

In these uncertain times, the financial services industry is experiencing unprecedented levels of customer queries and financial hardship requests. As a result of the high volume of customers in distressed circumstances, on 25 June 2020 ASIC approved temporary changes to the Banking Code of Practice (**the Code**) so that Banks can continue to provide suitable support to their customers.

The Code has now been modified to include the COVID-19 Special Note which sees the temporary changes apply until 1 March 2021.

Two changes

Easing of strict timing requirements



The Code currently imposes strict timing requirements with respect to certain provisions. This temporary change acknowledges that for the below paragraphs of the Code, in some circumstances the bank may not always be able to meet the usual timelines.

- ▶ 101(b) – giving guarantors notice within 14 days of the borrower having advised the bank that they are experiencing financial hardship which has resulted in a change to their loan.
- ▶ 101(c) – giving guarantors notice within 14 days of the borrower being in continuing default of their loan for more than two months after the issuance of a default notice.
- ▶ 102 – providing guarantors within 30 days, at their request, copies of loan documents, account statements and previously issued notices.
- ▶ 148 – providing customers, at their request, copies of loan documents, account statements, previously issued notices and any other documents within 30 days.
- ▶ 164 – responding to financial hardship requests in accordance with the timeframes set by the National Credit Code.
- ▶ 205 – where a complaint is not resolved within 21 days, informing the customer that more time to investigate is required.
- ▶ 206 – where a complaint is not resolved within 45 days, providing the customer with an explanation, a date by which the complaint can be reasonably expected to be determined together with monthly updates.

NB: Whilst the strict timing requirements have been eased, the substantive obligations of the above paragraphs remain in place. However, provided banks have made good faith efforts to comply with timing requirements, not meeting those timeframes will not constitute a breach of the Code.

Obligations when lending to small business customers



The pandemic has put small businesses under immense financial pressure. Banks are currently facing the difficulty of assessing serviceability in circumstances where it is challenging to predict economic recovery.

The temporary changes when lending to small business customers acknowledge that the effects of COVID-19 will generally be taken into account by bank employees when exercising the care and skill of a diligent and prudent banker.

What does this mean for the banks?



For the duration of the Special Note, banks must:

1. make good faith efforts to comply with the timing requirements for paragraphs 101(b) & (c), 102, 148, 164, 205 and 206;
2. continue to otherwise comply with all other requirements of the Code;
3. be informed of the matters and effects of COVID-19 generally when assessing a small businesses ability to service a loan;
4. advise of the possibility of delay to its customers upon acknowledgment of a complaint; and
5. where a complaint is not resolved with 45 days, inform customers of their rights to apply for external dispute resolution such as the Australian Financial Complaints Authority.



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