

Attachment 1 to CS 40: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Foreign Licensees and ADIs) Instrument 2026/XXX

I, Kate Metz, delegate of the Australian Securities & Investments Commission, make the following legislative instrument.

Date 2026

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

Contents

Part 1—Preliminary	3
1 Name of legislative instrument.....	3
2 Commencement	3
3 Authority.....	3
4 Schedules	3
5 Simplified outline of this instrument	3
6 Definitions	3
Part 2—Exemption	4
7 Relief from financial reports and record keeping for foreign licensees	4
8 Relief from licensing for foreign ADIs.....	5
Part 3—Repeal	5
9 Repeal	5

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Foreign Licensees and ADIs) Instrument 2026/XXX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under paragraphs 926A(2)(a) and 992B(1)(a) of the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its term.

5 Simplified outline of this instrument

Division 6 of Part 7.8 of the Act sets out requirements for Australian financial services licensees to comply in relation to their financial services businesses.

This instrument provides exemptions for:

- (a) foreign licensees, including foreign ADIs, from certain financial reporting and record-keeping obligations in particular circumstances and subject to various conditions; and
- (b) foreign ADIs from the requirement to hold an Australian financial services licence in particular circumstances.

6 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

foreign ADI has the meaning given by section 5 of the *Banking Act 1959*.

Part 2—Exemption

7 Relief from financial reports and record keeping for foreign licensees

- (1) A foreign company (the *foreign licensee*) which holds an Australian financial services licence does not have to comply with any of the obligations specified in the provisions listed below:
 - (a) paragraph 988A(1)(b) of the Act to the extent that it requires the foreign licensee to keep financial records in accordance with any of the following:
 - (i) section 988B of the Act;
 - (ii) paragraph 988D(a) of the Act;
 - (iii) any regulations made for the purposes of section 988F of the Act;
 - (b) Subdivisions C and D of Division 6 of Part 7.8 of the Act;
 - (c) if the foreign licensee is a foreign ADI—section 988E of the Act.

Note: The foreign licensee does not have to comply with regulations made for the purposes of sections 989B and 989C because of the exemptions from those provisions.

Conditions of exemption

- (2) A foreign licensee that relies on this exemption must lodge with ASIC:
 - (a) at least once in every calendar year and at intervals of not more than 15 months, a certified copy of:
 - (i) its balance sheet made up to the end of its last financial year; and
 - (ii) its cash flow statement for its last financial year; and
 - (iii) its profit and loss statement for its last financial year,in such form and containing such particulars which it reasonably believes is required to be prepared by the law for the time being applicable to that foreign licensee in its place of origin; and
 - (b) together with the documents referred to in paragraph (a), a certified copy of a document setting out the views of the licensee's auditor about those documents, including a statement that the auditor reasonably believes those documents were audited in accordance

with the requirements for the time being applicable to the licensee in its place of origin.

Note: Where the licensee is subject to subsection 601CK(1) of the Act, compliance with that subsection will also result in paragraph 7(2)(a) being satisfied.

8 Relief from licensing for foreign ADIs

A foreign ADI does not have to comply with subsection 911A(1) of the Act to the extent it requires the foreign ADI to hold an Australian financial services licence for the provision of a financial service where all of the following apply:

- (a) the service consists only of either or both of the following:
 - (i) dealing in derivatives;
 - (ii) dealing in foreign exchange contracts;
- (b) the service does not involve the making of a market for derivatives or foreign exchange contracts;
- (c) the dealing is entered into for the purpose of managing a financial risk that arises in the ordinary course of the foreign ADI's banking business;
- (d) the dealing is entered into on the foreign ADI's own behalf;
- (e) the counterparty for the dealing is a person as a wholesale client;
- (f) the foreign ADI does not hold an Australian financial services licence covering the provision of the service.

Note: *ASIC Corporations (Miscellaneous Technical Relief) Instrument 2015/1115* modifies subsections 911A(2)(a) and 911B(1) of the Act to extend their application to situations where a person provides financial services on behalf of another person who is exempt from holding an Australian financial services licence under section 926A of the Act.

Part 3—Repeal

9 Repeal

This instrument is repealed at the start of 1 April 2031.

Schedule 1—Repeals

ASIC Corporations (Foreign Licensees and ADIs) Instrument 2016/186

1 The whole of the instrument

Repeal the instrument.