

## BANKING SERVICES ALERT

### CREDIT LICENSING - WHO'S WHO IN THE ZOO

By 1 July 2010 everyone operating in the consumer credit space will either need to be registered, appointed a credit representative or be entitled to claim an exemption from these requirements. If they are not, then they cannot operate in the credit space after 1 July 2010.

In effect this means that before 1 July 2010 you will need to identify every person that you deal with as part of your business and determine in relation to each person what category they fall under.

To assist we give you some examples:

- Employees may be on contract arrangements and if involved in credit activities, will need to be licensed or appointed credit representatives.
- You may outsource your IT functions. The person to whom you outsource IT functions will need to be categorized. They will most likely be engaged in an "exempt activity".
- You may use a debt collection agency. They are "exempt persons" provided they are licensed under applicable State or Territory legislation.
- You may use lawyers for mortgage documentation services. They are "exempt persons" because the services they are providing to you are in the nature of normal legal services.
- Your lawyers may also introduce leads for new loans. The lawyers acting in this capacity are not "exempt persons". They must either be appointed in writing as "credit representatives" or fall within the category of "mere referrers". Even if they are merely referrers, the exemption only applies if they make full disclosure of any commissions earned.
- Some brokers source consumer loans from small private lenders. You will need to ensure that the private lender is licensed or acting as credit representative for some other party.

The table set out at the end of this document will assist you in this process. Every person who is involved in or has dealings with your business needs to be placed in one or more of the boxes in the table.

The above are merely some examples of the categories different persons who deal with your business may fall under. It is not intended to be exhaustive.

Exempt Persons include:

- Point of Sale Retailers
- Financial Counseling Agencies
- Third Parties who transport property of a borrower on behalf of a lender
- Securitisation Entity
- Lawyers acting as lawyers
- Registered Tax Agents
- Corporate and personal insolvency practitioners
- People who pass on factual information in response to a request
- People who merely pass on prepared documents
- Clerks and Cashiers
- Mere Referrers
- Debt Collectors registered under State laws (until 1/4/2011)
- Directors or employees of a Licensee

The process of identification and characterization of everyone involved in or dealing with your business needs to be fully completed by mid-June 2010.

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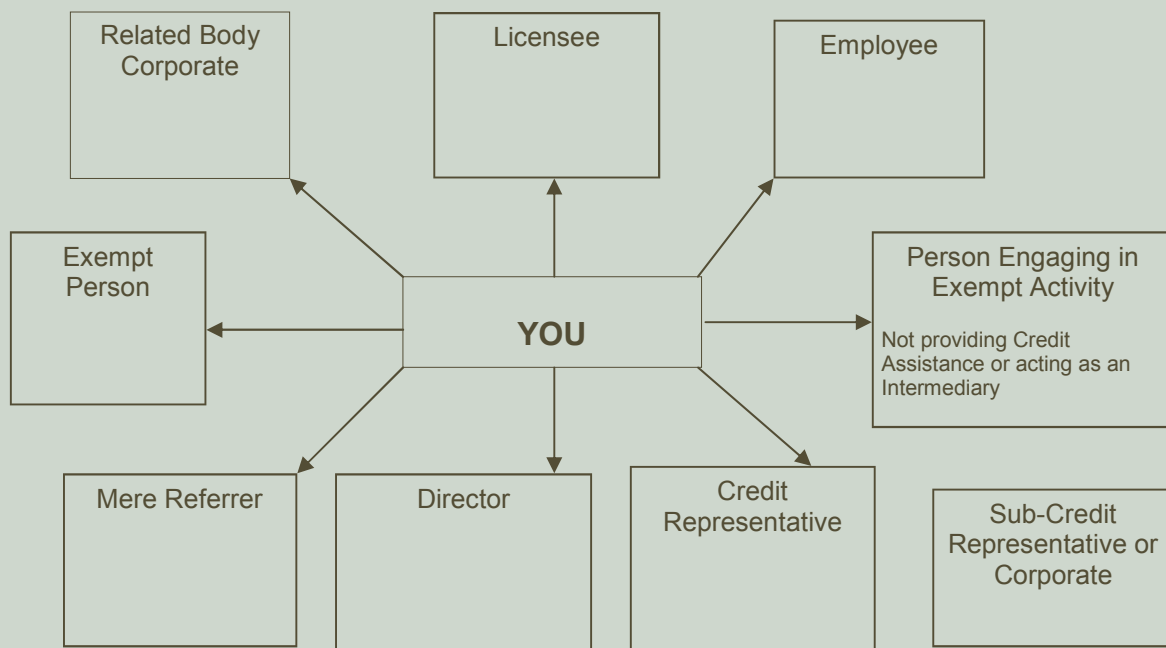
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### CREDIT LICENSING - WHO'S WHO IN THE ZOO CONTINUED ...

After 1 July 2010 if there is a person who should hold a licence, but did not register, or should have been appointed a credit representative but was not, they cannot operate in the credit space. Further, you commit a criminal offence under the legislation if you continue dealing with them after 1 July 2010 in such circumstances.

Our recommendation is that you take steps now to complete the matrix.

We can assist you if required.



Written by **Richard Williams** - Partner, Banking Services.

**PLEASE NOTE:** This newsletter is not legal advice and our comments are of a general nature only. This document is not to be relied on as substitution for proper detailed advice.

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