

Response by the Credit Review Office to the Review of the Code of Conduct for Business Lending to Small and Medium Enterprises Consultation Paper CP91

- 1. 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?

Response:

- 2.1.1
 - We have raised the issue of the standard decline letters in a number of Credit Review Office appeals and this need to be addressed. In our view the banks should be obligated to set out all the reasons in the response letter. On any verbal feedback this should also be recorded in the detailed decline letter.
 - In addition this letter should outline the key aspects of the loan i.e. term, amount, type of facility – ideally, where available, a copy of the final loan application should also be provided, as it is our experience that there is often disagreement between borrower and bank as to these basic points. We understand that currently banks do not routinely provide this information/application form to the borrower.
 - The purpose of the decline letter should specifically explain why the credit application was declined, AND, where appropriate, it should set out what the applicant might do to improve their chances of obtaining approval in future applications.
 - 2.1.2 – All banks should provide internal appeals statistics including full and partial overturn rates which can be independently audited/verified by either the Central Bank or the Credit Review Office .
 - 2.2 – The issues raised by the stakeholders are all valid and should be addressed in the revised Code. Response times are a critical issue and we suggest that standard response times be included in the Code. Where a bank is unable to decision a credit within the normal response time laid down in the Code they should be required to write to the applicant explaining the reason for the delay and setting out a definite response date.
 - Where additional information is requested which requires the credit process to be suspended temporarily, applicant is to be advised in writing/email of request, and advised that process is stopped/suspended until received, or consequences if not provided.
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- 2.4 – We support Recommendations 7 & 10. In relation to recommendation 7, potential conditions such as security/collateral/guarantees should also be highlighted at the earliest opportunity in the credit assessment process. In our experience, these can be 'deal breakers' and may only come to light after credit has been assessed and offer made by bank. In relation to Recommendation 11, we suggest a process along the lines of 2.2 above would be more appropriate and would take account of complex credits.
- 2.5 – Intertrade Ireland report states that SME's need to be made aware that 'rejected application does not result in a negative credit rating' – however ICB website FAQ's states the following:

'23. May a CBS be improved?

Making timely repayments boosts the level of your CBS and is also a remedy to dilute the negative effect on your CBS of previous late repayments. Other good habits to support your CBS are proper debt level management and avoid excessive applications for credit.

- Negative Credit Ratings should not, in all cases, be a reason for declining a credit. Many good entrepreneurs have impaired credit ratings due to the impact of the recession and if the issue that gave rise to the impaired credit rating has been addressed, e.g. settlement with a foreign bank, this should be taken into account in the credit assessment process.

4.1 – Strengthened protections: information on Government supports

- Government supports are many and wide ranging which may be difficult for bank staff to keep up to date with. We recommend directing applicants to the Supporting SME's Online Tool recently developed by DOF/DJEI/Dept. of Taoiseach. The link should be included in both the written acknowledgement of credit application letter referred to in Section 3 below, and all decline letters.

- 2. 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 solutions.

Response:

- *No specific comments.*

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

Response:

- *A new provision requiring the credit provider to provide in writing an acknowledgment of each credit application giving an estimated response date.*
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- *Also as referred above, the requirement for the credit provider to write to the SME where they do not have the required information setting out the information required and clear timelines for its submission and the consequences of it not being provided.*
- *The area of personal guarantees needs to be addressed in the Code. This is a major issue for SME's and the almost universal requirement for SME credit facilities to be personally guaranteed is stymieing enterprise.*

4. 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.

Response - *We do not agree that SME dealing with Credit Unions should have the same level of protection for the following reasons:*

- *The main issues that SME's encounter in dealing with banks is that credit decisions are, by and large, no longer made locally and the local knowledge factor carries very little weight in the decision making process. This is not the case with Credit Unions.*
- *With the ongoing closure of bank branches, Credit Unions with the required SME underwriting skills, need to be encouraged to fill the gap left by the banks and should have less regulatory restrictions in the area of credit decision making.*
- *Credit Unions may not have capability and capacity available at all times, to underwrite SME lending within the set time scales*
- *As far as I am aware there is no issue in relation to Credit Unions not being supportive of SME where the Credit Union is allowed to make SME loans. Accordingly, if there is no problem, no fix is required.*

5. 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.

Response - *Yes I agree that it should be extended. A uniform code is easier to monitor and regulate, and easier for SME's to understand.*

6. 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.

Response - *Business Credit Cards should be included. For many small businesses the Business Credit Card is used extensively to make purchases and payments. It is an efficient and cost effective way for small businesses to transact. In the UK business credit cards are used extensively to lend to microenterprises, and in the US cards are used extensively by the majority*

of small start-ups for their seed capital, and these practices may spread to Ireland. It also provides the SME with a period of interest free credit, credit that would not otherwise be available to them.

The Code may also consider applicability to the provision/refusal of merchant services to enable credit card transactions by new or existing businesses – this is an area where we have had a number of queries.

- 7. Question 7** - Do you agree that multi-lender credit, 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 you think should be included and explain why the protections proposed would be appropriate or necessary for these borrowers.

Response – *Our view is that these should continue to be excluded. In cases such as this the SME is likely that the SME will have professional advisers and will be dealing with a dedicated Corporate Banking Relationship Manager assigned to the application. The assessment process is also likely to include face to face meetings involving the bank where detailed feedback will be provided and issues discussed. Again, this feedback should be advised to the borrower in writing also.*

- 8. Question 8** - Do you agree that the introduction of a concept of 'not co-operating' is useful in an SME context? If so, do you have any comments on the proposed provisions?

Response – *I believe there is merit in including this. I would suggest the following provisions:*

- *The SME wilfully fails to make a full and honest disclosure of information to the lender that would have a significant impact on the business.*
 - *The SME wilfully provides information in relation to the business that they know to be false, inaccurate or misleading.*
 - *The SME wilfully fails to provide information sought by the lender within an appropriate timeframe. (However information requested must be reasonable in proportion to size of lending request and scale/complexity of the business and should not impose undue cost burdens)*
 - *A 3 month period has elapsed during which the SME:*
 - (a) has failed to meet their loan and other repayments in full, or has failed to operate their overdraft within the agreed terms, or has failed to comply with any alternative arrangement entered into.*
 - (b) has not made contact with, or responded to, any communications from the lender.*
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