

## APPENDIX 2

### CODE OF CONDUCT ON THE HANDLING OF BORROWERS IN FINANCIAL DIFFICULTIES

#### Part I

##### 1. INTRODUCTION:

###### (1) Scope of application

(1) Subject to the provisions of point (2) of this paragraph, ACIs shall apply the provisions of the Code of Conduct on the Handling of Borrowers in Financial Difficulties (hereinafter the "Code") to the following persons:

(a) Natural persons granted credit facilities by the ACI with total balances of credit facilities (including credit facilities of their connected persons) up to one million euro (€1.000.000). The said scope of application includes guarantors of the borrower and third parties who provided securities to the ACI for the borrower.

(b) Micro and small enterprises as defined in the European Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC) granted credit facilities by the ACI with total balances of credit facilities (including credit facilities of their connected persons) up to one million euro (€1.000.000).

(2) The following persons do not fall within the scope of application of the Code:

- (a) persons for which an application for bankruptcy was filed by another creditor;
- (b) persons for which a receiver or administrator was appointed by another creditor; and
- (c) persons for which a dissolution decree was issued.

###### (2) Adequate arrears management

The effective management of arrears of viable borrowers in financial difficulties (hereafter "the borrowers") is an essential component of the ACI's risk management, particularly in a distressed environment. The objective of arrears management is to reduce credit risk and avoid further deterioration of the financial position of the borrower, with the ultimate objective of reinstating, where possible, the sustainable ability of borrowers to meet their credit obligations.

On the basis of this premise, ACIs shall effectively and adequately manage arrears and pre-arrears situations and perform debt restructuring of borrowers based on market-based voluntary restructurings and workouts, where possible.

The Code is intended to provide ACIs with direction on the approach ACIs shall follow with a view to attaining the necessary means to develop and implement sustainable restructuring measures based on the borrower's repayment capacity. The underlying objective is the servicing of credit facilities by the borrowers, the fair treatment of borrowers, to minimise the level of repossessions in order to

achieve the social objective of keeping borrowers in their primary residence and maintaining the sustainability of businesses and, therefore, to support the Cypriot economy as a whole.

## 2. OBJECTIVES:

The aim of the Code is to enhance the level of cooperation between ACIs and borrowers in order to achieve:

- a sound portfolio for the ACI;
- serviceable credit facilities by the borrower through attainment of sustainable restructuring solutions;
- maintenance and growth of business and the economy;
- maintenance of property; and
- minimisation of repossessions and disposals.

The main objectives of the Code are:

- to guide the interactions and exchanges between the ACIs and the borrowers towards mutual understanding and co-operation;
- to encourage collaboration between the ACIs and the borrowers to enable effective management of arrears;
- to set the obligations and responsibilities of ACIs during arrears management and restructuring process;
- to ensure that ACIs adequately inform and fully explain to borrowers their rights and obligations in relation to arrears and restructuring; and
- to facilitate the process of solving the borrowers' difficulties in meeting their contractual financial obligations with the implementation of satisfactory and sustainable restructuring solutions, where possible.

## 3. GENERAL PRINCIPLES:

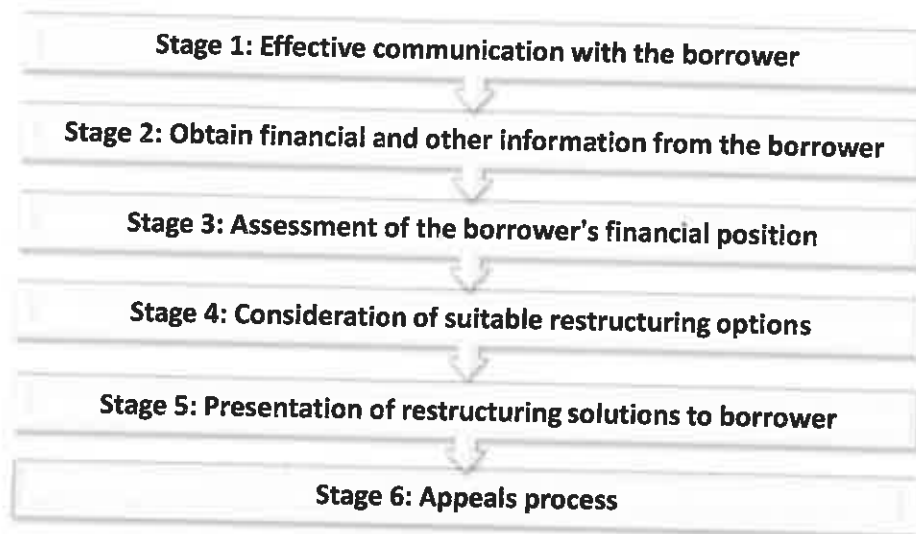
ACIs shall abide by the following general obligations and responsibilities for arrears management and debt restructuring. They shall:

- (a) Fully adhere to the general objectives detailed in point 2 above;
- (b) Apply these principles in conjunction with sound banking practices and in compliance with all relevant laws and regulations in the Republic which govern them;
- (c) Behave in a professional, fair, transparent and consistent manner when dealing with borrowers;
- (d) Ensure that borrowers understand their rights and obligations and are also informed of the rights and responsibilities of ACIs as they derive from their contractual relationship (Part II provides direction on this matter to ACIs and a list of obligations and rights of borrowers that shall be clearly laid down in the agreement);
- (e) Disclose complete and accurate information to the borrower regarding both the borrower's specific situation and the general procedures followed by the ACI;

- (f) Respond in a proactive and timely manner to pre-arrears and arrears situations;
- (g) Consider each case independently and define solutions based on its specific particularities (i.e. a case-by-case treatment);
- (h) Avoid placing undue pressure and act objectively in the best interests of the borrower;
- (i) Implement appropriate measures to prevent biases or conflicts of interest when negotiating with the borrower;
- (j) Provide the borrower with truthful and accurate explanation regarding the range of solutions available and their respective implications;
- (k) Communicate clearly and ensure that the message is adapted to its audience;
- (l) Ensure that the borrower understands and accepts all terms and conditions proposed;
- (m) Respect the right of privacy of the borrower;
- (n) Strive to develop sustainable solutions to arrears management;
- (o) Inform the borrowers of their particular rights and obligations when in arrears;
- (p) Accurately document all decisions and clearly communicate them to the borrowers;
- (q) Implement all necessary operational and organisational tools, processes and control mechanisms to ensure compliance with this Code;
- (r) Impose on the borrower only costs authorised and no greater than the costs incurred as a result of the arrears and/or the restructuring;
- (s) Provide appropriate training to staff members on effective management of arrears, pre-arrears and borrowers in financial difficulties;
- (t) Ensure that all staff members are aware of and comply with the relevant policies and procedures;
- (u) Ensure that any external third parties, hired consultants and providers of outsourced services duly respect the provision of this Code;
- (v) Remain proactive and take all necessary steps to effectively and efficiently address non-cooperative borrowers and unsustainable debts;
- (w) Proactively engage at an industry level, where applicable, to solve industry-wide arrears issues; and
- (x) Address complaints to envisage inappropriate behaviors in a timely and objective manner.

#### **4. GENERAL APPROACH TO RESTRUCTURING:**

ACIs shall apply the following stages when dealing with borrowers in arrears and in cases of pre-arrears:



#### **5. COMMUNICATION WITH THE BORROWER:**

##### **(1) General principles of communication with the borrower:**

ACIs, as a minimum, shall:

- i. Implement a standardised and uniform communication approach, based on the established up-to-date policies and procedures;
- ii. Develop pre-defined messages which are relevant, clear, informative, and can be easily adapted for the target audience, depending on their stage in the arrears process;
- iii. Ensure that all communication with the borrower is performed in a proactive and timely manner;
- iv. Ensure that all communication is conducted in an appropriate manner and in a polite way;
- v. Behave in a cooperative and collaborative manner with the borrower and invite them to discuss further over the phone or in person;
- vi. Maintain frequency of communications to an appropriate level, proportionate and not excessive in accordance with the ACI's approved policy;
- vii. Only contact the borrower at reasonable times, preferably during business hours, unless agreed otherwise;
- viii. Ensure compliance with privacy and confidentiality principles;
- ix. Inform the borrower, in writing, of the appointment of any intermediate or third parties representing the ACI and detail the extent of the mandate;
- x. Provide adequate training to responsible officers to ensure that all interactions with the borrowers are to a high professional standard;
- xi. Provide borrowers with dedicated points of contact that offer specialised information related to

restructuring of credit facilities;

xii. Make available all relevant resources to both the borrower and the staff, such as:

- A dedicated section on the website for restructuring of credit facilities, which is easily and clearly accessible and provides all relevant information of the borrowers' rights and obligations and the procedures when facing pre-arrears and arrears,
- Printed brochures, booklets and/or leaflets,
- Support of relevant banking industry initiatives aimed at educating the public on restructuring of credit facilities and the importance of pro-active actions;

xiii. inform the borrower, through informative material that shall be available in all branches of the ACI as well as posted on a special section of the ACI's website, about the mediation procedure governed by the provisions of Part VIA of the Laws on the establishment and operation of the Financial Ombudsman of 2010 and 2014, as subsequently amended or replaced (hereafter "Ombudsman Law"); and

xiv. inform the borrower of his/her right to submit an appeal to the Appeals Committee as well as the appeals process.

(2) Stages of communication:

The stages of communication with the borrower are as follows:

(a) Pre-arrears communication

Pre-arrears is defined as the situation where the ACI anticipates that there is a material risk of the borrower going into financial difficulties creating arrears in the short to medium term (due to, for example, change in employment status, reduction of salaries, industry problems, etc). ACIs may be made aware of the situation either by the borrower or as a result of their own assessment and controls. Due to the fact that no actual arrears have occurred, the communication with the borrower in pre-arrears shall be consultative and focused on identifying relevant preventive measures. Communication shall be performed via phone or in person, as deemed appropriate.

Follow up communication, via phone or in person, shall be performed only if the borrower is receptive to assistance in order to respect the rights of the borrower as well as for a right cooperation in the future. Conversely, follow-up communication may be in writing.

(b) Early arrears communication:

Early arrears occur when a borrower has not made a full repayment or only makes a partial repayment on the credit facility, up to 30 days following the contracted due date of the repayment program.

Communication with the borrower on early arrears, shall be done by phone, within the first 20 days, following similar principles as for pre-arrears, and be discrete and consultative in nature. The borrower may also be invited to a meeting. It is essential that communication is performed immediately as the arrears situation occurs or as soon as other warning indicators are observed.

When arrears reach 31 days and the borrower does not respond to an oral arrangement, the ACI shall notify both the borrower and the guarantor(s) in writing, unless contractual obligations prevent the provision of certain information to the guarantor(s).

Content of notification:

The content of this notification shall include, as a minimum, the following information:

- Information on arrears, including the date of the start of the arrears and the amount of payment shortfall due to date;
- The details of any potential fees, charges and/or penalties/interest related to the arrears by reference to the policy of the ACI as published on its website;
- The borrower's obligations and liabilities, and the potential impact of arrears (i.e. further costs, impact on the borrower's credit rating, the reporting of information on arrears in the Central Credit Registry, possibility of sale of collateral, etc);
- The importance of collaboration between the borrower and the ACI and the invitation to set an appointment to consider the reassessment of the financial circumstances of the borrower and the potential restructuring of the borrower's credit facilities;
- Full contact details of the employee the borrower can contact;
- The availability of informative material in all branches of the ACI as well as the link on the ACI's website about the mediation procedure governed by the provisions of Part VIA of the Ombudsman Law; and
- In case of natural persons, informing them of the availability of the document "Personal Financial Statement" in Part III of the Code in all branches of the ACI and reference to the link on the ACI's website where it is posted and informing them that with the valid completion and prompt submission of this document to the ACI, the assessment for restructuring purposes will be completed the soonest possible.

The written notification shall be accompanied by a phone call to ensure receipt of the notification and to remind the borrower of the payment obligations, to enquire on the expected payment, and schedule a face-to-face meeting, if deemed necessary.

The ACI shall agree with the borrower on the date of a follow-up communication for close monitoring of the situation.

(c) Mid arrears communication

When arrears have reached 60 days past due and no workout arrangement is made or is in progress, the ACI shall send another notification in writing, to the borrower and to the guarantors, setting out at least the following:

- Updated information on arrears;
- Any applicable fees, charges and penalties/interest, if relevant;
- The legal obligations of the borrower to comply with the contractual obligations of the credit facilities;
- The right of the ACI to initiate legal proceedings in case of further non-compliance;
- An estimation of the potential costs to the borrower of such proceedings;

- The availability of informative material in all branches of the ACI as well as the link on the ACI's website about the mediation procedure governed by the provisions of Part VIA of the Ombudsman Law; and
- A call by the ACI to the borrower to contact the ACI within 30 days from the date of this letter for either the settlement of the arrears or to submit the financial and other information within a reasonable and on the basis of the nature of financial information time period as determined in paragraph 6, in order for the ACI to proceed with a re-assessment of the financial situation and to develop, if feasible, a sustainable restructuring solution taking into consideration the borrower's particular circumstances.

(d) Serious arrears communication

(1) Subject to the provisions of point 5(2)(d)(2), when arrears have reached 90 days or exceeded, at the date of entry into force of this Directive, the 90 days and no workout arrangement is made or is in progress, the ACI shall send a warning letter to the borrower and a copy to the guarantor(s), setting out at least the following:

- all the information and actions included in the written notification of point 5(2)(c);
- inform the borrower that if he/she does not act in accordance with the said letter within 30 days from the date of this letter, he/she will be classified as non-cooperative;
- outline the implications of being non-cooperative, including the potential for the initiation of legal proceedings by the ACI and the potential that the borrower will fall outside the scope of this Code.

(3) Non-cooperative borrower:

A borrower is defined as non-cooperative when:

(a) any of the following conditions (i) to (iv) apply:

(i) the borrower does not fully and honestly disclose to the ACI relevant and material information that would have a significant impact on the assessment of the borrower's repayment ability; or

(ii) the borrower does not provide the relevant information and/or documentation as requested by the ACI for the assessment of the financial position of the borrower, within a determined by the ACI time limit, in accordance with paragraph 6; or

(iii) the duration of the contact between the ACI and borrower after the first communication of the ACI on its decision for a proposed solution or solutions exceeds the 14-day time limit set out in paragraph 8(1)(c) due to borrower's culpability; or

(iv) 90 days elapse:

- where the borrower has failed to meet his contractual repayments in full and has not entered into a workout arrangement, as provided for in this Code; or
- where the borrower fails to meet the new contractual repayment schedule as provided for in a restructuring solution arrived at in accordance with this Code, and
- during which the borrower does not contact or does not respond to contacts and notifications initiated by the ACI or the borrower does not take collaborative steps with the ACI to develop a

restructuring plan;

and

(b) a warning letter has been sent to the borrower, in accordance with the provisions of 5(2)(d)(1), and the borrower did not carry out the actions specified in that letter.

(e) Communication due to classification of a borrower as "non-cooperative"

(1) The ACIs notify, in writing, the non-cooperative borrower whose facilities continue to present arrears or excesses for over 90 days, and his/her guarantors, if any, of the following:

(i) that the borrower is classified as non-cooperative;

(ii) the details on the timeframe within which the ACI will begin legal proceedings;

(iii) an estimation of the potential costs of such proceedings;

(iv) the foreseen impact on the borrower's credit rating;

(v) the risk of repossession and disposal by the ACI of collateral pledged in favour of the ACI by the borrower and/or the guarantors for the credit facilities in arrears;

(vi) that the borrower and guarantors remain liable of any amount of the debt remaining after the repossession and disposal of the collateral, including any interest, charges and related selling costs;

(vii) any other information relevant to the specific situation; and

(viii) that the ACI offers a final opportunity to the borrower to be reclassified as cooperative should he/she properly act, within 14 days from the date of this letter.

(2) In case of no response by the borrower to the written notification of point 5(2)(e)(1), the ACI may take legal action.

## 6. FINANCIAL INFORMATION:

### (1) Required information for the assessment of the repayment ability:

ACIs have a right and an obligation to have access to adequate, complete and accurate information of entire financial circumstances of the borrower and his/her guarantors if the ACI considered or subsequently considered at the stage of assessment of the borrower in accordance with paragraph 7(3) necessary in order to adequately perform an assessment of their financial situation and to develop appropriate restructuring solutions.

The ACI shall explain to the borrower and, where applicable, his/her guarantors that their timely submission of complete and accurate financial information ensures the development of a workout solution that is within their repayment ability and, therefore, the risk of new arrears and/or excesses is significantly reduced.

ACIs shall clearly inform the borrower of the necessary information and the corresponding supporting documentation required. The information shall contain, at least, the following:

- for borrowers who are natural persons, the "Personal Financial Statement" ("PFS") which is



included as Part III of this Code, duly completed and signed and a signed declaration to the ACI on the completeness and accuracy of the data in the PFS;

- for borrowers who are legal persons, the audited financial statements or management accounts if the audited financial statements are unavailable.
- any necessary, in the opinion of the ACI, supporting documentation for the purposes of corroboration of the financial and other information provided by the borrower; and
- any additional required information for the purposes of restructuring.

In case of borrowers with exposures that have been guaranteed by third parties (guarantors) whose repayment ability of their credit facilities is based also on their guarantors in accordance with 7(3), the ACIs shall require from these guarantors to submit corresponding information with those required from the borrowers in order to adequately assess the repayment ability of the guarantors as well.

(2) Time limit for submission of financial and other information by the borrower and guarantor

ACIs shall give the borrower and, where applicable, his/her guarantors a fair and reasonable amount of time for the submission of relevant financial and other information, based on the type of information necessary for the assessment of the repayment ability of the borrower and guarantors. The fair and reasonable amount of time is determined as follows:

- for the relevant information from natural persons, 14 days from the maturity date for action by the borrower in accordance with the letter of point 5(2)(c) or 5(2)(d)(1) or 5(2)(e)(1), whichever applies, and which time limit may be extended by up to 7 days if an important reason, in the opinion of the ACI, exists; and
- for the relevant information from legal persons, within two months in case audited financial statements will be submitted or one month in case management accounts will be submitted from the maturity date for action by the borrower in accordance with the letter of point 5(2)(c) or 5(2)(d)(1) or 5(2)(e)(1), whichever applies, and which time limit may be extended by up to 21 days if a serious reason, in the opinion of the ACI, exists.

## 7. ASSESSMENT:

### (1) Assessment of financial position:

It is imperative that the credit institution adequately assesses the financial position of the borrower and, where relevant, the guarantors, in order to ensure the identification of suitable restructuring options and the implementation of the most adequate and sustainable restructuring solutions.

The assessment for the purposes of restructuring of the credit facilities of the borrower must be based on the financial information submitted by the borrower but must also be enhanced by additional information that is provided by the borrower during the conduct of the assessment by the ACI and relates but is not restricted to the following:

- i. borrower's particular situation;

- ii. borrower's financial strength;
- iii. the overall level and the categories of borrower's credit facilities;
- iv. borrower's current repayment capacity;
- v. borrower's forecasted and projected payment abilities; and
- vi. borrower's credit and payment history, including past behaviors.

The assessment shall follow clear and transparent processes and procedures.

ACIs shall exert every reasonable effort to collaborate with the borrower throughout the assessment process to accurately determine the repayment capacity of the borrower and thereby arrive at an adequate and sustainable solution that is acceptable to both parties.

ACIs shall carry out its assessment taking into account both historical data and realistic forecasts. To this end, the ACI shall explain to the borrower the merits and the necessity to remain cooperative and to provide in a timely manner any further information necessary to enable the ACI to assess and corroborate the borrower's income and expenditure forecasts and assets.

In cases where, the borrower has different categories of credit facilities (e.g. SME loan, housing loan, CRE loan, etc), the ACI shall look at 'unbundling' the various credit facilities, constituent collateral and/or earnings streams. In its assessment the ACI shall look at these categories separately as well as in total to determine the most appropriate overall restructuring solution(s).

(2) Assessment of collateral:

Considering the importance of the collateral's value as a secondary repayment source and the negative impact on collateral values due to the economic environment, it is essential that ACIs perform a thorough assessment of collateral.

In order to form suitable and sustainable restructuring solutions, ACIs shall conduct independent professional valuation for the determination of the open market value and forced sale value of properties in cases where:

- (i) the property is an existing collateral and which will be sold so that to reduce borrower's credit facilities;
- (ii) the ACIs request from borrowers to consider the possibility to include unencumbered properties as additional collateral; or
- (iii) the assignment by the ACI of unencumbered properties aims at converting unsecured credit facilities into secured credit facilities.

Independent professional valuations may be conducted by the property valuations unit of the ACI, if the unit is staffed with recognised valuers and is independent from the credit approval process.

In case where the borrower is asked to pay for the property valuation fee, the ACI shall furnish the borrower with the necessary payment documentation as well as a certified true copy of the valuation report.

### (3) Assessment of guarantees

In case where the repayment ability of the borrower depends on the repayment ability of his/her guarantors, the ACIs shall assess the repayment ability of the guarantors and their willingness to collaborate as well as the guarantees provided on a similar basis as the assessment of the repayment ability of the borrower.

ACIs shall encourage borrowers to take all necessary steps to facilitate communication and collaboration between the guarantor and the ACI in order to avoid complicating and/or slowing down the process.

### (4) Assessment of restructuring options:

Following the receipt of all necessary information from the borrower, ACIs shall explore all possible debt restructuring options that are available in order to decide the most suitable options for the particular situation of the borrower. During the evaluation of the different options vis-a-vis the financial position of the borrower, the ACI may consider it necessary to contact the borrower in order to obtain further information that it may deem relevant. The ACI shall explain to borrowers that it is vital for the achievement of sustainable restructuring solutions for the mutual benefit of the ACI and the borrower, and therefore they must submit all necessary information in a timely manner and to engage in a constructive exchange of information and ideas during the restructuring process.

ACIs shall thoroughly document their assessment, inter alia, with a view of providing the borrower with all necessary justification during the presentation of the restructuring solutions.

## 8. RESTRUCTURING SOLUTIONS:

### (1)(a) General principles:

ACIs shall propose sustainable restructuring solutions to borrowers that are experiencing financial difficulties. A solution is considered sustainable when the borrower is able to repay his/her credit facilities in accordance with a revised restructuring plan and, at the same time, a reduction in his/her balance of credit facilities in medium term or long term is achieved.

ACIs shall consider the sustainability of the solution as being a key factor of importance for the whole process especially with a view to avoiding legal proceedings and realisation of collateral. To this end, the ACI shall ensure that the borrower provides the ACI with all relevant financial information, including details of credit facilities to other ACIs.

In cases where there are multiple creditors, they shall collaborate together, irrespective of the performance exhibited by the accounts of the borrower or the pledge of collateral in each ACI. The ultimate aim is to arrive at sustainable restructuring solutions that are feasible on the basis of the overall position of the borrower and safeguard the position of all ACIs.

ACIs shall clearly explain to the borrower that restructuring is voluntary in nature and that the borrower's consent is required for any amendment to existing terms and conditions.

The ACIs shall carry out the process of identifying the relevant restructuring options in a transparent manner and with close collaboration with the borrower.

ACIs shall provide the borrower with a series of available restructuring solutions, out of the range of options assessed, as well as the factual explanation and implications of each proposal. The ACI shall involve the borrower, as far as possible, in defining the most appropriate solution to the particular situation.

ACIs shall be receptive to comments and requests by the borrowers and, in case of involuntary errors during the assessment by the ACIs due to errors in the facts or assumptions, the ACIs shall revise their assessment and present a new revised restructuring solution.

(b) Completion time of the assessment process and first contact with borrower:

(1) Subject to the provisions of points 8(1)(b)(2) and 8(3), for all borrowers falling within the scope of application of the Code except those who fall within the scope of application of Part VIA of the Ombudsman Law, as subsequently amended or replaced, and who did not exercise their right for mediation in accordance with the said Law, the total completion time of (i) the assessment process in accordance with paragraph 7 and (ii) first oral contact with the borrower with regard to the ACI's decision on the proposed restructuring solution/proposed restructuring solutions or that no sustainable restructuring solution exists shall not exceed:

- for restructurings of credit facilities of natural persons, the one month from the date of receipt of all the necessary information for restructuring purposes by the borrower and any guarantors in accordance with paragraph 6; and
- for restructurings of credit facilities of legal persons who fall within the scope of application of the Code, the two months from the date of receipt of all the necessary information for restructuring purposes by the borrower and any guarantors in accordance with paragraph 6.

(2) Subject to the provisions of point 8(3), the total completion time of (i) the assessment procedure in accordance with paragraph 7 and (ii) first oral contact with the borrower with regard to the ACI's decision on the proposed restructuring solution/solutions or that no sustainable restructuring solution exists may, in exceptional circumstances, be extended by up to 14 days as long as an important reason exists that can be documented.

(c) Duration of contact of ACI and borrower:

Subject to the provisions of point 8(3), for all borrowers except those who fall within the scope of application of Part VIA of the Ombudsman Law and who did not exercise their right for mediation in accordance with the said Law, the duration of contact between the ACI and borrower after the first contact with the borrower on the ACI's decision of a proposed restructuring solution/proposed restructuring solutions, for the purposes of achieving a mutually acceptable restructuring solution, shall not exceed the 14 days from the date of first contact with the borrower with regard to the ACI's decision.

(2) Communication of the decision:

(a) Positive decision:

The notification of a positive decision to the borrower by the ACI shall be made in accordance with the following process:

Following the communication of the ACI with the borrower in accordance with point 8(1)(c), the ACI shall communicate to the borrower and the guarantor, where applicable, the final decision within 14 days in an arranged meeting, whereby a "letter of offer" is handed to him/her, with the participation of the guarantor, where relevant, or the letter of offer is sent by post where a meeting is not feasible. In the letter of offer, the ACI shall provide the borrower, and, where relevant, the guarantor, with detailed and clear explanation of the decision, the rationales and arguments, and the exact terms and conditions under which the decision has been approved. Specifically, the letter of offer shall include:

- i. a clear explanation and the reasoning of the decision and what the proposed restructuring solution includes;
- ii. the new terms and conditions subject to the approval;
- iii. an analysis of all extra costs, if any, to be paid by the borrower as a result of the proposed restructuring solution;
- iv. the next steps in order for the borrower to officially accept the offer and to legalise amendments to the existing contract.
- v. the procedure that must be followed in case the proposal of the ACI is declined by the borrower, and specifically:
  - (a) to notify the ACI in writing about the decline within 21 days from the date of receipt of the letter of offer, and
  - (b) that the ACI shall respond to the borrower, in writing, within 7 days of the date of receipt of the refusal:
    - (i) expressing its willingness to convene, again, in order to assess other options, if possible, or
    - (ii) explaining that this is not possible and setting out the implications for the borrower of refusing the proposal, and shall, at a minimum, explain:
      - that he/she has the right to forward an appeal to the Appeals Committee of the ACI within one month from the date of receipt of the letter of point (b) above, unless otherwise set out by another law in force;
      - the ACI's right to call in the accounts and to initiate a legal procedure after the completion of the appeals process and/or any other procedure under legislation in force; and
      - the potential legal implications, e.g. the estimated additional legal costs the borrower may have to incur, the right of the ACI to repossess or realise the mortgaged property and any other collateral, etc.

**(b) Negative decision:**

ACIs shall avoid, as far as possible, taking legal recourse and shall pursue with the borrower all available out-of-court options.

In the case where after a thorough assessment and diligent collaboration with the borrower, the ACI arrives in a negative decision (i.e. it is assessed that the borrower will not be in a position to comply with any one of the restructuring options examined), the ACI shall communicate this decision to the borrower within 14 days from the last day of communication with the borrower, in accordance with point 8(1)(c), via a meeting or by a letter, where a meeting cannot be mutually agreed.

The ACI shall duly document the negative decision, including all corroborative assessment leading to this conclusion and shall send to the borrower an official written communication of the negative decision, though a letter (hereafter "letter of negative decision") which, as a minimum, includes the following:

- i. a clear explanation and the reasoning of the decision;
- ii. his/her right to forward an appeal to the Appeals Committee of the ACI within one month from the date of receipt of the letter of negative decision, unless otherwise set out by another law in force;
- iii. the ACI's right to call in the accounts and to initiate a legal procedure after the completion of the appeals process and/or any other procedure under legislation in force; and
- iv. the potential legal implications, e.g. the estimated additional legal costs the borrower may have to incur, the right of the ACI to repossess or realise the mortgaged property and any other collateral, etc.

**(3) Completion time of the mediation process:**

For restructuring cases of borrowers who fall within the scope of application of Part VIA of the Ombudsman Law, as subsequently amended or replaced, and who exercised their right to forward an application to the Ombudsman in order to appoint a mediator in accordance with the said Law, the total completion time of the process described in subsection 10 of section 14C of the said Law is determined in that subsection.

## **9. APPEALS PROCESS:**

### **(1) General principles:**

ACIs shall establish an Appeals Committee that has sufficient resources and its members are independent of the credit granting functions, credit approval, credit control and risk management functions and the head is an executive officer of the ACI, in order to deal with all appeals regarding restructurings in an effective, efficient, timely and impartial manner.

ACIs shall make the processes and procedures for making appeals, claims and complaints readily and easily accessible to all borrowers. The appeals process shall also be clearly and transparently laid down in a dedicated section on the ACI's website.

### **(2) Written procedure for the ACI's appeals process:**

ACIs shall clearly define the appeals process within its relevant policies and procedures and shall properly disclose it to all new and existing borrowers.

The content of the appeals process that shall be communicated to the borrower shall include, as a minimum, the following:

- The point of contact at the ACI that deals with appeals, claims and complaints;
- Clarification that only written applications are accepted;
- Standardised documentation provided by the ACI that may be used by the borrower;
- Where and how to submit the application, i.e. by post, by e-mail, by hand, etc; and
- The names of the persons at the ACI the borrower may communicate with until the Appeals Committee decides on the appeal.

The content of the appeals procedure that shall be followed by the ACI shall include, at least, the following:

- The detailed explanation of the review procedure to be performed by the Appeals Committee;
- The right of the Appeals Committee to invite the borrower who filed the appeal for a meeting as well as the obligation of the said Committee to have a meeting with the borrower should he/she requests for such a meeting;
- The supportive documentation required for the review; and
- The maximum timeframe for providing the borrower with:
  - (i) An official acknowledgement of the appeal, which may not be later than 21 days from the date of receipt of the complaint; and
  - (ii) An official decision regarding the appeal, which may not be more than two months from date of receipt of the appeal.

#### 10. DEMONSTRATING COMPLIANCE:

ACIs shall be able to demonstrate to the CBC their full compliance with the provisions of this Code. To this end, ACIs shall:

(1) Ensure the accessibility, quality and completeness of all relevant information;

(2) Maintain a complete record of:

- All communications with the borrowers with regards to arrears and debt restructuring;
- All information obtained from the borrower;
- All steps taken during the restructuring process;
- All assessments undertaken;
- All official approvals granted; and
- Any other related legal documentation

(3) Maintain a record of all relevant documentation.

(4) Retain all records demonstrating compliance with this Code for a minimum period of 6 years and all records of borrowers for a minimum of 6 years after the termination date of the relationship with the borrower.



## **Part II**

### **TRANSPARENCY OF BORROWERS' AND GUARANTORS' RIGHTS AND RESPONSIBILITIES**

1. ACIs shall provide borrowers with a document that lays down the respective rights and responsibilities of the borrowers and the ACIs whereupon the borrowers sign that they have received adequate and full explanation thereof. As a minimum, this document shall include the following with respect to the responsibilities of borrowers:

- i. To act in respect of the requirements of the terms of the credit facilities' agreements;
- ii. To fully collaborate with the ACI in order to achieve a sustainable restructuring solution;
- iii. To demonstrate integrity, honesty and transparency and always act in good faith;
- iv. To remain proactive in contacting their ACIs when foreseeing or facing difficulties in meeting their obligations;
- v. To timely provide full, complete, up-to-date and accurate financial information and documentation of their financial circumstances (e.g. earning capacity and net worth) as and when required, including supporting income, expenditure and other financial data;
- vi. To disclose all relevant information, including details of credit facilities to other ACIs, in order to assess the global financial position and to eventually reach a consensual agreement between all creditors and the borrower;
- vii. To be cooperative in providing any further relevant supporting documentation required by the ACI;
- viii. To produce a signed Personal Financial Statement (PFS) (for natural persons only), in accordance with Part III below;
- ix. To act to resolve arrears and other defaults in timely manner;
- x. To declare that they understand that the best solutions can be arrived at after their full cooperation and collaboration with the ACI;
- xi. To be receptive to receiving restructuring proposals;
- xii. To declare that they understand that failure to comply with the repayment program and to provide reliable information may halt the cooperative process and potentially lead to legal proceedings; and
- xiii. To not take any action that might adversely affect the position of the ACI and its collateral.

2. ACIs shall provide guarantors with a document laying down their rights and responsibilities, which, inter alia, include the timely submission of financial information required by the ACI and acknowledgment of the Guarantors' obligations as stipulated under the Protection of a Specific Group of Guarantors Law of 2003, as subsequently amended or replaced.

3. ACIs shall:

(a) When proposing the available restructuring options:

- (i) assist the borrower to understand the different options available;
- (ii) give time to the borrower to perform their own estimate of the implications of each available option in order to make an informed proposal to the ACI on which option to develop; and
- (iii) advise the borrower of their right to seek the counsel of an independent professional to support their decision making, if deemed necessary.

(b) When proposing of restructuring solutions:

- (i) ensure, as far as possible, that the proposed solutions are sustainable and the borrower will continue to be viable;
- (ii) discuss the proposed solutions with and offer clarifications to the borrower in order to help them form an informed and educated decision; and
- (iii) inform the borrower of their right to reply to the ACI of which of the solutions proposed, the borrower regards as the most suitable and sustainable in accordance with his/her particular financial situation or that none of the proposed solutions are acceptable and offer an alternative proposal to the ACI.

### **Part III**

#### **PERSONAL FINANCIAL STATEMENT (PFS)**

See: Attached document on the next page.