

Data Protection Ireland 2010

An outline on some issues regarding the trading of information between Suppliers in relation to Debtors

This document is compiled for FECMA Council Delegates to review and complete prior to our proposed meeting of MEP's in Brussels in the Spring of 2011.

Many businesses in Ireland to-day are making decisions regarding the granting or refusal of credit facilities for trade and/or consumer debt based on conversations they are having and paperwork they are completing as a result of direct communication with the proposed new/existing debtor. While there is limited information available in a public arena on businesses where they have a Limited trading status there is no such information available on sole traders, partnerships, clubs or consumers. A significant number of business trading relationships exist on the basis of dealing with any of these latter identified account types. The inability to obtain any information from relevant sources is of major concern to the greater business community who carry a large amount of unsecured debt on their ledgers at any given time.

Decisions made on the basis of little or no information may not be in the best interests of either the supplier of credit facilities or indeed the debtor. Under the current Data Protection Legislation it is almost impossible to gather intelligence which would be both fair to the debtor and provide some protection to a supplier leading to better and more informed decision making all round.

In the case of Limited Liability Companies, filed accounts are available on line and while in the main they are at least 12 months out of date at any point in time at least they are an indicator in terms of the worth of the business and a guideline for decision making pertaining to the granting or refusal of a credit facility. Similarly it is possible to obtain trade references in relation to Limited Liability Companies which again provide an indicator in relation to how the proposed debtor manages the affairs of the Company. In the absence of being able to seek such information about sole traders, partnerships, clubs or consumers it is getting increasingly harder to make decisions to grant credit facilities and in most instances there are no opportunities to obtain any level of security which would give a supplier a measure of comfort.

In an effort to test the current situation in Ireland a generic guide line for the establishing of Credit Circles and appropriate rules was devised for the purposes of obtaining legal opinion. The following is an outline of the proposal and the subsequent legal opinion:

Guidelines on Credit Circles and the Competition Rules

This guideline on competition does not deal with the question of data protection legislation. Such legislation may prevent disclosure of the debtor details where the debtor is an individual or a partnership trading under the names of the partners. It is assumed, for the purpose of this statement of the Competition Rules, that all of the debtors are limited companies. However, Legal opinion was sought in relation to non limited liability companies and the feedback is documented at the end of this draft guideline.

Credit Circles have proved to be a very valuable means of reducing bad debts and of improving the performance of Credit Managers. However, where Credit Circles involve meetings of competitors there must be an awareness of the Competition Rules. Identical Competition Rules apply to Credit Circles in the European Community (where trade between member states is affected), the United Kingdom, Ireland and the United States.

Essentially the Competition Rules prohibit agreements between competitors that prevent, restrict or distort competition.

The members of a Credit Circle who are not competing with one another have no difficulty. They can exchange any information they wish and take whatever action they wish.

In theory, a credit circle in any sector may be comprised of non-competitors. However, where they also sell a range of common products they may in practice be competitors.

Permitted Co-Operation between Competitors in a Credit Circle

1. Information on the debtor performance of individual companies may be exchanged between the members of the Credit Circle
2. Information can also be exchanged on aggregate performance. For example, the average age of debt of the individual members of the Credit Circle may be circulated. This can provide a useful guide to companies.

3. Information on the “stop list” of customers held by each of the members of the Credit Circle may also be exchanged.
4. Information on slow debtors may be exchanged.

Agreements Not Permitted

By agreement is meant a written agreement, a verbal agreement, an arrangement or an understanding.

Competitors in a Credit Circle (or outside a Credit Circle) cannot agree:

1. To determine the period of credit to be allowed.
2. To determine the level of cash discount, if any, granted for prompt payment or payment within the credit terms.
3. To reduce or increase credit terms.
4. To cease supplies automatically if one of the members of the Credit Circle is not being paid.
5. To boycott a slow paying customer.
6. To cease supplies if a direct debit is refused.
7. To only supply where a customer agrees to accept direct debits.
8. To only take clearing bank cheques.
9. To always follow the lead or one or several companies in relation to cessation of supplies etc.
10. To any other action that prevents, restricts or distorts competition.

Individual Actions of Member of a Credit Circle

Each individual company represented at a Credit Circle meeting, can of course, unilaterally do any of the above actions. Each individual company on receipt of information from other Credit Circle members can decide what action, if any, it will take.

Summary

1. The members of the Credit Circle can supply information to one another, even if they are competitors.
2. Agreements between non-competitors do not contravene the Competition Rules.
3. Any member of a Credit Circle can take, unilaterally, any action it wishes in relation to its customer's credit.

4. There can be no agreement, arrangement, understanding or concerted practice by the members of the Credit Circle in relation to the points identified in Agreements Not Permitted, above.

Suggested Credit Circle Scheme

Internal Policy for Scheme Members

It is absolutely imperative that each Scheme member has a clearly defined and recorded policy in relation to the internal use, management and control of all data supplied to and received from the Credit Circle Scheme.

Input data will only be accepted from one designated person within each company and likewise data from the Scheme will only be sent to this designated person. It is vitally important that the designated person should:

1. Be of a senior status within the Company e.g. Credit Control Manager, Sales Manager, Director or similar.
2. Clearly define those people within the Company to whom data will be provided and for what purpose.
3. Take all necessary steps to ensure no other person in the Company receives, or has access to any data provided.
4. Issue clear, written guidelines to those who receive data as to how the data must be used and controlled – for example, data must never be copied or given to any other person. Any data received should not be discussed with any third party either written or without the participating Company.
5. Data submitted to the Scheme should not be copied or communicated to any other person within the Company except on a strictly ‘need to know’ basis.

Credit Circle Reporting Form

Credit Circle Participant Name		
Date		
Region (please specify)		

Limited Company Name		
Stop Account		
Concern – Direct Debit		
Concern – Cash on Delivery		
Other	Detail	

Detailed Description of Form

Limited Company Name – must be as stated and per the registered number of that business

Stop Account – there is no more trading taking place with this Company because of credit reasons. Please tick if appropriate

Concern-Direct Debit – This Company is on direct debit and is recently causing problems i.e. requesting that the direct debit be processed at a later time than previously agreed, requesting that the amount of the direct debit due be processed over two transactions on a delayed phased basis or is returning direct debits unpaid

Concern-Cash on Delivery – This Company is a slow payer and therefore there is an insistence for cash on delivery. Please tick if appropriate.

Other-Detail allowed – Detail submitted must be in line with the Credit Circle Scheme Terms and Conditions

Step by Step

1. Participating companies placed in their Regional Credit Circles i.e. (based on Republic Of Ireland geographic territory):
 - a. Dublin
 - b. Dublin – Galway North
 - c. Dublin – Galway South
2. Contact details of ONE designated person in each company to be supplied via e-mail to the dedicated contact at XXX email address (Designated Credit Circle Scheme Coordinator)
3. List of initial problem accounts e-mailed to XXX email address (Designated Credit Circle Scheme Coordinator) on the Credit Circle Reporting Form. (This Form will be circulated in Excel format via e-mail once the participating Company has signed and returned this Contract)
4. Problem accounts are logged on the database with the date and brief details
5. The designated Credit Circle Scheme Coordinator will circulate this information to all participants, who have furnished the relevant template on time, in the relevant Credit Circle Region. The circulation goes out via e-mail to one designated person in each participating Company for that Region. The only details given are:
 - a. Region
 - b. Limited Company Name (Debtor)
 - c. Type of Account – e.g. stop, concern-direct debit, concern-cash on delivery
 - d. Date information received
6. Each participating Company must unilaterally decide what to do with this information
7. Information circulated to Designated Credit Circle Scheme Coordinator via e-mail
8. Database must be updated on a monthly basis to ensure all information is as up to date and accurate as possible. Any positive changes with a Debtor's credit status must be reported immediately so that no adverse circumstance arises as a result of another member taking action based on information circulated
9. An excel spreadsheet template will be circulated by the Designated Credit Circle scheme Coordinator (point of contact) to ensure that all information supplied is in line with expectation and in a consistent format across all members
10. Spreadsheet Template must be circulated to the Designated Credit Circle Coordinator, via e-mail, no later than 5pm on the 4th working day of each month. The

administrator agrees to circulate all collated data by commencement of business on 6th working day of each month

Terms & Conditions

Suggested Credit Circle Scheme

I. Introduction

1. The Designated Credit Circle Scheme Coordinator is the owner and operator of the Credit Circle Scheme (hereinafter referred to as the “Coordinator Credit Circle Scheme”).
2. The database is located on the Coordinator’s premises, hereinafter referred to as the “database”. The purpose of the Coordinator Credit Circle Scheme is to operate credit circles and to allow individual circle members to assess the credit worthiness of various industry groups amongst themselves and to alert others as to the credit worthiness of businesses with whom they wish to contract and trade.
3. Posting of information on the database is defined as submitting a Credit Circle Form to the Coordinator at XXX email address. This information then becomes integrated into the database. Access to the information on the database will be in the form of e-mailed bulletins of updates.
4. It is understood the Coordinator Credit Circle Scheme is primarily an information resource. To enhance the value of this resource for all its circle members there will be a general requirement for them to post information via e-mail on the Credit Circle Form, to report on credit experiences of organisations with whom the circle members wish to contract and trade.
5. The Coordinator Credit Circle Scheme will at all times have complete discretion as to who will be allowed to access and use the database and the manner in which it is so operated. As such it will be known as the “Superuser” and will have access to all information and complete discretionary control of the database (it is understood both the terms Coordinator Credit Circle Scheme and Superuser will be used throughout these terms and conditions where the context so admits).
6. One designated member of each participating organisation who enters the Coordinator Credit Circle Scheme will be known as a “circle member”.
7. For the sake of clarity, information to be posted on the database will be by the Superuser and circle members, subject to the terms hereof.

II. Rights, Responsibilities and Liabilities

8. Any person posting information onto the database must be certain as to its accuracy. If for any reason, it is suspected such information is inaccurate they must immediately advise the Superuser if they either believe or suspect that such information may be inaccurate. They must, as soon as possible, enter a corrective entry onto the database. It is understood that circle members will be free and relieve the Coordinator Credit Circle Scheme for any loss or losses arising from any inaccurate or misleading statement posted on the database.
9. Without prejudice to the foregoing it is understood that circle members must comply with the following:
 - a. In no circumstance must any defamatory information be sent to Coordinator Credit Circle Scheme with any person posting information being certain as to its accuracy
 - b. Circle members will not hold the Coordinator Credit Circle Scheme liable for any direct or indirect or consequential damages, costs, loss or expense of any nature whatsoever resulting from their use of the database
 - c. Circle members agree not to hold the Coordinator Credit Circle Scheme liable for any delay or inability in providing information on the database
 - d. Circle members agree to indemnify and keep indemnified Coordinator Credit Circle Scheme against any claim or action made against them for any losses, damages, consequential costs or other expenses or losses in connection with their use of the database
 - e. Any information posted onto the database will require to be provided in good faith but the Coordinator Credit Circle Scheme will have no liability for any losses arising in respect of information gathered by circle members
 - f. Circle members agree they will not use any information provided on the database in any way which may be detrimental to the Coordinator Credit Circle Scheme. The Superuser takes no responsibility in the event of any confidential information being unlawfully intercepted stolen or otherwise unlawfully obtained which is thereafter disclosed. The Superuser will be entitled to suspend their services to circle members at any time and without any notice without liability to any party for any reason whatsoever

- g. The Superuser has the right to suspend any circle member temporarily or permanently for any reason with no liability to such party

III. Usage of Database

10. Without prejudice to the foregoing, circle members should as a matter of good practice post information on the database as and when they have a trade experience to record. In the event of circle members failing to post such information on the database the Superuser, subject to clause 9 hereof, has the right to suspend any circle member without notice being given to such circle member and without liability. It is understood the Superuser will monitor the frequency and extent to which individual circle members post information on the database.

11. Without prejudice to the foregoing:

- a. The Superuser shall be entitled to change the content of the database, its layout and type of information to be supplied thereon without notice and without liability to any party
- b. The Superuser, gives no guarantee or opinion whatsoever as to the credit worthiness or otherwise in respect of any organisation referred to on the database against whom the reports or alerts are mentioned

IV. Site Security

12. The Coordinator Credit Circle Scheme will endeavour to secure the electronic integrity of the database. The server enjoys resilient power, communications and data storage. The data is backed up on a regular basis and protected from illicit access by a number of physical and software security measures. Data is stored in such a way as to limit access to authorised individuals only. Data is stored only so long as it is of effective use to the site and is expired efficiently and in compliance with accepted procedures

Without prejudice to the foregoing:

- a. The Superuser, shall have no liability for any losses or damages whatsoever incurred by any circle member or any person directly or as a consequence from the use of any information disclosed or supplied on site
- b. In the event of the circle members becoming aware of any unauthorised usage of the database they will agree to inform the Superuser immediately.

V. Data Protection and General Requirements

13. The Credit Circle Scheme and the Superuser shall be entitled to disclose any information posted onto the database to other persons at its entire discretion but only for the purposes of establishing the credit worthiness of those entities referred to in the database. The Credit Circle Scheme undertakes data shall be processed fairly and lawfully.

VI. Confidentially

14. It is understood the Coordinator Credit Circle Scheme and the database contain certain ideas, concepts and methods (hereinafter referred to as “the ideas”) which the Coordinator Credit Circle Scheme regards as confidential, as a consequence of which circle members agree:
 - a. Not to disclose any information relating to the Ideas which the Coordinator Credit Circle Scheme regards as confidential including, without prejudice to the foregoing, the concept and ideas behind the ideas, materials or other information of whatever nature relating directly or indirectly to the ideas whether conveyed in written, graphic or electronic form or otherwise in the course of our arising out of or in consequence of using the Coordinator Credit Circle Scheme or otherwise assessing it in any manner or form for use
 - b. To keep the ideas or any part thereof confidential, and shall not publish, transmit or otherwise disclose or allow access or divulge any part of the ideas to any third party for any reason whatsoever
 - c. Not to use the ideas or any part thereof for any purpose whatsoever other than using the Coordinator Credit Circle Scheme and without prejudice to the foregoing not use the ideas or any part of them which is prejudicial to or detrimental to the Coordinator Credit Circle Scheme
 - d. Not to copy or reproduce any of the ideas in any manner or form or store any of the ideas in any paper form or in any electronic, digital or other form or medium allowing access to it by any party who would otherwise not be permitted access under these terms and conditions
 - e. If any breach of the condition occurs, without prejudice to anything else contained in these Terms and Conditions, or if the Coordinator Credit Circle Scheme has grounds for believing such a breach has occurred the Coordinator Credit Circle Scheme may require the immediate cessation of use by any person (including third parties) or any of the Ideas and require any person to return such information to the Coordinator Credit Circle Scheme
 - f. The Coordinator Credit Circle Scheme will be indemnified fully and effectively in respect of all actions, costs, losses, claims, damages and expenses of whatever kind or nature arising from any breach or non-

performance of this condition and generally arising out of the use of the Coordinator Credit Circle Scheme

- g. For the avoidance of doubt the ideas and any intellectual property arising out of discussing or using the Coordinator Credit Circle Scheme shall at all times remain the property of the Coordinator Credit Circle Scheme and without prejudice to the foregoing generality no licences or intellectual property rights are implied or granted
- h. Notwithstanding the foregoing to develop, to have developed or participate in the development, of the ideas without the consent of the Coordinator Credit Circle Scheme, which consent, shall be granted entirely at its discretion
- i. For the avoidance of doubt this condition shall cover access to the ideas prior to the acceptance of these Terms and Conditions

VII. General and Choice of Law

- 15. Each provision of these terms and conditions is to be construed separately and in the event if, for any reason, any one or other of the conditions is held inapplicable or unreasonable in any circumstances all other terms and conditions shall remain in full force and effect notwithstanding any particular clauses being construed as being applicable, in which event these terms and conditions shall remain in full force and effect notwithstanding
- 16. These terms and conditions shall supersede and invalidate all other commitments, representations and warranties relating to the subject matter hereof which may have been made either orally or in writing prior to the date hereof and which shall become null and void from the date these terms and conditions are accepted
- 17. Circle members shall ensure that their employees and officers (and all contractors, agents, representatives and other parties with whom they have dealings) shall maintain the confidentiality referred to in condition 14 hereof and shall be fully responsible to the Coordinator Credit Circle Scheme in respect of any disclosure to such party
- 18. No failure or delay by the Coordinator Credit Circle Scheme in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of waiver or any right or remedy preclude its further exercise of any other right or remedy
- 19. This agreement shall be interpreted in accordance with the Law of the Republic of Ireland and any dispute, difference or question of any kind which may arise between the parties shall be determined in accordance with the law of the Republic of Ireland and the parties hereby propagate the non-exclusive jurisdiction of the Irish Courts

VIII. Payment

20. Participants agree to pay the Coordinator € xxx per quarter, in advance, for the Coordinator Credit Circle Scheme or any such other amount as may be determined by the Coordinator from time to time

Signed for and on behalf of the Coordinator: _____

Signed for and on behalf of the participant: _____

Date: _____

Designated Contact Form

Contact Details

Name	
Job Title	
Company	
Company Address	
Contact Telephone Number	
Company Fax Number	
E-mail Address	

It is important to note that all communications within the Coordinator Credit Circle Scheme will be directed to the 'designated contact' only.

The following legal opinion was received in relation to the compliance of the proposed Credit Circle Scheme within the confines of the Irish rules on Data Protection:

Opinion

General

The legal opinion is to advise solely as to whether the proposed Credit Circle Scheme complies with the Irish Law on Data Protection, principally the Data Protection Acts 1988 and 2003 (herein "DPA"). It has been assumed in the preparation of this opinion that the data shared between members of the proposed Credit Circle Scheme will not be transferred outside Ireland, and will not have been obtained from overseas.

Applicability of the DPA

In principle it is true that the DPA applies exclusively to records relating to people and not to companies. However, the DPA applies to data “relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into the possession of the data controller”. Therefore, the DPA is applicable to records relating to businesses where individuals can be identified from that record.

Credit Circle Scheme members’ customers, about which data will be collected, are variously sole traders, partnerships and limited liability companies. The DPA will always apply to records relating to sole traders. There is a suggestion, relating to the proposed scheme, that obtaining and processing data by reference to trade name, and not the name of the individual sole trader may avoid the applicability of the DPA. In the Legal opinion sought even if the trade name is used the DPA remains applicable because the individual concerned can be identified. The applicability of the DPA to partnerships and limited companies is less clear. Data on very large partnerships and very large limited companies is not subject to the DPA but only where there is no reference to any individual and where no reference to any individual could be identified from the information about the company. Data on smaller limited companies and smaller partnerships are subject to the provisions of the DPA. The legal opinionist has not been briefed with a list of Credit Circle Scheme members’ customers. It is believed, however that the following is likely to be a good litmus test to use when deciding whether the DPA is applicable: is the limited company or partnership so large that it would not be possible to connect the data with any individually identifiable person?

The proposers of the Credit Circle Scheme should note carefully that even in regard to a very large limited company or very large partnership that if a member were to include in the Credit Circle Reporting Form any information about a named individual at that company, then that the DPA would be applicable to this data. It is for this reason and for other reasons discussed below that the suggestion is to remove the box marked “other” from the Credit Circle Reporting Form.

The legal opinionist recognises that the above guidance might still involve a quite difficult assessment for the proposed scheme with regard to whether the DPA applies to a particular customer, or not. It is also likely to be the case that the proposed scheme will be collecting data to which the DPA applies and data to which it does not. It may, therefore, be the case that practical arrangements with regard to the operation of the Credit Circle Scheme lead to a de facto application of the DPA to companies that fall

outside the ambit of the DPA. Indeed it may in fact be easier for the proposed scheme (and minimise the potential for non compliance) if it were to comply with the DPA in relation to all customers.

Compliance with the DPA

Fair obtaining

The DPA requires that data must be obtained fairly. In practical terms this means that the proposed scheme must require members to be open and transparent with their customers as to the uses to which their (the customer's) data will be put. The proposed scheme must require members to inform their customer of the following (hereinafter referred to as "the relevant information"):

- [Name of Coordinator] will monitor and record information relating to your payment performance
- Such records will be made available to members of the Coordinator Credit Circle Scheme [name these members]
- Such records will be used by the said members to assess your creditworthiness
- If you would like to receive a copy of the said data relating to your payment performance you may apply to [give address which may be an e-mail address] with payment of the access fee of [insert fee at Scheme's discretion which cannot exceed € 6.35] and we will send you a copy of the data within 40 days of receiving the request or if we do not keep any information about you we will tell you within the said 40 day period.
- You have the right to have any inaccurate information rectified or erased and in the event of your information being rectified or erased we will refund to you the access fee

The Suggested Credit Circle Scheme must explicitly require members to make a clear and prominent statement of the relevant information to customers.

Fair Processing

Data must be processed fairly. To fulfil this criterion the Suggested Credit Circle Scheme members must be obliged to obtain the consent of customers to the intended uses of customers' data. Consent must be unambiguous. To ensure that consent is

unambiguous it is essential that the Coordinator Credit Circle Scheme expressly stipulates in the Terms and Conditions for members that members must actually bring the relevant information to customers' attention. If information is included in 'small print' there remains the possibility that customers may or may not be aware of the relevant information and any 'consent' then given will not be a valid consent because it will not be unambiguous.

Consent must also be freely given. In real terms this means that there must be an "opt out" for customers. For the purposes of this opinion the Legal advisor was not briefed in relation to any specific market in which the Credit Circle Scheme members operate. If the relevant market is such that customers have a genuine choice as to whether they contract with Credit Circle Scheme members or with other similar businesses who are not members of the Credit Circle Scheme, then in the legal opinion sought it is likely that the Data Protection Commissioner would regard a customers choice to contract with the Credit Circle Scheme member (after having been made expressly aware of the relevant information) as freely given consent. If, however, the market is not such the Credit Circle Scheme Members will be required to obtain their customers' consent as to whether that customer's data is used for the purposes of the Credit Circle Scheme. In this situation members must phrase this as a positive request: customer, please indicate if you wish your data to be processed in the following manner... (Description of manner would be in accordance with the relevant information set out above).

Consent must also be specific, meaning that to comply with the DPA members must obtain a customer's consent to the particular use to which data will be put and to the persons or bodies (or at least the categories of such persons or bodies) to whom data will be disclosed. It is for this reason, and for reasons discussed below that the legal opinionist suggests compliance with the data protection rules will be best served if paragraph 13 of the proposed Credit Circle Terms and Conditions is removed.

Specified, explicit and lawful purpose

Data must be kept for only one or more specified, explicit and lawful purposes. Compliance with this requirement will be achieved by making customers aware of the purpose for which their data is recorded (as discussed above), namely to allow Credit Circle Scheme members to make an informed decision as to their customer base. Members of the Credit Circle Scheme must not put the data to any other use. To aid compliance with the requirement that data is only obtained and kept for a particular purpose it is suggested that the box marked "other" on the Credit Circle Reporting Form be removed.

Security

Appropriate security measures must be taken against unauthorised access to or alteration, disclosure or destruction of the data and against its accidental loss or destruction. The Credit Circle scheme in its present proposed form involves the transmission of data both from members to Coordinator and from coordinator to members via e-mail. This is not in compliance with the DPA. The Data Protection Commissioner does not regard e-mail as secure. E-mail may be used if encryption is used and if the Coordinator takes steps to keep the key used to decrypt the data secure. The Credit Circle Scheme 'Internal Policy' and Terms and Conditions make a number of stipulations regarding security, and in relation to these the legal opinionist makes the following observations:

- The 'Internal Policy' provides that members must "clearly define those people within the Company to who data will be provided and for what purpose" and goes on to provide that "data submitted to the scheme should not be copied or communicated to any other person within the Company except strictly on a 'need to know' basis". Whilst these aims are correct, the policy should define and explicitly state the policy by which access to data is restricted to particular staff, and should define 'need to know' basis for its present purposes.
- The Terms and Conditions stat that data is "protected from illicit access by a number of physical and software security measures. Data is stored in such a way as to limit access to authorised individuals only". The policy should, however, state explicitly the means by which these aims are to be achieved. Access to computer systems should be password protected. Information on computer systems and manual files should be kept hidden from callers to Coordinator's and to Member's offices. The Coordinator should ensure that all waste papers and printouts are to be shredded.
- The Coordinator should stipulate a designated person who is responsible for periodic reviews of the safety measures that are in place.

To aid compliance with the security requirement the legal opinionist suggests, again, that paragraph 13 of the Terms and Conditions be removed and in the alternative would have, inter alia, extended security obligations.

Accurate, complete and up-to-date

The DPA imposes a requirement to keep information accurate, complete and up-to-date. In addition to the content of Paragraph 8 of the Terms and Conditions a mechanism should be provided for the cross checking of the information inputted onto the database to ensure a high level of data security.

The Commissioner has stated that the obligation to keep up-to-date is an active one. In this context 'up-to-date' means that data needs to be altered as soon as it is no longer accurate. The Coordinator must ensure that appropriate procedures are in place, including periodic review and audit to ensure that data is kept up to date.

Adequate, relevant and not excessive

Data should be adequate, relevant and not excessive in relation to the purpose or purposes for which that data was collected. To aid compliance with this requirement the legal opinion is that the box marked "other" on the Credit Circle Reporting Form be removed, and if not clear and explicit guidance should be given to members as to the type of information that may be recorded here, in accordance with the Credit Circle Scheme's explicit purpose.

Retention of Data

Data must be retained for no longer than is necessary to fulfil the purpose of allowing members to assess the credit worthiness of industry groups. In assessing how long is necessary the Coordinator should ask: has the explicit purpose of the Credit Circle in relation to this data been obtained? Once the purpose has been achieved the data must no longer be retained. The data protection rules require the Coordinator to make a clear statement in its Terms and Conditions as to both the length of time for which data will be kept by it and ought to be kept by its members. The Coordinator should assign specific responsibility to someone for ensuring that files are regularly purged both from the database and from member's own records.

Conclusion

The DPA is applicable to the proposed Credit Circle Scheme. The system in its present form requires modification to comply with the DPA. If changes as detailed above are made and implemented then the legal opinion is that the Credit Circle Scheme is likely to comply with the DPA. The Coordinator should, however, be careful to monitor the application of the scheme to ensure continued compliance. *End of Legal Opinion*

Taking all of the above into consideration it is now thought that even trading information in relation to Limited Companies is so cumbersome and the level of monitoring for any Credit Circle Scheme would make it such that it couldn't happen.

The big question for all FECMA Council delegates is – How do we approach this topic to get legislators to understand the difficulties the business community face on a day to day basis? The level of debt managed on a daily basis in each company of each Country is seriously significant, bearing in mind that at least in Ireland it is generally totally unsecured debt. How many times have we all attended Creditor's meetings where had we been privy to some prior knowledge we would have made different decisions in relation to supplying goods on credit.

Could our Institutes/Associations be incorporated with our Governments (retaining our Private entity status) and thereby allowing us the ability to grow our organisations as potential new members would see a really added value to being associated with us.

It is time for radical change and I urge other member Countries to add to this document the major areas of concern for them in business in relation to their own Data Protection Legislation.

In Ireland, filed accounts with the Companies Registration Office are a source of public information. How can we propose that a similar system be implemented for Sole Traders who have to file, albeit, self assessment forms but at least they are an indicator in terms of a financial position?

I would welcome feedback on this document and you can send your views and comments to scomerford@c2p.ie.

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