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ASIC Consults on Foreign Financial Services Providers Relief Proposals

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The Australian Securities and Investments Commission (**ASIC**) has released Consultation Paper 301 Foreign financial services providers (**CP 301**) proposing a modified licensing regime for foreign financial service providers (**FFSPs**) carrying on a financial services business in Australia with wholesale clients.

Background

A person who carries on a financial services business in Australia must hold an Australian financial services (**AFS**) licence unless relief is granted by ASIC or an exemption applies. There are currently two types of relief for FFSPs (**current reliefs**), which are as follows:

1. Sufficient equivalence relief – exempts foreign providers from the requirement to hold an AFS licence where they are regulated under overseas regulatory regimes that ASIC has assessed as sufficiently equivalent to the Australian financial services regimes; and
2. Limited connection relief - provides licensing relief to foreign providers with a limited connection to Australia providing financial services to wholesale clients. This relief covers a foreign provider inducing an Australian wholesale client to use the relevant financial services provided by the foreign provider.

Summary of CP 301

CP 301 sets out ASIC's proposal to repeal the current reliefs and introduce a new regime, which enables foreign providers to apply for a modified form of AFS licence (**foreign AFS licence**). The foreign AFS licence would:

- require a foreign AFS licensee to comply with general obligations under s912A(1)(a) - (ca) and (h) of the Corporations Act 2001 (Cth) (**Corporations Act**);
- exempt a foreign AFS licensee from the application of particular provisions of Chapter 7 of the Corporations Act and the Corporations Regulations 2001 where ASIC considers the overseas regulatory requirements achieve similar regulatory outcomes to the Australian requirements;
- impose tailored conditions on a foreign AFS licensee, including some additional obligations by legislative instrument; and
- require a foreign AFS licence applicant to provide similar documentation in support of their application as that required for an ordinary AFS licence.

ASIC considers that it is important for foreign providers to adhere to fundamental conduct obligations in the AFS licensing regime that govern how financial services are provided to Australian wholesale clients and promote market integrity.

Implementation of the new regime

While current reliefs are due to sunset on 27 September 2018, ASIC will extend the current reliefs for 12 months until 30 September 2019 while consulting with stakeholders.

CP 301 proposes a further transition period of 12 months to 30 September 2020 if ASIC proceeds with foreign AFS licensing.

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Baker McKenzie intends to respond and make a submission before 31 July 2018.

For more information

If you have any questions in relation to the foreign AFS licence, please contact one of the lawyers listed on this alert.

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