



FINANCIAL REGULATOR
Rialtóir Airgeadais

Consumer
Protection Code
for Licensed
Moneylenders

January 2009

Legislative Basis

This Code is issued by and in the name of the Irish Financial Services Regulatory Authority (“the Financial Regulator”) under section 117 of the Central Bank Act 1989 and Section 8H(1)(f) of the Consumer Credit Act, 1995 (“the Act”).

Scope

This Code applies to moneylenders licensed under the Act, while engaging in the business of moneylending.

The supervisory framework for moneylenders comprises the statutory obligations under the Act, together with the requirements of this Code.

Throughout this text, reference to a ‘moneylender’ refers to a moneylender licensed under the Act, its *officers, employees* and *persons* who engage in the business of moneylending on behalf of the moneylender.

Other Matters

The provisions of this Code will come into effect on a date to be specified by the Financial Regulator.

Moneylenders are reminded that they are required to comply with this Code as a matter of law.

All references to the business of moneylending throughout this Code also include the provision of an offer to engage in the business of moneylending.

The Financial Regulator has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act 1942.

Please refer to the Definitions section for any term shown in bold and italics throughout the text of the Code.

DEFINITIONS

In this Code:

"advertisement" means any commercial communication usually paid for by a moneylender, which is addressed to the **consumer** public or a section of it, the purpose being to advertise a product, service or moneylender the subject of this Code, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC);

"advertised product or service" means the product or service that is the subject of an **advertisement**;

"APR" has the meaning assigned to it by section 2(1) of the Act;

"associate" in relation to a **person** means:

- a) an undertaking in the same **group** as that **person**;
- b) any other **person** whose business, private or familial relationship with the first **person** or its **associate** might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties; or
- c) any other **person** whose business, private or familial relationship (other than as arises solely because that **person** is a client of the firm) with the first **person** is such that he or she has influence over that **person's** judgment as to how to invest his property or exercise any rights attaching to his investments;

"associated undertaking" means an **associated undertaking** within the meaning of Regulation 34 of the European Communities (Companies Group Accounts) Regulations 1992;

"business day" means any day except Saturday, Sunday, bank holidays and public holidays;

"certified person" has the meaning assigned to it by section 55 of the Investment Intermediaries Act, 1995;

"charge" means any cost or fee which a **consumer** must pay in connection with a product or service provided by a moneylender;

"complaint" refers to an expression of grievance or dissatisfaction by a **consumer**, either verbally or in writing, in connection with:

- a) the provision of a product or service to a **consumer** by a moneylender; or
- b) the failure of a moneylender to provide a product or service to a **consumer**;

"connected party" shall, except where otherwise stated, include a partner, **officer**, controller, **associated undertaking**, **related undertaking** or subsidiary undertaking, **employee** or **person** authorised to engage in the business of moneylending on behalf of a moneylender, including any **associate** of the **person** concerned;

"consumer" has the meaning assigned to it by section 2(1) of the Act;

"employee" means a **person** employed under a contract of service or a **person** otherwise employed by a moneylender;

"group" includes a company, its parent and its subsidiaries and any **associated undertaking** or **related undertakings**;

"officer" in relation to a moneylender, means a director, chief executive, manager or secretary, by whatever name called;

"outsourced activity" is where a moneylender employs another **person** (other than a natural person who is an **employee** of the moneylender under a contract of service) to carry out an activity on its behalf;

"person" means a natural person or a legal person;

"record" means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form;

"running account" has the meaning assigned to it by section 2(1) of the Act;

"related undertaking" means:

- a) companies related within the meaning of section 140(5) of the Companies Act 1990;
- b) undertakings where the business of those undertakings has been so carried on that the separate business of each undertaking, or substantial part thereof, is not readily identifiable; or
- c) undertakings where the decision as to how and by whom each shall be managed can be made either by the same *person* or by the same *group of persons* acting in concert;

"unsolicited contact" means: contact with a *consumer* by way of personal visit or telephone call. It does not include written contact with the *consumer*.



Table of Contents

General Principles	6
Common Rules For Moneylenders	8
Advertising	19

CHAPTER 1

GENERAL PRINCIPLES

A moneylender must ensure that in all its dealings with *consumers* and within the context of its licence, it:

- 1 acts honestly, fairly and professionally in the best interests of its *consumers* and the integrity of the market;
- 2 acts with due skill, care and diligence in the best interests of its *consumers*;
- 3 does not recklessly, negligently or deliberately mislead a *consumer* as to the real or perceived advantages or disadvantages of any product or service;
- 4 has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code;
- 5 seeks from its *consumers* 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 *consumer*;
- 7 seeks to avoid conflicts of interest;
- 8 corrects errors and handles *complaints* speedily, efficiently and fairly;
- 9 does not exert undue pressure or undue influence on a *consumer*;
- 10 ensures that any *outsourced activity* complies with the requirements of this Code;

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- 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.

CHAPTER 2

COMMON RULES FOR MONEYLENDERS

GENERAL

- 1 A moneylender must ensure that any warning required by this Code is prominent, i.e. it must be in a box, in bold type and of a font size that is larger than the normal font size used throughout the document or *advertisement*.

PROVISION OF INFORMATION TO THE CONSUMER

- 2 A moneylender must assist a *consumer* in understanding the product provided, including the method of repayment, all related interest payments, *charges* and the cost per €100 borrowed.
- 3 A moneylender must, prior to entering into an agreement with a *consumer*:
 - a) disclose all the fees, costs and interest in a clear manner; and
 - b) prominently indicate the high-cost nature of the loan on all loan documentation where the *APR* is 23% or higher. This disclosure must take the following form:

Warning: This is a high-cost loan.

- 4 A moneylender must, where it collects repayments by way of direct debit, issue statements, at least monthly, to *consumers* who pay weekly and statements, at least quarterly, to *consumers* who pay monthly.

- 5 A moneylender must, where applicable, inform *consumers* of the amount and order in which payments will be allocated to different outstanding balances at different borrowing rates.
- 6 A moneylender must ensure that, where it intends to record a telephone conversation with a *consumer*, it informs the *consumer*, at the outset of the conversation, that it is being recorded.
- 7 A moneylender must ensure that, where it communicates with a *consumer* using electronic media, it has in place appropriate arrangements to ensure the secure transmission of information to, and receipt of information from, the *consumer*.
- 8 A moneylender must ensure that all printed information it provides to *consumers* is of a print size that is clearly legible.

PRESERVATION OF A CONSUMER'S RIGHTS

- 9 A moneylender must not, in any communication or agreement with a *consumer* (except where permitted by applicable legislation), exclude or restrict, or seek to exclude or restrict:
 - a) any legal liability or duty of care to a *consumer* which it has under applicable law or under this Code;
 - b) any other duty to act with skill, care and diligence which is owed to a *consumer* in connection with the provision to that *consumer* of financial services; or
 - c) any liability owed to a *consumer* for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a financial service.

KNOWING THE CONSUMER

- 10 Before providing a product or service to a *consumer*, a moneylender must gather and record sufficient information from the *consumer* to enable it to provide a recommendation or a product or service appropriate to that *consumer*. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the *consumer*, but must be to a level that allows the moneylender to provide a professional service.

This requirement does not apply where the *consumer* has specified both the product and the moneylender and has not received any advice.

- 11 A moneylender must gather and record details of any material changes to a *consumer's* circumstances before providing that *consumer* with a subsequent product or service.
- 12 A moneylender must ensure that, where a *consumer* refuses to provide information sought in compliance with this Code, the refusal is noted on that *consumer's records*.
- 13 A moneylender must endeavour to have the *consumer* certify the accuracy of the information he/she has provided to the moneylender. Where the *consumer* declines to do so, the moneylender must note this on the *consumer's records*.
- 14 A moneylender must maintain a list of its *consumers* who are the subject of this Code.

SUITABILITY

- 15 A moneylender must ensure that, having regard to the facts disclosed by the *consumer* and other relevant facts about that *consumer* of which the moneylender is aware, any product or service offered to a *consumer* is suitable to that *consumer*.

This requirement does not apply where the *consumer* has specified both the product and the moneylender and has not received any advice.

- 16 Before providing a product or service to a *consumer*, a moneylender must prepare a written statement setting out the reasons why a product or service offered to a *consumer* is considered to be suitable to that *consumer*.

The moneylender must give a copy of this written statement to the *consumer* and retain a copy.

This requirement does not apply where the *consumer* has specified both the product and the moneylender and has not received any advice.

UNSOLICITED CONTACT (COLDCALLING)

- 17 When contacting a *consumer* other than an existing *consumer*, a moneylender may make an *unsolicited contact*, only if:
- a) the *consumer* has signed a statement, within the previous 6 months, giving the moneylender permission to make *unsolicited contact*; or
 - b) the *consumer* is the subject of a referral, received from an entity authorised to provide financial services in Ireland, another entity within the same *group*, a solicitor, a *certified person* or an existing *consumer*.

In relation to b) above, such a referral must be followed up by an indication to the *consumer* by the moneylender that the referral has been made and asking for consent to proceed.

This requirement does not apply where the moneylender is providing non-cash credit to the *consumer*.

- 18 A moneylender must ensure that, where it makes an *unsolicited contact* on foot of a referral, it retains a *record* of the referral.

- 19 An ***unsolicited contact*** made to a ***consumer*** other than an existing ***consumer***, may only be made between 9.00 a.m. and 9.00 p.m. Monday to Saturday (excluding bank holidays), unless otherwise requested by the ***consumer***.
- 20 When making an ***unsolicited contact*** in accordance with this Code, the representative of a moneylender must immediately and in the following order:
- a) identify himself or herself by name, the name of the moneylender on whose behalf he/she is calling and the commercial purpose of the contact;
 - b) inform the ***consumer*** that the call is being recorded, if this is the case;
 - c) disclose to the ***consumer***, the source of the lead or referral supporting the contact; and
 - d) establish if the ***consumer*** wishes the call to proceed; if not, the caller must end the contact immediately.
- 21 A moneylender must abide by a request from a ***consumer*** not to make an ***unsolicited contact*** to him/her again.
- 22 A moneylender must not reach a binding agreement with a ***consumer*** on the basis of an ***unsolicited contact*** alone, except in the circumstances permitted under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

DISCLOSURE REQUIREMENTS

- 23 A moneylender must include a regulatory disclosure statement:
- a) on its business stationery (including moneylending agreements, repayment books and authorisation cards);

- b) in all *advertisements*;
- c) in all catalogues, brochures etc; and
- d) on all electronic communications with *consumers* including on the home page of its website, if any.

The regulatory disclosure statement must take the following form:

"[Full legal name of moneylender (and trading name(s), if applicable)] is regulated by the Financial Regulator."

- 24 A moneylender must not use the regulatory disclosure statement on any business stationery, *advertisement*, catalogue, brochure or electronic communication in connection with a product or service for which the moneylender is not regulated by the Financial Regulator.
- 25 The regulatory disclosure statement must not be presented in such a way as to appear to be an endorsement by the Financial Regulator of the moneylender or its products or services.

ERRORS

- 26 A moneylender must:
 - a) speedily, efficiently and fairly, correct an error in any *charge* or price levied on, or quoted to, a *consumer* in respect of any product or service the subject of this Code;
 - b) where it considers that there may have been a material charging or pricing error, without delay, inform the Financial Regulator of its proposals for correcting any such error as may have occurred in accordance with paragraph a) above (if any such information is provided verbally in the first instance, it must be provided to the Financial Regulator in writing on the next *business day*); and

- c) notify all affected *consumers*, both current and former, in a timely manner and in such form as may be agreed with the Financial Regulator, of any material charging or pricing error that impacted negatively on the cost of the service or the value of the product provided.

HANDLING COMPLAINTS

- 27 A moneylender must have in place a written procedure for the proper handling of *complaints*. This procedure need not apply where the *complaint* has been resolved to the complainant's satisfaction within 5 *business days*, provided however, that a *record* of this fact is maintained.

At a minimum this procedure must provide that:

- a) the moneylender will acknowledge each *complaint* in writing within 5 *business days* of the *complaint* being received;
- b) the moneylender will provide the complainant with the name of one or more individuals appointed by it to be the complainant's point of contact in relation to the *complaint* until the *complaint* is resolved or cannot be processed any further;
- c) the moneylender will provide the complainant with a regular written update on the progress of the investigation of the *complaint* at intervals of not greater than 20 *business days*;
- d) the moneylender will attempt to investigate and resolve the *complaint* within 40 *business days* of having received the *complaint*. Where the 40 *business days* have elapsed and the *complaint* is not resolved, the moneylender will inform the complainant of the anticipated timeframe within which the moneylender hopes to resolve the *complaint* and of the *consumer's* right to refer the matter to the Financial Services Ombudsman and will provide the *consumer* with the contact details of the Financial Services Ombudsman; and

- e) the moneylender will advise the complainant in writing, within 5 ***business days*** 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. The moneylender will also inform the complainant of the right to refer the matter to the Financial Services Ombudsman and will provide the ***consumer*** with the contact details of the Financial Services Ombudsman.
- 28 When a moneylender receives a verbal ***complaint***, it must offer the ***consumer*** the opportunity to have the ***complaint*** treated as a written ***complaint***.
- 29 A moneylender must maintain an up-to-date ***record*** of all ***complaints*** subject to the ***complaints'*** procedure. This ***record*** must contain the details of each ***complaint***, a ***record*** of the moneylender's response(s), any other relevant correspondence or ***records*** and the action taken to resolve each ***complaint***.

CONSUMER RECORDS

- 30 A moneylender must maintain up-to-date ***consumer records*** containing at least the following:
- a) a copy of all documents required for ***consumer*** identification and profile;
 - b) the ***consumer's*** contact details;
 - c) all information and documents prepared in compliance with this Code;
 - d) details of products and services provided to the ***consumer***;
 - e) all correspondence with the ***consumer*** and details of any other information provided to the ***consumer*** in relation to the product or service;
 - f) all documents or applications completed or signed by the ***consumer***;

- g) copies of all original documents submitted by the *consumer* in support of an application for the provision of a service or product; and
- h) all other relevant information concerning the *consumer*.

Details of individual transactions must be retained for 6 years after the date of the transaction. All other *records* required under a) to h) above, must be retained for 6 years from the date the relationship ends. *Consumer records* are not required to be kept in a single location but must be complete and readily accessible.

UNSOLICITED CREDIT FACILITIES

- 31 A moneylender must not offer unsolicited pre-approved credit facilities.
- 32 A moneylender may only increase the limit on a *consumer's running account* following a request from the *consumer*.

ARREARS AND GUARANTEES

- 33 A moneylender must have in place, procedures for the handling of arrears cases.
- 34 A moneylender must advise *consumers* prior to entering into a moneylending agreement and again upon the sixth default/missed payment, whether consecutive or otherwise, during the currency of a moneylending agreement, of relevant credit counselling services, and the contact details for such services e.g. name and address of a local Money Advice & Budgeting Services' office.
- 35 A moneylender must ensure that, where a loan is being advanced subject to a guarantee, the guarantee outlines the obligations of the guarantor and must contain the following warning:

Warning: As a guarantor of this loan, you will have to pay off the loan, the interest and all associated *charges* if the borrower does not. Before you sign this guarantee, you should get independent legal advice.

- 36 A moneylender must notify the guarantor in writing if the terms of the loan agreement change.

DEBT COLLECTION

- 37 Where a moneylender engages the services of a third party to collect debts on its behalf, the moneylender must have in place a written contractual arrangement which seeks to ensure that its *consumers* are treated in accordance with the provisions of this Code and the relevant provisions of the Act.

- 38 A moneylender must inform an affected *consumer* that his/her moneylending agreement has been assigned to a third party as soon as practicable after assigning the moneylending agreement.

This requirement does not apply where the moneylender, by agreement with the third party, continues to service the moneylending agreement vis-à-vis the *consumer*.

COMPLIANCE WITH THIS CODE

- 39 A moneylender must have adequate systems and controls in place to ensure compliance with this Code.

- 40 Where the Financial Regulator requires a moneylender to provide information in respect of the moneylender's compliance with this Code, such moneylender is thereby required to provide information which is full, fair and accurate in all respects and not misleading and to do so in any reasonable period of time or format that may be specified by the Financial Regulator.

- 41 Where the Financial Regulator requires information in respect of a moneylender's compliance with this Code, and the Financial Regulator is of



the opinion that a meeting with personnel of the moneylender is necessary in order to procure such information in a satisfactory manner, the moneylender must use its best endeavours to arrange for appropriate personnel to participate in such a meeting in order to provide the required information to the Financial Regulator.

- 42 A moneylender must, upon being required by the Financial Regulator to do so, provide to the Financial Regulator *records* evidencing compliance with this Code for a period prior to such requirement as the Financial Regulator may specify (up to a maximum period of 6 years).

CHAPTER 3

ADVERTISING

GENERAL REQUIREMENTS

- 1 A moneylender must ensure that all its *advertisements* are fair and not misleading.
- 2 An *advertisement* must not influence a *consumer's* attitude to the *advertised product or service* of the moneylender either by inaccuracy, ambiguity, exaggeration or omission.
- 3 The name of the moneylender publishing an *advertisement* must be clearly shown in all *advertisements*.
- 4 The nature or type of the *advertised product or service* must be clear and not disguised in any way.
- 5 An *advertisement* must be designed and presented so that any reasonable *consumer* knows immediately that it is an *advertisement*.
- 6 The design and presentation of an *advertisement* must allow it to be clearly understood. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible. Where appropriate they should be linked to the relevant part of the main copy.
- 7 Warnings and product specific information must be clear and must not be obscured or disguised in any way by the content, design or format of the *advertisement*.
- 8 Any statement or promise contained in an *advertisement* must be true and not misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.

- 9 Any recommendations or commendations quoted must be complete, fair, accurate and not misleading at the time of issue, and relevant to the ***advertised product or service***.
- 10 A recommendation or commendation may not be used without the consent of the author and, if the author is an ***employee*** of the moneylender or a ***connected party*** of the moneylender, or has received any payment from the moneylender or a ***connected party*** of the moneylender for the recommendation or commendation, the ***advertisement*** must state that fact.
- 11 Comparisons or contrasts must be based either on facts verified by the moneylender, or on reasonable assumptions stated within the ***advertisement*** and must be presented in a fair and balanced way; and not omit anything material to the comparison or contrast. Material differences between the products must be set out clearly.
- 12 Where an ***advertisement*** includes an ***APR***, the ***advertisement*** must clearly state if the underlying interest rate is fixed or variable.
- 13 An ***advertisement*** for a loan must, if displaying the ***APR*** and the term, display the total cost of credit.



FINANCIAL REGULATOR
Rialtóir Airgeadais

PO Box No 9138
College Green,
Dublin 2, Ireland

T +353 1 410 4000

Consumer help-line

lo call 1890 77 77 77

Register of Financial Service Providers help-line

lo call 1890 20 04 69

F +353 1 410 4900

www.financialregulator.ie

www.itsyourmoney.ie

Information Centre: 6-8 College Green, Dublin 2

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