



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 21

How ASIC charges fees for relief applications

July 2020

About this guide

This guide is for applicants for relief and their advisers.

It explains how we calculate the fees we charge when we receive applications to exercise our discretionary powers. It also describes:

- when we charge fees for relief applications;
- how we calculate those fees; and
- the fees we charge for standard applications.

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 guide was issued in July 2020 and is based on legislation and regulations as at the date of issue. In October 2021 we amended RG 21.2 and RG 21.4 to refer to applications under the ASIC Act.

Previous versions:

- Superseded Practice Note 58, issued July 1995, amended July 1996, reissued January 2006, rebadged as Regulatory Guide 21 on 5 July 2007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

We charge fees for all ‘chargeable matters’ as defined in s9 of the Corporations Act. An application to ASIC for an approval, exemption, declaration, consent or statement under certain legislative provisions is a ‘chargeable matter’.

The amount that we will charge depends on:

- the number of substantive matters raised in the application; and
- whether the application requires the use of more than one head of power.

The fees we charge are specified in Sch 1 to the Corporations (Fees) Regulations 2001 (Fees Regulations).

Scope of this guide

- RG 21.1 The examples used in this guide refer to powers commonly exercised by ASIC, such as the powers under s340, 601QA, 741, 911A(2)(l), 951B, 992B and 1020F of the *Corporations Act 2001* (Corporations Act). However, the principles in this guide apply equally to our other discretionary powers.

When fees are payable

- RG 21.2 Fees are payable to the Commonwealth for ‘chargeable matters’, as defined in s9 of the *Corporations Act 2001* (Corporations Act). A ‘chargeable matter’ includes:
- (a) ‘the making of … an application to … ASIC in relation to a matter arising under [the Corporations Act]’; and
 - (b) ‘the making of an application to ASIC for an exemption, or variation or revocation of an exemption, under subsection 12DY(1) of the *Australian Securities and Investments Commission Act 2001*’ (ASIC Act).

Note: See paragraphs (g) and (o) of the definition of ‘chargeable matter’ in s4(1) of the *Corporations (Fees) Act 2001* (Fees Act).

- RG 21.3 We may collect the fees on behalf of the Commonwealth under Pt 9.10 of the Corporations Act.

- RG 21.4 Fees are payable for an application to ASIC for an approval, exemption, declaration, consent or statement under certain provisions of:
- (a) the ASIC Act;
 - (b) the Corporations Act;
 - (c) the *Superannuation Industry (Supervision) Act 1993*;
 - (d) the *National Consumer Credit Protection Act 2009*; and
 - (e) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.
- RG 21.5 Fees are set under legislation. The amount that we will charge for an application depends on the relief that is sought: see RG 21.10. When you apply for relief through the [ASIC Regulatory Portal](#), you will be given an indicative fee and details about payment options: see Section D.
- RG 21.6 For current fee amounts, see the Corporations (Fees) Regulations 2001.
- RG 21.7 We may refuse to undertake an act that requires payment of a fee until the fee has been paid: see s1355 of the Corporations Act.
- RG 21.8 You are liable for these fees even if we decide to grant relief in a different form from what you have requested. We cannot waive these fees nor provide a refund if the application is withdrawn or refused.

How we calculate fees

- RG 21.9 For the purposes of s5 and 6 of the Fees Act, fees have been prescribed for applications made under numerous heads of powers, including, for example, s601QA, 741, 911A(2)(l) and 1020F: see Sch 1 to the Fees Regulations.
- RG 21.10 The amount that we will charge for an application depends on:
- (a) the number of substantive matters raised in the application; and
 - (b) whether the application requires the use of more than one head of power.
- RG 21.11 Generally, we consider that an application will involve as many substantive matters as it involves separate decisions to either exercise or refuse to exercise one of our discretionary powers.
- RG 21.12 We will apply the following principles when calculating fees payable for applications:
- (a) One fee will be charged for each substantive matter raised by an application.
 - (b) However, if an application requires us to exercise two or more heads of power, the prescribed fee must be charged for each head of power.

- (c) In general, and subject to the principle in (b), additional fees are not charged for relief that is merely ancillary to a substantive matter.

RG 21.13 See Section B for the principles we apply when calculating fees.

Fees for standard applications

RG 21.14 We will treat a standard pro forma instrument as relating to only one substantive matter. However, we will charge one fee for each head of power invoked by the pro forma instrument: see Section C.

How to apply for relief

RG 21.15 See Section D for how to apply for relief through the [ASIC Regulatory Portal](#).

RG 21.16 See also [Regulatory Guide 51 Applications for relief](#) (RG 51) for further information about the requirements for applications for relief.

B How we calculate fees

Key points

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

- the number of substantive matters involved;
- the number of heads of power involved;
- if there are ancillary matters;
- if there is more than one managed investment scheme or company; and
- if there are any revocations or variations required.

This section sets out the principles we rely on to calculate the fees we charge.

Fee for each substantive matter

RG 21.17 We will charge a fee for each substantive matter raised in an application: see RG 21.12. A substantive matter is a matter requiring us to make a separate decision. The one substantive matter may also involve one or more ancillary matters, but the defining feature of such groups of relief is that only one substantive decision is made.

RG 21.18 To determine whether an application requires a separate decision, and is therefore a substantive matter, we consider whether that relief may stand by itself, without the need for additional relief. By contrast, a merely ancillary matter will, by itself, normally require additional relief to have the effect for which it is sought, and it would generally be insufficient or futile to only grant the application in the ancillary respect.

Fee for each head of power

Different powers

RG 21.19 In general, an application to exercise our powers under two provisions comprises two chargeable matters. One fee is prescribed for each matter. The applicant must pay, and we must collect, each of those prescribed fees. So, for example, if an applicant seeks relief under both s951B and 1020F, they must pay the fee referable to each of those sections.

Same power

- RG 21.20 If more than one exemption or declaration (to omit, modify or vary) is sought under the same head of power (e.g. two or more modifications to Ch 5C under s601QA(1)(b)), one or more fees may be charged, depending on the number of substantive decisions that arise from the application. If there are multiple substantive decisions to be made, a multiple of the prescribed fee will be payable.
- RG 21.21 If, however, there is only one substantive decision involved, and only one power invoked, then it will not matter how many provisions of the legislation may be affected by the instrument. For example, an application to modify several provisions of Ch 5C at the same time using the power in s601QA(1)(b) may require us to make only one substantive decision, in which case, only one fee will be charged.

Ancillary matters

- RG 21.22 In many cases, an instrument 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 (to omit, modify or vary) is needed to deal with one substantive matter—subject to the principle in RG 21.12(b).
- RG 21.23 For example, if we decide to modify the effect of Pt 5C.6, dealing with the withdrawal rights provisions and procedures for illiquid schemes, an ancillary declaration to modify s601GA(4) is also likely to be necessary to give effect to the substantive decision. In such a case, we charge only one fee.

More than one managed investment scheme or company

- RG 21.24 If we receive a request to exercise one or more heads of power for more than one managed investment scheme or company, a separate decision is needed for each head of power for each scheme or company—to the extent that the decision is not for ancillary relief. The number of substantive matters raised, and therefore the fees charged, equals the number of heads of power to be exercised multiplied by the number of schemes or companies affected.
- RG 21.25 For example, if a responsible entity of 10 different schemes sought the same declaration to modify s601GA under s601QA(1)(b) for each scheme, the applicable fee is 10 times the prescribed fee for the exercise of that head of power. Similarly, if a number of wholly-owned subsidiaries of one holding company require financial reporting and audit relief under s340, the applicable fee is the fee attracted by s340 multiplied by the number of wholly-owned subsidiaries that require relief.

Revocations or variations

- RG 21.26 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 fresh application to vary or revoke an existing instrument will be assessed according to RG 21.17–RG 21.25.
- RG 21.27 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 fresh 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 21.28 If a fresh 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.

C Fees for standard applications

Key points

The procedures we adopt for standard applications often involve pro forma instruments which give exemption from, or a declaration to omit, modify or vary, more than one provision. This section deals with the fees for these instruments.

Pro forma applications

- RG 21.29 We have published policies on matters that commonly require us to use our discretionary powers. We have also published pro forma instruments for use in applications consistent with these policies: see [RG 51](#).
- RG 21.30 To make the application process easier, we have grouped together some pro formas for different exemptions and declarations. Some pro formas are also grouped together because one commercial initiative can only be implemented with several exemptions from, or declarations to omit, modify or vary, various provisions.

Fees for pro formas

- RG 21.31 Our view is that each pro forma relates to 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, only one fee will be charged for an application for a pro forma instrument if we only need to make an exemption or declaration under one head of power.
- RG 21.32 If 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.
- RG 21.33 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 s601QA(1)(a);
 - (b) the exemption under s911A(2)(l) (depending on whether the applicant is a body corporate, partnership, non-corporate trustee or a natural person);
 - (c) the exemptions under s992B(1)(a); and

- (d) the exemption under s1020F(1)(a).

Note: See [Information Sheet 30 Fees for commonly lodged documents](#) (INFO 30) for further details about fees.

- RG 21.34 Paragraph 3 of PF 187 gives an exemption from s992AA 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) and so does not attract an additional fee.

D How to apply for relief

Key points

This section sets out how you apply for relief, including the information to include in your application and submitting it through the [ASIC Regulatory Portal](#).

- RG 21.35 To apply for relief you need to:
- (a) submit your application through the ASIC Regulatory Portal;
 - (b) make sure your application complies with [RG 51](#);
 - (c) specify and quantify any financial and other benefits, and costs (including any loss of consumer protection) of the relief as far as you can;
 - (d) if you cannot quantify the benefits and costs, explain why and how the scale of the effects of the relief can be estimated; and
 - (e) set out all information that may be relevant to your application, including your commercial objectives and how you will address any loss of consumer protection.
- RG 21.36 You will need to pay fees for your application. Fees are set under legislation. The amount that we will charge for an application depends on the relief that you seek: see RG 21.10. An indicative fee will be given before you submit your application through the portal. Details about payment options are also given in the portal. For more information, see [how you apply for relief](#).
- RG 21.37 Applications for individual relief are not needed if an ASIC legislative instrument applies.

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

Key terms

Term	Meaning in this document
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
Ch 5 (for example)	A chapter of the Corporations Act (in this example numbered 5), unless otherwise specified
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Fees Act	<i>Corporations (Fees) Act 2001</i>
Fees Regulations	Corporations (Fees) Regulations 2001
individual relief	Relief given by ASIC to individual parties on application to ASIC
Instrument	Either an ASIC legislative instrument or an individual relief instrument
INFO 30 (for example)	An ASIC information sheet (in this example numbered 30)
managed investment scheme	Has the meaning given in s9 of the Corporations Act
PF 187 (for example)	An ASIC pro forma (in this example numbered 187)
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
RG 51 (for example)	An ASIC regulatory guide (in this example numbered 51)
s9 (for example)	A section of the Corporations Act (in this example numbered 9), unless otherwise specified
substantive matter	A matter requiring ASIC to make a separate decision

Related information

Headnotes

ancillary matters, applications for relief, chargeable matters, fees, substantive matters

Pro formas

[PF 187](#) *Management rights schemes where the strata unit cannot be used as a residence*

Regulatory guides

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

Information sheets

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

Legislation

Acts Interpretation Act 1901, s33(3)

ASIC Act

Corporations Act, Ch 5C, Pts 5C.6, 9.10, s9, 340, 601QA, 601GA(4), 741, 911A(2)(l), 951B, 992AA, 992B(1)(a), 1020F(1)(a), 1355

Fees Act, s4(1) (definition of ‘chargeable matter’ paragraphs (g) and (o))

Fees Regulations, Sch 1

National Consumer Credit Protection Act 2009

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

Superannuation Industry (Supervision) Act 1993