

New Regime for Consumer Hire Purchase, PCP Finance and Point of Sale Lending

The [Consumer Protection \(Regulation of Retail Credit and Credit Servicing Firms\) Bill 2021](#)¹ (the "Bill") was published on 23 June 2021. Its enactment is expected later this year.

Newly Licensed Activity

Once enacted, the Bill will extend the Irish retail credit licensing regime to any currently unregulated providers of consumer hire-purchase, consumer hire (e.g. PCP car finance) and consumer indirect credit provision, such as the emerging point of sale lending sector. It is important to note that non-consumer activity such as SME hire-purchase and certain forms of trade credit are not in the scope of the Bill.

Irish Credit Servicing and Financing Implications

Under the Bill, the domestic Irish credit servicing regime in existence for cash lending products, such as consumer and mortgage loans, will be extended to these newly regulated areas. This will have implications for the sale, securitisation, servicing and back-up servicing of such portfolios beyond their primary origination. Under the proposed changes, regulated credit servicing firms will be required to hold legal title and operate commercial and strategic management of the portfolios (whether performing or non-performing) once sold to a third party or

securitised through the public or private markets.

Given political agreement has now been reached among the EU institutions on the proposed [EU Directive on credit servicers and credit purchasers](#)² (the "Directive"), it is anticipated that the Irish credit servicing regime will need to be amended to transpose the Directive. However, as the Directive is to be limited to non-performing loans originated by EU credit institutions, it appears most likely that the Irish credit servicing regime might impose different regulatory requirements for ownership and servicing of different forms of Irish credits unless a decision is made to ensure that the Irish regime in respect of all forms of Irish credit should mirror the Directive's framework.

The securitisation SPV exemption in place for secondary cash loan portfolio qualifying securitisations (i.e. clarifying that the SPV itself is not considered to be in scope of the licensing regime) has been extended to hire-purchase and consumer-hire portfolio securitisations.

Transitional and New Licensing

Similar to the introduction of the original credit servicing regime, firms carrying on a relevant activity (whether originating or credit servicing) will be deemed authorised if they apply to the

¹ <https://www.oireachtas.ie/en/bills/bill/2021/91/>

² <https://data.consilium.europa.eu/doc/document/ST-10268-2021-INIT/en/pdf>

Central Bank of Ireland (the "CBI") for the relevant licence or licence extension (in the case of authorised credit servicing firms) within three months of the Bill's enactment. This deemed or transitional licencing regime continues for the duration of the CBI's assessment of the application. A time period of three months poses a significant challenge for applicant firms to submit a licensing application which is deemed "complete" by the CBI (and which otherwise risks rejection and loss of one's deemed authorisation status). Both originating and servicing firms which are not otherwise deemed authorised under the Bill should therefore start to consider an application, with a view to starting preparations as soon as the text of the Bill is in near to final form (particularly on the retail credit firm side as these applications tend to be more onerous).

New entrants or firms that have not been engaging in relevant activity on the applicable date will not be able to conduct relevant activities from that date until they obtain the required retail credit firm or credit servicing firm licence. In practise this process can take up to 12 months.

Indirect Credit

While the definitions of hire-purchase agreements and consumer-hire agreements are clearly defined (in each case, only encompassing consumer contracts of a minimum three months duration), the expansion of the concept of credit as it pertains to both retail credit and credit servicing licencing from only covering cash loans to now also including "deferred payments" and "financial accommodation" (i.e. indirect credit provision) is significant. Deferred payment provision is not defined and the financial accommodation definition is not exhaustive. Although these provisions are intended to capture point of sale and other

new forms of technology-driven indirect credit providers, they may need to be defined further by CBI guidance or additional policy statements to avoid legal uncertainty and unintended consequences.

Other Proposals

The Bill also proposes to limit the interest rate applicable to consumers under credit and hire-purchase agreements (at threat of unenforceability of the agreement, with limited exceptions) and provide for more transparency by requiring the inclusion of the annual percentage rate ("APR") in a hire-purchase agreement, as well as introducing a new credit agreement statistical data reporting regime.

It also contains various important legislative amendments which firms should take note of, the most consequential of which are:

Consumer Credit Act 1995 Amendments

- **Definitions (Amended Section 2):** The Bill replaces the individual listing of entities defined as credit institutions by the CBI with the authorisation category of 'retail credit firms'. This means that that the new additional obligations under the Consumer Credit Act 1995 will apply to both existing retail credit firms and also the newly captured entities. Importantly, this would mean that not only would the "Section 149" regime but the entirety of Part XII would apply to all persons captured by the new definition of credit institutions, including retail credit firms.
- **APR (Amended Section 9 and 58):** The Bill clarifies that the APR provisions apply to credit and hire purchase, including PCP, agreements equally and the CBI may amend the APR calculation method through regulations. Firms should also be

aware that the Bill has introduced a new obligation into Section 58 to include a statement of the APR in hire-purchase agreements.

- **New Part IIA (APR):** This insertion includes the restriction of the APR to 23% on credit (excluding moneylending agreements) and hire-purchase agreements. Firms should note that credit and hire-purchase agreements will not be enforceable against a consumer where this requirement is not met. Exception can only be made in cases where the failure to comply with this requirement was not deliberate; has not prejudiced the consumer; and it would be just and equitable to enforce the agreement.

Amendments to Other Acts

The Central Bank (Supervision and Enforcement) Act 2013 is amended to include a 'hirer' as a customer in relation to a consumer-hire or hire-purchase agreement. The Financial Services and Pensions Ombudsman Act 2017 extends the scope of 'consumer' to customers of financial service providers who, in relation to a credit agreement, a consumer-hire agreement or a hire-purchase agreement, were customers in cases where a credit servicing firm undertook credit servicing in respect of the agreement concerned.

Further Information

Further information on our Irish Financial Services Regulatory Group, and the services we provide is available on our [website](#)³ and in our [brochure](#)⁴.

Our securitisation and loan portfolio transaction specialists can also advise on any implications for historic and ongoing transactions in these Irish asset classes.

If you would like further information, please liaise with your usual Maples Group contact or:

Dublin

Stephen Carty

+353 1 619 2023

stephen.carty@maples.com

Lorna Smith

+353 1 619 2125

lorna.smith@maples.com

Stephen McLoughlin

+353 1 619 2736

stephen.mcloughlin@maples.com

Callaghan Kennedy

+353 1 619 2716

callaghan.kennedy@maples.com

Philip Keegan

+353 1 619 2122

philip.keegan@maples.com

Alison Gibney

+353 1 619 2158

alison.gibney@maples.com

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³ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

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