



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 207

Credit licensing: Financial requirements

June 2010

About this guide

This guide is for credit licensees, licence applicants and unlicensed carried over instrument lenders (unlicensed COI lenders).

The guide sets out the financial requirements you will have to meet as the holder of an Australian credit licence or as an unlicensed COI lender.

If you are a body regulated by the Australian Prudential Regulation Authority (APRA), as defined in s3(2) of the *Australian Prudential Regulation Authority Act 1998*, this guide does not apply to you.

Note: APRA, and not ASIC, imposes requirements for financial resources for bodies it regulates. This applies even if only a part of your credit activities is an activity regulated by APRA.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 25 June 2010 and is based on legislation and regulations as at 25 June 2010.

Previous version:

- Superseded Regulatory Guide 207, issued 18 December 2009

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the credit legislation and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Credit licensees must comply with the obligation to have adequate financial resources in s47(1)(l) of the *National Consumer Credit Protection Act 2009* (National Credit Act): see RG 207.1–RG 207.4.

Unlicensed carried over instrument lenders (unlicensed COI lenders) must comply with a modified obligation to have adequate financial resources set out in s47(1) of the National Credit Act, as modified by the National Consumer Credit Protection Regulations 2010 (National Credit Regulations): see RG 207.5–RG 207.7.

As a credit licensee, you are responsible for deciding how to comply with the financial resource requirements. This guide sets out our minimum expectations for demonstrating that you have adequate financial resources: see RG 207.8–RG 207.11.

You must be able to confirm to ASIC that you can comply with the financial resource requirements when you apply for an Australian credit licence (credit licence) and on an ongoing basis as part of the annual compliance certificate: see RG 207.12.

The financial resource requirements

- RG 207.1 If you are a credit licensee, among other obligations you have under the National Credit Act, you must:
- (a) have adequate financial resources to:
 - (i) engage in the credit activities authorised by your licence; and
 - (ii) carry out supervisory arrangements (see s47(1)(l)(i));
 - (b) do all things necessary to ensure that the credit activities authorised by your licence are engaged in efficiently, honestly and fairly (see s47(1)(a)); and
 - (c) have adequate risk management systems (see s47(1)(l)(ii)).

Note: All section references in this guide are to the National Credit Act unless otherwise specified.

- RG 207.2 Your obligations as a credit licensee apply whether you are a natural person, a partnership, one of several trustees, or a body corporate. For partnerships or trusts, the obligations under the National Credit Act may be discharged by any of the partners or trustees: see s14(1)(a) and 15(3)(a), respectively.

Bodies regulated by APRA

- RG 207.3 If you are a body regulated by APRA then you are exempt from the requirement to maintain adequate financial resources and have adequate risk management systems: s47(1)(l).
- RG 207.4 The financial resource requirements in the National Credit Act will apply to you if you are a related body corporate of a body regulated by APRA. APRA regulation focuses on the capacity of the body APRA regulates to meet financial commitments to relevant parties and applies requirements to other group members only in so far as relevant for meeting those financial commitments. The financial capacity of a subsidiary of an authorised deposit-taking institution (ADI), for example, may not be material to APRA's purposes in regulating the ADI.

Carried over instruments

- RG 207.5 If you cease to offer new credit contracts or consumer leases before 1 July 2010 but continue to be a lender or lessor in relation to credit contracts or leases entered into before 1 July 2010, you are a carried over instrument lender (COI lender) and specific rules apply to you.
- RG 207.6 You can elect to either:
- (a) register with ASIC and apply for a credit licence and be regulated in the same way as credit providers offering new contracts under the National Credit Act (this includes the requirement to maintain adequate financial resources); or
 - (b) not be licensed under the National Credit Act and instead be regulated as an unlicensed COI lender, in which case you will be subject to a modified statutory regime. This includes the requirement to have adequate financial resources so that you can engage in credit activities and carry out supervisory arrangements in relation to carried over instruments and the requirement to have adequate risk management systems (see s47 of the National Credit Act, as modified by item 2.17 of Sch 2 of the National Credit Regulations).

Note 1: A 'carried over instrument' is a contract or other instrument that was made and in force, and to which an old Credit Code applied, immediately before 1 July 2010: see s4(1) of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act).

Note 2: For more guidance for people who engage in credit activities in relation to a carried over instrument, see Regulatory Guide 202 *Credit registration and transition* (RG 202) and Regulatory Guide 203 *Do I need a credit licence?* (RG 203) and Information Sheet 110 *Lenders with carried over instruments* (INFO 110).

Note 3: Schedule 2 of the National Credit Regulations was inserted by item [32] of Sch 1 of the National Consumer Credit Protection Amendment Regulations 2010 (No. 2).

Note 4: If you are assigned a carried over instrument on or after 1 July 2010 you are not a COI lender and accordingly must obtain a credit licence prior to the assignment.

RG 207.7 As the obligations on unlicensed COI lenders are broadly similar to the obligations on credit licensees, the minimum expectations contained in this guide for demonstrating that you have adequate financial resources also apply to unlicensed COI lenders.

What to do to comply with the financial resource requirements

RG 207.8 What you need to do to comply with the financial resource requirements will vary according to the nature, scale and complexity of the credit activities you engage in. This guide sets out our minimum expectations for complying with the financial resource requirements.

RG 207.9 As a minimum, in summary, we expect you to:

- (a) ensure that you have access to sufficient financial resources to be able to meet all your debts as and when they become due and payable;
- (b) plan and monitor cash flows to make sure they are sufficient to adequately meet your obligations as a licensee under the National Credit Act; and
- (c) keep written records that demonstrate that your financial resources are being monitored on a regular basis.

RG 207.10 You may designate a senior person within your organisation to be directly responsible to you for ensuring that your financial resources remain adequate. This will help you comply with the financial requirements we have outlined in RG 207.9. In some cases, you as the credit licensee might be the person who performs that role.

RG 207.11 We call the senior person who you designate to be responsible for the financial requirements outlined in this regulatory guide the 'financial manager'.

How we apply the financial requirements

RG 207.12 If you are applying for a credit licence, you must be able to confirm that you can comply with the financial resource requirements. Once you have a credit licence, you must maintain adequate financial resources at all times. As part of the annual compliance certificate, you must certify that you have adequate financial resources: see s53. If you become aware of an event that may make a material adverse change to your financial position, you must lodge a notice with ASIC within three business days setting out particulars of the event: see reg 9(14) of the National Credit Regulations.

RG 207.13 If you are an unlicensed COI lender, you must maintain adequate financial resources to engage in credit activities in relation to carried over instruments at all times. You will need to confirm on an annual basis that you have adequate financial resources in relation to carried over instruments. This confirmation will form part of your annual compliance certificate: see s53, as modified by item 2.28 of Sch 2 to the National Credit Regulations. If an event occurs that may have a material adverse effect on your financial position, you must lodge a notice with ASIC within three business days, setting out particulars of the event: see reg 9A of the National Credit Regulations.

Note 1: Schedule 2 of the National Credit Regulations was inserted by item [32] of Sch 1 of the National Consumer Credit Protection Amendment Regulations 2010 (No. 2).

Note 2: Regulation 9A of the National Credit Regulations was inserted by item [9] of Sch 1 of the National Consumer Credit Protection Amendment Regulations 2010 (No. 2).

Underlying principles

RG 207.14 The aim of the legislation in imposing financial requirements is to minimise the likelihood that insufficient resources will put compliance with the National Credit Act and a credit licensee's obligations at risk. We have used this principle in this regulatory guide in setting out our expectations about the financial requirements that we think Australian credit licensees should meet.

RG 207.15 We expect your risk management systems to specifically address the risk that your financial resources will not be adequate to ensure that you are able to carry on your business in compliance with your credit licence obligations or to wind up your business in an orderly manner.

RG 207.16 You also have separate, specific obligations to have compensation arrangements for your clients under s48. Those arrangements will provide the primary way for clients to be compensated if you breach your licensee obligations in the National Credit Act.

Note: For more information about how ASIC administers the compensation requirements under s48, see Regulatory Guide 210 *Compensation and insurance arrangements for credit licensees* (RG 210).

Solvency

RG 207.17 It is not appropriate for any licensee, including a natural person, to carry on a credit business while insolvent. We expect that you will continually monitor your solvency. The *Corporations Act 2001* (Corporations Act) requires directors of a company to prevent insolvent trading by the company: see Div 3 of Pt 5.7B of that Act. We also expect you to plan and monitor

whether you have a sufficient cash flow to meet your obligations under the National Credit Act as a credit licensee.

AFS licence holders

- RG 207.18 If you hold an Australian financial services (AFS) licence and an Australian credit licence you will have separate financial requirements under each licence. When you consider your financial requirements as a credit licensee you may take into account that you have financial requirements as an AFS licensee. However, you cannot automatically assume that if you meet your AFS licence financial requirements that you will have sufficient financial resources under your credit licence obligations.
- RG 207.19 Both a credit licensee and an AFS licensee must be able to pay their debts as and when they become due and payable. However, a credit licensee must also have available adequate financial resources to provide the credit services covered by the licence and to carry out supervisory arrangements. This obligation is different from the financial resource requirement imposed on an AFS licensee, which is directed at having adequate financial resources to provide the financial services under the AFS licence. While assets used to meet the AFS license conditions can also be used to meet the credit licence conditions, we expect in your planning and monitoring of your financial resources that you will consider that you must meet two financial resource obligations as a result of holding a credit licence and an AFS licence.

B How to meet your financial obligations

Key points

At least one senior person may be designated within your organisation to be directly responsible to you for ensuring that your financial resources remain adequate at all times. This will help ensure that you meet your financial requirements obligations at all times: see RG 207.20–RG 207.25.

The senior person you designate to be responsible to you for the financial resources may be you in some circumstances.

Any person you designate to be responsible for ensuring that your financial resources remain adequate at all times should:

- have direct responsibility to the board of the credit licensee or the credit licensee (as the case may be) for the significant day-to-day decisions about managing your financial resources (see RG 207.26–RG 207.29); and
- have the appropriate knowledge and skills to manage your financial resources (see RG 207.30–RG 207.31).

- RG 207.20 You may designate a senior person who is accountable for ensuring that your financial resources remain adequate at all times. We refer to this person in this regulatory guide as the ‘financial manager’.
- RG 207.21 For large businesses, if you designate at least one senior person within your organisation to be directly responsible to you for ensuring that your financial resources remain adequate at all times, it will help you ensure that your financial resources remain adequate at all times.
- RG 207.22 For small businesses that have a credit licence, you may designate yourself as the financial manager (e.g. where you operate the business as a sole trader or small partnership or trust). If the small business is operated as a company, you could designate a director of the corporation as the financial manager.
- RG 207.23 The person that you have designated as a financial manager should ensure that you have adequate financial resources at all times. They should be directly responsible for your compliance with the financial resource requirements to:
- (a) if the licensee is a single natural person—the licensee; or
 - (b) if the licensee is a body corporate—the board of directors; or
 - (c) if the licensee is a partnership or the trustees of a trust—a partner or trustee who performs duties in relation to credit activities.
- RG 207.24 You may have more than one person as a financial manager. For example, if you operate different business units which engage in separate credit activities, you may decide to have a financial manager for each business unit.
- RG 207.25 We may ask you about your financial manager if we conduct a surveillance visit on your business.

Who can you designate as a ‘financial manager’?

Direct responsibility for the significant day-to-day decisions

RG 207.26 A person that you designate as financial manager should have direct responsibility to the board of the credit licensee or the licensee (as the case may be) for significant day-to-day decisions about the management of your financial resources. The nature, scale and complexity of your credit business will affect who you appoint as a financial manager. For example, for a large credit provider it may be that the chief financial officer or the chief executive officer has the required responsibility.

RG 207.27 When you designate a financial manager you should ensure that the person has sufficient available time to be responsible for the significant day-to-day decisions about managing your financial resources.

RG 207.28 The person you designate as a financial manager may be one of the responsible managers that you have nominated in your application for a credit licence but we do not expect that your financial manager will always be a responsible manager.

Note: For information on who are your responsible managers, see Regulatory Guide 204 *Applying for and varying a credit licence* (RG 204).

RG 207.29 We expect that any person that you designate to act as a financial manager will work closely with the nominated responsible managers that you have identified in your application for a credit licence. The financial manager will assist the nominated responsible managers in ensuring compliance with the financial requirements under the National Credit Act.

Appropriate knowledge and skills

RG 207.30 Your financial manager should have the appropriate knowledge and skills about financial matters and your business. We intend that you can be flexible in adopting practices that suit your organisation.

RG 207.31 You should be able to demonstrate that a financial manager has the experience and qualifications and/or training that are relevant to their role in light of the nature, size and complexity of your business. For example, for a large credit provider we would expect that your financial manager would be a member of a relevant professional accounting or finance body and have at least three years of relevant practical experience over the last five years. However, we recognise that these requirements may not be appropriate for a small mortgage broker (e.g. where it may be sufficient for you to assess the capabilities of a person to act as a financial manager based on their previous work experience).

C What should your ‘financial manager’ do?

Key points

As a credit licensee you must plan and monitor whether you have adequate financial resources to conduct your business in compliance with the National Credit Act and your credit licence obligations: RG 207.33–RG 207.37.

We expect that your financial manager will ensure that you:

- have access to enough financial resources to be able to pay all debts as and when they become due and payable and to meet your obligations as a credit licensee under the National Credit Act (see RG 207.38–RG 207.42); and
- keep written records that demonstrate that your financial resources are adequate and are being monitored on a regular basis (see RG 207.43–RG 207.44).

RG 207.32 The financial resource requirements are principles-based and designed to apply in a flexible way. For this reason, credit licensees must develop their own arrangements to ensure that they comply with the financial resource requirements. Financial managers should have specific responsibilities about ensuring you comply with the financial requirements detailed below.

Planning and monitoring financial resources

RG 207.33 We do not impose specific minimum financial resource requirements as part of your licence conditions. In planning to meet your commitments, you should assess what risks your business faces and whether these risks are material enough so that it is reasonable for you to plan to meet them.

RG 207.34 We expect that your financial manager should continuously plan and monitor:

- (a) whether you have adequate financial resources to be able to meet all debts as and when they become due and payable;
- (b) whether you have adequate financial resources to engage in the credit activities in compliance with the National Credit Act and your Australian credit licence obligations; and
- (c) how best to monitor your financial resources on an ongoing basis.

RG 207.35 The financial resource requirement is principle-based and it is intended that you can be flexible in adopting practices that suit your organisation. This means that the obligations will vary according to the nature, scale and complexity of the credit activities you engage in. You can tailor the way in which you comply with the financial resource requirements, taking into account factors such as:

- (a) the types of credit activities you engage in;

- (b) the diversity and structure of your operations (including the geographical spread of the operations and the extent to which you outsource any of your functions);
- (c) the volume and size of the transactions you are responsible for; and
- (d) the number of people in your organisation.

RG 207.36 In planning and monitoring whether you have adequate financial resources, your financial manager should take into account all available information about the future, which is at least the next 12 months. If you have a history of profitable operations and ready access to financial resources, your financial manager may reach the conclusion that you have adequate financial resources without detailed analysis. In other cases, your financial manager may need to consider a wide range of factors related to current and expected profitability, debt repayment schedules and potential sources of replacement financing before being satisfied that you have adequate financial resources.

RG 207.37 We may ask you from time to time to explain your financial manager's planning and monitoring of your current financial resource needs and to demonstrate that you have at least that level of financial resources: see s51(1).

Cash flows and financial resources

RG 207.38 While you must take responsibility for determining what constitutes adequate financial resources in the context of your credit activities, one key component in any licensee's financial requirements is cash flow. We think this is an important aspect to consider in ensuring that you meet your general financial requirements. We expect that you will monitor your cash flows on an ongoing basis so you can meet your obligations as a credit licensee under the National Credit Act.

RG 207.39 All credit licensees must be able to meet their debts as and when they become due and payable.

RG 207.40 We also think that if your cash flow is planned for and covered you are less likely to feel pressured to cut costs on compliance arrangements or engage in non-complying conduct.

RG 207.41 In considering your cash flow you may include amounts that you reasonably believe are likely to be available from borrowings (including an overdraft facility) and any guarantees or other funding arrangements, such as contributions from your owners or associates.

RG 207.42 Your financial manager may determine whether you have adequate financial resources, however you will be ultimately responsible for compliance with the obligations where your financial manager makes the determination: see s324 and 325.

Documenting your decisions

- RG 207.43 Your financial manager should ensure that the process for determining whether you have adequate financial resources, including how your financial resources are being monitored on a regular basis, have been documented. Documenting this assessment process helps you to show that you are complying with the general credit licensee obligations and helps to test and improve your planning processes over time.
- RG 207.44 The amount of documentation you need will vary depending on the nature, scale and complexity of your business. For example, normally more documentation would be required if your planning and monitoring is underpinned by forecasts of likely continuing support by others who are not under legal commitments, such as relying on consumers' goodwill to ensure business turnover, rather than relying on enforceable legal rights against credit-worthy entities.

Telling us that you have adequate financial resources

Applying for an Australian credit licence

- RG 207.45 If you are applying for a credit licence, you must be able to comply with the financial resource requirements. We cannot grant you a licence if we have reason to believe that you will not be able to comply with the financial resource requirement: see s37(1)(b).

Note: We will ask questions in the licensing process to help us decide whether an applicant has adequate financial resources: see Section D of RG 204.

- RG 207.46 In assessing your application for a credit licence, we might ask you to lodge an audit report, prepared by a suitably qualified person, about the adequacy of your financial resources: see s37(4)(b).

Ongoing compliance

- RG 207.47 Once you have a credit licence, you must, among other responsibilities, maintain adequate financial resources at all times. You will need to confirm on an annual basis that you have adequate financial resources to engage in the credit activities authorised by your credit licence and to carry out supervisory arrangements. This confirmation will form part of your annual compliance certificate: see s53.
- RG 207.48 We expect your financial resources to be regularly reviewed to ensure they continue to be adequate. For example, we would expect that your financial manager would separately review the adequacy of your financial resources in light of any major changes to your business, such as providing new services or products or engaging more representatives.

Note: While a review may be undertaken by your financial manager, you will be ultimately responsible for compliance with the obligations where your financial manager performs the review: see s324 and 325.

Key terms

Term	Meaning in this document
ADI	Has the meaning given in s5 of the National Credit Act
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
body regulated by APRA	Has the meaning given in s3(2) of the <i>Australian Prudential Regulation Authority Act 1998</i>
carried over instrument	Has the meaning given in s4 of the Transitional Act
COI lender	A person who was a credit provider or lessor in relation to a carried over instrument immediately before 1 July 2010 and who remains the credit provider or lessor on or after 1 July 2010
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
financial manager	A person appointed by a credit licensee to be directly responsible to the board of the credit licensee or the licensee (as the case may be) for ensuring that its financial resources remain adequate at all times
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Schedule 1 of the National Credit Act
National Credit Regulations	National Consumer Credit Protection Regulations 2010

Term	Meaning in this document
s37 (for example)	A section of the National Credit Act (in this example numbered 37), unless otherwise specified
RG 204 (for example)	An ASIC regulatory guide (in this example numbered 204)
Transitional Act	<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>
unlicensed COI lender	Has the meaning given in s5 of the National Credit Act, as modified by item 2.4 of Schedule 2 of the National Credit Regulations
you	A credit licensee, an applicant for a credit licence, or an unlicensed COI lender

Related information

Headnotes

adequate financial resources, appropriate knowledge and skills, carried over instrument, cash flows, COI lender, credit licence, fit and proper person, responsible financial manager, self-assessment, unlicensed COI lender

Regulatory guides

RG 202 *Credit registration and transition*

RG 203 *Do I need a credit licence?*

RG 204 *Applying for and varying a credit licence*

RG 205 *Credit licensing: General conduct obligations*

RG 206 *Credit licensing: Competence and training*

RG 208 *How ASIC charges fees for credit relief applications*

RG 209 *Credit licensing: Responsible lending conduct*

RG 210 *Compensation and insurance arrangements for credit licensees*

Information sheets

INFO 96 *Getting ready for credit*

INFO 97 *Guidance for small credit businesses*

INFO 101 *Does the new credit regime apply?*

INFO 102 *Getting registered for credit*

INFO 110 *Lenders with carried over instruments*

Legislation

Australian Prudential Regulation Authority Act 1998, s3(2)

Corporations Act, s761A, 913B

National Credit Act, Ch 2, Pt 2-2 Div 5, Pt 2-4, s14(1)(1), 15(3)(a), 35, 37(1)(b), 37(4)(b), 47(1), 47(1)(a), 47(1)(l), 47(1)(l)(i), 47(1)(l)(ii), 48, 51(1), 53, 324, 325; National Credit Regulations, Ch 2, Pts 2-1, 2-4, regs 9, 9A, 25E, Sch 2; Transitional Act, s4(1)

Consultation papers and reports

CP 111 Compensation and financial resources arrangements for credit licensees

CP 125 Compensation requirements for credit licensees: Further consultation (includes response to submissions to CP 111 on compensation arrangements)

REP 179 Response to submissions on CP 111: Financial resources arrangements for credit licensees