



ASIC
Australian Securities &
Investments Commission

The Government's enhanced regulatory sandbox

ASIC webinar - 31 August 2020

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Objective of the webinar

- After the webinar, you have a better understanding of:
 - the enhanced regulatory sandbox (ERS) framework
 - what is required of you to make a notification to ASIC to make use of the ERS
 - what ASIC considers in assessing a notification
 - what are the obligations of businesses making use of the ERS exemption
 - where to obtain more information and assistance about the ERS



Agenda

- Opening statement by Cathie Armour, ASIC Commissioner
- Outline of the Government's enhanced regulatory sandbox
- How to make a notification and its assessment by ASIC
- Outline the conduct and disclosure obligations
- Other information and assistance
- Questions and Answers

Opening statement

Cathie Armour
ASIC Commissioner

Outline of the enhanced regulatory sandbox

George Marangoly
Senior Advisor
ASIC's Innovation Hub



ERS licensing exemption - elements

- It is a financial services and credit activities licensing exemption
 - Eligible persons
 - Eligible financial services
 - Eligible financial products and relevant caps
 - Eligible credit activities and relevant credit contracts
 - Overall limit cap
 - Duration and multiple use

In the following 6 slides – bold points indicate where the ERS is different to the ASIC Sandbox



Eligible persons

- Unlicensed businesses
- **Licensees or representatives not authorised for the same financial services or credit activities as are proposed to be tested (checked across corporate group)**
- Natural persons must be Australian citizens or permanent residents and satisfy criteria similar to above for corporates
- Foreign companies registered in Australia
- Not an operator of a financial market or clearing/settlement facility



Eligible financial services or credit activities

- Financial product advice (personal and general)
- **Dealing by issuing, varying or disposing of a non-cash payment facility (being your own NCPF)**
- Dealing in (other than by issuing) eligible financial products
- **a Crowd-funding service**

In relation to insurance products, you can act as **an agent (eg: issuing under a binder agreement with the insurer)** or a principal.



Eligible financial products

- Wholesale clients – all except derivatives and margin lending
- Retail clients:
 - deposits, except for retirement savings accounts
 - non-cash payment facilities
 - general insurance products, except for consumer credit insurance products
 - **life insurance products**
 - **superannuation products**
 - interests in simple managed investment schemes
 - Commonwealth debentures, stocks or bonds
 - Listed domestic or **international** securities
 - **fully-paid ordinary shares if providing securities as part of a crowd-funding service.**



Retail client limits – certain financial products

Retail clients may commit a **maximum of \$10,000 in total across the following financial products – and across the entity’s current and any previous ERS exemptions:**

- interests in simple managed investment schemes
- Commonwealth debentures, stocks and bonds
- listed domestic or **foreign** securities
- **securities offered under a crowd-funding service**
- **non-cash payment facilities issued by you.**



Eligible credit activities

Under the ERS exemption, you can test eligible credit activities. You can **provide credit contracts**, and credit services that relate to a credit contract (or proposed credit contract), as long as:

- **the term of the contract does not exceed four years**
- the credit limit of the contract is more than \$2,000 and less than \$25,000
- the contract is not a reverse mortgage or a small amount credit contract
- the contract is not secured by a charge or lien over a consumer's household property



Total exposure limits – across all services and activities

A \$5 million aggregate client exposure limit applies across all:

- financial services and products you provide
- **value of credit contracts** entered into in relation to eligible credit activities
- your clients (including retail clients, wholesale clients and credit consumers)
- **your related entities**
- your current **and past uses** of the ERS exemption.

In relation to life and general insurance – count the gross written premiums.



Duration and multiple use

- **Reliance on the ERS exemption can last up to 2 years** – starting from day 31 after notification to ASIC
 - **But no provision to apply to ASIC for an extension of time or to pause testing**
- **You can rely on the ERS more than once – however:**
 - For different eligible financial services or credit activities than tested before
 - Subject to the overall \$5M limit



Notifications and conduct and disclosure obligations

Mark Adams
Senior Executive Leader,
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Innovation Hub



How to notify ASIC

- You must notify ASIC of your intent to use the ERS
- You must provide with all the information required by the prescribed notification form
- You must satisfy ASIC of a range of matters including:
 - the probity requirements
 - the net public benefit test
 - the innovation test
 - membership of the Australian Financial Complaints Authority
 - minimum professional indemnity requirements



ASIC's approach to assessment of a notification

- A pragmatic approach
- Reliance on:
 - your information with the notification
 - ASIC's knowledge sourced from all relevant business teams
- Ordinarily, ASIC will not requisition for additional information
- ASIC has 30 days to assess a notification
- ASIC will write to you within 30 days to confirm whether or not you can rely on the ERS exemption



The probity requirements

- ASIC must be satisfied of the probity, fitness and propriety of you, your officers, your controllers, the officers of your controllers and your significant decision makers
- The requirements are the same as applying for a licence
- For each of the relevant individuals the following checks are required:
 - Bankruptcy
 - Criminal history
 - Personal history



Net public benefit test

- You must adequately explain why your proposed business to test will result, or be likely to result, in a benefit to the public
- The benefit must outweigh any detriment to the public that will result, or be likely to result, from exempting that business
- ASIC asks supporting questions including:
 - explain whether, and how, your proposed business: (a) increases Australian consumer choice (b) reduces cost (c) provides better user experience or (d) provides enhanced efficiency
 - identify the main risks that your proposed business poses to Australian clients or consumers and explain how each of those risks will be managed and controlled



The innovation test

- You must adequately explain why your proposed business should be considered either a new or a new adaptation or improvement of another business
- ASIC asks supporting questions, including:
 - explain whether, and why, you consider your proposed business is a new or a different service compared to what is available in the Australian market?
 - describe what comparable businesses to your proposed business do you consider are already available in the Australian market (if any)?



Conduct and disclosure obligations

You must meet ongoing conduct and disclosure obligations including:

- Upfront disclosures about you and your financial service or credit activities
- Disclosure about ceasing business
- You must maintain adequate internal dispute arrangements
- You must maintain membership of AFCA
- You must maintain minimum professional indemnity insurance including arrangements for 12 months after you cease your test
- Financial advice disclosure and conduct obligations
- Provide product disclosure documents
- Responsible lending and related conduct obligations



Other direct obligations

Notwithstanding the ERS exemption, some obligations of law will continue to directly apply to you, including:

- The prohibition against misleading or deceptive conduct
- The prohibition against unconscionable conduct
- The design and distribution obligations (from Oct 2021)
- The AML/KYC obligations
- The privacy obligations



Other options to test your business

- Seek an Australian financial services or credit licence
- Operate as the representative of a licensee
- Rely on alternative exemptions:
 - low value non-cash payment facilities class waiver
 - lending to businesses



Other information

- The ASIC Information Sheet on the ERS
- The ASIC Infographic on the ERS
- The comparison guide on the ASIC sandbox and the ERS
- The prescribed notification form and guidance
- Other ASIC guidance – including, on:
 - meeting the relevant conduct and disclosure obligations applied under the ERS
 - Seeking an AFSL or ACL
 - Other exemptions under the law
- Inquiries to ASIC's Innovation Hub at innovationhub@asic.gov.au

Questions and Answers

