

**Australian Securities and Investments Commission**  
**National Consumer Credit Protection Act 2009 — Paragraphs 109(1)(a) and (c)**  
**– Paragraph 163(1)(c)**

**Enabling provisions**

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under:
  - (a) paragraphs 109(1)(a) and (c) of the *National Consumer Credit Protection Act 2009* (the *National Credit Act*); and
  - (b) paragraph 163(1)(c) of the *National Credit Act*.

**Title**

2. This instrument is ASIC Instrument [11-0836].

**Commencement and cessation**

3. This instrument:
  - (a) commences on 25 August 2011; and
  - (b) ceases to have effect on 16 September 2011.

**Exemptions**

4. BioSolar Limited ACN 141 804 882 (the *unlicensed lender*) is exempt from subsections 29(1) and (2) of the *National Credit Act*.

*Note :* Subsection 29(4) of the *National Credit Act* may provide a defence to a person who engages in a credit activity on behalf of another person that is exempt from subsection 29(1) and (2) of the *National Credit Act* in relation to the credit activity under subsection 109(1)(a) of the *National Credit Act*.

**Declarations**

5. The provisions to which Part 2-6 of the *National Credit Act* applies:
  - (a) apply in relation to the *unlicensed lender* as if Chapter 2 of the *National Credit Act* applied; and
  - (b) apply in relation to the *unlicensed lender* as if those provisions were omitted, modified or varied as set out in Schedule 1.
6. The provisions to which Part 3-7 of the *National Credit Act* applies:
  - (a) apply in relation to the *unlicensed lender* as if section 155 of the *National Credit Act* applied; and
  - (b) apply in relation to the *unlicensed lender* as if those provisions were omitted, modified or varied as set out in Schedule 2.

**Where this instrument applies**

7. Subject to paragraph 8, this instrument applies in relation to credit activities specified in item 3 of the table in subsection 6(1) of the National Credit Act engaged in by the unlicensed lender in relation to a back end contract.
8. The exemption in paragraph 4 applies for so long as the unlicensed lender complies with the condition in paragraph 9.
9. The unlicensed lender must not engage in a restricted activity in relation to a back end contract unless:
  - (a) the lender has appointed, in writing, a licensee as the lender's representative to engage in the activity on behalf of the lender; and
  - (b) the lender has lodged with ASIC a written notice that sets out:
    - (i) the name and Australian credit licence number of the licensee; and
    - (ii) a description of the activities the licensee will engage in on behalf of the lender.

**Interpretation**

10. In this instrument:

***back end contract*** means a consumer lease entered into between 1 July 2010 and 30 June 2011 under which the unlicensed lender is the lessor.

***restricted activity*** means a credit activity specified in subitem 3(c) of the table in subsection 6(1) of the National Credit Act that is engaged in by:

- (a) demanding and receiving payment from a lessee under a consumer lease; or
- (b) exercising rights in relation to goods hired under a consumer lease.

(For the purposes of paragraph (a), and for the avoidance of doubt, a restricted activity does not include merely receiving payment from a lessee.)

Dated this 25<sup>th</sup> day of August 2011



Signed by Felicity Natoli  
as a delegate of the Australian Securities and Investments Commission

## SCHEDULE 1 – MODIFICATIONS TO CHAPTER 2

1. **Subsection 5(1), after definition of *tribunal***  
*insert*  
**“*unlicensed lender*”** means a lessor who:
  - (a) was a lessor that was registered to engage in credit activities; and
  - (b) was a lessor in relation to a consumer lease immediately before its registration was cancelled; and
  - (c) from the time at which its registration was cancelled, has been the lessor in relation to the consumer lease on a continuous basis; and
  - (d) is exempt from the requirement to hold a licence under this Act under paragraph 109(1)(a).”
2. **Chapter 2, heading**  
*substitute*  
**“Chapter 2- Unlicensed lenders”**
3. **Subsection 31(1)**  
*omit* “A licensee”  
*insert* “An unlicensed lender”
4. **Sections 32**  
*omit*
5. **Part 2-2, heading**  
*substitute*  
**“Part 2-2 – Obligations of unlicensed lenders”**
6. **Part 2-2, Divisions 1 to 4**  
*omit*
7. **Part 2-2, Division 5, heading**  
*substitute* “Division 5 - General obligations”
8. **Section 47, heading**  
*substitute* “General conduct obligations of unlicensed lender”
9. **Subsection 47(1)**  
*substitute*  
**“An unlicensed lender must:**
  - (a) do all things necessary to ensure that the credit activities engaged in by the unlicensed lender are engaged in efficiently, honestly and fairly; and
  - (b) comply with the credit legislation; and
  - (c) take reasonable steps to ensure that its representatives comply with the credit legislation; and
  - (d) have an internal dispute resolution procedure that:
    - (i) complies with standards and requirements specified in ASIC Class Order [CO 10/250] or any instrument that replaces that Class Order; and
    - (ii) covers disputes in relation to the credit activities engaged in by the unlicensed lender or its representatives; and
  - (e) be a member of an approved external dispute resolution scheme specified in ASIC Class Order [CO 10/249] or any instrument that replaces that Class Order; and
  - (f) have compensation arrangements in accordance with section 48.”
10. **Subsection 47(2), including subsection heading**  
*omit*

11. Subsection 47(3), including subsection heading  
*omit*
12. Subsection 48(1)
  - (a) *omit* "A licensee"  
*insert* "An unlicensed lender"
  - (b) *omit* "the licensee"  
*insert* "the unlicensed lender"
13. Subsections 48(2) to (4), including subsection heading  
*omit*
14. Subsection 49(1), subsection heading  
*omit* "licensee"  
*insert* "unlicensed lender"
15. Subsection 49(1)
  - (a) *omit* "a licensee"  
*insert* "an unlicensed lender"
  - (b) *omit each mention of* "the licensee"  
*insert* "the unlicensed lender"
16. Subsection 49(2)
  - (a) *omit each mention of* "licensees"  
*insert* "unlicensed lenders"
  - (b) *omit* "each licensee"  
*insert* "each unlicensed lender"
17. Subsection 49(3), subsection heading  
*omit* "licensee"  
*insert* "unlicensed lender"
18. Subsection 49(3)
  - (a) *omit* "a licensee"  
*insert* "an unlicensed lender"
  - (b) *omit* "the licensee"  
*insert* "the unlicensed lender"
19. Subsection 49(5), subsection heading  
*omit* "licensee"  
*insert* "unlicensed lender"
20. Subsection 49(5)  
*omit each mention of* "licensee"  
*insert* "unlicensed lender"
21. Subsection 49(6)  
*omit* "licensee"  
*insert* "unlicensed lender"
22. Section 50  
*omit*
23. Subsection 51(1)
  - (a) *omit each mention of* "a licensee"

- insert* "an unlicensed lender"
- (b) *omit each mention of* "the licensee"
- insert* "the unlicensed lender"

**24. Section 52**

*omit*

**25. Section 53**

*substitute*

"Where a person that has been an unlicensed lender ceased to be an unlicensed lender by reason that it has ceased to be a lessor under any consumer leases, the person must, within 15 business days, lodge with ASIC a notice that it is no longer an unlicensed lender."

**26. Part 2-2, Division 6**

*omit*

**27. Part 2-3, heading**

*substitute* "Part 2-3 – Representatives of unlicensed lenders"

**28. Part 2-3, Divisions 1 and 2**

*omit*

**29. Section 73, heading**

*omit* "licensee"

*insert* "unlicensed lender"

**30. Section 73**

(a) *omit each mention of* "a licensee"

*insert* "an unlicensed lender"

(b) *omit each mention of* "the licensee"

*insert* "the unlicensed lender"

(c) *omit each mention of* "A licensee"

*insert* "An unlicensed lender"

**31. Part 2-3, Division 4, heading**

*omit* "licensees"

*insert* "unlicensed lenders"

**32. Section 74**

*omit* "a licensee"

*insert* "an unlicensed lender"

**33. Section 75, heading**

*omit* "licensee"

*insert* "unlicensed lender"

**34. Section 75**

(a) *omit* "one licensee"

*insert* "one unlicensed lender"

(b) *omit each mention of* "the licensee"

*insert* "the unlicensed lender"

**35. Section 76, including heading**

*omit*

**36. Section 77**

- (a) *omit* "a licensee"  
*insert* "an unlicensed lender"
- (b) *omit* "the licensee"  
*insert* "the unlicensed lender"

**37. Subsection 78(1)**

- (a) *omit* "a licensee"  
*insert* "an unlicensed lender"
- (b) *omit* "the licensee"  
*insert* "the unlicensed lender"

**38. Subsection 78(2)**

*substitute*  
"The unlicensed lender and the representative are jointly and severally liable to the client in relation to those remedies."

**39. Subsection 78(3)**

- (a) *omit* "a licensee"  
*insert* "an unlicensed lender"
- (b) *omit* "the licensee"  
*insert* "the unlicensed lender"

**40. Subsection 78(4)**

- (a) *omit* "a licensee"  
*insert* "an unlicensed lender"
- (b) *omit* "the licensee"  
*insert* "the unlicensed lender"

**41. Subsection 78(5)**

*omit* ", 76"

**42. Subsection 78(6)**

*substitute*  
"However, subsection (5) does not apply to the extent that the agreement provides for a representative of an unlicensed lender to indemnify the lender for a liability of the lender in relation to the representative."

**43. Subsection 78(7)**

*omit* "A licensee"  
*insert* "An unlicensed lender"

**44. Part 2-4**

*omit*

**45. Part 2-5, Division 1**

*omit*

**46. Part 2-5, Division 2, heading**

*omit* "licensees"  
*insert* "unlicensed lenders"

**47. Section 88**

- (a) *omit each mention of* "A licensee"  
*insert* "An unlicensed lender"
- (b) *omit each mention of* "the licensee"

*insert* "the unlicensed lender"

**48. Subsection 88(2)**

*omit*

“; and

(c) any trust account statement or trust account report required under section 100.”

*insert*

“ ”

**49. Subsection 90(2)**

*omit* “licensee”

*insert* “unlicensed lender”

**50. Section 91**

*omit* “licensee”

*insert* “unlicensed lender”

**51. Section 92**

*omit each mention of* “licensee”

*insert* “unlicensed lender”

**52. Subsection 92(b)**

*omit*

**53. Section 93**

*omit*

**54. Section 94, heading**

*omit* “licensee's”

*insert* “unlicensed lender's”

**55. Section 94**

*omit* “licensee”

*insert* “unlicensed lender”

**56. Subsection 95(1)**

*omit* “A licensee”

*insert* “An unlicensed lender”

**57. Subsection 96(2)**

(a) *omit* “a licensee”

*insert* “an unlicensed lender”

(b) *omit* “the licensee”

*insert* “the unlicensed lender”

**58. Part 2-5, Division 3**

*omit*

**59. Subsection 102(1), including heading**

*substitute*

“Auditor is entitled to access and assistance etc. from unlicensed lender

(1) An auditor (the *auditor*) who prepares an audit report required under subsection 49(3) in relation to an unlicensed lender as a right of access at all reasonable times to the financial records or other credit books of the lender for purposes relating to the audit report.”

- 60. Subsections 102(2) and (3)**  
*omit each mention of "licensee"*  
*insert "unlicensed lender"*
- 61. Section 103**  
*omit each mention of "licensee"*  
*insert "unlicensed lender"*
- 62. Paragraph 104(1)(b)**  
*omit "licensee"*  
*insert "unlicensed lender"*
- 63. Paragraph 104(2)(a)**  
*omit "licensee to meet the licensee's obligations as a licensee; or"*  
*insert "unlicensed lender to meet its obligations under section 47; or"*
- 64. Paragraph 104(2)(b)**  
*substitute "(b) constitutes or may constitute a contravention of section 47 or Division 2; or"*
- 65. Section 105**  
*omit each mention of "licensee"*  
*insert "unlicensed lender"*
- 66. Section 106**  
*omit*



**SCHEDULE 2 – MODIFICATIONS TO SECTION 155**

1. **Subsection 155(1)**  
*omit*
2. **Subsection 155(2)**  
*omit each mention of “licensee”*  
*insert “unlicensed lender”*
3. **Subsection 155(3)**  
*omit*
4. **Subsection 155(4)**  
*omit each mention of “licensee”*  
*insert “unlicensed lender”*
5. **Subsections 155(5) and (6)**  
*omit*