

Regulation of Financial Advice

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15 October 2008



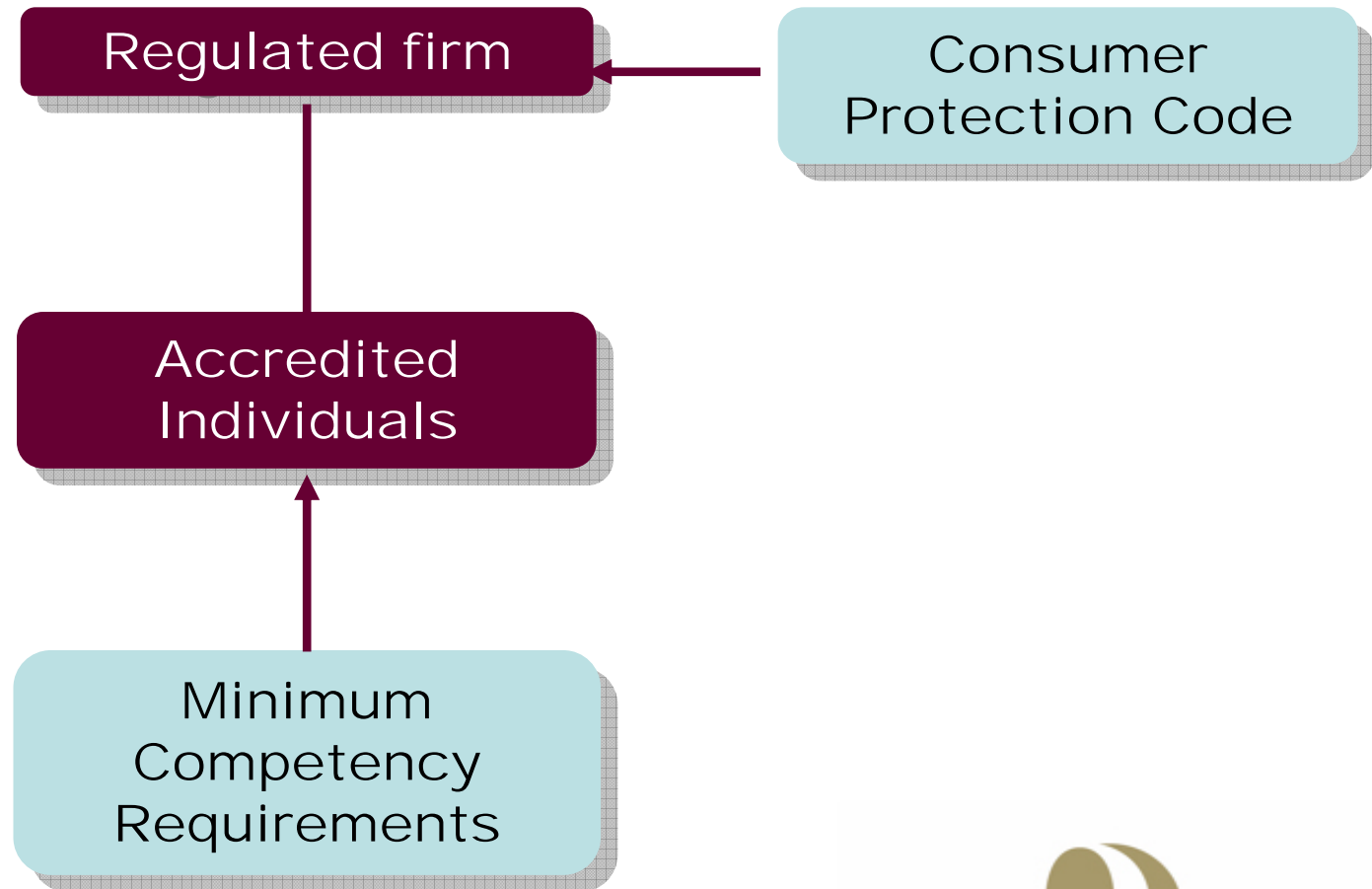
the QFA board

Regulated financial advice



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Overview



Overview

Insurance
Mediation
Regulations

Investment
Intermediaries
Act, 1995

MIFID
Regulations
2007

either/or

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graph LR; A[Insurance Mediation Regulations]; B[Investment Intermediaries Act, 1995]; C[MIFID Regulations 2007]; B <--> |either/or| C;
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Overview

Insurance
Mediation
Regulations

**Multi Agency
Intermediaries**

**Authorised
Advisers**

MIFID firms

Investment
Intermediaries
Act, 1995

**Multi Agency
Intermediaries**

**Authorised
Advisers**

MIFID
Regulations
2007

**Hold client funds
QFMs**

**PRSA providers
Discretionary fund
managers**



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Who is regulated?

*Regular occupation is the
provision of
investment services to
third parties
on a professional basis*



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Investment Services

Financial instruments

Investment advice

Reception &
transmission of orders

Portfolio management

Insurance policies

PRSAs

Tracker Bonds

Transferable securities

Money market instruments

Unit trusts, collective
investment funds

CFDs

Derivatives



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Transferable securities

“ ... securities which are negotiable on the capital market, such as the following:

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;*
- (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;*
- (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures”*



Money market instruments

“... means those classes of instruments which are normally traded on the money market, such as treasury bills, certificates of deposit and commercial papers, but does not include instruments of payment;”



Investment advice

“ ... the provision of a personal recommendation ”

“ ... made to persons in their capacity as investors, potential investors, agents for investors ”

“ ... suitable based on a consideration of their circumstances ”

“ ... a recommendation to buy, sell, subscribe for, exchange, redeem, hold or underwrite ”

“ ... a particular financial instrument. ”



Deposit broker

“ ... any person who brings together with credit institutions persons seeking to make deposits in return for a fee, commission or other reward”



Exemptions

- Insurers and their employees
- Persons providing investment services
 - *exclusively* in administration of employee participation schemes
 - *exclusively* for parent undertakings or subsidiaries
- A trustee, provided principal objective of trust is *not* to provide investment services to the ‘public’
- Pension funds
 - Depositories and managers of such funds



Exemptions

- Persons providing *investment advice* in the course of another professional activity, provided the provision of the advice is not specifically remunerated. (*MIFID exemption only*)
 - Examples : Tax advisers, lawyers
- Persons providing an *investment service* in an incidental manner in the course of another professional activity
 - Activity is regulated
 - Activity does not exclude provision of investment service
 - Examples: Tax advisers, lawyers



Specific situations

- Generic investment advice
 - On asset classes
 - Not a personal recommendation related to a particular financial instrument
- Funding advice
- Acting as an Occupational Pension Scheme trustee
 - Exemption only applies to '*actions as a trustee*' **NOTE!!!**
 - Separate trustee company?
 - Acting as a personal trustee?
 - Which entity is advising trustees?
- Holding client funds
 - Employer pension contributions?



Specific situations

- Introducing clients to investment manager
 - Is it carried out on a professional basis?
- Introducing clients to an insurance intermediary / insurer
 - ‘Introducing’ is in Insurance Mediation Directive but is not in the current IMD Regulations?
 - Purpose of introduction is to effect policy?
 - Is it carried out on a professional basis?
- Recommending an investment manager/ insurer to a client
 - IMD activity?
 - IIA activity.
 - Is it carried out on a professional basis?



Specific situations

- Exempt unit trusts (EUTs)
 - Unregulated as not promoted to the ‘public’
 - However provision of advice on, reception & transmission of orders for, EUTs is a regulated activity
 - E.g. providing investment advice on ‘units in a unit trust’



Insurance Mediation

“ ... any activity involved in proposing or undertaking preparatory work for entering into insurance contracts,

or of assisting in the administration and performance of insurance contracts that have been entered into

(including dealing with claims under insurance contracts)”



Insurance Intermediary

“ ... a person, who for remuneration, undertakes or purports to undertake insurance mediation ”



Specific situations

- Handling insurance proposal forms
 - IMD activity ... *'preparatory work for entering insurance contracts'*
 - Reception and transmission of orders?
 - Is it carried out on a professional basis?
- Handling insurance claims
 - IMD activity ... *'dealing with claims under insurance contracts'*
 - Is it carried out on a professional basis?



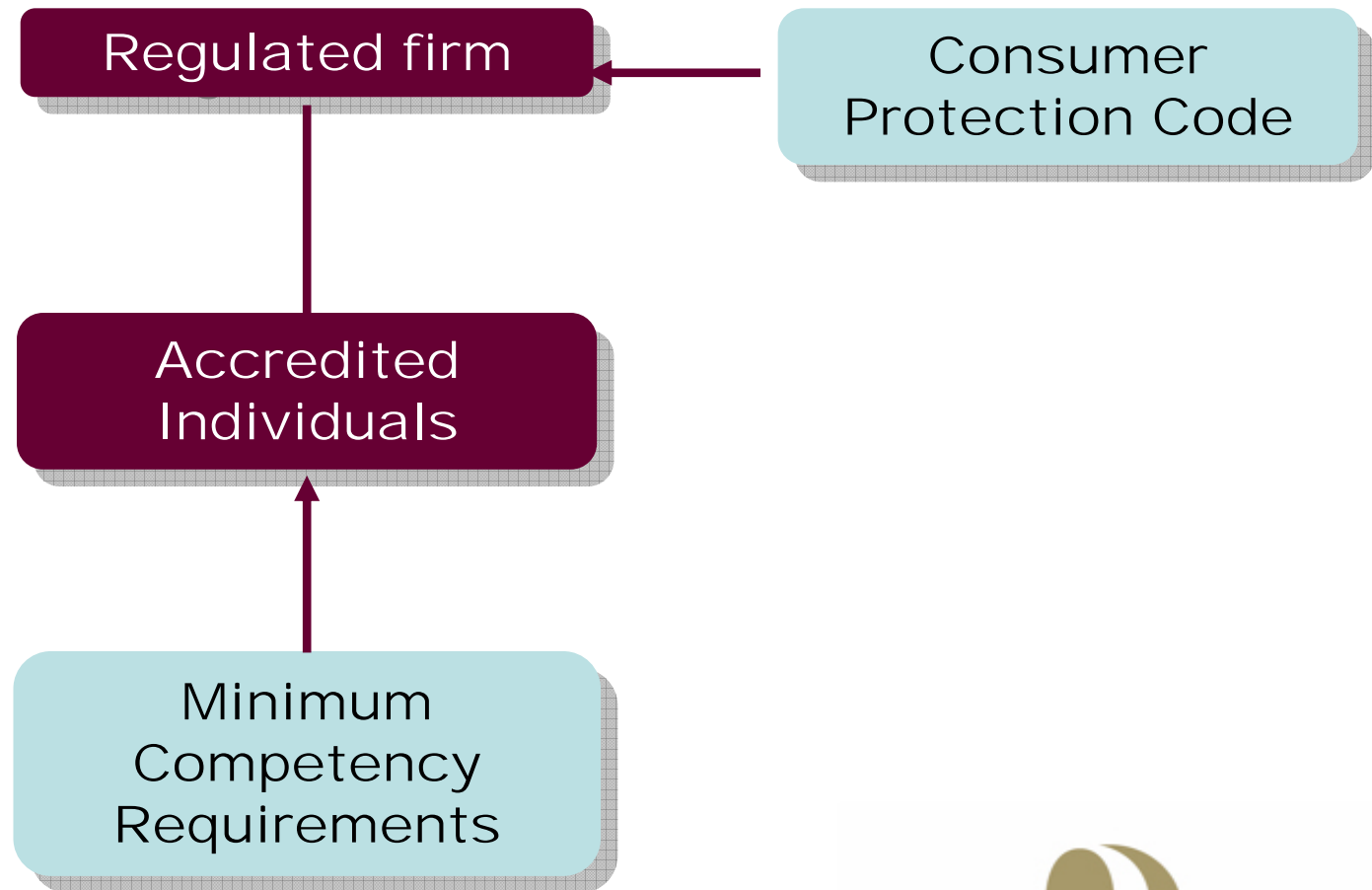
What services are you providing on a professional basis?

Are you or is your employer a regulated firm

or should be a regulated firm?



Overview



Consumer Protection Code



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Consumer Protection Code

- The General Principles of the Consumer Protection Code came into effect on 1 August 2006
- Some specified provisions of the Code came into effect on 31 August 2006
- The Code came into full effect on 1 July 2007



Consumer Protection Code

- The Consumer Protection Code consists of:
 - 12 General Principles
 - 178 Rules
- The Consumer Protection Code Rules have been supplemented by “*Dear Chief Executive*” letters
- The General Principles set out the fundamental requirements of the Consumer Protection Code – the Rules supplement the General Principles in specific circumstances
- There are two broad themes underlying the general principles:
 - requirements in relation to the sales / advice process; and
 - requirements in relation to skills and resources.



Sales / Advice Process General Principles

- acts honestly, fairly and professionally in the best interests of its customers
- does not recklessly, negligently or deliberately mislead a customer
- seeks from its customers information relevant to the product or service requested
- makes full disclosure of all relevant material information, including all charges
- seeks to avoid conflicts of interest
- does not exert undue pressure or undue influence on a customer



Sales / Advice Process General Principles

- These are demanding standards
- The key underlying requirements are to “*act ... in the best interests of customers*”, to “*make full disclosure of all relevant material information*” and to “*seek to avoid conflicts of interest*”
- Essentially, an adviser is required to put the interests of the client in *primary* position, and to arrange matters to be consistent with this



Skills and Resources General Principles

- acts with due skill, care and diligence in the best interests of its customers
- has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code
- corrects errors and handles complaints speedily, efficiently and fairly
- ensures that any outsourced activity complies with the requirements of this Code



Skills and Resources General Principles

- These are also demanding standards
- The key underlying requirements are to “*act with due skill, care and diligence*”, to have “*the resources ... necessary for compliance with the Code*”, and to “*correct errors and handle complaints speedily, efficiently and fairly*”
- Essentially, the firm is required to have the full range of human and other resources required to meet the requirements of the Consumer Protection Code



Acting With Due Skill

- This is essentially about people, their knowledge and their qualifications, and keeping these up to date
- The Minimum Competency Requirements effectively give detailed follow through to this aspect of the Consumer Protection Code in respect of sales / advice activities and other specified activities



Consumer Protection Code

- The Consumer Protection Code has set precise and demanding standards in relation to:
 - the Sales / Advice process; and
 - Skills and Resources.
- Meeting these standards is the key challenge arising from the Consumer Protection Code



Minimum Competency Requirements



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Insurance Mediation Directive

- The Insurance Mediation Directive created a requirement to introduce competency requirements for insurance intermediaries
 - *“Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary”*



Insurance Mediation Directive

- The activities subject to the knowledge and ability requirements of the Insurance Mediation Directive are:
 - *“introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim”*
- The Insurance Mediation Directive also requires that the knowledge and ability requirements be met by *“a reasonable proportion of the persons within the management structure of such undertakings who are responsible for mediation in respect of insurance products”*



Consultation Paper 4 – Mandatory Competency Requirements

- Insurance Mediation Directive applies only to insurance/reinsurance
- However, the Financial Regulator indicated its intention to apply competency standards to all relevant employees of supervised financial services providers
 - Consumers are entitled to a minimum level of professionalism and expertise from their financial advisers
 - Creates a level playing field between different financial firms



Financial Regulator Consultation Process

- At the launch of the QFA Board in January 2003, Dr Liam O'Reilly, the then Chief Executive of the Financial Regulator, outlined the Financial Regulator's plans to consult on proposals to introduce minimum educational requirements for those engaged in the provision of retail financial advice
- Consultation Paper 4 – April 2004
 - sought the views of the financial sector, consumer interests, educators and others on what is an appropriate measure of competence for those who provide advice on or sell financial products
- Consultation Paper 14 – Limited consultation – January 2006
 - Contained proposed minimum competency requirements
 - Based on submissions received in response to Consultation Paper 4 and discussions with industry representative bodies, in particular the main educational institutes active in this area
- The Minimum Competency Requirements were issued in July 2006
- Public Response also issued in July 2006
 - To provide clarification in areas where concerns or uncertainty were evident in the submissions



Minimum Competency Requirements

- Minimum Competency Requirements apply from 1 January 2007 to **individuals** who in regulated firms:
 - provide advice to consumers on retail financial products;
 - sell to consumers retail financial products; or
 - undertake certain specified activities.



Principles Based

- Minimum Competency Requirements are principles based
- Firms are expected to interpret the Minimum Competency Requirements in a reasonable and practical manner



Who is subject to the Requirements?

- Accredited Individuals
- Specified Accredited Individuals



Accredited individuals

- The Minimum Competency Requirements apply to those who:
 - *on a professional basis, as, for or on behalf of a regulated firm, provide advice to consumers on retail financial products or arrange or offer to arrange retail financial products for consumers*
- Accredited individuals must meet the requirements for the retail financial products in respect of which they are acting



Specified Accredited Individuals

- The Minimum Competency Requirements also apply to those who undertake certain specified activities
- Specified activities are:
 - being involved in the decision-making process in relation to insurance claims or assisting consumers in the administration or performance of insurance claims
 - Reinsurance Mediation
 - Adjudicating on Complaints relating to advice about retail financial products
 - the direct management or supervision of accredited individuals



Specified Accredited Individuals

- **Specified accredited individuals must either:**
 - meet the requirements for the retail financial products in respect of which the specified activity is carried out, or
 - hold a qualification recognised by the Financial Regulator in relation to that specified activity



Regulated Firms

- Banks & other lenders
- Insurance, investment & mortgage intermediaries
- Life assurance & general insurance companies
- Stockbrokers
- Financial services provider authorised or registered in another EU or EEA Member State and providing services into Ireland on a branch or cross-border basis



Retail financial products covered

- Life Assurance Protection Policies
- General Insurance Policies
- Shares and Bonds and other Investment Instruments
- Savings, Investments and Pension Products
- Housing Loans and Associated Insurances
 - Mortgage Protection Insurance
 - Home and Contents Insurance
 - Payment Protection Insurance
 - Permanent Health Insurance
- Consumer Credit and Associated Insurances
 - Payment Protection Insurance
 - Credit Protection Insurance
 - Permanent Health Insurance



Retail financial products excluded

- **Ordinary deposits**
 - Simple in nature
 - Clear client understanding of ‘deposit’
 - Transparency of return
- **Prize Bonds**
 - Not really a savings or investment product
- **Some Consumer Credit Agreements**
 - Current account overdrafts
 - Credit cards
- **Moneylending**
 - small numbers involved
 - modest knowledge requirements
 - real issue for this product is conduct of business
 - subject to detailed requirements in the Consumer Credit Act



Who is a consumer?

- Same definition as Financial Services Ombudsman's Bureau
 - A natural person acting outside their business, trade or profession
 - A person or group of persons, but not an incorporated body with an annual turnover in excess of three million euro. 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
 - Incorporated bodies having an annual turnover of three million euro 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 three million euro)
 - A member of a credit union



What is advice?

- Advice means:
 - *“a recommendation or opinion provided to a consumer to enter into or to become entitled to benefit under, terminate, exercise any right or option under, or take any benefit from a retail financial product”*



Not considered to be advice

- The provision of a brochure or booklet or other information to a consumer, without the provision of advice to that consumer
- Information given in a newspaper, journal, magazine or other publication, including electronic publications, where the principal purpose of the publication taken as a whole is not to lead consumers to use any specific retail financial product or any specific provider of such products
- Information given in a lecture, seminar or similar event or series of such events, where the principal purpose of the event or events taken as a whole is not to lead consumers to use a specific retail financial product or any specific provider of such products and where persons engaged in the organisation or presentation of such events will earn no remuneration, commission, fee or other reward as a result of any particular decision, by a consumer attending such event and arising out of such attendance, to use any particular retail financial product or any specific provider of such products
- Information given in sound or television broadcasts where the principal purpose of such broadcasts taken as a whole is not to lead consumers to use any specific retail financial product or any specific provider of such products
- Advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase or sale of undertakings
- Providing information on an incidental basis in conjunction with some other professional activity, so long as the purpose of the activity is not to assist a consumer to enter into or to become entitled to benefit under, terminate, exercise any right or option under, or take any benefit from one or more retail financial product



Knowledge Requirements

- Separate knowledge requirements for each of the six categories of *retail financial product*
- Accredited individuals must *know and understand* a detailed set of relevant learning outcomes
- Demonstrated by achieving a recognised qualification
- Recognised qualifications for accredited individuals must meet these knowledge requirements



Recognised Qualifications

- **Life Assurance Protection Policies**
 - Qualified Financial Adviser
 - Certified Insurance Practitioner plus Bridge Examination in Life Assurance Protection Policies
 - Member, Associate or Fellow of the Irish Institute of Pensions Managers (post 2006 syllabus)
- **General Insurance Policies**
 - Certified Insurance Practitioner
 - Qualified Financial Adviser plus Bridge Examination in General Insurance Policies
 - Associate or Fellow of the Chartered Insurance Institute
- **Shares and Bonds and other Investment Instruments**
 - Qualified Financial Adviser
 - Irish Stock Exchange Certificate in Stockbroking
 - Member, Associate or Fellow of the Irish Institute of Pensions Managers (post 2006 syllabus)
- **Savings, Investments and Pension Products**
 - Qualified Financial Adviser
 - Member, Associate or Fellow of the Irish Institute of Pensions Managers (post 2006 syllabus)
 - Irish Stock Exchange Certificate in Stockbroking plus Bridge Examination in Pensions
- **Housing Loans and Associated Insurances**
 - Qualified Financial Adviser
 - Mortgage Diploma
 - Certificate in Mortgage Practice
- **Consumer Credit and Associated Insurances**
 - Qualified Financial Adviser
 - Foundation Certificate in Consumer Credit



Additional qualifications recognised for specified activities

- **General Insurance Claims**
 - Associate or Fellow of the Chartered Institute of Loss Adjusters
 - Solicitor Member of the Law Society of Ireland
 - Barrister-at-Law called to the Bar of Ireland
- **Life Assurance Claims**
 - Associate or Fellow of the Chartered Insurance Institute
 - Diploma in Life and Disability Underwriting
 - Diploma in Life and Disability Claims
 - Solicitor Member of the Law Society of Ireland
 - Barrister-at-Law called to the Bar of Ireland
- **Advice Complaints Adjudication**
 - Professional Diploma in Compliance
 - Solicitor Member of the Law Society of Ireland
 - Barrister-at-Law called to the Bar of Ireland



Other Qualifications

- **Other qualifications or new qualifications which can be shown to meet the Minimum Competency Requirements will be considered by the Financial Regulator**
 - they should have support within the industry
 - the Financial Regulator reserves the right to enter into a public consultation in relation to these qualifications
 - the Financial Regulator reserves the right to have these qualifications reviewed by an independent external body



Recognised Qualifications – Exemptions

- **Extract from the Financial Regulator’s Public Response on the Minimum Competency Requirements**
 - We would expect that the educational bodies would treat fairly any application for exemption from all or part of their examinations and would apply any exemption decisions consistently. In this regard, the QFA Board has published a schedule of exemptions from its examinations, which covers various qualifications available in Ireland and UK financial planning qualifications.



The QFA Board

- The QFA Board was formally launched in January 2003
- The QFA Board is made up of representatives of the Institute of Bankers in Ireland (IoB), The Insurance Institute of Ireland (III) and LIA
- The QFA (Qualified Financial Adviser) qualification replaced the IoB's Certificate in Investment Advice, the III's Financial Planning Certificate and LIA's Associateship qualifications



The QFA Board

- Extracts from the FSA's recent Review of Retail Distribution
 - We think this could mean that for the general financial advisers ... the difficulty of the benchmark '*appropriate examination*' might rise from the level currently represented by the Certificate in Financial Planning ... to a minimum level of Diploma in Financial Planning.... A similar upwards shift in benchmark has been undertaken in Ireland.
 - Case study – Raising the bar: In Ireland, the Financial Regulator introduced new minimum competency requirements in January 2007. In broad terms, while other exam providers can create new qualifications, there is now one qualification, Qualified Financial Adviser (QFA), that is supported by three different professional bodies and which is now dominant. It has taken five or more years to merge the courses and raise the bar in terms of what the regulator now demands as course content. QFA is now the benchmark qualification for anyone advising on any retail financial products (including life policies, shares, savings, pensions, mortgages, protection and consumer credit).



Grandfathering

- Grandfathering applies in respect of an activity carried out on 1 January 2007 where:
 - the individual carrying out the activity did not at that date hold a recognised qualification in respect of the categories of retail financial products for which he or she was acting
 - the activity was commenced on or before 1 January 2007; and
 - the activity was carried on for at least four years between 1 January 1999 and 1 January 2007
- The criteria for assessment of individuals for grandfathering must be documented by firms
- Firms were required to certify compliance with the experience requirement before 1 January 2008
- An individual who availed of the grandfathering arrangements is required to comply on an ongoing basis with the Continuing Professional Development requirements from the date on which the individual's compliance with the experience requirement was certified by the regulated firm, i.e. from 1 January 2008 at the latest



Transitional Arrangements

- Individuals who were acting as accredited individuals or as specified accredited individuals on 1 January 2007, but who did not at that date hold a recognised qualification in respect of the specified categories of retail financial products for which they were acting and who could not benefit from the grandfathering arrangements, can continue to act as accredited individuals or as specified accredited individuals, but must obtain a recognised relevant qualification in respect of each category of retail financial product for which they are acting by 1 January 2011
- Such individuals must be working towards obtaining a recognised qualification



New entrants after 1 January 2007

- New entrant can commence acting as an *accredited individual* subject to:
 - completing an internal training programme or achieving part of a relevant recognised qualification; and
 - commencing work towards obtaining a recognised qualification.
- Must act under the direct supervision of another accredited individual while working towards obtaining a recognised qualification
- Maximum period of 4 years allowed to achieve full recognised qualification



Register

- Each firm must maintain a register of all accredited individuals and specified accredited individuals
- Must include those availing of grandfathering arrangements and those who have obtained recognised qualifications
- Must be available to the public



Continuing Professional Development

- Ongoing CPD requirements for holders of *recognised qualifications* and grandfathered individuals
- Grandfathered individuals may arrange CPD independently or participate in the CPD programmes provided by the professional educational bodies
- The relevant professional educational bodies have created a category of “*CPD Member*” to facilitate grandfathered individuals – CPD Members have full access to the same CPD facilities as qualified members, including online CPD facilities



Continuing Professional Development

- Total hours to be completed over three year cycle = 60, of which at least 40 must be formal CPD. The balance of 20 hours may be wholly comprised of either formal or informal activities or it may comprise a mix of both formal and informal activities
- Minimum hours to be completed in each year of the three year cycle = 15, of which at least 10 hours must be formal CPD
- Formal or structured hours may be obtained by attending seminars, lectures, conferences, certified completion of appropriate e-learning tutorials, workshops or courses dealing with a directly relevant topic, while informal hours include research and reading industry or other relevant material
- The content of the CPD hours must be directly relevant to the activities undertaken by the accredited individual or specified accredited individual



Continuing Professional Development

- The content of the CPD hours must be directly relevant to the activities undertaken by the accredited individual or specified accredited individual
- QFA Board approach to CPD:
 - The content of CPD hours must be directly relevant to providing advice to consumers on retail financial products, which, in the context of the Minimum Competency Requirements, means that the content must be related to the knowledge requirements set out in the Minimum Competency Requirements for the categories of Retail Financial Product in respect of which the QFA designation is recognised.
 - The overriding objective of the CPD requirement is to keep qualifications up to date and ensure that those who qualified in the past are as knowledgeable as those qualifying today. It thus follows that the CPD material for the QFA designation must be related to the knowledge requirements set out in the Minimum Competency Requirements for the categories of Retail Financial Product in respect of which the QFA designation is recognised.



Continuing Professional Development

- **Compliance with CPD requirements**
 - Spot checks by professional education bodies
 - Financial Regulator reserves the right to check any individual's compliance



Summary



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Summary

- Firms (including sole traders or partnerships) providing investment services to third parties on a professional basis are subject to regulation, including licensing
- The provision of such services must be conducted in accordance with conduct of business rules, including the Consumer Protection Code
- Individuals acting on behalf of regulated firms in providing advice to consumers **on retail financial products** must meet the Minimum Competency Requirements

