

Attachment 1 to CS 11: Draft updated RG 51



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 51

Applications for relief

October 2024

About this guide

This guide is for applicants and advisers who are making an application for relief under relevant provisions of the Acts administered by ASIC.

It sets out our general approach to granting relief, the requirements and process for making relief applications, and how ASIC charges fees for such applications.

The examples used in this guide refer to powers commonly exercised by ASIC, however, the principles apply to our discretionary powers generally.

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
- 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 October 2024 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 51, issued December 2009, reissued July 2020, updated October 2021
- Superseded Policy Statement 51, issued September 2006, rebadged as a regulatory guide 5 July 2007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 Acts administered by ASIC 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

ASIC has discretionary powers to grant relief by exemption or declaration (to omit, vary or modify) on an individual or class basis, or by approval, consent, determination, direction, statement or nomination, under certain legislative provisions and in certain circumstances.

This guide covers our general approach to assessing applications for the exercise of our discretionary powers.

There are three types of relief applications available—standard applications, minor and technical applications, and novel applications.

Applications for relief are required to follow a process, which includes clearly and completely identifying and addressing key issues relating to the legislative provisions from which the proposed relief is sought, and highlighting other relevant matters that will help us with our assessment of the application, including any urgency surrounding the application.

Our approach to relief applications

- RG 51.1 In considering and determining relief applications, we take the following factors into consideration:
- (a) the facts, circumstances and merits of the application: see RG 51.19;
 - (b) our two broad objectives—consistency and definite principles: see RG 51.21–RG 51.26;
 - (c) the policy objectives of the particular provisions in relation to which relief is sought: see RG 51.27;
 - (d) any relevant policy ASIC has published and the underlying principles of that policy: see RG 51.28;
 - (e) our regulatory objectives in s1(2) of the ASIC Act: see RG 51.29; and
 - (f) where relevant, the commercial benefit and any net regulatory benefit or detriment that would flow from granting the relief: see RG 51.30–RG 51.32.

Note: We generally publish our policy in the form of regulatory guidance. These are available on our website.

- RG 51.2 If we have the power and it is appropriate to do so, we may make a legislative instrument granting class relief to relevant persons or entities to avoid the need for applicants to apply for relief individually: see RG 51.34.

Note: ASIC legislative instruments were previously called ‘class orders’ and this term is used in our regulatory guidance published before 2015.

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RG 51.3 If legislative instruments are not appropriate, or if we do not have the power to make them, we may publish policy for exercising our discretionary powers on an individual basis, and may publish pro forma instruments where appropriate: RG 51.36.

RG 51.4 We generally only provide relief from provisions of Acts administered by ASIC (that are currently in force) in relation to future conduct. In certain circumstances we may consider applications relating to provisions that have been enacted but have not commenced. In general, we cannot grant relief in relation to past conduct (e.g. breaches that have already occurred), but in some circumstances we may be able to give relief for ongoing breaches arising from that past conduct.

Note: Included in the definition of ‘Acts administered by ASIC’ are the individual parts of Acts administered by ASIC.

Types of relief applications

RG 51.5 There are three types of relief applications:

- (a) standard applications—seeking relief in accordance with published ASIC policy and pro forma instruments (see RG 51.50);
- (b) minor and technical applications—involving the application of existing policy to new situations (see RG 51.51–RG 51.54); and
- (c) novel applications—requiring us to formulate substantive new policy (see RG 51.55).

Note: Whether an application is standard, minor and technical or novel is dependent on the nature and details of the application.

RG 51.6 All applications must address the matters set out in Table 1. Minor and technical and novel applications should also address the matters set out in Table 2.

The application process

RG 51.7 You should submit your relief application through the [ASIC Regulatory Portal](#). Generally, we will only be able to determine applications that are complete and provide in sufficient detail the information required in Section C.

RG 51.8 We aim to give applicants an in-principle decision within 28 days, however, our assessment times may take longer if the application is incomplete, does not contain sufficient detail, if we are awaiting responses to requisitions, or if the application is complex or raises novel issues.

RG 51.9 We describe the application process in Section D (including timeframes for our assessment) and how ASIC charges fees for relief applications in Section E.

B Our approach to relief applications

Key points

ASIC has discretionary powers to grant relief under certain legislative provisions and in certain circumstances.

We consider and determine each relief application on the basis of its facts, circumstances and merits, having regard to:

- our two broad objectives—consistency and definite principles;
- the policy objectives of the particular provisions in relation to which relief is sought;
- any relevant policy ASIC has published and the underlying principles of that policy; and
- our regulatory objectives in s1(2) of the ASIC Act.

For applications requiring us to formulate substantive new policy, we will also take into consideration whether there is a net regulatory benefit or if any regulatory detriment is minimal and is clearly outweighed by the commercial benefit.

In some instances, we may provide class relief to reduce the burden on applicants having to apply for relief on an individual basis.

Where the effect of the legislation in a particular case is uncertain or unclear, we may grant comfort relief, provided this relief is legally and commercially necessary and would be consistent with our policy. We will usually only consider applications for relief from provisions of (or regulations under) Acts administered by ASIC that are currently in force, however in certain circumstances we may consider applications relating to provisions that have been enacted but have not yet commenced. Generally, we do not have power to grant relief in relation to past conduct (i.e. retrospective relief).

ASIC's discretionary powers to grant relief

RG 51.10 ASIC may exercise its discretionary powers to grant relief by exemption or declaration (to omit, vary or modify) under relevant provisions of:

- (a) the *Corporations Act 2001* (Corporations Act);
- (b) the *Superannuation Industry (Supervision) Act 1993* (SIS Act);
- (c) the *National Consumer Credit Protection Act 2009* (National Credit Act);
- (d) *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act);

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- (e) the *Australian Securities and Investments Commission Act 2001* (ASIC Act); or
- (f) the *Insurance Act 1973* (Insurance Act).

Note 1: References in this guide to the National Credit Act include references to the Transitional Act.

Note 2: In some circumstances, ASIC may grant extensions of time for compliance with certain obligations, where the relevant provision specifically provides ASIC with this power. For example, s70 and s250P of the Corporations Act.

Note 3: We also have a power to exempt or declare that the application of the ePayments Code is modified in a specified way. This guide is also relevant to the use of that power. For more information, see [ePayments Code](#) on our website.

Note 4: ASIC also has the power to grant a waiver of a market integrity rule: See RG 265.28 and 265.29.

- RG 51.11 ASIC may also grant relief by approval, consent, determination, direction, statement or nomination under relevant provisions of the Acts in RG 51.10 in certain situations.
- RG 51.12 Our discretionary powers generally enable us to, among other things:
- (a) exempt a person or modify the law when the strict operation of the legislation may produce unintended or unreasonable results; and
 - (b) facilitate innovation that was not contemplated at the time the legislation was drafted.
- RG 51.13 We most frequently exercise our discretionary powers under the provisions of the Corporations Act (e.g. involving financial reporting, takeovers, fundraising, managed investment schemes, licensing, and conduct and disclosure requirements relating to financial products and services) and the National Credit Act. However, this guide applies to all relief applications.
- RG 51.14 This regulatory guide covers our general approach to applications for the exercise of our discretionary powers. In addition to this guide, we have published more specific policy explaining how we interpret and administer the law in relation to specific issues, as well as when and how we may exercise specific discretionary powers. Where appropriate, we have also supported our policy by publishing pro forma instruments.
- RG 51.15 You should read this guide in conjunction with information and regulatory guidance relevant to the subject matter of your application. These are available on our website.

Note: Also see 'Related information' for a list of regulatory guides and other materials dealing with our discretionary powers.

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- RG 51.16 Our published policies are intended to be complementary and consistent with each other. However, where they include details about how to apply for particular kinds of relief, this guide prevails if the details are inconsistent.
- RG 51.17 You should also read this guide in conjunction with:
- (a) Regulatory Guide 103 *Confidentiality and release of information* ([RG 103](#)); and
 - (b) Information Sheet 9 *ASIC decisions: Your rights* ([INFO 9](#)).
- RG 51.18 This guide does not apply to our actions in exercising our registration or licensing powers—for example, an application for an Australian financial services (AFS) licence under s913A, or an application for registration as an auditor under s1279 or liquidator under s20–5 of Sch 2 to the Corporations Act.

Factors we consider when assessing relief applications

- RG 51.19 We will consider and determine all relief applications on the basis of the facts, circumstances and merits of each application.
- RG 51.20 In making such determinations, we attempt to achieve two broad objectives—consistency and definite principles.

Broad objectives

Consistency

- RG 51.21 This objective ensures that we exercise our discretions consistently and on the basis of consistent regulatory objectives, without turning our administrative policies into inflexible rules.
- RG 51.22 We will normally only depart from existing ASIC policy that is relevant to an application (particularly where that policy has been published) when we are satisfied that the policy:
- (a) requires significant change or reversal; or
 - (b) is not applicable due to the special features of the application.

Definite principles

- RG 51.23 This objective ensures that our decisions are made on the basis of definite principles. We aim to have a clear understanding of the circumstances of each application and how the relief sought will operate in those circumstances. In this way, we can:
- (a) use each decision as a precedent when similar applications arise in the future; and
 - (b) distinguish the precedent when it is inapplicable.

- RG 51.24 An application for minor and technical or new policy relief should explain the commercial and legal nature of the proposal for which the relief is sought. This allows us to consider both the specific application and the more general precedent it may set. We are required by administrative law to have regard to the effect of relief in the particular situation in which it will operate. However, we cannot foresee what precedent we will set by making a decision, unless we understand the particular situation for which the relief is required.
- RG 51.25 You should also explain any legal and commercial constraints that form part of the reason why the relief should be granted. In general, if there is a lawful and effective way of doing something without relief (or with standard relief only), we will be inclined to refuse relief (or non-standard relief).
- RG 51.26 Every decision sets a precedent. Even if we are willing to give relief to allow a proposal to proceed, we may give relief in terms different from those proposed in an application to set a precedent that is more consistent with the development of policy.

Policy objectives of legislation

- RG 51.27 We will consider the purpose of the provisions in relation to which relief is sought, however we will not consider individual provisions in a vacuum. Rather, we will promote the policy objectives underlying the Corporations Act, the SIS Act, the National Credit Act, the ASIC Act or the Insurance Act (whichever is relevant).

Note: For example, in applications concerning Ch 6 of the Corporations Act, we will consider the criteria set out in s602 of that Act. In applications made under s340(1) or 341 of the Corporations Act, we will consider the criteria set out in s342 of that Act.

Relevant ASIC policy

- RG 51.28 We will also consider any relevant policy ASIC has published and the underlying principles of that policy. The fact that we have not published a policy about a particular activity does not mean that we have a policy for or against that activity.

Regulatory objectives

- RG 51.29 When exercising our powers, we will do so in accordance with our regulatory objectives in s1(2) of the ASIC Act.

Net regulatory benefit or regulatory detriment

- RG 51.30 When considering applications requiring us to formulate substantive new policy, we attempt to weigh the commercial benefit and any net regulatory

benefit or detriment that would flow from granting the relief on the conditions proposed. We will generally grant relief where:

- (a) we consider that there is a net regulatory benefit; or
- (b) the regulatory detriment is minimal and is clearly outweighed by the resulting commercial benefit.

RG 51.31 We will scrutinise very carefully any argument that the ordinary costs associated with, or the ordinary inconvenience of compliance with provisions of Acts administered by ASIC or existing published ASIC policy are excessive. Any applicant who claims to be particularly affected by compliance costs will need to explain why the effect of the law in their circumstances is anomalous.

RG 51.32 In any discussion about the commercial benefits of granting relief, dollar estimates should be made relating to:

- (a) the cost of compliance with the provisions if no relief were granted; and
- (b) the potential costs and benefits if relief as sought is granted.

RG 51.33 In addition, the basis on which the dollar estimates are calculated should be clearly explained. Failure to include this information may result in a delay in assessing the application or in it being refused.

Relief by legislative instrument

RG 51.34 We may make a legislative instrument to provide class relief where we have the power and it is appropriate to do so. This avoids the need for applicants to apply on an individual basis (provided they meet the requirements of the legislative instrument).

Individual relief

RG 51.35 Where legislative instruments are not appropriate or we do not have the power to make them, we:

- (a) may develop policies for the exercise of our discretionary powers on an individual basis and publish these policies in the form of regulatory guidance; and
- (b) may support these policies by publishing pro forma instruments.

RG 51.36 In general, pro forma instruments, published individual relief instruments, and notifiable instruments, enable us to administer our policies more efficiently. They also ensure consistency of relief.

Note: Relief under some provisions of the Corporations Act and the National Credit Act only take effect from the date of gazettal or execution of the relevant instrument.

Limits to the relief we may grant

Retrospective relief

- RG 51.37 In general, we cannot give relief for breaches of provisions of Acts administered by ASIC that have already taken place. In other words, we generally do not have power to grant retrospective relief.
- RG 51.38 To the extent that we can give relief that is not clearly retrospective but may take away the future consequences of past conduct, our general policy is not to do so. However, we may give relief in these circumstances where:
- (a) no mischief (e.g. harm) has yet occurred; and
 - (b) the regulatory detriment of the breach is minimal and clearly outweighed by the commercial benefit which would result from us giving the proposed relief.
- RG 51.39 Our paramount consideration in exercising our powers in these circumstances is whether anyone has already been adversely affected by the previous breach.

Court relief

- RG 51.40 The court has some powers to grant retrospective relief. For example, the court has power under:
- (a) s1322 of the Corporations Act (on the application of any interested person), to make orders about irregularities generally (i.e. validating acts and relieving persons from civil liability);
 - (b) s1318 of the Corporations Act to grant relief from liability to certain persons in civil proceedings to which that section applies; and
 - (c) s183 of the National Credit Act to grant relief from liability for contravention of civil penalty provisions.

Note: The court's retrospective powers and a few express grants of power to give retrospective relief confirm that ASIC's role in relation to past conduct is generally restricted to giving relief from future consequences of the past conduct.

Comfort relief

- RG 51.41 We may receive applications for comfort relief from Acts administered by ASIC where it is not clear whether an applicant needs the relief to proceed with their planned course of action.
- RG 51.42 We will consider a request for comfort relief (on the basis that the relevant Act does apply) when an applicant requests such relief because:
- (a) it is uncertain whether or how the Act applies; and
 - (b) commercially significant effects would flow from their application.

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- RG 51.43 We may grant comfort relief when we recognise that the effect of the relevant Act in a particular case is uncertain or unclear. However, such relief should not be taken to imply that we have formed any particular view of the effect of the Act in such cases.
- RG 51.44 We will generally refuse to grant comfort relief if:
- (a) the operation of the relevant provisions of the relevant Act is clear and we consider that the relief is clearly not legally necessary. In these cases, we will inform the applicant why we have formed the view that the particular relief is unnecessary; or
 - (b) we consider that the relief is commercially unnecessary (i.e. if the applicant's reasonable expectation of loss from the refusal of relief is insignificant).
- RG 51.45 Generally, ASIC's refusal to grant comfort relief under RG 51.44(a) is in effect giving a no-action letter on the subject matter of the application: see Regulatory Guide 108 *No-action letters* ([RG 108](#)). However, such a refusal is not a certification by us that the proposed action will be lawful in every respect. For example, we may refuse to grant relief from Ch 6 of the Corporations Act for a takeover offer on the grounds that the particular relief is not necessary for the transaction. This refusal is not an indication that we will not take investigative, surveillance or any other enforcement action over other aspects of the takeover that are not the subject of the application. Further, even if we refuse relief from Ch 6 on the grounds that the relief is not legally necessary, we may still make an application to the Takeovers Panel if there are unacceptable circumstances in relation to the subject matter.
- RG 51.46 Applications for comfort relief must be made before the potential breach has occurred. We will grant or refuse such applications on standard policy grounds (i.e. we will not grant relief for which there is no policy justification, purely for the sake of certainty).

Relief from provisions enacted but not commenced

- RG 51.47 We will not usually consider applications for relief from provisions of (or regulations under) Acts administered by ASIC that have not commenced.
- RG 51.48 Where it would be prudent and convenient for us to consider the impact of incoming provisions or regulations on an applicant's commercial circumstances, we will do so. Applications of this kind are examples of novel applications: see RG 51.55.

No-action letters

RG 51.49 In some instances, a person may ask ASIC to give a no-action letter where there is no specific relief available in the circumstances: see [RG 108](#) for further details in relation to no-action letters.

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C Types of relief applications

Key points

There are three types of applications—standard, minor and technical, and novel applications.

All applications should include the matters outlined in Table 1.

In addition to the matters in Table 1, minor and technical and novel applications should also cover the matters outlined in Table 2.

Standard, minor and novel relief applications

Standard applications

RG 51.50 Standard applications seek relief precisely in accordance with the terms of published ASIC policy and pro forma instruments (where relevant).

Minor and technical applications

RG 51.51 Minor and technical applications:

- (a) are not completely standard but are clearly within the policy of the Acts administered by ASIC or ASIC's existing policy; and
- (b) do not raise issues of such significance as to require our extensive consideration.

RG 51.52 In general, these applications involve applying existing policy to new situations, either legislative or administrative (e.g. where there is an existing policy, but it needs to be adapted to cover the application).

RG 51.53 These applications can concern:

- (a) relief from the requirements of Acts administered by ASIC;
- (b) minor changes to relief previously granted to an applicant (where there has been no significant change in the circumstances surrounding the granting of relief or in existing policy); or
- (c) relief or changes to relief arising from changes in existing policy. This includes, but is not limited to, published ASIC policy.

RG 51.54 Minor and technical applications typically concern unusual situations or new developments that are not anticipated in Acts administered by ASIC or in existing ASIC policy. In particular, our published policy cannot specify every possible set of circumstances to which the policy may be applied.

Rather, it sets out general principles and illustrates them by way of common examples. Our officers, therefore, often consider applications that, although not specifically covered by published policy, can be determined using the general principles set out in that policy.

Novel applications

- RG 51.55 Novel applications are those requiring us to formulate substantive new policy, because they:
- (a) raise policy considerations that are entirely new;
 - (b) involve more than minor and technical variations of existing ASIC policy; or
 - (c) involve a significant change to, or reversal of, existing ASIC policy.
- RG 51.56 Novel applications should be made as early as possible to ensure that we have sufficient time to assess them. Decisions can then be carefully and properly considered and other applications will not be unfairly delayed. We will refuse to grant relief if an applicant requires relief by a particular time and this requirement would not give us sufficient opportunity to consider whether the relief is appropriate.

Note: Target assessment times are set out in [ASIC's service charter](#), which is available on our website. Please note that these times are indicative only and may vary on a case-by-case basis, for example, where an application raises complex or new policy issues, or if an applicant does not give us all the information we need.

What to include in a relief application

- RG 51.57 Table 1 sets out the information that applicants need to provide in their relief applications. These requirements apply to all relief applications.
- RG 51.58 You should also read and consider all ASIC published policy that is relevant to your application.

Note: For example, Regulatory Guide 167 *AFS licensing: Discretionary powers* ([RG 167](#)), Regulatory Guide 169 *Disclosure: Hawking and disclosure: Discretionary powers* ([RG 169](#)) or Regulatory Guide 275 *The deferred sales model for add-on insurance* ([RG 275](#)). For a list of resources dealing with our discretionary powers see 'Related information'.

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Table 1: All applications—Information required

Type and nature of relief sought	<p>Specify what relief is being sought, including:</p> <ul style="list-style-type: none"> the particular discretionary power(s) ASIC is being requested to exercise; the specific provision(s) from which the proposed relief is sought; any provisions of the law affected by the proposed relief; and the relevant published policy or policies. <p>Note: The application should include the sections of the Corporations Act, the SIS Act, the National Credit Act, the ASIC Act or the Insurance Act (whichever is relevant) under which relief is sought and any provisions of the relevant Act that are affected by the application.</p>
The reason(s) relief is being sought	<p>Explain why relief is being sought. The application must give sufficient details to enable us to determine whether the facts meet the prerequisites of the relevant published policy. It should include any facts that may imply that it would be inappropriate to apply the relevant published policy to the particular case and reasons why this is so.</p>
Information required by any relevant ASIC published policy(ies)	<p>Provide any other information required by any relevant ASIC published policy, by attaching them as supporting documents to the application.</p>
Consultation with ASIC or other relevant regulatory organisations	<p>If you have previously consulted with ASIC or another relevant organisation, provide:</p> <ul style="list-style-type: none"> details of any relevant ASIC officers who have been consulted in relation to the application and the outcome of that consultation: see RG 51.66–RG 51.67; and details of any other relevant regulatory organisations that have been consulted in relation to the application and the outcome of that consultation.
Third parties affected by the application	<p>Provide:</p> <ul style="list-style-type: none"> details of any third parties whose interests may be adversely affected if the application was granted; and details of any consultation that had been undertaken with those third parties. <p>ASIC may determine that we are required to provide procedural fairness to a third party, if ASIC considers that a third party may be affected by the decision: see RG 51.86–RG 51.87.</p>

Minor and technical or novel applications

RG 51.59 Due to their nature, minor and technical applications and novel applications are required to include additional information to help us with our assessment. These additional requirements are set out in Table 2.

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Table 2: Minor and technical or novel applications—additional information required

Details regarding the proposed activity, including any relevant factual matters	<p>Explain the proposed commercial activity and advise of any factual matters that:</p> <ul style="list-style-type: none"> • could reasonably be relevant to the application; or • may have implications for how the relevant legislative provisions or existing ASIC policy is applied in the circumstances of the case.
The impact of legislative provisions or existing ASIC policy	<p>Explain how legislative provisions or existing ASIC policy would impede the proposed activity and why the proposal cannot be adapted to comply with these provisions or with existing statutory or legislative instrument relief.</p> <p>Explain how the relief sought would extend, relax, or vary:</p> <ul style="list-style-type: none"> • an Act or Acts administered by ASIC; • the scope of ASIC published policy; • any precedent relief, legislative instruments or pro forma instruments; or • any previous ASIC policy decision(s). <p>Explain precisely how the proposed relief would operate to facilitate the proposal.</p>
Reason(s) the relief should be granted	<p>Explain why ASIC should grant the relief. For example:</p> <ul style="list-style-type: none"> • minor and technical variation of an Act or Acts administered by ASIC—the application should explain why it is within the policy underlying that provision; • departure from existing ASIC policy—an application should set out the extent of the departure; or • variation of an instrument that already applies to the applicant—an application should: <ul style="list-style-type: none"> – confirm that the basis of the original relief still applies; and – explain why the variation is required. <p>You should also include any information we will need in considering the issues set out in Section B of this regulatory guide.</p>

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<p>The legal and cost-benefit arguments for relief</p>	<p>Explain the consequences of granting the relief and the reasons why it should be granted from:</p> <ul style="list-style-type: none"> • a legal perspective—for example, why is the relief required as a matter of law? • a commercial perspective—for example, why it is not commercially feasible to comply with the Act or Acts administered by ASIC or existing ASIC policy, or to restructure or redesign your proposed operations to bring them into alignment with the law? • a policy perspective—for example, identify the net regulatory benefit or detriment that would result if the relief was granted. In particular, balance commercial considerations against any relevant consumer or investor interests (if applicable). The application will need to include a cost-benefit analysis of the proposed relief. <p>Note: See RG 51.30–RG 51.33 for further details.</p>
<p>The conditions that should be imposed on the relief</p>	<p>Suggest any suitable limitations or conditions that should be placed on the relief to appropriately narrow the scope of the relief and limit the impact of the relief on third parties. For example, having identified any regulatory detriment to consumers or investors if the relief was granted, the applicant might propose parameters or conditions on the relief to minimise or avoid potential detriment. Note: Draft instruments of relief may also be submitted with the application: see RG 51.61–RG 51.62.</p>

Obtaining legal advice

RG 51.60 You should consider obtaining your own legal advice before making minor and technical or novel applications. A legal analysis of the need for relief often helps us assess an application promptly and effectively.

Submitting a draft instrument

RG 51.61 You may submit a draft instrument as part of your minor and technical or novel application to help clarify the exact relief being sought. If appropriate, and to the extent possible, a draft instrument should be adapted from a legislative instrument, published individual instrument, or a pro forma instrument. An applicant should explain the adaptations and highlight any changes in the application.

RG 51.62 We will only use the draft instrument as an aid in assessing the application. If we grant the relief, we may do so on terms other than those of the draft instrument.

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D The application process

Key points

Applicants must submit their relief application through the [ASIC Regulatory Portal](#) and clearly indicate if the application is urgent or confidential. After submission, ASIC may request additional details to support the type and nature of your request, or if the application is incomplete.

ASIC assigns an officer to each application. Under the ASIC service charter, we aim to reach an in-principle decision:

- for 70% of relief applications received—within 28 days of all information and fees being provided; and
- for 90% of relief applications received—within 90 days of all information and fees being provided.

We encourage applicants to begin the process for relief as early as possible when structuring their proposed activity, and to obtain legal and other relevant professional advice during their preparations.

Applications for relief should be submitted in advance of any proposed transaction, or relevant statutory deadline, to allow sufficient time for ASIC to consider their application.

We cannot guarantee that applications submitted shortly before a transaction is to be undertaken, or shortly before the statutory deadline, can be processed by ASIC within the requested timeframe. Applications that are submitted with insufficient time for ASIC to consider may be refused and application fees will still be payable.

Preparing a relief application

- RG 51.63 You are responsible for:
- (a) determining the specific provision(s) from which the proposed relief is sought and applying to ASIC for all appropriate relief; and
 - (b) providing all relevant information and the accuracy and completeness of the information to support your application (see Table 1 and Table 2).
- RG 51.64 All applications for relief should meet the requirements set out in this guide, and where relevant, the requirements in other ASIC guidance on particular kinds of relief. We can only determine applications for relief that are complete and provide sufficient detail. It is important for applicants to provide all the information required to avoid delays in ASIC's assessment of their application.

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- RG 51.65 We will analyse the proposed commercial activity to decide whether the relief applied for is necessary and sufficient to overcome the legal obstacles identified in an application. We will not necessarily look for other legal obstacles to an applicant's proposed course of action.
- RG 51.66 Discussions with ASIC officers are not a substitute for legal advice. Applicants are responsible for obtaining their own legal and other professional advice.
- RG 51.67 An application that has been preceded by discussions with ASIC officers will not receive any priority on that account alone, and the views of individual ASIC officers on policy issues are not binding on ASIC.

Incomplete applications

- RG 51.68 We may refuse an application that does not fully address all of the relevant issues. In this situation, and if it is possible to do so, our officers will inform the applicant before refusing an application and may give an applicant an opportunity to provide the additional information. However, if all of this information is not supplied within a specified time, we will refuse the application.

Applications on a tentative basis

- RG 51.69 If you make a tentative application before your proposed activity is settled, in some circumstances we may be able to indicate our in-principle decision on the relief, noting that we must consider our obligations to record and make public our decisions. We may withdraw our in-principle decision if further information subsequently becomes available that results in us changing our view of the appropriateness of the relief or if you have not notified us that you will proceed with the transaction within a reasonable time.

Note: The prescribed fee must be paid when you make your application, even if you later withdraw your application or decide not to proceed with the proposed activity.

Urgent applications

- RG 51.70 In certain situations, we may assess applications on an urgent basis (i.e. within a specific and short timeframe). However, we will only do so in exceptional circumstances because this would give the urgent application priority over previously submitted applications.

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RG 51.71 Applicants must clearly demonstrate that the urgency results from factors beyond their reasonable control that they could not have reasonably foreseen. Self-imposed deadlines are not a sufficient basis for urgent consideration. Urgent applications that are not submitted to ASIC at the earliest practicable time run the risk of being refused because we have not had the opportunity to fully consider the application. If we have not had time to reach a clear view that the application should be granted, we may refuse the application.

Confidentiality

RG 51.72 You should clearly indicate if your application is confidential up to a particular point in time, including the reason(s) for its confidentiality. In this case, you should advise us of the name of the person to receive all communications regarding the application.

RG 51.73 Under s127 of the ASIC Act, ASIC must take reasonable measures to prevent unauthorised use and disclosure of information we receive in confidence in connection with our statutory functions. Certain uses and disclosure are taken to be authorised.

Note 1: ASIC also has express powers under s25 and s37 to disclose certain information for certain purposes.

Note 2: Certain instruments must be gazetted, published on our website and entered on our public database: see RG 51.78.

RG 51.74 A person directly and materially adversely affected by a decision to use or disclose confidential information should normally be accorded procedural fairness.

RG 51.75 For information about our approach to confidentiality, see Regulatory Guide 103 *Confidentiality and release of information* ([RG 103](#)).

Note: We may be required to provide documents under the Commonwealth freedom of information legislation and court and parliamentary processes.

Submitting a relief application

RG 51.76 Applicants must submit their relief applications through the [ASIC Regulatory Portal](#) and clearly indicate if the application is urgent or confidential. For more information, see [How to apply for relief](#) and [FAQs: Apply for relief](#).

Note: Applicants are required to pay fees set under legislation: see Section D. We have provided details about payment options in the ASIC Regulatory Portal.

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How we assess relief applications

RG 51.77 An ASIC officer will be assigned to assess each relief application. An applicant should deal directly with this nominated officer.

RG 51.78 If your application is successful, the ASIC officer will:

- (a) give you notice of the in-principle decision and a copy of the draft instrument of relief (when ready);
- (b) execute the instrument; and
- (c) arrange for the instrument to be gazetted (if necessary) or published on our website (which is required for some relief instruments) and entered on our public database.

Note 1: Our in-principle decision to grant relief is subject to the settling of the final form of the relief instrument, including any requirements or conditions, with the applicant. We may refuse to grant the relief notwithstanding an earlier in-principle decision to grant relief if we are unable to settle the final form of the relief instrument with the applicant.

Note 2: Certain legislative instruments that are governed by the *Legislation Act 2003* are also required to be tabled in Parliament and are potentially subject to a process of disallowance.

RG 51.79 If your application is unsuccessful, the ASIC officer will notify you of our in-principle decision and briefly set out the reasons for the decision. We will generally give you an opportunity to respond to our in-principle decision to refuse relief. We will consider your response to our in-principle decision before making our final decision. We will generally provide an applicant an opportunity to withdraw their application if we have decided, in principle, to refuse the application, provided there is sufficient time for the applicant to respond (e.g. before the passing of a statutory deadline).

Note 1: If an applicant would like to withdraw their application at any time, they should advise us of that fact. The application will be recorded as having been withdrawn, rather than refused. Generally, we cannot refund any application fees.

Note 2: Information Sheet 9 *ASIC decisions: Your rights* ([INFO 9](#)) summarises your rights regarding our decision about your relief application. In addition to the rights set out in INFO 9, ASIC has certain obligations relating to confidential information and procedural fairness. Where relevant, an applicant may have a right to seek review by the Takeovers Panel of certain decisions under s655A and s673 of the Corporations Act.

Standard applications

RG 51.80 In dealing with a standard application, the ASIC officer will:

- (a) determine whether you satisfy the prerequisites for the relief, by reference to published ASIC policy and pro forma instrument (where relevant); and
- (b) make and record the decision.

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Minor and technical applications

- RG 51.81 In dealing with a minor and technical application, the ASIC officer must be satisfied that:
- (a) the departure from existing policy is in fact minor and technical (see RG 51.51–RG 51.54; and
 - (b) the request for a variation to the existing policy is no wider than is reasonably required to achieve an applicant’s commercial objectives.
- RG 51.82 We will refuse or limit excessively wide-ranging applications. When we can accommodate an applicant’s objective with standard relief, the ASIC officer will offer to deal with the application as a standard application under the relevant published policy.
- RG 51.83 After an application has been determined as either successful or unsuccessful, the process is as per RG 51.78–RG 51.79.

Novel applications

- RG 51.84 When considering a novel application, the ASIC officer will:
- (a) obtain internal legal advice on the relief sought, if needed—you should be aware that this takes time;
 - (b) consider the policy implications of the application to determine whether the relief should be granted and, if so, on what conditions—this may involve liaising internally on policy issues and, as such, may also take time; and
 - (c) conclude the application as per RG 51.78–RG 51.79.
- RG 51.85 Novel applications often raise issues that we decide require public comment. ASIC may seek public comment through hearings or submissions, either before or after the application is finalised. If extensive liaison with the public is required before a general policy decision can be made, we may give interim relief or a no-action letter to the applicant, if appropriate, pending final resolution of the application.

Providing procedural fairness to third parties

- RG 51.86 When assessing a relief application, ASIC must also consider whether the interests of any third party could be affected by the decision to grant relief. In some circumstances, we may be required to consult with a third party to understand whether and how they might be affected. If we determine that third-party consultation is required, we will notify the applicant of our intention to provide information about the relief application to the third party.

Note: Applicants are asked to provide details of any third parties affected by the application: see Table 1.

RG 51.87 If we determine that we are required to provide procedural fairness to a third party who may be affected by our decision to grant relief, this may affect the assessment times for the relief application.

Assessment times

RG 51.88 We encourage applicants to apply for relief as early as possible when structuring their proposed activity and to obtain legal advice at this time. However, applicants should only apply when there is sufficient information for us to consider their application. This will help us deal with applications in a timely and efficient way.

RG 51.89 Applicants should direct any query about assessment times to the officer assigned to their application.

RG 51.90 Assessment times given by ASIC are indicative only. They are also based on the assumption that:

- (a) an application is fully and carefully made in accordance with any relevant existing policy; and
- (b) an applicant has disclosed everything that they are aware of that is relevant to the making of our decision (see Section C).

RG 51.91 Subject to RG 51.90, we aim to give applicants an in-principle decision within 28 days of receiving a complete application, including all the necessary information to support the application and fees. Where an application raises complex or new policy issues, or if an applicant does not give us all the information we need, our assessment of the application may take longer to complete.

Note: Target assessment times are set out in [ASIC's service charter](#), which is available on our website. Please note that these times are indicative only and may vary on a case-by-case basis.

RG 51.92 Generally, a relief application that is in accordance with the terms of ASIC published policy will take less time to consider than an application that raises complex or new policy issues. However, we will still consider the circumstances of the individual application and have regard to all of the factors set out in Section C. If an application is complex or raises a new policy or novel issue, we will aim to give the applicant an interim response to inform them of our progress.

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E How ASIC charges fees for relief applications

Key points

For each application for relief, the fee that we will charge depends on:

- the number of substantive matters raised in the application;
- the number of heads of power involved;
- whether there are ancillary matters;
- if there is more than one person or entity seeking relief; and
- if there are any revocations or variations required.

Generally, we will charge a fee for each substantive matter raised and each head of power required to be used for each application. For applications involving a pro forma instrument, we will charge a fee for each head of power involved.

Fees payable for relief applications

RG 51.93 Fees are payable to the Commonwealth for ‘chargeable matters’, as defined in s9 of the Corporations Fees Act and s4(1) of the Credit Fees Act. An application to ASIC for an exemption, declaration, approval, consent or statement under certain provisions of the Acts administered by ASIC is a chargeable matter under the Corporations Fees Act and the Credit Fees Act. We charge fees for all ‘chargeable matters’.

RG 51.94 Fees are set under legislation. The amount that we will charge for an application depends on the relief that is sought. For more information, see Information Sheet 30 *Fees for commonly lodged documents* ([INFO 30](#)). Details about the payment options are available through the [ASIC Regulatory Portal](#).

Note: Also see Sch 1 to the Corporations (Fees) Regulations 2001 and Sch 1 to the National Consumer Credit Protection (Fees) Regulations 2010 for current fee amounts.

Liability to pay fees

RG 51.95 Applicants are liable to pay fees even if we decide to grant relief in a different form to what they have requested. An applicant must pay, and we must collect, the prescribed fee or fees. We cannot waive these fees nor provide a refund if the application is withdrawn or refused.

RG 51.96 We may refuse to undertake an act that requires payment of a fee until the fee has been paid: s1355 of the Corporations Act and s233 of the National Credit Act.

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The principles we apply in calculating fees

RG 51.97 We consider the following when calculating the fees payable for an application:

- (a) the number of substantive matters involved;
- (b) the number of heads of power involved;
- (c) if there are ancillary matters;
- (d) if there is more than one person or entity seeking relief (e.g. AFS licence, credit licence, managed investment scheme, CCIV or company); and
- (e) if there are any revocations or variations required.

Table 3: Principles for calculating fees

Principle	Considerations
Fee for each substantive matter	<p>A fee is chargeable for each substantive matter raised in an application. A substantive matter is a matter requiring us to make a separate decision.</p> <p>To determine whether an application requires a separate decision, and is therefore a substantive matter, we consider whether the relief being sought under an application may stand by itself without the need for additional relief.</p> <p>An application that involves a merely ancillary matter would generally be insufficient to stand by itself and would normally require additional relief to be granted in order for the relief to have the intended effect for which the relief was sought.</p>
Fee for each head of power	<p>Different powers</p> <p>Generally, an application involving the exercise of powers under two provisions comprises two chargeable matters. For example, an applicant who seeks relief under both s951B and s1020F of the Corporations Act must pay the fee referable to each of those sections.</p> <p>Same power</p> <p>If an application is seeking more than one exemption or declaration under the same head of power, (e.g. two or more modifications to Ch 2 under s109 of the Credit Act), one or more fees may be charged, depending on the number of substantive decisions required.</p> <p>If there are multiple substantive decisions to be made, a multiple of the prescribed fee will be payable.</p> <p>If, however, there is only one substantive decision involved, then only one fee will be charged (it will not matter how many provisions of the legislation may be affected). For example, an application to modify several provisions of Ch 2 of the Credit Act using the same power in s109 of the Credit Act.</p>

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Principle	Considerations
Fee for ancillary matters	<p>In many cases, an application affects more than one provision, although it deals with only one substantive matter. We will charge only one fee if a suite of exemptions or declarations is needed to deal with one substantive matter—although many merely ancillary matters may be involved (subject to the principle relating to ‘fees for each head of power’).</p> <p>For example, if we decide to modify the effect of Pt 5C.6 of the Corporations Act, dealing with the withdrawal rights provisions and procedures for illiquid schemes, an ancillary declaration to modify s601GA(4) of the Corporations Act is also likely to be necessary to give effect to the substantive decision. In such a case, we charge only one fee.</p>
More than one person or entity seeking relief	<p>If we receive a request to exercise one or more heads of power for more than one credit licence, managed investment scheme, CCIV or company, a separate decision is needed for each head of power for each entity—to the extent that the decision is not for ancillary relief. Accordingly, the number of substantive matters raised (and therefore the number of fees charged) will be the number of heads of power required to be exercised multiplied by the number of entities affected.</p> <p>For example:</p> <ul style="list-style-type: none"> • If a group of 10 credit licensees makes an application for the same relief for each credit licensee (i.e. where the application is made by a law firm for a number of licensees in the same group), the applicable fee would be the 10 credit licensees multiplied by the prescribed fee for the exercise of that head of power. • If a responsible entity of 10 different schemes sought the same declaration to modify s601GA under s601QA(1)(b) of the Corporations Act for each scheme, the applicable fee is 10 times the prescribed fee for the exercise of that head of power. <p>Similarly, if a number of wholly owned subsidiaries of one holding company require financial reporting and audit relief under s340 of the Corporations Act, the applicable fee is the fee attracted by s340 multiplied by the number of wholly owned subsidiaries that require relief.</p>

Pro forma applications

- RG 51.98 Generally, we will treat a standard pro forma instrument as relating to only one substantive matter, even if a particular pro forma modifies or provides an exemption from several different provisions, or relates to the operation of one provision in different fact situations. Therefore, we will charge one fee for an application for a pro forma instrument if that application requires us to make an exemption or declaration under one head of power. If, however, a pro forma application requires the exercise of powers under more than one head of power, the prescribed fee will be charged for each head of power affected.

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- RG 51.99 For example, in the case of Pro Forma 187 *Management rights schemes where the strata unit cannot be used as a residence* ([PF 187](#)), fees are payable for:
- (a) the exemption under s992B(1)(a) of the Corporations Act; and
 - (b) the exemption under s1020F(1)(a) of the Corporations Act.
- RG 51.100 Paragraph 3 of PF 187 gives an exemption from s992AA of the Corporations Act to a person, other than a promoter referred to in Schedule A of the instrument, if there is an offer to sell an interest in the relevant managed investment scheme. This is considered an ancillary matter to the other relief in the instrument given under s992B(1)(a) of the Corporations Act and so does not attract an additional fee.

Revocations or variations

- RG 51.101 An instrument that varies or revokes a previous instrument is made under the same power as the original instrument: s33(3) of the *Acts Interpretation Act 1901*. Therefore, the fee for a new application to vary or revoke an existing instrument will be assessed in accordance with the principles in Table 3.
- RG 51.102 When an instrument needs to be amended or revoked to deal effectively with the original application, no fee will be charged. This is because the new instrument is needed to deal with the original matter. An example is when we have made an error in the original instrument of relief.
- RG 51.103 If a new instrument is needed because there was an issue with the original application or its scope has changed, an additional fee will be charged. This is because a corrected or changed application will raise a new substantive matter.

Key terms

Term	Meaning in this document
Acts administered by ASIC	<p>Includes:</p> <ul style="list-style-type: none"> • ASIC Act; • Corporations Act; and • National Credit Act. <p>This also includes parts of the following Acts:</p> <ul style="list-style-type: none"> • <i>Insurance Contracts Act 1984</i>; • <i>Superannuation (Resolution of Complaints) Act 1993</i>; • <i>Superannuation Industry (Supervision) Act 1993</i>; • <i>Retirement Savings Accounts Act 1997</i>; • <i>Life Insurance Act 1995</i>; and • <i>Medical Indemnity (Prudential Supervision and Product Standards) Act 2003</i> <p>Note: References in this guide to the National Credit Act include references to <i>National Consumer Credit Protection (Transitional and Consequential Provisions Act) 2009 (Transitional Act)</i></p>
AGM	Annual general meeting
ancillary matter	A matter that, by itself, will normally require additional relief to have the effect for which it is sought
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
chargeable matter	a matter set out in s9 of the Corporations Fees Act or s4 of the National Credit Fees Act. A chargeable matter includes a relief application
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Fees Act	<i>Corporations (Fees) Act 2001</i>
Corporations Fees Regulations	<i>Corporations (Fees) Regulations 2001</i>
Credit Fees Act	<i>National Consumer Credit Protection (Fees) Act 2009</i>
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act

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Term	Meaning in this document
instrument	Either an ASIC legislative instrument (or pro forma instrument), an individual relief instrument or notifiable instrument
Insurance Act	<i>Insurance Act 1973</i>
legislative instrument	Instruments that have a wide application. They usually apply to a class of persons or entities who carry out a particular activity in certain circumstances. Before 2015 legislative instruments were referred to as class orders.
managed investment scheme	Has the meaning given in s9 of the Corporations Act
National Credit Act	<i>National Consumer Credit Protection Act 2009</i> Note: References in this guide to the National Credit Act include references to the <i>Transitional Act</i>
No-action letter	An application for a letter in which we state to a particular person that we do not intend to take regulatory action against that person over a particular state of affairs or conduct at a specific point in time
relief	relief by exemption or declaration (to omit, vary or modify) under Acts administered by ASIC
relief application	An application for ASIC to exercise its exemption or declaration powers when the relief is provided by instrument, and includes an approval, exemption, declaration, consent or statement under certain legislative provisions.
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
RG 275 (for example)	An ASIC regulatory guide (in this example, numbered 275)
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
substantive matter	A matter requiring ASIC to make a separate decision

Related information

Headnotes

ancillary matters, applications for relief, class relief, chargeable matters, comfort relief, disclosure, discretionary powers, extension of time for holding AGM, fees, licensing, no-action letters, retrospective relief, substantive matters

Regulatory guides

[RG 28](#) *Relief from dual lodgement of financial reports*

[RG 43](#) *Financial reports and audit relief*

[RG 44](#) *Annual general meeting: Extension of time*

[RG 72](#) *Foreign securities: Disclosure relief*

[RG 103](#) *Confidentiality and release of information*

[RG 108](#) *No-action letters*

[RG 115](#) *Audit relief for proprietary companies*

[RG 136](#) *Funds management: Discretionary powers*

[RG 167](#) *AFS licensing: Discretionary powers*

[RG 169](#) *Hawking and disclosure: Discretionary powers*

[RG 174](#) *Relief for externally administered companies and registered schemes being wound up*

[RG 189](#) *Disclosure relief for rights issues*

[RG 233](#) *Indirect self-acquisition: Relief for investment funds*

[RG 265](#) *Guidance on ASIC market integrity rules for participants of securities markets*

[RG 266](#) *Guidance on ASIC market integrity rules for participants of futures markets*

[RG 275](#) *The deferred sales model for add-on insurance*

Information sheets

[INFO 9](#) *ASIC decisions: Your rights*

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

[INFO 82](#) *Apply for relief*

Legislation

Acts Interpretation Act 1901, s33(3)

ASIC Act, s1(2), 12A, 127

Corporations Act, Ch 6, Pt 5C.6, s340, 340(1), 341, 342, 601GA, 601GA(4), 601QA(1)(a), 601QA(1)(b), 602, 655A, 673, 911A(2)(1), 913A, 922B(1)(a), 951B, 992AA, 992B(1)(a), 1020F, 1020F(1)(a), 1279, 1318, 1322, 1355

Corporations Fees Act, s9

Corporations Fees Regulations

[ePayments Code](#)

Insurance Act

Legislation Act 2003

Life Insurance Act 1995

National Credit Act, s183, 233

Credit Fees Act, s4, 4(1)

Credit Fees Regulations

Retirement Savings Account Act 1997

SIS Act

Transitional Act

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