



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 176

Foreign financial services providers

July 2019

About this guide

This guide is for foreign financial services providers (FFSPs) that wish to provide financial services in Australia to wholesale clients or professional investors only.

It explains:

- when an FFSP may be eligible to apply for a modified form of an Australian financial services (AFS) licence, known as a 'foreign AFS licence';
- how to apply for a foreign AFS licence; and
- when an FFSP may be eligible for other AFS licensing relief when providing 'funds management financial services' to professional investors only ('funds management' relief).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This draft guide was issued in July 2019 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 176, issued June 2012
- Superseded Policy Statement 176, issued September 2003, reissued May 2005, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

This guide explains the regulatory framework for foreign financial services providers (FFSPs) that wish to provide financial services to wholesale clients or professional investors in Australia.

An FFSP that is authorised to provide financial services under a 'sufficiently equivalent' overseas regulatory regime may be eligible to apply for a modified form of Australian financial services (AFS) licence, known as a 'foreign AFS licence'. This guide explains:

- when an FFSP may be eligible to apply for a foreign AFS licence;
- the obligations associated with holding a foreign AFS licence;
- how to apply for a foreign AFS licence; and
- certain transitional arrangements.

This guide also explains when other AFS licensing relief may be available to an FFSP providing 'funds management financial services' to professional investors in Australia (the 'funds management' relief).

Who this guide is for

RG 176.1 This guide is for FFSPs that wish to provide financial services in Australia to wholesale clients or professional investors only.

Note: In this guide, references to sections (s), chapters (Chs) and parts (Pts) are to the *Corporations Act 2001* (Corporations Act), unless otherwise specified. References to regulations are to the *Corporations Regulations 2001* (Corporations Regulations), unless otherwise specified.

Purpose of this guide

RG 176.2 This guide explains:

- (a) the foreign AFS licensing regime, including:
 - (i) when FFSPs are eligible to apply for a foreign AFS licence; and
 - (ii) the obligations and conditions that apply to a foreign AFS licensee (see Section B);
- (b) how to apply for a foreign AFS licence (see Section C);
- (c) our approach to extending the relief in ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX to cover other overseas regulatory regimes and how to apply for an extension of this relief (see Section D);
- (d) the transitional arrangements for FFSPs that have previously relied on the relief available under [ASIC Corporations \(Repeal and Transitional\)](#)

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[Instrument 2016/396](#) and [ASIC \(Corporations \(CSSF-Regulated Financial Service Providers\) Instrument 2016/1109](#) or other similar relief, including individual relief granted on substantially the same terms (see Section E); and

- (e) when an FFSP may be eligible for other AFS licensing relief when providing ‘funds management financial services’ to professional investors in Australia—that is, the ‘funds management’ relief (see Section F).

Our regulatory framework for FFSPs

RG 176.3 Generally, if you carry on a financial services business in Australia, you will need to hold an AFS licence, unless relief is granted by ASIC or an exemption applies.

RG 176.4 This guide explains the regulatory framework for FFSPs that wish to provide financial services to wholesale clients or professional investors in Australia.

Note: See also [Regulatory Guide 121](#) *Doing financial services business in Australia* (RG 121) for more general guidance on the financial services regime in Australia for people or companies from overseas who propose to conduct a financial services business in Australia.

RG 176.5 Table 1 sets out the three types of regulatory arrangements applicable to FFSPs that this guide addresses.

A modified AFS licensing regime for FFSPs

RG 176.6 The foreign AFS licensing regime is a modified AFS licensing regime for FFSPs that:

- (a) are authorised in a sufficiently equivalent overseas regulatory regime to provide financial services to wholesale clients; and
- (b) wish to provide those financial services to wholesale clients in Australia.

Note: See Section D of this guide and [Regulatory Guide 54](#) *Principles for cross-border financial regulation* (RG 54) for guidance on our approach to recognising overseas regulatory regimes for the purposes of facilitating cross-border financial regulation.

RG 176.7 A foreign AFS licensee is exempt from certain provisions in Ch 7 of the Corporations Act on the basis that it is subject to sufficiently equivalent overseas regulatory requirements that would achieve similar regulatory outcomes to the exempted provisions.

RG 176.8 A streamlined application process applies to applications for a foreign AFS licence. This recognises that foreign AFS licensees are authorised under a sufficiently equivalent overseas regulatory regime to provide the relevant financial services (or substantially the same financial services) and are expected to be complying with relevant obligations imposed by the foreign regime for the financial services they provide.

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Table 1: The regulatory framework for FFSPs

Regulatory arrangement	Description	For more information
Funds management relief	<p>An FFSP is exempt from the requirement to hold an AFS licence to provide 'funds management financial services' to professional investors in Australia, subject to:</p> <ul style="list-style-type: none"> • a cap on the scale those services; and • conditions that apply to the operation of the relief. <p>A person engages in a 'funds management financial service' if they provide:</p> <ul style="list-style-type: none"> • any of the following financial services to a professional investor in Australia: <ul style="list-style-type: none"> – dealing in interests of a managed investment scheme established outside Australia (scheme) or securities of a body that carries on a business of investment that is not incorporated in Australia (body); – providing financial product advice in relation to the interests or securities of the scheme or body; and/or – making a market in relation to the interests or securities of the scheme or body; and • portfolio management services to a limited category of professional investors ('eligible Australian users'). 	See Section F of this guide and ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2019/XXX.
Foreign AFS licence	<p>An FFSP that is licensed or authorised (as applicable) by an overseas regulatory authority that regulates the FFSP under a sufficiently equivalent regime (as assessed by ASIC) may be eligible to apply for a foreign AFS licence to provide financial services to wholesale clients in Australia.</p> <p>Foreign AFS licensees are exempt from certain provisions in Ch 7 of the Corporations Act on the basis that they are subject to sufficiently equivalent overseas regulatory requirements that would achieve similar regulatory outcomes to the Australian provisions from which we have issued an exemption.</p>	See Sections B–E of this guide and ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX.
Standard AFS licence	<p>This requires an FFSP to comply with all the general obligations under s912A, and all the applicable provisions of the Corporations Act and the Corporations Regulations.</p> <p>This would apply to an FFSP that is carrying on a financial services business in Australia and is not able to come within one of the other regulatory arrangements listed in this table or any other available exemption (e.g. the exemptions under reg 7.6.02AG).</p>	See the AFS Licensing Kit and related regulatory guides.

Note: FFSPs relying on the funds management relief can only provide financial services to 'professional investors'. Professional investors are a subset of wholesale clients. Section 9 states that professional investors include AFS licensees, bodies regulated by the Australian Prudential Regulation Authority (APRA), trustees, a listed entity or a related body corporate of a listed entity, a body corporate, or a person that controls at least A\$10 million. In contrast, wholesale clients include persons who invest more than A\$500,000.

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‘Sufficient equivalence’ relief

- RG 176.9 To be eligible to apply for a foreign AFS licence, an FFSP must be authorised in a ‘specified overseas regulatory regime’—that is, a regime that is defined in ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX or an individual relief instrument provided on substantially the same terms as this instrument (sufficient equivalence relief).
- RG 176.10 The sufficient equivalence relief is only available to FFSPs that:
- (a) wish to provide one or more of the financial services specified in the instrument to wholesale clients in Australia; and
 - (b) apply for and obtain a foreign AFS licence.

Extension of relief to other regulatory regimes

- RG 176.11 We will assess applications to extend the sufficient equivalence relief to cover other overseas regulatory regimes. Generally, we will only extend the relief if:
- (a) the relevant financial services are regulated by an overseas regulatory authority;
 - (b) the regulatory regime overseen by the overseas regulatory authority is sufficiently equivalent to the Australian regulatory regime; and
 - (c) there are effective cooperation arrangements between the overseas regulatory authority and ASIC.
- RG 176.12 Section D provides guidance on how to apply to extend the relief to another regulatory regime. This guide deals only with applications from FFSPs or their industry associations to extend the relief to another regulatory regime.
- RG 176.13 If an overseas regulatory authority wishes to initiate an approval process to seek relief for FFSPs that it regulates, it should contact us by email at international@asic.gov.au to express its interest and discuss an appropriate process. In considering an application from an overseas regulatory authority, we will:
- (a) be guided by our approach in [RG 54](#); and
 - (b) consider whether it would be appropriate to pursue a mutual recognition arrangement with that authority.
- RG 176.14 We may provide an opportunity for public comment on a proposed extension of the sufficient equivalence relief. For example, we may invite comment on whether there is any reason to believe that the overseas regulatory regime is not sufficiently equivalent to Australia’s regulatory regime.

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B The foreign AFS licensing regime

Key points

The foreign AFS licensing regime is a modified AFS licensing regime for FFSPs that:

- are authorised in a 'sufficiently equivalent' overseas regulatory regime to provide financial services to wholesale clients; and
- wish to provide those financial services to wholesale clients in Australia.

This section explains the foreign AFS licensing regime, including:

- the 'sufficient equivalence' relief; and
- the obligations and conditions that apply to foreign AFS licensees.

Authorisation in a sufficiently equivalent regulatory regime

RG 176.15 To be eligible to apply for a foreign AFS licence, an FFSP must be authorised in a 'specified overseas regulatory regime' and be able to rely on the sufficient equivalence relief. A 'specified overseas regulatory regime' is a regime that is defined in ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX or an individual relief instrument provided on substantially the same terms as this instrument.

RG 176.16 Table 2 lists the overseas regulatory regimes that are currently specified.

Note: ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX will be made before the foreign AFS licensing regime commences.

RG 176.17 The sufficient equivalence relief recognises that the overseas regulatory regimes set out in Table 2 have been assessed by ASIC as sufficiently equivalent to the Australian regulatory regime for the relevant financial services. It exempts foreign AFS licensees that are authorised in those jurisdictions from the provisions set out in Table 3 on the basis that they are subject to:

- sufficiently equivalent overseas regulatory requirements that would achieve similar regulatory outcomes to the exempted provisions; and
- supervision and, where required, enforcement action by an overseas regulatory authority for those requirements.

Who can rely on the sufficient equivalence relief?

RG 176.18 The sufficient equivalence relief is only available to FFSPs that:

- wish to provide one or more of the financial services specified in the relief to wholesale clients in Australia; and
- apply for and obtain a foreign AFS licence (see Section C).

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Table 2: Specified overseas regulatory regimes as set out in ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX

Sufficiently equivalent jurisdiction	Financial services and/or products for which relief is available
Germany —if regulated by the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product, or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C; • deposit-taking facilities that are not deposit products; or • facilities through which a person makes non-cash payments.
Hong Kong —if regulated by the Securities and Futures Commission	<p>The relief applies to providing financial product advice, dealing in a financial product or making a market for a financial product in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C.
Luxembourg —if regulated by the Commission de Surveillance du Secteur Financier United Kingdom —if regulated by the Financial Conduct Authority	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product, or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • eligible deposit products; • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C.

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Sufficiently equivalent jurisdiction	Financial services and/or products for which relief is available
<p>Singapore—if regulated by the Monetary Authority of Singapore</p> <p>United States—if regulated by the Securities Exchange Commission</p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product, or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C.
<p>United States—if regulated by:</p> <ul style="list-style-type: none"> • the Federal Reserve; and • the Office of the Comptroller of Currency 	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product, or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • any deposit-taking facility, including a deposit product; • derivatives; • foreign exchange contracts; • securities; • facilities for making non-cash payments; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C.
<p>United States—if regulated by the Commodity Futures Trading Commission</p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product, or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C.

Note: Table 2 does not include sufficiently equivalent jurisdictions identified in individual relief instruments provided on similar terms to ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX.

Conditions of the relief

- RG 176.19 The sufficient equivalence relief is subject to the following conditions:
- the foreign AFS licensee must carry on a business in the relevant foreign jurisdiction—this condition is aimed at ensuring that the licensee is carrying on a business in the relevant foreign jurisdiction and therefore subject to overseas regulatory oversight in that jurisdiction;

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- (b) the foreign AFS licensee must notify ASIC, as soon as practicable and in any event within 15 business days after it becomes aware or should reasonably have become aware, and in such form if any as ASIC may from time to time specify in writing, of the details of:
 - (i) each significant change to, including the termination of, the relevant registration or authorisation in the licensee's home jurisdiction applying to the financial services it is authorised to provide in Australia;
 - (ii) each significant exemption or other relief that the licensee obtains from the regulatory requirements in its home jurisdiction applying to the financial services it is authorised to provide in Australia; and
 - (iii) each significant investigation, enforcement or disciplinary action undertaken by any overseas regulatory authority against the licensee in a foreign jurisdiction in relation to financial services provided by the licensee in that jurisdiction.

RG 176.20 These requirements are intended to:

- (a) ensure that the foreign AFS licensee's conduct and status are such that it remains entitled to the sufficient equivalence relief; and
- (b) give us sufficient information to enable us to assess:
 - (i) whether the foreign AFS licensee is complying with its obligations in the relevant overseas regulatory regime;
 - (ii) whether the relevant overseas regulatory regime continues to satisfy our 'equivalence test'; and
 - (iii) whether the licensee is in compliance with the obligations under the foreign AFS licence.

What do we mean by a 'significant' investigation, enforcement or disciplinary action?

RG 176.21 The requirement in RG 176.19(b)(iii) is designed to ensure that we are aware of any significant investigation, enforcement or disciplinary actions against the foreign AFS licensee in an overseas regulatory regime, relevant to its provision of financial services.

RG 176.22 In determining whether an investigation, enforcement or disciplinary action is significant, a foreign AFS licensee should consider whether it is serious enough that it may affect our assessment that the licensee may continue to rely on the sufficient equivalence relief or raise questions about compliance by the licensee with its licensee obligations.

RG 176.23 An investigation, enforcement or disciplinary action may be significant even if it relates to relatively minor breaches of the obligations in the overseas regulatory regime, because those breaches may indicate inadequate compliance arrangements due to their number or frequency. If you are not sure

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whether an investigation, enforcement or disciplinary action is significant, we encourage you to notify us about it.

- RG 176.24 An investigation, enforcement or disciplinary action in a foreign jurisdiction does not have to be completed before it must be notified to us—that is, it does not need to have concluded in a finding or an outcome to be reportable. The fact that the overseas regulatory authority has commenced a significant investigation, enforcement or disciplinary action may trigger the notification requirement. It becomes notifiable when the foreign AFS licensee knows, or should reasonably have known, of its existence.

How to send your notifications to ASIC

- RG 176.25 An FFSP must send us notifications by email to FFSP@asic.gov.au. You can also contact ASIC on 1300 300 630 (or +61 3 5177 3988 if dialling from overseas) for general information and assistance.

What happens when an overseas regulatory regime ceases to be sufficiently equivalent

- RG 176.26 The types of changes that may result in the overseas regulatory regime ceasing to be sufficiently equivalent include changes to:
- (a) the regulatory structure in the overseas regulatory regime;
 - (b) the supervisory arrangements for FFSPs operating under the overseas regulatory authority;
 - (c) the obligations or requirements imposed on FFSPs in the overseas regulatory regime;
 - (d) the overseas regulatory authority's supervision or legislative responsibility for activities of the FFSP in Australia, or in relation to wholesale clients; and
 - (e) the rights and remedies that are practically available to investors in Australia under the overseas regulatory regime.

Note: This is not an exhaustive list. Relevant considerations will always depend on the applicable facts and circumstances. In assessing whether an overseas regulatory regime has ceased to be sufficiently equivalent, we may engage with the relevant overseas regulatory authority.

- RG 176.27 If we form the preliminary view that the overseas regulatory regime ceases to be sufficiently equivalent to the Australian regime for some or all financial services, we will notify the relevant foreign AFS licensees that are authorised in that regime for those financial services. We will provide them with a reasonable period to put to us submissions concerning our preliminary finding that it is not sufficiently equivalent.

- RG 176.28 If, after considering any submissions on our preliminary finding, we still consider that there is not sufficient equivalence, we will take steps to remove

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the overseas regulatory regime from the list of specified overseas regulatory regimes in ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX or any individual relief instrument on similar terms.

RG 176.29 A relevant foreign AFS licensee will be provided with a reasonable period to cease providing financial services under its licence. If the licensee does not cease to provide financial services under its licence within the specified timeframe, we will take steps to suspend or revoke the licence.

RG 176.30 If the relevant foreign AFS licensee wishes to continue to provide financial services under its licence, it may:

- (a) *Apply to vary its foreign AFS licence into a standard AFS licence covering those financial services*—To be eligible for a standard AFS licence, the foreign AFS licensee must provide us with the requisite proofs so that we can be satisfied that there is no reason to believe the applicant will not comply with the applicable provisions in the Corporations Act for the financial services that it wishes to continue to provide after it ceases to be eligible for the sufficient equivalence relief. If we are not satisfied of this, we will refuse the variation application and take steps to revoke the foreign AFS licence.

Note: For guidance on how to vary an AFS licence and the proofs that may be required, see [Regulatory Guide 1 AFS Licensing Kit: Part 1—Applying for and varying an AFS licence](#) (RG 1), [Regulatory Guide 2 Preparing your AFS licence application](#) (RG 2) and [Regulatory Guide 3 Preparing your additional proofs](#) (RG 3)—together, the [AFS Licensing Kit](#).

- (b) *Apply for transitional relief to enable the foreign AFS licensee to continue to provide financial services under its licence while an application to vary the foreign AFS licence is being made or assessed*—We will assess any applications for transitional relief on a case-by-case basis having regard to the foreign AFS licensee's specific circumstances.

RG 176.31 If the relevant foreign AFS licensee does not wish to continue to provide financial services under its licence, a cancellation request should be made to ASIC.

Obligations of a foreign AFS licensee

RG 176.32 While a foreign AFS licensee is exempt from specified provisions of the Corporations Act (see RG 176.33 and Table 3), a foreign AFS licensee must comply with:

- (a) all other applicable provisions under the Corporations Act (see RG 176.36–RG 176.37); and
- (b) the applicable conditions on its licence other than those applying under reg 7.6.01(a) and (d) (see RG 176.38–RG 176.39).

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Provisions that do not apply to foreign AFS licensees

- RG 176.33 Foreign AFS licensees are exempt from specified provisions in Ch 7 of the Corporations Act on the basis that they are subject to:
- (a) sufficiently equivalent overseas regulatory requirements that would achieve similar regulatory outcomes to the exempted provisions; and
 - (b) supervision and, where required, enforcement action by an overseas regulatory authority in a sufficiently equivalent overseas regulatory regime in relation to those requirements.
- RG 176.34 When an obligation in Ch 7 of the Corporations Act applies to a person as a result of providing financial services to a retail client, it will not be necessary to provide an exemption from the provision because the foreign AFS licence only authorises the FFSP to provide financial services to wholesale clients.
- RG 176.35 Table 3 sets out the exempted provisions.

Table 3: Corporations Act provisions that foreign AFS licensees are exempt from under ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX

Provision	Exempted provision
s912A(1)(b), to the extent it requires compliance with reg 7.6.04(1)(a) and (d)	Obligations about notifying ASIC of events that may cause a material adverse change to financial position and maintaining records of training for representatives
s912A(1)(d)	Have adequate resources
s912A(1)(e)	Maintain the competence to provide the financial services
s912A(1)(f)	Ensure representatives are appropriately trained
s912AAC	Meet minimum standards for custodial or depository service providers
s912AAD	Have agreements with sub-custodians to hold custodial property
s912AC	Have adequate financial resources for custodial or depository service providers
All the provisions in Subdivs A and B, Div 2 of Pt 7.8, Div 3 of Pt 7.8	Obligations about handling client money and client property when the sufficiently equivalent protections in the overseas regulatory regime apply to client money paid to, and client property held by, the foreign AFS licensee from a wholesale client in Australia relating to the exempt financial service
s991E	Obligations of licensees in relation to dealings with non-licensees (to the extent the financial product transaction is entered into or arranged outside Australia)
s991F	Dealings involving employees of licensees, if the foreign AFS licensee is only carrying on a financial services business in Australia because it carries on the business of providing eligible financial services under the instrument in Australia

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Provision	Exempted provision
s1017E	Obligations about dealing with money received for a financial product before the product is issued when sufficiently equivalent protections in the overseas regulatory regime apply to the money received from wholesale clients in Australia relating to the exempt financial service

Note: Foreign AFS licensees may also have the benefit of relief from certain financial reporting and record-keeping obligations under [ASIC Corporations \(Financial Licensees and ADIs\) Instrument 2016/186](#).

RG 176.36 Except for the provisions listed in Table 3, a foreign AFS licensee is subject to all other applicable provisions under the Corporations Act, including fundamental conduct obligations to:

- (a) provide financial services efficiently, honestly and fairly (see s912A(1)(a));
- (b) have in place adequate arrangements for management of conflicts of interest (see s912A(1)(aa));
- (c) comply with the conditions on its licence (see s912A(1)(b));
- (d) comply with applicable financial services laws (see s912A(1)(c));

Note: 'Financial services laws' is defined in s761A, and includes Commonwealth, state or territory legislation that covers conduct relating to the provision of financial services.

- (e) take reasonable steps to ensure that representatives comply with applicable financial services laws (see s912A(1)(ca)); and
- (f) have adequate risk management systems (see s912A(1)(h)).

Note 1: This obligation does not apply to a body regulated by APRA.

Note 2: This is not a comprehensive list of licensing obligations applying to foreign AFS licensees. For further guidance, see our [regulatory guides](#). For a list of some of the relevant regulatory guides, see 'Related information' at the end of this guide. You may wish to seek independent legal advice on the obligations that may apply to you.

RG 176.37 A foreign AFS licensee will also be subject to supervisory and enforcement provisions applicable to standard AFS licensees, including:

- (a) our power to direct a licensee to provide a written statement (see s912C);
- (b) breach reporting requirements (see s912D);
- (c) the requirement to give us reasonable assistance during surveillance checks (see s912E); and
- (d) the powers available to us in relation to AFS licences, such as the powers to:
 - (i) impose or vary conditions on a licence (see s914A); and
 - (ii) vary, suspend or cancel a licence (see s915A and 915B).

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Licence conditions that apply to foreign AFS licensees

- RG 176.38 [Pro Forma 209](#) *Australian financial services licence conditions* (PF 209) sets out the standard AFS licence conditions that apply to standard AFS licensees and foreign AFS licensees (as applicable to their individual circumstances). The prescribed conditions under reg 7.6.04 also apply (except those that foreign AFS licensees are exempted from complying with under the sufficient equivalence relief—that is, reg 7.6.04(1)(a) and (d)).
- RG 176.39 In addition to the applicable conditions in PF 209 and the prescribed conditions in the Corporations Regulations, a foreign AFS licensee must comply with all the conditions under ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX. These conditions are outlined in RG 176.19.

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C Applying for a foreign AFS licence

Key points

This section explains the streamlined application process for eligible FFSPs, including:

- how to determine if you are eligible to apply for a foreign AFS licence;
- what information you need to provide with your application; and
- how to lodge your application.

The streamlined application process

RG 176.40 Compared with an application for a standard AFS licence, a streamlined application process applies to applications for a foreign AFS licence. This recognises that foreign AFS licensees are authorised under a sufficiently equivalent overseas regulatory regime to provide the relevant financial services (or substantially the same financial services).

Note: In assessing your application, we will consider whether you can meet the obligations applicable to a foreign AFS licensee: see RG 176.32 and RG 176.39. Accordingly, the streamlined process means that the application has fewer questions and requires fewer ‘proofs’. The [AFS Licensing Kit](#) provides guidance for applicants applying for an AFS licence.

RG 176.41 To apply for a foreign AFS licence, you need to:

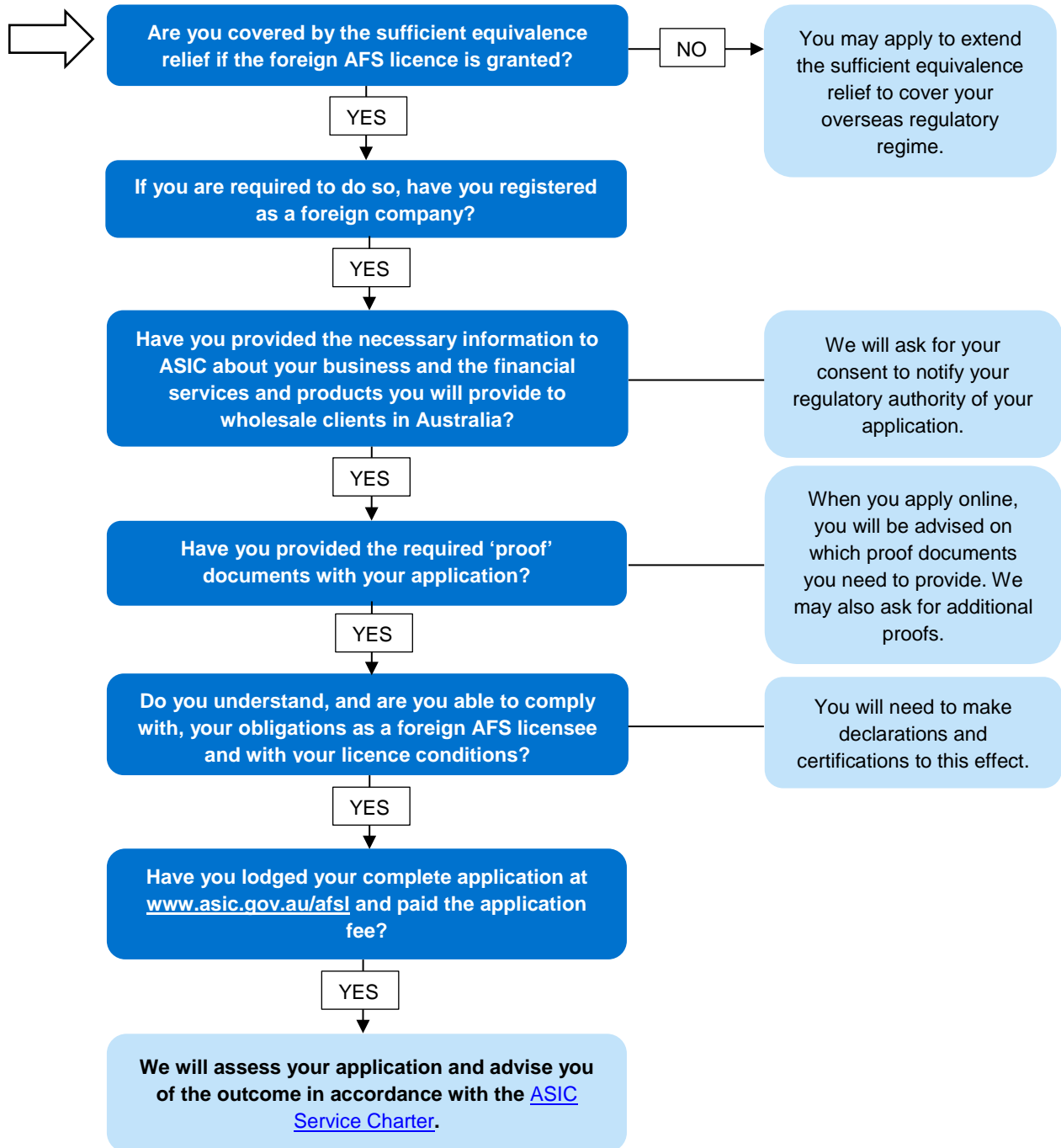
- ensure that you are eligible to apply for a foreign AFS licence (see RG 176.43–RG 176.46);
- ensure that you are registered as a foreign company if you are required to do so under the Corporations Act (RG 176.47–RG 176.48);
- provide the required ‘proof’ documents with your application (see RG 176.49–RG 176.55);
- understand and be able to comply with your obligations as a foreign AFS licensee and with your licence conditions (see RG 176.56–RG 176.58); and
- lodge your application and pay the application fee (see RG 176.59–RG 176.60).

Note 1: Applicants will need an Australian Business Number (ABN) or an Australian Registered Body Number (ARBN) to lodge an application.

Note 2: Annual industry funding levies may also apply: see [Regulatory costs and levies](#) for more information.

RG 176.42 Figure 1 provides an overview of the application process.

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Figure 1: Overview of the foreign AFS licence application process

Note: This flowchart is described in RG 176.41 (accessible version).

Ensure that you are eligible to apply for a foreign AFS licence

RG 176.43 To be eligible to apply for a foreign AFS licence you must be covered by the 'sufficient equivalence' relief if the foreign AFS licence is granted.

The sufficient equivalence relief

- RG 176.44 To be eligible to apply for a foreign AFS licence, an FFSP must be authorised in a ‘specified overseas regulatory regime’: see Table 2.
- RG 176.45 You need to check that the sufficient equivalence relief covers:
- (a) the overseas regulatory regime under which you are authorised to provide financial services to wholesale clients; and
 - (b) the financial services you wish to provide to wholesale clients in Australia—you must be authorised under the overseas regulatory regime to provide substantially the same financial services.
- RG 176.46 If the relevant overseas regulatory regime and/or financial services you wish to provide in Australia are not covered under the sufficient equivalence relief, you may apply to have the relief extended to the overseas regulatory regime and/or financial services that are not covered. If the application is granted, you may then apply for a foreign AFS licence. We will assess applications to extend the sufficient equivalence relief on a jurisdiction-by-jurisdiction basis: see Section D.

Note: We will not accept lodgement of a foreign AFS licence application or proceed to assess such an application until the sufficient equivalence relief has been extended to the applicable overseas regulatory regime in relation to the relevant financial services.

Register as a foreign company (if required)

- RG 176.47 Generally, an FFSP must register as a foreign company under Div 2 of Pt 5B.2 if, among other things, it:
- (a) has a place of business in Australia (e.g. a branch office);
 - (b) establishes or uses a share transfer office or share registration office in Australia; or
 - (c) administers, manages or deals with property in Australia as an agent, legal personal representative, or otherwise.
- RG 176.48 If an FFSP is required to be registered as a foreign company under Div 2 of Pt 5B.2, it must ensure that it has done so.

Note 1: Section 601CD and [RG 121](#) provide that a foreign company must not carry on business in Australia unless it is registered under Div 2 of Pt 5B.2 (or it has applied to be registered and the application has not been dealt with). See RG 121 for further guidance on the meaning of ‘carrying on a business in Australia’.

Note 2: [Information Sheet 32](#) *Foreign companies* (INFO 32) provides guidance on how to register as a foreign company and the ongoing obligations that apply to a registered foreign company.

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Provide ‘proof’ documents

- RG 176.49 You will need to provide proof documents as part of your application. How many and what type will depend on the complexity of the financial services and products you apply for as well as our analysis of your business and the market you propose to operate in. Generally, foreign AFS licence applicants are not required to submit proofs relating to the exempted provisions in Table 3.
- RG 176.50 The online application form will identify the proof documents you need to send as part of your application. We may ask you to provide additional proof documents as required. For further guidance, see the [AFS Licensing Kit](#).
- RG 176.51 Generally, the core proofs that applicants for a foreign AFS licence must provide are:
- (a) *A5 Business Description*—This core proof provides an overview of your financial services business and includes an organisation chart. We need this information so that we can understand the business you are applying to be licensed for. We will also require foreign AFS licence applicants to provide us with:
 - (i) evidence of incorporation in the relevant overseas regulatory regime;
 - (ii) evidence of the authorisation issued by the overseas regulator that would result in the financial services to be provided to wholesale clients in Australia being subject to the exemption in ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX;
 - (iii) details of any significant exemptions or relief obtained from relevant requirements in the overseas regulatory regime that apply to the foreign services the applicant wishes to be authorised to provide in Australia under the foreign AFS licence;
 - (iv) details of any significant investigation, enforcement or disciplinary action undertaken by the overseas regulatory authority against the applicant in a foreign jurisdiction in relation to the financial services provided by the applicant; and
 - (v) consent to notify and engage with the relevant overseas regulatory authority in relation to the application and their business.
 - (b) *People Proofs for each responsible officer, to the extent that the proofs relate to whether the responsible officer is of good fame and character*—This core proof includes a criminal history check and bankruptcy check. We need this information to help us assess whether your responsible officers are of good fame and character.

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- RG 176.52 Applicants will generally not be required to submit the following core proofs:
- (a) B1 Organisational Competence; and
 - (b) B5 Financial Statements and Financial Resources.
- RG 176.53 These core proofs relate to Corporations Act obligations that we have exempted foreign AFS licensees from on the basis that they are subject to:
- (a) a sufficiently equivalent overseas regulatory requirement; and
 - (b) supervision and, if required, enforcement action by an overseas regulatory authority under a sufficiently equivalent overseas regulatory regime in relation to those requirements.
- RG 176.54 We do not require these proofs because, to obtain its foreign authorisation or licence, the FFSP would have had to satisfy the relevant overseas regulatory authority of its ability to comply with overseas regulatory requirements that are sufficiently equivalent to the exempted provisions. The streamlined process reduces duplication in the regulatory assessment of the FFSP's ability to comply with those requirements.
- RG 176.55 Additional proof documents that we may ask you for are listed in [RG 3](#). Depending on the financial services you intend to provide and the complexity of your business, these may include proofs relating to compliance arrangements, risk management, custodial and depository arrangements, making a market, derivatives and foreign exchange products that the financial services relate to.

Ensure that you can comply with your obligations

- RG 176.56 Other than the exempted provisions in Table 3, a foreign AFS licensee is subject to the same obligations as a standard AFS licensee (as applicable to its individual circumstances). You must have systems and processes in place to enable you to comply with these obligations at the time you apply for your licence.
- RG 176.57 When you complete your application, you will be asked to make declarations and certifications to this effect. For further guidance, see the [AFS Licensing Kit](#).
- RG 176.58 We may refuse to grant a foreign AFS licence if we have reason to believe that you will not be able to comply with the obligations applicable to a foreign AFS licensee.

Note: For further guidance on refusals to grant a licence, see [RG 1](#). For example, before we can refuse to grant a licence, we will refer your application to an ASIC delegate who is authorised to make the final decision. The delegate will provide you with an opportunity to appear at a hearing and/or make submissions before making a final decision: see [Regulatory Guide 98 ASIC's powers to suspend, cancel and vary AFS licences and make banning orders](#) (RG 98).

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Lodge your application

- RG 176.59 Lodge your application for a foreign AFS licence at www.asic.gov.au/afsl. All supporting proof documents identified by the online form must be lodged at the same time as the application is submitted. If not, the application will be rejected. For further guidance, see the [AFS Licensing Kit](#).
- RG 176.60 We will assess your application and advise you of the outcome in accordance with the [ASIC Service Charter](#).

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D Applying to extend the sufficient equivalence relief to cover an overseas regulatory regime

Key points

We will assess applications to extend the sufficient equivalence relief to cover other overseas regulatory regimes. Relief will generally be provided in the form of a legislative instrument applying to a class of FFSPs.

This section explains when we will extend the relief to an overseas regulatory regime and how to apply to have the relief extended.

Our approach to extending the relief

RG 176.61 To be eligible for a foreign AFS licence, an FFSP must be authorised in a specified overseas regulatory regime: see Table 2 for a list of these regimes.

RG 176.62 We will assess applications to extend the sufficient equivalence relief to cover other overseas regulatory regimes. We will extend the sufficient equivalence relief to cover an overseas regulatory regime in relation to particular financial services *only* if:

- (a) the particular financial services (not the financial product) are regulated by an overseas regulatory authority (see RG 176.66–RG 176.70);

Note: Examples of financial services that must be regulated include the provision of financial product advice, dealing in financial products, and market making in relation to particular financial products. This extends to where the subject matter regulated under the overseas authorisation is substantially similar to the relevant financial services for which the exemption is sought.

- (b) the regulatory regime overseen by the overseas regulatory authority is sufficiently equivalent to the Australian regulatory regime in relation to the exempted provisions in Table 3 (see RG 176.71–RG 176.84); and
- (c) there are effective cooperation arrangements between the overseas regulatory authority and ASIC (see RG 176.85–RG 176.92).

RG 176.63 In assessing whether regulation by an overseas regulatory authority is sufficiently equivalent to regulation by ASIC for the purposes of granting relief, we will also be guided by [RG 54](#).

RG 176.64 The assessment will be outcomes-based and focused on an assessment of whether the overseas regulation produces similar outcomes to the exempted provisions in Table 3, rather than all the regulatory outcomes in Ch 7 of the Corporations Act.

RG 176.65 In approaching such an assessment, the information we would take into account would include:

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- (a) material from recent reviews of relevant overseas regulatory regimes undertaken by other regulatory bodies such as the Financial Sector Assessment Program undertaken by the International Monetary Fund;
- (b) material we obtain about the overseas regulatory regime through our relationships with international bodies such as the International Organization of Securities Commissions (IOSCO);
- (c) material we receive from the relevant overseas regulator; and
- (d) material we obtain from relevant industry associations to assist us with streamlining the assessment process for a particular jurisdiction.

Regulation of financial services by overseas regulatory authority

RG 176.66 We will:

- (a) assess the overseas regulatory regime overseen by the relevant regulatory authority against our ‘equivalence test’—that is, we will assess whether the outcomes of the requirements in the overseas regime in relation to the financial services are similar to those outcomes produced by the exempted provisions in Table 3; and
- (b) require effective cooperation arrangements with the relevant regulatory authority.

Why we rely on overseas regulatory authorities

RG 176.67 Regulation involves more than the imposition of legal obligations and requirements. A person is only regulated by a body that has the ability to monitor compliance with legal obligations and requirements, conduct investigations through the use of compulsory powers, and enforce compliance with legal obligations and requirements. Generally, an overseas regulatory authority has these powers over persons present in its jurisdiction.

Our approach to self-regulatory organisations

RG 176.68 When considering whether there is ‘sufficiently equivalent’ regulation by an overseas regulatory authority, we will take into account the role of a self-regulatory organisation (SRO) that has responsibilities delegated to it by an overseas regulatory authority. We note that, in some jurisdictions, SROs often have authority delegated to them by a statutory authority.

RG 176.69 In our view, an ‘overseas regulatory authority’ is a body established by, or for the purpose of, a foreign government, and we therefore consider that this term does not include overseas SROs.

RG 176.70 If an overseas regulatory authority delegates its responsibilities to an SRO, the overseas regulatory authority remains the statutory authority. However,

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we will recognise the role played by SROs with authority delegated to them from a statutory authority, and may require effective cooperation arrangements with both the SRO and the overseas regulatory authority.

‘Sufficient equivalence’ of overseas regulatory regime

- RG 176.71 Extending the relief to cover an overseas regulatory regime may, in part, involve overseas regulatory authorities playing a role in ensuring the integrity of Australian markets and the stability of the Australian financial system. To minimise regulatory and enforcement gaps, it is essential that we assess the nature of the regulatory regime overseen by a relevant overseas regulatory authority before we extend the relief.
- RG 176.72 An overseas regulatory regime will be sufficiently equivalent to regulation by ASIC if it:
- (a) achieves sufficiently equivalent regulatory outcomes to the Australian regulatory regime for the regulation of wholesale financial services for the exempted provisions in Table 3 (see RG 176.74–RG 176.76);
 - (b) is clear, transparent and certain (see RG 176.77–RG 176.79);
 - (c) is consistent with the [IOSCO Objectives and Principles of Securities Regulation](#) (see RG 176.80–RG 176.81); and
 - (d) is adequately enforced (see RG 176.82–RG 176.84).
- RG 176.73 These criteria form our outcomes-based ‘equivalence test’.

Sufficiently equivalent regulatory outcomes

- RG 176.74 Whatever its regulatory mechanisms, a sufficiently equivalent regulatory regime must achieve regulatory *outcomes* that are sufficiently equivalent to the regulatory outcomes achieved by the Australian regulatory regime. We will assess whether these outcomes are sufficiently equivalent from the perspective of Australian markets and the Australian financial system. We will not assess retail investor protection outcomes because the relief will apply only to services provided to wholesale clients.
- RG 176.75 An overseas regulatory regime will be assessed as sufficiently equivalent to the Australian regime if it contains regulation that produces similar outcomes to those produced by the exempted provisions in Table 3.
- RG 176.76 Table 4 sets out the high-level outcomes produced by the exempted provisions in Table 3—against which we will assess the overseas regulatory regime. We will only assess the outcomes relevant to the financial services in relation to which the equivalence assessment is being undertaken.

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Table 4: Outcomes that we will assess the overseas regulatory regime against

Exempted Corporations Act provision	Outcome assessed
s912A(1)(d) and 912AC	Whether the overseas regulatory regime requires providers to have adequate resources to provide the financial services
s912A(1)(e)	Whether the overseas regulatory regime requires providers to maintain the competence to provide the financial services
s912A(1)(f)	Whether the overseas regulatory regime requires providers to ensure representatives are appropriately trained
s912AAC	In relation to custodial and depository service providers, whether the overseas regulatory regime requires that: <ul style="list-style-type: none"> the client's assets are not exposed to unnecessary risks because of the way in which they are held; and efficient operational arrangements exist for holding and dealing with client assets, including assets from clients in Australia
s912AAD	In relation to custodial and depository service providers, whether the overseas regulatory regime requires providers to have agreements with sub-custodians to hold custodial property that allows the provider to review and monitor the sub-custodian
All the provisions in Subdivs A and B, Div 2 of Pt 7.8, Div 3 of Pt 7.8	Whether the overseas regulatory regime has effective measures to protect money and property provided by the client to the FFSP, including from clients in Australia
s1017E	Whether the overseas regulatory regime requires providers to separate and protect the money they receive from clients before the issue of relevant financial products, including from clients in Australia

Note: See Principle 10 of [RG 54](#) for further details.

Clear, transparent and certain

- RG 176.77 The outcome-focused equivalence test involves an assessment of the outcomes of the overseas regulatory regime against those of the Australian regulatory regime. This includes testing against the following criteria:
- a 'clear' regulatory regime—that is, one that is clearly articulated and easily understood;
 - a 'transparent' regulatory regime—that is, one where the rules, policies and practices are readily available to, and known by, all relevant persons; and
 - a 'certain' regulatory regime—that is, one that is consistently applied and is not subject to indiscriminate application or changes.

Note: See Principle 7 of [RG 54](#) for further details.

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RG 176.78 An overseas regulatory regime that is not clear, transparent and certain will not be regarded as sufficiently equivalent to the Australian regulatory regime because:

- (a) it cannot be consistently or reliably applied or enforced; and
- (b) we may not be able to obtain sufficient information about how the regime works in practice to assess the regime.

RG 176.79 Therefore, at a minimum, a sufficiently equivalent regulatory regime must:

- (a) be in written form;
- (b) be available in English (even if this is a translation from the original version in another language); and
- (c) not be subject to an unfettered, arbitrary discretion.

Note 1: If we seek verification of any English translation or other relevant details of an overseas regulatory regime, the applicant must meet the costs of such verification.

Note 2: See Principle 7 of [RG 54](#) for further details.

Consistent with IOSCO Objectives and Principles of Securities Regulation

RG 176.80 We will consider if an overseas regulatory regime is broadly consistent with the relevant standards in the [IOSCO Objectives and Principles of Securities Regulation](#). In assessing whether an overseas regulatory regime meets these standards, we will consider:

- (a) whether the overseas regulatory authority has assessed its regulatory regime against the IOSCO Objectives and Principles of Securities Regulation and has reasonably determined that the regulatory regime broadly complies with them; and
- (b) whether other international organisations have assessed the regulatory regime against the IOSCO Objectives and Principles of Securities Regulation and have reasonably determined that the regulatory regime broadly complies with them (e.g. the International Monetary Fund, the World Bank and the Financial Stability Board all assess national financial systems against these objectives and principles).

RG 176.81 The Australian regulatory regime is measured against the IOSCO Objectives and Principles of Securities Regulation. Adherence to these objectives and principles could be an indication of sufficient equivalence.

Note: See Principle 8 of [RG 54](#) for further details.

Adequately enforced

RG 176.82 A regulatory regime is adequately enforced if the regulatory authority:

- (a) has sufficient powers of investigation and enforcement;
- (b) has sufficient resources to use those powers;

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- (c) uses those powers and resources consistently to promote compliance with its regulatory regime; and
- (d) operates within a legal framework that is independent and has a reputation for integrity.

RG 176.83 We will assess the adequacy of an overseas regulatory authority's enforcement capability with reference to:

- (a) the international reputation of that overseas regulatory authority;
- (b) any IOSCO assessments of the overseas regulatory authority, including self-assessments or assessments by other IOSCO members; and
- (c) any assessments of the overseas regulatory regime by international financial institutions or other international organisations.

RG 176.84 It is unlikely that an overseas regulatory regime that is frequently ignored or inconsistently applied will provide sufficiently equivalent regulatory outcomes to the Australian regulatory regime. An inadequately enforced regulatory regime will not reliably protect market integrity.

Note: See Principle 9 of [RG 54](#) for further details.

Effective cooperation arrangements

RG 176.85 We will grant relief only if we are satisfied that there are effective cooperation arrangements between the relevant overseas regulatory authority and ASIC. This is a matter for ASIC to decide, in consultation with the relevant overseas regulatory authority. It cannot be dealt with by FFSPs or industry bodies in an application for relief.

RG 176.86 Effective cooperation arrangements will usually be in the form of a memorandum of understanding (MOU), or some other documented arrangement, although they may be established or supplemented by less formal arrangements. The MOU could be bilateral or multilateral: see, for example, the IOSCO [Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information](#) (IOSCO MMOU) or the IOSCO [Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information](#) (IOSCO Enhanced MMOU).

RG 176.87 Effective cooperation arrangements will provide for:

- (a) the prompt sharing of information by the relevant overseas regulatory authority; and
- (b) effective cooperation on:
 - (i) supervision and investigation; and
 - (ii) enforcement.

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RG 176.88 We will also look to effective cooperation arrangements with the relevant overseas regulatory authority to help inform us of:

- (a) significant changes to the authorisation, licence or registration of an FFSP or class of FFSP;
- (b) significant exemptions or other relief an FFSP or class of FFSP may obtain from the overseas regulatory regime;
- (c) significant changes to the relevant overseas regulatory regime; and
- (d) significant investigation, enforcement or other disciplinary action against an FFSP operating in Australia with the benefit of relief.

RG 176.89 We consider that, particularly in the supervision of FFSPs, effective cooperation arrangements with an overseas regulatory authority will mean that we have the potential for direct contact with the relevant officers of that authority to enable prompt exchanges of information and effective cooperation.

RG 176.90 Generally, effective cooperation arrangements will not be possible unless the overseas regulatory authority has the power under its regulatory regime to cooperate with us in these ways.

RG 176.91 When assessing whether we have effective cooperation arrangements with an overseas regulatory authority, we will take into account:

- (a) whether there are supervisory cooperation arrangements between the relevant overseas regulatory authority and ASIC that are consistent with IOSCO expectations regarding cross-border supervisory cooperation;
- (b) whether the overseas regulatory authority is a signatory to Appendix A of the [IOSCO MMOU](#) and to the [Enhanced IOSCO MMOU](#); and

Note: The IOSCO MMOU sets an international benchmark for cross-border cooperation between securities regulators on enforcement matters. In general, we consider IOSCO MMOU Appendix A signatory status as a good indicator of effective cooperation. However, we will also consider IOSCO MMOU Appendix B signatory status as an indicator together with the particular circumstances of the relevant overseas regulatory authority.

- (c) whether there is an existing MOU between the overseas regulatory authority and ASIC that creates an effective cooperation arrangement.

Note: See Principle 3 of [RG 54](#) for further details.

RG 176.92 We may consider proposing or agreeing to a mutual recognition arrangement with an overseas regulatory authority. Arrangements for any mutual recognition arrangement will contain appropriate provisions to help ensure effective cooperation arrangements.

Note: See Section B of [RG 54](#) for further details.

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How to apply for an extension of the relief

- RG 176.93 We will assess applications to extend the sufficient equivalence relief to cover other overseas regulatory regimes on a country-by-country basis, depending on our assessment of the particular regime. Relief will generally be provided in the form of a legislative instrument applying to a class of FFSPs that we have determined are regulated under a sufficiently equivalent regime.
- RG 176.94 Where ‘class’ relief is not appropriate, we may exercise our discretionary powers to grant relief on an individual basis. We expect this will only occur on a rare and exceptional basis.
- RG 176.95 Individual relief will be limited to:
- (a) a particular FFSP; and
 - (b) the particular financial services provided by that FFSP in Australia.
- RG 176.96 We consider that it would be rare for individual relief (as compared to class relief) to be appropriate. If an application is made for individual relief, and we consider that class relief would be more appropriate, we may assess the application as if it was an application for class relief instead.

What you need to do

- RG 176.97 If your overseas regulatory regime is not already covered by the sufficient equivalence relief in Table 2, send an email to applications@asic.gov.au for advice on whether you can apply to extend the relief to cover the overseas regulatory regime on the basis that there are effective cooperation arrangements. We will not be able to extend the relief if your overseas regulatory authority does not have effective cooperation arrangements with ASIC. We will respond advising whether we have such arrangements. Before responding, we may engage with the overseas regulatory authority.
- RG 176.98 After we have advised you on whether there are effective cooperation arrangements, you may apply for relief and pay the application fee. Your application to extend the relief should:
- (a) include *all* the information in RG 176.102–RG 176.106; and
 - (b) comply with [Regulatory Guide 51 Applications for relief](#) (RG 51).
- RG 176.99 We may also seek additional information: see RG 176.105–RG 176.106.
- RG 176.100 If an application is made for individual relief, we will ask for your consent to notify your relevant overseas regulatory authority of the application. In notifying the relevant overseas regulatory authority, we may:
- (a) inform that regulatory authority about the content of the application; and
 - (b) ask that regulatory authority questions about you.
- RG 176.101 Lodge your application in writing addressed to applications@asic.gov.au.

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Information we require

- RG 176.102 There is no prescribed application form for applying for relief. Applicants should:
- (a) clearly identify the relevant financial services and financial products in relation to which the relief is being sought;
 - (b) provide us with the relevant information and documents to demonstrate that the criteria in RG 176.62 are satisfied in relation to those financial services (other than information about whether we have effective cooperation arrangements with the relevant overseas regulatory authority); and
 - (c) provide submissions as to whether each of the outcomes in Table 4 is achieved by sufficiently equivalent requirements in the overseas regulatory regime.
- RG 176.103 In addition, applicants should:
- (a) provide verifiable information in support of any assertions about the overseas regulatory regime, such as current references to legislation, regulations and policy;
 - (b) if the relevant financial services are described in different terminology in the overseas regulatory regime—describe how it would translate into Australian terminology; and
 - (c) explain the jurisdictional reach of the overseas regulatory authority and the overseas regulatory regime, in terms of whether the authority and regime regulates services provided by FFSPs to wholesale clients in Australia.
- RG 176.104 We will ask for additional information from an applicant if we need it to properly assess the application.
- RG 176.105 In assessing an application, we may also ask you to provide:
- (a) information from the relevant overseas regulatory authority; and
 - (b) independent verification from overseas lawyers.
- RG 176.106 We may require relevant information to be made available in English, or an independent verification, to help us make an independent assessment of the overseas regulatory authority and regulatory regime.

Note: If we consider it appropriate to seek verification from overseas lawyers or verification of any English translation, or other relevant details of an overseas regulatory regime, the applicant must meet the costs of, or provide, the verification, or we may refuse the application.

Processing your application

- RG 176.107 The time it will take us to process an application will vary depending on:

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- (a) the complexity of the application;
- (b) the related difficulty of assessing the equivalence of the relevant overseas regulatory regime to the Australian regime when this assessment has not been done previously;
- (c) the amount of material we must assess;
- (d) whether the information provided to us in the application is complete;
and
- (e) whether we have dealt with a similar application before.

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E Transitional arrangements for entities relying on the previous sufficient equivalence relief

Key points

This section explains the transitional arrangements for FFSPs relying on relief from holding an AFS licence immediately before the implementation of the foreign AFS licensing regime on the basis of sufficient equivalence (previous sufficient equivalence relief).

These FFSPs may apply for a foreign AFS licence from 1 April 2020 covering the financial services that were subject to the previous sufficient equivalence relief. This is because the overseas regulatory regimes under which they are regulated have already been assessed by ASIC as 'sufficiently equivalent' in relation to those relevant financial services.

The previous sufficient equivalence relief

- RG 176.108 Before the implementation of the foreign AFS licensing regime, ASIC granted conditional AFS licensing relief to FFSPs to facilitate the provision of specified financial services to wholesale clients in Australia, where the FFSP was regulated under one or more specified overseas regulatory regimes that have been assessed by ASIC to be sufficiently equivalent to the Australian regulatory regime.
- RG 176.109 This sufficient equivalence relief was contained in the following instruments, which have now been repealed:
- (a) Class Order [CO 04/1313] *German BaFin regulated financial service providers*;
 - (b) Class Order [CO 03/1103] *Hong Kong SFC regulated financial service providers*;
 - (c) Class Order [CO 03/1099] *UK regulated financial service providers*;
 - (d) Class Order [CO 03/1102] *Singapore MAS regulated financial service providers*;
 - (e) Class Order [CO 03/1100] *US SEC regulated financial service providers*;
 - (f) Class Order [CO 03/1101] *US Federal Reserve and OCC regulated financial service providers*;
 - (g) Class Order [CO 04/829] *US CFTC regulated financial services providers*;
 - (h) ASIC Corporations (CSSF—Regulated Financial Services Providers) Instrument 2016/1109; and

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- (i) individual relief instruments issued to specified FFSPs on similar terms.

Note: ASIC Corporations (Repeal and Transitional) Instrument 2016/396 and [ASIC Corporations \(Amendment\) Instrument 2018/807](#) temporarily extended the relief for FFSPs available under these instruments (the current extension is until 30 September 2019). We intend to further extend this relief to 31 March 2020 and commence the foreign AFS licensing regime on 1 April 2020.

Who the transitional arrangements apply to

RG 176.110 Transitional arrangements apply to an FFSP that:

- (a) notified ASIC of its reliance on the previous sufficient equivalence relief contained in one or more of the instruments in RG 176.109, or has been granted individual relief on substantially the same terms, before 1 April 2020;
- (b) has not since notified ASIC that it no longer wishes to rely on that relief; and
- (c) was able to rely on the relief on 31 March 2020.

RG 176.111 As the overseas regulatory regimes under which these FFSPs are regulated have already been assessed under the previous sufficient equivalence relief, we have already undertaken an assessment of those regimes in relation to the relevant financial services. Sufficient equivalence relief will be granted in relation to each of these regimes in ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX. Accordingly, these FFSPs will be eligible to apply for a foreign AFS licence from 1 April 2020.

RG 176.112 We will provide transitional relief to continue the effect of the previous sufficient equivalence relief for 24 months after the commencement of the foreign AFS licensing regime. This transitional period will provide an FFSP that satisfies the criteria in RG 176.110 with sufficient time to:

- (a) apply for a foreign AFS licence to continue providing the financial services for which it was exempt to wholesale clients in Australia;
- (b) apply for a standard AFS licence to continue providing financial services in Australia;
- (c) cease carrying on a financial services business in Australia; or
- (d) limit its financial services business in Australia to what is exempt from requiring an AFS licence.

RG 176.113 If an FFSP intends to apply for a foreign AFS licence or a standard AFS licence to continue providing financial services in Australia, it should lodge its licence application as soon as possible following commencement of the new regime to allow ASIC time to process the application.

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- RG 176.114 FFSPs should consider ASIC's service charter, which sets out our timing targets for processing licence applications. However, the time taken for processing any application will depend on a range of factors, including the facts particular to the applicant, the completeness of the application and its complexity, and the volume of applications ASIC has on hand.
- RG 176.115 Early lodgement of the foreign AFS licence application will help us to process the application before the end of the transitional period. An extension of the transitional relief will only occur in rare and exceptional circumstances, and will not be granted if it is solely due to delays with lodgement by an applicant.

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F ‘Funds management’ relief

Key points

This section explains the AFS licensing relief that may apply to FFSPs that provide ‘funds management financial services’ to professional investors in Australia (‘funds management’ relief).

Note: There are also statutory exemptions that may be available to FFSPs (e.g. reg 7.6.02AG of the Corporations Regulations).

Who the relief may be available to

RG 176.116 The funds management relief may give relief to an FFSP from the requirement to hold an AFS licence. The relief is available to an FFSP that provides ‘funds management financial services’ (see RG 176.118) to professional investors in Australia, subject to:

- (a) a cap based on annual aggregated revenue that limits the provision of those services; and
- (b) requirements that apply to the operation of the relief.

Note: FFSPs relying on the funds management relief can only provide financial services to ‘professional investors’. Professional investors are a subset of wholesale clients. Professional investors include AFS licensees, bodies regulated by APRA, trustees, a listed entity or a related body corporate of a listed entity, a body corporate, or a person that controls at least A\$10 million: see s9. In contrast, wholesale clients include persons who invest more than A\$500,000.

RG 176.117 The funds management relief may enable an FFSP to test the Australian market before deciding whether to apply for a foreign AFS licence or a standard AFS licence. It is also available to an FFSP that is unable to rely on the sufficient equivalence relief, where it is only undertaking limited activities in Australia.

Meaning of ‘funds management financial services’

RG 176.118 A person engages in ‘funds management financial services’ if they provide:

- (a) any of the following financial services to a professional investor in Australia:
 - (i) dealing in interests of a managed investment scheme (scheme) established outside Australia or securities of a body (body) that carries on a business of investment that is not incorporated in Australia;

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- (ii) providing financial product advice in relation to the interests or securities of the scheme or body; or
- (iii) making a market in relation to the interests or securities of the scheme or body; and
- (b) portfolio management services to a limited category of professional investors that we specify in this guide as ‘eligible Australian users’ (see RG 176.119).

Note: There is an exemption for custodial and depository service providers in reg 7.6.01(k) operating under a master custody arrangement.

Eligible Australian users

RG 176.119 For portfolio management services, the funds management relief is only available for the provision of the service to the following specified ‘eligible Australian users’:

- (a) a person in Australia who is a trustee of:
 - (i) a superannuation fund, within the meaning of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), with net assets of at least A\$10 million;
 - (ii) an approved deposit fund, within the meaning of the SIS Act, with net assets of at least A\$10 million;
 - (iii) a pooled superannuation trust, within the meaning of the SIS Act, with net assets of at least A\$10 million;
 - (iv) a public-sector superannuation fund, within the meaning of the SIS Act, with net assets of at least A\$10 million;
- (b) a person in Australia who operates a managed investment scheme with net assets of at least A\$10 million;
- (c) a person who operates a statutory fund under the *Life Insurance Act 1995* in Australia; and
- (d) an exempt public authority, as defined in s9 of the Corporations Act.

Note: An exempt public authority is defined in s9 as a public authority or instrumentality or agency of the Crown in right of the Commonwealth, in right of a state or in right of a territory, that is a body corporate incorporated in Australia or an external territory.

Aggregated revenue cap on the scale of activities

RG 176.120 To be eligible for the funds management relief, the FFSP can only provide the financial services if less than 10% of its annual aggregated consolidated gross revenue is generated from the provision of:

- (a) the relevant financial services to professional investors in Australia; and
- (b) portfolio management services to eligible Australian users.

- RG 176.121 To determine the revenue derived from funds management financial services, the FFSP would apply the relevant accounting practice to determine revenue in its home jurisdiction.
- RG 176.122 To measure compliance with the 10% aggregated revenue cap, the FFSP would, at the time it proposes to provide the funds management financial service to clients in Australia, need to:
- (a) assess whether, in the financial year that ended immediately before the provision of the funds management financial service, it has complied with the 10% aggregated revenue cap; and
 - (b) form a view about whether it will comply with the 10% aggregated revenue cap in the current financial year if it were to provide the service.
- RG 176.123 If the FFSP forms a view that it will or may breach the aggregated revenue cap in the financial year that it provides the service, the FFSP should not provide the service.

Conditions on the operation of the relief

- RG 176.124 An FFSP that seeks to have the benefit of the funds management relief is subject to the following conditions:
- (a) the FFSP must not be carrying on a business in Australia;
 - (b) the FFSP must have appointed a local agent (see RG 176.125);
 - (c) the FFSP must enter into a deed submitting to the non-exclusive jurisdiction of the Australian courts in relation to action by ASIC and other Australian government entities, and lodge it with ASIC (see RG 176.126–RG 176.129);
 - (d) the FFSP must notify ASIC of the types of funds management financial services it intends to provide to professional investors in Australia;
 - (e) the FFSP must maintain adequate proof of its compliance with the 10% aggregated revenue cap (these records should be kept for a period of seven years);
 - (f) the FFSP must comply with directions from ASIC to provide a statement (similar to s912C);
 - (g) the FFSP must provide reasonable assistance to ASIC during surveillance checks (similar to s912E);
 - (h) the financial services must be provided only to clients in Australia who meet the definition of professional investor, or, in the case of portfolio management services, only to clients who meet the definition of eligible Australian user; and

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- (i) the FFSP cannot rely on the relief if ASIC has notified the FFSP, or its agent, that the FFSP is excluded from relying on the relief, and ASIC has not withdrawn the notice (see RG 176.131).

Appointment of a local agent

- RG 176.125 To ensure that Australians, including ASIC, may effectively engage with an FFSP, the FFSP must appoint a local agent who will be able to receive notices and respond to requests for relevant information about the activities involving investors in Australia.

Execution and lodgement of deed

- RG 176.126 To ensure that an FFSP complies with the conditions of the funds management relief, and any other applicable Australian laws, we may need to commence legal proceedings in an Australian court.

Note: See [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151) for further information.

- RG 176.127 To facilitate enforcement actions in Australia, the FFSP must execute and lodge with ASIC a deed that sets out certain provisions. This deed is for the benefit of, and is enforceable by, ASIC (and other persons referred to in s659B(1), and continues to apply even if the FFSP has ceased to rely on the relief.

- RG 176.128 The deed must specify that:

- (a) the FFSP will submit to the non-exclusive jurisdiction of the Australian courts in legal proceedings (when brought in the name of ASIC or the Crown or otherwise) that are conducted:
 - (i) by ASIC (including under s50 of the *Australian Securities and Investments Commission Act 2001*); and
 - (ii) for proceedings relating to a financial services law, by any Commonwealth, state or territory entity, as referred to in s659B(1) of the Corporations Act;
- (b) the FFSP will comply with any order of an Australian court for any matter relating to the provision of financial services;
- (c) on the written request of ASIC, the FFSP will give or vary written consent and take all other practicable steps to enable and assist the home regulator to disclose to ASIC any information or document that the home regulator has that relates to the FFSP;
- (d) if ASIC gives the FFSP a written notice directing the foreign company to give to ASIC a written statement containing specific information about the financial services provided by the FFSP in Australia, the FFSP will comply with the notice; and

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- (e) the FFSP will give such assistance to ASIC as ASIC reasonably requests in relation to whether the FFSP is complying with the financial services laws, and in relation to the performance of ASIC's other functions.

RG 176.129 The original deed must be dated, and it must be signed by a person authorised by the FFSP to do so on its behalf. If the FFSP is an unincorporated entity, the FFSP must provide an authority for the person to sign the deed.

Complying with notices from ASIC

RG 176.130 An FFSP that is relying on the funds management relief must comply with a notice from ASIC. From time to time, we may issue a notice to an FFSP directing it to lodge with ASIC a written statement containing specific information, such as:

- (a) the financial products and services provided in Australia in any given calendar year;
- (b) whether the services provided to professional investors are within the 10% aggregated revenue cap imposed on the relief; and
- (c) whether the financial services are provided to professional investors only.

What happens if an FFSP breaches a condition of relief?

RG 176.131 ASIC may notify an FFSP, or its agent, of our intention to exclude an FFSP from relying on the funds management relief. We may do so if:

- (a) the FFSP:
 - (i) fails to provide proof of records of the financial services it provides to professional investors in Australia in any given calendar year;
 - (ii) provides financial services that exceed the 10% aggregated revenue cap in purported reliance on the relief; and/or
 - (iii) provides financial services to persons in Australia other than professional investors in purported reliance on the relief;
- (b) we receive:
 - (i) reports of misconduct from members of the public; and/or
 - (ii) referrals from other regulators; and/or
- (c) we think there may be non-compliance with the conditions of the relief through our monitoring and surveillance work.

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Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7)
[CO 14/26] (for example)	An ASIC class order (in this example numbered 14/26) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
Div 2 (for example)	A division of the Corporations Act (in this example numbered 2)
eligible Australian users	For the purposes of the funds management relief, a limited category of professional investor (as specified in RG 176.119) who is provided with portfolio management services by an FFSP
equivalence test	The criteria set out in RG 176.72 by which we will assess the equivalence of a relevant overseas regulatory regime to the Australian regulatory regime
financial services law	Has the meaning given in s761A of the Corporations Act
foreign AFS licence	A modified AFS licence issued to an FFSP that: <ul style="list-style-type: none"> • provides financial services to wholesale clients in Australia; and • is regulated by an overseas regulatory regime that ASIC has determined is sufficiently equivalent to the Australian regulatory regime
foreign financial services provider (FFSP)	A provider that is regulated by an overseas regulatory authority and that wishes to provide financial services in Australia

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Term	Meaning in this document
funds management relief	<p>Relief from the requirement to hold an AFS licence when an FFSP provides funds management financial services in Australia:</p> <ul style="list-style-type: none"> • to professional investors only; or • in the case of portfolio management services—to a limited category of professional investor (referred to as 'eligible Australian users'). <p>The relief is subject to:</p> <ul style="list-style-type: none"> • a cap on the scale of the services that may be provided to professional investors in Australia; and • conditions that apply to the operation of the relief
funds management financial services	<p>Means:</p> <ul style="list-style-type: none"> • any of the following financial services provided by an FFSP to a professional investor in Australia: <ul style="list-style-type: none"> – dealing in interests of a managed investment scheme (scheme) established outside Australia or securities of a body (body) that carries on a business of investment that is not incorporated in Australia; – providing financial product advice in relation to the interests or securities of the scheme or body; or – making a market in relation to the interests or securities of the scheme or body; and • a portfolio management service provided by an FFSP to a limited category of professional investors that we specify as 'eligible Australian users'
home jurisdiction	The jurisdiction from which the FFSP originates and in which it is regulated
host jurisdiction	A jurisdiction, other than the jurisdiction from which the FFSP originates, in which the FFSP provides financial services
IOSCO	International Organization of Securities Commissions
IOSCO Enhanced MMOU	IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information
IOSCO MMOU	IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information
IOSCO Objectives and Principles of Securities Regulation	The IOSCO Objectives and Principles of Securities Regulation , originally adopted by IOSCO in September 1998, as amended from time to time
IOSCO Principles Regarding Cross-Border Supervisory Cooperation	The Principles Regarding Cross-Border Supervisory Cooperation, originally adopted by IOSCO in May 2010, as amended from time to time

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Term	Meaning in this document
MOU	Memorandum of understanding
overseas regulatory authority	The relevant regulatory authority of the FFSP in its home jurisdiction
overseas regulatory regime	The regulatory regime supervised and administered by the overseas regulatory authority
principles for cross-border financial regulation	The principles set out in RG 54
professional investor	Has the meaning given in s9 of the Corporations Act
Pt 5B.2 (for example)	A part of the Corporations Act (in this example numbered 5B.2)
reg 7.6.02AG (for example)	A regulation of the Corporations Regulations (in this example numbered reg 7.6.02AG)
regulatory regime	The rules that govern a financial facility, service or product, including the legislation, rules, policies and practices of a regulatory authority
relevant overseas regulatory authority	The overseas regulatory authority which, in our view, has primary responsibility for monitoring and enforcing compliance by the FFSP with its regulatory obligations in relation to the financial services that it provides or intends to provide in Australia with the benefit of relief
RG 54 (example)	An ASIC regulatory guide (in this example numbered 54)
s911A (for example)	A section of the Corporations Act (in this example numbered 911A), unless otherwise specified
self-regulatory organisation (SRO)	A non-government entity that has the authority to create, amend, implement and enforce rules of conduct, and resolve disputes through arbitration or other means
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
sufficient equivalence relief	The relief contained in ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2019/XXX or any individual relief instrument provided on substantially the same terms
wholesale client	A client who is not a retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations

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Related information

Headnotes

Australian financial services licence, effective cooperation arrangements, eligible Australian user, FFSP, foreign AFS licence, foreign financial services provider, funds management relief, licensing, overseas regulatory authority, professional investor, relief, sufficiently equivalent regulation, wholesale clients

ASIC instruments and pro formas

[ASIC Corporations \(Amendment\) Instrument 2018/807](#)

[PF 209](#) *Australian financial services licence conditions*

Regulatory guides

[RG 1](#) *Applying for and varying an AFS licence*

[RG 2](#) *Preparing your AFS licence application*

[RG 3](#) *Preparing your additional proofs*

[RG 36](#) *Licensing: Financial product advice and dealing*

[RG 51](#) *Applications for relief*

[RG 54](#) *Principles for cross-border financial regulation*

[RG 80](#) *Managed investment schemes: Interests not for money*

[RG 98](#) *ASIC's powers to suspend, cancel and vary AFS licences and make banning orders*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 121](#) *Doing financial services business in Australia*

[RG 172](#) *Financial markets: Domestic and overseas operators*

[RG 178](#) *Foreign collective investment schemes*

[RG 181](#) *Licensing: Managing conflicts of interest*

[RG 190](#) *Offering securities in New Zealand and Australia under mutual recognition*

Legislation

Australian Securities and Investments Commission Act 2001, s50

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Corporations Act, Chs 5C, 7, Div 2 of Pt 5B.2, Divs 2, 3 and 6 of Pt 7.8, Div 2 of Pt 5B.2, s9, 659B, 912A, 912AAC, 912AAD, 912AC, 912C, 912D, 912E, 914A, 915A, 915B, 991E, 991F, 1017E

Corporations Regulations, regs 7.6.01, 7.6.02AG, 7.6.04

Life Insurance Act 1995

SIS Act

Consultation papers and reports

[CP 98](#) *Cross-border recognition: Facilitating access to overseas markets and financial services*

[CP 268](#) *Licensing relief for foreign financial services providers with a limited connection to Australia*

[CP 301](#) *Foreign financial services providers*

[REP 134](#) *Enhancing capital flows into and out of Australia*

Information sheets

[INFO 30](#) *Fees for commonly lodged documents*

[INFO 32](#) *Foreign companies*

[INFO 151](#) *ASIC's approach to enforcement*

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