

Effective from 1 October 2021

Certification



On 1 October 2021, a new certification regime for consumer lenders and some mobile traders comes into force.

From this date, lenders and mobile traders who sell on credit will be required to be certified by the Commission before they can provide or continue to provide consumer lending or mobile trading services.

The purpose of this new requirement is to raise the standard of lenders and mobile traders operating in the credit industry to better protect consumers from harmful lending practices.

“Lender” means a creditor under a consumer credit contract.

These new rules cover both lenders and mobile traders. We will use the word “lenders” to cover both.

Mobile traders sell consumer goods outside of fixed premises (for instance door-to-door or out of a truck), making the sales on credit.

Certification will generally be for a period of 5 years.

If you are a lender you will need to be certified by the Commerce Commission—but there are exemptions.

Certification is covered in Part 5A of the Credit Contracts and Consumer Finance Act 2003.

The Commission will certify a lender if it is satisfied that they (if they’re an individual) or all their directors and senior managers (if they are a company or some other body corporate) are ‘fit and proper’ persons to hold their positions.

You are exempt from the certification requirement if you are already licensed or authorised by the Financial Markets Authority or the Reserve Bank, or are exempt by regulation.

However, if your licence or authorisation expires or is cancelled you will need to be certified by the Commission.

Certification becomes compulsory from 1 October 2021, and after this date lenders will need to be both certified by the Commission and registered on the Financial Service Providers Register (FSPR) to provide consumer lending services.

If you are already registered on the FSPR as at 30 September 2021, you don’t need to be certified until the date of your next FSPR annual confirmation.

For example: if your annual confirmation month is April, you will need to be certified by 30 April 2022.

To find your next annual confirmation month, look under the “general details” section of your FSPR dashboard.

We recommend that you apply for certification at least two months before the date that your certification is due.

For example: if your annual confirmation is due in April 2022, we recommend that you apply for certification before February 2022.

If you apply to us for certification more than two months prior to when your certification is due you can legally continue to offer lending services if we have not made a decision by that date (unless you have failed to respond to an information request from us).

If you apply less than two months before your certification is due, and we haven’t yet made a decision, you must stop providing lending services until you are certified.

When applying for certification you will need to consider who your directors and senior managers are.

A director is:

- anyone in a company occupying the position of director, regardless of the title assigned to that person;
- a person who is a sole trader;
- a partner in a partnership;
- a general partner of a limited partnership;
- anyone in any other body corporate or unincorporated entity occupying a position that is comparable with that of a director of a company.

A senior manager is:

- a person who is not a director but they occupy a position which allows them to exercise significant influence over the way the business is managed or administered;
- not necessarily an employee—it will depend on their influence and not just their employment status or position;
- in larger organisations it might be all those who report directly to the CEO;
- in smaller organisations it may be most of the senior people. The focus is on the role the person performs rather than their job title or description.

If your application includes directors only, we encourage you to consider again whether there are senior managers in your business.

You can apply for certification through the “Maintain Financial Services” tab on your FSPR dashboard.

When you select either the “consumer credit contract” or “mobile trader” service, you will be sent an email which sets out how you can pay the required fee(s) and will include the forms you’ll need to complete.

The application form will need to be completed and signed by each individual director and senior manager.

Complete and accurate information is critical for us to assess the application.

When assessing an application, we may seek information from other agencies.

An application fee of \$1,055 (excluding GST) is payable for each director or senior manager included in an application.

This fee is set by the Ministry for Business, Innovation and Employment (MBIE).

The Commission won’t start processing your application until all fees are paid.

If you are a director or senior manager of multiple lenders seeking to be certified, you must pay the fee(s) for each application (i.e. the assessment is not transferable).

MBIE intends to review the fee in 3 years.

In assessing whether an individual is a ‘fit and proper’ person to hold their position, the Commission will consider assessment criteria which looks at:

- Probity, reputation and financial integrity:

The suitability of individuals based on factors such as history of criminal convictions, insolvency, regulator investigations history and banning orders.

We will take into account all relevant circumstances and context.

- Competency and capability:

This is looking at your skills history and qualifications to perform your role.

We encourage you to read our Fit and Proper Person Certification guidance to understand more about our assessment criteria.

The Commission may:

- certify a lender;
- impose conditions on your certification (or you can request conditions);
- refuse to certify a lender if we are not satisfied that each of your directors and senior managers is a ‘fit and proper’ person to perform their role.

If a director/senior manager fails the ‘fit and proper’ person assessment, you may need to remove them in order to be certified.

If we intend to refuse certification, you will have an opportunity to make a submission to us before a final decision is made.

You can appeal the decision to refuse to certify (or to certify with conditions) to the District Court.

You must also keep the Commission notified of any material changes that could affect your certification.

That includes if a director or senior manager is appointed or ceases to hold their position, or if they are subject to

certain legal or insolvency events. The appointment of a new director/senior manager will require a 'fit and proper' person assessment and the fee to be paid.

You may face serious penalties if you breach the certification requirements—a company may have to pay up to \$600,000 and individuals up to \$200,000.

The Court may order payment of penalties if:

- you provide consumer credit without being certified (or if it has been cancelled or suspended);
- you represent that you are certified when you are not;
- you do not notify the Commission of changes in your circumstances as you are required to within 10 working days of knowing about the change;
- you provide false or misleading information on your application.

Commission tips:

- Before you apply for certification make sure your FSPR dashboard details are up to date (e.g. all directors and senior managers are listed on the FSPR);
- If your annual confirmation filing month on the FSPR is in August or September 2021, and you don't wish to be certified until your next annual confirmation in 2022, then when you click on the "Maintain Financial Services"

tab, you should select the option "consumer credit contract—prior to certification requirements";

- If you do wish to be certified prior to your next annual confirmation filing month, select the "consumer credit contract" or "mobile trader" service to trigger the certification application process.

For further information see the Fit and Proper Person Certification Guidance.

It's available on the Commission website. We do encourage you to read it.

Links to existing and relevant resources:

['Commerce Commission Fit and Proper Person Certification guidance'](#)

These are the relevant sections of the Act:

New Part 5A of the Credit Contracts and Consumer Finance Act 2003.

ACTION

Lenders need to understand the date by which they must be certified, and identify the directors and senior managers in their organisation.

IMPACT

Lenders and mobile traders must ensure they are certified in order to provide or continue providing consumer lending or mobile trading services.

This material provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

You can subscribe for information updates at www.comcom.govt.nz/subscribe

Commerce Commission contact details:

Phone: 0800 943 600 **Write:** Enquiries Team, PO Box 2351, Wellington 6140 **Email:** contact@comcom.govt.nz

