

# Guide for Foreign Financial Services Providers

## AFS licensing

A person or a business from overseas wishing to carry on financial services business in Australia may be required to hold an Australian Financial Services (AFS) Licence.

You may need an AFS Licence

If you are:

- carrying on a financial services business
- 'inducing' people in Australia to use a financial service

### 1 Carrying on a financial services business

If you intend to carry on a financial services business in Australia, you must hold an AFS licence containing a specific authorisation covering the provision of that financial service unless an exemption applies.

If you provide financial services and you meet one of the following criteria you are likely to be carrying on a financial service in Australia:

- have a place of business in Australia
- establish a share registration or share transfer office in Australia
- administer, manage or otherwise dealing with property situated in Australia whether as a local agent or as a legal personal representative
- conduct business activities in Australia with system, regularity and continuity
- involved in a significant one off financial services transaction including an offer of securities to Australian investors.

### 2 Inducement

The financial services regulatory regime also captures conduct that is "intended to induce people in Australia" to obtain or use a financial service.

You are likely to be carrying on a financial services business if you conduct:

- advertising activity that target Australians by promoting financial products and services in an Australian newspaper; and
- attempt to persuade, influence or encourage a person in Australia to become a client or use a financial service.

### 3 Exemptions

There are a range of exemptions which will allow a financial services business to carry out activities in Australia without holding an AFS licence.

An exemption may apply if:

- there is no inducement of clients in Australia
- the financial product predominantly provided outside of Australia
- a financial product or service is provided to an overseas client
- a financial service is provided to a professional investor
- a financial product is offered to a wholesale client and the product is regulated by an overseas regulatory authority acceptable to ASIC
- the financial services business is carried out under the authority of another party which is an AFS licensee.

#### How can Meridian help?

Meridian has extensive expertise in financial services and can assist a foreign financial services provider in navigating the Australian financial services regulatory environment and to establish operations in Australia including:

- registration of a foreign company and appointment of a local agent
- establishing a business and distribution arrangement or intermediary structure
- characterisation of wholesale and retail clients
- advice on regulatory capital requirements, funding and remuneration arrangements
- licensee, representative, conduct and disclosure obligations
- other applicable rules and regulations which may apply – ASX24 Rules, ASIC Market Integrity Rules, Foreign Investment, Payment Systems, National Credit Act, Insurance Legislations.

For more information on our financial services legal expertise, please contact us or visit [meridianlawyers.com.au](http://meridianlawyers.com.au)



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