5. Brokers – The Last 25 Years

Insurance Brokers have been active in the Irish market for more than one hundred years since Coyle & Co was formed in 1903. The history of insurance broker’s representative bodies stretches back 70 years with the formation the first broker representative body CIBI (Corporation of Insurance Brokers in Ireland) during the “emergency” in 1940. Other broker bodies were formed in the 1960’s such as the Institute of Insurance Brokers in Ireland. Until the 1970’s insurance brokers in Ireland confined their activities to general insurance and it was only during the 70’s that insurance brokers began to make an impact in the life market.

Through the 70’s and early 80’s four broker bodies existed in Ireland:

- CIBI
- The Institute of Insurance Brokers
- ALBI (Association of Life Brokers in Ireland)
- The Federation of Insurance Brokers in Ireland

Each body represented its own particular niche of the market with some degree of overlap. CIBI representing largely the corporate sector, the Institute represented in the main largely rural brokerages, the Federation urban brokerages and obviously ALBI represented life brokers. Thankfully in the early 80’s this was rationalised with a number of mergers in quick succession when NIBA (National Insurance Brokers Association) was formed by the coming together of the “Institute” the “Federation” and of ALBI in 1983.

The history of brokers in the modern era, that is the last twenty five years, largely begins around 1983 with the formation of NIBA. Two significant developments occurred during those formative years:

- The founding of what remains today the only monthly publication of the insurance industry the "Irish Broker"
- The establishment of a permanent secretariat for the first time for a broker representative body

As insurance broking/intermediation was an unregulated activity no accurate statistics exist regarding the number of brokerages that were trading in the country at that time. An informed guesstimate is that there was something around 1800 brokerages active in the market. Membership of the two broker bodies in late 1984 was approximately 80 members in CIBI and about 150 members in NIBA.

At that time a large number of agents existed in the market most of whom were part time. Once again no firm statistics existed regarding the number of agents however an informed guesstimate put their numbers at around the 5000 mark.

With a backdrop like that described above, with something like a total population of approximately 7000 intermediaries (brokers and agents) operating in an unregulated manner it was not surprising that the first item on the agenda of the broker bodies was to persuade the Government to introduce regulation. In the absence of regulation both broker bodies had made strenuous efforts to raise the standards in the market by voluntarily imposing strict membership requirements including solvency standards, criteria regarding educational standards and experience and mandatory professional indemnity insurance.
In 1986 the general insurers with a few notable exceptions decided collectively to arbitrarily impose swinging reductions to the commissions paid to brokers in respect of the following classes of business motor, home, employers and public liability. The reductions some of which were as high as 40% galvanised the broker bodies into action. Both NIBA and CIBI co-operated closely in taking the insurers to the European Court of Justice alleging that the insurers in the manner in which they acted were in breach of EU competition law.

The lobbying efforts of the broker bodies to persuade the Government to act in this area bore fruit and led to the publication of the “Insurance Bill, 1986” which was ultimately adopted into law as the “Insurance Act, 1989”. The bill was at the time an advanced piece of legislation and proposed regulating the “activity” of insurance intermediation. In that respect the Irish legislators had learnt from the mistakes of the UK which adopted a regulatory framework that was based on nomenclature i.e. insurance broker and those “brokers” who wanted to avoid regulation merely avoided using the word broker.

The publication of the Bill gave impetus for significant developments in the broker market. It contained a number of provisions, the most important of which was that self regulation was the regulatory system that was proposed in the Bill and it also contained a provision that brokers should have a compensation bond.

In anticipation of the bonding requirement becoming law in 1987 NIBA established a compensation fund which exists today as the IBA Compensation Fund though the requirement for bonding no longer exists as it has been super ceded by the establishment by the ICCL (Investor Compensation Company Ltd). Through this period membership of NIIBA (the word investment had been included in its name in 1987) grew rapidly to more than 500 brokerages in 1989. NIIBA also acquired its own building on the corner of Merrion Square right opposite the fulcrum of power the Dáil late in 1989.

When the “Insurance Act, 1989” was enacted in October 1989 in contained a provision which allowed broker bodies to apply to the Minister for Industry and Commerce for “recognition” to be permitted to regulate their members. The broker bodies who were at that stage co-operating very closely regarding their joint complaint to the European Court of Justice initiated merger discussions which led to the formation of IBA (Irish Brokers Association) in March 1990 which at that stage had a membership of 650 brokerages.

The regulation of insurance intermediaries for the first time led to a period of rapid consolidation for a number of years. As a result of the “89 Act” insurance intermediaries had a choice of two routes to become regulated;

- Joining the IBA as the only “recognised body”, or
- To be regulated by the insurers via the Insurance Intermediary Compliance Bureau (IICB) the body which was established by the insurers/IIF for that purpose.

Soon after the passing into law of the “Insurance Act, 1989” the then Minister for Industry and Commerce, Ray Burke TD used the powers under section 37 of the Act to issue a notice confirming the rates of commission agreed by the general insurers in their concerted action in 1986. This action by the Minister was to lead to ongoing friction in the industry between IBA and the IIF throughout most of the 90’s until the Section 37 notice was repealed later in the decade as it was becoming increasingly irrelevant and anachronistic.

Whist the market and brokers involvement in the market was constantly evolving, some of the changes that occurred are worthy of comment.

- IBA lobbied successfully for the abolition of the practice of conditional lending by financial institutions. It had been the practice of most financial institutions for
decades to make the provision of finance conditional upon the clients arranging their mortgage protection or home insurance through the institution. Over the years the practice of insurers forcing brokers to maintain their agencies by requiring brokers to give them business even if it was not in the clients interest has been prohibited. This practice was abolished with the adoption of the “Consumer Credit Act, 1995”

- Another development was prohibition on insurers forcing brokers to maintain their agencies by requiring brokers to give them business even if it was not in the clients interest
- During this period brokers expanded their area of activity into the mortgage/finance arena and made significant inroads into the mortgage market from a marginal role until it reached the stage that brokers controlled 50% of the market for new mortgages until the collapse of the market in recent years
- Since the early 90’s when an insurer engaged in the mass cancellation of the agencies of a large number of brokers IBA negotiated new and in its view more balanced agreements with insurers to prevent a similar reoccurrence

As the new regulatory environment matured, the numbers of intermediaries including brokers reduced dramatically. The reduction in numbers was largely in the number of part time agents until by the mid 90’s approximately 600 brokers were regulated by the IBA and a further 2500 intermediaries including many brokers were regulated by the IICB.

In 1992 IBA took the major step of requiring all members who were advising the public in relation to life and pensions were all required to undertake mandatory competency tests. IBA designed a course for this purpose in close co-operation with the LIA. This innovation was literally years ahead of its time and led the way in the market where a similar standard was adopted. Now almost twenty years later competency requirement have become the norm and a regulatory obligation.

Through the 90’s brokers successfully adapted to the newly regulated marketplace with only a minority of brokers failing to make standards that were required of them. The life sector over a period of about ten years experienced changes such as the abolition of life assurance premium relief, the cancellation of the life assurance commission’s agreement and the introduction of transparency in relation to all costs including commissions.

The 90’s saw new entrants entering the investment market with many foreign fund managers distributing non insurance investment products such as unit trusts or ucits. This area of activity became subject to EU legislation with the adoption of two Directives the ISD (Investment Services Directive) and the CAD (Capital Adequacy Directive) which were transposed into Irish law as the “Investment Intermediary Act, 1995.

In 1995 a group of life brokers who were not members of IBA but were regulated by the IICB formed a new body calling itself PIBA (Professional Insurance Brokers Association).

1996 was a traumatic year for IBA as it was embroiled in two significant events during that summer the Dawson v IBA court case and the collapse of the Taylor Group. In June IBA lost the High Court libel case referred to earlier and had an award of £515,000 made against it. The award was subsequently successfully appealed in the Supreme Court. In July IBA was at the centre of the controversy surrounding the collapse of the Taylor Group the principal of which Tony Taylor was a former President of IBA. In time the repercussion of both events combined with a political climate change led to a move away from self regulation to statutory regulation with the adoption of the “Insurance Act, 2000”(IIA).
From October 2000 all insurance intermediaries have been regulated by the newly established single regulator IFSRA (Irish Financial Services Regulatory Authority) which has been rebranded as the Financial Regulator. In the new regulatory regime, which in greater part based on the structure that had been established by the IIA, brokers and other insurance intermediaries were faced with two options to seek authorisation under Section 10 of the IIA which were called Autorised Advisors (AA’s) by the regulator or to be deemed to be authorised with responsibility falling on insurers/product producers to check their compliance, this latter group were designated rather awkwardly as RAIPI’s (Restricted Activity Investment Product Intermediaries). IBA took the decision to require all its members to seek authorisation as AA’s under Section 10 whereas PIBA brokers opted to become RAIPI’s. Much of this has become blurred since with the introduction of the term MAI (Multi Agency Intermediary) by the regulator as a replacement for the designation as a RAIPI. In reality this over elaborate system has been largely abandoned or ignored.

European developments have had an increasingly significant impact on the market throughout the last twenty five years. With the creation of the single European market the EU has engaged in a huge legislative programme under what has been called the financial services action plan. That impacted most directly on brokers with the adoption of the IMD (Insurance Mediation Directive) in 2002 which was transposed into Irish law early in 2005. The passing of the Directive made the possibility of creating a single market for intermediaries a realistic prospect notwithstanding the overzealous application of local conduct of business rules in some member states. The IMD forms the spine which underpins the regulation of insurance intermediaries, including brokers, throughout the EU.

In more recent years the Financial Regulator in 2006 has issued the Consumer Protection Code (CPC) which has become together with a number of statutory instruments such as S.I. 74 concerning non life renewals and motor insurance no claims bonuses the rules by which business is conducted by brokers and other participants in the insurance market.

Over the last twenty years since insurance intermediaries have been regulated, consolidation has been a constant feature of the broker market. The number of authorised intermediaries stands at about 2500, of which 450 are members of IBA and something over 800 are members of PIBA. Though there is a small overlap in the membership both bodies represent different constituencies in the broker market. IBA is dominant in terms of market share in the general market and in group pensions whereas PIBA strength lies largely in the individual life and pension’s part of the market. In 2007 a proposed merger of both bodies was aborted because of dissatisfaction of IBA members with the shape of the proposed merger.

Over the last quarter of a century brokers have seen a fundamental change in how they do business. They are now a highly regulated group where meeting standards relating to competence, probity, behaviour and accountability is the norm. This has been nothing less than a sea change and that pace of change is, if anything, accelerating. Brokers and all other insurance intermediaries will face further changes to the regulatory landscape as both the IMD and CPC is currently under review. Brokers have consistently proven their ability to adapt to change, they have over the years adapted to the abolition of life assurance premium relief, the introduction of transparency, the growth and the collapse of a number of direct writers, dramatic changes in the investment market and products, the collapse of the mortgage market and this list is by no means exhaustive. Because of this ability to adapt and because of consumer demand for independent advice, brokers will remain the dominant channel of distribution in most areas of the insurance market for the foreseeable future.