

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates
2014 - 2015

Department/Agency: Australian Securities and Investment Commission

Question: BET 273 - 277

Topic: Great Southern Finance

Reference: written - 15 June 2015

Senator: Dastyari, Sam

Question:

- 273. What are the implications of an entity writing loans without a Financial Services Licence?
- 274. Are loan contracts invalidated?
- 275. How can an entity write loans without a Financial Services Licence?
- 276. Did Great Southern Finance have a Financial Services Licences in 2004? 2005?
- 277. Was this ever established and reported to ASIC after any court actions?

Answer:

Question 273

An entity does not require an Australian Financial Services Licence (**AFSL**) to write loans as consumer credit is excluded from regulation under the Corporations Act 2001.

Credit facilities are not financial products (see s765A(1)(h) of the Corporations Act and regulation 7.1.06 of the Corporations Regulations 2001). Accordingly, an entity that provides services with respect to a credit facility is not providing financial services or therefore, carrying on a financial services business.

Question 274

For the reasons stated in response to question 273 above, loan contracts are not invalidated because the entity that provided them did not hold an AFSL.

Question 275

For the reasons stated in response to question 273 above, an entity can write loans without an AFSL as it is not carrying on a financial services business.

Since 15 December 2009, a licensing and conduct regime for the provision of credit services has been in existence under the National Consumer Credit Protection Act 2009 (Cth) and regulations made under that law. An Australian Credit Licence is now required to provide consumer credit services.

Question 276

Great Southern Finance did not hold an AFSL in 2004 or 2005. However, other entities within the Great Southern Group that performed different functions held an AFSL.

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A search can be undertaken of ASIC's professional register, available on its website, to determine whether an entity holds an AFSL or is the authorised representative of an entity that holds an AFSL.

Further, his Honour Justice Croft set out in his reasons for judgment (*Clarke (as trustee of the Clarke Family Trust) & Ors v Great Southern Finance Pty Ltd (Receivers and Managers Appointed) (in liquidation) & Ors* [2014] VSC 516) a description of the various entities within the Great Southern Group, including (amongst other things) dates of incorporation, functions or role performed within the group and those that held an AFSL.