



**INFORMATION LEAFLET FOR SME BORROWERS WHO  
ARE IN FINANCIAL DIFFICULTIES**

This booklet outlines our procedures when dealing with SME borrowers who are in financial difficulties and gives information on the various options available to SME Borrowers who are in financial difficulties. It also details the criteria which will be applied to SME Borrowers who are in financial difficulties. At all times it is in your interest to engage with the credit union about your arrears or financial difficulties so that a suitable arrangement can be found.

This leaflet applies to all borrowers who come under the definition of “borrower” as set out in the Central Bank (Supervision and Enforcement) Act, 2013 (Section 48) (Lending to Small and Medium Sized Enterprises) Regulations 2015 as amended by the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) (Amendment) Regulations 2016.

The SME Lending Regulations aim to provide greater transparency for borrowers around the lending application process including the requirement to provide information in relation to the lending application process, timelines and also government support schemes. The SME Lending Regulations also provide greater protections for guarantors. Under the Regulations the credit union will be required to contact borrowers who are in arrears, seek to identify the reason why and assess whether the borrower’s circumstances are such that the requirements placed on the credit union for dealing with borrowers in financial difficulties should apply to that borrower.

The regulations introduce a concept of ‘not co-operating’ which will act as a warning system for SME borrowers in financial difficulties who are not co-operating with the lender and who may, for instance, be at an increased risk of having security realised.

There are also expanded Grounds for Appeal and an internal Appeals Panel requirement for the credit union.

Further information on SME Lending and a copy of the SME Lending Regulations are available on [www.centralbank.ie](http://www.centralbank.ie)

## Definitions

“**arrears**” means a payment or part of a payment due in accordance with a credit facility agreement or alternative arrangement which has not been paid by the borrower by the scheduled due date for payment and, in the case of an overdraft facility, where the borrower’s overdraft limit is exceeded for 30 consecutive days, and “in arrears” means a situation in which arrears have arisen.

“**borrower**” means a micro, small or medium-sized enterprise in the State with which, or in respect of which, a credit union is carrying out a relevant activity;

“**financial difficulties**” means a situation in which one or more of the following apply to a credit facility agreement or alternative arrangement:

- a) the borrower is in arrears under the credit facility agreement or alternative arrangement for 3 consecutive months;
- b) where the credit facility agreement is an overdraft facility, the approved limit on the overdraft is exceeded for 90 consecutive days;
- c) the credit union has, following an assessment carried out in accordance with Regulation 17(2)(b), 17(4)(b) or 35(2)(b), determined that the borrower’s circumstances are such that Regulations 18 to 23 or Regulations 36 to 41 (of the SME Lending Regulations) should be applied to the borrower’s case,

and “**financial difficulties cases**” shall be construed accordingly;

“**medium-sized enterprise**” means a micro, small and medium-sized enterprise that is not a micro and small enterprise;

“**micro and small enterprise**” means an enterprise which employs fewer than 50 persons and which has either or both of the following:

- a) an annual turnover which does not exceed €10 million;
- b) an annual balance sheet total which does not exceed €10 million;

“**micro, small and medium-sized enterprise**” means an enterprise which employs fewer than 250 persons and which has either or both of the following:

- a) an annual turnover not exceeding €50 million;
- b) an annual balance sheet total not exceeding €43 million;

“**not co-operating**” means a situation in which -

- a) the borrower has failed to make a full and truthful disclosure to the credit union of the information required by the credit union to assess the borrower’s financial situation, within the timeframe specified by the credit union,
- b) the warning letter, required in accordance with Regulation 20(8), has been issued to the borrower, and
- c) the borrower has not carried out the action or actions within the timeframes specified in the letter referred to in subparagraph (b);

## Dealing with SME Borrowers who are in Arrears or Financial Difficulties

Ennistymon & District Credit Union recognizes that SME enterprises will vary in size and business activity. We will deal with each SME borrower on a cases by case basis and ensure that a flexible approach is adopted where possible. If your business gets into financial difficulties we will work with you to develop an appropriate solution for your business.

## Communicating with the Credit Union

**It is important that you contact us as soon as possible when you become aware that you are in or may be about to fall into financial difficulties. In this credit union you should contact our Credit Control Officer.**

You should advise us of any concerns which you may have in relation to your borrowings.

Where you notify us that you may be at risk of going into arrears, are in arrears or that you are concerned about going into financial difficulties, we will appoint a designated contact person and inform you of the designated person contact details. In this credit union the designated person is the Credit Control officer and they can be contacted at our Ennistymon office on (065) 7071126.

## SME Borrowers who are in Arrears

1. Where you notify us that you may be at risk of going into arrears or that you are concerned about going into financial difficulties, we will offer you the option of an immediate review of your credit facility agreements, alternative arrangements and security, as appropriate.
2. Where you agree to the review referred to in the above paragraph, we will –

- a. Perform the review and identify what options are available to you to address your anticipated arrears or financial difficulties, having regard to your particular circumstances, and
  - b. Assess if your circumstances are such that Regulations 18 to 23 of the SME Lending Regulations (SME Borrowers in Financial Difficulties) should be applied to your case.
3. Where a review referred to in the first paragraph is performed, we will, in writing or via email, inform you of the outcome of the review and any recommended course of action which you should take pursuant to the review.

## Where you are in Arrears for more than 15 days

If you fall into arrears of more than 15 days we are required to:-

1. Contact you in writing to advise you of the status of your account. We will send you a copy of our Information Booklet for Borrowers who are in Financial Difficulties.
2. You will be offered an immediate review meeting to discuss your situation.
3. You should provide any requested documents and information which will enable us to reach a suitable alternative arrangement which will be to your benefit.
4. You should also consult and engage with your Accountant/Solicitor/Adviser prior to meeting us. Your Accountant/Solicitor/Adviser may also accompany you to any meeting which you may have with us.

## Where you remain in arrears for more than 15 days

Where you remain in arrears for 15 working days after the arrears first arose, we will, where you continue to be in arrears, promptly –

- a) contact you to confirm to you that your account is in arrears and, where possible, to identify the reason why you are in arrears, and
- b) based on the information available to the credit union, assess whether your circumstances are such that Regulations 18 to 23 (SME Borrowers who are in Financial Difficulties) should be applied to the your case.

The credit union will, in writing or via email, promptly inform you of the outcome of the assessment referred to in the above paragraph and any course of action which you should take pursuant to the credit union's assessment. We will require you to furnish us with updated information and documents to enable us to carry out an assessment.

Where we determines that, as part of the assessment referred to above and in the first paragraph, that your circumstances are such that Regulations 18 to 23 (SME Borrowers who are in Financial Difficulties) should be applied to your case, the credit union shall comply with Regulations 18 to 23.

We are not required to comply with the assessment requirement where you are in arrears for 15 working days and –

- a) you have notified the credit union that you are at risk of going into arrears and the credit union is engaging with you in relation to the arrears, or
- b) You are in arrears and have already notified the credit union that you are concerned about going into financial difficulties and you are engaging with us in relation to the arrears.

### Information which we may require in Order to carry out an Assessment of your Financial Situation

- Up to date financials including most recent set of annual audited accounts
- Cash flow projections for next two years.
- Up to date Business Plan to include details of performance over last 12 months and projections for the next 12 months.
- Up to date list of Creditors and Debtors
- Up to date Property valuations (if applicable)
- 6 month current account (business) statements
- Confirmation from your accountant that your tax affairs are in order.

We will advise you of any further information which may be required. This information will be used to complete an assessment of your financial situation. We will only request documents which are relevant and needed to allow us to obtain a full picture of your financial situation.

We will carry out an assessment of the information you have provided and where appropriate we may suggest an alternative arrangement if we feel that this is appropriate and will assist in resolving your financial difficulties. The offering of an alternative arrangement will be subject to you meeting our alternative arrangement assessment criteria and to an individual assessment of your situation.

### Types of alternative arrangements

We may offer you one of the following alternative arrangements:

- Interest only – you pay interest on the loan for an agreed period and will not pay capital during this period.
- Reschedule- we will offer you a new loan agreement with reduced repayments over a longer term.

### Criteria which will be taken into account when carrying out assessment.

The criteria which we will apply when considering which alternative arrangement, if any, will be appropriate to your individual circumstances and the criteria shall, at a minimum, include the following:

- i. the viability of the business;
- ii. prior history
- iii. Repayment capacity
- iv. any links with personal debt of the owners of the business who are concerned in its management that impacts on the business;
- v. any business debt related to property and other investments;
- vi. Your current and future repayment capacity;
- vii. Your previous repayment history;

- viii. Whether you have any business debt other than the credit facility in financial difficulties, and if so your overall business indebtedness;
- ix. the information provided by you;

We will facilitate separate consideration of debt related to the business, debt related to property and other investments or your personal debt or persons who are concerned in the management of the business which will have an impact on the business;

We will consider all reasonable options available before suggesting that you dispose of assets essential to the running of your business, trade or profession;

If we cannot make a decision on whether we will facilitate an alternative arrangement within 15 working days from receipt of the information needed in order to allow it to consider the application, we will inform you promptly of –

- I. how long it will take to complete our consideration of whether to facilitate an alternative arrangement, and
- II. the reasons why it will take longer than 15 working days.

### Alternative arrangements

Where we offer an alternative arrangement to you, we shall include the following information, in a durable medium, in the offer documentation:

- a) the timeframe for you to avail of the offer of the alternative arrangement;
- b) the new repayment amounts on the credit facility under the proposed alternative arrangement, as applicable, and the number and frequency of those repayment amounts;
- c) the term of the alternative arrangement;
- d) the implications arising from an alternative arrangement including the impact on –
  - i. the term of the credit facility agreement,
  - ii. the balance outstanding on the account, and
  - iii. the monetary amount of any arrears on the account;
- e) the frequency with which the alternative arrangement will be reviewed and the criteria against which your financial difficulties will be assessed;
- f) if known, details of any residual debt remaining at the end of an alternative arrangement and owed by you and, if not known, details of how any residual debt will be determined;
- g) how interest and charges will be applied to the credit facility as a result of the alternative arrangement;
- h) how the alternative arrangement will be reported by us to a relevant credit reference agency or credit register and that it may impact on your credit rating;
- i) a statement highlighting your right to seek independent legal and financial advice, and a recommendation that you should do so.

If we decides not to offer an alternative arrangement to you, we shall, in writing or via email –

- a) inform you of the reasons, with reference to the specific criteria applied, for not offering an alternative arrangement,
- b) advise you of the next steps we may take,
- c) inform you of your right to appeal the credit union's decision, and
- d) refer you to the relevant section concerning appeals in our information booklet.

If you declines to accept an offer of an alternative arrangement made by us, we shall, in a durable medium –

- a) advise you of the next steps we may take,
- b) inform you of your right to appeal the terms and conditions applying to the alternative arrangement proposed, and
- c) refer you to the relevant section concerning appeals in our information booklet required under Regulation 19.

## Operation of alternative arrangements

When an alternative arrangement comes to an end, we shall promptly review your situation in order to assess whether a further alternative arrangement is necessary.

## Non Co-operation

It is very important that you engage with us and co-operate with the credit union when you are in or facing “financial difficulties”. By engaging with us and providing us with the required information as requested by us you will enable us to provide you with a timely assessment of your financial situation and enable us to offer a suitable alternative arrangement if appropriate.

Under the SME Lending Regulations “not co-operating” is defined as a situation in which:

- a) the borrower has failed to make a full and truthful disclosure to the credit union of the information required by the credit union to assess the borrower’s financial situation, within the timeframe specified by the credit union,
- b) the warning letter, required in accordance with Regulation 20(8), has been issued to the borrower, and
- c) the borrower has not carried out the action or actions within the timeframes specified in the warning letter;

Where we classify you as not co-operating following a period whereby you have been given the opportunity to co-operate in line with the paragraph above we shall –

- a) notify you and any guarantor, in writing or via email, that you have been classified as not co-operating, and
- b) inform you and any guarantor, in writing or via email of –
  - a. The impact of such a classification on the credit union’s consideration of an alternative arrangement,
  - b. The impact of such a classification on the credit union’s consideration of it exercising any existing legal or contractual rights to enforce security, and
  - c. Where security is realised, that you will remain liable for any outstanding debt.

Prior to classifying you as not co-operating, we are obliged to issue a warning letter informing you and any guarantor that you will be classified as not co-operating if you do not perform specific actions (which must be reasonable and proportionate) to enable us to complete an assessment of your financial circumstances and setting out the timeframe within which any specific actions are to be carried out.

The timeframe for performance of specific actions must be at least 20 working days from the date of issue of the warning letter. Where you have been classified as not co-operating, the credit union is

obliged to notify you and any guarantor that you have been classified as not co-operating and outline the impact of such classification.

The implications on an SME Borrower of not co-operating are that we will not be in a position to carry out an assessment of your current situation and we will not be in a position to offer you an alternative arrangement. We will be left with no option but to commence our credit control process which may result on legal action being taken against you and to the credit union having no other option but to exercise any legal rights or contractual rights to enforce security in accordance with the Credit Agreement and the Credit Union Acts, 1997 – 2012 and any regulations made thereunder. Please also note that where security is realised you will remain liable for any outstanding debt which remains.

### Impact of Arrears on Credit Rating

Please note that as we are registered with the ICB and are obliged under law to make returns to the Central Credit Register, data relating to your repayment history will be disclosed to the ICB and/or the Central Credit Register. We will ask for your consent to make these disclosures at the time of your loan application however we are required by law to make returns to the Central Credit Register for loans in excess of €2,000. Please note that if arrears do arise on your account your credit rating may be adversely affected. This may have an impact on your ability to avail of additional credit in the future.

### Our Appeals Process

Appeals under these Regulations can be made to the Board of Directors under Section 37 of the Credit Union Act, 1997 - 2012. You will have 30 days from the date of notification of our decision in relation to an alternative arrangement within which to lodge an appeal.

We will acknowledge receipt of your appeal within 5 working days. The Board will consider your appeal and will notify you in writing of their decision within 15 working days from the date of the making of their decision.

### Complaints

Details of our Complaints Procedure are attached herewith.

### Communicating with Borrowers in Financial Difficulty

When contacting you we shall ensure that–

- a) the level of contact and communications made by the credit union, and any third party acting on our behalf, with you is proportionate and not excessive, taking into account your particular circumstances,
- b) communications with you are not aggressive, intimidating or harassing,
- c) you are given sufficient time to complete an action to which it has committed before follow-up communication is attempted, and
- d) steps are taken to agree when the next communication will take place and the method of such communication.

We will inform you, in writing or by email, within 10 working days of you falling into arrears of the following:

- a) the status of the account;
- b) the applicability of these Regulations;
- c) the availability of the information booklet for borrowers in financial difficulties, including details of where it can be located on the credit union's website and information on how a you can receive a printed copy of the information booklet from the credit union;



- d) the type of information that may be requested from you by us or a reference to where this information is available;
- e) any impact of the financial difficulties on other credit facilities held by you with us;
- f) that it is in your interest to engage with us about arrears or financial difficulties;
- g) the option of an immediate review of your credit facilities, alternative arrangements and security.

Within 10 working days of you first entering financial difficulties, we shall inform any guarantor, in writing or via email, of the status of your account.

We will inform you of the contact details of the contact person in the credit union.

We will respond to all written communications from you regarding financial difficulties or arrears not mentioned above within 10 working days of the date of receipt of those communications.

### Independent reviews

Where you are in financial difficulties and we require an independent review your business by a third party in order to assess the future viability of the business, we shall, in writing or via email, provide you with –

- a) an explanation of the reasons for the review,
- b) information on what will be covered by the review,
- c) the name of the person carrying out the review, and
- d) information on any costs to be borne by you.

Where there is a guarantee in place in relation to a credit facility agreement we shall inform the guarantor, in writing or via email, where we require an independent review.

We shall promptly provide you, in writing or via email, with a copy of any report provided to us following the review referred to above.

Where you bear any cost of the review referred to above, the cost of the review must be proportionate to the amount of credit provided under a credit facility agreement and the size and complexity of your business.

## Complaints Procedure<sup>1</sup>

1. We will identify if you have a **concern** or a **complaint**.
  - A concern or complaint might be for example an error, unfair treatment or poor service.
  - A concern can be resolved on the spot.
  - If in doubt whether it is a concern or a complaint, we will ask you if you wish it be treated as a complaint.

**A complaint cannot be resolved on the spot.**
2. This procedure need not apply where the complaint has been resolved to your satisfaction within **5** business days.
3. If it is a **verbal** complaint
  - We will ask you if you want to put the complaint in writing.
  - We will record that we offered you the opportunity to put the complaint in writing but that you declined.
  - We will inform you that we are recording the complaint on our computer system.
  - We will record the facts of the complaint.
  - We will inform you that the complaint will be dealt with by the Complaints Officer and record same.
  - We will Inform you that the complaint will be acknowledged in writing by the Credit Union or Complaints Officer within **5** business days of being received by the Credit Union.
  - We will give you the **Members Complaint Procedure** and **Sub-Committee Complaint Form** and record same.
  - We will give you the name of the **Complaints Officer** who will be the **your primary contact** for all issues in relation to the complaint.
  - We will Inform the Complaints Officer of the complaint.
4. If you request to put the complaint in **writing**
  - We will ask you to write a **letter of Complaint** and to address it to the Complaints Officer.

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<sup>1</sup> Source of this procedure is a combination of Complaints Handling and Financial Ombudsman Online Course provided by the Irish League of Credit Unions, Standard Rules for Credit Unions, Republic of Ireland, Rule 103 – Settlement of Disputes between Members and the Credit Union and the Consumer Protection Code 2006 from the Financial Regulator.

- We will give you the **Members Complaint Procedure** and **Sub-Committee Complaint Form**.
- We will acknowledge receipt of the complaint within **5** business days of being received and send the **Members Complaint Procedure** (*this contains the name of the Complaints Officer/s*) and **Sub-Committee Complaint Form** to you if you have not already received same. The Credit Union will provide you with the name of the Complaints Officer who will be the contact person for you in relation to the complaint, until the complaint is resolved, or cannot be processed any further.
- You will be given the opportunity to **discuss** the complaint with the **Complaints Officer** (at a prearranged appointment time), who will try to resolve the complaint.

*If the complaint is not resolved to your satisfaction:*

- You should **complete** the “**Complaints Form**” which is pre-addressed to the **complaints sub-committee**. You will have the right to be heard by this sub-committee who will investigate, discuss and, wherever possible, resolve the complaint.

*If the complaint is not resolved to your satisfaction:*

- You should **request** the **secretary** of the credit union to forward the complaint to the **board of directors**. You will have the right to be heard by the board, which will investigate and, wherever possible, resolve the complaint.

**Note:** Nothing in Rule 103 shall prevent the **Financial Services Ombudsman** from investigating and adjudicating a complaint made against a credit union about the provision of, or failure to provide, a financial service, so long as the complaint:

(a) falls within the jurisdiction of that Ombudsman, and

(b) does not relate to a matter that involves only the governance of the credit union.

- The Credit Union will provide you with a regular written update on the progress of the investigation of the complaint at intervals of not greater than **20** business days starting on the date when the complaint was made.
- The Credit Union will attempt to investigate and resolve a complaint within **40** business days of having received the complaint; where the **40** business days have elapsed and the complaint is not resolved, the Credit Union will inform you of the anticipated timeframe within which we hope to resolve the complaint and of the consumer’s right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, where relevant and will provide the consumer with the contact details of such Ombudsman.

**Financial Services Ombudsman’s address:**

3rd Floor, Lincoln House,  
Lincoln Place,  
Dublin 2

**Phone Number:** Lo Call: 1890 88 20 90  
01 6620899

**Website:** [www.financialombudsman.ie](http://www.financialombudsman.ie)

- The Credit Union will advise you in writing, within **5** business days of the completion of the investigation of a complaint, of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made. The Credit Union will also inform you of the right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, where relevant, and will provide the consumer with the details of such Ombudsman.