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NEW PROTOCOL NEEDED FOR NEGOTIATIONS BETWEEN BANKS & SMALL BUSINESSES IN FINANCIAL DIFFICULTIES

The Irish Farmers' Association (IFA), the Vintners Federation of Ireland (VFI), Irish Property Owners Association (IPOA) and RGDATA have come together to send a clear message to the Government that the current basis on which negotiations between banks and small businesses in dealing with credit difficulties, is not working.

In a joint statement issued at a briefing in Dublin this morning (Mon), the group said: While the Irish economy is beginning to recover from the worst recession experienced in a generation, a significant number of small, family-owned enterprises are still facing financial difficulties. There remains a pressing need to ensure that these difficulties are resolved in order to maximise the numbers employed in small enterprises across Ireland. Regrettably, it has become clear to the bodies representing family businesses in key sectors that the action of some of the banks is actively damaging the recovery for some businesses.

Acceptable compromise and viable solutions are not being reached. In some instances, banks are imposing unreasonable conditions on customers seeking to refinance, which are just not achievable. This results in high levels of stress and anxiety for the business owner and their family. The breakdown of negotiations and appointment of receivers is a completely unacceptable outcome.

The Government and Central Bank must ensure that engagement between these enterprises and the banking sector is undertaken with the primary objective of retaining the viability of the core business and keeping people in employment.

Lenders must adhere to the existing *Code of Conduct for Business Lending to Small and Medium Enterprises;* however the Code does not provide sufficient protection to a customer under pressure facing unreasonable demands from their bank. The problem is particularly acute with the banks exiting the Irish market place, who are taking a very aggressive approach to seeking judgments and appointing receivers.

To address this, the Group has outlined a protocol for the banks (attached) which, if implemented, will result in greater levels of cooperation, with more positive and sustainable outcomes for both the lender and borrower.

The Group's key demands are:

- Banks must seek resolutions that preserve the viability of the underlying business and maintain employment;
- For all negotiations, a clearly identified point of contact in the bank must be agreed, who has responsibility for delivering a sustainable solution acceptable to both parties;
- A dispute resolution/mediation service[1] must be employed where banks and borrowers cannot reach agreement;
- Agreements reached must be full and final.

IFA President Eddie Downey said, "If we are going to maintain the maximum number of viable farm businesses, there must a fundamental change in the process of negotiation with the banks. Both the borrower and lender must be prepared to contribute to a sustainable solution, with negotiations entered into on the basis of reaching full and final settlement".

The President of the Vintners Federation of Ireland Noreen O'Sullivan, said, "For too long there has been inadequate engagement by the banks towards finding sustainable solutions. Commitment to this protocol by all parties will lead to better and fuller solutions to the problems facing many small and medium sized businesses".

RGDATA Director-General Tara Buckley said, "Viable business will close and jobs will be lost unless the banks are forced to change their approach to customers in distress. The problem is particularly acute with customers of foreign banks that are winding down their Irish businesses. All banks must be forced to be reasonable in trying to reach a resolution with co-operative customers. The banks should be stopped from driving retailers out of business through withdrawing credit facilities and rushing to forced sales. It's time the banks focused on helping not hindering these retailers who are the heart of the majority of town centres in Ireland".

IPOA Chairman Stephen Faughnan said, "Financial institutions are not adhering to the current codes and lack a basic understanding of the pressures that vulnerable people face. This is an opportunity for joint consultation to reach a satisfactory conclusion. While it may not solve all cases, it should go a long way to resolving the majority of them on a mutual basis. Pain will have to be endured on both sides if these issues are to be resolved".

[1] This may include the services of a Personal Insolvency Practitioner (PIP)

PROTOCOL FOR THE RESOLUTION OF CREDIT DIFFICULTIES

Lenders must adhere to the existing *Code of Conduct for Business Lending to Small and Medium Enterprises* (2012), which states that:

A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

1. *acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*
2. *acts with due skill, care and diligence in the best interests of its customers;*
3. *does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;*
4. *has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code;*
5. *seeks from its customers information relevant to the product or service requested;*
6. *makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;*
7. *seeks to avoid conflicts of interest;*
8. *corrects errors and handles complaints speedily, efficiently and fairly;*
9. *does not exert undue pressure or undue influence on a customer;*
10. *ensures that any outsourced activity complies with the requirements of this Code;*
11. *without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and*
12. *complies with the letter and spirit of this Code.*

In addition, the following Protocol must be followed by lenders in their negotiations with borrowers in financial difficulties. Acceptance and implementation of these guidelines will result in greater levels of cooperation, with more positive and sustainable outcomes for both the lender and borrower.

1. Lenders must fully engage with borrowers, without recourse to harassment or intimidation.

2. Lenders must provide at the outset to borrowers, all information they hold on the borrower, in line with the requirements of the *Data Protection Acts 1988 and 2003.*

3. Education and training must be provided for staff in financial institutions to ensure that they understand the small business sector with which they are dealing, including relevant taxation and management issues.

4. Lenders must respond to correspondence from the borrower in a prompt and business-like manner, within 15 working days.

5. Lenders must appoint an individual to deal with the account and give that individual the responsibility for delivering a sustainable solution acceptable to both parties. This person must be the main point of contact for the borrower throughout the negotiations. Where there is a change of personnel, this must be immediately communicated with the borrower, with a new point of contact identified. If a borrower cannot work constructively with the assigned individual, they must be offered another person to deal with.

6. Full disclosure of all assets and liabilities must be provided at the outset of negotiations. This is provided on the basis that any outcome negotiated has, as a primary objective, the maintenance of a viable core business. This must be set out in writing in advance of any further discussions. Agreement on the treatment of the family home and residual debt must be included in this discussion.

7. Lenders must be prepared to negotiate on the basis of reaching full and final settlement with the borrower, without any further, future, conditions attached to the settlement. Both the borrower and the lenders should be prepared to materially contribute to the solution, as both share the problem.

8. Where a solution cannot be reached by negotiation between borrowers and lenders, an independent Dispute Resolution / Mediation Service should be engaged. This should be funded by the lenders.

9. The Dispute Resolution / Mediation Service providers must be authorised to put forward workable solutions, which would be binding on all parties.

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