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Moneylending – New Central Bank Regulations

Background

The Central Bank of Ireland (**CBI**) has introduced The Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020 (the **Regulations**). The Regulations which are applicable to moneylenders strengthen protections for consumers.

Moneylending is the practice by which consumers are provided with credit under a “moneylending agreement” which is defined under the Consumer Credit Act 1995 (as amended) (the **CCA**) as ‘a credit agreement into which a moneylender enters or offers to enter with a consumer in which one or more of the following apply:

- the agreement was concluded away from the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement;
- any negotiations for, or in relation to, the credit were conducted at a place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement;
- repayments under the agreement will, or may, be paid by the consumer to the moneylender or his representative at any place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement; or
- where the total cost of credit to the consumer under the agreement is in excess of an annual percentage rate (**APR**) of 23 per cent., or such other rate as may be prescribed.’

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Credit in this instance includes a cash loan, deferred payment or similar financial structures.

Under Part VIII of the CCA, a person who is a 'moneylender' (as defined in the CCA) is required to obtain authorisation from the CBI to engage in the business of moneylending. Licences are issued to certified moneylenders by the CBI pursuant to Section 93 of the CCA. A moneylender's licence contains the terms and conditions specific to the relevant moneylender, including its maximum APR and its cost of credit. A licence is valid for a twelve month period and must be renewed annually.

Purpose of the Regulations and Key Provisions

The Regulations enhance the professional standards of moneylenders and protect consumers, allowing consumers to decide when they can be contacted by a moneylender. Regulation 6 largely mirrors the general principles outlined in Chapter 1 (General Principles) of the Consumer Protection Code for Licensed Moneylenders. Offers and loan promotions will be limited and moneylenders are no longer permitted to make unsolicited offers for credit to those who are nearing the end, or who have just completed their repayments. It will also be necessary for moneylenders to have a "fair and reasonable" marketing structure.

Where a consumer is seeking a loan in respect of basic needs such as electricity or accommodation, the moneylender must inform the consumer that the loan may not be in the consumer's best interests and inform the consumer of the Money Advice and Budgeting Service (MABS).

Some of the key provisions of the Regulations are as follows:

- General principles (Regulation 6) – This includes, inter alia, the requirement for moneylenders to act honestly, fairly and professionally in the best interests of its consumers and the integrity of the market and to act with due skill, care and diligence in the best interests of its consumers.
- Advertising (Regulation 8) - Moneylenders must ensure that all of their advertisements are fair and do not mislead consumers. A loan with an APR of 23% or higher must be accompanied with the warning set out below that it is high-cost credit and must prompt customers to consider alternatives. To ensure "fair and reasonable" marketing, moneylenders must take into account the particular circumstances of the consumer.

"Warning: This is high-cost credit. Consider alternative options before applying for this credit, including alternatives from other lenders regulated by the Central Bank of Ireland."

- Pre-Contract Information (Regulation 9) – Prior to entering into a moneylending agreement with a consumer where the APR is 23% or higher, the moneylender must indicate the high-cost nature of the credit on all documentation associated with that moneylending agreement.
- Provision of information to consumers (Regulation 10) - This sets out what information must be provided to consumers by moneylenders, including the following statement:

"If you require this credit to pay for accommodation, food, electricity, heating, medication or other similar costs, please read the below information carefully".

The information notices set out at Schedule 1 to the Regulations must also be provided to consumers.

- Warning statements for guarantors (Regulation 11) - If credit is being offered to a consumer by a moneylender subject to a guarantee, the moneylender must ensure that the guarantee documentation:
 - (a) clearly outlines the obligations of the guarantor, and
 - (b) contains the following warning statement:

“Warning: As a guarantor of this credit, you will have to pay off the credit, the interest and all associated charges up to the level of your guarantee if the borrower does not. Before you sign this guarantee, you should get independent legal advice.”
- Further information requirements under Part 3 of the Regulations are set out in Regulations 13 – 18:
 - (a) Disclosure Requirements (Regulation 13) – this deals with the use of regulatory disclosure statements by moneylenders;
 - (b) Information notice on website and application form (Regulation 14) - where a moneylender enters, or offers to enter, into a moneylending agreement with an APR in excess of 23 per cent the moneylender must display the information set out in Schedule 2 to the Regulations on its website (if it has one) or on an application form;
 - (c) Information notice at premises (Regulation 15) - where a moneylender enters, or offers to enter, into a moneylending agreement with an APR in excess of 23 per cent, the moneylender must display the information set out in Schedule 2 to the Regulations in every premises from which that moneylender engages with consumers in respect of moneylending activities. Regulation 15 also outlines how this information should be displayed;
 - (d) Post-contract information (Regulation 16) - except in the case of a moneylending agreement under which repayments are collected from the consumer at an agreed location in accordance with the CCA and Regulation 34, a moneylender must issue statements:
 - (i) at least monthly to consumers who pay weekly, and
 - (ii) at least quarterly to consumers who pay monthly.
 - (e) Provision of information to guarantors (Regulation 17) - If a moneylender has advanced credit to a consumer subject to a guarantee, the moneylender must notify the guarantor, on paper or on another durable medium, if:
 - (i) the terms of the moneylending agreement change, or
 - (ii) the amount guaranteed by the guarantor is to be increased.

- (f) Subsequent moneylending agreements (Regulation 18) – A moneylender, who has entered into a moneylending agreement with a consumer which has not been repaid in full, must before entry into a second or subsequent moneylending agreement with a consumer provide the consumer with the following information, in a durable medium, aggregated to include the second or subsequent moneylending agreement in question:
- (i) the total number of moneylending agreements in force between the moneylender and the consumer;
 - (ii) the total balance of credit outstanding between the consumer and the moneylender;
 - (iii) the date for final repayment by the consumer on the moneylending agreement with the longest remaining term;
 - (iv) the aggregated repayment amount due from the consumer on the first repayment date subsequent to the new moneylending agreement.
- Unsolicited Credit Facilities (Regulation 19) – Moneylenders shall not approve the provision of credit to a consumer in advance of an application by that consumer for the credit. They are also prohibited from targeting customers who have just completed their repayments within the previous month or where the final repayment date of the relevant moneylending agreement is within the next month.
 - Unsolicited Contact (Regulation 20) - When contacting a consumer, other than an existing consumer, a moneylender may make an unsolicited contact, only if: (a) the consumer has signed a statement, within the previous 12 months, giving the moneylender permission to make unsolicited contact, or (b) the consumer is the subject of a referral received by the moneylender from one of the following:
 - (i) a person authorised by the CBI to provide financial services in the State;
 - (ii) a person within the same group as the moneylender;
 - (iii) a solicitor;
 - (iv) a certified person.

When contacting an existing consumer for the purposes of sales and marketing, a moneylender may make an unsolicited contact, only if: (a) the consumer has given specific confirmation, by a statement or by a clear affirmative action, that the consumer agrees to be the recipient of such contact, and (b) the consumer's consent remains valid.

- Communications (Regulation 21) - A moneylender must ensure that the level of contact and communications from it to a consumer are "proportionate and not excessive".
- Vulnerable Customers (Regulation 24) – This provides that moneylenders must take reasonable steps to identify customers that are vulnerable. In such circumstances, the moneylender is required to ensure that the vulnerable customer is provided with such

reasonable arrangements and assistance that may be necessary to facilitate that customer in dealing with the moneylender.

- Preservation of a consumer's rights (Regulation 25) - This prohibits a moneylender from seeking to restrict or exclude itself from any legal liability or duty of care that it may owe to a consumer under applicable law.
- Lending Policies and Procedures (Regulation 26) - A moneylender is required to establish and maintain written lending policies and procedures, which must comply with the Regulations. In addition, Regulation 33 provides that a moneylender must establish, maintain and adhere to written procedures for the handling of arrears cases.
- The European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010) will now apply in respect of a moneylending agreement within the scope of the Regulations for loan amounts of less than €200 save for those exceptions outlined in Regulation 5.

Commencement of the Regulations

The Regulations will come into operation on 1 January 2021 with the exception of Regulations 8(4) and 12 (insofar as Regulation 12 applies to Regulation 8(4)) dealing with the 'high-cost warning' requirement in respect of loans with an APR of 23% or higher which are effective from 1 September 2020. The earlier implementation of these Regulations recognises the necessity to highlight the high cost of the credit provided to moneylending consumers and should afford vulnerable consumers a greater level of awareness of the product they are utilising.

Conclusion

The Regulations align the requirements applicable to moneylenders with existing rules in the CBI's Consumer Protection Code 2012, providing additional safeguards to consumers engaging with moneylenders. The Regulations will enhance the professional standards applicable to moneylenders and provide consumers with more information, allowing them to consider their options before entering into a moneylending agreement. The earlier introduction of Regulations 8(4) and 12 (insofar as Regulation 12 applies to Regulation 8(4)) in September of this year should be welcomed in light of the difficult financial position which many consumers may be currently experiencing.

It should be noted that as things stand an interest rate cap is not provided for by either the CCA or the Consumer Credit Regulations. The Department of Finance issued a public consultation in May 2019 on capping the cost of licensed moneylenders and therefore some changes in this area may be forthcoming.

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