

NEWS ALERT 02.04.20

COVID-19 CHALLENGES FOR AFS LICENSEES – *tips and traps*

New Government-imposed restrictions to contain the spread of COVID-19 and the significant implications for the economy mean Australian financial services (AFS) licensees are grappling with how to comply with their many obligations.

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In this article, senior associate Elliott Stumm highlights some of the specific challenges you need to think about now and what you should do next.

DO YOU HAVE ADEQUATE RESOURCES?

All AFS licensees (except if you are regulated by APRA) must have adequate resources (including financial, technological and human) available to provide the financial services covered by your licence and to carry out supervisory arrangements.

To assist you meet the financial resources obligation, several financial requirements are imposed on licensees. For example, licensed custody providers and responsible entities must prepare a projection of their cash flow over at least the next 12 months based on a reasonable estimate of what is likely to happen over this term. These cash flow

projections are required to be updated when—

- cash flows cease to cover the next 12 months
- there is a material change, or
- there is reason to suspect an updated projection would differ materially from the current projection or show that you were not meeting your financial resourcing requirements.

The COVID-19 crisis will likely require some AFS licensees to update their cash flow requirements now to reflect revised projections of inflows and outflows. An updated cash flow may show an AFS licensee is unable to comply with its financial requirements.

In addition to financial resources, the adequacy of human and information technology resources may also be tested as a result of the COVID-19 crisis. You need to assess whether the resources available remain adequate to provide

the financial services covered by your licence and to carry out supervisory arrangements.

CAN YOU SUPERVISE YOUR REPRESENTATIVES?

The national shift toward 'working from home' means some representatives of AFS licensees that previously operated from the licensee's principal place of business, and under the direct supervision of directors, responsible managers, and senior staff, will now operate in an environment without the physical presence of supervisors. You need to ensure you have adequate processes and procedures in place so that your representatives are adequately supervised and comply with the financial services laws.

ARE YOUR COMPLIANCE PROCEDURES ADEQUATE?

The COVID-19 crisis will test the disaster readiness and risk management procedures of AFS licensees and may reveal

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shortcomings or issues which need to be addressed. If your compliance procedures prove inadequate in the circumstances, then they need to be reviewed and updated.

SHOULD YOU APPLY TO ASIC FOR RELIEF?

AFS licensees have a range of obligations under the Corporations Act. If you think you would be unable to comply with an obligation in light of the COVID-19 crisis, then you need to consider whether to apply to ASIC for relief from that obligation.

In the current crisis, ASIC has stated that relief or waivers from regulatory requirements will be provided where warranted, such as requirements on listed companies associated with secondary capital raisings and audits. ASIC has already indicated a 'take no action' stance in relation to the timing of annual general meetings until 31 July and the conduct of those meetings by electronic means.

ARE YOU HAVING DIFFICULTY PAYING REGULATORY FEES?

If you are experiencing cash flow issues which may prevent you from meeting obligations and the associated regulatory fees (including any late fees), then you can apply to ASIC for a payment plan or a fee waiver.

HAVE YOU BREACHED YOUR OBLIGATIONS?

If you breach, or are likely to breach, one of your obligations, such as those discussed above, then you need to assess and rectify the breach in accordance with your compliance procedures, including recording the breach in your breach register.

If the breach (or likely breach) is assessed as 'significant' under the Corporations Act, then you must report the breach to ASIC as soon as practicable and within 10 business days of becoming aware of the breach.

ASIC recently made changes about how significant breaches (or likely breaches) are reported. Now, you need to submit any required breach reports to ASIC via the ASIC Regulatory Portal.

NEXT STEPS?

It is important you reassess your ability to comply with your obligations in light of the circumstances and implement measures to weather the COVID-19 crisis.

Please contact **Elliott Stumm** or a member of our **Funds Management team** if you have any questions about your compliance obligations as an AFS licensee and to discuss your concerns about the impact of the COVID-19 crisis on your business.

You can also look at our **FAQs for funds managers** and visit our **COVID-19 HUB** for more information and resources dealing with specific challenges for the funds management industry.