

## Australian Credit Licence Update – 27 October 2010

### AUSTRALIAN CREDIT LICENCE TO BECOME MANDATORY

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People involved in credit related activities for personal, household or domestic purposes should be aware of the major implications of the new credit regime which has been implemented by the *National Consumer Credit Protection Act 2009 (Act)*.

All people who were undertaking regulated credit activities prior to 1 July 2010 should now be registered with ASIC. If you are not registered with ASIC, you cannot provide regulated credit services unless you have an Australian Credit Licence (**ACL**). If you are registered, you will need to apply for an ACL before 31 December 2010. You may only continue to undertake credit activities from 1 January 2011 if you have applied for an ACL by 31 December 2010 or are appointed as a credit representative by a holder of an ACL.

This is a reminder for those registered with ASIC (or not registered but wanting to provide credit services) to apply for an ACL before 31 December 2010.

#### **Recap on the new regime**

Under the new credit regime:

- people engaging in credit activities must be licensed by ASIC; and
- the previous definition of “Consumer Credit” under the Uniform Consumer Credit Code (**UCCC**) is broadened to include residential property investment transactions which were not previously subject to the requirements of the UCCC.

#### **Who is captured by the new regime?**

The definition of “credit activities” under the Act is broad and includes provision of credit, benefitting from mortgages and providing credit services in relation to credit contracts and consumer leases.

The regime regulates credit which is provided:

- to a natural person or strata corporation; and
- wholly or predominantly for personal, household or domestic purpose or residential investment

in the course of carrying on a business of providing credit in Australia or as part of or incidental to any other business carried on in Australia.

Credit providers are not the only industry participants that are regulated. Those people who provide credit services such as intermediaries and brokers are also required to be licensed unless an exemption applies. Credit services include providing credit assistance such as helping a consumer choose between particular credit products and assistance in preparing documentation (amongst other services).

There are a number of exemptions which may apply to your business. Please contact us if you want to confirm if your business needs an ACL..

### **What does the ACL application process involve?**

The licensing process is more rigorous than the registration process and includes:

- analysis and description of the types of credit activities undertaken;
- evidence of the applicant's ability to ensure compliance with ACL obligations and preparation of documentation regarding systems and adequacy of resources; and
- identification and description of key people and responsible managers including information about the competency of those people.

### **Your obligations**

Under the new credit regime, people who are registered have the following obligations from 1 July 2010:

- ensure credit activities are engaged in efficiently, honestly and fairly;
- implement and maintain arrangements in relation to conflicts of interest to ensure customers and clients are not disadvantaged;
- have adequate arrangements in place to comply with credit legislation; and
- except for ADIs and registered financial corporations (in relation to which the obligation commences on 1 January 2011), undertake "unsuitability" assessments.

On becoming licensed, ACL holders will have the following obligations (in addition to those set out above):

- maintain a compliance plan, risk management system, internal dispute resolution procedure and maintain adequate resources including financial, information technology, human resources and compensation systems;
- remain competent to engage in credit activities and ensure all of its representatives have appropriate training, supervision and monitoring;
- ensure the licensee does not deal with unlicensed businesses (that require an ACL but do not have one);
- comply with trust account obligations when dealing with client money, comply with obligations regarding financial reporting, record keeping and auditing and lodge an annual compliance certificate with and pay annual fees to ASIC; and
- from 1 January 2011, comply with responsible lending disclosure obligations.

Please note that these obligations are mandatory.

## Future changes

Phase 2 of the reforms is expected to:

- implement specific conduct obligations in relation to certain credit products and fringe lending issues;
- expand the regulation of investment loans to loans other than margin loans and mortgages for residential investment properties;
- reform mandatory comparison rates and default notices obligations;
- enhance provisions regarding the regulation and disclosure of reverse mortgages; and
- expand regulation of the provision of credit to small businesses. We expect this last reform will impact on a number of businesses that are not currently regulated by the regime.

We will keep you updated regarding these changes.

## What you should do now

1. Start preparing for your ACL application to ensure that all documentation is ready for lodgement before 31 December 2010. The application process is quite detailed and is not just granted “overnight”.
2. Prepare and implement appropriate measures, systems and procedures to demonstrate compliance with the applicable obligations and requirements.
3. If you are a credit provider you should review your existing customer documentation to ensure that it covers the changes implemented by the new credit regime (including changes to business purpose declarations and default notices etc).

We can assist you with your ACL application, including the required policy and procedure documents and with compliance training. Please contact Catherine Evans or Richard Beissel if you want any further information or assistance.

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