Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

2012

Code of Conduct for Business Lending to Small and Medium Enterprises

Scope

This Code applies to all **business lending** by **regulated entities**.

This Code shall not apply to Credit Unions. "Credit Union" means a credit union as defined in the Credit Union Act 1997 (as may be amended or replaced from time to time).

The Code's objectives are:

- to facilitate access to credit for sustainable and productive business propositions,
- to promote fairness and transparency in the treatment of **SME**s by **regulated entities**, and
- to ensure that when dealing with **financial difficulties** cases, the aim of a **regulated entity** will be to assist **borrower**s to meet their obligations, or otherwise deal with the situation in an orderly and appropriate manner.

This Code sets out the processes **regulated entities** are required to adopt in facilitating access to credit for **SME**s.

This Code applies to **regulated entities** when providing the following credit products within the State to **SMEs** operating within the State, unless otherwise stated:

- overdrafts,
- loans,
- term loans,
- leasing,
- hire purchase, and
- invoice discounting,

but excluding:

- lending to other financial institutions,
- syndicated, club, or multi-lender transactions, and
- special purpose vehicles including vehicles established for the purposes of a particular transaction.

Some provisions of this Code apply when providing credit facilities to all **SME**s, while others only apply to **smaller enterprises**. For clarity, the following provisions apply to the following category of enterprises:

General Principles: all **SME**s including **smaller enterprises**

Provisions 1-45, and 55: all **SME**s including **smaller enterprises**

Provisions 46-53: **smaller enterprises** only

Provision 54: **SME**s excluding **smaller enterprises**

Financial Difficulties

The Code recognises that for **SME**s in **financial difficulties,** each **SME** needs to be considered on a case by case basis. It also recognises that for **SME**s at risk of going into **arrears**, it is important that the **borrower** contacts the **regulated entity** to inform them of the difficulties and engages with the **regulated entity** to try and address the situation.

The Financial Difficulties section of the code sets out the policies and procedures which lenders should have in place for dealing with **borrower**s in **financial difficulties**.

Regulated entities are required to comply with this Code as a matter of law.

Regulated entities must be able to demonstrate that they are in compliance with this Code.

Nothing in this Code prohibits a **regulated entity** from acting with all necessary speed:

a) where in the circumstances of the case it is necessary to initiate a liquidation, receivership, examinership or similar insolvency event or where another **regulated entity** or other third parties initiate such actions;

b) where it is necessary in order for a **regulated entity** to protect its legitimate commercial interests; or

c) where there is reasonable evidence of fraud, terrorist connections, money laundering and/or misrepresentation,

and the provisions of this Code are without prejudice to a **regulated entity**'s regulatory and/or legal obligations and legal rights to enforce any agreement including any security taken in connection with any agreement.

Legal Background

This Code is issued under Section 117 of the Central Bank Act 1989.

This Code is effective from 1 January 2012.

This Code replaces the previous Code of Conduct for Business Lending to Small and Medium Enterprises issued by the Central Bank of Ireland and which came into effect on 13 March 2009.

Any right acquired, or obligation or liability incurred, in respect of a contravention of, or act of misconduct under, the previous code survives the replacement of the previous code with this Code. Therefore, any legal proceedings, investigation, disciplinary or enforcement action in respect of a contravention of, or act of misconduct under, the provisions of the previous code in force at the time the contravention or act of misconduct occurred, may be instituted, continued or enforced, and any sanction or penalty in respect of such contravention or act of misconduct may be imposed by the Central Bank of Ireland as if the provisions of the previous code had not been replaced.

Existing Cases in Arrears

From 1 January 2012, this Code applies to all existing **arrears** cases falling within the definition of **financial difficulties** in this Code. In particular, provisions 19, 20 and 31 must be applied.

Definitions

The following are defined for the purposes of this Code:

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

'**arrears**' arise where a **borrower** has not made a full repayment, or only makes a partial repayment on a credit facility, as per the terms of the credit facility, by the scheduled date.

'**borrower**' means a **small and medium enterprise** including its representatives and/or agents.

'business day' means any day except Saturday, Sunday, bank holiday and public holidays.

'**business lending**' means the provision of credit products to **small and medium enterprises** operating in this State.

'**complaint**' means an expression of grievance or dissatisfaction by a **borrower**, either verbally or in writing, in connection with:

a. the provision of a product or service by a **regulated entity**, or
b. the failure of a **regulated entity** to provide a product or service to an **SME**.

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

'financial difficulties' – A **borrower** must be classified as in financial difficulties where:

(a) the credit facility of a **borrower** is in **arrears** for three consecutive months;
(b) in the case of an overdraft credit facility, where the approved limit on the facility is exceeded by the **borrower** and remains exceeded for 90 consecutive days and there has been no engagement with the **borrower**.

'Group' includes a company, its parent and its subsidiaries and any associated undertaking or related undertaking;

'**regulated entity**' means a person who carries on a business of providing one or more **regulated activities**.

'**regulated activities**' are services of a financial or investment nature that are subject to the regulation of the Central Bank of Ireland.

'**small and medium enterprises**' and '**SME**s' are as defined in European Commission recommendation 2003/361/EC which categorises **SME**s as "enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million and shall include '**smaller enterprises'**".

'smaller enterprises' is the following sub-category of **small and medium enterprises**:

a) a natural or legal person or ***group*** of natural or legal persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year, acting within their business, trade or profession (for the avoidance of doubt a group of ***persons*** includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate) or
b) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a ***group*** of companies having a combined turnover greater than the said €3 million);

General Principles

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

1. acts honestly, fairly and professionally in the best interests of its **customer**s and the integrity of the market;

2. acts with due skill, care and diligence in the best interests of its **customer**s;

3. does not recklessly, negligently or deliberately mislead a **customer** as to the real or perceived advantages or disadvantages of any product or service;

4. has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;

5. seeks from its **customer**s information relevant to the product or service requested;

6. makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the **customer**;

7. seeks to avoid conflicts of interest;

8. corrects errors and handles **complaint**s speedily, efficiently and fairly;

9. does not exert undue pressure or undue influence on a **customer**;

10. ensures that any outsourced activity complies with the requirements of this Code;

11. without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and

12. complies with the letter and spirit of this Code.

Credit Facilities

1. A **regulated entity** must offer its customers an option of an annual review meeting, to include all credit facilities and security.

Applications for Credit

2. A **regulated entity** must consider each application for credit facilities on its own merits.
3. A **regulated entity** must inform **borrower**s how long the process is considered likely to take. This information may be in statistical form, consistent with past experience, or be based on service targets set by the **regulated entity**.
4. A **regulated entity** must maintain records of all applications for credit facilities.
5. A **regulated entity** must have appropriate procedures in place to assess a loan application.
6. Where a new application for credit is approved, a **regulated entity** must provide the **borrower** with confirmation of the credit facilities granted and the terms and conditions applying thereto, including those regarding default, together with relevant details of fees, charges and interest rates. In addition, a **regulated entity** should outline to the **borrower** the next steps to be completed to facilitate drawdown.

Security

7. Having due regard to the nature, liquidity and value of collateral a **regulated entity** must not impose unreasonable collateral requirements for providing credit facilities, having regard to the value of the credit being offered.
8. A **regulated entity** must not impose unreasonable personal guarantee requirements on **borrower**s.
9. Where a **regulated entity** seeks collateral or a personal guarantee to support a lending proposition it must explain clearly the possible implications for the guarantor of giving such collateral or personal guarantee.

10. Any enforcement of a personal guarantee over a principal private residence must be in accordance with the Code of Conduct on Mortgage Arrears.

11. A **regulated entity** must promptly, at the request of the **borrower**, return any security held by the **regulated entity** to the **borrower** when all facilities for which the security is pledged have been repaid.

Declining / Withdrawing Credit

12. Where an application for credit is declined, the **regulated entity** must explain clearly to the **borrower** the reason(s) why the credit facility was declined.

13. A **regulated entity** must make each decision to withdraw or amend credit facilities on its merits.

14. Where a **regulated entity** decides to withdraw or amend credit facilities it must notify the **borrower**, promptly, of the proposed withdrawal or amendment. The **regulated entity** must advise the **borrower** of the reason(s) for the withdrawal or amendment.

15. Nothing in this Code prohibits a **regulated entity** from acting with all necessary speed to withdraw credit where there is a reasonable suspicion of fraud, money laundering, terrorist connections and/or misrepresentation.

Financial Difficulties

General

16. A **regulated entity** must have and implement policies and procedures for dealing with **borrower**s in **financial difficulties**. Such policies and procedures must:
    a) set out the process that the **regulated entity** will apply when treating **borrower**s in **financial difficulties** and how it will implement the process;
    b) set out the type of information that may be required from **borrower**s and the types of alternative repayment measures that may be offered to **borrower**s by the **regulated entity**;

c) set out the areas or sections within the **regulated entity** responsible for dealing with **borrower**s in **financial difficulties**;
d) allow for alternative repayment arrangements to be agreed with the **borrower,** where appropriate;
e) allow for a flexible approach for **borrower**s in **financial difficulties** to be handled on a case by case basis; and
f) be aimed at assisting the **borrower** in the **borrower'**s particular circumstances.

17. Where a **regulated entity** is working with a **borrower** to address the **borrower**'s **financial difficulties** in accordance with the policies and procedures established by the **regulated entity**, a **regulated entity** must:

    a. give the **borrower** reasonable time, from the time a **borrower** is classified as in **financial difficulties**, having regard to the circumstances of the case, to resolve the **financial difficulties**; and

    b. endeavor to agree an approach with the **borrower** that will assist the **borrower** to address the **financial difficulties.**

18. Where a **borrower** falls within the definition of **financial difficulties** and the **borrower** is not treated as a **financial difficulties** case, a **regulated entity** must maintain a record of the reasons why the **borrower** is not treated as a **financial difficulties** case. A **regulated entity** must confirm these reasons to the **borrower**, if requested.

Communication

19. A **regulated entity** must ensure that the level of contact and communications to a **borrower** in **financial difficulties** from the **regulated entity**, or any third party acting on its behalf, is proportionate and not excessive.

20. Where a **borrower** in **financial difficulties** requests a **regulated entity** to contact them to discuss the **financial difficulties**, the **regulated entity** must respond or acknowledge such a request promptly.

Information for Borrowers in Financial Difficulties

21. A **regulated entity** must prepare and make available to **borrower**s, an information booklet which contains the following:

    a) an explanation of the **regulated entity**'s procedures for dealing with cases in **financial difficulties**, including relevant timelines;
    b) an explanation of the importance of the **borrower** engaging and co-operating with the **regulated entity** to address the **financial difficulties**;
    c) details of any fees or charges that may apply to the **borrower** as a result of the **financial difficulties** and information on methods by which such fees or charges may be mitigated;
    d) if relevant, any impact of the **financial difficulties** on other facilities held by the **borrower** with that **regulated entity**;
    e) details of the type of information the **regulated entity** may request from the **borrower** when assessing the borrowers case;
    f) an explanation of the impact of **financial difficulties** on a **borrower**'s credit ratings;
    g) an outline of steps that the **borrower** could consider that may assist in the process for dealing with the **financial difficulties;** and
    h) information regarding the **borrower**'s right to appeal a **regulated entities** decision on an arrangement and the timeframes involved.

22. A **regulated entity** must have a dedicated section on its website for **borrower**s in, or concerned about, **financial difficulties** which should encourage a **borrower** to engage with a **regulated entity** to address the **arrears** or **financial difficulties** and must include the information booklet required under provision 21.

23. When **financial difficulties** first arise on an account, a regulated entity must promptly:
    a) advise the **borrower**, in writing, of the following:
        i. the status of the account;
        ii. the applicability of the Code;
        iii. information on the availability of the information booklet required under provision 21, including details of where it can be located on the **regulated entity**'s website and information on how a

borrower can receive a printed copy of the information booklet from the **regulated entity**, if required;

iv. the type of information that may be requested from the **borrower** by the **regulated entity** or refer the **borrower** to where this information is available; and

b) offer the **borrower** the option of an immediate review meeting to discuss the **borrower**'s circumstances.

Arrangements

24. Where a **borrower** contacts a **regulated entity**, or contact is established with the **borrower** by the **regulated entity**, by whatever means, to discuss an alternative repayment arrangement to address **financial difficulties,** a **regulated entity** must:

a) confirm with the **borrower** details of the information required from the **borrower** for the **regulated entity's** assessment of the **borrower**'s case (including any additional items to that set out in the information booklet);

b) endeavour to ensure that the details of the information a **borrower** will be required to provide are complete; and

c) ensure that the information required from a **borrower** is relevant to assessing the financial situation of the **borrower**.

25. Following receipt by the **regulated entity** of all of the information required under 24 (a) from a **borrower,** a **regulated entity** must complete an assessment of a **borrower** in **financial difficulties** for an alternative repayment arrangement. The assessment for an alternative repayment arrangement must consider the full circumstances of the **borrower** in **financial difficulties.**

26. A **regulated entity** must respond, in writing, to the borrower with a decision regarding an alternative repayment arrangement within 15 **business day**s of receipt of all of the information required from a **borrower** under 24 (a).

27. Where the **regulated entity** is offering an alternative repayment arrangement to the **borrower,** the response must include:

   a. details of the proposed alternative repayment arrangement; and

   b. the timeframe for the **borrower** to avail of the proposed alternative repayment arrangement**.**

28. Where a **regulated entity** is not willing to offer a **borrower** in **financial difficulties** an alternative repayment arrangement, the **regulated entity** must advise the **borrower** of:

   (i) the reasons for not offering an alternative repayment arrangement; and

   (ii) the **borrower**'s right to make an appeal to the **regulated entity** and refer the **borrower** to the appeals information in the information booklet required under provision 21.

29. If a **borrower** is not willing to enter into an alternative repayment arrangement offered by the **regulated entity**, the **regulated entity** must advise the **borrower** of the **borrower**'s right to make an appeal to the **regulated entity** and refer the **borrower** to the appeals information in the information booklet required under provision 21.

30. Where the terms of the alternative repayment arrangement are not adhered to by a **borrower**, a **regulated entity** must promptly assess the **borrower**'s situation. Where the **borrower** continues to show a willingness to meet its obligations, the **regulated entity** should consider if a revised alternative arrangement is appropriate for the **borrower**'s case.

31. Where an alternative repayment arrangement comes to an end, a **regulated entity** must promptly assess the **borrower**'s situation. The **regulated entity** must consider if the **borrower** should continue be treated as a **financial difficulties** case following the arrangement, or where the **borrower** continues to show a willingness to meet any remaining obligations, if an alternative repayment arrangement is appropriate for the **borrower**'s case.

Appeals

32. A **regulated entity** must have in place a written procedure for the proper handling of appeals by **borrowers** on the decision of a **regulated entity** on an alternative repayment arrangement. At a minimum, this procedure must provide that:

    a) The **regulated entity** must consider and adjudicate on an appeal and provide the **borrower** with a written response on the appeal within 15 **business day**s of receiving the appeal.
    b) Where applicable, the **regulated entity** must inform the **borrower** of its right to refer the matter to the Credit Review Office and provide the **borrower** with the contact details of the office.

33. A **regulated entity** must allow the **borrower** a reasonable period of time, as specified in the information booklet required under provision 21, to submit an appeal on an alternative repayment arrangement decision.

Borrowers not in Financial Difficulties

34. Where a **borrower** notifies a **regulated entity** that there is a danger that the **borrower** will not be able to meet repayments and /or a **borrower** in **arrears** is concerned about going into **financial difficulties**, the **regulated entity** must:

    a) offer the **borrower** the option of an immediate review meeting to discuss the **borrower**'s circumstances; and
    b) assess if the **borrower**'s circumstances are such that the Arrangement and Appeals provisions of this Section of the Code should be applied to the **borrower**'s case.

35. Where the **regulated entity** considers that the **borrower** should not have the Arrangement and Appeals provisions of this Section of the Code applied to the **borrower**'s case, the **regulated entity** must inform the **borrower** of its right to make a **complaint**.

Realisation of Security

36. After the realisation of a security on a credit facility a **regulated entity** must immediately inform the **borrower** of the **borrower**'s liability for:

    a. the balance of any residual debt;
    b. the interest rate on the residual debt; and
    c. any costs for the realisation of the security which have been added to the debt.

Provision of Information

37. A **regulated entity** must ensure that all information provided under this Code is clear and comprehensible, and that key items are brought to the attention of the **borrower**. The method of presentation must not disguise, diminish or obscure important information.

38. A **regulated entity** must provide information to the **borrower** outlining terms, conditions, fees and charges of credit facilities and provide a fair and balanced description of the credit facilities being offered, including a general description of the **regulated entity**'s policies on collateral.

39. A **regulated entity** must inform the **borrower** in advance of making changes to the terms, conditions, fees and charges relating to that **borrower**'s credit facilities.

40. A **regulated entity** must advise a **borrower**, where applicable, that the debt may be passed to another organisation or debt-collection agency; or that the **regulated entity** may sell the debt.

41. A **regulated entity** must explain to **borrower**s the basis on which interest is calculated, including the rates applicable to unauthorised overdraft balances.

42. Where a **regulated entity** changes the interest margin on a credit facility, it must notify affected **borrower**s promptly of such a change.

43. Where an interest rate change is of general application, a **regulated entity** may make notification by way of advertising/notices in any appropriate medium.

44. A **regulated entity** must issue statements (or schedules or confirmations, as most appropriate to the product) at regular intervals to the **borrower**. The interest rate applicable to the

credit facility must be clearly displayed on each statement (or schedule or confirmation).

45. All information required to be provided under this Code must be provided on paper or in such form that a record is created which is accessible by the Central Bank of Ireland. Verbal communications which are adequately documented by the **regulated entity** will be accepted.

Smaller Enterprises

This Section of the Code applies to **regulated entities** when providing credit facilities other than leasing, hire-purchase and invoice discounting to **smaller enterprises**.

46. A **regulated entity** must not offer unsolicited pre-approved credit facilities.

47. If the terms of a loan agreement change, the **regulated entity** must notify the guarantor in writing.

48. Where a mortgage is offered to a borrower for the purpose of consolidating other loans or credit facilities, the **regulated entity** must provide the borrower with a written indicative comparison of the total cost of continuing with the existing facilities and the total cost of the consolidated facility on offer.

49. Where an **advertisement** includes an annual percentage rate, the **advertisement** must clearly state if the underlying interest rate is fixed or variable.

50. An **advertisement** for a term loan must, if displaying the annual percentage rate and the term, display the total cost of credit.

51. Advertisements for a fixed-rate loan must, where applicable, state:

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

52. Advertisements for the consolidation of two or more debts must, where sample figures are offered in the **advertisement**, indicate the difference between the total cost of credit of the consolidated mortgage and the total cost of credit of the individual debts that are the subject of consolidation.

53. An **advertisement** for a debt consolidation mortgage must carry the following warning:

Warning: This new loan may take longer to pay off than your previous loans. This means you may pay more than if you paid over a shorter term.

Handling Complaints

The following requirements for the handling of complaints apply in the case of **business lending** to **SME**s other than to **smaller enterprises.** Complaints by **smaller enterprises** must be handled in accordance with the Complaints Resolution requirements of the Consumer Protection Code.

54. A **regulated entity** must have in place a written procedure for the proper handling of **complaint**s with the objective of resolving the **complaint** as soon as possible. This procedure need not apply where the **complaint** has been resolved to the complainant's satisfaction within 5 **business day**s, provided however that a record of this fact is maintained. At a minimum, this procedure must provide that:

    (a) the **regulated entity** will acknowledge each **complaint** within 5 **business day**s of the **complaint** being received;

    (b) the **regulated entity** will provide the complainant with the name of one or more individuals appointed by the **regulated entity** to be the complainant's point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be processed further;

    (c) the **regulated entity** will provide the complainant with a regular update on the progress of the investigation of the **complaint**;

    (d) the **regulated entity** will attempt to investigate and resolve a **complaint** within 40 **business day**s of having received the

complaint; where the 40 **business day**s have elapsed and the **complaint** has not been resolved, the **regulated entity** will inform the complainant of the anticipated timeframe within which the **regulated entity** hopes to resolve the **complaint**;

(e) the **regulated entity** will advise the complainant, within 5 **business day**s of the completion of the investigation of a **complaint**, of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made;

(f) in dealing with **complaint**s the **regulated entity** will not be required to retain documents relating to declined applications for more than 12 months.

Retention and Production of Documents

55. A **regulated entity** must prepare and maintain adequate records required under this Code, and must produce all such records to the Central Bank of Ireland upon request.

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