

12 MONTHS REPRIEVE FOR FOREIGN FINANCIAL SERVICES PROVIDERS USING AUSTRALIAN FINANCIAL SERVICES LICENCE EXEMPTIONS

02 August 2022

Legal Briefings - By **Fiona Smedley, Ewan MacDonald and Antonia Xu**

Today the Australian corporate regulator, ASIC, announced an extension of 12 months for the transitional arrangements for the passporting exemptions and limited connection exemption, which will now expire on 31 March 2024.

BACKGROUND

- The passporting exemptions and limited connection exemption from the need to hold an Australian financial services licence (**AFSL**) that have been used by foreign financial services providers (**FFSPs**) since 2003 are in a transition to expiry, due to expire on 31 March 2023.
- The consultation in relation to the expiry and replacement of those exemptions had originally proposed that they would be replaced by the 'foreign AFSL' regime and the 'funds management exemption' (see our earlier article of [11 March 2020](#)).
- In the May 2021 Australian Federal budget, the Treasurer announced a further consultation in relation to potentially restoring the passporting and limited connection exemptions. That consultation led to proposals in relation to alternative exemptions for FFSPs, in the form of the 'comparable regulator exemption' and the 'professional investor exemption'.

- A bill to introduce the ‘comparable regulator exemption’ and the ‘professional investor exemption’ was introduced into the House of Representatives in February 2022 (**Bill**) but lapsed on the calling of the Australian federal election, creating uncertainty again for FFSPs (see our earlier article of [11 April 2022](#)).

WHAT HAS HAPPENED?

Today ASIC [announced](#) an extension of 12 months for the transitional arrangements for the passporting exemptions and limited connection exemption, so that they will expire on 31 March 2024, rather than 31 March 2023.

ASIC is also delaying the commencement of the funds management AFSL exemption (which may be used by FFSPs to provide financial services from offshore to certain categories of Australian professional investors) by 12 months, to 1 April 2024.

ASIC has effected these changes by issuing [ASIC Corporations \(Amendment\) Instrument 2022/623](#).

WHAT HAPPENS NEXT?

Until the passporting exemptions and limited connection exemption expire on 31 March 2024:

- ASIC and Treasury are expected to consult on the lapsed Bill, the future for FFSP exemptions and the use of the foreign AFSL regime and funds management exemption;
- ASIC will continue to consider new applications for individual temporary licensing relief, or new standard or foreign AFS licence applications, from entities that cannot rely on the transitional relief; and
- FFSPs that have been granted a ‘foreign AFSL’ will be able to continue to operate under that 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.



FIONA SMEDLEY
PARTNER, SYDNEY

+61 2 9225 5828
Fiona.Smedley@hsf.com



EWAN MACDONALD
SPECIAL COUNSEL,
SYDNEY

+61 2 9225 5351
Ewan.MacDonald@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE

Close