Group Regulatory
Compliance & Operational Risk
50-55 Lower Baggot Street, Dublin
Tel +353 (0)1 661 5933
Fax +353 (0)1 604 4048
www.bankofireland.ie

22nd July 2011

Consumer Protection Codes Department
Central Bank of Ireland
PO Box 9559
Dame Street
Dublin 2

Dear Sir/Madam

Further to the request from the Central Bank of Ireland ("Central Bank") for views on Consultation Paper CP54 ("CP54"), please find below Bank of Ireland's comments and observations.

Bank of Ireland welcomes the review of the Code and is fully supportive of proposals that will improve consumer protection and awareness in respect of financial products and services. Bank of Ireland also welcomes the clarifications and amendments that have been introduced to the Code following the consultation period on CP47.

In reviewing the Code against the twin aims of consumer protection and awareness the tests we have employed include the avoidance of:

- unintended and unnecessary potential increased confusion, complexity or irritation for consumers;
- conflicts or inconsistencies with existing legislation and Codes;
- unnecessary cost for Bank of Ireland which may have to be passed on to consumers for little or no benefit;
- undue risks to delivery.

In that context our response comprises two elements in addition to this covering letter: comments on Section 2 (Additional Emerging Issues) and comments on other provisions.

In relation to Section 2 we believe six of the sub-sections fully meet the intent of the Code without the requirement for any amendment. Although not specifically requested to comment on other Sections we have done so for provisions which in our view potentially compromise one or all of the tests set out above. In all cases we have suggested possible wording or amendments that we believe clarifies the Code and meets the intent of the Code.

We would ask the Central Bank to review our full submission in that light and would like to highlight two particular matters of concern.

Apparent Retrospective Application of the Code

A number of the provisions in CP54 could suggest undue retrospective application of the Code. Bank of Ireland believes that the retrospective application of provisions in the Code would make existing agreements and arrangements with customers unworkable. We raise two specific instances in our detailed comments. Bank of Ireland suggests that a general provision be incorporated into the Code to the effect that existing agreements, signed by a consumer and entered into prior to the date on which the Code comes into force, which under the Code would require the creation of a new agreement, will not be retrospectively impacted by provisions within the Code.

Implementation Timeframe

A number of the provisions in CP54 will require extensive system and procedural changes to facilitate their implementation. Bank of Ireland is concerned that the time between the final publication of the revised Consumer Protection Code and the proposed implementation date of 1st January 2012 will be inadequate to allow regulated entities to specify, develop, test and embed the aforementioned changes. Bank of Ireland requests that an implementation period of 9 months from the proposed implementation date of 1st January 2012 be allowed where significant and complex system changes are required to meet the requirements of CP54.

In closing, I would like to reiterate Bank of Ireland's full support for achieving the intended aims of the Code and are fully prepared to implement the required changes and make the required investments to ensure enhancement of Consumer protection and awareness in respect of financial products and services.

We would wish to meet with the Central Bank to discuss our submission in more detail.

Yours sincerely

pp Gillian Breen

Peter Morris

Chief Governance Risk Officer

Part 1 - Bank of Ireland Comments on Section 2 - Additional Emerging Issues

Bank of Ireland is fully supportive of proposals that will improve consumer protection and awareness in respect of financial products and services. In that context we have reviewed all the proposals in this Section and believe the following achieve these dual aims without a requirement for further amendments, albeit will require significant investment for Bank of Ireland.

- **Complaints Resolution**
- **Provision of Credit to SME's**
- **General Principles**
- **Errors Handling**
- **Claims of Processing**
- **Conflicts of Interest**

We believe the following provisions are worthy of review for amendment for the reasons articulated:

i.) BASIC PAYMENT ACCOUNT

Bank of Ireland Comments

Bank of Ireland fully supports the concept of financial inclusion as espoused in the recent Department of Finance report on the promotion of financial inclusion. Bank of Ireland is actively working with the Department of Finance and other parties to bring Basic Payment Accounts to the market within the timeframe set out by the Department of Finance.

Bank of Ireland does however query the appropriateness of making provisions for the Basic Payment Account within the Consumer Protection Code at this point given that the Department of Finance have not yet finalised their detailed proposals. In particular, we refer to section 6 of the Department of Finance Strategy for Financial Inclusion wherein it is clear that further work will be required in defining eligibility criteria for the Basic Payment Account. We suggest that the provisions on the Basic Payment Account within CP54 are held out until such time as the Department of Finance proposals are finalised.

Alternatively, the full set of provisions could be enshrined in CP54 but doing that assumes the full consultation process on the Basic Payment Account can be finalised in good time to achieve this.

CP54 does not mention the concept of eligibility which is central to our understanding of the proposals for a Basic Payment Account. On the other hand, it is hard to understand how the idea of "suitability" which is mentioned in CP54 could apply to a Basic Payment Account. In light of this (and if there is a desire to retain reference to the Basic Payment Account in CP54) we suggest that the following changes should be made.

3.53 A ***regulated entity*** must bring to the attention of ***eligible personal consumers*** the fact that it offers ***basic payment accounts*** to ***personal consumers*** and include details of its ***basic payment account*** in its promotional material for any other payment accounts available from that ***regulated entity,*** other than where such promotional material is solely targeted at consumers who would be ineligible for the ***basic payments account***.

3.54 A ***regulated entity*** must ensure that a ***personal consumer*** is provided with such reasonable assistance that may be necessary to assist the ***consumer*** when the ***consumer*** is providing the information necessary for the assessment of whether or not they are eligible for a ***basic payment account.***

3.55 Where the ***personal consumer*** refuses to give information necessary for the assessment of whether or not they are *eligible* for a ***basic payment account***, the ***regulated entity*** must inform the ***personal consumer*** that it does not have the necessary information to assess their eligibility for a ***basic payment account*** and cannot offer that product unless and until such information is provided.

3.56 If a ***regulated entity*** refuses to open a ***basic payment account*** for an *eligible* ***personal consumer*** it must give that ***eligible personal consumer*** the reason(s) for the refusal, in writing.

3.57 A ***regulated entity*** must not refuse to provide a ***basic payment account*** to an *eligible* ***personal consumer*** solely on the basis of that *eligible* ***personal consumer***'s poor credit history or that he / she is, or was, previously bankrupt.

In relation to provision 3.56, Bank of Ireland believes that many consumers who are ineligible for a ***basic payment account*** may seek to open a ***basic payment account***. Bank of Ireland believes that providing reasons in writing to such ineligible customers would be an excessive administrative burden and suggests that in such cases a verbal refusal or the provision of handout giving details of the eligibility criteria would suffice.

Bank of Ireland suggests that a definition of eligibility be included / appended to CP54 when the details are finalised by the Department of Finance

iii) PERSONAL CONTACT WITH CONSUMERS *Unsolicited contact*

Bank of Ireland Comment

Provision 3.33 has the apparent effect of negating much of Provision 3.32 and would also operate in a manner which involves undue and unjust retrospective reach. Bank of Ireland recommends an amendment to Provision 3.33 to avoid this result.

Provision 3.32 allows a ***regulated entity*** make a marketing telephone call to an "... existing ***consumer***" where he or she ".. has given informed consent in writing..." to such contact. The standard data protection consent used by BOI Group includes the customer's consent to such contact (unless the consumer has opted out of that, for example, under the regulatory regime which covers marketing by telephone). Furthermore, the present version of the data protection consent in use by the BOI Group:-

a) is in plain language and easily understood;

b) has been reviewed by the office of the Data Protection Commissioner who have raised no objections to its current form;

c) is expressed to be subject to any relevant regulation (an example of that would be the "opt out" framework for marketing by telephone provided for under Statutory Instrument 535/2003 which includes the National Directory Database Opt-Out Register); and

d) for the above reasons Bank of Ireland is satisfied this constitutes the "informed" consent of the customer for the purpose of Provision 3.32.

The requirement for consent in writing in Provision 3.32 would appear to be further qualified in Provision 3.33 which specifies that e.g.:- the consent must be "..in a separate document or separate section of a document which requires the ***personal consumer*** to sign that section/document"; and the consent must set out the times and days of calls, &c., which must be in accordance with the provisions of CP54.

The consents to marketing which we hold to date for any "existing ***consumer***" (as described in Provision 3.32) cannot, by necessity, comply with the requirements in the format set out in Provision 3.33 simply because the consent forms were designed to meet the current (pre-CP54) regulatory framework. If Provision 3.33 is commenced as proposed, it would have the apparent effect of retrospectively invalidating hundreds of thousands of consents that are completely compliant with the current regulatory framework. That seems to Bank of Ireland to be contrary to the accepted and established norms for any public regulatory framework such as the proposed new Code.

Bank of Ireland suggests that Provision 3.33 be amended to read as follows:-

3.33 Where a ***regulated entity*** obtains a consent from a ***personal consumer*** after the commencement of this Code, in order to comply with Provision 3.32 above, the consent must be in a separate document or separate section of a document, which includes a requirement for the ***personal consumer*** to sign that section/document and which sets out:

a) the purposes for which a personal visit or telephone call may be made if the ***personal consumer*** consents, and

b) the times and days for the proposed contact, which must be within the times and days specified in Provision 3.35

vi) ADVERTISING - FOOTNOTES

9.8 *A **regulated entity** must ensure that small print or footnotes are only used to supplement or elaborate on the key information in the main body of the **advertisement**. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible and should not be directly related to the product or service in the **advertisement**.*

Bank of Ireland Comment

We believe this section is unclear. The two sentences as currently written appear to contradict one another. On the one hand this section states 'small print or footnotes are only used to *supplement or elaborate* on the key information' and on the other hand it states 'small print or footnotes...should *not be directly related* to the product or service in the advertisement'.

In addition, given that advertising can take many different formats (e.g. print-media, sms, mobile applications, instant messaging, etc) the size and prominence of small print or footnotes will vary depending on the format employed.

Bank of Ireland suggests that the following wording will address these matters:

9.8 A ***regulated entity*** must ensure that small print or footnotes are only used to supplement or elaborate on the **key information** contained in the main body of the **advertisement** Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible taking into consideration the format being used and overall font size in the main body copy of the ***advertisement***. **Key information** should not be included as part of small print or footnotes.

ADVERTISING - WARNINGS

*9.11 A **regulated entity** must ensure that warnings appear alongside the benefits of the product or service to which they refer. They must not be obscured or disguised in any way by the content, design or format of the **advertisement.***

Bank of Ireland Comment

Bank of Ireland appreciates the intentions of the Central Bank in introducing this provision. However, we anticipate that this will be difficult to apply to the majority of traditional advertising formats (print, television, radio) and even more so to emerging formats such as sms, mobile applications, online advertising. We are of the view that the number of warnings now required per product (in addition to key information) will serve to confuse rather than inform customers, if they become the core feature of financial product advertising.

Many print items and adverts refer to product features and benefits on multiple occasions in the same advertisement or document. The inclusion of warning boxes ALONGSIDE the feature every time it is mentioned is not always practical, given that "Alongside" literally means in the same horizontal plane

As the Code already states that warnings be placed "in a box, in bold type and of a font size that is larger than the normal font size used throughout the advertisement", we believe that the desired outcome can be achieved by requiring that warnings are placed in a prominent position, appropriate to the format of the advertisement, so as to ensure that a consumer will read it. We suggest that provision 9.11 be amended to now read as follows:

9.11 *A **regulated entity** must ensure that warnings appear on the page which sets out the benefits of the product or service to which the warnings refer. They must not be obscured or disguised in any way by the content, design or format of the **advertisement.** In this provision "page" includes a reference to a visual field where a the **advertisement** is in a non-print medium.*

Part 2 - Bank of Ireland Comments on other Sections of CP54

INFORMATION ABOUT PRODUCTS

4.26 A ***regulated entity*** must provide each ***consumer*** with the terms and conditions attaching to a product or service, before the ***consumer*** enters into a contract for that product or service.

Bank of Ireland Comment

This provision appears to conflict with Article 45(1) of the European Communities (Life Assurance) Framework Regulations 1994 which apply in relation to life assurance policies. As presently drafted compliance with this provision in the case of a life assurance product would we believe result in a breach of Article 45. We would therefore suggest that paragraph 4.26 be amended to clearly indicate that it does not apply in relation to life assurance products

JOINT ACCOUNT STATEMENTS

4.30 A ***regulated entity*** must, before it opens a joint account for two or more ***consumers***:

a) Warn such ***consumers*** of the consequences of opening and operating such a joint account;
b) specify the particular operations of the account for which consent is and is not required from all account holders;
c) ascertain from the ***consumers*** whether statements are to be issued separately to each of the joint account holders; and
d) ascertain from the ***consumers*** any limitations that they wish to impose on the operations of the account.

Bank of Ireland Comment

Provision 4.30 is not confined to ***personal consumers*** and we believe that will cause difficulty. The definition of c***onsumer*** includes partnerships, clubs, charities etc. Many of these partnerships will be very large (e.g. solicitors) and will be governed by their own formal partnership agreements, which will determine how the accounts should be operated.

Provision 4.30 (b) obliges the regulated entity to specify the operation of the account for which consent is not required from all account holders. In the context of a business partnership, this is information which the partnership needs to give the regulated entity, not the other way around. We strongly recommend that Clause 4.30 be limited to ***personal consumers*** to avoid such difficulties. That would also have the immediate advantage of bringing it into line with Provision 6.2.

INTEREST RATE CHANGES

4.34 A ***regulated entity*** must notify affected ***personal consumers*** in writing 30 days in advance of any change in the interest rate on a loan, except in the case of a tracker interest rate. This notification must include:

a) the date from which the new rate applies;
b) details of the old and new rate;
c) the revised repayment amount; and
d) an invitation for the ***personal consumer*** to contact the lender if he/she anticipates difficulties meeting the higher repayments.

In the case of a mortgage where a revised repayment arrangement has been put in place in accordance with the Code of Conduct for Mortgage Arrears, the notification must clearly indicate the revised repayment amount required in Part c) that applies to the original mortgage agreement as well as the revised repayment amount that applies to the revised repayment arrangement.

In the case of a change in a tracker interest rate, a ***regulated entity*** must notify the ***personal consumer*** of any change in the tracker interest rate as soon as possible, and no later than 10 ***business days*** after the change has been announced. The notification must include the information contained in this provision.

Bank of Ireland Comments on Provision 4.34 (Notice Period & Reference rates)

The requirement for 30 days notice is new in CP54 and Bank of Ireland believes that it will have serious unintended consequences for consumers who wish to avail of interest rates that are linked to a market rate or some other similar reference rate. The Bank of Ireland's position and suggestion for a revised provision are explained below.

There is, somewhat confusingly, a dual regime for personal loans (one for loans under €200 and over €75,000 under Parts II to IV of the Consumer Credit Act 1995 as amended ("CCA"); and the other for other loans under the European Communities (Consumer Credit Agreements) Regulations 2010 ("CCR")). The differences between these regimes will be accentuated on the implementation of CP54. This difference will become particularly acute and disadvantageous to consumers and lenders alike if provision 4.34 is commenced as proposed.

There is now a new and clear regime in force throughout the European Union for interest rate changes for loans in scope for Consumer Credit Directive (2008/48/EC) ("CCD") and these are set out for this jurisdiction in Regulation 14 of the CCR (and, for overdrafts in CCR Regulation 15(2)). This regime has recently been implemented by the Bank of Ireland at considerable cost and demand on management time and involved significant IT development. The regime in the CCD/CCR clearly represents the EU view of best practice for interest rate changes in consumer loans. In summary, the CCD/CCR provisions and how they contrast with CP54 are as follows:-

a. A consumer must be given notice of an interest rate change "...before the change enters into force". The CCD/CCR is not prescriptive about the length of prior notice that must be given. **In contrast, CP54 Provision 4.34 would impose a obligation to give "..30 days ...advance [notice]" of "...any change in the interest rate" on a loan which is not in-scope for CCD/CCR (and would, therefore, be in-scope for CCA).**

b. Regulation 14 of CCR (implementing Article 11 of CCD) makes provision for interest rates based on a "reference rate" (which can be from an external source or can be a financial institution's internal reference rate). Subject to compliance with that regulation, the lender is not obliged to notify a customer in advance of interest rate changes where the change is caused by a change in the reference rate. **CP 54 Provision 4.34, in contrast, makes no provision for any reference rate other than a "tracker interest rate". There are many other types of reference rates besides tracker rates, where rates automatically move in line with a reference rate that has been provided for in the customer's loan documentation.**

It will be readily seen, that CP54 Provision 4.34 would introduce a harsher regime for personal credit facilities above €75,000 than is provided for in Regulation 14 of CCR which was introduced and implemented only last year. It is difficult to think of a policy justification for this.

If CP54 Provision 4.34 is applied, it would effectively debar regulated entities from providing loans greater than €75,000 to personal consumers on market based rates which move automatically following changes in market rates. As these rates are very competitive and are valued by customers with large personal loans, the effect of the provision would be to significantly disadvantage them. We do not believe this is what the Central Bank intends.

In addition, Bank of Ireland is contracted to continue to provide a section of legacy personal consumers with market rates and therefore would not be in a position to comply with the Code as drafted for these legacy borrowers, i.e. to notify in advance of any rate change.

We suggest that CP54 Provision 4.34 be confined to mortgage loans. However if the Central Bank believes that the provision needs to be extended to personal loans greater than €75,000, then Bank of Ireland would suggest that the Central Bank should (in CP54) extend the regime for interest rate changes set out in Regulation 14 of CCR to apply to personal loans greater than €75,000.

Bank of Ireland Comment on provision 4.34 (Mortgages)

Insofar as mortgage loans are concerned it is the view of Bank of Ireland if a mortgage loan agreement has been amended to allow for an alternative payment arrangement under the Code of Conduct on Mortgage Arrears (CCMA), the only information of value to the customer is the impact of the interest rate change on the mortgage loan agreement so amended. The second (un-numbered) paragraph of Provision 4.34 would seem to oblige a mortgage lender to give a statement of what the revised repayment amount would have been "..in the original mortgage agreement...", that is as though the mortgage agreement were not amended through the CCMA process. Carrying out such a calculation would present a mortgage lender with significant difficulty because it would have altered the records on its system to reflect the arrangement made under CCMA and all calculations of interest derive from that. In addition, the information presented would be hypothetical and, in our view not of real value to the customer. Bank of Ireland believes this will lead to customer confusion.

INVESTMENT PRODUCTS

4.62 Before offering, arranging or recommending an ***investment product*** the ***regulated entity*** must provide the ***consumer*** with the following information, where relevant, in a stand-alone document:

a) capital security;

b) the risk that some or all of the investment may be lost;

c) leverage and its effects;

d) any limitations on the sale or disposal of the product;

e) restrictions on access to funds invested;

f) restrictions on the redemption of the product;

g) the impact, including the cost, of exiting the product early;

h) the minimum recommended investment period;

i) the risk that the estimated or anticipated return will not be achieved;

j) the potential volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment; and

k) the level, nature, extent and limitations of any guarantee and the name of the guarantor.

Parts (g) and (i) are not required to be disclosed in this document for life assurance products, where such information is already required to be disclosed under the Life Assurance (Provision of Information) Regulations 2001 or any other regulations made under Section 43D of the Insurance Act 31 1989 concerning provision of information for life assurance policies.

Bank of Ireland Comment

We note that parts (g) and (i) are not required to be disclosed for life assurance policies in circumstances where this information is already required to be disclosed under specific life assurance regulations. We would query why this exemption is limited only to parts (g) and (i) and would suggest that life assurance policies be exempted from the entire provision where the relevant information is already disclosed under an existing document prepared under the stated life assurance regulations.

TRACKER BONDS - DOCUMENTATION

4.68 A ***product producer*** of a ***tracker bond*** must produce and issue a document, within three ***business days*** of the start of the ***tracker bond***, to any ***consumer*** to whom it has sold its ***tracker bond*** or to any ***intermediary*** that has sold its ***tracker bond*** setting out:

i. the name(s) and address(es) of the ***consumer(s)***;

ii. the date of investment;

iii. the amount of the investment;

iv. the date or dates on which the minimum payment is payable;

v. disclosure of the make up of the investment, if the make up differs from that shown in the Key Features Document prepared in accordance with Provision 4.66;

vi. the date the investment will mature; and

vii. if a ***consumer*** has the right to cancel the ***tracker bond*** within a certain period of time from the sale, the cooling off period of [*Insert number*] days starts from [*insert date: the commencement of the investment date/date of receipt of policy document*].

The intermediary must, within three ***business days*** of receiving this document, provide it to the ***consumer(s)*** who purchased the ***tracker bond***.

Bank of Ireland Comment

Tracker Bonds may also be produced and issued by life assurance undertakings (as life assurance policies) and provision 4.52 of the draft Code states that, for insurance products, the policy documents must be issued to the consumer within 10 business days. There appears to be a potential conflict between provisions 4.52 and 4.68 in the case of life assurance polices that are tracker bonds as provision 4.68 obliges certain information to be issued within 3 business days. We would therefore suggest that provision 4.68 be amended so that it is specifically dis-applied in the case of life assurance policies that are tracker bonds, as this information is already required to be provided under provision 4.52 within 10 business days.

TRACKER BONDS – FEATURES

4.70 Prior to offering, arranging or recommending a ***tracker bond***, where relevant, the ***product producer*** of a ***tracker bond*** must explain to the ***consumer*** in writing that the ***consumer***'s return will be capped/limited and that the ***product producer*** and / or a third party will retain the excess of earnings over that cap/limit.

Bank of Ireland Comment

This clause discusses a common feature often added to tracker products, i.e. placing a cap on the potential return of a product. There seems to be a misunderstanding in the statement however – it is not always the case that either the product producer or a third party will gain should returns exceed the cap. This feature is added to products in order to cheapen the equity option that needs to be purchased and is priced economically using liquid market instruments. Technically the upside on these products are constructed by purchasing a call option on the relevant index or basket of shares and the cap cheapens the option because the product sells a put option on the underlying index back to the option counterpart. Any fee made by the product producer, the option counterpart or the distributors will be taken upfront while the product is being constructed.

We would therefore suggest that this provision (4.70) be amended by including the words "*where relevant*" so that it does not apply in circumstances where "any excess of earnings over that cap/limit" simply does not arise.

MORTGAGES

5.6 Before providing a mortgage to a ***consumer***, a mortgage lender must have had sight of all original supporting documentation evidencing the ***consumer***'s identity and ability to repay. A declaration signed by the ***consumer***, (or his representative), certifying income and/or ability to repay is not sufficient evidence for these purposes.

<u>Bank of Ireland Comment</u>

We note that this provision specifically requires a mortgage lender to have had sight of all original supporting documentation evidencing a consumer's identity.

Mortgage lenders and mortgage intermediaries are subject to the provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. Under section 40 of that Act it is possible for a designated person to have reliance on other persons to carry out relevant customer due diligence. Provision 5.6 as presently drafted appears to conflict with this provision and we would therefore suggest that the requirement for a mortgage lender to have sight of all original supporting documentation evidencing the customer's identity be deleted from this provision.

If this provision is retained as is currently drafted, it will become necessary for consumers living outside Dublin to either present themselves at the Mortgage Lender's offices in Dublin or forward their Driving Licence or Passport to the mortgage lender so as to allow the mortgage lender sight of the original documentation. This could deprive the consumer of the opportunity to travel abroad or indeed lead to a potential legal difficulty with the Gardai should they be driving a car while not in possession of their driving licence. We do not believe this what the Central Bank intends.

SUITABILITY

5.12 Before offering, arranging or recommending a variable interest rate mortgage, a ***regulated entity*** must provide a ***personal consumer*** with figures reflecting the revised instalment amount following a 2% interest rate increase above the variable interest rate offered.

Where the lender is offering an ***introductory interest rate***, the revised instalment amounts must reflect an increase of 2% on the variable interest rate to be applied after the introductory period has ended if known at the time of the offer of the ***introductory interest rate*** or the current variable interest rate, if the variable interest rate to be applied after the introductory period has ended is not yet known."

<u>Bank of Ireland Comment</u>

Bank of Ireland has no objection in principle to this new provision in CP54. However, Bank of Ireland believes there is a distinct legal difficulty with the provision, :

The provision would oblige a lender "*..before offering, arranging or recommending a variable interest rate mortgage...*" to provide the "***personal consumer*** with figures reflecting the revised instalment amount following a 2% interest rate increase...". The offer of a variable rate mortgage loan must be embodied in a mortgage loan offer letter which conforms with the relevant provisions of Part IX of the CCA. Section 129 of the CCA sets out certain important information that must be included in the mortgage loan offer letter "...in the form set out in Part II of the Third Schedule [to the CCA] or such other form as may be prescribed". In the CCA "prescribed" means "prescribed by regulations made under [the CCA]...".The form of important information required under Section 129 is now "prescribed" by ministerial regulation, namely, S.I. 132 / 1996, which requires the inclusion of the following items:

"10. *Effect on amount of instalment of 1% increase in first year in interest rate**: € **This is the amount by which the instalment repayment will increase in the event of a 1% increase at the start of the first year in the interest rate on which the above calculations are based*".

It seems to Bank of Ireland that the Central Bank will need to have the Minister make a new regulation under Section 129 of the CCA in order to give full effect to the proposed provision 5.12. Otherwise, there will be confusion for customers. In this regard, Bank of Ireland would refer the Central Bank to the position on advertising mortgages set out in the second last page of the Financial Regulator's ***Consumer Protection Code Clarifications Information Paper July 2007.*** The clarification sought to resolve conflict in the area of prescribed warnings between the CPC and CCA. By analogy, the same effort to avoid conflict between CCA and CP54 as regards the prescribed "important information" in mortgage loan agreements will be required before Provision 5.12 is commenced.

EXEMPTION FROM KNOWING THE CONSUMER AND SUITABILITY

5.27 Provisions on Knowing the Consumer and Suitability do not apply where:

a) the ***consumer*** has specified both the product and the ***product producer*** by name and has not received any assistance from the ***regulated entity*** in the choice of that product and/or ***product producer***; or

b) the ***regulated entity*** has established that the ***consumer*** is seeking a term deposit of less than one year or a notice deposit account and has alerted the ***consumer*** to any restrictions on the account.

c) where ***consumers*** other than ***personal consumers*** are seeking credit.

The above exemption in Provision 5.27 a) does not apply where:

1) a ***personal consumer*** is seeking:

   a. credit amount above €75,000,

   b. a mortgage,

   c. a ***home reversion agreement.***

2) a ***consumer*** is seeking an ***investment product***.

Bank of Ireland Comment

Bank of Ireland believes that both the **personal current account** and the ***basic* payment account** should be included in the exemption under 5.27 for the following reasons:

a) The basic, utilitarian nature of the accounts

b) the mandatory provisions requiring a regulated entity to provide Basic payment account (in provisions 3.53-3.57 of CP54 or in the document to be produced by the Department of Finance); and

c) the conceptual difficulty as to why a Basic payment account could be unsuitable for an eligible customer.

Additionally Provision 5.27(b) exempts term deposits of less than a year and notice deposit accounts. It seems to Bank of Ireland that there has been an omission not to include **demand deposit accounts** as these are simpler and more basic products than term and notice accounts.

STATEMENTS

6.2 In relation to a joint account, and when a ***consumer*** is a ***personal consumer*** under this Code, statements must be provided or made available separately to each of the joint account holders in the following circumstances:

a) where there are different postal addresses for each joint account holder; or

b) where a joint account holder has requested that a separate statement be issued to each account holder.

Bank of Ireland Comment

In our experience, it is not unusual for one of the joint account holders to specifically ask not to have a joint account statement delivered to their address. This can arise where the joint account holder does not wish the existence of the joint account to come to the attention of a spouse, partner or parent with whom they are living. Provision 6.2 makes no provision for a regulated entity to accede to such a request. We recommend adding the following words to the provision: "This provision does not apply where a joint account holder instructs the ***regulated entity*** not to send him or her statements at their postal address."

Chapter 8 – Arrears Handling

In this Chapter 'arrears' arise where a ***personal consumer***:

a) has not made a full repayment, or only makes a partial repayment, as set out in the original loan account contract, by the scheduled due date; or

b) in the case of a credit card account, has not made the minimum repayment by the due date.

8.4 As soon as an account goes into arrears, a ***regulated entity*** must communicate promptly and clearly with the ***personal consumer*** to establish in the first instance why the arrears have arisen.

Bank of Ireland Comment

Bank of Ireland believes that the definitions of arrears as set out above will cause serious irritation to the many customers who inadvertently miss a payment.

In particular, deeming "arrears" to arise if there is one missed minimum payment for a Credit Card would create a process that would be unworkable as it is not unusual for customers to miss a minimum payment. This can be for any number of reasons, such as: forgotten payment date, holiday abroad, changed address and did not change statement address, losing track of the balance in their account or just poor time management. Many customers who miss a payment bring their account into normal status before the next payment is due.

In the case of a credit card, a missed payment is detailed on their next monthly statement. Contacting customers to establish the reason will in most cases cause irritation and will be regarded as oppressive and overbearing. This seems to run contrary to other provisions in CP54 which aim to avoid unnecessary communications with consumers (e.g., CP 54, Provisions 2.9 and 8.13). Similarly for Loans, customers can miss a single repayment (most commonly due to poor account management) but bring their account back in order before the next payment is due. Customers who miss a repayment already get a letter notifying them of the fact and we believe that making personal contact with customers at this point to determine why the arrears have arisen would be disproportionate, particularly where the missed repayment is an oversight.

Bank of Ireland would recommend a broader interpretation of the word "arrears" or the term "in arrears" for loans and credit cards as follows, which reflects when a genuine arrears situation may be emerging. We would therefore suggest the following as a definition:

In this Chapter "arrears" can arise where a personal consumer

a) has not made a full repayment, or only makes a partial repayment for two consecutive periods as set out in the original loan account contract, by the scheduled due date; or

b) in the case of a credit card account, has not made the minimum repayment by the due date for two consecutive billing periods

Bank of Ireland appreciates the appropriateness of communicating promptly and clearly with a personal consumer who is in arrears to establish in the first instance why arrears have arisen. Telephone contact is often the most expedient and productive means of interaction for this purpose. Bank of Ireland is concerned that the restriction of calling hours to 9 AM to 7 PM Monday to Friday will restrict calling to timeframes during which many consumers who work long hours or who have long commutes will not be present to receive phone calls. Bank of Ireland suggests that an additional exception to provision 3.35 be included as follows:

3.35 A ***regulated entity*** may only make a personal visit or telephone call to a ***personal consumer*** between 9.00 a.m. and 7:00 p.m. Monday to Friday (excluding bank holidays and public holidays), except where:

a) The purpose of the contact is to protect the ***personal consumer*** from fraud or other illegal activity, or

b) The ***personal consumer*** requests, in writing, contact at other times or in other circumstances, or

c) The contact is permitted at other times under the Consumer Credit Act 1995, regardless of whether the loan is provided under the Consumer Credit Act 1995 or under the European Communities (Consumer Credit Agreements) Regulations 2010.

PROVISION OF INFORMATION

8.6 Where an account remains in arrears 31 days after the arrears first arose, a ***regulated entity*** must immediately inform the ***personal consumer*** and any guarantor of the loan, in writing, of the status of the account. This information must include the following:

a) the date the account fell into arrears;

b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts);

c) the amount of the arrears to date;

d) the interest rate applicable to the arrears;

e) details of any ***charges*** in relation to the arrears that may be applied;

f) the importance of the ***personal consumer*** engaging with the ***regulated entity*** in order to address the situation;

g) relevant contact points;

h) the consequences of continued non-payment;

i) if relevant, any impact of the non-payment on other accounts held by the ***personal consumer*** with that ***regulated entity*** including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and

j) the contact details of the ***personal consumer***'s nearest MABS office and/or the link to the MABS website and a statement to the effect that the involvement of MABS could help the ***personal consumer*** if they are experiencing financial difficulty.

<u>Bank of Ireland Comment</u>

Bank of Ireland believes that the provision of the above information after 31 days, which in some cases will be after just one missed repayment, is excessive and will serve to irritate rather than inform a consumer. Bank of Ireland suggests that sufficient time be allowed for a consumer to rectify matters following the communication specified in provision 8.4, which Bank of Ireland suggests should take place after two missed or partial repayments. In that context, Bank of Ireland suggests that the timeframe for the mandatory provision of the information specified in provision 8.6 be amended to 90 days in arrears.

Bank of Ireland would also like to highlight practical difficulties with the inclusion of guarantors in provision 8.6, mostly from the point of view of the ***personal consumer***. There is no materiality test in the provision other than the requirement that the amount be outstanding for over 31 days (or 90 days as is being proposed by Bank of Ireland). A borrower may be greatly aggrieved if he or she finds a guarantor has been notified about a relatively small amount of arrears which the borrower is easily able to repay (and where, in fact, the borrower may have repaid the arrears after the 31^{st} day of their occurrence and prior to the guarantor receiving notification). Correspondingly, the notice may cause the guarantor unnecessary stress and alarm where the arrears are not material.

Bank of Ireland, therefore, suggests that the guarantor only receives the information when the arrears are outstanding for over 90 days.