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Consumer Protection (Regulation of Credit Servicing Firms) Act 2018

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The Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 (“**2018 Act**”) is now in force, effective since 21 January 2019. The effect of the 2018 Act is to extend the provisions of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 (“**2015 Act**”) in the protection of borrowers who borrowed from a regulated lender but whose loans were subsequently acquired by unregulated entities.

The objective of the 2015 Act was to ensure that those borrowers continued to be protected by the regulated safeguards they had by virtue of borrowing from a regulated lender. The 2015 Act required that loans to “Relevant Borrowers” (as defined in the 2015 Act) must be serviced, managed and administered by a regulated credit servicing firm. This however meant that the acquirer of the loan from a regulated entity did not itself require to be regulated under the 2015 Act. There has been significant political pressure to extend the provisions of the 2015 Act to such acquirers/owners of relevant loans and this is what the 2018 Act seeks to achieve.

The 2018 Act extends the definition of “Credit Servicing” to now include:

- (a) Holding legal title to credit; and
- (b) Managing or administering such credit including
 - by determining the overall strategy for the management and administration of a portfolio of credit agreements; or
 - managing control over key decisions relating to such portfolios.

There continues to be carveouts for securitisations.

There are transitional provisions available which effectively mean that entities have time within which to comply with the 2018 Act whereby if an entity is deemed to be in “Credit Servicing” as a result of the 2018 Act, it will be taken to be authorised if it applies to the Central Bank for authorisation within three months of the commencement of the 2018 Act, and has a Credit Servicing firm undertake all Credit Servicing on its behalf.

In summary, the 2018 Act is now directly applicable to all owners of credit agreements covered by the 2018 Act and existing and intending loan portfolio owners will need to consider the implications of this and the extent to which, in the structuring of their loan acquisitions, they must now consider whether they require to be authorised.

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