



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 297

Retaining ASIC's fintech licensing exemption

December 2017

About this paper

This consultation paper seeks feedback on our financial technology (fintech) licensing exemption, introduced through our Innovation Hub in December 2016.

We are seeking feedback from fintech businesses, financial services providers, consumers and consumer representatives, and other interested parties.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 12 December 2017 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposal in this paper, which is only an indication of the approach we may take and is not our final policy.

As well as responding to the specific proposal and question, we also ask you to describe any alternative approaches you think would achieve our objectives.

The proposal in this consultation paper is not a new or additional regulatory measure, but is to maintain the same measures we proposed in [Consultation Paper 260](#) *Further measures to facilitate innovation in financial services* (CP 260), until such time as the Australian Government implements its enhanced regulatory sandbox exemption.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on ASIC's regulatory sandbox framework.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 27 February 2018 to:

ASIC's Innovation Hub
Australian Securities and Investments Commission
innovationhub@asic.gov.au

What will happen next?

Stage 1	12 December 2017	ASIC consultation paper released
Stage 2	27 February 2018	Comments due on the consultation paper
Stage 3	March 2018	Release of feedback report

A Background to the proposal

Key points

We are committed to facilitating innovation. This is balanced with our commitment to regulating new products and services in an appropriate way that promotes investor and financial consumer trust and confidence.

In December 2016, through the Innovation Hub, we introduced further measures to facilitate innovation in financial services, including legislative instruments to allow eligible financial technology (fintech) businesses to test certain specified services without holding an Australian financial services (AFS) licence or an Australian credit licence (credit licence). Collectively, we refer to these instruments as the 'fintech licensing exemption', also known as the 'regulatory sandbox exemption'.

The fintech licensing exemption is unique and intended to help new businesses test their services in an environment with a reduced regulatory burden, thereby addressing some of the key barriers to innovation that we identified.

When we introduced the fintech licensing exemption, we committed to review its operation within 12–18 months. We have released this consultation paper to:

- review whether the exemption is operating as intended; and
- consider whether it should be broadened or changed in any other way.

ASIC's 'regulatory sandbox' framework

- 1 We are committed to facilitating innovation. This is balanced with our commitment to regulating new products and services in an appropriate way that promotes investor and financial consumer trust and confidence.
- 2 In December 2016, we released [Regulatory Guide 257 Testing fintech products and services without holding an AFS or credit licence \(RG 257\)](#), which contains information about ASIC's regulatory sandbox framework.
- 3 That framework is comprised of:
 - (a) the existing flexibility in the regulatory framework and exemptions already provided by the law or ASIC, which mean that a licence is not required. Examples include our existing relief for non-cash payment products (like stored value cards) and regulations that mean a licence is often not required for certain foreign exchange services;
 - (b) our fintech licensing exemption, provided under [ASIC Corporations \(Concept Validation Licensing Exemption\) Instrument 2016/1175](#) and [ASIC Credit \(Concept Validation Licensing Exemption\) Instrument 2016/1176](#);

- (c) tailored, individual licensing exemptions from ASIC to facilitate product or service testing—individual exemptions of this nature are similar to the ‘regulatory sandbox’ frameworks established by financial services regulators in other jurisdictions.
- 4 The fintech licensing exemption allows eligible businesses that are not currently authorised to provide the services covered by the exemption to test these services for up to 12 months without an AFS or credit licence.
- 5 The exemption allows eligible businesses to provide advice on and deal in (other than acting as a product issuer):
- (a) listed or quoted Australian securities;
 - (b) debentures, stocks or bonds issued or proposed to be issued by the Australian Government;
 - (c) simple managed investment schemes;
 - (d) deposit products;
 - (e) some kinds of general insurance products; and
 - (f) payment products issued by authorised deposit-taking institutions (ADIs).
- 6 The exemption also allows eligible businesses to act as an intermediary or provide credit assistance for certain types of credit contract.
- 7 The exemption is subject to a number of conditions, such as client and exposure limits, consumer protection measures, adequate compensation arrangements, and dispute resolution systems.
- 8 We have taken a whitelist approach, meaning we do not review each proposed product or service, and we are not involved in selecting applicants and negotiating individual testing terms for people using the exemption in the instruments. However, customers of these fintech businesses will still have fundamental protections under the law, such as access to dispute resolution systems and the business’s professional indemnity insurance.
- 9 Within ASIC’s remit, this is the result of balancing the benefits of concept validation testing against the risks of consumer harm from poor conduct by unlicensed businesses that have not demonstrated their competence to deal with consumers.

International context

- 10 The fintech licensing exemption is a world-first approach that allows eligible fintech businesses to test certain services for up to 12 months without an AFS or credit licence.

- 11 It is challenging to compare our regulatory sandbox framework with fintech sandbox environments introduced in other jurisdictions, as the regulatory regime and approach to authorising fintech businesses differ significantly from jurisdiction to jurisdiction.
- 12 Of those jurisdictions where a regulatory sandbox has been implemented (now over 20), the sandbox has been approached from various contexts. We understand regulatory sandboxes vary because of different market, licensing and legal frameworks (including regulatory powers). Most of these sandboxes allow businesses to test new products, services, business models and delivery mechanisms within a controlled environment, and the regulators approve the businesses on an individual basis. Our fintech licensing exemption allows eligible businesses to notify ASIC and then commence testing without an individual approval process.
- 13 By introducing the fintech licensing exemption, we consider that we have gone as far as we can in balancing facilitation and consumer protection within our regulatory remit.

Use of the regulatory sandbox framework

Existing flexibility

- 14 The fintech licensing exemption was intended to build on the substantial flexibility already available to innovative businesses in the form of:
- (a) modular financial services and credit licensing frameworks;
 - (b) the option for businesses to operate as a representative of an existing licensee;
 - (c) our discretion on organisational competence when assessing submissions made by licensee applicants under Option 5 of [Regulatory Guide 105 Licensing: Organisational competence](#) (RG 105); and
 - (d) our policy framework for considering applications for industry-wide or entity-specific relief and issuing no-action letters.
- 15 Outside of the fintech licensing exemption, many fintech businesses rely on exemptions provided under ASIC's relief powers. We have provided a number of exemptions from the licensing requirement for offering certain types of products and services. This is because, depending on the nature, scale and complexity of the products and services offered, it is not always appropriate for a business to obtain a licence and meet all of the usual regulatory obligations.

- 16 For example, we have provided relief for 'low value' non-cash payment facilities, the provision of generic financial calculators, and some services for mortgage offset accounts.
- 17 We have also provided relief from some requirements of the law to most of the marketplace lending business models involving retail investors we have licensed.
- 18 Our general approach to granting relief is set out in [Regulatory Guide 51 Applications for relief \(RG51\)](#).

The fintech licensing exemption

- 19 Our fintech licensing exemption has been in place for 12 months.
- 20 We held a series of fintech meet-up events and information sessions throughout Australia in 2017, to help the sector understand the exemption and address questions. RG 257 and other communication materials on the fintech licensing exemption are available on [Innovation Hub webpages](#).
- 21 To date, four fintech businesses have used the fintech licensing exemption. Relying on the exemption, one business tested its financial services (providing advice and dealing in listed Australian securities); two businesses are currently testing advisory and dealing services in deposit products; and one business is testing acting as an intermediary and providing credit assistance. In addition, over a dozen fintech businesses have also contacted ASIC about using the fintech licensing exemption.
- 22 The fintech licensing exemption is unique; it is an experiment for ASIC as well as for the businesses testing in the sandbox. In our opinion, the exemption has created a quicker pathway for some fintech start-up businesses to testing their products and services. We consider that it has made an important contribution to creating opportunities for fintech businesses in two key areas:
- (a) testing viability, by allowing the businesses who have relied on the exemption to test the viability of their business model in real market circumstances without having to be licensed or otherwise authorised to operate;
 - (b) opening channels of communication, by encouraging fintech businesses to approach ASIC for informal assistance where they might not have otherwise. In some cases, businesses have learnt that they may already be able to test their concept because their activity does not require authorisation (e.g. small business lending) or is exempt under other ASIC relief (e.g. for 'low value' non-cash payment facilities).

Other measures

Innovation Hub

- 23 In March 2015, we launched our Innovation Hub to help fintech businesses navigate the regulatory system without compromising investor and financial consumer trust and confidence.
- 24 As of November 2017, the Innovation Hub has worked with 233 fintech businesses that cover the spectrum of fintech: see Table 1 for a full breakdown.

Table 1: Types of fintech businesses we have worked with

Business type	Number
Digital advice providers	45
Marketplace lenders	36
Crowd-sourced funding intermediaries	21
Consumer credit providers	27
Payment and remittance service providers	37
Other businesses, including insurers, superannuation funds, markets, and responsible entities for managed investment schemes	67

- 25 Through the work of the Innovation Hub, we have also granted 38 new licences to fintech businesses and provided variations to 11 licences. Further, licence applicants that have received informal assistance from ASIC staff through the Innovation Hub have obtained licensing decisions materially faster than if they applied without first obtaining informal assistance.
- 26 We think this aspect is valuable in helping fintech businesses understand how the regulatory framework applies to them, accelerating their route to market and reducing expenditure on external regulatory consultants.

Additional guidance on demonstrating organisational competence

- 27 We updated [RG 105](#) to include six specific examples of situations where we may, or may not, accept a responsible manager under Option 5. The additional guidance aims to help new businesses improve the quality of their AFS licence applications and better identify a responsible manager's prospects of being approved.

Organisational competence for small-scale, heavily automated businesses

- 28 The updated guidance in RG 105 also provides greater flexibility for some 'small-scale, heavily automated businesses' seeking to nominate a responsible manager.
- 29 We recognise that, if a licensee has a heavily automated business model and a small client base, responsibility for decisions about their financial services may not require significant day-to-day involvement from their responsible manager.
- 30 These businesses may now nominate a responsible manager without day-to-day involvement in the business to provide regular sign-off on the business's processes and systems and the quality of financial services provided.
- 31 We currently have one application seeking to nominate such a responsible manager under this policy.

Australian Government's enhanced regulatory sandbox exemption

- 32 In the 2017–18 Federal Budget, the Australian Government announced the introduction of an [enhanced regulatory sandbox exemption](#) to enable new and innovative fintech products and services to be tested in Australia without meeting ASIC's existing licensing requirements.
- 33 In October 2017, Treasury released [exposure draft legislation and regulations for the enhanced regulatory sandbox exemption](#) for consultation. The consultation period on this proposal expired on 1 December 2017.
- 34 The proposed exemption extends the scope of the ASIC's fintech licensing exemption in a number of areas, including the testing period, caps and limits on eligible products and services, and the number of times a business can make use of the sandbox: for more information, see the Hon. Scott Morrison MP, [Draft legislation and regulations—enhanced fintech regulatory sandbox](#), media release, 24 October 2017.

B The fintech licensing exemption

Key points

We are seeking feedback on our proposal to retain the fintech licensing exemption and make no changes until such time as the Australian Government implements its enhanced regulatory sandbox exemption.

Retaining the fintech licensing exemption

Proposal

B1 We propose to retain the fintech licensing exemption. We will review our position if and when the Australian Government implements the proposed enhanced regulatory sandbox exemption.

Your feedback

B1Q1 Do you agree with our proposal? If not, why not?

Rationale

- 35 The fintech licensing exemption provides additional pathways for businesses to begin testing the viability of innovative financial services and credit services for consumers, before incurring many of the regulatory costs normally associated with running their business.
- 36 By introducing the fintech licensing exemption, we consider that we have gone as far as we can in balancing facilitation and consumer protection within our regulatory remit.
- 37 The [EY fintech Australia census 2017](#) (PDF 3.15 MB) indicates that 9% of the surveyed fintech businesses intend to use the fintech licensing exemption within the next 12 months.
- 38 Even in cases where businesses have discovered that they are not eligible to use the fintech licensing exemption, we consider that its introduction has encouraged them to contact ASIC and explore other options that result from the flexibility in our existing regime.
- 39 Significantly, Treasury has recently consulted on [exposure draft legislation and regulations for the enhanced regulatory sandbox exemption](#) and is considering the feedback received. This proposed exemption, if implemented in a materially similar form, would supersede the need for our fintech licensing exemption. In the meantime, we consider it would be inappropriate to amend our fintech licensing exemption.

- 40 We will continue to monitor developments on the enhanced regulatory sandbox exemption. If the Australian Government implements an exemption similar to the one proposed, we will review the ongoing need for our fintech licensing exemption, including whether to revoke it.

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 on a financial services business to provide financial services Note: This is a definition contained in s761A.
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit service	Has the meaning given in s7 of the National Credit Act
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
fintech	Financial technology
fintech licensing exemption	A conditional licensing exemption provided by ASIC under ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 and ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176 to allow eligible businesses to test certain specified products and services for up to 12 months without holding an AFS licence or credit licence
RG 257 (for example)	An ASIC regulatory guide (in this example numbered 257)