

**Joint submission by:**

**Irish Brokers Association (IBA) and**

**Professional Insurance Brokers Association (PIBA)**

**On the**

**Consultation on the Review of the Handbook of Prudential Requirements for  
Authorised Advisors and Restricted Intermediaries  
CP 72**



## Introduction

This submission outlines the views of the Irish Brokers Association (IBA) and the Professional Insurance Brokers Association (PIBA) in relation to proposals contained in the Consultation on the Review of the **Handbook of Prudential Requirements for Authorised Advisors and Restricted Intermediaries Consultation Paper 72** on behalf of both associations' members. Between both associations, we represent 1300 Insurance, Investment and Mortgage Intermediaries; which accounts for the vast majority of full time Intermediaries.

This review outlines that firms in this sector include investment intermediaries

- authorised under the Investment Intermediaries Act, 1995 (IIA),
- registered under the European Communities (Insurance Mediation) Regulations 2005 (IMR) and
- Mortgage intermediaries (MIs) authorised under the Consumer Credit Act, 1995 (CCA).

We recognise that a parallel regime of authorisation and registration presently operates for many intermediaries in these sectors and welcome any changes that bring about a closer alignment. As highlighted in our response to Question 3 (a) & (b) greater clarity and definition in (1) the scope of activity and (2) nature of products sold, should recognise the low impact of many of the intermediaries who are involved solely in the sale of Protection Policies as defined and in many cases do not handle cash. It is disappointing that this review does not go further to address the differences and ambiguities that arise for our members who have been authorised under IIA and registered under IMR and required to comply with each regime. However we welcome the elements that are addressed in CP72.

Outlined below are the responses of both associations to the questions posed in the consultation paper:

**Q 1: Do you agree with the proposed reclassification of AAs and Restricted Intermediaries including MAIs to IPIs?**

Both associations agree with the reclassification of AAs and Restricted Intermediaries including MAIs. This was agreed at part of the Review of the Intermediary Market working group in 2008. Research has shown that consumers are unfamiliar with these terms and terms such as “multiagency intermediary” are not suited to the financial market.

We note the definition of investment product intermediary as per section 25 of the IIA:

*25. – In this Act “investment product intermediary” means an investment business firm or a solicitor holding a practicing certificate (within the meaning of the Solicitors Acts, 1954 to 1994) who:*

- (a) acts as a deposit agent or acts as a deposit broker, or*
- (b) provides a service of the reception and transmission of orders to a product producer in any of the instruments referred to in section 4(2) (a) to (c) or shares in a company which are listed on a stock exchange or bonds so listed or prize bonds.*

We would question the introduction of the proposed term ‘Investment Product Intermediaries’ (IPIs) as a replacement for the terms AA and MAI. We believe that the term and definition as outlined above, does not represent the actual activities provided by a large proportion of intermediaries (and our members) authorised under the Investment Intermediaries Act such as non-life insurances.

We feel that the introduction of another unfamiliar term that does not define the actual services provided will only confuse consumers further and will not achieve the Central Bank’s goal as outlined in the Review of the Intermediary Market report of having clear logical terminology for consumers.

The IBA and PIBA propose that a more appropriate term for the reclassified intermediary would be “Insurance and Investment Intermediary” (III). We believe this term captures all the services provided by entities regulated under the Investment Intermediaries Act. If the Central Bank has reservations in relation to the jointly proposed term, both associations are willing to work with the Central Bank to come up with a term which is mutually acceptable.

It is our understanding that following the introduction of the reclassification of ‘Intermediary’ that it will be permissible for all intermediaries to advise outside their agency appointments regardless of whether these intermediaries were previously classed AA’s or Restricted Intermediaries including MAIs. We welcome this positive development as it was clearly indicated in the Review of

the Intermediary Market report that the appointment system was seen as restricting consumer choice and placed restrictions on an intermediary's ability to provide advice on the basis of a fair analysis of the market and to act in the customer's best interest.

Both associations believe that it is important that the Central Bank's clarification in relation to Fair Analysis as of the 28th of November 2008 should be included within the revised Prudential Handbook to provide clarity in relation to the definition of Fair Analysis outside the guidance provided in the Consumer Protection Code. ([See appendix 1](#)). We believe that regulation on the extent of market search should seek to define the required choice associated with Fair Analysis. The Intermediary market is a competitive one with a large number of firms, the cost of search can be balanced against the benefit to consumers of search (beyond regulatory requirements to fulfill Fair Analysis) in such a competitive market.

***Q 2: Do you agree that firms which are already supervised by the Central Bank under another primary authorisation should be outside the scope of the Handbook?***

Following clarity received from the Central Bank in this matter we agree that firms that are already supervised by the Central Bank under another primary authorisation should remain outside the scope of the Handbook.

***Q 3: (a) Do you agree with the proposal that balance sheet assets of IPIs must maintain a positive net assets position at all times and;***

Both associations agree with the proposal that balance sheets assets of intermediaries authorised under the IIA must maintain a positive net assets position at all times.

***(b) Do you agree with the retention of the existing capital requirement on PPs (Product Producers)?***

The Product Producer is referred to in the Prudential Handbook section 3.3 as follows:

*3.3 An investment intermediary that acts as a product producer (i.e. appoints sub-brokers) must have minimum shareholders' funds (or in the case of a sole trader or partnership a positive capital account) of €50,000 at all times.*

We believe that a distinction should be made between the types of intermediaries acting as ‘product producers’ (PP):

1. Intermediaries who appoint other intermediaries for the purpose of distributing “protection policies” as defined in CPC 2012

and

2. Intermediaries who distribute ‘investment instruments’ as defined by the IIA via sub-brokers.

In respect of category 1 above, we do not believe that these intermediaries should be subject to a minimum capital requirement of €50,000 given the nature of the products being distributed and the fact that all monies received by the intermediary are under indemnity, where the relevant insurer is responsible for the monies.

In respect of Category 2 above, given the nature of the products distributed, we agree with the retention of the existing €50,000 capital requirement.

*Q 4: Do you agree with the Central Bank’s proposal to require that IPIs must at all times, meet their financial obligations in full as they fall due and that IPIs maintain a positive net assets position?*

Yes, subject to the reconsideration of Goodwill as outlined below.

*Q 5: Do you agree with the Central Bank’s proposal for the treatment of goodwill and other intangible assets?*

We the representative bodies do not agree with the Central Bank proposal in relation to the treatment of goodwill.

The issue of ‘Goodwill’ arises differently in respect of our diverse membership. We have two major concerns in this regard.

1)Presently ‘Goodwill’ may be included in the calculation of total assets only where the audited accounts are accompanied by an opinion from the auditor stating that the goodwill figure or a defined percentage of that figure represents the net present value of future cash flows arising from existing investment instruments.

We believe that as this is a clearly quantifiable amount calculated by an independent auditor that this should continue to be taken into account when dealing with provision 3.1 of the Prudential Handbook.

3.1 An investment intermediary must be solvent (i.e. have positive shareholders' funds or a positive capital account) at all times<sup>1</sup>.

The recognition of this aspect of 'Goodwill' takes into account tangible and quantifiable commissions payable in the future. These amounts can be clearly stated and have a readily ascertainable market value.

It is also our contention that the provision below:

*Goodwill arising on non-life insurance business cannot be included in the calculation of total assets.*

will act as an impediment barrier to our members in considering the purchase of other businesses.

*Goodwill and Other Intangibles – will not be eligible for inclusion in the calculation of balance sheet assets for regulatory reporting purposes;*

We note the comment that Central Bank considers that due to the perceived illiquid nature of goodwill, that it should be excluded from the calculation of a firm's balance sheet assets for regulatory reporting purposes. Whilst recognising the current difficult economic climate in which the sector is operating, it should also take into account that it is often in the interest of the consumer and staff of the industry that mergers and acquisitions take place to strengthen regulated entities and encourage a consolidation of intermediaries that are interested in developing progressive business operations. If "Goodwill " is not recognised there will be greater reluctance/reticence in making such investments.

#### **Definition of Goodwill**

In the current financial services industry we look at the following definition of "Goodwill"

*"What is goodwill "it is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name reputation and connection of a business. It is the attractive force that brings in custom. It is the one thing which distinguishes an old established business from a new one at its first start."*

This definition describes exactly why a broker will make an investment to expand the business by buying and paying a price for the good name, reputation and connections of the vending brokers' customers. Brokers are very concerned that Central Bank are considering the proposition to cease taking into account "Goodwill"

Although we recognise that purchased goodwill is not in itself an asset, its inclusion amongst the assets of the reporting entity, rather than as a deduction from shareholders' equity, recognises that goodwill is part of a larger asset, the investment, for which management remains accountable.

In the decision to buy another brokerage a regulated entity will scrutinise the accounts and customer profile and make a decision to buy based on previous experience and the ability of that business to renew its existing business. The price paid for an investment in another brokerage will be directly in proportion to the size of the book of business and the expectation that a certain percentage of it will transfer to the new entity. It is fair to say the price paid will have already taken into account that there will be a certain amount of customers who will not transfer to the new arrangement. In this circumstance we suggest that purchased goodwill and intangible assets should be capitalised as a tangible asset on the balance sheet but will be written down over a 10 year period.

***Q 6: Do you support the Central Bank's proposals for  
(a) The treatment of perpetual subordinated loans?***

Yes, we support the Central Banks proposal for the treatment of perpetual subordinated loans

***(b) The treatment of five-year subordinated loans?***

Yes, we support the Central Banks proposal for the treatment of 5 year subordinated loans

***Q 7: What is your view on the imposition of PII on IPIs?***

We agree with the requirement for intermediaries to hold adequate Professional Indemnity Insurance in line with requirements set down by the Insurance Mediation Regulations.

***Q 8: What is your view on the requirement to submit an online Annual Return being imposed as a condition on the authorisation of IPIs and set out in the revised Handbook, in lieu of the requirement to routinely submit annual audited accounts, allowing that the Central Bank retains the right to require submission of the full audited accounts?***

Both associations are in agreement with the requirement for intermediaries to submit annual online returns. We, however, strongly disagree with the continuing obligation for intermediaries authorised under the Investment Intermediaries Act to complete annual audited accounts particularly given the fact that the Central Bank does not actually require them to be submitted but only reserves the right to request them.

We feel that it does not make sense that non-cash handling intermediaries authorised under the IIA are subject to this requirement whilst IMD only firms who provide the exact same services are not. We are aware that it has always been the intention that when IMD is revised, intermediaries would be removed from scope of IIA (meaning they would not be subject to having their accounts audited). Given the delays at European Level in relation to IMD II, we urge the Central Bank to seek change to the IIA in relation to the removal of the audited accounts requirement through another legislative vehicle.

## Conclusion

Both associations welcome many aspects of the review as set out above. However we strongly urge serious reconsideration of:

- use of the terms IPI (investment product intermediary)
- treatment of Goodwill

We are pleased to see that attempts are being made to bring about change to ‘level the playing field’ for our members who carry out the same activities but due to the nature of their authorisation/registration some having greater requirements for Minimum Regulatory Capital.

We welcome the removal of the minimum requirement of €10,000 and its replacement by a requirement that intermediaries maintain a positive net assets position at all times. We strongly suggest that Product Producers who solely sub broke Protection Policies as defined in EU frameworks are also included in this change. The requirement for audited accounts places another financial burden on those who are IIA authorised but only operate within the remit of an IMR registration. We therefore urge the Central Bank to seek change in relation to those intermediaries and suggest the removal of the audited accounts requirement for those particular entities.



# **Appendix 1**

## **Review of Intermediary Market**

### **Fair Analysis**

#### ***Broker***

The term ‘broker’ may be used by an insurance or mortgage intermediary that offers consumers a “fair analysis” of the market.

A ‘fair analysis of the market’ entails providing advice on the basis of a sufficiently large number of contracts and providers available on the particular market to enable the broker to make a recommendation, in accordance with professional criteria, regarding which contract would be adequate to meet the customer’s needs.

#### ***Clarification***

The concept of fair analysis is derived from the Insurance Mediation Directive. It describes the extent of the choice of products and providers offered by a broker within a particular category of life assurance, general insurance, mortgages, and/or specialist area. The number of contracts and providers considered must be sufficiently large to enable a broker to recommend a product that would be adequate to meet the consumer’s needs.

The term ‘sufficiently large’ must be considered in the context of the product or service provided and the extent of the relevant market. The number of providers that constitutes ‘sufficiently large’ will vary depending on the number of providers operating in the market for a particular product or service and their relative importance in and share of that market. Firms must consider the extent of the market and select an appropriate amount of providers that would constitute a fair analysis of that market.

The extent of fair analysis must be such that could be reasonably expected of a professional conducting business, taking into account the accessibility of information and product placement to brokers and the cost of search.

It is expected that fair analysis will evolve as a concept over time. However, in order to ensure that the number of contracts and providers is sufficiently large to constitute a fair analysis of the market, firms should consider the following criteria:

- the needs of the customer,
- the size of the customer order;
- the number of providers in the market that deal with brokers,
- the market share of each of those providers,
- the number of relevant products available from each provider,
- the availability of information about the products,
- the quality of the product and service provided by the provider,
- cost, and
- any other relevant consideration.

Fair analysis refers to a reasonable amount of choice given the product and the market circumstances. It does not oblige brokers to deal with all firms and the broker retains the commercial freedom not to engage with certain firms should it so wish for valid commercial reasons. However to achieve fair analysis a firm should ordinarily take into account the products of a reasonable majority of the product providers accessible to it in the relevant market (specialist providers with a small market share may be disregarded for this purpose).

Where a broker excludes one or more product providers with a significant market share in the relevant market from the analysis, the broker must explain this clearly to the consumer. The number of products and providers considered is a matter of professional judgement and will vary depending on the extent of the market. A broker must be in a position to justify the extent of market search when acting on the basis of a fair analysis of the market.

This clarification is without prejudice to the obligations of brokers under the Consumer Protection Code.