



**An Roinn Airgeadais  
Department of Finance**

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Ms Bernie Mooney  
Deputy Head of Consumer Protection  
Central Bank of Ireland  
PO Box 559  
Dame Street  
Dublin 2

Dear Ms Mooney

I refer to the consultation paper on “Consultation on Financial Difficulties Requirements of the Code of Conduct for Business Lending to Small and Medium Enterprises” recently published by the Central Bank.

I note that the focus of the review is restricted to the Financial Difficulties section of the SME code and have restricted my response accordingly.

An area not included in the proposed code is what happens in the event of a regulated entity failing to follow its procedures for dealing with borrowers. The Department has received a limited number of complaints from borrowers who allege that banks have acted too swiftly to enforce security when the business was in the process of restructuring its finances. Sanctions on the banks after the event are of no assistance to a borrower which may be forced out of business in the meantime. It is accepted that such complaints only tell one side of the story but I would recommend an addition to the code to protect the borrower from banks who do not comply with their own procedures and to advise the borrower on the appropriate action to take in such circumstances.

#### Definitions section

There is no definition of “viable” although Paragraph 17 of the proposed Code only applies where the regulated entity is of the view that the borrower is viable.

While I note that “to implement a process for lenders to determine the viability of SMEs in financial difficulties” is not an objective of the Code, I consider that there is a risk that regulated entities could avoid their responsibilities by taking the view that the borrower is not viable.



The publication "Your Business Your Bank" contained the following description of a viable business in the context of securing finance:

A Viable Business is a business that is currently in operation and is expected to continue to remain trading for the foreseeable future. Common characteristics of viable businesses are as follows:

- A history of successful trading and profit and/or cash generation
- A management team that has adjusted its business model and cost structure to the prevailing business climate
- Good credit history over the previous 3-5 years
  - For start-ups, this may relate to the promoters personal credit/ financial history or any previous business ventures in which they have been involved in
- A realistic business plan and financial/cash flow forecasts that outlines a clear action plan.
  - Short-term cash flow projections (i.e. 6-12 months) are of particular importance in the current environment
- An ability to show that the business is capable of maintaining or returning to solvency within a two year trading period

This was agreed by a group consisting which included both banks and business representatives and the full report is available on the Department of Jobs, Enterprise and Innovation website. I would recommend that this definition should be used as the basis for a definition to be agreed by the banks and business representative organisations if it is accepted that it should be included in the code.

#### Paragraph 18

The Department of Finance has operated on an arms' length basis in relation to the banks operational decisions but would question whether it is appropriate for the Central Bank to prescribe operational structures in the banks. I would consider that the issue of whether staff dealing directly with borrowers in financial difficulties are supported by a dedicated unit or given adequate training to undertake the assessment themselves would be a matter for the banks themselves.

An alternative could be

"A regulated entity must have sufficient adequately trained staff to assess alternative arrangements for borrowers in financial difficulties."

#### Paragraph 33

It is noted that the paragraph permits the regulated entity to contact the borrower outside of the Monday to Friday working week. This is important in the context of one of the suggestions received under the Credit Suggestion Initiative which advocated weekend opening for banks.

Paragraph 37

This could be strengthened by the addition of “including the restrictions on the behaviour of the third party.” at the end of the paragraph to make it clear to the borrower that a third party is also bound by behavioural restrictions.

Paragraph 55

I would have concerns about the time limits on appeals. SI 127 of 2010 in relation to review of decisions to refuse credit to SMEs provides


“5. Where a decision on an application for a credit facility is not given by the participating institution within 15 working days, this shall be regarded as constructive refusal and the borrower may apply for review to the Credit Reviewer.”

Under the definitions section of SI 127 of 2010 ““Refusal” includes a decision by a participating institution to reduce or withdraw an existing credit facility.”

I recommend that the 15 working day limit should also apply in paragraph 55.

If you have any queries in relation to these issues or wish to discuss them further, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Brian Fee", written over a horizontal dashed line.

Brian Fee

Banking Division