



**PIBA submission on the Authorisation Requirements and Standards for Debt Management Firms and the Amendment of the Minimum Competency Code 2011
Consultation Paper CP70**

The Professional Insurance Brokers Association (PIBA) is the largest representative body for financial and insurance brokers with over 860 member firms throughout Ireland. This submission outlines a response to and highlights concerns in relation to the proposals contained in the consultation paper on the Authorisation Requirements and Standards for Debt Management Firms - CP 70, on behalf of our members.

Over the past number of years, the provision of debt management services has become an increasingly sought after service by clients; this unfortunately is reflective of the difficult economic times Ireland has and continues to experience. A significant proportion of our members provide this service to their clients and the provision of advice in this area is often in tandem with other financial services provided for clients by Financial Brokers.

PIBA has grave concerns regarding the requirements under the proposed authorisation and management structures, contained in the consultation paper and believes they are overly onerous as to deter smaller firms e.g. sole traders/partnerships from providing these services. A clear distinction needs to be made between the services that fall within the scope of debt management authorisation; that of firms taking payments and distributing them to creditors and those that involve firms offering advice only and no money-handling services. This distinction, we would argue, should be reflected in the authorisation and operational requirements. The money-handling service providers should be subject to the proposed authorisation regime. Those who offer advisory services only could be subject to a more proportional regime and perhaps one that merely requires registration. For example, if sole traders are required to have an external compliance function the cost of this requirement may either deter the Financial Broker from seeking authorisation or the cost will be transferred to the client. If the cost of advice becomes too great in this area it will inhibit individuals who need the advice from seeking and receiving it.

Financial Brokers meet the MCC, Fitness and Probity Standards, comply with their CPD requirements and apply the necessary controls to and monitoring of their business under the Consumer Protection Code to ensure compliant advice is given to consumers.

In the case of secured mortgage debt, Financial Brokers are working within an agreed framework set down by the Central Bank, which the lenders now have to adhere to also so the need to outsource compliance functions is onerous and unnecessary. PIBA believes

that Brokers already have the necessary controls in place to safeguard best advice to the consumer.

Many Financial Brokers give incidental advice to their clients when they need advice in this area and PIBA can see no reason as to why the regulatory regime should be any different for these services than for the provision of advice in relation to Life, Pensions and Investments. PIBA believes that the proposed regulatory regime should sit in tandem, in so far as possible, with the application and conduct of business rules intermediaries currently are subject to under the IMR & IIA & CCA and the Consumer Protection Code.

PIBA also has serious concerns in relation to the proposed short timeframe between the conclusion of the consultation process and the finalisation of the authorisation requirements and standards and would request, given the current proposed onerous application requirements, an extension to the deadline for applications by firms who are currently providing these services to the 31st of December 2013.

PIBA believes that any regulatory framework introduced should be cognisant of the varying sizes of entities which purport to provide debt management services to clients. We believe that it is inappropriate to have a dual regulation system in place whereby Accountants and Solicitors are not required to seek authorisation from the Central Bank to act as a debt management firm. It is essential that consumers are guaranteed the same level of professionalism in relation to these services. There should be no regulatory difference whether a consumer approaches an Accountant or Solicitor or a Financial Broker, particularly when the Financial Broker is regulated directly by the Central Bank of Ireland compared with other professionals' self-regulatory regimes, who are arguably, inferior. PIBA queries the measures the Approved Professional Bodies will have in place to ensure that these professionals are fully informed of the requirements of the CCMA, MARP & MARS.

The relationship between a Financial Broker and client is typically a personal relationship built up over a number of years and if the regulatory regime is overly onerous and costly, Financial Brokers may not seek the required authorisation. Indeed, feedback from PIBA members highlights the concern that the proposed onerous regulatory regime is discriminatory against small to medium sized Financial Brokers and is seen as a concerted intention by the Central Bank to limit their operation in this area. This would not be to the benefit of clients who have been liaising with their Financial Brokers in relation to these

matters thus far and would now be forced to seek advice from other entities unfamiliar with their circumstances. This will leave clients, who are already very distressed, exposed as they may be forced to deal with creditors directly without sufficient knowledge or expertise. This clearly is not to be benefit of clients.

We note the consultation paper requires authorisation where:

“a person who for remuneration provides debt management services to one or more consumers, other than an excepted person”;

The Act defines “debt management services” as meaning-

- (a) “giving advice about the discharge of debts (in whole or in part), including advice about budgeting in connection with the discharge of debts,
- (b) negotiating with a person’s creditors for the discharge of the person’s debts (in whole or in part), or
- (c) any similar activity associated with the discharge of debts”.

PIBA would like clarification as to whether if a firm does not receive remuneration for providing these services, do they fall outside the scope of the authorisation requirements?

We note reference to the term Consumer is used throughout the consultation paper, as this definition per the Act means “*an individual acting otherwise than in the course of business*” or a “micro enterprise”, which is defined under the 2003 Commission Recommendation as “*an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed 2 million*”.

PIBA would like clarification whether the fact that commercial lending is currently outside the scope of the Central Bank regulation (i.e. scope of CPC) that providing advices in relation to commercial lending debt will fall within the scope of the authorisation requirements.

Do the requirements apply where firms provide advice to businesses in relation to Hire Purchase agreements, where the business may not be able to comply with the original Hire Purchase agreement?

Minimum Competency Code 2011

We note that under minimum competency the proposed qualification for persons exercising certain functions in a debt management firm should be the “Qualified Financial Adviser Qualification.”

PIBA believe that an APA that specifically focuses on the area of debt management should be considered as another suitable recognised qualification. We would propose a combination of the Professional Certificate in Residential Mortgage Arrears and the QFA Regulation Module through the LIA and Institute of Bankers as an alternative to those who do not hold the QFA designation.

This APA would cover:

- The Personal Insolvency Act 2012;
- The Code of Conduct on Mortgage Arrears (CCMA);
- The Mortgage Arrears Resolution Process (MARP);
- Mortgages outside the scope of CCMA;
- The Consumer Protection Code (CPC);
- Implications of CCMA for Outsourcing firms;
- Completion of the Standard Financial Statement (SFS) challenging and supporting the borrower;
- The interpersonal skills required for the different borrower situations;
- Short term forbearance options;
- Long term modification options;
- The Keane and Cooney reports;
- Housing loans, Types of Security;
- Repossession process;
- Bank Capital and Impairment provisioning;
- Regulation.

Part A: Authorisation Requirements

1.3. In this section the consultation paper states that all debt management services provided by a debt management firm must be conducted within the state. It is our understanding that this provision does not restrict the providing of services by a debt management firm based in the Republic of Ireland to clients where the security is outside the state i.e. holiday homes, investment properties etc.

PIBA would like clarification as to whether it is permissible for a debt management firm based in Ireland to provide advice to a client who has emigrated to the USA/Canada or Australia etc., where their creditors are here in Ireland.

We note that a preliminary meeting will be held with applicant firms. We feel that this measure is excessive and that the authorisation process should mirror that which is currently in place under the IIA, IMR & CCA. We also feel that the requirement for the Central Bank to meet each applicant firm will delay authorisation of firms. We would suggest that a preliminary meeting could be used in circumstances where the Central Bank have concerns or queries on information submitted on the application form and they feel that a meeting would be beneficial. If a preliminary meeting is to take place, we would query what timeframe the Central Bank has put in place for arranging the meeting from receipt of a completed application form?

We note from the draft application for authorisation as a debt management firm that there is a requirement under the financial projections section for projected profit & loss accounts and balance sheet for the first three years. PIBA believes that this is excessive and should mirror the requirements under the IIA where a one year projection is sufficient. PIBA requests that a consultation be held in relation to the application form before finalisation.

PIBA would also like clarification as to whether an additional levy is to be applied to Debt Management firms?

3. Professional Indemnity Insurance

3.2 Under this section the consultation paper states that “the amount insured shall be at least equivalent to the total value of all the debts of consumers related to the services of the debt management firm.”

PIBA believes that the proposed PII levels are excessive and that the PII levels should cover the advice given and not the amount of debt that clients have. The service which is being provided under this authorisation does not involve handling client monies for onward transmission to creditors, therefore the risk of client losses in respect of the amount of debt is a non-issue and the purpose of the PII should be to cover negligent advice. From a practical point of view, it would also mean that firms would have to continuously update their PII each time a new client is acquired.

PIBA proposes that it would be sufficient to have a requirement similar to that imposed under the section 6 (2) Personal Insolvency Bill in Statutory Instrument 209 - Authorisation and Supervision of Personal Insolvency Practitioners or as an alternative PII levels could be aligned with the revised PII level requirements under the Insurance Mediation Regulations of €1.25m per claim and €1.85m in aggregate.

We also suggest that the annual PII return should be done via the online annual return system which intermediaries currently use.

4. Organisation and Management

4.5 This requirement deals with compliance arrangements of a firm and stipulates that “the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor.”

This is not a practical requirement for a sole trader or a brokerage where there may be only one to two staff. If the intention is that small/medium sized Financial Brokers have an outsourced compliance function, this will increase costs to the Broker of providing this service and in turn to clients. We would query why this requirement is deemed necessary as no such condition is required for Investment or Pension advice - the typical services that a Broker offers. PIBA believes that if the sole purpose of the firm is to give advice and assist in negotiations but not to manage the repayments of the debtors (i.e. handle client monies) then their current compliance structures should be sufficient.

Conclusion

PIBA has fundamental concerns about the proposed regulatory regime and feels that the regulations imposed should reflect the risk involved in the work the firm undertakes, on behalf of their clients. PIBA believes that the provisions proposed are overly onerous in particular, for sole traders or partnership firms who are advising on debt management but who are not administering the payments from the debtor to the creditors.

Introducing regulations which inhibit sole traders or partnership firms from continuing to advise in this area will not assist distressed borrowers who wish to seek advice on their debts from their current Financial Broker.