
First Citizen Finance DAC (“First Citizen”) dealing with SMEs in Financial Difficulties, reference Central Bank (Supervision And Enforcement) Act 2013 (Section 48) (Lending To Small And Medium-Sized Enterprises) Regulations 2015

1. Introduction

On the 18th December 2015 the Central Bank of Ireland published new Regulations “**Central Bank (Supervision And Enforcement) Act 2013 (Section 48) (Lending To Small And Medium-Sized Enterprises) Regulations 2015**” for firms lending to SMEs, with which regulated lenders (other than credit unions) must comply from 1 July 2016 or, in the case of credit unions, from 1 January 2017.

The Regulations introduce specific requirements for regulated lenders, including:

- Giving SME customers greater transparency around the application process;
- Providing SME customers with reasons for declining credit, in writing, that are specific to their application;
- Providing greater protections for guarantors;
- Contacting SME customers who have been in arrears for 15 working days;
- Warning SME customers if they are in danger of being classified as not co-operating; and
- Expanding the grounds for appeal and setting up an internal appeals panel.

This information provided outlines the procedures of First Citizen when dealing with SMEs in financial difficulties and gives information on the support which will be provided by First Citizen to customers in this situation. We recognise that individual SMEs will vary by size and sector and therefore each SME in financial difficulties will be dealt with on a case by case basis. This will enable First Citizen to adopt a flexible approach to dealing with each customer’s situation.

We recommend that all customers read this information provided carefully and contact First Citizen as soon as possible if they are facing or are in financial difficulties.

Please note that nothing in the SME Regulations or this information provided prohibits First Citizen from acting with all necessary speed:

- Where in the circumstances of the case demand it;
- Is necessary to initiate a liquidation, receivership, an examinership or similar insolvency event or where another regulated entity or other third parties initiate such actions;
- Where it is necessary in order for First Citizen to protect its legitimate commercial interests;
- Where there is reasonable evidence of fraud, terrorist connections, money laundering and/ or misrepresentation; or
- The provisions of the Regulations and this booklet are without prejudice to First Citizen regulatory and/or legal obligations and legal rights to enforce any agreement including any security taken in connection with any agreement.

2. Scope of the SME Regulations and Definitions

Scope of the SME Regulations

The SME Regulations applies to all business lending by regulated entities including the provision of the following credit products within the State to SMEs operating within the State, unless otherwise stated:

- Non Consumer Hire Purchase
- Leasing
- Overdrafts
- Loans and Term Loans
- Invoice Discounting

But excluding:

- Lending to other financial institutions
- Syndicated, club, or multi-lender transactions, and
- Special Purpose Vehicles including vehicles established for the purposes of a particular transaction.

Definition of an SME

An entity is regarded as an SME for the purpose of the SME Regulations if the enterprise employs fewer than 250 people and has an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million.

Definition of Financial Difficulties

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

- a) A customer is in arrears under the credit facility agreement or alternative arrangement for 3 consecutive months including where the customer is 1 month in arrears 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) Following an assessment by First Citizen carried out in accordance with Regulation 17(2)(b), 17(4)(b) or 35(2)(b), determined that the customer’s circumstances are such that Regulations 18 to 23 or Regulations 36 to 41 should be applied to the customer’s case, and “financial difficulties cases” shall be construed accordingly.

Definition of Arrears

Arrears are defined by the SME Regulations 2015 to be 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 customer by the scheduled due date for payment and, in the case of an overdraft facility, where the customer’s overdraft limit is exceeded for 30 consecutive days, and “in arrears” means a situation in which arrears have arisen.

Definition of Not Co-operating

Not co-operating means a situation in which —

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

3. Our approach to dealing with SMEs in or facing financial difficulties

If your agreement goes into financial difficulties we will work with you to try to develop a long term solution for your business. A summary of the main steps that an SME may consider taking when in or facing financial difficulties that may assist in the process of dealing with the financial difficulties is outlined below:

Step 1: Contact First Citizen as early as possible regarding financial difficulties which your business is encountering or facing and if such difficulties may impact on your ability to meet your financial commitments to First Citizen.

Step 2: Tell us about any concerns you have in relation to the impact of financial difficulties on your business relationship with First Citizen.

Step 3: Promptly engage and fully co-operate with First Citizen to agree an approach with us to rectify the financial difficulties situation.

Step 4: Provide relevant and reliable business information as requested by First Citizen and within the timeframes specified in order to support our assessment of your situation.

Step 5: Complete any necessary documentation requested as part of the assessment.

Step 6: Review your progress with us regularly and advise us if your circumstances change.

It is very important that customers in or facing financial difficulties fully engage and co-operate with First Citizen. This includes reverting to First Citizen and satisfying information requests within stipulated timeframes. Failure to engage and co-operate with First Citizen may result in you not being treated as a financial difficulties case which may result in the SME Regulations not applying to your situation.

The following section provides further details on the approach adopted by First Citizen when dealing with customers in or facing financial difficulties.

Communication with First Citizen

We recommend that customers who are in or facing financial difficulty fully engage with First Citizen and that we jointly discuss and address the situation. The earlier this contact is established, the quicker a potential solution can be discussed and agreed. The key objective of the First Citizen policy is to assist customers resolve their financial difficulties.

The SME Regulations sets out clear guidance for customers who are either in or facing financial difficulty and our recommended approach is as follows:

- **Customers facing financial difficulty:**

We recommend that SME customers who have concerns about their future ability to repay finance products or meet their financial commitments to First Citizen contact us as soon as possible to discuss the situation. When you contact First Citizen with your concerns, you will be offered an immediate review meeting to discuss your situation.

- **Customers in financial difficulty:**

When financial difficulties first arise on your agreement, we will contact you in writing to advise of: (a) the status of your agreement (b) the applicability of the SME Regulations and (c) the availability of this information booklet. We will also offer you the option of an immediate review meeting to discuss your situation. Customers may engage the services of third party advisors who can accompany the customer in these discussions with First Citizen whether these discussions are face to face or not. Before commencing discussions First Citizen recommend that customers seek independent legal advice.

Business Information Required

Prior to or as a result of your review meeting, certain information is likely to be requested from you in order for First Citizen to complete an assessment for an alternative repayment /payment arrangement (the "Required Information"). The type of Required Information will vary by individual SME but is likely to include the following:

- Up to date financials including annual audited (or draft) and quarterly management agreements;
- Cash flow projections for the next 12 months;
- Up to date business plan including details of your trading performance in the last 12 months plus outlook for the next 12 months;
- Up to date aged list of debtors and creditors;
- Estimate or independent report on property valuation (if applicable);
- 6 months current agreement bank statements for the business;
- Up to date Statement of Affairs for all named customers, material shareholders or guarantors as required;
- Confirmation that the tax affairs of the business and named customers and/or material shareholders are up to date and in order; and
- Any other information First Citizen deems relevant to review as part of your assessment.

The Required Information will be requested from you in writing or by telephone from First Citizen. The Required Information will be confirmed to you and will be used to complete an assessment of your situation.

Assessment

Following receipt of the Required Information, First Citizen will complete a full assessment of your situation for the purposes of considering an alternative repayment / payment arrangement. This assessment will consider the full circumstances of the customer in financial difficulties. The points below outline the timelines for this assessment as well as next steps.

Decision

We will respond to you in writing with a decision in relation to any available alternative arrangements within 15 working days of receiving all of the requested information.

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- If a suitable alternative repayment / payment arrangement can be identified for you by First Citizen, you will be provided with details of the proposed alternative arrangement and a timeframe to avail of this arrangement.

We will also advise you of your options in terms of appealing this decision in the event that you do not wish to avail of alternative repayment/payment arrangement offered to you by First Citizen.

- If, following the assessment, First Citizen cannot identify a suitable alternative repayment/payment arrangement for you we will also advise you of this in writing and of your option in terms of appealing this decision.

Appeals

First Citizen has an appeals process in place for customers who wish to appeal decisions made by First Citizen for customers in or facing financial difficulties. Details of the process are as follows:

- The customer must firstly initiate the appeal on a decision from First Citizen;
- The appeal must be submitted in writing to First Citizen within 21 days of the decision issued by First Citizen;
- The appeal is then forwarded for independent review by a senior manager in First Citizen; and
- The appeal will be reviewed to re-examine in full and determine if First Citizen requires additional information from the customer to progress the appeal.

First Citizen will consider any appeals made in full and will respond to customers within 15 working days of receiving your appeal and any supporting information requested from you to support the appeal.

4. Further information for SMEs in or facing financial difficulties.

First Citizen Fees and Charges

Late Payments

Should the customer fail to pay any payment amount or any other sum required to be paid by the customer to First Citizen upon the due date for payment, the customer is required to pay to First Citizen interest thereon from the due date of payment until the date actual payment is received at the rate of 1% per month from the due date of payment until the date the actual payment is received.

Additional Charges

If a customer requests First Citizen to make any special arrangements for the collection of his/her instalment payments by "Payment Book" a charge of €31.74 will be payable by the customer to First Citizen for this facility.

If a customer requests a re-issue of documentation (including statements) a charge of €3.00 for each additional copy will be debited to the customer's account.

A charge of €38.09 will be debited to the customer's agreement for the deferral of any instalment under the terms of the agreement where such deferral has been agreed to by First Citizen.

A charge of €63.49 will be debited to the customer's agreement for the rescheduling/alteration of the original terms of a finance agreement, where such reschedule/alteration has been agreed to by First Citizen.

In the event of the customer breaching the terms of the agreement the customer shall be liable for the following costs and/or charges in addition to his other liabilities under the agreement:

- A charge of €10.00 will be debited to the customer's agreement for each unpaid cheque / direct debit payment that is dishonoured.
- An administration charge of €10.00 will be debited to the customer's agreement for each letter dispatched by First Citizen a result of non-payment of any instalment or breach of any term of the agreement by the customer.
- A charge of €35.00 will be debited to the customer's agreement for each visit made by First Citizen, its servants and/or Agents to the last known address of the customer to ascertain the reason for non-payment of any overdue instalment and/or investigation of any breach of any term or condition of the agreement.

First Citizen reserves the right to demand all costs, charges and expenses paid by First Citizen for or arising out of or in connection with the repair, preservation, security or recovery of the Goods and all legal costs incurred by First Citizen in connection with the enforcement of the agreement, whether proceedings are commenced or otherwise.

Any cost and/or charges due will be debited to the customer's agreement and shall bear interest, at the default payment interest rate provided for in the agreement, calculated from the date of debit until the date that the actual payment is received. These costs/charges may vary from time to time. Should the charges applicable to the agreement change, First Citizen shall notify the customer at least 30 days before the changes take effect by an advertisement in one or more national newspapers.

Impact of arrears on other credit products and overall credit rating

If your agreement (s) goes into financial difficulties we will work with you to develop a long term solution for your business. It is important to note that if arrears do arise on your agreement, your credit rating may be affected. A default in respect of one agreement that you have with First Citizen could result in a default with other agreements that you have with First Citizen. Where applicable, Irish Credit Bureau (ICB) records are updated when arrears arise on agreements. This may also have an impact on your ability to avail of financial products in the future.

Complaints

First Citizen is committed to providing you with the best service at all times. However, we understand that sometimes we may fall short of the standard or you may be unhappy with a decision we have made. We will strive to resolve your complaint quickly and fairly and we encourage you to contact us as early as possible either in writing or contacting us directly on 01 884 6700.

We will acknowledge your complaint in writing within 5 working days and advise you of the name of the person dealing with your issue. It is our intention, where possible to investigate and resolve the complaint within 40 working days and you will receive regular updates on progress every 20 working days. If we cannot resolve the issue within 40 working days we will write and explain the reason for the delay and indicate when we might expect to have a resolution.

If you are not happy with our response you may take your case to the Financial Services Ombudsman who will act as an independent arbitrator and provides the service free of charge. **www.financialombudsman.ie**

5. Useful Contact Details in First Citizen

If you are an SME in or facing financial difficulty please contact us as soon as possible either by phone or in writing to;

Collections Manager

First Citizen Finance

Bloom House

Gloucester Square

Dublin 1

Phone: 01 884 6700

Further details are available on our website at **www.firstcitizen.ie**

6. Central Bank of Ireland

Copies of the Regulations of Conduct for Business Lending to Small and Medium Enterprises are available from the Central Bank of Ireland at **<https://www.centralbank.ie/regulation/consumer-protection/legislation>**.

First Citizen Finance DAC is regulated by the Central Bank of Ireland.