

Small and Medium Enterprises (SMEs) in Financial Difficulties

Introduction

Small businesses are key contributors to the Irish economy and are crucial for its growth and employment. At BMW Financial Services we are committed to supporting small and medium sized enterprises as they set up, establish and grow. Throughout the life of your business there will be opportunities and challenges which can have financial implications for your business. Our goal at BMW Financial Services is to work in partnership with businesses, providing support and advice, being available and making it easy to do business with us. We always aim to be clear and transparent in all our customer engagements and to comply with our obligations under Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-sized Enterprises) Regulations 2015 as amended (“SME Regulations”).

This information booklet outlines the approach of BMW Financial Services when dealing with SMEs.

Background and Objectives of the SME Regulations

New SME Regulations came into effect on 1st July 2016 and set out the standards you should expect from BMW Financial Services, covering key areas of the relationship between BMW Financial Services and SMEs, from credit applications and communications, to dealing with financial difficulties when problems occur. The SME Regulations apply to SME lending by regulated entities to borrowers within the State. If you would like a copy of the SME Regulations, the document is available to download from the Central Bank website at www.centralbank.ie.

This booklet aims to help you understand the SME Regulations and explains our approach and how we can assist businesses which are either in or facing financial difficulties.

The SME Regulations applies to all business lending by regulated entities including the provision of the following credit products within the State to SMEs operating within the State, unless otherwise stated:

- Non-Consumer Hire Purchase.
- Leasing.
- Overdrafts.
- New, Wholesale, Demo & used Stock.
- Mortgage Loan.
- Loans and Term Loans, and
- Invoice Discounting.

but excluding:

- Lending to other financial institutions.
- Syndicated, club, or multi-lender transactions, and
- Special Purpose Vehicles including vehicles established for the purposes of a particular transaction.

Please note that the provisions of the SME Regulations are without prejudice to our:

- Legal and regulatory obligations, and
- Legal rights to enforce any agreement including, but not limited to, any security taken in connection with a credit facility agreement.

Definition of an SME

The SME Regulations apply to “micro, small and medium sized enterprises” and the Regulations define these enterprises as follows:

Micro Enterprise means an enterprise which employs fewer than 10 employees and which has either or both of the following:

- a. An annual turnover which does not exceed €2 million.
- b. An annual balance sheet total which does not exceed €2 million.

Small Enterprise means an enterprise which employs greater than 10 employees and fewer than 50 employees and which has either or both of the following:

- a. An annual turnover which does not exceed €10million.
- b. An annual balance sheet total which does not exceed €10 million.

Medium Enterprise means an enterprise which employs fewer than 250 persons and which has either or both of the following:

- a. An annual turnover not exceeding €50 million.
- b. An annual balance sheet total not exceeding €43 million.

SMEs in Financial Difficulties

This information booklet outlines our procedures when dealing with SMEs in ‘financial difficulties’ and gives information on the support which will be provided by us to customers in this situation. We recognise that individual SMEs will vary by size, sector and type of credit product(s) held with us and therefore each SME in ‘financial difficulties’ will be dealt with on a case-by-case basis. This will enable us to adopt a flexible approach to dealing with each customer’s situation, noting that our key objective is to assist borrowers to resolve their financial difficulties.

The SME Regulations apply to SME lending by regulated entities to borrowers within the State and if you would like a copy of the SME Regulations, the document is available to download from the Central Bank [SME Regulations](#)

Definition of Financial Difficulties

Under the SME Regulations “financial difficulties” means a situation in which one or more of the following apply to a credit facility agreement or alternative arrangement:

- A customer is in arrears under the credit facility agreement or alternative arrangement for 3 consecutive months including where the customer is 1 month in arrears for 3 consecutive months.

- Where the credit facility agreement is an overdraft facility, the approved limit on the overdraft is exceeded for 90 consecutive days.
- Following an assessment by BMW Financial Services carried out in accordance with the SME Regulations we have determined that the customer's circumstances are such that the SME Regulations should be applied to the customer's case.

Definition of Arrears

Arrears are defined by the SME Regulations 201 to be: a payment or part of a payment due in accordance with a credit facility agreement or alternative arrangement which has not been paid by the customer by the scheduled due date for payment and, in the case of an overdraft facility, where the customer's overdraft limit is exceeded for 30 consecutive days, and "in arrears" means a situation in which arrears have arisen.

Definition of Not Co-operating

Not co-operating means a situation in which:

- The customer has failed to make a full and truthful disclosure to BMW Financial Services of the information required by BMW Financial Services to assess the customer's financial situation, within the timeframe specified by BMW Financial Services,
- A warning letter, required in accordance with Regulation 20(8), has been issued to the customer, and
- The customer has not carried out the action or actions within the timeframes specified in the letter referred to above in subparagraph.

We recommend that all customers read this information booklet carefully and contact BMW Financial Services as soon as possible if they are facing or are in financial difficulties.

Please note that nothing in the SME Regulations or this information booklet prohibits BMW Financial Services from acting with all necessary speed:

- Where in the circumstances of the case demand it.
- Is necessary to initiate a liquidation, receivership, an examinership or similar insolvency event or where another regulated entity or other third parties initiate such actions.
- Where it is necessary for BMW Financial Services to protect its legitimate commercial interests; or
- Where there is reasonable evidence of fraud, terrorist connections, money laundering and/ or misrepresentation.

Communication with BMW Financial Services

It is in customers interest to engage with us about arrears or financial difficulty. We recommend that customers who are in or facing financial difficulty fully engage with BMW Financial Services so that we can jointly discuss and address the situation.

The earlier this contact is established, the quicker a potential solution can be discussed and agreed. The key objective of the BMW Financial Services policy is to assist customers resolve their financial difficulties.

The SME Regulations sets out clear guidance for customers who are either in or facing financial difficulty and our recommended approach is as follows:

Customers facing financial difficulty

We recommend that SME customers who have concerns about their future ability to repay finance products or meet their financial commitments to BMW Financial Services contact us as soon as possible to discuss the situation. When you contact BMW Financial Services with your concerns, you will be offered an immediate review meeting to discuss your situation, and you will be provided with a dedicated contact person dealing with your case.

Customers in financial difficulty

When financial difficulties first arise on your agreement, we will contact you in writing to advise of:

- (a) the status of your agreement
- (b) the applicability of the SME Regulations and
- (c) the availability of this information booklet.

We will also offer you the option of an immediate review meeting to discuss your situation. Customers may engage the services of third-party advisors who can accompany the customer in these discussions with BMW Financial Services whether these discussions are face to face or not. Before commencing discussions BMW Financial Services, we recommend that customers seek independent legal advice.

Consequences of going into Arrears and Financial Difficulties

Should your agreement with BMW Financial Services go into arrears, or be in arrears (arrears are defined as the payments due under your agreement not being made to us in accordance with the terms of the agreement) the consequences of this may be some or all of the following:

- Your credit file with the credit reference agencies (Central Credit Register) being updated to reflect the arrears which may impact your ability to obtain finance in the future.
- Action being taken to recover the vehicle, which is the subject of the agreement which, dependent upon the agreement entered into, could also involve legal proceedings.
- Legal proceedings against you and/or any guarantor to recover outstanding debt and obtain judgment.
- The agreement being passed to debt collection agencies to recover the debt; and/or
- Default fees and charges being applied to the agreement.

Our approach to dealing with SMEs in or facing financial difficulties

If your agreement goes into financial difficulties, we will work with you to try to develop a long-term solution for your business. A summary of the main steps that an SME may consider taking when in or facing financial difficulties that may assist in the process of dealing with the financial difficulties is outlined below:

- Contact BMW Financial Services as early as possible regarding financial difficulties which your business is encountering or facing and if such difficulties may impact on your ability to meet your financial commitments to BMW Financial Services.
- Tell us about any concerns you have in relation to the impact of financial difficulties on your business relationship with BMW Financial Services.
- Promptly engage and fully co-operate with BMW Financial Services to agree an approach with us to rectify the financial difficulties situation.
- Provide relevant and reliable business information as requested by BMW Financial Services and within the timeframes specified to support our assessment of your situation.
- Complete any necessary documentation requested as part of the assessment.
- Review your progress with us regularly and advise us if your circumstances change.

It is very important that customers in or facing financial difficulties fully engage and co-operate with BMW Financial Services. This includes reverting to BMW Financial Services and satisfying information requests within stipulated timeframes. Failure to engage and co-operate with BMW Financial Services may result in you not being treated as a financial difficulties case which may result in the SME Regulations not applying to your situation.

It is always a good idea to consult with your financial advisor/accountant and/or legal advisor to seek assistance and/or review any proposal in advance of meeting with us. You may of course bring your financial advisor and/or legal advisor to the meeting if you wish. The following section provides further details on the approach adopted by BMW Financial Services when dealing with customers in or facing financial difficulties.

Actions we can take to help

If you will work with us to resolve the position, we may be able to offer some assistance however this will depend upon several factors including, but not limited to:

- How long the agreement has been in place
- The anticipated value of the vehicle compared to the outstanding balance on the agreement.
- Your current financial position; and/or
- The prospects of your recovery from your financial difficulties.

The options (alternative arrangements) that may be available include, but are not limited to:

- Reduced payments for a short period, for example 3 months, with the accumulated arrears being repaid over the following few months.
- Rescheduling the agreement.

The longer an arrears position continues, the more the potential outstanding liability increases. Therefore, the earlier you contact us to help us resolve the position collaboratively, the more likely it is that we can assist, and therefore you can help minimize or avoid some or all of the consequences listed above. You can contact this team on the following number **0818 253 181** so that we can discuss your current situation and the possible options available to you.

Business Information Required

Prior to or following a review meeting, certain information is likely to be requested from you for BMW Financial Services to complete an assessment for an alternative repayment /payment arrangement (the “Required Information”). The type of Required Information will vary by individual SME but is likely to include the following:

- Up to date financials including annual audited (or draft) and quarterly management agreements.
- Cash flow projections for the next 12 months.
- Up to date business plan including details of your trading performance in the last 12 months plus outlook for the next 12 months.
- Up to date aged list of debtors and creditors.
- Estimate or independent report on property valuation (if applicable).
- 6 months current agreement bank statements for the business.
- Up to date Statement of Affairs for all named customers, material shareholders or guarantors as required.
- Confirmation that the tax affairs of the business and named customers and/or material shareholders are up to date and in order.
- Any other information BMW Financial Services deems relevant to review as part of your assessment.

The Required Information will be requested from you in writing or by telephone from BMW Financial Services. The Required Information will be confirmed to you and will be used to complete an assessment of your situation.

Assessment

Following receipt of the Required Information, BMW Financial Services will complete a full assessment of your situation for the purposes of considering an alternative repayment /payment arrangement. This assessment will consider the full circumstances of the customer in financial difficulties. The points below outline the timelines for this assessment as well as next steps.

Decision

We will respond to you in writing with a decision in relation to any available alternative arrangements within 15 working days of receiving all the requested information.

- If a suitable alternative repayment/payment arrangement can be identified for you by BMW Financial Services, you will be provided with details of the proposed alternative arrangement and a timeframe to avail of this arrangement.

We will also advise you of your options in terms of appealing this decision if you do not wish to avail of alternative repayment/payment arrangement offered to you by BMW Financial Services.

- If following the assessment, BMW Financial Services cannot identify a suitable alternative repayment/payment arrangement for you we will also advise you of this in writing and of your option in terms of appealing this decision.

Appeals

BMW Financial Services has an appeals process in place for customers who wish to appeal decisions made by BMW Financial Services for customers in or facing financial difficulties. Details of the process are as follows:

- The customer must firstly initiate the appeal on a decision from BMW Financial Services.
- The appeal must be submitted in writing to BMW Financial Services within 21 days of the decision issued by BMW Financial Services.
- The Bank will acknowledge receipt of your appeal within 5 working days.
- The appeal is then forwarded for independent review by our appeals panel.
- The appeal will be reviewed to determine if BMW Financial Services requires additional information from the customer to progress the appeal.

Your appeal will be considered by our appeals panel which will comprise of at least two independent reviewers (who did not participate in the original decision, which you are now appealing).

We will issue you with a written decision on the outcome of the appeal within a maximum of 15 working days of receipt of the appeal (unless otherwise advised).

Complaints

BMW Financial Services is committed to always providing you with the best service. However, we understand that sometimes we may fall short of the standard or you may be unhappy with a decision we have made. We will strive to resolve your complaint quickly and fairly and we encourage you to contact us as early as possible either in writing or by contacting us on **0818 253 181** or by email at bmwcustomerservices@bmwfin.ie

If we cannot resolve your complaint in 5 working days we will respond to your complaint in writing or we may respond to you by email, if we hold an email address. We will advise you of the name of the person dealing with your complaint. It is our intention, where possible to investigate and resolve your complaint within 40 working days and issue a final response letter. You will receive regular updates on the progress of your complaint every 20 working days. If we cannot resolve your complaint within 40

working days, we will write and explain the reason for the delay and indicate when we might expect to issue a final response letter.

If you are not satisfied with our response, and your business within the scope of their services, you can refer the matter to the Financial Services and Pensions Ombudsman, Lincoln House, Lincoln Place, Dublin 2, D02 VH29. You can find information on how to access their resolution process by visiting their website at www.fspo.ie.

Further information for SMEs in or facing financial difficulties

Practical Steps to Take

What practical steps can be taken to reduce or prevent possible financial difficulties?

- Don't ignore the problem and act quickly to address potential issues.
- Talk to your accountant/financial advisor.
- Review/reduce costs – wages, fuel, light, rent, drawings, vehicle running costs etc
- Prompt debtor collection, early invoicing and payment follow-up and possible discounts to good customers. • Negotiate payment terms with suppliers if cashflow issues arise.
- Review the level and age of stock held.
- Sell assets.
- Additional investment in the business from your own resources.
- Stay in touch with us.

Late Payments

Should you fail to pay any payment amount, or any other sum required to be paid by the customer to BMW Financial Services upon the due date for payment, you may be required to pay to BMW Financial Services interest thereon from the due date of payment until the date actual payment is received at the rate set out in your Agreement.

Fees and Charges

Details of all our additional charges are set out in the terms and conditions of your Agreement.

BMW Financial Services reserves the right to demand all costs, charges and expenses paid by BMW Financial Services for or arising out of or in connection with the repair, preservation, security or recovery of the Goods and all legal costs incurred by BMW Financial Services in connection with the enforcement of the agreement, whether proceedings are commenced or otherwise.

Any cost and/or charges due will be debited to the customer's agreement and shall bear interest, at the default payment interest rate provided for in the agreement, calculated from the date of debit until the date that the actual payment is received.

These costs/charges may vary from time to time. Should the charges applicable to the agreement change, BMW Financial Services shall notify the customer at least 30 days before the changes take effect by an advertisement in one or more national newspapers.

Impact of arrears on other credit products and overall credit rating

If your agreement(s) goes into financial difficulties we will work with you to develop a long-term solution for your business. It is important to note that if arrears do arise on your agreement, your credit rating may be affected. A default in respect of one agreement that you have with BMW Financial Services could result in a default with other agreements that you have with BMW Financial Services. Your credit profile with the Central Credit Register and their records are updated when arrears arise on agreements. This may also have an impact on your ability to avail of financial products in the future.

Realisation of Security

Where BMW Financial Services recovers the security that is subject to this agreement, the asset will be disposed of, and we advise that the company and / or guarantor will be liable for any remaining debt due.

Other useful sources of information

For further useful information can be obtained by going to the links below:

www.bpfi.ie

www.thinkbusiness.ie

www.localenterprise.ie

www.enterprise.gov.ie

www.enterprise-ireland.com/en/

www.sfa.ie

www.isme.ie

www.centralbank.ie

www.creditreview.ie

Useful Contact Details in BMW Financial Services

If you are an SME in or facing financial difficulty, please contact us as soon as possible either by phone or in writing to:

Collections Manager
BMW Financial Services
Building 1
Swift Square
Northwood

Santry Demesne
Dublin 9
D09 A0E4

Phone: 0818 253 181

Email: bmwcustomerservices@bmwfin.ie

Central Bank of Ireland

Copies of the Regulations of SME Regulations are available from the Central Bank of Ireland on by clicking [here](#)

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