy has a standard range of covers and is rated and underwritten on an inclusive basis. Its premium is based on the overall policy sum insured.

'Account underwriting' refers to the option of placing all of a client's separate insurances with one insurer.

The breadth of the Irish insurance market means that there are options for most risks and therefore the decision on whether to combine covers will be based on the cost and cover offered. Table 6.3 outlines some advantages and disadvantages of commercial combined policies.

Table 6.3 Advantages and disadvantages of commercial combined policies

Advantages	Disadvantages
Most insurers only offer covers on a combined basis for economic reasons. For example, money insurance has become uneconomical to sell separately. However, if the cover is offered across an entire commercial portfolio, rating becomes much more affordable.	The client is potentially exposed due to overreliance on one insurer. Consider what would happen if the insurer imposed significant premium increases or cover amendments, withdrew cover or (worst-case scenario) became insolvent (see Chapter 4C1a).
Compiling one submission rather than multiple submissions is more time efficient.	Some insurers have more experience with some insurance classes than others and may not be able to design a combined policy that suits the full range of a client's commercial insurance needs.
Combining covers removes the need for separate policies which reduces administration costs and complexity (e.g. updating numerous policies in the event of a change of address or a change in business activity).	An insurer's risk appetite can change over time, depending on such factors as overall claims experience with a particular industry/class of business, reinsurance agreements and its own internal strategies.
For combined policies, insurers will offer a discount or will reduce the premium on one cover on condition of renewal of other covers.	Once a combined policy is placed with an insurer, it may reduce the need for a broker's involvement.
Some insurers will only write certain business (e.g. fire cover for woodworking risks) if it is supported by other, more attractive risks.	

If a commercial combined policy is not issued, the insurer will issue individual stand-alone policies such as a property damage policy, an employers' liability policy (EL) or a public liability policy (PL). Whilst not considered to be a commercial combined policy, some insurers will issue a single document for EL and PL risks if both are underwritten by the insurer and fall due for renewal at the same time. The same can occur with property damage and BI risks. In circumstances where other insurers are involved, such as on a co-insurance basis on property risks, insurers will always issue a stand-alone policy.

A2a Combined policies and retained risks

Wherever policies are combined, a broker should pay specific attention to the level of deductible and how it operates. Combined policies mix short-tail claims (e.g. property) with long-tail claims (e.g. employers' liability). The broker needs to check if there is one deductible that operates across the whole policy – a 'cross-class retention' – or if there are separate deductibles for each section.

Quick question 1

Think back to your earlier studies. What is a time franchise and which of Best BeanZ's exposures might it apply to?

The answer is at the end of this chapter.

Chapter 6

A2a1 Multi-line (cross class) contracts

As noted, instead of individual deductibles for different sections under a combined policy, there may be a 'cross-class retention'. This is one deductible that applies across the whole policy.

A combined policy that not only combines a variety of covers under a single contract with a deductible that operates across the whole policy but that also has a common (cross-class) **aggregate deductible** and policy limit is a **multi-line (cross-class) contract**. A common multi-line contract combines property and liability risks together into a single policy. Normally, these types of policies are suited only to larger clients. Table 6.4 outlines the advantages and disadvantages of such a contract.

aggregate deductible

usually a multiple of the individual deductible, used to limit the financial exposure of an insured with a substantial deductible who suffers several losses in a policy year (sometimes known as an 'aggregate limit')

multi-line (cross-class) contract

a combined policy that houses a variety of covers under a single contract with a deductible that operates across the whole policy with a common aggregate deductible and policy limit

Table 6.4 Advantages and disadvantages of multi-line cross-class contracts

Advantages	Disadvantages
The insured only has two numbers to remember - the policy deductible and the common aggregate deductible - as opposed to different amounts under different policies/sections.	Mixing long and short-tail claims can be problematic as most insurers have different capacities for long- and short-tail business. This can lead to complications and reinsurance challenges.
The common aggregate deductible will be less than the sum of individual deductibles.	Individual policy limits are replaced by one common aggregate limit. This can reduce cover but is necessary to maximise premium savings.
Insurers are able to reduce risk by spreading it among several factors, which helps to avoid a huge financial burden in the event of a catastrophe.	There is a danger for insurers that losses may build up on one side (e.g. public liability), but another side of the cover (e.g. property) may be running well. This means that the insurer may not have a full view.
Higher deductibles may be more feasible, thus generating further savings.	There is less flexibility in response to significant changes in the client's organisational structure.
Economies of scale/proportionate savings in the premium are likely to result.	The market available to write these programmes is narrower than for conventional and self-insured programmes, thus reducing competition.
Wider cover may be offered.	

The popularity of these contracts has fluctuated over the past 20 years. They tend to work better in hard-market conditions, where the premium spends are higher and discounts are more valuable. They are also more suited to clients with a more sophisticated approach to risk management, who are willing to take relatively high levels of deductibles and value stability rather than chasing the market to get the lowest premium.

The broker needs to be particularly sensitive to the needs of the client when devising and recommending contracts of this type.

A3 Contract terms

Remember in Table 6.1, one of the key factors that need to be considered in the design of an insurance programme was contract terms. The questions relating to this were:

- Can an insurer be engaged in a programme in a 'soft market' (see Chapter 4A1b) before premiums are expected to rise?
- If the client wants stability in pricing, can this be achieved by a long-term agreement?

'Stability' is not necessarily the same as 'static'. Re-broking a large commercial client's insurance portfolio every year can often be impractical. Some commercial clients are more interested in accurate budgeting of costs. They prefer a smooth change in pricing rather than price volatility.

Some insurers will look at a contract term beyond the standard one year. The main reasons are:

- Ongoing commitment to current low pricing, resulting in considerable savings for the client as rates rise
- Continuity and premium stability.

Long-term agreements (LTAs), sometimes referred to as long-term undertakings (LTUs), have been traditionally arranged on an 'offer' basis; that is, the commercial client 'offers' their business to the insurer for, say, three years. However, the insurer is not obliged to accept the terms and can negotiate to change them. The typical discount is 5-10% for three years. While these agreements are common, they create challenges.

The stage of the insurance cycle that the market is in can impact on the suitability and availability of these agreements.

It is vital that brokers clearly explain the commitment the client is making. The majority of brokers will encourage a client not to break an LTA as it goes against the spirit of the agreement and can lead to a difficult relationship with that insurer going forward. If unaware of this, the client may become justifiably dissatisfied on discovering they are being discouraged from changing insurers if offered better terms elsewhere.

There is also the simple 'value for money' argument. A broker needs to ask the client if a 5-10% discount is sufficient reward for a three-year commitment.

In a hardening market, LTAs are likely to be most attractive to commercial clients operating in businesses that are not the insurers' target markets.

A4 Limits and sums insured

Remember in Table 6.1, one of the key factors that need to be considered in the design of an insurance programme was limits/sums insured. The questions relating to this were:

- How can the programme be structured to achieve the limits the client needs, e.g. full-limit cover?
- Where is the optimum point for completing a primary level of cover and attaching an excess layer, or is co-insurance an option?

The higher the policy limit or sum insured, the more likely it is that no single insurer will be able to provide the full cover. An example of this is Best BeanZ's property and BI exposures in Mallow (food manufacturing plant and property owner risks) that total €87 million. Moreover, different market perceptions of estimated maximum losses (EMLs) will restrict the amount of cover a particular insurer can provide. However, there are a number of solutions that can be employed, either individually or together.

A4a Co-insurance

A single placement providing 100% cover is usually the most efficient and cost-effective method to place a risk. An arrangement involving more than one insurer (co-insurance) can increase transactional and negotiation costs. As a result, co-insurance, whether in the company market or the Lloyd's market, tends to be an appropriate option only where:

- The risk is high, complex and/or requires significant limits and no one insurer can provide 100% capacity, e.g. property risks with panel constructions that are deemed highly flammable
- The client needs to gain excess or spare capacity to allow for mid-term increases in risk or exposure
- The client wishes to spread their risk among a number of insurers given the risk of insurer failure (see Chapter 4C1a).

A broker can assist their client with co-insurance by providing a summary of what a particular insurer prefers or the level of capacity for a given risk. Ideally the broker would place that percentage of a given risk with an insurer and then approach other insurers to fill in the balance until 100% of the risk is placed.

A4b Excess layers

The common way of achieving higher limits of indemnity on liability policies is to arrange an excess layer of cover. Some State or semi-State entities in Ireland may require contractors to have higher levels of public liability and excess layers can facilitate this. Large property insurance programmes may use excess layers in cases where a co-insurance policy cannot be arranged and the sum insured or the loss limits are significant.

Chapter 6

Example 6.3 illustrates how an excess layer in liability insurance operates.

Example 6.3

Best BeanZ wants public liability cover for €40 million. SuperInsure underwrites the primary policy but only with a cover of €10 million. TIB therefore proposes building up the level of cover to €40 million as follows: €20 million in excess of SuperInsure's €10 million cover, purchased from BuyMore, and an additional €10 million in excess of SuperInsure and BuyMore's €30 million cover, purchased from TopCover.

€40 million	€10 million (with TopCover) in excess of SuperInsure and BuyMore's €30 million cover
€30 million	€20 million (with BuyMore) in excess of SuperInsure's €10 million cover
€10 million	SuperInsure's primary policy (€10 million)

As the excess layer is only called on once the cover of the primary policy (i.e. primary layer) is exhausted, there will be premium savings for the client. However, it is important that the insurer on each excess layer sees and agrees to follow the 'terms and conditions' on the primary policy. This ensures that the same cover applies throughout the programme. Details of the full primary policy wording and pricing structure are generally set out in the schedule on the excess layer.

Other essential points must be addressed, as follows:

- The policy periods throughout the primary and excess layers must match precisely. For example, watch for policies that expire at different times of the day, e.g. at midnight or 4pm, and for overseas policies that expire at local time, not GMT.
- There must be no gaps in cover in the way the limits are expressed or, preferably, in the policy terms and conditions.
- There must be clarity on whether the excess layer will 'step down' (i.e. perform in a claim or during cover) on exhaustion of the underlying layer. For example, the 'step-down' clause should specify any excess/deductible that will apply to the underlying layer.
- There must be consistency on the reinstatement provisions through the layers, i.e. whether each layer is subject to one (or more) automatic reinstatements, or whether reinstatement operates on a 'round the clock basis'; that is, each excess layer 'steps down' in turn until the total limit of indemnity is exhausted.
- There must be clarity on which insurer is responsible for handling claims, ordinarily the primary insurer.
- There must be clarity on when the insurer of the next layer up should be alerted that the limit of indemnity on the underlying layer may soon be exhausted, e.g. when total claims, both paid and outstanding, reach 70% of the underlying limit.

Chapter 6

facultative reinsurance

individual reinsurance placements, where there is no prior obligation upon reinsurers to accept a part of the risk; type of cover for individually large or unusual risks that are typically excluded from standard reinsurance treaties

umbrella policy

a policy or insurance programme that operates independently of primary levels of cover

A4c Facultative reinsurance

Facultative reinsurance allows an insurer to seek a one-off agreement, specific to the risk it is underwriting. This is best explained by Example 6.4.

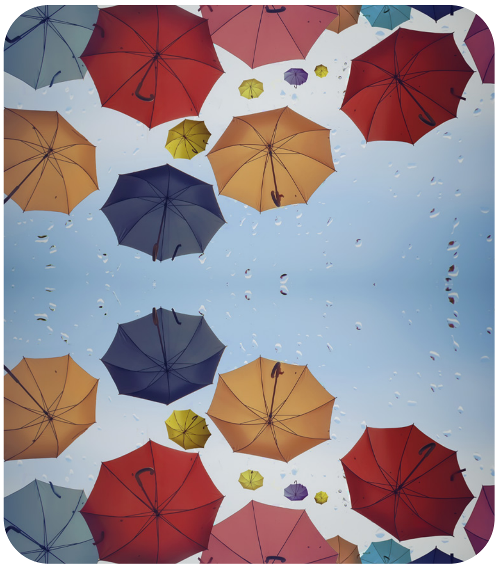
Example 6.4

BeSafe Insurance DAC retains all property risks up to a limit of €20 million, at which point its reinsurance treaty will operate. During the year, it is offered a property risk for an estate of thatched houses. Because of the construction and exposures, this proposal falls outside its current acceptance criteria and as a result also falls outside its current reinsurance treaty. BeSafe wishes to underwrite this risk, but does not want to retain more than €5 million for its own account. To allow this, it obtains facultative reinsurance for the exposures in excess of €5 million up to the total sum insured on this estate of thatched houses, enabling it to underwrite this particular risk.

Most facultative reinsurance arrangements are made by insurers for a given risk. The clients and broker would not usually be involved in these discussions. Facultative reinsurance tends to be expensive and so is only used by insurers to write risks which ordinarily perhaps they would not have been able to write.

A4d Umbrellas

An **umbrella policy** is extra liability insurance that 'sits over' a primary policy or programme and is independent of the cover provided underneath. It will have its own wording (as it does not follow any other terms and conditions) and its own attachment point. This may not necessarily be the total limit of indemnity provided by the primary and excess layers (i.e. the layers underneath). There will be no 'step-down' provision. It is a way of providing additional limits or specialist cover at the catastrophe end of a client's exposures, e.g. a major product recall claim. Umbrella policies are popular in the United States due to higher litigation costs there.



A5 Specialist covers

Remember in Table 6.1, one of the key factors that need to be considered in the design of an insurance programme was specialist covers. The question relating to this was:

- How can the programme be best structured to include special cover considerations, e.g. terrorism, environmental liability?

Not all insurers can write all lines of cover. Those offering specialist lines (i.e. product recall) may not wish to write, say, the property element of cover. Ultimately it depends on the specific needs of the client, which in turn will affect package and multi-line considerations.

Chapter 6

In addition, a broker needs to consider whether it is better to include specialist lines within a policy/programme, or arrange for them to stand alone. It is not necessarily beneficial to bring or 'force fit' every risk into one package or programme. Local markets and scheme underwriters, who have a greater understanding of the risks involved, can frequently offer more competitive terms.

Examples of specialist risks include environmental liability, crime/fidelity guarantee, product guarantee and recall, and motor uninsured loss recoveries.

A5a Natural hazards

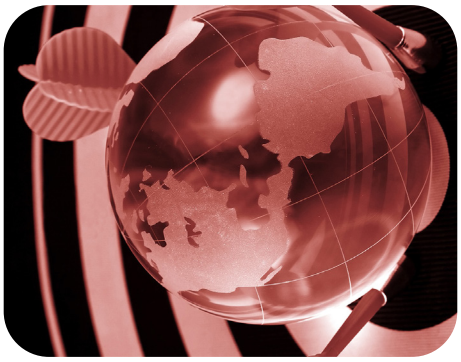
There is a range of covers that will respond to a local natural hazard (e.g. storm, earthquake, flood) and there may well be a local market/government scheme available. International examples of such schemes include the National Flood Insurance Program (NFIP) in the United States, Statens Naturskadeordning in Norway and the Elemental Pool in Switzerland.

Whether for natural hazards or terrorism, each country and scheme will have its own rules as to:

- Whether the Government is involved and on what basis
- Whether the scheme is mandatory, i.e. insureds must buy cover
- Whether the scheme can be incorporated within a wider programme
- Whether insurers can set up alternative schemes and facilities
- How much needs to be paid to the fund and how it is calculated, e.g. Statens Naturskadeordning requires a percentage of sums insured.

A5b Terrorism

Some of the natural hazard schemes mentioned in Section A5a include terrorism. However, most terrorism schemes are stand alone and have some State involvement. International examples of such schemes include the Australian Reinsurance Pool Corporation, Pool Re (United Kingdom) and Extremus (Germany).



Reminder

Most natural hazard and terrorism schemes are underwritten using a Geocoding system (see Chapter 3A1b1). However, not all countries have a postcode system or comprehensive, detailed hazard mapping, e.g. China. This creates issues with the data available and makes the risk harder, or more expensive, to place.

Chapter 6

B Global insurance programmes

The largest multinational businesses operate in up to 120 countries and the major international insurance brokers operate in more than 100 countries. Most businesses with a turnover in excess of €500 million are likely to have operations in more than one country.

Many of these multinational businesses have a global view of their business operations and have adopted a similar approach to their insurance needs. Thus, a demand has arisen for brokers and insurers who can provide a comprehensive service in many different territories throughout the world.

Designing a global programme involves a number of additional challenges, but before we look at these, it would be useful to examine the features and benefits of a global programme.

B1 Why a global programme?

There are many reasons why a broker should consider a global programme for its client.

Just think

Why would a multinational business that operates in a number of countries, such as Best BeanZ, want to consolidate its insurance arrangements around the world into one global programme?

Table 6.5 lists the main advantages and disadvantages of global insurance programmes.

Table 6.5 Advantages and disadvantages of global insurance programmes

Advantages	Disadvantages
It offers consistency of cover.	The programme needs to be controlled from the head office, which may conflict with established local management style.
It provides central control of cover and cost.	It could upset local relationships.
Savings are obtained through group buying often through one insurer.	It may cost more in total due to the purchase of cover that is unnecessary or doesn't cover losses in certain countries.
It offers simpler identification of losses worldwide.	Legislative and cultural differences can be problematic.
It can act as a driver for a global approach to risk management.	It reduces the choice of insurer(s), as fewer insurers have the global spread to handle such a programme.
It allows controlled participation in its own risk by the parent that can see which countries/regions/divisions are the source of more losses than others and address it.	The premium invariably has to be allocated between subsidiaries and may need to be paid locally. Often, this allocation process requires careful negotiation between different subsidiaries, especially those that do not like impositions from head office, or who feel their risk is better than others.
Premium allocations can be adjusted for claims experience and used as a tool to encourage better risk management.	Subsidiaries may be forced to 'buy' cover that either does not apply or has limits that are considerably in excess of their individual exposure.
It can open up additional markets/options for the client, including reinsurance markets.	Tax allocations can be difficult.

However, while the programme will always have to be justified in cost terms, the main driver tends to be the desire for effective corporate management, consistency and control across the business.

B2 Basis of a global programme

There are a number of ways in which a global programme for a multinational business can be organised to ensure that control and consistency of cover are achieved. An appropriate design will depend primarily on the corporate culture or management style of the client's business. Is it a highly-centralised business run by head office? Or is it a collection of autonomous business units or countries with a small head office?

The covers can be arranged:

- On a global basis, where insurance cover for the entire business is placed centrally in a coordinated manner (see Section B2a)
- On a regional basis, where certain regions (e.g. Ireland & the EU, Asia or the United States) arrange their own covers (see Section B2b)
- On a divisional basis, where individual divisions of the business arrange their own covers (e.g. the food manufacturing division arranges a policy separate from the property division) (see Section B2c).

Chapter 6

B2a Global basis

Organising an insurance programme on a global basis has been the traditional approach. It works effectively for highly-centralised businesses where the client wants to exert control.

The global master policy:

- Operates across all countries and is often referred to as a difference in conditions policy (DIC) (see Section B4)
- Operates above the master policy deductible; that is, the client has policies in their local markets, which operate to a certain level and when this level is reached, the global policy will operate
- Sits above local policies, which:
  - Are underwritten by the local office of the master insurer
  - Provide the same cover as the master or, at least, the widest cover available locally
  - Are subject to a local deductible that is acceptable to the local client.
- Provides cover which is usually wider than local policies.
- Is technically a non-admitted policy, which is why the insurer issues local **admitted policies** wherever possible (see Section B3).

admitted policies

a policy issued or coverage provided by an insurer to a policyholder domiciled in a territory where the insurer is licenced, under which an insurer can pay claims and/or defend an insured in that particular country

Just think

Considering the case of Best BeanZ, how could TIB develop an insurance programme on a global basis for the company's property/BI risks?

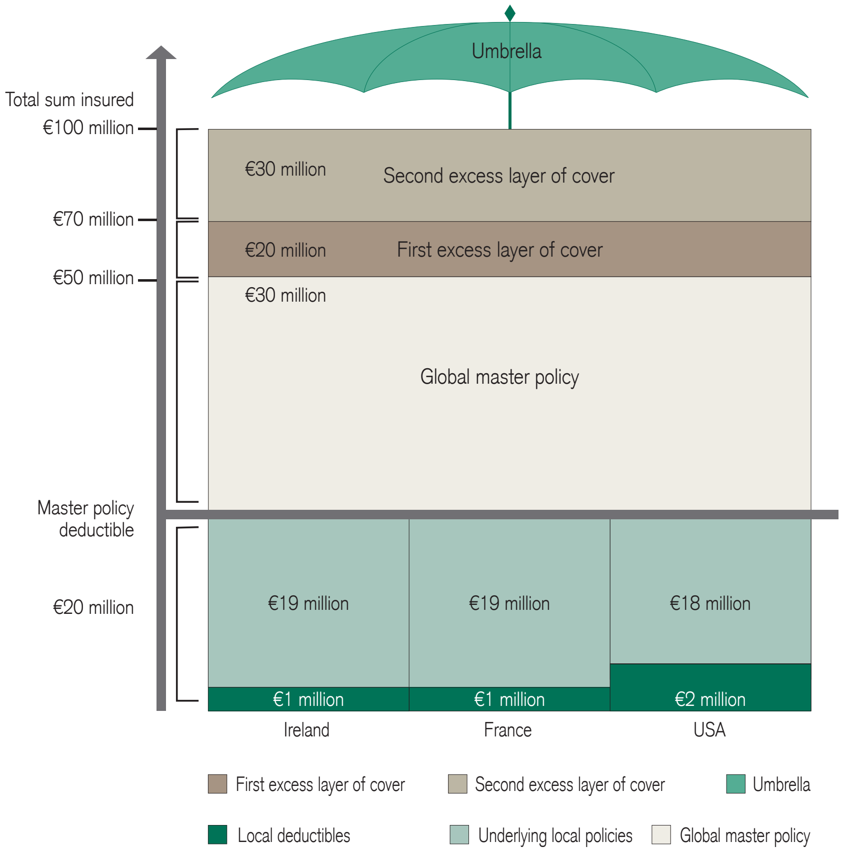
As we know Best BeanZ is located in three different countries (Ireland, France and the United States). TIB's steps to designing an insurance programme on a global basis for its property and BI risks would include:

- effecting a local property/BI policy in each country with an insurer who has global capacity and global reach but through a local broker to cover Best BeanZ' local needs. The limits and exact scope of cover provided by these local policies would differ, e.g. Ireland (€19 million), France (€19 million) and the United States (dollar equivalent of €18 million).
- effecting a global master property/BI policy with a deductible of €20 million that sits above these local policies and 'steps down' to ensure there are no gaps in local coverage
- choosing a deductible for the local policy that is acceptable to local management and fits in with local custom. This local deductible bridges the gap between the cover provided by the local policy and the global master policy's deductible. In Best BeanZ' case, this gap varies depending on the limit of the local policy. For example, in the case of the Irish operation, this gap is €1 million.
- ensuring that the global master policy operates for €30 million in excess of €20 million which brings the overall cover up to €50 million (less the local deductible).
- adding a layer (known as the first excess layer of cover) which provides €20 million (in excess of the €50 million) and then another layer (known as the second excess layer of cover) which provides €30 million (in excess of the €70 million).

The umbrella policy is not connected to this property/BI insurance programme and stands independent of it. The umbrella policy would be relevant to product liability/ product recall risks. The umbrella policy would include **difference in conditions** (DIC) and **difference in limits** (DIL) clauses for all such policies at all levels of cover from the underlying local policies up.

Figure 6.1 illustrates how such an insurance programme (designed on a global basis by TIB for Best BeanZ' property/BI risks) might look.

Figure 6.1 Global basis



Example 6.5 illustrates how a property/BI claim might be settled under Best BeanZ' insurance programme designed on a global basis.

Example 6.5

A massive fire in Mallow totally devastated the Best BeanZ's plant and properties and resulted in a property and BI claim of €87 million.

This is how the policies in the insurance programme illustrated in Figure 6.1 would respond:

- BestBeanZ would have to pay the local deductible of €1 million out of its own funds
- the local (Irish) property/BI policy would pay €19 million of the claim
- the global master policy would pay €30 million of the claim
- the first excess of layer cover would pay €20 million of the claim
- the second excess of layer cover would pay the balance of €17 million.

difference in conditions clause

policy designed to broaden coverage by providing additional limits for specific perils not adequately provided by standard markets, providing coverage for perils that are excluded on standard coverage forms, or supplementing international policies written by admitted insurers in the relevant foreign countries

difference in limits clause

a provision contained in a master international insurance programme that provides coverage for the difference in limits between the local underlying policies and the master international policy

B2b Regional or decentralised basis

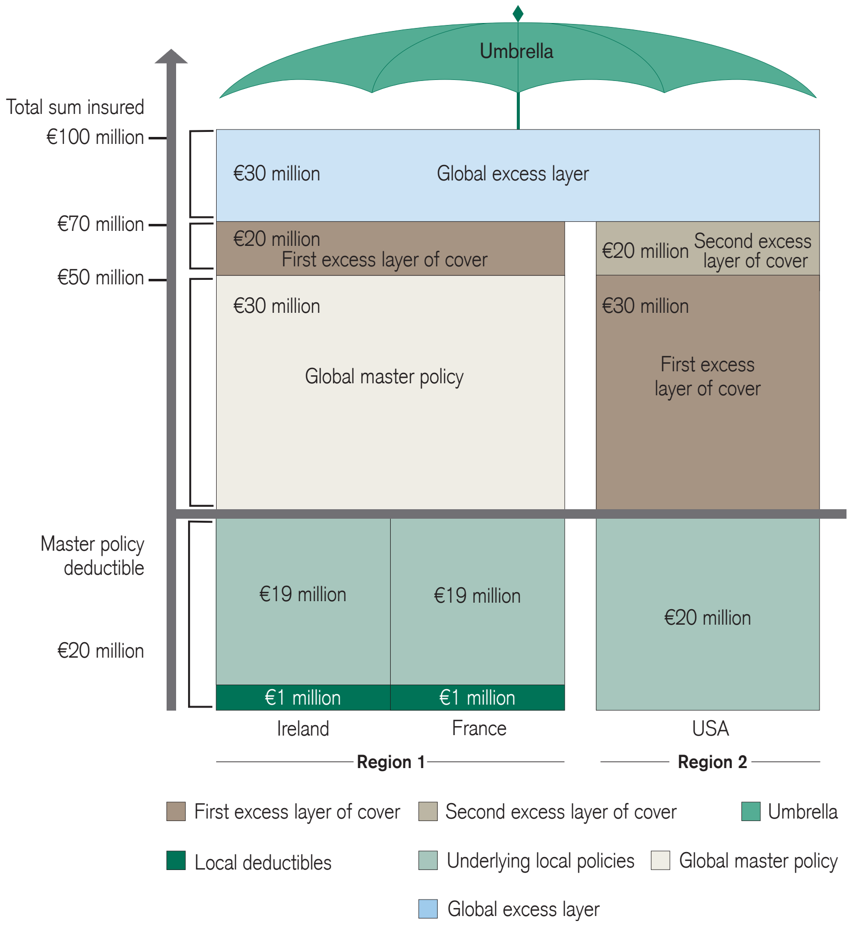
An insurance programme designed on a regional or decentralised basis splits exposures by geography or trade. This can make it easier to access market capacity and meet additional limits. This regional or decentralised basis is effective where the client has strong, independent regions or countries. It is also particularly useful where, for example, a specific region is over-exposed to a natural hazard (e.g. earthquake, flood) which requires higher policy limits or a specific region has a significant, particular exposure (e.g. in the USA, workers compensation (employers' liability) and/or auto cover) that could be better placed locally while a separate policy could be issued to other regions. For example, it is common for businesses and insurers to have separate US and 'non-US' policies due to differences in regulation and coverage requirements).

Just think

Considering the case of Best BeanZ, how could TIB develop an insurance programme on a regional or decentralised basis for the company's property/BI risks?

Figure 6.2 shows how TIB could design an insurance programme on a regional or decentralised basis for Best BeanZ' property/BI risks.

Figure 6.2 Regional or decentralised basis



Example 6.6 outlines how a claim would be settled under the insurance programme in Figure 6.2.

Example 6.6

An explosion in Lille caused serious damage at the Best BeanZ's plant and properties and resulted in a property and BI claim of €45 million.

This is how the policies in the insurance programme illustrated in Figure 6.2 would respond:

- BestBeanZ would have to pay the local deductible of €1 million out of its own funds
- the local (French) property/BI policy would pay €19 million of the claim
- the global master policy would pay the final €25 million of the claim
- neither the first excess layer of cover nor the global excess layer would be called up for this loss.

B2c Divisional basis

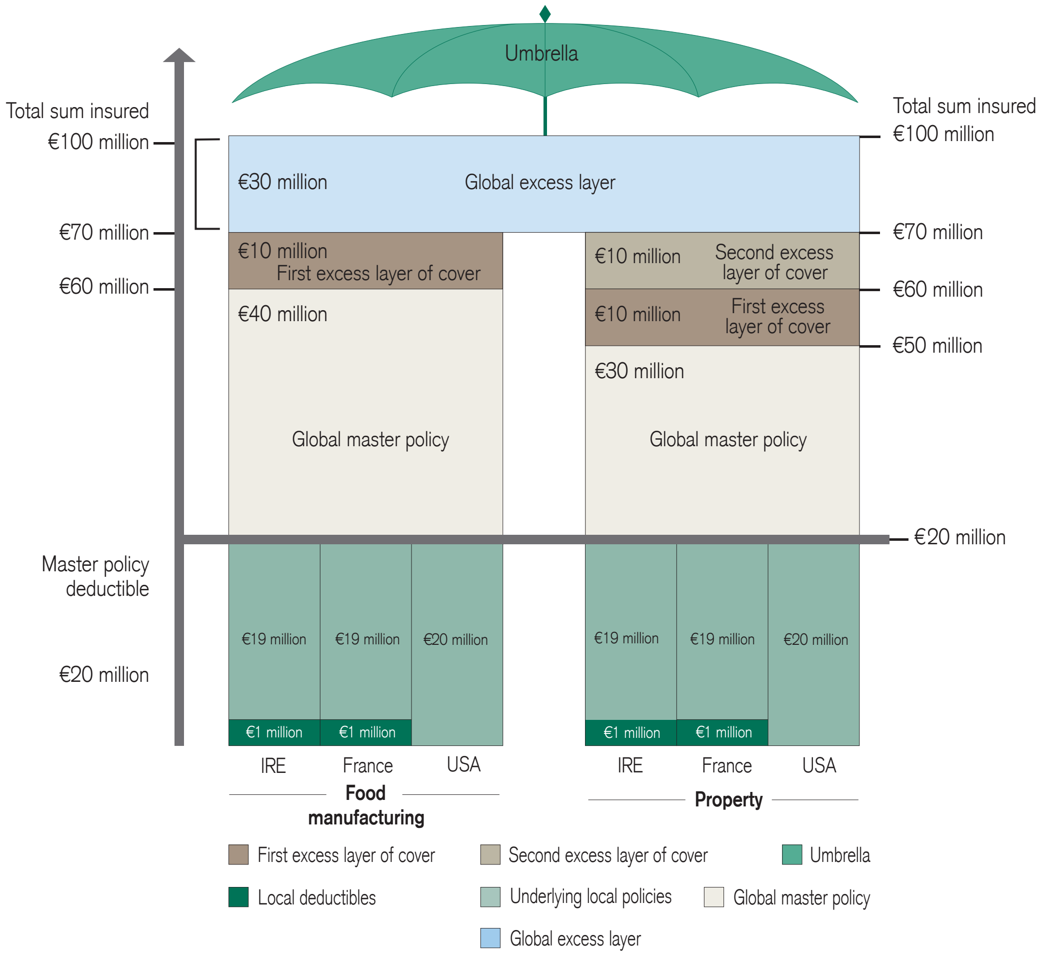
Where a client has a diverse range of operations with unique exposures, it may be more beneficial for the respective operations to have their own programme. Examples could include a commercial bank with a large property portfolio or a household goods manufacturer with a pharmaceutical division. The separate programmes could be combined at the higher level by an excess layer or umbrella policy. This option would also be appropriate if the client were to consider disposing of a particular business or division.

Just think

Considering the case of Best BeanZ with its property and food manufacturing divisions, how could TIB develop an insurance programme on a divisional basis for the company's property/BI risks?

Figure 6.3 shows how TIB could develop an insurance programme on a divisional basis for Best BeanZ' property/BI risks.

Figure 6.3 Divisional basis



Example 6.7 outlines how a claim would be settled under the insurance programme in Figure 6.3.

Example 6.7

A serious fire in Baltimore impacting on the Best BeanZ's plant and properties resulted in a property and BI claim of €56 million.

This is how the policies in the insurance programme illustrated in Figure 6.3 would respond:

- the local deductible would not apply as there is not one on the US property insurance policy
- the local (US) property/BI policy would pay €20 million of the claim
- the global master policy would pay €30 million of the claim
- the first excess of layer cover would pay the balance of €6 million
- neither the second excess layer of cover nor the global excess layer would be called up for this loss.

Chapter 6

B3 'Admitted' and 'non-admitted' policies

Local insurance laws or regulations often require that a policy is issued or cover provided by an insurer licenced in the country where the risk is located. An 'admitted policy' is a policy issued or cover provided by an insurer to a policyholder domiciled in a territory where the insurer is licenced and under which an insurer can pay claims and/or defend an insured in that particular country. A 'non-admitted' policy is a policy issued or coverage provided by an insurer to a policyholder domiciled in a territory where that insurer is not licenced. The policy cannot indemnify the insured in that territory. If the local insured is sued, the indemnity payment will need to be made to the insured in another location.

Example 6.8 outlines a situation, in which a master policy issued in Ireland has claims in France and the United States. It illustrates the consequences of admitted and of non-admitted policies and is very relevant for Best BeanZ.

Example 6.8

France

The EU Freedom of Services (passporting) legislation means that a policy issued in one EU territory is valid (i.e. admitted) in another. This means that the insurer can respond to a loss and pay a claim in France under the terms of the Irish master policy. If it is a liability policy, the insurer can also defend the insured against claims brought in the French courts.

If the master policy was issued by a non-EU insurer, then the policy would be non-admitted.

United States

The United States requires a policy to be issued by a locally domiciled insurer. If a master policy is issued in Ireland, the policy is thus non-admitted for claims arising in the United States. The insurer can only indemnify the insured in the country where the master policy was issued (i.e. Ireland). This leaves the insured to defend themselves in US courts and/or get the claim payment into the United States. While this is always possible, it is likely that local taxes would have a significant impact on the final amount that reaches the insured in the US.

If the master insurer has a local office in the US, it could issue a locally admitted policy. The master insurer is then able to pay claims under the terms of the local US policy and defend the insured in the US courts.

The exception to the admitted policies requirement is marine insurance, where a certificate is usually sufficient to evidence admitted cover. The worldwide convention on marine insurance is to accept the non-admitted nature of the business, so that there are no legal issues.

B3a Which is best – admitted or non-admitted policies?

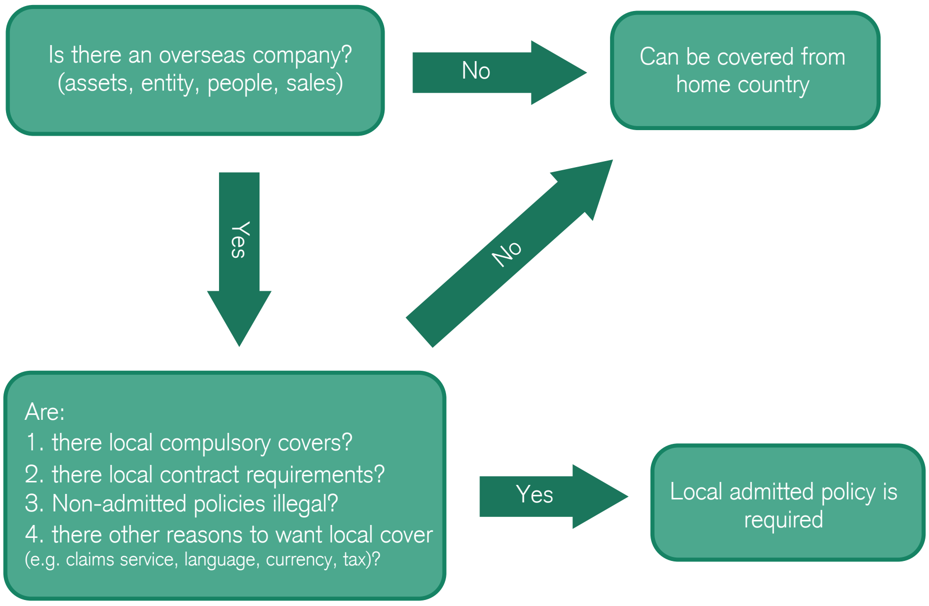
Common practice has been to issue locally admitted policies, wherever possible, under property and liability master programmes.

Until recently, other group policies have usually operated on a non-admitted basis, e.g. excess layer, umbrella, kidnap and ransom, directors and officers liability and crime. The argument was that these are catastrophe covers designed primarily to protect the client's head office, rather than any one individual region or division. However, three factors are beginning to change this:

1. Growing demand from local operations for local claims payment, particularly local protection from the group's D&O policy
2. Difficulty in getting claims monies into an overseas country without a locally admitted policy, and the impact of taxes and foreign exchange on the claim payment
3. Tightening up on collection of local premium taxes. Admitted policies are the simplest way to make payment.

TIB should consider Figure 6.4 when considering an admitted or non-admitted policy.

Figure 6.4 Choosing an admitted v non-admitted policy



B4 'Difference in conditions' and 'difference in limits' clauses

The purpose of **difference in conditions** (DIC) and **difference in limits** (DIL) clauses (which are usually combined) is to top up the cover available under a local policy to the same level that the global master policy provides. This allows the global master policy to indemnify the insured, where a local policy's response is less than what the insured is entitled to under the global master policy.

Implicit in the wording of most DIC/DIL clauses is the assumption that there is always a local policy for the global master policy to sit over. However, this is not always the case. For example, in many countries, it is not common to purchase business interruption or product liability cover. In these cases, it is therefore essential that the insurer agrees, and/or includes, a statement that allows the global master policy to act as a local non-admitted primary policy.

Quick question 2

Outline the difference between an admitted and a non-admitted policy.

difference in conditions clause

policy designed to broaden coverage by providing additional limits for specific perils not adequately provided by standard markets, providing coverage for perils that are excluded on standard coverage forms, or supplementing international policies written by admitted insurers in the relevant foreign countries

difference in limits clause

a provision contained in a master international insurance programme that provides coverage for the difference in limits between the local underlying policies and the master international policy

Chapter 6

It is important to also clarify what an insurer deems a local primary policy. Most insurers make a distinction between primary policies that they or their local representatives have issued, and primary policies issued by another insurer. Example 6.9 provides a scenario involving Best BeanZ.

Example 6.9

The global master property policy for Best BeanZ includes cover for 'accidental damage'. A local admitted policy is issued in France on the insurer's standard wording but is limited to 'fire and specified perils', with no cover for accidental damage. Under the DIC condition, the master policy will 'step down' and provide cover for 'accidental damage' in France.

The global master property policy for Best BeanZ covers fire brigade charges of €50,000 but the local Irish policy only covers fire brigade charges of €5,000. Under the DIC condition, the master policy will 'step down' and provide cover for fire brigade charges up to €50,000.

DIC and DIL clauses are also used in non-multinational cases. A broker who is considering a block transfer of business (e.g. its commercial combined account) from one insurer to another may seek DIC/DIL cover. In order to protect the clients (and the broker), it may insist that any gaps in the new wordings discovered are covered by DIC/DIL. For example, if the new insurer provides €20,000 in fire brigade charges, whereas the former insurer provided €50,000, the broker will protect the client by seeking to have the new insurer include a DIC condition. This provides at least the level of cover for fire brigade charges provided by the former insurer.

B5 Global versus local deductibles

In most cases, there is a balance to be struck between global (corporate) and local deductibles:

- Local deductibles need to be large enough to cover small, frequent, inevitable losses and provide an incentive to manage risk and minimise loss. They need to be at a level that the local operation can withstand, without disrupting business.
- Global (corporate) deductibles should reflect the head office's ability to retain a higher level of risk, thereby maximising the premium discounts obtained.

Local brokers should ensure they are aware, and understand the implications, of such issues and raise them with the global broker. Possible solutions may be to negotiate a lower deductible for specific risks or, if the client's head office allows, buy back a lower deductible under the local policy. Another variation is to set a lower deductible for new subsidiaries/acquisitions to help ease their way into the programme.

B6 Currency convertibility

One of the main problems with operating a global programme is dealing with different currencies and rates of exchange. Ireland's membership of the Eurozone reduces the need for currency convertibility, but currency differences will impact on insurers working with UK, US and other non-Eurozone companies.

B6a Exchange rates

All global programmes should be clear on the exchange rates used to denominate sums insured/limits, premiums and claims. Many multinational clients will use set rates of exchange internally and one solution may be to get the master insurer's agreement to use these. On claims, it would also be prudent to set the exchange rate to that applying at the time the loss is paid. Whichever rates are decided on, they should be regularly reviewed and updated, at least once a year.

hard currency

currency that is not likely to depreciate suddenly or to fluctuate greatly in value

B6b Inflation/currency fluctuations

Policy limits/sums insured and premiums that are set in the local currency of a high-inflation country can rapidly erode, potentially leading to gaps in cover, underinsurance and reduced profitability. In these circumstances, it is recommended that values and premiums are commonly denominated and paid in **hard currencies**. For this reason, most local policies are issued in USD$.

B6c Convertibility

Some local currencies, especially in underdeveloped countries may have little external value outside the country concerned and the local operation may not be able to operate in the hard currency. In these cases, it may be more appropriate to review their inclusion in the programme.

B6d Co-insurance deficiency

On a large global account operating across different currencies, it is almost impossible to achieve complete accuracy (e.g. in the declaration of values), as the exposure will always change over time. The local insurer may not be aware of the wider picture and will apply average to the local settlement if the values are deficient. Where this happens, the 'co-insurance deficiency' clause aims to protect the client at the corporate level from being penalised. A large enough spread of territories will lessen the disadvantage to the global insurer. At any one time, some declared values will exceed the value of property exposed and some will be less.

All versions of this clause state that there is no cover if the insured deliberately underinsures.

B7 Premium allocations

Allocating premiums among the client's various regions, countries, subsidiaries or divisions is a common service provided by brokers. It is a problematic and time-consuming task. The allocation of the premium must accurately reflect local cover and local risks, and be able to stand up to outside expert scrutiny.

Reminder

In a number of countries insurers require premium payment before inception, e.g. India, China. This is known as 'cash before cover' and means that allocating the premium cannot be left until renewal, even on a global programme. Brokers must be aware of this before they place the business, as this needs to be taken into account in the programme design.

B8 Policy taxes

Each country levies its own form and level of taxes on insurance premiums, and its own penalties for non-compliance. Although taxes are primarily calculated by the insurer, the broker has a duty to ensure their client appreciates the range and cost of the taxes payable in addition to the core premium(s).

In the EU, where policies are issued under the freedom of services' provisions, the insurer has an obligation to calculate the tax due in the EU country where the physical risks are located. The insurer is also liable to the respective EU governments for collecting and accounting for the tax. The European case of *Kvaerner plc v Staatssecretaris van Financiën ECJ* (1999) imposed a duty on corporations to calculate and pay taxes on any policy that provides cover for risks located in the EU, whether a premium is allocated to the subsidiary or not.

B9 Inadvertent errors and omissions

The larger the programme, and the more widespread the countries involved, the more problematic it can be to ensure that the information on a global programme is complete, up to date and includes all material facts. Language barriers, time differences, local legislation and market practices all combine to make this a complex issue.

For this reason, many global policies will include an 'inadvertent errors and omissions' clause. This clause restricts the insurer's right to void the policy on the grounds of fraud, deliberate misrepresentation and/or non-disclosure.

Chapter 6

Quick question 3

Explain the importance of taking into account fluctuations in currency exchange rates and inflation when designing a global programme.

C Summary

This chapter covered the main issues involved in designing insurance programmes for large commercial clients, even though it is not a job undertaken by all brokers. It is a complex process involving large premiums and many parties. The chapter also looked at designing insurance programmes within a global context.

C1 What's next?

The final chapter looks at the other services that brokers provide to their clients, e.g. risk management, consultancy services and alternative risk transfer and financing.

C2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in this textbook. Use the 'End of chapter questions', 'Quick questions' and 'Sample exam questions' to quickly test' what you have learned so far. Make a note of any topics/ areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

C3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter's content when revising.

Remember: This module is examined by mixed assessment, which includes:

- An online mid-semester MCQ assessment (20 questions)
- An end-of-semester written exam paper (9 questions)

Given that your online mid-semester assessment is a multiple-choice question test, completing the online practice paper is the ideal preparation for this. You can prepare for the end-of-semester written exam and test your knowledge by completing sample and past written exam papers.

To access these online learning supports, log into your Member Area of **www.iii.ie** and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 6. It should be noted that these end of chapter questions are revision questions to test your understanding of the material in the chapter just studied. They are not sample exam questions.

1. List three key factors to consider in programme design.

2. Outline the importance of making it clear to the client how an 'excess/deductible' will be applied.

3. State the advantages of multi-line (cross-class) contracts.

4. Explain three essential points that must be addressed when placing excess layers.

5. Briefly explain the circumstances in which an insurer would consider using facultative reinsurance.

6. Explain the term 'umbrella policy'.

7. Identify two examples of international specialist schemes designed to cover terrorism risks.

8. Outline the reason a multinational's decision to opt for a global programme might restrict its choice of insurers.

9. Outline the purpose behind difference in conditions and difference in limits clauses.

10. Outline the considerations for a broker when reviewing premium tax issues on a global programme.

Chapter 6

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. Key factors to consider in programme design (any three of the following):
   - Risk retention
   - Combined policies and account underwriting
   - Contract term
   - Limits/sums insured
   - Specialist covers
   - Available insurers.

2. The terms 'excess/deductible' can be applied in a number of different ways, each giving a different outcome in terms of what the policy actually provides. If not explained clearly to the client, this can result in disagreements when a claim comes to be settled.

3. The advantages of multi-line (cross-class) contracts are as follows:
   - The insured only has two numbers to remember - the policy deductible and the common aggregate deductible - as opposed to different amounts under different policies/sections.
   - The common aggregate deductible will be less than the sum of individual deductibles.
   - Insurers are able to reduce risk by spreading it among several factors, which helps to avoid a huge financial burden in the event of a catastrophe.
   - Higher deductibles may be more feasible, thus generating further savings.
   - They provide economies of scale/proportionate savings in the premium.
   - Wider cover may be offered.

4. When placing excess layers, essential points to be addressed include:
   - The policy periods throughout the primary and excess layers must match precisely.
   - There must be no gaps in cover in the way the limits are expressed and preferably, in the policy terms and conditions.
   - There must be clarity on whether the excess layer will 'step down' on exhaustion of the underlying layer.
   - There must be consistency on the reinstatement provisions through the layers.
   - There must be clarity on which insurer is responsible for handling claims.
   - There must be clarity on when the insurer of the next layer up should be alerted that the limit of indemnity on the underlying layer may soon be exhausted.

5. An insurer could consider using facultative reinsurance when it wishes to insure a risk that falls outside its ordinary reinsurance treaty or when it is insuring a high-value risk. Facultative reinsurance would bridge the gap between what an insurer is willing to retain of that risk and when the reinsurance treaty would step in.

6. An umbrella policy is extra liability insurance that 'sits over' a primary policy or programme and is independent of the cover provided underneath. It will have its own wording and its own attachment point. This may not necessarily be the total limit of indemnity provided by the primary and excess layers (i.e. the layers underneath). There will be no 'step-down' provision. It is a way of providing additional limits or specialist cover at the catastrophe end of a client's exposures.
7. International examples of such schemes include the Australian Reinsurance Pool Corporation, Pool Re (United Kingdom) and Extremus (Germany).
8. A multinational's decision to opt for a global programme might restrict its choice of insurers because there are fewer insurers that have the global spread to handle such a global programme.
9. Difference in conditions and difference in limits clauses are designed to top up the cover available under the local policy to the same level that the global master policy provides.
10. Although taxes are primarily calculated by the insurer, the broker has a duty to ensure that their client appreciates the range and cost of the taxes payable in addition to the core premium(s).

Answers to quick questions

1. A time-franchise is used on hospital, sickness and accident policies and is a minimum time incurred before insurance cover applies; once the amount of the franchise is exceeded, the whole of the claim is paid. This would be relevant to Best BeanZ travel/personal accident policy.

2. An 'admitted policy' is a policy issued or coverage provided by an insurer to a policyholder domiciled in a territory where the insurer is licenced, under which an insurer can pay claims and/or defend an insured in that particular country. A 'non-admitted' policy is a policy issued or coverage provided by an insurer to a policyholder domiciled in a territory where that insurer is not licenced. The policy cannot indemnify the insured in that territory. If the local insured is sued, the indemnity payment will need to be made to the insured in another location.

3. It is important to take exchange rate changes and inflation/currency variations between countries into account when designing a global insurance programme as either of these may result in the actual premium received being less than expected or claim settlements being higher than expected.

Sample exam questions

Question 1

You are employed as a broker with XYZ Advisers. JCD Manufacturing is a producer of cutting-edge mobile technology. JCD has found it difficult to obtain employers' liability insurance and has contacted you for assistance in placing this risk. JCD would like an employers' liability insurance policy with a limit of indemnity of €60 million.

To meet this need, you recommend 'excess layers' cover from three different insurers. The first insurer you contact, STP Insurance, confirms it is willing to act as the primary insurer but is only able to write €15 million. The next insurer you contact, CGK Insurance, agrees to write a further €20 million. The final insurer, DFK Insurance agrees to write a further €25 million.

a) Illustrate how this 'excess layers' employers' liability policy will be structured for JCD Manufacturing.

(4 Marks)

b) Outline **three** important considerations for you as the broker when placing a risk using 'excess layers'.

(6 Marks)

Total: 10 Marks

Question 2

A multinational business, operating in a number of countries, wants to consolidate all its insurance arrangements into one global programme.

State **five** advantages and **five** disadvantages of such an arrangement.

Total: 10 Marks

Your answers

Sample answers

The answers set out below show the main points to be considered by students in answering the question. In some cases, a well-reasoned alternative view could earn good marks.

Question 1

(a)

JCD Manufacturing's 'excess layers' employers' liability policy will be structured as follows:

Insurer	Excess layer	Limit	Total cover
DFK	2nd	€25 million (in excess of €35 million)	€60 million
CGK	1st	€20 million (in excess of €15 million)	€35 million
STP	Primary	€15 million	€15 million

CGK will only be called on once the primary cover provided by STP is exhausted. DFK will only be called on once the next layer of cover, provided by CGK, is exhausted.

(4 Marks)

(b)

Important considerations when placing a risk using 'excess layers' (any three):

- The policy periods throughout the primary and excess layers must match precisely.
- There must be no gaps in cover in the way the limits are expressed or in the policy's terms and conditions.
- There must be clarity on whether the excess layer will 'step down' (i.e. perform in a claim or during cover) on exhaustion of the underlying layer.
- There must be consistency on the reinstatement provisions through the layers.
- There must be clarity on which insurer is responsible for handling claims.
- There must be clarity on when the insurer of the next layer up should be alerted that the limit of indemnity on the underlying layer may soon be exhausted.

(6 Marks)

Reference Chapter 6A4b **Total: 10 Marks**

Question 2

Advantages and disadvantages of a global insurance programmes (any five)	
Advantages	**Disadvantages**
It offers consistency of cover.	The programme needs to be controlled from the head office, which may conflict with established local management style.
It provides central control of cover and cost.	It could upset local relationships.
Savings are obtained through group buying often through one insurer.	It may cost more in total due to the purchase of cover that is unnecessary or doesn't cover losses in certain countries.
It offers simpler identification of losses worldwide.	Legislative and cultural differences can be problematic.
It can act as a driver for a global approach to risk management.	It reduces the choice of insurer(s), as fewer insurers have the global spread to handle such a programme.
It allows controlled participation in its own risk by the parent that can see which countries/regions/ divisions are the source of more losses than others and address it.	The premium invariably has to be allocated between subsidiaries and may need to be paid locally. Often, this allocation process requires careful negotiation between different subsidiaries, especially those who do not like impositions from head office, or who feel their risk is better than others.
Premium allocations can be adjusted for claims experience and used as a tool to encourage better risk management.	Subsidiaries may be forced to 'buy' cover that either does not apply or has limits that are considerably in excess of their individual exposure.
It can open up additional markets/options for the client, including reinsurance markets.	Tax allocations can be difficult.

Reference Chapter 6B1 **Total: 10 Marks**

Chapter 6

Chapter

7

Other services

What to expect in this chapter

In global markets, the larger national and multinational brokers have the ability to offer a wide range of risk assessment facilities in-house. Smaller brokers will either make use of insurers' own risk assessment facilities or recommend the services of specialist risk assessment or risk management companies. These services include:

- Surveys to identify the risks and hazards often associated with the main lines of commercial business, e.g. fire, liability and theft
- Actuarial expertise in fields such as loss forecasting and setting claim reserves
- Geographical information systems (to assess the risk of natural perils arising from location) and human resources consultancy
- Accessing solutions in the fields of alternative risk transfer and capital markets.

This chapter will describe some of these services. First, however, we will examine the overarching risk management process, of which these services form an integral part. We will then consider the options outside the commercial insurance market for transferring risk.

To help you relate the material in this chapter to a real-life situation, we will refer to the sample profile of Tuhill Insurance Brokers Ltd (TIB) and the case of Best BeanZ plc (the sample corporate client submission at the start of Chapter 6). This should help you reflect on how and why each of the other services a broker might offer would be relevant and useful to its clients.

Learning outcomes for this chapter

Section	Title	At the end of each section, you should be able to:
A	**Risk management**	Outline the risk management process, particularly risk financing and risk-transfer options and the role of the broker in this process.
B	**Specialist risk consultancy services**	Describe the specialist risk consultancy services offered by corporate brokers.

A Risk management

We studied risk management in The Nature of Insurance module. In this section, we will outline the role of the broker in the risk management process.

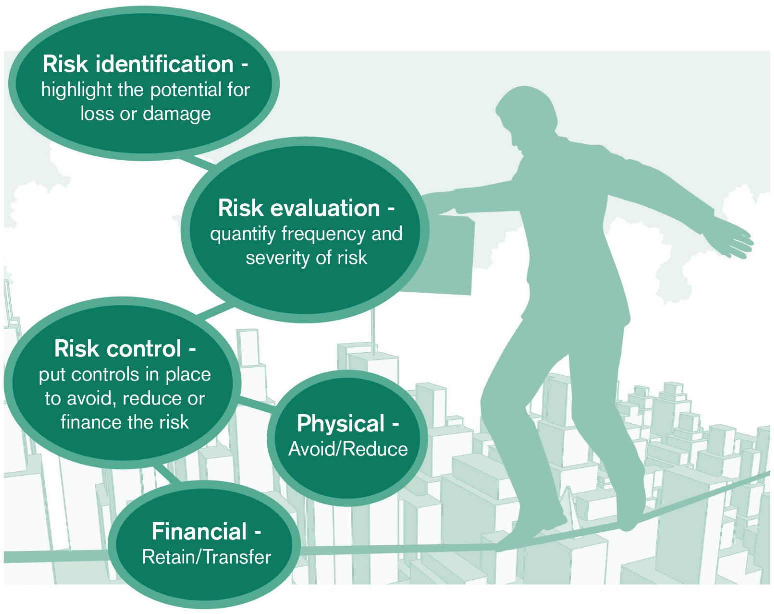
A1 The risk management process

A thorough understanding of the extensive subject of risk management requires specialist study. In order to understand the broker's role in the risk management process, we will concentrate here on summarising the main components of risk management.

Figure 7.1 is a reminder of the risk management process from The Nature of Insurance module. It illustrates that the risk management process is made up primarily of risk:

- Identification
- Evaluation
- Control.

Figure 7.1 Risk management process



Just think

Before reading on, what does the term 'risk' mean in the context of risk management?

In The Nature of Insurance module, we examined the different types of risk (e.g. pure, speculative, financial, non-financial, fundamental and particular) and identified which ones were insurable and uninsurable. However, the theory of risk management works with any type of risk.

As we examine this risk management process, consider the case of Best BeanZ and the discussions they should have with TIB.

A1a Risk identification

Risk identification is a combination of techniques to highlight and examine all of the organisation's activities, their interrelationship and potential losses, in order to identify features that may prove hazardous to its future business plans.

For a small or medium-sized business, the identification of the main risks that threaten the business will be relatively simple. However, large multinational businesses, operating in many geographical areas and from many business sites, require a much more structured and economical approach.

Identifying the main risks to the business ensures that the risk management programme allocates priorities correctly, that it is given structure and order and is achieved in the most economical way.

Before undertaking a physical survey or inspection, particularly for larger risks, it is necessary to speak with management. The information required includes:

- What they perceive to be the major or perceived threats, e.g. aggregation issues, dependency on key suppliers/clients, bottlenecks in the manufacturing process
- Which locations are most vital to their business
- What could be done if the worst happened
- Key changes in the business since the last review.

Once this stage is complete, several other methods can be used, including discussions or brainstorming with senior and middle management, surveys, examination of documents, and questionnaires. The contribution of each method depends on the risk under consideration. For the risk of fire, a survey is essential, but for business interruption resulting from fire, discussion with managers is necessary to establish the impact on different areas of the plant. Where the concern is with a less catastrophic risk (e.g. the theft of cash), a questionnaire may be adequate.

A1b Risk evaluation

Once the risk exposures are identified, the evaluation process begins. This assesses the:

- Financial cost of a given risk, i.e. severity
- Probability of loss, i.e. frequency
- Impact of self-insurance and deductibles
- Cost-effectiveness of loss elimination, reduction and control measures
- Viability of **risk transfer** to insurers or to a facility such as a captive.

risk transfer

the shifting or distributing of risk to other parties, mainly through insurance policies or contractual provisions

The evaluation process includes the following functions:

- Quantifying the effect of potential losses on the business
- Evaluating a 'worst-case scenario' and its effects on the business and future plans
- Reviewing the effect of previous losses, both significant and minor, and measuring their effect on the business, giving special consideration to cash-flow and amended projects
- Measuring the estimated 'down-time' following a loss, including any knock-on effect to other branches
- Evaluating the ability of the business to respond after a serious loss, including any contingent crisis management planning.

In the evaluation of risk, it is necessary to build up a detailed organisation risk profile showing specific areas of exposure, including assets, income, liabilities and personnel. Each of these areas may then be analysed to show the extent to which it is affected by management functions, e.g. purchasing, production, transport, distribution, sales, finance and administration.

A1c Risk control

Risk control is often mistakenly described as risk management. In fact, it is only one of the techniques used as part of the overall process.

As was seen in Figure 7.1, risk control techniques can be:

- Physical:
  - Risk avoidance
  - Risk reduction

or

- Financial:
  - Risk retention
  - Risk transfer.

A1c1 Physical risk control

Risk avoidance

Risk avoidance is any action taken to prevent the possibility of an undesirable event happening. As some risk is always inevitable, risk avoidance has to be realistic, practical and cost-effective. Examples of risk avoidance include:

- A decision to not sell a new drug until the potential side-effects are fully known
- A decision to not buy a business because its pollution liabilities are too great
- A decision to close operations in a country where there is a threat of war.

Risk reduction

Risk reduction is the process of actively reducing the likely frequency and severity of a hazard that cannot be eliminated.

Examples of risk reduction relating to frequency and severity include:

- Introducing an improved maintenance system for machinery and equipment
- Limiting the quantity of flammable liquids stored on the premises and, where possible, substituting non-flammable for flammable solvents in cleaning processes
- Replacing naked-flame space heaters on the premises with hot water radiators
- Eliminating ignition sources in areas where flammable vapours may collect
- Maintaining mandatory safety precautions for work above a certain height
- Demanding mandatory seat belt use for all employees travelling in company vehicles
- Introducing automatic sprinkler systems
- Employing skilled first-aid staff on building sites
- Undertaking an annual programme of staff training and safety awareness
- Supplying and monitoring the use of personal protective equipment by staff
- Providing an up-to-date Safety Statement to be read and signed off by all staff
- Compartmentalising hazardous areas by fire-break walls and doors.

A1c2 Financial risk control

This is the final stage of the risk management process. At this stage of the process:

- All the risk exposures have been identified
- Their impact on the business has been evaluated in terms of their likely frequency and severity
- The risks have been avoided wherever possible
- Effective risk reduction (including prevention and minimisation) measures have been put in place.

Despite having tried to avoid or reduce their risk exposure, a client may still have to provide for the financing of residual risk or for unidentified risks. At this point in the process, a client is left with two options for dealing with the remaining risk:

- Retain the risk themselves
- Transfer the risk to someone else, e.g. an insurer.

These two options are explored in Section A2.

A2 Risk retention and transfer

A2a Risk retention

Risk retention means that an organisation will meet, in whole or in part, the cost of losses resulting from a particular risk. Risk retention can take place either passively or actively. Passive risk retention occurs when an organisation is unaware that a risk exists, or recognises a risk exists but has no active plan in place to deal with it. Active risk retention occurs when an organisation makes a conscious decision to bear the cost of any losses resulting from a recognised risk.

A2a1 Assessing risk retention

The first step in assessing the most appropriate funding mechanism is for the business to decide how much loss it can afford (risk tolerance). This will involve calculating:

- The single largest amount the business can afford to retain
- The total value of losses the business can afford to retain over a given period.

There are various methods of calculating these amounts. One way is to look at the maximum loss a business could sustain in relation to its effect on pre-tax profits or other key financial metrics. However, the calculation of this amount varies considerably according to the individual business, so we will not consider it in too much depth here.

Just think

If Best BeanZ were to consider funding its risk retention and had assessed the maximum loss it could sustain, what other factors would it need to consider?

Best BeanZ would also need to consider:

- The value of losses already retained under existing policy excesses or deductibles
- Any potential savings from assuming certain risk levels, e.g. a reduced premium
- The nature of the risks being retained, e.g. short-tail (property) or long-tail (liability)
- The difference between passive and active risk retention and how to address either or both.

At this stage, we now have some financial quantification (amounts) for risk retention. The next step is to consider how best to fund the actively retained risks.

A2a2 Funding retained risk

Actively retained risks can be funded in a number of ways:

- As a regular business cost. Losses and costs relating to risks (e.g. fire damage, injury claim) are treated in the same way as items such as rent, light, and heating and are funded out of current income as losses arise. This form of risk retention has the benefit of being the cheapest to operate. It is a useful method of emphasising to local management the cost of risk and preventing losses. However, in many organisations this method causes complications, particularly when there is a disparity in size and risk between subsidiaries.
- A provision on the balance sheet at the beginning of the year. However, the same difficulties apply when there is a disparity in size and risk between subsidiaries.
- Self-insurance (see Section A2a2a).

A2a2a Self-insurance

Self-insurance through building up funds is a form of active risk retention. The organisation allocates an amount to a fund in order to meet anticipated losses. The organisation hopes that the amount allocated will be sufficient to meet such losses over a specified period.

The advantages of this method include:

- Reduction of the cost of risk transfer, e.g. insurance
- Greater control of risk
- Reduction of insurance administration and transaction costs, e.g. insurance premium tax and commission
- Increased emphasis and awareness of the need for loss control.

The disadvantages of this method include:

- Greater uncertainty compared to the certainty in purchasing insurance
- Increased work for general administration and accounting functions
- Increased involvement in claims (potentially long-tail) and lack of legal experience when dealing with claims
- Responsibility for underestimated risks and claims
- Contributions to such funds are not tax deductible but insurance premiums are.

In relation to funding retained risks, a broker can only make a recommendation bearing in mind the client's intentions regarding risk management. You should also remember that a **self-insured programme** is generally a long-term commitment.

Regardless of the funding method chosen, it is important to retain records of losses and costs for use in future risk analysis and for the organisation's accounts.

Quick question 1

A client is considering retaining some of the risks it faces. What are the two factors they need to take into account in deciding how much to retain in monetary terms?

The answer is at the end of this chapter.

self-insured programme

where a corporate entity provides resources to form active risk retention of claims

Chapter 7

A2b Risk transfer

Risk transfer is the practice of shifting or distributing risk to other parties, mainly through insurance policies or contractual provisions. Examples of contractual provisions include when:

- The risk of injury to contract employees (e.g. on an oil rig) is wholly retained by the employing contractor
- The tenant of a premises is made responsible for the risk of damage.

The following sections explore the various risk-transfer options. (In the case of Best BeanZ, these options should be discussed with TIB.)

A2b1 Conventional insurance market

Effective risk management procedures, combined with a considered risk financing strategy, will enable a broker to get the best terms (i.e. both premium and cover) from the conventional insurance market. However, this is not the only option for transferring risk.

A2b2 Captive insurers

A captive is an authorised insurer set up by a non-insurance parent company, to underwrite its own insurance risks. The captive will be a wholly-owned subsidiary of the client's business or part of the same parent group. Captives underwrite all of the types of risks that are underwritten by the general non-life insurance market.

The parent company of an insurance captive will use it as a risk management tool. The main benefits of a captive to a parent company are the ability to:

- Reduce insurance costs
- Gain access to reinsurers
- Provide solutions for less insurable risks
- Provide greater risk management control and control of own loss data
- Retain profit within the parent company that would normally pass to the insurance market
- Fund retained risk in a structured manner
- Act as a focus for risk management effort
- Deal with claims in a more efficient and timely manner
- Provide cover for certain risks that the conventional insurance market will either not write or charge an unacceptable premium for
- Access the possibly cheaper, more flexible reinsurance market
- Benefit from lower tax rates, depending on where the captive is based (e.g. Isle of Man).

The benefits of owning a captive become more apparent as the insurance market starts to harden (see Chapter 4A1a).

Just think

Before reading on, can you think of any reasons why Ireland is a popular location for captive insurers?

The popularity of Ireland as a base for captive insurers was summarised by the Dublin International Insurance & Management Association[119] as follows:

- Ireland is a recognised leading captive domicile centre with 25 years' history and expertise.
- The market has a deep pool of experienced and emerging talent with a wealth of (re)insurance expertise, with specific captive market expertise.
- Ireland is a strong networking environment for captives, as well as representing the interests of the captive community.
- Geographically, Ireland is an excellent location to access EU/European, US, Middle Eastern and Asian markets.
- Captives can avail of EU freedom of establishment or freedom of services from a base in Ireland, without the need for local representation in EU/EEA countries, and can cover pan-European insurance programmes on a direct basis.

[119] Now merged with Insurance Ireland.

- The Central Bank provides a robust supervisory function, which incorporates the principle of proportionality for the captive market. An example of this is the corporate governance code for captive insurance and reinsurance entities.
- Ireland has double taxation treaties with more than 70 countries and a low corporation tax rate.[120] Federal Excise Tax (FET) exemption is in place under the US-Ireland double taxation treaty (subject to certain conditions being met). No Irish stamp duty or insurance premium tax or levies apply where a risk is located outside Ireland.

Some larger international brokers in Ireland (e.g. AON, WTW) act as captive managers, providing advice on the domicile, set-up, capitalisation and structure, and managing the day-to-day operations.

Several large multinationals based in Ireland have their own captives which are either self-managed by their risk/insurance department or managed by a captive manager. A broker will liaise with the representatives of the captive regarding loss information, insurance market rates and other factors when considering the risk to be retained in the captive.

There are challenges in using captives. For example:

- Since Brexit, Irish-based captives cannot write insurance in the UK on a freedom of services basis. Most European and Irish multinationals will have UK operations. Some captives have set up UK branches to continue to write business there. This brings increased costs and increased regulatory requirements.
- There is pressure from the OECD and other European countries to harmonise corporate tax rates. This would lessen the advantages of setting up a captive in Ireland. For example, if the French corporate tax rate is 26.5% and the Irish corporate tax rate is 12.5%, a captive making a profit of €10 million would save €1.4 million by being set up in Ireland instead of France. This is especially relevant to a multinational based overseas that may prefer to have a captive managed by their head office. As of 2022, the Irish corporate tax rate (12.5% for firms with a turnover of less than €750 million) would include most insurance captives.[121]
- Although at present, premiums paid to captives are tax deductible, tax authorities in the United Kingdom, United States, Ireland and other countries are closely examining this.
- Due to capital and regulatory requirements, there are also considerable costs associated with the setting up and running of a captive. For this reason and due to its size, it is unlikely that a captive would be a viable risk transfer option for Best BeanZ.

Chapter 7

catastrophe (cat) bonds

a debt instrument in which investors take on the risks of a specified catastrophe or event occurring, in return for attractive rates of interest

A2b3 Alternative risk transfer – accessing the capital markets

Alternative risk transfer (ART) can be defined as:

> Various non-traditional forms of (re)insurance and techniques where risk is transferred to the capital markets. More broadly, it refers to the convergence of (re)insurance, banking and capital markets.

Transferring risk into the world's capital markets by means of **catastrophe (cat) bonds** and other financial instruments is an activity confined to specialist or very large brokers. These will have dedicated teams qualified in handling securities and investments. Staff working in this area require certain specialist qualifications.

[120] More information on double taxation treaties is available at the Revenue website, (Tax Professionals – Tax Agreements), www.revenue.ie.

[121] McQuinn, C. Horgan-Jones, J. O'Halloran, M. and Taylor, C., 2021. Ireland's corporate tax rate set to rise to 15%, as part of global deal, 7 October, www.irishtimes.ie.

Reminder

Cat bonds and other securities available in the capital markets are financial instruments, not 'insurance'. They do not follow insurance principles, e.g. insurable interest, proximate cause and indemnity.

A3 The role of the broker in risk management

The main role of the broker is to provide advice on the selection of insurers, execute instructions and provide ongoing support to its clients. Larger broking firms may also offer a risk survey service. The process of managing and transferring risk has become quite sophisticated and some large corporate clients have built their own highly-skilled risk management departments, with limited reliance on outside agencies. However, smaller companies tend to call on the services of insurance brokers and other parties.

As the theory and practice of risk management has developed, the insurance broking industry has recognised the need for additional technical support services to complement risk management programmes. For example, we know that our sample broker, TIB, has recently recruited an experienced risk control surveyor to the broking team. This surveyor will provide risk identification surveys, health and safety consultancy and motor fleet risk management to TIB's large commercial clients.

Other parties, such as insurers and independent consultants, have also recognised this need.

The role of the insurance broker is to assist the client in achieving their risk management objectives. So the broker can be involved in one or all of the functions of identification, evaluation and control (see Figure 7.1). The list of additional technical support services can include those outlined in Table 7.1.

Chapter 7

Table 7.1 Additional technical support services

Property loss prevention and control	Risk identification surveys and discussions	Self-insured funds and captive feasibility studies, as well as captive management
Business interruption analysis	Loss analysis modelling and prediction	Innovative risk-transfer programme design
Product liability hazard analysis	Assessments of maximum possible and probable loss	Insurance programme monitoring
Health and safety audits	Contingency planning and programme design	Claims and crisis management
Fire engineering design and consultancy	Environmental impairment	Post-loss surveys
Motor fleet risk management	Security/fraud consultation	Preparation of safety statement
Business continuity planning (BCP)	Natural catastrophe modelling	Risk tolerance modelling
Cyber loss modelling	Cyber impact analysis	Terrorism assessments

These services are functions of risk management. Most businesses, large or small, look to brokers for help and assistance in developing a risk management programme. It has been noted that TIB is keen to develop additional fee-paying services and have already appointed a risk control surveyor. The technical support services listed in Table 7.1 are areas that TIB should consider in the future. Risk management is about securing the most economic and efficient management of risk. In this context, it is vital that a broker has a full understanding of a business and the risks it faces.

Brokers need to acquaint themselves with their clients' business. For larger businesses, this will include:

- Knowledge of the client's plans, future projects and general philosophy regarding the development of the business, including possible mergers and acquisitions
- Awareness of developments and issues in the client's business sector
- Offering advice on solutions to current risks (known and unknown to the client), including liaison with, and recommendations of, other professionals
- Monitoring existing business through regular visits and discussions, both onsite and with the client's management team
- Co-operation with other professionals retained by the client (e.g. legal and consultative professionals), including awareness of special projects where their advice is sought
- Discussion and feedback from both the client's employees and the broker's own staff to identify problem areas or exposure to risk
- Awareness of trends in the client's trade through reading trade journals or other publications
- General awareness of any issues in the macroeconomic environment that may affect the client, e.g. Brexit.

The broker's involvement with key decision makers and giving advice and help to the client creates an awareness of risk on both sides and can lead to the recommendation and acceptance of risk improvement and transfer measures. These actions will not be as detailed when dealing with relatively smaller clients.

Some in the insurance industry maintain that risk management can only be effectively provided by a specialist organisation that is completely independent of insurance brokers. Others believe that risk management has been, and always will be, part of the overall service that insurance brokers provide. Larger corporate brokers provide a comprehensive range of risk management services, partly or wholly financed by fees. The risk management services offered by larger brokers can be a real added value for clients and can result in significant improvements for the client. This will usually result in the client obtaining more favourable terms from the insurance market for the risk.

There is room for both approaches. A solution may be that brokers, conscious of the need to keep up to date in a fast-changing field and to contain their own costs, make use of independent risk management consultants on a sub-contracted basis.

For all companies, their potential exposures and the related financial consequences are significant. Larger companies apply the full risk management process detailed in Figure 7.1 (and in Section A1) at a conscious level, while smaller companies may be less sophisticated in their approach. However, the broker can apply the risk management process as it gets to know the client's business and evaluates the extent to which the client should insure or self-insure.

Quick question 2

Outline why a broker needs a thorough understanding of a client's business when offering risk management advice.

Chapter 7

B Specialist risk consultancy services

Some insurers offer a risk management service within the insurance offering, but care should be taken to clarify this. For example, where a risk improvement could decrease the client's profit, is this suggestion being made for the benefit of the insurer or client? For this reason, many large brokers like to retain risk management advice for the benefit of the client as an optional additional service, and use insurers' services to identify underwriting information.

The following sections are an overview of the specialist risk consultancy services that may be available through brokers. Some brokers may provide the service 'in-house', while others may have arrangements with specialist companies.

If a broker offers specialist risk consultancy as a professional service and charges professional fees, the Central Bank would consider this to be an unregulated activity. Therefore, the Central Bank requires the broker to remove the regulatory statement from all correspondence, advise the client that this service is outside of the firm's regulated activities and is not covered by the CPC in respect of consumer protection or by statutory compensation schemes. On the broker's website, there should be a separate section for any unregulated activity and that section should not have a regulatory statement.

We recall that TIB has recently recruited an in-house experienced risk control surveyor. This surveyor will offer the following services to TIB's clients: risk identification surveys, health and safety consultancy and motor fleet risk management.

B1 Property surveys

This is the most traditional of risk consultancy services and, where provided by a broker, is generally an 'in-house' service. Property surveys provide a clear example of the two related but separate functions of underwriting surveys and risk management surveys, as outlined in Table 7.2.

Table 7.2 Property surveys

Underwriting surveys	These determine the risk information needed by insurers to underwrite the risk, i.e. buildings construction, occupation, protections, sprinklers and housekeeping. Good-quality, up-to-date surveys can help to obtain the most competitive terms, particularly in a hard market.
Risk management surveys	These provide the client with an expert assessment of the risks that exist in their occupation of the premises, together with practical recommendations for controlling and eliminating those risks.

Just think

How could TIB's risk control surveyor help Best BeanZ, given their extensive property business?

TIB's risk control surveyor can offer Best BeanZ assistance in:

- Risk management surveys to identify risks and provide guidance on how Best BeanZ could reduce, or even eliminate, its hazards – resulting in a safer workplace, a lower accident and claims rate and, ideally, lower premiums
- Underwriting surveys to allow potential insurers to understand the features, processes and operations of Best BeanZ, and lead to more competitive premiums and/or premium discounts for risk improvement features, e.g. monitored fire alarms.

B2 Business continuity plans

A broker can provide assistance with business continuity plans as an extension of its property survey or as a dedicated service. The aim is to assist the client in understanding the risks that could have an impact on their business, e.g. a major fire at their central warehouse, a failure of utilities or a cyber-attack on their head office. The broker will then help the client create a plan to deal with such events, should they occur. This is to ensure the business is up and running again in the shortest possible time and that it maintains a positive communication with clients and suppliers.

B3 Business interruption reviews

These reviews examine a client's business model (e.g. use of sub-contractors for manufacturing) and assess their dependence on their own clients and suppliers. Taking account of the client's business continuity plans, the aim of the business interruption review is to assist the client in identifying the risks to the business and quantifying the correct sum insured. In addition, the indemnity period (i.e. length of time the business turnover/profits could be negatively affected following an insured event) will form a vital component.

B4 Health and safety in the workplace

Following the growth of health and safety legislation, some of the larger brokers extended their risk management offering to include workplace liability (including use of company vehicles, which are also a 'place of work'). However, this exponential growth in legislation and regulation has made it difficult for a broking firm to maintain the competency levels needed in all possible occupations. Where a broker does provide workplace liability consultancy, it is likely that, having identified a particular risk (e.g. the need for noise assessments), it will contract out any further reviews and recommendations to a specialist provider.

Just think

In terms of workplace liability, how could TIB's risk control surveyor help Best BeanZ in regard to the employees in its property and manufacturing businesses?

There are many opportunities for TIB's risk control surveyor to assist Best BeanZ in relation to its employers' liability risks. These include: conducting risk management surveys, helping Best BeanZ to complete a risk assessment for its safety statement, advising on trends in employers' liability claims against other employers in its industry and providing management information to assist in maintaining a safe workplace.

B5 Liability surveys

A similar situation applies with general liability surveys, in which a broker may identify a particular product risk and may sub-contract further investigation to, say, an expert in food safety and product recall.

B6 Motor fleet risk management

Where a broker is involved in motor fleet risk management, it is likely that it will contract out most of the following services:

- Review of driver handbooks and fleet risk management procedures
- Defensive or advanced driving training for fleet drivers
- 'At work' assessments, as part of workplace liability risk management
- Use of telematics, to monitor and improve driving skills.

B7 Environmental risk surveys

The field of environmental risk surveys is highly specialised and involves assessing the environmental impact of a client's premises and business activities. This can include pre-existing and historical exposures and is particularly helpful during the purchase or sale of a business or premises.

Just think

Before reading on, can you think of any claims assistance activities where a broker goes beyond processing a client's claim?

Chapter 7

B8 Post-loss control services

Some brokers go beyond simply processing a client's claim to providing active assistance in the event of a loss. Examples include: quantifying and submitting a claim, mitigating any further damage, and undertaking detailed negotiations with loss adjusters and other parties. In such cases, brokers are virtually acting as loss assessors. This service is sometimes referred to as 'claims advocacy' (Chapter 5G2a).

B9 Disaster recovery services

As an extension to post-loss control services, some brokers provide specific assistance in the event of a major loss, e.g. a product recall or transport accident. Services may include specialist public relations support through to full crisis management.

C Summary

This chapter concluded our overview of general insurance broking practice, by looking at the more common risk management and consultancy services provided within the broking community. As new risks emerge (e.g. cyber liability and computer crime), brokers will continue to develop innovative and targeted solutions, along with specialist activity in particular areas, e.g. the renewable energy sector. Insurance and insurance broking continue to evolve to meet the changing needs of their clients and industry.

C1 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in this textbook. Use the 'End of chapter questions', 'Quick questions' and 'Sample exam questions' to quickly test what you have learned so far. Make a note of any topics/ areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

C2 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter's content when revising.

Remember: This module is examined by mixed assessment, which includes:

- An online mid-semester MCQ assessment (20 questions)
- An end-of-semester written exam paper (9 questions)

You can prepare for the end-of-semester written exam and test your knowledge by completing sample and past written exam papers.

To access these online learning supports, log into your Member Area of **www.iii.ie** and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 7. It should be noted that these end of chapter questions are revision questions to test your understanding of the material in the chapter just studied. They are not sample exam questions.

1. When beginning a risk management process, explain the reason for asking senior management to identify what they consider to be the main threats to the business.

2. Explain the term 'risk identification'.

3. Identify what the risk evaluation process is designed to assess.

4. Explain the purpose of risk reduction.

5. Explain what is meant by a 'captive insurer'.

6. Outline three reasons why Ireland has become a popular base for captive insurers.

7. List three advantages to a parent company of owning a captive.

8. List three specialist risk consultancy services a broker may offer.

9. Outline the objectives of a business interruption review.

10. Describe some disaster recovery services that a broker can provide.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. By asking senior management and/or other appropriate employees to describe the main threats to the business, the broker can ensure that the risk management programme allocates priorities correctly, that it is given structure and order and is achieved in the most economical way.

2. Risk identification isa combination of techniques to highlight and examine all of the organisation's activities, their interrelationship and potential losses, in order to identify features that may prove hazardous to its future business plans.

3. The risk evaluation process is designed to assess the:
    - Financial value of a given risk
    - Probability of a loss
    - Impact of self-insurance and deductibles
    - Cost-effectiveness of loss elimination, reduction and control measures
    - Viability of risk transfer to insurers or to a facility such as a captive.

4. Risk reduction aims to actively reduce the likely frequency and severity of a hazard that cannot be eliminated.

5. A captive insurer is an authorised insurer set up by a non-insurance parent company to underwrite its own insurance risks.

6. Ireland is a popular base for captive insurers because (any three of the following):
    - It is a recognised leading captive domicile centre with 25 years' history and expertise.
    - The Irish market has a deep pool of experienced and emerging talent with a wealth of reinsurance expertise, with specific captive market expertise.
    - There is a strong networking environment for captives, as well as representing the interests of the captive community.
    - Geographically, it is an excellent location to access EU/European, US, Middle Eastern and Asian markets.
    - Captives can avail of EU freedom of establishment or freedom of services from a base in Ireland, without the need for local representation in EU/EEA countries and can cover pan-European insurance programmes on a direct basis.
    - The Central Bank provides a robust supervisory function, which incorporates the principle of proportionality for the captive market.
    - Ireland has double taxation treaties with more than 70 countries and a low corporation tax rate. Federal Excise Tax exemption is in place under the US-Ireland double taxation treaty (subject to certain conditions being met). No Irish stamp duty or insurance premium tax or levies apply where a risk is located outside Ireland.

7. Advantages to a parent company of owning a captive are the ability to:
   - Reduce insurance costs
   - Gain access to reinsurers
   - Provide solutions for less insurable risks
   - Provide greater risk management control and control of own loss data
   - Retain profit within the parent company that would normally pass to the insurance market
   - Fund retained risk in a structured manner
   - Act as a focus for risk management effort
   - Deal with claims in a more efficient and timely manner
   - Provide cover for certain risks that the conventional insurance market will either not write or charge an unacceptable premium for
   - Access the possibly cheaper, more flexible reinsurance market
   - Benefit from lower tax rates, depending on where the captive is based (e.g. Isle of Man).

8. Specialist risk consultancy services (any three):
   - Property surveys
   - Business continuity plans
   - Business interruption reviews
   - Health and safety in the workplace
   - Liability surveys
   - Motor fleet risk management
   - Environmental risk surveys
   - Post-loss control surveys
   - Disaster recovery services.

9. A business interruption review examines a client's business model and assesses their dependence on their own clients and suppliers. Taking account of the client's business continuity plans, it assists the client in identifying the risks to the business, quantifying the correct sum insured and estimating the indemnity period.

10. As an extension to post-loss control services, some brokers provide specific assistance in the event of a major loss, e.g. a product recall or transport accident. Services may include specialist public relations support through to full crisis management.

Chapter 7

Answers to quick questions

1. The two factors that your client needs to consider are:
   - The single largest amount it can afford to retain
   - The total value (aggregate) of losses they can afford to retain over a given period.
2. Risk management is about securing the most economic and efficient management of risk. In this context, it is vital that a broker has a full understanding of a business and the risks it faces. This will mean that the broker's advice is realistic and reflective of the philosophy and priorities of the business.

Sample exam questions

Question 1

a) Define what is meant by a 'captive insurer'.

(2 Marks)

b) State **eight** reasons why Ireland is seen as a popular base for captive insurers.

(8 Marks)

Total: 10 Marks

Question 2

Briefly describe the specialist risk consultancy services a broker may offer to a client in relation to:

a) business continuity plans

(5 Marks)

b) health and safety in the workplace.

(5 Marks)

Total: 10 Marks

Your answers

Sample answers

The answers set out below show the main points to be considered by students in answering the question. In some cases, a well-reasoned alternative view could earn good marks.

Question 1

(a)

A captive is an authorised insurer set up by a non-insurance parent company to underwrite its own insurance risks. Usually, a captive is either a wholly-owned subsidiary of the client's business or part of the same parent group.

(2 Marks)

(b)

The popularity of Ireland as a base for captive insurers has been summarised by the Dublin International Insurance & Management Association as follows:

- Ireland is a recognised leading captive domicile centre with 25 years' history and expertise.
- The market has a deep pool of experienced and emerging talent with a wealth of reinsurance expertise.
- Ireland is a strong networking environment for captives, as well as representing the interests of the captive community.
- Geographically, Ireland is an excellent location to access EU/European, US, Middle Eastern and Asian markets.
- Captives can avail of EU freedom of establishment or freedom of services from a base in Ireland, without the need for local representation in EU/EEA countries and can cover pan-European insurance programmes on a direct basis.
- The Central Bank provides a robust supervisory function, which incorporates the principle of proportionality for the captive market.
- Ireland has double taxation treaties with more than 70 countries and a low corporation tax rate. Federal Excise Tax exemption is in place under the US–Ireland double taxation treaty (subject to certain conditions being met). No Irish stamp duty or insurance premium tax or levies apply where a risk is located outside Ireland.

(8 Marks)

Reference Chapter 7A2b2 **Total: 10 Marks**

Question 2

(a)

A broker can provide assistance with business continuity plans as an extension of its property survey or as a dedicated service. The aim is to assist the client in understanding the risks that could have an impact on their business, e.g. a major fire at their central warehouse, failure of utilities or a cyber-attack on their head office. The broker will then help the client to create a plan to deal with such eventualities, to ensure that the business gets back up and running in the shortest possible time and that a positive communication is maintained between clients and suppliers.

(5 Marks)

(b)

Following the growth of health and safety legislation, some of the larger brokers extended their risk management offering to include workplace liability (including use of vehicles, which are also a 'place of work'). However, this exponential growth in legislation and regulation has made it difficult for a broking firm to maintain the level of competency needed in all possible occupations. Where a broker does provide workplace liability consultancy, it is likely that, having identified a particular risk (e.g. the need for noise assessments), it will contract out any further reviews and recommendations to a specialist provider.

(5 Marks)

Reference Chapter 7B2 & B4 **Total: 10 Marks**

Chapter 7

Referenced websites, legal cases and legislation

Study Tip

Do you wish to find a specific website, legal case, acronym, key term or legislation within this textbook?

You can do a quick find in the module eBook, which is available on **Connect** via your Member Area Login at **www.iii.ie**.

Websites

Brokers Ireland
www.brokersireland.ie

Central Bank of Ireland
www.centralbank.ie

Central Bank of Ireland Registers
www.registers.centralbank.ie

Data Protection Commission
www.dataprotection.ie

Insurance Institute of Ireland
www.iii.ie

Insurance Ireland (EU)
www.insuranceireland.eu

Irish Statute Book
www.statutebook.ie

Law Reform Commission
www.lawreform.ie

Lloyd’s
www.lloyds.com

Managing General Agents’ Association
www.mgaa.co.uk

Revenue Commissioners
www.revenue.ie

Legal cases

Dunbar v A & B Painters (1986)

Kvaerner plc v Staatssecretaris van Financiën (ECJ 1999)

Rozanes v Bowen (1928)

Winter v Irish Life Association plc (1995)

Legislation

Central Bank (Individual Accountability Framework) Bill 2021

Central Bank (National Claims Information Database) Act 2018

Consumer Credit Act 1995 (as amended)

Consumer Insurance Contracts Act 2019

Credit Reporting Act 2013

Criminal Justice Act 2010

Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010-2021

Data Protection Acts 1988–2018 (DP Acts)

Insurance Act 1964

Insurance (Amendment) Act 2018

Investment Intermediaries Act 1995 (as amended)

Marine Insurance Act 1906

Road Traffic Act 2010

Regulations (EU)

Consumer Mortgage Credit Agreements Regulations 2016

Data Protection (Access Modification) (Health) Regulations 1989

EU Commission Implementing Regulation 2017

General Data Protection Regulation 2016

Insurance Distribution Regulation 2018

Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018

Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007

Directives (EU)

Insurance Distribution Directive 2016

Solvency II Directive 2009

Acronyms

alternative risk transfer	ART
annual percentage rate	APR
anti-money laundering	AML
British Insurance Brokers Association	BIBA
Broker Federation of Ireland	BFI
business continuity planning	BCP
business interruption	BI
Central Credit Register	CCR
Competition and Consumer Protection Commission	CCPC
construction, occupancy, protection and exposure	COPE
Consumer Credit Act 1995	CCA
Consumer Mortgage Credit Agreements Regulations 2016	CMCAR
Consumer Protection Code	CPC
Consumer Protection Risk Assessment	CPRA
continuing professional development	CPD
counter-terrorist financing	CTF
Criminal Justice Act	CJA
customer due diligence	CDD
Danish Financial Services Authority	DFSA
Data Protection Commission	DPC
Declined Cases Agreement	DCA
difference in conditions (clause)	DIC
difference in limits (clause)	DIL
directors and officers liability insurance	D&O
electronic data interchange	EDI
employers' liability	EL
estimated maximum loss	EML
European Economic Area	EEA
evidence of cover	EOC
Federal Excise Tax (US)	FET
financial sanctions	FS
Financial Services and Pensions Ombudsman	FSPO
General Data Protection Regulation 2016	GDPR
Individual Accountability Framework	IAF

Insurance Compensation Fund	ICF
Insurance Distribution Directive 2016	IDD
Insurance Distribution Regulation 2018	IDR
insurance product information document	IPID
Integrated Information Data Service	IIDS
International Underwriting Association	IUA
Investment Intermediaries Act 1995	IIA
know your client	KYC
long-term agreement	LTA
long-term undertaking	LTU
managing general agent	MGA
mid-term alteration	MTA
Motor Insurers' Bureau of Ireland	MIBI
Motor Insurers' Insolvency Compensation Fund	MIICF
multiple-choice questions	MCQ
National Fleet Database	NFD
National Flood Insurance Program	NFIP
no claims discount	NCD
Private Motorists Protection Association	PMPA
Probability Risk and Impact SysteM	PRISM
professional indemnity insurance	PII
public finance initiative	PFI
public liability	PL
public loss assessor	PLA
risk mitigation programme	RMP
Senior Executive Accountability Regime	SEAR
service level agreement	SLA
small-to-medium/small-and-medium-sized enterprise	SME
Standard & Poor's	S&P
statement of fact	SOF
Terms of Business	TOB
Terms of Business Agreement	TOBA
total cost of risk	TCOR
United Kingdom	UK
United States	US
value added tax	VAT

Glossary of key terms

admitted policy	a policy issued or coverage provided by an insurer to a policyholder domiciled in a territory where the insurer is licenced, under which an insurer can pay claims and/or defend an insured in that particular country
advice	a personal recommendation to a person, whether at their request or at the initiative of the firm, in the course of performing a relevant function **Minimum Competency Code 2017 (Definitions)**
adviser (advisor)	one who is involved in the advising process
agency	facility that allows an individual, partnership or company to represent an insurer in terms of the distribution of insurance products, claims handling and dealing with mid-term alterations
agency agreement	agreement between a principal (insurer) and an agent (broker) setting out the basis on which they will conduct business and binding the insurer to later agreements made by the broker
agent	one who is authorised by a principal to bring that principal into a contractual relationship with a third party
aggregate deductible	usually a multiple of the individual deductible, used to limit the financial exposure of an insured with a substantial deductible who suffers several losses in a policy year (sometimes known as an 'aggregate limit')
ancillary insurance intermediary	one whose principal professional activity is not insurance distribution but who provides particular insurance products that are complementary to a good or service
annual percentage rate	calculation of the overall cost of a loan expressed as an annual rate: • Representing the actual yearly cost of the funds borrowed • Taking into account all the costs during the term of the loan, including any set-up charges and the interest rate
basis of contract clause	a declaration on an insurance proposal form or insurance contract stating that representations made by the policyholder (insured) are true and accurate
bordereaux	detailed monthly report or memorandum sent by the broker to the insurer showing details of the risks accepted, including the name, risk details (sum insured, limits of indemnity) and how the premium was calculated
broker	an insurance intermediary that provides its principal regulated activities on the basis of a fair analysis of the market **Consumer Protection Code 4.18**
broker management system	the evolution of quotation engines since the advent of electronic data interchange; term used by Applied Systems, Open GI and SSP and ComQuote

broker network	a grouping of insurance brokers who use their collective buying power to obtain better terms and conditions, improved service and higher levels of brokerage from insurers for their clients; may also develop own-branded products
captive insurer	an authorised insurer set up by a non-insurance parent company to underwrite its own insurance risks
catastrophe (cat) bonds	a debt instrument in which investors take on the risks of a specified catastrophe or event occurring, in return for attractive rates of interest
Central Bank of Ireland	financial regulatory body responsible for the authorisation and supervision of financial service providers in the Republic of Ireland
claims advocacy	role played by brokers, which involves assisting and advising the client if there are any problems with an individual claim or policy cover
claims experience	detailed breakdown of past losses, giving details of paid and outstanding claims (ideally confirmed by the holding insurer)
client	a buyer of financial services/products. Client can include, for example, individuals, firms, organisations or clubs. The terms 'client' and 'customer' are interchangeable. We use the term 'client' extensively in this textbook, especially when examining the activities of insurance intermediaries (and advisers working in intermediary firms).
co-insurance	proportional risk sharing between insurers
combined policy	type of policy that groups together a number of separately underwritten covers in one contract
Competition and Consumer Protection Commission	an independent statutory body that enforces competition and consumer protection law in Ireland
compensation scheme	a statutory or voluntary scheme that makes payments to affected persons (subject to limits and eligibility criteria) following the failure of a financial service provider
complaint	expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with: a. The provision or offer of the provision of a product or service to a consumer by a regulated entity b. The failure or refusal of a regulated entity to provide a product or service to a consumer **Consumer Protection Code (Definitions)**
condition precedent to contract	a condition or event that must occur before a specific contract is considered in effect or any obligations are expected of either party
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 its client, but favours the firm/individual

consumer	a. a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (includes partnerships and other unincorporated bodies such as clubs, charities and trusts), or b. incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided they are not part of a group having a combined turnover of more than €3 million) and … includes a potential ‘consumer’. **Central Bank Minimum Competency Code and Consumer Protection Code** a. a natural person who is acting for purposes that are wholly or mainly outside his or her trade, business, craft or profession, or b. a person or group of persons having an annual turnover of €3 million or less in the financial year preceding the year in which such person or persons enters into a contract of insurance, provided that such person or persons shall not be a member of a group of persons having a combined turnover greater than €3 million, and … includes both a consumer who at the pre-contractual stage of a contract of insurance proposes to enter into a contract of insurance and also a consumer who has entered into a contract of insurance, and includes, where relevant, an ‘average consumer’ **Consumer Insurance Contracts Act 2019**
Consumer Protection Code	code issued by the Central Bank, setting out requirements that regulated firms must comply with in order to ensure a similar level of protection for consumers
contingent commission	a commission linked to volume of sales or profitability
continuing warranty	a warranty applied to an insurance policy where the insured promises they will continue to do something or that a state of affairs will continue to exist, i.e. to ensure that some aspect of good housekeeping or good management is observed by the insured
continuing professional development	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 Minimum Competency Code
contract	voluntary agreement between two or more parties that is enforceable at law as a binding legal agreement
coverholder	an entity (e.g. broker or MGA) to which an insurer gives delegated binding authority
cross-selling	to sell related or complementary products to a client (e.g. an insurance distributor offers an insurance product along with a non-insurance product)

customer	any person to whom a regulated entity provides or offers to provide a product or service (subject to this Code), and any person who requests such a product or service **Consumer Protection Code (Definitions)**
data controller	a natural or legal person who controls, and is responsible for, the keeping and use of personal information on a computer or in structured manual files
data processor	a natural or legal person, public authority, agency or any other body that processes personal data on behalf of the controller, but does not exercise responsibility for, or control over, what happens to the data
Data Protection Commission	office established under the **Data Protection Act 1988**, which is responsible for enforcing obligations placed on data controllers, regarding how they obtain and use personal data and information and upholding the rights of individuals as set out in the Act
data subject	a living individual who is the subject of personal data
Declined Cases Agreement	an agreement among motor insurers, whereby motorists who experience difficulty obtaining motor insurance (after a minimum of three attempts) can apply for cover under the DCA programme as operated by Insurance Ireland
delegated binding 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
difference in conditions clause	policy designed to broaden coverage by providing additional limits for specific perils not adequately provided by standard markets, providing coverage for perils that are excluded on standard coverage forms, or supplementing international policies written by admitted insurers in the relevant foreign countries
difference in limits clause	a provision contained in a master international insurance programme that provides coverage for the difference in limits between the local underlying policies and the master international policy
differential pricing	where customers with a similar risk and cost of service are charged different premiums for reasons other than risk and cost of service
directors and officers liability insurance	insurance cover to protect individuals when they are held personally liable for their actions as a director or officer of a company under a particular legislation
durable medium	any instrument that allows information to be stored and accessible for future reference, for a required period of time, and prevents the stored information from being changed or reproduced
evidence of cover	proof or acknowledgement that an insurance policy is in place at the inception of cover, while policy documentation is being prepared
excess/deductible	first part of each and every claim that must be paid by the insured
excess layer	a policy designed to provide increased limit of liability over the primary insurance cover

facultative reinsurance	individual reinsurance placements, where there is no prior obligation upon reinsurers to accept a part of the risk; type of cover for individually large or unusual risks that are typically excluded from standard reinsurance treaties
fair analysis (of the market)	providing services on the basis of a sufficiently large number of contracts and product producers [insurers] available on the market to enable the intermediary to make a recommendation in accordance with professional criteria, regarding which contract would be adequate to meet the consumer's needs **Consumer Protection Code (Definitions)**
fair and personal analysis (of the market)	advice given on the basis of an analysis of a sufficiently large number of contracts available on the market, to enable the intermediary to make a recommendation, in accordance with professional criteria, as to which insurance contract adequately meets the customer's needs **Insurance Distribution Regulations 2018 (34) (4)**
fiduciary duty	in the insurance context, the legal duty and obligations placed on the agent as a result of having undertaken to perform certain activities on behalf of the principal; forms the basis of a fiduciary relationship that is recognised by law as being based on trust and responsibility
fiduciary relationship	a relationship recognised by law as being based on trust and responsibility (which, in the insurance context, means that legal duties and obligations are placed on the agent as a result of, or having undertaken to, perform certain activities on behalf of the principal)
financial sanctions	restrictive financial measures imposed on individuals or entities in an effort to curtail their activities and to exert pressure and influence on them (also includes restrictions on trade, travel or civil aviation)
Financial Services and Pensions Ombudsman	statutory office that deals independently and impartially with unresolved complaints from consumers about the conduct of pensions providers and regulated financial service providers (also refers to the FSPO Bureau or the Office of the FSPO)
fraud	wrongful or criminal deception intended to result in financial or personal gain
freedom of services	An insurer or insurance intermediary may provide the services for which it is registered in its home country/member state, throughout the EU, through the free provision of services on a cross border basis (i.e. without establishing a permanent presence)
general insurance programme	the design of an insurance solution for a large corporate client
global programme	an insurance solution for a large multinational client that could operate in different and diverse locations requiring a varied combination of cover
hard currency	currency that is not likely to depreciate suddenly or to fluctuate greatly in value
greenwashing	conveying a false impression or providing misleading information about how a firm's products are more environmentally sound

Insurance Compensation Fund	Irish insurance guarantee fund (financed by a levy on most non-life insurance policies), designed to protect consumers of authorised non-life insurers that go into liquidation and are unable to pay insurance claims
insurance distribution	any activity involved in advising on, proposing, or carrying out other work in preparation for or conclusion of contracts of insurance, or of assisting in the administration and performance of such contracts Adapted from **Insurance Distribution Regulations 2018 (Interpretation)**
insurance distributor	any insurance intermediary, ancillary insurance intermediary or insurance undertaking
insurance intermediary	any person or firm, other than an insurer or reinsurer or their employees, but including an ancillary insurance intermediary, which for remuneration, takes up or pursues the activity of insurance distribution and is subject to the **Insurance Distribution Regulations 2018**
InsuranceLink	a database of past claimants, maintained by Insurance Ireland
insurance premium government levy	tax applying to most general insurances where the insured risk is located in Ireland, but does not apply to reinsurance contracts, private health insurance policies, certain marine policies and engineering inspection insurances
insurance product information document	documentation that contains the relevant information about the insurance product in a prescribed and simple format to allow the client to make an informed decision, while taking into account the complexity of the insurance product and the type of client
insurance provider/carrier	a regulated entity that provides insurance cover as outlined in the certificate of insurance
insurer	a risk-carrying regulated entity/firm (product producer)
investment intermediary	an investment business firm (authorised by the Central Bank under the **Investment Intermediaries Act 1995**) to provide investment business services and investment advice to (i) product producers and/or (ii) non-product producers (e.g. a Lloyd's broker)
key information	any information that is likely to influence a consumer's actions with regard to a product or service
law of agency	law governing the agent–principal relationship
limited analysis (of the market)	providing of services on the basis of a limited number of contracts and product producers [insurers] available on the market, i.e. while not tied to one product producer, the services are not provided on the basis of a fair analysis of the market **Consumer Protection Code (Definitions)**
lineslip	a scheme or facility placed with Lloyd's underwriters, with or without delegated binding authority, and consists of contract details, subscription agreements, taxation and regulatory information
Lloyd's market	insurance market founded in the 18th century to provide cover for various risk types

CIP-08_EndMatters.indd 288 06-05-2022 17:12:34

loss adjuster	independent expert in processing claims from start to finish (and appointed by the insurer)
loss assessor	an expert in dealing with insurance claims, appointed by the insured to prepare and negotiate a claim on their behalf
loss experience	information detailing the loss sustained by an insured over a certain period of time
loss ratio	indicator of an account in terms of whether or not it is in profit, calculated by dividing the incurred claims by the earned premium, and expressed as a percentage
managing agent	term used by Lloyd's to describe a company set up specifically to manage one or more syndicates on behalf of the members, having responsibility for employing and overseeing underwriters and managing the syndicate's day-to-day operations; may also authorise third parties (coverholders) to accept insurance risks directly on the syndicate's behalf (see 'managing general agent')
managing general agent (agency)	an intermediary that has been given delegated underwriting authority by a risk carrier or insurer to accept risks on their behalf and to perform certain functions ordinarily handled by insurers, e.g. underwriting, appointing brokers and, in some circumstances, settling claims
material change	changes to the risk that are extensive enough to render the risk as no longer what the insurer agreed to cover
material fact	every circumstance that would influence the judgment of a prudent insurer in fixing the premium or determining whether it will take the risk **Marine Insurance Act 1906, Section 18(2)**
mid-term administration	changes made to a policy between the inception/renewal date and expiry date, when a change of risk occurs
misrepresentation	untrue statement of fact, either innocent, negligent or fraudulent, made during negotiations with another contracting party
money laundering	process by which criminals and terrorists convert money that has been obtained illegally into apparently legitimate funds
Motor Insurers' Bureau of Ireland	body set up between motor insurers and the government, which aims to ensure that innocent victims of road accidents are properly compensated in circumstances where no effective motor insurance is in force (e.g. uninsured or untraced vehicles)
multi-line (cross-class) contract	a combined policy that houses a variety of covers under a single contract with a deductible that operates across the whole policy with a common aggregate deductible and policy limit
multinational programmes	an insurance solution for a large multinational client that could operate in different and diverse locations requiring a varied combination of cover
no claims bonus/discount	a reduction of premium for successive claim-free years, which increases to a maximum over a period of (usually) 5 years, held in the client's own name

CIP-08_EndMatters.indd 289 06-05-2022 17:12:35

non-monetary benefit	a benefit (non-financial) that is capable of enhancing the quality of the service provided to a consumer
package policy	single policy containing different types of cover, underwritten and rated on an inclusive basis
passporting	EU system whereby an insurer/intermediary established and authorised in one member state can sell to residents of another member state by either establishing a branch there or by way of cross-border services
personal consumer	a consumer who is a natural person acting in their private capacity (outside their business, trade or profession)
personal data	data relating to a living individual who can be identified from this data
pound-swapping	premium payments made, which return in settlements from numerous, largely avoidable small claims
premium	payment by the insured to the insurer, which compensates the insurer for bearing the insured's risk
premium allocation	where a client's premium is allocated across regions, countries or subsidiaries by a broker
price walking	where customers are charged higher premiums relative to the expected costs the longer they remain with an insurer
principal	a person for whom another acts as agent
principal regulated activity	at least 75% of a regulated firm's total turnover on an annual basis comes from regulated activities that are provided on the basis of a fair analysis of the market **Consumer Protection Code 2012 Guidance, 3.4**
Probability **R**isk and **I**mpact **S**yste**M**	a formal, risk-based framework designed by the Central Bank to provide a structured approach to assessing financial service providers based on impact and probability
product producer	any regulated entity that produces, manufactures or packages a product of a financial or investment nature and is not limited to a product producer as defined in **the Investment Intermediaries Act 1995** **Consumer Protection Code (Definitions)**
professional indemnity insurance	cover for civil liability arising from a breach of professional duty, including negligent or inadequate advice given by the policyholder or their predecessors (also known as 'errors and omissions insurance')
proposal form	a type of questionnaire about the subject matter of insurance, completed before an insurance contract is entered into
proposer	a person, firm or organisation applying for insurance but not yet a policyholder/ an insured
questionnaire	specially constructed form used by insurers to deal with commonly encountered hazards for groups of risks
regulated activities	the provision of products or services by a regulated entity and which are subject to the regulation of the Central Bank

CIP-08_EndMatters.indd 290 06-05-2022 17:12:35

regulated entity	a financial service provider authorised, regulated or supervised by the Central Bank or other EU or EEA member state, that is providing regulated activities in the state
reinsurance broker/ intermediary	any person, other than a reinsurer or its employees, who for remuneration takes up or pursues the activity of reinsurance distribution
retail intermediary	a regulated entity/firm that receives and transmits orders for certain financial products and/or gives advice about those products
risk control	where an insured evaluates potential losses and takes action to reduce or eliminate such threats
risk improvement	a requirement insisted on by the insurer as a condition for accepting the risk
risk management	the identification, analysis and economic control of those risks that can threaten the operations, assets and other responsibilities of an organisation
risk transfer	the shifting or distributing of risk to other parties, mainly through insurance policies or contractual provisions
scheme	exclusive arrangement a broker has with an insurer to retail specialist insurance cover to the public
self-insured programme	where a corporate entity provides resources to form active risk retention of claims
service level agreement	an agreement made between the intermediary and the client for specific activities over and above the standard agreement in the Terms of Business
slip	document created by a Lloyd's broker, showing underwriters' stamps, the percentage of the risk written by each underwriter ('lines'), underwriting references, and other details such as specific terms and conditions
statement of fact	document generated by an insurer, recording the answers from a proposer to specific questions asked by a telesales operator or insurance broker or on a website, in response to an enquiry for a quotation, thus clarifying the basis on which insurance is accepted and what conditions apply
statement of suitability	written statement setting out the reasons why a product or service (or options, if listed) offered to a consumer is considered to be (most) suitable for that consumer
sub-broker	a broker that sells insurance to another broker through a scheme arrangement
subjectivities	conditions placed on an insurance quote, requiring receipt and acceptance of specific items
subscription market	type of market where risks are shared among a group of underwriters working in an insurance market, e.g. Lloyd's
subscription risk	a risk that is covered by a number of insurance providers/carriers with a lead insurance provider/carrier and others

subsidence	gradual movement or sinking of land on which premises stand
Summary of Commissions (document)	a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to an intermediary as agreed with product producers
survey report	report generated by an insurer or insurer's contractor to identify aspects of the risk on cover
Terms of Business	document in which a regulated entity sets out the basis on which it will conduct business with consumers **Consumer Protection Code (Definitions)**
terrorist financing	the provision, collection or receipt of funds with the intent or knowledge that the funds will be used for the benefit of a terrorist group to carry out an act of terrorism (or any act intended to cause death or serious bodily injury)
third-party claim	a claim brought against the insured party by a person or entity (party) that was not connected with the original policy
tied insurance intermediary	any intermediary who: a. undertakes insurance or reinsurance distribution for and on behalf of one or more insurers/reinsurers or other intermediaries in the case of insurance products that are not in competition b. acts under the responsibility of those insurers/reinsurers or other intermediaries, and c. is subject to oversight of compliance with conditions for registration by the insurer/reinsurer or other intermediary on whose behalf it is acting Adapted from **Insurance Distribution Regulations 2018**
umbrella policy	a policy or insurance programme that operates independently of primary levels of cover
undertaking	a regulated entity/firm (e.g. insurer, reinsurer, intermediary) holding an authorisation via the Central Bank
underwriting	process of risk pooling, selection (choosing who and what to insure) and assessment of individual risks that meet the insurer's risk criteria
utmost good faith	the positive duty to voluntarily disclose, accurately and fully, all facts material to the risk being proposed, whether requested or not
vulnerable consumer	a natural person who: a. has the capacity to make their own decisions but who, because of individual circumstances, may require assistance to do so (e.g. hearing impaired or visually impaired persons) b. has limited capacity to make their own decisions and who requires assistance to do so (e.g. persons with intellectual disabilities or mental health difficulties) **Consumer Protection Code (Definitions)**
wholesale broker	type of insurance broker that acts as an intermediary between a retail intermediary and an insurer, while having no contact with the insured