



Number 36 of 2018

Consumer Protection (Regulation of Credit Servicing Firms) Act 2018



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**CONSUMER PROTECTION (REGULATION OF CREDIT SERVICING FIRMS) ACT
2018**

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[No. 36.]

*Consumer Protection (Regulation of
Credit Servicing Firms) Act 2018*

[2018.]

ACTS REFERRED TO

Central Bank Act 1997 (No. 8)

Central Bank Acts 1942 to 2015

National Asset Management Agency Act 2009 (No. 34)



Number 36 of 2018

**CONSUMER PROTECTION (REGULATION OF CREDIT SERVICING FIRMS) ACT
2018**

An Act to provide for the regulation of credit servicing firms and for that purpose to amend the Central Bank Act 1997. [24th December, 2018]

Be it enacted by the Oireachtas as follows:

Amendment of section 28 of Central Bank Act 1997

1. Section 28 of the Central Bank Act 1997 is amended—

(a) in subsection (1)—

(i) by substituting the following definition for the definition of “credit servicing”:

“ ‘credit servicing’, in relation to a credit agreement, means, subject to subsection (2)—

(a) holding the legal title to credit granted under the credit agreement,

(b) managing or administering the credit agreement, including—

(i) notifying the relevant borrower of changes in interest rates or in payments due under the credit agreement or other matters of which the credit agreement requires the relevant borrower to be notified,

(ii) taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower,

(iii) managing or administering any of the following:

(I) repayments under the credit agreement;

(II) any charges imposed on the relevant borrower under the credit agreement;

(III) any errors made in relation to the credit agreement;

(IV) any complaints made by the relevant borrower;

(V) information or records relating to the relevant borrower in respect of the credit agreement;

- (VI) the process by which a relevant borrower’s financial difficulties are addressed;
- (VII) any alternative arrangements for repayment or other restructuring;
- (VIII) assessment of the relevant borrower’s financial circumstances and ability to repay under the credit agreement;
- (IX) determination of the overall strategy for the management and administration of a portfolio of credit agreements;
- (X) maintenance of control over key decisions relating to such portfolio,

or

- (c) communicating with the relevant borrower in respect of any of the matters referred to in paragraph (b);”,
- (ii) by substituting the following definition for the definition of “credit servicing firm”:

“ ‘credit servicing firm’ means, subject to subsection (2A)—

- (a) a person (other than the National Asset Management Agency or a NAMA group entity (within the meaning of the National Asset Management Agency Act 2009)) who undertakes credit servicing other than on behalf of an owner of credit,
- (b) a regulated financial service provider taken to be authorised to carry on the business of a credit servicing firm by virtue of subsection (3),
- (c) a credit servicing firm taken to be authorised to carry on the business of a credit servicing firm by virtue of subsection (4), or
- (d) a credit servicing firm referred to in paragraph (b) of section 34FA(1) that undertakes, on behalf of a person referred to in the said section 34FA, credit servicing within the meaning of subparagraphs (i), (ii) and (iii)(I) to (VIII) of paragraph (b) and paragraph (c) of the definition of ‘credit servicing’ in section 28(1);”,

and

- (iii) by inserting the following definitions:

“ ‘owner of credit’ means—

- (a) a person who is authorised, or, by virtue of subsection (4), taken to be authorised, to carry on the business of a credit servicing firm, or
- (b) a regulated financial services provider authorised, by the Bank or

an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State;

‘retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 per cent’ shall be construed in accordance with Article 6 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017¹;

‘securitisation special purpose entity’ means a corporation, trust or other entity (other than an originator or sponsor)—

- (a) established for the purpose of carrying out one or more securitisations,
- (b) the activities of which are limited to those appropriate to accomplishing that objective, and
- (c) the structure of which is intended to isolate the obligations of the securitisation special purpose entity from those of the originator;

‘securitisation’, ‘originator’, ‘sponsor’ and ‘original lender’ have the meanings given to them respectively by Article 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017;”

- (b) by substituting the following subsection for subsection (2):

“(2) For the purposes of this Part, a person who holds the legal title to credit granted under a credit agreement (in this subsection referred to as ‘the holder’) is taken to be credit servicing even if any action referred to in paragraph (b) or (c), as the case may be, of the definition of ‘credit servicing’ in subsection (1) is being undertaken by a person, acting on behalf of the holder, authorised to carry on the business of a credit servicing firm.”

- (c) by inserting the following subsection after subsection (2):

“(2A) For the purposes of this Part, ‘credit servicing firm’, in relation to credit granted by, or the holding of legal title to credit by, the owner of credit, does not include a securitisation special purpose entity to which any part of the interest of the owner of credit in the credit concerned is directly or indirectly assigned or otherwise disposed of, as part of a securitisation, where—

- (a) the securitisation special purpose entity was established by or on behalf of the owner of credit as part of the securitisation arranged by or on behalf of that owner of credit,
- (b) the owner of credit retains the legal title to the credit so assigned or otherwise disposed of, and

¹ OJ No. L 347, 28.12.2017, p.35

- (c) the originator, sponsor or original lender of the securitisation is required to retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 per cent;”,

and

- (d) by inserting the following subsection after subsection (3):

“(4) For the purposes of this Part, a person (other than a regulated financial service provider taken to be authorised to carry on the business of a credit servicing firm by virtue of subsection (3)) authorised to carry on the business of a credit servicing firm before the coming into operation of the *Consumer Protection (Regulation of Credit Servicing Firms) Act 2018* is taken to be authorised to carry on the business of a credit servicing firm after such coming into operation.”.

Transitional provision for existing credit servicing firms: supplementary

2. The Central Bank Act 1997 is amended by inserting the following section after section 34F:

“**34FA.**(1) Notwithstanding section 29, a person (other than a regulated financial service provider taken to be authorised to carry on the business of a credit servicing firm by virtue of section 28(3) or a person taken to be carrying on the business of a credit servicing firm by virtue of section 28(4)) carrying on the business of a credit servicing firm, in so far as that business relates to credit servicing within the meaning of paragraph (a), (b)(iii)(IX) or (b)(iii)(X), as the case may be, of the definition of ‘credit servicing’ in section 28(1) (in this subsection referred to as ‘the specified matters’), immediately before the coming into operation of the *Consumer Protection (Regulation of Credit Servicing Firms) Act 2018*, is taken to be authorised to carry on the business of a credit servicing firm, in so far as that business relates to the specified matters, after such coming into operation until the Bank has granted or refused authorisation to the person, provided that—

- (a) the person applies to the Bank under section 30 for authorisation no later than 3 months after that coming into operation, and
- (b) a credit servicing firm undertakes, on behalf of that person, credit servicing within the meaning of subparagraphs (i), (ii) and (iii)(I) to (VIII) of paragraph (b) and paragraph (c) of the definition of ‘credit servicing’ in section 28(1).
- (2) If a person is taken to be authorised to carry on the business of a credit servicing firm under subsection (1), the Bank may do either or both of the following:
- (a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly

regulation and supervision of credit servicing firms;

- (b) direct that person not to carry on the business of a credit servicing firm for such period (not exceeding 3 months) as is specified in the direction.
- (3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Short title, collective citation and commencement

3. (1) This Act may be cited as the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018.
- (2) The Central Bank Acts 1942 to 2015 and this Act may be cited together as the Central Bank Acts 1942 to 2018.
- (3) This Act shall come into operation on such day or days as the Minister for Finance may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.