

14.02.2019

NEWS

Licensing relief extended for foreign financial services providers

ASIC has extended licensing relief for foreign financial service providers (FFSPs) who carry on financial services business in Australia without an AFS licence (AFSL) to 30 September 2019. This reprieve is to allow ASIC more time to consult on the proposals in Consultation Paper 301. Here managing partner Sean McMahon explains ASIC's objectives and what's in store for FFSPs.

MODIFIED AFS LICENSING REGIME

To date, one avenue for obtaining licensing relief has been 'sufficient equivalence relief': where an FFSP provides certain financial services to wholesale clients only and is regulated by an overseas regulatory regime that is sufficiently equivalent to Australia's.

In Consultation Paper 301, ASIC announced its intention to repeal this relief, and instead implement a modified AFS licensing regime for FFSPs that will otherwise rely on Legislative Instrument relief to provide financial services here in Australia. The modified licensing regime would require a FFSP to provide similar documentation as is required for an AFSL application, and to comply with certain AFS licensee obligations under the Corporations Act.

A further consultation on the revised regime is expected within the first half of 2019, along with a draft Regulatory Guide and Legislative Instruments. If ASIC proceeds with the regime, a transitional period of 12 months to 30 September 2020 will apply.

STRICTER COMPLIANCE PROPOSED

Previously, FFSPs eligible for sufficient equivalence relief under one of ASIC's seven Class Orders (the prior name of Legislative Instruments) were not required to comply with certain provisions of the Corporations Act as long as they were providing financial services in compliance, so far as is possible, with the law in their respective home country.

ASIC is now proposing that if granted a foreign AFSL, the general obligations under the Corporations Act will apply to sufficient equivalence FFSPs.

In particular, FFSPs would be required to do all things necessary to ensure the financial services covered by the licence are provided 'efficiently, honestly and fairly,' and to comply with any conditions imposed on the licence by ASIC. This is a significant development from the prior Class Order relief.

HOW CAN WE HELP?

Our Funds Management lawyers are up to date with the details of these proposed changes and can assist with any queries, including other exemptions and structures that may be available to continue your business here in Australia.

Authors



SEAN MCMAHON

Managing Partner