

WORLD-FIRST LICENSING EXEMPTION FOR FINTECH BUSINESSES - ASIC'S NEW REGULATORY SANDBOX

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Legal Briefings - By **Michael Vrisakis**, **Tony Coburn** and **Alison Wheatley**

On 15 December 2016, ASIC released news of class waivers to allow eligible financial technology (**fintech**) businesses to test certain products and services without holding an Australian financial services (**AFS**) or credit licence.

While the actual instruments of relief are yet to be published by ASIC, Regulatory Guide 257 (RG 257) gives us a taste of what they are likely to contain.

ASIC has described the fintech licensing exemption as “unique” and has said that no other major jurisdiction has relief that “allows eligible businesses to notify the regulator and then commence testing without an individual application.”

The exemption will have a significant impact on fintech businesses as they will essentially have 12 months to operate, within the parameters set by ASIC, without the expense and time delay of obtaining an AFS or credit licence.

The purpose of the exemption is described by ASIC as being “to facilitate innovation in financial services and credit”. ASIC have identified speed to market, organisational competence and access to capital as three major impediments for fintech business and the exemptions are aimed at alleviating these issues.

AFS AND CREDIT LICENSING

Who qualifies to rely on the relief?

To be eligible to rely on the exemption to provide financial services, the person seeking to provide the service must **not**:

- be banned from providing financial services;
- hold an AFS licence;
- be an authorised representative of a licensee authorised to provide the services covered by the exemption; or
- be a related body corporate of an AFS licensee.

To be eligible to rely on the exemption to engage in credit activities, the person seeking to engage in the activity must **not**:

- be banned from engaging in credit activities;
- hold a credit license;
- be a credit representative of a credit licensee; or
- be a related body corporate of a credit licensee.

Persons that are not eligible for the fintech licensing exemption (for example, because they already have an AFS licence) are able to seek an individual exemption under the existing relief regime (see [RG 51 Applications for relief](#)). This will enable existing licensees who wish to test an innovative product or service to comply with a modified version of the law.

Foreign companies can also rely on the exemption so long as they are registered under Part 5B.2 of the Corporations Act.

It is important to note that ASIC can exclude a person from the exemption where ASIC considers that their business is not innovative and/or does not use technology when providing financial services or credit.

What are the conditions?

To be eligible, the fintech business must:

- have no more than 100 retail clients – although an application may be made to increase the limit to 200 clients. There is no limit on the number of wholesale clients;
- plan to test for no more than 12 months - although an application may be made to extend the period for an additional 12 months;
- have total customer exposure (retail and wholesale) of no more than \$5 million. There are also lower limits on the exposure in respect of specific products;
- have adequate compensation arrangements (such as professional indemnity insurance);
- have dispute resolution processes in place;
- meet disclosure and conduct requirements - for example, disclosure of some information normally contained in a Financial Services Guide and a credit guide as well as complying with the 'responsible lending' obligations. Clients and potential clients must also be notified of reliance on the exemption.

What products and services are covered?

In respect of AFS licensing, the exemption only covers **dealing and providing advice** on:

- deposit products, with a maximum A\$10,000 balance;
- payment products, if ADI-issued and with a maximum A\$10,000 balance;
- general insurance, for personal property and home contents and with a maximum of A\$50,000 insured;
- liquid investments, for listed Australian securities or simple schemes and with a maximum A\$10,000 exposure;
- consumer credit contracts with certain features, and a loan size of between A\$2,001 and A\$25,000.

As a result, issuing, for instance, is not covered by the exemption.

In respect of engaging in credit activities, the exemption allows eligible persons to act as an intermediary or provide credit assistance in respect of a credit contract that:

- has a maximum amount of credit of no more than A\$25,000;
- has a maximum annual cost rate of 24%;
- is not subject to tailored responsible lending obligations (i.e. is not a reverse mortgage or a small amount credit contract); and
- is not a consumer lease.

Importantly, the exemption is not available for providing credit.

What is the process?

To rely on the exemption, the fintech business must provide ASIC with written notice of intention to rely on the exemption along with specified information in relation to the business.

The testing period will begin 14 days after ASIC is notified.

ASIC has also indicated that it expects businesses relying on the exemption to report back on their experience at the end of the period.

Other measures to facilitate innovation

ASIC has also introduced other measures to facilitate innovation including updated guidance in [RG 105](#). These updates are intended to provide greater flexibility for some 'small-scale, heavily automated businesses' seeking to nominate a responsible manager.

Exemption reflects commitment to innovation

John Price of ASIC has said: "ASIC's fintech licensing exemption reflects our commitment to facilitating innovation in financial services. However, we are equally committed to ensuring that innovation products and services are regulated appropriately and promote good consumer outcomes."

All indications are that there is significant interest among fintechs in the exemption so we expect to see it in use in the near future.

For further information see [RG 257](#) Testing fintech products and services without holding an AFS or credit licence.

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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