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Public & Regulatory Law Update

January 2009

Licensed Moneylenders: new code

The general principles of the new statutory Consumer Protection Code for Licensed Moneylenders ("Code") came into effect on 1 January 2009. The remainder of the Code will come into effect on 1 September 2009. The Code follows on from the Financial Regulator's 2007 report on the licensed moneylending industry which found that 80% of consumers do not compare interest rates when taking out a loan and 71% did not know the interest rate they were being charged.

The Code applies to moneylenders licensed under the Consumer Credit Act 1995 while engaging in the business of moneylending. It requires moneylenders to assist individual consumers in understanding the method of repayment and all related costs and charges. Moneylenders must comply with the Code as a matter of law.

General principles

Under the general principles of the Code a moneylender must ensure that in all its dealings with consumers and within the context of its licence, it:

1. Acts honestly, fairly and professionally in the best interests of its consumers and the integrity of the market;
2. Acts with due skill, care and diligence in the best interests of its consumers;
3. Does not recklessly, negligently or deliberately mislead a consumer as to the real or perceived advantages or disadvantages of any product or service;
4. Has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code;
5. Seeks from its consumers information relevant to the product or service requested;
6. Makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the consumer;
7. Seeks to avoid conflicts of interest;
8. Corrects errors and handles complaints speedily, efficiently and fairly;
9. Does not exert undue pressure or undue influence on a consumer;
10. Ensures that any outsourced activity complies with the requirements of the Code;
11. Without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and
12. Complies with the letter and spirit of the Code.

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Public sector reform

On 2 January 2009 the Minister for Enterprise, Trade and Employment, Mary Coughlan, published the Advisory Group on Media Mergers 2008 report on the current legislative framework regarding the public interest aspects of media mergers. The review was undertaken as part of a wider review of the operation of the Competition Act 2002 (the Act). The Group looked at international best practice and examined how the existing mechanism for the approval of media mergers under the Act might be amended to reflect the relationship between media and the public interest in media plurality in the State. It identified difficulties with the present system including concerns about the role of the Competition Authority (Authority), lack of clarity in the current "relevant criteria" that the Minster must consider in certain circumstances and the absence of clear statutory mechanisms to enable the Minister to protect the public interest in media plurality.

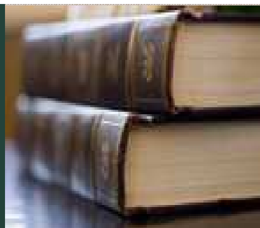
Background

The vast majority of media mergers must be notified to the Authority. Where the Authority decides that a merger may not be put into effect because it would have the effect of substantially lessening competition, then the Minister for Enterprise, Trade and Employment has no role. However, if the Authority determines that a merger should be effected with or without conditions, the Minister must consider the merger having regard to the "relevant criteria" (public interest criteria) which relate to the diversity/plurality of views in the Irish public sphere, the strength and competitiveness of Irish media businesses and the dispersion of media ownership among individuals and other undertakings.

Report recommendations

The Advisory Group examined these "relevant criteria" and made 11 recommendations:

1. There should be a statutory definition of media plurality (referring both to ownership and content);
2. The Act should be amended to incorporate a statutory test to be applied by the Minister in the discharge of his/her function in relation to media mergers;
3. The current definition of the "relevant criteria" in the Act should be replaced;
4. There should be an on-going collection and periodic publication of information and employment of concrete indicators in relation to media plurality in the State;
5. The Authority should neither be required to form nor to give an opinion on the application of the "relevant criteria";
6. There should be a separate system of notification of media mergers to the Minister for clearance;
7. There should be a statutory obligation on parties to a media merger to provide full information to the Minister on all circumstances that might impair media plurality in the State and to notify any changes in information provided to the Minister, with appropriate penalties for non-compliance;
8. The Minister should publish guidelines to assist undertakings involved in media mergers in ascertaining how the Minister would, in general, apply the relevant criteria;
9. Where the Minister initiates a detailed investigation of a proposed merger (other than a broadcaster to broadcaster merger), a three to five person statutory consultative panel should be established to provide advice to the Minister on the media merger;
10. The definition of "media business" should be amended to include publication of newspapers and periodicals on the internet and broadcast of certain audiovisual material on the internet; and
11. The important role of the media in a democracy should be recognised by statute.



Financial Services Ombudsman: recent findings

The Financial Services Ombudsman (Ombudsman) investigates and adjudicates complaints regarding the conduct of regulated financial services providers. He can also make compensation awards up to €250,000 which are binding on both parties subject only to a High Court appeal.

On 15 January 2009 the Ombudsman published details of 11 significant findings made in the banking and investment area since July 2008. Nine complaints were upheld and the other two rejected.

Some of the cases which were upheld were as follows:

- A credit union's worthless investment of €1 million merits €500,000 award but the credit union and the investment broker were severely criticised. After an oral hearing the Ombudsman found that the broker had failed to advise the credit union of the risk of the possibility of total loss of capital and that its research into the bond it was selling had not been thorough. He also found that the credit union had 'blindly signed' the application form and did not read the brochure or the conditions under which they were investing €1 million of members' monies. This case is currently the subject of court proceedings.
- House title deeds which were misplaced for over 20 years resulted in €47,000 compensation as well as a refund of €20,000 legal fees.
- An incorrect bogus non-resident account notification by a bank which led to a subsequent tax settlement of €200,000 merited a €12,500 award. As a result of the bank's incorrect notification to the Revenue, the Revenue found that the complainants had a €200,000 income tax liability. The complainants sought a refund of the €200,000 and compensation as a result of the public humiliation of being named in Revenue's defaulters list. The Ombudsman compensated them for the bank's false notification. As the substantial undisclosed liability to the Revenue was not caused by any breach of duty by the bank the Ombudsman stated that in assessing a fair level of compensation he will not compensate anyone for tax unpaid, concealed or understated.

The two cases which were not upheld were as follows:

- A complaint about €60,000 losses on a CFD stock broking account was not upheld.
- A €1 million investment in a bond by a farmer was found to be worthless but the complaint was not upheld.

Comment. As economic conditions are continuing to deteriorate, the number of complaints may increase. Financial services providers should therefore try to take appropriate corrective or pre-emptive action where possible in light of the decisions above.

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