



Banc Ceannais na hÉireann
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Consultation on Financial Difficulties Requirements of the Code of Conduct for Business Lending to Small and Medium Enterprises

Consultation Paper CP 55

CONSULTATION PAPER ON THE REVIEW OF THE FINANCIAL DIFFICULTIES REQUIREMENTS OF THE CODE OF CONDUCT FOR BUSINESS LENDING TO SMALL AND MEDIUM ENTERPRISES

Introduction

The Code of Conduct for Business Lending to Small and Medium Enterprises ('SME Code') was published in February 2009. The SME Code applies to all regulated entities, with the exception of credit unions, which provide business lending services to small and medium enterprises. The existing 'Financial Difficulties' section of the SME Code requires regulated entities to have in place procedures for the handling of arrears cases. Regulated entities are also required to give the borrower reasonable time, having regard to the circumstances of the case, to resolve an arrears problem and must endeavour to agree an approach that will assist the borrower to resolve an arrears problem.

A full review of the provisions of the SME Code will be undertaken in 2012, however we have decided to immediately revise the Financial Difficulties provisions of the SME Code given the current economic climate and to build on previous work that has been undertaken for borrowers facing arrears or in arrears. The review of the Financial Difficulties provisions also forms part of our commitments to the IMF/EU programme.

The key objective of this review is to enhance the procedural aspects of the handling of arrears by lenders. It is important to note that it is not the objective of the review to introduce access to further credit or debt restructuring type arrangements for SMEs in financial difficulties or to implement a process for lenders to determine the viability of SMEs in financial difficulties.

In advance of the publication of this consultation, we engaged with a number of lenders, SME Representative Bodies and other authorities involved with the SME sector in order to inform our work and we would like to thank all of those who engaged with us as part of this exercise.

Proposed Provisions

We have revised the existing requirements of the SME Code for borrowers in financial difficulty to introduce a framework that, while recognising that SMEs in financial difficulties need to be considered on a case-by-case basis, will:

- require lenders to communicate at an early stage with SMEs facing financial difficulties to facilitate early identification of issues and early engagement between both parties to try and address the borrower's situation;
- require lenders to provide borrowers with important information to encourage and assist borrowers to deal with the financial difficulties ; and

- facilitate a fair and balanced negotiation process between both parties.

The proposed revised provisions are attached to this paper and we are now seeking views on these proposed revised requirements from interested parties. We would also encourage respondents who disagree with particular proposed provisions to put forward alternative approaches which they feel would more appropriately address the issues.

It should also be noted that the focus of the review is on the Financial Difficulties section of the SME Code. Other sections of the SME Code are not open for review at present and are not being consulted on as part of this review. The proposals have required some amendments to the Scope and Definitions Sections of the SME Code and to the formatting.

Review of the Consumer Protection Code

Arising from our review of the protections measures for consumers availing of credit, it has been decided that such protection measures should be incorporated into the following codes of conduct:

- Consumer Protection Code for:
 - (a) persons acting outside their business, trade or profession.
- SME Code for:
 - (b) incorporated bodies having an annual turnover of €3million 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 €3million); and
 - (c) a person or group of persons, but not persons acting outside their business, trade or profession or an incorporated body, with an annual turnover in excess of €3 million (for the avoidance of doubt a group of persons includes partnerships and other incorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate).

In order to ensure that categories (b) and (c) above retain the same levels of protections as they currently receive under the Consumer Protection Code, it is also our intention to incorporate appropriate provisions relating to credit from the existing Consumer Protection Code into the SME Code for borrowers falling within these categories. Further work on this will be carried out as part of the review of the full provisions of the SME Code in 2012. The General Principles are also set out in the SME Code.

Making Your Submission

The closing date for submissions is 24 August 2011. Any comments received after this date will not be considered. We welcome comments from all interested parties. Please make your submissions by email and, if possible, in writing (see details below):

When addressing any issue raised in this paper, please use the headings the provision numbering in this paper to identify the section you are referring to. If you are raising an issue that we have not referred to in this paper, please indicate this in your submission.

We intend 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, we make no guarantee not to publish any information that you deem confidential. Please be aware that, unless you identify any commercially sensitive information, you are making a submission on the basis that you consent to us publishing it in full.

Please clearly mark your submission 'Code of Conduct for Business Lending to Small and Medium Enterprises' and send it to:

Consumer Protection – Banking & Policy
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

E-mail: smecode@centralbank.ie

Code of Conduct for Business Lending to Small and Medium Enterprises

Scope

This Code applies to all **business lending** by **regulated entities**, excluding credit unions, to **small and medium enterprises** (SMEs).

The Code's objectives are:

- to facilitate access to credit for sustainable and productive business propositions,
- to promote fairness and transparency in the treatment of SMEs by **regulated entities**, and
- to ensure that when dealing with **arrears** cases the aim of a regulated entity will be to assist borrowers to meet their obligations, or otherwise deal with the situation in an orderly and appropriate manner.

This Code sets out the processes **regulated entities** are required to adopt in facilitating access to credit for businesses.

This Code recognises that for SMEs in **financial difficulties** each SME needs to be considered on a case by case basis. It also recognises that for SMEs at risk of going into **arrears**, it is important that the borrower contacts the **regulated entity** to inform them of the difficulties and engages with the **regulated entity** to try and resolve the situation.

This Code applies to **regulated entities** when providing the following credit products within the State to business customers operating within the State:

- overdrafts,
- loans,
- term loans,
- leasing,
- hire purchase, and
- invoice discounting,

but excluding:

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

Regulated entities are required to comply with this Code as a matter of law.

Regulated entities must be able to demonstrate that they are in compliance with this Code.

Nothing in this Code prohibits a **regulated entity** from acting with all necessary speed in the case of a liquidation, receivership, examinership or similar insolvency event or from executing loan collateral, or where there is reasonable evidence of fraud, terrorist connections, money laundering and/or misrepresentation.

Legal Background

This Code is issued under Section 117 of the Central Bank Act 1989.

This Code is effective from [xx/xx/xx].

This Code replaces the previous Code of Conduct for Business Lending to Small and Medium Enterprises issued by the Central Bank of Ireland on 9 March 2009.

Any right acquired, or obligation or liability incurred, in respect of a contravention of, or act of misconduct under, the previous code survives the replacement of the previous code with this Code. Therefore, any legal proceedings, investigation, disciplinary or enforcement action in respect of a contravention of, or act of misconduct under, the provisions of the previous code in force at the time the contravention or act of misconduct occurred, may be instituted, continued or enforced, and any sanction or penalty in respect of such contravention or act of misconduct may be imposed by the Central Bank of Ireland as if the provisions of the previous code had not been replaced.

Existing Financial Difficulties Cases

From xxxxx, this Code applies to all existing **financial difficulties** cases falling within this Code.

Definitions

The following are defined for the purposes of this Code:

'**arrears**' arise where a **borrower** has not made a full repayment, or only makes a partial repayment on a credit facility, as per the terms of the credit facility, by the scheduled date.

'**borrower**' means a **small and medium enterprise** including its representatives and/or agents.

'**business day**' means any day except Saturday, Sunday, bank holiday and public holidays.

'**business lending**' means the provision of credit products to **small and medium enterprises** operating in this State.

'**complaint**' means an expression of grievance or dissatisfaction by a **borrower**, either verbally or in writing, in connection with:

- a. the provision of a product or service by a **regulated entity**, or
- b. the failure of a **regulated entity** to provide a product or service.

'**customer**' means any **borrower** to whom a regulated entity provides or offers to provide a product or service the subject of this Code, and any **borrower** who requests such a product or service;

'financial difficulties' – A **borrower** must be classified as in financial difficulties where:

- (a) **arrears** arise on a credit facility of a **borrower**;
- (b) the **borrower** notifies the **regulated entity** that there is a danger that the **borrower** will not be able to meet repayments and/or the **borrower** is concerned about going into **arrears**;
- (c) the **borrower** already has an alternative arrangement in place with the **regulated entity** to address difficulties with meeting repayments; or
- (d) in the case of an overdraft credit facility, where the approved limit on the facility is exceeded by the **borrower** and remains exceeded for 31 consecutive days.

'Not co-operating' - A **borrower** may be considered as 'not co-operating' with the **regulated entity** when any of the following apply to the **borrower's** particular case:

- a) the **borrower** fails to make a full and honest disclosure of information, that would have a significant impact on the **borrower's** financial situation, to the **regulated entity**;
- b) the **borrower** fails to provide information sought by the **regulated entity** relevant to assessing the **borrowers** financial situation; or
- c) a period of three consecutive months elapses during which the **borrower**:
 - i. (a) has failed to meet repayments in full as per the credit facility contract or has failed to meet in full repayments as specified in the terms of an alternative repayment arrangement; or
(b) has exceeded the approved credit limit on an overdraft credit facility and has not attempted to reduce the balance of the overdraft to the approved credit limit or below;
and
 - ii. has not made contact with, or responded to, any communications from the **regulated entity** or a third party acting on the **regulated entity's** behalf.

'regulated entity' means a person who carries on a business of providing one or more **regulated activities**.

'regulated activities' are services of a financial or investment nature that are subject to the regulation of the Central Bank of Ireland.

'small and medium enterprises' are as defined in European Commission recommendation 2003/361/EC which categorises SMEs as "enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million".

General Principles

A **regulated entity** must ensure that in all its dealings with **customers** and within the context of its authorisation it:

1. acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;
2. acts with due skill, care and diligence in the best interests of its **customers**;
3. does not recklessly, negligently or deliberately mislead a **customer** as to the real or perceived advantages or disadvantages of any product or service;
4. has and employs effectively the resources and procedures, systems and control checks, including quality control checks, and staff training that are necessary for compliance with this Code;
5. seeks from its **customers** information relevant to the product or service requested;
6. makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the **customer**;
7. seeks to avoid conflicts of interest;
8. corrects errors and handles **complaints** speedily, efficiently and fairly;
9. does not exert undue pressure or undue influence on a **customer**;
10. ensures that any outsourced activity complies with the requirements of this Code;
11. without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and
12. complies with the letter and spirit of this Code.

Credit Facilities

1. A **regulated entity** must offer its customers an option of an annual review meeting, to include all credit facilities and security.

Applications for Credit

2. A **regulated entity** must consider each application for credit facilities on its own merits.
3. A **regulated entity** must inform **borrowers** how long the process is considered likely to take. This information may be in statistical form, consistent with past experience, or be based on service targets set by the **regulated entity**.
4. A **regulated entity** must maintain records of all applications for credit facilities.
5. A **regulated entity** must have appropriate procedures in place to assess a loan application.
6. Where a new application for credit is approved, a **regulated entity** must provide the **borrower** with confirmation of the credit facilities granted and the terms and conditions applying thereto, including those regarding default, together with relevant details of fees, charges and interest rates. In addition, a **regulated entity** should outline to the **borrower** the next steps to be completed to facilitate drawdown.

Security

7. Having due regard to the nature, liquidity and value of collateral a **regulated entity** must not impose unreasonable collateral requirements for providing credit facilities, having regard to the value of the credit being offered.
8. A **regulated entity** must not impose unreasonable personal guarantee requirements on **borrowers**.
9. Where a **regulated entity** seeks collateral or a personal guarantee to support a lending proposition it must explain clearly the possible implications for the guarantor of giving such collateral or personal guarantee.
10. Any enforcement of a personal guarantee over a principal private residence must be in accordance with the Code of Conduct on Mortgage Arrears.
11. A **regulated entity** must promptly, at the request of the **borrower**, return any security held by the **regulated entity** to the **borrower** when all facilities for which the security is pledged have been repaid.

Declining/Withdrawing Credit

12. Where an application for credit is declined, the **regulated entity** must explain clearly to the **borrower** the reason(s) why the credit facility was declined.
13. A **regulated entity** must make each decision to withdraw or amend credit facilities on its merits.
14. Where a **regulated entity** decides to withdraw or amend credit facilities it must notify the **borrower**, promptly, of the proposed withdrawal or amendment. The **regulated entity** must advise the **borrower** of the reason(s) for the withdrawal or amendment.
15. Nothing in this Code prohibits a **regulated entity** from acting with all necessary speed to withdraw credit where there is a reasonable suspicion of fraud, money laundering, terrorist connections and/or misrepresentation.

Financial Difficulties

General

16. A **regulated entity** must have and implement procedures for dealing with **borrowers** in **financial difficulties**. Such procedures must:
 - a) set out the process that the **regulated entity** will apply when treating **borrowers** in **financial difficulties** and how it will implement the process;
 - b) set out how the **regulated entity** will assess cases in **financial difficulties**, including the type of information that may be required from **borrowers** and the types of alternative repayment measures or any other relief method that may be offered to **borrowers** by the **regulated entity**;
 - c) allow for a flexible approach for **borrowers** in **financial difficulties** to be handled on a case by case basis;
 - d) be aimed at assisting the **borrower** in the **borrowers** particular circumstances; and
 - e) set out how the criteria used for the assessment of the viability of a **borrower**.
17. Where a **regulated entity** assesses a **borrower** in **financial difficulties** and is of the view that it is viable, and the **borrower** is co-operating with the **regulated entity**, a **regulated entity** must:
 - a. Give the **borrower** reasonable time, from the time a **borrower** is classified as in **financial difficulties**, having regard to the circumstances of the case, to resolve the **financial difficulties**; and

- b. Endeavour to agree an approach with the **borrower** that will assist the **borrower** to address the **financial difficulties**.
18. A **regulated entity** must establish a dedicated unit for **borrowers** in **financial difficulties**, which must be adequately staffed, to assess alternative arrangements and liaise with staff dealing directly with **borrowers** in **financial difficulties**.
19. A **regulated entity** must have in place management information systems to capture information on its handling of borrowers in **financial difficulties**, including all alternative repayment arrangements put in place to assist **borrowers**.
20. A **regulated entity** must provide appropriate training for frontline staff dealing with **borrowers** in **financial difficulties**. All other frontline staff must be made aware of the **regulated entity's** policy for dealing with **borrowers** in **financial difficulties** and the relevant contact persons and process.
21. A **regulated entity** must inform a **borrower** that it may wish to seek independent advice when addressing the **financial difficulties**. Where a third party is appointed by a **borrower** and with the **borrower's** written consent, the **regulated entity** should liaise with a third party nominated by the **borrower** to act on the **borrower's** behalf in relation to the **borrower's financial difficulties**, e.g., accountant, adviser etc. This does not prevent the **regulated entity** contacting the borrower directly.
22. A **regulated entity** must ensure that all meetings with **borrowers** in relation to **financial difficulties** are conducted with utmost privacy.
23. Where a **regulated entity** requests a meeting with a **borrower** in **financial difficulties** which requires information from a third party to be provided by the **borrower**, the **regulated entity** must give the **borrower** reasonable notification of the meeting to allow for such information to be produced.
24. A **regulated entity** shall only impose surcharge/penalty interest, unpaid direct debit fees and/or referral fees on **arrears** arising on a credit facility, for any period in respect of which a **borrower** in **financial difficulties** is considered as **not co-operating** with the **regulated entity**.

Communication

25. A **regulated entity** must pro-actively encourage its **borrowers** to engage with them about financial concerns which may prevent them from meeting credit facility repayments.

26. A **regulated entity** must ensure that all information relating to a **regulated entity's** handling of cases in **financial difficulties** is clear and comprehensible, and that key items are brought to the attention of the **borrower**. The language used in communications must indicate a willingness to work with the **borrower** to address the situation. Legal or financial jargon must be avoided, where possible.
27. A **regulated entity** must ensure that all communications about **financial difficulties** are provided to the **borrower** in a timely manner. In doing so, the **regulated entity** must have regard to the urgency of the situation and the time necessary for the **borrower** to absorb and react to the information provided.
28. As soon as a **borrower** goes into **arrears**, a **regulated entity** must communicate promptly and clearly with the **borrower** to establish in the first instance why a repayment schedule, as per the terms of the credit facility, has not been adhered to.
29. In the case of an overdraft credit facility, as soon as the approved credit limit is exceeded, a **regulated entity** must communicate promptly and clearly with the **borrower** to establish in the first instance why the limit has been exceeded.
30. A **regulated entity** must ensure that responsibility for direct engagement with a **borrower** in **financial difficulties** must only be assigned to a different section, area or staff member within a **regulated entity**, after staff members taking over this responsibility are familiar with and have been briefed in writing, on the circumstances of the **borrower**.
31. A **regulated entity** must ensure that the level of contact and communications to a **borrower** in **financial difficulties** from the **regulated entity**, or any third party acting on its behalf, is proportionate and not excessive.
32. Each calendar month, a **regulated entity** and/or any third party acting on its behalf, may not initiate more than five unsolicited communications, by whatever means, to a **borrower** in respect of **financial difficulties**. The five unsolicited communications include any communication that has not been requested by, or agreed in advance with, the **borrower** and any communication where contact is not made with the **borrower**.

The following communications are not included in the unsolicited communications limit:

- a) Any communications to the **borrower** which are required by this Code or other regulatory requirements; or

- b) Any communications to the **borrower** which are necessary for the operation of the **borrower's** credit facility.
33. A **regulated entity** must only contact a **borrower** regarding **financial difficulties** between 9.00am and 7.00pm Monday to Friday (excluding bank holidays and public holidays) except where:
- a) the purpose of the contact is to protect the **borrower** from fraud or other illegal activity, or
 - b) the **borrower** requests, in writing, contact at other times or in other circumstances.
34. Where a **borrower** in **financial difficulties** requests a **regulated entity** to contact them to discuss the **financial difficulties**, the **regulated entity** must respond to such a request within 3 **business days**.

Information for Borrowers in Financial Difficulties

35. A **regulated entity** must prepare and make available to **borrowers**, an information booklet providing details of its procedures and process for dealing with cases in **financial difficulties**, which must be drafted in accordance with the requirements set out in provision 26 above and must include:
- a) an explanation of the **regulated entity's** procedures for dealing with cases in **financial difficulties**, including the alternative repayment measures available to **borrowers**
 - b) an outline in general terms, of the **regulated entity's** criteria for assessing requests for alternative repayment measures including details of the type of information the **regulated entity** may request from the **borrower** as part of the assessment ;
 - c) relevant contact points (i.e., the dedicated contact points for a **borrower** in **financial difficulties** and not the general customer service contact points);
 - d) an overview of how viability of a **borrower** is determined by the **regulated entity**;
 - e) an explanation of the impact of **arrears** on a **borrower's** credit ratings; and
 - f) an outline of steps that the **borrower** could consider that may assist in the process for dealing with the **financial difficulties**.
36. A **regulated entity** must have a dedicated section on its website for **borrowers** in, or concerned about, **financial difficulties** which must include:
- a) the information booklet required under provision 35;and

- b) information on the level of charges that may be imposed on **borrowers** as a result of the **financial difficulties**, if the **borrower** does not co-operate with the **regulated entity**.
37. A **regulated entity** must inform the **borrower**, in writing, when it has appointed a third party to engage with the **borrower** in relation to their **financial difficulties** and must explain the role of the third party.
38. A **regulated entity** must ensure that, where responsibility for direct engagement with a **borrower** in **financial difficulties** is assigned to a different section, area or staff member within a **regulated entity**, the **borrower** must be notified immediately of this change and provided with the relevant contact information for the new direct contact.
39. When **arrears** arise on a **borrower's** credit facility and remain outstanding 31 days from the date the **arrears** arose, a **regulated entity** must:
- a) inform each **borrower** of the status of the facility in writing, within 10 **business days**. The letter must include the following information:
 - i) the date the credit facility fell into **arrears**;
 - ii) the number and total amount of full or partial payments missed;
 - iii) the monetary amount of the **arrears** to date;
 - iv) confirmation that the **regulated entity** is treating the **borrower's** situation as a **financial difficulties** case;
 - v) the importance of the **borrower** co-operating with the **regulated entity** to address the **financial difficulties** and the implication for the **borrower** if co-operation ceases;
 - vi) details of any fees or charges that may apply to the **arrears** and information on methods by which such fees or charges may be mitigated;
 - vii) where applicable, a statement that surcharge/penalty interest, fees and charges, in relation to the **arrears** will apply, where the **borrower** does not co-operate with the **regulated entity** and the rate of the surcharge/penalty interest and fees and charges;
 - viii) if relevant, any impact of the non-payment on other facilities held by the **borrower** with that **regulated entity**;
 - ix) a general statement about the impact of **arrears** on the **borrower's** credit rating; and
 - x) offer the **borrower** the option of an immediate review meeting to discuss their circumstances and provide information on the relevant contact for the **borrower** to arrange such a meeting.

- b) provide the **borrower** with the information booklet required under provision 35.
40. In the case of an overdraft credit facility, where the credit facility is classified as in **financial difficulties** (i.e. the approved limit on the facility is exceeded by the **borrower** and remains exceeded for 31 consecutive days) the **regulated entity** must:
- a) inform the **borrower** of the status of the facility in writing, within 10 **business days**. The letter must include the following information:
 - i) the date the credit facility exceeded the approved credit limit;
 - ii) the monetary amount that the approved credit limit has been exceeded by;
 - iii) confirmation that the **regulated entity** is treating the **borrower's** situation as a **financial difficulties** case;
 - iv) the importance of the **borrower** co-operating with the **regulated entity** to address the **financial difficulties** and the implication for the **borrower** if co-operation ceases;
 - v) where applicable, a statement that surcharge/penalty interest, fees and charges, in relation to the **arrears** will apply, where the **borrower** does not co-operate with the **regulated entity** and the rate of the surcharge/penalty interest and fees and charges;
 - vi) if relevant, any impact of the exceeded credit limit on other facilities held by the **borrower** with that **regulated entity**;
 - vii) a general statement about the impact on the **borrower's** credit rating; and
 - viii) offer the **borrower** the option of an immediate review meeting to discuss their circumstances and provide information on the relevant contact for the **borrower** to arrange such a meeting.
 - b) provide the **borrower** with the information booklet required under provision 35.
41. When a **borrower** notifies a **regulated entity** that there is a danger that the **borrower** will not be able to meet repayments and /or the **borrower** is concerned about going into **arrears**, the **regulated entity** must provide the **borrower** with the information booklet required under provision 35.

Assessment for a Revised Repayment Arrangement

42. Where a **borrower** contacts a **regulated entity**, or contact is established with the **borrower** by the **regulated entity**, by whatever means, to discuss an alternative arrangement to

address **financial difficulties** a **regulated entity** must provide the **borrower** with a complete list of the information the **borrower** will be required to provide for the **regulated entity's** assessment of their case.

This list of information required must be provided to the **borrower**, in writing, within 10 **business days** of the contact.

43. The information required by a **regulated entity** for the assessment must be based on the circumstances of the case and must be relevant to assessing the financial situation of the **borrower**. A **regulated entity** must allow the **borrower** reasonable amount of time for the information to be gathered and submitted to the **regulated entity**.
44. A **regulated entity** should require a **borrower** in financial difficulty to certify that, to the best of the **borrower's** knowledge, any information provided by the **borrower** to assess its financial situation is accurate and represents the financial situation of the **borrower**.
45. In the case of a **borrower** in financial difficulty, a **regulated entity** must assess the viability of the **borrower** concerned.
46. A **regulated entity** must perform its assessment of the **borrower** in financial difficulties on a case by case basis and on the full circumstances of the **borrower** including:
 - a) the viability of the **borrower** concerned;
 - b) the overall indebtedness and liabilities of the **borrower**;
 - c) the information provided by the **borrower** for the assessment;
 - d) cashflow of the **borrower**;
 - e) the **borrower's** current repayment capacity;
 - f) the **borrower's** previous payment history;
 - g) the expected repayment capacity;
 - h) the liabilities and/or exposures of the **borrower** to related entities that could impact on the financial situation of the **borrower**; and
 - i) the overall exposure of the lender to the **borrower**.
47. A **regulated entity** must assess a **borrower's** case and inform the **borrower** of the outcome of the assessment in writing. This response must be provided to the **borrower** within 15 **business days** of the information notified to the **borrower** under 42 above being received by the **regulated entity**.

Resolution

48. A **regulated entity** must explore the options for alternative repayment arrangements that the **regulated entity** has available for **borrowers** in financial difficulty. The alternative repayment arrangements which a **regulated entity** must explore to determine a viable option must include:
- (i) general alternative repayment arrangement options including:
 - a) interest only,
 - b) term extension,
 - c) reduced payment arrangements, and
 - d) capitalisation of **arrears**
 - (ii) atypical alternative repayment arrangement options based on the individual circumstances of the **borrower**.
49. A **regulated entity** must document its considerations of each option examined for a **borrower** in **financial difficulties** and the reasons why the option offered to the **borrower** is appropriate for the **borrower's** individual circumstances.
50. Where an alternative repayment arrangement is offered by a **regulated entity**, the **regulated entity** must provide the **borrower** in **financial difficulties** with a clear explanation, in writing, of the alternative repayment arrangement, including:
- a) the new repayment amount;
 - b) the term of the arrangement;
 - c) the implications arising from the arrangement for the credit facility including the impact on:
 - (i) the credit facility term,
 - (ii) the balance outstanding on the credit facility, and
 - (iii) the existing **arrears** on the account, if any;
 - e) details of how interest, will be applied to the credit facility as a result of the arrangement;
 - f) details of any terms and conditions attached to the alternative repayment arrangement;
 - g) information on how the alternative repayment arrangement and any outstanding **arrears** will be reported by the **regulated entity** to the Irish Credit Bureau and the impact of this on the **borrower's** credit rating;
 - h) information regarding the **borrower's** right to appeal the **regulated entity's** decision, including the procedure and timeframe for submitting an appeal; and
 - i) the **borrower** must be advised to take appropriate independent legal and/or financial advice.

51. The **regulated entity** must monitor the arrangement that is put in place for a case in **financial difficulties**, on an ongoing basis and formally review the appropriateness of that arrangement for the **borrower**, at least every six months. As part of the review, the **regulated entity** must check with the **borrower** whether there has been any material change in circumstances in the period since the arrangement was put in place, or since the last review was conducted.
52. If a **regulated entity** is not willing to offer a **borrower** in financial difficulty an alternative repayment arrangement, the **regulated entity** must inform the **borrower**, in writing, of the **borrower's** right to make an appeal to the **regulated entity** including the procedure for making an appeal and the relevant time allowed to the **borrower** to submit an appeal.
53. If a **borrower** in financial difficulty is not willing to enter into an alternative repayment arrangement offered by the **regulated entity**, the **regulated entity** must inform the **borrower** in writing, of the **borrower's** right to make an appeal to the **regulated entity**, including the procedure for making an appeal and the relevant time allowed to the **borrower** to submit an appeal.
54. Where a **borrower** is not offered an alternative repayment arrangement or is not willing to enter into an alternative repayment arrangement offered by the **regulated entity** and has not made an appeal within the time allowed, a **regulated entity** must provide the **borrower** with an explanation of the course of action the **regulated entity** intends to apply to the **borrower's** case and the timeframes involved.

Appeals

55. A **regulated entity** must have in place a written procedure for the proper handling for appeals by **borrowers** in **financial difficulties** on the decision of a **regulated entity** on an alternative repayment arrangement. At a minimum, this procedure must provide that:
 - a) The **regulated entity** must consider and adjudicate on an appeal within 40 **business days** of having received the appeal.
 - b) The **regulated entity** must notify the **borrower** in writing, within 5 **business days** of the completion of the consideration of the appeal by the **regulated entity** and explain the terms of any offer being made.

- c) Where applicable, the **regulated entity** must inform the **borrower** of its right to refer the matter to the Credit Review Office or the Financial Services Ombudsman. The **regulated entity** must provide the **borrower** with the contact details of relevant office.
56. A **regulated entity** must allow the **borrower** a reasonable period of time to submit an appeal on an alternative repayment arrangement decision, which must be at least 10 **business days** from the date **the borrower** received notification of the decision of the **regulated entity**.

Realisation of Security

57. After the realisation of a security on a credit facility a **regulated entity** must immediately inform the **borrower** of the **borrower's** liability for:
- the balance of any residual debt;
 - the interest rate on the residual debt;
 - any costs for the realisation of the security which have been added to debt.

Provision of Information

58. A **regulated entity** must ensure that all information provided under this Code is clear and comprehensible, and that key items are brought to the attention of the **borrower**. The method of presentation must not disguise, diminish or obscure important information.
59. A **regulated entity** must provide information to the **borrower** outlining terms, conditions, fees and charges of credit facilities and provide a fair and balanced description of the credit facilities being offered, including a general description of the **regulated entity's** policies on collateral.
60. A **regulated entity** must inform the **borrower** in advance of making changes to the terms, conditions, fees and charges relating to that **borrower's** credit facilities.
61. A **regulated entity** must advise a **borrower**, where applicable, that the debt may be passed to another organisation or debt-collection agency; or that the **regulated entity** may sell the debt.
62. A **regulated entity** must explain to **borrowers** the basis on which interest is calculated, including the rates applicable to unauthorised overdraft balances.

63. Where a **regulated entity** changes the interest margin on a credit facility, it must notify affected **borrowers** promptly of such a change.
64. Where an interest rate change is of general application, a **regulated entity** may make notification by way of advertising/notices in any appropriate medium.
65. A **regulated entity** must issue statements (or schedules or confirmations, as most appropriate to the product) at regular intervals to the **borrower**. The interest rate applicable to the credit facility must be clearly displayed on each statement (or schedule or confirmation).
66. All information required to be provided under this Code must be provided on paper or in such form that a record is created which is accessible by the Financial Regulator. Verbal communications which are adequately documented by the **regulated entity** will be accepted.

Handling Complaints

67. A **regulated entity** must have in place a written procedure for the proper handling of **complaints** with the objective of resolving the **complaint** as soon as possible. This procedure need not apply where the **complaint** has been resolved to the complainant's satisfaction within 5 **business days**, provided however that a record of this fact is maintained. At a minimum, this procedure must provide that:
 - (a) the **regulated entity** will acknowledge each **complaint** within 5 **business days** of the **complaint** being received;
 - (b) the **regulated entity** will provide the complainant with the name of one or more individuals appointed by the **regulated entity** to be the complainant's point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be processed further;
 - (c) the **regulated entity** will provide the complainant with a regular update on the progress of the investigation of the **complaint**;
 - (d) the **regulated entity** will attempt to investigate and resolve a **complaint** within 40 **business days** of having received the **complaint**; where the 40 **business days** have elapsed and the **complaint** has not been resolved, the **regulated entity** will inform the complainant of the anticipated timeframe within which the **regulated entity** hopes to resolve the **complaint**;
 - (e) the **regulated entity** will advise the complainant, within 5 **business days** of the completion of the investigation of a

complaint, of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made;

- (f) in dealing with **complaints** the **regulated entity** will not be required to retain documents relating to declined applications for more than 12 months.

Retention and Production of Documents

- 68. A **regulated entity** must prepare and maintain adequate records required under this Code, and must produce all such records to the Financial Regulator upon request.



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