



**Review of the Code of Conduct for Business Lending and to  
Small and Medium Enterprises**

**ISME Response**

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**ISME**, the Irish Small & Medium Enterprises Association, is the only INDEPENDENT body representing owner managers of small & medium businesses in Ireland. Small and Medium Enterprises (SMEs) constitute 99% of all businesses in Ireland, employ over 800,000, which equates to 68% of Private Sector employees and 52% of total employees.

ISME welcomes this opportunity to submit views on the *Review of the Code of Conduct for Business Lending to Small and Medium Enterprises*. ISME is in regular contact with the Associations membership concerning access to finance issues and conducts a quarterly Bank Watch Survey.

ISME has reviewed and agrees with the main stakeholder issues outlined in the consultation paper:

- better communication from the lenders regarding their application process and timelines
- clarity from the start of the credit application process about what information is required in order to avoid issuing further requests for information
- more transparency around how 'ability to repay' is determined
- reliance on the use of personal guarantees
- insufficient clarity on the reasons for the refusal of credit facilities; and
- SMEs need to be made more aware of their right to an internal appeal or a review by the Credit Review Office (CRO).

The issue of timelines is of particular concern to our members. The most recent ISME Quarterly Bank Watch Survey found that SMEs are waiting an average of just over 4 weeks for an initial decision. This is far too long and makes it difficult for SMEs to plan for growth.

The over reliance on the use of personal guarantees is, in many cases, overkill and their use is unjustified. SME owner managers should not, in all cases, be required to personally guarantee their private limited companies. This practice should be reviewed and bankers should be educated and trained to assess an applicant company's ability to repay without the necessity for a personal guarantee.

ISME members are frequently frustrated by the lack of detail they receive when their application for credit is rejected. Standard letters must not be sent when banks are informing SMEs of a rejection of their credit application. The consultation paper states that

where it was presented to the Central Bank that more detailed information was provided to applicants verbally, however, in a number of cases SME lenders did not have a record of these discussions. This mirrors the experiences of ISME members and proves that they must be better informed in writing of the specific reasons for the refusal of credit. This will assist SMEs in deciding how to progress with their credit needs. The Joint Oireachtas Committee on Jobs, Enterprise and Innovation has also made this recommendation in its Report on Access to Finance for SMEs published in 2014.

The Joint Oireachtas Committee report also recommended that responses to loan applications be within 2 weeks and that businesses are given a full breakdown of charges when opening a new account and when drawing down credit. ISME agrees with these recommendations. A 'normal' application for credit which does not require any extra investigation or have any added complexities should always be processed within ten working days. Allowances for extra time in specific circumstances would be acceptable but these must be clearly outlined. The Association also believes that stricter regulation of bank charges is vitally important to ensuring that banks do not take advantage of their current relatively uncompetitive trading environment.

Intertrade Ireland's call for a dedicated team to review rejected applications for appropriateness and consistency of decline decisions, explore the use of government backed schemes and review informal applications should be acted upon. An independent review team examining the issues around SME access to credit and monitoring trends would be highly beneficial.

***Question 1: Do you have comments on the attached draft regulations? In your response, please quote the number of the specific provision(s) which give rise to your concerns and, if possible, suggest alternative drafting or solutions.***

As outlined below.

***Question 2: Are there specific areas that you feel should be expanded on? If so, please provide details and, if possible, drafting suggestions or proposed solutions.***

Suggestions for further detail and clarification below.

***Question 3: Do you have any suggestions for further reform, e.g., are there any gaps or areas omitted from the protections proposed? If so, please set out your proposals.***

ISME believes that the code should provide protection for the Guarantors of loans. They must be informed if the loan they have guaranteed goes into arrears and must then be notified of any changes or progression of the process. In the instance of a borrower not cooperating the Guarantor must be notified and kept informed of the status of the Claim. The Guarantor should also be advised if an independent review is being conducted and should receive a copy of the review.

***Question 4: Do you agree that SMEs dealing with credit unions should have the same level of protection as when dealing with other lenders? If you do not agree, please outline the reasons why.***

ISME agrees with the Central Banks proposal that where credit unions provide credit to SMEs they should be included in the scope of the regulations.

***Question 5: Do you agree that the 'Smaller Enterprises' provisions in the current SME Code should be extended to all SMEs? If not, please set out the reasons why.***

Yes, ISME agrees that the 'smaller enterprises' provisions should extend to all SMEs.

***Question 6: Do you agree that business credit cards should be included in the scope of the regulations that are proposed to replace the SME Code for all SMEs? Please explain why this approach is appropriate. If you do not agree, please set out the reasons why.***

SMEs who need credit can sometimes use credit cards in exceptional circumstances. This can lead to financial difficulties as credit cards are an extremely high interest form of borrowing. ISME agrees that all business credit card should be included in the scope of the new regulations.

***Question 7: Do you agree that multi-lender credit, including syndicated, club or other multilender transactions, and special purpose vehicles should continue to be excluded from the scope of the regulations? If so, please provide the reasons for your view. If you do not agree, please set out the types of multi-lender credit or special purpose vehicles you think should be included and explain why the protections proposed would be appropriate or necessary for these borrowers.***

Yes we agree that these may continue to be excluded as they are rarely applicable to SMEs.

***Question 8: Do you agree that the introduction of a concept of 'not co-operating' is useful in an SME context? If so, do you have any comments on the proposed provisions?***

ISME believes that the concept of 'not co-operating' must be defined clearly and an appeals procedure should be put in place. This is discussed in more detail under 'Part 8 15 (3) below.

## **Comments on the Draft Regulations**

### **Part 2- General**

#### ***5 Unsolicited Credit***

ISME strongly agrees with the provision that unsolicited credit should not be offered to borrowers.

### **6 (2) *Appropriate training***

This regulation should include a provision for updated refresher training courses for staff every twelve months. This would have been helpful in recent years when various government backed schemes such as the Credit Guarantee Scheme were being introduced as SMEs often found that the banker with whom they were dealing was not sufficiently informed.

### **6 (5) *Review of Borrower's Credit Facility***

This provision states that reviews must be completed within a 'reasonable timeframe' but there is no definition of what a reasonable timeframe is. It is important that this would be stated clearly in the regulations as perceptions of what is 'reasonable' can vary dramatically.

## **Part 4- Provision of Information**

### **9 (2) (m) *Credit Ratings***

This provision stipulates that arrears on credit facility agreements may mean the borrower's credit rating is affected. However, it is not clear how long into the future this record will be held by the credit agency? SMEs require clarification on this point and the rights they have about their own data.

### **9(2) (s)**

It is also not clear what data protection rights govern this data, another important issue for SMEs which needs to be clarified.

Similarly, Provision **10 (8)** regarding the appointment of a third party by the lender does not stipulate what data protection rules apply.

## **Part 5- applications for Credit**

### **12 *Security***

This section discusses the need for security sought by the lender to be reasonable and proportionate. However, it does not outline what 'reasonable and proportionate' means. The code must give more guidance on this. ISME believes that security should not be required to be greater than the loan value sought.

### **12 (6) Return of Security**

This stipulates that security should be returned to the borrower promptly unless the borrower requests otherwise. Again, 'promptly' must be defined clearly.

Furthermore, when all credit has been repaid, whether a borrower has requested the lender to retain the security previously or not, borrowers should receive a letter stating what security is being held and asking them whether they want their security retained or returned. They may decide to allow the bank to hold the security for the time being as they will be requiring new lending shortly. If it is being retained, a letter confirming this must be sent to the borrower so that the SME has a record of the retention of the security for when they want to retrieve it. This would also prevent any future confusion over the whereabouts of the security.

### 12 (7)

This provision does not outline what must happen if the security realised on a credit facility is equal to or greater than the outstanding balance of the credit. It only details the banks responsibilities in the case of a shortfall.

This provision should stipulate that the **borrower and the guarantor** receive a letter detailing the realization of the security and the current position of the loan whether shortfall or overpayment.

## **Part 8- Financial Difficulties**

### **15 (3) Non co-operation**

The principle of 'non co-operation' and how a borrower can be classified as such must be outlined and defined clearly within the code. It cannot be left to perception and the best judgment of the lender. An appeals process for borrowers who are deemed to be uncooperative must also be established and clearly stated. Borrowers must be able to seek the intervention of a third party review if they are considered non co-operative by their lender.

### **Guarantors 15(3), 15(4).**

At this point, and throughout the whole process, it is imperative that the guarantor, whether connected directly or not, be informed of the arrears of the loan and also of the

non-co-operation of the borrower. Guarantors may potentially be required to pay the outstanding debt so they must be made aware of the arrears problem as soon as it arises and must also be kept informed as the process escalates.

### ***16 Standard Information for Borrowers***

This section should include a stipulation that the borrower be informed of the existence of the CRO as part of the standard information given. 16 (1) (o)

#### ***16 (1) (j) Sharing borrower Information***

This provision states the lender must inform the borrower in financial difficulties that their information may be shared with a relevant credit reference agency or credit register. This provision should stipulate that the borrower be informed of exactly what organisations will receive the information and how much detail they will be given. Borrowers need to know with whom their information is being shared.

### ***17 Communication with Borrowers in Financial Difficulties***

This section deals with the level and tone of communications with borrowers in financial difficulties. It seeks that they be 'proportionate and not excessive...not aggressive, intimidating or harrasing'. These concepts require further detail and explanation as they are currently open to interpretation.

#### ***17 (2)***

This provision requires the bank to contact the borrower within ten days of them entering financial difficulties. ISME believes that the Guarantor should also receive notification at this point.

### ***18 Independent Reports***

Borrowers should not only be privy to the findings of an independent report if they have paid for a portion of it. If they co-operate with the completion of the report they must be given a copy of the report.

The Guarantor must always be given a copy of the review results so that they are fully aware of the status of the credit and the likelihood that it will be repaid.



**19 (2) (d) and 19 (3) (c)**

This provision stipulates that the borrower shall be referred to the lender's information booklet. ISME asks that banks be required to send the booklet to the borrower at this point and also to include one in the notification that must be sent to the guarantor.

**Part 9- Appeals and Complaints**

***21 Appeals***

As stated previously, borrowers should also have the right to appeal being determined 'non co-operative' by the lender.

***22 Handling Complaints***

***22 (3) (c)***

The code currently states that complainants will be informed of progress on the investigation of their complaint within 20 working days. ISME believes this timeframe is too long and should be reduced to five (5) working days.

***22 (6) Complaints Register***

Analyses by lenders of their complaint's registers should be forwarded to the Central Bank and CRO as well as the lender's management body on a monthly basis.

## Timelines

The code makes many vague references to timelines i.e. stating that something should be done 'promptly', 'shall inform', 'reasonable timeframe', 'give notice' etc. but it does not give specific timeframes. If the code is to operate effectively without abuse from lenders or confusion from borrowers it must outline exact timeframes in each of the following provisions:

Part 2 – 6 (5) (b) complete review

Part 4 10 (3) Interest rate change notice

10 (6) Notification of change of credit terms

12 (6) Return of security

13 (2) Prompt Notification of Amendment

14 (1) (d) Actions recommended by review

14 (3) Outcome of assessment review

15 (1) (l) Alternative arrangements

15 (4) Length of non-co-operation period

17 (3) Point of Contact Changes

19 (1) (a) Alternative arrangements

20 Operation of an Alternative Arrangement

21 (3) Appeals

21 (5) Appeals decision

22 (3) (d) referral to ombudsman

These important stipulations cannot be left to interpretation regarding timelines.