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DEVELOPING YOUR FUTURE IN FINANCE

QFA Regulation

LEVEL 7

Certificate in Professional Financial Advice

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QFA Regulation

2024/2025 Textbook

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Contents

01

Why Governments Regulate Financial Services

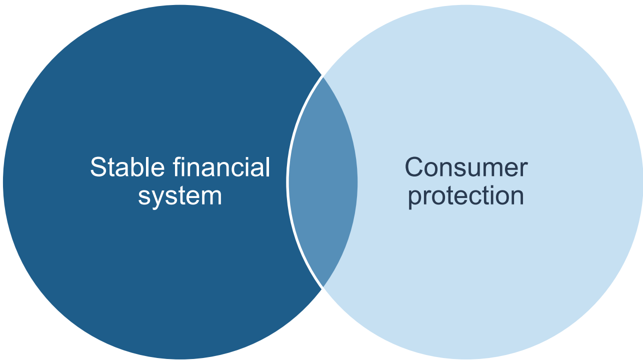
Chapter 1 introduces the four main types of regulation of financial services firms. The main functions of the Central Bank of Ireland are outlined including its enforcement powers. You will learn about the Competition and Consumer Protection Commission and its dual mandate of enforcing competition and consumer protection law.

Learning Outcomes – after studying this chapter you should be able to:
identify why Government seeks to regulate financial services firms and distinguish between structural, systemic, prudential and consumer protection regulation.
describe the main functions of the Central Bank of Ireland, including its enforcement powers.
describe the main functions of the Competition and Consumer Protection Commission in relation to the provision of financial services to consumers.

Chapter weightings	Number of questions which may appear		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	1	7	9

1.1 Why?

Governments regulate financial services providers to try to prevent failures of the free market system which could otherwise damage the stability of the overall financial system



(and hence the economy) and/or cause financial loss to consumers.

The Central Bank of Ireland is the main regulator of financial services firms established in the State.

The twin and related objectives of:

- A stable financial system, and
- Consumer protection,

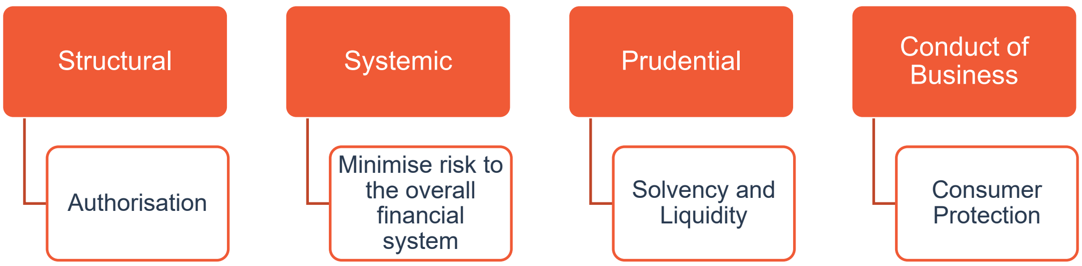
are reflected in its Mission Statement, '*We serve the public interest by maintaining monetary and financial stability while ensuring that the financial system operates in the best interests of consumers and the wider economy*.', and in its statutory objectives:

- *The stability of the financial system;*
- *The proper and effective regulation of financial service providers and markets, while ensuring that consumers of financial services are protected.*

1.2 Different Types of Regulation

There are four main types of regulation of financial services firms:

Different types of financial services regulation



1.2.1 Structural Regulation

Structural regulation covers the initial authorisation process to become a financial services firm. The purpose of structural regulation is to ensure that only those of sufficient financial standing, integrity, competence and experience can set up as financial services firms.

Under the EU Single Market financial system, structural regulation is the responsibility of the firm's *home* Member State, i.e., the State where the firm is legally established. Once authorised in one EU Member State, banks, insurance companies, insurance intermediaries and investment funds are usually free to conduct equivalent business in other EU Member States, either on a cross-border basis (called '*freedom of services*') or by setting up a branch in that other State or States (called *'freedom of establishment*').

Example

A bank is set up in the Republic of Ireland. The Central Bank of Ireland authorised it.

This bank can accept deposits from investors in another EU Member State either on a cross-border basis (e.g., through the internet) or by setting up a branch in that other EU Member State.

This freedom to conduct financial services in other EU Member States is usually referred to as '*passporting*'.

1.2.2 Systemic Regulation

Systemic regulation seeks to ensure that risks to the overall financial services system are minimised.

A major failure in the financial services system could lead to a breakdown in public confidence in the financial system, leading to a sudden withdrawal of funds, and/or the collapse of a major financial institution, such as a bank or an insurance company.

In a classic scenario, it might begin with a run on an individual troubled bank, where depositors all attempt to withdraw their funds in panic at the same time. This is likely to undermine public confidence in other banks, possibly producing a domino effect throughout the system, domestically and perhaps beyond, as there is a 'flight to quality', with everyone seeking to move their funds to stronger banks, Governments and other low-risk assets, at home and abroad.

Financial regulators therefore try to create early warning systems and information networks in the hope that swift and early remedial action might limit systemic risk to the whole financial services system.

1.2.3 Prudential Regulation

Prudential regulation aims to establish that financial services firms comply with a set of rules designed to ensure their continuing solvency, liquidity and ability to meet their financial obligations to their customers. The rules cover prudential and financial stability, internal control arrangements and corporate governance.

So, for example, the Central Bank of Ireland requires:

- Some financial services firms (e.g., banks, insurance companies and investment firms) to maintain certain minimum levels of capital and free reserves, and

- All financial services firms to make regular financial returns to the Central Bank.

Under the EU Single Market financial system, ongoing prudential regulation of financial services firms operating cross borders is the responsibility of the regulatory authorities of the firm's Home Member State.

Example

ABC Life is a German life assurance company and operates in the Irish State through a Branch established here.

ABC Life's solvency (including its Branch in Ireland) is regulated by the regulatory authorities of its Home State, i.e. BaFin in Germany.

However, under the EU's Single Supervisory Mechanism (SSM), the European Central Bank (ECB) is the competent authority for banking supervision throughout the EU. The ECB is, therefore, the competent authority for the supervision of banks in Ireland.

Certain banks, referred to as Significant Institutions, are supervised directly by the ECB for prudential purposes. These banks currently include Bank of Ireland and AIB.

In the case of other, less-significant, banks, the Central Bank of Ireland supervises them directly for prudential purposes, while the ECB supervises them indirectly. In these cases, the ECB, which has ultimate responsibility for the functioning of the SSM, may issue guidelines to ensure consistent supervision or even take over the direct supervision for prudential purposes of an institution if it considers it necessary.

1.2.4 Conduct of Business Rules

Conduct of Business regulation aims to establish that there is protection for consumers dealing with financial services firms by specifying certain procedures, disclosure of information and competency requirements which must be followed by firms when dealing with consumers.

The Central Bank has issued a Consumer Protection Code which applies to certain financial services firms when dealing with consumers in the State for certain types of financial services.

Prudential regulation is the responsibility of a firm's 'home' Member State.

Conduct of business rules in a Member State are the responsibility of that 'host' State.

Under the EU Single Market financial system, conduct of business rules applying to dealings with consumers resident in an EU Member State are generally set by that Member State, i.e., referred to as the '*host'* Member State. As already indicated, the EU Member State where the provider is established and authorised is referred to as its '*home'* Member State.

Example

ABC Life is a German life assurance company and operates in the Irish State through a branch.

ABC Life's solvency (including its branch in Ireland) is regulated by the regulatory authorities of its home State, i.e. BaFin in Germany. Its home Member State is therefore Germany.

However, in its dealings with Irish consumers, it must comply with the Central Bank of Ireland's Consumer Protection Code and other relevant local regulatory requirements. In its dealings with consumers in this State, Ireland is the host Member State.

The local conduct of business and marketing rules which a financial services firm must comply with when dealing with consumers in that State are sometimes referred to as the '*common-good requirements*'.

Consumers are also protected by a variety of other measures, e.g., the Investor Compensation Act scheme, as well as the provision by the Competition and Consumer Protection Commission of independent information and surveys etc., to consumers on financial services charges and returns.

1.3 The Central Bank of Ireland

The Central Bank of Ireland is the main regulator of the provision of financial services in the State.

1.3.1 Main Functions

The main functions of the Central Bank of Ireland are:

- To regulate financial services firms operating in the State. These include:
  - Credit institutions, also known as banks.
  - Insurance companies, both life and general, and including reinsurance companies.
  - Insurance, investment, mortgage credit and mortgage intermediaries, sometimes referred to as 'retail' intermediaries.
  - Debt management firms.
  - Credit unions (through the Registrar of Credit Unions, who is part of the Central Bank).
  - Retail credit firms and home reversion firms.
  - Credit servicing firms.
  - MiFID investment firms.
  - Unit trusts and other collective investment schemes, including UCITS and non-UCITS funds, such as Alternative Investment Funds, and certain service providers to such collective investment schemes.
- Holding an inquiry into whether a regulated financial services firm, or persons concerned in its management, have not complied with financial services legislation.

- Monitoring the provision of financial services to consumers of those services to the extent that the Bank considers appropriate, for the purpose of protecting the public interest and the interests of consumers.

- Promoting and protecting the interests and welfare of consumers in relation to the prohibition of unfair, misleading or aggressive commercial practices by regulated financial services firms. This particular function, in relation to regulated financial services providers, is shared with the Competition and Consumer Protection Commission (see Section 1.4 following).

The Central Bank is required by law to perform its functions and exercise its powers in a way that is consistent with:

- The orderly and proper functioning of financial markets,

- The prudential supervision of providers of financial services, and

- The public interest and the interest of consumers.

1.3.2 Funding

The Central Bank imposes an annual levy on regulated financial services firms operating in the State, in order to pay for part of the cost of providing such regulation.

The objective of the levy is to raise, directly from the financial service providers it regulates, an increasing percentage each year of the budget attributed to the Central Bank's supervisory activities, with the objective of having 100% industry funding by 2024.

The following target rates of recovery of the cost of regulation apply for 2023 (collected in 2024):

- Credit Institutions are required to fund 100% cent of their supervisory costs.

- Insurance undertakings and investment firms are required to fund 100% cent of their supervisory costs.

- Investment funds are required to fund 100% cent of their supervisory costs.

- Retail intermediaries and debt management firms are required to fund 100% of their supervisory costs.

The method of calculation of the levy varies depending on the industry classification of a financial services provider. There are 12 categories (A-N):

- Category A: Credit Institutions;

- Category B: Insurance undertakings;

- Category C: Intermediaries and Debt Management Firms;

- Category D: Investment Firms;

- Category E: Investment Funds and Investment Fund Service Providers;

- Category F: Credit Unions;

- Category G: High-Cost Credit Providers (formerly Moneylenders);

- Category H: Approved Professional Bodies;

- Category J: Bureau de Change;
- Category L: Default assessment;
- Category M: Retail Credit Firms, Home Reversion Firms, and Credit Servicing Firms;
- Category N: Payment Institutions and E-Money Institutions.

Where a firm falls into more than one category, it must pay a levy for each category it falls into. For example, a credit union which is also an insurance intermediary must pay the Category F AND the Category C levies.

Some of the categories above are further divided into sub categories, to which different levies apply.

In most cases, the levy payable is related to a firm's size, importance and risk profile or its 'Impact Category'.

'Impact Category' is derived from the Central Bank's assessment of the potential impact of the failure of the provider on financial stability and consumers.

For example, for life insurance undertakings with an Irish head office, the levy for 2023 varies according to Impact Category as follows:

Impact Category	Ultra-high	High	Medium high	Medium low	Low
Levy	€4,393,100	€1,993,369	€455,784	€90,608	€28,147

1.3.3 Enforcement

When a financial services firm fails to comply with relevant legislation and codes of conduct issued by the Central Bank, this is referred to as a '*prescribed contravention'*.

For example, if a firm failed to comply with any provision of the Central Bank's Consumer Protection Code, this would be a '*prescribed contravention'*.

With regard to a possible contravention by a firm, there is a two-stage process:

1. The Central Bank conducts an inquiry into whether or not a prescribed contravention is occurring or has occurred,

   OR

   The firm acknowledges to the Central Bank that a prescribed contravention has occurred, or is still occurring, and has consented to the Central Bank dispensing with an inquiry and agrees to the imposition of a sanction.

2. Where a prescribed contravention is found to have occurred, either by inquiry or where the firm admits that the contravention has occurred, the Central Bank can then impose one or more sanctions on the firm.

The possible range of sanctions which can be imposed by the Central Bank where a prescribed contravention is found to have occurred include:

- A caution or reprimand;
- A direction to refund any charge or sum paid for the provision of a financial service by the firm;
- A fine to be paid to the Central Bank of up to the greater of €10 million and 10% of annual turnover, in the case of a corporate body or an unincorporated body, or €1 million, where the firm is a natural person; however, the fine cannot exceed such an amount as would cause a regulated financial services provider to cease business or cause an individual to be adjudicated bankrupt;
- A direction to cease committing the contravention; and/or
- An order to pay part or all of the costs of the Central Bank's inquiry and investigation;
- Suspension or revocation of authorisation.

A person involved in the '*management'* of a firm can also be subjected to inquiry and sanction by the Central Bank where, following an inquiry or where the person agrees, the person is found to have participated in the commission of a prescribed contravention by the firm. The possible range of sanctions in this case include disqualification from being concerned in the management of a regulated financial services provider for a specified period and a fine of up to €1 million.

Following the introduction of the Individual accountability framework in 2023, the Central Bank can now take enforcement action under the Administrative Sanctions Procedures directly against individuals for breaches of their obligations rather than only for their participation in breaches committed by a firm.

A finding by the Central Bank following an inquiry that a firm or member of management is committing or has committed a prescribed contravention and/or the level of sanction to be imposed by the Central Bank, can be appealed by the firm or individual involved to the *Irish Financial Services Appeals Tribunal.*

The *Irish Financial Services Appeals Tribunal* is an independent tribunal to which entities regulated by the Central Bank can appeal certain decisions (referred to in legislation as 'appealable decisions') made by the Central Bank, e.g., imposition of a sanction for non-compliance, refusal to grant authorisation, etc.

The regulated entity or the Central Bank may appeal a decision of *the Irish Financial Services Appeals Tribunal* to the High Court.

1.3.4 Redress for Consumers

Where the Central Bank is satisfied that there have been widespread or regular 'defaults' by a financial services firm, and that consequently customers of the firm have suffered, are suffering or will suffer financial loss or damage, the Central Bank may give the firm a direction requiring it to make appropriate redress to the customers involved.

The 'defaults' by the firm covered by this power are:

- Charging a customer an amount which the firm is not entitled to charge,
- Providing a customer with a financial service which the customer has not agreed to receive,

- Providing a customer with a financial service which was not suitable for the customer at the time when it was provided,

- Providing a customer with inaccurate information which influences the customer in making a decision about any financial service,

- A failure of any system or controls of the firm, or

- A prescribed contravention.

The redress which the Central Bank can direct the firm to make to the customers involved includes the actual or anticipated loss plus interest.

Example #1

The Central Bank is satisfied that DEF Bank has been systematically overcharging (through a computer systems error) its current account holders by levying a monthly charge on the accounts, which it was not entitled to charge under the agreed terms and conditions of the accounts.

The Central Bank could direct DEF Bank to make an appropriate refund to all such account holders, with interest.

Where the substance of a customer complaint has been dealt with by the Central Bank issuing a direction to the firm involved, that complaint cannot then be dealt with by the Financial Services and Pensions Ombudsman.

Example #2

Joe is a current account holder of DEF Bank above, who was overcharged. He has been refunded by direction given by the Central Bank to DEF Bank.

The Financial Services and Pensions Ombudsman cannot investigate a complaint from Joe about the same overcharging on his current account, as the complaint is deemed to have been dealt with by the direction issued by the Central Bank.

1.3.5 Registrar of Credit Unions

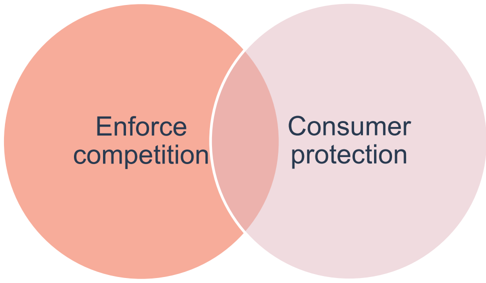
The Registrar of Credit Unions deals with the registration, regulation and supervision of Credit Unions.

The Registrar of Credit Unions is part of the Central Bank and acts as the '*delegate'* of the Central Bank in '*managing the performance and exercise of the functions and powers of the Central Bank under the Credit Union Act, 1997'*.

1.4 Competition and Consumer Protection Commission

The Competition and Consumer Protection Commission (CCPC) is an independent body which has a dual mandate to enforce competition and consumer protection law in the supply of goods and services to consumers, including financial services.

Some of its functions in relation to the provision of financial services to consumers are shared with the Central Bank.



1.4.1 Commercial Practices

The Consumer Protection Act 2007 makes illegal a wide range of *unfair*, *misleading* and *aggressive* commercial practices.

A ‘*commercial practice*’ is defined for this purpose as:

> *“... any conduct (whether an act or omission), course of conduct or representation by the trader in relation to a consumer transaction, including any such conduct or representation made or engaged in before, during or after the consumer transaction.”*

The CCPC shares with the Central Bank the function of regulating unfair, misleading or aggressive commercial practices by financial services firms.

1.4.2 Promoting the Interests of Consumers of Financial Services

Under the Competition and Consumer Protection Act 2014, the CCPC is required to promote the interests of consumers of financial services by:

- Promoting public awareness and conducting public information campaigns for the purpose of educating and providing information to the public in relation to consumer protection and welfare,
- Providing information in relation to financial services, including information in relation to the costs to consumers, and the risks and benefits associated with the provision of those services, and
- Promoting the development of financial education and capability.

To this end, the CCPC may:

- Undertake studies, analyses and surveys with respect to the provision of relevant financial services to consumers,
- Collect and compile information for that purpose, and
- Publish the results of any such studies, analyses, or surveys.
- The CCPC shares these functions with the Central Bank.

The main way the CCPC provides information to consumers about financial services is through its website (http://www.ccpc.ie/consumers/), where it compares various financial products, e.g., deposits, and also provides various calculators such as a mortgage and loan calculator.

1.4.3 Regulating Credit Intermediaries

The CCPC authorises and regulates credit intermediaries, i.e., persons who arrange personal unsecured loans for consumers. Therefore, credit intermediaries are not regulated by the Central Bank.

Examples of credit intermediaries would include garages and retailers who arrange loans, leasing and hire purchase for consumers. Most current authorised credit intermediaries are garages.

In addition to the power to grant or refuse an authorisation to act as a credit intermediary, the CCPC also has powers under the Consumer Credit Act, 1995 in relation to matters connected to the provision of consumer credit:

- Advertising and offering of finance; annual percentage rate (APR) must be shown;
- Restrictions on inertia selling;
- Sending circulars offering credit to minors;
- Provision of a cooling-off period;
- Duty to disclose information relating to the financial standing of the consumer, where the consumer is refused finance.

1.4.4 Levies

The CCPC imposes levies on certain financial services firms to fund the provision of information to consumers in relation to financial services, including information in relation to costs, the risks and benefits associated with those services and promoting the development of financial education and capability.

The levy is based on information relating to the business level of the firms, obtained from official sources or from the firms themselves.

The levy is applied to financial institutions such as banks and insurance companies, but not to insurance or investment intermediaries.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] Why Governments regulate financial services firms
- [ ] Different types of regulations
- [ ] The Central Bank of Ireland
- [ ] The Competition and Consumer Protection Commission

Sample Questions

The answers to these questions can be found in your Study Hub.

1. In relation to a financial services firm established in an EU country, the term ‘freedom of services’ means being able to:

   A. set up a branch in another EU country.
   B. provide any type of financial service the firm wishes to provide, without requiring any fresh authorisation.
   C. charge different levels of fees to different consumers, without requiring authorisation to do so.
   D. provide financial services to consumers in another EU country on a cross-border basis.

2. A life assurance company established in Germany sells policies to residents of the Republic of Ireland. Who regulates the solvency of this life company?

   A. The Central Bank of Ireland.
   B. The German Regulatory Authority, BaFin.
   C. The European Insurance and Occupational Pensions Authority.
   D. The European Securities and Markets Authority.

3. The Central Bank imposed a fine on ABC Investment Advisers Ltd, an investment intermediary, for non-compliance with financial services regulations. ABC can appeal this decision to the:

   A. Minister for Finance.
   B. Financial Services and Pensions Ombudsman.
   C. European Insurance and Occupational Pensions Authority.
   D. Irish Financial Services Appeals Tribunal.

4. Credit intermediaries are authorised by the:

   A. Competition and Consumer Protection Commission.
   B. Central Bank of Ireland.
   C. Irish Banking Federation.
   D. Irish Credit Bureau

02

Authorisation

This chapter outlines the registration and authorisation requirements of those providing advice. The main categories of retail intermediaries authorised under the Investment Intermediaries Act, 1995 and registered under the European Union (Insurance Distribution) Regulations 2018 (the Insurance Distribution Regulations) are included. The Central Bank's Consumer Protection Code (CPC) obligations are described in detail together with fitness and probity requirements.

Learning Outcomes – after studying this chapter you should be able to:
describe the different types of retail intermediaries.
identify 'certified persons'.
provide an overview of Mortgage Credit Intermediaries and their authorisation process.
know the obligations on product producers.
provide an overview of the various Controlled Function roles (CFs and PCFs) which exist for financial services firms.
know the details of the Central Bank's Minimum Competency Code and the fitness and probity standards which apply.

Chapter weightings	Number of questions which may appear		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	2	18	23

2.1 Providing Financial Advice to Consumers

In order to be able to provide advice on and arrange retail financial products for consumers on a professional basis, i.e., in return for some financial remuneration or reward, you must:

Be authorised in your own personal capacity as a financial services firm to provide such services on a professional basis, e.g., as a sole trader insurance or investment intermediary;

Work as an employee or tied agent for a firm which is authorised to provide such services on a professional basis, e.g., an employee of a bank, insurance company, insurance or investment intermediary or a tied agent of an insurance company; or

Be specifically exempted by law from the requirement to be authorised; this is very rare and unlikely to apply.

The broad categories of retail financial products are:

- Life Assurance Policies
- Pension Arrangements
- Savings and Investments
- Personal General Insurance
- Private Medical Insurance and Associated Insurances
- Mortgage Credit Agreements, Housing Loans, Home Reversion Agreements and Associated Insurances
- Consumer Credit Agreements and Associated Insurances

Within each broad category there are individual product lines. For example, the Pensions category is further sub-divided into:

- Employer pension schemes fully secured by one or more policies issued by life assurance companies;
- Personal pension plans, also known as retirement annuities or RACs for short (the Finance Act, 2024 provides that no new RACs can be written from 1st January 2024);
- Personal Retirement Savings Accounts (PRSAs);
- Additional Voluntary Contributions (AVCs) fully secured by one or more policies issued by life assurance companies;
- Approved Retirement Funds (ARFs) fully secured by one or more policies issued by life assurance companies;
- Annuities;
- Buy-out bonds secured by one or more policies issued by life assurance companies, also known as Personal Retirement Bonds or PRBs for short.

2.2 Retail Intermediaries

Intermediaries who arrange and/or provide advice to consumers on the retail financial products outlined are often referred to as *'retail intermediaries'*.

The main categories of retail intermediaries are:

- Investment intermediaries, which includes:
  - Deposit Agents
  - Deposit Brokers
- Insurance intermediaries, including tied insurance intermediaries
- Mortgage credit intermediaries
- Mortgage intermediaries
- Credit Intermediaries

Investment Intermediaries	• Advise on and arrange investments (excluding deposits)
Deposit Agents	• Arrange deposits with one bank
Deposit Brokers	• Arrange deposits with more than one bank
Insurance intermediaries	• Advise/arrange insurance (life and general) policies - tied - not tied
Mortgage credit intermediaries	• Arrange mortgage credit agreements which fall within the scope of the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016
Mortgage intermediaries	• Arrange housing loans which falls outside the scope of the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016 (such as equity-release products)
Credit intermediaries	• Arrange loans

2.3 Investment Intermediaries

An investment intermediary must be authorised by the Central Bank under the Investment Intermediaries Act, 1995 to arrange and/or give advice to consumers on regulated investment products.

Authorisation by the Central Bank as an investment intermediary is required to arrange and/or give advice to consumers on one or more of the following retail financial products:

- Shares listed on a Stock Exchange.
- Bonds listed on a Stock Exchange.
- Collective investment funds, such as unit trusts, investment companies and UCITS funds.
- Non-insurance Tracker Bonds (i.e. Tracker Bonds that are not issued by an insurance company).
- Non-insurance PRSAs (i.e. PRSAs that are not issued by an insurance company).

Where a Tracker Bond is also a deposit, i.e., issued by a bank, the investment intermediary must also be authorised as a Deposit Agent or Deposit Broker (see below).

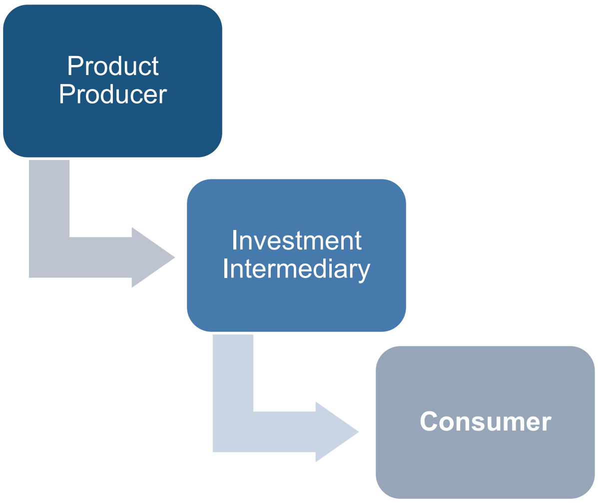
An investment intermediary may also be authorised by the Central Bank under the Investment Intermediaries Act, 1995 to act as a deposit broker or deposit agent.

Note that insurance products do not fall under the scope of the Investment Intermediaries Act, 1995, and insurance companies are not 'product producers' for the purposes of the Investment Intermediaries Act, 1995.

An investment intermediary can arrange investments for consumers in retail financial products only with financial institutions called '*product producers*', and only where the intermediary has an agency appointment in writing from that product producer, appointing the intermediary as an investment intermediary for that product producer.

Examples of products producers are:

- Banks, and
- MiFID investment firms.



Different requirements apply for investment intermediaries under the Consumer Protection Code, depending on whether the services being provided are *MiFID Article 3 services* or not.

MiFID Article 3 services are services which are described in Article 3(1)(b) and Article 3(1)(c) of the MiFID II Directive. Essentially, *MiFID Article 3 services* are arranging and/or giving advice to consumers on transferrable securities (such as Shares listed on a Stock Exchange and Bonds listed on a Stock Exchange) or units in collective investment undertakings (such as unit trusts, investment companies and UCITS funds).

The Minister for Finance exercised Ireland's national discretion under Article 3 of the MiFID II Directive. This allows certain firms to continue to be regulated under the Investment Intermediaries Act, 1995, rather than the European Union (Markets in Financial Instruments) Regulations 2017 (the MiFID II Regulations), in respect of *MiFID Article 3* services.

The exercising of this option is subject to imposing certain requirements on investment intermediaries when providing *MiFID Article 3 services* that correspond to equivalent requirements imposed under the MiFID II Regulations. The Consumer Protection Code reflects those requirements.

2.3.1 Two Types of Investment Intermediaries

Some investment intermediaries were automatically authorised by the Central Bank to give advice on all types of retail financial products listed above, while others are authorised to give advice only on one or more of the product types:

Deemed authorised	**Authorised under Section 10**
Intermediaries who are deemed authorised pursuant to Section 26 ot the Investment Intermediaries Act, 1995. These intermediaries are sometimes referred to as Restricted Activity Investment Product Intermediaries (RAIPIs).	Intermediaries who sought and obtained authorisation under Section 10 the Investment Intermediaries Act, 1995.
Automatically authorised to arrange and/or give advice on any of the retail financial products set out above, provided they hold an agency appointment with each relevant product producer.	Must seek authorisation for each type of retail financial product they wish to arrange and/or provide advice on. In addition they must also hold an agency appointment with each relevant product producer.

An investment intermediary who arranges and/or gives advice to consumers on insurance policies must also be a registered insurance intermediary.

An investment intermediary may also be authorised under the Investment Intermediaries Act, 1995 to act as a deposit agent or deposit broker, (see below).

An investment intermediary can give advice, i.e., *product-specific advice,* only in relation to those retail products for which it holds an appointment in writing with the relevant financial institution, i.e., it must have an agency facility with the institution.

Example

ABC Ltd. is authorised under Section 10 of the Investment Intermediaries Act, 1995 as an investment intermediary, in relation to arranging and providing advice on Non-insurance Tracker Bonds and unit trusts.

It currently has written agency appointments with:

- Bank A
- Bank B
- Unit-trust provider C

ABC Ltd. can arrange or give advice to clients only on:

- Non-insurance Tracker Bonds from Banks A and B,
- Unit trusts from unit-trust provider C.

It cannot, for example, arrange or give advice on Non-insurance Tracker Bonds issued by any other bank or on unit trusts from any other unit-trust provider, or any other type of investment for which it is not currently authorised for, e.g., shares listed on a Stock Exchange, as it was authorised under Section 10 of the Investment Intermediaries Act, 1995 and was not deemed authorised.

2.3.2 Deposit Agents

A deposit agent is an investment intermediary which:

> *"... holds an appointment in writing from a single credit institution enabling him to receive deposits on behalf of that institution and prohibiting him from acting in a similar capacity on behalf of another credit institution."*

A deposit agent therefore arranges deposits for consumers with one bank only. It cannot arrange deposits for consumers with another bank.

A deposit agent cannot operate from the same premises as a deposit broker.

2.3.3 Deposit Broker

A deposit broker, on the other hand, is an investment intermediary which:

> *"... brings together with credit institutions persons seeking to make deposits in return for a fee, commission or other reward."*

A deposit broker can arrange deposits for clients with a number of different banks, unlike a deposit agent who can arrange deposits with only one bank.

2.3.4 Handbook of Prudential Requirements for Investment Intermediaries

The Central Bank's Handbook of Prudential Requirements for Investment Intermediaries imposes a number of specific requirements on investment intermediaries:

- Obtain the prior approval of the Central Bank in advance of engaging in any new financial services including services which may require an amendment to their existing authorisation.
- Notify the Central Bank in writing in advance of the establishment of any new branch, office or subsidiary and changes to its legal name, trading name, principal business address, telephone number, email address and website address.
- Notify the Central Bank in writing as soon as it becomes aware of any breach of any regulatory requirements applicable to it.
- Report to the Central Bank all frauds perpetrated on the firm (including any misappropriation or use without proper authorisation of client premiums or investment instruments) as soon as identified.
- Notify the Central Bank of all current or impending legal action being taken either by or against the firm. This notification should include details of the other party/parties to the legal action and the nature of the proceedings.
- Notify the Central Bank immediately where the firm decides to cease operating as an investment intermediary.
- Hold Professional Indemnity Insurance in respect of its investment intermediary activities (excluding insurance intermediary activities) of €1,564, 610per claim and €2,315,610aggregate cover per annum. (These increased amounts are effective from 9 October 2024).
- At all times, be in a position to meet its financial obligations in full as they fall due, i.e., be solvent at all times.
- Prepare annual audited accounts (a profit and loss account or an income and expenditure account plus a balance sheet or capital account) within six months of their financial year end.
- Submit an Annual Return by the Central Bank's Online Reporting, within six months of the end of the relevant financial year.
- Maintain records evidencing its compliance with the requirements in the Handbook for six years.

2.3.5 Certified Persons

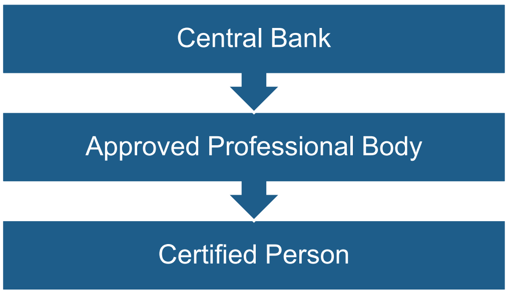
Certain professional bodies have been approved by the Central Bank to regulate their own member firms when providing investment intermediary services to consumers in an *incidental manner* to their main professional service:

- Institute of Chartered Accountants in Ireland [Chartered Accountants Ireland]
- Institute of Certified Public Accountants in Ireland [CPA Ireland]

An accountancy firm providing investment intermediary services in this manner is referred to as a 'certified person'. All certified persons are currently accountants.

Such accountancy firms are not directly authorised by the Central Bank under the Investment Intermediaries Act, 1995. Instead they are regulated in relation to their investment intermediary activities by their own professional body.

The term '*in an incidental manner*' is taken as meaning that no more than 20% of the firm's gross annual fee income is derived from investment business.



If the firm earns more than 20% of its gross annual fee income from investment intermediary activities, it must be authorised directly by the Central Bank as an investment intermediary and cannot be regulated by its own professional body in respect of such investment services.

Where an accountancy firm is regulated by its own professional body to provide investment intermediary services, it will hold a valid *practising certificate* under the rules of that professional body deeming that firm to be a fit and proper person to carry on investment services.

Certified persons are *not* subject to the Central Bank's Consumer Protection Code when providing investment intermediary services but are instead subject to similar consumer protection rules imposed by their approved professional bodies. These consumer protection rules have been approved by the Central Bank.

2.4 Insurance Intermediaries

Insurance intermediaries arrange and provide advice to consumers on insurance policies (life or general or both) to clients, on a professional basis.

All insurance intermediaries must be authorised and registered with the Central Bank as insurance intermediaries under the Insurance Distribution Regulations.

An insurance intermediary provides advice to consumers on one of the following three bases, and must inform consumers in writing before the conclusion of an insurance contract as to the basis on which advice is provided:

- The intermediary gives advice on the basis of a fair and personal analysis,

- The intermediary is under a contractual obligation to conduct business exclusively with one or more insurance undertakings, in which case it is to provide the names of those insurance undertakings, or

- The intermediary is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis, in which case it is to provide the names of the insurance undertakings with which it may and does conduct business.

A "*fair and personal analysis*" applies where advice is given "*based on an analysis of a sufficiently large number of insurance 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*".

So, an insurance intermediary falls into one of three mutually exclusive categories when providing advice on a product to a consumer:

- The intermediary gives advice on the basis of a “*fair and personal analysis*” of a large number of insurance providers,

- The intermediary is not restricted in relation to the insurance providers it can deal with but has chosen to deal with only a limited number of insurance providers, and does not meet the “*fair and personal analysis*” standard.

- The intermediary is restricted to conducting business exclusively with one or more insurance providers.

In all cases, the intermediary must make clear to the consumer the basis on which advice is provided.

Note that an employee of a life assurance company who advises on and arranges insurance policies for consumers is not required to be authorised or registered by the Central Bank as an insurance intermediary.

2.4.1 Tied Insurance Intermediaries

A particular form of restricted insurance intermediary is a Tied Insurance Intermediary.

The Insurance Distribution Regulations define a Tied Insurance Intermediary as an intermediary which “*undertakes insurance or reinsurance distribution for and on behalf of one or more insurance or reinsurance undertakings or other intermediaries, in the case of insurance products that are not in competition*”.

A Tied Insurance Intermediary:

- Acts under the responsibility of the organisation to which it is tied,

- Must comply with the conditions for registration placed upon the organisation to which it is tied, and

- Is subject to oversight of compliance with those conditions by the organisation to which it is tied.

It is possible to be tied to more than one insurance undertaking or other intermediary, but only “*in the case of insurance products that are not in competition*”. In particular, it is possible to be tied to one organisation for life assurance products and to another organisation for general insurance products.

It is also possible to be a tied insurance intermediary for one category of product and to be an insurance intermediary for another category of product. For example, it is possible to be an insurance intermediary providing advice on life assurance products on the basis of a fair and personal analysis, but to be a tied insurance intermediary for general insurance policies.

2.4.2 Professional Indemnity Insurance

Insurance intermediaries are required to hold Professional Indemnity (PI) cover of at least €1,564,610 per claim and €2,315,610 aggregate cover per annum, unless :

- An insurance or equivalent guarantee is already provided by an insurer on whose behalf the intermediary is acting,

  OR

- The insurer has taken full responsibility for the intermediary's insurance intermediary activities.

Where an insurance intermediary is also an investment intermediary, e.g., an insurance intermediary and a deposit broker, it must hold separate ring-fenced Professional Indemnity Insurance cover of €1,564,610 per claim and €2,315,610 aggregate cover per annum in relation to its insurance intermediary activities AND ring-fenced separate cover of a similar amount in respect of its investment intermediary activities.

(The above amounts of PI cover are effective from 9 October 2024),

Example

ABC Ltd. is authorised as an investment intermediary under the Investment Intermediaries Act, 1995 in respect of collective investment funds. ABC Ltd. is also registered as an insurance intermediary under the Insurance Distribution Regulations.

The firm is required to have separate ring-fenced PI cover as follows:

- €1,564,610 per claim and €2,315,610 aggregate cover per annum in respect of its investment intermediary activities related to collective investment funds, and
- €1,564,610 per claim and €2,315,610 aggregate cover per annum in respect of its insurance intermediary activities.

2.5 Mortgage Credit Intermediaries

A mortgage credit intermediary authorised under the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (Mortgage Credit Regulations) is:

> *"… a person … who … in the course of his or her trade, business or profession, for remuneration … carries on any of the activities:*
>
> *a. Presents or offers credit agreements to consumers;*
>
> *b. Assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in subparagraph (a);*
>
> *c. Concludes credit agreements with consumers on behalf of the creditor."*

This definition applies to credit agreements "*secured by a charge, a mortgage or by another comparable security used in an EEA Member State on residential immovable property or secured by a right related to residential immovable property, and where the person to whom the credit is provided is a consumer*".

A mortgage credit intermediary must be authorised by the Central Bank of Ireland.

2.5.1 Professional Indemnity Insurance

Mortgage credit intermediaries authorised under the Mortgage Credit Regulations are required to hold Professional Indemnity cover of at least €460,000 per claim and €750,000 aggregate cover.

Where a mortgage credit intermediary is also an investment intermediary and/or an insurance intermediary, it must hold separate ring-fenced Professional Indemnity Insurance in relation to its mortgage credit intermediary activities AND ring-fenced separate cover in respect of its investment intermediary activities AND ring-fenced separate cover in respect of its insurance intermediary activities.

2.6 Mortgage Intermediaries

With the introduction of the Mortgage Credit Intermediary status in 2016, outlined above, the Mortgage Intermediary status has now become much more confined.

A mortgage intermediary licensed under the Consumer Credit Act 1995 is:

> *"… a person (other than a mortgage lender or credit institution) who, in return for commission or some other form of consideration:*
>
> *a. Arranges, or offers to arrange, for a mortgage lender to provide a consumer with a housing loan which falls outside the scope of the European Union (Consumer Mortgage Credit Agreements) Regulations (such as equity-release products), or*
>
> *b. Introduces a consumer to an intermediary who arranges, or offers to arrange, for a mortgage lender to provide the consumer with such a loan."*

A housing loan is a loan to purchase, improve, or build the borrower's principal private residence, or to refinance such a loan.

A mortgage intermediary must be authorised by the Central Bank of Ireland.

In effect, intermediaries who arrange mortgages today are now authorised as Mortgage Credit Intermediaries (see previous section). Only those intermediaries who provide referrals to a Mortgage Credit Intermediary, and those who provide specialist mortgage products only, such as equity-release loans, are authorised as Mortgage Intermediaries.

2.7 Credit Intermediaries

Credit Intermediaries arrange certain other forms of consumer credit for consumers. e.g., a garage which arranges car finance deals for consumers buying cars from them. The majority of authorised credit intermediaries are garages and shops.

A credit intermediary is:

> *"**...** a person, other than a credit institution or a mortgage lender, who in the course of his business arranges or offers to arrange for a consumer the provision of credit or the letting of goods in return for a commission, payment or consideration of any kind from the provider of the credit or the owner, as the case may be."*

A person cannot act as a *credit intermediary* unless he or she holds an authorisation from the Competition and Consumer Protection Commission to act as a credit intermediary.

The CCPC maintains a publicly available register of credit intermediaries.

2.8 MiFID Investment Firms

The Markets in Financial Instruments Directive (MiFID II) is an EU Directive which provides harmonised regulation of investment services across the Member States of the European Economic Area (the EU Member States plus Iceland, Norway and Liechtenstein). An amended Directive, MiFID II, came into force in January 2018. Depending on the range of services they wish to offer, firms can opt to be regulated as MiFID Investment Firms under MiFID II or as investment intermediaries under the Investment Intermediaries Act, 1995.

MiFID investment firms are authorised by the Central Bank under the MiFID II Regulations (which transposed the MiFID II Directive into Irish law) to provide investment advice on and arrange investments for clients in a wider range of investments than allowed for investment intermediaries authorised under the Investment Intermediaries Act, 1995:

	MiFID investment firm	Investment Intermediary, authorised under the Investment Intermediaries Act, 1995
Shares and bonds listed on a Stock Exchange	✔	✔
Other shares and bonds, not listed on a Stock Exchange	✔	✕
Collective Investment Funds	✔	✔
Non-insurance Tracker Bonds (i.e. Tracker Bonds that are not issued by an insurance company)	✔	✔
Non-insurance PRSAs (i.e. PRSAs that are not issued by an insurance company)	✔	✔
Contracts for Difference (CFDs)	✔	✕
Options, swaps and other derivatives	✔	✕

MiFID investment firms can also be authorised to provide the following services which an investment intermediary cannot provide:

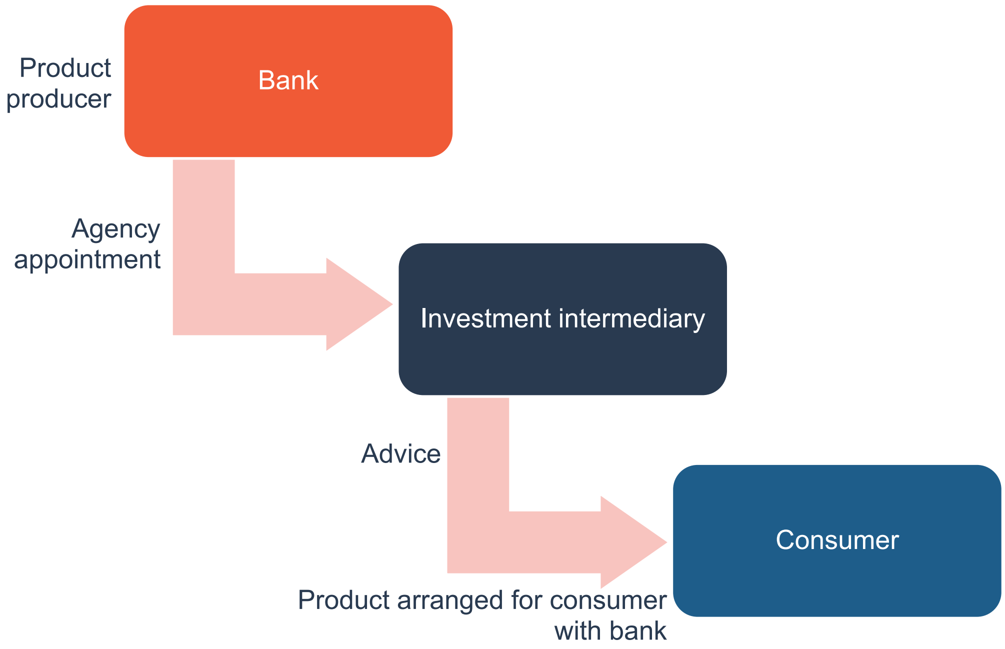
- Hold client funds and assets;
- Provide a discretionary portfolio management service, i.e., buying and selling investments for a client, without seeking the client's permission or instruction in each case, under a mandate provided by the client to the firm.

MiFID investment firms which want to act as insurance intermediaries must be separately authorised and registered by the Central Bank as an insurance intermediary under the Insurance Distribution Regulations.

2.9 Product Producers

As we have already seen in Section 2.3, the term '*product producer*' refers to a financial institution like a bank or investment manager, which 'produces' financial products which are then bought by consumers through an intermediary.

Take, for example, a Non-insurance Tracker Bond arranged for a consumer by an investment intermediary with a bank.



As indicated previously, an investment intermediary (including certified persons) must have a written agency appointment with a product producer before that intermediary can send a completed client application form for a financial product to that product producer.

2.9.1 Obligations on Product Producers

Under the Investment Intermediaries Act, 1995 a product producer *cannot:*

- Accept a client application form from an intermediary,
- Accept money belonging to a client from an intermediary, or
- Pay commission to an intermediary,

unless that intermediary is an authorised intermediary to which the product producer has provided an agency appointment.

A product producer is also required to establish and maintain a register of all its appointed intermediaries, at its principal office in the State.

The product producer is required to provide the Central Bank with details of its register of agency appointments. In turn, the Central Bank is required to maintain a register of all such agency appointments; this register is usually referred to as the *Investment Product Intermediaries Section 31 Register,* after the relevant section of the Investment Intermediaries Act, 1995.

2.9.2 Intermediaries Acting as Product Producers

Some investment intermediaries may also be authorised by the Central Bank to act as a product producer between other authorised intermediaries and a financial institution such as a bank.

Example

Take Bank A which has given an appointment in writing to Super Broker B, an investment intermediary which is also authorised by the Central Bank to act as a product producer to other intermediaries.

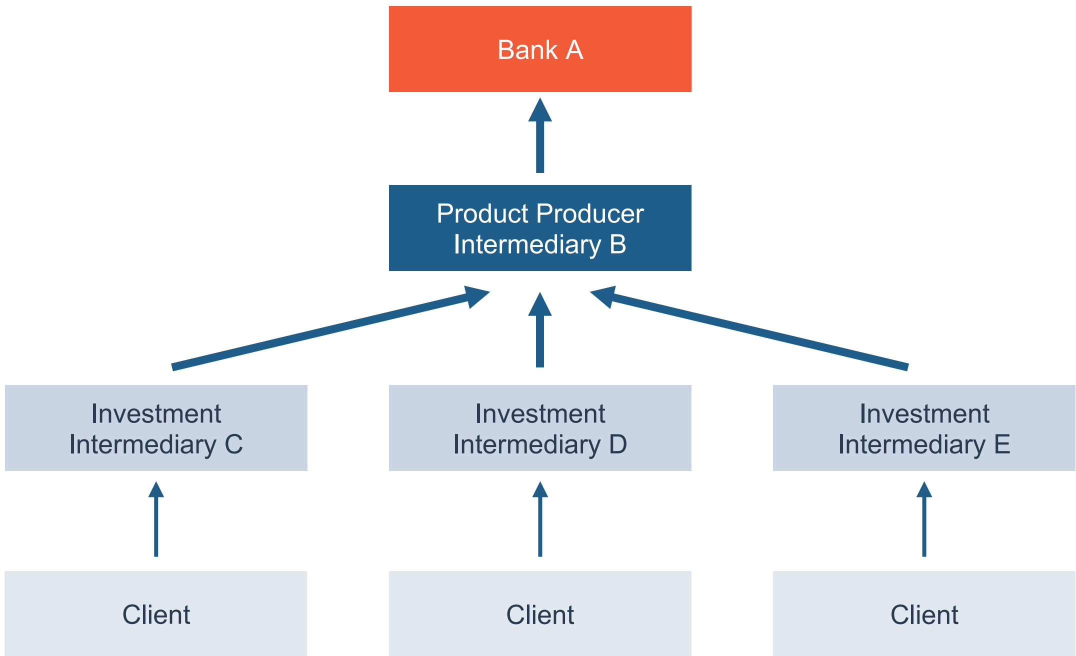
Super Broker B has given written agency appointments to authorised intermediaries C, D and E.

Super Broker B has developed a special deposit product underwritten by Bank A, which it distributes to the intermediaries to which it has given an appointment in writing.

Investment intermediary D sells this product to a client who completes the Bank A proposal form.

Investment intermediary D then sends the completed proposal form to Super Broker B, which in turn forwards it to Bank A.

Therefore, the chain is as follows:



The Central Bank requires investment intermediaries authorised to act as product producers with other intermediaries to have a minimum solvency, i.e., excess of assets over liabilities, of €50,000.

2.9.3 Consumer Protection Code Obligations

The definition of “product producer” in the Central Bank’s Consumer Protection Code is a wider one than that in the Investment Intermediaries Act, 1995. For example, the Consumer Protection Code definition includes insurance companies, while the Investment Intermediaries Act, 1995 does not include insurance companies.

The Central Bank's Consumer Protection Code imposes a number of obligations on product producers in relation to the design and launch of all investment products *other than*:

- Deposits, and
- Insurance policies.

When a product producer designs and launches a new investment product (e.g., a bank launching a new Tracker Bond) to be sold to consumers, the product producer must provide the following details of the product to any intermediary who will promote and sell that product to consumers on its behalf:

- The key characteristics and features of the product;
- The target market of consumers for the product;
- The nature and extent of the risks inherent in the product; and
- The level, nature, extent and limitations of any guarantee attaching to the product and the name of the guarantor.

The term 'target market' is defined in the Code as: '*the profile of the group of consumers at which the regulated entity aims a particular investment product'*, i.e., the profile of consumers for whom the product may be suitable.

Within the first year of launching a new investment product which is sold to consumers, and at least annually thereafter, a product producer must update the product information above and provide that updated information to any intermediary who is promoting and selling that product to consumers.

The product producer must provide an ongoing facility to appointed intermediaries to ask questions and obtain information on an investment product.

Where a firm is providing *MiFID Article 3 services*, and it offers, recommends, arranges or provides an investment product, it is required to have in place adequate arrangements to:

- Obtain all appropriate information on the investment product and the investment product approval process, including the identified target market of the investment product; and
- Understand the characteristics and identified target market of each investment product.

2.9.4 Insurance Distribution Regulations Obligations

The Insurance Distribution Regulations require that insurance undertakings and intermediaries, which manufacture any insurance product for sale to customers, must have a process for the approval of each insurance product, or any significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

The process for product approval referred to must:

- Be proportionate and appropriate to the nature of the insurance product,
- Specify an identified target market for each product,

- Ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and

- Take reasonable steps to ensure that the insurance product is distributed to the identified target market.

An insurance undertaking must regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess whether each product remains consistent with the needs of the identified target market and whether its intended distribution strategy remains appropriate.

Insurance undertakings and intermediaries which manufacture insurance products must make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.

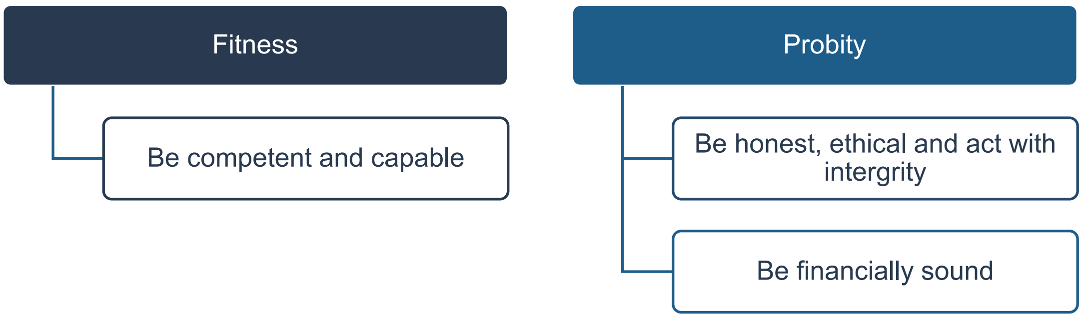
An insurance distributor which advises on, or proposes, insurance products which it does not manufacture must have in place adequate arrangements to obtain the information on the insurance product and the product approval process, including the identified target market of the insurance product and to understand the characteristics and identified target market of each insurance product.

2.10 Fitness and Probity Requirements

A key requirement for the Central Bank to authorise a firm to act as an intermediary in relation to arranging and providing advice to consumers on retail financial products is that the people in the firm dealing with consumers in this role (and in associated roles) are fit and proper people for that role.

The Central Bank has a Fitness and Probity Standards Code, which specifies the Standards of Fitness and Probity which all persons performing key roles (called Controlled Functions or CFs for short) in a financial services firm must, at a minimum, comply with, both on appointment to the position and on an ongoing basis.

In broad terms the Code sets out these main Standards for persons performing Controlled Functions in a firm:



A financial services firm cannot:

- Permit a person to perform a Controlled Function role in the firm unless the firm is satisfied on ‘reasonable grounds’ that the person complies with the Central Bank’s Fitness and Probity Standards, and

- The person has agreed to abide by the Standards.

This obligation is not just a once-off obligation to be complied with at the time of appointment; rather, it is an ongoing obligation on the firm and the individuals carrying out the roles involved.

Failure by a firm to comply with these requirements can result in the imposition of sanctions on the firm by the Central Bank.

2.10.1 Controlled Functions (CFs)

There are many roles in a financial services firm which are classified as Controlled Functions, but the main ones related to the provision of advice to consumers on retail financial products on behalf of the firm are:

CF-1	Ability to exercise a significant influence on the conduct of the affairs of a regulated financial service provider
CF- 2	Ensuring, controlling or monitoring compliance with the firm's statutory obligations, e.g., Compliance Manager.
CF-3	A function which is likely to involve the person giving financial advice to a customer of the firm, e.g., a personal financial adviser.
CF-4	A function which is likely to involve the person arranging, or offering to arrange, a financial service for a customer of the firm, e.g., a personal financial adviser.
CF-5	A function which is likely to involve the person assisting a customer in the making of a claim under a contract of insurance or reinsurance.
CF-6	A function which is likely to involve the person determining the outcome of a claim arising under a contract of insurance or reinsurance.
CF-7	A function which is likely to involve the person acting in the direct management or supervision of those persons who act for the firm in roles CF-3, CF-4, CF-5 or CF-6.
CF-8	A function which is likely to involve the person adjudicating on any complaint by a customer of the firm in relation to the provision of a financial service, e.g., Manager in charge of handling and deciding on customer complaints.

2.10.2 Pre-Approval Controlled Functions (PCFs)

Enhanced Fitness and Probity Standards apply to persons who carry out Controlled Functions in which the person involved '*may exercise a significant influence on the conduct of a regulated financial services provider's affairs'*.

Such positions are referred to as Pre-Approval Controlled Functions (or PCFs for short), as any appointment to such a position cannot be made by the firm without the prior written approval of the Central Bank. The list of roles prescribed by the Central Bank as PCFs includes roles that apply to all firms (e.g. Chief Executive), and certain roles specific to an industry sector (e.g. Head of Actuarial function in insurance firms).

Examples of positions in the firm which are PCFs include:

- Directors (both executive and non-executive);
- Chair of the Board;
- Chief Executive;
- Head of Actuarial Function;

- Head of Compliance;
- Head of Retail Sales.

2.10.3 The Standards

The Central Bank Fitness and Probity Standards Code requires that a person performing a CF role for a firm, e.g., a personal financial adviser:

- Must have the “qualifications, experience, competence and capacity appropriate to the relevant function”.
- Be able to demonstrate that his or her ability to perform the CF role is not adversely affected to a material degree by one or more certain specified events relating to that individual, such as:
    - The individual is or was a sole trader or a director or partner in a firm, which has been refused, prohibited, restricted or suspended from the right to carry on any trade, business or profession in any jurisdiction for which authorisation is required, or has had any such authorisation revoked, otherwise than on a voluntary basis;
    - The individual has been, the subject of a complaint made to the Central Bank, the Financial Services and Pensions Ombudsman or any equivalent body;
    - The individual is or has been, in any jurisdiction, subject to any disciplinary proceedings or has been issued a warning, reprimand or other administrative sanction or its equivalent by the Central Bank, or an equivalent measure issued by any other regulatory authority;
    - The individual has been, in any jurisdiction, dismissed, or asked to resign and did resign, from any profession, vocation, office or employment or from any position of trust or fiduciary appointment, whether or not remunerated;
    - The individual has, in any jurisdiction, been a director, of a company that was struck off the register of companies (or its equivalent) by the Registrar of Companies (or its equivalent) on an involuntary basis;
    - The individual has been disqualified or restricted from acting as a director in any jurisdiction or has been disqualified from acting in any managerial capacity.
- Be able to demonstrate that his or her ability to perform the CF role is not adversely affected to a material degree where one or more of the following have happened:
    - The individual defaulted on a loan;
    - The individual is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in the State or elsewhere;
    - The individual was adjudicated a bankrupt and the bankruptcy is undischarged, whether in the State or elsewhere; or
    - The individual was a director of an entity which was adjudged insolvent.

2.10.4 Minimum Competency Code

A key part of the Fitness requirements is that an individual providing advice to consumers on retail financial products on behalf of a financial services firm is competent to provide that service.

The Central Bank's Minimum Competency Code and Minimum Competency Regulations apply to individuals working for firms in the provision of advice on and the sale of retail financial products to consumers, and to those in the firm who directly manage such personal financial advisers.

The Code and Regulations also apply to the following positions in such firms:

- Claims Manager; and
- Complaints Manager.

An individual whose function falls within the scope of the Minimum Competency Code is not deemed to meet the Fitness and Probity Standards unless he or she:

- Holds one or more recognised qualification(s) which are relevant to the role (e.g., the Qualified Financial Adviser (QFA)) and he or she complies on an ongoing basis with specified Continuing Professional Development (CPD) requirements. In addition, a person carrying out a relevant function in respect of MiFID services or activities must have at least six months' experience (on a full-time equivalent basis) relevant to the function to be exercised;

  OR

- Is a grandfathered person in respect of the function to be exercised, and complies on an ongoing basis with specified CPD requirements;

  OR

- Is a new entrant participating in a training process under the supervision of a qualified person or a grandfathered person;

  OR

- In the case of a person performing a prescribed script function,[1] e.g., in a call centre, has complied with certain minimum specified standards.

Holds a recognised qualification	Grandfathered	New entrant	Call centre staff

An individual is taken to be a grandfathered person, and hence compliant with the Minimum Competency Code as a personal financial adviser, only if *all* of the following conditions are met:

- On 1st January 2007, the individual was advising consumers on the retail financial product of which he/she is availing of the grandfathering arrangements;
- The individual had four years' experience carrying out that role during the period 1st January 1999 to 1st January 2007,
- An assessment for grandfathering purposes was carried out and documented by the firm,

[1] An individual, acting on behalf of a firm, provides advice to consumers on retail financial products or arranges such products for consumers within a narrow and rigid set of criteria and according to a prescribed script and routine.

- The firm certified the individual’s compliance with the experience requirement, and
- The individual complies with the relevant CPD requirements on an ongoing basis.

Grandfathering does not apply for mortgage credit agreements, MiFID services or activities, or debt management services.

Note that grandfathering status is confined to the specific type of products or products for which the individual meets the requirements above.

Therefore, if a grandfathered individual wishes to act in respect of another type of the same retail financial product or other retail financial products for which he or she does not meet the conditions above, he or she must first obtain a relevant recognised qualification in respect of such other type of retail financial product or retail financial products.

Example

Joe meets the grandfathering requirements above for life assurance temporary assurance policies only.

Joe can (subject to complying with CPD requirements) continue to advise consumers on temporary assurance policies, without acquiring a relevant professional qualification.

However, if Joe wants to start advising consumers on life assurance savings and investment policies in addition to temporary assurance policies, he will have to first obtain a recognised professional qualification for Life Assurance, e.g., the Qualified Financial Adviser or the Accredited Product Adviser (Life Assurance).

An individual who for the *first time* on behalf of a firm provides advice to consumers on retail financial products and/or arranges such products for consumers is taken to comply with the Minimum Competency Code and Regulations only if he or she:

- First undergoes a relevant training programme organised by the firm, or has obtained part of a recognised qualification for that particular activity;
- Acts under the immediate direction and supervision of another nominated person, who holds a relevant recognised qualification or is a grandfathered person in respect of the activity the new entrant will be engaged in;
- Is working towards obtaining a relevant recognised qualification, e.g., the new entrant must register for the first available sitting of the relevant examination;
- Obtains the recognised qualification within four years of first starting to act as a personal financial adviser;
- In the case of MiFID services or activities, is working towards obtaining at least six months’ experience relevant to the function to be exercised on a full-time equivalent basis.

New entrants
• Undergo training programme or get part of a recognised qualification
• Act under direct supervision of qualified person
• Work towards getting a recognised qualification
• Obtain the recognised qualification within four years
• Obtain at least six months' relevant experience, in the case of MiFID services or activities

In relation to new personal financial advisers who do not yet hold a recognised qualification, the firm must:

- Inform the new entrant, before he or she commences, of the requirement to obtain a recognised qualification, and, in the case of MiFID services and activities, at least six months' relevant experience, within four years;

- Agree a plan with the new entrant for obtaining the recognised qualification and monitor his or her progress in adhering to this plan;

- Ensure that the new entrant undergoes a relevant training programme or obtains part of a relevant recognised qualification;

- Have procedures in place to ensure that new entrants are adequately supervised, such as:

  - All relevant client related documentation relating to the individual's activity must be checked and signed off by a person who holds a recognised qualification or is a grandfathered person for that activity, until the new entrant obtains a relevant recognised qualification, and, in the case of MiFID services and activities, at least six months' relevant experience.

  - For an initial specified period, new entrants must be accompanied, at all times, by a person who holds a recognised qualification or is a grandfathered person for that activity. Following this initial period, the level of accompaniment may be reduced incrementally.

  - There are regular meetings and contact between the supervisor and the new entrant.

  - Each supervisor must supervise no more than seven new entrants.

A firm must ensure that it has procedures in place to ensure that individuals acting on its behalf, who hold recognised qualifications or are grandfathered for particular activities subject to the Minimum Competency Code and Regulations, are in compliance with the CPD requirements of the Code and Regulations on an ongoing basis.

Individuals who hold a recognised qualification which does *not* have a CPD requirement to maintain that qualification and grandfathered individuals are required by the Minimum Competency Code to complete at least 15 hours of relevant CPD annually by either:

- Participating in a CPD scheme operated by an external professional educational body which provides a recognised qualification, provided the requirements of that CPD scheme do not differ in a material way from the CPD requirements of the Code and Regulations; or

- Arranging their own CPD hours. In this case, they must retain written records to demonstrate that they have satisfied the requirement (e.g., maintenance of a log, supported by receipts from courses attended, certificates of attendance, certificates of completion, etc.), including the requirement that the content of the course was relevant to the retail financial products or the specified functions for which they act.

CPD hours can be obtained only by attending seminars, lectures, conferences, certified completion of appropriate e-learning tutorials, workshops or courses dealing with a topic directly relevant to the provision of advice to consumers on retail financial products.

The content of the CPD hours must be directly relevant to the functions of the individual and the CPD material must therefore be related to the competencies set out in Appendix 3 of the Minimum Competency Code for the relevant retail financial product(s).

2.10.5 Due Diligence

Central Bank Guidance requires a firm, at a minimum, to undertake the following due diligence to satisfy itself, on reasonable grounds, that the person in or proposed to be appointed to a CF role, such as a personal financial adviser or a manager of such advisers, is compliant with the Fitness and Probity Standards:

- **Fitness**
  - Evidence of compliance with the Minimum Competency Code and Regulations, either through qualification or grandfathering.
  - Evidence of professional qualification(s), where the role requires a specific professional qualification.
  - Evidence of CPD, where maintenance of a relevant qualification is dependent on completing continuing professional development (CPD).
  - Record of interview and application.
  - References: The Central Bank expects firms to make all reasonable efforts to obtain references from former employers or other relevant persons and to maintain records of such correspondence.
  - Record of previous experience.
  - Details of any concurrent responsibilities, such as other Directorships and employments.
- **Probity**

The firm is required to seek and obtain signed written confirmation (i.e., self-certify (SC)) from the individual performing or proposing to perform a CF role as to whether or not any of the circumstances set out above in Section 2.10.3 apply to that person, e.g., has the individual been the subject of a complaint made to the Central Bank, the Financial Services and Pensions Ombudsman or any equivalent body, reasonably and in good faith, relating to activities regulated by the Central Bank or regulated by an equivalent authority in any jurisdiction?

The firm will usually seek this confirmation through asking the person to complete and sign a questionnaire containing questions regarding the items outlined above.

Where the person confirms that one of more of the circumstances set out above apply, the person must be in a position to demonstrate that his or her ability to perform the CF role is not adversely affected to a material degree by that matter.

The Central Bank Guidance summarises the due diligence requirements as follows:

Standard	Supporting documents obtained from a third party	PCF	CF1	CF2	CF3-CF11
Competent and capable	Provision of a copy of the relevant transcripts	Y	Y	Y	Y
	Professional body check	Y	Y	Y	-
	Employer's references	Y	Y	Y	Y
	Minimum Competency Code	I/A	I/A	I/A	SC/Y
	Conflicts	SC	SC	SC	SC
Honest, ethical and with integrity	Garda check/convictions	SC	SC	SC	SC
	Regulator check	Y	Y	Y	SC
Financial soundness	Judgements search	Y	Y	Y	SC

Y = Checks undertaken by the regulated financial service provider.

SC = Self certify.

I/A = If applicable.

2.10.6 Individual Accountability Framework

The Central Bank (Individual Accountability Framework) Act 2023 (the IAF Act) was signed into law on 9 March 2023. Some aspects of the IAF commenced in 2023, and further aspects come into effect over 2024 and 2025.The Individual Accountability Framework (IAF) includes the following key elements:

2.10.6.1 Senior Executive Accountability Regime (SEAR):

This requires in-scope firms (initially banks, insurance undertakings, and certain large investment firms) to set out clearly and fully where responsibility and decision-making lies within the firm's senior management. This requires firms to have an overall Management Responsibility Map for the firm and Individual Statements of Responsibility for the in-scope specific role holders identifying each individual's core responsibilities, and these are required to be in place from 1 July 2024. (Non-executive directors will come into scope in July 2025).

2.10.6.2 Conduct Standards:

These include the Common Conduct Standards, which are a set of expected standards of conduct which apply to all Controlled Function (CF) and Pre-approval Controlled Function role holders in all regulated firms, and the Additional Conduct Standards which apply to all PCF role holders in all regulated firms. The Conduct Standards apply from 29 December 2023. Further details are set out below.

2.10.6.3 Enhancements to the current Fitness & Probity (F&P) Regime:

This sets out requirements for firms to proactively certify that individuals carrying out certain specified functions are fit and proper. The first reporting of completion of the certification process by firms to the Central Bank will be due in January 2025 for the year 2024.

2.10.6.4 Amendments to the Administrative Sanctions Procedure (ASP).

As referenced in section 1.3.3 the key change is that the Central Bank now has the legal power to take enforcement action under the Administrative Sanction Procedures directly against individuals for breaches of their obligations rather than only for their participation in breaches committed by a firm.

2.10.6.5 Conduct Standards

The Conduct Standards set out a single set of standards of behaviour that the Central Bank expects of individuals. These Standards constitute universal statutory obligations applicable to individuals who hold CF or PCF roles in all firms, irrespective of sector, comprising Common Conduct Standards for CFs and Additional Conduct Standards for individuals performing PCF and CF1 roles.

2.10.6.6 Common Conduct Standards

The Conduct Standards are applicable across all sectors i.e. to a wider population than SEAR.

Under the IAF legislation, an individual who performs a CF role (including PCFs) in relation to a firm should take the steps that it is reasonable in the circumstances for the individual to take to ensure that the Common Conduct Standards are met. A number of the Common Conduct Standards are similar to the General Principles of the Consumer Protection Code and include:

- Acting with honesty and integrity;
- Acting with due skill, care and diligence;
- Acting in the best interests of customers and treating them fairly and professionally.

Whilst the Consumer Protection Code states that its General Principle are applicable to a firm in all its dealings with customers, the IAF Common Standarads are applicable to all the activity of an individual, including dealings with customers, dealings with their firm, dealings with other market participants, and dealings with regulators.

In the context of enforcement, breaches of the Common Conduct Standards will be directly enforceable against individuals by the Central Bank and the reasonable steps taken by individuals will be considered on a case-by-case basis by reference to the relevant circumstances in each case.

2.10.6.7 Additional Conduct Standards

Additional Conduct Standards apply in the case of an individual who performs a PCF or a CF1 role. These include:

A. that the business of the regulated financial service provider is controlled effectively;

B. that the business of the regulated financial service provider is conducted in accordance with its obligations under financial services legislation;

C. that any delegated tasks are assigned to an appropriate person with effective oversight; and

D. that any information which the Central Bank would reasonably expect notice of in respect of the business of the regulated financial service provider is disclosed promptly and appropriately to the Central Bank, including information relevant to, or giving rise to a suspicion or expectation of, the commission of an offence, commission of a prescribed contravention, or any other breach of obligations under financial services legislation by the regulated financial service provider or a person performing a Controlled Function in relation to it.

There is a statutory obligation on firms to provide training to individuals in CF roles on the Common Conduct Standards and to individuals in PCF/CF1 roles on the Additional Conduct Standards to ensure that they have appropriate knowledge of them and how they apply to an individual performing that function. The firm must provide appropriate induction training on implementation of the Standards, and thereafter to all newly appointed individuals subject to the Standards.

2.11 Intermediary Registers

The Central Bank maintains online registers of authorised:

- Investment intermediaries (called investment business firms), split into two sub-registers; deemed authorised under Section 26 and Section 10 authorised investment intermediaries.
- MiFID investment firms.
- Insurance intermediaries (Insurance Distribution Register).
- Mortgage credit intermediaries.
- Mortgage intermediaries.
- Investment Product Intermediaries: Each financial institution must maintain a register of all of its appointed intermediaries. In turn, financial institutions must provide information of agency appointments to the Central Bank, who maintain a register of agency appointments; this register is called Investment Product Intermediaries Register (Section 31).

The registers can be viewed at http://registers.centralbank.ie.

The Competition and Consumer Protection Commission maintains a register of authorised credit intermediaries at https://www.ccpc.ie/business/credit-intermediaries/authorised-credit-intermediaries/.

2.12 Cancellation of Agency Appointments

Where a financial institution cancels the agency appointment of an investment intermediary, then, under the Investment Intermediaries Act, 1995:

- It must inform the Central Bank of the cancellation.
- The intermediary must place a ‘notice of discontinuance’ in a national newspaper, within 14 days of being informed by the financial institution of the cancellation of the appointment.
- If the intermediary does not place the ‘notice of discontinuance’ in a newspaper, the financial institution must publish the notice itself within 28 days of informing the intermediary of the cancellation of their appointment.

Example

A bank cancels the agency appointment of a deposit broker on 1st January. The bank must immediately inform the Central Bank of the termination of the agency.

The deposit broker fails to put a Notice of Discontinuance in a national newspaper within 14 days of being notified by the bank of the cancellation of its agency appointment with the bank.

The bank must publish a Notice of Discontinuance of the agency appointment in a national newspaper by 28th January.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] Retail intermediaries
- [ ] Investment intermediaries, including deposit brokers and agents
- [ ] Insurance intermediaries
- [ ] Mortgage credit intermediaries
- [ ] Mortgage intermediaries
- [ ] Credit intermediaries
- [ ] MiFID investment firms
- [ ] Product producers
- [ ] Fitness and Probity requirements
- [ ] Minimum Competency Code and Regulations
- [ ] Intermediary registers
- [ ] Cancellation of agency appointments

Sample Questions

The answers to these questions can be found in your Study Hub.

1. Which one of the following is a fitness requirement under the Central Bank's fitness and probity standards code for those performing a controlled function in an insurance or investment intermediary?

   A. Act with integrity.
   B. Be honest and ethical.
   C. Be financially sound.
   D. Be competent and capable.

2. An intermediary who wishes to provide advice to consumers on a Tracker Bond, which is also a deposit, must be authorised as a(n):

   (i) investment intermediary.
   (ii) deposit broker.
   (iii) credit intermediary.

   A. (i) only.
   B. (ii) only.
   C. (i) and (ii) only.
   D. (i), (ii) and (iii)

3. A MiFID investment firm can provide investment advice on which of the following:

   (i) Shares listed on a Stock Exchange.
   (ii) Contracts for Difference.
   (iii) Options.

   A. (ii) only.
   B. (iii) only.
   C. (ii) and (iii) only.
   D. (i), (ii) and (iii).

4. Marie has been a personal financial adviser for a long number of years but does not hold a recognised qualification for the purposes of the Central Bank's Minimum Competency Standards.

   If Marie wants to advise consumers on term assurance policies without obtaining such a qualification, she must have had experience of advising consumers on term assurance policies for which MINIMUM number of years between 1st January 1999 and 1st January 2007?

   A. 3 years.
   B. 4 years.
   C. 5 years.
   D. 6 years.

03

Marketing

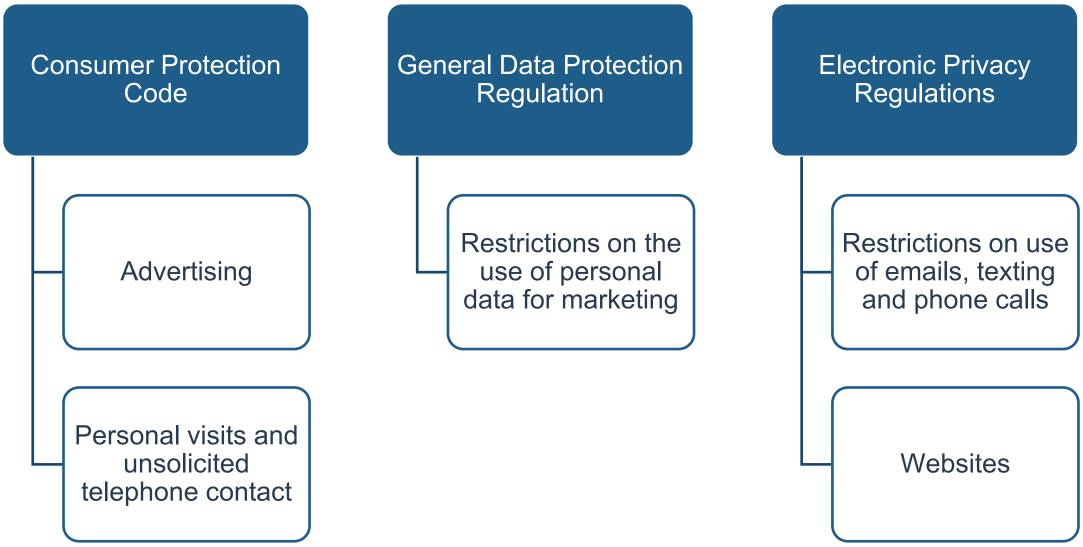
This chapter looks at the regulations regarding the marketing activities of firms; as covered by Consumer Protection Code, General Data Protection Regulation and Electronic Privacy regulations. The general advertising regulations which apply to firms are outlined. The provisions of the General Data Protection Regulation on personal data and its uses for marketing purposes are detailed. The regulations regarding personal visits and unsolicited telephone contact are also included.

Learning Outcomes – after studying this chapter you should be able to:
understand the general regulations regarding advertising requirements which apply to firms.
appreciate the different terms used by the industry; Independent and Broker.
know the main provisions of the General Data Protection Regulation on the use of personal data for marketing purposes.
outline the main regulations regarding personal visits and unsolicited telephone contact.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	3	6	8

All financial services providers undertake marketing activities from time to time, with the objective of attracting new customers and retaining existing customers.

There are a number of regulatory provisions which set rules on some marketing activities:



The Central Bank's Consumer Protection Code applies to all firms when providing certain financial services to consumers in the State:

- Firms established in the State and licensed or authorised by the Central Bank, and
- Firms established and authorised or licensed in another EU Member State, when providing financial services to consumers in this State on a cross-border basis.

Note the following exceptions where the Code does NOT apply:

- MiFID investment firms when providing MiFID investment services. The Code therefore applies to MiFID firms only when providing services in the State to consumers in relation to insurance policies, PRSAs, Tracker Bonds and deposits.
- Credit unions in respect of their core savings and loan services. The Code does apply when the credit union is acting as an insurance intermediary.

3.1 Advertising

The Central Bank's Consumer Protection Code sets out a number of:

- General advertising requirements applicable to all advertisements, and
- Product specific requirements which apply only to advertisements related to some types of financial products, e.g., loans and savings and investment products.

3.1.1 What is an 'Advertisement'?

The Code defines an '*advertisement'* as:

> *"... any commercial communication in respect of a regulated entity, which is addressed to the consumer public or a section of it, the purpose being to advertise a regulated activity or a regulated entity excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC)."*

It therefore covers:

- Print advertisements;
- Radio/TV advertisements;
- Flyers;
- Product brochures;
- Websites.

3.1.2 General Requirements

A number of general advertising requirements apply to firms when advertising, including the following:

• Make clear that it is an advertisement
• Clear as to who is publishing the advertisement
• Clear, fair, accurate and not misleading
• Ensure key information is prominent
• Small print only to elaborate key information
• Include Warning statements, where they apply
• Disclose tied status, if tied to one financial institution
• Explain any initialisms or acronyms, e.g., APR, CAR

- An advertisement must be designed and presented so that any consumer can reasonably be expected to know immediately that it is an advertisement.
- The name of the firm publishing the advertisement must be clearly shown. It must be obvious to a consumer who is advertising.
- The firm must ensure that the design, presentation and content of the advertisement is clear, fair, accurate and not misleading;

- The firm must ensure that:

  - Key information, in relation to the advertised product or service, is prominent and is not obscured or disguised in any way by the content, design or format of the advertisement; and

  - Small print or footnotes are used only to supplement or elaborate on the key information in the main body of the advertisement and must be of sufficient size and prominence to be clearly legible.

- The firm must ensure that any warning statements required by the Code (e.g., *Warning: The value of your investment may go down as well as up*):

  - Must be in a box, in bold type and of a font size that is at least equal to the predominant font size used throughout the advertisement, and

  - Appear simultaneously with the benefits of the advertised product or service.

In the case of non-print media e.g., a radio advertisement, it is sufficient that the warning statements are outlined at the end of the advertisement.

However, it is not necessary for a firm to display the warning statements in an advertisement if the advertisement does not refer to the benefits of a product or service but only names the product or service and/or invites a consumer to discuss the product or service in more detail with the firm.

- Where an intermediary is tied to a single financial institution for a particular product or service, the intermediary must disclose this fact in all advertisements for the advertised product or service.

- A firm must ensure that an advertisement which contains any initialisms or acronyms (for example AER, APR etc.) explains what the letters stand for.

3.1.3 Disclosure of Regulatory Status

A firm must include a regulatory disclosure statement on all its advertisements:

> *"[Full legal name of the regulated entity, trading as (insert all trading names used by the regulated entity)] is regulated by the Central Bank of Ireland."*

No additional text should be added into the wording of the regulatory disclosure statement.

The regulatory disclosure statement must not be presented in such a way as to appear to be an endorsement by the Central Bank of the firm or its products or services.

Example

ACE Investment Advisers Ltd. is regulated by the Central Bank of Ireland as an investment intermediary. ACE operates under a trading name of 'Smart Investors'. ACE does not provide any other services not regulated by the Central Bank.

ACE Investment Advisers Ltd. must include the following statement on all its advertisements

"ACE Investment Advisers Ltd., trading as Smart Investors, is regulated by the Central Bank of Ireland."

3.1.4 Inclusion of Warning Statements

The Code sets out a number of warning statements which must be included in advertisements for different types of financial products. The warnings vary by the type of financial or product being marketed.

For example, where the advertisement is for an investment product which can fluctuate in price or value and does not guarantee a return of capital, the advertisement must contain the following warning statement in a box:

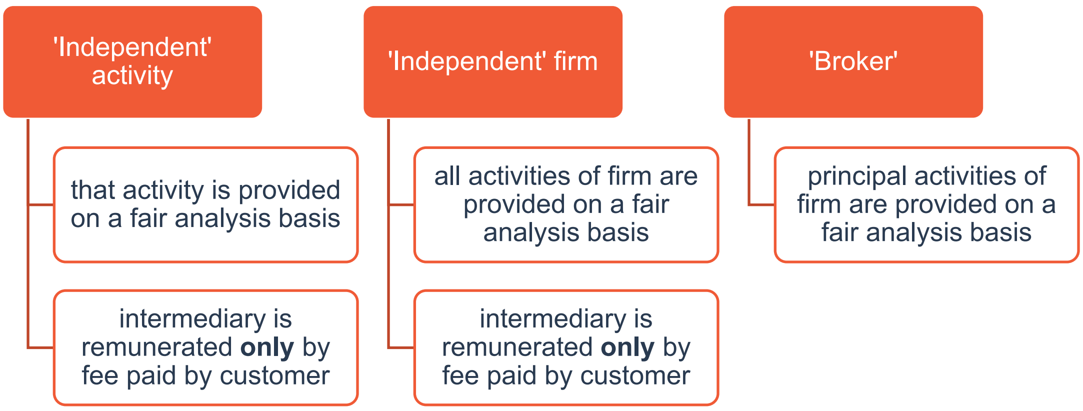
Warning: The value of your investment may go down as well as up.

Warning: If you invest in this product you may lose some or all of the money you invest.

3.2 Use of the Terms 'Independent' and 'Broker'

The Consumer Protection Code imposes restrictions on the use of the terms 'independent' and 'broker' by intermediaries, whether in advertisements, stationary, websites etc.

The following chart summarises the position for firms that do not provide MiFID Article 3 services.



Independent Activity and Independent Firm

An intermediary that is not providing a MiFID Article 3 service may use the description ‘independent’ or any other word or expression that is a derivative of, or similar to, this term:

- In its legal name, trading name or any other description of the intermediary, only where regulated activities provided by the intermediary are all provided on the basis of a fair analysis of the market; or

- In any description of a regulated activity provided by the intermediary, only where that regulated activity is provided on the basis of a fair analysis of the market;

and, in either of these circumstances, only where the intermediary does not accept and retain any fee, commission, other reward or remuneration where advice is provided in respect of regulated activities provided by the intermediary, other than a fee paid by a consumer, or a person acting on behalf of a consumer, to whom the advice is provided.

An intermediary cannot, therefore, use the term “independent” to describe the firm or an activity of the firm unless the intermediary is remunerated for all regulated activities **only** by means a fee paid by, or on behalf of, the customer.

Minor non-monetary benefits that include, for example, attendance at a conference within the State, IT software or platforms, or hospitality of a reasonable de minimis value such as food and drink during a business meeting or conference, are excluded for the purposes of determining if the intermediary is remunerated for all regulated activities **only** by means a fee paid by, or on behalf of, the customer.

Example

ABC Independent Financial Advisers Ltd. is regulated by the Central Bank. It does not provide *MiFID Article 3 services*. In order to be able to continue to use the term ‘independent’ in its legal name, it must:

- Provide all its regulated activities on the basis of a fair analysis of the market
  AND
- Is remunerated for its services **only** by means of a fee paid by, or on behalf of, the customer.

These requirements do not apply to a creditor or mortgage credit intermediary providing *advisory services* in relation to mortgage credit agreements. In these cases, the firm cannot use the term “*independent advice*” or “*independent advisor*” in the course of providing *advisory services* unless:

- The creditor or mortgage credit intermediary considers a sufficiently large number of credit agreements available on the market; and

- If the number of creditors considered is less than a majority of the market, the creditor or mortgage credit intermediary is not remunerated for those advisory services by one or more creditors.

MiFID Article 3 Services

In the case of an intermediary providing *MiFID Article 3 services*, the requirement that the firm is remunerated for **<u>all</u>** regulated activities **<u>only</u>** by means of a fee paid by, or on behalf of, the customer is replaced by the following requirement:

- The criteria for selecting the various financial instruments include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients and ensure that the selection of the instruments that may be recommended is not biased.

In the case of *MiFID Article 3 services*, the following additional requirements apply:

- Where the firm informs a client that investment advice is provided on an independent basis, the firm must not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to a client. Minor non-monetary benefits that are capable of enhancing the quality of the service provided to the client and are of a scale and nature such that they could not be judged to impair compliance with the firm’s duty to act in the best interest of the client are excluded from this provision but must be clearly disclosed.

- Firms must explain in a clear and concise way whether and why investment advice qualifies as independent or non-independent and the type and nature of the restrictions that apply, including, when providing investment advice on an independent basis, the prohibition to receive and retain inducements. Where advice is offered or provided to the same client on both an independent and non-independent basis, firms shall explain the scope of both services to allow investors to understand the differences between them and not present itself as an independent investment adviser for the overall activity. Firms shall not give undue prominence to their independent investment advice services over non-independent investment services in their communications with clients.

- Firms must provide a description of the types of financial instruments considered, the range of financial instruments and providers analysed per each type of instrument according to the scope of the service, and, when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis and the factors taken into consideration in the selection process used by the firm to recommend financial instruments, such as risks, costs and complexity of the financial instruments.

- A firm offering investment advice on both an independent basis and on a non-independent basis cannot allow an individual to provide both independent and non-independent advice.

Broker

An intermediary cannot use the term ‘*broker’* unless its principal financial services are provided on the basis of a *fair analysis of the market.*

The Central Bank has clarified that the principal financial services test means that an intermediary cannot call itself a ‘*broker’* unless at least 75% of its annual turnover from services regulated by the Central Bank arise from services provided on a ‘*fair analysis of the market*’ basis.

In turn the term *'fair analysis of the market'* is defined in the Code as:

> *"... providing services on the basis of a sufficiently large number of contracts or investment products and product producers available on the market to enable the intermediary to make a recommendation, in accordance with professional criteria, regarding which contract or investment product would be adequate to meet the consumer's needs."*

This definition is essentially identical to the definition of "*fair and personal analysis*" contained in the Insurance Distribution Regulations.

Obviously, being 'tied' to one product producer does not fall into the definition of 'fair analysis of the market', but after that it is less certain what 'fair analysis' means in any individual case, e.g., for some insurance lines there are only a small number of insurers offering products, but for other lines there may be a much greater choice of insurers. So, fair analysis doesn't relate to a fixed number of insurers or product producers.

The following example illustrates the impact of these measures:

ABC Intermediary Ltd. is a life and non-life insurance intermediary and mortgage intermediary. All its services are regulated by the Central Bank. It provides its services as follows:

	Nature of service provided by firm	% of firm's annual turnover
Life and pensions	Fair analysis of market	75%
Home insurance	Tied to one general insurer	15%
Mortgage intermediary	Not tied, but not fair analysis of market	10%
		100%

Under the Code, ABC Intermediary Ltd.:

- Cannot describe the firm as 'independent' as all its regulated activities are not provided on the basis of a fair analysis of the market, and it is not remunerated for all regulated activities only by means a fee paid by, or on behalf of, the customer.

- Can describe the firm as a 'broker' as at least 75% of its annual turnover relates to services which the firm provides on a fair analysis of the market basis.

Where an intermediary does not provide a product or service on the basis of a fair analysis of the market, it must clearly disclose to the consumer the names of those product producers whose products or services it intends to consider as part of its analysis.

Where an intermediary is tied to a single product producer for a particular product or service, it must disclose this fact to the consumer in all communications with the consumer in relation to that particular product or service.

3.3 Using Personal Data for Marketing Purposes

The EU General Data Protection Regulation (GDPR) came into force on the 25th May 2018, replacing the previous data protection framework under the EU Data Protection Directive.

As an EU Regulation, the GDPR does not require transposition into Irish law. EU Regulations have '*direct effect*'.

The GDPR seeks to protect the privacy of individuals and their personal information, called data', in two main ways:

- By imposing various restrictions on firms which control and process personal data in relation to how they obtain and use that information;

  AND

- By providing certain rights to consumers whose personal data is held by firms to:

  - Access,

  - Correct inaccurate information,

  - Have certain personal data and information removed, and

  - Complain to the Data Protection Commission where they feel personal data about them has been misused by such an entity.

The Data Protection Commission is the regulatory body in relation to data protection legislation. The Data Protection Commission is responsible for upholding the rights of individuals as set out in the GDPR and enforcing the obligations upon data controllers.

3.3.1 What is 'Personal Data'?

The term '*personal data'* is defined in the GDPR as:

> *"… any information relating to an identified or identifiable natural person."*

An "*identifiable natural person*" is:

> *"… one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person."*

An obvious example of *personal data* would include the individual's name, as this would allow someone who gets access to this item of personal data to identify the individual involved.

There are different ways in which a living individual could be identified from personal data, apart from his or her name. A person could also potentially be identified from combining other information, such as his or her physical characteristics, pseudonyms, occupation, address, etc.

Obviously, name and address combined would accurately identify an individual.

The term '*personal data'* includes both automated (e.g., information held on computers) as well as manual data (e.g., manual paper filing systems).

3.3.2 Use of Personal Data for Marketing Purposes

The main obligations imposed by the GDPR on firms, called data controllers and/or data processors, in respect of personal data collected, held and used by them are:

1. Personal data must be processed lawfully, fairly and in a transparent manner.

2. Personal data must be collected only for one or more specified, explicit and legitimate purposes.

3. Personal data must not be processed in a manner incompatible with the purpose or purposes for which it was collected.

4. Personal data must be adequate, relevant and limited to what is necessary for the purpose or purposes for which it was collected or further processed.

5. Personal data must be accurate and, where necessary, kept up to date. Every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay.

6. Personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which it was collected.

7. Personal data must be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.

8. Data controllers must give a copy of personal data held by the data controller in relation to any individual to that individual on request.

These principles are binding on every data controller and data processor. Any failure to observe them is a breach of the GDPR. Under the GDPR, the Data Protection Commission has wide-ranging powers to enforce compliance, including the power to impose administrative fines of up to €20m or 4% of the total worldwide annual turnover, whichever is greater.

The **KEY** restrictions in relation to the use of personal data held by a firm for general marketing purposes are those set out above at 1 to 3.

The GDPR requires that a data controller shall, at the time when personal data are obtained, provide the data subject with specified information in "*a concise, transparent, intelligible and easily accessible form, using clear and plain language*". This is usually given in a Privacy Notice.

There must be a lawful basis to collect and use personal information. The Privacy Notice will, therefore, typically include a description of the data collected, and the reason for collecting them, and will set out such data under a number of sub-headings, such as:

- Data needed for the contract;
- Data required by law;
- Data required for the data controller's legitimate interest; and
- Data requiring the data subject's consent.

In relation to direct marketing, the basic rule that applies is that the data controller needs the consent of the individual to use his or her personal data for direct marketing purposes. The Privacy Notice will usually address this by stating that:

- The firm would like to be able to contact the individual about its own services and services from its group of companies: and
- The firm will send the individual direct marketing content only where the individual has given his or her consent to this.

If a firm therefore wishes to be able to pass on client details to another entity, e.g., within the same financial group, the client's permission for this must have been sought at the outset.

This is an example of a consent to allow sharing of information across group companies from a typical life assurance proposal form:

Optional Consent

Consent to Sharing with Other Companies in the ABC Group

I agree to ABC Life sharing my personal information (excluding my personal health information) with other companies within the ABC Group. I understand this is to assist in developing combined customer services (for example, access to services from different Group companies on one online platform). This is an area that will continue to improve with a view to adding new customer engagement offerings.

You can change your mind at any time and opt-out of any further sharing by emailing or writing to the ABC Data Protection Team. If you opt-out, we will keep a record of your instruction to opt-out.

Plan Owner 1: I agree/I don't agree

Plan Owner 2: I agree/I don't agree

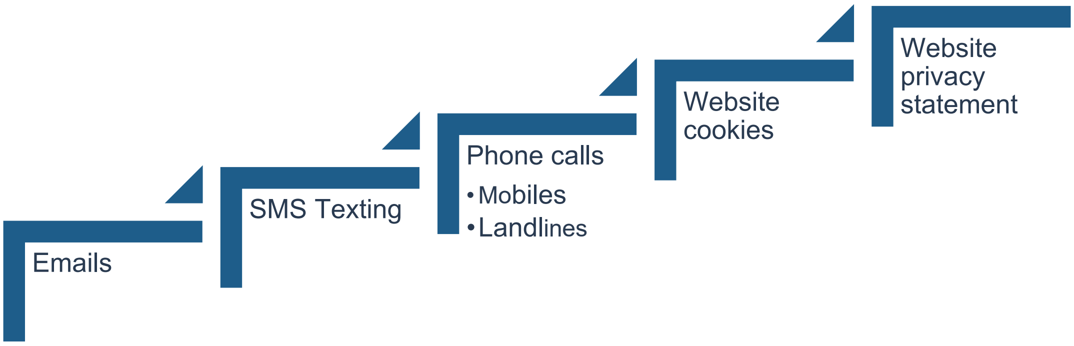
If different to Plan Owner

Life Assured 1: I agree/I don't agree

Life Assured 2: I agree/I don't agree

So, unless the terms of the data protection 'consent' obtained from a client at the outset allowed for the future use of that client's personal data for marketing purposes, your firm cannot use that client's details to try and market to him or her some other product or service or to pass on his or her personal details to another entity for marketing purposes.

3.4 Electronic Privacy



The Electronic Privacy Regulations 2011 impose additional restrictions in relation to marketing to consumers using:

- Email;
- Text messaging;
- Phone calls to landlines and mobile numbers;
- The use of cookies on websites; and
- A Privacy Statement on websites.

3.4.1 Email and Texting

Where a firm obtains a consumer's email address and mobile telephone number at the time of selling him or her a product or service, the firm **must**, at that time, give the consumer the opportunity to choose whether to opt in or not to the future use of his or her email address and mobile telephone number for marketing purposes, e.g., providing an opt in box on an application form to capture the consumer's consent.

If the individual did not opt in to receipt of future email and text message marketing at the time of sale of the original product or service, the firm cannot send an unsolicited marketing email or text to the consumer now unless their consent is captured at some other point.

While there is no legal time limit on how long consent for marketing purposes remains valid, the Data Protection Commission has previously suggested a rolling 12 month basis – this means, where marketing material is sent within 12 months of the consent being captured and it contains the option to opt out, if the consumer does not choose to opt out their consent is deemed to remain valid.

Example

DEF Life Co sold Joanne a PRSA in March 2020. On the PRSA application form, Joanne supplied her personal email address and mobile telephone number. She was provided on the PRSA application form with a box to tick to opt in to the use of her email and mobile telephone number for future marketing purposes, i.e., for purposes other than in connection with her PRSA.

She did tick the box and hence is **opted in** for the receipt of marketing emails and text messages.

DEF can send her a marketing email or text message about another of its products up to March 2020 if:

- Joanne has not opted out of marketing emails and text messages from DEF, since she took out the PRSA,
- The product being marketed is a policy from DEF Life Co,
- The email or text message gives Joanne an easy facility to opt out of the receipt of future marketing emails and text messages, e.g., an Unsubscribe link in an email or a STOP command in a text message.

However, if DEF did not send Joanne a marketing email or text message by March 2021, she is then deemed to have opted out of future marketing emails and text messages from that date.

Firms can send marketing emails and text messages to a consumer who is not an existing customer of the firm, only if the firm has specific permission from the consumer to do so, i.e., the individual must have opted in to receive marketing emails and text messages.

3.4.2 Phone Calls

A firm must not make an unsolicited marketing telephone call to an individual (whether an existing customer or not):

- Who has indicated to the firm that he or she does not want to be contacted in this manner;

  OR

- Whose telephone number is listed on the National Directory Database as not consenting to unsolicited marketing telephone calls e.g., an ex-directory number.

The *National Directory Database (NDD)* was originally a directory enquiries tool and used as a means of producing telephone directories.

However, the NDD now also acts as a form of national unsolicited telemarketing *'opt out'* register:

- Telemarketers must check the NDD before making an unsolicited telephone or fax marketing call to a telephone number and cannot make a call to a number which is registered as having opted out of receiving telemarketing calls.
- Ex-directory numbers are automatically registered as having opted out on the NDD from marketing calls.
- Other numbers (private and commercial) can be registered on the NDD by their subscriber as opting out of receiving unsolicited marketing telephone calls.

A firm can make a marketing call to an individual (whether an existing customer or not) on his or her mobile telephone number only if:

- The individual has opted in to receive marketing calls from the firm on his or her mobile telephone number;

  OR

- His or her mobile telephone number is listed on the National Directory Database as consenting to unsolicited marketing telephone calls.

Therefore, individuals must specifically opt **in** to receive marketing calls to their mobile number; they are assumed to have opted **out** by default.

3.4.3 Cookies on Websites

Where a firm's website contains cookies (either their own or third parties) which collect information about the user's use of the website, and the information is stored after the user's session on the website has finished, the website must provide clear communication to the user as to what he/she is being asked to consent to in terms of cookies usage and a means of giving or refusing consent.

The user's consent to the use of cookies must be obtained explicitly through the use of an opt-in check box which the user can tick if he or she agrees to accept cookies. It is not permissible to obtain consent by implication.

3.4.4 Privacy Statement on Websites

Each website which obtains and stores personal data and information from a user must contain a privacy statement setting out a public declaration of how the provider applies data protection principles to personal data processed on its website. This may be contained in the provider's Privacy Notice, provided the privacy notice is available on its website.

3.5 Personal Visits and Unsolicited Telephone Contact

The Consumer Protection Code imposes additional restrictions on firms in relation to making personal visits and telephone contact with consumers; these apply in addition to normal Data Protection and Electronic Privacy regulation restrictions already outlined.

The Code does not impose any additional restrictions on email contact; such contact should be made only in accordance with Data Protection consents and the Electronic Privacy Regulations (see above).

3.5.1 Personal Visits

- Unsolicited personal visits by firms to individuals are prohibited, e.g., door-to-door calling and selling.

- Personal visits to individuals, whether existing clients or not, can be made only where that consumer has given informed consent to being visited by the firm. The informed consent must be obtained separately for each personal visit, and the firm must maintain a record of this consent.

  The informed consent of the consumer for a specific personal visit must relate to:

  - The purpose(s) for which a personal visit is to be made, including in the case of sales and marketing, the types of product to be discussed during the personal visit, and

  - The time and date for the personal visit.

In other words, the consumer cannot be asked to give a blanket open-ended consent to being visited by the firm on numerous occasions for unspecified purposes; the consent must be sought specifically for each visit and for the specific purposes of the visit, as outlined above.

3.5.2 Unsolicited Telephone Call Contact – Potential Customers

An unsolicited telephone call can be made by a firm to a consumer, who is an individual and *not* an existing customer of the firm, only in one of the following circumstances:

- Where the consumer has signed a statement, within the previous twelve months, giving the firm permission to make telephone calls to him/her for specified purposes;

- Where the consumer has a listing in the Business Listing section of the current telephone directory, classified telephone directory or in trade/professional directories circulating in the State, and contact is made through this business telephone number;

Example #1

Mary is a self-employed dentist. Her name, business address and telephone number are listed in the business section of the telephone directory. Mary is not an existing customer of ACE Investment Advisers Ltd.

ACE can make an unsolicited telephone call to Mary, using this business telephone number.

- Where the consumer is a director of a company, or a partner in a firm with an entry in the Business section of the current telephone directory, classified telephone directory or in trade/professional directories circulating in the State, and the call is in connection with his or her role as a director or partner of the business in question.

Example #2

ABC Enterprises Ltd. is listed in the business section of the telephone directory. Tom is a director of ABC Ltd. Neither ABC nor Tom are existing customers of DEF Insurance Advisers Ltd.

DEF can make an unsolicited telephone call to Tom, as a director of the company, using the business number, if the call is in connection with Tom's role as a director of ABC.

- Where the consumer is the subject of a referral, for which the consumer has provided express consent, received from:
  - A firm authorised to provide financial services in Ireland,
  - Another entity within the same group as the firm,
  - A solicitor, or
  - A certified person (i.e., an accountant authorised to provide investment advice and services on an incidental basis).
  -

A firm must ensure that, where it makes an unsolicited telephone contact on foot of a referral above, it retains a record of the referral.

- Where the purpose of the telephone contact is limited to offering protection policies.

  For this purpose, protection policies are defined as:

  - All general insurances, such as motor and liability insurance.
  - Life assurance protection policies, be they linked or non-linked, where the purpose and intention of the policy is solely to provide protection.
  - Annuities, both conventional and unit linked.
  - Permanent Health Insurance.

Unsolicited telephone contacts allowed by the Code may be made only between 9.00 am and 9.00 pm Monday to Saturday (excluding Bank Holidays and public holidays), unless otherwise agreed with the consumer.

The Central Bank has clarified that "*we would not consider that a firm which sends a text message to a consumer outside of these hours would be in violation of this provision".*

Central Bank clarification on the Consumer Protection Code provisions in relation to telephone contact states that "*regulated entities are reminded that they may not contact, for sales or marketing purposes, persons who have expressed a preference not to receive sales or marketing calls and have subscribed to the National Directory Database Opt-Out Register."*

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- Advertising ☐
- Use of the terms ‘independent’ and ‘broker’ ☐
- Using personal data for marketing purposes ☐
- Electronic Privacy ☐
- Personal visits and unsolicited telephone contact ☐

Sample Questions

The answers to these questions can be found in your Study Hub.

1. The Central Bank's Consumer Protection Code does NOT apply to:

   A. credit unions' savings services.
   B. banks.
   C. MiFID investment firms, when providing insurance intermediary services.
   D. general insurance companies.

2. The Central Bank's Consumer Protection Code advertising requirements apply to:

   (i) print advertisements.
   (ii) TV advertisements.
   (iii) a firm's website.

   A. (i) only.
   B. (i) and (ii) only.
   C. (ii) and (iii) only.
   D. (i), (ii) and (iii).

3. Under the Consumer Protection Code, an intermediary CANNOT, in respect of services that are not MiFID Article 3 services, describe the firm as 'independent' unless:

   A. the firm has at least fifteen agency appointments with different product producers.
   B. the firm has at least two offices.
   C. the firm is remunerated only by fees paid by its customers.
   D. the firm has at least five staff members.

4. Which one of the following is a KEY restriction in relation to the use of personal data, held by a firm, for general marketing purposes?

   A. Personal data must be obtained and processed lawfully, fairly and in a transparent manner.
   B. Personal data must be accurate and complete.
   C. Appropriate security measures must be taken against unauthorised access.
   D. Personal data must be adequate and relevant.

04

Meeting Potential Clients

This chapter looks at the regulations that apply when in contact with potential clients. We learn about Terms of Business documents and what information they must contain. Included are the obligations on financial services firms to undertake Customer Due Diligence (CDD) checks to prevent money laundering, and the process involved. The terms simplified, standard and enhanced as set out under CDD are explained.

Learning Outcomes – after studying this chapter you should be able to:
understand the main provisions required when meeting potential clients.
be familiar with the contents of the Terms of Business document.
explain the obligations of financial services firms as designated persons under the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010.
know how to establish the identify of a customer.
provide an overview of customers and products which may qualify for Simplified CDD.
provide an overview of when Enhanced CDD applies.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	4	10	14

You may end up making contact with a potential client through one or more of the following ways:

- The individual contacts your firm, possibly following up on an advertisement or after visiting your website;

- The individual contacts your firm following a recommendation from an existing client, friend, or relative of yours;

- You contact the individual following a referral from an existing client, another professional adviser, or an associated firm, or using personal data collected as part of your firm's marketing activities.

- Where you are contacting an individual, who is not already a client of yours, using personal data you have on him or her, you need first to be sure about a number of things before making first contact, as outlined in the previous Chapter 3:

• Did you obtain the personal data fairly?
• Can you use the data for marketing purposes?
• Will the contact comply with the Consumer Protection Code?
• Will the contact comply with Electronic Privacy Regulations

  - Did you obtain the personal data fairly? For example, was the individual aware of, and did he or she consent to, you getting his or her personal details?

  - By using the personal data to make contact with the individual, will you be using it for the purpose for which the data was collected? In obtaining the personal data, did the individual consent to his or her details being used by you to make contact with him or her for the purposes of advising him or her on the financial services your firm offers, i.e., for marketing purposes. Personal visits to individuals, whether existing clients or not, can be made only where that consumer has given informed consent to being visited by the firm. The informed consent must be obtained separately for each personal visit and the firm must maintain a record of this consent.

  - Will the contact be in accordance with the Central Bank's Consumer Protection Code?

  - Will the contact be in accordance with the Electronic Privacy Regulations?

4.1 Making First Contact on Foot of a Referral

Telephone or email contact can be made with a prospective client in the first place only in accordance with:

- Data Protection restrictions: See Section 3.3.2;

- Electronic Privacy restrictions: See Section 3.4.1 and 3.4.2;

- Consumer Protection Code restrictions: See Section 3.5.1 and 3.5.2.

The prospective client has given express consent to the referral, e.g., the individual has given express consent to his or her accountant to pass on his or her name and telephone number to you, for the purpose of obtaining personal financial advice.

Where you ring or email the potential client on foot of a referral and for the purpose specified in the referral (e.g., to obtain advice on investing a lump sum), the Consumer Protection Code requires that you must:

- First identify yourself by name, and the name of your firm;
- State on whose behalf you are acting and the purpose of the call;
- Inform the consumer that the telephone call is being recorded, if this is the case;
- Disclose to the consumer the source of the business lead or referral supporting the telephone call or email; and
- Establish if the consumer wishes the telephone call or email correspondence to continue and, if not, end the telephone call or email correspondence immediately.

4.2 Terms of Business

Under the Consumer Protection Code, at the first meeting with a potential client you must first (*before* providing any advice or financial service to the individual) provide him or her with a copy of your firm's Term of Business, on a standalone basis, i.e., not part of any other document or brochure.

The Terms of Business document must set out the basis on which your firm is providing its services and must include:

- The legal name, trading name(s), address, and contact details of the firm;
- If the firm is part of a group, the name of the group to which the firm belongs;
- Confirmation that the firm is authorised, licensed or registered and the name of the competent authority that has authorised, licensed or registered it;
- A statement that it is subject to the [insert names of the Central Bank's Code(s) of Conduct which the firm must comply with] which offers protection to consumers and that the Code(s) can be found on the Central Bank's website at http://centralbank.ie;
- A description of the financial services that the firm provides;
- If the firm acts as an intermediary, a description of the level of service it provides for each product type, i.e., whether fair analysis of the market or limited analysis of the market and an explanation of that type of service in a way that seeks to inform the consumer;
- If the firm is tied for any of the financial services it provides, it must specify the name of each of the product(s) and/or service(s) for which it is tied and the name of the firm to which it is tied for those product(s) and/or service(s);
- A general statement of the charges imposed directly by the firm;
- A summary of the firm's policy in relation to how it will use a consumer's personal data;
- A summary of the firm's policy in relation to conflicts of interest;
- An outline of the action and remedies which the firm may take in the event of default by the consumer;

- A summary of the complaints procedure operated by the firm;

- If the firm is a member of a statutory compensation scheme, the name of the scheme and the nature and level of protection available from the scheme; and

- The effective date of the terms of business document.

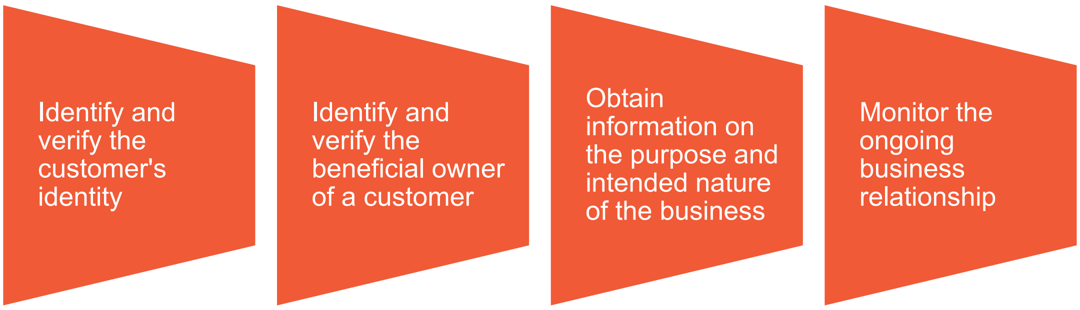
Although not required by the Consumer Protection Code, most firms ask the consumer to sign a copy of the Terms of Business letter to indicate that he or she has received it and accept the terms set out. However, the consumer cannot be compelled by the firm to sign a copy of the Terms of Business letter.

If your firm later makes a '*material change'* to its Terms of Business, you must provide each affected consumer with details of the change as soon as possible.

4.3 Customer Due Diligence

A financial services firm is required by law to undertake certain Customer Due Diligence checks on new clients, before providing any financial service for them, in order to prevent the financial system being used for money laundering or terrorist financing purposes:

Customer Due Diligence



4.3.1 Money Laundering and Terrorist Financing

The Fourth Anti-Money Laundering Directive (Directive (EU) 2015/849) was transposed into Irish law on 26 November 2018 by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018, which amended The Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 (CJA 2010). The Fifth Anti-Money Laundering Directive (Directive (EU) 2018/843) was transposed into Irish law on 23 April 2021 (all sections except section 8) and 24th of April (Section 8 only) by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021, which further amended The Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 (CJA 2010).

Money laundering means an offence as set out under Section 7 of the CJA 2010. It involves the intentional or reckless movement or conversion of property, generated from criminal conduct, so that the criminal origin of the property is difficult to trace. It is commonly understood to refer to the processes by which criminals pass the proceeds of their criminal activity through legitimate financial systems to make the money appear to be clean and unrelated to criminal activity.

The CJA 2010 imposes a number of obligations on financial institutions, such as banks and insurance companies, and intermediaries (referred to as '*designated persons*') in relation to the prevention of the use of the financial system for money laundering and terrorist financing.

While the popular view is that *'money laundering'* refers to hiding and dealing with money arising from drug crime and robbery, in fact it covers money, funds and property arising from any type of conduct which is an offence under the law of the State.

Therefore, for example, money laundering also covers the hiding and dealing in money and funds knowing (or being reckless as to whether or not) they are the proceeds of:

- Tax evasion.
- Financial fraud and deception.

The term '*property'* of criminal conduct is widely defined and includes not just cash but also property, land, financial securities, cars, works of art, etc. as well as financial benefits in money or money's worth.

There is no one way of money laundering. Methods can range from the purchase and resale of high-value items (e.g., houses, cars or jewellery) to the passing of money through a complex international web of legitimate businesses and 'shell' companies.

Initially, however, in the case of drug crime and some other serious crimes, such as robbery, the proceeds of criminal conduct usually take the form of cash in relatively low denominations.

There is, therefore, usually a need by criminals to introduce cash into the financial system by some means so that it can be converted into a form which can be later more easily transported, particularly out of the jurisdiction, e.g., an EFT. The methods of introducing cash to the financial system are limited only by the ingenuity of the criminals involved and these methods have become increasingly sophisticated.

Terrorist Financing means an offence under Section 13 of the Criminal Justice (Terrorist Offences) Act 2005 (CJA 2005). A person commits the offence of *'terrorist financing'* if he or she by any means, directly or indirectly, unlawfully and wilfully provides, collect or receives funds, intending that the funds be used or knowing that they will be used, in whole or in part, in order to carry out:

- An act of terrorism, as defined by law, or
- An act intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, and the purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do, or abstain from doing, any act.

The Central Bank has issued guidance entitled "*Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector*" (Central Bank AML/CFT Guidelines).

The Central Bank AML/CFT Guidelines state that the purposes of the guidelines are to:

- Assist firms in understanding their Anti-Money Laundering/Countering the Financing of Terrorism obligations under Part 4 of CJA 2010, which requires firms to put in place systems and controls to prevent and detect money laundering and terrorist financing; and
- Set out the expectations of the Central Bank regarding the factors that firms should take into account when identifying, assessing and managing money laundering and terrorist financing risks.

Customer Due Diligence

4.3.2 Standard Customer Due Diligence

The CJA 2010 requires that a firm apply a risk-based approach when applying Anti-Money Laundering/Countering the Financing of Terrorism compliance measures, and that the firm carry out a Business Risk Assessment (which must be approved by the firm's senior management) to identify and assess the risks of money laundering and terrorist financing involved in carrying on its business activities. The CJA 2010 also requires the results of the Business Risk Assessment to be applied in the context of carrying out customer due diligence.

The CJA 2010 also requires that a firm identify and assess the Money Laundering and Terrorist Financing risk in relation to a customer or particular transaction in order to determine the level of customer due diligence required,

The CJA 2010 provides for three categories of Customer Due Diligence – Standard, Simplified and Enhanced.

Due Diligence requirements must be applied on a 'r*isk-based'* approach, i.e., your firm must scale the information sought or monitoring required in proportion to its perceived risk of money laundering or terrorist financing posed by the customer and transactions in question, taking account of the:

- Profile of the customer involved,
- Nature of the financial product or service to be provided,
- Delivery mechanism or distribution channel used to sell the financial product or service, and
- Geographical area of operation.

The rationale for this approach is that a financial services firm should concentrate its resources on those customers and transactions that represent the higher risk of money laundering or terrorist financing.

Example

A term assurance life assurance policy represents a far lower risk of being used for money laundering or terrorist financing than an investment bond.

Therefore, more detailed Customer Due Diligence may be exercised by a life assurance company or insurance intermediary when dealing with a customer who wants to invest a large amount in a life assurance investment bond, than for a customer who wants to take out a Term Assurance policy for €100,000 cover at a monthly premium of €30.

There are potentially four steps involved in Standard Customer Due Diligence:

- Identify and verify a customer's idendity
- Identify and verify the beneficial owner
- Obtain information on the purpose and nature of the proposed business relationship
- Monitor ongoing business relationship

4.3.2.1 Identification and Verification of a Customer's Identity

The first requirement is that your firm identify and verify a customer's identity:

- **Prior** to establishing a business relationship with the customer.
- **Prior** to carrying out an occasional transaction for a customer, i.e., a single transaction, or a series of transactions that are, or appear to be linked to each other, where:
  - The designated person does not already have a business relationship with the customer, and
  - The total amount of money paid by the customer in the single transaction or series of transactions is greater than €15,000.
- **Prior** to carrying out any service for the customer, if the designated person has reasonable grounds to believe that there is a real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing.
- **Prior** to carrying out any service for the customer if the designated person has reasonable grounds to doubt the veracity or adequacy of documents or information previously obtained by it for the purposes of verifying the identity of the customer, and it has not obtained any other documents or information that can be reasonably relied on to confirm the identity of the customer.
- **At any time**, including a situation where the relevant circumstances of a customer have changed, where the risk of money laundering and terrorist financing warrants this.

The most likely occasion when customer identification will be required will be for *new* customers, i.e., *before* establishing a business relationship with the customer.

However, the requirement for a firm to establish the identity of a new customer *before* starting a business relationship with the customer is modified in three specific circumstances:

- A credit institution or financial institution may allow an account, including an account that permits transactions in transferable securities, to be opened with it before verifying the identity of the new customer, provided the institution ensures that no transactions take place on the account before the customer's identity is established.

- A life assurance company can opt to verify the identity of a new policyholder after the policy has started, provided identification is carried out before the pay-out under the policy or before assignment of the policy, provided the life assurance company obtains enough information on the beneficiaries at the outset to satisfy itself that it will be in a position to identify the beneficiaries prior to pay-out.

  For example, life assurance companies will typically verify a term assurance policyholder's identity and the beneficiary's identity, if different, only at the claim stage, i.e., prior to paying out a death or serious illness claim, as appropriate.

- Verification of the identity of the customer may be completed during the establishment of a business relationship if:

  This is necessary in order to not to interrupt the normal conduct of business; and

  There is no real risk of money laundering or terrorist financing occurring;

provided that the verification is completed as soon as practicable after the initial contact.

4.3.2.2 Identifying and Verifying the Beneficial Owner of a Customer

In some cases, a customer may not be an individual, but an entity controlled by one or more owners.

The second requirement, where it applies, is that your firm is required to establish and verify the identity of a *beneficial owner* connected with the customer or service concerned. The beneficial owner is "*any individual who ultimately owns or controls a customer or on whose behalf a transaction is conducted.*" The following table sets out the beneficial owner for specific types of customer.

Where the customer is:	The beneficial owner is:
A company (not listed on a stock exchange)	Any individual who: • Directly or indirectly owns more than 25% of the shares or voting rights in the company, OR • Exercises control via other means over the management of the company.
A partnership	Any individual who: • Directly or indirectly is entitled to or controls more than 25% of partnership profits or capital, or 25% of the voting rights in the partnership, OR • Otherwise exercises control over the management of the partnership.
A trust	An individual who: • Has an interest in the trust capital, OR • Has control over the trust, OR • Is the settlor of the trust, OR • Is a trustee of the trust, OR • Is the protector of the trust.
Estate of a deceased person	The executor or administrator of the estate.
Other cases	Any individual who ultimately owns or controls a customer, or on whose behalf a transaction is conducted.

Example

ABC Ltd. is owned 40% by Mr A, 40% by Mr B and 20% by Mr C. Mr C is not able to exercise control over the management of ABC Ltd.

If ABC Ltd. wishes to open a bank account with a bank it has not previously had a business relationship with, the bank will be required to identify the 'beneficial owners' of ABC Ltd., which in this case are Mr A and Mr B, as each has more than 25% of the shares or voting rights in the company.

Some possible options for verifying the identity of the beneficial owner of a company include:

- Requesting from the customer documentary evidence from an independent source detailing the beneficial owners (e.g., a certified copy of the company's share register);
- Searches of the relevant company registry; and

Electronic searches either direct or via a commercial agency for electronic verification, e.g., use of the CRO website.

4.3.2.3 The Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (RBO)

The EU's Fourth Anti-Money Laundering Directive requires all EU Member States to put into national law provisions requiring corporate and legal entities to obtain and hold adequate, accurate and current information on their beneficial owner(s) in their own internal beneficial ownership register. The EU's Fourth Anti-Money Laundering Directive further requires that this information be held in a central register in each Member State.

A Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (RBO) was established in April 2019 by the Minister for Finance to carry out this function.

The RBO is the central repository of statutory information required to be held by relevant entities (corporate or legal entity incorporated in the State) in respect of the natural persons who are their beneficial owners/controllers, including details of the beneficial interests held by them.

4.3.2.4 Customer Identification Documentation

Your firm must adopt a *'risk-based'* approach as to how to establish and verify the identity of a customer (or beneficial owner of a customer), i.e., it must identify the most appropriate method to identify and verify the customer's identity, taking account of its Business Risk Assessment and the assessment of the risk of money laundering or terrorist financing presented by the customer in question.

Typically, you will seek documentary or electronic verification of the customer's:

- Name;
- Date or birth; and
- Current address.

Firms are required to identify the customer, and verify the customer's identity, on the basis of documents (whether or not in electronic form), or information, that the firm has reasonable grounds to believe can be relied upon to confirm the identity of the customer, including:

- Documents from a government source, or
- Any prescribed class of documents, or
- Any prescribed combination of classes of documents.

The CJA 2010 provides that the Minister for Justice, Equality and Law Reform may prescribe a class of documents, or a combination of classes of documents, to be used in identifying the customer.

The Central Bank AML/CFT Guidelines state: *Firms should set out in their policies and procedures the documents and information which they are willing to accept and the circumstances under which they are willing to accept them in order to identify and verify the identity of a customer. Where appropriate, firms should also document their approach to accepting alternative documentation to support financial inclusion. Firms should retain records evidencing identity in either paper or electronic format*.

4.3.2.5 Non-Face-to-Face Contact with Customers

Additional Customer Due Diligence measures are required where the firm is dealing with a new customer on a non-face-to-face basis, e.g., exclusively over the internet or by telephone, and therefore does not physically meet the customer before establishing a business relationship with them.

Some of the additional Customer Due Diligence measures which could be used are:

- To require the first payment to the financial institution by the customer to be carried out through a bank established in the State or other EU Member State;
- Telephone call to the customer prior to the commencement of the business relationship on a home or business number which has been verified (electronically or otherwise);
- Communicating with the customer at an address that has been verified (such communication may take the form of a direct mailing of account opening documentation to him or her, which, in full or in part, might be required to be returned completed or acknowledged without alteration);
- Internet sign-on following verification procedures where the customer uses security codes, tokens, and/or other passwords which have been set up during account opening and provided by mail (or secure delivery) to the named individual at an independently verified address.

4.3.2.6 Obtaining Information on the Purpose of the Business Relationship

The third requirement, using a risk-based approach, is to seek information reasonably warranted by the risk of money laundering or terrorist financing from all customers on the purpose and intended nature of their business relationship *prior* to the establishment of the relationship.

Firms are required to identify the most appropriate information necessary to satisfy their obligations under the CJA 2010.

Firms are required to obtain sufficient information about their customers in order to adequately monitor their activity and transactions and to satisfy themselves that the account is operating in line with the intended purpose.

Depending on the type of customer, the information might include:

- Information concerning the customer's or beneficial owner's business or occupation/employment;
- Information on the types of financial products or services which the customer is looking for;
- The expected source and origin of the funds to be used in the relationship, e.g., source of a large investment amount to be invested in a life assurance investment bond or unit trust;
- The anticipated level and nature of the activity that is to be undertaken through the relationship.
- The source of wealth of the customer (particularly for high risk customers);
- Copies of the customer's most recent financial statements;
- Information on any relationships between signatories and underlying beneficial owners;
- Any relevant information pertaining to related third parties and their relationships to an account, e.g., beneficiaries;
- The anticipated level and nature of the activity that is to be undertaken through the business relationship, which may include the number, size and frequency of transactions that are likely to pass through the account.

4.3.2.7 Failure to Supply Information Sought

Where a firm is unable to identify and verify the customer's identity or establish the purpose of the business relationship, because of the failure of the customer to provide the documentation or information sought, the firm must, for so long as the failure to supply the relevant information remains unrectified,

- Not provide the service sought by that customer or carry out a proposed transaction, and
- Discontinue the business relationship (if any) with the customer.

4.3.2.8 Ongoing Monitoring of the Business Relationship

The fourth requirement of standard customer due diligence is to monitor the business relationship on an ongoing basis to the extent reasonably warranted by the risk of money laundering or terrorist financing.

The CJA 2010 requires firms to adopt internal policies, controls and procedures dealing with:

- The monitoring of transactions and business relationships;
- The identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the firm has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing; and
- Measures to be taken to keep documents and information relating to risk assessments by the firm up to date.

Processes to meet these requirements would include:

- Maintaining, and keeping up to date, a list of clearly defined trigger events that require a customer review;
- Having a well-documented and well-established monitoring programme, where high-risk customers are reviewed on a frequent basis;
- Carrying out periodic reviews of all customers, the frequency of which is commensurate with the level of money laundering or terrorist financing risk posed by the customer;
- Reassessing and, if applicable, re-categorising customers upon material updates to CDD information and/or other records gathered through a trigger event or periodic review;
- Re-categorising of customers as high risk subject to Senior Management approval and the completion of Enhanced Due Diligence before a decision is taken to continue the relationship;
- Screening of all customers to identify new and on-going PEP relationships, the frequency of such screening being determined by the firm, commensurate with the firm's Business Risk Assessment;
- Having clear instruction for staff regarding the action required where appropriate Customer Due Diligence documentation or information is not held on file; and
- Utilising customer contact as an opportunity to update Customer Due Diligence information.

For example, life assurance companies might monitor a higher risk product, like an investment bond, for certain suspicious behaviour such as:

- A small initial investment in a bond, followed shortly later by a much larger top up investment paid from a different third-party source.
- Multiple partial encashments totalling up to 75% of the original investment amount, within a short period of the bond being issued.

Another example might be a medium risk product like a life assurance savings plan for a modest regular savings amount, being suddenly topped up by a large single premium.

4.3.3 Simplified Customer Due Diligence

Simplified Customer Due Diligence (CDD) requirements are a reduced level of due diligence requirements that apply where the firm has taken steps to verify that certain customers and certain financial products are likely to carry a low risk of money laundering or terrorist financing.

The CJA 2010 provides that a firm may take Simplified CDD measures to such extent and at such times as is reasonably warranted by the lower money laundering or terrorist financing risk in relation to a business relationship or transaction where it:

- Has identified in its Business Risk Assessment an area of lower risk into which the business relationship or transaction falls; and
- Considers that the relationship or transaction presents a lower degree of risk.

Prior to applying Simplified CDD, a firm is required to conduct an appropriate assessment to satisfy itself that the customer or business qualifies for the simplified treatment.

Having decided to apply Simplified CDD, the firm must keep a record of its determinations in relation to risk, and the customer and / or transactions will have to be monitored to detect unusual or suspicious activity.

Firms are required to identify the most appropriate Simplified CDD measures to apply to business relationships or transactions in accordance with their policies and procedures.

When applying Simplified CDD measures, a firm must obtain sufficient information:

- To enable it to be reasonably satisfied that its assessment that the risk of money laundering or terrorist financing associated with the relationship is low is justified; and
- About the nature of the business relationship to identify any unusual or suspicious transactions.

In any event, there must be ongoing monitoring of the business relationship.

Simplified CDD does not exempt a firm from reporting suspicious transactions to the Financial Intelligence Unit of the Garda Síochána (FIU Ireland) and the Revenue Commissioners.

4.3.3.1 Customers Who May Qualify for Simplified CDD

Customers for whom a firm can potentially apply Simplified CDD include:

- A company whose shares are listed on a Stock Exchange;
- A public body;
- EU agencies and bodies.

4.3.3.2 Products Which May Qualify for Simplified CDD

The financial products for which a firm can potentially apply Simplified CDD when dealing with a new customer include:

- A life assurance policy having a low premium;
- A life assurance or pension policy issued to a pension scheme, which does not have a surrender clause and may not be assigned;
- A pension, superannuation or similar scheme that provides for retirement benefits to employees and where contributions to the scheme are made by an employer or by deductions from wages and the scheme rules do not permit a member’s interest under the scheme to be assigned;
- Financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes; and
- Certain types of electronic money.

Example #1

ABC Ltd. is setting up an Executive Pension Plan for one of its directors, underwritten by Lunar Life. ABC Ltd. in proposing for the policy is acting as trustee of the Executive Pension Plan scheme.

Lunar Life can apply Simplified CDD to ABC Ltd. proposing for this pension policy, as the policy is being issued to the trustees of a Revenue approved occupational pension scheme.

Example #2

Joe is applying for a Term Assurance policy with ABC Life Co, at a monthly premium of €50.

As the premium is low, ABC Life Co may apply Simplified CDD to Joe.

4.3.3.3 Where Simplified CDD Does Not Apply

However, Simplified CDD *cannot* be applied to any customer where:

- The firm knows or suspects that a proposed business relationship or occasional transaction involves a real risk of money laundering or terrorist financing,
- The firm has reasonable doubts about the veracity or accuracy of documents, data or information previously obtained for the purposes of identifying a customer,
- The customer is an individual, but the firm does not physically meet the individual for verification in person of their identity, or
- The customer is a Politically Exposed Person (PEP).

4.3.4 Enhanced Customer Due Diligence

Enhanced CDD, i.e., over and above Standard CDD, applies where:

- The customer (or beneficial owner) is a politically exposed person (PEP) or an immediate family member or close associate of a politically exposed person;
- The firm deals with natural persons or legal entities established in high-risk third countries;
- The firm has identified the business relationship or transaction as presenting a higher degree of risk.

A PEP is an individual who is or has been entrusted with prominent public functions, or an immediate family member, or a known close associate of such a person. The definition includes persons holding a prominent position in European Union and international bodies such as the UN, World Bank or IMF.

Examples include:

- Heads of State, Heads of Government, Ministers, Deputy Ministers and Assistant Ministers;
- Members of Parliament;
- Members of the governing bodies of political parties;
- Members of Supreme Courts, of constitutional courts or of other high-level judicial bodies;
- Members of courts of auditors or of the boards of Central Banks;
- Ambassadors, chargé d'affairs and high-ranking officers in the armed forces;
- Members of the administrative, management or supervisory boards of State-owned enterprises; and
- Directors, deputy directors and members of the board of, and persons performing the equivalent function in relation to, an international organisation.

These categories do not include middle-ranking or more junior officials. An individual ceases to be a PEP after he or she has left office for one year. However, a firm is required to continue to apply the measures applicable to a politically exposed person "*for as long as is reasonably required to take into account the continuing risk posed by that person and until such time as that person is deemed to pose no further risk specific to politically exposed persons*".

Individuals who have, or have had, a high political profile, or hold, or have held, public office, can pose a higher money laundering risk to designated persons as their position makes them vulnerable to bribery and corruption. This risk also extends to members of their immediate families and to known close associates. PEP status therefore puts a customer into a higher risk category.

In relation to PEPs, a firm is required to take the following steps prior to establishing a business relationship with a customer (or beneficial owner) or carrying out a transaction:

- Have appropriate procedures to determine whether the customer or beneficial owner is a PEP;
- Obtain appropriate senior management approval prior to establishing a business relationship with such a PEP; and
- Take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction.

• Have appropriate procedures to detect a PEP
• Obtain prior senior management approval
• Establish source of funds/wealth

The above steps must be undertaken to determine whether any of the following are PEPs, immediate family members of a PEP or close associates of a PEP:

- A customer or beneficial owner connected with the customer or service concerned;

- A beneficiary of a life assurance policy or other investment related assurance policy;
- A beneficial owner of the beneficiary.

Firms are required to undertake these steps:

- Prior to the establishment of a business relationship;
- Prior to carrying out an occasional transaction;
- Prior to the pay out of a life assurance policy or the assignment, in whole or in part, of such a policy.

The firm is also required to conduct enhanced ongoing monitoring of the business relationship with a PEP.

4.3.5 Relying on Third Parties to Carry out CDD

In certain circumstances a firm can rely on CDD carried out on a potential customer or beneficial owner by another third party (which includes another financial institution or intermediary regulated by the Central Bank), for the purposes of:

- Identifying and verifying a customer;
- Identifying and verifying the beneficial owner of a customer, if relevant, and
- Obtaining information on the purpose and intended nature of the business relationship.

However, the firm engaging in the business relationship with the customer remains liable for any failure by the third party to carry out the CDD correctly.

Examples of circumstances where a firm might rely on the fact that a third party has already undertaken CDD measures in relation to a customer include:

- Where a firm enters into a business relationship with, or undertakes a transaction for, a customer through an investment or insurance intermediary.
- Where one member of a financial group introduces a customer to another member company of the same group.

Example

A life assurance company can, in certain circumstances, rely on CDD measures carried out by an insurance intermediary with a customer who is taking out a policy with that life assurance company through the intermediary.

In this case, the life company doesn't have to carry out CDD a second time on the customer involved.

However, the life company in this example remains liable for any CDD not carried out correctly or at all, by the insurance intermediary involved.

The firm must confirm with the third party that it (the third party) knows the firm is relying on them for CDD purposes, that they will keep the identification and verification data and other relevant documentation on the identity of the customer and that the third party accepts the obligation to provide information to the firm as soon as practicable on request.

In some cases, the third party will supply a Letter of Assurance to the firm, certifying that it has completed the relevant CDD requirements and that a copy of the identification material will be supplied to the firm on request.

A firm cannot rely on a third party to perform Enhanced CDD measures or to provide Senior Management approval. However, the third party may provide assistance to the firm in gathering the necessary documentation or information to establish the source of wealth and source of funds.

4.3.6 Internal Policies and Procedures

A financial services firm is required to have internal policies, controls and procedures for its business to prevent and detect the commission of money laundering and terrorist financing.

The internal policies and procedures must deal with:

- The identification assessment, mitigation and management of risk factors relating to money laundering or terrorist financing,
- Customer due diligence measures,
- Monitoring transactions and business relationships,
- The identification and scrutiny of complex or large financial transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the firm has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing,
- Measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity,
- Measures to be taken to prevent the risk of money laundering or terrorist financing which may arise from technological developments, including the use of new products and new practices and the manner in which services relating to such developments are delivered,
- Reporting (including the reporting of suspicious transactions),
- Record keeping,
- Measures to be taken to keep documents and information relating to the customers of the firm up to date,
- Measures to be taken to keep documents and information relating to risk assessments by the firm up to date,
- Internal systems and controls to identify emerging risks and keep business-wide risk assessments up to date, and
- Monitoring and management of compliance with the firm's internal policies and procedures.

In preparing policies and procedures, the firm must have regard to any Guidelines prepared by the Central Bank of Ireland. In this regard, the Central Bank has issued guidelines entitled "*Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector*" (Central Bank AML/CFT Guidelines).

4.3.7 Staff Training

Financial services firms are required to ensure that all personnel:

- Are instructed on the law regarding money laundering and terrorist financing, and

- Are provided with ongoing training on identifying a transaction or other activity that may be related to money laundering or terrorist financing, and on how to proceed once such a transaction or activity is identified.

However, this training requirement does not apply to a firm who is an individual and carries on his or her business alone without employees e.g., a sole trader insurance intermediary.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] Making first contact with a potential client
- [ ] Terms of Business
- [ ] Customer Due Diligence

Sample Questions

The answers to these questions can be found in your Study Hub.

1. Which one of the following items of information is NOT required to be included in a bank's Terms of Business?

A. Trading name, if different to its legal name.
B. List of all its directors.
C. Outline of action the bank may take in the case of default by the consumer.
D. General statement of the charges imposed directly by the bank.

2. The offence of 'money laundering' includes:

(i) being reckless as to whether works of art are the proceeds of theft.
(ii) handling monies that you know are the proceeds of financial fraud.
(iii) possessing funds which you believe to have arisen from a financial deception.

A. (i) only.
B. (i) and (ii) only.
C. (ii) and (iii) only.
D. (i), (ii) and (iii).

3. Eva has applied over the internet to open a bank account. Having established and verified Eva's identity by post, the bank can also do which one of the following, as an additional Customer Due Diligence measure?

A. Ask Eva's employer for a written reference.
B. Wait fifteen days before activating the account for Eva.
C. Require the first transfer to the account to come from a bank established in the EU or in other specified acceptable countries.
D. Undertake a Google search on Eva to seek confirmation of his identity.

4. A bank CANNOT apply Simplified Customer Due Diligence where the customer is:

(i) another bank.
(ii) a life assurance company.
(iii) an EU agency.

A. (i) only.
B. (ii) only.
C. (i) and (ii) only.
D. (i), (ii) and (iii).

05

The Sales/Advisory Process

This chapter looks at the conduct of business rules which apply to financial services firms. The Consumer Protection Code is covered in detail. 'Knowing the customer' is outlined; the level of relevant information which needs to be gathered is examined. Other topics include how vulnerable customers should be dealt with together with an overview of how 'suitability' of any financial recommendation should be established. What is meant by 'Execution only' is looked at. The requirements for MiFID regulated firms are also contained in this chapter. Distance marketing is also covered.

Learning Outcomes – after studying this chapter you should be able to:
understand the Conduct of Business rules which apply to financial services firms.
understand the fact-finding process and structure for both new and existing customers.
recognise vulnerable customers; understand the definitions and be able to follow the process of how best to deal with the various categories.
understand the obligations on a financial adviser under the code for recommending the most suitable product and the statement of suitability which must be produced prior to any product recommendation.
explain the process surrounding execution only transactions.
demonstrate knowledge of how to deal with errors.
understand the MiFID conduct of business rules which apply to MiFID investment firms.
outline what is meant by Distance Marketing and explain what a 'distance contract' is.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	5	19	25

5.1 Conduct of Business Rules

When giving financial advice to consumers on retail financial products or arranging such products for consumers (whether existing or new clients), your firm is subject to a number of conduct of business rules in relation to that process, including:

- The **Central Bank's Consumer Protection Code** applies to all intermediaries, including banks and MiFID investment firms, when providing advice to consumers on:

  - Insurance policies (which includes life assurance, non-life insurance and pension policies);
  - PRSAs;
  - Deposits;
  - Tracker Bonds (deposit and life assurance);
  - Mortgages.

  The Code also applies to investment intermediaries (but not MiFID investment firms) when providing advice to consumers on:

  - Shares and bonds listed on a stock exchange;
  - Collective investment funds, such as Exchange Traded Funds and UCITS.

  The Code does not apply to credit union activities, other than when a credit union is acting as an insurance intermediary.

- **MiFID Conduct of Business Rules**

  When a MiFID investment firm is providing investment advice or a discretionary portfolio management service to a consumer in relation to:

  - Shares, whether listed on a stock exchange or not;
  - Bonds, whether listed on a stock exchange or not;
  - Contracts for Difference (CFDs);
  - Options, swaps and other derivatives;
  - Collective investment funds such as Exchange Traded Funds and UCITS;

  it must comply with MiFID conduct of business rules, rather than the Consumer Protection Code.

- **Distance Marketing Regulations** apply to any firm which supplies a financial service or contract to a consumer exclusively by means of phone, post, fax, email, internet etc., where there is no face-to-face contact with the consumer at any time during the process.

5.2 Consumer Protection Code

5.2.1 General Principles

The Code sets out the following general principles which all firms covered by the Code are required to comply with when providing financial services to all of its customers in the State:

1. *"… act honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*
2. *Act with due skill, care and diligence in the best interests of its customers;*
3. *Do not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;*
4. *Have and employ effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;*
5. *Seek from their customers information relevant to the product or service requested;*
6. *Make full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;*
7. *Seek to avoid conflicts of interest;*
8. *Correct errors and handles complaints speedily, efficiently and fairly.*
9. *Do not exert undue pressure or undue influence on a customer;*
10. *Ensure that any outsourced activity complies with the requirements of this Code;*
11. *Without prejudice to the pursuit of their legitimate commercial aims, do not, through their policies, procedures, or working practices, prevent access to basic financial services; and*
12. *Comply with the letter and spirit of this Code."*

Detail is put on many of these general principles in the Code by way of specific requirements in the General Requirements sections of the Code. For example, General Principle 5 states: "... *seek from their customers information relevant to the product or service requested"*; specific requirements in relation to this general principle are then set out in General Requirements under the '*Knowing the Consumer'* heading.

5.2.2 Consumer Protection Code Review

The Central Bank is conducting a review of the Consumer Protection Code during 2024 and has issued a Consultation Paper for stakeholder comments and feedback. The Central Bank has advised that it will publish an updated Code in early 2025 for implementation during 2025/2026.

5.2.3 Terms of Business.

As pointed out already in Section 4.2, you must give a new client a copy on a standalone basis (i.e., not built into some other document) of your firm's *Terms of Business* before providing the first financial service to that new client.

The terms of business document must set out the basis on which your firm is providing its financial services.

You do not have to provide an existing client with a Terms of Business each time you meet them if your firm has already provided them with a Term of Business and your firm has made no material change to its Terms of Business in the meantime. However, where your firm makes a '*material change'* to its Terms of Business, your firm must provide each affected client with details of the change as soon as possible.

5.2.4 Payment for Services

Prior to offering, recommending, arranging or providing a financial product or service, you should explain to the consumer how your firm will charge for your services, whether through a fee (and how that may be calculated, e.g., €XXX per hour + VAT @ 23%), or commissions from financial institutions where your firm arranges a product with that institution, or a combination of both.

Where your firm allows the option of paying for its services by means of a fee, the option of payment by fee and the amount of the fee must be explained in advance to the consumer.

Where your firm charges the consumer a fee but will also receive commission in respect of a financial product or service provided to the consumer by you, you must explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

5.2.5 Schedule of Fees and Charges

Your firm must display in its public offices, in a manner that is easily accessible to consumers, and on its website a schedule of its fees and charges, which it may charge the consumer.

In the case of *MiFID Article 3 services*, the Consumer Protection Code has the following additional requirements.

- A firm must ensure that appropriate information is provided in good time to clients or potential clients with regard to all costs and related charges. For this purpose, the information on all costs and associated charges must include information relating to both investment services and ancillary services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments.

- A firm must provide clients with an illustration showing the cumulative effect of costs on return when providing investment services.

Where a firm receives any fee, commission, other reward or remuneration paid or provided to it by a product producer, the firm must also comply with the requirements relating to disclosure of commissions and fees, as set out in Section 5.2.6.

5.2.6 Sharing Fees and Commissions

The Code prohibits your firm from paying or sharing a fee or commission in respect of financial services other than to individuals and entities which are, or were, also regulated financial services providers themselves, e.g., another intermediary or a certified person.

Your firm cannot, therefore, pay or share a commission with a consumer in respect of an investment made by the consumer. Your firm can of course reduce the commission which you might otherwise receive, to allow the consumer to get enhanced terms from the product producer and so give the consumer the benefit of the reduction in commission.

5.2.7 Disclosure of Commissions and Fees

Commission disclosure is required under three different regulatory requirements, as set out below.

5.2.7.1 Life Assurance (Provision of Information) Regulations 2001

The Life Assurance (Provision of Information) Regulations 2001 require you, at the point of sale of a life assurance or pension policy, to provide the consumer with a document setting out commissions which you or your firm will receive from the life assurance company for the sale of the product.

5.2.7.2 Consumer Protection Code – Mortgage Intermediaries and Firms Authorised under the Investment Intermediaries Act

The Consumer Protection Code requires that, prior to offering, recommending, arranging or providing a financial product or service, other than a life assurance or pension policy, mortgage intermediaries and firms authorised under the Investment Intermediaries Act must disclose, on paper or on another durable medium, to a consumer the existence, nature and amount of any fee, commission or other remuneration received or to be received by your firm from a product producer in relation to that product or service.

Where the amount of commission cannot be worked out accurately at this point in time, the method of calculating the commission amount must be disclosed to the consumer.

The disclosure must be in a manner that is 'comprehensive, accurate and understandable'.

This disclosure requirement also applies to:

- Mortgage intermediary commissions,
- Deposit broker commissions, and
- Commissions derived from collective investment funds such as UCITS.

Example

You work for ACE Investment Advisers Ltd., which is authorised by the Central Bank of Ireland as an investment intermediary.

You are about to recommend a non-insurance tracker bond investment to Paul, and ACE will receive a commission payment from the tracker bond provider in respect of Paul's investment.

Under the Consumer Protection Code ACE must first disclose to Paul (before arranging the investment in the tracker bond) on paper or other durable medium (e.g., a PDF file) that:

- ACE will receive commission from the tracker bond provider in relation to his investment; and
- Disclose the likely amount of commission your firm will receive, but if Paul's investment amount is not known at this time, disclose the method by which the commission will be calculated, e.g., 1% of his investment amount.

In the case of *MiFID Article 3 services*, the Consumer Protection Code requires that remuneration and similar incentives shall not be solely or predominantly based on quantitative commercial criteria but shall take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of clients and the quality of services provided to clients. A balance between fixed and variable components of remuneration must be maintained at all times, so that the remuneration structure does not favour the interests of the firm or its relevant persons against the interests of any client.

5.2.7.3 Consumer Protection Code – All Products

An intermediary must make available in its public offices or on its website, 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 which it has agreed with product producers. Where an intermediary operates a website, it must publish the summary on its website. The summary must include a minimum of the following:

- An indication of the agreed amount or percentage of any fee, commission, other reward or remuneration where the payment is made to the intermediary on this basis;

- An explanation of the arrangement including details on the type of fee, commission, other reward or remuneration paid or provided to the intermediary, for example, sales commission or trail commission, and details affecting the fee, commission, other reward or remuneration paid or provided to the intermediary, for example, clawback provisions;

- Details of any other agreed fees, administrative costs, or non-monetary benefits under such arrangements, including any benefits, which are not related to the intermediary's individual sales.

An intermediary must bring this information to the attention of the consumer, and provide any clarification of the information if requested by the consumer, before concluding a contract for a financial product or service. An intermediary must retain records demonstrating that it has complied with this requirement.

5.2.8 Product Information

Prior to offering, recommending, arranging or providing a financial product, other than an insurance product or a Packaged Retail And Insurance-Based Investment Product (PRIIP), to a consumer, your firm must provide information, on paper or on another durable medium, to the consumer about the main features and restrictions of the product to assist him or her in understanding the product.

In the case of insurance products, the Insurance Distribution Regulations require that, prior to the conclusion of a contract, the firm must provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision. In the case of non-life insurance products, this information must be provided by way of a standardised document, called the Insurance Product Information Document.

In the case of PRIIPs, the PRIIP manufacturer must draw up a key information document, which must be published on its website, and which must set out the pre-contractual information relating to the product. It is required to be accurate, fair, clear and not misleading, and to be consistent with any related binding contractual documents.

For all products, your firm must also provide each consumer with the terms and conditions attaching to the product, on paper or on another durable medium, before the consumer enters into a contract for that product or service.

5.2.9 Contingent Selling

You must not make the sale of a financial product or service contingent on the consumer purchasing another financial product or service from your firm.

This provision does not apply in the case of mortgage credit agreements or in the case of insurance products.

5.2.10 Bundling Products and Services

In general, the bundling of products and services which are otherwise available to be purchased separately, is prohibited unless it can be shown that there is a cost saving to the consumer in bundling them in this way.

This provision does not apply in the case of mortgage credit agreements or in the case of insurance products.

Insurance products are instead subject to different requirements set out in the Insurance Distribution Regulations. Where an insurance intermediary offers an insurance product together with a non-insurance product, the insurance intermediary must:

- Inform the customer whether it is possible to buy each product separately, and,
- If so, it must provide the customer with a description of the insurance and non-insurance products and the costs and charges of each product.

Mortgage credit agreements are instead subject to different requirements set out in the Mortgage Credit Regulations.

- A mortgage credit agreement cannot be bundled in a package with other products or services unless that mortgage credit agreement is also made available to the consumer separately.
- A lender must be able to demonstrate to the Central Bank that products bundled with a mortgage credit agreement, and which are not made available separately, result in a clear price benefit to the consumer.
- Where ancillary products or services are bundled with a mortgage credit agreement, an explanation must be given as to whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.

All products are subject to the following requirements. Prior to offering, recommending, arranging or providing a bundled financial product, you must give the consumer the following information on paper or on another durable medium (e.g., a PDF file):

- The overall cost to the consumer of the bundle;
- The cost to the consumer of each product separately;
- How to switch products within the bundle;
- The cost to the consumer of switching products within the bundle;
- How to exit the bundle; and
- The cost to the consumer of exiting the bundle.

Where a consumer wishes to switch one or more products in a bundle or exit a bundle, you must:

- Provide the consumer with certain information, and
- Allow the consumer to retain any product(s) in the bundle that the consumer wishes to keep, without penalty or additional charge, apart from the loss of any discount.

5.2.11 Optional Extras

Where your firm offers an optional extra to a consumer in conjunction with a financial product or service, you:

- Must inform the consumer on paper or on another durable medium:
  - That he or she does not have to purchase the optional extra in order to buy the main financial product or service;
  - Of the cost of the basic financial product or service (excluding the optional extra); and
- Of the cost of the optional extra;

  AND

- Your firm must not charge the consumer a fee for any optional extra offered in conjunction with a financial product or service unless the consumer has confirmed that he or she wishes to purchase that optional extra.

Example

A life assurance company offers a term assurance plan. The plan contains an optional Hospital Cash extra, in return for an additional premium.

Under the Consumer Protection Code an insurance intermediary recommending the optional Hospital Cash extra to a consumer who is taking out the term assurance plan must comply with the requirements above, i.e., the intermediary must inform the consumer in writing:

- That he or she does not have to take Hospital Cash cover to take out the term assurance plan;
- Of the cost of the term assurance plan on its own, without the Hospital Cash cover; and
- Of the cost of the Hospital Cash cover extra.

In addition, the consumer cannot be charged for the Hospital Cash benefit unless he or she has signed to confirm that he or she wishes to purchase the Hospital Cash cover benefit.

5.2.12 Knowing the Consumer and Suitability

Where you are offering financial advice to a consumer about a retail financial product, the Code requires your firm to comply with two related requirements, when making a recommendation to the consumer:

- Knowing the Consumer; and
- Suitability

The provisions set out in Sections 5.2.11.1 to 5.2.11.4 do not apply in the case of insurance-based investment products. Instead, the requirements arising from the Insurance Distribution Regulations, set out in Section 5.2.11.5, apply for insurance-based investment products.

5.2.12.1 Knowing the Consumer

The Code requires you to first gather and record sufficient **relevant** information from the consumer before offering, recommending, arranging or providing a financial product or service appropriate to him or her. This is also sometimes referred to as 'fact-finding'.

The level of information gathered must be appropriate to the nature and complexity of the product or service being sought by the consumer, but must be to a level that allows you to provide a professional service and must include details of the consumer's:

- **Needs and objectives** including, where relevant the:

  Length of time for which the consumer wishes to hold a product,

  Need for access to funds (including emergency funds),

  Need for accumulation of funds.

- **Personal circumstances** including, where relevant:

  Age,

  Health,

  Knowledge and experience of financial products,

  Dependants,

  Employment status,

  Known future changes to his/her circumstances.

- **Financial situation** including, where relevant:

  Income,

  Savings,

  Financial products and other assets,

  Debts and financial commitments.

- Where relevant, **attitude to risk**, in particular the importance of capital security to the consumer.

In the case of an existing client, your firm may already have some or all of the details above, albeit the information may be out of date.

The Code requires you, in this case, to gather and maintain a record of details of any material changes to the consumer's circumstances prior to offering, recommending, arranging or providing a subsequent product or service to him or her. Where there is no material change in the client details above which you already have, this must be noted on a consumer's records.

Example

A Bank acting as an insurance intermediary sold a PRSA to a client three years ago, when it undertook a full fact find with that client.

The Bank has now contacted the same client about a lump sum investment product, following a call from the client, and has arranged a meeting with him.

The Bank should not make an investment recommendation to this client now without first establishing and recording any 'material changes' in his circumstances over the last three years, e.g., the client may have moved jobs or taken out a large mortgage since the Bank sold him the PRSA three years ago, and his financial circumstances could be materially different now than recorded on the 'fact-find' completed three years ago.

The Code requires you to endeavour to have the consumer certify the accuracy of any information it has provided during the fact-finding process.

Where a consumer refuses to provide information sought by you which is relevant to the proposed financial product or advice to be provided to that consumer, you must inform him or her that, as you do not have the relevant information necessary to assess his or her suitability for the financial product or service, you cannot offer him or her the product or service sought. This requirement does not apply in the case of mortgage credit agreements.

The Central Bank has clarified this requirement, as follows:

> *"The Knowing the Consumer provisions set out certain information that should be gathered, where relevant.*
>
> *Regulated entities must judge what information is relevant in assessing whether a product or service is suitable for a particular consumer, and, if the consumer refuses to provide this relevant information, then it follows that it is not possible to properly assess suitability ... the consumer should be advised of this and that the product or service should <u>not</u> be offered, recommended, arranged or provided if the consumer refuses to provide this relevant information."*

5.2.12.2 Identifying Vulnerable Consumers

The Code requires firms to identify, as part of the Knowing the Consumer process, any personal consumer who is a '*vulnerable consumer*'.

The term *'vulnerable consumer'* is defined in the Code as an individual who:

- *"has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or*

- *Has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)."*

The Central Bank has further clarified that:

"Identification of a consumer's vulnerability or otherwise will require the exercise of judgement and common sense and should be based on a consumer's ability to make a particular decision at a point in time.

We consider that identification of a vulnerability should be an inherent part of the Knowing the Consumer process, during which regulated entities should consider whether there is any evidence of consumer vulnerability, as outlined in categories 1, 2 and 3 below."

	Categories of vulnerable consumers	Examples of vulnerabilities
1	Capable of making decisions but their particular life stage or circumstances should be taken into account when assessing suitability	Age, poor credit history, low income, serious illness, bereaved, etc.
2	Capable of making decisions but require reasonable accommodation in doing so.	Hearing-impaired, vision-impaired, English not first language, poor literacy
3	Limited capacity to make decisions (temporary/permanent)	Mental illness/intellectual disability

Consumers who fall into Category 1 should have their circumstances taken into account as part of the Knowing the Consumer and Suitability requirements.

For Categories 2 and 3, advisers must provide those identified as vulnerable consumers with "*such reasonable arrangements or assistance that may be necessary to facilitate their dealings with that adviser*".

5.2.12.3 Assisted Decision-Making (Capacity) Act 2015

The Assisted Decision-Making (Capacity) Act establishes a modern legal framework for adults who require, or may require, support in exercising their decision-making capacity. The Act provides for a number of decision support arrangements that a person may choose to put in place. Where a financial adviser has reasons to question a customer`s / potential customer`s capacity to make a decision, he/she should ascertain if a decision support arrangement is in place which may be relevant to any financial planning decisions and which may require the involvement of the appointed decision-supporter.

5.2.12.4 Suitability

The Code requires firms to assess the '*suitability'* of any financial recommendation provided to consumers.

The firm when assessing the suitability of a financial product or advice for a consumer, must, at a minimum, consider and document whether, on the basis of the information gathered about the consumer:

• Product suits consumer's financial needs and objectives
• Consumer can afford the financial commitment
• Consumer is able to financially bear any risks
• Product consistent with consumer's attitude to risk

- The product to be recommended meets his or her financial needs and objectives;
- The consumer:
  - Is likely to be able to meet the financial commitment associated with the product on an ongoing basis;
  - Is financially able to bear any risks attaching to the product;
- The product is consistent with the consumer's attitude to risk.

A firm must ensure that any product offered to a consumer is *suitable* to that consumer, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the firm is aware.

The following additional requirements also apply:

- Where a firm offers a selection of financial product options to the consumer, the product options contained in the selection must represent the most suitable from the range available to the firm; and
- Where a firm recommends a specific financial product to a consumer, the recommended product must be the most suitable product for that consumer.

The requirements in relation to '*suitable'* products can be summarised as follows:

• Only suitable financial products should be considered
• Consider all suitable products
• Recommend the most suitable

- Only financial products suitable for the consumer's identified financial needs can be considered by the firm; unsuitable products should not be considered.
- All financial products which are suitable for the consumer's identified financial needs, and which the firm can offer advice on, must be considered by the firm, and
- From the range of suitable financial products that the firm can advise on, the firm must recommend the '*most suitable*' product for the consumer.

Example

ACME Financial Advisers Ltd., which is an investment intermediary, is advising Mr Brown in relation to a lump sum investment he proposes to make. During the fact-finding phase, ACME established that Mr Brown requires a minimum money back guarantee at maturity and the maximum term he can invest for is five years, as he requires access to the funds in five years' time.

The Code requires ACME to:

- Offer to Mr Brown only lump sum investment products which contain a minimum money back guarantee at maturity and have a maximum investment term of five years, as only products which meet these criteria are 'suitable' for Mr Brown's identified financial need,
- To consider all such suitable products which ACME can advise on; it can consider only products from financial institutions with which it has written agency appointments.

Let's assume that the firm has agency appointments with financial institutions, A, B, C, D and E, and that financial institutions A, C and E offer lump sum investment bonds with a capital guarantee at maturity and a maximum five-year investment term.

ACME must therefore:

- Consider the most suitable investment products from these three financial institutions (A, C and E) and can't limit itself to one particular financial institution, say A in this example, and
- Recommend from the three suitable products, i.e., from financial institutions A, C and E, the 'most suitable' product of the three for Mr Brown.

The Code requires that before providing or arranging a financial product or service for a consumer, the firm must prepare a *written* **Statement of Suitability** setting out:

- The reasons *why* a product offered to a consumer is considered to be *suitable* to that consumer;

  OR

- The reasons *why* the product options contained in a selection of product options offered to a consumer are considered to be the *most suitable* to that consumer;

  OR

- The reasons *why* a recommended product is considered to be the *most suitable* product for that consumer.

This statement is usually referred to as a '*Reason Why*' statement.

The reasons set out in the Reason Why statement must reflect the information gathered under the '*Knowing the consumer*' requirement, to assist the consumer in understanding *how* the product recommended meets, where relevant, the consumer's:

- Financial needs and objectives;
- Personal circumstances; and
- Financial situation.

The written statement must also include an outline of the following, where relevant:

- How the risk profile of the product is aligned with the consumer's attitude to investment risk; and
- How the nature, extent and limitations of any guarantee attached to the product is aligned with the consumer's attitude to investment risk.

The firm must sign the reason why statement and provide a copy of the statement on paper or on another durable medium, dated on the day on which it is completed, to the consumer *prior* to providing or arranging a financial product for the consumer, and retain a copy.

The following statement must be included at the start of the Reason Why statement:

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.

Where a firm has provided an oral explanation to the consumer of the product(s) offered or recommended, it must include a record of such explanation in or with the Reason Why statement provided to the consumer.

Firms providing *MiFID Article 3 services* must comply with the following additional requirements:

- When investment advice is provided to a client by a firm, the obligation of the firm includes its informing the client in good time whether the firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to the client.
- Where a firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may cover only changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report.
- Firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended.

5.2.12.5 Insurance-based Investment Products

The Insurance Distribution Regulations have the following requirements in relation to insurance-based investment products.

Before the conclusion of a contract with a customer, the firm must set out, on the basis of information obtained from the customer, the demands and the needs of the customer and must provide the customer with objective information about the product in a comprehensible form to allow that customer to make an informed decision.

A firm must recommend only a contract that is consistent with the customer's demands and needs.

A firm providing advice on an insurance-based investment product must also obtain the following information in order to enable the firm to recommend to the customer or potential customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with that person's risk tolerance and ability to bear losses:

- The customer or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service;
- The customer's financial situation including his or her ability to absorb losses; and
- The customer's investment objectives, including that person's risk tolerance.

A firm providing advice on an insurance-based investment product may also need to consider the provisions of the Assisted Decision-Making (Capacity) Act 2015, (see 5.2.11.3) when dealing with a vulnerable customer.

5.2.13 Execution Only Services

There are different regulatory requirements relating to execution only services as follows:

- Products other than insurance-based investment products are subject to requirements set out in the Consumer Protection Code.
- Insurance-based investment products are subject to requirements set out in the Insurance Distribution Regulations.

5.2.13.1 Products Other Than Insurance-based Investment Products

In some cases, a consumer may approach you and ask you to arrange a specific financial product with a specific financial institution, without requiring any advice from you in relation to such a transaction.

This is sometimes referred to as '*execution only*', as the firm is being asked to simply 'execute' a particular specified transaction for the consumer, with no financial or investment advice provided.

The Code provisions on *Knowing the Consumer* and *Suitability* do ***not*** apply where:

- The consumer has specified by name both:
  - The financial product;

    AND
  - The financial institution to provide that product;

    AND
- Has not received any assistance from the firm in the choice of that product and/or choice of financial institution.

An execution only service may not be provided where a personal consumer is seeking:

- A credit amount above €75,000;
- A mortgage;

  OR

- A home reversion agreement.

Where the consumer wants to invest in an investment product from a particular financial institution on an execution only basis, the firm must first warn the consumer, on paper or on another durable medium, that he or she does not have the information necessary to determine the suitability of that product for the consumer.

Example #1

Ms C has contacted ACME Insurance Brokers Ltd, an insurance intermediary, and has indicated that she wants them to arrange 25-year Mortgage Protection Life Assurance cover for €250,000 on her life, with Alpha Life Assurance Company.

ACME Insurance Brokers Ltd does not give any advice to Ms C about this policy or the choice of insurer.

ACME Insurance Brokers Ltd are not required, under the Consumer Protection Code, to comply with the Knowing the Consumer and Suitability requirements in relation to this policy for Ms C, as she has:

- Specified the product, i.e., a 25-year Mortgage Protection cover for €250,000,
- Specified the insurer, i.e., Alpha Life Assurance Company, and
- Has not been given any advice by ACME Insurance Brokers about this policy or choice of insurer.

As the product is not an investment product, ACME Insurance Brokers Ltd is not required to warn the consumer, on paper or on another durable medium, that it does not have the information necessary to determine the suitability of that product for Ms C.

However, such cases, i.e., where the consumer has specified the product AND the financial institution and does not receive any advice from your firm in relation to the choice of product or institution, are extremely rare in practice, as few consumers would know enough about financial products to be able to specify precisely the product and financial institution and not require **any** advice in relation to the choice of product or financial institution.

Example #2

Ms C has contacted ACME Investment Brokers Ltd. and has indicated that she wants them to arrange a €25,000 Non-insurance Tracker Bond investment for her over a five-year term. She has not specified which financial institution she wants to invest in, or the precise details of the type of Bond she wants to invest in, e.g., what financial index does she want to follow, does she need a full guaranteed return of capital, etc.

ACME cannot treat arranging a Non-insurance Tracker Bond investment for Ms C as 'execution only', as she has not specified the choice of financial institution and ACME will have to provide advice on the different Tracker Bond investments currently available in the market, to arrive at a suitable product for her.

Therefore, this transaction will be subject to the Code's Knowing the Consumer and Suitability requirements.

5.2.13.2 Insurance-based Investment Products

A firm must, in relation to sales where no advice is given, ask the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the insurance service or product envisaged is appropriate for the customer.

5.2.14 Issue of Receipts

In general, an investment or insurance intermediary is not authorised by the Central Bank to accept or hold client monies or assets, e.g., *cannot*:

- Accept a client cheque made payable to the intermediary,

  OR

- Accept cash (or any other form or negotiable instrument for which the intermediary could obtain value) from the client.

Non-negotiable instrument made payable to a financial institution

Acting as a deposit agent

Providing other non-regulated services

Insurance intermediary where insurer is legally responsible for the premium

However, an intermediary can handle client funds in certain very limited circumstances:

- Accepting a client cheque or similar non-negotiable instrument made payable to a financial institution for onward transmission to the relevant financial institution.

  For example, an investment intermediary recommends a client to invest in financial institution A. The client completes the application form and makes out a cheque for the relevant amount made payable to financial institution A; the investment intermediary can handle this cheque and must forward it immediately to the relevant financial institution.

- When acting as a deposit agent in accepting funds from a client for the client's deposit account with the relevant bank for which it acts as deposit agent.

- When the investment intermediary, in providing services other than investment intermediary services, holds cash on behalf of clients.

  Examples include:

  - An investment intermediary which also acts as an auctioneer and which takes deposits from clients in relation to property purchase or letting.

  - An investment intermediary which also acts as a pension scheme trustee and handles pension scheme funds in its role as a pension scheme trustee.

- When acting as an insurance intermediary in handling clients' insurance premiums, in circumstances where the insurer is legally responsible for the monies collected.

In all other circumstances an intermediary ***cannot*** accept money, or cheques made payable to the intermediary or handle negotiable instruments which can be converted easily to cash, e.g., a Bank draft.

The Code requires a firm that is in direct receipt (i.e., the consumer physically hands the payment (e.g., a cheque) to the firm) of a payment from a consumer for a financial product or service to provide that consumer with a receipt, whether or not the payment is made payable to your firm or to a financial institution. This receipt must include the following information:

- The name and address of the firm;

- The name of the consumer who provided the payment, or on whose behalf the payment is provided;

- The value of the payment received and the date on which it was received;

- The purpose of the payment;

  AND

- In the case of an insurance intermediary, that the acceptance by the insurance intermediary of a completed insurance proposal does not itself constitute the effecting of a policy of insurance, where relevant.

Section 30 of the Investment Intermediaries Act, 1995 imposes on investment intermediaries (including banks acting as an investment intermediary) to issue a receipt to a client for each *'non-negotiable or negotiable instrument or other payment received for the purposes of transmitting an order or a deposit to a product producer'*.

Example

An investment intermediary has recommended that a client invest in a Non-Insurance Tracker Bond with Bank A. The client agrees and completes the proposal form and gives the intermediary a cheque made payable to Bank A.

The investment intermediary must give the client a Section 30 receipt in respect of this cheque.

5.2.15 Conflicts of Interest

There are different regulatory requirements relating to conflicts of interest as follows:

- Products other than insurance-based investment products are subject to requirements set out in the Consumer Protection Code.

- Insurance-based investment products are subject to requirements set out in the Insurance Distribution Regulations.

5.2.15.1 Products Other Than Insurance-based Investment Products

Your firm must have in place and operate in accordance with a written conflicts of interest policy appropriate to the nature, scale and complexity of its regulated financial services. The conflicts of interest policy must:

- Identify, with reference to its regulated financial services, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of its customers who are consumers; and

- Specify procedures to be followed, and measures to be adopted, in order to manage such conflicts.

Where conflicts of interest arise, and cannot be reasonably avoided, your firm must:

- Disclose the general nature and/or source of the conflicts of interest to the consumer. Your firm may undertake business with a consumer, where there is directly or indirectly a conflicting interest, only where that consumer has acknowledged, on paper or on another durable medium, that he or she is aware of the conflict of interest and still wants to proceed; and

- Ensure that the conflict does not result in damage to the interests of the consumer.

Example

ABC Financial Services Ltd. is authorised by the Central Bank as an investment intermediary.

It is promoting a non-insurance geared pension property product. The directors of ABC Financial Services Ltd. have a personal financial interest in the relevant property development, which will be part of the geared pension investment product the firm is promoting to its clients.

ABC Financial Services Ltd. has a conflict of interest in promoting this product, as the higher the price achieved for the property, the more the firm’s directors will personally financially benefit but its clients (through the pension policy) end up paying more for the property.

ABC Financial Services Ltd. must:

- Declare its conflict of interest to its clients and must obtain a written acknowledgement from each client investing in the particular geared pension property investment that the client is aware of the conflict of interest and still wants to proceed with the investment, and
- Ensure that the conflict does not result in damage to the interests of the consumer, e.g., arrange for an independent valuation of the property to be provided to prospective investors.

Investment intermediaries providing *MiFID Article 3 services* must comply with the following additional requirements:

- The intermediary must ensure that disclosure to consumers includes a specific description of the conflicts of interest that arise in offering, recommending, arranging or providing an investment product. The description must explain the risks to the client that arise as a result of the conflicts of interest and the steps undertaken to mitigate these risks, in sufficient detail to enable that client to take an informed decision with respect to the investment business service in the context of which the conflicts of interest arise.

- The intermediary must assess and periodically review, on at least an annual basis, its conflicts of interest policy and take all appropriate measures to address any deficiencies.

5.2.15.2 Insurance-based Investment Products

A firm is required to:

- Take all reasonable steps to prevent conflicts of interest from adversely affecting the interests of its customers.

- Take all appropriate steps to identify conflicts of interest between the firm and its customers, or between one customer and another, that arise in the course of carrying out any insurance distribution activities.

- Clearly disclose to the customer the general nature or sources of a conflict of interest, in good time before the conclusion of an insurance contract, where the organisational or administrative arrangements made by the firm to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented.

5.2.16 Handling Administration Errors

From time to time a firm may make a mistake in relation to the charges levied for a financial product or service. The Code requires a financial services firm regulated by it to:

- Have written procedures in place for the effective handling of errors. At a minimum, these procedures must provide for the following:

  - The identification of the cause of the error;

  - The identification of all affected consumers;

  - The appropriate analysis of the patterns of the errors, including investigation as to whether or not it was an isolated error;

  - Proper control of the correction process; and

  - Escalation of errors to compliance/risk functions and senior management.

- Resolve all errors speedily and no later than six months after the date the error was first discovered.

- Where an error which affects consumers has not been fully resolved within 40 business days of the date the error was first discovered, a firm must inform the Central Bank, on paper or on another durable medium, within five business days of that deadline.

- Not benefit from any balance arising out of a refund, which cannot be repaid, in respect of an error.

- Maintain a log of all errors which affect consumers.
- Maintain a record of all steps taken to resolve an error which affects consumers, including details of the steps taken where:
    - Any affected consumers were dissatisfied with the outcome;
    - There were difficulties contacting affected consumers; and
    - A refund could not be repaid.

5.2.17 Use of Regulatory Disclosure Statement

A financial services firm regulated by the Central Bank of Ireland must include a regulatory disclosure statement only on:

- Its business stationery used in connection with its financial services;
- The section of its website that relates to its financial services;
- Electronic communications with consumers (excluding SMS messages) where such communications are in connection with its financial services; and
- All advertisements. (See Section 3.1.3 for more details).

The regulatory disclosure statement is:

> *"[Full legal name of the regulated entity, trading as (insert all trading names used by the regulated entity)] is regulated by the Central Bank of Ireland."*

No additional text can be added into the wording of the regulatory disclosure statement above.

Where a firm also engages in other services which are not regulated by the Central Bank, e.g., auctioneering or selling overseas properties, the firm must:

- Maintain separate sections of its website for regulated (by the Central Bank) and unregulated services; the regulatory disclosure statement must not be included in the part of the website that relates to unregulated activities.
- Not use the regulatory disclosure statement on business stationery or emails in communications with consumers regarding unregulated services.

5.3 MiFID Rules

As pointed out already, MiFID investment firms comply with the Consumer Protection Code only when providing advice to consumers on:

- Insurance policies
- PRSAs
- Deposits
- Tracker Bonds (deposit and life assurance)
- Mortgages

For other financial services and advice, they must comply with MiFID conduct of business rules outlined below.

5.3.1 Acting in the Client's Best Interests

A MiFID investment firm is required to always act honestly, fairly and professionally in accordance with the best interests of its clients.

5.3.2 Conflicts of Interest

A MiFID investment firm must:

- Identify, and prevent or manage, conflicts of interest, including those caused by the receipt of inducements from third parties or by the investment firm's own remuneration and other incentive structures, that may damage the interests of its client, e.g., situations where the firm or someone connected with it is likely to make a financial gain, or avoid a financial loss, at the expense of the client; and

- Maintain an effective written conflicts of interest policy, which must identify the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients, and which must specify procedures to be followed and measures to be adopted in order to prevent or manage such conflicts.

5.3.3 Inducements

In broad terms a MiFID investment firm is not allowed to accept any fee, commission or non-monetary benefit (referred to as 'inducements') from a third party in relation to the provision of a financial service (e.g., commission received from a financial institution in respect of the sale of its financial product to a client) unless:

- The fee, commission or non-monetary benefit is designed to enhance the quality of the relevant service to the client, and does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in the best interests of the client,

- The existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment service or ancillary service, and

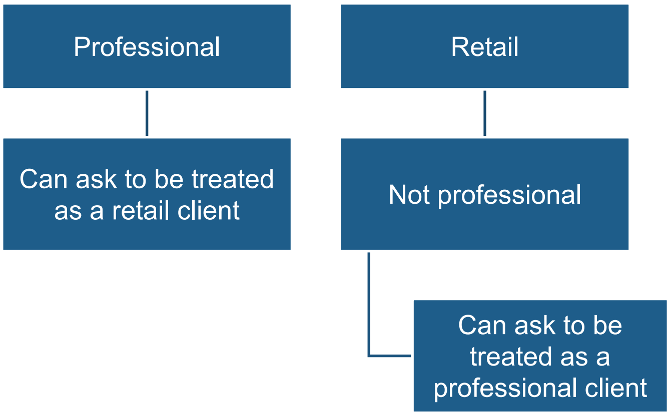
- Where applicable, the investment firm also informs the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.

However, if the service being provided is investment advice on an independent basis, no fees or commissions can be accepted or retained in relation to that service, other than minor non-monetary benefits.

5.3.4 Client Categorisation

A MiFID investment firm must categorise consumers into one of two categories for investment advisory services:

- Professional
- Retail



Certain MiFID conduct of business rules apply to firms when dealing with '*retail clients*', as these clients are assumed to be less experienced and less knowledgeable and hence are afforded a higher level of protection by the MiFID system.

A '*retail client'* is any individual who does not meet the definition of a *professional client*.

A '*professional client'* for MiFID purposes is a client which possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.

Certain clients can *automatically* be regarded by a MiFID investment firm as a '*professional client'*. This includes financial institutions, pension funds, national and regional governments, and institutional investors. These are called per-se professional clients.

Certain large companies *may* be treated as *professional clients* provided they meet **at least two** of the following three requirements:

- Have a total balance sheet value of €20m
- A net turnover of €40m
- Have own investment funds of €2m.

However, the above professional clients can request that the investment firm treat them *not* as a professional client but as a retail client.

A *retail client* may request in writing to be treated by the investment firm as a professional client. It is valid for a MiFID investment firm to do so only if:

> *"… an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved."*

The MiFID II Regulations require that a retail client who requests to be treated as a professional client must meet **at least two** of the following requirements:

- The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds €500,000;
- The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

In order for a retail client to obtain professional client status, the following requirements must be met:

- The retail client must state in writing to the firm that he or she wishes to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product;

- The firm must give him or her a clear written warning of the protections and investor compensation rights he or she may lose;

- The client must state in writing, in a separate document from the contract, that he or she is aware of the consequences of losing such protections.

Firms are required to notify clients of their categorisations, and must also inform clients of their right to request a different categorisation, and, where appropriate, about any limitations on client protection that arise under the different categories.

5.3.5 MiFID Suitability Test

When providing a MiFID investment advice or portfolio management service, a MiFID investment firm must obtain from a client the necessary information about:

- The client’s knowledge and experience in the investment field relevant to the specific type of product or service offered to the client by the investment firm,

- The client’s financial situation, including his or her ability to bear losses, and

- The client’s investment objectives, including his or her risk tolerance,

To enable the investment firm to recommend to the client those investment services and financial instruments that are *suitable* for the client and, in particular, are in accordance with his or her risk tolerance and ability to bear losses.

This is referred to as ‘**suitability’**.

In order to comply with this requirement when providing investment advice or a portfolio management service, a MiFID investment firm must obtain information about a client’s or potential client’s:

Investment knowledge and experience	Financial situation	Investment objectives

- Knowledge and experience in the investment field relevant to the specific type of product or service offered to the client by the investment firm.

  This is clarified as information (relevant to the specific type of product or service offered to or demanded by the client) on:

  - The types of service and financial instruments with which the client is familiar,

  - The nature, volume and frequency of the client's transactions in financial instruments and the period over which they were carried out, and

  - The client's level of education and profession or relevant former profession of the client.

- The client's **financial situation**.

  This is clarified as: 'Information on the source and extent of the client's regular income, assets, including liquid assets, investments and real property, and regular financial commitments'.

- The client's investment objectives.

  This is further clarified as: 'information on the length of time for which the client wishes to hold the investment, the client's preferences regarding risk taking, the client's risk profile and the purposes of the investment'.

When providing investment advice or portfolio management services to a '*professional client',* a firm can assume that the client has the necessary level of knowledge and experience in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client has been categorised as professional.

The suitability requirements can be summarised as follows:

Suitability requirements to be established in relation to provision of investment advice or portfolio management		
Need to establish that:	**Retail Client**	**Professional Client**
Client is able to financially bear the investment risks	✔	✔ (In respect of investment advice, the firm can assume this for a client automatically classified as a professional client)
Meets investment objectives of the client	✔	✔
The client has the necessary knowledge and experience to understand the risks involved in the transaction	✔	✔ (Firm can assume this)

If the firm does not obtain the information required to establish the suitability of an investment service or financial instrument for the client, then it *cannot* recommend that investment service or financial instrument to the client. However, the firm may be able to still provide a service of receiving and transmitting an order for a financial instrument (see Section 5.3.7 below for more details).

5.3.6 MiFID Execution Only – Appropriateness Test

Where a MiFID firm is providing an execution only service, i.e., no investment advice or portfolio management, the suitability test outlined above does not apply. Instead, there is an **appropriateness** test to the execution only service requested by the client.

For example, a client directs the MiFID investment firm to buy shares for him or her in a particular company.

Sufficient information about the client must be obtained by a MiFID investment firm to assess whether the client has the necessary *knowledge and experience* to understand the risks involved in relation to the product or investment service offered to or demanded by the client.

The investment firm must take this information about the client into account in order to assess whether the investment service or product envisaged is *appropriate* to the client.

Investment firms are obliged to warn their client if they conclude, on the basis of the information received by the firm, that a particular investment service or product is not appropriate to the client.

Where sufficient information is not forthcoming from a client to enable the firm to assess the appropriateness of the service or financial instrument to the client, the firm must warn the client that due to the client not providing sufficient information the firm cannot determine whether the service or product is appropriate to the client.

Both warnings above can be in a standardised format.

5.3.7 MiFID Execution Only – Non-Complex Products

The MiFID 'appropriateness' test above does *NOT* apply to an execution only transaction for a retail client if:

- The transaction relates to the following '*non-complex'* investment products:
  - Shares in companies listed on a stock exchange other than shares in AIFs (Alternative Investment Funds) and shares that embed a derivative;
  - Bonds or other forms of securitised debt listed on a stock exchange other than those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
  - Money market instruments, other than those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
  - Shares or units in UCITS other than structured UCITS;
  - Structured deposits other than those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before the end of the term;
  - Other non-complex financial instruments.
- Those services are provided at the initiative of the client.
- The firm has clearly warned (it may be in a standardised format) the client that:
  - In the provision of those services, the investment firm is not required to assess the appropriateness of the financial instrument or service provided or offered, and
  - Therefore, the client does not benefit from the corresponding protection of the relevant conduct of business rules.
- The firm complies with conflicts of interest requirements.

To be a 'non-complex' investment product, the product must meet a number of criteria:

- It is not a derivative.
- It is highly liquid.
- It does not involve an actual or potential liability which exceeds the amount invested.

- It does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment.

- It does not include any explicit or implicit exit charges that have the effect of making the investment illiquid, even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it.

- Adequate information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

In relation to retail clients, the suitability and appropriateness requirements can be summarised as follows:

MiFID requirements for retail clients when investing		
Investment Advice provided	**Execution only – complex product**	**Execution only – non-complex product**
Suitability	Appropriate	Suitability and appropriateness requirements do *not* apply.[2]

5.3.8 MiFID Best Execution

The MiFID II Regulations impose detailed requirements on MiFID investment firms, when providing a service of the receipt and transmission of orders, or when executing an order for a client as part of a portfolio management service, to *take all sufficient steps,* taking into account such issues as the size of the order, price, costs involved, speed, etc., *to obtain the best possible result for its client*. This is broadly referred to as best execution.

For retail clients, the best possible outcome in relation to reception and transmission of orders for a particular financial instrument will be determined in terms of the most favourable *total consideration* for the client, representing the price of the financial instrument and the costs relating to the execution of the order.

Example #1

John is a retail client of ABC Stockbrokers Ltd., a MiFID authorised investment firm. John has given ABC Investment Services Ltd an order to <u>buy</u> a particular quantity of shares in a company listed on the Stock Exchange.

The best execution requirements would generally require ABC to obtain the <u>lowest</u> total consideration for John, for this purchase order.

[2] *Assuming other conditions are complied with, e.g., product provided at the initiative of the client, the investment firm has warned the client that they are not required to assess the appropriateness of the product offered and the firm complies with the conflicts of interest requirements of the MiFID II Regulations.*

Example #2

Mark is a retail client of ABC Stockbrokers Ltd., a MiFID authorised investment firm. Mark has given ABC Investment Services Ltd an order to sell some shares he has in a company listed on the Stock Exchange.

The best execution requirements would generally require ABC to obtain the highest total consideration for John, for this sale order.

The firm must have in place a written '*order execution'* policy which identifies each class of financial instrument for which, and each entity with which, it places orders. It must have execution arrangements in place with each of these entities that ensures the best possible result for its client. Clients must be given information on the firm's order execution policy. Firms must be able to demonstrate to both the Central Bank and to clients, at their request, that orders have been executed in line with the firm's order execution policy.

However, where a MiFID firm receives a *specific* instruction from a client, it must execute the order in line with that instruction, regardless of the firm's best execution policy.

5.4 Distance Marketing

The Distance Marketing Regulations provide for certain protective measures for consumers who enter into a '*distance contract for the supply of a financial service'*, i.e., where the supplier of the financial product or service and the consumer do not meet each other face-to-face at any time during the process of putting the contract in place, by imposing certain obligations on the firms which arrange such distance contracts with consumers, with regard to the:

- Provision of certain information to consumers before the consumer enters into the contract;
- Provision of a cooling-off period, just after the contract is entered into.

5.4.1 What Financial Service Contracts are Covered?

The Regulations cover *distance contracts* for the supply of a *financial service* which is:

> *"... any service of a kind normally provided in the ordinary course of carrying on a banking business, an insurance business or a business of providing credit, personal pensions, an investment service or a payment service".*

5.4.2 What is a 'Distance Contract'?

The term distance contract for the supply of a financial service is:

> *"... a contract under which a supplier undertakes to supply a financial service to a consumer under an organised distance sales, or service-provision scheme operated by the supplier, who, for the purposes of the contract, makes exclusive use of one or more means of distance communication up to and including the time when the contract is entered into".*

Note that the definition of a 'distance contract' refers to the supply of a contract for financial services to consumers using an '*organised distance sales scheme*", i.e., where a particular organised distance distribution system is being systematically used by the supplier (e.g., a call centre or a website), rather than where a once-off contract with an individual consumer might happen to be concluded 'accidentally', as it were, exclusively by means of distance communication in one individual case.

In turn, the term '*means of distance communication'* is:

> *"... any means that enables persons to communicate with each other when they are not in each other's presence".*

The term '*means of distance communication'* would therefore include the use of:

- Phone
- Post
- Fax
- Email
- Internet

If, at some stage during the process, the supplier, e.g., a bank or insurance company, physically meets the consumer in relation to the proposed product or service, the particular sale is *not* covered by the Distance Marketing Regulation, as the contract or service was not then *exclusively* arranged by means of distance communication.

Example #1

A life assurance company operates a direct telephone sales operation. A consumer rings up and asks for a quote and agrees to accept the quote and proceed with the policy.

The life company posts out a proposal form and disclosure notice to the consumer and the consumer sends it back with a completed direct debit.

The life company accepts the proposal and posts out the policy to the consumer, and starts the direct debit.

This contract has been concluded exclusively by a means of distance communication, and hence is covered by the Distance Marketing Regulations.

However, consider this alternative scenario:

Example #2

A life assurance company operates a direct telephone sales operation. A consumer rings up and asks for a quote and agrees to accept the quote and proceed with the policy.

The life company posts out a proposal form and disclosure notice to the consumer.

The consumer drops into the life company's office with the proposal form, completes it in the office and signs a direct debit mandate for payment of the premium.

The life company accepts the proposal, posts out the policy to the consumer and starts the direct debit.

This contract has not been concluded exclusively by means of distance communication; at one stage in the process there is simultaneous physical presence between the life company and the consumer. Hence, this particular contract would not be covered by the Distance Marketing Regulations.

5.4.3 Who is a 'Supplier'?

The Regulations apply to *suppliers* of distance financial contracts to consumers. The term '*supplier'* is:

> *"... a person who, in the course of a business, provides one or more consumer financial services under distance contracts for supply of such services".*

Therefore, it includes financial institutions and intermediaries.

Where an intermediary acts between the consumer and the supplier of the financial service, the Regulations apply only if there is deemed to be a distance contract between the intermediary and the consumer, i.e., if the intermediary also does not physically meet up with the consumer.

Example

A mortgage lender provides housing loans to consumers through mortgage intermediaries. The lender, as part of the process of providing the loan, never meets with the borrower; everything comes through the mortgage intermediary.

The supply of the housing loan in this case would be deemed to be a distance contract provided by the mortgage lender only if the mortgage intermediary also never meets with the borrower.

If the mortgage intermediary meets with the borrower, then the supply of the housing loan to the borrower is not deemed to be a distance contract provided by the mortgage lender.

5.4.4 Who is a 'Consumer'?

The Regulations deal with distance contracts for the supply of a financial service to '*consumers'*.

The term *consumer* is:

> *"... in relation to a distance contract, or proposed distance contract ... a natural person who is acting otherwise than in the course of a business carried on by the person".*

Hence, it does *not* extend to distance contracts for financial services supplied to companies and commercial concerns, or to individuals when related to their trade or business, e.g., the Regulations would *not* apply to a bank providing a loan by distance means to a dentist for the purpose of buying new dental equipment for his or her practice.

5.4.5 Provision of Information

Where a proposed financial product or service contract is to be subject to the Distance Marketing Regulations, the supplier of the distance contract must provide certain information to the consumer *before* the consumer is bound by the contract:

• The supplier
• The financial service to be provided
• Cooling-off period
• Right of redress if things go wrong

Certain specified information must be supplied regarding:

- The supplier;

  The identity and the main business of the supplier, the geographical address at which the supplier is established and any other geographical address relevant for the customer's relations with the supplier;

- The financial service to be provided;

  A description of the main characteristics of the financial service provided under the distance contract;

  The total price to be paid by the consumer to the supplier for the financial service, including all related fees, charges and expenses, and all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;

  Any limitations of the period for which the information provided is valid;

  The provision of risk warnings where the financial service is linked to investments or factors which can fluctuate in value, e.g., unit-linked investments.

- Right to withdraw from the contract;

  The arrangements for cooling off and withdrawing from the contract.

- Right of redress;
  - Details of any 'out of court' complaint and redress mechanism under the contract, e.g., right to complain to the Financial Services and Pensions Ombudsman.

The information must be supplied to the consumer in a "*clear and comprehensible (*manner) *taking into account the means of communication used".* This includes a requirement that the information supplied to the consumer:

> *a. "is easily, directly and at all times accessible to the consumer of the financial service concerned, and*
>
> *b. Can be stored by the consumer in a durable medium."*

5.4.6 Telephone Sales

In relation to telephone sales:

- Where the supplier rings the consumer, the identity of the supplier and the commercial purpose of the call must be made explicitly clear at the beginning of the conversation with the consumer;
- If, during the course of the conversation, the consumer expressly waives his or her right to receive the detailed information outlined above before conclusion of the contract, more limited information may be provided to the consumer on the phone, provided the full information is provided in writing immediately after the contract is entered into.

5.4.7 Supply of Terms of the Distance Contract

The Regulations require the supplier of a distance contract "*within a reasonable time before entering into a distance contract ... give to the consumer, in writing or in some other durable medium and accessible to the consumer ... all of the terms of the contract.*"

However, if a distance contract is entered into at the request of a consumer, and the means of distance communication used does not allow the information about the terms and conditions of the contract and the other information outlined above to be given to the consumer *before* the contract is concluded, the supplier can comply with the obligation immediately after the contract is entered into.

5.4.8 Ongoing Consumer Rights

While the distance contract is in force:

- The consumer can request the supplier to provide the contractual terms and conditions printed on paper, at any time;
- The consumer can request the supplier to change the means of distance communication, e.g., from phone to email, or vice versa, unless to do so would be inconsistent with the contract or the nature of the service.

5.4.9 Enforceability of Distance Contracts

A distance financial contract is not enforceable against the consumer if the supplier has failed to comply with the Regulations.

5.4.10 Cooling-Off Period

There is a standard cooling-off period of 14 days for distance financial contracts, other than life assurance and personal pensions where the cooling-off period is 30 days.

However, the cooling-off right does *not* apply to certain financial services whose price depends on fluctuations in the financial market outside the supplier's control, which may occur during the cooling-off period.

The following are specifically excluded from the cooling-off right under the Distance Marketing Regulations:

- Financial services related to:
  - Foreign exchange,
  - Money market instruments,
  - Transferable securities,
  - Units in collective investment undertakings,
  - Financial-futures contracts,
  - Swaps and options.
- Contracts entered into at the consumer's express request whose performance has been fully completed by both parties before the consumer exercises his or her right of withdrawal.

Where a consumer exercises a cooling-off right, he or she can be made pay only for the financial services actually provided during the period before he or she exercised the cooling-off right; however, in the case of life assurance and personal pension contracts the consumer is entitled to a full refund of any premium paid, within the 30 day cooling-off period, less any investment losses during the period the policy was in force.

5.5 Sustainability Disclosure Requirements

5.5.1 Sustainable Finance Disclosure Regulation

The EU Sustainable Finance Disclosure Regulation (SFDR) came into force on the 10th March 2021. As an EU Regulation, the SFDR does not require transposition into Irish law. EU Regulations have '*direct effect*'.

The SFDR requires financial market participants and financial advisers to make pre-contractual and ongoing disclosures to end investors in relation to financial products.

The information required to be provided by a financial market participant or financial adviser relates to:

- The integration of sustainability risks;
- The consideration of adverse sustainability impacts in its processes;
- The promotion of environmental or social characteristics; and
- The provision of sustainability-related information with respect to financial products .

Financial products include:

- Insurance-based investment products;
- UCITS funds;

- Pension products;
- Pension schemes;
- Investment portfolios managed on a discretionary basis; and
- Alternative investment funds (AIFs).

Financial market participants include:

- Insurance-based investment product providers;
- Pension providers;
- Investment firms;
- Credit institutions; and
- Fund managers.

Financial advisers include:

- Insurance intermediaries which provide advice in relation to insurance-based investment products;
- Insurance undertakings which provide advice in relation to insurance-based investment products;
- Credit institutions which provide investment advice;
- investment firms which provide investment advice (including investment intermediaries registered under Investment Intermediaries Act 1995);
- Alternative Investment Fund Managers (AIFMs) which provide investment advice; and
- UCITS management companies which provide investment advice.

The SFDR requirements include:

- Website disclosures for financial market participants. A financial market participant must disclose on its website:
  - Information about its policies on the integration of sustainability risks in its investment decision-making process;
  - A statement on its due diligence policies about the adverse impacts of investment decisions on sustainability factors; and
  - Information on how its remuneration policies are consistent with the integration of sustainability risks.
- Website disclosures for financial advisers. A financial adviser must disclose on its website:
  - Information about its policies on the integration of sustainability risks in the advice in provides;
  - Information as to whether it considers, in providing advice, the principal adverse impacts on sustainability factors;

- Information on how its remuneration policies are consistent with the integration of sustainability risks.

- Pre-contractual disclosures for financial market participants: A financial market participant is required to disclose in pre-contractual disclosures:

  - The manner in which sustainability risks are integrated into its investment decisions; and

  - The results of the assessment of the likely impacts of sustainability risks on the returns of the financial products it makes available.

- Pre-contractual disclosures for financial advisers: A financial adviser is required to disclose in pre-contractual disclosures:

  - The manner in which sustainability risks are integrated into advice it provides; and

  - The result of the assessment of the likely impacts of sustainability risks on the returns of the financial products it advises on.

  - The Central Bank intends to update the Minimum Competency Code 2017 (MCC) to include recognition of sustainability knowledge and competence. The purpose of the MCC is to ensure that an acceptable minimum level of competence is maintained by those acting for regulated firms in the provision of advice and information to consumers regarding retail financial products. In light of the increasing awareness of consumers and appetite for products with sustainability type features, the Central Bank considers it appropriate to update the MCC to ensure relevant staff have the knowledge and competence to understand and explain such products as well as to undertake suitability assessments taking into account consumers' sustainability preferences. These amendments will apply to all retail financial products, including life assurance, pensions, general insurance, consumer credit and debt management services as well as savings and investment products.

  The requirements in the MCC in relation to Continuous Professional Development (CPD) will be updated to clarify that CPD may be undertaken in respect of sustainability topics where this is directly relevant to the person's role. The amendments to the MCC are planned to come into force 1st January 2025.

5.5.2 European Insurance and Occupational Pensions Authority (EIOPA) Guidance on Suitability Assessment under the Insurance Distribution Directive

The European Insurance and Occupational Pensions Authority (EIOPA) published guidance on integrating the customer's sustainability preferences in the suitability assessment under the Insurance Distribution Directive (IDD) in July 2022.

EIOPA provides guidance on:

- How to help customers better understand the concept of "sustainability preferences" and their investment choices;

- How to collect information on sustainability preferences from customers;

- How to match customer preferences with products, based on product disclosures under the Sustainable Finance Disclosure Regulation;

- What arrangements are necessary to ensure the suitability of an insurance-based investment product; and

- The sustainable finance-related training and competence expected of insurance intermediaries and insurance undertakings who provide advice on insurance-based investment products.

5.5.3 European Securities and Markets Authority (ESMA) Guidelines on certain aspects of the MiFID II Suitability Requirements

The European Securities and Markets Authority (ESMA) published its Guidelines on certain aspects of the MiFID II Suitability Requirements in September 2022.

The assessment of suitability in the MiFID framework applies to the provision of any type of investment advice, whether independent or not, and to portfolio management.

The main items reflected in the guidelines on the topic of sustainability are:

- Information to clients on the sustainability preferences – Firms will need to help clients understand the concept of sustainability preferences and explain the difference between products with and without sustainability features in a clear manner and avoiding technical language;

- Collection of information from clients on sustainability preferences – Firms will need to collect information from clients on their preferences in relation to the different types of sustainable investment products and to what extent they want to invest in these products;

- Assessment of sustainability preferences – Once the firm has identified a range of suitable products for client, in accordance with the criteria of knowledge and experience, financial situation and other investment objectives, the firm shall identify the product(s) that fulfil the client's sustainability preferences; and

- Organisational requirements – Firms will need to give staff appropriate training on sustainability topics and keep appropriate records of the sustainability preferences of the client (if any) and of any updates of these preferences.

5.5.4 Minimum Competency Code and Sustainability Disclosure Requirements

The Central Bank has updated the Minimum Competency Code 2017 (MCC) to include recognition of sustainability knowledge and competence. The purpose of the MCC is to ensure that an acceptable minimum level of competence is maintained by those acting for regulated firms in the provision of advice and information to consumers regarding retail financial products. In light of the increasing awareness of consumers and appetite for products with sustainability type features, the Central Bank considers it appropriate to update the MCC to ensure relevant staff have the knowledge and competence to understand and explain such products as well as to undertake suitability assessments taking into account consumers' sustainability preferences. These amendments apply to all retail financial products, including life assurance, pensions, general insurance, consumer credit and debt management services as well as savings and investment products.

The requirements in the MCC in relation to Continuous Professional Development (CPD) have also been updated to clarify that CPD may be undertaken in respect of sustainability topics where this is directly relevant to the person's role.

These amendments to the MCC come into force on 1st January 2025.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- Conduct of Business Rules ☐
- Consumer Protection Code ☐
- MiFID Rules ☐
- Distance Marketing ☐

Sample Questions

The answers to these questions can be found in your Study Hub.

1. When an investment intermediary is providing advice to a client on a unit linked investment bond issued by a life assurance company, it must comply with the:

   A. Consumer Protection Code.
   B. Code of Conduct for Investment Intermediaries.
   C. MiFID Regulations.
   D. Code of Conduct for Life Assurance Companies.

2. ABC Life and Pensions Ltd, an insurance intermediary, is required under the Consumer Protection Code to display a schedule of its fees and charges:

   (i) in its public offices.
   (ii) on its website.
   (iii) on all its business stationary

   A. (i) only.
   B. (i) and (ii) only.
   C. (ii) and (iii) only.
   D. (i), (ii) and (iii).

3. Which of the following investors can be automatically treated by a MiFID investment firm as a professional client?

   A. Pension funds.
   B. Companies.
   C. Trusts.
   D. Proprietary directors.

4. Which one of the following is a consumer, for the purposes of the Distance Marketing Regulations?

   A. A company with an annual turnover of €2 million taking out car insurance for its fleet.
   B. A self-employed plumber taking out a Personal Pension Plan.
   C. A self-employed dentist taking out a loan to buy dental equipment.
   D. A charity investing in a lump sum investment bond.

06

Customer Records

This chapter looks at the provisions for dealing with Customer records under the Central Bank's Consumer Protection Code, Criminal Justice Acts and Data Protection Acts. Outlined are the main obligations imposed on data controllers within firms in respect of personal data obtained, controlled and used by them. The security of such data is also detailed in this chapter. The personal rights of individuals whose data is held is also explained.

Learning Outcomes – after studying this chapter you should be able to:
demonstrate knowledge of the provisions of the Consumer Protection Code in respect of customer records.
know the obligations of firms under the Criminal Justice Acts.
identify and apply the main obligations on firms under the General Data Protection Regulation (GDPR).
provide an overview of the various aspects of data security as issued by the Data Protection Commission.
know the personal rights afforded to individuals regarding their personal data held by firms.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	6	4	6

6.1 Introduction

A financial services firm will, by necessity, build up and retain records on its clients, e.g., paper files, electronic records, etc.

Firms are subject to a number of provisions in relation to how they keep such records, how long they should retain such records, and how they can use such records in its day to day business, under:

- The Central Bank's Consumer Protection Code;
- The Criminal Justice Acts, and
- The General Data Protection Regulation (GDPR).

6.2 Consumer Protection Code

The Code defines customer records as: "*any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form*." So, it includes paper and electronic files and documents.

A firm must maintain up-to-date customer records containing at least the following:

- A copy of all documents required for consumer identification and profile;
- The consumer's contact details;
- All information and documents prepared in compliance with the Code;
- Details of products and services provided to the consumer;
- All correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;
- All documents or applications completed or signed by the consumer;
- Copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and
- All other relevant information concerning the consumer.

Records must be maintained for a period of at least six years from:

- The date of a transaction, where the records relate to the transaction.
- The date the provider ceases to provide any product or service to the consumer, for all other records.

6.3 Criminal Justice Acts

Under the Criminal Justice Acts, firms are generally obliged to keep customer records at an office or premises in the State for a period of not less than five years after the *later* of:

- The ending of the customer relationship,

  AND

- The date the last transaction was carried out for the customer.

However:

- Banks and other financial institutions are also obliged to have processes in place to respond to enquiries from the Gardaí or Revenue Commissioners or other authorities as to whether they have had a business relationship during the previous five years with a specified individual or company. They must also be able to provide details on the nature of that relationship.

- As noted above in Section 6.2, firms are required by the Central Bank's Consumer Protection Code to retain records in relation to clients, who are consumers, for a period of at least six years after the relationship with the client ends, including in particular 'a copy of all documents required for consumer identification and profile'.

So, in reality, the retention period of client records by a firm should be taken as not less than six years after the business relationship with the client ends.

6.4 General Data Protection Regulation

Personal data is "*any information relating to an identified or identifiable natural person".*

An "identifiable natural person" is "*one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*".

The GDPR seeks to protect the privacy of individuals and their personal data in two main ways:

- By imposing various restrictions on firms who control and process personal data in relation to how the firm obtains and uses such personal data.

- By providing certain rights to individuals whose personal data is held by firms to:

  Access that data,

  Correct inaccurate data,

  Have certain personal data erased, and

  Block the use of their personal data for specified purposes.

6.4.1 Main Obligations

The main obligations imposed by the GDPR on firms, called data controllers and data processors, in respect of personal data collected, held and used by them are:

1. Personal data must be **processed lawfully, fairly and in a transparent manner**.

2. Personal data must be **collected only for one or more specified, explicit and legitimate purposes**.

3. Personal data must **not be processed in a manner incompatible with the purpose or purposes for which it was collected**.

4. Personal data must be **adequate, relevant and limited to what is necessary** for the purpose or purposes for which it was collected or further processed.

5. Personal data must be **accurate and, where necessary, kept up to date**. Every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay.

6. Personal data **must be kept in a form which permits identification of data subjects for no longer than is necessary** for the purposes for which it was collected.

7. Personal data must be processed in a manner that ensures **appropriate security of the personal data**, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.

8. Data controllers must **give a copy of personal data held by the data controller in relation to any individual to that individual on request**.

6.4.2 Processing Personal Data

A firm can process, i.e., use, personal data fairly obtained only where at least one of the following applies:

- The individual has given consent to the processing of his or her personal data for one or more specific purposes;

- Processing is necessary for the performance of a contract to which the individual is party or in order to take steps at the request of the individual prior to entering into a contract;

- Processing is necessary for compliance with a legal obligation to which the controller is subject;

- Processing is necessary in order to protect the vital interests of the data subject or of another natural person;

- Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

- Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Personal data must not be processed in a manner incompatible with the purpose or purposes for which it was collected. A key test of compatibility:

- Is the information used only in ways consistent with the purpose(s) for which it was collected?

- Is the information disclosed only in ways consistent with that purpose(s) for which it was obtained?

Guidance issued by the Data Protection Commission in this regard states:

> *"Personal data should only be collected for specified, explicit, and legitimate purposes and not further processed in a manner that is incompatible with those purposes. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data."*

6.4.3 Keeping Personal Data Accurate, Complete and Up-to-Date

A firm has a '*duty of care'* to the consumer involved, in relation to the personal data obtained and retained by the firm on that individual.

If a firm fails to observe this duty of care provision applying to the handling of personal data, the firm could be liable for damages to the individual involved, through the normal judicial system.

To comply with Data Protection requirements, a firm should ensure that:

- Clerical and computer procedures are adequate to ensure high levels of data accuracy;
- The general requirement to keep personal data up-to-date has been fully examined;
- Appropriate procedures are in place, including periodic review and audit, to ensure that each data item is kept up-to-date.

The accuracy requirement does *not* apply to back-up data, that is, to data kept only for the specific purpose of replacing other data in the event of the other data being lost, destroyed or damaged.

6.4.4 Keeping Personal Data Safe and Secure

The GDPR requires that:

> *"Personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures."*

When determining measures that provide an "*appropriate*" level of security, the GDPR provides that a number of factors can be taken into account:

> - *"The state of the art";*
> - *"The cost of implementation";*
> - *"The nature, scope, context and purposes of processing"; and*
> - *"The risk of varying likelihood and severity for the rights and freedoms of natural persons".*

Firms are also obliged to "*take steps to ensure that any natural person acting under the authority of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union or Member State law*".

Guidance issued by the Data Protection Commission outlines various aspects of data security:

Data collection and retention policies

The most effective means of mitigating the risk of lost or stolen personal data is not to hold the data in the first place. Data retention and replication should always be assessed against business need and minimised, either by not collecting unnecessary data or by deleting data as soon as the need for it has passed.

Access control

A data controller has a duty to limit access to personal data on a 'need to know' basis. Greater access limitations or controls should apply to more sensitive data. A data controller must be aware of the different users who access their systems/records and their requirements.

Access authentication

Users should have a unique identifier (such as a password, passphrase, smart card or other token) to allow access to personal data.

Data controllers should enforce password complexity and length.

Data controllers should ensure that users are made aware that their password/ passphrase is unique to them and must not be disclosed to anyone else. Shared credentials (where multiple users use the same login and password) should never be permitted.

Automatic screensavers

Most systems allow for screensavers to activate after a period of inactivity on a computer, requiring a password to re-establish access. This automatic lock activation is useful as the alternative manual locking of a workstation requires positive action by the user every time he/she leaves the computer unattended. Regardless of which method an organisation employs, computers should be locked when unattended. This applies not just to computers in public areas, but to all computers. It is pointless having an access control system in place if unattended computers may be accessed by any staff member, or where a shared password is used.

Encryption

Encryption is the process of encoding information stored on a device and can add a further useful layer of security. It is considered an essential security measure where personal data is stored on a portable device or transmitted over a public network. As with passwords, this measure is pointless unless the key to decrypt the data is kept secure.

Anti-virus software

Anti-virus software is not only required to prevent infection from the internet (either e-mail or web-sourced) but to prevent viruses that may also be introduced from portable devices, such as memory sticks (the use of which should be strictly limited). No anti-virus package will prevent all infections, as they are only updated in response to infections. It is essential that such software is updated on a regular basis and that policies support vigilance in regard to potential threats. A policy of not opening e-mail attachments from unexpected sources can be a useful way of preventing infection.

Firewalls

A firewall is essential where there is any external connectivity, either to other networks or to the internet. It is important that firewalls are properly configured, as they are a key weapon in combating unauthorised access attempts. The importance of firewalls has increased as organisations and individuals increasingly avail of 'always-on' internet connections, exposing themselves to a greater possibility of attack.

Software patching

Organisations should ensure that they have regular, consistent and comprehensive patch management procedures in place. Where possible, before installing the very latest patches, it is good practice to install these patches in a test environment to ensure that the patches do not create other issues with your systems. A record should also be kept of the date and patch installed on a system.

Remote access

Where a staff member/contractor is allowed to access the network from a remote location (e.g., from home or from an off-site visit) such access creates a potential weakness in the system, not least when accessed from a wireless network.

For this reason, the need for such access should be properly assessed and security measures reassessed before remote access is granted. If feasible, the access should be limited to specific IP addresses. Security should be the first consideration in granting access to partner organisations.

Wireless networks

Access to a server by means of a wireless connection can expose a network to attack. Data controllers must ensure that adequate security is in place on the network through, for example, appropriate encryption measures or specification of authorised devices.

Portable devices

Laptops, USB keys, smart phones and other forms of portable device are especially vulnerable to theft and accidental loss. Where a data controller considers it essential to store personal data on a portable device, these devices should be encrypted. Staff allocated such devices should be familiar with the relevant procedures.

Logs and audit trails

A system should be able to identify the user name that accessed a file and the time of the access. A log of alterations made, along with author/editor, should also be created.

Logs and audit trails can help in the effective administration of the security system and can deter staff members tempted to abuse the system. Staff should be informed that logging is in place and that user logs are regularly reviewed.

Back-up systems

A back-up system is an essential means of recovering from the loss or destruction of data. While some system should be in place, the frequency and nature of back up will depend, amongst other factors, on the type of organisation and the nature of data being processed. The security standards for back-up data are the same as for live data.

Incident response plans

As part of a data security policy, an organisation should anticipate what it would do if there were a data breach so that it can be ready to respond.

Disposal of equipment

It is the responsibility of the data controller to ensure that all personal data previously stored on devices has been removed prior to disposal.

Where the devices are not being recycled/reused the hard drives can either be physically destroyed or degaussed (a method of erasing data from a magnetic storage device).

Physical Security

Physical security safeguards should include the following considerations:

- *Perimeter security (monitoring of access, office locked and alarmed when not in use);*
- *Restrictions on access to sensitive areas within the building (such as server rooms);*
- *Computer location (so that the screen may not be viewed by members of the public);*
- *Storage of files (files not stored in public areas with access restricted to staff with a need to access particular files); and*
- *Secure disposal of records (effective 'wiping' of data stored electronically; secure disposal of paper records).*

The Human Factor

No matter what technical or physical controls are placed on a system, the most important security measure is to ensure that staff are aware of their responsibilities.

Effective employee training about the risks of data compromise, their role in preventing it and how to respond in the event of problems can be a very effective line of defence.

Data controllers must have procedures in place to manage staff turnover, including retrieval of data storage devices and quick removal of access permissions.

Certification

Certification can be a useful means of demonstrating compliance with security obligations, where certification indicates that data security controls have been subject to audit or review against a recognised standard by a reputable third party organisation

However, it remains up to the data controller to ensure they are satisfied with security provisions made, and to determine how they can demonstrate this if required.

6.4.5 Retain Information No Longer Than is Necessary

The Data Protection Acts require personal data held should: *"... not be kept for longer than is necessary for that purpose or those purposes"*.

Guidance issued by the Data Protection Commission in this regard states:

"Personal data should only be kept in a form which permits identification of data subjects for as long as is necessary for the purposes for which the personal data are processed. In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review."

6.4.6 Personal Rights

An individual in respect of whom a firm collects or holds personal data has certain rights in relation to the holding and processing by that firm of such personal data:

- The right to be informed;
- The right of access to that personal data;
- The right to rectify, erase, object to or restrict the use of personal data;
- The right to data portability;
- The right to not to be subject to a decision based solely on automated processing.

6.4.6.1 Right to be Informed

An individual in respect of whom your firm collects personal data must be provided with the following information:

- Identity and contact details of the firm;
- Contact details of the Data Protection Officer (person with responsibility for data protection matters within the firm);
- Purpose(s) of the processing and the lawful basis for the processing;
- Where processing is based on the legitimate interests of the firm or a third party, the legitimate interests of the firm;
- Any other recipient(s) of the personal data;
- Where applicable, details of any intended transfers to a third country (non-EU Member State) or international organisation and details of adequacy decisions and safeguards;

- The retention period (how long an organisation holds onto data) or, if that is not possible, the criteria used to determine the retention period;

- The existence of the right of access, the right to rectification, the right to erasure, the right to restrict processing, the right to data portability, and the right to object, and to request these from the data controller;

- Where processing is based on consent, the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

- The right to lodge a complaint with a supervisory authority;

- Whether the provision of personal data is a statutory or contractual requirement, necessary to enter into a contract, an obligation, and the possible consequences of failing to provide the personal data; and

- The existence of any automated decision-making processes that will be applied to the data, including profiling, and meaningful information about how decisions are made, the significance and the consequences of processing.

Where your firm has not obtained the data from the individual, the firm must provide the individual with the following additional information:

- Information on the types of personal data it holds about you; and

- Information on how it obtained the personal data and whether it came from publicly accessible sources.

This information must be provided within a reasonable period of having obtained the data and, at the latest, within one month.

If the data is used to communicate with the individual, the information must be provided at the latest when the first communication takes place.

If the personal data will be disclosed to another recipient, this information must be provided when the personal data is first disclosed.

The information must be provided in writing, or by other means, including, where appropriate, by electronic means.

Where the individual makes the request by electronic form means, where possible, the information must be provided by electronic means, unless otherwise requested by the individual.

6.4.6.2 Right of Access

An individual in respect of whom your firm keeps personal data is entitled to obtain the following from the firm:

- A copy of the personal data held by the firm on him or her;

- A description of the purpose(s) for which the personal data is held;

- A description of the categories of personal data concerned;

- A description of those to whom the data is or may be disclosed, in particular recipients in non-EU Member States or international organisations and information about appropriate safeguards;

- The envisaged period for which the personal data will be retained, or, if that is not possible, the criteria used to determine the retention period;

- The existence of the following rights: the right to rectification, the right to erasure, the right to restrict processing, and the right to object;

- The right to lodge a complaint with the Data Protection Commission;

- Where the personal data are not collected from the data subject, any available information as to their source; and

- The existence of automated decision making, including profiling, and meaningful information about how decisions are made, the significance and the consequences of processing.

When an individual exercises his or her right of access, the firm must provide the information without undue delay, and, in any event, within one month of receipt of the request. The one-month period may be extended by two further months, where necessary, taking into account the complexity and number of requests, where necessary. In this case, the firm must inform the individual of any extension within one month of receipt of the request and the reasons for the delay.

The information must be provided in writing, or by other means, including, where appropriate, by electronic means.

Where the individual makes the request by electronic form means, where possible, the information must be provided by electronic means, unless otherwise requested by the individual.

However, the ‘right of access’ to personal data is restricted in relation to the right of access to health information, relating to the physical or mental health of the individual.

The Data Protection (Access Modification) (Health) Regulations, 1989 provide that a firm **cannot** supply health data directly to the *client “if it would be likely to cause serious harm to the physical or mental health of the data subject”*.

You cannot supply or withhold health data from that individual, without first consulting an ‘*appropriate health professional’*, which in the case of an individual would be likely to be his or her GP.

Example

A client is proposing for life assurance with a life company. He has attended a Medical Examination, including a scan, requested by the life company and the individual's GP has also completed a report for the life company. The medical examination discovered a likely cancerous growth in the individual's brain, which may be terminal.

Some time later, the life company declines to offer cover to the individual. The individual then makes a Data Protection Act request to the life company for all information it holds on him, including the results of the medical examination.

The life company can refuse to supply the medical information to the individual only if it first consults with an appropriate health professional, i.e., the individual's known GP. If, following discussions with his GP, the GP agrees with the life company's Chief Medical Officer that disclosing such information, without appropriate prior counselling, would be likely to cause serious harm to the mental well-being of the individual, the life company can refuse to disclose that medical information to the client.

The life company's Chief Medical Officer would likely send the medical examination results to the individual's GP and suggest to the individual that he or she contact the GP immediately.

6.4.6.3 Right to Rectify, Erase, Object or Restrict

If an individual finds out or feels that personal data kept by your firm about him or her is inaccurate, he or she has a right to have that information **rectified** by your firm, without undue delay. If an individual's personal data is incomplete, he or she has the right to have data completed, including by means of providing supplementary information.

An individual is entitled to have his or her data erased, without undue delay, by the firm, if one or more of the following grounds applies:

- The personal data is no longer necessary in relation to the purpose for which it was collected or processed;
- The individual withdraws his or her consent to the processing and there is no other lawful basis for processing the data;
- The individual objects to the processing and there are no overriding legitimate grounds for continuing the processing;
- The individual objects to the processing and his or her personal data is being processed for direct marketing purposes;
- The individual's personal data has been unlawfully processed;
- The individual's personal data have to be erased in order to comply with a legal obligation;
- The individual's personal data has been collected in relation to the offer of information society services to a child.

In addition, an individual can **object** to your firm using his or her personal data for certain specified purposes.

Where a firm is using an individual's personal data for the purpose of marketing something directly to him or her, or profiling him or her for direct marketing purposes, the individual can object at any time, and the firm must stop processing as soon as it receives the objection.

Therefore, if a customer contacts your firm to indicate that he or she does not want his or personal data used for marketing purposes, your firm must mark his or her records that they may not be used for future marketing purposes.

An individual may also object to processing of his or her personal data for research purposes, unless the processing is necessary for the performance of a task carried out in the public interest.

An individual has the right to **restrict** processing of his or her personal data by a firm where:

- The individual has objected to processing of his or her data or has contested the accuracy of the data. In these cases, the restriction applies until the firm has determined the accuracy of the data, or the outcome of his or her objection.
- The processing is unlawful. In these cases, if the individual does not want the firm to delete the information, he or she can request restriction of the personal data instead.
- Where the individual requires data for the purpose of a legal claim. In this case, the individual can request restriction even where the firm no longer needs the data.

Where processing of an individual's data is restricted, it can be stored by the firm, but most other processing actions, such as deletion, will require the individual's permission.

Where an individual has obtained restriction of the processing of his or her data, the must inform him or her before lifting the restriction.

6.4.6.4 Right to Data Portability

In some circumstances, an individual may be entitled to obtain his or her personal data from a firm in a format that makes it easier to reuse the information in another context, and to transmit this data to another firm or organisation. This is referred to as the right to **data portability**.

This right applies only where processing of personal data (supplied by the individual) is carried out by automated means, and where the individual has consented to processing, or where processing is conducted on the basis of a contract between the individual and the firm.

This right applies only to the extent that it does not affect the rights and freedoms of others.

Where this right applies, a firm must provide and transmit personal data in structured, commonly used and machine-readable form. Data is structured and machine readable if it can be easily processed by a computer.

Under this right, an individual can ask a firm to transmit his or her data to another firm, if such transmission is technically feasible.

6.4.6.5 Right to Not to Be Subject to a Decision Based Solely on Automated Processing

An individual has the right to not to be subject to a decision based solely on **automated processing**. Processing is "automated" where it is carried out without human intervention and where it produces legal effects or significantly affects the individual. Automated processing includes **profiling**.

Automated processing is permitted only with the individual's express consent, when necessary for the performance of a contract or when authorised by Union or Member State law. Where one of these requirements applies, suitable measures must be in place to safeguard the rights, freedoms and legitimate interests of the individual. This may include the right to obtain human intervention on the firm's part, the right of the individual to present his or her point of view and the right to challenge the decision.

6.4.6.6 Restrictions on Exercising Rights

The GDPR allows all the rights it confers on individuals to be restricted by national law in certain circumstances for example, the prevention and detection of crime. Section 60 of the Data Protection Act 2018 sets out the circumstances in which the rights set out in the GDPR can be restricted.

6.4.6.7 What are the Charges?

Requests exercised under the GDPR must be dealt with free of charge.

However, where requests from an individual are considered '*manifestly unfounded or excessive*' (for example where an individual continues to make unnecessary repeat requests, or the problems associated with identifying one individual from a collection of data are too great), the firm may:

- Charge a reasonable fee, taking into account the administrative costs of providing the information/ taking the action requested; or

- Refuse to act on the request.

In cases where this is used as a reason to refuse an access request or to charge a fee, it is up to the firm to prove why it believes the request is manifestly unfounded or excessive.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] Consumer Protection Code
- [ ] Criminal Justice Acts
- [ ] Data Protection Acts

Sample Questions

The answers to these questions can be found in your Study Hub.

1. A bank's records in relation to a particular customer breached the principles of the Data Protection Act. This was because the records were:

   A. allowed to become out of date.
   B. kept on the same premises as the back-up data.
   C. held only on a microfiche system.
   D. retained in two different languages.

2. Under the General Data Protection Regulation, a bank can process personal data held on one of its customers if the customer has given consent to the processing and the processing is:

   A. necessary for compliance with a legal obligation imposed on the bank.
   B. incidental to the service provided by the bank to the customer.
   C. overseen by a senior manager of the bank.
   D. in relation to a financial transaction valued at less than €12,700.

3. Under the General Data Protection Regulation, a financial institution can take which of the following into account, in determining measures to ensure that personal data is processed in a manner that ensures appropriate security of the personal data?

   (i) The cost of implementation.
   (ii) The risk of varying likelihood and severity for the rights and freedoms of natural persons.
   (iii) The state of the art.

   A. (ii) only.
   B. (iii) only.
   C. (ii) and (iii) only.
   D. (i), (ii) and (iii).

4. John has sought access to personal data relating to him held by Lunar Loans Ltd. From receipt of John's written request, Lunar must normally supply John with a copy of the personal data requested within a MAXIMUM of:

   A. 20 days.
   B. 1 month.
   C. 3 months.
   D. 6 months.

07

Handling Complaints

This chapter looks at the procedures involved in complaints handling as outlined by the Consumer Protection Code. The role and functions of the Financial Services and Pensions Ombudsman (FSPO) are outlined together with details of what complaints can and cannot be referred to the FSPO.

Learning Outcomes – after studying this chapter you should be able to:
describe how to advise a customer in relation to the procedures involved in complaints handling and the use of alternative dispute resolution channels.
understand the role of the FSPO; the nature of complaints which can be referred and those which cannot be investigated.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	7	10	15

Complaints from clients and potential clients of financial services firms can naturally arise from time to time.

The Consumer Protection Code requires firms to have written procedures for the handling of complaints. If the complaint cannot be resolved to the consumer's satisfaction, the consumer has the right to refer the complaint to the FSPO.

An *Ombudsman* is an independent entity which investigates disputes between consumers and institutions, attempts to mediate on these disputes, and, where no agreement can be reached directly between the consumer and the relevant institution, adjudicates on the dispute.

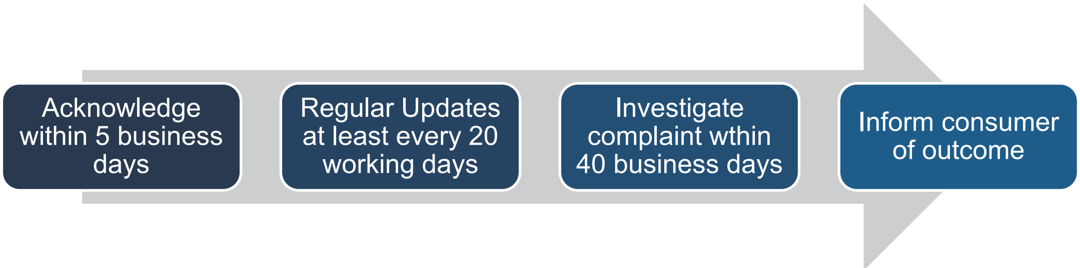
7.1 Consumer Protection Code

7.1.1 Written Procedures

A firm must have a *written* procedure for the proper handling of '*complaints*'. The term '*complaint'* is:

> *"… an expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:*
>
> *a. The provision or the offer of the provision of a product or service to a consumer by a regulated entity; or*
>
> *b. The failure or refusal of a regulated entity to provide a product or service to a consumer."*

The term therefore covers both verbal and written complaints. It also covers complaints not just from existing clients but also from prospective clients.



At a minimum, the firm's written complaints procedures must provide that:

- All complaints will be acknowledged by the firm in writing, within 5 business days of the complaint being received.

- The firm will provide the consumer with the name of one or more contact persons in relation to the complaint, until the complaint is resolved or cannot be processed any further.

- The firm will, while investigation of the complaint is ongoing, give the consumer a regular written update on the progress of the investigation at intervals of not greater than 20 business days, starting from the date on which the complaint was made.

- The firm will attempt to investigate and resolve a complaint within 40 business days of receiving the complaint.

- Where the complaint is not resolved within 40 business days of receiving the complaint, the firm must inform the consumer of:

  - The anticipated timeframe within which the firm hopes to resolve the complaint, and

  - Their right to refer the complaint to the FSPO and provide contact details of such Ombudsman.

- Within five business days of the completion of the investigation of a complaint, the firm must inform the consumer in writing of:

  - The outcome of the investigation and, where appropriate, explaining the terms of any offer of settlement, offered by the firm, and

  - Their right to refer the complaint to the FSPO and provide contact details of such Ombudsman.

The above procedures need *not* apply where the complaint has been resolved to the satisfaction of the consumer within five business days of receipt of the complaint and a record of such complaint and resolution is maintained by the firm.

7.1.2 Log of Complaints

A firm must maintain a log of all complaints received from consumers. A firm must also maintain up-to-date and comprehensive records for each complaint received from a consumer.

7.1.3 Analysing Complaints

A firm must undertake an appropriate analysis of the patterns of complaints from consumers on a regular basis, but at least annually, including investigating whether complaints indicate an isolated issue or a more widespread issue for consumers.

This analysis of consumer complaints must be reported to the firm's compliance/risk function and senior management.

7.2 Financial Services and Pensions Ombudsman

The FSPO is a statutory officer who deals independently with unresolved complaints from consumers about their individual dealings with financial service providers and pension providers. It is a free service to the complainant.

7.2.1 Functions of the Ombudsman

The principal statutory functions of the FSPO are:

- To deal by mediation with complaints made to the FSPO by eligible consumers about the conduct of financial services firms, and

- Where mediation has not been successful or has been refused, to investigate and adjudicate on the complaint.

7.2.2 Who Can Refer a Complaint to the Financial Services and Pensions Ombudsman?

Complaints to the FSPO can be referred only by:

- Consumers of certain financial service providers, and
- Consumers of pension providers.

7.2.2.1 Complaints in Relation to Financial Service Providers

Complainants may make a complaint to the FSPO in relation to the conduct of a financial service provider involving:

- The provision of a financial service by the financial service provider,
- An offer by the financial service provider to provide a financial service, or
- A failure by the financial service provider to provide a particular financial service requested by the complainant.

The categories of customer of certain financial service providers in respect of which a complaint can be referred to the FSPO are:

- A private individual, when not acting in the course of, or in connection with, carrying on a business, i.e., in relation to their own personal finances
- Sole Traders
- A limited company
- Trusts, which includes the trustees of occupational pension schemes
- Clubs
- Charities
- Partnerships

However, apart from private individuals, a complaint is respect of the other categories above can be referred only if they have an annual turnover (or are part of a group with an annual turnover) of €3m or less in their financial year prior to the year in which the complaint is made to the Ombudsman.

A consumer in relation to a financial service provider is*:*

- A customer of the provider, or
- A person to whom the financial service provider has offered to provide a financial service, or
- A person who has sought the provision of a financial service from the financial service provider, or
- A person who was, in relation to a credit agreement, a customer of the financial service provider in a case where a credit servicing firm undertakes credit servicing in respect of the credit agreement concerned, or

- An actual or potential beneficiary of a financial service, defined as a consumer, any surviving dependant of a consumer, a legal personal representative of a deceased consumer, a widow, widower or surviving spouse or civil partner of a deceased consumer or any person who is contractually entitled to benefit from a long-term financial service, or

- An employee or a former employee entitled to benefit from an income continuance plan.

So, the scope includes not just existing clients of a financial service provider, but also former clients and potential clients, i.e., consumers who sought (but may not necessarily have obtained) a service from the financial service provider.

7.2.2.2 Complaints in Relation to Pension Providers

Complainants may make a complaint to the FSPO in relation to the conduct of a pension provider involving:

- The alleged financial loss occasioned to a complainant by an act of maladministration done by or on behalf of the pension provider, or

- Any dispute of fact or law that arises in relation to conduct by or on behalf of the pension provider.

A consumer in relation to a pension provider is an actual or potential beneficiary of the pension provider.

An actual or potential beneficiary, in relation to a complaint concerning a pension provider, means:

- A member,

- An external member,

- Any person who has been a member,

- Any surviving dependant of a deceased member,

- Any person claiming to be a member or a surviving dependant of a deceased member,

- A contributor to a PRSA,

- A legal personal representative of a deceased member or deceased contributor,

- A widow, widower or surviving spouse or civil partner of a deceased member or deceased contributor, or

- Any person with an entitlement under a scheme.

7.2.3 Financial Service Providers Covered by the FSPO

Only consumers who are clients of the following types of financial service providers operating in the State, whether regulated by the Central Bank or an equivalent regulatory authority in another EEA[3] country, can refer complaints to the FSPO:

- Banks

[3] *That is, EU, Norway, Lichtenstein, and Iceland.*

- Building Societies
- Loan Owners / Credit Servicing Firms
- Insurance Companies, life and non-life
- Credit Unions
- Mortgage, Insurance and Credit intermediaries
- MiFID investment firms, including Stockbrokers
- Pawnbrokers
- High-Cost Credit Providers (formerly Money Lenders)
- Buy Now Pay Later (BNPL) Firms
- Bureaux de Change
- Hire Purchase providers
- Health insurance companies
- Retail Credit Firms
- Home Reversion Firms
- Debt Management Firms

Where a complaint is submitted to the FSPO regarding a financial service provider which operates in Ireland on a '*freedom of service basis*' (see Section 1.2.1 for more details), the matter is referred to the relevant Ombudsman Scheme in the country in which the firm is established.

7.2.4 Pension Providers Covered by the FSPO

A consumer in relation to a pension provider is an actual or potential beneficiary of:

- An occupational pensions scheme,
- A Trust retirement annuity contract (Trust RAC)[4],or
- A personal retirement savings account (PRSA)

who believes he or she has suffered financial loss because of maladministration of the scheme, trust or PRSA, as the case may be.

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[4] A Trust RAC is a group pension arrangement set up for self-employed members of a particular group or occupation, e.g., the Irish Dental Association or the Incorporated Law Society. The Trust RAC may operate as:

- *A group Personal Pension operated by a life company investing in life company policies, or*
- *A self-administered scheme invested directly in stocks and shares.*

7.2.5 Which Complaints Can and Cannot be Referred to the FSPO?

Consumers can refer *unresolved* complaints about the alleged conduct of a financial service provider or pension provider covered by the scheme only if he or she has previously communicated the substance of the complaint to the financial service provider or pension provider, and has given that provider a reasonable opportunity to deal with it in accordance with its internal dispute resolution process.

However, some complaints are specifically *excluded* from the remit of the FSPO scheme, and therefore *cannot* be referred to the FSPO:

> *"the conduct complained of:*
>
> a. *Is or has been the subject of legal proceedings before a court or tribunal, or*
>
> b. *Relates to a matter that is within the jurisdiction of the Workplace Relations Commission or the Pensions Authority, or*
>
> c. *Is of a class prescribed by … Regulations, or*
>
> d. *Occurred outside the time limits specified in the Financial Services and Pensions Ombudsman Act 2017.*

The FSPO can decide not to investigate a complaint or to discontinue investigating a complaint on any of the following grounds:

> a. *"the complaint is frivolous or vexatious or was not made in good faith, or*
>
> b. *The subject-matter of the complaint is trivial, or*
>
> c. *The conduct complained of occurred at too remote a time to justify investigation, or*
>
> d. *There is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of, or*
>
> e. *The complainant has no interest or an insufficient interest in the conduct complained of, or*
>
> f. *The subject matter of the complaint is of such a degree of complexity that the courts are a more appropriate forum."*

The FSPO can also decide not to continue to investigate a complaint if the consumer fails within a reasonable period to comply with a request for further written particulars.

The fact that complaints relating to matters that are within the jurisdiction of the Pensions Authority cannot be referred to the FSPO means that complaints about trustees of occupational pension schemes in relation to such matters, or complaints relating to the Pensions Act, 1990, or regulations issued thereunder, cannot be referred to the FSPO.

Complaints in relation to State benefits, such as the State Pension (Contributory) or the State Pension (Non-Contributory), also cannot be referred to the FSPO.

7.2.6 First Step – Complain to the Financial Service Provider or Pension Provider

The first step for a consumer who has a complaint about a financial service provider or pension provider is to submit a written complaint to the financial service provider or pension provider, and not contact the FSPO at this stage.

The financial service provider or pension provider will then investigate the complaint in accordance with its internal dispute resolution process. In this regard, the financial service provider or pension provider must, if applicable, comply with the Consumer Protection Code requirements set out in Section 7.1.1 earlier.

If, after the provider investigates a complaint in accordance with its internal dispute resolution process, a resolution has not been reached which satisfies the consumer, a Final Response Letter must be issued by the provider to the consumer stating that the provider's internal complaints process has been exhausted and that the complaint cannot be resolved. The Final Response Letter will advise the complainant to contact the FSPO as his or her next step, if he or she remains unhappy.

Step 1 - Complain to the firm

Step 2 - If unresolved, make complaint to the FSPO

Step 3 - FSPO offers mediation

Step 4 - FSPO investigates

Step 5 - FSPO issues finding

7.2.7 Step 2 – Referral to the FSPO

The FSPO will accept a complaint only where there is evidence that the complainant has already communicated the substance of the complaint to the financial service provider or pension provider, and that the provider has been given a reasonable opportunity to deal with it. The Final Response Letter issued by the provider to the complainant is, therefore, required by the FSPO to accept a complaint.

When a consumer contacts the FSPO, he or she will be sent a complaint form, which should be completed and returned to the FSPO, along with any relevant documentation and any correspondence with the financial service provider or pensions provider (including the Final Response Letter) with which they have an unresolved complaint.

7.2.8 Step 3 – Mediation is Offered

When the FSPO has received both the completed complaint form from the consumer (and the Final Response letter from the financial service provider or pensions provider), it will assess the complaint and the option of mediation will first be offered to both parties as a means of resolving the matter.

However, participation in mediation by both the consumer and the provider is *voluntary*. If either does not want to participate in mediation, then it will not take place.

The mediator is trained and accredited, and he or she is experienced in the process of resolving disputes. He or she is independent, and his or her role is to help both the complainant and the firm to reach an agreed resolution of their differences.

If the complainant and the firm agree a settlement during mediation, that agreement becomes legally binding on both the complainant and the provider.

Where mediation is not successful or is not availed of, then the complaint will go to investigation and adjudication.

7.2.9 Step 4 – Formal Investigation

If mediation has not been successful or has been refused, the FSPO carries out a formal investigation.

During the formal investigation, the FSPO will seek information from both the provider and the complainant. In the case of most complaints, the FSPO will provide to the complainant all the information submitted by the provider, and vice versa.

Any issue about whether a complaint is within the FSPO's remit may also be dealt with at this stage.

The FSPO reviews all the information received during its investigation to help to reach a decision on the complaint.

This decision made by the FSPO is legally binding, which means that it can be appealed only to the High Court.

If a complaint is upheld, substantially upheld or partially upheld by the FSPO, he or she may direct the provider to pay compensation to the consumer or may direct the provider to rectify or correct the issue. If a complaint is rejected, no action will be directed by the FSPO.

7.2.10 Step 5 – Issue of the FSPO Finding – Financial Service Providers

On completing an investigation of a complaint relating to a financial service provider that has not been settled or withdrawn, the FSPO shall make a decision in writing that the complaint:

- Is upheld,
- Is substantially upheld,
- Is partially upheld, or
- Is rejected

The FSPO must give a copy of its written finding to:

- The consumer who made the complaint, and
- The financial service provider to which the complaint relates.

A finding by the FSPO in relation to a complaint is binding on all parties involved, i.e., the consumer who made the complaint, and the financial service provider against whom the complaint was made, subject only to appeal by either party to the High Court.

7.2.11 Step 5 – Issue of the FSPO Finding – Pension Providers

On completing an investigation of a complaint relating to a pension provider that has not been settled or withdrawn, the FSPO shall make a decision in writing in relation to the complaint.

A decision under by the FSPO shall be communicated to the parties by the FSPO and such decision shall include the following:

- The decision;
- The grounds for the decision; and
- Any direction given.

A finding by the FSPO in relation to a complaint is binding on all parties involved, i.e., the consumer who made the complaint, and the pension provider against whom the complaint was made, subject only to appeal by either party to the High Court.

7.2.12 Directions Following Upholding of a Complaint – Financial Service Providers

If a complaint is found to be upheld, substantially upheld or partially upheld, the FSPO in its written findings may direct the financial service provider to do one or more of the following:

- Review, rectify, mitigate or change the conduct complained of or its consequences;
- Provide reasons or explanations for that conduct;
- Change a practice relating to that conduct;
- Pay an amount of compensation to the complainant for any loss, expense or inconvenience sustained by the complainant as a result of the conduct complained of. The FSPO may direct that interest be added to the compensation amount, if the compensation is not paid by a date specified in the direction;
- Take any other lawful action that the FSPO considers appropriate having had regard to all the circumstances of the complaint.

The maximum compensation payments which can be currently ordered by the FSPO are as follows:

- €52,000 pa, where the complaint relates to an annuity, or
- €500,000 in all other cases.

The FSPO can, in effect, make awards in excess of the €500,000 limit above by, for example, ordering a financial service provider to refund an investment loss to the client, or to buy back an investment from the investor at cost price, etc. In this way, the financial cost of the action required of the financial service provider could be in excess of €500,000. The €500,000 limit refers only to a direct payment of compensation.

7.2.13 Directions Following Upholding of a Complaint – Pension Providers

The decision of the FSPO may contain such direction to the parties concerned as the FSPO considers necessary or expedient for the satisfaction of the complaint or the resolution of the complaint.

The FSPO may order such redress, including financial redress, for the complainant as he or she considers appropriate.

Any such financial redress shall be of such amount as the FSPO deems just and equitable having regard to all the circumstances, but it shall not exceed any actual loss of benefit under the scheme concerned.

Where the FSPO makes a direction concerning a pension provider, such a direction shall not require either:

- An amendment of the rules of a scheme or the conditions of a scheme, or
- The substitution of the decision of the FSPO for that of the pension provider in relation to the exercise by the pension provider of a discretionary power under the rules of the scheme.

7.2.14 Right of Appeal

Following adjudication by the FSPO of a complaint referred to it, the consumer who made the complaint or the provider against whom the complaint was made, can, if dissatisfied with the finding, appeal it to the High Court.

An appeal must be made to the High Court:

- Not later than 35 days after the date of notification of the FSPO's decision, or
- Within such further period as the Court considers just and equitable in all the circumstances.

A finding of the FSPO is not binding while an appeal to the High Court is pending.

The High Court can make an order to:

- Uphold the finding of the FSPO, either with or without modification;
- Set aside the FSPO's finding and any direction made by the FSPO in relation to that finding;
- Remit the finding and any direction back to the FSPO for '*review*'.

7.2.15 Time Limits for Complaints to the FSPO

The time limit for complaints to the FSPO depends on whether the contract to which the complaint arises is a *long-term financial service* or not.

A long-term financial service is a financial service with a duration of five years and one month or more, or a life assurance policy of any duration.

A complaint that does not relate to a long-term financial service must be made to the FSPO not later than six years from the date of the conduct giving rise to the complaint.

A complaint about a long term financial service must be made to the FSPO within whichever of the following periods is the last to expire:

- Six years from the date of the conduct giving rise to the complaint; or
- Three years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct giving rise to the complaint; or
- Such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period.

The long-term financial service must not have expired or otherwise been terminated more than six years before the date of the complaint, and the conduct complained of occurred during or after 2002.

The FSPO can investigate complaints made before 1st January 2018 (the date the new office of the FSPO came into being) but which had not been assessed due to being time barred. This means that complaints that were refused as being outside the then applicable time limits can be resubmitted to the FSPO, as they could now possibly qualify under the new extended time limits.

7.2.16 Naming Firms

The FSPO may publish a table each year setting out a list of financial service providers which have had at least three complaints upheld, substantially upheld or partially upheld during the preceding financial year. This list will include in respect of each such financial service provider the number of complaints found to be upheld, substantially upheld or partially upheld in the preceding financial year.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- Consumer Protection Code complaints process ☐
- Financial Services and Pensions Ombudsman ☐

Sample Questions

The answers to these questions can be found in your Study Hub.

1. Joanna has made a written complaint to ABC Life Co. Under the Consumer Protection Code, ABC must acknowledge Joanna's complaint in writing within what MAXIMUM number of business days from receipt of the complaint?

A. 5 days.
B. 15 days.
C. 20 days.
D. 40 days.

2. Barry is unhappy about the management of his Approved Retirement Fund. If his complaint is unresolved, he can refer it to the:

A. Financial Services and Pensions Ombudsman.
B. Pensions Regulator.
C. Central Bank.
D. Revenue Commissioners.

3. A consumer can refer an unresolved complaint about which of the following to the Financial Services and Pensions Ombudsman?

(i) A home reversion firm.
(ii) A debt management firm.
(iii) A credit intermediary.

A. (ii) only.
B. (i) and (ii) only.
C. (ii) and (iii) only.
D. (i), (ii) and (iii).

4. Joe made a complaint to the Financial Services and Pensions Ombudsman (FSPO) about ABC Bank plc. The FSPO did not uphold Joe's complaint. Joe:

A. cannot appeal this decision.
B. can appeal the decision to the High Court.
C. can appeal the decision to the Financial Services Appeals Tribunal.
D. can appeal the decision to the Central Bank.

08

Investor Protection

This chapter includes the main elements of the Investor Compensation scheme. You will learn about the requirement for notifying clients and how the scheme is funded. Included in this chapter is an overview of the Deposit Guarantee Scheme and how it operates.

Learning Outcomes – after studying this chapter you should be able to:
understand the benefits provided to consumers by the Investor Compensation scheme, the limitations of the scheme and how it is funded.
know how to make a claim.
explain how the Deposit Guarantee Scheme (DGS) operates and which funds are covered.
know the range of institutions covered under the DGS.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	8	5	9

8.1 Introduction

On very rare occasions it can happen that a financial institution or intermediary fails and becomes unable to repay (fully or partly) funds and assets to consumers; as a result, consumers could lose out financially by the failure.

There are three arrangements which provide some protection to consumers who may be impacted by such a failure:

- The Investor Compensation Scheme,
- The Deposit Guarantee Scheme, and
- Policyholder protection provisions.

8.2 The Investor Compensation Scheme

The Investor Compensation Act provides for the payment of compensation to certain investors (called eligible investors) who sustain a financial loss caused by certain financial services firms being found to be financially unable to meet their financial obligations to their clients, i.e., unable to return client money or investments to the client. The compensation payment to an investor is 90% of his or her net loss, subject to a maximum compensation payment of €20,000.

The scheme does *not* cover deposits, as the separate Deposit Protection Scheme is designed for that purpose.

The Investor Compensation Scheme does not pay compensation for financial loss for a consumer arising from alleged bad advice or where the value of a client's investment declines because of normal market or other economic forces. Such clients may be able to refer a complaint on these issues to the FSPO and seek financial redress that way for bad advice, etc.

The Investor Compensation Scheme is administered by the Investor Compensation Company Ltd. (ICCL).

8.2.1 What Consumers Are Covered by the Scheme?

Only *eligible clients* of certain firms can claim compensation from the ICCL, in the circumstances specified. Firms covered include:

- Investment intermediaries.
- Insurance intermediaries.
- MiFID investment firms.
- Banks authorised by the Central Bank which carry on investment business, i.e., non-deposit based financial products.
- Credit unions that provide investment and/or insurance services.
- Certified persons.
- UCITS management companies and Alternative Investment Fund Managers (AIFMs).

Note that life assurance companies and general insurance companies are *not* covered by the Investor Compensation Scheme.

Only *eligible clients* can make a claim on the ICCL, which includes individuals but specifically *excludes* what might be called '*professional*' clients such as professional investors, pension and retirement funds, insurance companies, large companies, etc.

8.2.2 Notifying New Clients

A firm covered by the scheme must notify new clients that the firm is part of the Investor Compensation Scheme by providing the client with the following information:

- That the Investor Compensation Act provides for the establishment of a compensation scheme and the payment, in certain circumstances, of compensation to certain clients (known as eligible investors) of investment firms;
- That the firm is a member of that compensation scheme;
- That compensation may be payable where money or investments owed or belonging to clients and held or administered or managed by the firm, cannot be returned to those clients for the time being and there is no reasonable foreseeable opportunity of the firm being able to do so;
- That a right to compensation will arise only:
  - If the client is an eligible investor;
  - If it transpires that the firm is not in a position to return client money or investment instruments owed or belonging to clients, and
  - To the extent that the client's loss is recognised by the ICCL
- That where an entitlement of compensation is established, the compensation payable by the ICCL will be the lesser of:
  - 90% of the amount of the client's net loss, and
  - €20,000.

However, firms covered by the scheme are *not* allowed to advertise the fact that they are covered by the Investor Compensation scheme.

8.2.3 Funding of the Scheme

The Investor Compensation Scheme is funded by contributions payable to the ICCL by firms covered by the scheme. There are two funds, Fund A and Fund B, each catering for different types of firms. The annual levy payable by a Fund A firm is based upon its number of eligible clients, while the annual levy payable by a Fund B firm is based on its investment and insurance income.

The categories of membership of each fund are as follows:

Fund A	Fund B
MiFID Investment Firms including stockbrokers	
Banks providing investment services	**Investment Intermediaries** **Insurance intermediaries**
Certified persons providing investment services similar to MiFID investment firms	**Credit unions** providing investment and/or insurance services
UCITS management companies providing Individual Portfolio Management Services	**Certified persons,** providing investment services similar to retail investment intermediaries
Alternative Investment Fund Managers authorised to undertake Individual Portfolio Management Services	

8.2.4 Making a Claim

Consumers can submit a claim to ICCL only where the Central Bank has advised ICCL that a firm covered by the scheme has either:

a. *Been the subject of a court ruling which prevents the firm returning money or investment instruments to clients, or*

b. *Been the subject of a determination by the Central Bank that the firm is unable to meet its obligations arising from claims by clients.*

This is referred to as a *determination* that the firm is unable to return client money, or investments it holds or controls, to its clients.

Once it has been so advised, the ICCL will write to all known eligible clients of the failed firm advising them of their right to make a claim for compensation. It will also place notices in the national newspapers seeking claims from investors.

The validation of claims is carried out by an '*Administrator'* who will be either the court appointed liquidator to the firm or some other person appointed by the Central Bank.

Payment of claims are usually made about five months from the date of the court ruling or the Central Bank's decision that the firm is unable to repay clients.

The maximum amount consumers can claim is 90% of their net loss certified by the Administrator, up a maximum compensation of €20,000 per individual. The term 'net loss' refers to the total amount due to the client at the date of determination that it is unable to return all monies and assets to its clients, less any recovery since made to the client by the administrator of the firm.

Example #1

John gave €10,000 to an investment intermediary, for investment in a Tracker Bond. The Bond was never purchased for John and the intermediary has now been declared insolvent. John has received nothing from the firm or its administrator.

John's net loss is €10,000.

John can claim 90% x €10,000, i.e., €9,000 from the ICCL.

Example #2

John gave €22,000 to an investment intermediary for investment in a Tracker Bond. The Bond was never purchased for John. The intermediary has now been declared insolvent. The Administrator has returned €18,000 to John from funds and assets of the firm.

John's net loss is therefore €4,000.

John is entitled to claim 90% of €4,000 i.e., €3,600 from ICCL.

8.3 The Deposit Guarantee Scheme (DGS)

The Deposit Guarantee Scheme compensates some depositors in the event that a bank, building society or credit union established and authorised in the State becomes unable or unwilling to repay its deposits because:

- The Central Bank of Ireland has determined that, for the time being, the institution concerned appears to be unable, for reasons which are directly related to its financial circumstances, to repay the deposit and has no current prospect of being able to do so;
- A court has appointed a liquidator or examiner to the institution; or
- A court has made, for reasons which are directly related to the institution's financial circumstances, any other ruling that has the effect of suspending depositors' ability to make claims against it.

The scheme is administered by the Central Bank of Ireland.

8.3.1 Funds Covered

While the scheme is referred to as the 'deposit' guarantee scheme, it covers not just deposits (demand, notice, fixed term) but also current account balances, as well as share accounts in credit unions.

The deposit element of a deposit Tracker Bonds is covered by the DGS *only* if at least 100% of the original investment amount is guaranteed to be repaid at the maturity date of the bond.

However, Tracker Bonds which do not guarantee a return of the full investment amount at maturity issued on or before 2nd July 2014 are covered by the DGS up to their maturity date.

The bonus part of a deposit Tracker Bond is not covered by the scheme.

8.3.2 Compensation

In the event that a bank, building society or credit union covered by the scheme becomes unable to repay its deposits, the Central Bank will repay a depositor covered by the scheme within 10 working days, 100% of their total deposits held with that financial institution, subject to a maximum compensation payment of €100,000 per depositor in that institution.

Example #1

John has a single deposit of €30,000 with Large Bank plc, which is covered by the Deposit Guarantee Scheme.

Large Bank plc has gone into liquidation and is unable to repay its depositors. John has no other deposits or loans with Large Bank plc.

The Central Bank will pay John €30,000 under the Deposit Guarantee Scheme.

Example #2

Mary has five separate deposits, totalling €125,000, with Large Bank plc., which is covered by the Deposit Guarantee Scheme.

Large Bank plc. has gone into liquidation and is unable to repay its depositors. Mary has no other deposits with Large Bank plc.

The Central Bank will pay Mary the maximum of €100,000 under the Deposit Guarantee Scheme.

In the case of joint deposit accounts, each deposit holder is treated for the purposes of the scheme as having a deposit of his or her share of the account, e.g., typically 50%.

Example #3

John and Mary have €150,000 in a joint deposit account with Large Bank plc, which is covered by the Deposit Guarantee Scheme.

Large Bank plc has gone into liquidation and is unable to repay its depositors. John and Mary have no other deposits with Large Bank plc.

The Central Bank will pay Mary and John €75,000 each under the Deposit Guarantee Scheme.

Therefore, in effect, joint deposits are covered by the Deposit Guarantee Scheme up to €200,000, where each account holder is entitled to 50% of the deposit.

8.3.3 Temporary Large Deposits

However, some special deposits (referred to as 'temporary high balance') are covered up to €1m for a six-month period from the time the deposit is opened. These special deposits include:

- Funds related to the purchase and sale of a private residential property.

- Sums paid to the depositor in respect of:

  - Benefits payable under an insurance policy,

  - A claim for compensation for personal (including criminal) injury; (these deposits are not subject to the €1m upper limit and hence are covered for the six-month period without limit);

  - State benefits paid in respect of a disability or incapacity,

  - A claim for compensation for wrongful conviction,

  - A claim for compensation for unfair dismissal,

  - Redundancy (whether voluntary or compulsory),

  - The depositor's marriage, judicial separation or civil partnership,

  - The depositor's divorce or dissolution of his or her civil partnership,

  - Benefits payable on retirement,

  - Benefits paid to the depositor on a person's death,

  - A claim for compensation in respect of a person's death, or

  - A legacy or other distribution from the estate of a deceased person.

For example, if an individual retires and receives a lump sum payment of, say, €300,000 which he or she then lodges to a deposit account covered by the scheme, the full €300,000 deposit is covered by the scheme for six months. Thereafter, if the deposit is maintained at the same level, the cover provided by the scheme falls back to the normal €100,000 limit.

8.3.4 Which Depositors Are Covered?

All depositors are covered by the scheme, within the limits explained above, with the exception of deposits made by financial institutions (such as banks, insurance companies and investment funds), and by pension schemes and retirement funds, other than Small Self-Administered Pension Schemes

Therefore, the following depositors *are* covered by the scheme:

- Individuals

- Sole Traders

- Partnerships

- Clubs, associations, schools and charities

- Companies
- Small Self-Administered Pension Schemes.

In the case of sole traders, personal and business accounts are combined for the purposes of the €100,000 limit, so that there isn't a separate €100,000 guarantee for personal savings and another €100,000 limit for the sole trader's business deposits.

Example #1

Fiona is a sole trader. She has a personal deposit account of €85,000 with Large Bank plc and another €20,000 in her business current account.

Fiona's maximum cover under the Deposit Guarantee Scheme is currently €100,000, as her personal and business account are combined for the purposes of the €100,000 limit on cover.

In the case of a partnership, one €100,000 limit applies to the Partnership accounts, regardless of the number of partners and accounts, but each partner is entitled to their own €100,000 limit in respect of their personal deposit accounts, i.e., funds not related to their role as a partner.

Example #2

Jack is a 50% partner of J & M, Chartered Accountants. He has a personal deposit of €140,000 with Large Bank plc, and the partnership has another €270,000 on deposit with the same bank.

The coverage of these deposits under the Deposit Guarantee Scheme is currently:

Personal deposit €140,000: restricted to a maximum of €100,000

Partnership deposit €270,000: restricted to a maximum of €100,000

8.3.5 Institutions Covered

The institutions currently covered by the Deposit Guarantee Scheme include:

- AIB, including previous Anglo Irish Bank deposits and EBS deposits[5]
- Bank of Ireland
- Permanent TSB, including previous Irish Nationwide Building Society deposits
- Credit Unions (deposit and share accounts)

Retail deposits held in Irish branches of foreign banks are *not* covered by the Irish Deposit Guarantee Scheme. However, such deposits are covered by an equivalent deposit guarantee scheme of the relevant bank's home State, up to a limit of €100,000 per depositor (£85,000 for UK registered banks).

[5] EBS Building Society became a subsidiary of AIB on 1/7/2011 but is still treated separately for the purpose of the DGS), i.e., investor is entitled to €100,000 limit in respect of deposits with AIB and another €100,000 limit in respect of deposits with EBS.

8.3.6 Provision of Information

Institutions must provide information about the Deposit Guarantee Scheme (including explaining what deposits are *not* covered by the scheme) to prospective depositors, and must have an acknowledgement of the receipt of that information, before taking a deposit from a prospective depositor.

Institutions must also confirm whether the deposit is covered by the DGS on their annual statements of account provided to depositors.

8.4 Policyholder Protection

There is currently no policyholder protection scheme, like the Deposit Guarantee Scheme for deposits, to compensate policyholders if a life company established in the State goes into liquidation and is unable to fully repay its policyholders.

- However, on the winding up of a life assurance company established in the State, Regulations provide that policyholder assets are legally ring-fenced from the shareholder's other assets and are available only to meet policyholder claims on the company. In effect, policyholders are treated as preferential creditors, before all other creditors, in respect of policyholder assets.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- Investor Compensation Scheme ☐
- Deposit Guarantee Scheme ☐
- Policyholder protection ☐

Sample Questions

The answers to these questions can be found in your Study Hub.

1. Owen had €35,000 invested in ACE Investment Managers Ltd, a MiFID investment firm, which has just gone into liquidation with a large deficit. ACE is financially unable to return Owen's investments to him. What is the MAXIMUM amount Owen may be able to recover from the Investor Compensation Scheme in respect of his investment with ACE?

   A. € 18,000
   B. € 20,000
   C. € 31,500
   D. € 35,000

2. Which one of the following can potentially claim on the Investor Compensation Scheme?

   A. A pension fund.
   B. An insurance company.
   C. A large company.
   D. An individual private client of an insurance intermediary.

3. Jack has €50,000 on deposit with ABC Bank plc in his own name. Jack and his wife, Cynthia, also have €80,000 in a joint deposit with the same bank. What total amount is Jack covered for by the Deposit Guarantee Scheme in respect of his deposits with ABC?

   A. € 50,000
   B. € 80,000
   C. € 90,000
   D. € 100,000

4. James and John are joint partners in a dental practice. They have €200,000 on deposit with their bank from their dental partnership funds. What is the MAXIMUM total amount they could claim under the Deposit Guarantee Scheme in respect of this partnership deposit account?

   A. € 75,000
   B. € 100,000
   C. € 180,000
   D. € 200,000

09

Whistleblowing

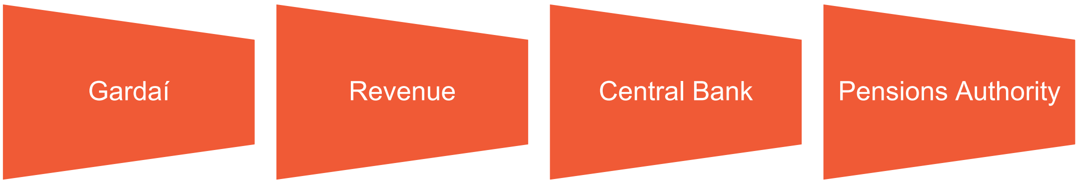
The whistleblowing obligations on relevant firms and financial advisers are outlined in this chapter. Ongoing Customer Due Diligence is a necessity and the requirements are covered here. The obligations to report to the Central Bank on firms which you believe are non-compliant are included. Suspicions which must be reported to the Pensions Authority, the Financial Intelligence Unit of the Garda Síochána (FIU Ireland) and the Revenue Commissioners are covered.

Learning Outcomes – after studying this chapter you should be able to:
explain the whistleblowing obligations imposed on firms and financial advisers.
outline the ongoing Customer Due Diligence requirements.
understand the meaning of 'protected disclosure'.
explain the obligations to report to the Pensions Authority.
provide an overview of the financial services offences which are covered by the CJA 2010 and the Criminal Justice Act 2011.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	9	1	3

There are a number of obligations on firms and financial advisers to whistle-blow to one or more relevant authorities, should they become aware of certain financial transactions and/or have suspicions about such transactions.

The relevant authorities are:



9.1 Ongoing Monitoring of Customers

In Section 4.3, we looked at the Customer Due Diligence requirements applying to financial services firms when dealing with new clients.

However, there are also ongoing Customer Due Diligence requirements which apply to firms in the ongoing business relationship with a client.

Financial services firms, including their directors, agents, employees and officers, must make a report to the Financial Intelligence Unit of the Garda Síochána (FIU Ireland) and the Revenue Commissioners, as soon as practicable, if they:

- Know
- Suspect, or
- Have reasonable grounds to suspect,

On the basis of information obtained in the course of carrying on their business, a client or prospective client has been or is engaged in money laundering or terrorist financing.

The report must include the following:

- The information on which the firm's knowledge, suspicion or reasonable grounds are based,
- The identity, if the firm knows it, of the person whom the firm knows, suspects or has reasonable grounds to suspect has been or is engaged in money laundering or terrorist financing,
- The whereabouts, if the firm knows them, of the funds involved in the suspicious transaction, and
- Any other relevant information.

A firm which is required to make a report above must not proceed with any suspicious transaction or service connected with the report, prior to the sending of the report to the FIU Ireland and the Revenue Commissioners, unless:

- It is not practicable to delay or stop the transaction or service from proceeding, or
- The firm is of the reasonable opinion that failure to proceed with the transaction or service may result in the other person suspecting that a report is being made or that an investigation is commencing.

The firm may also consider making a report if it is unable to apply Customer Due Diligence requirements to an existing customer, as a result of the failure of the customer to provide requested documentation or information to verify their identity.

Reports of suspicious financial transactions should normally be first made through the firm's Money Laundering Reporting Officer in accordance with the firm's internal reporting procedures, who would then determine whether it should be passed on to FIU Ireland and Revenue.

9.2 Reporting to the Central Bank

If you have reasonable grounds for believing a firm has been or may have been non-compliant with some aspect of regulation and legislation applying to it, you can make a '*protected disclosure*' to the Central Bank, as provided for in the Central Bank (Supervision and Enforcement) Act, 2013 and in the Protected Disclosures Act, 2014.

If you make, in good faith (i.e., not making an allegation knowing it to be false or misleading) a report to the Central Bank about a firm, that you have reasonable grounds for believing the firm has been or may have been non-compliant with some aspect of regulation and legislation applying to it, that disclosure to the Central Bank is a '*protected disclosure'*, which means that:

- You are protected from any civil liability for making the disclosure to the Central Bank; and

- Where you are an employee of the firm, the firm cannot penalise you for making the disclosure, and the firm may be prosecuted if they do attempt to penalise you for making the report to the Central Bank.

However, a disclosure made anonymously to the Central Bank is not a protected disclosure.

9.2.1 Reporting to the Office of Protected Disclosure Commissioner.

The Office of the Protected Disclosures Commissioner was established on 1 January 2023 under an amendment to the Protected Disclosure Act, 2014. This Office provides an additional route for a person to make a Protected Disclosure, particularly if a person is unsure where a report should be sent, or if there is no appropriate organisation particular to an industry/sector to which a particular report can be sent. In practice, Protected Disclosures in the financial services industry are likely to continue to be sent directly to the Central Bank by the individual making the disclosure or forwarded to the Central Bank by the Office of the Protected Disclosures Commissioner if it is initially sent to that Office.

9.3 Reporting to The Pensions Authority

The Pensions Act 1990 places a compulsory whistleblowing obligation on firms involved in some way in the operation of employer pension schemes and PRSAs, to report to the Pensions Authority, where the person has reason to believe that material misappropriation or fraudulent conversion of the scheme or PRSA's assets or funds has occurred or is occurring, or is to be attempted.

The reporting obligation falls on a wide range of entities who may be involved in the operation and investment of the scheme or PRSA, including:

- A trustee;

- An insurance intermediary;

- An investment intermediary;

- A MiFID investment firm;
- A PRSA Provider.

There is legal protection for firms making such reports in good faith to The Pensions Authority.

9.4 Obligation to Report to the Gardaí

The Criminal Justice Act, 2011 makes it an offence for *any person* who has information which he or she knows or believes might be of material assistance in:

- Preventing the commission by any other person of a relevant offence, or
- Securing the apprehension, prosecution or conviction of any other person for a relevant offence,

and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to the Garda Síochána.

The term ‘any person’ includes financial services firms and the individuals who work in such providers.

There are a wide range of financial services offences which fall into the category of ‘relevant offences’ covered by the requirement above to report information to the Gardaí, including:

- Failure of an insurance company to reduce commissions, following the issuing by the Central Bank of a commission reduction notice. (This is a power the Central Bank has under the Insurance Act 1989, but hasn’t to date being used).
- An insurance intermediary accepting a commission payment from an insurer subject to a Central Bank commission reduction notice, and the payment is in excess of the maximum allowed by the notice.
- Providing false or misleading information when applying for an authorisation as an investment intermediary under the Investment Intermediaries Act, 1995.
- Failing to issue a receipt to a client under Section 30 Investment Intermediaries Act, 1995. (See Section 5.2.13 for more details).
- Making a misleading, false or deceptive statement to the auditor of an intermediary.
- Failing to comply with statutory client money rules by MiFID investment firms.
- Linking services in relation to arranging housing loans, i.e., arranging or offering to arrange a housing loan on condition that any financial, conveyancing, auctioneering services or other services which the borrower may require must also be provided by the same entity or by an associated body.
- Failing to comply with certain Anti-Money Laundering and Terrorist Financing obligations, e.g., failing to:
    - Establish the intended nature of a business relationship with a new client, where required,
    - Carry out enhanced customer due diligence when dealing with politically exposed persons,

  - Reporting suspicious transactions.

- Insider dealing and market manipulation in relation to any financial instrument admitted to trading on a regulated market in the EU or for which a request for admission to trading on a regulated market in the EU has been made.

- Providing false or misleading information or documents to the Central Bank or Head of Financial Regulation of the Central Bank.

- Certain company law offences.

- Certain theft and fraud offences.

- Certain bribery and corruption offences.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- Ongoing Customer Due Diligence ☐
- Reporting to the Central Bank ☐
- Reporting to The Pensions Authority ☐
- Obligation to report to the Gardaí ☐

Sample Questions

The answers to these questions can be found in your Study Hub.

1. A bank has become suspicious of certain large cash lodgements suddenly being made to Frank's deposit account. If the bank has reasonable grounds to suspect that Frank maybe engaged in money laundering, it must:

   A. close the account immediately.
   B. transfer the funds in the account to the Dormant Accounts fund, pending an investigation by the Gardaí.
   C. seize any further cash lodgements Frank makes to his account.
   D. make an immediate report of the bank's suspicions to the Financial Intelligence Unit of the Garda Síochána and Revenue Commissioners.

2. Joanne works for a bank. If she makes a whistleblowing report to the Central Bank about the conduct of her employer, this is a protected disclosure provided:

   (i) the disclosure is not made anonymously.
   (ii) she makes the disclosure in good faith.
   (iii) she has reasonable grounds for believing that the bank has committed an offence under financial services legislation.

   A. (i) only.
   B. (i) and (iii) only.
   C. (ii) and (iii) only.
   D. (i), (ii) and (iii).

3. The Pensions Act imposes certain whistle blowing obligations on investment firms in relation to the operation of all:

   (i) Personal Retirement Savings Accounts (PRSAs).
   (ii) Occupational pension schemes
   (iii) Approved Retirement Funds (ARFs).

   A. (i) only.
   B. (i) and (ii) only.
   C. (ii) and (iii) only.
   D. (i), (ii) and (iii).

4. Which of the following is NOT a relevant offence which must be disclosed to the Gardaí under the Criminal Justice Act, 2011?

   A. An insurance intermediary receiving commission in respect of an insurance policy.
   B. Making a deceptive statement to the auditor of an intermediary.
   C. Failing to issue a receipt to a client under Section 30 Investment Intermediaries Act, 1995.
   D. Insider dealing in relation to shares in a publicly quoted company.

How well do you know your textbook?

Chapter 1

- Who sets the conduct of business rules for a French bank providing internet deposit accounts to consumers in the Republic of Ireland?
- What is the key difference between systemic and prudential regulation?

Chapter 2

- What is a product producer for the purposes of the Investment Intermediaries Act, 1995?
- What four conditions must a new entrant to a financial services firm comply with in order to be able to advise consumers on retail financial products, where he or she does not yet hold a recognised qualification, nor is grandfathered for the type of products he or she will be advising consumers on?
- What is the maximum percentage of an accountancy firm's gross fee income which can derive from investment business, if the firm is not directly authorised as an investment intermediary by the Central Bank?

Chapter 3

- What is an advertisement for the purposes of the Consumer Protection Code?
- In what circumstances can your firm send a marketing text message to an existing client of your firm?

Chapter 4

- What is a Politically Exposed Person (PEP)?
- When must you give a new client a copy of your firm's Terms of Business?

Chapter 5

- When does the MiFID suitability test apply to a MiFID firm?
- What rules apply to the bundling of different financial products into one sale to a consumer?

Chapter 6

- Under the Consumer Protection Code, for how long must your firm retain records of an investment arranged for a client on 15th January 2019?
- What charge can a firm normally make for requests exercised under the GDPR?

Chapter 7

- What is the normal time limit for submission to the FSPO of a complaint that does not relate to a long-term financial service or a life assurance policy?
- What is the normal time limit (in terms of working days) that a financial services firm should strive to investigate and reach a conclusion on a complaint referred to it by one of its customers?

Chapter 8

- Which financial services firms are not covered by the Investor Compensation Scheme?
- What protections are there for policyholders if a life assurance company goes into liquidation and is unable to fully repay its policyholders what they are due?

Chapter 9

- If you have your suspicions about a client and a proposed financial transaction he wants to carry out, you should first report your suspicions to which person?
- What condition must apply in order for a disclosure to the Central Bank about the conduct of your firm to be a ‘protected disclosure’?

Are you ready for your exam?

01

Do you understand the exam format?

Familiarise yourself with the structure and requirements of the exam. Understand how many questions you'll need to answer, the time limit, and any specific instructions or scoring methods.

02

Have you covered the full course material?

Have you read and understood the full textbook? Have you used the additional supplementary study resources available in your online Study Hub (pre-recorded videos, microlearning webinars, exam preparation masterclass recording)?

03

Have you created a revision plan?

Develop a study plan that outlines your exam preparation strategy. Break down your study sessions into manageable chunks and allocate time for each topic or chapter. Ensure you have sufficient time to review all the relevant material before the exam.

04

Practice sample questions

Use the sample questions related to each chapter. This will help you become familiar with the types of questions typically asked and allow you to practise applying your knowledge. Time yourself during these practice sessions to get used to working within the exam time constraints.

05

Have you used the "Take a Test" facility?

Test yourself by answering practice questions without referring to your study materials under exam conditions. This will help reinforce your knowledge and identify any remaining gaps you need to address.

06

Have you familiarised yourself with the Online User Guide and Exam Regulations, which can be found in your Study Hub?

This will help you become familiar with the online exam environment and the rules that need to be followed.

07

Have you checked your computer set up and broadband speed and stability in preparation for your online exam?

Please consult the Online Exam User Guide for further information regarding system requirements. This will help ensure your exam runs smoothly.

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