

ADVISORY | INDUSTRY INFORMATION

# Transposition of Credit Servicers Directive in Ireland – Overview

## Introduction

On 29 December 2023, the Minister for Finance signed the European Union (Credit Servicers and Credit Purchasers) Regulations 2023 (the "**Regulations**") into law, thereby transposing the Directive on credit servicers and credit purchasers (Directive (EU) 2021/2167) (the "**CSD**") into Irish law, with effect from 30 December 2023.

In keeping with the approach previously indicated by the Department of Finance, the Regulations confirm that the existing Irish domestic credit servicing regime (the "**Domestic Regime**") provided for under the Central Bank Act 1997 (as amended) (the "**CBA 1997**") will operate in parallel with the regime provided for by the Regulations (the "**CSD Regime**").

## CSD Regime – At a glance<sup>1</sup>

### Scope:

In summary, the Regulations impose obligations on both credit servicers and credit purchasers of non-performing credit agreements issued by EU credit institutions ("**NPCAs**").

### Classification of NPCAs:

For the purposes of the CSD and the Regulations, NPCAs are credit agreements classified as non-performing exposures in accordance with Article 47a of the Capital Requirements Regulation ((EU) No 575/2013).

### Key Obligations of In-Scope Entities:

<b>Credit purchaser</b>	<ul style="list-style-type: none"> <li>Appoint a credit servicer (or other specified regulated entity) where a credit purchaser is either:                             <ul style="list-style-type: none"> <li>an EU domiciled purchaser of NPCAs with consumers; or</li> <li>a non-EU domiciled purchaser of NPCAs with natural persons, including consumers and independent workers or SMEs (as defined in Commission Recommendation 2003/361/EC).</li> </ul> </li> <li>Communicate with underlying borrowers (including prescribed details) following transfer, including prior to the date of the first collection under each NPCA;</li> <li>Report data to competent authorities; and</li> <li>Act in good faith, fairly and professionally in interactions with borrowers.</li> </ul>
<b>Credit servicer</b>	<ul style="list-style-type: none"> <li>Obtain and maintain appropriate authorisation;</li> <li>Adhere to requirements for receiving and holding funds;</li> <li>Communicate with underlying borrowers (including prescribed details) following transfer, including prior to the date of the first collection under each NPCA Adhere to record-keeping requirements;</li> <li>Adhere to outsourcing requirements;</li> <li>In certain circumstances, report data to competent authorities; and</li> <li>Act in good faith, fairly and professionally in interactions with borrowers.</li> </ul>

### Exemptions:

The Regulations do not apply to the servicing of a creditor's rights under a NPCA, or of the NPCA itself, carried out by:

- a credit institution established in an EU Member State;
- a retail credit firm; or
- certain authorised fund management entities.

The Regulations do not apply in circumstances where:

- an EU credit institution is the purchaser of the NPCA or creditor's rights thereunder;
- the transfer of a creditor's rights under a NPCA, or of the NPCA itself, takes place before 30 December 2023; or
- the credit servicing activities are conducted by lawyers or persons enforcing a court order in a professional capacity.

<sup>1</sup> See Appendix for details of key defined terms used in the Regulations.

## Domestic Regime - Overview

By way of reminder, the CBA 1997 provides for the regulation of credit servicing firms in Ireland by the Central Bank of Ireland (the "CBI").

The activities that are within scope of the Domestic Regime include:

- holding the legal title to credit granted under an in-scope credit agreement;
- determining the overall strategy for the management and administration of an in-scope credit agreement; and
- maintaining control over key decisions relating to an in-scope credit agreement.

The Domestic Regime is limited in application to credit originally advanced by a lender acting in the course of its business to the following in-scope borrowers:

- a relevant person (i.e. in summary, a natural person in Ireland (incl. sole traders or partnerships)); or
- an SME but only to the extent that the credit granted to it under the credit agreement concerned was provided by a financial service provider authorised, by the CBI or an authority that performs functions in an EEA country that are comparable to the functions performed by the CBI, to provide credit in Ireland.

It also includes a carve-out, subject to conditions, for securitisation special purpose vehicles engaged in traditional securitisations.

Following the introduction of the Regulations, the Domestic Regime continues to apply to the servicing of credit agreements with in-scope borrowers in a number of scenarios, including:

- performing credit agreements to in-scope borrowers;
- NPCAs to in-scope borrowers issued by non-bank lenders.

Note that the CBA 1997 has been amended by the Regulations to provide that where entities such as credit purchasers and credit servicers are engaged in activities that are within scope of the Regulations, they will be exempt from the scope of the Domestic Regime.

## CSD Regime – Overview

The objective of the CSD is to create a harmonised set of rules for the transfer and servicing of NPCAs across the EU with a view to reducing the stock of NPCAs on EU credit institution balance sheets through enhancing the efficiency, competitiveness and transparency of secondary markets for NPCAs in the EU.

The CSD Regime applies to:

- credit purchasers; and
  - credit servicers acting on behalf of credit purchasers, in respect of a creditor's rights under NPCAs, or of the NPCA itself, issued by a credit institution established in an EU Member State.
- a) *Obligations for sellers of NPCAs:*
- **Information for prospective purchasers:** The Regulations impose obligations on credit institutions selling NPCAs within scope of the CSD Regime to provide prescribed information to a prospective credit purchaser prior to the acquisition of the NPCAs. Disclosures are to be made using the data templates adopted under Commission Implementing Regulation ((EU) 2023/2083). This is subject to certain exceptions, including for a securitisation of NPCAs to which Regulation (EU) 2017/2402 (the "Securitisation Regulation") and related disclosure technical standards apply (in respect of which disclosures should be made using the templates prescribed by that regime).
  - **CBI reporting:** Entities that transfer NPCAs must report biannually certain information and data to the CBI on completed transfers. These post-transfer reporting obligations arise both for credit institutions and for credit purchasers that on-sell in-scope NPCAs to other credit purchasers.

Reportable data includes certain information relating to the identity of the (acquiring) credit purchaser, NPCAs transferred and whether the borrowers are consumers.

b) *Obligations for credit purchasers:*

Obligations imposed on credit purchasers include the following.

**Appointment of a credit servicer:** Credit purchasers domiciled in an EU member state must appoint a credit servicer (or alternatively a credit institution or certain non-credit institution supervised entities, e.g. a retail credit firm) to perform credit servicing activities in respect of NPCAs concluded with consumers.

Credit purchasers not domiciled in the EU ("**Third-Country Credit Purchasers**") are subject to a broader obligation under the Regulations with regard to the appointment of a credit servicer. They must appoint a credit servicer (or alternatively a credit institution or certain non-credit institution supervised entities, e.g. a retail credit firm) to perform credit servicing activities in respect of NPCAs concluded with natural persons, including consumers and independent workers, or SMEs.

Third-Country Credit Purchasers are required to designate an EU-domiciled representative that will be addressed by the CBI regarding all issues relating to compliance with the Regulations.

In contrast to the Domestic Regime, an entity that acquires and holds title to NPCAs is not subject to an obligation to seek authorisation from the CBI, unless carrying out in-scope servicing on its own behalf.

**Provision of information to borrowers:** The Regulations impose obligations on credit purchasers to provide underlying borrowers, whose NPCAs have been acquired, with certain information. This must be occur prior to the first debt collection post-transfer (which may pose practical challenges) and subsequently, upon request by an underlying borrower.

**Good conduct:** In their relationship with borrowers, credit purchasers must act in good faith, fairly and professionally, provide information to borrowers that is not misleading, unclear or false, respect and protect the personal information and privacy of borrowers, and communicate with borrowers in a way that does not constitute harassment, coercion or undue influence.

*c) Obligations for credit servicers:*

The Regulations impose an authorisation requirement on credit servicers carrying out "credit servicing activities" in respect of NPCAs.

The following activities are defined as "credit servicing activities" under the Regulations:

- collecting or recovering from the borrower, in accordance with national law, any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;
- renegotiating with the borrower, in accordance with national law, any terms and conditions related to a creditor's rights under a credit agreement, or of the credit agreement itself, in line with the instructions given by the credit purchaser, where the credit servicer is not a credit intermediary as defined in the Consumer Credit Directive (Directive 2008/48/EC) or in the Mortgage Credit Directive (Directive 2014/17/EU);
- administering any complaints relating to a creditor's rights under a credit agreement or to the credit agreement itself; and/ or
- informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself.

Obligations imposed by the Regulations credit servicers include that they must:

**Record keeping:** maintain certain specified information in relation to the credit agreements that it services for a period of at least 6 years from the date on which the credit servicing agreement is terminated, but no longer than 10 years.

- **Credit servicing agreement:** provide credit servicing pursuant to the terms of a credit servicing agreement which must contain certain minimum prescribed provisions.
- In addition, obligations of credit purchasers outlined above in respect of **good conduct and provision of information to borrowers** similarly apply to credit servicers acting on behalf of credit purchasers.

Additionally, the Regulations permit credit servicers to:

- *Holding funds:* receive and hold funds received from underlying borrowers in order to transfer those funds to the credit purchaser. All funds received must be transferred into a separate account and held for the interest and benefit of the credit purchaser.
- *Outsourcing:* to engage in outsourcing of any credit servicing activities to a credit service provider subject to complying with certain obligations including that it notifies the CBI of the outsourcing arrangement and entering into a written outsourcing agreement with the credit service provider.

Note that under the Regulations, credit servicing firms that were authorised under the Domestic Regime prior to the introduction of the Regulations will be deemed authorised for the purposes of the CSD Regime.

A credit servicer authorised under the CSD and the Regulations may passport its authorisation to other EU Member States.

## Exemptions

The Regulations include a number of exemptions from their scope. For example, the Regulations do not apply to the servicing of a creditor's rights under a NPCA, or of the NPCA itself, carried out by:

- a credit institution established in an EU Member State;
- a retail credit firm; or
- certain authorised fund management entities.

Furthermore, the Regulations do not apply in circumstances where:

- an EU credit institution is the purchaser of the NPCA or right thereunder;
- the transfer of a creditor's rights under a NPCA, or of the NPCA itself, takes place before the entry into force of the Regulations (i.e. 30 December 2023).

## Practical impact of CSD transposition for loan purchasers

Following the introduction of the Regulations, prospective credit purchasers will need to pay particular attention to a number of practical matters, including:

- **Due diligence of loan portfolio:** In light of the fact that the Domestic Regime and CSD Regime will operate in parallel, additional focus will need to be placed on due diligence of loan portfolios prior to acquisition in order to confirm whether the loans are performing loans or NPCAs, when they became NPCAs (if applicable) and whether they were originated by EU credit institutions. This aspect of the due diligence process will be essential to ensure that the credit purchaser and any credit servicer comply with the relevant applicable credit servicing regime and information requirements.
- **Adjustment of existing eligibility criteria applied to loan acquisitions:** Following the introduction of the Regulations, different regulatory regimes may apply to the acquisition of a loan portfolio based on the composition of that loan portfolio. Prospective credit purchasers may wish to adjust the eligibility criteria of the loan assets they may acquire to ensure they can understand/ manage whether the Domestic Regime and/ or the CSD Regime will apply.
- **Structuring of loan acquisitions:** Due to the contrasting approaches taken by the Domestic Regime and the CSD Regime to the regulation of holding title to credit agreements, additional considerations may arise in terms of who will acquire the legal title to the loan portfolio.
- **Credit Servicing Firms – Additional Due Diligence:** Prospective credit purchasers will need to ensure that any credit servicing firms they seek to appoint in relation to a loan portfolio hold the relevant authorisations to permit them to service the types of loans within the loan portfolio (e.g. performing loans or NPCAs).
- **Credit purchaser requirements:** Prospective credit purchasers will also need to assess their own conduct of business obligations for portfolios within scope of the CSD Regime, in particular with regard to the information provision requirements under the Regulations.

- **Securitisations:** Parties to a securitisation of NPCAs will need to, amongst other things:
  - consider any funds held by the credit servicer on behalf of the credit purchaser and borrower-to-credit servicer cash in transit as part of the transaction security package arrangements;
  - consider the impact of the required notification to borrowers of the occurrence of transfer on the structure; and
  - ensure that any servicing agreement contains the prescribed provisions.

## Transposition and Decisions on Discretions

Prior to the introduction of the Regulations, the Department of Finance ("DoF") published a paper outlining the decisions it has taken in relation to the discretions afforded to each EU Member State under the CSD. The most relevant of these discretions and the approach taken by the DoF are as follows:

- Confirmed that Ireland will not exercise the discretion to provide that EU based credit purchasers should appoint credit servicers under the CSD in respect of NPCAs other than NPCAs concluded with consumers. As highlighted above, EU domiciled credit purchasers need only appoint a credit purchaser in respect of a NPCA with a consumer.
- Credit servicers authorised in Ireland under the CSD will be allowed to receive and hold funds from borrowers and measures required to support this have been provided for in the transposition, as per the discretion under Article 6(2) of the CSD.
- A record retention period of six years has been provided for in the transposition of the CSD, as per the discretion under Article 11(4) of the CSD.
- Confirmed that Ireland will not exercise the discretion in relation to obligations of the credit purchaser in relation to credit registers. The DoF considers that the provisions of the Credit Reporting Act 2013 are appropriate and effective and should continue to apply.
- Entities carrying out credit servicing activities under the provisions of Part V of the CBA 1997 will be recognised as authorised credit servicers, as per the discretion under Article 32(2) of the CSD has been applied.

## Appendix (European Union (Credit Servicers and Credit Purchasers) Regulations 2023 - Defined Terms)

**"borrower"** means a legal or natural person who has concluded a credit agreement with a credit institution, including its legal successor or assignee;

**"consumers"** means a natural person who, in credit agreements covered by this Directive, is acting for purposes which are outside his trade, business or profession.

**"credit purchaser"** means any natural or legal person, other than a credit institution, that purchases a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, in the course of its trade, business or profession, in accordance with applicable Union and national law.

**"credit service provider"** means a third party used by a credit servicer to perform any of the credit servicing activities.

**"credit servicer"** means a legal person that, in the course of its business, manages and enforces the rights and obligations related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, on behalf of a credit purchaser, and carries out at least one or more credit servicing activities.

**"credit servicing activities"** means one or more of the following activities:

- a) collecting or recovering from the borrower, in accordance with national law, any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;
- b) renegotiating with the borrower, in accordance with national law, any terms and conditions related to a creditor's rights under a credit agreement, or of the credit agreement itself, in line with the instructions given by the credit purchaser, where the credit servicer is not a credit intermediary as defined in Article 3, point (f), of Directive 2008/48/EC or in Article 4, point (5), of Directive 2014/17/EU;
- c) administering any complaints relating to a creditor's rights under a credit agreement or to the credit agreement itself;
- d) informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself.

**"non-performing credit agreement"** means a credit agreement that is classified as a non-performing exposure in accordance with Article 47a of Regulation (EU) No 575/2013.

**"retail credit firm"** means a person who, pursuant to Part V of the Central Bank Act 1997 (No. 8 of 1997), holds an authorisation from the Bank to carry on the business of a retail credit firm.

### Further information

We practice Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Irish and Jersey law from an international network of ten offices across Europe, the Americas, Asia and the Middle East. For more information, please get in touch with your usual contact at Walkers or any of the contacts in your region listed below.



#### Niall Esler

Partner  
Ireland  
+353 1 863 8517  
[niall.esler@walkersglobal.com](mailto:niall.esler@walkersglobal.com)



#### Shane Martin

Partner  
Ireland  
+353 1 470 6673  
[shane.martin@walkersglobal.com](mailto:shane.martin@walkersglobal.com)



#### Ian McNamee

Partner  
Ireland  
+353 1 470 6643  
[ian.mcnamee@walkersglobal.com](mailto:ian.mcnamee@walkersglobal.com)



#### Paddy Rath

Partner  
Ireland  
+353 1 470 6657  
[paddy.rath@walkersglobal.com](mailto:paddy.rath@walkersglobal.com)



#### Noeleen Ruddy

Partner  
Ireland  
+353 1 470 6650  
[noeleen.ruddy@walkersglobal.com](mailto:noeleen.ruddy@walkersglobal.com)



#### Andrew Traynor

Partner  
Ireland  
+353 1 470 6632  
[andrew.traynor@walkersglobal.com](mailto:andrew.traynor@walkersglobal.com)



#### Muireann Nic Dhonncha

Of Counsel  
Ireland  
+353 1 470 6677  
[muireann.nicdhonncha@walkersglobal.com](mailto:muireann.nicdhonncha@walkersglobal.com)



#### Conor Daly

Senior Associate  
Ireland  
+353 1 470 6684  
[conor.daly@walkersglobal.com](mailto:conor.daly@walkersglobal.com)



#### Sinead Gormley

FCM Knowledge Manager  
Ireland  
+353 1 863 8561  
[sinead.gormley@walkersglobal.com](mailto:sinead.gormley@walkersglobal.com)