



SME Regulations now applicable to Credit Unions – Action Required

January 2017

As of 1 January 2017, Credit Unions lending to small and medium enterprises (SMEs) must have appropriate systems, policies and procedures in place to comply with regulations issued by the Central Bank of Ireland (CBI). In practice, virtually all business lending by Credit Unions (whether to companies, partnerships or sole traders) will be captured by the regulations as Credit Unions rarely provide business loans to non-SMEs.

Non-compliance with these new requirements would be a serious breach that may result in fines and/or other penalties under the CBI's administrative sanctions regime.

Background

In December 2015, new regulations were published by the CBI governing dealings between regulated entities and SMEs. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (as amended, the **SME Regulations**) came into force for regulated lenders (other than Credit Unions) from 1 July 2016 and for Credit Unions from 1 January 2017.

“In practice, virtually all business lending by Credit Unions (whether to companies, partnerships or sole traders) will be captured by the regulations”

The SME Regulations replaced an existing CBI Code of Conduct for Business Lending which was originally introduced in 2009. Credit Unions were not required to comply with this Code of Conduct with the result that the task of putting in place the necessary systems, policies and procedures to comply with the SME Regulations has proved more of a challenge to Credit Unions than to other regulated entities.

SME categorisation

The SME Regulations provide protection to SMEs with fewer than 250 employees and which have an annual turnover not exceeding €50 million and/or an annual balance sheet not exceeding €43 million.

Micro and small enterprises benefit from enhanced protection under the SME Regulations and a *micro and small enterprise* is defined as an enterprise which employs fewer than 50 persons and which has either or both of the following:

- (a) an annual turnover not exceeding €10 million;
- (b) an annual balance sheet total not exceeding exceed €10 million.

Key Requirements

Credit Unions lending to SMEs will need to implement specific processes in relation to staff training, credit applications, credit reviews, credit appeals and arrears. In particular, Credit Unions should be aware of the following key requirements which apply to lending to micro and small enterprises:

- a. the Credit Union must publish information about its credit application process on its website including the points of contact, relevant timelines, information that may be required of the borrower and information about Government support schemes available from or through the Credit Union;



- b. the Credit Union will need to establish suitability and appropriateness for the borrower and this applies to both initial credit and to any additional credit provided to the borrower;
- c. credit should not be offered to a borrower in advance of an application by a borrower for such credit;
- d. training must be provided to relevant staff on both the SME Regulations and the Credit Union's policies and procedures on credit provision;
- e. the borrower must be offered an annual review which should include a review of its credit facility agreements, related security and any alternative arrangements. A borrower is also entitled to request a credit review at any time;
- f. if the Credit Union declines an application for credit, it must provide the reason(s) for doing so in writing. The reason(s) given must be clear and easy to understand and relevant to the application;
- g. the Credit Union must contact a borrower that has been in arrears for 15 working days in order to confirm that the borrower is in arrears, and, if possible, to identify the reasons for the arrears;
- h. the Credit Union must publish an information booklet on its website with information for borrowers in financial difficulties, including a description of the types of alternative arrangements that may be available;
- i. the Credit Union must have an internal appeals procedure which allows a borrower to appeal a decision in relation to, inter alia, a refused credit application or the withdrawal or reduction of a credit facility agreement;
- j. if security is required for a credit facility, the Credit Union must explain to the borrower in writing why the security is required and any potential consequences for the borrower of providing the security;
- k. if a Credit Union offers a borrower an alternative arrangement to discharge their debts, the borrower must be provided with information about the alternative arrangement including the timeframe to avail of the offer and the implications of the arrangement;
- l. guarantors must be provided with certain information when guaranteeing the debt and during the term of the loan.

Action required

Credit Unions will need to:

- implement policies and procedures to meet the requirements as set out in the SME Regulations;
- put in place training programmes for staff;
- publish relevant information on its website in relation to the credit application process;
- amend existing documentation to reflect the new requirements e.g. pre-contract information, annual statements, standard form guarantees, information booklets for borrowers in financial difficulties etc.; and
- maintain records evidencing how they have complied with the SME Regulations.

Contact Us

If you require assistance in complying with your obligations under the SME Regulations, please get in touch with any of the following people or your usual contact at Walkers.



Eoin O'Connor
Partner - Head of Risk and Compliance
T: +353 1 470 6664
E: eoin.oconnor@walkersglobal.com



Shane Martin
Regulatory Compliance Director
T: +353 1 470 6673
E: shane.martin@walkersglobal.com

Disclaimer

The information contained in this advisory is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.