

Article Information

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Want to throw a shrimp on the barbie? ASIC updates guidance on carrying on business in Australia

Australian Securities and Exchange Commission (ASIC) has reissued its [Regulatory Guide 121](#) including updated guidance to overseas companies on whether they are, and how they can compliantly, conduct a financial services business in Australia.

ASIC has recently reissued [Regulatory Guide 121 \(RG121\)](#) which replaces previous version of the guidance issued in June 2013.

RG 121 has been reissued to:

- remove references to expired or repealed Australian Financial Services (AFS) licensing relief, including [class relief granted by ASIC to foreign financial services providers \(or FFSPs\)](#) and foreign collective investment schemes
- amend descriptions of AFS licensing exemptions and relief to reflect those currently available
- update the description of the Courts' interpretation of 'carrying on a business in Australia' (e.g. *Gebo Investments (Labuan) Ltd v Signatory Investments Pty Ltd* [2005] NSWSC 544, *Facebook Inc v ASIC* [2022] FCAFC 9 and *Hungier v Grace* (1972) 127 CLR 210), including the general indicators of carrying on a business, other relevant factors and when a one-off transaction may amount to the carrying on of a business, and
- update descriptions of, or references to, financial products and services, obligations of AFS licensees (such as Design and Distribution Obligation), legislation administered by ASIC, other applicable rules and legislation, and ASIC's regulatory documents to reflect the current legal and regulatory framework.

Given the significant criminal and civil penalties which apply to offering financial services in Australia, foreign financial services providers that offer services to Australians should seek professional advice on whether they may be carrying on a financial services business in Australia. While the updated RG121 provides high level guidance on this issue and outlines the relevant licensing relief which may be available, the law in this area is complex and the increasing use of digital platforms like apps and social media to engage with investors can create new risks for financial services providers offering their services globally. [The current licensing relief for overseas providers is also expected to change in the near future.](#) It is vital for foreign financial services providers to be familiar with the evolving regulatory position and ASIC's guidance on these matters to ensure that they don't get burned.

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