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The Consumer Protection (Regulation of Credit Servicing Firms) Act 2018

Introduction and Background

The Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 (the "**2018 Act**") is effective from 21st January, 2019. Its enactment comes following a period of intense domestic political pressure to provide for the direct regulation of the purchasers of loan portfolios.

The 2018 Act extends the scope of regulatory oversight provided for in the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 (the "**2015 Act**"). The 2015 Act was introduced to ensure that borrowers whose loans were sold to unregulated entities would continue to have the benefit of the regulatory safeguards that they enjoyed prior to the sale, including those provided by the Central Bank of Ireland (the "**Central Bank**") Code of Conduct on Mortgage Arrears, Code of Conduct for Business Lending to Small and Medium Enterprises and the Consumer Protection Code (together the "**Codes**"). Our briefing on the 2015 Act can be found here.

The 2015 Act required that the servicing, management and administration of loans to "relevant borrowers" as defined in the 2015 Act, namely:

(a) natural persons within Ireland (with limited exceptions); and/or
(b) micro, small or medium enterprises, where the loans to

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those borrowers were originated by regulated entities,

be undertaken by a regulated credit servicing firm. However, pursuant to the 2015 Act, the legal owner of the credit (i.e. the loan purchaser itself) was not required to be regulated, provided that they appointed an authorised credit servicing firm.

Changes under the 2018 Act

The 2018 Act now requires that the actual owners of in scope credit agreements or any person who has material decision making powers in relation to those credit agreements be regulated.

This change is introduced by the amendment of the definition of "credit servicing" in the 2018 Act. Credit servicing now includes:

(a) holding legal title to credit; and
(b) managing or administering such credit, including by:

(i) determining the overall strategy for the management and administration of a portfolio of credit agreements; or
(ii) maintaining control over key decisions relating to such portfolios.

In order to carve-out traditional securitisations from its scope, the 2018 Act excludes securitisation special purpose entities from the requirement to be regulated. "Securitisation" as defined in the 2018 Act has the meaning given to it by Article 2 of the Securitisation Regulation.[1]

Transitional Provisions

The 2018 Act provides for a limited transitional period for those entities that will come within its scope. Where an entity is deemed to be "credit servicing" as a result of the expanded scope of the 2018 Act, that entity will be "taken to be authorised" provided that it:

(a) applies to the Central Bank for authorisation within three months of the commencement of the 2018 Act; and

(b) has a credit servicing firm undertake all credit servicing on its behalf.

The 2018 Act does not contain any carve-out for pre-existing transactions.

[1] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017

Conclusion

The 2018 Act is now directly applicable to all owners of in-scope credit agreements. Existing and prospective loan portfolio owners will need to consider and, if necessary, revise their servicing and structuring arrangements to ensure compliance with the 2018 Act.

Should you require any advice on the potential impact of the 2018 Act on your business or in relation to restructuring solutions, please do not hesitate to contact any member of the Dillon Eustace Banking and Capital Markets Team.

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