

Co-operation Agreement between the National Consumer Agency and the Central Bank of Ireland

Introduction

The purpose of this Co-operation Agreement (*'the Agreement'*) is to provide a framework for the relationship between the National Consumer Agency ('the Agency') and the Central Bank of Ireland ('the Bank'). This Agreement is made in accordance with Section 21 of the Consumer Protection Act, 2007 (*'the Act'*). This Agreement refers to these two parties as *'the Co-operating Parties'* or a *'Co-operating Party'* when referring to one party alone.

The Co-operating Parties acknowledge that, notwithstanding any other provision of this Agreement, they may only disclose information in accordance with this Agreement if permitted or not prevented under any applicable laws, including section 33AK of the Central Bank Act 1942 (*'the 1942 Act'*) and EU law.

Definitions

Terms not defined in this Agreement shall, unless the contrary intention appears, have the meaning given to such terms by the Consumer Protection Act, 2007 (the *'Act'*).

'Regulated financial service provider' has the same meaning as in Section 2(1) of the 1942 Act.

1. General Structure

1.1 The *Agency* was established under Part 2, Chapter 1 of the Act.

The Bank was established under Part II of the 1942 Act.

1.2 The Co-operating Parties enter into this Agreement pursuant to Section 21 of the Act, setting out the terms under which the Co-operating Parties agree to give effect to the provisions of Section 21 (1) relating to:

- (i) Facilitating co-operation between the Agency and the Bank in the performance of their respective functions in so far as they relate to issues of consumer protection and welfare;
- (ii) Avoiding duplication of activities by the Agency and the Bank;
- (iii) Enabling the Agency to be consulted in relation to any decisions by the Bank which affect consumers; and
- (iv) Where appropriate, conducting joint studies or analysis of matters relating to consumer protection or issues of concern to consumers.

1.3 The Co-operating Parties also desire to enter into this Agreement in order to regulate the supply of information between them and to maintain controls on the uses of and the confidentiality of any information so shared.

2. Roles of the Co-operating Parties

The respective roles of the Agency and the Bank are summarised below:

2.1 The Agency

The Agency is charged with (i) promoting and protecting the interests and welfare of consumers; (ii) enforcing the 'relevant statutory provisions' (as defined in the Act), including by the prosecution of offences, by way of summary proceedings; (iii) encouraging compliance with the relevant statutory provisions; (iv) investigating instances of suspected offences under any of the relevant statutory provisions; and (v) at its discretion, referring cases to the Director of Public Prosecutions where the Agency has reasonable grounds for believing that an indictable offence under any of the relevant statutory provisions has been committed.

2.2 *The Bank*

The Bank, in performing its functions and exercising its powers is charged with promoting the best interests of users of financial services in a way that is consistent with -

- (i) the orderly and proper functioning of financial markets,
- (ii) the orderly and prudent supervision of providers of those services
- (iii) the public interest and the interests of consumers,

3. General co-operation

The Co-operating Parties will seek to maintain strong and constructive relationships with each other in order to promote the best interests of consumers. The Co-operating Parties recognise the importance of close co-operation and communication between them.

4. Information sharing and consultation

4.1 The Co-operating Parties have agreed, to the extent permissible by law, to observe the following principles:

- (i) They will consult at an early stage on any issues that might have significant implications for either Co-operating Party.
- (ii) They will seek to achieve consistency of approach and to avoid confusion or misunderstanding as to their respective roles.
- (iii) Where appropriate they will seek to exercise their respective responsibilities in a complementary fashion to address issues and problems that affect consumers.

4.2 With a view to observing these principles the Co-operating Parties will ensure that there is an appropriate and timely flow of information between them. This exchange of information will take place on a regular and routine basis and as the circumstances demand.

5. Confidentiality/Permissible uses

- 5.1 A Co-operating Party will furnish to the other Co-operating Party information in its possession if the information is required by the other Co-operating Party for the purpose of the performance by that party of any of its functions, subject to any legal constraints outlined below.
- 5.2 The Co-operating Parties recognise that the exchange of information between them will be an important contribution to the efficient and effective discharge of their duties in promoting and protecting the interests and welfare of consumers. They are equally conscious of the need for discretion and for the adoption of procedures that protect the following:
- (i) the confidential nature of certain information, and
 - (ii) the professional secrecy obligations of the Bank under Section 33AK of the 1942 Act and EU law, to which the terms of this Agreement are subject (where applicable).
- 5.3 The Co-operating Parties consider it prudent for them to commit to a level of confidentiality between them as regards the exchange of non-public information. They are able to assist each other through the sharing of certain information as provided for under the relevant statutory provisions.
- 5.4 Where one Co-operating Party (the “Requesting Party”) requests information from the other Co-operating Party (the “Requested Party”), the Requesting Party shall state in its request the purpose of such a request and the proposed use by the Requesting Party of such information. The Requested Party may require that such request be made in writing.
- 5.5 Where one Co-operating Party provides information to another Co-operating Party (whether pursuant to a request or otherwise), the Co-operating Party receiving such information shall use such information only for a purpose agreed with, or consented to by, the Co-operating Party providing such information.

5.6 A Co-operating Party shall not disclose to a third party non-public information received from the other Co-operating Party (whether pursuant to a request or otherwise) except with the consent in writing of the Co-operating Party that provided such information, or pursuant to a legally enforceable demand or obligation. A Co-operating Party that is subject to such demand or obligation shall inform the other Co-operating Parties of the legal provision(s) that require such disclosure within a reasonable time of such Party becoming aware of such demand or obligation.

6. Performance of functions under the Act in respect of financial services provided by a regulated financial services provider

6.1 By virtue of the relevant legislative framework certain functions are vested concurrently in both the Agency and the Bank. The extent to which such functions vest concurrently in both the Agency and the Bank is specified in section 5A(5) of the 1942 Act. In this respect, and to the extent that these functions relate to a financial service provided by a regulated financial service provider, the Agency shall forbear the performance of its functions under Section 8 (1), (4), (5), and (6) of the Act in relation to:

- (i) Sections 41 to 49 and 51 to 56 of the Act, and
- (ii) The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000 (S.I. No. 27 of 1995 and S.I. No.307 of 2000), and the functions under Section 30, 71, 72, 73, 75, 81, 82, 84, 86, 88 and 90 of the Act, unless both parties agree within a reasonable timeframe that the Bank has chosen not to exercise such functions.

6.2 Where any section of the Act referred to in 6.1 provides for anything to be done in relation to the Agency (whether the giving of notice to it, the submitting of a thing to it or the doing of any other thing) then, in respect of financial services provided by regulated financial service providers, it is sufficient compliance with the section concerned if the thing is done in relation to the Bank.

6.3 In view of the statutory role it holds in relation to the provision of information including information in relation to the costs to consumers, and the risks and benefits associated with the provision of those services, and promoting the development of financial education and capability, the Agency shall be the primary source of consumer information on financial products and services.

In view of the statutory role which the Bank has under Section 5C of the 1942 Act, and in particular the power to:

- (i) undertake studies, analyses and surveys with respect to the provision of relevant financial services to consumers,
- (ii) collect and compile information for that purpose, and
- (iii) publish the results of any such studies, analyses or surveys,

the agency may, if it is of the opinion that the information obtained by the Bank pursuant to Section 5C of the 1942 Act is relevant to the Agency's functions under Section 8(3)(ha) of the Act, request such information from the Bank and the Bank shall provide that information to the Agency unless prevented from doing so under Section 33AK of the 1942 Act.

The Co-operating Parties shall engage in prior consultation in accordance with paragraph 4 of this Agreement and shall endeavour, to the extent permissible by law, to keep each other informed, within a reasonable timeframe, of any actions taken or decisions made arising from their performance of the functions outlined above.

7. Proceedings and Compliance Notices

7.1 The Co-operating Parties will ensure that no person is the subject of:

- (i) Proceedings (whether civil or criminal) under the Act or any other enactment;
or
- (ii) The exercise of any power under Section 73 or 75 of the Act,

in respect of an alleged contravention of a provision of the Act or any other enactment, by more than one of the Co-operating Parties.

- 7.2 If a Co-operating Party is considering an action of a type described in 7.1 in relation to a matter in which functions may vest concurrently in both the Agency and the Bank, the co-operating parties shall consult, to the extent permitted by law, and agree a concerted approach prior to initiating that action.
- 7.3 If a Co-operating Party is considering an action of a type described in 7.1 which may otherwise be relevant to the other co-operating party, taking into account the respective roles of the Co-operating Parties as referred to in paragraph 2, that Co-operating Party will consult, to the extent permitted by law, with the other Co-operating Party to clarify this.
- 7.4 Any consultation entered into pursuant to paragraphs 7.2 and 7.3 will occur directly between the Chief Executive of the Agency and the Assistant Director General, Consumer Protection of the Bank.

8. Meetings

The Co-operating Parties will meet regularly (at appropriate levels of seniority), and not less than annually, to discuss matters of mutual interest and will communicate routinely between meetings on such matters of shared interest that may arise in the course of day-to-day business.

9. Co-operation Agreement Binding

This Co-operation Agreement has been drafted in accordance with section 21 of the Act and enables a Co-operating Party to forbear the performance of its functions to the extent that such functions are, pursuant to paragraph 6 of this Agreement designated for performance by the other Co-operating Party. This Co-operation Agreement shall not operate to make a Co-operating Party (or any employee, officer or agent thereof) liable to

any person in damages or otherwise for anything done or omitted for which such person would not otherwise be so liable.

10. Variation of the terms of the Co-operation Agreement

10.1 Where a Co-operating Party proposes a variation of the Agreement that Party shall submit, in writing, to the other Co-operating Party the text of the proposed variation and the reasons thereof.

10.2 This Agreement may only be varied with the consent of both Co-operating Parties in writing.

11. Implementation and review

This Co-operation Agreement will be effective from 1st February 2011. The Co-operating Parties will continue to monitor the operation of this Co-operation Agreement and will review it from time to time as necessary, with an initial review after it is in operation for twelve months.

12. Costs

Each Co-operating Party agrees to bear its own costs, fees and expenses incurred on foot of a request for information under this Agreement, subject to the Co-operating Parties agreeing to alternative arrangements in circumstances where a Requested Party incurs excessive costs, fees or expenses on foot of such a request.

13. Miscellaneous

13.1 The Agency shall furnish the Minister for Enterprise, Trade and Innovation and the Minister for Finance with a copy of this Agreement, including any variation of this Agreement, within 1 month from the date upon which this Agreement is signed by both Co-operating Parties.

13.2 Where the measures specified in paragraph 13.1 have been met, the Agency shall as soon as practicable, publish a notice, drafted in accordance section 21(7) of the Act, and agreed to in advance by the Bank, in Iris Oifigiúil.

13.3 Notwithstanding paragraphs 13.1 & 13.2, both Co-operating Parties shall cause a copy of the above notice to be published on both of their respective Internet sites.

Both Co-operating Parties confirm their acceptance of the above terms and conditions by signing below.

Signed:

Matthew Elderfield
Head of Financial Regulation of Central Bank of Ireland

Date:

Signed:

Ann Fitzgerald
Chief Executive Officer of the National Consumer Agency

Date: