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# Knowledge Network

**Commercial Credit: Navigating the  
Regulatory Perimeter**

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# Commercial Credit: Navigating the Regulatory Perimeter

- Authorisation
- Conduct of Business
- Generally Applicable
- Incoming Changes

# Authorisations

- Central Bank of Ireland (**CBI**)
- European Central Bank (**ECB**)



EUROPEAN CENTRAL BANK



# Who needs authorisation?

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- Credit Institutions/Banks
- Retail Credit Firms
- Credit Servicing Firms
- Credit Servicers
- Investment Funds
- Trust or Company Service Providers
- Payment services / money remittance provider



Central Bank Act 1971, s7(1)

“Banking business”

“any business that consists of or includes

(a) receiving money on the person’s own account from members of the public either on deposit or as repayable funds, **and**

(b) the granting of credits on own account”

ECB: competent authority

Passporting: European Economic Area (EEA)



Central Bank Act 1997, s29 (“regulated business”)

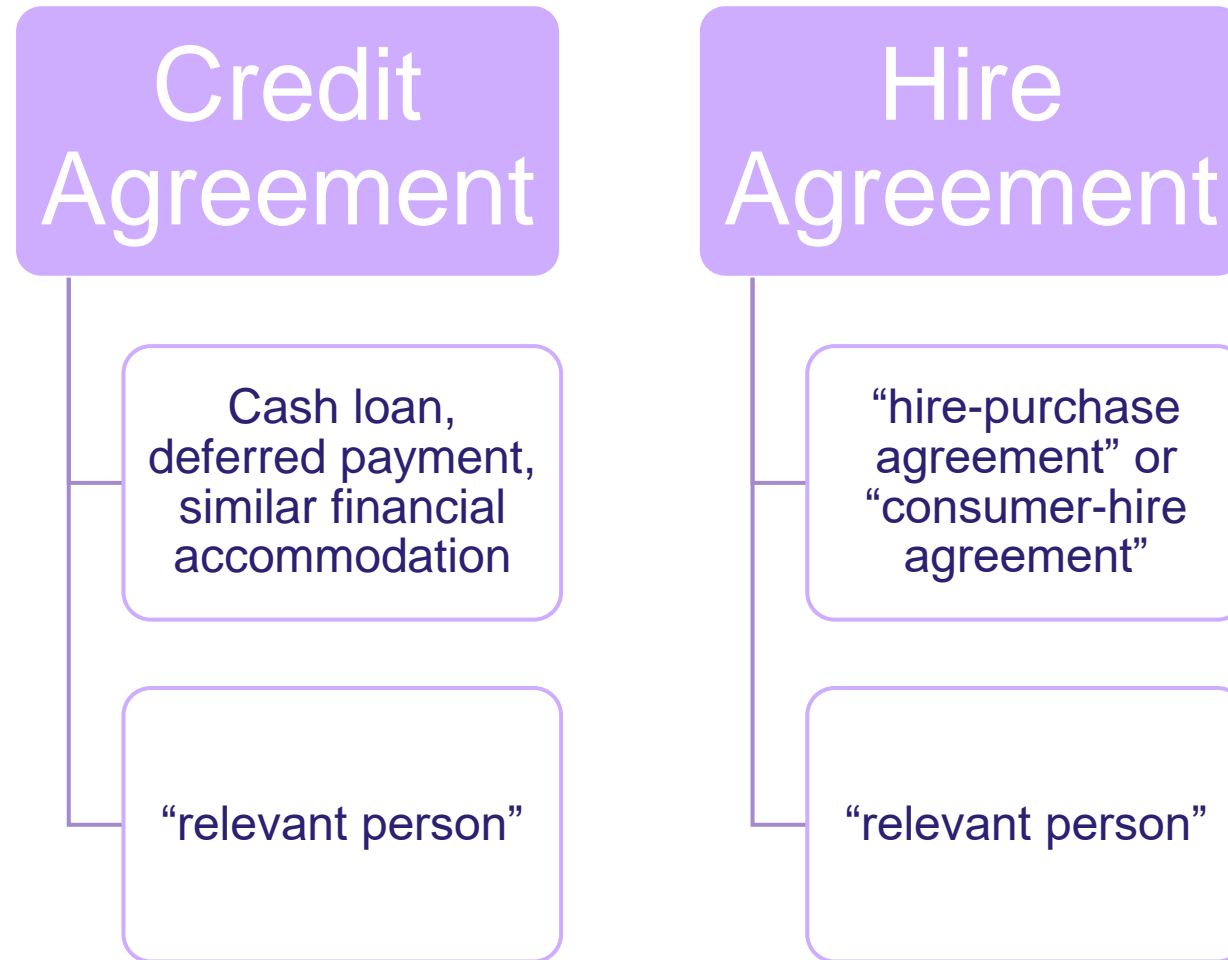
RCF: business comprises a “relevant activity”





# “Relevant activity”

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# “Relevant Person”

- “Relevant person” means a natural person in the State other than:
  - MiFID professional client, or
  - person who is a regulated financial services provider.
- No passporting



# Ireland: Credit Servicing Firm (original)

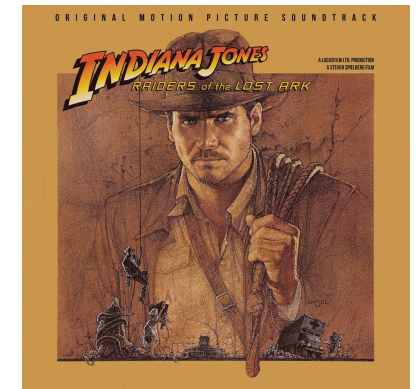
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- 2015: amendment to Part V Central Bank Act 1997
- Cash loan
- “Relevant borrower”
- Managing or administering



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- “Relevant Borrower” means a:
  - relevant person [*natural person*]; or
  - SME “...but only to the extent that the credit granted to it under the credit agreement concerned was provided by a financial service provider authorized...to provide credit in the State.” [*corporate*]



# Ireland: Credit Servicing Firm (v2)

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2018 amendment to CBA 1997

Holding legal title

Managing or administering, including, for a portfolio:

- determination of overall strategy
- controlling key decisions



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## **‘We were not in arrears and never had been’: PTSB sold this reader’s mortgage - now she pays hundreds more each month**

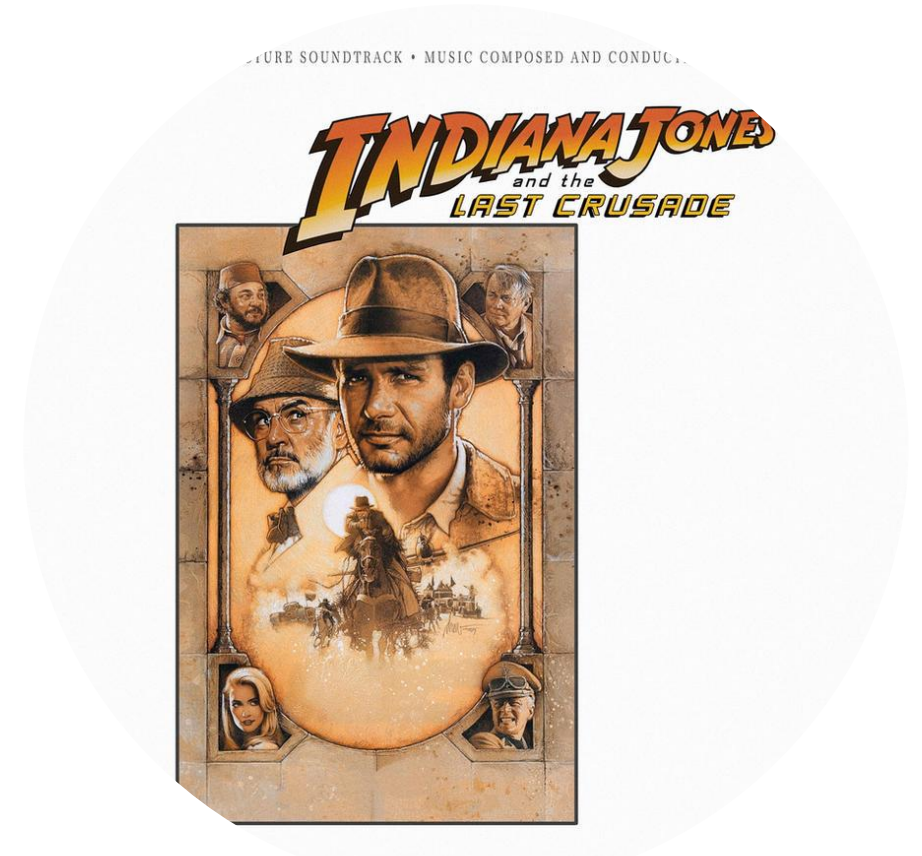
Two single mothers who took out a mortgage with PTSB have been forced to pay hundreds of euro more each month in ...

December 4, 2023

# Ireland: Credit Servicing Firm (v3)

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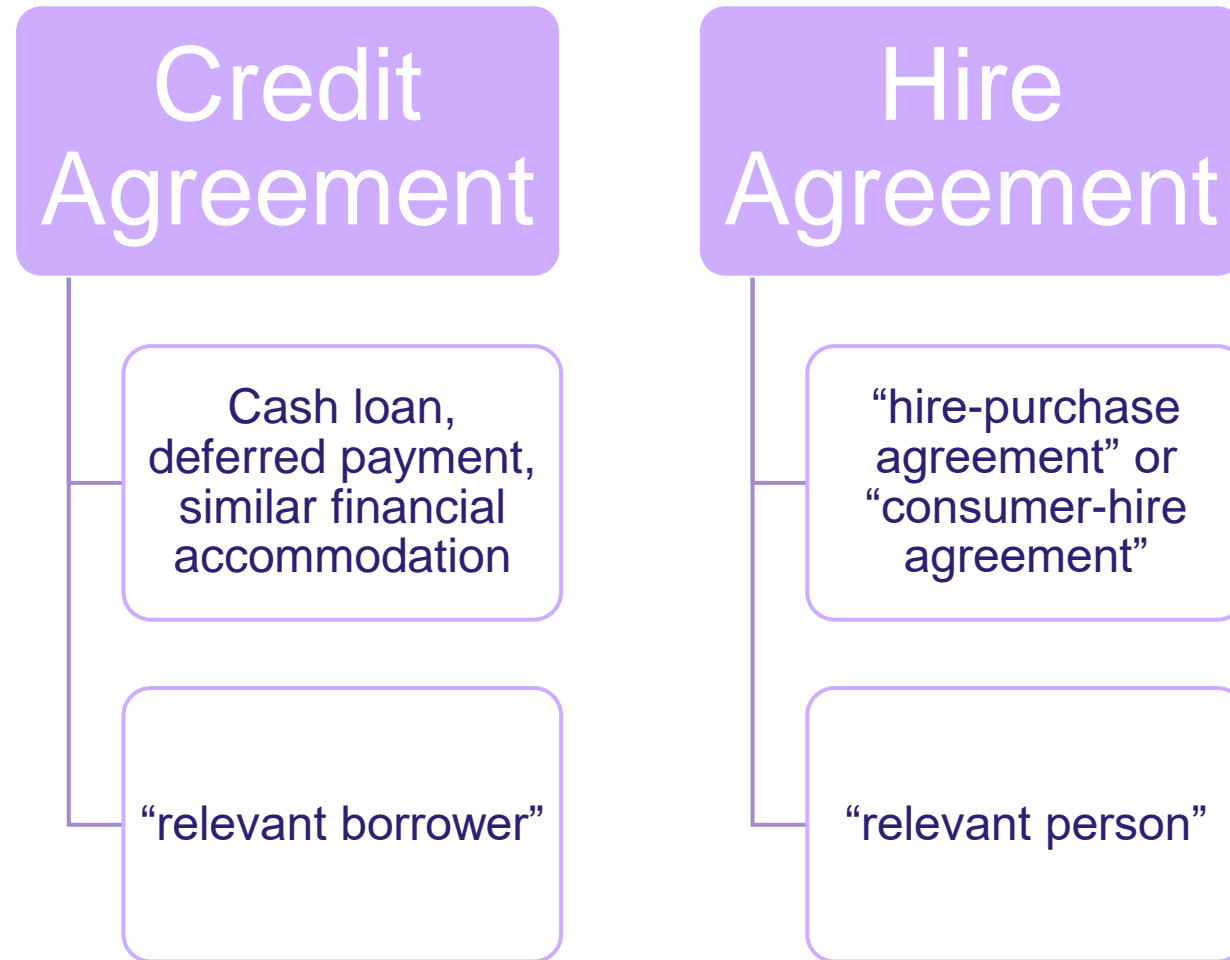
- 2022 amendment to CBA 1997
- Expanded to cover:
  - Credit (cash loan, deferred payment, similar financial accommodation)
    - Relevant borrower
  - Hire-purchase agreement and consumer-hire agreement
    - Natural person



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# Irish Credit Servicing (in-scope agreement)

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- Directive (EU) 2021/2167 on credit servicers and credit purchasers
- European Union (Credit Servicers and Credit Purchaser) Regulations 2023
- Dual regime



*“It's a bit schizophrenic in its approach but it's definitely a superb adventure flick”*



- Transfers on or after 30 December 2023
- NPLs issued by EU credit institution
- Purchase by entity other than EU credit institution
- Commercial and consumer customers
- Credit agreement:
  - deferred payment
  - loan
  - other similar financial accommodation





## Pre-sale information to prospective purchaser

- Enable purchaser to assess value

## Implementing Technical Standards (EU 2023/2083)

- Info on counterparty, credit agreement, collateral, historical collections
- Some exemptions from ITS

## Post-sale: reporting to competent authority

## Regulation 18

(4) A credit purchaser shall not be subject to any additional requirements for the purchase of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, other than as provided for in these Regulations, or by provisions of applicable consumer protection law, contract law, civil law or criminal law.

## Regulation 28

(e) a credit servicer, credit service provider, credit purchaser or designated representative of a credit purchaser, each within the meaning of the European Union (Credit Servicers and Credit Purchasers) Regulations 2023 (S.I. No. 644 of 2023), shall **not** be treated as carrying on a regulated business as a credit servicing firm.

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- 3<sup>rd</sup> country Purchaser: appoint EU-domiciled representative
  - EU-domiciled Purchaser: appoint Credit Servicer for NPLs with consumers
  - 3<sup>rd</sup> country Purchaser: appoint Credit Servicer for NPLs with:
    - natural persons
    - SMEs.
  - Notify competent authority re Credit Servicers and secondary transfers of NPLs
  - Obligations to borrowers





Authorisation  
required

Regulations n/a to servicing by an EU credit institution, certain AIF/UCITS entities, or retail credit firms

## Credit servicing activities:

- collecting or recovering payments from borrower
- renegotiating terms of credit agreement (in line with Purchaser instructions)
- administering complaints
- informing borrower of changes in rates/charges applicable or payments due



Obligations to borrower (also applies to Purchaser)

Notice to borrower (also applies to Purchaser)

Credit servicing agreement required

EU passport

# Credit Servicing: EU vs Ireland

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Scope / Impacted Party	EU Directive	Irish Credit Servicing Regime
In-scope types of finance	<b>Non-performing</b> credit in the form of a deferred payment, a loan or other similar financial accommodation	Credit in the form of a deferred payment, cash loan or other similar financial accommodation  Hire purchase agreements and “consumer-hire agreements”
“Borrower”	All types (but with a focus on consumers and SMEs)	Natural persons and, in the case of “credit”, certain corporate SMEs.
<b>Seller</b>	EU credit institution	Entity authorised to provide credit or hire agreements in the State
Purchaser	No authorisation required – some obligations	Authorisation required for (i) holding legal title to a credit agreement/hire agreement, and/or (ii) making key decisions or setting strategy for the management of a portfolio of such agreements.
Credit servicer	Authorisation required	Authorisation required
Credit servicing scope	<ul style="list-style-type: none"> <li>collection/recovery of payments from borrowers</li> <li>renegotiating terms and conditions with borrowers</li> <li>dealing with complaints</li> <li>telling borrowers about changes to interest rates, charges or payments due</li> </ul>	<ul style="list-style-type: none"> <li>holding legal title to a credit/hire agreement</li> <li>managing or administering a credit/hire agreement (including the activities within the Directive’s scope)</li> <li>making of key decisions or setting strategy in relation to management of portfolio of credit/hire agreements</li> </ul>
Application in time	Applies to NPL sales by EU credit institutions after the legislation comes into effect	Applies to existing and future credit agreements



# Loan Originating Qualifying Investor Alternative Investment Funds

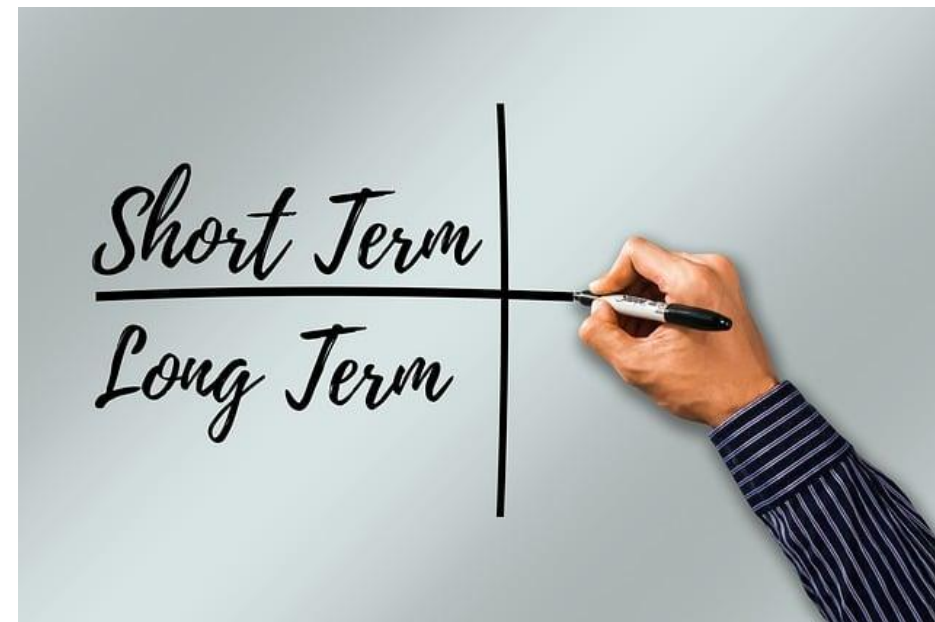
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- Special category of QIAIF which can originate loans
- In practice, lending is limited to corporate entities including SMEs
- AIFMD 2.0



- EU alternative investment funds (AIFs) that invest in long-term investments, such as social and transport infrastructure projects and real estate.
- Can be distributed on a cross-border basis to both professional and retail investors.
- Can take the form of a loan to a qualifying entity



# What is a Trust or Company Service Provider?

An entity which provides services such as:

- a) Forming companies or other bodies corporate
- b) Acting as a director or secretary of a company under an arrangement with a person other than the company
- c) Arranging for another person to act as a director or secretary of a company
- d) Acting, or arranging for a person to act, as a partner of a partnership
- e) Providing a registered office, business address, correspondence or administrative address or other related services for a body corporate or partnership
- f) Acting, or arranging for another person to act, as a trustee of a trust
- g) Acting, or arranging for another person to act, as a nominee shareholder for a person other than a company whose securities are listed on a regulated market



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## PSD2 / EU (Payment Services) Regulations 2018

- “Payment service” in the State requires authorisation
- Automatically authorised e.g. credit institution
- Exemptions, including commercial agency
- Jurisdictional analysis

## Central Bank Act 1997

- “Money transmission business” = “regulated business”
- Exemptions, including credit institution and “ancillary to other services”



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# Conduct of Business



- Extensive for regulated entities
- Important examples:
  - “SME Lending Regulations”
  - Consumer Protection Code 2012
- Documentary: warning statements
- Enforcement: procedures (under SME Regs)



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# Common Regulatory Issues for Transactions

- AML “Schedule 2” registration
- AML – Beneficial Ownership (trusts)
- Credit Reporting
- Credit Servicing (Ireland and EU)



# AML “Schedule 2” registration

- s108A Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
- Unregulated “Financial Institution” (s24(1)); and
- Designated Person “...acting *in the State* in the course of business carried on by the person *in the State*...” (s25)
- No express intra-group exemption



# AML “Schedule 2” registration

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Schedule 2	
1. Taking deposits and other repayable funds	8. Participation in securities issues and the provision of services relation to such issues
2. <b>Lending including</b> inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).	9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings
3. <b>Financial leasing</b>	10. Money broking
4. Payment services	11. Portfolio management and advice
5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.)	12. Safekeeping and administration of securities
6. Guarantees and Commitments	13. Credit reference services
7. Trading for own account or for account of customers in any of the following: <ul style="list-style-type: none"><li>• Money market instructions (cheques, bills, certificates of deposit etc.)</li><li>• Foreign exchange</li><li>• Financial futures and options</li><li>• Exchange and interest-rate instruments</li><li>• Transferrable securities</li></ul>	14. Safe custody services
	15. Issuing electronic money

# AML – European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021

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- Express trust in writing
- Trustee in the State / Trust administered in the State
- Central Register (CRBOT)
- Trustee obligations

Separate beneficial ownership regimes for:

- bodies corporate/legal entities (CRO/RBO) and
- applicable financial vehicles (CBI)



- Legislation vs Implementation
- Credit Reporting Act 2013 (+SIs)
  - All lenders and other providers of credit
  - Borrower “resident in the State” or Irish law credit agreement
  - Very broad “credit” definition



# Credit reporting

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“**credit**” includes a loan, deferred payment or other form of financial accommodation, other than any provided...

(c) by a company to a related undertaking of the company,

(d) by a person who does not provide credit except to the person's employees...

(f) in the form of “trade credit”, or

(g) without any requirement to pay interest or any other charge (in any circumstances)





- CBI Guidance
  - Only Irish-resident/established lenders
  - Disapplied for credit provided by individuals
  - Reportable credit is more limited



## CBI Guidance for CIPs, October 2024

*“...the scope of credit applications and credit agreements (consumer and non-consumer) is confined to **lending products only**, i.e. data on credit advanced through **alternative means** such as through **deposits, derivatives, loan notes etc.** is not currently being collected...The table below contains a generic and non-exhaustive **list of products** currently in scope for the CCR.”*

# Credit reporting

Consumer	Non Consumer
Personal Loan	Business Loan
Credit Card, Charge Card	Business Credit Card
Overdraft, Revolving Facility	Business Overdraft, Business Revolving Facility
Mortgage Home Loan, Lifetime Mortgage Plan, Property Reversion Plan, Mortgage Buy to Let	Mortgage Buy to Let, Mortgage - Commercial
Hire Purchase, Personal Contract Plan, Leasing	Business Hire Purchase, Business Leasing, Stocking Finance
Premium Financing	Supply Chain Finance, Invoice Discounting
	Syndicated Loan – Business, Commercial, Revolving, Other
	Letter of Credit
	Public Body Funding for Property Acquisitions and Development



Credit reporting obligations?

- Warning on “application form”
- Enquiry and Reporting Processes

Loan purchaser may / may not be required to report



# Irish: Credit servicing (Transfer)

Irish regime (Central Bank Act 1997)

- Credit agreement with “relevant borrower”
- Hire agreement with natural person
- Most relevant on proposed transfer from regulated entity



# EU: Credit servicer (Transfer)

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- NPL
- EU credit institution
- Transfer on or after 30 December 2023



# “Bank” in Name

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- s7(2) Central Bank Act 1971
  - Deemed to hold self out as a “banker”

# Incoming Changes CRD VI



- Basel III Reforms
- Third-country branch (**TCB**) requirement

- New Article 21c:  
*“...undertaking established in a third country as referred to in Article 47...[must] apply for authorisation...to commence or continue...activities in Article 47(1)...”*
- Under Article 47: TCB requirements apply to:
  - Third Country Undertaking that is (i) Lending, or (ii) providing Guarantees or Commitments, if that Undertaking would qualify as a credit institution if established in the EU; or
  - Third Country Undertaking that takes deposits/repayable funds from the public.

# Third Country Branch – what?

- Only “Core Banking” services are caught i.e.
  - Deposit-taking
  - “Lending” (including factoring)
  - Guarantees and Commitments
- Provision of service “in” a Member State
  - Not defined in CRD VI
  - Transposing legislation
- Saver for pre-11 July 2026 contracts

- Interbank services
- Intragroup services
- Reverse solicitation
- Ancillary to core MIFID activities

- (Re)Authorisation application
- Grandfathering option
- Minimum Conditions for Authorisation
  - TCB meets minimum regulatory requirements in CRD VI
  - Is head undertaking subject to supervision for same activities in home country?
  - No passporting
  - No reasonable grounds to suspect money-laundering/terrorist financing

# Authorisation as a Third Country Branch?

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- 'Class 1' TCB:
  - €5bn assets booked in Member State in preceding year; or
  - Takes retail deposits in Member State that = (at least) 5% total liabilities or €50m; or
  - Not a 'qualifying branch'.
- 'Class 2' TCB:
  - TCB that is not Class 1
- Qualifying Branch:
  - EU Commission equivalence decision
  - Not high-risk for AML/CFT purposes
- Subsidiarisation

- Third Country Branch?
- EU Subsidiary?
- Non-bank finance?



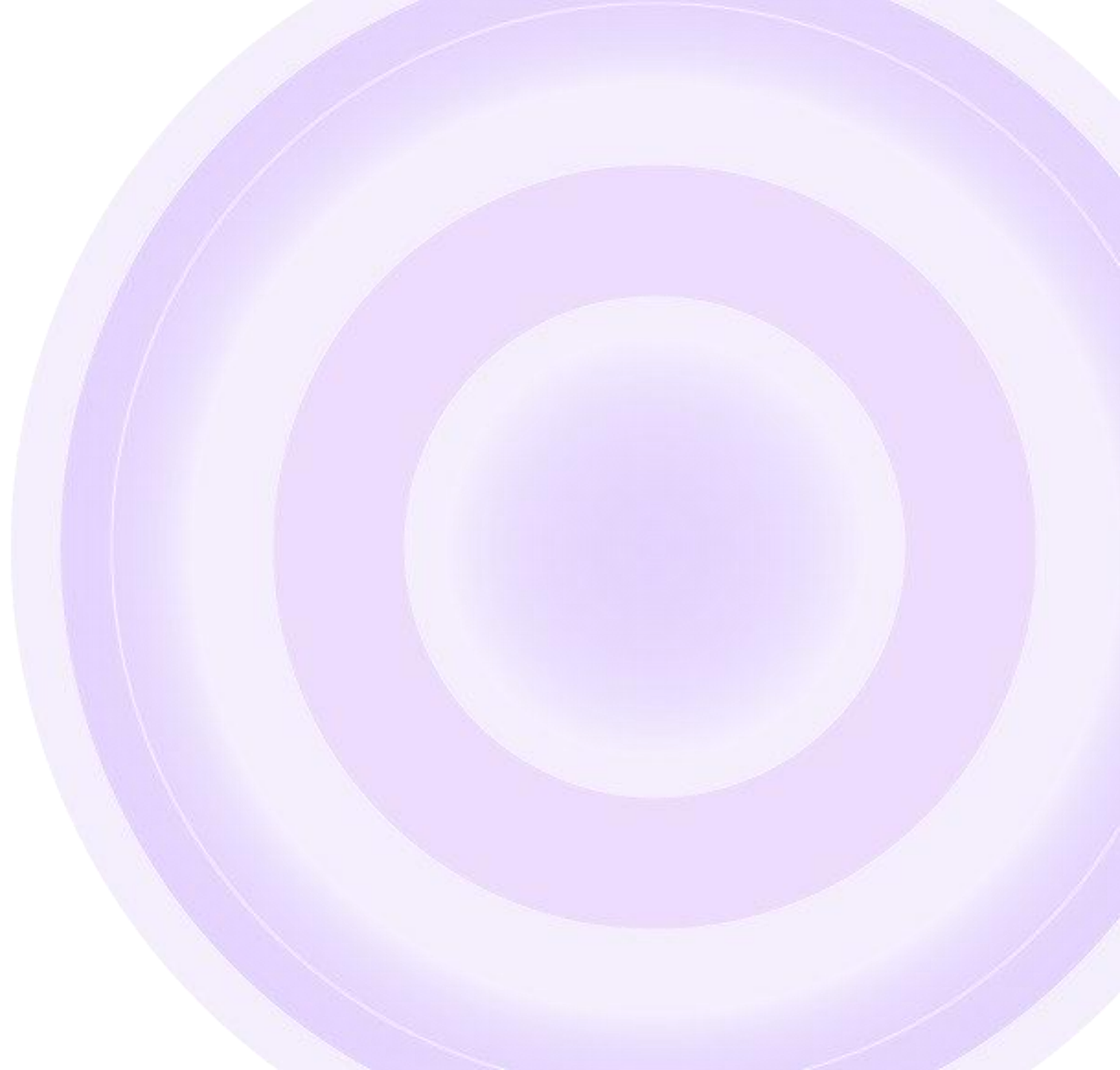


# Summary

- No material barriers to corporate credit in Ireland
- Some complexity
- Compliance obligations
- Incoming third-country branch requirements
- Get initial and periodic regulatory advice!

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**Questions?**



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Such advice should always be taken before acting on any of the matters discussed.