

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 11

Topic: ASIC Guidelines

Senator Abetz asked:

Does ASIC consider any exception for companies with a compliant record to retain their credit licence? If so, how? If not, why not?

Answer:

The answer to this question will vary depending upon whether it refers to credit licensing or registration.

If the query relates to an existing credit licensee then the basis upon which a credit licence may be cancelled or suspended is set out in sections 54 and 55 of the National Consumer Credit Protection Act (the Act). The grounds for cancellation usually include insolvency, failure to comply with licence conditions, breaches of the Act or failure to maintain suitably qualified officers or responsible managers. It would be rare for a licensee to have its licence cancelled or suspended if it has a fully compliant record.

An example of where this could occur is if a company officer was convicted of serious fraud but the offence did not relate to the credit business.

If the query relates to the automatic cancellation of credit registration upon the refusal of a credit licence application then ASIC does not have discretion. The cancellation is imposed by statute.

However, in practice where the proposed refusal is based upon insufficient experience or qualifications, such as has occurred with some micro lenders, then ASIC may consider delaying any decision on the credit licence application in order to allow the applicant to obtain qualified staff or seek further qualifications to meet ASIC's concerns. This would depend upon the applicant satisfying ASIC that it is making bona fide efforts to acquire the necessary staff and/or qualifications.

So long as the applicant has lodged an application prior to 31 December 2010 then as a registered person the applicant would be able to continue in operation until ASIC makes a decision to grant or refuse the application, or until 30 June 2011.

If the application is granted then the applicant can continue in business as a credit licensee.

ENDS