



STATUTORY INSTRUMENTS.

S.I. No. 127 of 2010.

GUIDELINES ISSUED UNDER SECTION 210(1) OF THE NATIONAL
ASSET MANAGEMENT AGENCY ACT 2009 REGARDING LENDING
PRACTICES AND PROCEDURES AND RELATING TO THE REVIEW
OF DECISIONS OF PARTICIPATING INSTITUTIONS TO REFUSE
CREDIT FACILITIES.

(Prn. A10/0443)

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I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 210 of the National Asset Management Agency Act 2009 (No. 34 of 2009), hereby issue the following guidelines:

Outline

1. These guidelines are issued with the intention of encouraging and increasing the supply of credit to viable borrowers (that is, borrowers who have the capacity to service their loans) for business purposes.

Definitions

2. “Credit facility”: Any form of credit including (but not limited to) loans, term loans, overdrafts, finance and leasing arrangements and invoice discounting.

“Credit reviewer”: The person appointed by the Government to review decisions to refuse credit facilities.

“Borrower”: an applicant for credit facilities, including one who has been refused and including persons acting on behalf of the applicant.

“SME”: a business that meets one or more of the following criteria: it has fewer than 250 employees, it has an annual turnover of less than €50 million, it has a balance sheet value of less than €43 million.

“Refusal” includes a decision by a participating institution to reduce or withdraw an existing credit facility.

Eligibility

3. An SME, including a farm enterprise or sole trader, may apply for a review of a decision by a participating institution to refuse credit facilities or to restructure existing credit facilities.

Exclusion from right of review

4. The following applications and decisions are not reviewable under these guidelines:

- (a) Decisions by participating institutions to refuse applications for credit facilities because of EU State Aid rules,

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 30th March, 2010.

- (b) Decisions by participating institutions to refuse applications for credit facilities in excess of €250,000,
- (c) Applications for credit facilities of less than €1000,
- (d) Decisions notified to borrowers before the issue of these guidelines.

Constructive refusal

5. Where a decision on an application for a credit facility is not given by the participating institution within 15 working days, this shall be regarded as constructive refusal and the borrower may apply for review to the Credit Reviewer.

6. Where a borrower considers that the terms or conditions attached to a credit facility or its price are so onerous as to amount to a constructive refusal, the borrower is entitled to apply for a review. The Credit Reviewer shall issue guidance on the reasonableness of terms, conditions and pricing.

Review of decisions

7. The Credit Reviewer shall review a decision that is eligible for review under these Guidelines on application by the borrower concerned. This review shall be investigative in nature. The Credit Reviewer may investigate and carry out any inquiries and collect information in any form he chooses. The Credit Reviewer is not bound by the normal rules of evidence. The review process shall be conducted with as little formality as possible and as expeditiously as possible. Any formality that is necessary to the process shall be to the smallest degree possible.

8. In carrying out a review, the Credit Reviewer shall take all reasonable precautions and put suitable systems in place to prevent the disclosure of confidential information obtained in the course of the review to any other person unless authorised to do so or in the opinion of the Credit Reviewer required to do so in the course of and in accordance with his duties.

Lending policies

9. The Credit Reviewer shall review the lending policies of each participating institution, including taking account of the perspective of particular sectors, and shall report to the Minister for Finance on whether those needs are being met.

Analysis of outcomes of Credit Reviewer's recommendations

10. The Credit Reviewer shall prepare a regular analysis of applications for review and their outcomes, including the number of claims for review, the number of valid claims for review, the reasons for invalid claims, whether or not and to what extent each participating institution complied with the recommendations and their explanations for not complying.

11. Participating institutions shall maintain, and supply to the Credit Reviewer on request, any records necessary for this analysis. The Credit Reviewer shall provide this analysis, or such other analysis as the Minister for Finance may request, to the Minister for Finance, who may publish it.

Powers

12. The Credit Reviewer shall have such powers as are necessary to undertake the review of the decision to refuse formal applications for credit facilities, the review of lending policies and the analysis of the outcomes of Credit Reviewer recommendations. Amongst such powers shall be the power to enter into contracts, with the consent of the Minister for Finance, including contracts for the provision of expert services. The Credit Reviewer, with the consent of the Minister for Finance, may appoint a person, or persons, to act on his behalf in relation to these guidelines. Recommendations made by persons so appointed shall be treated as recommendations of the Reviewer.

Process

13. Before applying for review, a borrower shall exhaust any credit appeal mechanisms available within the participating institution concerned. The borrower shall apply to the Credit Reviewer within ten working days of being notified of the refusal. The application for review shall be in the form prescribed by the Credit Reviewer. The borrower shall comply with the procedures prescribed by the Credit Reviewer for reviews, including any appropriate legal agreements and waivers of confidentiality necessary to allow the review to take place. In making the application the borrower shall agree, in the form required by the Credit Reviewer, that no claim may be made against the State or the Credit Reviewer in respect of any recommendation made by the Credit Reviewer.

Documents to be included with a borrower's application

14. With a borrower's application the borrower shall include copies of the documentation provided to the participating institution by the borrower and the response of the participating institution if available. The borrower may also make a submission to the Credit Reviewer. The Reviewer may seek further documentation where insufficient information to allow a recommendation to be made is provided in documentation provided by an applicant.

Fee

15. The application shall be accompanied by a fee of €100 or €1 per thousand euro of the value of the credit facility requested (whichever is the greater), but subject to a maximum of €250. An application for review is not complete until the fee is paid.

Notification of participating institution

16. The Credit Reviewer shall notify the participating institution which refused credit facilities of the receipt of an application for a review. The participating institution may make a submission to the Credit Reviewer in response to the application within ten working days of the Credit Reviewer's notification. The submission shall be in the form prescribed by the Credit Reviewer. The participating institution shall provide any information and documents sought by the Credit Reviewer.

Review criteria

17. In reviewing a decision to refuse a credit facility, the Credit Reviewer shall take account of all submissions made to it and the viability and repayment

capacity of the borrower. The Credit Reviewer shall ensure that the participating institution and the applicant for review each have the opportunity to examine, and respond to, the material put forward by the other party. Such responses shall be in the form prescribed by the Credit Reviewer.

Recommendation

18. In reviewing a decision to refuse a credit facility, the Credit Reviewer may support the decision, recommend that the credit facilities should be granted, or make such other recommendation as he or she considers appropriate in all the circumstances.

19. The Credit Reviewer shall inform the borrower and the participating institution of the recommendation and the reasons for it.

Withdrawal of application

20. A participating institution may make an alternative credit offer to a borrower at any time before the Credit Reviewer issues a recommendation in relation to a refusal. If the alternative offered is acceptable to the borrower, the review application shall be deemed to be withdrawn.

21. A borrower may withdraw an application for review at any time.

Response to Credit Reviewer recommendation

22. If the Credit Reviewer recommends that a credit facility should be granted, the participating institution which refused credit shall comply with the recommendation of the Credit Reviewer or provide an explanation to the Credit Reviewer why it would not be appropriate for the institution to comply with the specific recommendation. The explanation shall be in the form prescribed by the Credit Reviewer.

23. The standard terms which apply to this type of credit in the participating institution shall apply to the credit facilities granted. The participating institutions shall not apply unduly onerous terms to the credit facilities granted.

Costs

24. The administrative and other costs of the Credit Reviewer, including costs of expert assistance, IT support, internet facilities, advertising, etc., after taking account of the fees paid by borrowers, shall be paid quarterly by the participating institutions. The share of the costs payable by each participating institution shall be in proportion to the number of applications for review of decisions of the participating institution. Start up costs of the Credit Reviewer shall be paid, on demand and in equal amounts by the two main participating institutions.

Financial Services Ombudsman

25. Nothing in these guidelines purports to affect, in any way, a borrower's right to have recourse to the Financial Services Ombudsman.



GIVEN under my Official Seal,
26 March 2010.

BRIAN LENIHAN,
Minister for Finance.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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