

Bank of Ireland Group

Appendix A: Bol submission on Consultation on SME Lending Code (CP91)

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1. INTRODUCTION

The Central Bank of Ireland (CBI) introduced the Code of Conduct for Business Lending to Small and Medium Enterprises in 2009, and reviewed the Code in 2011. Bank of Ireland (BoI) has made a number of detailed submissions to the CBI both at the time of the introduction – and subsequent review – of this Code. This latest submission is made in response to the current consultation process (CP91) which issued in January 2015.

BoI has a number of significant concerns with regard to the proposals which form the basis of CP91. It is the view of the bank that these proposals – which are not grounded in an appropriate analysis of their potential impact on SMEs or lenders – may have a number of substantive, negative consequences should they be introduced.

This response document sets out a number of strategic, implementation, and customer and market impact considerations. These considerations refer to comparisons with other EU Member States, regulatory change in Ireland, the different characteristics and needs of SMEs, the ways in which our customers engage with the bank, and issues relating to compliance, cost, and lending standards. These considerations include the following:

(i) The proposals will have a negative impact on customers.

The proposed changes would limit the ability of lenders to serve their customers effectively and efficiently, and would hamper the ability of lenders to engage with customers in the manner that most suits them (including branch, online, via telephone and with 24/7 availability).

(ii) The proposals will dilute the ability of lenders to act as required in certain situations.

The previous Code included a protection for lenders which stated that ‘Nothing in these regulations prohibit a lender from acting with all necessary speed’ in certain (difficult trading) situations. This protection has been deleted from the proposed Code.

(iii) The proposals inappropriately transpose consumer regulations to the SME sector.

The nature of the coverage required by the SME sector is quite different to those required by the consumer. Application of consumer-type proposals will add to the cost of doing business for SMEs. For example:

- Part 5, Section 11 (4) refers to a lender carrying out an affordability assessment. However, the nature of affordability for businesses is fundamentally different than for consumers.
- Part 5, Section 12 (3) requires the lender to provide the borrower with a clear explanation of why the security or guarantee is required. However, the nature of security/collateral and guarantees for businesses is also fundamentally different than that which pertains in consumer/mortgage lending.
- Part 5, Section 12(6) requires the lender to promptly return any security held (irrespective of whether the borrower requests same) when the credit for which security is pledged has

been repaid. Given the ongoing nature of lending to SMEs, this would not be appropriate and would add unnecessary costs to doing business.

(iv) An evidence-based need for change has not been provided.

The Government has commissioned Red C to provide a regular assessment of credit conditions and bank engagement with SMEs. This survey shows steadily improving bank credit conditions for SMEs, including:

- The number of applications for credit granted fully/partially has increased from 65% in September 2011 to 83% in April - September 2014
The overall decline rate for bank finance has fallen from 15% in March 2014 to just 12% for credit applied for in the period April - September 2014.
A significantly lower proportion (32%) of declined applicants has given a bank controlled reason for that decline. This is down from 58% a year ago and far fewer SMEs are stating that the bank simply did not want to lend to that type of business.
- Just 23% of all SMEs now believe that banks are not lending, down from 30% in March 2014 and 37% a year ago.

(Source: Red C SME Credit demand survey Apr.-Sept.2014)

The improvement in Irish conditions is in line with EU norms. Against this backdrop, the bank does not see any basis for making material alterations to the Code.

(v) No rigorous impact analysis has been undertaken.

Any proposal to introduce regulation should be clearly founded on a rigorous analysis of the perceived difficulties being addressed, the options available for addressing them, and the costs and benefits of any proposed form of action. Such evidence based approaches to regulation are also fundamentally important in highlighting any unforeseen impacts from proposed change, yet no impact analysis has been conducted in relation to these proposals. We have seen the shortcomings of a similar approach on previous occasions, for example in relation to the Code of Conduct on Mortgage arrears (CCMA), and it is the view of Bol that a detailed impact analysis would have highlighted the range of considerations which are detailed in this submission.

The further extension and complication of the SME Lending Code - both against the current economic backdrop, and in light of the wide range of issues, complications and concerns which this proposal raises – is difficult to understand. These proposals also suggest a lack of practical insight into the issues faced by business customers and lenders on a daily basis, and a lack of appreciation for the potential negative implications for lending growth.

Bol has exited State Aid, has fully repaid the taxpayer, has fully met its commitments to supporting SME lending, and has publicly set a target of €33bn new lending into the Irish economy by 2017. It is the view of the bank that a rigorous, independent impact analysis – with appropriate international benchmarking – should be conducted before any substantive amendments are made to the Code.

2. STRATEGIC CONSIDERATIONS

1. Most other EU member states have no equivalent statutory Code for SME lending.

Statutory prescription of SME lending Codes appears to be very much the exception, rather than the rule in other EU member states.

BOI's review of EU policy responses in the recent financial crisis (adapted from an OECD study, 2014) also suggests that the introduction of statutory Codes of conduct in relation to SME lending was rare, **with only Ireland and Belgium appearing to have introduced a statutory Code covering SME lending.** It should also be noted that **in the case of Belgium, the relevant law only covers enterprises employing less than 50 employees.** Based on our understanding, Codes are not present at all, in some of the major European economies, such as Germany or Spain.

Table (1): Financial crisis: EU states' policy responses:

Policy response	States
Government loan guarantees	Aus, Be, Cz, De, Fi, Fr, Gr, Hu, Ire, NI, Por, Slo, Slv, Sp, SW, UK
Special loans and guarantees for start ups	Aus, De, UK
Government export guarantees, trade credit	Aus, Be, Cz, De, Fi, Hu, NI, Sp, Sw
Direct Lending to SMEs	Aus, Bel, Cz, Fin, Fr, Gr, Hu, Ire, Por, Slk, Slv, Sp, Sw, UK
Subsidised interest rates	Aus, Gr, Hu, Por, Sp, UK
Venture capital, equity funding, business angel support	Aus, Be, De, Fi, Fr, Gr, Hu, Ire, NI, Por, Sp, UK
SME banks	Fr, Por, UK
Business advice, consultancy	Aus, De, Fi, NL, Sw
Tax exemptions, deferments	Be, Fi, Ita, Sp, Sw,
Credit mediation, review, Code of conduct	Bel, Fr, Ire, Sp
Bank targets for SME lending, negative interest on CB deposits	Ire, De
CB funding to banks dependent on net lending rate	UK

Source: Adapted from Table 1.9, "Financing SMEs and Entrepreneurs", 2014, OECD.

2. The UK, which is a similar market to Ireland, does not have such a statutory Code

In the United Kingdom, the closest market to Ireland, and similar in broad business conditions, significance of SME sector etc, there is no statutory Code regulating business lending. Instead, the Financial Conduct Authority ("FCA") relies on its key principles of Treating Customers Fairly, which set out the FCA's expectations that banks will put the well-being of customers at the heart of how they run their businesses. These principles, in the case of lending to consumers and certain micro businesses (defined as businesses which employ fewer than 10 persons and have a turnover or annual balance sheet that does not exceed €2 million) are complemented by a voluntary Code, which is applied by participating banks.

This voluntary Code is much less prescriptive than the Irish equivalent. The UK Code, taking some examples, **does not:**

1. Impose strict deadlines for the assessment of a credit application, unlike Regulation 11(5) of the Irish regulations
2. Require the provision of such detailed information to customers as Regulations (9) (2) and 16 of the Irish regulations
3. Require a lender to ensure that “...*any security sought is reasonable and proportionate..*”, unlike Regulation 12.1 of the Irish regulations,
4. Require a lender declining an application to give a detailed explanation of the reason(s) for refusal. The UK Code instead requires that “...*wherever practical the subscriber should provide proactive and clear feedback to the customer on the main reason why the application was declined and inform the customer of their right to appeal that decision*” in contrast to the detailed requirements of Regulation 13 of the Irish Code.
5. Mandate the establishment of an Appeals Board, unlike the Irish Code which requires a “*minimum of two decision makers*” to consider appeals from an unsuccessful borrower applicant. The UK Code instead requires that “*Each bank should have their individual solution to handle a request to review an application that was turned down. Examples for this include: a second bank manager reviewing the decision on request or a central telephone hotline to make the application again.* “

Ireland thus appears to be taking a very different approach to its most significant trading partner, and to other European countries, by having a statutory SME Lending Code, and in having such detailed, extensive and prescriptive requirements.

3. The Code will adversely affect business lending, investment and will delay economic recovery.

SME business lending stock is on a steady downward trajectory, and, while new business flows are showing a welcome upward trend, this is from a very low base, as the tables below show:

Table: Overall Stock of Lending in the SME Market (€bn)

2012	58.5
2013	55.9
2014	46.5

Source: CBI

Table: New Lending in the SME Market (€bn)

2012	2.77
2013	2.33
2014	2.73

Source: CBI

As the largest provider of SME credit in the market, BoI is acutely aware of the slowly recovering nature of current trading conditions, and makes the following observations:

1. Overall flows of new business lending, relative to total lending stock, are cyclically very low. It must also be noted that a significant volume of new business lending is not new flow, but, is in fact, the re-financing of existing borrowing of exiting banks or 3rd party intermediate holders.

2. The overall flows of SME lending are artificially boosted by the significant volume of agricultural lending, which comprises circa 20% of flows, as the market gears up for the new, post-milk quota, regime.
3. Although not explicitly captured in the CBI statistics, [REDACTED] in Bol's case, [REDACTED] of the available funding is being utilised.
4. [REDACTED]
5. [REDACTED]

In view of this situation, a policy response which appears to introduce greater levels of complexity and bureaucracy, which will have the effect of impeding credit provision, does not appear sensible at this stage of Ireland's economic recovery.

4. A high level, objectives-based approach and sound business practice has served SME businesses well in the downturn, rather than a strict, codified rule-book.

Bol has extended significant support to its challenged customers, utilising solid banking principles rather than rigid, codified rules, during the recent downturn. The very specific financial support and tailored approaches to individual customer circumstances have helped to sustain and to allow many of these businesses recover. Working with customers, on an individual basis, has proved very effective. Bol re-structured and re-ordered [REDACTED] of its challenged customers by the end of 2013.

Over these years, Bol only [REDACTED], where consensual arrangements were not possible, or businesses, simply, were not viable. [REDACTED] of the restructures implemented by Bol have held, with these businesses, through Bol support and forbearance, trading through, and out of, the downturn. The principles that have guided Bol have been those of sound banking practice and customer understanding, applied by lenders on a daily basis, to individual customer circumstances.

The CBI has been supplied with extensive detail and statistics about these activities, and through its regular audit programme has independently verified these results.

The banking industry has thus shown an ability to modify and react to different circumstances without the imposition of further conditions on the existing Code, and ensure proper practices and procedures are in place, which both provide appropriate support to SMEs, while enabling the banking sector to take corrective actions.

5. The Code cannot be seen in isolation and must be viewed in the context of other significant regulatory changes and attempts to address other perceived credit issues.

The Government has recently launched the Strategic Banking Corporation of Ireland ("SBCI"), in an effort to provide cheaper forms of finance to the SME market. The business model chosen here requires existing banks to act as a conduit for the dissemination of these monies. Given the multiplicity and variety of the funders of the SBCI and the EU rules surrounding State Aids, there are significant new conditions, administration changes and systems alterations required to ensure compliance with the rules and requirements of the stakeholders.

Separately, the most fundamental changes in companies' law in over half a century are being introduced in July this year. This will require an alteration to the constitution of every limited company and ensuing amendment and re-designation of their bank accounts, operations and facilities. These changes on their own, albeit with an 18 month implementation period, risk distracting attention, delaying investment, and ultimately retarding growth.

Voluntarily adding-in further changes to this scenario is ill-advised.

3. IMPLEMENTATION CONSIDERATIONS

1. The scope of the regulations should be restricted to micro businesses, which constitute over 80% of SMEs in Ireland

The three SME size categories - Micro, Small and Medium - have very different characteristics, acknowledged as such in policy formulation and official statistics.

The proposed Code is not properly nuanced as regards the different type of SME covered and the extent, to which some form of coverage under the Code, may be justified. As it stands, the Code would equally apply to substantial business enterprises with 250 employees and turnover in the tens of millions of euro, as to a small farmer or shopkeeper with a turnover in the tens of thousands of euro.

For example, a large SME business, in regular negotiation of multi-year, multi-million contracts, operating in many different countries and currencies, will, under the current proposals, if taking out a loan for €10,000 merit the same degree of protection, as a sole trader taking out a loan for a similar amount. Whatever the merits of protecting the sole trader (taking account of previous comments about the inherent differences between consumers and any business in regard to risk assessment and risk taking), it is impossible to come up with a convincing case as to why the large SME needs or will benefit in any way from the “protections” being extended under the Code. It is far more likely to be regarded as an administrative complexity of zero benefit to that large SME than as a necessary protection.

Therefore, rather than applying the Code in a broad brush way, the scope of the Code should be recalibrated so that it only applies to those businesses where a reasoned case for inclusion in scope may be made.

BoI firmly believes that the extension of the smaller enterprise protections contained in the current Code to all SMEs is unwarranted.

BoI also firmly believes that the Code should only apply to Micro enterprises (i.e. enterprises with less than 10 employees), which would ensure that the majority of businesses would still be covered under the Code, but that businesses of a certain size and scale would be exempted from scope. Firms of this scale invariably have stronger finance and legal resources to guide their business and commercial dealings with lenders.

Any determination on the scope of coverage, however, would need to be grounded in further research and evidence, as to the characteristics of firms encountering perceived difficulties in sourcing finance or in making appropriate decisions around finance, thus making a clear case for some form of statutory protection.

There is also a strong argument for excluding certain other categories of SME lending applicants, irrespective of size. For example, an accountancy firm or firm of solicitors are unlikely to benefit in any way from the application of the Code. Accordingly, these categories of readily identifiable professional should be exempted from the definition of SME.

2. The Code is misplaced in seeking to transpose elements of consumer regulation to the SME sector, which is more heterogeneous in composition and clearly distinct from consumers.

As set out in point (iii) of the Introduction section, businesses and commercial entities are very different to consumers, both in the level of variation within the business sector compared with consumers and businesses' ability to perceive and manage risk. In managing risk, businesses, in most instances, have choices available to them that are not available to consumers, particularly in their constitution, governance and make-up. The legal system has long since recognised this distinction with the creation of limited liability companies, which specifically attempt to give legal protection to individuals, but within a very different construct.

It logically follows that, given these unique distinctions, very different protections are appropriate for such entities and thus, the initial premise and template for drafting the Code is fundamentally wrong in principle.

Extending a rule-based, formulaic approach for small business lending to the wider business market will reduce banks' scope to deal appropriately with widely different types of business customers. In contrast to a consumer customer, an SME customer may present in a variety of distinct legal entities - from the individual or sole trader, a partnership, through to a connected limited trading company, which may be partly held by other shareholders, and with other directors. An SME may be multi-banked, with an operating account in one bank, a business loan with another bank, and invoice discounting or leasing arrangements with a non-regulated entity. Legal arrangement may be complex and not involve just one party, but with several companies in a structure and the provision of cross-guarantees and support to the borrowing entity. There may be several different sets of advisers - from in-house accountants and lawyers, through to external lawyers and other advisers - consultants, engineers, architects, surveyors and the like. Executing a business loan in these circumstances requires an appreciation of complexity and an ability to co-ordinate, rather than having to proceed along the inflexible, restrictive, tramlines of the proposed Code.

It is reasonable to expect that any approach to regulation, would take full account of these fundamental differences between consumers and businesses. All businesses, big or small, are aware of the importance of sound finances and prudent cashflow management for the success of the business. Businesses also know from experience that unexpected risks can arise and take appropriate steps and utilise risk management techniques to mitigate these: from taking out business interruption insurance, to dual currency invoicing, and tight credit control, to name but a few.

Bol considers that any case for further regulation must take into account these fundamental differences between businesses and consumers. The temptation to transpose large elements of consumer regulation and directly apply these to businesses, without consideration of needs or consequences, is not appropriate. At all times, there should be a clear recognition of the demarcation between consumer and business, in general, and this must be reflected in any regulation that is introduced.

3. The Code will impose higher levels of compliance and cost on regulated lenders vis à vis their non-regulated counterparts.

The Code does not apply to non-bank, non-regulated, providers of SME finance. The detailed provisions of the Code relating to customers in financial difficulty, will, hence not apply. The net effect of these regulations will be to distort competition in the market, create two forms of treatment (including pricing) for the same customer grouping, without distinction as to individual merit, but wholly dependent on which entity provides finance to the SME in question.

Thus, for example, an SME borrowing from a bank will directly/indirectly incur costs associated with implementation of the Code, but the exact same borrower, borrowing from an unregulated entity, will enjoy a simpler and presumably cheaper process. There does not seem to be any clear basis for this discrimination on the basis of the form of entity providing the finance, as opposed to the substance of the transaction entered into by the borrower.

More directly and seriously, in terms of future credit availability and pricing, bank lenders will be at a considerable disadvantage compared to unregulated lenders and other trade creditors, as banks will have to follow detailed procedures regulating contact with customers, the information to be provided, response times to customer letters, independent reports and alternative arrangements, all procedures which will not have to be followed by unregulated lenders.

The inescapable effects of these constraints will be:-

- To make it more costly for banks to lend to individual borrowers, given increased compliance costs;
To increase costs of borrowing to individual businesses, reflecting reduced recoveries (higher credit losses) and higher funding costs for banks.

4. The Code unfairly restricts banks in dealings with SMEs in financial difficulty relative to other business creditors.

The changes to the Code proposed may, inadvertently, override the bank's contractual rights and ability to act with appropriate haste to protect its position.

The failure to continue the "legitimate rights saver" in page (3) of the current Code allowing a regulated entity "to act with all necessary speed" means that a bank will be seriously restrained in the exercise of its security, relative to other business creditors, some of which may be unregulated lenders.

A bank has a legal right to rely on its security and the SME lending market operates on this basis. Any dilution of this right would be viewed, by external stakeholders, and international markets and banks as an indication that Irish institutions are no longer permitted to fully control the management of loan exposures. This would inevitably affect lenders' risk appetites, leading to an increase in the number of loan declines, higher prices for Irish SME borrowers and higher funding costs for lenders in Ireland due to the perceived dilution of a lender's contractual rights in regard to security held.

Such constraints are not placed on a trade supplier recovering goods under a “retention of title” clause. Bol does not understand why bank loans should be different. This point was very forcefully made by the banking sector in the initial drafting of the Code, and it is very unclear why these changes are being contemplated.

The inescapable effects of these constraints will be:-

- To make it more difficult for banks to invoke their security where required, limiting the scope of recoveries and thus increasing credit losses;
To impose greater restrictions on the availability of credit, for more marginal customers, given the restrictions on the free exercise of security.

The Bank strongly argues that the protections – page 3 of the current Code - should be re-inserted.

5. *The proposal is too prescriptive and would cut across prudent lending standards*

Certain of the proposed regulations in the Code would appear to cut directly across prudent lending standards of individual banks, which have been approved at Board level and notified to the Central Bank of Ireland.

The relevant parts of the draft Code should be amended to ensure that there is no trespass into the domain of banks’ lending standards. Examples of the regulations at issue, include the following:

- The use of personal guarantees - Regulation (12.4);
The taking of security - Regulation 21 (1) (b); and
Allowing for appeal of lending terms and conditions - Regulation (21).

It is unclear why any attempt would be made to legislate against Irish banking institutions’ ability to conduct business in accordance with standard banking norms, and in a fashion which seems unparalleled in other jurisdictions.

6. *Some of the information to be provided will fundamentally alter the manner in which business loans are provided to SME customers*

The proposed Code would require Bol, in the event of a change in interest rate, to provide the customer with details of any changes to the quantum and number of payments on their facility.

The introduction of this requirement appears to be a direct translation from that utilised in the Consumer Code. This proposed alteration takes no account of current banking processes in the market, whereby business owners require the certainty of fixed levels of repayments, recognising that the capital and interest components of such payments will vary depending on interest rate fluctuations. Here alone, the suggested change would introduce a fundamental alteration to the current business processes and norms operating in the market.

It is unclear what benefit would accrue to business customers from this information requirement, when compared with the education programme necessary for changing current business practices and the substantial IT and process changes required.

4. CUSTOMER AND MARKET IMPACT

1. The Code takes no account of customer-led banking trends, particularly the use of direct (phone and online) channels.

The Code makes various references to the provision of information before a binding credit agreement is formed and the availability of designated persons in “offices” where lending activity is carried on.

The requirements seem to envisage a traditional, branch based model for fulfilling business loans, and do not take account of the considerable amount of business now done in other distribution channels, notably Direct (by phone and online). Such changes have been led by rapidly changing customer use and preferences.

In common with most banks internationally, many loans to Bol’s Small business segment are done on a direct (‘phone) basis. The customer is interviewed by phone, the application assessed, and, if successful, the loan can be drawn down, often within 24 hours of interview, and, sometimes on an intra-day basis. Bol plans to progressively expand business lending using this channel and is currently trialling its potential for higher value loans.

Customer reaction to the new lending channel has been very positive.

Bol would be concerned that the requirement to furnish information to the customer, and the extent of this information, would slow up the lending process from a customer perspective. This would reduce customer endorsement and support of the direct lending initiative, which has accelerated SME access to finance, in a notable way, and would retard the future growth of this channel and undermine the associated required improvement in the business economics of providing relatively low value loans. The effect of this will be to make small business lending less available, and more costly.

Certain of the other provisions of the Code - notably the offering of an annual meeting to a customer - also seem based in the branch as the primary conduit for the lending relationship and do not seem to explicitly contemplate incorporeal meetings, via telephone, or other channels, as an appropriate way of holding an annual review.

2. Overall, the proposed Code will have a negative impact on customer experience in terms of speed of response and perceived ease of doing business. In some instances, the inflexible nature of the Code will mean that customer requests may not be fulfilled by banks given the onerous compliance requirements that must be discharged before the request is fulfilled.

The proposed Code runs counter, at several distinct points, to the considerable investment Bol has been making in improving its business customers’ experience, through an ongoing focus on business processes, channel innovation and simplification of customer requirements to take out a loan.

Currently, Bol business customers requiring an immediate increase in overdraft facilities may contact their relationship manager (if relationship managed) or Direct channels, requesting an increase. This often may be sanctioned immediately, changes to overdraft limits entered on computer systems and subsequently confirmed by way of a letter of sanction.

Under the suggested terms of the new Code, such a request will require pre-notification of extensive specified information to customers in advance of a binding credit agreement being created. This hardly seems desirable from a customer perspective.

A serious, practical, implication is that BoI may no longer be able to meet telephone requests for urgent overdraft increases to existing facilities within the required timescale. For time-critical, short-term, working capital requests, the absence of sanction letters and the use instead of letters of offer would operate to restrict an SME's access to credit. Such an alteration would have serious, negative, repercussions for the normal conduct of banking business in the country.

In relation to term lending, currently, BoI's unsecured lending <€65k is primarily authorised using "Letters of Sanction" which issue at loan drawdown and detail the terms and conditions attaching. The new Code would increasingly see "Letters of Offer" being used for such loans, with a corresponding impact on bank response times, as letters of offer issue in advance of the credit facility being put in place. Our initial estimate is that tens of thousands of additional offer letters would need to be issued each year to ensure compliance with the proposed revisions to the Code.

In excess of c. 500 applications per week are approved via the Bank's direct telephone channel. The Code alterations would require the process for direct lending to be adapted to allow for pre-contractual information to be issued as part of a letter of offer. This will cause delays in approving a credit application. The current customer journey to obtain credit would be lengthened appreciably, and bear more heavily on lower value loan applications, which constitute the majority of requests for credit. The benefits and protections from such a delay to the provision of credit would need to be clearly understood, before such a provision was implemented.

3. The Code would add to the perceived complexity of lending to business in Ireland and hence would deter market entry by new banks

The addition of further requirements to be met by bank lenders in the SME market in Ireland will create less favourable operating conditions for banks wishing to enter the Irish SME market.

The cumulative consequence of this Code, and other such restriction in Irish financial legislation (the economic regulation of bank fees and charges, for example), will be to heighten the perceived difficulty of entering and competing effectively in the Irish market. This will deter entry by would-be entrants and damage the competitive environment for banking in Ireland.

5. CONCLUSION

BOI believes that there are areas within the current Code that need to be adapted and refined.

As has been emphasised by BOI from the commencement of this process, both directly and through the offices of the BPF, dealing with these individually, rather than looking at a complete overhaul of the Code, is the prudent and sensible approach to adopt.

Confidence levels among SMEs in the country are slowly recovering. Economic recovery is patchy and not yet well geographically diversified. Many banks choosing to remain in the market are grappling with their capital structures, ownership issues, and longer-term plans. Banks exiting the market have still not yet completed the sale or transfer of their SME loan portfolios. Many SME customers are still unsure of the identity of their existing lender and their longer-term plans for a relationship. Against this backdrop, BOI believes that a different approach to regulatory change should be adopted.

BOI is committed to working with key stakeholders to understand the perceived or real gaps in the credit application process and develop practical solutions to these issues. It is to be hoped that such a consultation would add value, rather than time and cost to the process, and would not require fundamental regulatory change.

BOI looks forward to further consultation and discussion with the CBI on this vitally important and strategically significant area of the economy.

Appendix B: BOI response to consultation questions

Question 1: Do you have comments on the attached draft regulations? In your response, please quote the number of the specific provision(s) which give rise to your concerns and, if possible, suggest alternative drafting or solutions.

See separate submission on the draft Code – Appendix A.

BoI would be concerned with the following specific provisions:

1. The absence of a legitimate interest “saver” in the proposed Code - see provision “Financial Difficulties”, page 3, Scope section of the current Code, which is not included in the draft Regulations.

Question 2: Are there specific areas that you feel should be expanded on? If so, please provide details and, if possible, drafting suggestions or proposed solution.

No, as has been pointed out above, BoI believes that the scope of the proposed provisions is already too wide and needs to be curtailed significantly.

Question 3: Do you have any suggestions for further reform e.g. is there any gaps or areas omitted from the protections proposed? If so, please set out your proposals.

No, BoI has no suggestions for further additional protections under the Code.

Question 4: Do you agree that SMEs dealing with credit unions should have the same level of protection as when dealing with other lenders. If you do not agree, please outline the reasons why.

BoI considers that all persons engaged in the provision of lending to in-scope SMEs should be covered by the same disclosure and protection regulations. On this basis, credit unions should be included within the scope of the Code.

Question 5: Do you agree that the Smaller Enterprises provisions in the current SME Code should be extended to all SMEs? If not, please set out the reasons why.

BoI believes that the proposed scope of the Code is too wide and that it should be confined to those businesses where there is a clear basis for affording protection. The scope should be Micro businesses only. Certain categories of professional, notably firms of accountants and solicitors, are unlikely to benefit from inclusion and, hence, should also be exempted from coverage.

Question 6: Do you agree that business credit cards should be included in the scope of the regulations that are proposed to replace the SME Code for all SMEs. Please explain why you think this approach is appropriate. If you do not agree, please set out the reasons why.

Bol does not consider that business credit cards should be included in the scope of the Code. Bol's business credit card is intended to be cleared each month, by way of a direct debit to the customer's current account.

As such, the Bol credit card more resembles a charge card than a credit card with a specified revolving credit facility. Any requirement to include credit cards within the scope of the Code would lead to customer confusion as to the nature of the underlying product, as well as risking a deterioration in customer observance of required product terms and conditions i.e. repayment in full, each month.

Question 7: Do you agree that multi-lender, including syndicated, club, or other multi-lender transactions and special purpose vehicles should continue to be excluded from the scope of the regulations? If so, please provide the reasons for your view. If you do not agree, please set out the types of multi-lender credit or special purpose vehicles which you think should be included and explain why the protections proposed would be appropriate or necessary for these borrowers.

Bol agrees that a degree of protection should be conferred by the Code, on certain categories of SME borrower. Bol believes that smaller SMEs, which account for the vast majority of businesses in Ireland, are the appropriate target for coverage by the Code. Beyond this, banks are dealing with more sophisticated categories of borrower, usually with access to appropriate financial and legal advisers, either internally or externally. These resources may be relied upon to ensure that a borrower's financial and legal position is protected in any dealings with a bank lender. Given this, it would appear appropriate to continue to exempt borrowers operating at a level of scale and sophistication, such as large corporate borrowers, which typically are the ones to have multi-lender arrangements in place, either via syndicated, club, SPV or other structures.

Question 8: Do you agree that the introduction of 'non co-operating' is useful in an SME context? If so, do you have any comments on the proposed provisions?

Bank of Ireland welcomes the introduction of the concept of 'non-cooperating' as it enables regulated entities to reach an end state in circumstances where a borrower has taken a conscious decision to not cooperate. This needs to be allied to the continuation of the legitimate interest saver, as contained in page 3 of the existing Code, to be fully effective.