



CONSUMER PROTECTION (REGULATION OF CREDIT SERVICING FIRMS) BILL 2015

What do I need to know?

16 January 2015

On 12 January 2015, the Government published the Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015 (the 'Bill'). The Bill is designed to protect consumers upon the sale of consumer loan portfolios to unregulated entities. It proposes the creation of a new type of regulated entity called a 'credit servicing firm'.

1. What is the purpose of the Bill?

The Bill is designed to protect consumers upon the sale of consumer loan portfolios to unregulated entities. In particular, the Bill seeks to protect consumers whose loans are sold to an unregulated entity in a situation where that entity either undertakes the servicing of the acquired loans itself or appoints a loan servicer to service the acquired loans on its behalf. The Bill also proposes the creation of a new type of regulated entity which will be known as a 'credit servicing firm'.

2. Is the Bill different from what had previously been proposed?

Yes. The Department of Finance had previously proposed a different approach with the same purpose of protecting consumers upon the sale of loan portfolios to unregulated entities. That earlier approach involved making the ownership (as opposed to the granting) of Irish retail credit a newly regulated activity which would require Central Bank authorisation. In contrast, the Bill focuses on regulating the servicing of consumer loan portfolios which are sold to unregulated entities. We understand that the Bill replaces the previous proposal.

3. What credit agreements fall within the scope of the Bill?

The Bill is designed to protect consumers and accordingly it does not cover all types of credit agreement. Protection will be given to consumers who are borrowers under a 'credit agreement' where a 'credit servicing firm' undertakes 'credit servicing' activities. The credit agreements which will fall within the scope of the Bill are credit agreements with:

- A natural person within the State (unless that natural person is a regulated financial service provider or it is, or it elects to be treated as, a professional client for the purpose of the MiFID Regulations¹); or
- A micro, small or medium-sized enterprise².

¹ The European Communities (Markets in Financial Instruments Directive) Regulations 2007.

² Within the meaning of Article 2 of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003.



4. How is 'credit servicing' defined in the Bill?

The Bill defines 'credit servicing' in relation to a credit agreement as managing or administering the credit agreement, which would include the following activities:

- Notifying the borrower of changes in interest rates or in payments due under the credit agreement or other matters of which the credit agreement requires the borrower to be notified;
- Taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the borrower;
- Managing or administering any of the following:
 - repayments under the credit agreement;
 - charges imposed on the borrower under the credit agreement;
 - errors made in relation to the credit agreement;
 - complaints made by the borrower;
 - information or records relating to the borrower in respect of the credit agreement;
 - the process by which a borrower's financial difficulties are addressed;
 - any alternative arrangements for repayment or other restructuring; or
 - assessment of the borrower's financial circumstances and ability to repay under the credit agreement;
- Communicating with the borrower in respect of any of the above matters.

The Bill also lists certain activities that are excluded from the definition of 'credit servicing' in circumstances where those activities are undertaken by a holder of legal title to the credit or a person/firm acting on the holder's behalf (provided those activities are not undertaken in a manner which would breach financial services legislation if they were undertaken by a regulated financial service provider). The excluded activities are:

- Determination of the overall strategy for the management and administration of a portfolio of credit agreements;
- The maintenance of control over key decisions relating to such portfolio; or
- Taking such steps as may be necessary for the purposes of enabling the undertaking of credit servicing by another person/firm or enforcing a credit agreement.

These exclusions effectively limit the definition of 'credit servicing' to day-to-day loan servicing activities. They are designed to avoid a situation where the activities of an unregulated entity which acquires a consumer loan portfolio, and which appoints a credit servicing firm to undertake the day-to-day servicing of that loan portfolio, would also fall within the definition of 'credit servicing' by virtue of its role in appointing and setting the strategy of the credit servicing firm, overseeing its activities and being party to any enforcement action.

5. What is the definition of a 'credit servicing firm'?

The Bill defines a 'credit servicing firm' as a person/firm (other than NAMA or a NAMA group entity or a regulated financial service provider authorised to provide credit in the State) which:

- Undertakes credit servicing other than on behalf of a regulated financial service provider; or
- Holds the legal title to credit in respect of which credit servicing is not being undertaken by:
 - a regulated financial service provider authorised to provide credit in the State, or
 - any authorised credit servicing firm.

Accordingly, in circumstances where an unregulated entity acquires a consumer loan portfolio and it does not appoint an appropriate regulated entity to undertake credit servicing activities on its behalf in respect of the



consumer loans, the Bill envisages that the unregulated entity will itself require authorisation as a credit servicing firm.

6. What are the new authorisation requirements for credit servicing firms?

If the Bill is enacted, credit servicing firms will become a new type of regulated entity. They will be required to apply for authorisation from the Central Bank under Section 30 of the Central Bank Act 1997 (as amended) and they will be regulated and supervised by the Central Bank. We would expect that, should the Bill become law, the Central Bank would publish an application form for the purposes of obtaining authorisation as a credit servicing firm, together with official guidance on the application process and requirements. It should be noted that pursuant to Section 29 of the the Central Bank Act 1997 (as amended) it is a criminal offence for an entity to carry on regulated financial services business in Ireland without the required authorisation.

7. What transitional arrangements will apply to existing firms which carry on the business of a credit servicing firm?

The Bill includes a transitional regime of interim authorisation for existing firms carrying on the business of a credit servicing firm. A person/firm carrying on the business of a credit servicing firm immediately before the coming into operation of the new legislation will be taken to be authorised to carry on the business of a credit servicing firm until the Central Bank has granted or refused authorisation to them, provided that they have applied to the Central Bank for authorisation no later than three months after the legislation comes into operation. The Bill provides that during the transitional period, the Central Bank may impose regulatory and supervisory conditions or requirements upon such firms and may direct such firms not to carry on the business of a credit servicing firm for a specified period not exceeding three months.

8. What other protections will the Bill provide to consumers whose loans are sold to unregulated entities?

If the Bill is enacted:

- upon the sale of a consumer loan portfolio to an unregulated entity, the relevant borrowers will continue to enjoy the benefits of Central Bank Codes designed to protect consumers (including the Code of Conduct on Mortgage Arrears);
 - upon the sale of a consumer loan portfolio to an unregulated entity, the relevant borrowers will have access to the Financial Services Ombudsman complaints procedure regarding treatment by credit servicing firms; and
 - as regulated entities, credit servicing firms will be subject to supervision and enforcement by the Central Bank.
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9. What is the anticipated timing for enactment of the Bill?

The Minister for Finance, Michael Noonan T.D., has confirmed that, subject to the legislative programme, the Bill is expected to pass through the Houses of the Oireachtas (the Irish parliament) in the early part of 2015.

10. How can William Fry assist your business?

William Fry is available to assist you with legal advice on all aspects of the Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015. Please contact Shane Kelleher (E: shane.kelleher@williamfry.ie, D: +353 1 6395148) or any member of William Fry's Financial Regulation Group or your usual William Fry contact for legal advice.