

# The Chartered Certified Accountants' Irish Investment Business Regulations 2013

Amended 14 October 2019

These regulations must be read in conjunction with the other regulations in Section 2. A regulation may affect members, affiliates and registered students in different ways depending on the application of other regulations to those members, affiliates and registered students. Regulations are not always cross-referenced to each other.

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The Council of the Association of Chartered Certified Accountants, in exercise of all the powers conferred on it by bye-laws 6 and 27 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

(Note: Words or phrases which are defined in regulation 2(1) are shown in italics in the text of the regulations throughout.)

## 1. Citation, commencement and application

### (1) Citation

These regulations may be cited as The Chartered Certified Accountants' Irish Investment Business Regulations 2013.

### (2) Commencement

These regulations as amended shall come into force on 14 October 2019.

### (3) Application

- (a) These regulations, in so far as they are relevant, shall apply to all members, and to firms, and to individuals who have agreed and undertaken to be bound by them. In addition, to the extent provided for in the regulations, these regulations shall continue to apply to *members* after they have ceased to be *members* and to *firms* and such other persons after the investment business certificate (Ireland) issued to the *firm*, or the *firm* in relation to which they are specified persons, has lapsed.
- (b) These regulations apply only to the provision of investment business services and investment advice by a *firm* which are either:
  - (i) carried on from the *firm*'s place of business in the Republic of Ireland; or
  - (ii) carried on from the *firm*'s place of business in the United Kingdom for clients in the Republic of Ireland.

In other words, where *firms* holding an investment business certificate (Ireland) have a branch in the UK, that branch will not be bound by these regulations unless it is providing investment business services or investment advice to clients based in the Republic of Ireland. Such branches may instead be subject to UK legislation and The Chartered Certified Accountants' Designated Professional Body Regulations 2001.

- (c) *Members* and *firms* and all persons who have agreed and undertaken to be bound by these regulations shall be subject to any provisions of the Act not specifically set out in these regulations and shall comply with any such provisions, where necessary, as if these provisions were specifically set out in these regulations. Where there is a conflict between the provisions of these regulations and the provisions of the Act, the provisions of the Act shall take precedence.

## 2. Interpretation

### (1) Definitions

In these regulations, unless the context otherwise requires:

*Act* means the Investment Intermediaries Act 1995, as amended;

*Admissions and Licensing Committee* means the committee of *Council* responsible, inter alia, for administering these regulations, or such other committee to whom *Council* may delegate such responsibilities, or *Council*;

*agent*, in relation to a person, means any person (including an *employee*) who acts on that person's behalf;

*Appeal Committee* means the committee of *Council* responsible, inter alia, for hearing appeals from decisions of the *Admissions and Licensing Committee*, or such other committee to whom *Council* may delegate such responsibility, or *Council*;

*applicant* means a person who or which has applied or is in the course of applying to the *Association* for or to renew or to amend an *investment business certificate (Ireland)*;

*approved professional body* has the meaning given by section 55 of the *Act*;

*associate*, in relation to a person, shall be construed as follows:

(a) in relation to an individual, *associate* means:

- (i) that individual's spouse or minor child or step-child;
- (ii) any body corporate of which that individual is a director; and
- (iii) any *employee* or partner of that individual;

(b) in relation to a body corporate, *associate* means:

- (i) any body corporate of which that body is a director;
- (ii) any body corporate in the same *group* as that body; and
- (iii) any *employee* or partner of that body or of any body corporate in the same *group*;

*the Association* means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

*BES investment* means an investment which provides income tax relief as referred to in section 489 (Part 16) of The Taxes Consolidation Act 1997;

*Central Bank of Ireland* means the single unitary body in Ireland responsible for central banking and financial regulation, created by the Central Bank Reform Act 2010;

*certified person* has the meaning given by section 55 of the *Act*;

*client* means a person to whom a *firm* provides *investment business services* or *investment advice* and includes an *indirect client* but does not include a trust beneficiary;

*collective investment scheme* means any collective investment scheme subject to the regulation of the *Central Bank of Ireland*;

*company* includes any body corporate;

*Compensation Act* means the Investor Compensation Act, 1998;

*Consumer Protection Code* means the Consumer Protection Code 2012 introduced by the *Central Bank of Ireland*, as updated;

*controller* means, in relation to any *company*, a person who either alone or with any *associate* or *associates* is entitled to exercise or control the exercise of 15 per cent or more of the rights to vote on all, or substantially all, matters at general meetings of the *company* or another *company* of which it is a *subsidiary*;

*Council* means the Council of the *Association* from time to time and includes any duly authorised committee of Council;

*deposit* means a deposit with a credit institution and shall be construed as including a shareholding in as well as a deposit with a building society;

*deposit agent* means any person who holds an appointment in writing from a single credit institution enabling the person to receive *deposits* on behalf of that institution and prohibiting the person 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;

*derivatives* means any investment falling within sub-paragraphs (d)–(h) of the definition of “investment instruments” within section 2 of the *Act* (which is wider than the definition at 4(2) of these regulations) and sub-paragraphs (k) and (1) to the extent the option or hybrid instrument relates to such an instrument within sub-paragraphs (d)–(h);

*distance contract for the supply of a financial service* has the same meaning as that set out in regulation 3 of the *Distance Marketing of Consumer Financial Services Regulations*;

*Distance Marketing of Consumer Financial Services Regulations* means the EU (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. No. 853/2004);

*employee* means an individual who is employed in connection with the *firm*’s investment business under a contract of service or under a contract for services such that the individual is held out as an *employee* or consultant of the *firm*;

*execution-only* means the effecting or arranging of a transaction by a *firm* for a *client* in circumstances in which the *firm* can reasonably assume that the *client* is not relying upon the *firm* to advise the client on or to exercise any judgement on the client's behalf as to the merits of or the suitability for the client of the transaction and where the *client* has agreed in writing that the *firm* has not provided and is not responsible for providing the client with *investment advice* or for exercising any judgement on the client's behalf as to the merits of or the suitability for the client of the transaction and where the *client* has specified both the product and the *product producer* by name and has not received any assistance from the *firm* in the choice of that product and/or *product producer*; and *execution-only client* shall be construed accordingly;

*film investment* has the meaning given in section 481 of the Taxes Consolidation Act, 1997 (Relief for investment in films);

*firm* means an individual (including a sole trader), partnership or *company* holding a current, valid *investment business certificate (Ireland)* or, as the context requires, which has held such a certificate;

*group*, in relation to a body corporate, means the body corporate, any other body corporate which is its *holding company* or *subsidiary* and any other body corporate which is a *subsidiary* of that *holding company*;

*holding company* has the meaning given by Section 8 of the Companies Act, 2014;

*incidental manner* has the meaning given by [regulation 3\(4\)](#) of these regulations;

*indirect client* means, where a *client* is known to be acting as *agent*, an identified principal who would be a *client* if dealt with directly;

*inducement* does not include disclosable commission;

*insurance distribution* has the meaning given by article 2 of the Insurance Distribution Directive, and comprises the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim;

*investment advice* has the meaning given by [regulation 4\(2\)](#) of these regulations;

*investment business certificate (Ireland)* means a certificate issued by the Association pursuant to section 55 of the Act;

*investment business services* has the meaning given by regulation 4(2) of these regulations;

*investment instrument* has the meaning given in regulation 4(2) of these regulations;

*investment instrument transaction* means:

- (a) the purchase or sale of an *investment instrument*, or
- (b) the subscription for an *investment instrument*;

*member* means an individual admitted to membership of the *Association* pursuant to the bye-laws of the *Association*;

*Minimum Competency Code* means the Minimum Competency Code 2017 introduced by the *Central Bank of Ireland*, as updated;

*Minimum Competency Regulations* means the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017;

*officer* means, in relation to a *firm* which is a partnership, a partner, and in relation to a *firm* which is a *company*, a director or shadow director;

*practising certificate (Ireland)* means a practising certificate issued by the *Association* relating to the carrying on of *public practice* in the Republic of Ireland issued only to *members* who are eligible therefor;

*product producer* means a firm, institution, collective undertaking or investment company of the kind referred to in section 26 (1) (i) to (vii) of the *Act*;

*PRSA* means Personal Retirement Savings Account and, in the context of these regulations, excludes any PRSA provided by an insurance undertaking;

*public practice* has the meaning given by regulation 4 of The Chartered Certified Accountants' Global Practising Regulations 2003;

*RAIPI* means a restricted activity investment product intermediary, in accordance with Section 26 of the *Act*, as amended by Section 59 of the *Compensation Act* and Section 23 of the *Insurance Act* 2000;

*regulatory system* means the arrangements for regulating a *firm* under the *Act* and these regulations;

*specified person* means, in relation to a *firm* which is a partnership any partner in that *firm* and in relation to any *firm* which is a body corporate any director of that *firm*;

*subsidiary* means a subsidiary undertaking within the meaning of section 7 of the *Companies Act*, 2014;

*turnover* means the total income of a *firm*;

*United Kingdom* means the United Kingdom of Great Britain and Northern Ireland;

**(2) Interpretation**

- (a) Words in the singular include the plural and vice versa.

- (b) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.
- (c) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or regulation shall include that provision or regulation as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.
- (d) All references to Acts are to Acts of the Republic of Ireland unless otherwise specified.
- (e) These regulations shall be interpreted in accordance with Irish law.

### 3. Eligibility for an investment business certificate (Ireland)

#### (1) Eligibility – Sole practitioners

A sole practitioner will only be eligible for an *investment business certificate (Ireland)* where:

- (a) the sole practitioner is a *member*; and
- (b) the sole practitioner holds a *practising certificate (Ireland)*; and
- (c) the sole practitioner provides *investment business services* or *investment advice* in an *incidental manner*; and
- (d) the sole practitioner holds minimum net business assets (see [regulation 3\(5\)](#) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and
- (e) the sole practitioner is practising otherwise than in partnership or in a *company*.

#### (2) Eligibility – Partnerships

A partnership will only be eligible for an *investment business certificate (Ireland)* where:

- (a) each of the partners is
  - (i) a *member*; or
  - (ii) a member of another *approved professional body* and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; or
  - (iii) entitled to practise accountancy and is regulated by another professional body and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; and
- (b) the partners who are neither *members* of the *Association* nor of another *approved professional body* (if any) do not form a majority of the partners of the *firm*; and

- (c) at least one of the partners in the *firm* is a *member*; and
- (d) the partnership provides *investment business services* or *investment advice* in an *incidental manner*; and
- (e) the partnership holds minimum net business assets (see [regulation 3\(5\)](#) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and
- (f) each partner who is a *member* holds a *practising certificate (Ireland)* and each partner who is not a *member* holds such other qualification as is deemed adequate by the *Admissions and Licensing Committee*.

**(3) Eligibility – Companies**

A *company* will only be eligible for an *investment business certificate (Ireland)* where:

- (a) each director who is also a [controller](#)
  - (i) is a *member*; or
  - (ii) is a member of another *approved professional body* and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; or
  - (iii) is entitled to practise accountancy and is regulated by another professional body and has given an undertaking to be bound by the regulations of the *Association* in such form as the *Admissions and Licensing Committee* may require; and
- (b) the directors who are neither *members* of the *Association* nor of another *approved professional body* (if any) do not form a majority of the board; and
- (c) at least one of the directors in the *firm* is a *member*; and
- (d) the *company* provides *investment business services* or *investment advice* in an *incidental manner*; and
- (e) the *company* holds minimum net business assets (see [regulation 3\(5\)](#) below) of 10,000 euro for category A authorisation or nil euro for category B authorisation; and
- (f) each director who is a *member* holds a *practising certificate (Ireland)* and each director who is not a *member* holds such other qualification as is deemed adequate by the *Admissions and Licensing Committee*.

**(4) Meaning of incidental manner**

- (a) In order for a *firm* to qualify as providing *investment business services* or *investment advice* in an *incidental manner*, the *Admissions and Licensing Committee* will need to be satisfied that:
  - (i) the main activity of the *firm* is [public practice](#), other than the provision of *investment business services* or *investment advice*; and

- (ii) the provision of the *investment business services* or *investment advice* is not isolated from the other activities of the *firm* so that it is in effect a separate business (this would, however, not exclude a *firm* operating specialist departments within it).
- (b) In relation to the “main activity” test in (a)(i) above, if less than 20 per cent of the *firm’s turnover* on an annual basis derives from *investment business services* or *investment advice*, the test is satisfied.
- (c) The test in (a)(ii) above can be assessed by reference to various indicators, such as:
  - (i) It should be clear to a potential *client* when advertising *investment business services* that the *firm* is an accountancy *firm* which also provides *investment business services* and *investment advice*.
  - (ii) The offices dealing with *investment business services* and *investment advice* should be in the same location as the offices from which the accountancy services are provided.
  - (iii) The *investment business services* and *investment advice* should normally be provided in conjunction with the accountancy services of the *firm*.
  - (iv) The *firm’s* policy should be to endeavour to provide its full range of services to its *clients*, where these services are appropriate.
  - (v) The *firm* should fully accept that its provision of *investment business services* and *investment advice* is within the scope of the Association’s Code of Ethics and Conduct.
  - (vi) It should be clear, in terms of the way the *investment business services* and *investment advice* are managed by the *firm*, that this activity does not act on a stand-alone basis separate from the main activities of the *firm*.
  - (vii) The provision of *investment business services* and *investment advice* should be managed on a day-to-day basis by persons who are members of an *approved professional body*.
- (d) The question as to whether a *firm* complies with regulation 3(4)(a) will be determined by the *Admissions and Licensing Committee* on the particular circumstances of each case.

**(5) Net business assets**

The net business assets of a sole trader or partnership are defined as follows:

- (a) Fixed assets plus current assets less “creditors” (including those due after more than one year).

- (b) Fixed assets are defined as assets that have been specified as being business assets and are included on the balance sheet of the sole trader or partnership and are used on a regular basis in the conduct of the business. Assets used mainly for the purpose of entertainment and intangible assets are excluded from the definition of fixed assets for the purpose of determining whether the capital adequacy requirements have been satisfied.
- (c) Current assets include those assets that would be included under this heading if the business were incorporated except that the following are excluded:
  - (i) unbilled partner time included in work in progress;
  - (ii) amounts due to the firm from any individual connected with a principal of the firm (a connected person is defined as a spouse, child or parent of the principal); and
  - (iii) any bank account not designated as a business account.
- (d) "Creditors" includes all liabilities incurred in conjunction with the operation of the business, and for the purpose of establishing net business assets under this regulation includes personal liabilities of a sole trader or the sole trader's spouse, or a partner or the partner's spouse, incurred to enable funds to be introduced into the business.

The net business assets of a limited company are determined in accordance with generally accepted accounting practice for the preparation of company accounts. For the avoidance of doubt, "creditors" due after more than one year are to be deducted in the calculation of net business assets.

Every *firm* shall keep accounting records which are sufficient to show and explain the *firm's* transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the *firm* at that time, and its compliance with the requirements to have a minimum level of net business assets on an ongoing basis.

#### *(6) Main activity*

For the purposes of [regulations 3\(1\)](#) to 3(3), where 20 per cent or more of a *firm's* turnover on an annual basis derives from *investment business services* or *investment advice*, this fact must be notified to the Association who will refer the matter to the *Admissions and Licensing Committee* and to the [Central Bank of Ireland](#) for its consideration.

#### *(7) Other restrictions*

An [applicant](#) shall not be eligible for an *investment business certificate (Ireland)* if the applicant is authorised to provide *investment business services* or *investment advice* other than pursuant to these regulations.

## 4. Scope

### (1) Prohibition on carrying on investment business

No *member*, nor any partnership or company in relation to which the member is a *specified person*, may act as an investment business firm otherwise than in compliance with the provisions of section 9(1) of the Act.

### (2) Category A authorisation

A Category A *firm* may carry on any activity for the provision of *investment business services* or *investment advice* within the meaning of this regulation 4(2).

“*Investment advice*” means the giving, or offering or agreeing to give, to any person:

- (a) advice on the purchasing, selling, or subscribing for an *investment instrument* or on the making of a *deposit* or on the exercising of any right conferred by an *investment instrument* to acquire, dispose of, or convert an *investment instrument* or *deposit*; or
- (b) advice on choice of a person providing *investment business services*;

and includes advice on *BES investments* and *film investments*, but does not include any of the following:

- (a) advice 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 persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services*;
- (b) advice 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 persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services* 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 person attending such event and arising out of such attendance, in relation to *investment instruments* or *deposits* or in relation to the choice of a person providing *investment business services*;
- (c) advice given in sound or television broadcasts where the principal purpose of such broadcasts taken as a whole is not to lead persons to invest in any particular *investment instrument* or *deposit* or to deal with any particular provider of *investment business services*;
- (d) advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase or sale of undertakings.

“*Investment business services*” includes all or any of the following services:

- (a) receiving and transmitting, on behalf of investors, of orders in relation to one or more *investment instruments*;
- (b) execution of orders in relation to one or more *investment instruments*, other than for own account;
- (c) acting as a deposit broker (but not a deposit agent).

“*Investment instruments*” includes:

- (a) transferable securities including shares, warrants, debentures including debenture stock, loan stock, bonds, certificates of deposits and other instruments creating or acknowledging indebtedness issued by or on behalf of any body corporate or mutual body; government and public securities, including loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority; bonds or other instruments creating or acknowledging indebtedness; certificates representing securities; or money market instruments;
- (b) non-transferable securities creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority;
- (c) units or shares in undertakings for collective investments in transferable securities within the meaning of European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), and any subsequent amendments thereto; units in a unit trust; shares in an investment company; capital contributions to an investment limited partnership;
- (d) agreements for the borrowing and lending of transferable securities;
- (e) certificates or other instruments which confer all or any of the following rights, namely:
  - (i) property rights in respect of any *investment instrument* referred to in paragraph (a) of this definition; or
  - (ii) any right to acquire, dispose of, underwrite or convert an *investment instrument*, being a right to which the holder would be entitled if the holder held any such investment to which the certificate or instrument relates; or
  - (iii) a contractual right (other than an option) to acquire any such *investment instrument* otherwise than by subscription;
- (f) tracker bonds (excluding those provided by insurance undertakings) or similar instruments;
- (g) PRSAs.

(3) *Category B authorisation*

(a) A Category B *firm* may carry out a limited number of Category A activities. Those activities are all or any of the following:

- (i) receiving and transmitting orders on behalf of investors in the following instruments:
  - (aa) units or shares in undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989, and any subsequent amendments thereto;
  - (bb) units in a unit trust;
  - (cc) other *collective investment scheme* instruments;
  - (dd) shares in a company which are listed on a stock exchange or bonds so listed;
  - (ee) prize bonds;
  - (ff) tracker bonds (excluding those provided by insurance undertakings);
  - (gg) *PRSAs*; or
- (ii) acting as a *deposit broker* (but not a *deposit agent*); or
- (iii) giving, or offering or agreeing to give, to any person, advice on the purchasing, selling, or subscribing for one of the instruments listed at regulation 4(3)(a)(i) above or on the making of a *deposit*; or
- (iv) giving, or offering or agreeing to give, to any person, advice on choice of a person providing *investment business services*.

(b) In the course of engaging in any of the activities listed at regulation 4(3)(a) above, a category B *firm* may transmit orders only to all or any of the following *product producers*, namely:

- (i) investment firms authorised in accordance with Directive 2004/39/EC of 21 April 2004 by a competent authority of another Member State, or to an authorised investment business firm authorised under the *Act*, not being a *RAIPI* or *certified person*, or to a firm authorised in accordance with the European Communities (Markets in Financial Instruments) Regulations 2007;
- (ii) credit institutions authorised in accordance with Directive 2006/48/EC;
- (iii) such other branches of investment business firms or credit institutions authorised in a third country as the *Central Bank of Ireland* may approve from time to time;

- (iv) collective investment undertakings authorised under the law of a Member State of the European Union to market units in collective investments to the public and to the managers of such undertakings;
- (v) investment companies with fixed capital as defined in Article 15(4) of Council Directive 77/91/EEC of 13 December 1976 the securities of which are listed or dealt in on a regulated market in a Member State;
- (vi) the Prize Bond Company Ltd or any successor to it as operator of the Prize Bond scheme.

**(4) Excluded activities**

(a) No *firm* may:

- (i) deal in one or more *investment instruments* for own account as if it were a market maker. A *firm* shall not act collectively for a *client* or *clients* and on its own account. In no circumstances may the *firm* allocate to a *client* a transaction originally effected for the *firm*'s own account or allocate for the *firm*'s own account a bargain originally effected for a *client*;
- (ii) manage portfolios of *investment instruments* or *deposits* in accordance with mandates given by investors on a discretionary client-by-client basis where such portfolios include one or more *investment instrument* or one or more *deposit*;
- (iii) underwrite in respect of issues of one or more *investment instruments* or the placing of such issues or both;
- (iv) act as a *deposit agent*;
- (v) administer *collective investment schemes*, including the performance of valuation services or fund accounting services or act as transfer agents or registration agents for such funds;
- (vi) carry out custodial operations involving the safekeeping and administration of *investment instruments*;
- (vii) act as a manager of a designated investment fund within the meaning of the Designated Investment Funds Act, 1985;
- (viii) carry out any activity, including for this purpose the issue of an advertisement, relating to derivatives;
- (ix) carry on any other activity constituting the provision of investment business services or investment advice within the meaning of section 2 of the *Act* other than an activity falling within regulation 4(2);

- (x) hold or receive any money belonging to a *client*, or any money received from a *client* which belongs to a *product producer*, in the course of carrying on *investment business services* for a *client* which is not immediately due and payable on demand to the *firm* for its own account;
- (xi) undertake *insurance distribution*.

(b) A *firm* may not hold *clients*' funds or securities nor funds received from a *client* which belong to a *product producer*. This shall not prevent a *firm* from taking non-negotiable cheques or similar instruments made out to a *product producer* for the purposes of the receipt and transmission of orders.

(c) Regulation 4(4)(a)(i) is designed to ensure that *firms* do not, for own account in a personal capacity, buy investment instruments from, or sell investment instruments to, a *client* with a view to making a personal profit or to cause loss to the *client*. The rule prohibits personal own account trading with *clients*.

## 5. Consumer Protection

### (1) Consumer Protection Code

(a) A *firm* must ensure that it complies with the *Consumer Protection Code* to the extent that the *Consumer Protection Code* is relevant to the activities that a *firm* is permitted to carry on under regulation 4. Where a requirement of the Association's Irish Investment Business Regulations 2013 or the Association's Code of Ethics and Conduct is more stringent than the *Consumer Protection Code* (or vice versa), the more stringent requirement applies.

(b) The following provisions of the *Consumer Protection Code* are to be interpreted as explained in this regulation 5(1)(b):

- (i) A *firm* falls within the definition of a 'regulated entity' within the *Consumer Protection Code*.
- (ii) Provisions that relate to *investment business services* and *investment advice* that a *firm* is not permitted to provide or offer shall be interpreted accordingly. For the avoidance of doubt:
  - (aa) provision 4.10 should be replaced by the requirements of regulation 7(2), and provision 9.1 should be interpreted accordingly;
  - (bb) provision 3.41 does not apply to *firms*, as a *firm* is not permitted to make telephone contact with a consumer who is not an existing customer.
- (iii) Provision 4.13 (c) should be read so as to require the name of the Association, as approved professional body, to be stated, rather than the name of the competent authority.

**(2) Minimum Competency Code**

A *member* who is a *certified person* must comply with the [Minimum Competency Code](#). A *firm* must ensure that it complies with the [Minimum Competency Regulations](#).

## 6. Independence

**(1) Inducements**

A *firm* must take reasonable steps to ensure that neither it nor any of its [agents](#) offers, gives, solicits or accepts any [inducement](#) which is likely to conflict significantly with any duties of the recipient or the recipient's employer owed to *clients* in connection with the provision by the *firm* of *investment business services* or *investment advice*.

**(2) Material interest**

Where a *firm* has a material interest in a transaction to be entered into with or for a *client* or a relationship which gives rise to a conflict of interest in relation to such a transaction, the *firm* must not knowingly advise in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the *client*.

**(3) Arrangements with third parties**

A *firm* shall not, unless constrained to do so by law, in connection with the provision by the *firm* of *investment business services* or *investment advice*, have any association or arrangement with any other person under which it will be constrained to recommend to its *clients* or to effect with or for them (or refrain from doing so) transactions in some *investment instruments* but not in others, with some persons but not with others, or through the agencies of some persons but not of others.

## 7. Relations with clients

**(1) Fair and clear communications**

A *firm* may make a communication with another person which is designed to promote the provision of *investment business services* or *investment advice* only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

**(2) Information about the firm**

A *firm* must, in all its business letters, electronic communications, notices and other publications including advertisements, state that it is authorised as a *firm* by the *Association*. The required wording is as follows:

“Authorised to undertake investment business services in Ireland by the Association of Chartered Certified Accountants.”

The authorisation statement must also be displayed in the public area of each office from which the firm operates.

**(3) Charges**

- (a) The amount of a *firm*'s charges to a *client* for the provision of *investment business services* or *investment advice* to the *client* must not be unfair or unreasonable in the circumstances.
- (b) *Firms* must comply with the requirements of paragraphs 220.18 to 220.20 of the Association's Code of Ethics and Conduct in respect of commission and other financial gains.
- (c) If as a result of a subsequent variation of the proposed transaction, the amount of the commission receivable is increased, this fact must be communicated in writing to the *client*.

**(4) Client agreements**

- (a) A *firm* shall not be entitled to recommend to or undertake for a *client* any transactions as the *Central Bank of Ireland* may stipulate from time to time, unless the *client* has previously signed a statement acknowledging the risks resulting from such transactions. The *Central Bank of Ireland* may from time to time issue guidance on the contents of such statements. Any statement issued by a *firm* in accordance with this paragraph shall explain the risks of the transaction at least as fully as any such guidance.
- (b) Where a *firm* accepts an order subject to any condition it shall maintain a written note of the condition to which the instruction or order is subject.

**8. Effecting transactions for clients****(1) Clients' best advantage**

- (a) A *firm* must take reasonable care in executing transactions for its *clients* to ensure that it deals to the best advantage of those *clients*. In deciding whether or not a *firm* has taken such reasonable care, regard will be had to all the relevant circumstances of the transaction including:
  - (i) the nature of the transaction;
  - (ii) the price and availability of the *investment instrument*, where appropriate, as well as the general condition of the market at the time;
  - (iii) the services which the *firm* holds itself out as providing;
  - (iv) all charges which will be levied on the investment concerned;
  - (v) the size of the order;
  - (vi) the nature and extent of enquiries made by the *firm* in the market place;
  - (vii) the terms of the order given by the *client*, including the date on which the order was placed.

- (b) A *firm* may be required to justify its actions to the *Association* in order to show that it has dealt to the best advantage of its *client*.
- (c) *Firms* should record the time and date of dealing for all transactions for their *clients* and, where appropriate, the time of receipt of order and should retain this information in a readily accessible form.
- (d) *Firms* may aggregate a transaction for a *client* with transactions for other *clients* or with own account transactions where it is reasonably unlikely that the aggregation will operate to the disadvantage of any of the *clients* whose transactions have been aggregated and where the *firm* discloses to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order.

**(2) Allocation of transactions between clients**

A *firm* shall only act on behalf of a named or otherwise identifiable *client*. In any situation where the *firm* finds itself obliged to allocate an *investment instrument transaction* between different *clients*, and all cannot be satisfied, the *investment instrument transaction* shall as soon as reasonably practicable thereafter be allocated between the *clients*:

- (a) in a manner which the *firm* in good faith believes does not unfairly benefit one *client* at the expense of another;
- (b) so as to be reasonable in the interests of each *client*;
- (c) so as not to conflict with any instructions a *client* may have given the *firm*;
- (d) so as not to conflict with any limitations which may have been placed on the *firm's* discretion to act; and
- (e) on a pro rata basis with a detailed explanation providing for any deviation from that basis.

**(3) Timely execution**

- (a) Once a *firm* has agreed to effect a transaction for a *client*, it must do so as soon as reasonably practicable.
- (b) A *firm* must ensure that, once it has transmitted an order to a *product producer*, it obtains confirmation from the *product producer* that the transaction has been processed properly and promptly.

**(4) Notes containing the essential details of a transaction**

A *firm* which effects a transaction for a *client* shall ensure that there is sent to the *client* as soon as possible either:

- (a) such contract note or statement as is received by the *firm* from any firm or a firm regulated under the European Communities (Markets in Financial Instruments) Regulations 2007 involved in the transaction (or a copy or relevant part thereof); or

- (b) a note containing the essential details of the transaction (as set out in [Appendix 2](#) to these regulations), unless those details are already known to the *client*.

## 9. Advising clients

### (1) Advice on choice of person providing investment business services or investment advice

- (a) *Firms* may not refer a *client* to a person who will only advise on one particular product or group of products. For example, *firms* may not refer a *client* to an adviser who will advise only on the products of one *product producer*.
- (b) *Firms* must take reasonable steps to ensure that they refer *clients* to an independent adviser. If a *firm* is unable to do so, it must be able to show that it took reasonable steps to establish that the person was suitable and had access to a suitable range of products.

### (2) Understanding of risk

A *firm* shall not provide *investment business services* or *investment advice* for a *client* unless it has reasonably concluded that the *client* can be expected to understand the risks involved in a transaction or a particular type of transaction.

## 10. Additional requirements in certain circumstances

### (1) Collective investment schemes

- (a) Product particulars:
  - (i) Before or when a *firm* recommends to a *client* to acquire or vary a holding in a *collective investment scheme*, the *firm* must provide the *client* with a self-contained statement of the particulars of the product.
  - (ii) In the case of a variation from accumulation to income units or vice versa, there is no need to provide further product particulars if the *client* has already received them.
  - (iii) If the transaction is on an *execution-only* basis, the product particulars need only be provided within five business days after the transaction and in any event no later than the contract note relating to the transaction is issued.
  - (iv) In any event, if a *product producer* provides the *firm* with product particulars, the *firm* must provide them to the *client*.
- (b) Confirmations:
  - (i) Where a *firm* arranges a transaction relating to a *collective investment scheme* where the *client* persists in wishing the transaction to be effected despite advice from the *firm*, the *firm* shall send the *client* written confirmation that:

- (aa) the *client* was given advice from the *firm* in connection with the transaction but nevertheless persisted in wishing the transaction to be effected; and
- (bb) the transaction was entered into on the *client's* explicit instructions;

and shall ensure that the confirmation is signed by a *certified person*. Details of individual transactions must be retained for six years after the date on which the particular transaction is discontinued or completed. All other records must be retained for six years from the date on which the firm ceased to provide any product or service to the *client* concerned. *Firms* should consider keeping the confirmation until the expiry of the term of the investment to which it relates.

- (ii) *Firms'* attention is also drawn to the provisions of regulation 10(3) relating to the confirmations to be sent to *execution-only clients*, in particular regulations 10(3)(c)(iv) and 10(3)(e).

### (2) Guarantees

A *firm* shall not itself give a guarantee (in any form) to a *client* of investment performance in respect of any *investment instrument* or of any transaction relating to any *investment instruments*.

Before recommending or effecting for a *client* a transaction relating to *investment instruments* in respect of which a guarantee (in any form) of investment performance has been or will be given, a *firm* shall notify the *client* in writing of the following:

- (a) the precise nature and extent of the guarantee, including any limit of whatsoever kind upon the guarantee and the name of the guarantor;
- (b) that no guarantee (in any form) of investment performance can be given by a *firm* in respect of any *investment instrument* or any transaction relating to the *investment instrument*; and
- (c) that the *client* will not be able to bring a claim for compensation in respect of any failure of investment performance to match a guarantee given or representation made (whether in writing or not) by the guarantee.

### (3) Execution-only clients

Where a *firm* is treating a *client* as an *execution-only client* it must:

- (a) make written evidence of specific instructions from the *client*; and
- (b) have reasonably assessed and concluded that the *client* can be expected to understand the risks involved in the transaction; and
- (c) send the *client* a written confirmation that:
  - (i) the *client* is being treated as an *execution-only client*;
  - (ii) the *client* did not seek or receive any advice from the *firm* regarding the transaction;

- (iii) the transaction was entered into on the *client*'s explicit instructions; and
- (iv) in the case of an *investment instrument*, that the *client* was clearly warned that the value of such instruments can fall as well as rise, but the *client* nevertheless wished the transaction to be effected; and
- (d) ensure that the written confirmation referred to in regulation 10(3)(c) above is signed by a *certified person* and retained for at least six years from the date on which the firm ceases to provide any product or service to the *client* concerned. *Firms* should consider keeping each record until the expiry of the term of the investment to which the record relates; and
- (e) in the case of an *investment instrument*, ensure that the *client* signs the written confirmation referred to in regulation 10(3)(c) above.

## 11. Compliance procedures

### (1) Compliance

A *firm* must take reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and agents act in conformity with all regulations applicable to the provision by the *firm* of *investment business services* or *investment advice*.

### (2) Records

- (a) A *firm* must ensure that sufficient information is recorded and retained about its *investment business services* or *investment advice* as is necessary for the proper conduct of that business and to enable it to demonstrate compliance with the regulatory system, including but not limited to records:
  - (i) of the receipt of commissions;
  - (ii) which are adequate to demonstrate the amount of its fees charged to *clients* which are attributable to *investment business services* and *investment advice* as permitted by regulation 4;
  - (iii) of complaints received and action taken;
  - (iv) of the names of *clients* to whom *investment business services* and *investment advice* is provided and the agreement setting out the *firm*'s terms of business issued to each;
  - (v) of details of non-independent advisers and their product ranges to whom *clients* have been referred, which adequately demonstrate that reasonable steps have been taken regarding suitability in accordance with regulation 9(1)(b);
  - (vi) of the facts obtained about *clients* pursuant to chapter 5 of the *Consumer Protection Code*;

- (vii) of written notification and acknowledgement and evidence of instructions relating to transactions;
- (viii) of details of recommendations which adequately demonstrate that reasonable steps have been taken regarding suitability in accordance with chapter 5 of the *Consumer Protection Code*;
- (ix) of the date and, where appropriate, the time of both receipt and transmission of all orders for *clients*, in a readily accessible form;
- (x) of each receipt issued in accordance with section 30 of the *Act*, the provisions of which are set out at [Appendix 1](#) for ease of reference;
- (xi) of the information provided to the *client* in accordance with chapter 4 of the *Consumer Protection Code*;
- (xii) of the *firm*'s own position as follows:
  - (aa) income and expenditure;
  - (bb) assets and liabilities, including off-balance sheet items and any commitments including contingent liabilities;
  - (cc) correspondence with the *Association*.
- (b) A *firm* must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. All other records must be retained for six years from the date on which the *firm* ceased to provide any product or service to the *client* concerned. *Firms* should consider keeping each record until the expiry of the term of the investment to which the record relates.
- (c) *Firms* should note that:
  - (i) failure to keep such records, or any other records prescribed under the *Act*, will constitute a criminal offence under the *Act*;
  - (ii) if a *firm* is wound up and is unable to pay its debts and it is found that the prescribed records have not been kept, any or all of the *officers* and/or beneficial owners of the *firm* may be personally liable for the *firm*'s debts and liabilities.

### (3) Compensation scheme

*Firms* shall not provide any *investment business services* unless they are either:

- (a) contributors to the compensation scheme established by the Investor Compensation Company Limited under the [Compensation Act](#) providing for compensation to *clients* who have suffered losses; or
- (b) members of a compensation scheme set up by an *approved professional body*, which scheme has been approved of by the *Central Bank of Ireland* and provides compensation to *clients* who have suffered losses.

#### (4) Companies Act 2014

Each *employee* of a *firm* shall, as part of their contract of employment, be required to sign an undertaking relating to the provisions of chapter 2 of Part 23 of the Companies Act, 2014 (Market abuse) declaring that the *employee* has read and understood them and shall as part of their contract comply with such procedures as may from time to time be introduced for the purpose of ensuring compliance therewith.

## 12. Enforcement

#### (1) Intervention Orders

- (a) If it appears to the *Admissions and Licensing Committee* that for the protection of investors or for the protection of the *Association* or for both reasons:
  - (i) it is desirable to prohibit a *firm* from disposing of or otherwise dealing with any of its assets, or any specified assets; and/or
  - (ii) a *firm* is not fit and proper to provide *investment business services* or *investment advice* either generally or of a particular kind or to the extent to which it is or is intending to carry on that business; and/or
  - (iii) a *firm* has committed, or intends, or is likely to commit a breach of these regulations or some other act of misconduct; and
  - (iv) it is desirable to take protective measures,
 the *Admissions and Licensing Committee* may make and serve on the *firm* concerned a written Intervention Order (an “*Order*”).
- (b) An *Order* may operate for a specified period or until the occurrence of a specified event or until the *firm* complies with specified conditions and may, at the *Admissions and Licensing Committee*’s discretion, come into effect either immediately on service or at such later time as the *Admissions and Licensing Committee* may determine.
- (c) An *Order* served on a *firm* may require the *firm* to take specified steps and/or may forbid the *firm*:
  - (i) in whole or in part, to provide *investment business services* or *investment advice*;
  - (ii) to dispose of or otherwise deal with any assets or any specified assets (whether held in the Republic of Ireland or outside the Republic of Ireland) or to act otherwise than in the manner specified in the *Order*;
  - (iii) to enter into transactions of a specified kind or enter into them except in specified circumstances or to a specified extent;
  - (iv) to solicit business from persons of a specified kind or otherwise than from such persons or in a specified country or territory; and/or

- (v) to carry on business in a specified manner or otherwise than in a specified manner.
- (d) An *Order* shall specify:
  - (i) the reasons for its issue;
  - (ii) the date and time at which the *Order* shall come into effect;
  - (iii) the period for which the *Order* shall operate, which may be expressed to end with the occurrence of a specified event or when the *firm* has complied with the requirements of the *Order*;
  - (iv) where relevant, in regard to an *Order* to which regulation 12(1)(a)(iii) applies, the act or omission which constituted or would constitute breach of the regulations and the regulation which has been or would be contravened; and
  - (v) the officer of the *Admissions and Licensing Committee* to whom a request can be made for a stay of execution of the *Order*.
- (e) The *Admissions and Licensing Committee*, or the Chair of the *Admissions and Licensing Committee* acting on its behalf, may, at any time before or after an *Order* comes into effect, revoke the *Order* or vary its terms; and where the terms of an *Order* are varied the variation shall be effected by a new *Order* being served on the *firm* concerned.
- (f) Subject to regulation 12(2) the *Association* shall publish the *Order* at or after the time it comes into effect and shall notify the *Central Bank of Ireland* that an *Order* has been published.

**(2) Application for stay**

After service of the *Order*, its recipient may apply to the *Association* for a stay of execution of the *Order* or any part of it and/or of its publication. The application shall be considered by the officer specified pursuant to regulation 12(1)(d)(v) who in the officer's discretion may grant or refuse the stay or grant it subject to conditions.

**(3) Reference to the Appeal Committee**

A *firm* served with an *Order* may appeal against the *Order* in the same way and subject to the same limitations as it may appeal against any other decision of the *Admissions and Licensing Committee*.

**(4) Right of the Association to appeal against an Order**

The *Association* may appeal against an *Order* in the same way and subject to the same limitations as it may appeal against any other decision of the *Admissions and Licensing Committee*.

### (5) Offences

*Firms* should note that the *Act* prescribes penalties of varying severity for breaches of its provisions:

- (a) Section 74 of the *Act* lists the provisions which, if breached, would not amount to a criminal offence but could attract a penalty of a reprimand, and/or a fine of up to 635,000 euro, and/or publicity, and/or payment of costs.
- (b) Section 79 of the *Act* lists the provisions which, if breached, amount to a criminal offence and could attract a penalty of a fine of up to 1,270,000 euro maximum and/or imprisonment for up to 10 years. Some of those offences are referred to within these regulations.

## 13. Waivers and service

### (1) Waivers and modifications

- (a) A *firm* is entitled to apply in writing to the *Admissions and Licensing Committee* to waive, vary or suspend the requirements of any of these regulations in order to adapt them to the *firm*'s circumstances or to any particular kind of business which the *firm* is carrying on or intends to carry on. The *Admissions and Licensing Committee* shall not grant the application unless it appears that compliance with the regulations would be unduly burdensome having regard to the benefit which compliance would confer on investors and the exercise of the power would not result in any undue risk to investors. Any waiver, variation or suspension given by the *Admissions and Licensing Committee* shall be granted subject to the prior approval of the *Central Bank of Ireland*.
- (b) The *Admissions and Licensing Committee* may grant such an application on conditions. If it does so, the applicant *firm* must comply with any such conditions.
- (c) Following an application under this regulation, or of its own volition, the *Admissions and Licensing Committee* may waive, vary or suspend any of these regulations. Where it does so, it may impose conditions and any *firm* which acts upon the waiver, variation or suspension extended to it must comply with any such condition. Any such conditions imposed by the *Admissions and Licensing Committee* shall be subject to the prior approval of the *Central Bank of Ireland*.
- (d) Any waiver, variation or suspension given under this regulation shall apply for such period as the *Admissions and Licensing Committee* shall specify.

### (2) Consents

Where provided for in these regulations any consent to be given by the *Admissions and Licensing Committee* may be given or withheld in its absolute discretion but if withheld the *Admissions and Licensing Committee* shall notify the *firm* of the reasons why it has been withheld.

(3) *Service*

Except as otherwise provided in these regulations, any notice or other document required or authorised by these regulations to be served on any *firm* may be served by leaving it at or sending it by post to the *firm's* address or faxing it to the number notified to the *Association* in accordance with these regulations.

## 14. Liability

Neither the *Association* nor any of its *officers* or servants or *agents* nor any members of any committee of *Council* shall be liable in damages or otherwise for anything done or omitted to be done in the discharge or purported discharge of any function under the *Act*, or these regulations, or any other rules or regulations referred to in these regulations unless the act or omission is shown to have been in bad faith.

# Appendix 1

## Regulation 11(2)(a)(x)

### Receipt in compliance with section 30 of the Act

(1) The receipt shall state succinctly the terms and conditions upon which the transaction was entered into.

(2) The receipt shall state that it is issued pursuant to section 30 of the *Act* and shall, subject to such alterations or additions as may be prescribed by the *Central Bank of Ireland*, specify the following:

- (a) the name and address of the *firm*;
- (b) the name and address of the *client* or other person furnishing the instrument or payment, or an alternative form of identification approved by the *Central Bank of Ireland* for the purpose;
- (c) the value of the instrument or payment received and the date on which it was received;
- (d) the purpose of the payment;
- (e) the name of the *product producer* in whose favour the payment is made.

## Appendix 2

### Regulation 8(4)(b)

#### Essential details of a transaction

The essential details of a transaction effected by a *firm* to be sent to a *client* as referred to in regulation 8(4)(b) are as follows:

- (a) the name of the *firm*;
- (b) the date of the transaction;
- (c) the time at which the transaction was entered into or a statement that this will be available on request;
- (d) the *investment instrument* concerned, the size involved and whether the transaction was a purchase or sale;
- (e) the price at which the transaction was executed or averaged and the total consideration due to or from the *client*;
- (f) the settlement date;
- (g) the amount of the *firm*'s charges to the *client*, if any, in connection with the transaction except where the *firm* has been requested to issue the contract note on a net basis by a professional client and has maintained a written note of such request;
- (h) a statement, if this is the case, that any dividend, bonus or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the relevant *investment instrument*, will not pass to the purchaser under the transaction;
- (i) the amount or basis of any charges shared by the *firm* with another person (except employees) or the fact that this will be made available on request;
- (j) the amount or basis of any remuneration which the *firm* has received or will receive from another person in connection with the transaction;
- (k) if any interest which has accrued or will accrue on the relevant security is accounted for separately from the transaction price, the aggregate amount of the interest which the purchaser will receive or the number of days for which the purchaser will receive interest and the applicable rate of interest accruing;

- (l) the amount of any costs, including transaction taxes, which are incidental to the transaction and which will not be paid by the *firm* out of the charges mentioned in (g) above;
- (m) if the transaction involved a foreign currency, the rate of exchange involved and the date of calculation of such if other than the date of the transaction;
- (n) a statement, if this is the case, that the *firm* has acted as principal.

In addition, where the *member* and/or the *firm* has entered into a [distance contract for the supply of a financial service](#) after 15 February 2005, the *member* or *firm* entering into such contract shall comply with the [Distance Marketing of Consumer Financial Services Regulations](#).