Financial Services Ireland submission to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

No Consent, No Sale Bill 2019 [PMB]

March 2019

By email: fincom@oireachtas.ie

21 March 2019

Re: No Consent, No Sale Bill 2019 [PMB]

Financial Services Ireland Submission

About FSI:

Financial Services Ireland (FSI) is a trade association within Ibec, the voice of business in Ireland. FSI represents the interests of the multiple sectors within financial services, including banking, insurance, asset and funds management, corporate treasury, international financial services and, aircraft leasing. FSI works with key industry stakeholders to ensure Ireland remains a competitive ecosystem allowing organisations to achieve success for their customers and clients.

Background:

A critical component for banks to operate and successfully serve their customers is access to secured debt capital markets, such as covered bonds or securitisation markets. Currently, to access such finance, banks seek customer consent at the point of loan origination, which gives them the right to pledge these mortgages (or transfer/sell the beneficial interest) to access funding at any time over the life of the loan. The proposed Bill would remove this automatic option by requiring a newly written consent from each individual borrower for each future transaction which would materially reduce access to capital markets.

Impact on the Irish Economy:

The areas of the Irish economy expected to be affected by the proposed Bill are as follows:

- Cost of mortgages would increase;
- Reduced availability of funding, thereby weakening the Irish banking system;
- Reduced market participation and competitiveness;
- Creation of a barrier for new entrants to the lending market.

Existing Consumer Protection:

There is existing legislation to protect consumers. The Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 provides that the regulatory consumer protections continue to be available to a borrower should their loan ownership be transferred.

In certain circumstances, interactions of mortgage lenders in Ireland - in their dealings with borrowers - are governed by the Code of Conduct on Mortgage Arrears (CCMA). This Code sets out the framework that lenders must use when dealing with borrowers in mortgage arrears or in pre-arrears.

European Regulatory Context:

Ireland operates as a member of the Eurozone and, as such, its banking sector is bound by European Central Bank (ECB) rules. One of these rules is a mandate from the ECB Single Supervisory Mechanism to Irish banks, stating that Irish banks must decrease the amount of Non-Performing Loans (NPLs) as a percentage of total loans to the EU average of 5% within three years.

Standards are imposed on banks by regulators to maintain conservative capital levels. There is clear regulatory guidance from the ECB on lending institutions regarding their requirement to effectively manage Non-Performing Exposures (NPEs). Failure to do so could have serious consequences on a country's banking system and ultimately its economy. Restrictive requirements and reduced ability for banks to manage NPEs impacts both available finance as well as the cost of finance. The proposed Bill will impact the ability of banks in Ireland to meet ECB guidance and rules.

Legal implications:

The potential retrospective application of the Bill to existing contracts between Irish mortgage lenders and borrowers will impinge the contractual agreements that are already in place. These contracts, which were entered into under the laws of the Irish State, include the consent by the borrower to a bank transferring a loan. There is a question regarding the constitutionality of this Bill, specifically in relation to Article 43 of the Constitution.

Conclusion:

By introducing this Bill, the mortgage market in Ireland will be less attractive to new entrants. There is a significant, if unintentional, impact on banks access to external funding, and the increased costs and potential decreased availability of that funding, will lead to restricted credit availability and increased costs for mortgage customers.