|  |
| --- |
| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Licensing exemptions for foreign financial services providers

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1.  |  |  |
| 2. Schedule # | 1 April 2024. | 1 April 2024 |
| 3.  |  |  |

Schedule #—Licensing exemptions for foreign financial services providers

Corporations Act 2001

1 Section 9

Insert:

***comparable regulator***, for a financial service, has the meaning given by subparagraph 911A(2)(ep)(iv).

2 Before section 911A

Insert:

Subdivision A—General

3 After paragraph 911A(2)(en)

Insert:

 (eo) all of the following apply:

 (i) the financial service is provided only to professional investors;

 (ii) the financial service does not involve a dealing to which section 911F (about dealings in certain products tradeable on certain markets) applies;

 (iii) the person provides the financial service from a place outside this jurisdiction, unless subsection 911E(1) (about marketing visits) applies to the financial service;

 (iv) the person’s head office and principal place of business are located at one or more places outside this jurisdiction;

 (v) the person reasonably believes that providing the same or substantially the same financial service would not contravene any law applying in any of the places referred to in subparagraph (iii) or (iv);

Note: There may be exceptions that make this exemption unavailable, and this exemption is subject to conditions (see Subdivision B).

 (ep) all of the following apply:

 (i) the financial service is provided only to wholesale clients;

 (ii) the person is a foreign company or is a partnership formed outside this jurisdiction;

 (iii) the person has and maintains any authorisations, registrations or licences (however described) necessary to legally provide the same or substantially the same financial service in a place outside this jurisdiction (the ***comparable jurisdiction***);

 (iv) the regulator administering those authorisations, registrations or licences for the comparable jurisdiction is a regulator determined under subsection 911X(1) (the financial service’s ***comparable regulator***);

 (v) the person provides the financial service from this jurisdiction or from the comparable jurisdiction;

Note: This exemption is subject to conditions (see Subdivision B).

 (eq) all of the following apply:

 (i) the financial service involves making a market for derivatives that are able to be traded on a licensed market prescribed by the regulations for the purposes of this subparagraph;

 (ii) the person provides the financial service from a place outside this jurisdiction;

 (iii) the person’s head office and principal place of business are located at one or more places outside this jurisdiction;

 (iv) the person reasonably believes that providing the same or substantially the same financial service would not contravene any law applying in any of the places referred to in subparagraph (ii) or (iii);

Note: This exemption is subject to conditions (see Subdivision B).

4 At the end of Division 2 of Part 7.6

Add:

Subdivision B—Extensions, exceptions and conditions for certain licensing exemptions for foreign financial services providers

911E Exemption for financial services provided to professional investors—extends to financial services provided in Australia during limited marketing visits

 (1) For the purposes of subparagraph 911A(2)(eo)(iii), this subsection applies to a financial service provided by a person:

 (a) from this jurisdiction; and

 (b) on a day during a financial year;

if the financial service is provided during one or more marketing visits to this jurisdiction by one or more representatives of the person.

 (2) However, subsection (1) does not apply to the financial service for that day if, at the start of that day, the total length of the person’s marketing visits to this jurisdiction during the financial year is already 28 days or more.

 (3) For the purposes of subsection (2), work out the total length of those marketing visits as follows:

 (a) count each marketing visit to this jurisdiction:

 (i) by any representative of the person; and

 (ii) that includes time spent with any client (or prospective client) of the person in relation to any financial service;

 (b) count each day of the visit, whether or not time is spent with a client (or prospective client) on all of the days;

 (c) count as a whole day any part of a day at the start or end of the visit;

 (d) count as a single day any day on which 2 or more of the person’s representatives are making such visits.

911F Exemption for financial services provided to professional investors—not available for dealings in certain financial products tradeable on certain licensed markets

 For the purposes of subparagraph 911A(2)(eo)(ii), this section applies to a dealing in a financial product if:

 (a) the financial product:

 (i) is of a kind prescribed by the regulations for the purposes of this subparagraph; and

 (ii) is able to be traded on a licensed market prescribed by the regulations for the purposes of this subparagraph; and

 (b) the dealing involves one or more trades in relation to that financial product on that licensed market.

Note: This section applies whether or not the financial product is also able to be traded on another financial market.

911G Exemption for financial services provided to professional investors—regulations may provide exceptions

 Despite paragraph 911A(2)(eo), the regulations may provide that the exemption under that paragraph does not apply for:

 (a) a particular kind of financial service; or

 (b) a particular kind of financial service in relation to a particular kind of financial product; or

 (c) a particular kind of financial product; or

 (d) a particular kind of professional investor.

911H Certain licensing exemptions for foreign financial services providers are subject to conditions

Conditions for the exemption for financial services provided to professional investors

 (1) The exemption under paragraph 911A(2)(eo) applies to a person for a financial service subject to conditions. These conditions for the exemption are:

 (a) the conditions in sections 911J, 911K, 911L, 911M and 911N; and

 (b) any additional conditions imposed under section 911V for the exemption’s future application to the person.

Note: ASIC may cancel the exemption from applying to the person if:

(a) the person contravenes any of these conditions, other than the condition in section 911N; or

(b) ASIC reasonably believes that the person has contravened the condition in section 911N (about providing financial services efficiently, honestly and fairly); or

(c) ASIC reasonably believes that the person (or a related person) is not a fit and proper person;

(see sections 911S and 911T).

Conditions for the exemption for comparably regulated providers

 (2) The exemption under paragraph 911A(2)(ep) applies to a person for a financial service subject to conditions. These conditions for the exemption are:

 (a) the conditions in sections 911J, 911K, 911L, 911M, 911N, 911P and 911Q; and

 (b) any additional conditions imposed under section 911V for the exemption’s future application to the person.

Note: ASIC may cancel the exemption from applying to the person if:

(a) the person contravenes any of these conditions, other than the condition in section 911N; or

(b) ASIC reasonably believes that the person has contravened the condition in section 911N (about providing financial services efficiently, honestly and fairly); or

(c) ASIC reasonably believes that the person (or a related person) is not a fit and proper person;

(see sections 911S and 911T).

Conditions for the exemption for making a market for derivatives able to be traded on certain licensed markets

 (3) The exemption under paragraph 911A(2)(eq) applies to a person for a financial service subject to conditions. These conditions for the exemption are:

 (a) the conditions in sections 911J, 911K, 911M and 911N; and

 (b) any additional conditions imposed under section 911V for the exemption’s future application to the person.

Note: ASIC may cancel the exemption from applying to the person if:

(a) the person contravenes any of these conditions, other than the condition in section 911N; or

(b) ASIC reasonably believes that the person has contravened the condition in section 911N (about providing financial services efficiently, honestly and fairly); or

(c) ASIC reasonably believes that the person (or a related person) is not a fit and proper person;

(see sections 911S and 911T).

Contravening a condition may result in a civil penalty

 (4) A person contravenes this subsection if:

 (a) apart from the exemption under paragraph 911A(2)(eo), (ep) or (eq), the person would contravene subsection 911A(5B) in relation to providing a financial service; and

 (b) the person contravenes a condition for the exemption.

Note 1: This subsection is a civil penalty provision (see section 1317E).

Note 2: The conditions set out in this Subdivision apply to one or more of the exemptions referred to in subsections (1), (2) and (3).

Note 3: A condition set out in this Subdivision can require something to be done outside of Australia (see subsection 5(4)).

911J Certain licensing exemptions for foreign financial services providers—conditions about notifying or assisting ASIC

 (1) For the purposes of section 911H, this section sets out conditions for a person that proposes to rely on the exemption under paragraph 911A(2)(eo), (ep) or (eq) for providing one or more kinds of financial service (the ***notifiable kinds of service***).

Notifying ASIC of intention to rely on the exemption

 (2) The person must notify ASIC that the person intends to rely on the exemption for providing the notifiable kinds of service:

 (a) during the period (the ***notification period***):

 (i) starting on the 15th business day before the first day on which the person intends to start providing any of the notifiable kinds of service in reliance on the exemption; and

 (ii) ending on the 15th business day after the first day on which the person starts providing any of the notifiable kinds of service in reliance on the exemption; and

 (b) by giving ASIC the notice in a written form that:

 (i) is approved by ASIC; and

 (ii) includes the person’s contact details; and

 (iii) describes each of the notifiable kinds of service; and

 (iv) includes the information, statements, explanations or other matters required by the approved form; and

 (v) is accompanied by any other material required by the approved form; and

 (vi) is given in a manner required by the approved form (including in electronic form).

Note: A single notice can cover one or more of the notifiable kinds of service.

Giving ASIC such assistance as ASIC reasonably requests

 (3) The person must give such assistance to ASIC, or a person authorised by ASIC, as ASIC or the authorised person reasonably requests in relation to the performance of ASIC’s functions or the exercise of ASIC’s powers.

 (4) Such assistance may include showing ASIC the person’s books, giving ASIC a copy of the person’s books or giving ASIC other information.

Submitting to the non‑exclusive jurisdiction of Australian courts

 (5) The person must notify ASIC that the person agrees:

 (a) that legal proceedings relating to providing any of the notifiable kinds of service in reliance on the exemption may be brought in a Court; and

 (b) if such proceedings are brought in a Court—that the law relating to providing such a service is the law in force in this jurisdiction; and

 (c) subject to subsection (7), to comply with any order of a Court from such proceedings.

 (6) The person must give the notice under subsection (5) to ASIC:

 (a) during the notification period (see paragraph (2)(a)) for the notifiable kinds of service; and

 (b) in a written form that:

 (i) is approved by ASIC; and

 (ii) includes the information, statements, explanations or other matters required by the approved form; and

 (iii) is accompanied by any other material required by the approved form; and

 (iv) is given in a manner required by the approved form (including in electronic form).

Note: A single notice can cover one or more of the notifiable kinds of service.

 (7) Paragraph (5)(c) does not require compliance with an order to the extent that the order conflicts with an order made by a court in:

 (a) for the exemption under paragraph 911A(2)(eo)—any of the places referred to in subparagraph 911A(2)(eo)(iii) or (iv) for such a service; or

 (b) for the exemption under paragraph 911A(2)(ep)—a comparable jurisdiction referred to in subparagraph 911A(2)(ep)(iii) for such a service; or

 (c) for the exemption under paragraph 911A(2)(eq)—any of the places referred to in subparagraph 911A(2)(eq)(ii) or (iii) for such a service.

911K Certain licensing exemptions for foreign financial services providers—condition to comply with ASIC directions

 (1) For the purposes of section 911H, this section sets out a condition for a person that proposes to rely on the exemption under paragraph 911A(2)(eo), (ep) or (eq) for providing one or more kinds of financial service.

 (2) ASIC may, by giving written notice to the person, direct the person to give ASIC a statement containing specified information about one or more of the following:

 (a) one or more of those financial services;

 (b) one or more of those kinds of financial service;

 (c) the person’s related financial services business.

 (3) Directions given under subsection (2) to the person:

 (a) may be given at any time; and

 (b) may require a statement containing information to be given to ASIC on a periodic basis, or each time a particular event or circumstance occurs, without ASIC having to give a further direction; and

 (c) may require each statement to be given to ASIC in a written form that:

 (i) is approved by ASIC; and

 (ii) includes the information, statements, explanations or other matters required by the approved form; and

 (iii) is accompanied by any other material required by the approved form; and

 (iv) is given in a manner required by the approved form (including in electronic form).

 (4) The person must comply with a direction given under subsection (2):

 (a) within the time specified in the direction if that is a reasonable time; or

 (b) in any other case—within a reasonable time.

ASIC may extend the time within which the person must comply with the direction by giving written notice to the person.

911L Certain licensing exemptions for foreign financial services providers—condition about giving notice of the exemption to each recipient of a kind of financial service

 (1) For the purposes of section 911H, this section sets out a condition for a person that proposes to rely on the exemption under paragraph 911A(2)(eo) or (ep) for providing one or more kinds of financial service.

 (2) The person must provide written notice to each recipient of each of those kinds of financial service either:

 (a) before the person starts providing that kind of financial service to the recipient in reliance on the exemption; or

 (b) if that is not practicable—as soon as practicable after starting to do so.

 (3) The notice must include:

 (a) a statement to the effect that the person is exempt from the requirement to hold an Australian financial services licence covering the provision of that kind of financial service; and

 (b) a statement explaining either that:

 (i) the exemption is under paragraph 911A(2)(eo) of this Act, which is an exemption for a financial service provided only to professional investors; or

 (ii) the exemption is under paragraph 911A(2)(ep) of this Act, which is an exemption for a financial service provided only to wholesale clients.

Note 1: The notice only needs to be given once to each recipient for each exemption for that kind of financial service.

Note 2: A single notice can cover one or more of those kinds of financial service.

Note 3: For subsection (2), the recipient will be:

(a) for the exemption under paragraph 911A(2)(eo)—a professional investor; or

(b) for the exemption under paragraph 911A(2)(ep)—a wholesale client.

911M Certain licensing exemptions for foreign financial services providers—condition to notify ASIC of changes to contact details

 (1) For the purposes of section 911H, this section sets out a condition for a person that proposes to rely on the exemption under paragraph 911A(2)(eo), (ep) or (eq) for providing one or more kinds of financial service.

 (2) The person must notify ASIC of any change to the person’s contact details:

 (a) as soon as practicable after the change happens; and

 (b) by giving the notice to ASIC in a written form that:

 (i) is approved by ASIC; and

 (ii) includes the information, statements, explanations or other matters required by the approved form; and

 (iii) is accompanied by any other material required by the approved form; and

 (iv) is given in a manner required by the approved form (including in electronic form).

911N Certain licensing exemptions for foreign financial services providers—condition to ensure that financial services are provided efficiently, honestly and fairly

 (1) For the purposes of section 911H, this section sets out a condition for a person that proposes to rely on the exemption under paragraph 911A(2)(eo), (ep) or (eq) for providing one or more kinds of financial service.

 (2) The person must do all things necessary to ensure that the financial services are provided efficiently, honestly and fairly.

 (3) Subsection (2) does not apply to the extent that:

 (a) the financial services involve:

 (i) providing financial product advice; or

 (ii) dealing in a financial product; or

 (iii) making a market for a financial product;

 where the financial product is able to be traded on a financial market not operated under a licence under subsection 795B(1) (about Australian market licences); or

 (b) the financial services involve:

 (i) providing financial product advice; or

 (ii) dealing in a financial product; or

 (iii) making a market for a financial product;

 where the financial product is a derivative having a consideration or value that is ultimately determined, derived from or varied by reference to the value or amount of something else that is located outside this jurisdiction; or

 (c) the financial services are custodial or depository services involving holding financial products, or beneficial interests in financial products, if:

 (i) the financial products were issued outside this jurisdiction; and

 (ii) the financial products, or the beneficial interests, are being held outside this jurisdiction; or

 (d) circumstances exist that are of a kind prescribed by the regulations for the purposes of this paragraph.

Note: For paragraph (b), the thing located outside this jurisdiction could be, for example, an asset, a rate, an index or a commodity (see paragraph 761D(1)(c)).

911P Exemption for comparably regulated providers—information about the person and investigations etc.

 (1) For the purposes of subsection 911H(2), this section sets out conditions for a person that proposes to rely on the exemption under paragraph 911A(2)(ep) for providing one or more kinds of financial service.

Consent to information sharing between ASIC and any comparable regulator

 (2) During the notification period (see paragraph 911J(2)(a)) for each of those kinds of financial service, the person must notify ASIC that the person consents to:

 (a) ASIC; and

 (b) the comparable regulator for each financial service of that kind;

sharing information about the person.

 (3) The person must give this notice to ASIC in a written form that:

 (a) is approved by ASIC; and

 (b) includes the information, statements, explanations or other matters required by the approved form; and

 (c) is accompanied by any other material required by the approved form; and

 (d) is given in a manner required by the approved form (including in electronic form).

Note: A single notice can cover one or more of those kinds of financial service.

Notifying ASIC of investigations etc. in other jurisdictions

 (4) The person must notify ASIC of any significant enforcement action taken, any significant disciplinary action taken or any significant investigation undertaken against the person by:

 (a) any regulator in any place outside this jurisdiction; or

 (b) any government authority in any place outside this jurisdiction; or

 (c) any operator of a financial market, in any place outside this jurisdiction, in which the person is a participant.

 (5) The person must give this notice to ASIC:

 (a) as soon as practicable, and before the 15th business day, after the day on which the person becomes aware, or would reasonably be expected to have become aware, of the action or investigation; and

 (b) by giving the notice to ASIC in a written form that:

 (i) is approved by ASIC; and

 (ii) includes the information, statements, explanations or other matters required by the approved form; and

 (iii) is accompanied by any other material required by the approved form; and

 (iv) is given in a manner required by the approved form (including in electronic form).

 (6) Subsection (4) does not apply to the extent that complying with subsection (4) would be contrary to another law in force in this jurisdiction or elsewhere.

911Q Exemption for comparably regulated providers—agents and representatives

 (1) For the purposes of subsection 911H(2), this section sets out conditions for a person that proposes to rely on the exemption under paragraph 911A(2)(ep) for providing one or more kinds of financial service.

Having an agent when providing each of those financial services

 (2) The person must have an agent in this jurisdiction when providing each of those financial services in reliance on the exemption unless the consecutive period during which the person so provides the financial service without an agent is less than 10 business days.

 (3) The person must ensure that:

 (a) if the person is a foreign company—the person’s agent is appointed under Division 2 of Part 5B.2 as the person’s local agent; or

 (b) if the person is not a foreign company but is a partnership formed outside this jurisdiction—the person complies with any obligations under paragraph 912A(1)(j) relating to the person’s agent that the person would have to comply with if the person were a financial services licensee.

Note: For paragraph (a), a foreign company that appoints a local agent must give ASIC a statement under subsection 601CG(4).

Adequate oversight over representatives etc.

 (4) The person must:

 (a) maintain adequate oversight over its representatives who provide each of those financial services in reliance on the exemption; and

 (b) ensure that its representatives who provide each of those kinds of financial service in reliance on the exemption are adequately trained, and are competent, to provide that kind of financial service.

911R Any of the exemptions—person must notify ASIC of any contravention of a condition for the exemption

 If a person contravenes a condition for an exemption under paragraph 911A(2)(eo), (ep) or (eq) that applies to the person, the person must provide ASIC with full particulars of the contravention:

 (a) as soon as practicable, and before the 15th business day, after the day on which the person becomes aware, or would reasonably be expected to have become aware, of the contravention; and

 (b) by giving the particulars to ASIC in a written form that:

 (i) is approved by ASIC; and

 (ii) includes the information, statements, explanations or other matters required by the approved form; and

 (iii) is accompanied by any other material required by the approved form; and

 (iv) is given in a manner required by the approved form (including in electronic form).

Note 1: A failure to provide ASIC with particulars of the contravention may result in ASIC imposing additional conditions for the exemption (see section 911V).

Note 2: For the conditions for an exemption, see subsection 911H(1), (2) or (3).

911S Cancelling any of the exemptions—person contravenes a condition for the exemption

 (1) ASIC may, in writing, decide to cancel an exemption under paragraph 911A(2)(eo), (ep) or (eq) from:

 (a) applying to a person for providing one or more specified kinds of financial service; or

 (b) applying to a person for providing any kind of financial service;

if the person contravenes a condition for the exemption (see subsection 911H(1), (2) or (3)), other than the condition in section 911N.

Note 1: Paragraphs (a) and (b) mean the cancellation may be partial or complete.

Note 2: For an alternative to partially or completely cancelling the exemption, see section 911V.

 (2) ASIC may, in writing, decide to cancel an exemption under paragraph 911A(2)(eo), (ep) or (eq) from:

 (a) applying to a person for providing one or more specified kinds of financial service; or

 (b) applying to a person for providing any kind of financial service;

if ASIC reasonably believes that the person has contravened the condition in section 911N (about providing financial services efficiently, honestly and fairly) for the exemption.

Note 1: Paragraphs (a) and (b) mean the cancellation may be partial or complete.

Note 2: For an alternative to partially or completely cancelling the exemption, see section 911V.

911T Cancelling any of the exemptions—person fails the fit and proper person test

 (1) ASIC may, in writing, decide to cancel an exemption under paragraph 911A(2)(eo), (ep) or (eq) from applying to a person for providing any kind of financial service if ASIC reasonably believes that:

 (a) the person (the ***first person***) is not a fit and proper person to provide a financial service; or

 (b) a person mentioned in a paragraph of subsection 913BA(1) in relation to the first person is not a fit and proper person for a purpose mentioned in that paragraph (assuming any reference in that paragraph to a licence were a reference to the exemption).

Note: A cancellation under this subsection is a complete cancellation.

 (2) In considering whether a person referred to in paragraph (1)(a) or (b) is fit and proper for a purpose referred to in that paragraph, ASIC must have regard to the matters in section 913BB.

911U Procedures for cancelling any of the exemptions

ASIC must first give a show cause notice

 (1) ASIC may only decide under section 911S or 911T to cancel an exemption from applying to a person after:

 (a) taking reasonable steps to give the person written notice of:

 (i) the proposed cancellation and the reasons for it; and

 (ii) the opportunity to appear (or be represented) at a hearing before ASIC that takes place in private, and to make submissions to ASIC in relation to the matter; and

 (b) taking into account any information given to ASIC at such a hearing or in such submissions.

Note: For decisions under section 911S, this subsection applies whether the cancellation is partial as described in paragraph 911S(1)(a) or 911S(2)(a) or is complete as described in paragraph 911S(1)(b) or 911S(2)(b).

Notice of cancellation

 (2) If ASIC decides under section 911S or 911T to cancel an exemption from applying to a person, ASIC must take reasonable steps to give the person written notice of:

 (a) the cancellation and the reasons for it; and

 (b) the day the cancellation is to take effect (which must not be before the day the notice is given to the person).

Note: The notice could also include notice of the person’s right to seek review of the decision (see subsection 1317D(2)).

911V Imposing additional conditions as an alternative to cancelling an exemption

 (1) ASIC may, in writing, decide to impose one or more additional conditions for the future application of an exemption under paragraph 911A(2)(eo), (ep) or (eq) to a person for providing one or more specified kinds, or any kind, of financial service if:

 (a) the person contravenes a condition for the exemption (see subsection 911H(1), (2) or (3)); or

 (b) the person fails to comply with section 911R in relation to a contravention of a condition for the exemption.

Note 1: If the person contravenes any of these additional conditions, ASIC may:

(a) cancel the exemption partially or completely (see section 911S); or

(b) vary the additional condition, or impose another additional condition, under this section.

Note 2: The contravention may also result in a civil penalty (see subsection 911H(4)).

 (2) ASIC may, in writing, vary or revoke a condition imposed under subsection (1):

 (a) on the person’s request under subsection (3); or

 (b) on ASIC’s own initiative.

 (3) The person may request a condition imposed under subsection (1) to be varied or revoked by giving the request to ASIC in a written form that:

 (a) is approved by ASIC; and

 (b) includes the information, statements, explanations or other matters required by the approved form; and

 (c) is accompanied by any other material required by the approved form; and

 (d) is given in a manner required by the approved form (including in electronic form).

911W Procedures for additional conditions

 (1) This section applies if ASIC is proposing to make any of the following decisions (the ***proposed decision***) under section 911V in relation to a person:

 (a) imposing an additional condition;

 (b) varying an additional condition on ASIC’s own initiative;

 (c) refusing to comply with a request made by the person under subsection 911V(3).

ASIC must first give a show cause notice

 (2) ASIC may only make the proposed decision after:

 (a) taking reasonable steps to give the person written notice of:

 (i) the proposed decision and the reasons for it; and

 (ii) the opportunity to appear (or be represented) at a hearing before ASIC that takes place in private, and to make submissions to ASIC in relation to the matter; and

 (b) taking into account any information given to ASIC at such a hearing or in such submissions.

Notice of making the proposed decision

 (3) If ASIC makes the proposed decision, ASIC must take reasonable steps to give the person written notice of:

 (a) the decision and the reasons for it; and

 (b) the day the decision is to take effect (which must not be before the day the notice is given to the person).

Note: The notice could also include notice of the person’s right to seek review of the decision (see subsection 1317D(2)).

911X List of comparable regulators

 (1) The Minister may, by legislative instrument, determine regulators that administer broadly comparable regulatory regimes of authorisations, registrations or licences (however described) necessary to legally provide financial services in places outside this jurisdiction.

Note: Regulators determined under this subsection are relevant for:

(a) the licensing exemption under paragraph 911A(2)(ep); and

(b) the exemptions under subsections 913B(2A) and 914B(2A) from the fit and proper person test.

Matters to have regard to when making determinations

 (2) In deciding whether to determine a regulator under subsection (1), the Minister must have regard to:

 (a) whether the regulatory regime that the regulator administers produces broadly comparable outcomes to this jurisdiction in regulating and improving the performance of:

 (i) the relevant financial services system; and

 (ii) the financial services providers in that system; and

 (b) whether that regulatory regime is clear, transparent, certain and adequately enforced; and

 (c) whether that regulatory regime is broadly consistent with the Objectives and Principles of Securities Regulation, developed by the International Organization of Securities Commissions (***IOSCO***) and as in force from time to time; and

 (d) whether the regulator:

 (i) is a signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, developed by the IOSCO and as in force from time to time; or

 (ii) is a party to any other effective cooperation arrangement with ASIC; and

 (e) any relevant submission received:

 (i) from the regulator; or

 (ii) from any entity in relation to the regulator or that regulatory regime; and

 (f) any relevant advice (including any assessment) received from ASIC in relation to the regulator or that regulatory regime; and

 (g) any other matters prescribed by the regulations for the purposes of this paragraph.

The Minister may also have regard to any other matter that the Minister considers relevant.

Note: The Regulation mentioned in paragraph (c), and the Memorandum mentioned in subparagraph (d)(i), could in 2023 be viewed on IOSCO’s website (see https://www.iosco.org).

 (3) To assist the Minister to decide whether to determine a regulator under subsection (1), ASIC may:

 (a) give advice to the Minister; and

 (b) if the Minister requests, include with the advice an assessment of one or more of the matters in subsection (2) in relation to the regulator or the regulatory regime that the regulator administers.

5 At the end of subsection 913B(1)

Add:

Note 3: There is an exemption from paragraph (c) for certain foreign companies or partnerships (see subsection (2A)).

6 After subsection 913B(2)

Insert:

Fit and proper person test does not apply to certain foreign companies or partnerships

 (2A) Paragraph (1)(c) does not apply to an applicant for an Australian financial services licence if:

 (a) the applicant is a foreign company or is a partnership formed outside this jurisdiction; and

 (b) the licence, if granted, would be restricted to the provision of financial services to wholesale clients; and

 (c) the applicant holds any authorisations, registrations or licences (however described) that:

 (i) are necessary to legally provide the same or substantially the same financial services in a place outside this jurisdiction; and

 (ii) are issued (however described) by a regulator determined under subsection 911X(1).

7 Before subsection 914B(2)

Insert:

Refusing to grant the application if the fit and proper person test is not satisfied

8 After subsection 914B(2)

Insert:

 (2A) However, subsection (2) does not apply if:

 (a) the applicant is a foreign company or is a partnership formed outside this jurisdiction; and

 (b) the licence, if the application is granted, would be restricted to the provision of financial services to wholesale clients; and

 (c) the applicant holds any authorisations, registrations or licences (however described) that:

 (i) are necessary to legally provide the same or substantially the same financial services in a place outside this jurisdiction; and

 (ii) are issued (however described) by a regulator determined under subsection 911X(1).

9 In the appropriate position in subsection 1317E(3)

Insert:

|  |  |  |
| --- | --- | --- |
| subsection 911H(4) | contravening a condition of a licensing exemption for foreign financial services providers | uncategorised |

10 In the appropriate position in Chapter 10

Insert:

Part 10.65—Transitional provisions relating to the [Treasury Laws Amendment (Measures for Future Bills) Act 2023]

1695 Application of amendments—exemptions from the requirement to hold an Australian financial services licence

 Paragraphs 911A(2)(eo), (ep) and (eq), as inserted by [Schedule # to the *Treasury* *Laws Amendment (Measures for Future Bills) Act 2023*], apply in relation to financial services provided on or after the commencement of that Schedule.

1695A Application of amendments—exemption from the fit and proper person test

 (1) Subsection 913B(2A), as inserted by [Schedule # to the *Treasury* *Laws Amendment (Measures for Future Bills) Act 2023*], applies in relation to applications for Australian financial services licences made on or after the commencement of that Schedule.

 (2) Subsection 914B(2A), as inserted by [Schedule # to the *Treasury* *Laws Amendment (Measures for Future Bills) Act 2023*], applies in relation to applications:

 (a) for ASIC to take certain action in relation to Australian financial services licences; and

 (b) that are made on or after the commencement of that Schedule;

whether the licences were granted before, on or after that commencement.

1695B Transitional—first list of comparable regulators

 Subsection 911X(2) does not apply in relation to the determination of a regulator in the first legislative instrument made under subsection 911X(1) after the commencement of [Schedule # to the *Treasury* *Laws Amendment (Measures for Future Bills) Act 2023*] if the Minister is satisfied that:

 (a) the regulator can be identified from a legislative instrument made by ASIC and in force immediately before the commencement of that Schedule; and

 (b) the regulator is responsible for regulating the provision of financial services by providers in a place outside this jurisdiction; and

 (c) the legislative instrument exempted those providers from certain provisions of Part 7.6 (about licensing of providers of financial services) in relation to the provision of financial services.