January 2015

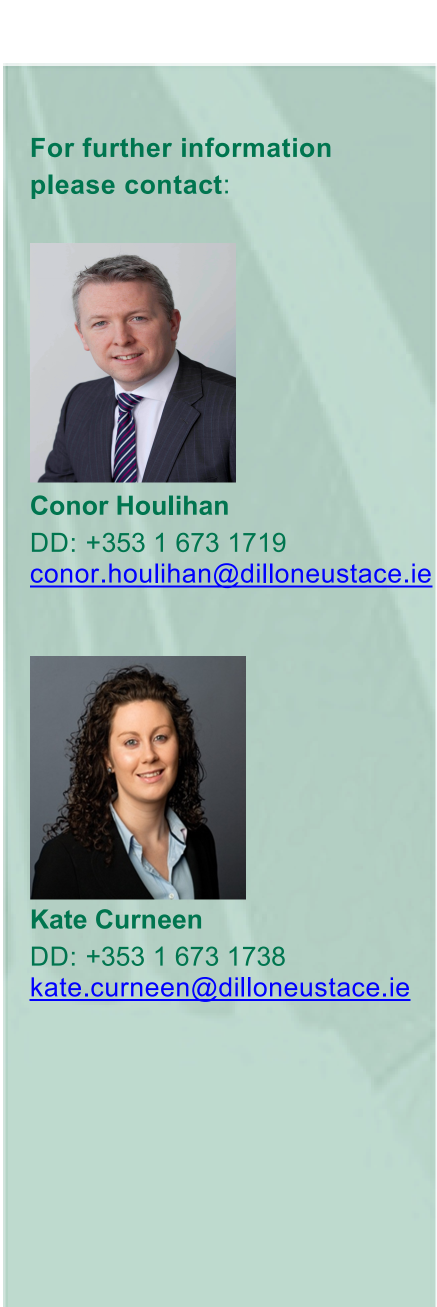
The Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015

Introduction

On 14th January, 2015, the Irish government published the much anticipated bill in relation to the continuation of regulatory protection for borrowers following the sale of their loans from regulated to unregulated entities. The Bill is entitled the Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015 (the "**Bill**"). The Bill aims to ensure that borrowers have the benefit of the regulatory safeguards that they enjoyed prior to the sale of their loans, including pursuant to the Central Bank of Ireland ("**CBI**") 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**") as well as the right to make complaints to the Financial Services Ombudsman (the "**FSO**"). It is proposed that the legislative changes envisaged by the Bill will be brought about by way of amendment to the Central Bank Acts 1942 – 2014.

Background

The Bill was published following the public consultation conducted by the Department of Finance in July and August 2014 (the "**Consultation Process**") on the initial draft of the proposed legislation, known as the "*Consumer Protection on the Sale of Loan Books Bill 2014*" (the "**Initial Proposals**"). The impetus to legislate in this area arose from the fact that the protections afforded to borrowers by the Codes, as well as borrowers' access to the FSO, no longer apply when their loans are transferred to unregulated entities.



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The Initial Proposals had sought to regulate the ownership of retail credit[1] as a means of ensuring continued regulatory protections for natural persons following the sale of their loans to unregulated purchasers.

The Bill

On foot of the concerns raised as part of the Consultation Process, the Bill has moved away from the approach outlined in the Initial Proposals and now proposes to regulate the activity of "credit servicing" and the "credit servicing firms" engaged in such activity, being the "customer-facing" activity. Pursuant to the terms of the Bill, a holder of legal title to a credit, who is not already a regulated financial services provider authorised by the CBI (or in another EEA country) to provide credit in Ireland, will only be subject to regulation if the credit servicing is not undertaken by: (i) a regulated financial services provider authorised by the CBI (or in another EEA country) to provide credit in Ireland or; (ii) an authorised credit servicing firm.

In addition, relevant borrowers will also have the benefit of access to the FSO.

"Credit Servicing"

Credit servicing is defined broadly in the Bill and includes the following activities:-

a) notifying the relevant borrower of changes in interest rates or in payments due under the credit agreement or other matters of which the credit agreement requires the relevant borrower to be notified,

b) taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower,

c) managing or administering any of the following:

    i. repayments under the credit agreement;
    ii. any charges imposed on the relevant borrower under the credit agreement;
    iii. any errors made in relation to the credit agreement;
    iv. any complaints made by the relevant borrower;
    v. information or records relating to the relevant borrower in respect of the credit agreement;
    vi. the process by which a relevant borrower's financial difficulties are addressed;
    vii. any alternative arrangements for repayment or other restructuring;
    viii. assessment of the relevant borrower's financial circumstances and ability to repay under the credit agreement, or

d) communicating with the relevant borrower in respect of any of the matters referred to in paragraphs (a) to (c).

The Bill expressly stipulates that "credit servicing" does not include:

[1] As defined in the Central Bank Act 1997 (as amended).

a) the determination of the overall strategy for the management and administration of a portfolio of credit agreements,

b) the maintenance of control over key decisions relating to such portfolio, or

c) taking such steps as may be necessary for the purposes of –

   i. enabling the undertaking of credit servicing by another person, or
   ii. enforcing a credit agreement,

regardless of whether any action referred to in paragraphs (a) to (c) is taken by a person who holds the legal title to credit in respect of a portfolio of credit agreements (the "**holder**") or a person acting on behalf of the holder. However, the foregoing is subject to the proviso that the specified actions must not be taken in a manner that if they were so taken by a regulated financial service provider it would be a breach of any provision of financial services legislation (within the meaning of the Central Bank Act 1942).

Retail Credit Firms

The current retail credit firm regime provides an exemption from the need to be regulated as a retail credit firm for entities that are regulated financial service providers. However, the Bill now narrows that exemption such that it only applies to regulated financial service providers authorised by the CBI or an authority that performs functions in an EEA country that are comparable to the functions performed by the CBI to provide credit in the State, otherwise than under the retail credit regime. The net effect of this is that a regulated financial service provider that is authorised for some purpose other than to provide credit in the State will now need to be authorised as a retail credit firm if it is advancing credit to natural persons resident in the State.

Transitional Arrangements

The Bill provides for transitional arrangements in respect of the proposed legislation, giving both existing retail credit firms and credit servicing firms a three month grace period during which to apply for an authorisation.

Difficulties

While the Bill does seek to address the issue of providing regulatory protection for consumers, it does require some further consideration and amendment. For example, certain types of corporate lending, and the ownership of such corporate loans that, up to now, would not have constituted regulated activities and which are expressly excluded from the scope of the Codes (such as syndicated lending and lending to SPVs) would become regulated pursuant to the terms of the Bill. This is concerning, especially given the need for SME credit presently.

As such, Dillon Eustace expects further engagement on the Bill before its enactment.

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