



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

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## Feedback to CP96 – Review of the Consultation on the Authorisation Requirements and Standards for Credit Servicing Firms and Consequential Amendments to Statutory Codes



## 1. Introduction

Consultation Paper CP96 on the Authorisation Requirements and Standards for Credit Servicing Firms and Consequential Amendments to Statutory Codes was published on 14 July 2015. The consultation closed on 30 September 2015 and 7 responses were received.

CP96 sought the view of all interested parties 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 ongoing basis. It also sought views on the consequential amendments proposed to be made to the Central Bank's Statutory Codes arising from the amendment of Part V of the Central Bank Act, 1997 (the Act) to introduce a regulatory regime in Ireland in respect of credit servicing<sup>1</sup>.

The following questions were asked in the Consultation Paper:

- 1.1. Do you have any comments on the proposed Authorisation Requirements and Standards for Credit Servicing Firms? 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 those proposals would be more appropriate.
- 1.2. 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).
- 1.3. Do you have any comments on the proposed consequential amendments to the various Central Bank Statutory Codes? If so, please refer to the specific amendment(s) which give rise to your concerns and outline the nature of your concern.

The Central Bank would like to thank all those who made a submission in response to CP96 thereby informing the consultation process. It is standard practice for the Central Bank to

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<sup>1</sup> The Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 was enacted on 8 July 2015 and amended 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, is now a regulated activity in Ireland.



publish all responses received to Consultation and Discussion Papers. Individual responses to CP96 are available on the Central Bank's website. On this occasion a limited number of responses containing firm-specific information of a proprietary nature have not been published on the website. It should be noted, however, that all responses to CP96 have been considered in finalising the Authorisation Requirements and Standards for Credit Servicing Firms.

This Feedback Statement summarises the responses received to the questions posed in CP96 and also explores the additional matters which respondents have highlighted in their submissions. The purpose of this Feedback Statement is to outline how significant comments received as part of this consultation process have been dealt with in the finalised Authorisation Requirements and Standards for Credit Servicing Firms and the consequential amendments to the various Statutory Codes. It also outlines an additional requirement which the Central Bank has added to the finalised Authorisation Requirements and Standards for Credit Servicing Firms based upon its own review of its proposals in this regard.

Please note that this document is for information purposes only. It does not form part of the Authorisation Requirements and Standards for Credit Servicing Firms. This document does not constitute legal advice and should not be used as a substitute for such advice. The Central Bank does not represent to any person that this document provides legal advice. It is the responsibility of all relevant regulated entities to ensure their compliance with the Authorisation Requirements and Standards for Credit Servicing Firms.

## **2. Central Bank addition to the Authorisation Requirements and Standards**

It should be noted that the finalised Authorisation Requirements and Standards for Credit Servicing Firms also now includes an additional requirement in section 6.1(a) which requires that a Credit Servicing Firm shall not in any circumstance provide the Central Bank with:

- (i) false or misleading statements concerning the operation of the Credit Servicing Firm; or
- (ii) information which it knows or ought to know to be false or misleading.

This requirement has been added to promote an open and honest relationship between authorised Credit Servicing Firms and the Central Bank and is in line with requirements imposed on other industry sectors.

### 3. Summary of Responses

Category of Respondent	Number of Submissions
Industry bodies and other representative bodies	2
Industry participants, consumers and individuals	5
<b>Overall Total</b>	<b>7</b>

The main issues highlighted by respondents in respect of the proposals set out in CP96 and the Central Bank’s position in respect of these issues, following careful consideration of the submissions received, are set out below under the following headings:

- 3.1 General Comments received
- 3.2 Requirement 2<sup>2</sup> - General Authorisation Requirements
- 3.3 Requirement 3 - Professional Indemnity Insurance
- 3.4 Requirement 4 - Organisation and Management
- 3.5 Requirement 5 - IT Systems
- 3.6 Requirement 6 - Relationship with the Central Bank
- 3.7 Requirement 7 - Ownership
- 3.8 Requirement 9 - Relationship with Loan Owners
- 3.9 Other matters highlighted
- 3.10 Consequential Amendments to the Central Bank’s Statutory Codes

### 4. Main Issues Highlighted

#### 4.1. General Comments received

Several respondents to CP96 commented on the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 (‘the 2015 Act’) and two recurring issues raised were the Government’s decision to regulate the Credit Servicing Firm and not the Loan Owner and the

<sup>2</sup> The requirement numbers outlined are aligned with those set out in the Authorisation Requirements and Standards for Credit Servicing Firms document which was consulted upon.

application of the legislation in respect of individual business models. These issues relate to matters which were not the subject of this consultation process and have thus not been addressed in this Feedback Statement.

#### **4.2. Requirement 1 – General Authorisation Requirements**

##### Proposals outlined in CP96

##### Demonstrating how ‘adequate and effective control rests in the State’

Section 31 (2) (b) of the Act states that, *‘in order to obtain and retain authorisation, a person proposing to carry on, or carrying on a regulated business shall satisfy the Bank –*

*(f) that the organisation of the [person’s] business structure is such that it, and any of its associated or related undertakings, (so far as appropriate and practicable) are capable of being supervised adequately by the Bank’.*

CP96 proposed that a Credit Servicing Firm be 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. Some of the factors to be considered in this area were set out as follows:

- 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.

##### Submissions

A respondent to the consultation expressed the view that there is a lack of clarity as to what structure is required in order to demonstrate that adequate and effective control rests in the State.

## Response

Having considered the submission made on this issue, the Central Bank is of the view that it is not possible to prescribe at the level of the Authorisation Requirements and Standards “a one size fits all” approach as to what is required to ensure that adequate and effective control rests in the State for the purposes of Central Bank supervision. This is the case given that the nature, scale and complexity of the activities undertaken by each firm can vary depending on the activities being conducted, the range and nature of credit servicing activities that may be involved and the manner in which the credit servicing activities of a firm are organised and positioned within the firm and/or its wider business or group structure.

It is therefore proposed that the Authorisation Requirements and Standards will remain unchanged in this area.

### **4.3. Requirement 3 - Professional Indemnity Insurance (PII)**

#### Proposals outlined in CP96

Pursuant to Section 33A (5) of the Act, the Central Bank may also impose on a Credit Servicing Firm a condition or requirement to effect a policy of PII. CP96 proposed that a Credit Servicing Firm must put in place PII cover and 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 credit servicing business of the Credit Servicing Firm.

#### Submissions

Respondents to the consultation expressed the following views in respect of the proposed PII cover requirement:

- a) that PII coverage and costs are potentially high given the increased accountability placed on a Credit Servicing Firm;
- b) that the PII cover requirement should only apply to a Credit Servicing Firm’s activities that require authorisation i.e. it should not apply to any credit servicing undertaken on behalf of a regulated financial service provider who is authorised to grant credit; and

- c) that the amount of PII cover stipulated is low in respect of many larger commercial mortgages collateralized by commercial real estate.

#### Response

Having considered the submissions made in relation to PII cover, the Central Bank's view remains that the proposed PII requirement should be retained as it provides an important protection to consumers who are impacted by the activities of a Credit Servicing Firm and is proportionate to the activities to be undertaken by a Credit Servicing Firm. With regard to the view that the level of PII cover proposed is potentially low, the level of cover required is consistent with that applied to other firms that would not hold client money. The appropriateness of the level of cover required will be kept under review as the new regulatory regime is embedded.

The Central Bank is in agreement that the proposed PII cover requirement should not apply in respect of credit servicing conducted on behalf of a regulated financial service provider authorised by the Central Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Central Bank to provide credit in the State on the basis that, in such a case, the regulated financial service provider (for whom the Credit Servicing Firm is an outsourcee) will be responsible for ensuring the borrower is afforded the protections of financial services legislation. The Authorisation Requirements and Standards have therefore been amended accordingly.

#### **4.4. Requirement 4 - Organisation and Management**

##### Proposals outlined in CP96

CP96 proposed organisation and management requirements which Credit Servicing Firms would be required to meet both as at authorisation date and on an ongoing basis.

## Submissions

Respondents to the consultation raised concerns that:

- a) the type of credit servicing they conduct may not have or need the type of organisational structure appropriate to the servicing of a residential or retail type loan portfolio and that as a result some of the organisational requirements may be difficult to meet;
- b) in order to meet the proposed Organisation and Management Requirements, significant investment would be required and that this would potentially be onerous considering that only a small part of their activities require authorisation;
- c) the proposed requirement to demonstrate to the Central Bank that a Credit Servicing Firm has sufficient resources (including financial resources) creates uncertainty regarding the capital requirements which Credit Servicing Firms are subject to; and
- d) not having ‘best interest of the consumer’ defined creates ambiguity for Credit Servicing Firms.

## Response

Having considered the submissions made in relation to the Organisation and Management requirements, the Central Bank is of the view that the existing wording in the Authorisation Requirements and Standards provides satisfactory scope to account for scale and complexity whilst still requiring compliance with the Organisation and Management requirements set out therein.

The Authorisation Requirements and Standards do not impose a capital requirement on Credit Servicing Firms. We do however expect such entities to be adequately resourced (including financially) to conduct their services on an ongoing basis. It will be a matter for each Credit Servicing Firm to demonstrate in the course of its application for authorisation and on an ongoing basis the adequacy of its available resources to conduct credit servicing.

It is not proposed that ‘best interests of the customer’ be defined. We believe that to seek to do so would only serve to narrow what has to be complied with in regard to the best interests of the customer and is therefore not in the consumers’ interest. This requirement is aligned with



the requirements set out in the Consumer Protection Code 2012 ('the 2012 Code') which also imposes a similar requirement in its general principles.

#### **4.5. Requirement 5 - IT Systems**

##### Proposals outlined in CP96

CP96 proposed that a Credit Servicing Firm be required to ensure that it has adequate IT systems in place to conduct its credit servicing business.

##### Submissions

Respondents to the consultation raised concerns that:

- a) different types of Credit Servicing Firms might not necessarily need the same type of credit servicing systems appropriate to the servicing of a large number of retail loans;
- and
- b) that Credit Servicing Firms would need to invest a significant amount of money to automate certain processes.

##### Response

Having considered the submissions made in respect of the IT Systems requirements, the Central Bank is of the view that the existing wording in the Authorisation Requirements and Standards provides satisfactory scope to account for scale and complexity whilst still requiring compliance with the IT Systems requirements set out therein.

There is no specific requirement in the Authorisation Requirements and Standards for processes to be automated. The onus will be on each Credit Servicing Firm to demonstrate in the course of its application for authorisation and on an ongoing basis that its IT systems and processes are appropriate for the credit servicing activity which it conducts.

#### **4.6. Requirement 6 - Relationship with the Central Bank**

##### Proposals outlined in CP96

CP96 set out requirements which Credit Servicing Firms would have to adhere to in relation to their relationship with the Central Bank, including events that have to be notified to the Central Bank, events which require the prior approval of the Central Bank and potential ongoing reporting obligations.

##### Submissions

Respondents to the consultation expressed the view that:

- a) the requirement to notify the Central Bank in advance of a new loan portfolio or client being taken on should not be required in circumstances where a Credit Servicing Firm begins to service a loan portfolio on behalf of a regulated credit institution, i.e. the notification should not be required where the portfolio being on-boarded is not 'in scope' under the Act;
- b) the requirement to obtain the prior approval of the Central Bank in respect of any proposed change of legal or trading name is out date, as under the new Companies Act, the concept of trading names no longer exists. It was also added that there is now a requirement to register Business Names with the Companies Registration Office and that as Business Names are a broader and less onerous registration construct, that the prior approval and the associated requirement to include such names on all disclosures should be removed; and
- c) that a Credit Servicing Firm should be required to notify the Central Bank of any potential conflict of interest and present the Central Bank with procedures to mitigate against such conflict.

##### Response

Having considered the submissions made in respect of these requirements, the Central Bank is in agreement that the notification requirement in respect of new loan portfolios or clients being taken on should only apply in respect of the regulated business which a Credit Servicing Firm

conducts for which it requires authorisation as a Credit Servicing Firm. The Authorisation Requirements and Standards have therefore been amended to more clearly reflect this position.

The Central Bank is in agreement that the Companies Act no longer includes a definition of a trading name. As a result, the Authorisation Requirements and Standards have been updated to reflect a ‘business name’. Whilst the Central Bank notes that business names have to be approved by the Companies Registration Office, it remains of the view that any changes in business name should obtain the prior approval of the Central Bank in order to ensure that the name(s) used by Credit Servicing Firms are appropriate to the activities they conduct and for example are not potentially misleading or confusing to consumers.

The Central Bank is of the view that a specific authorisation requirement and standard in relation to conflicts of interest is not required as such matters are already dealt with by the 2012 Code. In accordance with section 2.8 of the General Principles of the 2012 Code, a regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it seeks to avoid conflicts of interest. Section 3.2.8 of the 2012 Code also requires that a regulated entity has a conflicts of interest policy in place. The Central Bank is also of the view that the matter of conflicts of interest is also addressed by the generic provisions in relation to having adequate systems, controls, governance etc. set out in the Organisation and Management Requirements in section 4 of the Authorisation Requirements and Standards.

#### **4.7. Requirement 7 – Ownership**

##### Proposals outlined in CP96

CP96 proposed a notification requirement where a material change in a Credit Servicing Firm’s ownership structure is proposed.

##### Submissions

A respondent to the consultation proposed that, where a change of ownership relates to a parent of a regulated entity which is a plc and whose shares are therefore publically traded on a listed stock exchange, it would be appropriate for the requirement to notify the Central Bank

prior to the share change to be removed. This was proposed on the basis that the change of ownership is not within the control of the plc.

#### Response

The Central Bank acknowledges that, in some instances, it may be beyond the control of an authorised Credit Servicing Firm to provide the Central Bank with prior notification of a change in ownership. The notification requirement in the Authorisation Requirements and Standards now reflects that notification of changes in ownership should be made forthwith upon the Credit Servicing Firm becoming aware of a proposed change. Where this is not possible due to circumstances outside the control of the Credit Servicing Firm, the notification should be made forthwith upon the Credit Servicing Firm becoming aware of the change in ownership.

#### **4.8. Requirement 9 - Relationship with loan owners**

##### Proposals outlined in CP96

CP96 sets out requirements to ensure that a Credit Servicing Firm's relationship with relevant loan owners does not impede its ability to comply with its obligations under financial services legislation.

##### Submissions

A respondent to the consultation suggested that, in addition to the requirements proposed in CP96 to govern a Credit Servicing Firm's relationship with the holders of the legal title over loans for whom it acts, Credit Servicing Firms should be required to retain all directions issued by loan owners for inspection and be able to demonstrate upon request from the Central Bank that their interactions with the loan owners reflect the firm's obligation to act in the best interests of consumers.

##### Response

Having considered this submission, the Central Bank is of the view that this issue is already addressed in the Authorisation Requirements and Standards. Under Requirement 4.1, 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 and pursuant to Requirement 11 a Credit Servicing Firm is also required to keep appropriate records regarding its Credit Servicing Firm business.

#### **4.9. Other Matters highlighted**

##### Submission

A respondent to the consultation suggested that how equitably a Credit Servicing Firm handles a breach of a loan covenant could potentially be a matter for additional consideration in determining whether that Credit Servicing Firm should be approved as a regulated entity.

##### Response

Having considered this submission, the Central Bank would note that any Credit Servicing Firm who is conducting credit servicing is required to adhere to the relevant requirements of financial services legislation (including any applicable codes of conduct) when conducting credit servicing. Compliance with Statutory Codes is therefore required when a Credit Servicing Firm is handling a breach of loan covenant as part of its credit servicing activities. It is therefore not considered necessary to impose a specific authorisation requirement or standard in this area, given that there are already statutory code of conduct requirements in place to govern a Credit Servicing Firm's activities in this area.

##### Submission

A respondent to the consultation raised concerns regarding the short timeframe from the closure of CP96 to the deadline for submission of applications by firms seeking to avail of the transitional arrangements provided for in the Act.

##### Response

Having considered this submission, the Central Bank would note that it did not require that applicant firms demonstrate that they comply with the Authorisation Requirements and Standards in the Stage 1 Application Form to be submitted by firms seeking to avail of the transitional arrangements provided for in the Act. Such firms will be required to demonstrate



their compliance with the finalised Authorisation Requirements and Standards in the Stage 2 Application Form to be submitted to the Central Bank.

The purpose of having firms submit a Stage 1 Application Form in advance of the Authorisation Requirements and Standards being finalised was to:

1. Enable firms to avail of the transitional arrangements provided for in the Act to be taken to be authorised by having an application submitted within the timeframe set out in the Act in this regard;
2. Obtain certain information on the entities that have applied for authorisation as a Credit Servicing Firm;
3. Obtain confirmation that applicant firms are aware of their regulatory obligations as Credit Servicing Firms that are taken to be authorised pending a decision on their application; and
4. Remind applicant firms availing of the transitional arrangements that they are required to comply with the requirements of financial services legislation including the Central Bank's Statutory Codes pending a decision being made on their application.

#### **4.10 Consequential amendments to Statutory Codes**

##### Proposals outlined in CP96

CP96 proposed that no significant amendments were required to the Central Bank's Statutory Codes in order to apply them to Credit Servicing Firms following enactment of the 2015 Act. The 'Scope' and 'Definitions' Chapters of the various Codes will be amended to include 'credit servicing' and 'Credit Servicing Firms' so as to make clear that the activity of credit servicing is a 'regulated activity', within the meaning of the Codes, and that firms carrying on that activity are 'regulated entities' with respect to that activity.

##### Submissions

One respondent suggested an additional amendment should be made to the 2012 Code to exclude from its scope loans to financial institutions, multi-lender transactions and special purpose vehicles. This amendment, they argue, would harmonise the exemptions as between

the 2012 Code and the Code of Conduct for Business Lending to Small and Medium Enterprises ('the SME Code') for corporates such as special purpose vehicles and will therefore clarify the range of credit servicing obligations applicable to credit agreements with such corporates.

One industry representative body referred to the applicability of Provision 3.11 of the 2012 Code in the context of credit servicing and stated that the proposal to require the regulated firm, who sells the loans subject to the 2012 Code, to identify the firm who will be providing the regulated activity of credit servicing, requires further clarification.

It was suggested that since Credit Servicing Firms act on behalf of a range of clients who may have varying interpretations of certain elements of the Central Bank's Statutory Codes, there may be an opportunity to explore the development of a consistent approach to key issues among Credit Servicing Firms and their clients in order to support the current Consumer Protection Framework.

Some additional comments were received that related to the Review of the SME Code, which is outside the scope of the CP96 and was the subject of a separate previous consultation exercise conducted by the Central Bank.

### Response

The suggested amendment to the 'Application' section in Chapter 1 of the 2012 Code to enumerate loans to financial institutions, multi-lender transactions and special purpose vehicles in the list of firms to which the Code applies, goes beyond the matter consulted upon in CP96 but will be considered as part of any wider review of the 2012 Code, which would include public consultation.

With regard to the variations in interpretation of the Central Bank Codes we would respond that regulated entities are responsible for their own compliance with the Codes. To aid regulated entities interpretation on the various Codes, the Central Bank has published on its website:

- Consumer Protection Code 2012 Guidance document

- Guidance on the Advertising Requirements of the Consumer Protection Code 2012
- Feedback to CP63 – Review of the Code

### **Clarification on Provision 3.11 of the 2012 Code with respect to the regulated activity of credit servicing**

Provision 3.11 of the 2012 Code relates to, inter alia, the transfer of all or part of a firm's regulated activities to another regulated entity. From enactment of the 2015 Act, 'credit servicing' is now a distinct regulated activity. With respect to transfers of the newly regulated activity of credit servicing, it should be noted that Provision 3.11 of the 2012 Code shall be interpreted as applying to the regulated entity who is the transferor. In order to discharge their obligations under Provision 3.11 of the 2012 Code, the regulated entity that is transferring its credit servicing activities will be required to notify the Central Bank and affected consumers in advance of such transfer, in accordance with the timelines set out under Provision 3.11. For this, as with other provisions of financial services legislation, Credit Servicing Firms must ensure that their contract in place with the loan owner enables compliance with this provision (please see section 9 of the Authorisation Requirements and Standards which sets out applicable requirements in relation to a Credit Servicing Firm's relationship with loan owners in this regard).

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