

## ■ Regulation of Retail Lenders

### Introduction

The Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (the “Act”) has introduced measures to regulate retail lenders. A copy of the Act may be found on the website of the Oireachtas (<http://www.oireachtas.ie/documents/bills28/bills/2007/3407/b34b07d.pdf>).

Section 19 of the Act relating to the regulation of retail lenders will come into operation on 1<sup>st</sup> February 2008.

### What entities are regulated?

Section 19 provides for the regulation of retail lenders that provide credit to natural persons in Ireland by way of cash loan, whether or not either the lender or the borrower is acting in the course of their trade, business or profession. The Act therefore requires lenders making loans, including mortgage loans, available directly to Irish persons to be regulated.

Section 19 excludes the following entities from regulation:

- lenders providing credit solely to companies;
- lenders providing credit to natural persons outside Ireland;
- regulated financial service providers within the meaning of the Central Bank Act 1942, which includes licensed banks;
- authorised credit intermediaries;
- entities exempted by the Financial Regulator from the requirement to hold an authorisation;
- entities that provide credit on a once-off or occasional basis;
- secondary lenders i.e. persons that obtain an interest in credit that was originally provided by another person; and
- securitisation special purpose vehicles (“SPVs”).

## Regulation

Section 19 of the Act provides for the regulation of retail lenders by amending the definition of “regulated business” in the Central Bank Act, 1997 (the “**Central Bank Act**”) to include retail lenders.

Retail lenders that are regulated under section 19 are required to obtain an authorisation from the Financial Regulator to carry on such lending.

## Exemption

Under section 19 the Financial Regulator may exempt entities that fulfil specific criteria from the requirement to hold an authorisation as a retail lender. This power may be exercised on the initiative of the Financial Regulator itself or on application made by or on behalf of the retail lender.

## Authorisation Process

The Central Bank Act sets out the application process for authorisation of regulated businesses. Application for authorisation is made to the Financial Regulator but the Financial Regulator has not yet issued forms or guidelines specific to retail lenders. It is expected that these may take a

similar form to those applicable at present to bureau de change and money transmission businesses.

## Transitional Provisions

The Act contains a transitional provision for entities carrying on the business of a retail lender immediately before the commencement of section 19. Such persons will be deemed to be authorised as a regulated business until the Financial Regulator has granted or refused permission to the person, provided that the person applies to the Financial Regulator for authorisation no later than three months after that commencement. This exemption **does not apply** where the relevant retail lender is not carrying on business prior to the commencement of section 19.

## Further Information

A more comprehensive note on the regulatory measures introduced by the Act may also be found in the Banking Publications area of our website.

Any specific questions may be directed to:

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*This memorandum is a general summary of developments and is not a complete statement of the law. Specific legal advice should be obtained before taking action.*

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