

**FCE BANK PLC**

**INFORMATION BOOKLET FOR MICRO, SMALL AND MEDIUM ENTERPRISES IN FINANCIAL  
DIFFICULTIES**

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## Section 1: Introduction

We at FCE Bank plc understand that changing economic circumstances may present challenges for many of our customers. We would like to assure you that we are fully committed to working with any customers who experience Financial Difficulties.

The Central Bank of Ireland's (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (the "**Regulations**") govern the way in which we lend to Micro, Small and Medium Enterprises ("**SMEs**") and the information that must be provided to you throughout the loan transaction. A link to the Regulations can be found here: [https://www.centralbank.ie/regulation/processes/consumer-protection-code/Documents/Central%20Bank%20\(Supervision%20and%20Enforcement\)%20Act%202013%20\(Section%2048\)%20\(Lending%20to%20Small%20and%20Medium-sized%20Enterprises\).pdf](https://www.centralbank.ie/regulation/processes/consumer-protection-code/Documents/Central%20Bank%20(Supervision%20and%20Enforcement)%20Act%202013%20(Section%2048)%20(Lending%20to%20Small%20and%20Medium-sized%20Enterprises).pdf)

As part of our obligations under the Regulations, we have prepared this booklet which outlines our procedures when dealing with SMEs in Financial Difficulties and gives information on the support which will be provided by us to such customers.

We recommend that all SME customers read this booklet carefully. It is in your interest to engage with us as soon as possible about Arrears and / or Financial Difficulties.

We recognise that each customer that is in or facing Financial Difficulties needs to be considered on a case by case basis. The earlier we know about any financial concerns that you may have, the sooner we can work together to try to find a solution.

**IMPORTANT:** The provisions of the Regulations and this booklet are without prejudice to our legal and regulatory obligations and to our legal rights to enforce any agreement including, but not limited to, any security taken in connection with a credit facility agreement. Accordingly, nothing in the Regulations or this booklet prevents us from acting with all necessary speed where:

- in the circumstances of the case it is necessary to initiate a liquidation, receivership, examinership or similar insolvency event or where another regulated entity or other third parties initiate such actions;
- at any stage we consider our assets to be at risk / or our legitimate commercial interests to be threatened and it is necessary to assert our title to our assets and to protect our interests; or
- there is reasonable evidence of fraud, terrorist connections, money laundering and/or misrepresentation.

Such actions may include, but are not limited to, repossessing any vehicles held by you and enforcing any security held by us over your assets.

## Section 2: Definitions

**"Business Day"** means any day except Saturday, Sunday, bank holidays and public holidays.

**"Micro, small and medium-sized enterprises"** or "**SMEs**" are defined in the Regulations as enterprises which employ fewer than 250 persons and which have either or both of the following:

- (a) an annual turnover not exceeding EUR 50 million, and; and / or
- (b) an annual balance sheet total not exceeding EUR 43 million.

“**We**” means FCE Bank Plc.

“**You**” means any customer of FCE that is a SME.

### **Section 3: The meaning of “Arrears” and “Financial Difficulties”**

For the purposes of the Regulations and this booklet:

1. you are in “Arrears” if a payment or part of a payment due in accordance with a credit facility agreement or alternative arrangement which has not been paid by you by the scheduled due date for payment and “in Arrears” means a situation in which Arrears have arisen; and
2. you are in “Financial Difficulties” if one or more of the following apply to you in relation to a credit facility agreement or alternative arrangement:
  - (a) you are in Arrears under the credit facility agreement or alternative arrangement for three consecutive months; or
  - (b) we have, following an assessment in accordance with the Regulations determined that your circumstances are such that the provisions of the Regulations relating to borrowers in Financial Difficulties should be applied to your case.

### **Section 4: Steps you could consider that may assist in dealing with your Financial Difficulties**

If you find yourself in Financial Difficulties, you should consider taking the following steps which may assist in the process of dealing with those Financial Difficulties:

- contact us and any other lenders as early as possible regarding any Financial Difficulties which your business is encountering and / or if there is a danger of your being unable to meet your financial commitments;
- promptly engage and fully co-operate with us and any other lenders to agree a means of rectifying the situation;
- provide relevant and reliable information as requested by us and other lenders within the timescales specified;
- make sure that you keep anyone acting as guarantor for your credit facilities up to date with what is happening; and
- consider taking independent financial and/or legal advice.

## **Section 5: Our approach to dealing with SMEs which are in Arrears or are in or facing Financial Difficulties**

### **Step 1: Communication**

It is very important that you contact us as soon as possible regarding any Financial Difficulties which your business is encountering or facing and / or if there is a danger of your being unable to meet your financial commitments to us.

If you notify us that you may be at risk of going into Arrears or Financial Difficulties, we will offer you the option of an immediate review of: your credit facility agreement; any existing alternative arrangements; and any security which you have provided. If you accept this offer, we will review and identify what options are available to you to address your anticipated Arrears or Financial Difficulties, having regard to your particular circumstances and will assess whether you have entered Financial Difficulties for the purposes of the Regulations and this booklet. We will notify you by email of the outcome of this review and of any recommended course of action which you should take. The sooner you contact us, the quicker a potential solution can be discussed and agreed.

If you remain in Arrears for 15 Business Days after you first go into Arrears, We will promptly contact you to confirm that you are in Arrears and, where possible, identify the reason why you are in Arrears. Based on the information available, we will assess your circumstances with a view to deciding whether you are in Financial Difficulties for the purposes of the Regulations and this booklet. We will notify you by email of the outcome of this review and of any recommended course of action which you should take.

If you enter Financial Difficulties, we will, within 10 Business Days, inform you of the following:

- (a) the status of your account;
- (b) the applicability of these Regulations;
- (c) the availability of this information booklet;
- (d) the type of information which may be requested from you;
- (e) the impact of the Financial Difficulties on any other credit facilities held with us;
- (f) the option of an immediate review of: your credit facility agreement; any existing alternative arrangements; and any security which you have provided.

If you enter Financial Difficulties, we will appoint a designated contact point and inform you by email of the relevant contact details of the designated contact point. You will be informed promptly by email if such designated contact point changes. You may employ third party advisers who may accompany you during discussions with us whether these discussions are face to face or not.

### **Step 2: Provision of information**

Prior to assessing your circumstances, we will request certain information (including supporting documents) in order for us to carry out the assessment of your case and to determine the suitability of an alternative repayment arrangement (please refer to STEP 3: Assessment for further details). The type of information and supporting documents required will vary by individual SME but is likely to include:

- up to date financials including annual audited (or draft) accounts and monthly management accounts, by department and location, with comparisons to budget and previous year;
- short and long term cash flow projections;
- up to date business plan including details of your trading performance in the last 12 months and outlook for the next 12 months;
- a monthly summary of your aged debtors and creditors;
- copies of all facility letters, loan agreements and similar documentation between you and any lender other than ourselves;
- copies of bank statements and any other information relating to your level of indebtedness, contingent indebtedness, credit or debit balances on any accounts and details of payments made or to be made;
- a monthly summary report showing total amounts by age of your stock of new and used motor vehicles;
- a monthly summary report showing total amounts by age of your stock of parts and accessories;
- confirmation that your tax affairs are up to date and in order; and
- any other information that we feel is relevant to review as part of your assessment.

### **Step 3: Assessment**

If you are facing Financial Difficulties, we may offer you an alternative arrangement to assist you with resolving the Financial Difficulties. Any offer will only be made if you met our alternative arrangement assessment criteria, following an individual assessment of your situation. This assessment will consider the full circumstances of your situation, including but not limited to your overall indebtedness, your ability to make repayments, your previous payment history, the information that you have provided to us and any other relevant information.

### **Step 4: Decision**

We will respond to you in writing with a decision regarding an alternative repayment arrangement within 15 Business Days of receipt of all information that we have requested from you. If it is not possible for us to make a decision within 15 Business Days, we will inform you before the expiry of 15 Business Days as to how long it will take to make a decision and the reason for the delay.

#### **If we offer an alternative arrangement**

If we are able to offer you an alternative repayment arrangement then we will provide you with information relating to:

- (a) the timeframe for you to avail of the offer of the alternative arrangement;
- (b) the new repayment amounts on the credit facility under the proposed alternative arrangement, as applicable, and the number and frequency of those repayment amounts;

- (c) the term of the alternative arrangement;
- (d) the implications arising from an alternative arrangement including the impact on:
  - (i) the term of the credit facility agreement;
  - (ii) the balance outstanding on the account; and
  - (iii) the monetary amount of any Arrears on the account,
- (e) the frequency with which the alternative arrangement will be reviewed and the criteria against which your Financial Difficulties will be assessed;
- (f) if known, details of any residual debt remaining at the end of an alternative arrangement which will be owed by you, or if not known, how any residual debt will be calculated;
- (g) how interest and charges will be applied to the credit facility as a result of the alternative arrangement;
- (h) how the alternative arrangement will be reported by the us to a relevant credit reference agency or credit register and that this may impact your credit rating; and
- (i) that you have the right to seek independent legal and financial advice and that it is recommended that you do so.

### **Accepting an Alternative Arrangement**

Where you accept our offer of an alternative repayment arrangement and such arrangement comes to an end, we will promptly review your situation in order to assess whether a further alternative repayment arrangement is necessary.

### **If you reject our offer of an alternative arrangement**

If you reject our offer of an alternative repayment arrangement, we will advise you by email of:

- (a) the next steps that we may take; and
- (b) your right to appeal the terms and conditions of the proposed arrangement in accordance with STEP 5: Appeal below.

### **If we are unable to offer you an alternative arrangement**

If we are not able to offer you an alternative repayment arrangement then we will advise you of:

- (a) the reasons why we are not able to offer you an alternative arrangement;
- (b) the next steps that we may take; and
- (c) your right to appeal the decision in accordance with STEP 5: Appeal below.

### **Step 5: Appeal**

You may appeal the following:

- (a) our refusal to offer you an alternative arrangement;
- (b) a special term or condition which we require in order to provide an alternative arrangement; and
- (c) our decision to classify you as “not co-operating” (as referred to in SECTION 5 below).

This appeal should be made in writing to *Regional Manager, Dealer Credit & Wholesale Operations*, at the address specified in Section 10 below within 20 Business Days of the date that we advised you of our decision on the alternative repayment arrangement or our classification of you as not co-operating. The appeal will be independently reviewed by our appeals board which will consist of at least two senior members of staff who were not previously involved in the decision on the original application and who have the requisite knowledge and experience to conduct the appeal.

We will acknowledge receipt of any complete application for appeal made and will provide you with the contact details of a point of contact within FCE Bank Plc in relation to the appeal within 5 Business Days of receipt. We will make a decision on your appeal as soon as reasonably practicable upon receiving a complete application, but if a decision cannot be reached within 15 Business Days, we will inform you, before the expiry of those 15 Business Days, as to how long the appeal will take and the reason(s) why it will take longer. Once we have made a decision, we will inform you of the result of the appeal and the reasons for the decision within 5 days. Where your appeal is successful, we will also provide you with the terms of any alternative arrangement offer being made.

## **Section 6: Non co-operation**

### **The meaning of “not co-operating”**

It is in your interest to engage with us about Arrears and Financial Difficulties. If you do not engage with us, you run the risk of being classified as “not co-operating”. You can be considered to be “not co-operating” under the Regulations if:

- (a) you have failed to make a full and truthful disclosure to us, within the timeframe specified by us, of the information required in order to assess your financial situation;
- (b) a warning letter has been issued to you; and
- (c) you have not carried out the action or actions within the timeframes as specified in the warning letter.

If you are classified as not co-operating:

- (a) such a classification can have an impact on our consideration of whether you can be offered an alternative arrangement;
- (b) such a classification can have an impact on our consideration relating to exercising any existing legal or contractual rights to enforce security; and
- (c) you will remain liable for any outstanding debt if the security you have provided is realised.

### **Prior to classification of not co-operating**



Prior to classifying you as not co-operating, we will issue a warning letter by email informing you and any guarantor of the following:

- (a) that you will be classified as not co-operating if you do not perform specific actions, set out in the letter, to enable us to complete an assessment of your circumstances;
- (b) that the specific actions set out in the letter referred to in subparagraph (a) above are to be carried out within a specified time period which shall not be shorter than 20 Business Days from the date of the warning letter;
- (c) the implications for you of not co-operating, as outlined above.

### **Classification of not co-operating**

Where we have classified you as not co-operating, following a period whereby you were given the opportunity to co-operate in line with the warning letter referred to above, we will notify you and any guarantor that this is the case by email.

### **Section 7: Fees and charges**

Additional fees / charges may apply to you if you are in Arrears or Financial Difficulties. Details of the fees and charges which are applicable to your credit facility are set out in the Master Finance Agreement or other agreement that governs the facility. You should refer to those agreements for further details.

Where a repayment or payment is not made to a credit facility by the due date, default interest at the rate set out in the Master Finance Agreement or other agreement that governs the facility may apply to the amount in Arrears.

### **Section 8: Impact of Financial Difficulties on other credit facilities and overall credit rating**

If you are in or facing Financial Difficulties, we will work with you to try to find a solution for your business. It is important to note however that if you do not meet the repayments or payments on your facility, your facility will go into Arrears. Going into Arrears or Financial Difficulties may affect your credit rating and may prevent you from obtaining credit in future. In addition, a default in respect of one credit facility could result in a default with other facilities that you hold with us or with other parties. Data relating to your Arrears may be shared with a relevant credit reference agency or credit register where permitted by contract or required by law.

### **Section 9: Complaints**

You have the right to make a complaint to us and we will make all reasonable efforts to resolve complaints made by you.

Complaints can be made in writing to our address or by phone to our telephone number each as specified in Section 10 below. We will acknowledge receipt of any complaint made and will provide the complainant with the contact details of a point of contact within FCE Bank Plc in relation to the complaint within 5 Business Days of receipt. We will provide the complainant with a regular update (at least every 20 days) on the process of the investigation of the complaint, beginning from when the complaint was received. We will attempt to investigate and resolve a complaint within 40 Business

Days of having received the complaint. If we have not resolved the complaint within 40 Business Days, we will inform the complainant:

- (a) of the anticipated timeframe within which we expect to resolve the complaint;
- (b) that the borrower may be in a position to make a complaint to the Financial Services Ombudsman (the “**FSO**”), depending on whether the borrower falls within the class of persons who can make complaints to the FSO; and
- (c) the contact details of the FSO.

Once we have completed the investigation, we will inform the complainant of the result of the outcome of the investigation within 5 Business Days. We will also inform the complainant, where relevant, of the terms of any offer or settlement being made as well as that the complainant may be in a position to make a complaint to the FSO (depending on their class of person) and the contact details of the FSO.

### **Section 10: Contacts**

FCE Bank Plc: Ford Credit, 1 Tony Wilson Place, Manchester, M15 4FN

Tel: 0353214329250

Central Bank of Ireland: Copies of the Regulations are available from the Central Bank of Ireland at [www.centralbank.ie](http://www.centralbank.ie)