Information Note for Farms which have had their loans sold on

What Every Farm Needs to Know

Summer 2019

Introduction:

As with all Credit Review information notes, reading this short article will help you to understand how you can ensure your farm has access to credit when it needs it.

This note specifically provides some information for borrowers whose loan has been sold on to another lender. Also if you are being asked to repay the loan, what could have happened so far; and some actions to consider.

As with all things, it is up to the manager of the Farm to decide what to do next.

A. Why has your loan been sold on to a new owner?

B. Actions to be considered with regard to the loans which have been sold?

C. Is there a chance that the loan will be called in?

D. What protections are available?

E. Other actions to be considered by the Farm

A. Why has your loan been sold to a new owner?

When a Loan is obtained from your Bank, a loan agreement document is signed. This specifies the amount and term of the loan, the collateral security, the repayment conditions, - and the rules for what happens if the agreement is not kept to.

This is an important document, as during the duration of the loan if any of the conditions in the loan agreement are not met (breached), with or without the consent of the Bank, then the Bank can classify it as Non-Performing, and can demand its immediate repayment in full. This also includes the right by your Bank to sell the loan to a new owner. This 'right' is often included in banks loan documentation and can be actioned whether the loan is performing or not.

Banks usually sell the entire connected business in these loan sales, which will include all the Farm's debit accounts, even if some of these have not breached the specific terms of that loan or overdraft.

If the Farm has had personal guarantees as part of the collateral for the loans, then all of the guarantor's debit accounts will also from part of the exposure being sold on.

Some Borrowers have been shocked to learn that their loans are being sold on as the result of one or more of the Borrower's guarantors being classified as Non-Performing by the Bank, even if the Borrower has met the terms of its loan agreement with the Bank. (This may only happen when the guarantor and the Borrower use the same Bank).

If your Farm business has had difficulties in the past, and required the terms of the loans to be restructured, and this has been agreed with your Bank, then a new loan agreement will have been drawn up with the revised terms.
Provided the Borrower has signed this agreement, and the revised terms have been adhered to, then the Bank should not sell the loans – the only exception being if one or more of the guarantors is classified as Non-Performing, as described above.

If you would like more information on Non-Performing Loans, there is a separate Information sheet on the publications tab of the Credit Review Office website.
Information Note – Non-Performing Loans

B. Actions to be considered with regard to the loans which have been sold?

The Borrower's loans will now be owned by a new owner – likely an Investment Fund or Hedge Fund.
The new loan owners usually appoint a managing agent to handle all communications with Borrowers. It is these agents which you will deal with on matters concerning the loans.
If you are not contacted by the managing agent over the weeks following the loan sale, you should obtain contact details from the Bank selling the loan, and then make contact with the managing agent.

The Credit Review Office strongly recommends that the Borrower continues to make the loan repayments, to the new loan owner, and adhere to the terms of the loan as was previously agreed with the Bank. The managing agent will provide you with the details of how to continue to make the repayments. The loan contract which has been sold should have the same terms and conditions applicable to it.

Any further breaches of the original loan terms will provide additional leverage to the new Owners to demand full repayment on the loans.
A poor repayment pattern will also make it more difficult for the Borrower to obtain refinance from one of the Banks, in the event that the new loan owner demands full repayment.

Having the loans sold to a new owner will make it more difficult to obtain new credit from one of the Banks, as the collateral security of the debt will also be transferred to the new loan owner as part of the debt sale. Banks will also be mindful of the debt now owned by the new loan owner, and that technically this can be demanded for repayment in full at any time. Such a demand may put any new loans advanced by a Bank in jeopardy.

C. Is there a chance that the loan will be called in?

The status of the Borrower's loan is that it has been classified as non-performing through a breach of the terms signed on the loan contract agreed originally with the Bank. This breach has broken the contract and renders the loan 'repayable on demand'. This is how the Bank was able to sell the Borrower's loan on, and the 'on demand' status remains with the new loan owner. It is important to re-iterate however, that not all loans which are sold to 3rd parties are 'non-performing' and you should continue to adhere to the contractual obligations (where possible) so that the loan contract is maintained.

The picture of 'what happens next' with the new loan owners is still evolving. Some appear content to hold on to loans which are being adequately serviced, others have demanded full repayment over a shortish period of around three months, with the option of using a Receiver to recover the full amount of the loans which are now 'repayable on demand'.

While the new loan owners will have bought the loans at a discount to the outstanding loan value, they will still look to recover up to 100% of the full outstanding balance depending on ability to repay, and the net worth of the borrower.

The approach being taken by the New Loan Owners seeking repayment of the loans generally involves the following three options:

- *Discounted Buy Out* – Under this option the borrower can put forward a proposal to buy the loan at a discount to its outstanding value. However, any offer would be expected to be at least in line with the market value of the security held in respect of the loan.

- *Settlement & Sale* – a voluntary sale of the assets plus a cash settlement towards any shortfall on the settlement figure. This settlement would be required to be agreed in advance.

- *Enforcement* – In the event of no agreement being possible under options (a) & (b) the new loan owner may appoint a receiver to realise the security they hold, and pursue the borrowers for any shortfall to the value of the loans outstanding.

D. What protections are available?

If you believe that either the bank has sold your loan (and should not have) or the managing agent is being unreasonable or unfair, then you should lodge a formal complaint to the offending party in the first instance. All regulated entities are required to comply with the Central Bank of Ireland's SME Lending Regulations. Whilst some new loan owners are unregulated, their managing agents must abide by the regulations. These Regulations can be found at:
Central Bank – Lending to SMEs Regulations

These Regulations set out a number of protections for SMEs on how Banks should conduct their business including:
- rights to annual meetings and reviews
- general provision of information
- loan pre-sale information
- loan post-sale information
- security/collateral
- refusing or withdrawing credit
- borrowers in arrears
- policies for borrowers in financial difficulties
-alternative arrangements (restructuring debt)

The Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015 was enacted in the summer of 2018. This Bill extends the protections of the Central Bank's SME lending Regulations, not directly on the activities of the new owners of the loan, but to their managing agents in Ireland which they have appointed to interact with borrowers on their behalf.
In 2019 legislation was passed through the Dáil to extend the protections onto the Loan owners as well.

E. Other actions to be considered by the SME

At this stage, good advice is essential. Bad advice at this critical stage may result in terminal results for your business. If your Accountant is sufficiently well informed, they should be the initial port of call.

Alternatively, you may wish to engage a specialist regulated debt management services (DMS) firm to independently review your financial circumstances and/or engage with the bank on your behalf. DMS firms are regulated by the Central Bank of Ireland to provide Debt Management Services to Consumers. These can be found at:
Central Bank - Registers

At some point in time you will need to be talking with another Bank to provide finance to meet the settlement figure which may be demanded by the new Loan owner, if you wish to continue trading.

If you have not already done so, you should make some effort to value your security which is held by the new loan owner – this will provide an indication as to a reasonable settlement amount for any deal.

As previously recommended, you should keep up the required repayments to the new owners of your debt. Failure to do so may result in you not being able to get the required funds from one of the existing banks when a demand for repayment is made by the loan's owner.
In the event that your debt adviser suggests ceasing repayments, you must be able to show what you have done with the withheld repayment cash. As any bank providing refinance will be reluctant to lend if they feel that these withheld funds are required to keep the business afloat and would not be available to service any proposed refinancing loan.

It is likely that you will have your normal day to day business banking with one of the remaining banks which are still active in the Farm market. If this account is operated well it will help you to secure the finance you will need; if the account is poorly operated with payments dishonoured, this will make it more difficult.

In any case, you should be talking with your daily 'transactional bank' to establish a good relationship, and letting them know that you will may need refinancing in the foreseeable future. Listen to the banker – are they positive or negative about this?
If they are negative – try to address the issues they raise. You may need to shop around for a more accommodating bank. There are also a number of alternate finance providers on the market who provide a combination of asset backed lending and cashflow lending.

Some key points which may help to obtain new finance:

1. It is unlikely that any Bank will refinance any assets by 100%, or by multiples of your profits to settle he debt with the current loan owner.

   You may need to get part of the settlement money from a non-bank source – an investor in your business. If practicable you should also be talking with Friends and Family about the upcoming need for refinancing.

2. As with any bank loan application, you will need up to date financial accounts – there is no point in seeking credit with financial accounts which are over a year old. All banks will

want to see 3 years accounts, and if past trading has been difficult you will need to be able to explain the past performance.

3. You should also have a credible business plan for the next three to five years, together with cash-flow projections. Templates to produce these are widely available on Banks websites.
4. You will need your up-to-date tax clearance certificates, or the payment record for any arrangements for arrears with the Revenue Commissioners.
5. It will also help if you have aged listings for your debtors and creditors, to help the bank understand your business working capital needs.
6. The bank will likely check your business and personal credit history with the Irish Credit Bureau – do you know what these credit records look like – if not find out. It is better to explain in advance the causes for any defaults, including missed payments, interest only periods or other forbearance, and why these will not re-occur. You can apply on-line at www.icb.ie for your credit report.
7. The Central Bank of Ireland also maintain a credit register which may have significant detail on you and your loan history. A copy of this report can be found at https://www.centralcreditregister.ie/ - this can also be done on-line.
8. You may need security for the lending. This will likely be at least fixed charge over the assets being financed, and possibly floating charges on the business. If the assets are in the Directors names on a limited company, be prepared to give a guarantee, backed by a charge on the assets to secure the loan.

Some other sources of help which is available:

If your business is viable or potentially viable, and has been refused credit, the Credit Review Office can help with loan appeals up to €3M. www.creditreview.ie
The Credit Review Office help line may also be a useful service 1850211789

If you are a member of a trade body such as IFA let them know how you are getting on. They can lobby on the collective experience of their members.

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