



IRISH FINANCIAL SERVICES  
REGULATORY AUTHORITY

# Mandatory Competency Requirements

April 2004

CONSULTATION PAPER CP4

## What is this consultation about?

This consultation seeks the views of the financial services sector, consumer interests, educators and any other interested people on what is an appropriate measure of competence for those who provide advice on or sell retail financial products to consumers or carry out certain related activities.

This paper contains a series of questions that we are asking you to answer. However, you can also add any other relevant information or proposals you consider appropriate.

## Why are we doing it?

We recently published our strategic plan for 2004–2006. As part of that strategy, we are committed to setting specific industry standards in relation to the competency and skills of financial service providers who deal with consumers. We believe that those who deal with consumers should have a level of competence that enables them to understand a consumer's needs and provide relevant information to the consumer in a meaningful way. One of the main requirements of the Insurance Mediation Directive (IMD)<sup>1</sup>, which has to be transposed into Irish law by 15 January 2005, is that individuals<sup>2</sup> involved in providing insurance services to consumers must have an appropriate level of knowledge and ability.

## Who will be subject to the competency requirements?

In general, our supervisory requirements are applied to financial services providers regulated by us. We intend to apply competency requirements to all those entities that we regulate who provide services to the retail market. This covers those who:

- carry on banking business in the State (such as banks and building societies),
- provide insurance,
- act as an investment broker, an insurance broker or stockbroker, or
- work as a mortgage broker or moneylender,

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<sup>1</sup> Insurance Mediation Directive, Directive 2002/92/EC, entered into force in European Union law on 15/01/2003

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<sup>2</sup> The IMD applies solely to people employed by insurance intermediaries, but we intend to apply minimum competency requirements to employees of all firms providing retail financial services.

All such firms will be required to ensure that all of their employees who deal with consumers meet the minimum competency requirements appropriate to their jobs.

For the purposes of this consultation, we refer to all such people as accredited individuals.

Consumers should be able to trust the competence of their financial adviser regardless of what type of company the adviser represents – whether they are corporate bodies, partnerships or sole traders. As a result, we believe that the requirements should apply to the full range of companies and service providers we regulate. They should also apply to certain managers that are responsible for accredited individuals within a firm.

While the IMD makes such requirements mandatory in relation to insurance and reinsurance intermediaries, we believe that, in the interest of fair competition, and to ensure that all consumers get access to the level of professionalism and expertise they deserve, minimum competency requirements should apply to relevant employees of all the firms we supervise.

## What is the legal background?

Under various supervisory enactments, the Financial Services Regulator is legally empowered and obliged to deal with matters concerning the competence and probity of certain employees and controllers of supervised firms. This consultation relates only to the competence of those employees who deal with consumers. It does not consider any matters concerning the appropriate levels of probity and competence for directors and senior managers, an area in which we also have a statutory role.

The following briefly outlines our main powers in this area but is not an exhaustive list.

Article 4 of the Insurance Mediation Directive (IMD) contains specific requirements in relation to professional competence. The relevant provisions of Article 4 are set out in the attached Annex. The IMD requires that those who provide insurance services to consumers demonstrate the knowledge and ability necessary for their duties. This

requirement must be fulfilled on a permanent basis. The introduction to the IMD (Recital 9) states that to provide equal treatment, these professional requirements should apply to all individuals regardless of whether they work in a bank, building society, insurance intermediary (broker), etc.

The Investment Intermediaries Act, 1995, as amended, requires intermediaries to satisfy us that they have adequate expertise to carry out their activities (Section 10). It permits us to specify the level of training, qualifications or professional requirements of managers, officers or employees (Section 14(4)). It also lets us apply to the court for a direction to require an intermediary to dismiss, suspend or remove from a particular activity any employee that does not have the required level of competence for the job. Finally, the statutory codes of conduct, issued under Section 37, require an intermediary to act with due skills in the best interests of its consumers and the integrity of the market.

The Consumer Credit Act, 1995, provides that before issuing a licence to a moneylender or a mortgage intermediary, we must be of the opinion that the person is fit to carry on the business. The Act also permits that we may apply certain conditions, at our discretion, to the issue of a moneylender's licence.

Finally, the Central Bank Act, 1989, as amended, gives us wide powers to draw up codes of conduct that can apply to any or all categories of entities that we supervise.

## Your views

Against this background, we are seeking your views on a number of issues. To help us draw up our requirements, we have set out the particular issues involved, followed by specific questions, which we would like you to answer. However, we will consider all of your views, so you should not feel constrained by any specific questions.

## Scope of Retail Services

We intend that only accredited individuals will be permitted to deal with consumers. We need, therefore, to determine the range of financial services to which the accredited individual concept will apply. We believe that it should apply to the provision of retail financial services and should not extend to those involved in wholesale markets. Employees that could be considered to be providing retail services are those who:

- provide advice and information on retail financial products,
- sell retail financial products,
- design retail financial products,
- deal with complaints, or
- assist in the administration of insurance claims.

- 1) Do you agree that only those involved in retail financial services should be required to be accredited individuals?
- 2) If you do not agree, which non-retail service providers do you think should be included and why?
- 3) How should we define retail?
- 4) Are there concepts in the list that need to be carefully defined?
- 5) Should some of the services listed above be excluded and why?
- 6) Are there any other services that should be classified as retail?

## Who should be an accredited individual?

We believe that everyone involved in providing financial services to consumers should have the appropriate knowledge and skills. The proposed minimum requirements will set a base level for all such people. However, within some firms, some employees will not be 'accredited individuals', such as administration and IT staff.

- 7) What criteria should we adopt to identify those individuals to whom the minimum competency requirements should apply?

- 8) To what level should the mandatory competency requirements apply to those responsible for sales personnel and other accredited individuals?
- 9) What criteria should we employ when considering whether an individual should be excluded?
- 10) What categories of staff do you believe we should specifically exclude from the minimum competency requirements?
- 11) Do you believe we should publish a specific list of excluded positions?
- 12) Should we require each company or sole trader to keep a publicly accessible register of all their accredited individuals?

## Categories of accredited individuals

We regulate a broad range of financial services firms that deal directly with members of the public. In order to determine what qualifications are most suitable, it may be appropriate to group firms by the particular service they provide. Some of those groups could be:

- General Insurance (including reinsurance)
  - Life Assurance and Investments (including savings and deposits)
  - Mortgage Lending and Mediation
  - Consumer Credit
- 13) Do you believe that dividing companies by the service provided is the correct approach? If not, how do you think we should divide them and why?
  - 14) Do you believe that the above groups are most suitable, and if not, what categories would you prefer and why?

## Qualifications

Despite the different categories listed above, we believe that the various qualifications should be linked as closely as possible. In this context, we welcome the creation of the Qualified Financial Advisor ('QFA') qualification. This joint venture of the Institute of Bankers in Ireland, the Insurance Institute of Ireland and the LIA creates a new single qualification for people who provide advice on or sell retail life assurance and investment products to consumers. We would encourage bodies representing those involved in other financial services, such as mortgage mediation and non-life insurance, to strongly consider a similar approach for their businesses.

In considering which qualifications should be acceptable in the context of each category, we will be conscious of the need to:

- provide clarity to consumers, who should not have to evaluate different qualifications when selecting an adviser, and
- achieve a common standard across different classes of distributor of retail financial products and services.

In the context of all qualifications, we believe that retaining a qualification should depend on the holder's participation in a programme of Continuous Professional Development ('CPD'), as is the case with the QFA.

- 15) What qualifications do you believe are appropriate for each of the categories of accredited individuals identified above?
- 16) Do you believe that developing a single qualification for all categories is feasible?
  - i. If you do, how would that apply to the different categories?
  - ii. If you do not, should a single qualification standard be set or should different courses within each category be permitted?
- 17) If more than one qualification were accepted for any category, what steps would ensure that the qualifications are consistent with each other?
- 18) How do you think that the skills acquired in obtaining the qualifications can be kept current, as required by the IMD?

## Content, running and approval of qualification(s)

We believe that a course leading to a qualification as an accredited individual should cover the following:

- the general economic background,
- financial markets,
- legal issues, including contracts and consumer rights,
- assessment of clients' financial needs and objectives,
- risks, costs and benefits, including return characteristics, of retail financial products,
- relevant taxation and social welfare issues,
- regulatory codes and legislation,
- roles of financial advisers, and
- voluntary industry codes and standards.

Educational bodies normally design courses and qualifications. The same bodies are often responsible for subsequent examinations and awarding qualifications. They also register students and qualified individuals and run programmes of Continuing Professional Development. We need to clarify our role in the competency framework and our relationship with these educational bodies.

- 19) What areas do you believe a relevant qualification should cover, in addition to those listed above?
- 20) Are there any disciplines which might not require knowledge of some of the elements listed above?
- 21) Should we be approving or endorsing qualifications or should we confine our role to setting criteria within which industry bodies and education providers can develop courses and qualifications?
- 22) What part, if any, should we play in
  - i. course design,
  - ii. examinations,
  - iii. registration, and
  - iv. Continuing Professional Development?
- 23) What relationship should we have with industry educational bodies, colleges or educational establishments?



## Transitional arrangements (‘grandfathering’)

We acknowledge the need to phase in a mandatory competency regime. In particular, we recognise that many individuals possess considerable experience and a consequent high level of knowledge of their industry and that obtaining a qualification takes time. We seek views on the level of experience that would allow somebody qualify as an accredited individual without having undergone a course of formal study. For example, would five continuous years’ experience of providing the relevant financial service be sufficient? However, all accredited individuals, including those who may be grandfathered, will need to update their knowledge of products, markets, regulatory and legislative developments by taking part in CPD courses or their equivalent.

We suggest that the accredited individual regime will apply from January 2005. From that date, all new entrants to the retail financial services sector should have achieved the minimum competency standard, before taking up their position. We will need to give detailed consideration to the necessary transitional arrangements for those who have started a course of study or have another qualification.

- 24) What transitional arrangements do you believe we should adopt?
- 25) What rules do you believe should apply to new individuals who wish to work in the financial services sector?
- 26) In relation to people who have worked for some time in the sector:
  - i. What rules should be used to assess whether their level of experience is enough to exempt them obtaining the relevant qualification?
  - ii. Who do you believe should certify that the individual has the relevant experience?
  - iii. What period of time do you think is a suitable measure of appropriate experience?
  - iv. How long should we allow individuals to apply for such an exemption, under a grandfathering arrangement?
  - v. Should an individual who has availed of a grandfathering arrangement have to obtain a qualification in the future and, if so, in what circumstances?
- 27) How do you believe those who have started a course or have another qualification should be accommodated?
- 28) Do you believe that we can introduce the requirements from January 2005? If you do not, when and how should we introduce them?

## Making your submissions

The closing date for submissions is 4 June 2004. Comments are welcome from all interested parties. Please make your submissions in writing and, if practical, by email or on disk. You can post them, fax them or email them to us. When addressing any issue raised in this paper, please use the corresponding numbers in this paper to identify the section you are referring to. If you are raising an issue that we have not referred to in this paper, please indicate this in your submission.

We place a high value on the openness of the consultation process. Consequently, we intend to make submissions available on our website after the deadline for receiving submissions has passed. Because of this, please do not include commercially sensitive material in your submission, unless you consider it essential. If you do include such material, please highlight it clearly so that we may take reasonable steps to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted and indicating the deletions.

Despite the approach outlined in the paragraph above, we make no guarantee not to publish any information that you deem confidential. So, be aware that, unless you identify any commercially sensitive information, you are making a submission on the basis that you consent to us publishing it in full.

All submissions should be sent before 4 June 2004:

By post to: Consumer Protection Codes Department  
Irish Financial Services Regulatory Authority  
P.O. Box 9138  
College Green  
Dublin 2

By e-mail to [competencyconsultation@ifsra.ie](mailto:competencyconsultation@ifsra.ie)

By Fax to 01 6710659

All submissions should be clearly marked Mandatory Competency Submission

Consumer Protection Codes Department

8 April 2004

## Annex 1 – Some extracts from relevant legislation

### A. Insurance Mediation Directive, Directive 2002/92/EC:

#### (i) Recitals:

- 8 The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance mediation can therefore contribute both to the completion of the single market for financial services and to the enhancement of customer protection in this field.
- 9 Various types of persons or institutions, such as agents, brokers and "bancassurance" operators, can distribute insurance products. Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by this Directive.

#### (ii) Article 4: Professional requirements

- 1 Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary.

Home Member States may adjust the required conditions with regard to knowledge and ability in line with the activity of insurance or reinsurance mediation and the products distributed, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for his actions.

Member States may provide that for the cases referred to in the second subparagraph of Article 3(1), the insurance undertaking shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons working in an undertaking who pursue the activity of insurance or reinsurance mediation. Member States shall ensure that a reasonable proportion of the persons within the management structure of such undertakings who are responsible for mediation in respect of insurance products and all other persons directly involved in insurance or reinsurance mediation demonstrate the knowledge and ability necessary for the performance of their duties.

5. Pursuit of the activities of insurance and reinsurance mediation shall require that the professional requirements set out in this Article be fulfilled on permanent basis.

## B. Investment Intermediaries Act 1995, as amended

### (i) Section 10: Grant of authorisation.

- 2 The grant of an authorisation under subsection (1) of this section may be given unconditionally or it may be given subject to such conditions or requirements or both as the supervisory authority considers fit.
  
- 5 A proposed investment business firm shall not be authorised by the supervisory authority under this section unless—
  - d it satisfies the supervisory authority as to the probity and competence of each of its directors and managers,
  
  - f it satisfies the supervisory authority as to the organisational structure and management skills of the proposed investment business firm and that adequate levels of staff and expertise will be employed to carry out its proposed activities,
  
  - j it satisfies the supervisory authority as to its conduct of business, its financial resources and any other matters as the supervisory authority considers necessary in the interests of the proper and orderly regulation and supervision of authorised investment business firms or in the interests of the protection of investors.

12 b Subject to the provisions of this section, investment business firms shall be subject to such conditions or requirements or both as may be imposed on them by the supervisory authority in the interests of any or all of the following, namely:

- (i) the proper and orderly regulation and supervision of investment business firms,
- (ii) the protection of investors or clients or both.

15 A supervisory authority may impose conditions or requirements or both on an authorised investment business firm which is constituted as an unincorporated body of persons or which is a sole trader, in order to achieve an equivalent level of supervision to that pertaining to an authorised investment business firm which is constituted as a corporate body.

14(4) Without prejudice to the generality of subsections (1) to (3) of this section, a supervisory authority may impose conditions or requirements on an authorised investment business firm—

- (a) concerning the level of training, qualifications or professional competence of managers, officers or employees, or

(ii) Section 36: Probity and competence of employed persons.

1 b If a supervisory authority considers that any officer or employee of an authorised investment business firm is not competent in respect of matters of the kind with which the officer or employee would be concerned as an officer or employee of an authorised investment business firm, the supervisory authority may, on notice to the person concerned and on notice to the authorised investment business firm, apply to the Court to issue a direction to direct the authorised investment business firm concerned to have the officer or employee concerned removed or suspended for a specified period of time or to dismiss the employee concerned from their employment or to remove that employee from a particular area of employment.

(ii) Section 37: Code of conduct

- 1 Subject to subsection (2) of this section, a supervisory authority shall draw up and issue a code of conduct for investment business firms which shall include provisions which seek to ensure that an investment business firm—
  - a acts honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market,
  - b acts with due skills, care and diligence in the best interests of its clients and the integrity of the market,
  - c has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities,
  - g complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market, and the supervisory authority may impose conditions or requirements on an investment business firm or any class of investment business firm in respect of compliance with the provisions of such a code of conduct or any other code of conduct or rules of like effect.
  
- 4 Codes of conduct or rules of conduct (referred to in subsection (1) or (2) of this section) may include criteria for distinguishing between different categories of investment business firms or of investor for the purposes of this section.
  
- 5 A code of conduct drawn up by a supervisory authority under subsection (1) of this section may be revised from time to time by the supervisory authority.

C. Consumer Credit Act 1995, as amended

(i) Section 93: Moneylender's licence

- 1 The Director, having considered any objection to the granting of a licence, may grant to a person a licence ("a money-lender's licence") upon such terms and conditions as he sees fit authorising that person to engage in the business of moneylending in any district court district or in any particular district or part thereof upon application to the Director in that behalf.

10 The Director may refuse to grant a moneylender's licence on one or more of the following grounds that:

- f the applicant is not or is no longer, in the opinion of the Director, a fit and proper person to carry on the business of moneylending,

(ii) Section 116: Mortgage intermediaries

9 The Director may refuse to grant an authorisation on one or more of the following grounds, namely, that:

- e the applicant is not or is no longer, in the opinion of the Director, a fit and proper person to carry on the business of mortgage intermediary.

#### D. Central Bank Act 1989, as amended

Section 117: Codes of practice

1 The Bank may, after consultation with the Minister, from time to time draw up, amend or revoke, in relation to any class or classes of licence holders or other persons supervised by the Bank under this or any other enactment, one or more than one code of practice concerning dealings with any class or classes of persons and every such code shall be observed by the licence holders, or other persons so supervised, to whom they relate.

2 In drawing up codes of practice the Bank shall have regard to—

- a the interest of consumers and the general public, and
- b the promotion of fair competition in financial markets in the State.



ÚDARÁS RIALÁLA SEIRBHÍSÍ  
AIRGEADAIS NA hÉIREANN

Please clearly mark your submission 'Mandatory Competency Submission' and send it to:

Consumer Protection Codes Department  
Irish Financial Services Regulatory Authority  
PO Box 9138  
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