



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 121

Doing financial services business in Australia

April 2011

About this guide

This is a guide for people or companies from overseas who propose to conduct a financial services business in Australia.

It provides general guidance on the financial services regime in Australia, including:

- when a person or company from outside Australia may be required to hold an Australian financial services (AFS) licence to carry on a financial services business in Australia;
- circumstances in which a person or company may be exempt from holding an AFS licence; and
- some of the obligations associated with being an AFS licensee.

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

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Previous versions:

- Superseded Regulatory Guide 121, issued 11 August 2008

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.

Contents

A	Overview	4
	About this guide	4
	ASIC's regulation of the financial services industry	5
	The general requirement to be licensed	5
	Exemptions from the licensing requirement	5
	Obligations of AFS licensees	6
	Offering financial products in Australia	6
	Other rules and legislation that may apply	6
B	ASIC's regulation of the financial services industry	7
	What is ASIC's role?	7
	The laws that ASIC administers	7
	Key concepts of the AFS licensing regime	8
C	The general requirement to be licensed	13
	Do you need an AFS licence?	13
	'Carrying on a financial services business in Australia'	13
D	Are you exempt from holding an AFS licence?	18
	Categories of exemption	18
	Foreign financial services providers	18
	Connection with an AFS licensee	19
	Financial services that involve only the financial services provider	19
	Alternative regulatory regime	20
	Financial services business is not the sole or principal purpose of the activity	20
	Foreign collective investment schemes	20
E	Obligations for AFS licensees	22
	AFS licensee is ultimately responsible for all its financial services	22
	General AFS licensee obligations	22
	Conduct obligations	23
	Disclosure obligations	24
	Additional obligations: Financial product advice to retail clients	24
	When do representatives need to hold an authorisation?	25
	What obligations are imposed on representatives?	26
F	Offering financial products in Australia	27
	Disclosure obligations that apply to offering financial products	27
	Disclosure obligations that apply to offering securities	28
G	Other rules and legislation that may apply	29
	ASX and ASX 24 operating rules	29
	ASIC market integrity rules	29
	Foreign investment	30
	Banking and insurance	30
	Credit activities	30
	Payment systems and the transfer of funds	31
	Australian taxation laws and other rules	31
	Appendix: Exemptions from holding an AFS licence	32
	Key terms	44
	Related information	47

A Overview

Key points

If you are a person or company from overseas and you wish to engage in a financial services business in Australia, you need to consider whether you need to be licensed or have other obligations under legislation administered by the Australian Securities and Investments Commission (ASIC).

ASIC regulates companies and financial services businesses and promotes investor, creditor and consumer protection by administering relevant laws.

The main source of obligations relevant to a foreign person or company in the Australian financial market is the *Corporations Act 2001* (Corporations Act): see Section B.

Generally, if you carry on a financial services business in Australia, you will need to hold an Australian financial services (AFS) licence or an authorisation from an AFS licensee: see Section C. Some exemptions from the requirement to be licensed may apply: see Section D.

AFS licensees and their representatives must comply with certain obligations: see Section E. There are disclosure obligations related to offering financial products in Australia to a retail client: see Section F.

There may be other rules and legislation relevant to your financial services business in Australia depending on the circumstances: see Section G.

About this guide

RG 121.1 This regulatory guide contains general guidance on whether a person or company from outside Australia may be required to hold an AFS licence to carry on a financial services business in Australia. It covers:

- (a) ASIC's regulation of the financial services industry;
- (b) the AFS licensing requirement and exemptions that might apply;
- (c) the obligations of AFS licensees;
- (d) offering financial products in Australia; and
- (e) other legislation and rules that may apply to a foreign person or company in the Australian financial market.

Note: This guide does not specifically deal with the issue of when a foreign company must be registered under Pt 5B.2 of the Corporations Act.

ASIC's regulation of the financial services industry

RG 121.2 We administer legislation that includes the Corporations Act. Chapter 7 of the Corporations Act regulates the financial services industry in Australia.

RG 121.3 Section B of this guide introduces some of the key concepts in Ch 7. These include:

- (a) 'financial product';
- (b) 'financial service';
- (c) 'wholesale' versus 'retail' clients; and
- (d) 'authorised representative'.

The general requirement to be licensed

RG 121.4 If you are a foreign person or company, you will generally need an AFS licence to carry on a financial services business in Australia (unless an exemption applies).

RG 121.5 To help you determine whether you need an AFS licence, Section C provides guidance on the following questions:

- (a) What is carrying on a financial services business?
- (b) When does the activity occur in Australia?
- (c) When does a foreign person or company induce people in Australia to use a financial service?

Exemptions from the licensing requirement

RG 121.6 There are certain circumstances in which a foreign person or company may carry on a financial services business in Australia without holding an AFS licence: see Section D.

RG 121.7 Exemptions are available:

- (a) for foreign financial services providers;
- (b) for business carried on in connection with an AFS licensee;
- (c) in relation to financial services that involve only the financial services provider itself;
- (d) because the financial service is subject to an alternative regulatory regime;
- (e) because the financial services business is not the sole or principal purpose of the activity; and
- (f) in relation to foreign collective investment schemes.

Obligations of AFS licensees

- RG 121.8 If you hold an AFS licence, you must comply with various obligations under the Corporations Act. These include obligations relating to:
- (a) undertaking particular conduct in certain situations (see RG 121.72–RG 121.73); and
 - (b) disclosing certain information in a Financial Services Guide (FSG) to retail clients (see RG 121.74).
- RG 121.9 There are additional obligations that apply where an AFS licensee provides financial product advice to retail clients: see RG 121.75–RG 121.78.
- RG 121.10 If you provide financial services in Australia as a representative of another person or company, you generally must hold an authorisation under the Corporations Act from that person or company. There are separate obligations imposed on representatives under the Corporations Act: see RG 121.79–RG 121.82.

Offering financial products in Australia

- RG 121.11 If you wish to offer financial products to a retail client, you may be obliged to provide the client with a Product Disclosure Statement (PDS). This obligation may apply even if you are exempt from the requirement to be licensed. If the financial product being offered is a security, you may be obliged to provide a prospectus rather than a PDS: see Section F.

Other rules and legislation that may apply

- RG 121.12 There are other rules and legislation that may apply to your activities as a foreign person or company in the Australian financial market, including:
- (a) the Australian Securities Exchange (ASX) Operating Rules and ASX 24 (formerly Sydney Futures Exchange (SFE)) Operating Rules;
 - (b) the ASIC market integrity rules;
 - (c) laws relating to foreign investment in Australia;
 - (d) laws relating to banking and insurance;
 - (e) laws relating to credit activities;
 - (f) laws relating to payment systems and the transfer of funds; and
 - (g) Australian taxation laws.

Note: For more information, see Section G.

B ASIC's regulation of the financial services industry

Key points

ASIC regulates registered companies, markets and financial services providers in Australia, and administers legislation that includes the Corporations Act.

Chapter 7 of the Corporations Act regulates the financial services industry.

This section provides guidance on some of the key concepts in Ch 7, such as 'financial product', 'financial service', 'wholesale' versus 'retail' clients and 'authorised representative'.

What is ASIC's role?

- RG 121.13 We are an independent agency of the Australian Government that regulates registered companies, markets and financial services providers by enforcing and administering relevant legislation.
- RG 121.14 We aim to promote a fair and efficient financial market characterised by integrity and transparency, and to support confident and informed participation by investors and consumers.
- RG 121.15 Among other things, we license and monitor financial services businesses and markets to ensure that they operate efficiently, honestly and fairly. These businesses are typically involved in superannuation, managed funds, shares and company securities, derivatives and insurance. We also maintain a register of AFS licensees and authorised representatives of AFS licensees.

The laws that ASIC administers

- RG 121.16 The legislation that we administer includes the *Australian Securities and Investments Commission Act 2001* (ASIC Act), the Corporations Act, the Corporations Regulations 2001 (Corporations Regulations), the *National Consumer Credit Protection Act 2009* (National Credit Act) and the *Superannuation Industry (Supervision) Act 1993* (Superannuation Act).
- RG 121.17 This guide is mainly about the obligations in the Corporations Act and Corporations Regulations that may be relevant to foreign people or companies. There are other laws and rules that may apply to foreign people or companies, depending on the circumstances: see Section G.

Key concepts of the AFS licensing regime

RG 121.18 Chapter 7 regulates the financial services industry in Australia. This includes the regulation of financial services, most financial products and the providers of financial services and products.

RG 121.19 This section is a brief introduction to some key concepts under the financial services regime in Australia. You should refer to the Corporations Act for more information.

Financial products

RG 121.20 A 'financial product' is a facility that allows a person to make a financial investment, manage a financial risk or make non-cash payments. A financial product includes any of the following:

- (a) shares;
- (b) debentures;
- (c) interests in a managed investment scheme;
- (d) derivatives;
- (e) general insurance;
- (f) life insurance;
- (g) superannuation;
- (h) basic deposit products;
- (i) retirement savings accounts; and
- (j) margin lending facilities.

Note: The definition of 'financial product' is found in Div 3 of Pt 7.1.

RG 121.21 A facility may not be a financial product if the aspect of the facility that allows a person to make a financial investment, manage a financial risk or make non-cash payments is an *incidental* aspect of the facility.

Note: See s763E on when an aspect of a facility is incidental.

RG 121.22 We are empowered to include or exclude particular products from the financial services regime as appropriate.

Note: For more information on how to make an application to ASIC (e.g. to include or exclude particular products from the regime), see Regulatory Guide 51 *Applications for relief* (RG 51).

Financial services

RG 121.23 As described in Section C, the AFS licensing regime is structured around whether a person is providing a financial service.

RG 121.24 Generally, you are providing a financial service if you:

- (a) provide financial product advice;
- (b) deal in a financial product;
- (c) make a market for a financial product;
- (d) operate a registered managed investment scheme;
- (e) provide a custodial or depository service; or
- (f) provide traditional trustee company services.

Note: See Div 4 of Pt 7.1 for provisions on when a person provides a financial service.

What is the meaning of ‘provide financial product advice’?

RG 121.25 A recommendation or a statement of opinion, or a report of either of those things, constitutes ‘financial product advice’ if it is provided with the intention of influencing a person’s decision in relation to a financial product (and is not exempted from the definition of ‘financial product advice’).

Note: There are two types of financial product advice under the Corporations Act—personal and general advice. For more information about these two types of advice and your obligations, see RG 121.75–RG 121.78 and Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) and Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175).

RG 121.26 The following considerations will help you determine whether a communication constitutes financial product advice:

- (a) the overall impression and circumstances of a communication;
- (b) whether the communication is merely factual information; and
- (c) whether a decision on a particular financial product or class of financial product is made.

Note: For more information about these considerations, see RG 36.19–RG 36.27.

RG 121.27 A communication might be exempt from being financial product advice if it is advice given by a lawyer or tax agent (in the course of their ordinary activities) or is a quote relating to the cost of a financial product or the rate of return on a financial product.

Note: For more information on circumstances where a person does not provide financial product advice, see RG 36.31–RG 36.32.

What is the meaning of ‘deal in a financial product’?

RG 121.28 The following conduct may constitute ‘dealing in a financial product’:

- (a) applying for or acquiring a financial product;
- (b) issuing a financial product;

- (c) for securities or managed investment schemes, underwriting the securities or interests;
- (d) varying a financial product; or
- (e) disposing of a financial product.

RG 121.29 Arranging for a person to engage in the conduct described in RG 121.28 may also constitute dealing in a financial product.

Note: For more information on dealing in financial products and 'arranging', see RG 36.33–RG 36.39.

RG 121.30 There are various exceptions to the definition of dealing. For example, a person who deals on their own behalf may not be dealing in a financial product.

Note: For more information, see s766C of the Corporations Act and Div 4 of Pt 7.1 of the Corporations Regulations.

What is the meaning of 'make a market for a financial product'?

RG 121.31 Generally, a person 'makes a market for a financial product' if:

- (a) they regularly state the prices at which they propose to buy or sell financial products on their own behalf; and
- (b) other persons can reasonably expect to be able to regularly buy and sell at those stated prices.

RG 121.32 There is a distinction between making a market for a financial product and operating a financial market. The general test is whether the person operates a facility where the prices for a financial product are quoted on behalf of other persons (operating a financial market) or solely on their own behalf (making a market).

Note: For more information on making a market, see s766D and Div 5 of Pt 7.1 of the Corporations Act. For more information on operating a financial market, see Regulatory Guide 172 *Australian market licences: Australian operators* (RG 172) and Regulatory Guide 177 *Australian market licences: Overseas operators* (RG 177).

What is a 'managed investment scheme'?

RG 121.33 Managed investment schemes are also known as managed funds, pooled investments or collective investments. Generally, in a managed investment scheme:

- (a) people are brought together to contribute money to get an interest in the scheme ('interests' in a scheme are a financial product);
- (b) money is pooled together with other investors—often many hundreds or thousands of investors—or used in a common enterprise; and
- (c) a responsible entity operates the scheme. Investors do not have day-to-day control over the operation of the scheme.

RG 121.34 Managed investment schemes cover a wide variety of investments. Some of the popular managed investment schemes that may be offered include:

- (a) cash management trusts;
- (b) property trusts;
- (c) equity (trust schemes)—either Australian or international schemes;
- (d) agricultural schemes;
- (e) some film schemes;
- (f) timeshare schemes;
- (g) some mortgage schemes; and
- (h) actively managed strata title schemes.

Note: The definition of ‘managed investment scheme’ is set out in s9, and Ch 5C regulates the creation and operation of managed investment schemes.

What is a ‘custodial or depository service’?

RG 121.35 A ‘custodial or depository service’ generally involves a person holding financial products or beneficial interests in financial products in trust on behalf of another (usually for a fee).

Note: See s766E for the general definition of ‘provide a custodial or depository service’ and for exceptions to this definition.

What are ‘traditional trustee company services’?

RG 121.36 The following activities are ‘traditional trustee company services’:

- (a) performing estate management functions;
- (b) preparing a will, a trust instrument, a power of attorney or an agency arrangement;
- (c) applying for probate of a will, applying for a grant of letters of administration, or electing to administer a deceased estate; or
- (d) establishing and operating common funds.

Note: The definition of ‘traditional trustee company services’ is set out in s601RAC.

RG 121.37 A person will generally not be providing ‘traditional trustee company services’ if they are:

- (a) operating a registered scheme;
- (b) providing a custodial or depository service (within the meaning of s766E);
- (c) acting as trustee for debenture holders under Ch 2L;
- (d) acting as a receiver or other controller of property of a corporation under Pt 5.2; or

- (e) acting as trustee of a superannuation fund, an approved deposit fund or a pooled superannuation trust (within the meaning of the Superannuation Act).

'Wholesale' versus 'retail' clients

RG 121.38 Disclosure requirements in relation to the financial services regime generally apply only to 'retail clients' because it is recognised that 'wholesale clients' are in a better position to look after their own interests.

RG 121.39 A person may fall within the definition of a wholesale client if, among other things, they are:

- (a) a person purchasing a financial product, or a financial service related to a financial product, where the value of the product is above the prescribed threshold (currently set by the Corporations Regulations at \$500,000);
- (b) a person with certified net assets of at least \$2.5 million or a person who had a gross income for each of the past two financial years of at least \$250,000; or
- (c) a 'professional investor'. This category includes AFS licensees, listed entities, banks and friendly societies, and other entities that may be presumed to have the expertise or access to professional advice to justify their being treated as wholesale.

Note: See s761G and regs 7.1.11–7.1.28 for provisions on wholesale and retail clients.

Authorised representatives

RG 121.40 An 'authorised representative' is a person authorised under the Corporations Act to provide a financial service or financial services on behalf of an AFS licensee.

Note: This is a definition contained in s761A. Authorisation is in accordance with s916A or 916B.

C The general requirement to be licensed

Key points

You will require an AFS licence if you ‘carry on a financial services business in Australia’, according to the Corporations Act, unless an exemption applies.

The courts’ interpretation of ‘carrying on a business in Australia’ is relevant to determining whether you need an AFS licence for your activities in Australia.

You will also need to hold an AFS licence if you ‘induce’ people in Australia to use the financial services you provide.

Do you need an AFS licence?

RG 121.41 If you intend to carry on or are carrying on a financial services business in Australia, you must hold an AFS licence authorising you to do so (unless an exemption applies). The AFS licence will need to contain a specific authorisation covering the provision of the financial services.

Note: For more information about the scope of the AFS licensing regime, see RG 36. For more information about how to apply for an AFS licence, see Regulatory Guides 1–3, which are Parts 1–3 of the *AFS Licensing Kit*. For more information about how we will exercise our licensing exemption power under s911A(2)(l), see Section A of Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167).

‘Carrying on a financial services business in Australia’

RG 121.42 If you engage in providing a financial service, you will need to determine whether you are ‘carrying on a financial services business’ in this jurisdiction by considering:

- (a) what the Corporations Act says about the meaning of ‘carrying on a financial services business in Australia’ (see RG 121.43–RG 121.44);
- (b) how the courts have interpreted ‘carrying on a business in Australia’ (see RG 121.47–RG 121.48); and
- (c) what activities constitute ‘inducing’ people in Australia to use a financial service (you might need an AFS licence if you intend to induce clients in Australia to use your financial services (see s911D and RG 121.51–RG 121.52)).

Note 1: ‘In Australia’ or ‘in this jurisdiction’ means within the geographic area of each state and territory in Australia, including the coastal sea and any external territory. Specified external territories include the Australian Antarctic Territory, Heard Island

and McDonald Islands, Coral Sea Islands, Ashmore and Cartier Islands, Cocos (Keeling) Islands, Christmas Island and Norfolk Island.

Note 2: See Section B for an introduction to the terms ‘financial product’, ‘financial service’, ‘wholesale client’ and ‘retail client’. The statutory definition of ‘financial service’ (including the terms ‘dealing’, ‘arranging’ and ‘financial product advice’) is set out in s766A–766E; the definitions of ‘wholesale client’ and ‘retail client’ are set out in s761G; and the definition of ‘financial product’ is set out in s762A–765E.

What does ‘carrying on a financial services business in Australia’ mean?

RG 121.43 You will be deemed to carry on a business in Australia if you:

- (a) have a place of business in Australia;
- (b) establish or use a share transfer office or share registration office in Australia; or
- (c) administer, manage, or otherwise deal with, property situated in Australia as an agent, legal personal representative or trustee, whether by employees or agents or otherwise.

Note: See s21(1)–(2) and 761C.

RG 121.44 You will not be deemed to be carrying on a business in Australia *merely* because, in Australia, you:

- (a) are or become a party to a proceeding or effect settlement of a proceeding or of a claim or dispute;
- (b) hold meetings of your directors or shareholders or carry on other activities concerning your internal affairs;
- (c) maintain a bank account;
- (d) effect a sale through an independent contractor;
- (e) create evidence of a debt or create a charge on property;
- (f) secure or collect any of your debts or enforce your rights in regard to any securities relating to such debts;
- (g) conduct an isolated transaction that is completed within 31 days, not being one of a number of similar transactions repeated from time to time; or
- (h) invest any of your funds or hold any property.

Note: See s21(3) and 761C.

RG 121.45 There are a number of statutory provisions that qualify the general concept of carrying on a business, including:

- (a) a person may carry on a business even if they are not carrying on that business for profit;

- (b) a reference to a business of a particular kind includes a reference to a business of that kind that is part of, or is carried on in conjunction with, any other business; and
- (c) a reference to a person carrying on a business, or a business of a particular kind, is a reference to a person carrying on a business, or a business of that kind, whether alone or together with other persons.

Note: See s18, 19 and 20.

RG 121.46 Subject to these statutory provisions, the common law test of ‘carrying on a business’ will need to be applied to the activity. The statutory provisions dealing with ‘carrying on a business’ are not exhaustive.

How have the courts interpreted ‘carrying on a business in Australia’?

RG 121.47 The courts’ interpretation of the phrase ‘carrying on a business in Australia’ is also relevant to the issue of whether you are carrying on a financial services business in Australia. The courts stress that whether a body corporate’s activities constitute ‘carrying on a business in Australia’ depends on the factual circumstances. Cases indicate that the degree to which a body corporate’s activities in Australia are conducted with *system, regularity and continuity* generally determines whether the activities can be characterised as ‘carrying on a business in Australia’.

Note: Relevant cases are listed in the ‘Related information’ at the end of this guide.

RG 121.48 If the financial services you provide in Australia are more than very minor (and, in particular, have elements of *system, repetition* and *continuity*), then it is likely that you will need an AFS licence. However, *system, repetition* and *continuity* are not essential; a one-off transaction, if substantial, could also be seen by the courts as carrying on a business in Australia.

RG 121.49 Acts of an agent acting within their actual or apparent authority are generally attributed to their principal for the purposes of Ch 7: see s769B. The courts have found that the acts of an agent of the company can be attributed to the company, leading to the conclusion that the company carries on business in Australia through its agent.

RG 121.50 Table 1 provides a general guide to whether activities connected with Australia may constitute ‘carrying on a business in Australia’ for the purposes of the common law.

Table 1: Do your activities constitute ‘carrying on a business in Australia’?

Activity	Example	Do you need an AFS licence?
The activity connected with Australia is either systematic or repetitious or continuous	You are located in New Zealand and offer new financial products to a significant number of clients who were previously based in New Zealand but who have moved to Australia.	You are <i>likely</i> to need an AFS licence.
The activity involves only one significant financial services transaction connected with Australia	You make a one-off offer of securities to Australian investors who are wholesale clients, where you have not previously undertaken such activity in Australia and are unlikely to do so again.	You <i>may</i> need an AFS licence.
The activity involves occasional, less significant transactions	You are the representative of a foreign bank who is travelling in Australia and you merely refer queries about opening accounts with the foreign bank to the bank’s head office, which is based overseas.	You are <i>unlikely</i> to need an AFS licence.

What activities constitute ‘inducing’ people in Australia to use a financial service?

RG 121.51 If you engage in conduct that is ‘intended to induce people’ in Australia (or you engage in conduct that is likely to induce people in Australia) to use financial services you provide, then you will need to hold an AFS licence, unless an exemption applies.

Note: This is because of the deeming provision in s911D, which says that such conduct is ‘taken to be’ carrying on a financial services business in Australia. We have created a specific exemption for ‘inducing’ wholesale clients that may apply: see Class Order [CO 03/824] *Licensing relief for financial service providers with limited connection to Australia dealing with wholesale clients*.

What is ‘inducing’?

RG 121.52 Conduct that amounts to inducing includes attempts to persuade, influence or encourage a particular person to become a client. It could, for example, include mass marketing campaigns. Table 2 provides some examples of what may or may not constitute ‘inducing’.

Table 2: Does your conduct constitute ‘inducing’ people in Australia?

Example	Do you need an AFS licence?
You are an insurance company in Singapore and you place advertisements in an Australian newspaper promoting your products.	You are <i>likely</i> to need an AFS licence, even if you are yet to provide any financial services in Australia.
You are a broker in the United Kingdom and you directly contact and encourage a small number of people in Australia to buy parcels of shares on the London Stock Exchange.	You are <i>likely</i> to need an AFS licence.
<p>You are a broker in Hong Kong and you have an advertisement for securities on your website that is accessible from Australia, but the advertisement:</p> <ul style="list-style-type: none"> • is not targeted at people in Australia; • has a jurisdictional disclaimer; and • has little impact on investors in Australia. 	You <i>may not</i> need an AFS licence because there may not be any inducing.

D Are you exempt from holding an AFS licence?

Key points

You may be exempt from holding an AFS licence if you propose to carry on a financial services business in particular circumstances.

This section gives an overview of the licensing exemptions that may apply to foreign people or companies.

These exemptions are available under Ch 7 of the Corporations Act, the Corporations Regulations or class order relief granted by ASIC. In some cases, we may grant case-by-case relief.

Table 3 to Table 7 in the appendix provide more details about the various exemptions.

Categories of exemption

- RG 121.53 Your activities as a foreign person or company may be exempt from the AFS licensing requirement under the provisions in Ch 7, the Corporations Regulations or class order relief granted by ASIC.
- RG 121.54 This section provides an overview of the licensing exemptions that may apply. For ease of reference in this guide, we have categorised the exemptions into the following groups:
- (a) exemptions for foreign financial services providers;
 - (b) exemptions for business carried on in connection with an AFS licensee;
 - (c) exemptions in relation to financial services that involve only the financial services provider itself;
 - (d) exemptions because the financial service is subject to an alternative regulatory regime;
 - (e) exemptions because the financial services business is not the sole or principal purpose of the activity; and
 - (f) exemptions for foreign collective investment schemes.

Foreign financial services providers

- RG 121.55 These exemptions apply to financial services activities carried on by a foreign person or company where:
- (a) there is no inducement for clients in Australia to use the service;
 - (b) the financial services are predominantly provided outside the Australian jurisdiction;

- (c) the financial service is provided to an overseas client;
- (d) the financial service is provided to a professional investor;
- (e) the financial service is carried out in relation to AFS licensees; or
- (f) the foreign person or company only provides services to wholesale investors and is regulated by a foreign regulator specified by ASIC.

Note: See Table 3 in the appendix for more details.

Exemptions on a case-by-case basis

- RG 121.56 We will consider exempting wholesale foreign financial services providers that are in jurisdictions not covered by the class orders described in Table 3 or who, for other reasons, do not fit within the terms of those class orders. The policy under which we consider such applications is Regulatory Guide 176 *Licensing: Discretionary powers—Wholesale foreign financial services providers* (RG 176).

Connection with an AFS licensee

- RG 121.57 These exemptions apply where a financial services business is carried on in relation to an AFS licensee. These activities can include:
- (a) acting under the authority, or on behalf, of an AFS licensee;
 - (b) acting under an intermediary authorisation;
 - (c) providing administrative services; or
 - (d) providing services that are incidental to the operation of a licensed market or clearing and settlement facility (CS facility).

Note: See Table 4 in the appendix for more details.

Financial services that involve only the financial services provider

- RG 121.58 These exemptions apply where the financial service has some connection with the financial services provider itself.
- RG 121.59 They apply in the following situations:
- (a) the financial services provider deals on its own behalf or provides services to a related body corporate;
 - (b) the financial service is provided in relation to a financial product the financial services provider issues; or
 - (c) the financial service is provided in relation to an employee share scheme.

Note: See Table 5 in the appendix for more details.

Alternative regulatory regime

RG 121.60 These exemptions apply where the financial service is subject to adequate alternative regulation, such as the superannuation regulatory regime, or where people to whom financial services are provided would still have the protection intended by Parliament: see Table 6 in the appendix for more details.

Financial services business is not the sole or principal purpose of the activity

RG 121.61 These exemptions apply where:

- (a) carrying on the financial services business is not the sole or principal purpose of the activity; or
- (b) the predominant purpose of the product to which the service relates is not a financial product purpose.

Note: See Table 7 in the appendix for more details.

Foreign collective investment schemes

RG 121.62 Regulatory Guide 178 *Foreign collective investment schemes* (RG 178) outlines how we will use our powers to facilitate the offer of interests in foreign collective investment schemes (FCISs) to Australian investors. It describes how and when we will use our exemption powers to:

- (a) grant a foreign person or company who operates an FCIS (FCIS operator) relief from the requirement to be licensed (licensing relief);
- (b) grant an FCIS operator relief from the requirement to register an FCIS where the interests are offered to Australian retail investors (registration relief); and
- (c) enable an FCIS operator to make offers to Australian investors on the basis of a foreign regulated disclosure document (product disclosure relief).

RG 121.63 In general, we will only give this relief if:

- (a) the FCIS and FCIS operator are regulated in their home jurisdiction under a sufficiently equivalent regulatory regime; and
- (b) there are effective cooperation arrangements between ASIC and the regulator in the home jurisdiction.

Note: RG 178 also deals with relief we will give to responsible entities of Australian-registered managed investment schemes that want to invest scheme property in an unregistered FCIS.

RG 121.64 Under our policy in RG 178, we have given licensing and registration relief to operators of certain types of FCISs that are regulated in the United States and New Zealand (see Class Order [CO 04/526] *Foreign collective investment schemes*), in Singapore (see Class Order [CO 07/753] *Singaporean collective investment schemes*) and in Hong Kong (see Class Order [CO 08/506] *Hong Kong collective investment schemes*).

RG 121.65 RG 178, [CO 04/526], [CO 07/753] and [CO 08/506] provide further information about:

- (a) the basis upon which we have granted and will grant exemptions to FCIS operators; and
- (b) the conditions of that relief.

Note: For more information on the conditions of relief for FCISs, see Information Sheet 93 *Practical guidance for operators of foreign collective investment schemes seeking to offer in Australia* (INFO 93).

E Obligations for AFS licensees

Key points

If you are required to hold an AFS licence in relation to a financial services business, you will be subject to various general, conduct and disclosure obligations: see RG 121.70–RG 121.74.

If you provide financial product advice to retail clients, you will have additional obligations: see RG 121.75–RG 121.78.

There are also obligations that apply directly to a person who provides financial services as a representative of an AFS licensee: see RG 121.79–RG 121.82.

AFS licensee is ultimately responsible for all its financial services

- RG 121.66 A person who holds an AFS licence has obligations under the Corporations Act and their licence conditions, particularly if they deal with retail clients. These obligations include having a dispute resolution system and professional indemnity insurance, and training and supervising representatives.
- RG 121.67 An AFS licensee remains ultimately responsible for all the financial services provided under its AFS licence, regardless of how those services are provided.
- RG 121.68 If you are not a foreign company registered under the Corporations Act but you are an AFS licensee, you are obliged to have a local agent at all times who is authorised to accept service of process and notices on your behalf: regs 7.6.03A and 7.6.03B.
- RG 121.69 If you are an AFS licensee, you are also subject to various conduct and disclosure obligations.

General AFS licensee obligations

- RG 121.70 As an AFS licensee, you must comply with the following general obligations under s912A and 912B:
- (a) do all things necessary to ensure that the financial services covered by your AFS licence are provided efficiently, honestly and fairly;
 - (b) have adequate arrangements in place to manage your conflicts of interest;
 - (c) comply with your AFS licence conditions;

- (d) comply with the financial services laws;
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws;
- (f) have available adequate resources;
- (g) maintain the competence to provide the financial services;
- (h) adequately train your representatives and ensure that they are competent to provide the financial services;
- (i) have a dispute resolution system if financial services are provided to retail clients;
- (j) have adequate risk management systems; and
- (k) have compensation arrangements if financial services are provided to retail clients.

Note 1: RG 121.70(f) and RG 121.70(j) do not apply if you are a body regulated by the Australian Prudential Regulation Authority (APRA) within the meaning of s3(2) of the *Australian Prudential Regulation Authority Act 1998*.

Note 2: For guidance on complying with these obligations, see Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104) and Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* (RG 126).

RG 121.71 The consumer protection provisions of the ASIC Act apply to prohibit a person from engaging in misleading or deceptive conduct in relation to financial services, and prohibit unconscionable conduct. Under the ASIC Act, a term in a consumer contract may also be rendered void if it is deemed to be unfair.

Note: See Div 2 of Pt 2 of the ASIC Act for more details on these provisions.

Conduct obligations

RG 121.72 As an AFS licensee, you may need to comply with various conduct obligations in Pts 7.6, 7.8 and 7.10, including:

- (a) notifying ASIC of significant breaches or likely breaches of certain AFS licensee obligations;

Note: The obligation to notify ASIC of a breach or likely breach of an AFS licence obligation applies only to 'significant' breaches of certain obligations: s912D(1)(b). For guidance on complying with this obligation, see Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78).

- (b) assisting us in our regulatory oversight of you as an AFS licensee;
- (c) quoting your AFS licence number in documents;

Note: See s912F and reg 7.6.01C.

- (d) complying with certain procedures when dealing with clients' money and other property; and
- (e) keeping financial records and preparing and lodging financial statements.

RG 121.73 AFS licensees are prohibited from engaging in market misconduct and other conduct that is contrary to the prohibitions in the Corporations Act.

Note: See Pt 7.10 in relation to these prohibitions. Some of these obligations also apply to persons other than AFS licensees.

Disclosure obligations

RG 121.74 As an AFS licensee, you may also be subject to various disclosure obligations, including (but not limited to) giving an FSG to retail clients.

Note: For information about complying with the FSG and other disclosure obligations in Pt 7.7, see RG 175. For further information about disclosure obligations regarding providing personal advice to retail clients, see s945A, 945B and 946A, and RG 175.

Additional obligations: Financial product advice to retail clients

RG 121.75 There are additional obligations if you provide financial product advice to retail clients. These obligations vary depending on whether the advice is personal advice or general advice. Personal advice is financial product advice given or directed to a person (including by electronic means) in circumstances where:

- (a) the provider of the advice has considered one or more of the person's objectives, financial situation and needs; or
- (b) a reasonable person might expect the provider to have considered one or more of those matters (s766B(3)).

RG 121.76 All other financial product advice is general advice.

Note 1: The definition of 'financial product advice' is set out in RG 36.17.

Note 2: For further information about the distinction between personal and general advice, see Section A of RG 175.

RG 121.77 Generally, if you are the providing entity and the financial service is the provision of personal advice to a retail client, you must:

- (a) make reasonable inquiries into the relevant personal circumstances of the client and have a reasonable basis for the advice (s945A);
- (b) warn the client if the advice is based on incomplete or inaccurate information (s945B); and

- (c) give the client a Statement of Advice (SOA), as defined in s761A, if the value of the financial investments in relation to which the advice is provided exceeds \$15,000 (s946A and reg 7.7.09A).

Note 1: For further information about complying with these additional obligations, see Sections C and D of RG 175.

Note 2: An SOA is not required for advice about small investments and where advice does not recommend the purchase or sale of products, when specific conditions are met: see s946AA and 946B, and reg 7.7.09A.

Note 3: An SOA is not required for advice on some specified products—for example, basic deposit products, related non-cash payment facilities, travellers' cheques, cash management trusts or general insurance products: see reg 7.7.10.

RG 121.78 If you provide general advice, you do not need to comply with the obligations referred to above. However, if the general advice is provided to a retail client and you are the providing entity, you must warn the client that the advice does not take account of their objectives, financial situation or needs: see s949A.

Note 1: For further information about complying with this obligation, see Section A of RG 175.

Note 2: We have granted relief to simplify the warning where oral general advice is provided to a retail client. See Class Order [CO 05/1195] *Simplified warning for oral general advice*.

Note 3: In some circumstances, a general advice warning may not be required where general advice in relation to an issue or offer for sale is given on a billboard or poster or in the media: see reg 7.7.20.

When do representatives need to hold an authorisation?

RG 121.79 In general, if you provide financial services in Australia as a representative of another person (a principal), you need to hold an authorisation under the Corporations Act from that principal (who must, in general, hold an AFS licence). You do not need to hold an authorisation if:

- (a) you are not providing financial services;
- (b) you are an employee or director of the principal (or a related body corporate of the principal) and the principal holds an AFS licence and the other requirements of s911B(1)(a) are satisfied;
- (c) you are an employee of an authorised representative of the principal, but only if the principal holds an AFS licence and the financial service is the provision of:
 - (i) a basic deposit product;
 - (ii) a facility for making non-cash payments that is related to a basic deposit product; or
 - (iii) a traveller's cheque,
 and the other requirements of s911B(1)(c) are satisfied;

- (d) you are an AFS licensee providing the financial service under your own AFS licence (s911B(1)(d) and (3)); or

Note: As an AFS licensee, you cannot be the authorised representative of another AFS licensee except in relation to a binder: see s916D and 916E.

- (e) the financial services you provide would be exempt under s911A(2) if they were instead provided by the principal (s911B(1)(e)).

Note: We have given relief to allow AFS licensees who are authorised to deal in general insurance products to appoint distributors to deal in these products on their behalf without the need to appoint the distributors as authorised representatives: see Class Order [CO 05/1070] *General insurance distributors*.

RG 121.80 Accordingly, if you provide financial services as a representative of an AFS licensee, you will generally need to hold an authorisation from that licensee (unless you are an employee or director of that licensee or a related body corporate).

RG 121.81 Under s766A(4) a person is not regarded as operating a registered scheme merely because they act as an agent or employee of another person who does. This means that if an agent of the operator of a registered scheme merely acts in connection with the operation of the scheme, and does not provide a financial service of a type referred to in s766A(1)(a), (b), (c), (e) or (f), they will not have to hold an authorisation.

Note: The responsible entity remains responsible for the acts of its agents: see s601FB(2).

What obligations are imposed on representatives?

RG 121.82 The responsibility to ensure compliance with the financial services laws is primarily imposed on AFS licensees, who are responsible for the conduct of their representatives (as defined in s910A). However, some obligations in the law apply directly to representatives, including (but not limited to):

- (a) the financial services disclosure obligations in Pt 7.7 where the representative is the providing entity (including the additional obligations relating to financial product advice described in RG 36.51–RG 36.53);

- (b) the hawking prohibitions in Pt 7.8;

Note: For more information about the hawking prohibitions, see Regulatory Guide 38 *The hawking prohibitions* (RG 38).

- (c) some product disclosure obligations under Ch 6D (in the case of securities) or Pt 7.9 (in other cases);

- (d) the market misconduct and other prohibited conduct provisions in Pt 7.10; and

- (e) the consumer protection provisions in Div 2 of Pt 2 of the ASIC Act (e.g. the prohibition against misleading or deceptive conduct in s12DA).

Note: Some of these obligations also apply to persons other than representatives.

F Offering financial products in Australia

Key points

Disclosure obligations apply to offering a financial product to a retail client in Australia, even if you are not an AFS licensee.

If you issue a financial product to a retail client, you may be required to provide the client with a PDS about the financial product, unless your activities fit within an exemption: see RG 121.86.

If you offer securities (such as shares or debentures) to a retail client, you may be obliged to provide a prospectus rather than a PDS.

Disclosure obligations that apply to offering financial products

RG 121.83 If you have a business of issuing financial products and you wish to offer a financial product to a retail client in Australia, you may be obliged to provide a PDS to the retail client: see Div 2 of Pt 7.9.

Note: For guidance on 'retail' versus 'wholesale' clients, see: RG 121.38–RG 121.39.

RG 121.84 A PDS includes information such as:

- (a) the fees related to a financial product;
- (b) the risks associated with the financial product;
- (c) benefits of the financial product; and
- (d) significant characteristics of a financial product.

Note 1: See s1013D for the main content requirements of a PDS.

Note 2: Certain products are subject to specific disclosure regimes. Superannuation products, simple managed investment schemes and margin lending facilities are subject to a shorter PDS regime: see Corporations Amendment Regulations 2010 (No. 5). For more information on the shorter PDS regime that applies to these products, see Information Sheet 133 *Shorter and simpler PDSs: Superannuation, managed investment schemes and margin lending* (INFO 133). Modified disclosure regimes also apply to general insurance products and First Home Saver Accounts: see Pt 7.9 of the Corporations Regulations.

Note 3: For more information on products subject to modified PDS disclosure regimes, see Section D of Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

RG 121.85 The information included in a PDS must be clear and concise and disclosed in an effective manner.

Note: For more information about PDSs, see Pt 7.9 of the Corporations Act.

Exemptions from the obligation to provide a PDS

- RG 121.86 If you conduct one of the following activities as part of your financial services business (as described in s911A(2A)–(2E), as inserted by reg 7.6.02AG (see Table 3 in the appendix)), you are exempt from the obligation to provide a PDS (reg 7.9.98):
- (a) dealing with an AFS licensee;
 - (b) providing a financial service to a professional investor;
 - (c) providing a financial service from outside Australia;
 - (d) trading on a licensed Australian market for an overseas client; or
 - (e) providing financial services to an Australian client in relation to a foreign financial product issued to the Australian client while the Australian client was overseas,

Disclosure obligations that apply to offering securities

- RG 121.87 If the financial product you wish to offer to a retail client is a security (such as a share or a debenture), you may be obliged to provide a prospectus rather than a PDS. For provisions concerning disclosure in a prospectus, see Ch 6D.

G Other rules and legislation that may apply

Key points

There are other rules and legislation that may apply to your activities in Australia, including:

- the ASX and ASX 24 operating rules;
- the ASIC market integrity rules;
- laws relating to foreign investment in Australia;
- laws relating to banking and insurance;
- laws relating to credit activities;
- laws relating to payment systems and the transfer of funds; and
- Australian taxation laws.

ASX and ASX 24 operating rules

RG 121.88 If you wish to participate in the financial markets of ASX (operated by ASX Limited) or ASX 24 (operated by Australian Securities Exchange Limited), you will be bound by the ASX Operating Rules and ASX 24 Operating Rules respectively. For more information, go to www.asxgroup.com.au.

ASIC market integrity rules

RG 121.89 Part 7.2A establishes a rule-making regime whereby ASIC is able to make market integrity rules dealing with the activities and conduct in relation to licensed financial markets, including participants in the relevant market.

RG 121.90 Market participants will need to comply with the market integrity rules for each relevant market. ASIC is responsible for supervising compliance with these rules. For more information, see Regulatory Guide 214 *Guidance on ASIC market integrity rules for ASX and ASX 24 markets* (RG 214) and Regulatory Guide 215 *Guidance on ASIC market integrity rules for APX, IMB, NSXA and SIM VSE markets* (RG 215), or go to www.asic.gov.au/markets.

Foreign investment

- RG 121.91 The *Foreign Acquisitions and Takeovers Act 1975* regulates foreign investments in Australia. The *Financial Sector (Shareholding) Act 1998* also regulates foreign investments in Australia by imposing restrictions on shareholdings in financial sector companies.
- RG 121.92 The Foreign Investment Review Board is an advisory body that examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Australian Government on whether those proposals are suitable for approval under the government's policy. For more information, go to www.firb.gov.au.

Banking and insurance

- RG 121.93 APRA oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies, and some members of the superannuation industry. For more information about APRA's regulatory role and the legislation it administers, go to www.apra.gov.au.

Credit activities

- RG 121.94 Under the National Credit Act, if you engage in credit activities, you need to be:
- (a) authorised to engage in those activities under an Australian credit licence (credit licence) or registration;
 - (b) exempt from the requirement to be licensed or registered; or
 - (c) acting as a representative of another person who is licensed, registered or exempt from the requirement to be licensed or registered.
- RG 121.95 Credit licensees must comply with the general conduct obligations and the responsible lending obligations under the National Credit Act. For more information, go to www.asic.gov.au/credit.

Payment systems and the transfer of funds

- RG 121.96 Under the *Payment Systems (Regulation) Act 1998* and the *Payment Systems and Netting Act 1998*, the Reserve Bank of Australia (RBA) regulates systems that facilitate the transfer of funds (payment systems). For more information about these laws and the RBA's role in Australia's financial markets, go to www.rba.gov.au.
- RG 121.97 APRA and the Australian Competition and Consumer Commission (ACCC) may also have a role in regulating payment systems. For more information about the ACCC's role, go to www.accc.gov.au.

Australian taxation laws and other rules

- RG 121.98 You may need to consider various laws imposing taxation obligations. The taxation legislation is administered by the Australian Tax Office (ATO). For more information, go to www.ato.gov.au.
- RG 121.99 There may also be industry standards you wish to voluntarily adopt in relation to your financial services business in Australia.

Appendix: Exemptions from holding an AFS licence

The tables in this appendix contain details of the exemptions from the obligation to hold an AFS licence that are available in Ch 7 of the Corporations Act, the Corporations Regulations and ASIC class orders. See Section C of this guide for guidance on the obligation to be licensed and Section D for an overview of the exemptions detailed in this appendix. For the titles of amending class orders, see the ‘Related information’ at the end of this guide.

Table 3: Foreign financial services providers

Conduct for which a foreign person or company does not need to hold an AFS licence	Relevant section, regulation or class order
<i>No inducement for people in Australia to use the service</i>	
Where a person or company located outside Australia provides a financial service from outside Australia to a client in Australia and does not induce people in Australia to use the service.	s911A(2A), as inserted by reg 7.6.02AG
<i>Trading on a licensed Australian financial market for an overseas client</i>	
Where a person or company located outside Australia trades on a licensed Australian financial market for a client and the foreign person or company believes on reasonable grounds that the client is an overseas client.	s911A(2B), as inserted by reg 7.6.02AG
<i>Providing financial services to an Australian client in relation to a financial product it issued when the Australian client was overseas</i>	
Where a person or company located outside Australia provides a financial service to a client in Australia relating to a financial product: <ul style="list-style-type: none"> • issued to the Australian client upon that client’s instigation; • issued to the Australian client while that client wasn’t in Australia; or • that supplements or is similar to and substitutes a financial product mentioned in (a) or (b), and does not induce people in Australia to use the service.	s911A(2D), as inserted by reg 7.6.02AG

Conduct for which a foreign person or company does not need to hold an AFS licence	Relevant section, regulation or class order
<i>Providing a financial service to a professional investor</i>	
<p>Where a person or company located outside Australia provides a financial service to a professional investor and the service consists of any or all of the following:</p> <ul style="list-style-type: none"> • dealing in derivatives or foreign exchange contracts; • providing advice on derivatives or foreign exchange contracts; • making a market in derivatives or foreign exchange contracts. 	s911A(2E), as inserted by reg 7.6.02AG
<i>Acting in conjunction with an AFS licensee</i>	
<p>Where a person or company located outside Australia arranges, on behalf of a client, for an AFS licensee to deal in a financial product, provided the person or company believes on reasonable grounds that the client is also located outside Australia.</p>	reg 7.6.01(1)(f)
<p>Where a person or company located outside Australia enters into an arrangement with an AFS licensee under which a financial product, or a beneficial interest in a financial product, is to be held on trust for, or on behalf of, a client, provided the person or company believes on reasonable grounds that the client is also located outside Australia.</p>	reg 7.6.01(1)(fa)
<p>Where an AFS licensee arranges for a person or company located outside Australia to deal for a client who is in Australia.</p> <p>Note: This exemption does not apply if the foreign person or company provides any other financial service as part of the service to the client or if the licensee's AFS licence does not cover the provision of the service.</p>	reg 7.6.01(1)(n)
<p>Where an AFS licensee that is a related body corporate of a person or company located outside Australia (or a party to a business joint venture with that person or company) arranges for the foreign person or company to provide financial product advice, make a market, or provide custodial or depository services to a wholesale client in Australia, and the licensee's AFS licence covers the provision of the service and is subject to a condition requiring it to assume responsibility for the conduct of the foreign person or company in providing that service.</p>	reg 7.6.01(1)(na)
<i>Dealing with an AFS licensee</i>	
<p>Where a person or company located outside Australia provides a financial service to another person who holds an AFS licence or is exempt from the requirement to hold an AFS licence under s911A(2)(h) and is not, in relation to the service, acting as a trustee, responsible entity of a registered managed investment scheme or otherwise acting on someone else's behalf.</p>	s911A(2C), as inserted by reg 7.6.02AG

Conduct for which a foreign person or company does not need to hold an AFS licence	Relevant section, regulation or class order
<i>Referral to an AFS licensee</i>	
<p>Where a person or company located outside Australia provides a financial service that consists only of a 'referral'—that is, informing another person that an AFS licensee (or one of its representatives) is able to provide a particular financial service or class of financial services and giving that other person contact details for the AFS licensee or representative.</p> <p>Note: Unless the foreign person or company is a representative of the AFS licensee (or a related body corporate of the licensee), they must disclose any benefits (including commissions) that they (and their associates) are to receive in respect of, or that are attributable to, the service.</p>	reg 7.6.01(1)(e) and (ea)
<i>Only dealing in off-market products to foreign clients</i>	
<p>Where a person or company located outside Australia is only dealing in products not traded on an Australian financial market licensed under Ch 7 (e.g. ASX or ASX 24).</p> <p>Note: This exemption only applies if the foreign person or company believes on reasonable grounds that all parties to the dealing or any transactions to which the dealing relates (including the client) are overseas.</p>	reg 7.6.01(1)(g)
<i>Foreign market maker in derivatives or foreign exchange contracts</i>	
<p>Where a person or company located outside Australia deals in a foreign exchange contract or makes a market in a derivative or foreign exchange contract with a wholesale client in Australia who holds an AFS licence.</p>	Class Order [CO 04/1570] <i>Licensing relief for some overseas dealers or market makers in derivatives and foreign exchange contracts</i>
<i>Regulated by an overseas regulatory authority</i>	
<p>Where a person or company located outside Australia provides the service only to wholesale clients and is regulated by an overseas regulatory authority and the provision of the service is covered by an exemption specified by ASIC.</p> <p>Note: For information about our approach to applications under this provision, see RG 176.</p>	s911A(2)(h)
<p>Where a person or company that is regulated by the UK Financial Services Authority (FSA) only provides the service to wholesale clients.</p>	Class Order [CO 03/1099] <i>UK FSA regulated financial service providers</i> (as amended by [CO 04/100], [CO 05/308] and [CO 10/737])
<p>Where a person or company that is regulated by the US Securities and Exchange Commission (SEC) only provides the service to wholesale clients.</p>	Class Order [CO 03/1100] <i>US SEC regulated financial service providers</i> (as amended by [CO 04/100], [CO 05/308] and [CO 10/737])

Conduct for which a foreign person or company does not need to hold an AFS licence	Relevant section, regulation or class order
Where a person or company that is regulated by the US Federal Reserve and Office of Comptroller of Currency (OCC) only provides the service to wholesale clients.	Class Order [CO 03/1101] <i>US Federal Reserve and OCC regulated financial service providers</i> (as amended by [CO 04/100], [CO 04/213] and [CO 05/308])
Where a person or company that is regulated by the Monetary Authority of Singapore (MAS) only provides the service to wholesale clients.	Class Order [CO 03/1102] <i>Singapore MAS regulated financial service providers</i> (as amended by [CO 04/100], [CO 05/308] and [CO 05/957])
Where a person or company that is regulated by the Securities and Futures Commission (SFC) of Hong Kong only provides the service to wholesale clients.	Class Order [CO 03/1103] <i>Hong Kong SFC regulated financial service providers</i> (as amended by [CO 04/100], [CO 05/308] and [CO 10/737])
Where a person or company that is regulated by the US Commodity Futures Trading Commission (CFTC) only provides the service to wholesale clients.	Class Order [CO 04/829] <i>US CFTC regulated financial services providers</i> (as amended by [CO 05/308] and [CO 10/737])
Where a person or company that is regulated by the Federal Financial Supervisory Authority (BaFin) of Germany only provides the service to wholesale clients.	Class Order [CO 04/1313] <i>German BaFin regulated financial service providers</i> (as amended by [CO 05/308])
<i>Foreign authorised deposit-taking institution</i>	
Where a foreign authorised deposit-taking institution engages in limited dealings with derivatives and foreign exchange that are related to ordinary banking business and the counterparty to the dealing is a wholesale client.	Class Order [CO 03/823] <i>Relief from licensing, accounting and audit requirements for foreign authorised deposit-taking institutions</i>
<i>Dealings with a limited connection to Australia</i>	
Where a person or company located outside Australia deals with wholesale clients and the only reason that the foreign person or company is carrying on a financial services business in Australia is as a result of s911D.	Class Order [CO 03/824] <i>Licensing relief for financial service providers with limited connection to Australia dealing with wholesale clients</i>
Where a person or company located outside Australia provides further services to an existing client, where the client acquired the original product when they were not in this jurisdiction and, but for s911D, is not carrying on a financial services business in Australia.	Class Order [CO 03/825] <i>Licensing relief for the provision of ongoing services in relation to a product acquired when the client was outside the jurisdiction</i>

Table 4: Connection with an AFS licensee

Conduct for which a financial services business does not need to hold an AFS licence	Relevant section, regulation or class order
<i>Representative of an AFS licensee</i>	
Where a person or company provides the service as a representative of a person who is licensed to carry on the financial services business that covers the provision of the service or is exempt under s911A(2) from the requirement to hold an AFS licence.	s911A(2)(a)
<i>Acting under an intermediary authorisation</i>	
Where a person or company enters into or provides a service under an intermediary authorisation as specified in s911A(2)(b) and (ba).	s911A(2)(b) and (ba)
<i>Incidental to the operation of a licensed market or licensed CS facility</i>	
Where a person or company provides the service of, or the service is provided incidentally to, the operation of a licensed market or licensed CS facility.	s911A(2)(d)
<i>Acting in an administrative capacity</i>	
Where a person or company provides the financial services in one of the circumstances described in s911A(2)(f).	s911A(2)(f)
<i>Sub-custodian</i>	
Where a person or company provides the service as a sub-custodian in the circumstances set out in reg 7.6.01(1)(k).	reg 7.6.01(1)(k)
<i>General product advice provided to an AFS licensee by the issuer</i>	
Where a person or company that issued a financial product or class of financial product provides general product advice to an AFS licensee about those products and the AFS licensee is authorised to provide that advice.	reg 7.6.01(1)(s)
<i>Activity of a nominee</i>	
Where a wholly owned subsidiary of a licensed market person or company holds a financial product or the beneficial interest in a financial product on trust for a client of the licensed market participant in the circumstances set out in reg 7.6.01(1)(v).	reg 7.6.01(1)(v)
<i>General insurance distributor</i>	
Where a distributor of an AFS licensee authorised to deal in general insurance products provides the financial service of dealing in a general insurance product.	Class Order [CO 05/1070] <i>General insurance distributors</i>

Table 5: Financial services that involve only the financial services provider

Conduct for which a financial services business does not need to hold an AFS licence	Relevant section, regulation or class order
<i>Service provided to a related body corporate</i>	
Where the person or company provides the service only to related bodies corporate.	s911A(2)(i)
<i>Variation or disposal of financial product by issuer</i>	
Where a person or company is a product issuer who varies or disposes of a financial product at the direct request of the product holder (rather than through an intermediary).	s911A(2)(c)
<i>Dealing in derivatives or foreign exchange contracts to manage financial risk</i>	
Where a person or company deals on its own behalf in (but does not make a market in) derivatives or foreign exchange contracts for the purpose of managing a financial risk that arises in the ordinary course of a business, but only if the person or company does not deal in derivatives or foreign exchange contracts as a significant part of its business.	reg 7.6.01(1)(m)
<i>Employee share schemes</i>	
Where a person or company is giving general advice in connection with an eligible employee share scheme and it is the issuer of the financial products covered by the scheme (e.g. they are the employer) or an entity controlled by the issuer. Note: 'Eligible employee share scheme' is defined in s9.	s911A(2)(ed)
Where a person or company is dealing in a financial product in connection with an eligible employee share scheme where: <ul style="list-style-type: none"> • the scheme requires that any purchase or disposal of the financial product under the scheme occurs through either an AFS licensee or a foreign entity licensed to deal in their own country; and • they are the issuer of the financial products covered by the scheme (e.g. they are the employer) or an entity controlled by the issuer. 	s911A(2)(ee)
Where a person or company is providing a custodial and depository service dealing in a financial product in connection with an eligible employee share scheme and it is the issuer of the financial products covered by the scheme (e.g. they are the employer) or an entity controlled by the issuer.	s911A(2)(ef)
Where a person or company is dealing in an interest in a contribution plan that it operates in relation to an eligible employee share scheme and it is the issuer of the financial products covered by the scheme (e.g. they are the employer) or a person or company controlled by the issuer.	s911A(2)(eg)

Conduct for which a financial services business does not need to hold an AFS licence	Relevant section, regulation or class order
<i>Issuer varies or disposes of the financial product</i>	
Where a person or company that issued a financial product varies or disposes of that financial product under the terms of the financial product.	reg 7.6.01(1)(q)
<i>Trustees of a public offer entity</i>	
Where trustees of a public offer entity deal in financial products on behalf of the members of that entity in the course of the operation of that entity.	Class Order [CO 02/1161] <i>Limited relief from requirement for dealing authorisation for public offer superannuation entities</i>
<i>Self-dealers</i>	
Where bodies that are entitled to the licensing exemption in s766C(4) provide general advice to wholesale clients in an offer document about securities covered by s766C(4).	Class Order [CO 03/911] <i>Licensing relief for self-dealers who provide general product advice about own securities</i>

Table 6: Alternative regulatory regime

Conduct for which a financial services business does not need to hold an AFS licence	Relevant section, regulation or class order
<i>Regulated by APRA</i>	
Where a company provides the financial service only to wholesale clients and is a body regulated by APRA and the service is one for which APRA has regulatory or supervisory responsibilities.	s911A(2)(g)
<i>Trustee capacity in relation to superannuation</i>	
Where a body deals in a financial product in the capacity of trustee of a non-public offer superannuation entity.	reg 7.6.01(1)(a)
Where a body deals in a financial product in the capacity of trustee of a pooled superannuation trust (PST) where the regulated superannuation fund investing its assets in the PST has net assets of at least \$10 million.	reg 7.6.01(1)(b)
Where a body deals in a financial product in the capacity of trustee of a PST where the regulated superannuation fund investing its assets in the PST has net assets of at least \$5 million and where it could reasonably be expected that the superannuation fund will have net assets of at least \$10 million within three months.	reg 7.6.01(1)(c)
Where a body deals in a financial product in the capacity of trustee of a PST where the PST is not used for the investment of assets of a regulated superannuation fund.	reg 7.6.01(1)(d)
Where a body is a trustee of a superannuation fund dealing in a financial product only by paying the benefits of a member into a superannuation product or retirement savings account (RSA) product.	reg 7.6.01(1)(ha)
Where a body provides the service in the entity's capacity as trustee of a self-managed superannuation fund.	s911A(2)(j)
<i>Superannuation</i>	
Where a body is an employer–sponsor dealing in a financial product only by paying contributions on behalf of an employee into a superannuation product or RSA product.	reg 7.6.01(1)(h)
Where a body is an RSA provider dealing in a financial product only by paying the benefits of an RSA product holder into a superannuation product or RSA product.	reg 7.6.01(1)(hb)
Where a body is an employer–sponsor dealing in a financial product only by arranging for the issue of a superannuation product to an employee.	reg 7.6.01(1)(hc)

Conduct for which a financial services business does not need to hold an AFS licence	Relevant section, regulation or class order
<i>Workers' compensation insurance</i>	
Where a body provides a financial service relating to insurance with respect to workers' compensation in the circumstances set out in reg 7.6.01(1)(p).	reg 7.6.01(1)(p)
<i>Factoring arrangements</i>	
Where a person purchases debt obligations under the terms of a factoring arrangement. The relief is conditional on the disclosure of terms and conditions to retail clients and maintenance of an internal dispute resolution system that covers retail client complaints.	Class Order [CO 04/239] <i>Factoring arrangements—licensing, hawking and disclosure relief</i>
<i>Trustees of wholesale equity venture capital schemes</i>	
Acting as a trustee of wholesale equity venture capital schemes.	Class Order [CO 07/74] <i>Wholesale equity schemes: licensing relief for trustees (as amended by [CO 08/405])</i>

Table 7: Financial services business is not the sole or principal purpose of the activity

Conduct for which a financial services business does not need to hold an AFS licence	Relevant section, regulation or class order
<i>Providing general advice</i>	
Where a person or company provides general advice by publishing a newspaper or periodical that is generally available to the public (otherwise than only on subscription) and where the sole or principal purpose of the newspaper or periodical is not the provision of financial product advice.	s911A(2)(ea)
Where a person or company provides general advice in transmissions made by means of an information service where the transmissions are generally available to the public and where the sole or principal purpose of the transmissions is not the provision of financial product advice.	s911A(2)(eb)
Where a person or company provides general advice in sound recordings, video recordings or data recordings that are made publicly available and where the sole or principal purpose of the recordings is not the provision of financial product advice.	s911A(2)(ec)
Where a company is a product issuer providing general advice in the media in the circumstances set out in reg 7.6.01(1)(o).	reg 7.6.01(1)(o)
<i>Actuaries</i>	
Where a person or company is an actuary providing financial product advice in the circumstances set out in reg 7.6.01(1)(oa).	reg 7.6.01(1)(oa)
<i>Non-cash payment facility (general)</i>	
Where AFS licensees give basic advice on or arrange for their clients to use most non-cash payment facilities.	Class Order [CO 03/705] <i>Non-cash payment facilities—licensing relief</i>
Where a person or company advises other people about, or arranges for the use of, non-cash payment facilities in the ordinary course of its business, but only if the person or company does not provide financial services as a significant part of its business.	reg 7.6.01(1)(l)
Note: See also [CO 03/705] for other licensing exemptions for the provision of financial services in relation to non-cash payment facilities.	regs 7.6.01(1)(la), (lb) and (lc)

Non-cash payment facilities (other)

Where a person or company provides financial services in relation to low value non-cash payment facilities where specified consumer protection requirements are met.	Class Order [CO 05/736] <i>Low value non-cash payment facilities</i>
Loyalty schemes constituting non-cash payment facilities are not financial products for the purposes of Ch 7.	Class Order [CO 05/737] <i>Loyalty schemes</i>
Where a person or company provides financial services in relation to gift facilities, such as gift vouchers or cards.	Class Order [CO 05/738] <i>Gift facilities</i>
Where a person or company provides financial services in relation to prepaid mobile facilities.	Class Order [CO 05/740] <i>Prepaid mobile facilities</i>

Advice relating to matters other than financial products

Where a person or company provides advice in a document issued in connection with a takeover bid or an offer of a financial product and the advice relates to matters other than financial products (e.g. a geologist's report) in the circumstances set out in reg 7.6.01(1)(u).	reg 7.6.01(1)(u)
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General advice contained in a document

Where an issuer of certain documents provides general advice contained in those documents.	Class Order [CO 03/606] <i>Financial product advice—exempt documents (as amended by [CO 03/774], [CO 07/43] and [CO 09/69])</i>
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Mortgage offset accounts

Where a person who is a member of an eligible external dispute resolution scheme provides financial services that consist of advising or arranging in relation to a mortgage offset account.	Class Order [CO 03/1048] <i>Mortgage offset accounts</i>
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Financial counselling

Where a financial counselling agency provides financial product advice in the course of providing a financial counselling service.

Class Order [CO 03/1063]
*Licensing relief for financial
counselling agencies*

Generic financial calculators

Where a person or company provides generic financial calculators.

Class Order [CO 05/1122]
*Relief for providers of
generic calculators*

Valuing shares in a real estate company

Where a person or company provides financial product advice that is, or is incidental to, a valuation of shares in a real estate company.

Class Order [CO 05/1243]
*Licensing relief for valuers
providing valuations of
shares in real estate
companies*

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	The market known as the Australian Securities Exchange, operated by ASX Limited
ASX 24	The market formerly known as the Sydney Futures Exchange (SFE), operated by Australian Securities Exchange Limited
authorised representative of an AFS licensee	A person authorised in accordance with s916A or 916B of the Corporations Act to provide a financial service or financial services on behalf of an AFS licensee Note: This is a definition contained in s761A of the Corporations Act.
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D)
[CO 03/824]	An ASIC class order (in this example numbered 03/824)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
CS facility	Clearing and settlement facility as defined by s768A of the Corporations Act
FCIS	Foreign collective investment schemes

Term	Meaning in this document
financial product	<p>Generally a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
Financial Services Guide	A Financial Services Guide as defined in s761A of the Corporations Act
financial services regime	Chapter 7 of the Corporations Act
FSG	Financial Services Guide
general conduct obligations	The obligations under s47(1) of the National Credit Act
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
market participant	As defined in s761A of the Corporations Act
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
PDS	Product Disclosure Statement
Product Disclosure Statement	<p>A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
PST	pooled superannuation trust
Pt 5B.2 (for example)	A part of the Corporations Act (in this example numbered 5B.2), unless otherwise specified
reg 7.1.07G (for example)	A regulation of the Corporations Regulations (in this example numbered 7.1.07G)
representative of an AFS licensee	<p>Means:</p> <ul style="list-style-type: none"> • an authorised representative of the licensee; or • an employee or director of the licensee; or • an employee or director of a related body corporate of the licensee; or • any other person acting on behalf of the licensee <p>Note: This is a definition contained in s910A(a).</p>
responsible lending obligations	The obligations under Ch 3 of the National Credit Act

Term	Meaning in this document
RG 175 (for example)	An ASIC regulatory guide (in this example numbered 175)
RSA	retirement savings account
s761 (for example)	A section of the Corporations Act (in this example numbered 761), unless otherwise specified
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Sch B, C, D and E of the Corporations Regulations, which prescribe the content and length of the PDS for margin loans, superannuation products and simple managed investment schemes
SOA	Statement of Advice
Statement of Advice	A document that must be given to a retail client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act Note: See s761A for the exact definition.
Superannuation Act	<i>Superannuation Industry (Supervision) Act 1993</i>

Related information

Headnotes

authorisation, carrying on a business, conduct and disclosure obligations, foreign financial services providers, general licence obligations, inducing, licensing exemptions, obligations that apply to providers of financial services, overseas regulatory authorities, retail clients, wholesale clients

Class orders

[CO 02/1161] *Limited relief from requirement for dealing authorisation for public offer superannuation entities*

[CO 03/606] *Financial product advice—exempt documents*, as amended by Class Order [CO 03/774] *Financial product advice: exempt documents—amendment*, Class Order [CO 07/43] *Financial products advice: exempt documents—variation* and Class Order [CO 09/69] *Variation of Class Orders [CO 03/606] and [CO 04/671]*

[CO 03/705] *Non-cash payment facilities—licensing relief*

[CO 03/823] *Relief from licensing, accounting and audit requirements for foreign authorised deposit-taking institutions*

[CO 03/824] *Licensing relief for financial service providers with limited connection to Australia dealing with wholesale clients*

[CO 03/825] *Licensing relief for the provision of ongoing services in relation to a product acquired when the client was outside the jurisdiction*

[CO 03/911] *Licensing relief for self-dealers who provide general product advice about own securities*

[CO 03/1048] *Mortgage offset accounts*

[CO 03/1063] *Licensing relief for financial counselling agencies*

[CO 03/1099] *UK FSA regulated financial service providers*, as amended by Class Order [CO 04/100] *Foreign financial services providers: licensing relief—amendment*, Class Order [CO 05/308] *Wholesale foreign financial services providers—amendment* and Class Order [CO 10/737] *Variation of Class Order [CO 03/1099], [CO 03/1100], [CO 03/1103] and [CO 04/829] for foreign financial services providers*

[CO 03/1100] *US SEC regulated financial service providers*, as amended by Class Order [CO 04/100] *Foreign financial services providers: licensing relief—amendment*, Class Order [CO 05/308] *Wholesale foreign financial services providers—amendment* and Class Order [CO 10/737] *Variation of*

Class Order [CO 03/1099], [CO 03/1100], [CO 03/1103] and [CO 04/829] for foreign financial services providers

[CO 03/1101] US Federal Reserve and OCC regulated financial service providers, as amended by Class Order [CO 04/100] Foreign financial services providers: licensing relief—amendment, Class Order [CO 04/213] US Federal Reserve and OCC regulated financial service providers—amendment and Class Order [CO 05/308] Wholesale foreign financial services providers—amendment

[CO 03/1102] Singapore MAS regulated financial service providers, as amended by Class Order [CO 04/100] Foreign financial services providers: licensing relief—amendment, Class Order [CO 05/308] Wholesale foreign financial services providers—amendment and Class Order [CO 05/957] Singapore MAS regulated financial services providers—amendment

[CO 03/1103] Hong Kong SFC regulated financial service providers, as amended by Class Order [CO 04/100] Foreign financial services providers: licensing relief—amendment, Class Order [CO 05/308] Wholesale foreign financial services providers—amendment and Class Order [CO 10/737] Variation of Class Order [CO 03/1099], [CO 03/1100], [CO 03/1103] and [CO 04/829] for foreign financial services providers

[CO 04/239] Factoring arrangements—licensing, hawking and disclosure relief

[CO 04/526] Foreign collective investment schemes, as amended by Class Order [CO 04/1031] Foreign collective investment schemes—amendment

[CO 04/829] US CFTC regulated financial services providers, as amended by Class Order [CO 05/308] Wholesale foreign financial services providers—amendment and Class Order [CO 10/737] Variation of Class Order [CO 03/1099], [CO 03/1100], [CO 03/1103] and [CO 04/829] for foreign financial services providers

[CO 04/1313] German BaFin regulated financial service providers, as amended by Class Order [CO 05/308] Wholesale foreign financial services providers—amendment

[CO 04/1570] Licensing relief for some overseas dealers or market makers in derivatives and foreign exchange contracts

[CO 05/736] Low value non-cash payment facilities

[CO 05/737] Loyalty schemes

[CO 05/738] Gift facilities

[CO 05/740] Prepaid mobile facilities

[CO 05/1070] *General insurance distributors*

[CO 05/1122] *Relief for providers of generic calculators*

[CO 05/1195] *Simplified warning for oral general advice*

[CO 05/1243] *Licensing relief for valuers providing valuations of shares in real estate companies*

[CO 07/74] *Wholesale equity schemes: licensing relief for trustees, as amended by Class Order [08/405] Variation of Class Order [CO 07/74]*

[CO 07/753] *Singaporean collective investment schemes*

[CO 08/506] *Hong Kong collective investment schemes*

Regulatory guides

RG 1 *AFS Licensing Kit: Part 1—Applying for and varying an AFS licence*

RG 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application*

RG 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs*

RG 36 *Licensing: Financial product advice and dealing*

RG 38 *The hawking prohibitions*

RG 51 *Applications for relief*

RG 78 *Breach reporting by AFS licensees*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 146 *Licensing: Training of financial product advisers*

RG 165 *Licensing: Internal and external dispute resolution*

RG 166 *Licensing: Financial requirements*

RG 167 *Licensing: Discretionary powers*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 169 *Disclosure: Discretionary powers*

RG 172 *Australian market licences: Australian operators*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 176 *Licensing: Discretionary powers—Wholesale foreign financial services providers*

RG 177 *Australian market licences: Overseas operators*

RG 178 *Foreign collective investment schemes*

RG 181 *Licensing: Managing conflicts of interest*

RG 203 *Do I need a credit licence?*

RG 204 *Applying for and varying a credit licence*

RG 205 *Credit licensing: General conduct obligations*

RG 206 *Credit licensing: Competence and training*

RG 209 *Credit licensing: Responsible lending conduct*

RG 210 *Compensation and insurance arrangements for credit licensees*

RG 214 *Guidance on ASIC market integrity rules for ASX and ASX 24 markets*

RG 215 *Guidance on ASIC market integrity rules for APX, IMB, NSXA and SIM VSE markets*

RG 221 *Facilitating online financial services disclosures*

Information sheets

INFO 93 *Practical guidance for operators of foreign collective investment schemes seeking to offer in Australia*

INFO 133 *Shorter and simpler PDSs: Superannuation, managed investment schemes and margin lending*

Legislation

Australian Prudential Regulation Authority Act 1998

Australian Securities and Investments Commission Act 2001

Corporations Act 2001, Pts 7.1, 7.6, 7.7, 7.8, 7.9 and 7.10

Financial Management and Accountability Act 1997

Financial Sector (Shareholding) Act 1998

Foreign Acquisitions and Takeovers Act 1975

National Consumer Credit Protection Act 2009

Payment Systems and Netting Act 1998

Payment Systems (Regulation) Act 1998

Superannuation Industry (Supervision) Act 1993

Cases

Bray v. F Hoffman-La Roche Ltd (2002) 118 FCR 1, *Constantine v. Davies* (1984) ASC 55-312, *Edgelow v. MacElwee* [1918] 1 KB 205, *Hope v. Bathurst City Council* (1980) 144 CLR 1, *Hungier v. Grace* (1972) 127 CLR 210, *Hyde v. Sullivan* (1956) 56 SR (NSW) 113, *Luckins v. Highway Motel (Carnarvon) Pty Ltd* (1975) 133 CLR 164, *Pioneer Concrete Services Ltd v. Galli* [1985] VR 675, *PT v. Maradona* [1992] NSWLR 643 at 650, *Re New Cap Reinsurance Corp Holdings Ltd* (1999) 17 ACLC 1024, *Smith v. Anderson* (1880) 15 Ch D 247