

Ireland Reminder – Credit Reporting Obligations

The Credit Reporting Act 2013 (the "Act") establishes an official statutory register (the "Register") operated by the Central Bank of Ireland (the "CBI") to record the amount of credit in the Irish economy. The Register will also enable creditors to check a potential borrower's credit status before advancing credit.

The Act applies to credit where the debtor is resident in Ireland, or where the credit agreement is governed by Irish law. The Act requires that creditors provide the CBI with basic information on all credit arrangements exceeding €500 which are within the scope of the Act.

In Scope Lenders and Borrowers

Both regulated and unregulated lenders are covered by the Act, which refers to them as "credit information providers" or "CIPs".

The Act is silent as to whether it applies to market operators outside Ireland. The CBI issued guidance which indicates that the Act does not apply to lenders who are not "established" in Ireland. Whilst this is consistent with the conventional approach that legislation does not apply outside a state's territorial limits (unless it expressly provides otherwise), the CBI cautions parties to take their own advice.

The Act applies to borrowers (both natural and legal, including SPVs) which are resident in Ireland or where the loan is governed by Irish law. The Act also applies to guarantors of

such loans. Borrowers and guarantors covered by the Act are known as "credit information subjects" or "CISs".

The Meaning of Credit

Under the Act "credit" includes a loan, deferred payment or other form of financial accommodation but excludes intra-group credit and support, inter-bank lending and loans that are free of interest and other charges. There is currently a legislative proposal to clarify the meaning of "credit" under the Act in the context of hire purchase agreements and other similar arrangements.

The CBI has stated in its guidance that the current implementation phase of the Act does not include credit provided by way of investment in bonds, making deposits and entering into derivatives contracts. Although the position adopted by the CBI does not appear to be entirely consistent on this point, it is open to question whether the legislation was intended to apply to such transactions.

Key Dates

Banks established in Ireland and authorised by the CBI will already be aware of the implications of the Act if they have consumer credit customers, due to information-gathering and reporting obligations under the Act having been introduced for consumer credit during 2017. However, credit providers such as alternative lenders and purchasers of non-consumer loans and other corporate debt in the secondary markets who have had no

exposure to consumer credit, now need to be aware of the potential application of the Act.

CIPs to in-scope non-consumer borrowers must input information on the Register by the following dates:

- a) Information regarding credit outstanding as at 31 March 2018, by 30 September 2018;
- b) Credit applications made after 30 September 2018 must be reported upon application; and
- c) Credit granted after 30 September 2018 must be reported upon issuance.

After 30 September 2018, information submitted to the Register must be updated so that it records significant milestones (such as amendment of terms, restructuring and default/enforcement action).

Information about guarantors and other sureties of in-scope credit will need to be provided in due course, although the CBI has yet to indicate when this requirement will become operative.

Information on the Register

CIPs must take "all reasonable steps" to verify the identity of each CIS to whom they advance credit (and guarantors of such credit) and to establish that the information provided by a CIS is accurate and complete. The Act makes it an offence for a CIP to knowingly provide false or misleading information to the Register.

Information about a credit application will be stored by the CBI for six months, whilst information on the Register regarding a credit agreement will be kept for five years or until the agreement ends (whichever is earlier). Anonymised information may be held indefinitely. It is intended that credit ratings for

CISs will, in due course, be available to CIPs on the Register.

Accessing the Register

The Register enables CIPs to access details of all lending relating to a specific CIS prior to advancing credit and from March 2019 CIPs will be obliged to check the Register before advancing credit in excess of €2000.

A CIS is entitled to access the Register once a year without charge and to supplement details on the Register by including a brief statement should they believe an item merits explanation. CISs can also amend inaccurate, incomplete or outdated information.

Failure to Comply with the Act

If the CBI considers that a CIP has failed to comply with the requirements of the Act, it can direct the CIP to take specific steps to remedy its failure. Continued failure to comply could result in regulatory sanctions (if the CIP is a regulated entity) or the CBI applying to the High Court for an order requiring the CIP to comply (if the CIP is not a regulated entity).

The Act does not address what, if any, effect a breach of the Act has on the recoverability of a loan, or enforcement of security where a CIP has acted in breach.

Further Information

Should you have any questions or would like to discuss the above, please liaise with your usual Maples Group contact, or the contact listed below:

London

Donna Ager

+44 20 7466 1712

donna.ager@maples.com

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