



FINANCIAL REGULATOR
Rialtóir Airgeadais

Code of Conduct for
Business Lending to Small
and Medium Enterprises

February 2009

Code of Conduct for Business Lending to Small and Medium Enterprises

Scope

This Code applies to all business lending by regulated entities, excluding credit unions, to small and medium enterprises (SMEs).

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 SMEs by regulated entities, and
- to ensure that when dealing with arrears cases the aim of a regulated entity will be to assist borrowers 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 businesses.

This Code applies to regulated entities when providing the following credit products within the State to business customers operating within the State:

- 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.

Regulated entities are advised that they 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 in the case of a liquidation, receivership, examinership or similar insolvency event, or where there is reasonable evidence of fraud, terrorist connections, money laundering and/or misrepresentation.

Legal Background

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

Definitions

For the purposes of this Code, 'business lending' means the provision of credit products to small and medium enterprises operating in this State.

'Small and medium enterprises' are as defined in European Commission recommendation 2003/361/EC which categorises SMEs 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".

For the purposes of this Code, 'borrower' includes representatives and/or agents of the borrower.

'Complaint' means an expression of grievance or dissatisfaction, 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.

'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 Financial Regulator.

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 borrowers 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 borrowers.
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

16. A regulated entity must have in place procedures for the handling of arrears cases.
17. Without prejudice to a regulated entity's regulatory and/or legal obligations and legal rights a regulated entity must
 - a. give the borrower reasonable time, having regard to the circumstances of the case, to resolve an arrears problem,
 - b. endeavour to agree an approach that will assist the borrower to resolve an arrears problem, and
 - c. advise the borrower of any possible impact of the default on other accounts held by the borrower.

Provision of Information

18. 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.
19. 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.
20. 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.
21. 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.
22. A regulated entity must explain to borrowers the basis on which interest is calculated, including the rates applicable to unauthorised overdraft balances.
23. Where a regulated entity changes the interest margin on a credit facility, it must notify affected borrowers promptly of such a change.
24. Where an interest rate change is of general application, a regulated entity may make notification by way of advertising/notices in any appropriate medium.
25. 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).
26. 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 Financial Regulator. Verbal communications which are adequately documented by the regulated entity will be accepted.

Handling Complaints

27. A regulated entity must have in place a written procedure for the proper handling of complaints 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 days, 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 days 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 days of having received the complaint; where the 40 business days 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 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;
- (f) in dealing with complaints the regulated entity will not be required to retain documents relating to declined applications for more than 12 months.

Retention and Production of Documents

28. A regulated entity must prepare and maintain adequate records required under this Code, and must produce all such records to the Financial Regulator upon request.



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