



## **Information Booklet for Small and Medium Enterprises (SMEs) in Financial Difficulty**

**Note:** In this information booklet – “you” or “your” or “their” or “them” refers to the SME borrower and “we” or “our” or “us” or “credit union” refers to Newmarket Credit Union.

Note: In this information booklet – any reference to the issuing by the credit union of a letter to the SME borrower can also refer to an email instead, provided this means of communication is agreed in advance by both the SME borrower and the credit union.

**Privacy Notice** - please take time to read the lending privacy notice of the credit union which outlines how and why we process your personal data. A copy is available in any of our branches for you to take away and you can access the privacy notice anytime on our webpage.

**This information booklet can be viewed and downloaded from the credit union’s website or upon request to the credit union’s Credit Control Officer, the SME borrower can receive a printed copy of this booklet (free of charge).**

## Introduction

Small businesses are key contributors to the Irish economy and are vital for its growth. At Newmarket Credit Union Limited we are committed to supporting small and medium-sized enterprises (“SMEs”) as they establish, launch and mature. Newmarket Credit Union Limited endeavours at all times to be both clear and transparent in all our member engagements and to comply in full with our legal and regulatory obligations under the *Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-sized Enterprises) Regulations 2015* (the “SME Regulations”).

The SME Regulations set out the standards you should expect from the Credit Union and address key aspects of the relationship between the Credit Union and SMEs from credit applications and communications, to dealing with financial difficulties should any problems arise. The SME Regulations apply to all SME lending by regulated entities within the State excluding:

- multi-lender credit;
- credit offered to or granted by special purpose vehicles;
- or credit provided to a regulated financial services provider which is itself authorised to provide credit.

A copy of the SME Regulations are available to download from the Central Bank website at [www.centralbank.ie](http://www.centralbank.ie)

## What are the SME Regulations?

In December 2015, the Central Bank of Ireland published Regulations for Business Lending to Small and Medium Enterprises called the SME Regulations. The SME Regulations set out new requirements for lenders when dealing with SMEs who are facing or in financial difficulty and apply to Credit Unions since 1<sup>st</sup> January 2017.

The purposes/objectives of the SME Regulations can be summarised as follows:

- To enable access to credit for viable and productive business propositions;
- To promote fairness and transparency in the treatment of SMEs;
- To ensure that when dealing with financial difficulties cases, the objective of a regulated entity will be to assist borrowers to meet their obligations, or otherwise deal with the situation in both an orderly and appropriate manner.

***The provisions of the SME Regulations and this information booklet are without prejudice to the Credit Union’s legal and regulatory obligations and legal rights to enforce any agreement including, but not limited to, any security taken in connection with a credit facility agreement.***

## Who and what do the SME Regulations apply to?

The SME Regulations apply to “*micro, small and medium-sized enterprises*” and the SME Regulations define these enterprises as follows:

- A micro or a small enterprise is an enterprise which employs fewer than 50 persons and which has an annual turnover that does not exceed €10 million and/ or an annual balance sheet total which does not exceed €10 million.
- A medium-sized enterprise is an enterprise which is neither a micro or small enterprise and which employs fewer than 250 persons and which has an annual turnover not exceeding €50 million and an annual balance sheet total not exceeding €43 million and which is not a micro and small enterprise.

In more specific and practical terms, in this credit union, such a borrower is normally either a sole trader/self-employed business person (including farmers and taxi-drivers etc.), a business partnership or a partner in a business partnership, a company director or a company, **where the purpose for which the loan was borrowed was commercial/business (i.e., where the purpose of the loan was personal or private – then the SME Lending Regulations do not apply).** The definition of “commercial/business purposes” is set out in the credit union’s lending policy and reflects guidance issued by the Central Bank (i.e., where the loan is made for the purpose of the member’s trade, business or profession).

## Financial Difficulties

This Credit Union Information Booklet outlines the Credit Union’s procedures when dealing with SMEs in ‘financial difficulties’ and gives information on the support which will be provided by the Credit Union to SMEs in this situation. The Credit Union recognises that individual SMEs may differ by size and indeed sector and therefore each SME in financial difficulties will be dealt with on a case-by-case basis.

A key objective of our approach **is to assist SME borrowers to resolve their financial difficulties**, by continuing to work together, we may find an acceptable alternative way forward.

It is in the borrower’s best interest to engage with the credit union about arrears or financial difficulties.

## When am I classed as being in financial difficulties and/or arrears?

The SME Regulations defines “financial difficulties” as being a situation in which one or more of the following apply:

- When your credit facility agreement/alternative arrangement has been in arrears for 3 consecutive months;
- In the case of an overdraft where the approved limit on the overdraft is exceeded by the borrower and remains exceeded for 90 consecutive days;
- Where the Credit Union has determined that the borrower’s circumstances are such that the ‘financial difficulties’ provisions of the SME Regulations should be applied to the borrower.

For the purposes of the SME Regulations, arrears arise where a borrower has not made a full repayment or only makes a partial repayment on a credit facility, as per the terms of the credit facility agreement or alternative arrangement, by the scheduled date or in the case of an overdraft facility, where the borrower has exceeded an overdraft limit for 30 consecutive days.

### Communication with the Credit Union

The Credit Union recommends that SMEs who are in **or** facing financial difficulties contact the Credit Union as soon as possible so that a possible solution can be discussed and approved. The SME Regulations set out clear guidance for SMEs who are either in or facing financial difficulties and the Credit Union recommends the following:

#### Borrowers facing 'financial difficulties':

The Credit Union recommends that SMEs who have concerns about their future ability to repay or discharge their financial commitments to the Credit Union, contact the Credit Control Officer as soon as possible to discuss the situation. The Credit Control Officer will be your designated contact point in Newmarket Credit Union. Upon making contact with the Credit Union, you will be offered an immediate review meeting to discuss your situation.

#### Borrowers in 'financial difficulties':

When financial difficulties first arise on your account, the Credit Union will contact you<sup>1</sup> within 10 working days in writing to advise of the status of your account; the applicability of the SME Regulations; and the availability of this Information Booklet. The Credit Union will also offer you the option of an immediate review meeting to discuss your situation and any options available to you and will provide you with details of a designated contact point within the Credit Union. In order to properly assess each case on its own merits, it is vital that you furnish all information requested by the Credit Union immediately so that the Credit Union can assist you in meeting your obligations within a realistic time frame.

***If you do not meet the repayments on your credit agreement, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.***

### Credit Union approach to dealing with SMEs in or facing financial difficulties

If your business gets into financial difficulties the Credit Union will assist in developing an appropriate solution. A summary of the key steps that an **SME may consider taking**, when in or facing financial difficulties is outlined in the table below:

<b>Step 1</b>	Contact the Credit Union as soon as possible regarding 'financial difficulties' which your business is facing, particularly where such difficulties may impact on your ability to
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<sup>1</sup> Credit union will inform any guarantor, in a durable medium, of the status of the borrower's account within 10 working days of the borrower entering financial difficulties. Without prejudice to any other timeframes prescribed by the SME Regulations, the credit union will respond to all written communications from a borrower regarding financial difficulties or arrears within 10 working days of the date of receipt of those communications.

	meet your financial commitments to the Credit Union.
<b>Step 2</b>	Inform the Credit Union about any concerns you have in relation to the effect of ‘financial difficulties’ on your business relationship with the Credit Union.
<b>Step 3</b>	Engage promptly and fully co-operate with the Credit Union to agree an approach to resolve the ‘financial difficulties’ situation.
<b>Step 4</b>	Provide relevant and reliable information as requested by the Credit Union and within the timeframes specified in order to support the assessment of your situation.
<b>Step 5</b>	Complete any necessary documentation requested as part of the above assessment.
<b>Step 6</b>	Regularly review your progress with the Credit Union and advise the Credit Union should your situation change.

### Non Co-operation

It is very important that if you are in, or are facing financial difficulties that you fully engage and cooperate with the Credit Union. This cooperation includes satisfying information requests within any stipulated timeframes so that a complete and timely assessment of your financial situation can be conducted by the Credit Union.

The Credit Union recommends to consult with your financial advisor/accountant and/or legal advisor to seek assistance and/or review any proposal in advance of meeting with the Credit Union. You may bring your financial advisor/accountant and/or legal advisor to the meeting if you so wish.

Under the SME Regulations a borrower may be classified as ‘*not co-operating*’ where:

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

Where the Credit Union considers a borrower to be ‘not cooperating’, the Credit Union will write to the borrower and any Guarantor, advising that the borrower will be classified as ‘not co-operating’ if the borrower does not perform specific actions within a designated timeframe as detailed in the correspondence. The implications for borrowers of ‘not co-operating’ are that:

- the Credit Union will be unable to put in place an alternative arrangement; and
- the Credit Union will have no option other than to commence the process of seeking repayment of all sums outstanding which may lead to the Credit Union eventually enforcing any security held.

Where security is realised, the borrower will remain liable for any outstanding debt.

## Business Information and Case Assessment

### Business Information

Prior to or as a result of your review meeting with the Credit Union, certain information is likely to be requested from you so that the Credit Union can complete an assessment of the financial situation of your business. As stated previously, each case will be assessed on its own merits. The type of information requested will differ but is *likely* to include some *or* all of the following:

- Up-to-date financials to include annual audited (or draft) and quarterly management accounts;
- Cash flow projections for the next 12 months;
- Up-to-date business plan to include 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 account bank statements for the business;
- Up-to-date Statement of Affairs for all named borrowers, material shareholders or guarantors as required;
- Confirmation that the tax affairs of the business and named borrowers and/or material shareholders are up-to-date and in order; and
- Any other information the Credit Union feels is pertinent to review as part of your assessment.

Please note this list is **not exhaustive** and the Credit Union may require independent verification of any information you provide. Based on this information the Credit Union will assess whether an alternative repayment arrangement is a feasible option and endeavour to work with you in order to develop a solution for your business.

**Note:** Data relating to your case may be shared with a relevant credit reference agency or credit register, where permitted by contract or required by law.

**Note:** You may employ third party advisers who may accompany you during discussions with the Credit Union whether these discussions are face-to-face or not.

### Case Assessment

Following receipt of the requested information, the Credit Union will conduct an assessment of your situation for the purposes of considering whether an alternative arrangement would assist in resolving your financial difficulties.

Some of the more common alternative arrangements *may* include one or more of the elements below:-

- **Interest Only** – you will pay interest on the loan for the agreed period and not capital.

- **Fixed Repayment** – an agreed reduced set repayment for a period which will incorporate some capital element.
- **Term Extension / Reschedule** – increases the length of the loan thereby reducing your repayments.
- **Freeze Interest** – you may be allowed freeze the interest on the loan for a specified period.

In order to determine the suitability of any alternative arrangement, the Credit Union assessment will typically consider the following factors, along with other relevant factors pertinent to the particular case:

- The full circumstances of the borrower in 'financial difficulties' including loan repayments, credit history etc.;
- Ability to meet the proposed loan repayments in the context of a borrower's total overall business commitments;
- The related business environment;
- The level of security that may be offered/available; and
- The level of co-operation by borrowers to enable the Credit Union to carry out a complete assessment on the feasibility of an alternative arrangement.

The suitability of any particular type of alternative arrangement to be offered will depend solely on the results of the credit union's review of the SME borrower's financial situation.

**It is important to note that alternative arrangements; (1) may be affordable for your business in the short term but could be more expensive in the longer term AND (2) may affect your credit rating, which may limit your ability to access credit in the future - thus before accepting any suggested alternative arrangement, the SME borrower should seek independent advice as regards both of these matters.**

Once the Credit Union reaches a decision on any proposed alternative arrangement, it will respond to you within 15 working days from receipt of all information requested and outline the terms of the arrangement. You will then have 20 working days to decide whether to accept or decline an alternative arrangement offered by the Credit Union. The Credit Union may decide that an alternative arrangement is not possible. If this is the case it will inform you in writing within 15 working days along with the reasons for the decision.

### **Alternative Arrangement Appeals Process**

To appeal a Credit Union alternative arrangement decision, please do so in writing to the CEO of the credit union. The appeal must be submitted to the Credit Union in writing within 20 working days from the date of notification of the decision. The Credit Union will acknowledge receipt of your appeal within 5 working days and provide you with a designated point of contact in relation to the appeal. The appeal will be reviewed by two independent reviewers who will consider the appeal in full. The Credit Union will issue you with a written decision on the



outcome of the appeal within a maximum of 15 working days of receipt of the appeal (unless otherwise advised).

## Complaints

The Credit Union is committed to providing the best service to its members at all times. However, in the event the Credit Union falls short of your expected standards or you are unhappy with a decision the Credit Union has made, the Credit Union will endeavour to resolve your complaint quickly and fairly. To this end the Credit Union encourages you to contact the Credit Union as early as possible either in writing or by calling to our office at Church Street, Newmarket.

The Credit Union will acknowledge your complaint in writing within 5 working days and advise you of the name of the person dealing with your complaint. It is the Credit Union's 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 the Credit Union cannot resolve the complaint within 40 days it will write and explain the reason for the delay and indicate when it might expect to have a resolution. This procedure does not apply where the complaint is resolved to the borrower's satisfaction within 5 working days.

If an agreement cannot be reached, the Credit Union will set out its position in its 'final response letter'. If, at this point you remain unsatisfied, you *may*<sup>2</sup> have the right to appeal in writing to:

*The Financial Services and Pensions Ombudsman, Lincoln House, Lincoln Place, Dublin 2*

**Telephone:** 01 5677000

**Email:** [info@fspoi.ie](mailto:info@fspoi.ie)

**Web:** [www.fspoi.ie](http://www.fspoi.ie)

## Fees and Charges

The Credit Union may be entitled to impose additional fees or charges on borrowers in financial difficulties in accordance with the terms and conditions of the credit agreement.

## Impact of arrears on other credit products and overall credit rating

It is important to note that if arrears do arise on your credit union account, your credit rating may be adversely affected. This may also have an impact on your ability to avail of additional credit products in the future.

## Useful Contact Details

If you are an SME in, or are facing financial difficulties please contact our Credit Control Officer as soon as possible. Further details are available on our website at [www.newmarketcreditunion.ie](http://www.newmarketcreditunion.ie).

A copy of the SME Regulations for Business Lending to Small and Medium Enterprises is available from the Central Bank of Ireland at [www.centralbank.ie](http://www.centralbank.ie)

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<sup>22</sup> If you fall within the scope of the class of persons who can make complaints to the FSPO.



## Other helpful information

Some steps SMEs can take to manage financial difficulties:

1. *Don't ignore the problem.*
2. *Act quickly to address any potential issues.*
3. *Keep all joint parties and guarantors informed.*
4. *Talk to your accountant/financial/legal advisor.*
5. *Contact the Credit Union if you are facing financial difficulties.*
6. *Engage fully with the Credit Union.*
7. *Seek independent financial and/or legal advice when considering any alternative arrangement that the Credit Union may offer you.*