

Consumer Protection (Regulation of Credit Servicing Firms) (Amendment) Act 2018 widens the scope of Ireland's credit servicing regime

On 21 January 2019, the Consumer Protection (Regulation of Credit Servicing Firms) (Amendment) Act 2018 ("**2018 Act**") commenced. The purpose of the 2018 Act is to expand the definition of a 'credit servicing firm' and bring within the existing credit servicing framework, entities that acquire legal title to certain loans (performing and non-performing consumer loans) and associated ownership activities. Entities that fall within the expanded definition of a credit servicing firm must be authorised by the Central Bank of Ireland ("CBI"). For more information on the credit servicing framework, please refer to our earlier [briefing](#) on the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015.

What additional entities are now in-scope?

The 2018 Act seeks to regulate firms that hold legal title to loans ("holders") that are provided to "relevant borrowers" i.e. natural persons and micro, small and medium-sized enterprises, so that such holders of legal title to loans are on the same regulatory footing as other entities that typically hold or service such loans (such as retail credit firms and credit servicing firms).

Newly in-scope entities are those that undertake any of the below activities and accordingly, now fall within the definition of a 'credit servicing firm' contained in the Central Bank Act 1997 as amended:

- a.** holding legal title to credit granted under the credit agreement;
- b.** determining the overall strategy for the management and administration of a portfolio of credit agreements; and
- c.** maintaining control over key decisions relating to a portfolio of credit agreements.

An entity will be a "credit servicing firm" even if the activities set out in paragraphs (b) and (c) above are undertaken by other entities on behalf of the entity holding legal title.

Transitional Provisions for Newly in-scope Firms

The 2018 Act provides for a period of transition and newly in-scope firms are 'taken to be authorised' on the date of commencement of the 2018 Act until the CBI has either granted or refused authorisation, provided that such firms apply to the CBI for authorisation by 21 April 2019.

During the transition period, the CBI may:

- impose conditions or requirements as it considers appropriate that relate to the proper and orderly regulation of credit servicing firms; or
- direct the firm to refrain from carrying on the business of credit servicing for a period of less than three months.

How does an entity become authorised as a credit servicing firm?

An applicant must complete and submit to the CBI a completed application form that demonstrates the firm's ability to meet authorisation standards, along with a document outlining its programme of operations and a business plan.

Carve-out for Securitisation Special Purpose Entity ('SPEs')

Certain securitisation SPEs are excluded from the credit servicing framework regardless of whether the SPE may be considered a "*holder of legal title to credit*" or otherwise falls within the definition of a credit servicing firm. Excluded SPEs are those whose establishment and activities are directed towards the accomplishment of a limited securitisation objective and whose activities are isolated from those of its originator.

Other carve-outs

If a firm is servicing the portfolio of loans on behalf of a regulated entity, then that credit servicing firm does not need to be separately authorised by the CBI as a credit servicing firm, as this arrangement is covered under existing rules governing outsourcing arrangements that apply to all regulated financial services firms.

Conflict with the Proposed European Commission Directive

On 14 March 2018, the European Commission published a proposed **Directive** on credit servicers, credit purchasers and the recovery of collateral ("**Directive**") that will enter into force in July 2021.

The European Central Bank has expressed concern that the 2018 Act may stifle the ability for banks to reduce their stocks of non-performing loans ("**NPLs**") thereby frustrating the goal of the Directive. The inclusion of loan purchasers in Ireland's credit servicing regime places Ireland's framework squarely at odds with this Directive which specifically provides that loan purchasers must not be subject to certain regulatory requirements.

What supervisory and enforcement measures are firms subject to?

As regulated entities, credit servicing firms are subject to supervision and enforcement by the CBI. The CBI may take enforcement measures against a regulated firm which include imposing administrative sanctions up to €10 million or up to 10% of the annual turnover of the credit servicing firm. Additionally, credit servicing firms are required to comply with the following CBI statutory codes of conduct:

- the Consumer Protection Code 2012;
- the Code of Conduct on Mortgage Arrears 2013;
- the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015; and
- the Minimum Competency Code 2017 and the Central Bank (Supervision and Enforcement Act 2013 (Section 48(1)) Minimum Competency Regulations 2017.

Credit servicing firms are also subject to the CBI's Fitness and Probity regime. Relevant borrowers have access to the Financial Services Ombudsman complaints procedure regarding treatment by credit servicing firms.

The Key actions for firms

- Firms should ascertain if they fall within the scope of the amended definition of a credit servicing firm and require authorisation by the CBI; and if so an application for authorisation must be completed by 21 April 2019.
- Firms should seek legal advice if in doubt about whether their activities fall within the scope of the amended legislation.
- In-scope firms should begin preparing the relevant documentation to demonstrate compliance with the CBI's 'Authorisation Requirements and Standards for Credit Servicing Firms'.

How can William Fry help?

William Fry can assist regulated firms in relation to:

- assisting newly-in scope firms with their authorisation application;
- reviewing and updating firms' business plans and programme of operations to ensure they comply with the authorisation standards and requirements for credit servicing firms;
- assisting firms in restructuring their portfolios so that the relevant loan servicing activities are carried out by a regulated entity (such as a retail credit firm or an existing credit servicing firm); and
- advising on regulatory inspections and enforcement in relation to credit servicing.

CONTACT OUR FINANCIAL REGULATION UNIT

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