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Central Credit Register: Phase two - preparation for reporting on business loans

From 31 March 2018, lenders, both regulated and unregulated, are obliged to collect and report information in relation to credit advanced to non-consumer borrowers, including companies, limited liability partnerships, industrial and provident societies, clubs and associations. The requirement on lenders to provide personal and credit information relating to any qualifying credit application or agreement to the Central Bank of Ireland (the “**Central Bank**”) for the purpose of populating the Central Credit Register (the “**Register**”) has been introduced on a phased basis. The proposed timelines set by the Central Bank provide that all in-scope lenders must report data on non-consumer credit to the Register by 30 September 2018. Given these impending deadlines, this note will focus on phase two (“**Phase Two**”) credit reporting.

Background

The Register is a central database for credit and personal information established by the Central Bank. It was introduced under the Credit Reporting Act 2013 (the “**Act**”) ¹ as part of the EU/IMF Programme of Financial Support for Ireland.

From 30 June 2017, the Register became operational and all lenders (with the exception of local authorities and moneylenders) were

¹ The Act means the [Credit Reporting Act 2013](#) and all other applicable laws (statutory, common law or other) enactments, orders, legislation, regulations, regulatory policies, codes of practice and guidelines.

For further information on any of the issues discussed in this article please contact:



Keith Robinson
DD: + 353 (0)1 674 1004
keith.robinson@dilloneustace.ie



David O'Shea
DD: + 353 (0)1 673 1718
david.oshea@dilloneustace.ie

required to submit personal and credit information on consumer loans of €500 or more existing on 30 June 2017. A “consumer” for the purposes of the Act is defined as “a natural person acting outside his trade, business or profession”.

From 31 March 2018, Phase Two commences, and lenders are required to provide credit information to the Register for business loans of €500 or more existing on 31 March 2018 and any new business loans of €500 or more taken out from 31 March 2018. The below provides a summary of the key dates relevant to Phase Two credit reporting:



What types of borrowers are covered?

A credit information subject (a “CIS”) is a person who for the purpose of the Act:

- has made a credit application;
- has made a credit agreement for the provision of credit to the person; or
- is a guarantor.

It is important to note that a credit application or credit agreement will only be subject to the Act where:

- the applicant, or the person for whom the credit is provided under the credit agreement, is resident in Ireland at the time when the credit application or credit agreement is made;
- the law governing the credit agreement made pursuant to the application is Irish law; and
- the amount of credit applied for or agreed to be provided is €500 or more.

What types of lenders are covered?

Lenders that are subject to the Act comprise any person specified in the Act who provides credit (a “Credit Information Provider” or “CIP”). A CIP includes the following:

- regulated financial service providers, such as banks (domestic and passporting banks);
- NAMA;
- local authorities;

- ▣ unregulated credit providers not falling within the foregoing categories (including corporate lenders and special purpose vehicles);
- ▣ credit unions; and
- ▣ retail credit firms.

Pursuant to section 2 (1) of the Act, the Central Bank, the central bank of any country or territory (other than Ireland), and pawnbrokers are expressly excluded from the definition of a CIP.

Purchasers of loans from a CIP listed above also come within scope of the Act (subject to section 2(4) of the Act) whether they are regulated or not.

The scope of credit

The term “credit” is broadly defined under the Act. Credit includes a loan, deferred payment or other form of financial accommodation. As stated above, the sale of a loan or portfolio of loans does not exclude the loans from the scope of the Act.

The following are not considered credit under the Act:

- ▣ intra-group credit;
- ▣ inter-bank lending;
- ▣ credit provided by an employer only to its employees;
- ▣ in connection with the provision of utilities;
- ▣ credit for facilitating the purchase of goods or services from the person by whom the credit is provided; and
- ▣ credit that is interest-free / charge-free.

The Central Bank has stated that “*credit provided for facilitating the purchase of goods or services*” includes hire purchase agreements, personal contract plans, leasing agreements or any other type of credit agreement where the credit is being advanced by the owner of the financed good or service. These types of credit are currently outside the scope of the Act. However, the Central Bank has stated that it intends, subject to appropriate legislative amendment being made, to bring these types of agreements into scope.

The Central Bank is also due to advise if and when guarantors will come under the scope of the reporting regime.

What are the lender’s key obligations?

The Act sets out detailed requirements for CIPs in respect of the Register. The CIPs will need to adapt their documentation and procedures to comply with these obligations:

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| 1. Reporting | Once it is established that the amount of credit being sought is in excess of €500 |
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| | <p>and is therefore deemed a “qualifying” credit application, a CIP has a duty to provide the Central Bank with certain prescribed personal and credit information relating to:</p> <ul style="list-style-type: none"> ▣ any qualifying credit application or credit agreement made to the CIP; ▣ the CIS to which the credit application relates; ▣ the CIS with whom the qualifying credit agreement relates; and ▣ any person providing a guarantee or indemnity in respect of such lending. <p>The personal and credit information to be provided by lenders to the Central Bank in respect of individuals, self-employed individuals and corporates is set out in the Credit Reporting Act 2013 (Section 11) (Provision of Information for Central Credit Register) Regulations 2016.</p> <p>Notably, the Register will contain details such as information on a CIS’s credit performance over a set period, details on any defaults and details of any restructuring arrangements.</p> |
| <p>2. Verification</p> | <p>The CIPs have a responsibility under the Act to take “<i>all reasonable steps</i>” to verify the identity of the CIS, to ensure that the information provided by the CIS is accurate and complete, to keep records, comply with data protection legislation, and to inform the Central Bank of any changes of which they become aware.</p> <p>The CIP shall thereafter inform the Central Bank of any changes to the credit information provided, of which it becomes aware.</p> <p>A CIP shall retain a copy of any document used for the purpose of verification for a period of five years beginning on the date that the credit information is last required by section 11 of the Act and any regulations made thereunder to provide personal information to the CBI in respect of that CIS.</p> |
| <p>3. Notice</p> | <p>CIPs have a responsibility to provide on forms for qualifying credit applications the following notice:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>NOTICE: Under the Credit Reporting Act 2013 lenders are required to provide personal and credit information for credit applications and credit agreements of €500 and above to the Central Credit Register. This information will be held on the Central Credit Register and may be used by other lenders when making decisions on your credit applications and credit agreements.</p> </div> <p>The notice provided by the CIP shall be delineated by a box, be in bold type and must share equal prominence as the main terms and conditions associated with the credit application or agreement.</p> |
| <p>4. Access</p> | <p>From 31 March 2019, CIPs have a responsibility to consult the Register before making a determination in respect of any application that is made by a CIS for a business loan that is in excess of €2,000.</p> <p>A CIP has the power to access information where a CIS is seeking to amend an existing credit agreement or has failed to comply with an obligation under any credit agreement.</p> |

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| An access request must be made electronically and in accordance with any applicable Central Bank guidelines. Any information which is accessed may only be used by the CIP to assist in evaluating the risk in extending credit to such CIS, taking guarantees, or changing the terms of credit already extended and to monitor failure by any CIS to comply with any obligation contained in a credit agreement. |
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What are the borrower's rights?

CIPs must ensure that a CIS is “*made aware of their rights and duties*” under the Act. A CIS will be able to request their credit report detailing their credit arrangements at any time. The first credit report requested in each calendar year will be provided free of charge.

A CIS may also request the correction of any inaccuracies contained in their credit report and may make a report to the Register if it is reasonably believed that someone has, is, or is about to impersonate them.

The implications for the failure to report and/or provide false information?

A registered CIP (and its relevant officers or managers) who provides information to the Register knowing it to be false or misleading or uses information accessed from the Register for a purpose other than one permitted by the Act (as described above), commits an offence. A CIP guilty of an offence is liable (a) on summary conviction, to a class A fine (up to €5,000) or imprisonment for a term not exceeding 6 months or both, or (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

If the Central Bank considers that a CIP (other than a regulated financial services provider, NAMA and a local authority) has failed, or is failing, to comply with an obligation imposed by the Act, it may direct the lender to take specified steps to comply with this obligation. If the CIP fails to comply with any such direction, the Central Bank may make an application to the High Court and the High Court may, on such application, make an order requiring the CIP to comply with the direction. It may also make such interim or interlocutory orders as it considers appropriate.

Fees and levies associated with the Register

It is stated by the Central Bank that CIPs will not be charged for access to the Register until 1 January, 2019.²

² Please see <https://www.centralcreditregister.ie/about/timeline/> for further information on the timeline and fees and levies associated with the Register.

The Act proposes that the Central Bank may introduce regulations to set a levy which CIPs will have to pay for the purpose of meeting expenses properly incurred by the Central Bank in the performance of its functions. It is intended that the costs of the Register will be recouped using a fixed 'click fee' i.e. a flat fee each time it is accessed by lenders.

What are the next steps for a CIP?

In the lead up to the launch of Phase Two credit reporting, in so far as CIPs have not already done so, CIPs should:

- register with the Register's website (www.centralcreditregister.ie);
- put in place internal systems, policies and procedures to ensure compliance with the Act and the implementing regulations, to include systems which will regulate loans to both consumers and business loans;
- prepare appropriate customer communications before the Phase Two reporting requirements become operational; and
- Complete any CIP profile that a CIP may receive from the Central Bank.

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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