

# ASIC EXTENDS RELIEF FOR FOREIGN FINANCIAL SERVICES PROVIDERS

Date: 26 September 2018

## Australia Investment Management Alert

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As expected, on 21 September 2018, the Australian Securities and Investments Commission (ASIC) issued ASIC Corporations (Amendment) Instrument 2018/807 (Amendment Instrument), extending existing relief available to certain foreign financial services providers (FFSPs) from the requirement to hold an Australian Financial Services (AFS) Licence for an additional 12 month period until 30 September 2019.

## BACKGROUND

Many FFSPs currently provide financial services to wholesale clients in Australia pursuant to conditional relief (or individual relief issued by ASIC on similar terms) from the requirement to hold an AFS Licence under the *Corporations Act 2001* (Cth) (Act). This relief is contained in:

- ASIC Corporations (Repeal and Transitional) Instrument 2016/396 and ASIC Corporations (CSSF-Regulated Financial Services Providers) Instrument 2016/1109 (Sufficient Equivalence Relief); and
- ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182 (Limited Connection Relief), (together, FFSP Relief).

On 1 June 2018, ASIC published Consultation Paper 301: Foreign financial services providers (CP 301) in which ASIC proposed to amend the existing regulatory regime for FFSPs by repealing the FFSP Relief and implementing a modified form of AFS Licence for FFSPs in Australia (Foreign AFS Licence). ASIC also signaled its intent to temporarily extend the FFSP Relief for a further period in order to allow industry to engage with its proposals on the regulation of FFSPs in CP 301.

The FFSP Relief was due to expire in late September 2018. The Amendment Instrument extends the FFSP Relief for an additional 12 month period until 30 September 2019.

For further details on ASIC's proposals as outlined in CP 301, please read our previous article [here](#).

## WHAT'S NEXT?

In addition to the extension of the FFSP Relief until 30 September 2019, ASIC is proposing a further 12 month transitional period to 30 September 2020 if it proceeds with implementation of the Foreign AFS Licence regime.

If ASIC's proposals in CP 301 are implemented, those FFSPs that rely on the FFSP Relief (and that are unable to rely on any other exemption under the Act) will be required to obtain a Foreign AFS Licence in relation to their Australian financial services activities by the time the new regime commences on 1 October 2020.

In CP 301, ASIC has indicated its intention for FFSPs regulated in jurisdictions recognised as "sufficiently equivalent" to Australia's financial services regime to be eligible to apply for a Foreign AFS Licence during the 12 month transitional period between 30 September 2019 and 30 September 2020.

## WHAT DOES THIS MEAN FOR FOREIGN FINANCIAL SERVICES PROVIDERS?

Entities currently relying on the FFSP Relief may continue to do so until 30 September 2019. FFSPs that do not currently have the benefit of the FFSP Relief may apply to ASIC if they wish to rely on the FFSP Relief during the period up to 30 September 2019.

In the meantime, FFSPs should familiarise themselves with the proposals in CP 301 in relation to the new Foreign AFS Licence regime and closely monitor the outcome of the consultation process.

## KEY CONTACTS



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