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E X P E C T E X C E L L E N C E

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Financial Regulatory Group Briefing Consumer Credit Directive

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What is the aim of the Consumer Credit Directive?

Directive 2008/48/EC on Credit Agreements for Consumers - the Consumer Credit Directive (“**CCD**”) - was adopted in April 2008 and is required to be implemented in Member States by 11 June 2010. The latest indications from the Department of Finance are that draft legislation will be available in Ireland in early 2010.

The broad aim of the CCD is to harmonise laws governing consumer credit across the EU. The CCD applies uniform rules to certain types of consumer credit so consumers can easily compare offers of credit in different Member States and lenders can expect similar rules when they provide cross-border credit within the EU.

For Irish lenders, the CCD will involve considerable changes to standard documentation, advertisements and procedures, all of which will need to be in place by June 2010 when the CCD is due to be implemented.

Who does the CCD apply to?

The CCD applies to certain types of credit advanced to “consumers” who are defined as natural persons “acting for purposes which are outside [their] trade, business or profession”. Like the Irish Consumer Credit Act 1995 (the “**Consumer Credit Act**”), the CCD therefore only protects individuals borrowing for non-business purposes - it contrasts with the protection given by the Consumer Protection Code 2006 (“**CPC**”) to (a) all individuals regardless of the purpose of the borrowing and (b) small companies.

Consumers are protected under CCD when availing of credit from “creditors” lending in the course of their trade, business or profession. The CCD will apply therefore to banks, retail credit firms and other entities which lend in the course of their business.

What types of credit are covered?

While the CCD covers some of the same types of lending currently covered by the Consumer Credit Act, there are a number of notable exclusions from CCD including:

- > credit agreements where the amounts involved are less than €200 or more than €75,000 - this contrasts with the Consumer Credit Act and CPC which apply regardless of the amount of credit provided;

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- › mortgage lending - again this contrasts with the Consumer Credit Act and CPC, each of which apply to mortgage lending;
- › hire purchase and leasing agreements - again this contrasts with the Consumer Credit Act and CPC, each of which apply to hire purchase and leasing;
- › certain credit agreements which are interest free or at lower rates of interest than those available to the general public; and
- › certain agreements for the supply of a service or utility where payment is in instalments.

What does the CCD require?

The CCD contains conduct of business provisions which include the following:

- › obligations on creditors to provide standard pre-contractual information;
- › a duty to provide adequate explanations to consumers to enable them to assess whether the credit product is adapted to their needs and financial situation;
- › obligations on creditors to assess the creditworthiness of a consumer;
- › obligations on creditors to include standard information in credit agreements;
- › fourteen day withdrawal period for consumers from credit agreements;
- › amended method for the calculation of APR;
- › restrictions on advertising credit; and
- › restrictions on the compensation payable by consumers on early repayment.

Challenges arising from the implementation of the CCD in Ireland

Depending on how the CCD is implemented in Ireland, it poses a number of challenges for lenders including:

- › **Consolidation or another layer of regulation?** - navigating the myriad of overlapping provisions which apply to consumer credit. For example, specific restrictions on advertising credit products are now contained in the Consumer Credit Act, the CPC and now the CCD. It remains to be seen whether the opportunity will be taken to overhaul and consolidate the existing provisions;
- › **Similar but different** - the provisions whilst not contradictory to existing provisions of Irish law, impose similar but “slightly different requirements”. Examples are the obligations on creditors in CCD to assess the creditworthiness of consumers and to provide adequate explanations to consumers to ensure a product is adapted to their needs which are similar but not the same as the requirements in CPC to know your customer and complete suitability statements;
- › **Product and customer segregation** - making the necessary systems changes required to segregate the products, customers and specific credit agreements to which CCD will apply and identifying the standard documents to be used in each case. Lenders may end up with products to which all of CCD, CPC and the Consumer Credit Act may apply in certain instances and some of which only apply in others depending on the borrower and the amount of the loan - the necessary systems changes cannot be implemented however until it is clear how CCD is to be implemented.

The CCD requires maximum harmonisation insofar as the Directive contains harmonising provisions. The Department of Finance issued a consultation paper inviting submissions on the transposition of the CCD in Ireland in March 2009. The date for submissions passed on 30 April 2009 and replies from eleven parties are available on the Department of Finance website. Some of the key issues for the Department include the following:

- › dealing with the discretions afforded to Member States in the CCD;
- › how in practice to effect the implementation of the CCD in Ireland - amendments will be required to the Consumer Credit Act, the CPC and other existing provisions; and
- › avoiding gold plating the CCD, particularly where CCD requirements overlap with existing requirements of Irish law.

Interestingly, the CCD itself indicates that Member States may introduce national legislation corresponding to the provisions of the CCD for agreements falling below or above the numerical thresholds described above (i.e. where the amounts involved are less than €200 or more than €75,000). In the UK it is intended to apply the CCD protections to most credit agreements caught by the UK Consumer Credit Act. Draft UK Regulations apply a £100,000 limit on the value of credit agreements in respect of CCD requirements such as adequate explanations, right of withdrawal, provision of an amortisation table on demand and provision of revised contract information.

Conclusion

Much remains to be clarified in terms of how the CCD will be implemented in Ireland and in particular:

- > the approach to the national discretions afforded under the CCD;
- > who will get the protection of CCD and whether the Department will introduce a wider definition of “consumer” in line with the CPC; and
- > whether the protections in the CCD will be afforded to credit agreements which either (a) fall outside its scope or (b) involve amounts below or above the thresholds.

It is to be hoped that that CCD will be implemented in a manner which consolidates the new requirements with the existing consumer credit regime and introduces a clear and transparent regime for consumers and lenders alike.

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