

CCCFA: New regulations set out exemptions and details about new annual returns reporting obligation

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On 27 September 2021, the Credit Contracts and Consumer Finance (Exemptions, Annual Returns and Other Matters) Amendment Regulations 2021 (Amendment Regulations) were finalised and published.

The Amendment Regulations amend the Credit Contracts and Consumer Finance Regulations 2004 (Regulations) and provide various limited exemptions to obligations under the Credit Contracts and Consumer Finance Act 2003 (CCCFA) regime as well as prescribing the content of annual returns which will have to be submitted under the CCCFA, as recently amended.

This article summarises these exemptions, the annual returns reporting obligations and the dates that the provisions of the Amendment Regulations come into force.

If you would like advice on the new CCCFA regime, how these Amendment Regulations will impact you, or the changes to your reporting obligations please contact a member of our [financial services regulation team](#).

Exemptions

Some of the key provisions of the Amendment Regulations are as follows:

Exemption for insurance premium funding

- A new regulation 18H provides an exemption for insurance premium funding agreements. A premium funding agreement is one where:
 - the advances must be applied to pay premiums under an insurance contract or amounts in connection with an insurance contract (including fees for advice)
 - any security is limited to the consumer's rights in the insurance contract, and
 - the consumer has a right to cancel at any time
- Lenders who provide credit under premium funding agreements will be exempt from the application of section 9C(3)(a) of the CCCFA (which requires lenders to make inquiries into the affordability and suitability of consumer credit contracts)
- The exemption only applies in instances where the borrower is not required to pay default interest charges, default fees, or credit fees (other than establishment fees) in respect of the funding agreement
- The Minister of Commerce and Consumer Affairs noted that this exemption was appropriate because the obligations under section 9C(3)(a) would be unduly onerous or burdensome to insurance premium funders.

Exemption from certification for securitisation/covered bond arrangements and for credit provided by a non-financial service business

- Part 5A to the CCCFA (as recently amended) will introduce a certification regime under which all lenders under a consumer credit contract will be required to be certified at an entity level by the Commerce Commission (the Commission). As part of this process, the Commission must be satisfied that all the lender's current and prospective directors and senior managers are 'fit and proper' persons to hold their respective positions
- A new regulation 27 provides an exemption to a person from this certification requirement (under section 131B of the CCCFA) to the extent that the person provides services under a contract between that person and a contract manager (for the purposes of securitisation or covered bond arrangements or similar arrangement) that meets the requirements set out in regulation 22(2), and the contract manager is certified (or exempt from certification)
- A new regulation 28 also provides an exemption from the certification requirement where an entity, whose only or principal business is the provision of goods or services that are not financial services, provides credit to its customers to facilitate the provision of goods or services to those customers and assigns the credit contracts to another person (an underlying lender, who must be certified and also registered as a creditor on the Financial Service Providers Register). Notably, the underlying lender is deemed to be a creditor from the time the consumer credit contracts are entered into by the entity (rather than from

assignment), and will thereby be liable for responsible lending obligations and other pre-contract responsibilities under the CCCFA in relation to the consumer credit contract.

Annual returns

Background

Under the current CCCFA regime, there is no mandatory obligation on lenders to provide any reporting information to the Commission unless the Commission uses its powers under the Commerce Act 1989, requests such information from a lender as part of a formal investigation or if proceedings have been instigated under the CCCFA.

Following recent amendments, the CCCFA now contains a requirement under which all lenders under a consumer credit contract will be "required to provide an annual return to the Commission in the prescribed manner" which "must be provided before the prescribed date".

Details about the contents of annual returns

Until now there has been little guidance as to what information must be provided to the Commission, in what form, by whom and in what timeframe.

The Amendment Regulations set out that the following information will be required in the annual return that lenders provide to the Commission:

- The number of high-cost consumer credit contracts (and related consumer credit contracts) entered into and the total dollar amount that has been advanced or total credit limit (as applicable)
- The number of consumer credit contracts (or credit contracts that that have been treated as consumer credit contracts) entered into and the total dollar amount that has been advanced or total credit limit (as applicable)
- The number of material changes that have been made to consumer credit contracts (or credit contracts that that have been treated as consumer credit contracts) and the total dollar amount that has been advanced or total credit limit (as applicable)
- For each type of credit contract or material change to a credit contract, information about the number of times there has been reliance on one of the exceptions set out in the Amendment Regulations that allows a lender to forego detailed inquiries into the borrower's income and expenses.

In terms of timing, the annual return will cover a lender's preceding financial year (i.e. 1 April to 31 March), and will need to be provided to the Commission by 30 June in each year. The date by which the first annual return must be provided is 30 June 2024.

Commencement dates

The publishing of the Amendment Regulations follows a recent announcement from the Government that it would defer the full commencement of the Credit Contracts Legislation Amendment Act 2019 (CCLAA) (which amends the CCCFA) to 1 December 2021, in response to the disruption caused by the re-emergence of COVID-19 in the community. Please see our [previous update](#) for more information on this announcement.

The commencement dates of various other regulations were also delayed to 1 December 2021 reflect this decision.

As such, the commencement of these Amendment Regulations ties in with this deferral as several provisions including those relating to the annual returns come into force on 1 December 2021.

Notably, the exemptions to insurance premium funders and from the certification requirements (under Regulations 18H, 27 and 28) came into force on 1 October 2021.

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