

Substantial Changes to Australian Regulation for Foreign Financial Service Providers

Currently, a Foreign Financial Service Provider (FFSP) that carries on a financial services business in Australia has two potential avenues of regulatory relief available in order to avoid the requirement to hold an Australian Financial Services Licence (AFSL).

- i. **Limited connection (wholesale client) relief** which exempts an FFSP from holding an AFSL where:
 - the financial services offered in Australia is limited to inducing or intending to induce persons in Australia to use its financial services such as a promotional or marketing campaign, and
 - where the FFSP only provides financial services to wholesale clients.

Class order [CO 03/824] (as extended by ASIC Corporations (Foreign Financial Services Providers – Limited Connection, Instrument 2017/182).

- ii. **Sufficient regulatory equivalence relief** which exempts an FFSP from holding an AFSL where the FFSP is regulated under a prescribed overseas regulatory regime that ASIC classifies are 'sufficiently equivalent' to the financial services regime in Australia; *ASIC Corporations (Repeal and Transitional) Instrument 2016/396.*

New FFSP Regulatory Regime

The above relief instruments are due to expire on 27 September 2018. However, in its recent Consultation Paper CP 301, ASIC has confirmed that the current relief regime will be extended beyond the original expiry date until 30 September 2019 while ASIC consults with the financial services industry in respect of proposed changes to the current licensing regime.

More importantly, Consultation Paper CP 301 highlights that:

- the sufficient regulatory equivalence relief and the limited connection (wholesale client) relief will both be repealed on 30 September 2019; and
- a FFSP wishing to provide financial services in Australia after 30 September 2019 must operate under an AFSL and in this regard proposes a new FFSP licensing regime and the introduction of a 'Foreign Australian Financial Services Licence' ('Foreign AFSL').



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What the proposed change to the FS Regime means for FFSPs

Based on Consultation Paper CP 301, it is likely that the new licensing regime will require an FFSP to:

- i. Apply for an AFSL or a 'Foreign AFSL'
- ii. Provide ASIC with documentation and evidence in support of their 'Foreign AFSL' application similar the core and additional support proof documents required of a local AFS licensee
- iii. Comply with the general AFSL obligations applying under s912A(1) of the Corporations Act as modified under the proposed new Foreign AFSL requirements such as:
 - to ensure financial services are provided efficiently, honestly and fairly
 - adequate risk management systems for relevant risk
 - be responsible for its representatives
 - have adequate arrangements to manage conflicts of interest.
- iv. Comply with specific licence and regulatory conditions including:
 - a FFSP will not be permitted to appoint representatives other than employees or directors of the foreign AFS licensee or its wholly owned related bodies corporate or authorised representatives of a wholly owned body corporate;
- v. Satisfy specific notification requirements including:
 - to notify ASIC upon becoming aware of any significant changes to the financial services business or foreign enforcement action or any appointment and changes to its local agent.

Note that it is anticipated that a FFSP may be exempted from complying with certain obligations if the FFSP is licensed in a foreign jurisdiction which has a 'sufficiently equivalent' financial services regime.

ASIC intends that a 'Foreign AFSL' will allow for the continued operation of FFSPs in Australia but will also facilitate greater oversight of FFSP compliance with Australian regulatory requirements by ASIC.

It is anticipated that a 12 month transition period will apply from the commencement of the proposed change to the FFSP regime on 1 October 2019 to provide time for affected FFSPs to implement the necessary structures in order to comply with the regulatory changes.

Steps to Consider

From 1 October 2020, it is proposed that an FFSP must obtain an AFSL or a Foreign AFSL to conduct financial services business in Australia under a modified AFS licensing regime.

If you are a FFSP we recommend that you:

- monitor the progress of the new licensing laws proposed in Consultation Paper CP 301

- assess the extent to which you currently rely on existing relief to conduct your business in Australia
- assess the likely compliance requirements of the proposed new FFSP licensing regime and Foreign AFSL
- assess whether your operations in Australia are likely to require a full AFSL or Foreign AFSL
- consider applying for sufficient equivalence relief or individual relief prior to 30 September 2019 in order to take advantage of any transition legislation
- plan for implementation and compliance with the new FFSP licensing regime.

Meridian Lawyers are specialists in financial services. If you would like assistance in assessing the implications for your business of the modified AFS licensing regime for FFSPs contained in Consultation Paper CP 301 or in preparing an application for FFSP relief please contact Michael Bracken, Principal.