



Banc Ceannais na hÉireann  
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# Consultation on the Authorisation Requirements and Standards for Credit Servicing Firms and Consequential Amendments to Statutory Codes

## Consultation Paper 96



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## 1. Introduction

The Consumer Protection (Regulation of Credit Servicing Firms) Act, 2015 (the 2015 Act) was enacted on 8 July 2015. The 2015 Act amends Part V of the Central Bank Act 1997 (the Act) to introduce a regulatory regime for a new type of entity called a ‘Credit Servicing Firm’ and the activity of credit servicing, as defined in the Act (as amended by the 2015 Act), is now a regulated activity in Ireland.

Credit Servicing Firms will be subject to the provisions of Irish financial services law that apply to ‘regulated financial service providers’. This will ensure that relevant borrowers, whose loans are sold to third parties, will maintain the same regulatory protections they had prior to the sale, including under the various statutory codes issued by the Central Bank of Ireland (the Central Bank).

The Central Bank is the competent authority in Ireland for the purposes of the Act and will implement a regulatory framework for Credit Servicing Firms. In this regard, the Central Bank will exercise its statutory “gatekeeper” role to permit or refuse an applicant Credit Servicing Firm, through rigorous assessment of applications against applicable regulatory standards, so as to mitigate the risk that firms could pose harm to customers, counterparties and the wider market once they are authorised.

The views of all interested parties are being sought on the proposed Authorisation Requirements and Standards that applicants seeking authorisation as a Credit Servicing Firm must satisfy to be granted an authorisation and which must be complied with thereafter on an on-going basis. The proposals under consideration as part of this Consultation Paper broadly reflect the requirements and standards that currently apply to other sectors falling within the regulatory remit of the Central Bank.

Once the Authorisation Requirements and Standards for Credit Servicing Firms have been finalised, it is the Central Bank’s intention in principle to apply corresponding standards to Retail Credit Firms<sup>1</sup> following the conduct of a separate future public consultation exercise, which will have regard to the feedback to this consultation as applicable.

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<sup>1</sup> A Retail Credit Firm means a person prescribed for the purpose of paragraph (e) of the definition of ‘credit institution’ in section 2(1) of the Consumer Credit Act 1995 or any other person who holds itself out as

## 2. Development of Authorisation Requirements & Standards

The process of developing suitable Authorisation Requirements & Standards for Credit Servicing Firms included the conduct of a review of the following regimes:

- The UK Financial Conduct Authority’s Home Finance Administration Regime<sup>2</sup>;
- The Central Bank’s Retail Credit Firm Authorisation Process;
- The Central Bank’s Money Transmission Business Prudential Regime; and
- The Central Bank’s Debt Management Firm Prudential Regime.

In addition, the Central Bank met with a number of existing Credit Servicing Firms operating in the Irish market in order to gain an understanding of their business models and the risks associated with the activities carried out by such firms.

The proposed Authorisation Requirements & Standards to apply to Credit Servicing Firms have therefore been informed by and take into account the information gathered by the Central Bank during this engagement with industry participants.

## 3. Credit Servicing Firms - Requirement for Authorisation

The Act has been amended by the 2015 Act to provide for a regulatory regime in respect of Credit Servicing Firms. The Central Bank is responsible for the authorisation and supervision of Credit Servicing Firms under Part V of the Act.

## 4. Definition of Credit Servicing Firm/Credit Servicing

Section 28 of the Act defines a “Credit Servicing Firm” as meaning-

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carrying out as carrying on a business of, and whose business consists wholly or partly of, providing credit directly to relevant persons. (Central Bank Act 1997 (as amended).

<sup>2</sup> Home Finance Administration is the administration of a regulated mortgage contract. It is defined as either or both of:

1. Notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and
2. Taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;

but does not include merely having or exercising a right to take action to enforce the regulated mortgage contract, or to require that action is or is not taken.

- (a) a person (other than the National Asset Management Agency or a NAMA group entity (within the meaning of the National Asset Management Agency Act 2009)) who—
  - i. undertakes credit servicing other than on behalf of a regulated financial service provider authorised, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State, or
  - ii. holds the legal title to credit granted under a credit agreement in respect of which credit servicing is not being undertaken by a person authorised to carry on the business of a Credit Servicing Firm, and
- (b) a regulated financial service provider taken to be authorised to carry on the business of a Credit Servicing Firm by virtue of subsection (3);

Section 28 of the Act also defines ‘credit servicing’ as meaning -

‘credit servicing’, in relation to a credit agreement, means managing or administering the credit agreement, including—

- a) notifying the relevant borrower of changes in interest rates or in payments due under the credit agreement or other matters of which the credit agreement requires the relevant borrower to be notified,
- b) taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower,
- c) managing or administering any of the following:
  - i. repayments under the credit agreement;
  - ii. any charges imposed on the relevant borrower under the credit agreement;
  - iii. any errors made in relation to the credit agreement;
  - iv. any complaints made by the relevant borrower;
  - v. information or records relating to the relevant borrower in respect of the credit agreement;
  - vi. the process by which a relevant borrower’s financial difficulties are addressed;
  - vii. any alternative arrangements for repayment or other restructuring;
  - viii. assessment of the relevant borrower’s financial circumstances and ability to repay under the credit agreement,

or

- d) communicating with the relevant borrower in respect of any of the matters referred to in paragraphs (a) to (c).

It should be noted that Section 28 of the Act also provides that credit servicing does not include the following activities for the purposes of the Act:

- determination of the overall strategy for the management and administration of a portfolio of credit agreements;
- the maintenance of control over key decisions relating to such portfolio; or
- taking such steps as may be necessary for the purposes of enabling the undertaking of credit servicing by another person, or enforcing a credit agreement,

provided that those activities are not undertaken in a manner which would breach financial services legislation if they were undertaken by a regulated financial service provider.

## **5. Purpose of Consultation**

The views of all interested parties are being sought on Part A of the proposed Authorisation Requirements and Standards<sup>3</sup> that applicants seeking authorisation as a Credit Servicing Firm must satisfy in order to be granted an authorisation and which must be complied with thereafter on an on-going basis. The Authorisation Requirements and Standards comprise both prudential and consumer protection requirements which are assessed at authorisation and on an on-going basis.

Part B of the proposed Authorisation Requirements and Standards lists other legislation that may apply to Credit Servicing Firms. The proposed amendments to the Central Bank's Statutory Codes of Conduct which are included in Part B form part of this consultation. Any other requirements in Part B do not form part of this consultation.

## **6. Proposed Authorisation Requirements and Standards for Credit Servicing Firms**

Following the enactment of the 2015 Act, a person shall not carry on the business of a Credit Servicing Firm unless the person is the holder of an authorisation<sup>4</sup> or is an excepted person under the Act. Each applicant must:

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<sup>3</sup> Attached at Appendix 1 to this Consultation Paper

<sup>4</sup> See section 34E of the Act for the transitional provision for existing Credit Servicing Firms.

- comply with the Central Bank's Authorisation Requirements and Standards; and
- comply with the conditions of authorisation that will be imposed by the Central Bank on granting an authorisation.

It is proposed that Part A of the Authorisation Requirements and Standards for Credit Servicing Firms will be applied to a person seeking and obtaining authorisation as a Credit Servicing Firm.

The Central Bank is seeking the views of interested parties on the proposed Authorisation Requirements and Standards, in particular the following requirements:

#### **6.1 Professional Indemnity Insurance-**

Section 33A(5) of the Act provides that the Central Bank may impose a condition or requirement on a Credit Servicing Firm to effect a policy of professional indemnity insurance (PII).

It is proposed that a Credit Servicing Firm be required to have in place a policy of PII covering its activities as a Credit Servicing Firm. It is proposed that the amount insured shall at a minimum provide cover for €1.25 million per claim and €1.85 million in aggregate cover in a single policy period with regard to the activities of a Credit Servicing Firm.

The level of cover outlined is in line with the current level of PII cover required to be held by Debt Management Firms, Investment Intermediaries and Insurance/Reinsurance Intermediaries authorised by the Central Bank. The levels were most recently applied to Debt Management Firms as a result of the feedback received during the public consultation exercise conducted in respect of the Authorisation Requirements and Standards for Debt Management Firms where respondents were of the view that the levels outlined above were appropriate for firms that would not hold client money.

PII will provide the Central Bank with some comfort that a Credit Servicing Firm will be in a position to pay compensation arising from professional negligence claims. The Central Bank is of the view that PII, together with the proposed organisation and management requirements

referred to below, provide essential safeguards to protect customers and are proportionate to the activities to be undertaken by Credit Servicing Firms.

## **6.2 Outsourcing**

It is proposed that a Credit Servicing Firm be required to notify the Central Bank in advance where it proposes to outsource any important operational functions relating to the provision of credit servicing and as soon as possible where a change occurs or is due to occur in an outsourcing arrangement governing an important operational function relating to the provision of credit servicing.

The Central Bank proposes to require a Credit Servicing Firm to demonstrate that:

- (a) the outsourcing shall not result in the delegation of its responsibility or accountability for the operational function which has been outsourced;
- (b) the obligations of the Credit Servicing Firm to customers will continue to be complied with at all times; and
- (c) the outsourcing of operational functions will not be undertaken in such a way as to impair the quality of the Credit Servicing Firms internal controls and the ability of the Central Bank to monitor the Credit Servicing Firm's compliance with its regulatory obligations.

The requirement for a Credit Servicing Firm to demonstrate that its outsourcing arrangements do not adversely impact its regulatory obligations is in line with the requirement placed on firms in other regulated sectors. Please see the proposed Authorisation Requirements and Standards for Credit Servicing Firms for full details in relation to the proposed outsourcing requirements.

The Central Bank expects Credit Servicing Firms to be structured, organised and resourced in such a way that they are in a position to comply with applicable regulatory requirements. Firms should not be outsourcing to an extent that would impact on their ability to meet such requirements.

### ***6.3 IT Systems***

It is proposed that a Credit Servicing Firm be required to have adequate IT systems in place to conduct its business. IT systems should be set up in such a way that:

- (a) A Credit Servicing Firm can meet its obligations under financial services legislation and any applicable Code requirements;
- (b) There are adequate governance/controls in place to mitigate IT risk; and
- (c) There are adequate business continuity arrangements in place in respect of the IT systems.

The rationale for these IT requirements is the importance of IT systems to the operating model of Credit Servicing Firms. If a Credit Servicing Firm's IT systems have not been set up correctly or have inadequate controls in place, there is a significant risk that breaches of financial services legislation will occur.

### ***6.4 Organisation and Management***

It is proposed that a Credit Servicing Firm may be required, in advance of authorisation or thereafter, to procure a review of its operations, systems and controls by a third party of relevant expertise to provide the Central Bank with assurance that the requisite operations, systems and controls are in place in a Credit Servicing Firm and functioning as described.

A Credit Servicing Firm will be required to demonstrate that it has sufficient resources (including financial resources) to conduct its business in the manner provided for in its application for authorisation and in accordance with financial services legislation including the capacity to withstand potential shocks such as the loss of a key client or the occurrence of a significant business continuity event.

This is proposed in order to enforce sound business practices across the Credit Servicing Firm sector and is also important should a Credit Servicing Firm run into difficulty in order to allow for an orderly wind down and/or a transfer of business if required. Such a requirement is also proposed to ensure that only appropriately resourced firms can enter the Credit Servicing Market. If a Credit Servicing Firm were to fail, it could detrimentally impact the way in

which a customer's loan is managed on an on-going basis as, for example, repayments made may not be adequately recorded or information or records relating to the borrower in respect of the credit agreement may not be adequately kept pending another Credit Servicing Firm taking over these responsibilities. In addition, customers in arrears may find themselves in limbo with no substantive business entity to engage with.

### **6.5 Relationship with Loan Owners**

Given that a Credit Servicing Firm is essentially acting on the instructions of loan owners when providing services, its relationship with the loan owner is very important in the context of its ability to meet its regulatory obligations. It is therefore proposed that:

1. A Credit Servicing Firm is required to inform in writing any holder of legal title over loans for whom it acts of the Credit Servicing Firm's obligations under financial services legislation, including any Codes of Conduct that apply; and
2. A Credit Servicing Firm is required to demonstrate how its agreement in place with the loan owner enables it to fully comply with its obligations under financial services legislation.

**Question 1:**

Do you have any comments on the proposed Authorisation Requirements and Standards for Credit Servicing Firms, in particular the requirements outlined above? If so, please refer to the specific requirement(s) which give rise to your comments and outline the nature of your specific concern together with your alternative proposal(s) and the reasons why you feel those proposals would be more appropriate.

**Question 2:**

Are there any additional requirement(s) that you feel should be included in the Authorisation Requirements and Standards for Credit Servicing Firms? If so, please provide details and outline a rationale for including the requirement(s).

## 7 Consequential Amendments to the Central Bank Statutory Codes of Conduct

### 7.1 Consumer Protection Code 2012

No significant amendments are required in order to apply the Consumer Protection Code 2012 (the 2012 Code) to Credit Servicing Firms. It is proposed to amend the ‘Application’ section in Chapter 1 to include **Credit Servicing Firms** as the last bullet after **Debt Management Firms** in the list of firms that the 2012 Code applies to. A definition of ‘credit servicing’ and ‘Credit Servicing Firm’ will be included in the ‘Definitions’ under Chapter 12 of the 2012 Code. This will make clear that (as arises automatically from the definitions in Chapter 12 as a matter of law) the activity of credit servicing is a ‘regulated activity’ within the meaning of the 2012 Code and firms carrying on that activity are ‘regulated entities’ with respect to that activity, including so that provisions such as Provision 3.11 on transfers will apply in the new regulatory framework. This will mean for example that, as credit servicing is now a distinct regulated activity, a regulated lender who sells loans subject to the 2012 Code to an unregulated transferee must, ahead of that sale, identify the firm who will provide the regulated activity of credit servicing for those loans post the sale and provide the requisite notification of their details to the Central Bank and the customer in accordance with Provision 3.11.

### 7.2 Code of Conduct for Business Lending to Small and Medium Enterprises 2012

Based on the definition of ‘relevant borrower’ in the Act, Credit Servicing Firms will be required to comply with the relevant provisions of the Code of Conduct for Business Lending to Small and Medium Enterprises (the SME Code) for credit servicing activities, in relation to “credit” (as set out in section 28 of the Act i.e. a cash loan) relating to SME borrowers.

It is proposed to amend the SME Code as follows:

- Amend the ‘Scope’ section of the SME Code to state “This Code applies to regulated entities when providing *and servicing* the following credit products within the State to SMEs operating within the State, unless otherwise stated:...”
- Amend the definition of ‘business lending’ to “**business lending**’ means the provision of credit products to **small and medium enterprises** operating in this State

and the **credit servicing** of such credit products, but not the **credit servicing** of the credit products of:

- a) leasing,
- b) hire purchase, or
- c) invoice discounting

when carried out by a **credit servicing firm** which is not a **regulated entity** authorised to provide credit in the State”.

- Include a definition of ‘credit servicing’ and ‘Credit Servicing Firm’ in the ‘Definitions’ section of the SME Code.

### 7.3 Code of Conduct on Mortgage Arrears 2013

In order to apply the Code of Conduct on Mortgage Arrears (the CCMA) to Credit Servicing Firms, the scope of the CCMA must be expanded to include credit servicing activities when managing and administering mortgage loan books (where the mortgage loan is secured by the borrower’s primary residence). The wording of the CCMA will need to be changed in order to make it clear that credit servicing of mortgages is incorporated and credit servicing activities will be subject to the relevant parts of the CCMA.

The following amendments to the CCMA are proposed:

- Replace the term ‘lender’ with ‘regulated entity’ throughout the entire CCMA;
- Amend the ‘Application of this Code’ section of Chapter 1 so that the CCMA “*applies to the mortgage lending activities and credit servicing activities in respect of mortgage loans<sup>5</sup> of all regulated entities, except credit unions, operating in the State... ”;*
- Insert clarification in the “Introduction” and “Application of this Code” sections of the CCMA to stress that the term ‘regulated entity’, for the purposes of the CCMA, applies only to regulated entities who are engaging in the business of mortgage lending or credit servicing; and
- Amend Chapter 2 to include a definition of ‘credit servicing’, ‘Credit Servicing Firm’ and ‘regulated entity’.

<sup>5</sup> Where the mortgage loan is secured by the borrower’s primary residence only.

#### *7.4 The Minimum Competency Code 2011*

The Minimum Competency Code 2011 (the MCC) will apply to all persons exercising a controlled function or a pre-approval controlled function in a Credit Servicing Firm and to Credit Servicing Firms themselves when the following activities are being conducted:

- providing advice to consumers on retail financial products,
- arranging or offering to arrange retail financial products for consumers, including ..... the restructuring or rescheduling of loans,
- acting for or on behalf of a regulated firm in the direct management or supervision of those persons who act for or on behalf of that regulated firm in providing advice to consumers about retail financial products or who arrange or offer to arrange retail financial products for consumers ....., and
- adjudicating on any complaint communicated to a regulated firm by a consumer which relates to advice about a retail financial product provided to that consumer or the arranging or the offering to arrange of a retail financial product for that consumer .....

The parts of the definition of ‘credit servicing’ that are relevant when considering the application of the MCC include:

- b) taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower;
- c) managing or administering any of the following:....
  - iv) any complaints made by the relevant borrower; ....
  - vi) the process by which a relevant borrower’s financial difficulties are addressed;
  - vii) any alternative arrangements for repayment or other restructuring;
  - viii) assessment of the relevant borrower’s financial circumstances and ability to repay under the credit agreement.

This definition would appear to envisage that the Credit Servicing Firm may be involved in the restructuring of loans and, therefore, the MCC would apply to this activity where the borrower<sup>6</sup> is a consumer as defined in the MCC<sup>7</sup> and to adjudicating on any complaints about this activity.

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<sup>6</sup> A ‘borrower’ is defined in the 2015 Act as

a) A relevant person, or

Part 1 of the MCC, which is issued pursuant to Section 50 of the Central Bank Reform Act 2010, specifies certain minimum competency standards with which persons falling within its scope must comply when performing controlled functions or pre-approval controlled functions. Part 2 of the Code is imposed under certain specified legal powers<sup>8</sup> and it imposes certain obligations on regulated firms in connection with the minimum competency standards.

The qualifications to be held will depend on the type of loan being serviced. In the case of mortgage loans, the qualifications recognised in respect of Category 7, Housing Loans, Home Reversion Agreements and Associated Insurances, would be relevant. In the case of other loans, the qualifications recognised in respect of Category 8, Consumer Credit Agreements and Associated Insurances, would be relevant.

### ***Grandfathering***

Persons already grandfathered in respect of the provision of advice on loans, or arranging or offering to arrange loans, or the exercise of a specified function in relation to loans would meet the standards of the MCC in respect of those activities where they are provided by a Credit Servicing Firm.

The grandfathering arrangements under the MCC can no longer be availed of and it is not proposed to introduce grandfathering arrangements specifically for individuals providing credit servicing.

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b) A micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003.

<sup>7</sup> 'consumer' means any of the following:

- a) a *person* or group of *persons*, but not an incorporated body with an annual turnover in excess of three million euro (for the avoidance of doubt, a group of *persons* includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate); or
- b) incorporated bodies having an annual turnover of three million euro or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said three million euro);

<sup>8</sup> Section 33A(3) of the Act

### *Transitional Arrangements*

In line with transitional periods permitted for other sectors, it is proposed that there will be a transitional period of four years from the enactment of the 2015 Act to allow all persons who are seeking authorisation as a Credit Servicing Firm, and individuals within those firms carrying out activities that fall within the scope of the MCC, to meet the standards set out.

The following amendments to Part 1 of the MCC are proposed:

- Amend sub-paragraph d) of Section 1.3 as follows:
  - d) is availing of the transitional arrangements in respect of the function to be exercised pursuant to Sections 1.8 or 1.9 of the *Standards*, or
- Amend the title of section 1.8 to **TRANSITIONAL ARRANGEMENTS FOR DEBT MANAGEMENT SERVICES**.
- Insert a new section 1.9, as follows:

#### **1.9 TRANSITIONAL ARRANGEMENTS FOR CREDIT SERVICING**

A *person* exercising a controlled function or a pre-approval controlled function on a professional basis on behalf of a Credit Servicing Firm (in the context of this paragraph 1.9, the term “Credit Servicing Firm” does not include a person authorised to provide credit in the State) on 8 July 2015, the exercise of which, in relation to loans, includes the following:

- providing advice to consumers on retail financial products,
- arranging or offering to arrange retail financial products for consumers, including the restructuring or rescheduling of loans,
- acting for or on behalf of a regulated firm in the direct management or supervision of those persons who act for or on behalf of that regulated firm in providing advice to consumers about retail financial products or who arrange or offer to arrange retail financial products for consumers . . . ., and
- adjudicating on any complaint communicated to a regulated firm by a consumer which relates to advice about a retail financial product provided to that consumer or the arranging or the offering to arrange of a retail financial product for that consumer,

who does not hold a *recognised qualification* in respect of that function may, until 8 July 2019, perform that function as if that person were a qualified person provided:

- (a) the *person* is working towards obtaining a *relevant recognised qualification*. In this regard, the *person* must:
  - i) register for the first available sitting of the relevant examination which the person could reasonably be expected to sit, and should the *person* fail to pass the examination on that occasion, each available sitting thereafter until the *person* obtains the qualification;
  - ii) work towards obtaining examinations for the relevant qualification on a consistent and timely basis, until completion; and
  - iii) maintain a record of all examinations completed, results obtained and examinations scheduled for completion; **and**
- (b) the person obtains a *relevant recognised qualification* by 8 July 2019. A pro-rata adjustment to this timeframe may be applied in the same circumstances as outlined in paragraph 1.4.1(d) (ii) of the MCC in respect of new entrants.

The following amendments to Part 2 of the MCC are proposed:

- Amend the title of section 2.8 to **TRANSITIONAL ARRANGEMENTS FOR DEBT MANAGEMENT SERVICES**.
- Insert a new section 2.9, as follows:

## **2.9 TRANSITIONAL ARRANGEMENTS FOR CREDIT SERVICING**

A regulated firm must:

- a) inform the person availing of the transitional arrangements, within three weeks of the date the Addendum is imposed, of the requirement to obtain a relevant recognised qualification by 8 July 2019;
- b) agree a plan for obtaining a recognised qualification with the person availing of the transitional arrangements and monitor the person's progress in adhering to this plan; and
- c) where an opportunity to sit an examination is not availed of by a person availing of the transitional arrangement, the regulated firm must document the reasons why.

**Question 1:**

Do you have any comments on the proposed consequential amendments to the various Central Bank Statutory Codes outlined above? If so, please refer to the specific amendment(s) which give rise to your concerns and outline the nature of your concern.

## 8 Making Your Submission

The closing date for submissions is **30 September 2015**. Any submissions received after this date will not be considered. When addressing any particular issue set out in Part A of the Authorisation Requirements and Standards for Credit Servicing Firms document, please use the headings and the provision numbering in this document to identify the section you are referring to. If you are raising an issue that is not referred to in that document, please indicate this in your submission.

The Central Bank intends to make submissions available on our website after the deadline for receiving submissions has passed. Because of this, please do not include commercially sensitive material in your submission, unless you consider it essential. If you do include such material, please highlight it clearly so that we may take reasonable steps to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted and indicating the deletions.

Despite the approach outlined above, the Central Bank makes no guarantee not to publish any information that you deem confidential. Therefore, please be aware that, unless you identify any commercially sensitive information, you are making a submission on the basis that you consent to it being published in full.

Please clearly mark your submission “Response to Consultation on the Authorisation Requirements and Standards for Credit Servicing Firms”. Please make your submissions electronically by email to [creditservicing@centralbank.ie](mailto:creditservicing@centralbank.ie) or, in writing to:

Consumer Protection – Policy and Authorisations  
Central Bank of Ireland  
PO Box 559  
Dame Street  
Dublin 2

## Appendix 1

### Authorisation Requirements and Standards for Credit Servicing Firms

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#### Part A: Authorisation Requirements

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## 1. Introduction

The Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 ('the 2015 Act') was enacted on 8 July 2015. The 2015 Act amends Part V of the Central Bank Act 1997 ('the Act') in order to introduce a regulatory regime for a new type of entity called a 'Credit Servicing Firm' and the activity of credit servicing, as defined in the Act (as amended by the 2015 Act) is now a regulated activity in Ireland.

Credit Servicing Firms will be subject to the provisions of Irish financial services law that apply to 'regulated financial service providers'. This will ensure that relevant borrowers, whose loans are sold to third parties, will maintain the same regulatory protections they had prior to the sale, including under the various statutory codes issued by the Central Bank of Ireland (the Central Bank).

The Central Bank is the competent authority in Ireland for the purposes of the Act and will implement a regulatory framework for Credit Servicing Firms. In this regard, the Central Bank will exercise its statutory "gatekeeper" role to permit or refuse an applicant Credit Servicing Firm, through rigorous assessment of applications against applicable regulatory standards, so as to mitigate the risk that firms could pose harm to customers, counterparties and the wider market once they are authorised.

**Part A** of this document sets out the authorisation requirements that must be complied with by an applicant seeking authorisation to carry on Credit Servicing. These requirements are imposed on all Credit Servicing Firms as a condition of authorisation and must be complied with on an on-going basis. Please note that each Credit Servicing Firm should refer to the conditions of authorisation, which are annexed to its authorisation, for complete details of the conditions imposed on its authorisation.

**Part B** of this document lists certain other regulatory requirements which apply to Credit Servicing Firms and which Credit Servicing Firms should be aware of in relation to the provision of Credit Servicing. This list is not exhaustive.

It is the responsibility of each individual regulated entity to ensure compliance with all aspects of applicable legislation and other regulatory requirements. Firms are advised to obtain their own independent legal advice if they are unclear in relation to any of their compliance obligations.

## **Part A: Authorisation Requirements**

### **1 General Authorisation Requirements**

- 1.1 The obligation to hold an authorisation as a Credit Servicing Firm applies to all persons who provide Credit Servicing as defined in section 28 of Part V of the Act.
- 1.2 Applicants are required to demonstrate how they meet each of the Authorisation Requirements and Standards listed below in order to be granted an authorisation.
- 1.3 A Credit Servicing Firm is required to demonstrate that the organisation of its business structure is such that it is capable of being supervised by the Central Bank and that adequate and effective control of the firm rests in the State. Factors to be considered in this regard include:
- a) where the mind and management of the Credit Servicing Firm is located;
  - b) where key decisions regarding the direction of the Credit Servicing business are made;
  - c) where key functions are undertaken;
  - d) what reporting lines exist;
  - e) where key books and records are kept; and
  - f) how the Credit Servicing Firm will engage with borrowers including, in particular, the practical facilities that will be made available to borrowers in arrears to resolve their arrears.

Adequate arrangements in this regard are required in order to ensure the proper and orderly regulation and supervision of persons authorised to carry on Credit Servicing.

### **2 Professional Indemnity Insurance**

- 2.1 Pursuant to section 33A(5) of the Act, a Credit Servicing Firm is required to have in place professional indemnity insurance ('PII'), against liability arising from professional negligence, covering its Credit Servicing business in accordance with paragraph 3.2 below.

- 2.2 The amount insured shall at a minimum provide cover for €1.25 million per claim and €1.85 million in aggregate cover in a single policy period with regard to the Credit Servicing business of the Credit Servicing Firm.
- 2.3 A Credit Servicing Firm is required to provide the Central Bank with a written confirmation from the insurer that it has in place a policy of PII which covers its activities as a Credit Servicing Firm and meets the cover specified in paragraph 3.2 above. This must be provided to the Central Bank prior to authorisation. Evidence of the PII cover in place will then be required to be made available to the Central Bank upon request thereafter. Where the policy of PII includes an excess amount payable by the Credit Servicing Firm, the Credit Servicing Firm is required to be in a position to demonstrate to the Central Bank that it has the financial resources to pay this excess amount, without it impacting on its financial viability and its ability to continue to operate as a Credit Servicing Firm.

### **3 Organisation and Management**

- 3.1 A Credit Servicing Firm is required to demonstrate that it is in a position to conduct its affairs in a manner that ensures that the best interests of its customers are protected.
- 3.2 A Credit Servicing Firm is required to have robust governance arrangements in place including:
- (a) a clear organisational structure with well defined, transparent and consistent lines of responsibility and accountability;
  - (b) effective processes to identify, manage, monitor and report the risks it is or might be exposed to including conduct/consumer protection risks;
  - (c) effective internal control mechanisms to mitigate risk;
  - (d) adequate systems and controls to monitor compliance with its internal policies and legislative and other regulatory requirements; and
  - (e) sound administrative and accounting procedures.
- 3.3 A Credit Servicing Firm may be required, in advance of authorisation or thereafter, to procure a review of its operations, systems and controls by a third party of relevant

expertise in order to provide the Central Bank with the necessary assurance that the requisite operations, systems and controls are in place and functioning as described.

- 3.4 A Credit Servicing Firm is required to have adequate staffing in place and to ensure that relevant members of staff are fit and proper and have appropriate experience and skills, including, in accordance with Part 3 of the Central Bank Reform Act 2010.
- 3.5 A Credit Servicing Firm is required to maintain sufficient compliance arrangements to ensure that it complies with all relevant financial services legislation and regulatory requirements to which it is subject and, to that end, it is required to ensure:
- (a) that it has a compliance function with the necessary authority, resources, expertise and access to all relevant information, with regard to all risks relevant to the firm;
  - (b) that a Compliance Officer is appointed who is responsible for the compliance function and for all compliance reporting;
  - (c) that the duties and responsibilities of those with responsibility for compliance activities are clearly defined and documented (both within the compliance function and within business units, as applicable);
  - (d) that the relevant persons with responsibility for compliance are not involved in the performance of services or activities they monitor;
  - (e) that the proposed reporting lines/functional relationships between the Compliance Officer and the firms' senior management and board of directors (including the frequency and format of reporting thereof) are clearly defined; and
  - (f) that compliance with any requirements of financial services legislation, including, but not limited to, the Consumer Protection Code, the Code of Conduct on Mortgage Arrears, the Code of Conduct for Business Lending to Small and Medium Enterprises and the Minimum Competency Code, form a key part of the Credit Servicing Firm's compliance monitoring responsibilities.
- 3.6 A Credit Servicing Firm is required to have an internal audit function; (a) to provide for independent internal oversight of the firm's activities and (b) to evaluate and improve the effectiveness of the Credit Servicing Firm's risk management, internal controls and governance processes.

- 3.7 A Credit Servicing Firm is required to:
- (a) demonstrate that it has sufficient resources (including financial resources) to conduct its business in the manner provided for in its application for authorisation and in accordance with financial services legislation, including the capacity to withstand potential shocks such as the loss of a key client or the occurrence of a significant business continuity event.
  - (b) establish accounting policies and procedures which enable it, at the request of the Central Bank, to deliver in a timely manner to the Central Bank, financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules;
  - (c) be aware of and monitor, on an on-going basis, all risks to its business and maintain adequate technical, organisational and procedural safeguards;
  - (d) establish, implement and maintain systems and procedures that are adequate to safeguard the confidentiality, integrity and availability of information;
  - (e) establish and maintain effective business continuity and disaster recovery procedures; and
  - (f) have constituting documentation sufficiently wide to permit the Credit Servicing Firm to conduct its Credit Servicing business.

#### **4 IT Systems**

- 4.1 A Credit Servicing Firm is required to ensure that it has adequate IT systems in place to conduct its Credit Servicing business.
- 4.2 A Credit Servicing Firm is required:
- (a) to demonstrate how its IT systems are capable of meeting any relevant obligations under financial services legislation, including compliance with any applicable Codes of Conduct;
  - (b) to have adequate governance/controls/safeguards in place to mitigate risks associated with its IT systems;
  - (c) to establish and maintain effective business continuity and disaster recovery procedures in respect of its IT systems; and

- (d) to ensure that systems and controls in place are appropriate to safeguard the confidentiality, integrity and availability of information.

## **5 Relationship with the Central Bank**

### **5.1 General**

- 3.1.1 Where any change affects the accuracy of information and evidence provided by a Credit Servicing Firm in its application for authorisation in accordance with these requirements, a Credit Servicing Firm is required, without undue delay, to inform the Central Bank accordingly;
- 3.1.2 A Credit Servicing Firm is required to notify the Central Bank in advance of a new loan portfolio or client being taken on;
- 3.1.3 A Credit Servicing Firm is required to be open and cooperative in its dealings with the Central Bank. This requirement includes, but is not limited to, the requirement to notify the Central Bank as soon as it becomes aware of:
  - i. any breaches of these requirements or of any other legal requirements applicable to the firm that may have occurred;
  - ii. the commencement of any legal proceedings by or against the Credit Servicing Firm which is either related to financial services legislation or which could potentially impact on the firm's ability to trade as an on-going concern; or
  - iii. any situations which have impacted or have the potential to impact significantly on the operation of the Credit Servicing Firm or its compliance or ability to comply with financial services legislation.
- 3.1.4 A Credit Servicing Firm is required to obtain the prior approval of the Central Bank in respect of any proposed change of legal or trading name; and
- 3.1.5 In accordance with section 36 of the Act, if a Credit Servicing Firm decides to cease providing Credit Servicing it is required to request, in writing, the revocation of its authorisation from the Central Bank without delay. The request for revocation of authorisation must clearly set out the rationale for seeking that revocation, and must include a plan for the orderly wind-down of the business.

## 5.2 **Audited Accounts and On-going Reporting**

- 5.2.1 A Credit Servicing Firm is required to make available audited accounts and any applicable auditor's reports to the Central Bank upon request.
- 5.2.2 A Credit Servicing Firm is required to comply with such reporting requirements as the Central Bank may impose from time to time.

## 6 **Ownership**

- 6.1 A Credit Servicing Firm is required to notify the Central Bank in respect of any proposed material change of ownership of the Credit Servicing Firm i.e. proposed changes in direct and indirect qualifying shareholders.
- 6.2 The Central Bank considers that a material change in ownership occurs where the change would result in the proportion of voting rights or capital held by a person or more than one person acting in concert reaching or exceeding 10%, 20%, 33% or 50% or resulting in a Credit Servicing Firm becoming a subsidiary of the acquirer.
- 6.3 A Credit Servicing Firm is required to notify the Central Bank in respect of any transfer of shares, which would result in the transferee controlling more than 10 per cent of the shares, voting rights attaching to shares or other interests in the Credit Servicing Firm.
- 6.4 Where a shareholding which is registered in the name of a nominee constitutes more than 10 per cent of shares or of the voting rights attaching to shares in a Credit Servicing Firm, the ultimate beneficial ownership of shares so held must be notified to the Central Bank.

A Credit Servicing Firm is required to notify the Central Bank where a direct or indirect disposal of shares occurs by a person or more than one person acting in concert which would result in the proportion of voting rights or capital held by the person or persons falling below 10, 20%, 33% or 50% or such that a Credit Servicing Firm would cease to be a subsidiary of the disposer.

## 7 Outsourcing

- 7.1 In considering any application for authorisation, the Central Bank will have regard to the purpose of the Act, which is to ensure that borrowers whose loans are sold by a regulated entity to a currently unregulated entity, maintain the same regulatory protections as they had prior to the sale, including under the various Central Bank Statutory Codes of Conduct.
- 7.2 A Credit Servicing Firm is required to structure, organise and resource its business to ensure that it is in a position to demonstrate that it can comply with applicable regulatory requirements. This includes, without limitation, ensuring that adequate and effective control of the firm rests in the State, having all records available to the Central Bank in the State and not outsourcing activities to any extent that would impact on its ability to meet all applicable regulatory requirements.
- 7.3 A Credit Servicing Firm is required to notify the Central Bank in advance where it proposes to outsource any **important operational function** relating to the provision of Credit Servicing.
- 7.4 A Credit Servicing Firm is required to notify the Central Bank as soon as possible where a material change occurs or is due to occur in an outsourcing arrangement governing an **important operational function** relating to the provision of Credit Servicing.
- 7.5 Where a Credit Servicing Firm proposes to outsource an **important operational function**, it is required to ensure that the:
- (a) outsourcing does not result in the delegation of its responsibility or accountability for the operational function which has been outsourced;
  - (b) obligations of the Credit Servicing Firm towards its customers under Part V of the Act will continue to be complied with at all times; and
  - (c) outsourcing of operational functions will not be undertaken in such a way as to impair the quality of the Credit Servicing Firm's internal controls and the ability of the Central Bank to monitor the Credit Servicing Firm's compliance with its regulatory obligations.

- 7.6 A Credit Servicing Firm is required to ensure that it has adequate internal controls in place and that it is satisfied regarding the internal controls in place in the service provider such that:
- (a) the Credit Servicing Firm must properly supervise the carrying out of the outsourced functions and adequately manage the risks associated with the outsourcing;
  - (b) the Credit Servicing Firm must take appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
  - (c) the Credit Servicing Firm must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;
  - (d) the service provider will disclose to the Credit Servicing Firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
  - (e) the Credit Servicing Firm must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to its customers;
  - (f) the service provider will, when required, cooperate with the Central Bank in connection with the outsourced activities;
  - (g) the Credit Servicing Firm, its auditors and the Central Bank must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider;
  - (h) the service provider will protect any confidential information relating to the Credit Servicing Firm or its customers;
  - (i) the Credit Servicing Firm and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;

- (j) the respective rights and obligations of the Credit Servicing Firm and of the service provider shall be clearly allocated and set out in a written agreement; and
- (k) A Credit Servicing Firm is required to make available on request to the Central Bank all information, including but not limited to books, records and documentation, necessary to enable the Central Bank assess compliance with the firm's obligations under Part V of the Act, any other designated enactment or designated statutory instrument and any conditions of authorisation imposed on the Credit Servicing Firm.

A Credit Servicing Firm is required to notify a customer in writing in advance of any third party contacting the customer on behalf of the Credit Servicing Firm to advise that such third party acts on behalf of the Credit Servicing Firm and may contact the customer.

## **8 Relationship with Loan Owners**

- 8.1 A Credit Servicing Firm is required to inform, in writing, any holder of legal title over loans for whom it acts, of the Credit Servicing Firm's obligations under financial services legislation, including any statutory Codes of Conduct that apply.
- 8.2 A Credit Servicing Firm is required to demonstrate how its agreement in place with the loan owner enables it to fully comply with its obligations under financial services legislation.

## **9 Other Places of Business**

- 9.1 A Credit Servicing Firm is required to seek the prior approval of the Central Bank before operating from a place of business other than its head office.
- 9.2 A Credit Servicing Firm intending to operate from another place of business is required to notify the Central Bank, at least 14 days in advance, of the nature of the services the **other place of business** will provide and the name(s) of those responsible for the management of the other place of business.

- 9.3 A Credit Servicing Firm is required to notify the Central Bank, at least 14 days in advance, of the proposed closure of another place of business and the reason for such closure.

## 10 Record Keeping

- 10.1 Pursuant to Section 36F of the Act, the Central Bank requires a Credit Servicing Firm to keep appropriate records regarding its Credit Servicing business. Such records include but are not limited to:
- (a) Agreements in place with loan owners;
  - (b) Customer records, including e.g. mortgage deeds, copies of loan agreements etc. as applicable;
  - (c) Communications by the Credit Servicing Firm or its agents with its customers;
  - (d) All records or evidence required to be retained under financial services legislation;
  - (e) Board Minutes;
  - (f) Financial Audit Reports;
  - (g) Internal Audit Reports;
  - (h) Compliance Reports; and
  - (i) Complaints handling records.

Appropriate records are required to be kept for at least six years from:

- (i) in the case of (a) to (d), the date on which the Credit Servicing Firm ceases to provide Credit Servicing to the loan owner or the date of the last interaction with its customer, whichever is the later;
- (ii) in the case of (e), the date of the Board meeting;
- (iii) in the case of (f) to (h), the date of the relevant report; and
- (iv) in the case of (i), the date of the closing of the complaint.

A Credit Servicing Firm is required to keep all records required by these rules and other financial services legislation in the State and pursuant to section 36F(1)(b) of the

Act, the Credit Servicing Firm is required to notify the Central Bank in writing of the address of the office or offices where those records are kept.

## 11 **Legislative basis for the Authorisation Requirements and Conditions imposed by the Central Bank and consequences of non-compliance**

### 11.1 **An Offence to provide Credit Servicing without an Authorisation**

Section 29 of the Act provides that it is a criminal offence to carry on Credit Servicing unless the person is the holder of an authorisation. Section 36K provides that if a body corporate commits an offence under Part V of the Act, each person who was, at the time the offence is found to have been committed, an officer of the body commits an offence, unless the person establishes that-

- the body committed the offence without the person's knowledge, or although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.

### 11.2 **Legislative Basis for Authorisation Requirements**

Section 30 of the Act provides that a person who wishes to carry on Credit Servicing can apply to the Central Bank for an authorisation to carry on such a business and the application must be in the form specified by the Central Bank and must contain such information and be accompanied by such documents as the Central Bank requests.

Section 31 prescribes the grounds upon which the Central Bank can refuse an application for authorisation, including, that the applicant has failed to satisfy the Central Bank that the applicant is, or will be able, to properly fulfil the obligations imposed by or under Part V of the Act or any other designated enactment or designated statutory instruments<sup>9</sup>.

If the Central Bank grants an application for authorisation, it will impose each of the requirements contained in Part A of this document, and such other requirements as it may specify as conditions pursuant to Section 33 and 33A of the Act, on the authorised Credit Servicing Firm.

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<sup>9</sup> A designated enactment or designated statutory instrument are those provisions of legislation listed in Schedule 2 of the Central Bank Act 1942 (as amended).

### 11.3 Legislative Basis for the imposition of Conditions

Under section 33A of the Act, the Central Bank may impose whatever conditions or requirements it considers appropriate relating to the proper and orderly regulation and supervision of persons carrying on Credit Servicing and the protection of their customers or potential customers. The applicable conditions will be specified in one or more documents annexed to the authorisation granted, in accordance with section 33(2) of the Act.

### 11.4 Potential Consequences of Non Compliance

A contravention of any provision of the Act or of any condition or requirement imposed under a provision of the Act or of any provision of a designated enactment or designated statutory instrument is a prescribed contravention for the purposes of Part IIIC of the Central Bank Act 1942 (as amended) and, accordingly, the authorised Credit Servicing Firm and/or persons concerned in its management may be subject to the Administrative Sanctions Procedure of the Central Bank or the revocation of its authorisation in the event of committing such a contravention.

Section 35 of the Act provides that it is a criminal offence for the holder of an authorisation to fail to comply with the requirements imposed on holders of authorisations by Part V of the Act, the conditions of the authorisation and/or the requirements (if any) imposed by regulations in force under Part V of the Act. Section 36K of the Act provides that if a body corporate commits an offence under Part V of the Act, each person who was, at the time the offence is found to have been committed, an officer of the body commits an offence, unless the person establishes that-

- the body committed the offence without the person's knowledge; or
- although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.

Pursuant to section 36A(1)(d) of the Act, the Central Bank may revoke an authorisation if it is satisfied on reasonable grounds that the holder of the authorisation has contravened or is contravening, or has failed or is failing to comply with a provision of Part V of the Act or any other designated enactment or designated statutory instrument, a condition of the authorisation or a requirement imposed by or under Part V of the Act or any other designated enactment or

designated statutory instrument. Section 36A of the Act sets out a comprehensive list of the grounds upon which the Central Bank may revoke an authorisation.

#### 11.5 **Amendments to Authorisations**

Pursuant to section 34 of the Act, the Central Bank may, from time to time, amend an authorisation granted to a person to carry out Credit Servicing –

- (a) by varying any of its conditions;
- (b) by replacing or revoking an existing condition. or
- (c) by adding a new condition

but only after giving to the holder of that authorisation a notice in writing of its intention to do so and an opportunity to be heard by, or to make written representations to, the Central Bank in relation to the proposed amendment.

## 12 **Definitions**

12.1 **Important operational function** means an operational function where a defect or failure in its performance would materially impair—

- a) the continuing compliance of the Credit Servicing Firm concerned with the requirements of its authorisation or its other obligations;
- b) its financial performance; or
- c) the soundness or continuity of its Credit Servicing activities.

12.2 **Other place of business** means a place of business other than the head office which is a part of a Credit Servicing Firm, which has no separate legal personality and which carries out directly some or all of the services inherent in the business of a Credit Servicing Firm.

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