



Banc Ceannais na hÉireann  
Central Bank of Ireland  
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# Consumer Protection Code 2012



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# CHAPTER 1

## SCOPE

### INTRODUCTION

In order to ensure a consistent level of protection for **consumers** regardless of the type of financial services provider they choose, the Consumer Protection Code (the Code) was introduced in August 2006. Following the introduction of legislation governing the authorisation of **retail credit** firms and home reversion firms, an Addendum to the Code was issued in May 2008.

The Consumer Protection Code has been updated and this revised Consumer Protection Code replaces the original Consumer Protection Code introduced in August 2006 and is effective from 1 January 2012.

### LEGISLATIVE BASIS

This Code is issued pursuant to powers under the following legislation:

- (a) Section 117 of the Central Bank Act 1989;
- (b) Section 23 and Section 37 of the Investment Intermediaries Act 1995;
- (c) Section 8H of the Consumer Credit Act 1995; and
- (d) Section 61 of the Insurance Act 1989.

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

The provisions of this Code are binding on **regulated entities** and must, at all times, be complied with when providing financial services.

Any legal proceedings, or any investigation, disciplinary or enforcement action in respect of any provision of the Consumer Protection Code that applied prior to the issue of this Code may be continued, and any breach of any provision of the Consumer Protection Code that applied prior to the issue of this Code may subsequently be the subject of legal proceedings, investigation, disciplinary or enforcement action by the **Central Bank** or other person, as if the provision had not been amended or deleted and as if the Code had not been updated and re-issued.

## APPLICATION

Subject to the exclusions set out in the following paragraphs this Code applies to the **regulated activities** of **regulated entities** operating in the State, including:

- financial services providers authorised, registered or licensed by the **Central Bank**; and
- financial services providers authorised, registered or licensed 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 applies to include:

- **Credit Institutions**;
- **Insurance Undertakings**;
- Investment Business Firms, authorised under the Investment Intermediaries Act 1995;
- Investment Intermediaries, authorised under the Investment Intermediaries Act 1995;
- **Insurance Intermediaries**;
- **Mortgage Intermediaries**;
- Payment Institutions;
- Electronic Money Institutions;
- Credit Unions, when acting as insurance intermediaries;
- **Regulated entities** providing **retail credit**; and
- Home Reversion Firms.

Chapter 2 (General Principles) applies in respect of all **customers** in the State and the other chapters of the Code apply in respect of **customers** in the State who fall within the definition of **consumer** (except in the case of provisions which are specifically restricted to **personal consumers** - provisions which are specifically restricted to **personal consumers** apply only to **customers** in the State who fall within the definition of **personal consumer**).

Where **regulated entities** are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), only the following sections of the Code apply:

- Chapter 2, General Principles 2.1 to 2.4 and 2.7 to 2.12
- Chapter 3, Common Rules
- Chapter 4, Provision of Information: Provisions 4.7 to 4.11 and 4.26
- Chapter 6, Post-sale Information Requirements: Provision 6.8

- Chapter 8, Arrears Handling
- Chapter 10, Errors and Complaints Resolution
- Chapter 11, Records and Compliance.

Where ***regulated entities*** are providing ***payment services*** and/or issuing ***electronic money***, only the following sections of the Code apply:

- Chapter 2, General Principles 2.1 to 2.4 and 2.7 to 2.12
- Chapter 3, Common Rules: Provisions 3.1, 3.17 to 3.23 and 3.28 to 3.45
- Chapter 4, Provision of Information: Provisions 4.7 to 4.11
- Chapter 8, Arrears Handling
- Chapter 9, Advertising: Provisions 9.1 to 9.18 and 9.30 to 9.31
- Chapter 10, Errors and Complaints Resolution
- Chapter 11, Records and Compliance: Provisions 11.5 to 11.10

**THE CODE DOES NOT APPLY TO:**

- Services provided by ***regulated entities*** to ***persons*** outside the State;
- ***MiFID services***;
- Moneylending under the Consumer Credit Act 1995;
- Reinsurance business;
- Bureau de change business;
- Credit union activities, other than when acting as insurance intermediaries;
- The provision of credit involving a total amount of credit of less than €200;  
and
- Hire purchase and consumer hire agreements.

**OTHER MATTERS**

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

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

## CHAPTER 2

### CLARIFICATION OF SCOPE

#### Consumer Credit, Payment Services and Electronic Money

- a) Where **regulated entities** are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), only General Principles 2.1 to 2.4 and 2.7 to 2.12 apply.
- b) Where **regulated entities** are providing **payment services** and/or issuing **electronic money**, only General Principles 2.1 to 2.4 and 2.7 to 2.12 apply.

## GENERAL PRINCIPLES

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

- 2.1 acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;
- 2.2 acts with due skill, care and diligence in the best interests of its **customers**;
- 2.3 does not recklessly, negligently or deliberately mislead a **customer** as to the real or perceived advantages or disadvantages of any product or service;
- 2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;
- 2.5 seeks from its **customers** information relevant to the product or service requested;
- 2.6 makes full disclosure of all relevant material information, including all **charges**, in a way that seeks to inform the **customer**;
- 2.7 seeks to avoid conflicts of interest;
- 2.8 corrects errors and handles **complaints** speedily, efficiently and fairly;

- 2.9 does not exert undue pressure or undue influence on a **customer**;
- 2.10 ensures that any **outsourced activity** complies with the requirements of this Code;
- 2.11 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
- 2.12 complies with the letter and spirit of this Code.

## CHAPTER 3

### CLARIFICATION OF SCOPE

#### Payment Services and Electronic Money

Where **regulated entities** are providing **payment services** and/or issuing **electronic money**, only Provisions 3.1, 3.17 to 3.23 and 3.28 to 3.45 apply.

## GENERAL REQUIREMENTS

- 3.1 Where a **regulated entity** has identified that a **personal consumer** is a **vulnerable consumer**, the **regulated entity** must ensure that the **vulnerable consumer** is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the **regulated entity**.
- 3.2 A **regulated entity** must ensure that the name of a product or service is not misleading in terms of the benefits that the product or service can deliver to a **consumer**.
- 3.3 A **regulated entity** must ensure that all instructions from or on behalf of a **consumer** are processed properly and promptly.
- 3.4 A **credit institution** must ensure that any funds received by it to be lodged to a **consumer's** term or notice deposit account directly or via a **deposit agent**, are credited to that account by close of the **business day** on which the funds are received. Where the funds are not credited on the day they are received, credit for those funds must be backdated to the day the funds were received.
- 3.5 A **regulated entity** that is in direct receipt of a payment from or on behalf of a **consumer** for a financial product or service must provide that **consumer** with a receipt. This receipt must include the following information:
  - a) the name and address of the **regulated entity**;
  - b) the name of the **consumer** who provided the payment, or on whose behalf the payment is provided;
  - c) the value of the payment received and the date on which it was received;
  - d) the purpose of the payment; and
  - e) in the case of an **insurance intermediary**, that the acceptance by the **insurance intermediary** of a completed insurance proposal does not itself constitute the effecting of a policy of insurance, where relevant.
- 3.6 A **regulated entity** must ensure that documents conferring ownership rights are given to the **consumer** in a timely manner or are held for safekeeping



under an agreement on paper or on another  **durable medium**  with the  **consumer** , in accordance with the terms of the  **regulated entity's**  authorisation.

- 3.7 Where a  **regulated entity**  deals with a  **person**  who is acting for a  **consumer**  under a  **power of attorney** , the  **regulated entity**  must:
- a) obtain a certified copy of the  **power of attorney** ;
  - b) ensure that the  **power of attorney**  allows the  **person**  to act on the  **consumer's**  behalf; and
  - c) operate within the limitations set out in the  **power of attorney** .
- 3.8 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.
- 3.9 A  **regulated entity**  must ensure that all warning statements required by this Code are prominent i.e. they must be in a box, in bold type and of a font size that is at least equal to the predominant font size used throughout the document or  **advertisement** .
- 3.10 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.
- 3.11 Where a  **regulated entity**  intends to cease operating, merge with another, or to transfer all or part of its  **regulated activities**  to another  **regulated entity**  it must:
- a) notify the  **Central Bank**  immediately;
  - b) provide at least two months notice to affected  **consumers**  to enable them to make alternative arrangements;
  - c) ensure all outstanding business is properly completed prior to the transfer, merger or cessation of operations or, alternatively in the case of a transfer or merger, inform the  **consumer**  of how continuity of service will be provided following the transfer or merger; and
  - d) in the case of a merger or transfer of  **regulated activities** , inform the  **consumer**  that their details are being transferred to the other  **regulated entity** , if that is the case.

- 3.12 When intending to close, merge or move a branch, a **credit institution** must:
- a) notify the **Central Bank** immediately;
  - b) provide at least two months notice to affected **consumers** to enable them to make alternative arrangements;
  - c) ensure all business of the branch is properly completed prior to the closure, merger or move, or alternatively inform the **consumer** of how continuity of service will be provided; and
  - d) notify the wider community of the closure, merger or move in the local press in advance.

## RESTRICTIONS

### Term and Notice Deposit Accounts

- 3.13 Prior to opening a joint account for two or more **personal consumers**, a **regulated entity** must:
- a) warn each **personal consumer** of the consequences of opening and operating such a joint account;
  - b) specify the particular operations of the account for which consent is and is not required from all account holders;
  - c) ascertain from the **personal consumers** whether statements are to be provided separately to each of the joint account holders; and
  - d) ascertain from the **personal consumers** any limitations that they wish to impose on the operations of the account.

### Credit

- 3.14 A **regulated entity** must not offer unsolicited pre-approved credit to a **personal consumer**.
- 3.15 A **regulated entity** may only increase a **personal consumer's** credit limit with the agreement of the **personal consumer**.
- 3.16 Where a **regulated entity** intends to impose a **charge** in respect of the provision or arrangement of a loan to a **personal consumer**, and it is proposed that this **charge** is incorporated into the loan amount advanced to the **personal consumer**, the **regulated entity** must give the **personal consumer** the right to pay this **charge** separately and not include it in the loan.

### Bundling and Contingent Selling

- 3.17 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**. This provision does not prevent a **regulated entity** from offering

additional products or services to **consumers** who are existing **customers** which are not available to potential **consumers**.

- 3.18 Where a **credit institution** requires a **consumer** to open a feeder account in order to avail of another product, this shall not be prevented by Provision 3.17 where all of the following conditions are met:
- a) the **consumer** must not be obliged to use the feeder account for purposes other than facilitating payments to the product concerned;
  - b) **charges** cannot be applied for using the feeder account for the purpose for which it was established;
  - c) where additional facilities are available on the feeder account they must be optional and only activated if requested by the **consumer**; and
  - d) these conditions must be communicated clearly to the **consumer**.
- 3.19 A **regulated entity** is prohibited from **bundling** except where it can be shown that there is a cost saving for the **consumer**.
- 3.20 Prior to offering, recommending, arranging or providing a bundled product, a **regulated entity** must provide the **consumer** with the following information on paper or on another **durable medium**:
- a) the overall cost to the **consumer** of the bundle;
  - b) the cost to the **consumer** of each product separately;
  - c) how to switch products within the bundle;
  - d) the cost to the **consumer** of switching products within the bundle;
  - e) how to exit the bundle; and
  - f) the cost to the **consumer** of exiting the bundle.
- 3.21 Where a **consumer** wishes to switch one or more products in a bundle or exit a bundle, the **regulated entity** must:
- a) provide the **consumer** with the information set out in Provision 3.20 c) and d) or 3.20 e) and f) as appropriate, on paper or on another **durable medium**, and
  - b) allow the **consumer** to retain any product(s) in the bundle that the **consumer** wishes to keep, without penalty or additional **charge**, apart from the loss of any discount.
- 3.22 Where a **regulated entity** offers an optional extra to a **consumer** in conjunction with a product or service, the **regulated entity**:
- a) must inform the **consumer** on paper or on another **durable medium**:
    - i) that the **consumer** does not have to purchase the optional extra in order to buy the main product or service;
    - ii) of the cost of the basic product or service (excluding the optional extra); and
    - iii) of the cost of the optional extra;
- and

- b) must not charge the **consumer** a fee for any optional extra offered in conjunction with a product or service unless the **consumer** has confirmed that he or she wishes to purchase the optional extra.
- 3.23 In relation to Provisions 3.20 to 3.22, if the means of communication between the **regulated entity** and the **consumer** is by way of telephone only, the **regulated entity** must:
- a) provide this information orally at the time of offering, recommending, arranging or providing a bundled product; and
  - b) provide this information to the **consumer** on paper or on another **durable medium** immediately after arranging or providing a bundled product.

### Payment Protection Insurance

- 3.24 Where a **regulated entity** offers payment protection insurance in conjunction with a loan, the **regulated entity** must:
- a) exclude the payment protection premium from the initial repayment estimate of the loan advised to the **consumer** and advise the **consumer** of the amount of the premium separately; and
  - b) use separate application forms for the payment protection insurance and for the loan.

### Remuneration

- 3.25 A **regulated entity** may pay a fee, commission, other reward or remuneration in respect of the provision of **regulated activities** 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 under the Investment Intermediaries Act 1995;
  - d) an agent, branch or entity to which activities are outsourced in accordance with the European Communities (Payment Services) Regulations 2009 where the **regulated entity** remains fully liable for the acts of that agent, branch or entity to which activities are outsourced;
  - e) a distributor, agent, branch or entity to which activities are outsourced in accordance with the European Communities (Electronic Money) Regulations 2011 where the **regulated entity** remains fully liable for the acts of that distributor, agent, branch or entity to which activities are outsourced;
  - f) an entity specifically exempted by law from requiring an authorisation, licence or registration to carry out the **regulated activity** in respect of which the fee, commission, other reward or remuneration is to be paid;
  - g) an credit intermediary (within the meaning of the Consumer Credit Act 1995 and the European Communities (Consumer Credit Agreements) Regulations 2010); or

- h) no longer providing a **regulated activity**, where the fee, commission, other reward or remuneration is in respect of a **regulated activity** that the **person** provided when the **person** fell within any of the descriptions at a) to g) above.

### Deposit Agents

- 3.26 A **deposit agent** must not retain in its possession an account passbook of a **consumer**.
- 3.27 A **deposit agent** must not operate from the same premises as a **deposit broker**.

### CONFLICTS OF INTEREST

- 3.28 A **regulated entity** must have in place and operate in accordance with a written conflicts of interest policy appropriate to the nature, scale and complexity of the **regulated activities** carried out by the **regulated entity**. The conflicts of interest policy must:
  - a) identify, with reference to the **regulated activities** carried out by or on behalf of the **regulated entity**, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of its **customers** who are **consumers**; and
  - b) specify procedures to be followed, and measures to be adopted, in order to manage such conflicts.
- 3.29 Where conflicts of interest arise and cannot be reasonably avoided, a **regulated entity** must:
  - a) disclose the general nature and/or source of the conflicts of interest to the **consumer**. A **regulated entity** may only undertake business with or on behalf of a **consumer** where there is directly or indirectly a conflicting interest, where that **consumer** has acknowledged, on paper or on another **durable medium**, that he or she is aware of the conflict of interest and still wants to proceed; and
  - b) ensure that the conflict does not result in damage to the interests of the **consumer**.
- 3.30 Where a **regulated entity** distributes its products to **consumers** through an intermediary, the **regulated entity** must not require the intermediary to introduce a specified level of business from **consumers** in order to retain an appointment from that **regulated entity**.
- 3.31 Where a **product producer** distributes its products to **consumers** through an intermediary and pays commission to an intermediary based on levels of business introduced, the **product producer** must be able to demonstrate that these arrangements:

- a) do not impair the intermediary's duty to act in the best interests of **consumers**; and
  - b) do not give rise to a conflict of interest between the intermediary and the **consumer**.
- 3.32 A **regulated entity** must ensure that its remuneration arrangements with **employees** in respect of providing, arranging or recommending a product or service to a **consumer**, are not structured in such a way as to have the potential to impair the **regulated entity's** obligations:
- a) to act in the best interests of **consumers**; and
  - b) to satisfy the suitability requirements set out in Chapter 5 of this Code.
- 3.33 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.
- 3.34 A **regulated entity** must ensure it has written procedures in place relating to the maintenance of **Chinese walls**, and the consequences of breaches of **Chinese walls**. These procedures must be notified to all relevant **officers** and **employees** of the **regulated entity**.
- 3.35 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 gifts or rewards (monetary or otherwise) likely to conflict with any duties of the recipient in relation to his or her activities in the **regulated entity**, or the **regulated entity**.
- 3.36 A **regulated entity** must not enter into a **soft commission agreement** unless such agreement is on paper or on another **durable medium**. Where a **soft commission agreement** is in place, the following conditions apply:
- a) any business transacted under a **soft commission agreement** must not conflict with the best interests of **consumers**;
  - b) 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 them;
  - c) a copy of the **soft commission agreement** must be made available to the **consumer** on request;
  - d) 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**; and
  - e) 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.

## PERSONAL VISITS AND CONTACT WITH CONSUMERS

### Personal Visits

- 3.37 A **regulated entity** must not make an unsolicited personal visit, at any time, to a **consumer** who is an individual.
- 3.38 A **regulated entity** may only make a personal visit to a **consumer** who is an individual if that **consumer** has given informed consent to being contacted by the **regulated entity** by means of a personal visit. A **regulated entity** must obtain informed consent separately for each personal visit and must maintain a **record** of this consent.
- 3.39 In order to comply with Provision 3.38 above, a **regulated entity** must have obtained the informed consent of a **consumer** who is an individual in relation to:
- a) the purpose(s) for which a personal visit is to be made, including in the case of sales and marketing, the types of product to be discussed during the personal visit, and
  - b) the time and date for the personal visit.

### Telephone Contact

- 3.40 A **regulated entity** may make telephone contact with a **consumer** who is an existing **customer**, 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 telephone contact;
  - b) the **consumer** holds a product, which requires the **regulated entity** to maintain contact with the **consumer** in relation to that product, and the contact is in relation to that product;
  - c) the purpose of the telephone contact is limited to offering **protection policies** only; or
  - d) the **consumer** has given his or her consent to being contacted in this way by the **regulated entity**.
- 3.41 A **regulated entity** may make telephone contact with a **consumer** other than an existing **customer**, only if:
- a) the **consumer** has signed a statement, within the previous twelve months, giving the **regulated entity** permission to make telephone calls to him or her for specified purposes and the contact is in respect of such specified purposes;
  - 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 and contact is made via the business telephone number;

- 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 and contact is made via the business telephone number of the company or firm in question and is in connection with their role as director of the company or partner in the firm;
- d) the **consumer** is the subject of a referral for which the **consumer** has provided express consent, received from an entity authorised to provide financial services in Ireland, another entity within the same **group**, a solicitor or a **certified person**; or
- 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.

3.42 A **regulated entity** must ensure that, where it makes a telephone contact on foot of a referral, it retains a **record** of the referral.

3.43 Telephone 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 agreed with the **consumer**.

#### **Personal Visits and Telephone Contact**

3.44 When making a personal visit or telephone 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, and the name of the **regulated entity** on whose behalf he or she is being contacted and the commercial purpose of the contact;
- b) inform the **consumer** that the telephone contact is being recorded, if this is the case;
- c) where relevant, disclose to the **consumer**, the source of the business lead or referral supporting the telephone contact; and
- d) establish if the **consumer** wishes the personal visit or telephone contact to proceed and, if not, end the contact immediately.

3.45 A **regulated entity** must abide by a request from a **consumer** not to make a personal visit or telephone contact to him or her again for sales and marketing purposes and this request must be recorded by the **regulated entity**.



## PREMIUM HANDLING

- 3.46 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”.
- 3.47 An **insurance intermediary** must operate separate client premium accounts in respect of life and non-life business.
- 3.48 A **regulated entity** must ensure that all payments from a client premium account clearly state that the payment emanated from a client premium account.
- 3.49 A **regulated entity** must ensure that a client premium account is never overdrawn.
- 3.50 The following are the only debits and credits that may be passed through a client premium account:
- a) **Credits (money in)**
- i) money received from the **consumer** 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**;
  - ii) money received from a **regulated entity** representing premium rebated for onward transmission to the **consumer**;
  - iii) transfers from another client premium account operated by the **insurance intermediary** for the same form of insurance;
  - iv) 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);
  - v) proceeds received from a **regulated entity** in respect of the settlement of a claim for onward transmission to the **claimant**;
  - vi) bank interest, if appropriate; and
  - vii) where mixed remittances are received, the total amount must first be lodged to the appropriate client premium account.
- b) **Debits (money out)**
- i) 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**;
  - ii) money paid to a **consumer** representing rebates of premiums received from **insurance undertakings**;
  - iii) commissions and fees paid to the **insurance intermediary** for which there is documentary proof that the funds are properly due to the **insurance intermediary**;

- iv) transfers to another **client premium account** operated by the **insurance intermediary** for the same form of insurance;
- v) payments of claims settlement amounts to a **consumer**;
- vi) bank interest, if appropriate;
- vii) 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; and
- viii) payments in respect of charitable donations, in accordance with Provision 7.2.

3.51 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.

## PRODUCT PRODUCER RESPONSIBILITIES

3.52 In relation to a new **investment product** designed by a **product producer** to be sold to **consumers**, the **product producer** must provide the following details to an intermediary:

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

3.53 When selling an **investment product** to **consumers** through an intermediary channel, a **product producer** must provide information to the intermediary about the **investment product** that is clear, accurate, up to date and not misleading, and includes the information outlined in Provisions 3.52 and 4.46.

3.54 The **product producer** must provide an ongoing facility to the intermediary to ask questions and obtain information on an **investment product** in relation to which information is provided to the intermediary pursuant to Provisions 3.52 and 4.46. The **product producer** must:

- a) provide this facility to the intermediary for the duration of the period in which that product is offered for sale by the **product producer**; and
- b) inform the intermediary of his or her right to that ongoing facility.

3.55 Within the first year of launching an **investment product** which is sold to **consumers**, and at least annually thereafter, a **product producer** must update the information required under Provision 3.52 and provide that updated information to the intermediary.

3.56 A **regulated entity** must maintain a publicly accessible register of all **mortgage intermediaries** to which it has issued a current appointment.

3.57 Upon the termination of the appointment of any *mortgage intermediary*, a *regulated entity* must provide to the *Central Bank* a confirmation, on paper or on another *durable medium*, that such *mortgage intermediary* has been removed from the register maintained under Provision 3.56.

## CHAPTER 4

### CLARIFICATION OF SCOPE

#### Consumer Credit, Payment Services and Electronic Money

- a) Where **regulated entities** are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), only Provisions 4.7 to 4.11 and 4.26 apply.
- b) Where **regulated entities** are providing **payment services** and/or issuing **electronic money**, only Provisions 4.7 to 4.11 apply.

## PROVISION OF INFORMATION

### GENERAL REQUIREMENTS

- 4.1 A **regulated entity** must ensure that all information it provides to a **consumer** is clear, accurate, up to date, and written in plain English. **Key information** must be brought to the attention of the **consumer**. The method of presentation must not disguise, diminish or obscure important information.
- 4.2 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.
- 4.3 A **regulated entity** must ensure that, where it communicates with a **consumer** using electronic media, it has in place appropriate arrangements to ensure the security of information received from the **consumer** and the secure transmission of information to the **consumer**.
- 4.4 A **regulated entity** must ensure that the font size used in all printed information provided to **consumers** is:
  - a) clearly legible, and
  - b) appropriate to the type of document and the information contained therein.
- 4.5 When a **regulated entity** publishes a notice regarding a change in interest rates, the notice must state the old rate and the new rate and the date from which the changes will apply.

- 4.6 Where a **regulated entity** publishes interest rates on its information services, including telephone helplines and websites, the **regulated entity** must update such information services as soon as any interest rate change comes into effect.

#### INFORMATION ABOUT REGULATORY STATUS

- 4.7 A **regulated entity** must only use a regulatory disclosure statement as set out in Provision 4.10, in the following circumstances:
- a) on its business stationery used in connection with its **regulated activities**;
  - b) on the section of its website that relates to its **regulated activities**; and
  - c) on electronic communications with **consumers** (excluding SMS messages) where such communications are in connection with its **regulated activities**.
- 4.8 A **regulated entity** may only use the regulatory disclosure statement in communications with a **consumer** where such communications relate solely to a **regulated activity**.
- 4.9 A **regulated entity** must have separate sections on any website it operates, for **regulated activities** and any other activities which it carries out.
- 4.10 A **regulated entity** must use a regulatory disclosure statement in either of the following formats, depending on the **Member State** where it has been authorised, registered or licensed:
- a) “[Full legal name of the **regulated entity**, trading as (*insert all trading names used by the regulated entity*)] is regulated by the Central Bank of Ireland”; or
  - b) “[Full legal name of the **regulated entity**, trading as (*insert all trading names used by that regulated entity*)], is authorised/licensed or registered by [*insert name of the competent authority from which it received its authorisation or licence, or with which it is registered*] in [*insert name of the Member State where that competent authority resides*] and is regulated by the Central Bank of Ireland for conduct of business rules.”

A **regulated entity** must not insert additional text into the wording of the regulatory disclosure statements as set out above.

- 4.11 A **regulated entity** must ensure that its regulatory disclosure statement is not presented in such a way as to appear to be an endorsement by the **Central Bank** or other relevant EU competent authority of the **regulated entity** or its products or services.

## INFORMATION ABOUT THE REGULATED ENTITY AND ITS REGULATED ACTIVITIES

- 4.12 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**.
- 4.13 The **terms of business** must set out the basis on which the **regulated entity** provides its **regulated activities** and must include at least the following:
- a) the legal name, trading name(s), address, and contact details of the **regulated entity**;
  - b) if the **regulated entity** is part of a **group**, the name of the **group** to which the **regulated entity** belongs;
  - c) confirmation that the **regulated entity** is authorised, licensed or registered and the name of the competent authority that has authorised, licensed or registered it;
  - d) a statement that it is subject to the [insert names of the **Central Bank's** Code(s) of Conduct which the **regulated entity** must comply with] which offers protection to **consumers** and that the Code(s) can be found on the **Central Bank's** website [www.centralbank.ie](http://www.centralbank.ie);
  - e) a description of the **regulated activities** that the **regulated entity** provides;
  - f) if the **regulated entity** acts as an intermediary, a description of the level of service it provides for each product type, i.e., whether **fair analysis of the market** or **limited analysis of the market** and an explanation of that type of service in a way that seeks to inform the **consumer**;
  - g) if the **regulated entity** is tied for any of the **regulated activities** it provides, it must specify the name of each of the product(s) and/or service(s) for which it is tied and the name of the **regulated entity** to which it is tied for those product(s) and/or service(s);
  - h) a general statement of the **charges** imposed directly by the **regulated entity**;
  - i) a summary of the **regulated entity's** policy in relation to how it will use a **consumer's** personal data;
  - j) a summary of the **regulated entity's** policy in relation to conflicts of interest;
  - k) an outline of the action and remedies which the **regulated entity** may take in the event of default by the **consumer**;
  - l) a summary of the **complaints** procedure operated by the **regulated entity**;
  - m) if the **regulated entity** is a member of a statutory compensation scheme, the name of the scheme and the nature and level of protection available from the scheme; and
  - n) the effective date of the **terms of business** document.
- 4.14 A **regulated entity** must provide its **terms of business** to a **consumer** as a stand-alone document.

- 4.15 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 regulated activities** are provided.
- 4.16 The term 'independent' may only be used by an intermediary in its legal name, trading name or any other description of the firm where:
- a) the principal **regulated activities** of the intermediary are provided on the basis of a **fair analysis of the market**; and
  - b) the intermediary allows the **consumer** the option to pay in full for its services by means of a fee.
- 4.17 The term 'independent' may only be used in any trading name or other description of a **regulated activity** where the intermediary:
- a) provides the **regulated activity** on the basis of a **fair analysis of the market**; and
  - b) allows the **consumer** the option to pay in full for the **regulated activity** by means of a fee.

Where a **regulated entity** does not provide all of its **regulated activities** in an independent capacity, it must explain the different nature of its services in a way that seeks to inform the **consumer**. It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity.

- 4.18 The term 'broker' may only be used where the principal **regulated activities** of the intermediary are provided on the basis of a **fair analysis of the market**.
- 4.19 Where an intermediary does not provide a product or service on the basis of a **fair analysis of the market**, it must clearly disclose to the **consumer** the names of those **product producers** whose products or services it intends to consider as part of its analysis.
- 4.20 Where an intermediary is tied to a single **product producer** for a particular product or service, it must disclose this fact to the **consumer** in all communications with the **consumer** in relation to that particular product or service.

## INFORMATION ABOUT PRODUCTS

- 4.21 Prior to offering, recommending, arranging or providing a product, a **regulated entity** must provide information, on paper or on another **durable medium**, to the **consumer** about the main features and restrictions of the product to assist the **consumer** in understanding the product. To the extent that the contract for the provision of the product is a distance contract for

the supply of a financial service under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, the Regulations apply in place of the requirement set out in the first sentence of this provision.

- 4.22 A **regulated entity** must provide each **consumer** with the terms and conditions attaching to a product or service, on paper or on another **durable medium**, before the **consumer** enters into a contract for that product or service. To the extent that the contract for the provision of the product is a distance contract for the supply of a financial service under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, the Regulations apply in place of the requirement set out in the first sentence of this provision.

## Credit

- 4.23 Prior to credit being approved, a **regulated entity** must explain to a **personal consumer** the effect of missing any of the scheduled repayments. The implications and effects of missing the scheduled repayments must be highlighted in all credit agreement documentation provided to the **personal consumer** and the following warning statement must also appear in the documentation:

**Warning: If you do not meet the repayments on your credit agreement, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.**

- 4.24 Where a **personal consumer's** formal application for credit is turned down by the **regulated entity**, it must clearly outline to the **personal consumer** the reasons why the credit was not approved. The **regulated entity** must offer to provide the reasons, on paper or on another **durable medium**, to the **personal consumer**. If requested by the **personal consumer**, the **regulated entity** must provide the reasons, on paper or on another **durable medium**, to the **personal consumer**.
- 4.25 Where a **regulated entity**:
- offers credit on a fixed interest rate to a **personal consumer**; or
  - offers a **personal consumer** the option to fix their rate or to switch to a fixed rate, on an existing credit agreement;
- the **regulated entity** must provide, in the credit documentation, a worked example specific to the **personal consumer** of the early redemption **charge** in monetary terms and details in relation to the calculation of this **charge**.
- 4.26 Where credit is being offered to a **personal consumer** by a **regulated entity** subject to a guarantee, the guarantee documentation must outline the



obligations of the guarantor and must contain the following warning statement:

**Warning: As a guarantor of this credit, you will have to pay off the debt amount, the interest and all associated charges up to the level of your guarantee if the borrower(s) do(es) not. Before you sign this guarantee you should get independent legal advice.**

- 4.27 Prior to offering, recommending, arranging or providing a loan to a **personal consumer** for the purpose of consolidating other loans or credit, a **regulated entity** must provide a **personal consumer**, on paper or on another **durable medium**, with an indicative comparison of the total interest they will pay if they continue with the existing facilities and the total interest payable over the term of the consolidated facility on offer. Any assumptions used must be reasonable and justifiable and must be clearly stated.
- 4.28 Where a **regulated entity** operates a website, it must publish on its website the interest rates for mortgages which are currently available to **consumers** from that **regulated entity**.
- 4.29 Where a **regulated entity** offers a mortgage to a **personal consumer**, the **regulated entity** must include in the offer document:
- a) the amount of the mortgage;
  - b) the interest rate that applies to the mortgage at the date of offer;
  - c) the term of the mortgage;
  - d) where there is a possibility that the interest rate set out in the offer document may not be the interest rate applicable when the mortgage is drawn down, this must be clearly highlighted. The offer document must also outline the circumstances that would result in such a change to the interest rate; and
  - e) the length of time for which the mortgage offer is valid, assuming that all details provided by the **personal consumer** are correct and do not change.

### **Insurance products**

- 4.30 A **regulated entity** providing an insurance quotation to a **consumer** must include the following information in the quotation, assuming that all details provided by the **consumer** are correct and do not change:
- a) the monetary amount of the quotation;
  - b) the length of time for which the quotation is valid; and
  - c) the full legal name of the relevant underwriter.
- 4.31 A **regulated entity** must set out clearly in the quotation provided to the **consumer** any warranties or endorsements that apply to the policy. Where the quotation is provided on paper or on another **durable medium**, this

information must not be in a smaller font size than other information provided in the document.

- 4.32 A **regulated entity** providing an insurance quotation to a **consumer** must set out clearly any discounts or loadings that have been applied in generating the quotation.
- 4.33 A **regulated entity** must, when offering a motor insurance policy to a **consumer**, set out clearly for the **consumer** the basis on which an **insurance undertaking** may calculate the value of the vehicle for the purposes of settling a claim where the vehicle is deemed to be beyond economic repair following a road traffic accident, fire or theft.
- 4.34 A **regulated entity** must state the full legal name of the relevant underwriter on all insurance policy documentation and renewal notices issued to a **consumer**.
- 4.35 A **regulated entity** must explain to a **consumer**, at the proposal stage, the consequences for the **consumer** of failure to make full disclosure of relevant facts, including:
- a) the **consumer's** medical details or history; and
  - b) previous insurance claims made by the **consumer** for the type of insurance sought.

The explanation must include, where relevant,

- i) that a policy may be cancelled;
  - ii) that claims may not be paid;
  - iii) the difficulty the **consumer** may encounter in trying to purchase insurance elsewhere; and,
  - iv) in the case of property insurance, that the failure to have property insurance in place could lead to a breach of the terms and conditions attaching to any loan secured on that property.
- 4.36 Prior to a **consumer** completing a proposal form for a permanent health insurance policy, a **regulated entity** must explain to the **consumer**:
- a) the meaning of disability as defined in the policy;
  - b) the benefits available under the policy;
  - c) the general exclusions that apply to the policy; and
  - d) the reductions applied to the benefit where there are disability payments from other sources.
- 4.37 Prior to a **consumer** completing a proposal form for a serious illness policy, a **regulated entity** must explain clearly to the **consumer** the restrictions, conditions and general exclusions that attach to that policy.
- 4.38 When offering a property or motor insurance policy to a **consumer**, a **regulated entity** must, where relevant, explain to the **consumer** that, in the

event of a claim, the **regulated entity** may appoint its own builder or other expert to undertake restitution work on a property or motor vehicle.

- 4.39 Where an **insurance undertaking** refuses to quote a **consumer** for motor or property insurance, it must, within five **business days** of the refusal:
- a) in the case of motor insurance, provide the **consumer** with its refusal and its reasons for refusing cover, on paper or on another **durable medium**, and notify the **consumer** of their right to refer the matter to the Declined Cases Committee and the method of doing so.
  - b) in the case of property insurance, inform the **consumer** of its refusal and its reasons for refusing cover and notify the **consumer** that failure to have property insurance in place could lead to a breach of terms and conditions attaching to any loan secured on that property. The **regulated entity** must inform the **consumer** that they can request that this information be provided on paper or on another **durable medium** and must provide this information, on paper or on another **durable medium**, to the **consumer** if so requested.
- 4.40 Prior to offering, recommending, arranging or providing an insurance policy where the premium may be subject to review by the **insurance undertaking** during the term of the policy, a **regulated entity** must:
- a) explain clearly to the **consumer** the risk that the premium may increase; and
  - b) provide the **consumer** with details of the period for which the initial premium is fixed.

The following warning statement must be included on the application form for the product:

**Warning: The current premium [*‘may’ or ‘will’ – delete as appropriate*] increase after [*insert period of time for which the premium is fixed*].**

This provision does not apply where the premium may be subject to review as a result of an alteration to the policy that is requested by the **consumer**.

#### **Lifetime mortgages and home reversion agreements**

- 4.41 Prior to offering, recommending, arranging or providing a **lifetime mortgage** to a **personal consumer**, a **regulated entity** must inform the **personal consumer** of the consequences of purchasing a **lifetime mortgage**, and provide the following information to the **personal consumer** on paper or on another **durable medium**:
- a) the circumstances in which the loan will have to be repaid;
  - b) details of the interest rate that will be charged;

- c) an explanation of the impact of the rolling up of the interest over the duration of the loan;
  - d) an indication of the amount required to repay the loan at maturity;
  - e) the effect on the existing mortgage, if any; and
  - f) an indication of the likely early redemption costs which would be incurred if the loan was redeemed on the third and fifth anniversary of the loan and at five yearly intervals thereafter.
- 4.42 Prior to offering, recommending, arranging or providing a **home reversion agreement** to a **personal consumer**, a **regulated entity** must inform the **personal consumer** of the consequences of entering a **home reversion agreement** and provide the following information to the **personal consumer** on paper or on another **durable medium**:
- a) the circumstances in which the agreement comes to an end;
  - b) the effect on the **personal consumer's** existing mortgage, if any; and
  - c) in the case of a **variable-share contract**, an indication of the potential change in the breakdown of the ownership of the property between that held by the home reversion company and the **personal consumer**, over the duration of the agreement.
- 4.43 Any assumptions used by the **regulated entity** to generate the information required by Provisions 4.41 and 4.42 above, must be reasonable and justifiable and must be clearly stated in the information provided to a **personal consumer**.
- 4.44 Prior to offering, recommending, arranging or providing a **lifetime mortgage** or a **home reversion agreement** to a **personal consumer**, a **regulated entity** must ensure that the **personal consumer** is made aware of the importance of seeking independent legal advice regarding the proposed transaction.
- 4.45 A **regulated entity** must include the relevant warning statements set out below on the following, where they contain information regarding a **lifetime mortgage** or **home reversion agreement**:
- a) an application form;
  - b) any other document provided to the **personal consumer**; and
  - c) on its website.

For **lifetime mortgages**:

**Warning: While no interest is payable during the period of the mortgage, the interest is compounded on an annual basis and is payable in full in circumstances such as death, permanent vacation of or sale of the property.**

and;

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

For *home reversion agreements*:

**Warning: The money you receive may be much less than the actual market value of the share in your home.**

and;

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

#### Investment Products

- 4.46 Prior to offering, recommending, arranging or providing an **investment product**, other than a **tracker bond**, a **regulated entity** must provide a **consumer** with information on the following, where relevant:
- a) capital security;
  - b) the risk that some or all of the investment may be lost;
  - c) leverage and its effects;
  - d) any limitations on the sale or disposal of the product;
  - e) restrictions on access to funds invested;
  - f) restrictions on the redemption of the product;
  - g) the impact, including the cost, of exiting the product early;
  - h) the minimum recommended investment period;
  - i) the risk that the estimated or anticipated return on the **investment product** will not be achieved;
  - j) the potential effects of volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment;  
and
  - k) the level, nature, extent and limitations of any guarantee and the name of the guarantor.

This information must be provided in a stand-alone document except where such information is already required to be disclosed under the Life Assurance (Provision of Information) Regulations 2001 or any other regulations made under Section 43D of the Insurance Act 1989 concerning provision of information for life assurance policies and where such information is disclosed to the **consumer** in a manner which complies with such Regulations.

- 4.47 A **regulated entity** must include the following warning statement with all illustrations:

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

- 4.48 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 a **regulated entity** and one or more of its **consumers**, this fact must be clearly stated in the prospectus.

- 4.49 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 a 100% return of a **consumer's** capital on maturity, the following warning statement:

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

- b) where the promised return is known but is less than the initial 100% invested by a **consumer**, the following warning statement:

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

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

**Warning: If you cash in your investment before [specify the particular date] you may lose some or all of the money you invest.**

- d) if there is no access to funds for the term of the product, the following warning statement:

**Warning: If you invest in this product you will not have any access to your money for [insert time required before the product matures].**

- e) the nature, extent and limitations of any guarantee attaching to the product and the name of the ultimate provider of any guarantee.

- 4.50 A **product producer** of a **tracker bond** must produce and issue a “Key Features Document” of a type referred to in Appendix A to this Code to any intermediary that offers that **tracker bond** to **consumers**. Where the information required by the Key Features Document is otherwise already provided to the **consumer** as required under the Life Assurance (Provision of Information) Regulations 2001 or any other regulations made under Section 43D of the Insurance Act 1989 requiring the provision of information to **consumers** regarding life assurance policies, the **regulated entity** is not obliged to include that information in the Key Features Document.
- 4.51 A **regulated entity** must provide a **consumer** with a Key Features Document prior to the **consumer** signing an application form for a **tracker bond**. Where relevant, the Key Features Document must explain to the **consumer** that the **consumer’s** return on his or her investment will be capped/limited.
- 4.52 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;
    - i) for this purpose only, the fixed interest rate offered by the lender for the period to the date of the promised payment under the **tracker bond**, must be used.
    - ii) 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.
  - b) the equivalent **compound annual rate** of the promised payment under the relevant **tracker bond** must be shown prominently; and
  - c) 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**.
- 4.53 Prior to offering, recommending, arranging or providing a Personal Retirement Savings Account (**PRSA**), a **regulated entity** must provide a **consumer** with the information set out in Appendix B to this Code. Where a non-standard **PRSA** is offered or recommended to a **consumer** the **regulated entity** must also complete the declaration set out in Appendix C to this Code.

## INFORMATION ABOUT CHARGES

- 4.54 Prior to providing a product or service to a **consumer**, a **regulated entity** must:
- a) provide the **consumer**, on paper or on another **durable medium**, with a breakdown of all **charges**, including third party **charges**, which will be passed on to the **consumer**; and
  - b) where such **charges** cannot be ascertained in advance, notify the **consumer** that such **charges** will be levied as part of the transaction.
- 4.55 Where a **regulated entity** intends to impose a **charge** in respect of the provision or arrangement of a loan to a **personal consumer**, and it is proposed that this **charge** is incorporated into the amount advanced to the **personal consumer**, the **regulated entity** must, prior to the **personal consumer** signing an application form for a loan:
- a) inform the **personal consumer**, on paper or on another **durable medium**, that the **personal consumer** has the right to pay such a **charge** separately and not include it in the loan; and
  - b) provide the following information to the **personal consumer** on paper or on another **durable medium**:
    - i) the amount of the **charge**; and
    - ii) the overall cost of paying the **charge** over the term of the loan.
- 4.56 A **regulated entity** must display in its public offices, in a manner that is easily accessible to **consumers**, a schedule of fees and **charges** imposed by that **regulated entity**. If the **regulated entity** has a website, its schedule of fees and **charges** must also be made publicly available through placing this schedule on its website.

## INFORMATION ABOUT REMUNERATION

- 4.57 Prior to offering, recommending, arranging or providing a product or service a **mortgage intermediary** and a firm authorised under the Investment Intermediaries Act 1995 must disclose, on paper or on another **durable medium**, to a **consumer** the existence, nature and amount of any fee, commission or other remuneration received or to be received from a **product producer** in relation to that product or service. Where the amount cannot be ascertained, the method of calculating that amount must be disclosed. The disclosure must be in a manner that is comprehensive, accurate and understandable.

This provision does not apply where the product or service relates to an insurance policy.

- 4.58 Where remuneration is to be received by an intermediary from a **product producer** on an ongoing basis in respect of a product or service, the



intermediary must disclose to the **consumer** on paper or on another **durable medium**, prior to the provision of that product or service, the nature of the service to be provided to the **consumer** in respect of this remuneration.

- 4.59 Prior to the sale of a non-life insurance product, an **insurance intermediary** must:
- a) disclose in general terms to a **consumer** that it is paid for the service provided to the **consumer** by means of a remuneration arrangement with the **product producer**;
  - b) inform the **consumer** of the amount of remuneration receivable in respect of that service or that details of remuneration are available on request; and
  - c) disclose in general terms to a **consumer** any remuneration arrangements with **product producers** that are not directly attributed to the service provided to an individual **consumer** but are based on levels of business introduced by the intermediary to that **product producer** or that may be perceived as having the potential to create a conflict of interest.
- 4.60 The disclosure required at Provision 4.59 must be in the **terms of business** or through some other suitable mechanism, and with renewal notices.
- 4.61 Where an intermediary allows the **consumer** the option to pay for its services by means of a fee, the option of payment by fee and the amount of the fee must be explained in advance to the **consumer**. Where the intermediary charges a fee and also receives commission in respect of the product or service provided to the **consumer**, it must explain to the **consumer** whether or not the commission will be offset against the fee, either in part or in full.

## CHAPTER 5

### CLARIFICATION OF SCOPE

#### Consumer Credit, Payment Services and Electronic Money

- a) Where **regulated entities** are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), the Provisions in this Chapter do not apply.
- b) Where **regulated entities** are providing **payment services** and/or issuing **electronic money**, the Provisions in this Chapter do not apply.

## KNOWING THE CONSUMER AND SUITABILITY

### KNOWING THE CONSUMER

- 5.1 A **regulated entity** must gather and record sufficient information from the **consumer** prior to offering, recommending, arranging or providing 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 and must include details of the **consumer's**:
- a) Needs and objectives including, where relevant:
    - i) the length of time for which the **consumer** wishes to hold a product,
    - ii) need for access to funds (including emergency funds),
    - iii) need for accumulation of funds.
  
  - b) Personal circumstances including, where relevant:
    - i) age,
    - ii) health,
    - iii) knowledge and experience of financial products,
    - iv) dependents,
    - v) employment status,
    - vi) known future changes to his/her circumstances.
  
  - c) Financial situation including, where relevant:
    - i) income,
    - ii) savings,
    - iii) financial products and other assets,
    - iv) debts and financial commitments.

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

The **regulated entity** is only required to seek the information set out at a) to d) above where it is relevant to the assessment of suitability to be carried out under this Chapter.

- 5.2 In the case of a standard Personal Retirement Savings Account (**PRSA**), where an employer has chosen a provider and the **regulated entity** makes a presentation to **employees**, the **regulated entity** must gather and record the following minimum relevant information namely, that the **consumer**:
  - a) is an **employee** of the firm;
  - b) has no other form of pension provisions; and
  - c) intends to select the **default investment strategy** of the provider.
- 5.3 A **regulated entity** must gather and maintain a **record** of details of any material changes to a **consumer's** circumstances prior to offering, recommending, arranging or providing a subsequent product or service to the **consumer**. Where there is no material change, this must be noted on a **consumer's records**.
- 5.4 Where a **consumer** refuses to provide information sought in compliance with Provisions 5.1 and 5.3, the **regulated entity** must inform the **consumer** that, as it does not have the relevant information necessary to assess suitability, it cannot offer the **consumer** the product or service sought.
- 5.5 A **regulated entity** must endeavour to have the **consumer** certify the accuracy of the information it has provided to the **regulated entity**.

### **Mortgages**

- 5.6 Prior to providing a mortgage to a **personal consumer**, a mortgage lender must either:
  - a) have had sight of all original supporting documentation evidencing the **personal consumer's** identity and ability to repay; or
  - b) receive from a **mortgage intermediary** a signed declaration that such **mortgage intermediary** has had sight of all original supporting documentation evidencing the **personal consumer's** identity and ability to repay.

A declaration signed by the **personal consumer**, (or his or her representative), certifying income and/or ability to repay is not sufficient evidence for these purposes.

- 5.7 A **regulated entity** must assess the reasonableness of the information contained in the documentation submitted by a **personal consumer** in

support of a mortgage application and take all reasonable steps to ensure that the documentation submitted is legitimate and authentic.

- 5.8 A **regulated entity** must ensure that it has had sight of an original valuation report for the property which will act as security for the mortgage, prior to providing a mortgage.

## SUITABILITY

### Assessing affordability of credit

- 5.9 Prior to offering, recommending, arranging or providing a credit product to a **personal consumer**, a lender must carry out an assessment of affordability to ascertain the **personal consumer's** likely ability to repay the debt, over the duration of the agreement. An affordability assessment must include consideration of:

- a) the information gathered under parts b) and c) of Provision 5.1; and
- b) in the case of all mortgage products provided to **personal consumers**, the results of a test on the **personal consumer's** ability to repay the instalments, over the duration of the agreement, on the basis of a 2% interest rate increase, at a minimum, above the interest rate offered to the **personal consumer**. This test does not apply to mortgages where the interest rate is fixed for a period of five years or more.

Where the lender offers an **introductory interest rate**, it must carry out the 2% interest rate test on the variable interest rate to be applied after the introductory period has ended if known at the time of the offer of the **introductory interest rate**, or on the current variable interest rate, if the variable interest rate to be applied after the introductory period has ended is not yet known.

The lender must notify the relevant intermediary, if any, of the results of the assessment of affordability.

- 5.10 A **mortgage intermediary** must submit the information obtained from a **personal consumer** under Provisions 5.1 and 5.3 to the relevant lender to enable the affordability assessment(s) to be carried out.
- 5.11 In the case of an interest only mortgage, in addition to Provision 5.9 b), the lender must carry out an assessment to ascertain the **personal consumer's** likely ability to repay the principal at the end of the mortgage term.
- 5.12 In the case of a mortgage provided on an interest-only basis for a duration less than the term of the mortgage, in addition to Provision 5.9 b), a lender

must carry out an assessment to ascertain the **personal consumer's** likely ability to repay the capital and interest instalment amount that will apply at the end of the interest-only period. This assessment must be on the basis of a 2% interest rate increase, at a minimum, above the interest rate that will apply at the end of the interest-only period if known at the time of the offer of the interest-only mortgage, or on the current variable interest rate if the variable interest rate to be applied after the ending of the interest-only period is not yet known.

- 5.13 A **regulated entity** must take account of the result of the affordability assessment when deciding whether a **personal consumer** is likely to be able to repay the debt for that amount and duration in the manner required under the credit agreement.
- 5.14 When offering or recommending a variable interest rate mortgage, a **regulated entity** must provide a **personal consumer**, on paper or on another **durable medium**, with figures reflecting the revised instalment amount following a 2% interest rate increase above the variable interest rate offered.

Where the lender is offering an **introductory interest rate**, the revised instalment amounts must reflect an increase of 2% on the variable interest rate to be applied after the introductory period has ended if known at the time of the offer of the **introductory interest rate** or the current variable interest rate, if the variable interest rate to be applied after the introductory period has ended is not yet known.

- 5.15 A lender must carry out a further affordability and suitability assessment prior to advancing additional credit to a **personal consumer**, whether by way of a top-up on an existing loan or by a new agreement to provide credit.

### Assessing suitability

- 5.16 When assessing the suitability of a product or service for a **consumer**, the **regulated entity** must, at a minimum, consider and document whether, on the basis of the information gathered under Provision 5.1 and 5.3:
- a) the product or service meets that **consumer's** needs and objectives;
  - b) the **consumer**:
    - i) is likely to be able to meet the financial commitment associated with the product on an ongoing basis;
    - ii) is financially able to bear any risks attaching to the product or service;
  - c) in the case of credit products, a **personal consumer** has the ability to repay the debt in the manner required under the credit agreement, on the basis of the outcome of the assessment of affordability; and,
  - d) the product or service is consistent with the **consumer's** attitude to risk.

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

The following additional requirements apply:

- a) where a **regulated entity** offers a selection of product options to the **consumer**, the product options contained in the selection must represent the most suitable from the range available from the **regulated entity**; and
  - b) where a **regulated entity** recommends a product to a **consumer**, the recommended product must be the most suitable product for that **consumer**.
- 5.18 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 that, when taken together, are deemed to be excessive and/or detrimental to the **consumer's** best interests.

Where a **consumer** instructs a **regulated entity** to carry out an **investment product** transaction, or series of **investment product** transactions, with a frequency or in amounts that, 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 transaction(s) is/are excessive and/or detrimental to the **consumer's** best interests, if the **consumer** wishes to proceed with the transaction(s).

### Statement of suitability

- 5.19 Prior to providing or arranging a product or service, 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**; or
  - b) the reasons why the product options contained in a selection of product options offered to a **consumer** are considered to be the most suitable to that **consumer**; or
  - c) the reasons why a recommended product is considered to be the most suitable product for that **consumer**.

The reasons set out in the statement must reflect the information gathered under Provision 5.1 to assist the **consumer** in understanding how the product(s) or service(s) offered or recommended meets, where relevant, the **consumer's**:

- i) needs and objectives;
- ii) personal circumstances; and
- iii) financial situation.

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

- iv) how the risk profile of the product is aligned with the **consumer's** attitude to risk; and
- v) how the nature, extent and limitations of any guarantee attached to the product is aligned with the **consumer's** attitude to risk.

The **regulated entity** must sign the statement and provide a copy of this statement on paper or on another **durable medium**, dated on the day on which it is completed, to the **consumer** prior to providing or arranging a product or service, and retain a copy.

- 5.20 A **regulated entity** must include the following notice at the beginning of the statement of suitability:

**Important Notice – Statement of Suitability**  
**This is an important document which sets out the reasons why the product(s) or service(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.**

- 5.21 Where a **regulated entity** has provided an oral explanation to the **consumer** of the product(s) or service(s) offered or recommended, a **regulated entity** must include a **record** of such explanation in or with the statement of suitability.
- 5.22 In the case of travel, motor and home insurance provided to a **personal consumer**, the statement of suitability may be in a standard format.
- 5.23 In the case of insurance policies where immediate cover is required, a statement of suitability may be issued to the **consumer** immediately after the product has been provided.

#### **EXEMPTION FROM KNOWING THE CONSUMER AND SUITABILITY**

- 5.24 Provisions on Knowing the Consumer and Suitability do not apply where:
- a) the **consumer** has specified both the product and the **product producer** by name and has not received any assistance from the **regulated entity** in the choice of that product and/or **product producer**; or
  - b) the **regulated entity** has established that the **consumer** is seeking a term deposit of less than one year or a notice deposit account and has alerted the **consumer** to any restrictions on the account.

The above exemption in Provision 5.24 a) does not apply where a **personal consumer** is seeking:

- i) a credit amount above €75,000;
- ii) a mortgage;
- iii) a **home reversion agreement**.

In relation to 5.24 a) above, prior to providing an **investment product** to a **consumer**, a **regulated entity** must warn the **consumer**, on paper or on another **durable medium**, that the **regulated entity** does not have the information necessary to determine the suitability of that product for the **consumer**.



## CHAPTER 6

### CLARIFICATION OF SCOPE

#### Consumer Credit, Payment Services and Electronic Money

- a) Where **regulated entities** are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), only Provision 6.8 in this Chapter applies.
- b) Where **regulated entities** are providing **payment services** and/or issuing **electronic money**, the Provisions in this Chapter do not apply.

## POST-SALE INFORMATION REQUIREMENTS

### GENERAL REQUIREMENTS

- 6.1 Where a **regulated entity** makes a material change to its **terms of business**, it must provide each affected **consumer** with a revised **terms of business** as soon as possible.
- 6.2 A **regulated entity** must inform a **consumer** that he or she may request the statements referred to in Provisions 6.3, 6.5 and 6.16 to be provided on paper and, if requested by the **consumer**, the **regulated entity** must provide these statements on paper to the **consumer**.

### INFORMATION ABOUT PRODUCTS

#### Term and Notice Deposit Accounts

- 6.3 In relation to all term and notice deposit accounts with a balance in excess of €20, a **credit institution** must at least annually, provide to a **consumer**:
  - a) a statement of the account which includes, where applicable:
    - i) the opening balance;
    - ii) all additions;
    - iii) all withdrawals;
    - iv) all interest credited;
    - v) all **charges**;
    - vi) the closing balance;
    - vii) details of the interest rate(s) applied to the account during the period covered by the statement; and
    - viii) where tax is deducted from interest credited, information on the tax deducted or on how **consumers** may obtain a certificate detailing the tax paid.

- b) details of interest rates applied to other similar accounts available to the **consumer** from that **credit institution**; and
  - c) where the term of the account is less than one year, the **credit institution** must provide to a **consumer** a closing statement which contains this information.
- 6.4 A **credit institution** must ensure that at least 10 **business days** prior to the maturity of a fixed term deposit, it alerts the **consumer** about its impending maturity and the maturity date. This provision does not apply where the maturity date of the fixed term deposit is less than 30 days.

## Credit

- 6.5 In relation to loans, a **regulated entity** must, at least annually, provide to a **personal consumer** a statement of the account which includes:
- a) the opening balance;
  - b) all transactions;
  - c) all interest charged;
  - d) all **charges**;
  - e) the outstanding balance due; and
  - f) details of the interest rate(s) applied to the account during the period covered by the statement.
- 6.6 A **regulated entity** must notify affected **personal consumers** on paper or on another **durable medium** of any change in the interest rate on a loan. This notification must include:
- a) the date from which the new rate applies;
  - b) details of the old and new rate;
  - c) the revised repayment amount; and
  - d) an invitation for the **personal consumer** to contact the lender if he or she anticipates difficulties meeting the higher repayments.

In the case of a mortgage where a revised repayment arrangement has been put in place in accordance with the Code of Conduct for Mortgage Arrears, the notification must clearly indicate the revised repayment amount required in Part c) that applies to the revised repayment arrangement.

- 6.7 A **regulated entity** must provide the notification required under Provision 6.6 to a **personal consumer** at least 30 days in advance of any change in the interest rate, except in the following circumstances:
- a) in the case of a **tracker interest rate**, the **regulated entity** must provide the notification required under Provision 6.6 as soon as possible, and no later than 10 **business days** after the **regulated entity** becomes aware of a change in the underlying rate being tracked; or
  - b) for loans other than mortgage loans, where the following conditions are satisfied, the **regulated entity** does not need to provide the notification

required under Provision 6.6:

- i) the change in the interest rate is caused by a change in a reference rate which changes on a daily or weekly basis;
- ii) the new reference rate is made publicly available by appropriate means; and
- iii) information concerning the new reference rate is kept available on the premises of the **regulated entity**.

6.8 Where a **regulated entity** has advanced credit to a **personal consumer** subject to a guarantee, the **regulated entity** must notify the guarantor, on paper or on another **durable medium**, if the terms of the credit agreement change.

6.9 Where

- a) a **personal consumer** requests to change from an existing **tracker interest rate**; or
- b) a **regulated entity** offers a **personal consumer** the option to move from a **tracker interest rate** to an alternative rate on their existing loan; the lender must provide the **personal consumer** with the following information on paper or on another **durable medium**:
  - i) indicative comparisons of the cost of the monthly loan repayments at the **personal consumer's** current **tracker interest rate** and each of the alternative rate(s) being offered;
  - ii) an indicative comparison of the total cost of the loan if the **personal consumer** continues with the existing **tracker interest rate** and the total cost of the loan for each of the alternative rate(s) and terms being offered. Any assumptions used must be reasonable and justifiable and must be clearly stated; and
  - iii) details of the advantages and disadvantages for the **personal consumer** of the **tracker interest rate** compared to each of the other rate(s) being offered.

The following warning statement should also appear with the information above, in circumstances where a **personal consumer** will not be able to revert to a **tracker interest rate** if they move to an alternative rate:

**Warning: If you switch to an alternative interest rate, you will not be contractually entitled to go back onto a tracker interest rate in the future.**

This provision does not apply to a mortgage on a primary residence covered by the Code of Conduct for Mortgages Arrears which is in “arrears” or “pre-arrears” as defined in the Code of Conduct for Mortgage Arrears.

- 6.10 A **regulated entity** must allow the **personal consumer** at least one month to consider any change proposed under Provision 6.9 and advise the **personal consumer** of this entitlement.
- 6.11 Where a **personal consumer** waives the one month period provided for in Provision 6.10, a **regulated entity** must receive written confirmation from the **personal consumer**, prior to the proposed change, confirming that:
- a) the **personal consumer** has been provided with the information required under Provision 6.9; and
  - b) the **personal consumer** understands that he or she is waiving a one month period to consider this information.
- 6.12 Where a **regulated entity** offers an incentive to a **personal consumer** on an existing mortgage, the **regulated entity** must provide the **personal consumer**, on paper or on another **durable medium**, with the information needed to consider the incentive offered.

This information must:

- a) quantify the implications for the **personal consumer** of availing of the incentive including an indicative cost comparison of the total cost of the existing mortgage if they do not avail of the incentive and the total cost of the mortgage if they avail of the incentive;
- b) clearly set out the length of time during which the incentive will be available;
- c) clearly set out any assumptions used, which must be reasonable and justifiable;
- d) set out the advantages and disadvantages to the **personal consumer** of availing of the incentive;
- e) include other **key information** which the **personal consumer** should have available to them when considering the incentive; and
- f) include a statement that the **personal consumer** may wish to seek independent advice prior to availing of the incentive.

### **Insurance products**

- 6.13 An **insurance undertaking** must issue policy documents, within five **business days** of all relevant information being provided by the **consumer** and cover being underwritten, to any **consumer** to whom it has sold its insurance policy directly or to any **insurance intermediary** that has sold its insurance policy. An **insurance intermediary** must, within five **business days** of receiving the policy documents from an **insurance undertaking**, provide them to the **consumer**.

This provision also applies in the case where the **consumer** renews an existing policy.

- 6.14 When a **consumer** notifies a **regulated entity** of the intention to use an insured vehicle in another **Member State**, the **regulated entity** must provide the **consumer** with contact details of the **regulated entity's** appointed claims representative for that **Member State**.
- 6.15 Where a secondary market exists for a life assurance policy, and when the holder of such a life assurance policy is a **consumer** and seeks information on its early surrender, the **regulated entity** must notify to the **consumer**, 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.

### **Investment products**

- 6.16 For each **investment product** held with it, a **regulated entity** must, at least annually, provide to a **consumer** a statement in respect of the previous 12 month period, which includes, where applicable:
- a) the opening balance or value;
  - b) all additions including additional amounts invested;
  - c) all withdrawals;
  - d) the total sum invested;
  - e) the number of units held;
  - f) all interest;
  - g) all **charges** and deductions affecting the **investment product** including any **charges** associated with the management, sale, set up and ongoing administration of the **investment product**; and
  - h) the closing balance or statement of the value of the investment.
- 6.17 A **product producer** of a **tracker bond** must produce and issue a document, within five **business days** of the start of the **tracker bond**, to a **consumer** to whom it has sold its **tracker bond** or to an **intermediary** that has sold its **tracker bond** setting out:
- a) the name(s) and address(es) of the **consumer(s)**;
  - b) the date of investment;
  - c) the amount of the investment;
  - d) the date or dates on which the 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 Provision 4.50;
  - f) the date the investment will mature; and
  - g) if a **consumer** has the right to cancel the **tracker bond** within a certain period of time from the sale, that the cooling off period of [*Insert number*] days starts from [*insert date: the commencement of the investment date/date of receipt of policy document*].

An **intermediary** must, within five **business days** of receiving this document, provide it to the **consumer(s)** who purchased the **tracker bond**.

## INFORMATION ABOUT CHARGES

- 6.18 A **regulated entity** must:
- a) notify affected **consumers** of increases in **charges**, specifying the old and new **charge**, or the introduction of any new **charges**, at least 30 days prior to the change taking effect; and
  - b) where **charges** are accumulated and applied periodically to accounts, notify **consumers** at least 10 **business days** prior to deduction of **charges** and give each **consumer** a breakdown of such **charges**, except where **charges** total an amount of €10 or less.
- 6.19 A **regulated entity** must notify, on paper or on another **durable medium**, **consumers** who have been charged penalty **charges**, including surcharge interest, of the methods by which these penalties may be mitigated.

## CHAPTER 7

### CLARIFICATION OF SCOPE

#### Consumer Credit, Payment Services, Electronic Money and Health Insurance

- a) Where **regulated entities** are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), the Provisions in this Chapter do not apply.
- b) Where **regulated entities** are providing **payment services** and/or issuing **electronic money**, the Provisions in this Chapter do not apply.
- c) Where a method of direct settlement is used by health insurers, Provisions 7.6 to 7.21 do not apply.

## REBATES AND CLAIMS PROCESSING

### PREMIUM REBATES

- 7.1 A **regulated entity** must issue a premium rebate to a **consumer** within five **business days** of the rebate becoming due where the value of the premium rebate is more than €10.
- a) Where the **regulated entity** is an **insurance undertaking**, the premium rebate becomes due as soon as the **insurance undertaking** becomes aware of the circumstances giving rise to the premium rebate.
  - b) Where the **regulated entity** is an **insurance intermediary**, the premium rebate becomes due when:
    - i) the **insurance intermediary** has received the premium rebate from the relevant **insurance undertaking**; or
    - ii) the **insurance undertaking** has notified the **insurance intermediary** that such rebate is due and permits the **insurance intermediary** to issue the rebate from the funds held by the **insurance intermediary** which are due to the **insurance undertaking**.
- 7.2 Where a premium rebate is due to a **consumer**, and the value of the rebate is €10 or less the **regulated entity** must issue the premium rebate to the **consumer** within five **business days** of the rebate becoming due, or, alternatively, the **regulated entity** may offer the **consumer** the choice of:
- a) receiving the premium rebate; or
  - b) receiving a reduction from a renewal premium or other premium currently due to that **regulated entity**; or
  - c) the **regulated entity** making a donation of the rebate amount to a registered charity.

In respect of options b) and c) above, the **regulated entity** must seek the **consumer's** consent on each occasion and must maintain a **record** of the **consumer's** decision.

Where the **consumer** has agreed under option c) that a charitable donation can be made, the **regulated entity** must document the donation and retain a receipt from the relevant charity.

- 7.3 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**.
- 7.4 An **insurance intermediary** must transfer the rebate amount to the **consumer** in full. Any **charges** that the **consumer** may owe the **insurance intermediary** must not be recovered from the rebate amount due to the **consumer** without the prior written agreement of the **consumer** in each instance and a **record** of such agreement must be maintained by the **insurance intermediary**. Where the **consumer** has agreed to the deduction of any **charges** these must be clearly outlined on the accompanying notification of the rebate to the **consumer**.
- 7.5 Where an **insurance intermediary** has issued a rebate cheque to a **consumer**, and the rebate cheque has not been presented for payment within six months from the date of issue, the **insurance intermediary** must return the rebate to the **insurance undertaking**. Should the **consumer** seek the rebate in the future, it must be issued by the **insurance undertaking** or by the **insurance intermediary** in accordance with Provisions 7.1 or 7.2 above.

## CLAIMS PROCESSING

- 7.6 A **regulated entity** must endeavour to verify the validity of a claim received from a **claimant** prior to making a decision on its outcome.
- 7.7 A **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) where an accident has occurred and a personal injury has been suffered, a copy of the **Personal Injuries Assessment Board** Claimant Information Leaflet is issued to the **claimant** as soon as the **regulated entity** is notified of the claim;
  - b) where the potential **claimant** has been involved in a motor accident with an uninsured or unidentified vehicle or with a foreign registered vehicle, the **regulated entity** must advise the potential **claimant** to contact the



- Motor Insurance Bureau of Ireland (MIBI);
- c) where a claim form is required to be completed, it is issued to the **claimant** within five **business days** of receiving notice of a claim;
  - d) the **regulated entity** must offer to assist in the process of making a claim, including, where relevant, alerting the **claimant** to policy terms and conditions that may be of benefit to the **claimant**;
  - e) a **record** must be maintained of all conversations with the **claimant** in relation to the claim; and
  - f) the **regulated entity** must, while the claim is ongoing, provide the **claimant** with updates of any developments affecting the outcome of the claim within ten **business days** of the development. When additional documentation or clarification is required from the **claimant**, the **claimant** must be advised of this as soon as required and, if necessary, issued with a reminder on paper or on another **durable medium**.
- 7.8 An **insurance intermediary** who assists a **consumer** in making a claim must on receipt of the completed claims documentation, transmit such documentation to the relevant **regulated entity** within one **business day**.
- 7.9 Where a **regulated entity** engages the services of a loss adjustor and/or expert appraiser it must notify the **claimant** of the contact details of the loss adjustor and/or expert appraiser it has appointed to assist in the processing of the claim and that such loss adjustor and/or expert appraiser acts in the interest of the **regulated entity** and the **regulated entity** must maintain a **record** of this notification.
- 7.10 In the case of motor insurance and property insurance claims, and other claims where relevant, the **regulated entity** must notify the **claimant** that the **claimant** may appoint a loss assessor to act in their interests but that any such appointment will be at the **claimant's** expense and the **regulated entity** must maintain a **record** of this notification.
- 7.11 At the **claimant's** request and with the **claimant's** written consent, a **regulated entity** must engage with a third party which a **claimant** has appointed to act on his or her behalf in relation to a claim.
- 7.12 A **regulated entity** must be available to discuss all aspects of the claim with the **claimant**, including assessment of liability and damages, during normal office hours, or outside of these hours if agreed with the **claimant**.
- 7.13 Where an **insurance undertaking** appoints a third party to undertake restitution work in respect of a claim, the **insurance undertaking** must provide the **claimant** in advance and on paper or on another **durable medium**, with details of the scope of the work that has been approved and the cost.

- 7.14 Where a method of direct settlement has been used, a **regulated entity**:
- a) must not ask the **claimant** to certify any restitution work carried out by a third party appointed by the **insurance undertaking**; and
  - b) must certify, on paper or on another **durable medium**, to the **claimant** that the restitution work carried out by the third party appointed by the **insurance undertaking** has been carried out to restore the **claimant's** property at least to the standard that existed prior to the insured event.
- 7.15 A **regulated entity** must ensure that any claim settlement offer made to a **claimant** is fair, taking into account all relevant factors, and represents the **regulated entity's** best estimate of the **claimant's** reasonable entitlement under the policy.
- 7.16 A **regulated entity** must, within ten **business days** of making a decision in respect of a claim, inform the **claimant**, on paper or on another **durable medium**, of the outcome of the investigation explaining the terms of any offer of settlement. When making an offer of settlement, the **regulated entity** must ensure that the following conditions have been satisfied:
- a) the insured event has been proven, or accepted by the **regulated entity**;
  - b) all specified documentation has been received by the **regulated entity** from the **claimant**; and
  - c) the entitlement of the **claimant** to receive payment under the policy has been established.
- 7.17 A **regulated entity** must allow a **claimant** at least ten **business days** to accept or reject the offer. Where the **claimant** waives this right and accepts the settlement offer within this timeframe, the **regulated entity** must retain a **record** of this decision.

This provision does not apply in the case of surrender or encashment of life assurance investment policies or to claims on life assurance **protection policies** where the settlement amount is set out in the policy terms and conditions and/or the policy schedule.

- 7.18 Where a **claimant** has agreed to accept the offer made by the **regulated entity** to settle a claim, the **regulated entity** must discharge the claim within ten **business days** from the date the **claimant** has agreed to accept the offer, once the appropriate amount has been agreed subject to finalisation of legal costs, where applicable.

Where a method of direct settlement is being applied, the **regulated entity** must discharge the claim without delay.

- 7.19 If the **regulated entity** decides to decline the claim, the reasons for that decision must be provided to the **claimant** on paper or on another **durable medium**.

- 7.20 A **regulated entity** must provide a **claimant** with written details of any internal appeals mechanisms available to the **claimant**.
- 7.21 Where the policyholder who is a **consumer** is not the beneficiary of the settlement the policyholder must be advised, on paper or on another **durable medium**, by the **regulated entity**, at the time that settlement is made, of the final outcome of the claim including the details of the settlement. Where applicable, the policyholder must be informed that the settlement of the claim will affect future insurance contracts of that type.

## CHAPTER 8

### CLARIFICATION OF SCOPE

- a) The provisions in this Chapter only apply in respect of loans (including credit cards) held by a **personal consumer**.
- b) The provisions in this Chapter do not apply to the extent that the loan is a mortgage loan to which the Code of Conduct for Mortgage Arrears applies.

## ARREARS HANDLING

### GENERAL

- 8.1 A **regulated entity** must have in place written procedures for the handling of **arrears**.
- 8.2 A **regulated entity** must make the following information available for **personal consumers**, including on a dedicated section of any website it operates:
  - a) general information to encourage a **personal consumer** to deal with **arrears** and stating the benefits of dealing with **arrears**;
  - b) relevant contact details of the **regulated entity** for dealing with **arrears**;
  - c) details on the **charges** that may be imposed on **personal consumers** in **arrears**; and
  - d) a link to the Money Advice and Budgeting Service (MABS) website.

The information on the website must be easily accessible from a prominent link on the homepage.

- 8.3 Where an account is in **arrears**, a **regulated entity** must seek to agree an approach (whether with a **personal consumer** or through a third party nominated by the **personal consumer** in accordance with Provision 8.5) that will assist the **personal consumer** in resolving the **arrears**.
- 8.4 Where an account remains in **arrears** ten **business days** after the **arrears** first arose, a **regulated entity** must immediately communicate clearly with the **personal consumer** to establish in the first instance why the **arrears** have arisen.
- 8.5 At the **personal consumer's** request and with the **personal consumer's** written consent, a **regulated entity** must liaise with a third party nominated by the **personal consumer** to act on his or her behalf in relation to an **arrears**

situation. This does not prevent the **regulated entity** from contacting the **personal consumer** directly in relation to other matters.

## PROVISION OF INFORMATION

- 8.6 Where an account remains in **arrears** 31 calendar days after the **arrears** first arose, a **regulated entity** must within three **business days** inform the **personal consumer** and any guarantor of the loan, on paper or on another **durable medium**, of the status of the account. This information must include the following:
- a) the date the account fell into **arrears**;
  - b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts);
  - c) the amount of the **arrears** to date;
  - d) the interest rate applicable to the **arrears**;
  - e) details of any **charges** in relation to the **arrears** that may be applied;
  - f) the importance of the **personal consumer** engaging with the **regulated entity** in order to address the **arrears**;
  - g) relevant contact points;
  - h) the consequences of continued non-payment, including where relevant, sharing of data relating to the **consumer's arrears** with the Irish Credit Bureau or any other credit reference agency;
  - i) if relevant, any impact of the non-payment on other accounts held by the **personal consumer** with that **regulated entity** including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and
  - j) a statement that the **personal consumer** may wish to seek assistance from MABS and contact details for the MABS National Helpline and the link to the MABS website.
- 8.7 Where a **personal consumer** has purchased payment protection insurance (PPI) from the **regulated entity** in relation to the loan account or credit card account which subsequently went into **arrears**, the communication required under Provision 8.6 must also advise the **personal consumer** of the following:
- a) that the **personal consumer** has purchased PPI;
  - b) the **personal consumer's** policy number; and
  - c) that the **regulated entity** will provide the **personal consumer** with a copy of the policy on request.
- 8.8 Where the **arrears** persist, an updated version of the information required in Provision 8.6 must be provided to the **personal consumer**, on paper or on another **durable medium**, every three months.
- 8.9 In respect of a mortgage, where a third full or partial repayment is missed and remains outstanding and an alternative repayment arrangement has not

been put in place, a **regulated entity** must notify the **personal consumer**, on paper or on another **durable medium**, of the following:

- a) the potential for legal proceedings and proceedings for repossession of the property, together with an estimate of the costs to the **personal consumer** of such proceedings;
- b) the importance of seeking independent advice, for example from MABS; and
- c) that, irrespective of how the property is repossessed and disposed of, the **personal consumer** will remain liable for the outstanding debt, including accrued interest, **charges**, legal, selling and other related costs, if this is the case.

8.10 A **regulated entity** must inform the **personal consumer**, on paper or on another **durable medium**, when it intends to appoint a third party to engage with the **personal consumer** in relation to **arrears** and must explain the role of the third party.

#### REVISED REPAYMENT ARRANGEMENTS

8.11 Where a **regulated entity** reaches an agreement on a revised repayment arrangement with a **personal consumer**, the **regulated entity** must, within five **business days**, provide the **personal consumer**, on paper or on another **durable medium**, with a clear explanation of the revised repayment arrangement and clarification on what data relating to the **consumer's arrears** will be shared with the Irish Credit Bureau or any other relevant credit reference agency.

8.12 Where **arrears** arise on an account and where a **personal consumer** makes an offer of a revised repayment arrangement that is rejected by the **regulated entity**, the **regulated entity** must formally document its reasons for rejecting the offer and communicate these to the **personal consumer**, on paper or on another **durable medium**.

#### COMMUNICATIONS

8.13 A **regulated entity** must ensure that the level of contact and communications from the **regulated entity**, or any third party acting on its behalf, with a **personal consumer** in **arrears**, is proportionate and not excessive.

8.14 Each calendar month, a **regulated entity**, and/or any third party acting on its behalf, must not initiate more than three unsolicited communications, by whatever means, to a **personal consumer** in respect of **arrears**.

The three unsolicited communications include any communication where contact is attempted but not made with the *personal consumer* but do not include:

- a) any communication that has been requested by, or agreed in advance with, the *personal consumer*; and
- b) any communication to the *personal consumer* the sole purpose of which is to comply with the requirements of this Code or other regulatory requirements.

## CHAPTER 9

### CLARIFICATION OF SCOPE

#### Consumer Credit, Payment Services and Electronic Money

- a) Where **regulated entities** are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), the Provisions in this Chapter do not apply.
- b) Where **regulated entities** are providing **payment services** and/or issuing **electronic money**, only Provisions 9.1 to 9.18, 9.30 and 9.31 apply.

## ADVERTISING

### GENERAL REQUIREMENTS

- 9.1 A **regulated entity** must include a regulatory disclosure statement, which meets the requirements set out in Provision 4.10, in all **advertisements**.
- 9.2 A **regulated entity** must ensure that:
  - a) the design, presentation and content of an **advertisement** is clear, fair, accurate and not misleading;
  - b) an **advertisement** does not seek to influence a **consumer's** attitude to the **advertised product or service** or the **regulated entity** either by ambiguity, exaggeration or omission; and
  - c) the nature and type of the **advertised product or service** is clear and not disguised in any way.
- 9.3 Without limiting the generality of Provision 9.2, a **regulated entity** must ensure that an **advertisement** is not misleading in particular 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**.



- 9.4 A **regulated entity** must ensure when publishing an **advertisement** that its name is clearly shown in all **advertisements**.
- 9.5 A **regulated entity** must ensure that an **advertisement** is designed and presented so that any **consumer** can reasonably be expected to know immediately that it is an **advertisement**.
- 9.6 A **regulated entity** must ensure that:
- a) **key information**, in relation to the **advertised product or service**, is prominent and is not obscured or disguised in any way by the content, design or format of the **advertisement**; and
  - b) small print or footnotes are only used to supplement or elaborate on the **key information** in the main body of the **advertisement** and must be of sufficient size and prominence to be clearly legible.
- 9.7 A **regulated entity** must ensure that any qualifying criteria in relation to:
- a) obtaining a minimum price for the **advertised product or service**; or
  - b) benefiting from potential maximum savings relating to the **advertised product or service**
- is included in the main body of the **advertisement**.
- 9.8 A **regulated entity** must ensure that warning statements required by this Chapter:
- a) meet the criteria specified in Provision 3.9; and
  - b) appear simultaneously with the benefits of the **advertised product or service**.
- In the case of non-print media, it is sufficient that the warning statements are outlined at the end of the **advertisement**.
- 9.9 It is not necessary for a **regulated entity** to display the warning statements required by this Chapter if the **advertisement** does not refer to the benefits of a product or service but only names the product or service and/or invites a **consumer** to discuss the product or service in more detail with the **regulated entity**.
- 9.10 A **regulated entity** must ensure that an **advertisement** that uses promotional or **introductory interest rates** clearly states the expiry date of that interest rate and provides an indication of the rate that will apply thereafter.
- 9.11 A **regulated entity** must ensure that any assumptions, on which a statement, promise or forecast contained in an **advertisement** is based, are clearly stated, reasonable and up to date.
- 9.12 A **regulated entity** must ensure that an **advertisement** that promotes more than one product sets out clearly the **key information** relating to each product in such a way that a **consumer** can distinguish between the products.

- 9.13 A **regulated entity** must ensure that any recommendations or commendations quoted are complete, fair, accurate and not misleading at the time of issue, and relevant to the **advertised product or service**.
- 9.14 A **regulated entity** must ensure that a recommendation or commendation may not be used in an **advertisement** without the consent of the author. 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.
- 9.15 Where an intermediary is tied to a single provider for a particular product or service, the intermediary must disclose this fact in all **advertisements** for the **advertised product or service**.
- 9.16 A **regulated entity** must ensure that comparisons or contrasts are based either on facts verified by the **regulated entity**, or on reasonable assumptions stated within the **advertisement**. They should be presented in a clear, fair and balanced way and not omit anything material to the comparison or contrast. Material differences between the products must be set out clearly.
- 9.17 A **regulated entity** must ensure that an **advertisement** which contains any initialisms or acronyms (for example AER, EAR, CAR, APR etc.) also states what the letters stand for.
- 9.18 A **regulated entity** must ensure that an **advertisement** only describes a product or service as free where the product or service in its entirety is available free of **charge** to the **consumer**.

#### **CREDIT: ADVERTISING TO PERSONAL CONSUMERS**

- 9.19 A **regulated entity** must ensure that an **advertisement** for a residential mortgage contains the following warning statement:

**Warning: If you do not keep up your repayments you may lose your home.**

- 9.20 A **regulated entity** must ensure that where an **advertisement** includes an annual percentage rate, the **advertisement** must clearly state if the interest rate is fixed or variable. In the case of a fixed interest rate, the term of the fixed interest rate must be displayed and an indication must be given of the rate that will apply thereafter.
- 9.21 A **regulated entity** must ensure that an **advertisement** for a term loan, if displaying the annual percentage rate and the term, also displays the total

cost of credit by means of an example. This provision does not apply to the provision of loans for mortgage credit.

- 9.22 A **regulated entity** must ensure that an **advertisement** for a fixed-rate loan contains the following warning statement:

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

- 9.23 A **regulated entity** must ensure that an **advertisement** for personal lending contains the following warning statement:

**Warning: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.**

- 9.24 A **regulated entity** must ensure that **advertisements** for the consolidation of two or more debts, where sample figures are offered in the **advertisement**, indicate the difference between the total cost of credit of the consolidated credit facilities and the total cost of credit of the individual credit facilities that are the subject of the consolidation.

- 9.25 A **regulated entity** must ensure that an **advertisement** for a debt consolidation mortgage contains the following warning statement:

**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.**

- 9.26 A **regulated entity** must ensure that an **advertisement** for a variable-rate mortgage contains the following warning statement:

**Warning: The cost of your monthly repayments may increase.**

- 9.27 A **regulated entity** must ensure that an **advertisement** for an interest-only mortgage contains the following warning statement:

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

- 9.28 A **regulated entity** must ensure that an **advertisement** for a **lifetime mortgage** contains the following warning statements:

**Warning: While no interest is payable during the period of the mortgage, the interest is compounded on an annual basis and is payable in full in circumstances such as death, permanent vacation of or sale of the property.**

and;

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

- 9.29 A **regulated entity** must ensure that an **advertisement** for a **home reversion agreement** contains the following warning statements:

**Warning: The money you receive may be much less than the actual market value of the share in your home.**

and;

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

## SAVINGS

- 9.30 A **regulated entity** must ensure that where an interest rate for a savings or deposit account is displayed in an **advertisement**, it clearly states the following:

- a) whether the interest rate quoted is fixed or variable, and if fixed, for what period and, where relevant, an indication of the rate that will apply thereafter;
- b) the relevant interest rate for each term quoted together with the annual equivalent rate, and each rate must be of equal size and 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.

- 9.31 A **regulated entity** must ensure that:

- a) the annual equivalent rate as contained in an **advertisement** is not misleading;
- b) any assumptions used in the calculation of the annual equivalent rate are reasonable, up to date and clearly stated; and
- c) a **record** of the manner of the calculation of the annual equivalent rate is maintained.

## INVESTMENT PRODUCTS

- 9.32 A **regulated entity** must ensure that an **advertisement** for a product where the **consumer** may not get back 100% of the initial capital invested contains the following warning statement:

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

- 9.33 A **regulated entity** must ensure that an **advertisement** for a product where the promised return of capital is only applicable on a specific date, contains the following warning statement:

**Warning: If you cash in your investment before [specify the particular date] you may lose some or all of the money you invest.**

- 9.34 A **regulated entity** must ensure that an **advertisement** for a product where there is no access to funds for the term of the product contains the following warning statement:

**Warning: If you invest in this product you will not have any access to your money for [insert time required before the product matures].**

- 9.35 Where a **regulated entity** gives information about the past performance of the **advertised product or service** or of the **regulated entity**, this information 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;
- 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.

- 9.36 A **regulated entity** must ensure that an **advertisement** which contains information on past performance contains the following warning statement:

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

- 9.37 Where a **regulated entity** has a position or holding in the product or service that is the subject of an **advertisement** by that **regulated entity**, it must include a statement to this effect in the **advertisement**.
- 9.38 Where a **regulated entity** gives information in an **advertisement** about the simulated performance of the **advertised product or service** or of a **regulated entity**, this information must:
- be based on a simulated performance that is relevant to the performance of the **advertised product or service** or of the **regulated entity**;
  - 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**;
  - state the source; and
  - indicate whether, and to what extent, transaction costs, interest and taxation have been taken into account.
- 9.39 A **regulated entity** must ensure that an **advertisement** which contains illustrations or information on simulated performance must also contain the following warning statement:

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

- 9.40 A **regulated entity** must ensure that an **advertisement** must not describe a product as guaranteed or partially guaranteed unless:
- 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;
  - the regulated entity** has made, and can demonstrate that it has made, an assessment of the value of the guarantee;
  - it clearly states the level, nature and extent of limitations of the guarantee and the name of the guarantor; and
  - where it is the case, the **advertisement** must state that the guarantee is from a **connected party** of the **regulated entity**.
- 9.41 A **regulated entity** must ensure that where an **advertisement** contains a reference to the impact of taxation, it must:
- state the assumed rate of taxation;
  - 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.

9.42 A **regulated entity** must ensure that where the **advertised product or service** can fluctuate in price or value, an **advertisement** contains the following warning statement:

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

9.43 A **regulated entity** must ensure that where the return on an **advertised product or service** is not set until a particular date (for example, the maturity date of the **advertised product or service**), this is clearly stated.

9.44 A **regulated entity** must ensure that where a product that is 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** contains the following warning statement:

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

9.45 Where a product that is 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 the withdrawal upon such a product is clearly explained in the **advertisement**.

9.46 A **regulated entity** must ensure that 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** contains the following warning statement:

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

- 9.47 A **regulated entity** must ensure that an **advertisement** for a product, which is not readily realisable, states 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.
- 9.48 A **regulated entity** must ensure that an **advertisement** for a product that cannot be encashed prior to maturity, or which incurs an early redemption **charge** if encashed prior to maturity, clearly states that this is the case.
- 9.49 A **regulated entity** must ensure that an **advertisement** for a product subject to front-end loading states that:
- a) deductions for **charges** and expenses are not made uniformly throughout the life of the product, but are loaded onto the early period;
  - b) 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 full amount they invested.
- 9.50 Where a **regulated entity** advertises an interest rate relating to a proportion of the **tracker bond** to be placed on deposit, the **advertisement** must also clearly state the following:
- a) whether the rate quoted is fixed or variable, and if fixed, for what period and, where relevant, an indication of the rate that will apply thereafter;
  - b) the relevant **compound annual rate**, over the full term of the **tracker bond**, applicable to the proportion of the **tracker bond** to be placed on deposit; and
  - c) whether any tax is payable on the interest earned.

Each rate provided to a **consumer** under this provision must be of equal font size and prominence.

- 9.51 Where a **regulated entity** advertises a projected return on investment for a **tracker bond**, the **regulated entity** must ensure that the value of the projected return of that **tracker bond** is expressed and shown as prominently as the equivalent **compound annual rate**.
- 9.52 Where a **regulated entity** advertises a projected return on investment for a **tracker bond**, where there are parts of that **tracker bond** invested separately, the **regulated entity** must ensure that the value of the return on the amount invested in each of the component parts of that **tracker bond** over the full term of the **tracker bond** is expressed and shown as prominently as the equivalent **compound annual rate**.



## CHAPTER 10

### CLARIFICATION OF SCOPE

#### Code of Conduct on Mortgage Arrears

Provisions 10.7 to 10.12 do not apply to the extent that the loan is a mortgage loan to which the Code of Conduct for Mortgage Arrears applies and the complaint is in relation to arrears (as defined in the Code of Conduct for Mortgage Arrears) or pre-arrears (as defined in the Code of Conduct for Mortgage Arrears).

## ERRORS AND COMPLAINTS RESOLUTION

### ERRORS

- 10.1 A **regulated entity** must have written procedures in place for the effective handling of errors which affect **consumers**. At a minimum, these procedures must provide for the following:
- the identification of the cause of the error;
  - the identification of all affected **consumers**;
  - the appropriate analysis of the patterns of the errors, including investigation as to whether or not it was an isolated error;
  - proper control of the correction process; and
  - escalation of errors to compliance/risk functions and senior management.
- 10.2 A **regulated entity** must resolve all errors speedily and no later than six months after the date the error was first discovered, including:
- correcting any systems failures;
  - ensuring effective controls are implemented to prevent any recurrence of the identified error;
  - effecting a refund (with appropriate interest) to all **consumers** who have been affected by the error, where possible; and
  - notifying all affected **consumers**, both current and former, in a timely manner, of any error that has impacted or may impact negatively on the cost of the service, or the value of the product, provided, where possible.
- 10.3 Where an error which affects **consumers** has not been fully resolved (as outlined in Provision 10.2) within 40 **business days** of the date the error was first discovered, a **regulated entity** must inform the **Central Bank**, on paper or on another **durable medium**, within five **business days** of that deadline.

- 10.4 A **regulated entity** must not benefit from any balance arising out of a refund, which cannot be repaid, in respect of an error.
- 10.5 A **regulated entity** must maintain a log of all errors which affect **consumers**. This log must contain:
- a) details of the error;
  - b) the date the error was discovered;
  - c) an explanation of how the error was discovered;
  - d) the period over which the error occurred;
  - e) the number of **consumers** affected;
  - f) the monetary amounts involved;
  - g) the status of the error;
  - h) the date the error was resolved;
  - i) the number of **consumers** refunded; and
  - j) the total amount refunded.
- 10.6 A **regulated entity** must maintain a **record** of all steps taken to resolve an error which affects **consumers**, including details of the steps taken where:
- a) any affected **consumers** were dissatisfied with the outcome;
  - b) there were difficulties contacting affected **consumers**; and
  - c) a refund could not be repaid.

## COMPLAINTS RESOLUTION

- 10.7 A **regulated entity** must seek to resolve any **complaints** with **consumers**.
- 10.8 When a **regulated entity** receives an oral **complaint**, it must offer the **consumer** the opportunity to have this handled in accordance with the **regulated entity's complaints** process.
- 10.9 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 five **business days**, provided however that a **record** of this fact is maintained. At a minimum this procedure must provide that:
- a) the **regulated entity** must acknowledge each **complaint** on paper or on another **durable medium** within five **business days** of the **complaint** being received;
  - b) the **regulated entity** must 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 progressed any further;
  - c) the **regulated entity** must provide the complainant with a regular update, on paper or on another **durable medium**, on the progress of the investigation of the **complaint** at intervals of not greater than 20 **business days**, starting from the date on which the **complaint** was made;

- d) the **regulated entity** must 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** must inform the complainant of the anticipated timeframe within which the **regulated entity** hopes to resolve the **complaint** and must inform the **consumer** that they can refer the matter to the relevant Ombudsman, and must provide the **consumer** with the contact details of such Ombudsman; and
- e) within five **business days** of the completion of the investigation, the **regulated entity** must advise the **consumer** on paper or on another **durable medium** of:
  - i) the outcome of the investigation;
  - ii) where applicable, the terms of any offer or settlement being made;
  - iii) that the **consumer** can refer the matter to the relevant Ombudsman, and
  - iv) the contact details of such Ombudsman.

10.10 A **regulated entity** must maintain an up-to-date log of all **complaints** from **consumers** subject to the **complaints** procedure. This log must contain:

- a) details of each **complaint**;
- b) the date the **complaint** was received;
- c) a summary of the **regulated entity's** response(s) including dates;
- d) details of any other relevant correspondence or **records**;
- e) the action taken to resolve each **complaint**;
- f) the date the **complaint** was resolved; and
- g) where relevant, the current status of the **complaint** which has been referred to the relevant Ombudsman.

10.11 A **regulated entity** must maintain up to date and comprehensive **records** for each **complaint** received from a **consumer**.

10.12 A **regulated entity** must undertake an appropriate analysis of the patterns of **complaints** from **consumers** on a regular basis including investigating whether **complaints** indicate an isolated issue or a more widespread issue for **consumers**. This analysis of **consumer complaints** must be escalated to the **regulated entity's** compliance/risk function and senior management.

## CHAPTER 11

### CLARIFICATION OF SCOPE

#### Payment Services and Electronic Money

Where **regulated entities** are providing **payment services** and/or issuing **electronic money**, only Provisions 11.5 to 11.10 apply.

## RECORDS AND COMPLIANCE

### RECORDS

- 11.1 A **regulated entity** must ensure that all instructions from or on behalf of a **consumer**, including the date of both the receipt and transmission of the instruction, are recorded.
- 11.2 A **regulated entity** must ensure that any decision in the exercise of its discretion on behalf of a **consumer** with respect to a product is recorded.
- 11.3 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.
- 11.4 A **regulated entity** must maintain a list of its **customers** who are **consumers** as defined by this Code.
- 11.5 A **regulated entity** must maintain up-to-date **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 and documentation concerning the **consumer**.
- 11.6 A **regulated entity** must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or

completed. A **regulated entity** must retain all other **records** for six years from the date on which the **regulated entity** ceased to provide any product or service to the **consumer** concerned.

- 11.7 A **regulated entity** must maintain complete and readily accessible **records**; however, a **regulated entity** is not required to keep **records** in a single location.

#### COMPLIANCE WITH THIS CODE

- 11.8 Where the **Central Bank** requires a **regulated entity** to provide information in respect of the **regulated entity's** compliance with this Code, such **regulated entity** is required to provide information which is full, fair and accurate in all respects and not misleading and to do so in any period of time or format that may be specified by the **Central Bank**.
- 11.9 Where the **Central Bank** requires information in respect of a **regulated entity's** compliance with this Code, and the **Central Bank** is of the opinion that a meeting with personnel of the **regulated entity** should take place in order to procure such information in a satisfactory manner, the **regulated entity** must arrange for appropriate personnel to participate in such a meeting in order to provide the required information to the **Central Bank**.
- 11.10 A **regulated entity** must, upon being required by the **Central Bank** to do so, provide, to the **Central Bank**, **records** evidencing compliance with this Code for a period which the **Central Bank** may specify (up to a maximum period of six years).

## CHAPTER 12

### DEFINITIONS

In this Code:

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

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

**“arrears”** arise where a **personal consumer**:

- a) has not made a full repayment, or only makes a partial repayment, as set out in the original loan account contract, by the scheduled due date; or
- b) in the case of a credit card account, has not made the minimum repayment by the due date.

**“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 **persons** 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;

**“bundling”** means the packaging of two or more distinct products into a bundle, where each of these products can be purchased separately from or through the **regulated entity**;

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

**“Central Bank”** means the Central Bank of Ireland;

**“certified person”** has the meaning given to it in 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, any **associate** of that **regulated entity**, or a particular operating unit within the **regulated entity** or within any **associate** of that **regulated entity** 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 and can be a **person**, other than the policyholder;

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

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

**“compound annual rate”** is the equivalent annual rate of interest (where interest is paid on previously earned interest as well as on the principal), 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 **person** or **group** of **persons**, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (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); or
- b) 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);

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

**“credit institution”** means an undertaking within the meaning of Article 4(1) of EU Directive 2006/48/EC the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;

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

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

**“deposit agent”** means any **person** who holds an appointment on paper or on another **durable medium** 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;

**“durable medium”** means any instrument that enables a recipient to store information addressed personally to the recipient in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

**“electronic money”** has the meaning given to it in the European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011);

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

**“fair analysis of the market”** means providing services on the basis of a sufficiently large number of contracts and **product producers** available on the market to enable the intermediary to make a recommendation, in accordance with professional criteria, regarding which contract would be adequate to meet the **consumer’s** needs;

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

**“home reversion agreement”** has the meaning given to it in Part V of the Central Bank Act 1997;

**“insurance intermediary”** has the meaning given to it in the European Communities (Insurance Mediation) Regulations 2005;

**“insurance undertaking”** has the meaning given to it in the Insurance Act 1989;



**“introductory interest rate”** is an interest rate favourable to the **consumer** that applies for a specified period of time at the beginning of the contract;

**“investment product”** means an “investment instrument” within the meaning of Section 2 of the Investment Intermediaries Act 1995 but does not include:

- i. non-life insurance policies; and
- ii. life assurance products which do not have a surrender or maturity value;

**“key information”** means any information which is likely to influence a **consumer’s** actions with regard to a product or service;

**“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;

**“limited analysis of the market”** means providing services on the basis of a limited number of contracts and **product producers** available on the market, i.e., while not tied to one **product producer** the services are not provided on the basis of a **fair analysis of the market**;

**“Member State”** means a Member State of the European Economic Area;

**“MiFID Service”** means any service or activity set out in Schedule 1 of the European Communities (Markets in Financial Instruments) Regulations 2007, but not including any service or activity of a **person** to whom such Regulations do not apply by virtue of Regulations 5(1), 5(2) and 5(3) of such Regulations;

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

**“officer”** in relation to a **regulated entity**, means a director, chief executive, manager or secretary, by whatever name called, or an office or position, the holder of which reports directly to a director, chief executive, manager or secretary;

**“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;

**“payment services”** has the meaning given to it in the European Communities (Payment Services) Regulations 2009 (S.I. No. 383 of 2009);

**“person”** means a natural person or a legal person;

**“personal consumer”** means a **consumer** who is a natural person acting outside his or her business, trade or profession;

**“Personal Injuries Assessment Board”** means the Personal Injuries Assessment Board established under the Personal Injuries Assessment Board Act 2003 and now known as InjuriesBoard.ie, or any successor thereto;

**“power of attorney”** has the meaning assigned to it in the Powers of Attorney Act 1996;

**“product producer”** means any **regulated entity** that produces, manufactures or packages a product of a financial or investment nature, and is not limited to a product producer as defined in the Investment Intermediaries Act 1995;

**“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 Annexe 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;

**“regulated activities”** are the provision of products or services that are provided in this State by a **regulated entity** and which are subject to the regulation of the **Central Bank** and a **“regulated activity”** is the provision of any one such product or service;

**“regulated entity”** means a financial services provider authorised, registered or licensed by the **Central Bank** or other EU or EEA **Member State** that is providing **regulated activities** in the State;

**“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 is carried on in such a way 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;

**“retail credit”** means the provision of credit (as defined in Section 28 of the Central Bank Act 1997) to relevant persons (as defined in Section 28 of the Central Bank Act 1997);

**“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**;

**“sponsorship material”** means material that only communicates the **regulated entity’s** brand name, rather than the promotion of a specific financial product/service;

**“Standard PRSA”** has the meaning in Part X of the Pensions Act 1990;

**“target market”** for an **investment product** means the profile of the group of **consumers** at which the **regulated entity** aims a particular **investment product**;

**“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 has either or both of the following features:

- a) it provides for 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;
- b) it provides for 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;

**“tracker interest rate”** means a mortgage interest rate which tracks a rate which comes from a publicly available source which can be verified by both the **consumer** and the **regulated entity**, including without limitation, a rate that tracks the European Central Bank (ECB) main refinancing operations rate ;

**“variable-share contract”** means a **home reversion agreement** where the portion of the property held by the **regulated entity** changes during the term of the **home reversion agreement**;

**“vulnerable consumer”** means a natural person who:

- a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or
- b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).

## APPENDIX A

### KEY FEATURES DOCUMENT FOR TRACKER BONDS

#### 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 there is a risk that the **consumer** may lose some or all of the money invested, a statement of this risk;
- if there is a risk that the **consumer** will not achieve the estimated or anticipated return on his or her investment, a statement of this risk;
- 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 return on his or her investment (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, interest rate risk and/or price volatility risk to the **consumer**, in relation to the benefits promised, a statement of this risk;
- the period to the date of the promised payment;
- if the **tracker bond** is guaranteed, the level, nature, extent and limitations of the guarantee and the name of the guarantor; and

- if the **tracker bond** involves leveraging, a statement of the effects.

## 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:

- 1 the open market value, at the date of investment, of the payment promised to the **consumer**;
- 2 the open market value, at the date of investment, of the cash bonus promised to the **consumer**; and
- 3 **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 yy years and mm 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 yy years and mm 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.*

*Where relevant, insert an explanation that the **consumer's** return on his or her investment will be capped/limited. This explanation should clearly set out that the excess of any earnings over the cap/limit will be retained by the **product producer** and / or a third party.*

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.

## APPENDIX B

### PRSA (PERSONAL RETIREMENT SAVINGS ACCOUNT)

#### WHAT IS A PRSA?

A PRSA is a way of helping people provide for their retirement by saving now. It is a long-term investment product sold by financial institutions and intermediaries. It allows you to create a pension fund for yourself when you retire; you can vary the amount you pay into it over time and, if you change employment, you can continue to use the same PRSA. You can switch from one PRSA to another at any time free of charge.

Types of PRSA:

There are two types of PRSA:

- Standard PRSA – where the charges you have to pay are capped i.e. there is a maximum level of charges allowed and where there are certain investment restrictions on how your money is invested.
- Non-Standard PRSA – where there is no maximum level of charges and there are fewer investment restrictions.

#### DO YOU NEED A PRSA?

To see if you need a PRSA you should ask yourself some questions:

- **Can you join an existing pension scheme in your job?** You should find out if there is a good scheme available to you through your job. If not, you will need to consider making provision for your retirement and should consider a PRSA. If you already have good pension arrangements you may not need to make any additional provisions or you may be able to top-up your benefits through making Additional Voluntary Contributions (AVCs).
- **What if you are in a Defined Benefit Scheme?** If you have a defined benefit pension scheme – a pension related to your salary, for example, two thirds of final salary on retirement – you may not need to make any further pension provisions or you may already have a facility to make additional voluntary contributions (AVCs). Transferring from a defined benefit scheme into a PRSA involves a risk and should only be done after very careful assessment of your financial position and the advantages/disadvantages for you – you will be foregoing a defined salary related pension in retirement for an uncertain income.
- **What if you are in a Defined Contribution Scheme?** If you are in a defined contribution scheme you are already carrying the investment risk – your

pension will depend on the contributions you make together with the investment performance of your fund less the charges involved. But your employer may be making a contribution to the Scheme – would this contribution continue if you transferred into a PRSA?

- **Should you start a PRSA if you already have a Personal Pension Plan?** You will need to take professional advice based on your personal circumstances.

### **WHAT TYPE OF PRSA IS BEST FOR YOU?**

A Standard PRSA is likely to meet the requirements of most people. You cannot be charged more than the maximum level of charges allowed (5% of contributions paid and 1% per year of the PRSA assets).

The level of charges is very important. Charges reduce the fund you can build up. The size of your fund on retirement will depend on your contributions and the Investment performance less the charges deducted. Investment performance cannot be predicted, but higher charges are just like a weight handicap in a horse race – creating a need to produce a better investment performance just to remain level with products carrying lower charges.

Charges on Non-Standard PRSAs are not capped and, in most cases, may be higher than on Standard PRSAs.

A second difference between Standard and Non-Standard PRSAs is in the way in which your money is invested. A Standard PRSA invests only in pooled funds, where the risk is spread across a large number and type of investments. A Non-Standard PRSA can offer you a wider investment choice. If a Non-Standard PRSA is offered to you on the basis of the investment choice it gives you, you need to be sure that you understand the investment choices, and that you understand why you need them. This is your pension, your income in your retirement years. If you do not understand how your pension will be invested then perhaps you should consider again if this particular product is the one for you.

You should keep the level of your contributions and the investment performance of your PRSA under regular review, so you can see if your PRSA will provide you with the pension you need.

### **BUYER BEWARE – WHAT TO LOOK OUT FOR**

Where a Non-Standard PRSA is being offered or recommended to you, make sure you understand the differences between this product and a Standard PRSA, in particular the charges and investment choices of each product.

Beware of suggestions of better returns on Non-Standard PRSAs. Predicting investment performance is notoriously difficult.



Beware if it is suggested to you, or you are advised, to abandon an existing pension plan in favour of a new PRSA. Make sure that you understand the reasons why this would be the best course of action for you.

## APPENDIX C

### NON STANDARD PERSONAL RETIREMENT SAVINGS ACCOUNT

#### DECLARATION

TO BE COMPLETED BY THE VENDOR (WHETHER PRODUCT PRODUCER OR INTERMEDIARY).

Name of Consumer to whom a non-Standard PRSA has been offered or recommended: (Print name in block capital letters)

Name of Non-Standard PRSA offered to the Consumer:

Name of Non-Standard PRSA Product Producer:

- a) I declare that I have explained to this consumer that there are differences between a Non-Standard PRSA and Standard PRSA, and focused on the fact that the charges may be higher and the investment risks are greater for this non-Standard PRSA.
- b) I declare that in my opinion it is in the best interest of the above named consumer to purchase this non-Standard PRSA.
- c) I declare that in my opinion the non-Standard PRSA I have offered/recommended to the above named consumer is the PRSA product most suited to this consumer from among all those I am able to provide.

Signature of Salesperson:

Name of Salesperson (in block capitals):

Position Held:

Name of Regulated Entity:

Date of completion of the declaration:

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Banc Ceannais na hÉireann  
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