



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

Submitted via email to [creditservicing@centralbank.ie](mailto:creditservicing@centralbank.ie),

30 September 2015

Dear Sirs,

**Re: CP 96 - Consultation on the Authorisation Requirements and Standards for Credit Servicing Firms and Consequential Amendments to the Statutory Codes**

The IDSA welcomes the opportunity to contribute to the Central Banks (CBI) Consultation on the Authorisation Requirements and Standards for Credit Servicing Firms and Consequential Amendments to the Statutory Codes (CP 96). The Irish Debt Securities Association (IDSA) is an industry organisation established with the aim to promote and develop Ireland as the premier European location for activities to support the global structured finance, debt securities and the specialist securities industries. IDSA promotes a responsible, sustainable and effective environment within which debt securities and other specialist securities can be used to facilitate transactions, to create investment products and to raise capital funding. IDSA aims to achieve its mission by representing all industry participants, promoting high standards of professional conduct among industry service providers and leading the industry activity to develop and provide a world-leading environment for structured finance transactions and for the issuance of debt securities and other specialist securities. The membership of IDSA includes the corporate administrators, trustees, audit firms, legal advisors, listing agents, and other parties involved in the structuring and management of Special Purpose Vehicles (SPVs) in the industry in Ireland.

IDSA believes that it is important that the new credit servicing firm authorisation regime applies in a manner which is consistent with the stated purpose of the Act, the Consumer Protection (Regulation of Credit Servicing Firms) Act - to 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 CBI. Market participants and the CBI have a shared objective in ensuring that there is certainty as to the application of the regulatory requirements. IDSA highlighted concerns in relation to the impact of the draft Bill insofar as corporate borrowers are concerned as part of the DoF's public consultation. IDSA's principal concern in relation to the interaction between the SME Code and the Act remains.

As the CBI will be aware, its SME Code does not apply to:

- lending to other financial institutions;
- syndicated, club or multi-lender transactions; or
- special purposes vehicles, including vehicles established for the purposes of a particular transaction.

The Act did not incorporate these exemptions. The effect of this mismatch is that the CBI's authorisation requirements and standards apply to a credit servicer of loans advanced to a category of borrowers which do not have regulatory protection under the SME Code either before or after a sale of their loans. Given the stated purpose of the Act, we believe this is unintentional. From a policy perspective, this contrasts with the approach to natural person borrowers, where there is an express exemption for sophisticated borrowers (for example, the definition of "relevant person" in section 28 CBA 1997 excludes MiFID professional clients).

IDSA believes that the CBI had valid policy and practical reasons to exclude loans to financial institutions, multi-lender transactions and special purpose vehicles from the SME Code. It is not clear why those type of transactions are not also excluded from the ambit of the credit servicing authorisation process under the Act. In the case of financing transactions involving special purpose companies, as the relevant borrowers cannot benefit from the SME Code, it is not obvious why the Act brings those arrangements within scope of the Act. The result appears to be that the person servicing the credit agreement entered into by the special purpose company is required to hold or seek authorisation as a credit servicing firm but the special purpose company still doesn't get the benefit of the SME Code. Insofar as multi-lender/syndicated loan transactions are concerned, at a practical level, it is not clear how the concept of a credit servicing firm can be accommodated in such a transaction, where certain lenders may be subject to the Act and others will not. At best, the potential for special purpose companies and multi-lender/wholesale funding transactions to be within scope of the authorisation process creates uncertainty and risks absorbing regulatory supervision resources which might be better deployed in oversight of borrowers who would generally be accepted as being SMEs deserving of regulatory protection.

Further difficulties in this context include:

- The systems required in order to comply with the Act appear to be driven towards large loan books – it will be very difficult for entities that just acquire smaller books / a handful of loans to comply with these requirements. It is our understanding that special loan servicers with specific knowledge and capability to deal with large loan transactions (such as in the case of commercial mortgage deals) do not have systems to deal with residential or retail-type deals. The proposed authorisation requirements and standards appear to be premised upon the basis that all servicers are set up to deal with residential or retail-type loan portfolios. The net result of this approach could be that residential or retail credit servicers will meet the criteria to become regulated and can then supply specialist commercial mortgage services (but with no experience or special capability in this area), whereas the specialists will not meet the criteria for residential or retail-type servicing and then will not be able to supply these specialist services in Ireland.
- In addition, and in connection with the foregoing, where there is an arrangement to acquire a borrower's loan(s), the cost of providing the necessary credit servicing will inevitably fall to the borrower – making the re-financing / work-out arrangement more expensive for the borrower; something that is contrary to the purpose of the Act, being the protection of borrowers.

For these reasons, and as a general response to the consultation paper, we would invite CBI to consider requesting a facilitative amendment to the Act to permit the Minister to designate a class of relevant borrowers and/or credit agreement as outside of scope of the credit servicing firm regime, in order to ensure consistency between the SME Code and the Act, to provide legal certainty to market participants and to provide clarity to the CBI as to the scope of its role as competent authority for the credit servicing firm authorisation regime.

In addition and as specific responses to questions in the consultation paper:

- Part 6, Question 1 (proposed authorisation requirements and standards): the authorisation requirements and standards should reflect the fact that special loan servicers (such as those dealing with large individual commercial mortgage transactions) may not have or need the type of credit servicing systems or organisational structure appropriate to the servicing of granular residential or retail-type loan portfolios.
- Part 7, Question 1 (consequential amendments to CBI Codes): we suggest that a consequential amendment should be made to the CPC to exclude from its scope loans to financial institutions, multi-lender transactions and special purpose vehicles. This amendment would harmonise the exemptions as between the CPC and the SME Code for corporates such as special purpose vehicles (noting that a “consumer” for the purposes of the CPC includes incorporated bodies having an annual turnover of €3m or less in the previous financial year) and will therefore clarify the range of credit servicing obligations applicable to credit agreements with such corporates.

IDSAs and its members would welcome the opportunity to meet with the Central Bank to discuss this letter, its contents and the Consultation in general.

Yours faithfully,

-----  
**Gary Palmer**  
**Chief Executive**  
**Irish Debt Securities Association**