

THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

TRANSACTIONS COVERED BY THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

The Credit Contracts and Consumer Finance Act 2003 (CCCF Act) applies to four kinds of transaction:

- credit contracts;
- consumer credit contracts
- consumer leases; and
- buy-back transactions of land.

WHAT IS A CREDIT CONTRACT?

If credit has been provided under a contract, then a credit contract has been entered. Under the CCCF Act, credit has been provided if someone has been given the right to defer payment of a debt or incur a debt and defer its payment. Credit is also provided where a person is granted the right to defer payment for the purchase of property, goods or services.

WHAT IS A CONSUMER CREDIT CONTRACT?

A credit contract meets the definition of a consumer credit contract if credit has been provided as above and:

- the person to whom the credit has been provided (the debtor) is a '**natural person**'; and
- the debtor enters the contract primarily for **personal, domestic or household purposes**; and
- either **interest** or a **credit fee** is or may be payable, or a **security interest** is or may be taken.

In addition, the person providing the credit (the creditor) must either:

- carry on a business of providing credit; or
- make a practice of providing credit in the course of their business; or
- make a practice of entering into credit contracts in their name but on behalf of or as nominee for any other person; or
- have been introduced to the debtor through a paid advisor or broker.

LEASES DEEMED TO BE CONSUMER CREDIT CONTRACTS AND CREDIT SALES

A typical lease of goods does not involve the provision of credit within the meaning of the CCCF Act since a lessee does not incur a debt or defer payment of one. However, a transaction is covered under the CCCF Act if goods have been leased and:

- the person leasing the goods (the lessee) is a natural person; and
- the lessee enters into the lease primarily for personal, domestic or household purposes; and
- the person leasing the goods (the lessor) carries on the business of leasing goods or makes a practice of leasing good in the course of their business;

and either:

the amount payable under the lease is substantially **equivalent to or more than** the cash price of the goods, regardless of whether or not there is an option to purchase the goods. When you are working out the total amount payable under the lease, you are not required to take into account:

- any charges for optional or incidental services;
- any amount charged to exercise an option to purchase the goods; or
- any amount that would cease to be payable if the lessee cancelled the contract at the earliest opportunity;

or:

the lessee has an option to buy the goods at the end of the lease for no additional amount, a nominal amount, or an amount substantially less than a reasonable pre-estimate of the fair market value of the goods as at the end of the lease; it does not matter in this situation whether the rental paid under the lease is more or less than the cash price of the goods.

Lessors under consumer leases have different obligations under the CCCF Act from those applying to consumer credit contracts.

WHAT IS A CONSUMER LEASE?

Where a lease is not a credit sale and consumer credit contract it may still be a consumer lease and covered by the CCCF Act. Under the CCCF Act, a lease means a contract for the hire of goods. A lease is a consumer lease if it does not fall within the definition of a credit sale and consumer credit contract and:

- the lessee is a natural person; and
- the lessee enters into the lease primarily for personal, domestic or household purposes; and
- the lessor carries on the business of leasing goods or make a practice of leasing goods in the course of your business;

and either

- the term of the lease is for a period of 12 months or more,

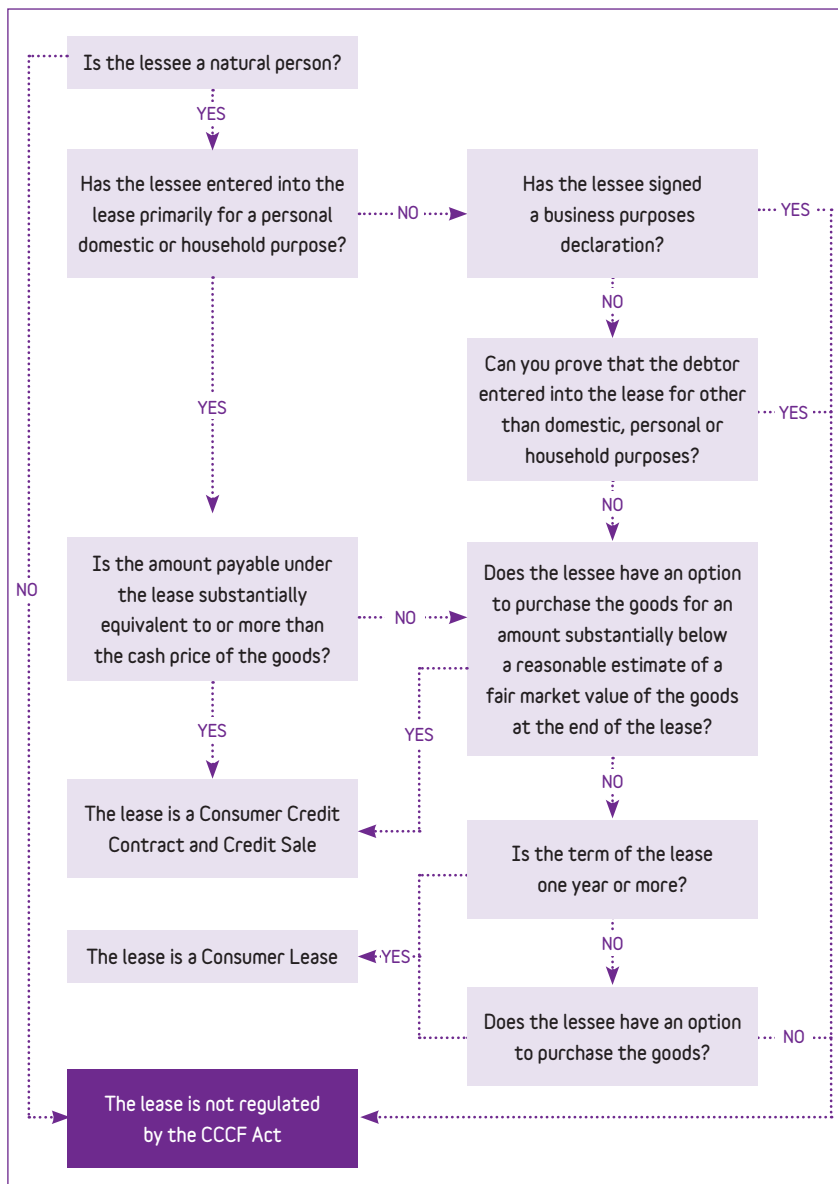
or

- the lessee has an option to purchase the goods being leased.

The amount of rent or price paid for the goods under the lease is not relevant in determining whether or not a lease is a consumer lease.

Lessors under consumer leases have different obligations under the CCCF Act from those applying to consumer credit contracts.

IS THE LEASE A CONSUMER CREDIT CONTRACT OR A CONSUMER LEASE?



PERSONAL, DOMESTIC OR HOUSEHOLD PURPOSES

Where a person enters into a contract for **personal, domestic or household purposes**, this means the primary purpose of the contract is not for business nor investment reasons.

In the case of a credit contract, even if the contract is partly for business reasons the contract will likely fall within the definition of a consumer credit contract – what is important is the primary purpose at the time the contract is entered into. The meaning of partly is not defined but where the consumer purpose is at least 50 per cent the view is that it is a consumer credit contract.

The CCCF Act presumes that, if the debtor is an individual, they will have entered into the contract for personal, domestic or household purposes – in other words, that a credit contract is also a consumer credit contract. This means that the onus is on the creditor to prove it is not.

If, however, the debtor makes a written declaration that the credit will be used primarily for business or investment purposes (or both) the credit contract is not a consumer credit contract and will overcome the presumption made by the CCCF Act that the contract is a consumer credit contract. The declaration will only be effective if:

- it is made before the debtor enters into the contract; and
- it is contained in a separate written document; and
- the debtor has confirmed they have read and understood the declaration;

The declaration will be ineffective if the creditor, broker or creditor's agent knew or had reason to believe at the time it was made that it was incorrect.

A creditor should also be careful what they tell debtors – particularly those who have bought goods through a credit sale – about their rights under the Consumer Guarantees Act 1993. A declaration made for the CCCF Act that the debtor has entered into a contract for business purposes may not affect their rights under the Consumer Guarantees Act.

WHAT IS A BUY-BACK TRANSACTION OF LAND?

A buy-back transaction typically involves the transfer of property to a third party where the person transferring their ownership (the occupier) remains in occupation (usually paying rent) and retains the right to buy back the property at a later date.

The CCCF Act defines a buy-back transaction as one in which:

- a person (the occupier) transfers land to a third party;
- the land is the occupier's principal place of residence at the time of the transaction;
- after the transfer the occupier has the right to continue occupying the property;
- there is an agreement or understanding that the original occupier can re-purchase the property; and
- the occupier is a natural person who enters into the transaction primarily for investment or for personal, domestic or household purposes.

EXCLUSIONS FROM THE CCCF ACT

The CCCF Act excludes some credit contracts from the definition of consumer credit contract. A credit contract is not a consumer credit contract if:

- it is a contract for the sale of property or provision of services where the agreed price is to be paid within two months of the date of the contract, even if more money is owed in the event of default; or
- someone has overdrawn their bank account without an agreed overdraft facility; or
- the debtor is acting as trustee for a family trust. However this credit contract will still be subject to the provisions of the CCCF Act relating to re-opening oppressive credit contracts.

DEFINITIONS

NATURAL PERSON A 'natural person' is a private individual – ie, not an organisation such as an incorporated company or society, or a trust. A credit contract where the debtor is an organisation or a trustee acting for a family trust is not a consumer credit contract.

PERSONAL, DOMESTIC OR HOUSEHOLD PURPOSES A person must have entered into the contract primarily for personal, domestic or household purposes. This means the loan may be partly for business or investment purposes as long as it is primarily for personal, domestic or household purposes.

INTEREST CHARGE An interest charge is one that accrues over time and is calculated by applying a rate to an amount owing under a credit contract.

CREDIT FEE A credit fee is a charge a debtor must pay under a credit contract, or to a creditor or for a creditor's direct financial benefit in connection with a credit contract. It does not include optional service fees, default fees or government charges.

SECURITY INTEREST A security interest is an interest in property that secures payment or performance of an obligation. It makes no difference for the purposes of the CCCF Act what form the security takes or who owns the property subject to the security.

LENDERS AND BORROWERS

The CCCF Act uses a number of different terms to describe lenders and borrowers, depending on the nature of the transaction.

- Consumer credit contracts – creditors and debtors.
- Consumer leases – lessors and lessees.
- Buy back transactions – transferees and occupiers.

For the purposes of these fact sheets the terms creditor and debtor are used when referring generally to credit transactions, but the specific terms are used where relevant.

To check for updates to this fact sheet visit:
www.comcom.govt.nz/consumer-credit

This fact sheet is part of a series looking at the Credit Contracts and Consumer Finance Act. Other fact sheets can be downloaded from
www.comcom.govt.nz/consumer-credit

CONTACT

Contact the Commerce Commission with information about possible breaches of the Credit Contracts and Consumer Finance Act.

TELEPHONE

Our Contact Centre during office hours on 0800 943 600

WRITE

To us at Contact Centre,
PO Box 2351, Wellington 6140

EMAIL

Us at contact@comcom.govt.nz

This fact sheet is a guideline only, and reflects the Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

Only the courts can make an authoritative ruling on breaches of the Credit Contracts and Consumer Finance Act.