

Ban on providing financial services without an AFSL

Under the [Corporations Act 2001 \(Cth\)](#), a person who carries on a financial services business in Australia must hold an AFSL ([Australian Financial Services Licence](#)). There are few exceptions for this, although FFSP relief is one.

The licensing requirement may cover persons from overseas jurisdictions who:

- would then be subject to a potential duplicated regulatory burden arising from having to comply with Australia's regulatory regime where that person was already subject to sufficiently equivalent financial services regulatory regimes in their home jurisdiction, or
- would have only a limited connection to Australia, for example in that they do no more than act as counterparties to derivatives, counterparties to foreign exchange transactions, or providers of investment management services engaged only in "inducing" wholesale clients in Australia to use their financial services (even when those financial services are not actually to be provided in Australia)

ASIC has granted exemptions to FFSPs providing services within Australia, to the requirement to hold an AFSL known as the "sufficient equivalence relief", and the "limited connection relief". The relief also supported increasing the number of service providers and competition in the industry.

AFSL exemptions for providing financial services from outside of Australia

The *Corporations Act* exempts certain FFSPs which provide financial services from outside of Australia, including when the FFSP:

- provides a financial service to a client in Australia and does not induce people in Australia to use the service
- trades on a licensed Australian financial market for a client the FFSP believes on reasonable grounds is an overseas client
- provides a financial service to a client in Australia who holds an ordinary AFSL, or is regulated by an overseas authority and falls within an exemption specified by ASIC, and who is not acting as a trustee, responsible entity of a managed investment scheme, or otherwise acting on someone else's behalf
- provides a financial service to a client in Australia who provides the service in relation to a financial product:
 - (i) issued to the client on that client's instigation
 - (ii) issued to the client while that client was not in Australia, or
 - (iii) that supplements or is similar to and substitutes a financial product mentioned in (i) or (ii), and
- provides a financial service to a client in Australia who provides any of the following services:
 - dealing in derivatives or foreign exchange contracts
 - providing advice on derivatives or foreign exchange contracts, or

- making a market in derivatives or foreign exchange contracts

Current relief regime for FFSPs providing financial services into Australia

In addition to exemptions for dealing "outside" of Australia, the current regulatory structure grants FFSPs which provide financial services within Australia the following exemptions from the requirement to hold an AFSL:

- sufficient equivalence relief, or
- limited connection relief

Sufficient equivalence relief is conditionally granted to FFSPs if they meet a number of criteria, including that:

- their financial services are only provided to wholesale clients, and
- they are regulated by an overseas authority sufficiently equivalent to the Australian regulatory regime

FFSPs relying on the sufficient equivalence relief must:

- notify ASIC of their reliance on the relief
- submit to the non-exclusive jurisdiction of the Australian courts in legal proceedings, and
- comply with a written notice from ASIC to provide information about the financial services business they operate

Limited connection relief is granted when the FFSP is outside of Australia and:

- deals only with wholesale clients, and
- only intends to induce a person in Australia to use financial services it provides overseas

Unlike sufficient equivalence relief, an FFSP relying on the limited connection relief is not required to notify ASIC of its reliance on the relief, submit to Australian courts' jurisdiction, or provide information of its financial services business operating in Australia

Current relief regime sunset

The current FFSP Relief is due to sunset on 27 September 2018.

ASIC has extended that timeframe to 30 September 2019 to allow time for consultation on FFSP licensing.

How the proposed Foreign AFSL would operate

The Foreign Licensee would be required to comply with the "general obligations" (with exceptions, below) imposed on standard AFS Licensees under the *Corporations Act*, including to:

- do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly

- have in place adequate arrangements for managing conflicts of interest in providing the financial services
- comply with the conditions on the licence
- comply with financial services laws, subject to proposed modifications
- take reasonable steps to ensure representatives comply with the financial services law, and
- have adequate risk management systems

However, unlike usual AFSL holders, the Foreign Licensee would not be required to:

- have adequate resources (including financial, technological, and human resources) to provide financial services covered by the Foreign AFSL and to carry out supervisory arrangements
- maintain the competence to provide those financial services
- ensure that its representatives are adequately trained, and are competent to provide those financial services, and
- comply with any other obligations that are prescribed by regulations made for the purposes of [section 912A\(1\)](#) of the *Corporations Act*.

Other exemptions from the *Corporations Act*

The Foreign Licensee will be exempt from certain other provisions of the *Corporations Act* and Corporations Regulations where ASIC considers them to achieve similar outcomes to overseas regulatory regimes.

Examples of those proposed exempted provisions relate to:

- minimum standards of custodial or depository services
- obligations when dealing with client money, or about loans to financial service providers by clients
- dealings in insurance with unauthorised insurers
- reporting on dealings in derivatives
- record keeping and relevant financial statements
- maintenance of records of training, and
- how money is to be dealt with if licensee ceases to be licensed

Tailored conditions on the Foreign AFSL

The Foreign Licensee would be subject to tailored conditions on its licence, including:

- the pro forma conditions on standard AFS Licensees in relation to financial services and products provided only to wholesale clients
- that the Foreign AFS Licensee is only permitted to appoint representatives that are the Foreign Licensee's:

- employees or directors
- wholly owned bodies corporate, or
- employees or directors of wholly owned bodies corporate, and
- conditions requiring the FFSP to notify ASIC of any significant change to, exemption from, or disciplinary action taken under the FFSP's home jurisdiction financial services regulation

Documentation in support of a Foreign AFSL application

A Foreign AFSL applicant would be required to provide similar documentation in support of its application to that required for an ordinary AFSL.