



FINANCIAL REGULATOR  
*Rialtóir Airgeadais*

# Consumer Protection Code

August 2006

# SCOPE

## Legislative Basis

This Consumer Protection Code ("Code") is issued by and in the name of the Irish Financial Services Regulatory Authority ("Financial Regulator") and applies to entities regulated by the Financial Regulator, pursuant to powers under the following legislation:

- ▶ the Central Bank Acts 1942 to 1998 (including without limitation Section 335(6) of the Central Bank Act 1942);
- ▶ the Investment Intermediaries Act 1995;
- ▶ the Consumer Credit Act 1995;
- ▶ the Stock Exchange Act 1995;
- ▶ the Insurance Acts 1909 to 2000; and
- ▶ relevant statutory instruments.

## To whom this Code applies

Chapter 1 (General Principles) applies when providing the services described below to **customers** in the State. The other Chapters of the Code apply only when providing the services described below to **consumers** in the State.

Except as stated otherwise below under 'To whom this Code does not apply', this Code applies to:

- ▶ the services of all financial services providers operating in the State for which they require to be authorised by, or registered with, the Financial Regulator; and
- ▶ firms with an equivalent authorisation or registration in another EU or EEA **Member State** when providing services in this State on a branch or cross-border basis.

Without prejudice to the generality of the above, the types of firm that the Code covers include, therefore:

- ▶ Credit Institutions (Banks and Building Societies);
- ▶ Insurance Undertakings;
- ▶ Investment Business Firms, other than when conducting **MiFID Services**;
- ▶ Insurance Intermediaries;
- ▶ Mortgage Intermediaries; and
- ▶ Credit Unions, when providing services for which they require to be authorised by or registered with the Financial Regulator under the legislation listed in 'Legislative Basis' above (i.e. other than the Credit Union Act 1997).

Chapters 1 (General Principles), 2 (Common Rules) and 7 (Advertising) apply to all regulated entities. Chapter 3 (Banking Products and Services) applies to regulated entities when providing banking products and services and Chapter 4 (Loans) applies to credit providers and mortgage intermediaries. Chapter 5 (Insurance Products and Services) applies to insurance undertakings and insurance intermediaries.

Chapter 6 (Investments) will apply to regulated entities providing investment services, or providing services in relation to deposits with a term equal to or greater than one year, other than ***MiFID Services***.

## To whom this Code does not apply

This Code does not apply to regulated entities when:

- ▶ providing services to persons outside the State;
- ▶ providing ***MiFID Services***;
- ▶ providing the services of a 'moneylender', within the meaning of the Consumer Credit Act 1995;
- ▶ carrying on the business of reinsurance or reinsurance mediation;
- ▶ carrying on the business of a 'bureaux de change' or 'money transmission', within the meaning of Part V of the Central Bank Act 1997; or
- ▶ if such firm is a credit union, when providing services for which it does not require to be authorised by or registered with the Financial Regulator under the legislation listed in 'Legislative Basis' above (i.e. other than the Credit Union Act 1997).

## Other Matters

The provisions of this Code will come into effect on a date to be specified by the Financial Regulator.

Regulated entities are reminded that they are required to comply with this Code as a matter of law. Therefore, for example, where a requirement of this Code conflicts with a requirement of any voluntary code to which the regulated entity has subscribed, the requirement of this Code must be complied with nevertheless.

We use the term 'regulated entity' throughout the Code to refer to entities to whom the Code applies. We only use the formal technical term for a particular type of regulated entity where it is considered necessary to the proper application of the particular provision.

All references to the provision of services throughout this Code also include the provision of advice.

The Financial Regulator has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act 1942.

Please refer to the Definitions section for any term shown in bold and italics throughout the text of the Code.

# DEFINITIONS

In this Code:

**"advertisement"** means any commercial communication usually paid for by a regulated entity, which is addressed to the **consumer** public or a section of it, the purpose being to advertise a product, service or regulated entity the subject of this Code, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC);

**"advertised product or service"** means the product or service that is the subject of an **advertisement**;

**"associate"** in relation to a **person** means:

- a) an undertaking in the same **group** as that **person**;
- b) any other **person** whose business, private or familial relationship with the first person or its **associate** might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties; or
- c) any other **person** whose business, private or familial relationship (other than as arises solely because that **person** is a **client** of the firm) with the first **person** is such that he or she has influence over that **person's** judgment as to how to invest his property or exercise any rights attaching to his investments;

**"associated undertaking"** means an associated undertaking within the meaning of Regulation 34 of the European Communities (Companies Group Accounts) Regulations 1992;

**"basic banking product or service"** means a current account, overdraft, ordinary deposit account or a term deposit account with a term of less than one year;

**"business day"** means any day except Saturday, Sunday, bank holidays and public holidays;

**"certified person"** has the meaning assigned to it by Section 55 of the Investment Intermediaries Act 1995;

**"charges"** means any cost or fee which a **consumer** must pay in connection with a product or service provided by a regulated entity;

**"Chinese walls"** means an arrangement within the organisation of the regulated entity (or between the regulated entity and any **associate** of that regulated entity) which requires information held by the regulated entity (or as the case may be, **associate** or a particular operating unit within the regulated entity or **associate** in the course of carrying on one part of its business of any kind) to be withheld in certain circumstances from other operating units or from persons with whom it deals in the course of carrying on another part of its business of any kind;

**"claimant"** means a **person** making a claim under an insurance policy entered into by a **consumer**;

**"client premium account"** means the account required under Requirement 24 of Chapter 5;

**"complaint"** refers to an expression of grievance or dissatisfaction by a **consumer**, either verbally or in writing, in connection with:

- a) the provision of a product or service to a **consumer** by a regulated entity, or
- b) the failure of a regulated entity to provide a product or service to a **consumer**;

**"compound annual rate"** is the equivalent annual rate of interest, payable at the end of the year, on a deposit;

**"connected party"** shall, except where otherwise stated, include a partner, **officer**, controller, **associated undertaking, related undertaking** or subsidiary undertaking or **employee** of the regulated entity, including any **associate** of the **person** concerned;

**"consumer"** means any of the following:

- a) a natural **person** acting outside their business, trade or profession;
- b) a **person** or **group** of **persons**, but not an incorporated body with an annual turnover in excess of €3 million (for the avoidance of doubt a **group** of **persons** includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate);
- c) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a **group** of companies having a combined turnover greater than the said €3 million); or
- d) a member of a credit union;

and includes where appropriate, a potential '**consumer**' (within the meaning above);

**"credit institution"** means the holder of an authorisation issued by the Financial Regulator or by a competent authority of another **Member State** for the purposes of EU Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions;

**"customer"** means any **person** to whom a regulated entity provides or offers to provide a service the subject of this Code, and any **person** who requests such a service;

**"default investment strategy"** has the meaning in Part X of the Pensions Act 1990;

**"deposit agent"** means any **person** who 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**;

**"deposit broker"** means any **person** who brings together with **credit institutions persons** seeking to make deposits in return for a fee, commission or other reward;

**"employee"** means a **person** employed under a contract of service or a **person** otherwise employed by a regulated entity;

**"group"** includes a company, its parent and its subsidiaries and any **associated undertaking** or **related undertakings**;

**"inducement"** means any gifts or rewards (monetary or otherwise) provided to a regulated entity but does not include:

- a) disclosable commission; or
- b) goods or services which can reasonably be expected to assist in the provision of services to **consumers** and which are provided or are to be provided under a **soft commission agreement**;

**"insurance intermediary"** has the meaning in the European Communities (Insurance Mediation) Regulations 2005;

**"insurance undertaking"** has the meaning in the Insurance Act 1989;

**"investment product"** means:

- a) a deposit with a term equal to or greater than one year; or
- b) an 'investment instrument' within the meaning of Section 2 of the Investment Intermediaries Act, 1995 but does not include:
  - i) insurance policies; and
  - ii) instruments listed in Section C of Annex I of EU Directive 2004/39/EC;

**"investment product transaction"** means:

- a) the purchase or sale by a firm of an **investment product**;
- b) the subscription for an **investment product**;
- c) the underwriting of an **investment product**; or
- d) the placing or withdrawal of a deposit in relation to a), b) or c) above;

**"lifetime mortgage"** means a loan secured on a borrower's home where:

- a) interest payments are rolled up on top of the capital throughout the term of the loan;
- b) the loan is repaid from the proceeds of the sale of the property; and
- c) the borrower retains ownership of their home whilst living in it;

**"Member State"** means a Member State of the European Economic Area;

**"mortgage intermediary"** has the meaning specified in Section 2 of the Consumer Credit Act 1995;

**"MiFID Service"** means any service or activity set out in Annex I of EU Directive 2004/39/EC, but not including any service or activity of a person to whom such Directive does not apply by virtue of Article 3 of such Directive;

**"officer"** in relation to a regulated entity, means a director, chief executive, manager or secretary, by whatever name called;

**"outsourced activity"** is where a regulated entity employs another **person** (other than a natural person who is an **employee** of the regulated entity under a contract of service) to carry out an activity on its behalf;

**"person"** means a natural person or a legal person;

**"Personal Injuries Assessment Board"** means the board known as such established under the Personal Injuries Assessment Board Act 2003, or any successor thereto;

**"protection policies"** for the purposes of this Code include the following:

- a) insurances of a class falling within the European Communities (Non-Life Insurance) Framework Regulations 1994; and
- b) insurances of classes I, III and IV as set out in Annex I of the European Communities (Life Assurance) Framework Regulations 1994 where the purpose and intention of the policy is solely to provide protection;

**"PRSA"** has the meaning in Part X of the Pensions Act 1990;

**"record"** means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form;

**"related undertaking"** means:

- a) companies related within the meaning of section 140(5) of the Companies Act 1990;
- b) undertakings where the business of those undertakings has been so carried on that the separate business of each undertaking, or a substantial part thereof, is not readily identifiable; or
- c) undertakings where the decision as to how and by whom each shall be managed can be made either by the same **person** or by the same **group of persons** acting in concert;

**"soft commission agreement"** means any agreement under which a regulated entity receives goods or services, in return for which it agrees to direct business through or in the way of another **person**;

**"standard PRSA"** has the meaning in Part X of the Pensions Act 1990;

**"terms of business"** means the document in which a regulated entity sets out the basis on which it will conduct business with **consumers**;

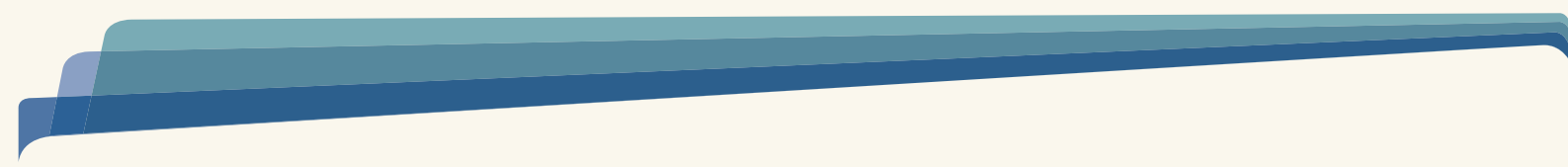
**"tracker bond"** means a deposit or life assurance policy which contains the following features:

- a) a minimum payment, at the expiration of a specified period of time, of a specified percentage of the amount of capital invested by the **consumer** in the product; and
- b) a potential cash bonus payable after a specified period of time, which is linked to, or determined by, changes over the period of investment in the level of one or more recognised stock market indices, commodity prices, any other recognised financial indices or the price of one or more securities specified at the outset or from time to time.

# TABLE OF CONTENTS

<b>Chapter</b>	<b>Title</b>	<b>Page</b>
<b>1</b>	<b>General Principles</b>	<b>9</b>
<b>2</b>	<b>Common Rules for all Regulated Entities</b>	<b>11</b>
<b>3</b>	<b>Banking Products &amp; Services</b>	<b>21</b>
<b>4</b>	<b>Loans</b>	<b>23</b>
<b>5</b>	<b>Insurance Products &amp; Services</b>	<b>25</b>
<b>6</b>	<b>Investment Products</b>	<b>29</b>
<b>7</b>	<b>Advertising</b>	<b>35</b>



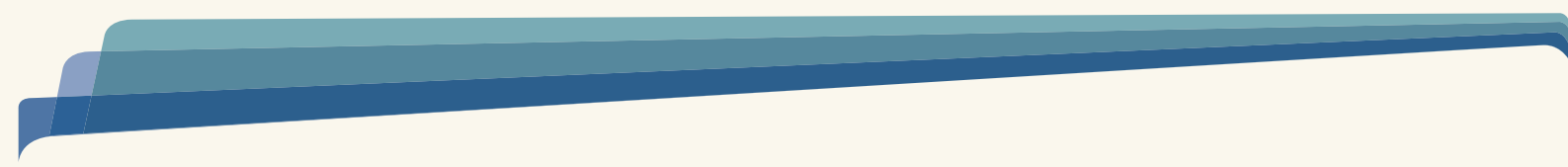


# CHAPTER 1

## GENERAL PRINCIPLES

A regulated entity must ensure that in all its dealings with **customers** and within the context of its authorisation it:

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



# CHAPTER 2

## COMMON RULES FOR ALL REGULATED ENTITIES

### GENERAL

- 1 A regulated entity must ensure that the name of a product or service which it provides is not misleading in terms of the benefits that the product or service can deliver.
- 2 A regulated entity must ensure that all instructions from or on behalf of a **consumer** are processed properly and promptly and that the date of both the receipt and transmission of the instructions is recorded.
- 3 A regulated entity must ensure that, where it accepts an instruction from a **consumer** that is subject to any condition imposed by the **consumer**, it maintains a **record** of the condition to which the instruction is subject.
- 4 A regulated entity must not make the sale of a product or service contingent on the **consumer** purchasing another product or service from the regulated entity.
- 5 A regulated entity must not charge a **consumer** a fee for any optional extra(s) offered in conjunction with a product or service, unless that **consumer** has positively indicated that they wish to purchase the optional extra(s).
- 6 A regulated entity must ensure that all warnings required by this Code are prominent, i.e. they must be in a box, in bold type and of a font size that is larger than the normal font size used throughout the document or **advertisement**.

### ACCESS

- 7 A regulated entity must take into consideration the provisions of the relevant anti-money laundering guidance notes issued with the approval of the Money Laundering Steering Committee, and in particular any guidance in such notes on how to establish identity, in order to ensure that a **person** is not denied access to financial services solely on the grounds that that **person** does not possess certain specified identification documentation.

### TERMS OF BUSINESS

- 8 A regulated entity must draw up its **terms of business** and provide each **consumer** with a copy prior to providing the first service to that **consumer**. The **terms of business** must set out the basis on which the regulated entity provides its services and must include at least the following:
  - a) the legal name, trading name (if any), address, and contact details of the regulated entity;
  - b) the identity of the **group** to which the regulated entity belongs, if any;

- c) confirmation that the regulated entity is authorised and the name of the competent authority that has authorised it;
  - d) the regulatory status of the regulated entity;
  - e) a description of the services that the regulated entity provides;
  - f) if the regulated entity is tied for any of the services outlined in e) above, the name of the regulated entity to which it is tied and details of the service for which it is tied;
  - g) a general statement of the **charges** imposed directly by the regulated entity;
  - h) a summary of the regulated entity's policy in relation to conflicts of interest;
  - i) an outline of the action and remedies which the regulated entity may take in the event of default by the **consumer**;
  - j) a summary of the **complaints** procedure operated by the regulated entity;
  - k) if the regulated entity is a member of a compensation scheme, the name of the scheme and the nature and level of protection available from the scheme.
- 9 A **deposit agent** must ensure that each **consumer** is given a copy of the relevant **credit institution's terms of business** prior to providing the first service to that **consumer**. Such **terms of business** must set out the nature of the relationship between the **credit institution** and the **deposit agent** and the basis on which the **deposit agent's** services are provided.
- 10 A regulated entity must provide its **terms of business** to a **consumer** as a stand-alone document.
- 11 Where a regulated entity makes a material change to its **terms of business**, it must provide each affected **consumer** with details of the change as soon as possible.

## PROVISION OF INFORMATION TO THE CONSUMER

- 12 A regulated entity must ensure that all information it provides to a **consumer** is clear and comprehensible, and that key items are brought to the attention of the **consumer**. The method of presentation must not disguise, diminish or obscure important information.
- 13 A regulated entity must supply information to a **consumer** on a timely basis. In doing so, the regulated entity must have regard to the following:
- a) the urgency of the situation; and
  - b) the time necessary for the **consumer** to absorb and react to the information provided.
- 14 Where a regulated entity intends to amend or alter the range of services it provides, it must give notice to affected **consumers** at least one month in advance of the amendment being introduced.

- 15 Where a regulated entity intends to cease operating it must:
- a) provide at least two month's notice to affected **consumers** to enable them to make alternative arrangements; and
  - b) ensure all outstanding business is properly completed.
- 16 A regulated entity must ensure that, where applicable, documents conferring ownership rights are given to the **consumer** in a timely manner or are held for safekeeping under an agreement with the **consumer**, in accordance with the terms of the regulated entity's authorisation.
- 17 A regulated entity must ensure that, where it intends to record a telephone conversation with a **consumer**, it informs the **consumer**, at the outset of the conversation, that it is being recorded.
- 18 A regulated entity must provide a **consumer** with a receipt for each negotiable or non-negotiable instrument presented by the **consumer** as payment for a financial product or service provided by that regulated entity.
- 19 A regulated entity must acknowledge in writing, the receipt of a completed direct debit mandate or payroll deduction mandate, received from a **consumer** as a payment instruction for a financial product or service provided by that regulated entity.
- 20 A regulated entity must ensure that, where it communicates with a **consumer** using electronic media, it has in place appropriate arrangements to ensure the secure transmission of information to, and receipt of information from, the **consumer**.
- 21 A regulated entity must provide each **consumer** with the terms and conditions attaching to a product or service, before the **consumer** enters into a contract for that product or service, or before the cooling-off period (if any) expires.
- 22 A regulated entity must ensure that all printed information it provides to **consumers** is of a print size that is clearly legible.

## **PRESERVATION OF A CONSUMER'S RIGHTS**

- 23 A regulated entity must not, in any communication or agreement with a **consumer** (except where permitted by applicable legislation), exclude or restrict, or seek to exclude or restrict:
- a) any legal liability or duty of care to a **consumer** which it has under applicable law or under this Code;
  - b) any other duty to act with skill, care and diligence which is owed to a **consumer** in connection with the provision to that **consumer** of financial services; or
  - c) any liability owed to a **consumer** for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a financial service.

## KNOWING THE CONSUMER

24 Before providing a product or service to a **consumer**, a regulated entity must gather and record sufficient information from the **consumer** to enable it to provide a recommendation or a product or service appropriate to that **consumer**. The level of information gathered should 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 the regulated entity to provide a professional service.

This requirement does not apply where:

- i) the **consumer** has specified both the product and the product provider and has not received any advice; or
- ii) the **consumer** is purchasing or selling foreign currency; or
- iii) the regulated entity has established that the **consumer** is seeking a **basic banking product or service**.

25 A regulated entity must gather and record details of any material changes to a **consumer's** circumstances before providing that **consumer** with a subsequent product or service.

26 In the case of a **standard PRSA**, where an employer has chosen a provider and the regulated entity makes a presentation to **employees**, the minimum relevant information required by the regulated entity is to establish that the **consumer** is an **employee** of the firm, has no other form of pension provisions and intends to select the **default investment strategy** of the provider.

27 A regulated entity must ensure that, where a **consumer** refuses to provide information sought in compliance with this Code, the refusal is noted on that **consumer's** records.

28 A regulated entity must endeavour to have the **consumer** certify the accuracy of the information it has provided to the regulated entity. Where the **consumer** declines to do so, the regulated entity must note this on the **consumer's records**.

29 A regulated entity must maintain a list of its **customers** who are **consumers** and the subject of this Code.

## SUITABILITY

30 A regulated entity must ensure that, having regard to the facts disclosed by the **consumer** and other relevant facts about that **consumer** of which the regulated entity is aware:

- a) any product or service offered to a **consumer** is suitable to that **consumer**;
- b) where it offers a selection of product options to the **consumer**, the product options contained in the selection represent the most suitable from the range available to the regulated entity; or
- c) where it recommends a product to a **consumer**, the recommended product is the most suitable product for that **consumer**.

This requirement does not apply where:

- i) the **consumer** has specified both the product and the provider and has not received any advice;
- ii) the **consumer** is purchasing or selling foreign currency; or
- iii) where, in the context of the provision of a **basic banking product or service**, the regulated entity has alerted the **consumer** to any restrictions on the account and/or the availability of a lower cost alternative.

31 Before providing a product or service to a **consumer**, a regulated entity must prepare a written statement setting out:

- a) the reasons why a product or service offered to a **consumer** is considered to be suitable to that **consumer**;
- b) the reasons why each of a selection of product options offered to a **consumer** are considered to be suitable to that **consumer**; or
- c) the reasons why a recommended product is considered to be the most suitable product for that **consumer**.

The regulated entity must give a copy of this written statement to the **consumer** and retain a copy.

This requirement does not apply where:

- i) the **consumer** has specified both the product and the provider and has not received any advice;
- ii) the **consumer** is purchasing or selling foreign currency; or
- iii) the **consumer** is seeking a **basic banking product or service**.

## UNSOLICITED CONTACT (COLDCALLING)

32 When contacting a **consumer** who is an existing **customer**:

A regulated entity may make an unsolicited contact to a **consumer**, who is an individual, by way of a personal visit or telephone call, only if:

- a) the regulated entity has, within the previous twelve months, provided that **consumer** with a product or service similar to the purpose of the unsolicited contact;
- b) the **consumer** holds a product, which requires the regulated entity to maintain contact with the **consumer** in relation to that product;
- c) the purpose of the contact is limited to offering **protection policies** only; or
- d) the **consumer** has given his/her consent in writing to being contacted in this way by the regulated entity.

33 When contacting a **consumer** other than an existing **customer**:

A regulated entity may make an unsolicited contact to a **consumer**, who is an individual, by way of a personal visit or telephone call, only if:



- a) the **consumer** has signed a statement, within the previous 6 months, giving the regulated entity permission to make personal visits or telephone calls to him/her;
- b) 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;
- c) the **consumer** is a director of a company, or a partner in a firm with an entry in one of the directories listed in b) above;
- d) the **consumer** is the subject of a referral, received from an entity authorised to provide financial services in Ireland, another entity within the same **group**, a solicitor, a **certified person** or an existing **customer**;
- e) the purpose of the contact is limited to offering **protection policies**.

In relation to d) above, such a referral must be followed up by an indication to the **consumer** by the regulated entity that the referral has been made and asking for consent to proceed.

- 34 A regulated entity must ensure that, where it makes an unsolicited contact on foot of a referral, it retains a **record** of the referral.
- 35 Unsolicited contact, made in accordance with this Code, may be made only between 9.00 a.m. and 9.00 p.m. Monday to Saturday (excluding bank holidays and public holidays), unless otherwise requested by the **consumer**.
- 36 When making an unsolicited contact in accordance with this Code, the representative of a regulated entity must immediately and in the following order:
  - a) identify himself or herself by name, the name of the regulated entity on whose behalf he/she is calling and the commercial purpose of the contact;
  - b) inform the **consumer** that the call is being recorded, if this is the case;
  - c) disclose to the **consumer**, the source of the business lead or referral supporting the contact; and
  - d) establish if the **consumer** wishes the call to proceed; if not, the caller must end the contact immediately.
- 37 A regulated entity must abide by a request from a **consumer** not to make an unsolicited contact to him/her again.
- 38 A regulated entity must not reach a binding agreement with a **consumer** on the basis of an unsolicited contact alone, except in the circumstances permitted under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

## DISCLOSURE REQUIREMENTS

- 39 A regulated entity must include a regulatory disclosure statement:
  - a) on its business stationery;
  - b) in all **advertisements**; and

- c) on all electronic communications with **consumers** including on the home page of its website, if any.
- 40 A regulated entity must not use the regulatory disclosure statement on any business stationery, **advertisement** or electronic communication in connection with a product or service for which the firm is not regulated by the Financial Regulator.
- 41 The regulatory disclosure statement must take the following form:  
"[Full legal name of regulated entity (and trading name, if applicable)] is regulated by the Financial Regulator".
- 42 A financial services provider operating in this State under EU law freedom of services or establishment provisions must disclose the name of the competent authority from which it received its authorisation, or with which it is registered, and the name of the State where that competent authority resides:
- a) on its business stationery;
  - b) in all **advertisements** for services for which the regulated entity is subject to this Code; and
  - c) on all electronic communications with **consumers** including on the home page of its website, if any.
- 43 The regulatory disclosure statement must not be presented in such a way as to appear to be an endorsement by the Financial Regulator of the regulated entity or its products or services.

## CHARGES

- 44 A regulated entity must, where applicable:
- a) provide the **consumer** with details of all **charges**, including third party **charges**, which the regulated entity will pass on to the **consumer**, prior to providing a service to the **consumer** and where such **charges** cannot be ascertained in advance, the regulated entity must advise the **consumer** that such **charges** will be levied as part of the transaction;
  - b) advise affected **consumers** of increases in **charges**, or the introduction of any new **charges**, at least 30 days before the change takes effect;
  - c) detail in each statement provided to the **consumer**, all **charges** applied during the period covered by that statement; and
  - d) where **charges** are accumulated and applied periodically to accounts, advise **consumers** at least 10 **business days** before deduction of **charges** and give each **consumer** a breakdown of such **charges**, except where **charges** total an amount of €12.70 or less.

## ERRORS

- 45 A regulated entity must:
- a) speedily, efficiently and fairly, correct an error in any charge or price levied on, or quoted to, a **consumer** in respect of any product or service the subject of this Code;

- b) where the regulated entity considers that there may have been a material charging or pricing error, without delay, inform the Financial Regulator of its proposals for correcting any such error as may have occurred in accordance with paragraph a) above (if any such information is provided verbally in the first instance, it must be provided to the Financial Regulator in writing on the next **business day**); and
- c) notify all affected **consumers**, both current and former, in a timely manner and in such form as may be agreed with the Financial Regulator, of any material charging or pricing error that impacted negatively on the cost of the service or the value of the product provided.

## HANDLING COMPLAINTS

- 46 A regulated entity must have in place a written procedure for the proper handling of **complaints**. This procedure need not apply where the **complaint** has been resolved to the complainant's satisfaction within 5 **business days**, provided however that a **record** of this fact is maintained. At a minimum this procedure must provide that:
- a) the regulated entity will acknowledge each **complaint** in writing within 5 **business days** of the **complaint** being received;
  - b) the regulated entity will provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be processed any further;
  - c) the regulated entity will provide the complainant with a regular written update on the progress of the investigation of the **complaint** at intervals of not greater than 20 **business days**;
  - d) the regulated entity will attempt to investigate and resolve a **complaint** within 40 **business days** of having received the **complaint**; where the 40 **business days** have elapsed and the **complaint** is not resolved, the regulated entity will inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the **complaint** and of the **consumer's** right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, where relevant, and will provide the **consumer** with the contact details of such Ombudsman; and
  - e) the regulated entity will advise the complainant in writing, within 5 **business days** of the completion of the investigation of a **complaint**, of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made. The regulated entity will also inform the complainant of the right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, where relevant, and will provide the **consumer** with the contact details of such Ombudsman.
- 47 When a regulated entity receives a verbal **complaint**, it must offer the **consumer** the opportunity to have the **complaint** treated as a written **complaint**.
- 48 A regulated entity must maintain an up-to-date **record** of all **complaints** subject to the complaints procedure. This **record** must contain the details of each **complaint**, a **record** of the regulated entity's response(s), any other relevant correspondence or **records** and the action taken to resolve each **complaint**.

## CONSUMER RECORDS

- 49 A regulated entity must maintain up-to-date **consumer records** containing at least the following:

- a) a copy of all documents required for **consumer** identification and profile;
- b) the **consumer's** contact details;
- c) all information and documents prepared in compliance with this Code;
- d) details of products and services provided to the **consumer**;
- e) all correspondence with the **consumer** and details of any other information provided to the **consumer** in relation to the product or service;
- f) all documents or applications completed or signed by the **consumer**;
- g) copies of all original documents submitted by the **consumer** in support of an application for the provision of a service or product; and
- h) all other relevant information concerning the **consumer**.

Details of individual transactions must be retained for 6 years after the date of the transaction. All other **records** required under a) to h), above, must be retained for 6 years from the date the relationship ends. **Consumer records** are not required to be kept in a single location but must be complete and readily accessible.

## FEES, COMMISSIONS AND OTHER REWARDS

50 A regulated entity may pay a fee, commission, other reward or remuneration only to a **person** that is:

- a) a regulated entity;
- b) a **certified person**;
- c) an individual for whom a regulated entity has taken full and unconditional responsibility;
- d) an entity specifically exempt by law from requiring authorisation;
- e) an authorised "credit intermediary" (within the meaning of the Consumer Credit Act 1995); or
- f) a financial services provider operating in the State in accordance with freedom of services or establishment provisions of EU law.

## CONFLICTS OF INTEREST

51 Where conflicts of interest arise and cannot be reasonably avoided, a regulated entity may undertake business with or on behalf of a **consumer** with whom it has directly or indirectly a conflicting interest, only where that **consumer** has acknowledged, in writing, that he/she is aware of the conflict of interest and that he/she still wants to proceed.

- 52 A regulated entity must take reasonable steps to ensure that it or any of its **officers** or **employees** does not offer, give, solicit or accept, any **inducement** likely to conflict with any duties of the recipient or of the recipient's employer.
- 53 A regulated entity must not enter into a **soft commission agreement** unless such agreement is in writing. Any business transacted under a **soft commission agreement** must not conflict with the best interests of its **consumers**. Where a regulated entity considers that a **consumer** may be affected by the **soft commission agreement**, the **consumer** must be made aware of the **soft commission agreement** and of how the **soft commission agreement** may affect him/her. A copy of the **soft commission agreement** must be made available to the **consumer** on request.
- 54 Goods or services received by a regulated entity under a **soft commission agreement** must be used to assist in the provision of services to **consumers**.
- 55 A regulated entity must provide to any affected **consumer** details of any changes in its policy on **soft commission agreements** promptly after implementation of any such changes.

## CHINESE WALLS

- 56 A regulated entity must ensure that there are effective **Chinese walls** in place between the different business areas of the regulated entity, and between the regulated entity and its **connected parties** in relation to information which could potentially give rise to a conflict of interest or be open to abuse. All procedures relating to the maintenance of **Chinese walls**, and the consequences and breaches of **Chinese walls**, must be in writing and notified to all relevant **officers** and **employees** of the regulated entity.

## COMPLIANCE WITH THIS CODE

- 57 A regulated entity must have adequate systems and controls in place to ensure compliance with this Code.
- 58 Where the Financial Regulator requires a regulated entity to provide information in respect of the regulated entity's compliance with this Code, such regulated entity is thereby required to provide information which is full, fair and accurate in all respects and not misleading and to do so in any reasonable period of time or format that may be specified by the Financial Regulator.
- 59 Where the Financial Regulator requires information in respect of a regulated entity's compliance with this Code, and the Financial Regulator is of the opinion that a meeting with personnel of the regulated entity is necessary in order to procure such information in a satisfactory manner, the regulated entity must use its best endeavours to arrange for appropriate personnel to participate in such a meeting in order to provide the required information to the Financial Regulator.
- 60 A regulated entity must, upon being required by the Financial Regulator to do so, provide to the Financial Regulator **records** evidencing compliance with this Code for a period prior to such requirement as the Financial Regulator may specify (up to a maximum period of 6 years).

# CHAPTER 3

## BANKING PRODUCTS & SERVICES

### STATEMENTS

- 1 A **credit institution** must, at least annually, issue statements of transactions on all accounts with a balance in excess of €20, unless otherwise agreed with the **consumer** in writing.

This statement must:

- a) include details of the interest rates applied to the account during the period covered by the statement;
- b) be issued to the **consumer's** last known postal address, or be made available to the **consumer** electronically if the **consumer** so requests;
- c) where tax is deducted from interest paid, provide information on the tax deducted or inform **consumers** how they may obtain a certificate detailing the tax paid.

### BRANCH RESTRUCTURING/WITHDRAWAL OF SERVICES

- 2 Where a **credit institution** plans to close or move a branch it must inform affected **consumers** in writing at least 3 months in advance and advise the Financial Regulator immediately thereof. The wider local community should also be informed, in advance, through notification in the local press.

### CHANGES IN INTEREST RATES

- 3 A **credit institution** must ensure that when it announces a change in interest rates, the notification states clearly the date from which the changes will apply.
- 4 Where a **credit institution** changes the interest rate on accounts, it must update the information on information services, including telephone helplines and websites as soon as the change comes into effect.

### ACCOUNTS

- 5 A **credit institution** must advise **consumers** who are subject to penalties, including interest surcharges, of the methods by which these penalties may be mitigated.
- 6 A **credit institution** must make available to existing deposit holding **consumers**, details of the different interest rates that are being applied to its other deposit accounts.
- 7 A **credit institution** must ensure that at least 10 days before the maturity of a fixed term deposit, which has a minimum term of 1 year, it alerts the **consumer** about its impending maturity.

- 8 A **credit institution** must ensure that any funds lodged by a **consumer** to its account directly or via a **deposit agent**, are credited to that account on that day.

## JOINT ACCOUNTS

- 9 A **credit institution** must, before a **consumer** opens a joint account which permits full access and use of funds in the account by either named party, warn such **consumer** of the consequences of opening and operating such a joint account.
- 10 A **credit institution** must ascertain from the accountholders of a joint account any limitations that they wish to impose on the operations of the account.

## DEPOSIT AGENTS

- 11 A **deposit agent** must not retain in its possession an account passbook of a **consumer**.
- 12 A **deposit agent** must not operate from the same premises as a **deposit broker**.
- 13 When a deposit agency is terminated by either party, the **deposit agent** must:
- a) notify its **consumers** of the termination;
  - b) advise its **consumers** of the options available; and
  - c) properly complete any outstanding business.

# CHAPTER 4

## LOANS

### UNSOLICITED CREDIT FACILITIES

- 1 A regulated entity must not offer unsolicited pre-approved credit facilities.
- 2 A regulated entity may only increase a **consumer's** credit card limit following a request from the **consumer**.

### ARREARS AND GUARANTEES

- 3 Where a loan is being advanced subject to a guarantee, the guarantee must outline the obligations of the guarantor and must contain the following warning:

**Warning: As a guarantor of this loan, you will have to pay off the loan, the interest and all associated charges if the borrower does not. Before you sign this guarantee you should get independent legal advice.**

- 4 If the terms of the loan agreement change, the regulated entity must notify the guarantor in writing.
- 5 A regulated entity must have in place procedures for the handling of arrears cases.

### PAYMENT PROTECTION INSURANCE

- 6 Where a regulated entity offers payment protection insurance in conjunction with a loan, the initial repayment estimate of the loan advised to the **consumer** must be exclusive of the payment protection premium.
- 7 A combined application form can be used, provided that all information relating to payment protection insurance is contained in a separate section and this section also contains a requirement for the **consumer** to sign in order to apply for payment protection insurance.
- 8 A text box indicating that the payment protection insurance is optional must be included in the application form immediately above where the **consumer** is required to sign.

### NON-MORTGAGE PERSONAL LENDING

- 9 Prior to a loan being approved, a regulated entity must explain to a **consumer** the effect, if any, of missing any of the scheduled repayments. This information must be highlighted in any relevant documentation and the following notice should also appear:



**Warning: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating.**

## MORTGAGES

- 10 Where a mortgage is offered to a **consumer** for the purpose of consolidating other loans or credit facilities, the regulated entity must provide the **consumer** with a written indicative comparison of the total cost of continuing with the existing facilities and the total cost of the consolidated facility on offer.
- 11 Where the mortgage account is in arrears, the regulated entity must inform the **consumer** in writing of the status of the account as soon as possible after it becomes aware of the arrears. This information must include:
  - a) the date the mortgage fell into arrears;
  - b) the number and total of payments missed;
  - c) the amount of the arrears interest charged to date;
  - d) the interest rate applicable to the arrears, and details of other fees and **charges** used to calculate the arrears interest amount.
- 12 A regulated entity must maintain a publicly accessible register of all **mortgage intermediaries** to which it has issued a current appointment.
- 13 Upon the termination of the appointment of any **mortgage intermediary**, a regulated entity must provide to the Financial Regulator a confirmation in writing that such **mortgage intermediary** has been removed from the register maintained under Requirement 12, together with details of the consequent amendment made to such register.
- 14 Before a mortgage can be drawn down, a **mortgage intermediary** must submit to a mortgage lender a signed declaration that such **mortgage intermediary** has had sight of all original supporting documentation including bank statements, P60/certificate of earnings and other supporting documentation evidencing the **consumer's** identity and ability to repay.
- 15 A regulated entity must ensure that it has sight of an original valuation report before drawdown of the funds.

## LIFETIME MORTGAGES

- 16 A regulated entity must advise the **consumer** of the consequences of **lifetime mortgages** including details of the total costs involved, including all interest, **charges** and the effect on the existing mortgage, if any.
- 17 A regulated entity must ensure that **consumers** are made aware of the importance of seeking independent legal advice.
- 18 A regulated entity must include the following warning on any information document, application form or any other document given to the **consumer** in connection with a **lifetime mortgage**:

**Warning: Purchasing this product may negatively impact on your ability to fund future needs.**

# CHAPTER 5

## INSURANCE PRODUCTS & SERVICES

### QUOTATIONS, PROPOSALS AND POLICY DOCUMENTATION

- 1 A regulated entity must, when providing a quote to a **consumer**, inform the **consumer** of the amount of the quotation and the length of time for which the quotation will be valid, assuming that all details provided by the **consumer** are correct and do not change.
- 2 A regulated entity must express clearly in the quotation documents any warranties or endorsements. These sections in the quotation documents must not be detailed in smaller print than other information provided in the documents.
- 3 A regulated entity must clearly identify any discounts or loadings applying to the policy at the quotation stage.
- 4 A regulated entity must state the full legal name of the relevant underwriter on all quotations, policy documentation and renewal notices issued to a **consumer**.
- 5 A regulated entity must explain to a **consumer** the consequences of failure to make full disclosure on the proposal form of such **consumer's** medical details or history.
- 6 A regulated entity must, before completing a proposal form for a permanent health insurance policy, explain to the **consumer** the meaning of disability, the benefit available under the policy and the reductions applied to the benefit where there are disability payments from other sources.
- 7 A regulated entity providing serious illness policies must, before completing a proposal form, explain clearly to the **consumer** the restrictions, conditions and exclusions that attach to the policies.
- 8 A regulated entity must issue policy documents to the **consumer** within 10 **business days** of all relevant information being provided by the **consumer** and cover being underwritten.

### DISCLOSURE

- 9 A regulated entity which offers financial services under a number of business names and product images or through any direct outlets must disclose, in all correspondence with **consumers**, the identity of the **group** to which it belongs.
- 10 Where an **insurance undertaking** refuses to quote for motor insurance, it must, on request from the **consumer**, state its reasons in writing. The **insurance undertaking** must advise the **consumer** immediately of their right to refer the matter to the Declined Cases Committee of the Irish Insurance Federation and the method of doing so.
- 11 When a **consumer** advises a regulated entity of the intention to travel to another **Member State**, the regulated entity must provide the **consumer** with details of the regulated entity's appointed claims representative in that **Member State**.

- 12 In the event of an **insurance intermediary** retiring and the book of business being passed to another **insurance intermediary**, all **consumers** must be informed in writing of the option to decline to have their details transferred.
- 13 Where a secondary market exists for a life policy, and when the holder of such a life policy seeks information on its early surrender, the regulated entity must divulge to the holder, at the same time as it discloses the surrender value of the policy, that this secondary market exists and that the policy may be sold on it.

## CLAIMS PROCESSING<sup>1</sup>

- 14 A regulated entity must take reasonable steps to verify the validity of a claim before making a decision on its outcome.
- 15 Each regulated entity must have in place a written procedure for the effective and proper handling of claims. At a minimum, the procedure must provide that:
  - a) the potential **claimant** is provided with information on how to make a claim, including, where applicable, full details of the **Personal Injuries Assessment Board** process and the manner in which the potential **claimant** can deal with the **Personal Injuries Assessment Board** and what the potential **claimant's** responsibilities are in relation to a claim;
  - b) where a claim form is required to be completed, it is issued within 5 **business days** of receiving notice of a claim;
  - c) the regulated entity must offer to assist in the process of making a claim;
  - d) details of all conversations with the **claimant** in relation to the claim are noted;
  - e) the regulated entity must, while the claim is ongoing provide the **claimant** with updates of any developments affecting the outcome of the claim within 10 **business days** of the development. When additional documentation or clarification is required from the **claimant**, the **claimant** must be advised of this at an early stage in writing and, if necessary, issued with a reminder.
- 16 An **insurance intermediary** who assists a **consumer** completing a claim must, on receipt of the completed claims documentation, transmit such documentation to the relevant regulated entity without delay.
- 17 Where there is a requirement to engage the services of a loss adjuster and/or expert appraiser the regulated entity must inform the **claimant** of the contact details of the loss adjuster and/or expert appraiser it has appointed to assist in the processing of the claim and that such loss adjuster and/or expert appraiser acts in the interest of the regulated entity.
- 18 The regulated entity must inform the **claimant** that they may appoint a loss assessor to act in their interests and that any such appointment shall be at the **claimant's** expense.
- 19 A regulated entity must be available to confer with the **claimant** in relation to the claim and to discuss assessment of liability and damages during normal office hours or outside of these hours if agreed with the **claimant**.

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<sup>1</sup>These provisions do not apply to health insurers where a method of direct settlement is used.

- 20 A regulated entity must, within 10 **business days** of the making of a decision in respect of a claim, advise the **claimant** in writing of the outcome of the investigation explaining the terms of any offer of settlement. If the claim is denied, the reasons for the denial must be provided to the **claimant** in writing.
- 21 Where the policyholder will not be the beneficiary of the settlement amount, the policyholder must be advised in writing by the regulated entity of the final outcome of the claim including any details of the settlement amount paid. Where applicable, the policyholder must be informed that the settlement of the claim will affect future insurance contracts of that type.
- 22 A regulated entity must provide a **claimant** with written details of any internal appeals mechanisms available to the **claimant**.
- 23 A regulated entity must pay all claims to the **claimant** within 10 **business days** once the following conditions have been satisfied:
- a) the insured event has been proven;
  - b) all specified documentation has been received by the regulated entity from the **claimant**;
  - c) the entitlement of the **claimant** to receive payment under the policy has been established; and
  - d) the appropriate amount has been agreed subject to finalisation of legal costs, where applicable.

## PREMIUM HANDLING

- 24 An **insurance intermediary** must lodge money it receives in respect of a premium or a premium rebate to a segregated bank account. Each such account must be designated 'Client Premium Account'.
- 25 An **insurance intermediary** must operate separate **client premium accounts** in respect of life and non-life business.
- 26 All payment instruments used to make payments from a **client premium account** must clearly state that the payment emanated from a **client premium account**.
- 27 A **client premium account** must never be overdrawn.
- 28 The following are the only debits and credits that may be passed through a **client premium account**:

### Credits (money in)

- a) money received from **consumers** in respect of the renewal of a policy, which has been invited by an **insurance undertaking**, or a proposal for insurance accepted by an **insurance undertaking**;
- b) money received from a regulated entity representing premium rebated for onward transmission to the **consumer**;
- c) transfers from another **client premium account** operated by the **insurance intermediary** for the same form of insurance;

- d) transfers from the **insurance intermediary's** office account to allow a 'buffer' amount to be maintained in the **client premium account** (any such transfers must be clearly identifiable);
- e) proceeds received from a regulated entity in respect of the settlement of a claim for onward transmission to the **claimant**;
- f) bank interest, if appropriate; and
- g) where mixed remittances are received, the total amount must first be lodged to the appropriate **client premium account**.

#### Debits (money out)

- a) money paid to a regulated entity on foot of renewal of a policy, which has been accepted by an **insurance undertaking**, or a proposal, accepted by an **insurance undertaking**;
  - b) money paid to a **consumer** representing rebates of premiums received from **insurance undertakings**;
  - c) commissions and fees paid to the **insurance intermediary** for which there is documentary proof that the funds are properly due to the **insurance intermediary**;
  - d) transfers to another **client premium account** operated by the **insurance intermediary** for the same form of insurance;
  - e) payments of claims settlement amounts to a **consumer**;
  - f) bank interest, if appropriate; and
  - g) the portion of mixed remittances that does not relate to a premium payment. Such remittances should be transferred to, or to the order of, the **consumer** without delay.
- 29 An **insurance intermediary** must carry out and retain, on a monthly basis, a detailed reconciliation of amounts due to regulated entities with the balance on each **client premium account** it operates.

## **PREMIUM REBATES**

- 30 A regulated entity must transfer a premium rebate to a **consumer** within 5 **business days** of the rebate becoming due.
- 31 An **insurance intermediary** may handle premium rebates due to **consumers** only where an express agreement exists whereby the **insurance intermediary** acts as agent of a regulated entity in passing rebates to **consumers** so that in handling the rebated premium the **insurance intermediary** does not become a debtor of the **consumer**.
- 32 An **insurance intermediary** must transfer a premium rebate to a **consumer** within 5 **business days** after receiving payment of such rebate amount from a regulated entity or being notified by a regulated entity that such premium rebate is due to the **consumer**, as applicable.
- 33 An **insurance intermediary** must transfer the rebate amount to the **consumer** in full. Any **charges** that the **consumer** may owe the intermediary must not be recovered from the rebate amount due to the **consumer** without the prior written agreement of the **consumer**.

# CHAPTER 6

## INVESTMENT PRODUCTS

- 1 A regulated entity must issue statements of **investment product transactions** for each **investment product** held with it at least on an annual basis, either on an actual basis in respect of the previous 12-month period or on a forecast basis in respect of the next 12-month period, unless otherwise agreed, in writing, with the **consumer**. The statements should include, at a minimum:
  - a) the opening balance or value;
  - b) all additions or withdrawals in the relevant 12-month period;
  - c) the total sum invested in the relevant 12-month period;
  - d) a closing balance or statement of the value of the investment; and
  - e) all **charges** and deductions affecting the **investment product** including any **charges** associated with the management, selling, set up and ongoing administration of the **investment product**.
- 2 A regulated entity must provide **consumers** with pre-sale product information specific to that **consumer** that contains an estimation of the **investment product's** value after tax, at the end of year 1, 2, 3, 4, 5, 10, 15 and 20 (where applicable) assuming realistic growth rates.
- 3 A regulated entity must ensure that all illustrations contained in **investment product** documentation must be shown pre- and post- any tax deduction due on surrender or encashment of the **investment product**.
- 4 A regulated entity must include the following statement with all illustrations:

**Warning: These figures are estimates only. They are not a reliable guide to the future performance of your investment.**

- 5 A regulated entity must record and retain in a readily accessible form, the date of both receipt and transmission of any of the following:
  - a) an instruction to the regulated entity from a **consumer** to effect an **investment product transaction** as agent; or
  - b) any other instruction to the regulated entity from a **consumer** to effect an **investment product transaction** in similar circumstances as those arising on an instruction to effect an **investment product transaction** as an agent; or
  - c) a decision by the regulated entity in the exercise of its discretion for the **consumer** with respect to an **investment product**.

- 6 A regulated entity must not advise a **consumer** to carry out an **investment product transaction**, or a series of **investment product transactions**, with a frequency or in amounts to the extent that those **investment product transactions**, when taken together, are deemed to be excessive and/or detrimental to the **consumer's** best interests. The regulated entity must make a contemporaneous **record** that it has advised the **consumer** that in its opinion the **investment product transaction(s)** are excessive, if the **consumer** wishes to proceed with the **investment product transaction(s)**.
- 7 Where a prospectus, other than a prospectus falling within the scope of the Prospectus Directive (2003/71/EC), represents or contains the terms of a contract between the regulated entity and one or more of its **consumers**, this fact must be clearly stated in the prospectus.

## TRACKER BONDS

- 8 A regulated entity must provide the following information in a prominent position in a **tracker bond** product brochure, if any, and on a **tracker bond** application form:
- a) for investments in products that do not promise the 100% return of a **consumer's** capital on maturity, the following statement:

**Warning: The value of your investment may go down as well as up. You may get back less than you put in.**


- b) where the promised return is known but is less than the initial 100% invested the following statement:

**Warning: If you invest in this product you could lose xx% of the money you put in.**

- c) if the promised 'return of capital' is only applicable on a specific date, this date and the following statement:

**Warning: If you cash in your investment before (specify the particular date) you may lose some or all of the money you put in.**

- d) the name of the ultimate provider of any guarantee.

- 9 A regulated entity must provide a **consumer** with a 'Key Features Document', of a type referred to in the Appendix to this Chapter before the **consumer** signs an application form for a **tracker bond**. Where the information required by the Key Features Document is already provided to the **consumer** under a legal requirement to do so, the regulated entity is not obliged to include that information in the Key Features Document.
- 10 A regulated entity must provide a **consumer** who has invested in a **tracker bond** with a document within 2 **business days** of the start of the fund, setting out:
- a) the name and address of the  **sumer**;
- b) the date of investment;

- c) the amount of the investment;
  - d) the date or dates on which the promised minimum payment is payable;
  - e) disclosure of the make up of the investment, if the make up differs from that shown in the Key Features Document prepared in accordance with Requirement 9; and
  - f) the date the investment will mature.
- 11 Where a regulated entity shows an illustration of the projected return on investment of a **tracker bond**, the value of the total return must be expressed and shown as prominently as the equivalent **compound annual rate**.
- 12 A regulated entity must not provide an illustration of an investment of a **tracker bond** to a **consumer** where the illustration shows the return that investment could have provided over any prior investment period.
- 13 Where a regulated entity offers a **consumer** the facility to borrow funds to invest in a **tracker bond**, the regulated entity must give the **consumer** an illustration showing:
- a) the year-by-year and total interest payments the **consumer** is likely to have to pay in respect of the funds borrowed to invest in the **tracker bond**, until the date the product matures;
  - b) for this purpose the fixed interest rate offered by the lender for the period to the date of the promised payment under the **tracker bond** should only be used. Where the lender does not offer a fixed interest rate over this period, an equivalent open market fixed interest rate should be used for this purpose;
  - c) the **compound annual rate** equivalent of the promised payment under the relevant **tracker bond** must be shown prominently; and
  - d) the difference between the promised payment under the **tracker bond** and the total projected outgoings of the **consumer** (i.e. interest payments related to the funds borrowed to invest, any capital repayments related to such borrowings and any capital investment by the **consumer** other than the borrowed funds) over the period to the date of promised payment under the **tracker bond**.



# APPENDIX

## KEY FEATURES DOCUMENT FOR TRACKERS

### HOW DOES THE XXXX (INSERT NAME) TRACKER BOND WORK?

This section must include:

- ▶ the name and address of the product producer(s);
- ▶ a brief description of the benefits promised by the **tracker bond** to the **consumer**, including the promised payment which applies;
- ▶ the **compound annual rate** equivalent of the promised payment, related to the total investment amount, must be shown;
- ▶ if averaging and/or any lock-in provisions can impact negatively on the promised benefits, as compared with an identical investment without such benefits, the way in which such an averaging or lock-in provision can lead to reduced returns (which must be disclosed prominently);
- ▶ whether or not the **tracker bond** will benefit from dividends payable on the underlying shares; if the **tracker bond** will benefit from such dividends, a clear statement of the extent to which the **tracker bond** will benefit; if the **tracker bond** will not benefit from such dividends, a clear statement that the **tracker bond** is suitable only as a capital growth investment;
- ▶ if the relevant **credit institution** or **insurance undertaking** benefits from any dividend or interest income arising from the investment used to secure the cash bonus promised to the **consumer**, a statement of this fact;
- ▶ if there is any currency risk to the **consumer**, in relation to the benefits promised, a statement of this risk; and
- ▶ the period to the date of the promised payment.

### WHERE DOES MY INVESTMENT GO?

This section must show clearly the split of the investment amount (or a typical investment amount for this type of product if the disclosure is being made on a provisional or generic basis) into three components:

- ▶ the open market value, at the date of investment, of the payment promised to the **consumer**;
- ▶ the open market value, at the date of investment, of the cash bonus promised to the **consumer**; and
- ▶ **charges** representing the balance.

The implied **compound annual rate** of the amount promised to the **consumer**, relative to the total investment amount, should also be stated prominently.

The disclosure should take the following format:

Your proposed investment of €xx,xxx will be used, at the date of investment, as follows :

€xx,xxx , or xx%, will be used to secure the promised payment of €xx,xxx payable after xx years and yy months. This is equivalent to a promised return on this part of your investment of xx% pa, before tax is deducted.

€xx,xxx , or xx%, will be used to secure the cash bonus which may be payable after xx years and yy months.

€xx,xxx, or xx%, will be taken in **charges**. If applicable, intermediary remuneration must be disclosed in this section.

**€xx,xxx Total**

If the cash bonus is zero, the promised payment will represent a return of x.x% pa, on your total investment over the period to the date of the promised payment, before any tax is deducted.

The open market value referred to above is the open market cost of the benefit promised to the **consumer** at the date of investment, net of the value of any commission or other reward or benefit payable to the **credit institution** or **insurance undertaking** and/or a **connected party** to that **credit institution** or **insurance undertaking**.

## DO I HAVE ACCESS TO MY INVESTMENT?

In this section, the **consumer** must be informed of the limited nature of the promised payment, e.g. that it is payable on one specified date only.

This section must also include:

- ▶ whether or not the **consumer** can get access to part or all of their investment, before the date of the promised payment;
- ▶ if access is provided before this date, whether the encashment will be on promised terms or not; and
- ▶ whether or not the **consumer** is likely to suffer a penalty or financial loss if access is provided to part or all of their investment, before the date of the promised payment.

## WHAT HAPPENS IF I DIE BEFORE THE TRACKER BOND MATURES?

This section must include:

- ▶ the circumstances, if any, in which the **tracker bond** may or must be encashed on death and the procedure for encashing it on death, if this is allowed; and
- ▶ the benefit payable on encashment of the **tracker bond** on death, when this benefit is payable, how this benefit is calculated, and whether there is any promised level of benefit payable on death.

## WHAT ABOUT TAX?

This section must include:

- ▶ the tax that may be deductible by the regulated entity from benefits payable;
- ▶ the circumstances, if any, in which the tax referred to above, may not be deductible from the benefits payable;
- ▶ a general statement that a **consumer** should satisfy themselves in relation to revenue reporting requirements and the implications of non-disclosure where required.

# CHAPTER 7

## ADVERTISING

### GENERAL REQUIREMENTS

- 1 A regulated entity must ensure that all its **advertisements** are fair and not misleading.
- 2 An **advertisement** must not influence a **consumer's** attitude to the **advertised product or service** or the regulated entity either by inaccuracy, ambiguity, exaggeration or omission.
- 3 The name of the regulated entity publishing an **advertisement** must be clearly shown in all **advertisements**.
- 4 The nature or type of the **advertised product or service** must be clear and not disguised in any way.
- 5 An **advertisement** must be designed and presented so that any reasonable **consumer** knows immediately that it is an **advertisement**.
- 6 The design and presentation of an **advertisement** must allow it to be clearly understood. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible. Where appropriate they should be linked to the relevant part of the main copy.
- 7 Warnings and product specific information must be clear and must not be obscured or disguised in any way by the content, design or format of the **advertisement**.
- 8 An **advertisement** that uses promotional or introductory rates must clearly state the expiry date of that rate and provide an indication of the rate that will apply thereafter. This requirement does not apply to **advertisements** for loans where the promotional rate is for a period that does not exceed 1 year.
- 9 Any statement or promise contained in an **advertisement** must be true and not misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.
- 10 Any forecast contained in an **advertisement** must not be misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.
- 11 An **advertisement** must not be misleading in relation to:
  - a) the regulated entity's independence or the independence of the information it provides;
  - b) the regulated entity's ability to provide the **advertised product or service**;
  - c) the scale of the regulated entity's activities;
  - d) the extent of the resources of the regulated entity;

- e) the nature of the regulated entity's or any other **person's** involvement in the **advertised product or service**;
  - f) the scarcity of the **advertised product or service**;
  - g) past performance or possible future performance of the **advertised product or service**.
- 12 An **advertisement** that promotes more than one product must set out clearly the different features of each product in such a way that a **consumer** could distinguish between the products.
- 13 Any recommendations or commendations quoted must be complete, fair, accurate and not misleading at the time of issue, and relevant to the **advertised product or service**.
- 14 A recommendation or commendation may not be used without the consent of the author and, if the author is an **employee** of the regulated entity or a **connected party** of the regulated entity, or has received any payment from the regulated entity or a **connected party** of the regulated entity for the recommendation or commendation, the **advertisement** must state that fact.
- 15 Comparisons or contrasts must be based either on facts verified by the regulated entity, or on reasonable assumptions stated within the **advertisement** and must be presented in a fair and balanced way; and not omit anything material to the comparison or contrast. Material differences between the products must be set out clearly.
- 16 It is not necessary to display the required warnings set out in this chapter if the **advertisement** does not refer to the benefits of a product but only invites a **consumer** to discuss the product or service in more detail with the regulated entity.

## LENDING

- 17 Where an **advertisement** includes an annual percentage rate, the **advertisement** must clearly state if the underlying interest rate is fixed or variable.
- 18 An **advertisement** for a term loan must, if displaying the annual percentage rate and the term, display the total cost of credit.
- 19 Advertisements for a fixed-rate loan must, where applicable, state:

**Warning: You may have to pay charges if you pay off a fixed-rate loan early.**

- 20 Advertisements for the consolidation of two or more debts must, where sample figures are offered in the **advertisement**, indicate the difference between the total cost of credit of the consolidated mortgage and the total cost of credit of the individual debts that are the subject of consolidation.
- 21 An **advertisement** for a debt consolidation mortgage must carry the following warning:

**Warning: This new loan may take longer to pay off than your previous loans. This means you may pay more than if you paid over a shorter term.**

22 An **advertisement** for a variable-rate residential mortgage must contain the following warning:

**Warning: The cost of your monthly repayments may increase - If you do not keep up your repayments you may lose your home.**

23 An **advertisement** that offers goods on hire purchase must contain the following warning:

**Warning: You will not own these goods until the final payment is made.**

24 Where a free banking period is advertised, the period for which the free banking applies should be clearly stated.

25 An **advertisement** for an interest-only mortgage must contain the following warning:

**Warning: The entire amount that you have borrowed will still be outstanding at the end of the interest-only period.**

## SAVINGS & INVESTMENTS

26 Where an interest rate for a savings or deposit account is displayed in an **advertisement**, it must clearly state the following:

- a) whether the rate quoted is variable or fixed, and if fixed, for what period;
- b) the relevant interest rate for each term quoted together with the equivalent annual rate for each rate quoted, and each rate should be given equal prominence;
- c) the minimum term and/or minimum amount required to qualify for a specified rate of interest, if applicable; and
- d) if any tax is payable on the interest earned.

27 Information about the past performance of the **advertised product or service** or of the regulated entity must:

- a) be based on a product similar to that being advertised;
- b) not be selected so as to exaggerate the success or disguise the lack of success of the **advertised product or service**;
- c) state the source of the information;
- d) be based on actual performance;
- e) state clearly the period chosen, which must be related to the term of the product being advertised; where that term is open-ended, the longest term available should be included;
- f) include the most recent period;

- g) indicate, where they arise, details of transaction costs, interest and taxation that have been taken into account; and
- h) state, where applicable, the basis upon which performance is quoted.

28 An **advertisement** which contains information on past performance must contain the following warning:

**Warning: Past performance is not a reliable guide to future performance.**

29 Where the regulated entity has a position or holding in the product the subject of an **advertisement** by that regulated entity it must include a statement to this effect in the **advertisement**.

30 Information about the simulated performance of the **advertised product or service** or of a regulated entity must:

- a) be based on a simulated performance that is relevant to the performance of the **advertised product or service** or of the regulated entity;
- b) not be selected so as to exaggerate the success or disguise the lack of success of the **advertised product or service** or of the regulated entity;
- c) state the source; and
- d) indicate whether, and to what extent transaction costs, interest and taxation have been taken into account.

31 An **advertisement** which contains information on simulated performance must also contain the following warning :

**Warning: These figures are estimates only. They are not a reliable guide to the future performance of this investment.**

32 An **advertisement** must not describe a product or an investment as guaranteed or partially guaranteed unless:

- a) there is a legally enforceable agreement with a third party who undertakes to meet, to whatever extent is stated in the **advertisement**, the **consumer's** claim under the guarantee;
- b) the regulated entity has made, and can demonstrate that it has made, an assessment of the value of the guarantee;
- c) the **advertisement** gives details about both the guarantor and guarantee sufficient for a **consumer** to make a fair assessment about the value of the guarantee; and
- d) where it is the case, the **advertisement** states that the guarantee is from a **connected party** of the regulated entity.

33 If an **advertisement** contains a reference to the impact of taxation, it must:

- a) state the assumed rate of taxation;

- b) state, where applicable, that the tax reliefs are those currently applying, and state that the value of the tax reliefs referred to in the **advertisement** apply directly to the **consumer**, to the provider of the **advertised product or service** or its provider, as appropriate;
- c) state, where applicable, that the matters referred to are only relevant to a particular class or classes of **consumer** with particular tax liabilities, identifying the class or classes of **consumer** and the type of liabilities concerned;
- d) state who has the responsibility for obtaining the tax benefits advertised;
- e) not describe the **advertised product or service** as being free from any liability to income tax unless equal prominence is given to a statement, where applicable, that the income is payable from a product from which income tax has already been paid; and
- f) not describe the **advertised product or service** as being free from any liability to capital taxation unless equal prominence is given to a statement, where applicable, that the value of the **advertised product or service** is linked to a product which is liable to capital taxation.

34 Where the product that is the subject of the **advertisement** can fluctuate in price or value, an **advertisement** must contain the following warning:

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

35 Where the return on an **advertised product or service** is not set until a particular date (e.g., the maturity date of the **advertised product or service**), this must be clearly stated.

36 Where a product the subject of an **advertisement** is described as being likely to yield income or as being suitable for a **consumer** particularly seeking income and where the income from such product can fluctuate, the **advertisement** must contain the following warning:

**Warning: The income you get from this investment may go down as well as up.**

37 Where a product the subject of an **advertisement** offers the facility of a planned withdrawal from capital as an income equivalent, a regulated entity must ensure that the effect of such a withdrawal upon such product is clearly explained in the **advertisement**.

38 Where an **advertised product or service** is denominated or priced in a foreign currency, or where the value of an **advertised product or service** may be directly affected by changes in foreign exchange rates, the **advertisement** must contain the following warning:

**Warning: This [product/service] may be affected by changes in currency exchange rates.**

39 An **advertisement** for a product which is not readily realisable must state that it may be difficult for **consumers** to sell or exit the product and/or obtain reliable information about its value or extent of the risks to which it is exposed.



- 40 An **advertisement** for a product that cannot be encashed prior to maturity or which incurs an early redemption charge must clearly state that this is the case.
- 41 An **advertisement** for a product subject to front-end loading must state that:
- a) deductions for **charges** and expenses are not made uniformly throughout the life of the product, but are loaded disproportionately onto the early period;
  - b) the **consumer** must be warned that, if the **consumer** withdraws from the product in the early period, the practice of front-end loading will impact on the amount of money which the **consumer** receives; and
  - c) if applicable, that a **consumer** may not get back the amount they invest.



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