

ASIC EXTENDS FFSP EXEMPTIONS FOR A FURTHER 12 MONTHS

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Legal Briefings - By **Fiona Smedley and Julian Vertoudakis**

Today the Australian Securities & Investments Commission (**ASIC**) [announced](#) a 12 month extension, to 30 September 2019, to the 'limited connection' and 'passporting' Australian financial services licence (**AFSL**) exemptions.

CURRENT EXEMPTIONS FOR FFSPS

Conditional exemptions for foreign financial services providers (**FFSPs**) from the requirement to hold an AFSL when providing financial services to wholesale clients in Australia are currently provided in three ASIC instruments (**FFSP Exemptions**):

- [ASIC Corporations \(Repeal and Transitional\) Instrument 2016/396](#) - commonly referred to as the 'passporting exemption', used by FFSPs who are subject to regulation in their home jurisdiction which ASIC has determined is 'sufficiently equivalent';
- [ASIC Corporations \(Foreign Financial Services Providers - Limited Connection\) Instrument 2017/182](#) - commonly referred to as the 'limited connection exemption', used by FFSPs outside Australia who do not have any physical presence in Australia; and
- [ASIC Corporations \(CSSF-Regulated Financial Services Providers\) Instrument 2016/1109](#) - used solely by FFSPs that are regulated by the CSSF in Luxembourg.

The FFSP Exemptions were due to expire at the end of September 2018.

ASIC has been consulting, most recently in Consultation Paper 301 *Foreign financial services providers (CP 301)*, released in June 2018, in relation to terminating the FFSP Exemptions and introducing a new 'foreign AFSL' regime.

WHAT'S HAPPENED?

ASIC has extended the operation of the FFSP Relief until 30 September 2019 by [ASIC Corporations \(Amendment\) Instrument 2018/807](#).

This will allow more time for consultation on the CP 301 proposals.

The FFSP Exemptions have been extended on the same terms (other than the expiry date). No change has been made to the conditions that must be satisfied in order for a FFSP to be entitled to continue to use the FFSP Exemption.

This extension is consistent with ASIC's intention as stated in CP 301. For further details regarding ASIC's proposals in CP 301, please see Herbert Smith Freehills' previous [legal briefing](#).

WHAT'S NEXT?

Submissions on CP 301 closed on 31 July 2018. ASIC is now reviewing the 36 submissions received and anticipates engaging over the next few months with industry participants about their submissions.

If ASIC determines to proceed with establishing a 'foreign AFSL' regime, it is likely that a further transitional period of 12 months to 30 September 2020 will apply as proposed in CP 301, to allow FFSPs time to establish the organisational structures and competence necessary to comply with their additional obligations under a foreign AFSL.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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