

## SUMMARY OF FINANCIAL SERVICES EXEMPTIONS (UNDER CORPORATIONS ACT AND REGULATIONS) AS AT APRIL 2008

There are a broad range of financial services licensing exemptions. Many of these are contained in Chapter 7 of the Corporations Act 2001 and in Part 7 of the Corporations Regulations 2001.

It is possible for an advisory and consulting firm to limit their activities to 'exempt services' or other recognised exemptions to avoid the requirement to hold an Australian financial service (**AFS**) licence or an authorisation from an AFS licence holder. Some of these exemptions are outlined below.

Other possible avenues of exemptions or relief may be available in the form of ASIC Class Order relief and/or applying for ASIC relief on a 'case by case' basis. ASIC publishes its Class Order relief and information about the 'case by case' relief applications it has granted from time to time on its website at [www.asic.gov.au](http://www.asic.gov.au). The information in this document is not exhaustive and provides an overview of some of the applicable exemptions for professional advisers.

If you would like more information about any of them or advice on your particular situation, please contact Gold Seal on (02) 8353 6600.

Description	Scope/Conditions	Reference
Risk assessment referring to generic types/classes of financial products	Advice on a risk that another person might be subject to which identifies generic financial products or generic classes of financial product that will mitigate that risk (the advice cannot be included in an exempt document or statement – e.g. Financial Services Guide, Statement of Advice or Product Disclosure Statement).	Reg. 7.1.29(3)(b)
Strategy advice on structuring, valuation, acquisition/disposal, due diligence in relation to a business	Advice on the acquisition or disposal, administration, due diligence, establishment, structuring or valuation of an incorporated or unincorporated entity, if the advice: <ul style="list-style-type: none"> <li>• is given to a person who is, or is likely to become, an interested party in the entity; and</li> <li>• to the extent that it is financial product advice — is confined to advice on a decision about: <ul style="list-style-type: none"> <li>• securities of a body corporate, or related body corporate, that carries on or may carry on the business of the entity; or</li> <li>• interests in a trust (other than a superannuation fund or a managed investment scheme that is registered or required to be registered), the trustee of which carries on or may carry on the business of the entity in the capacity of trustee; and</li> <li>• does not relate to other financial products that the body corporate or the trustee of the trust may acquire or dispose of; and</li> <li>• is not advice for inclusion in an exempt document or statement – e.g. Financial Services Guide, Statement of Advice or Product Disclosure Statement.</li> </ul> </li> </ul>	Reg. 7.1.29(3)(c)
Advice on shares or units in a trust where the entities do not carry on a business (e.g. shelf companies, establishment of trusts as investment vehicles)	Advice on financial products that are: <ul style="list-style-type: none"> <li>• securities in a company (other than securities offered using a prospectus/PDS); or</li> <li>• interests in a trust (other than a superannuation fund or a managed investment scheme that is registered or required to be registered);</li> </ul> if the company or trust is not carrying on a business and has not, at any time, carried on a business.	Reg. 7.1.29(3)(d)

Description	Scope/Conditions	Reference
Advice on transferring products between associates	<p>Advice in relation to the transfer of financial products between associates.</p> <p>Note: 'associates' are defined under the Act – associates of body corporate include a director, secretary, a related body corporate and a director or secretary of a related body corporate. This can also extend to a person who is acting or proposes to act in concert with another or a person with whom a person proposes to become associated whether in a formal or informal way. An associate is not adviser acting in a professional capacity or business relationship, a proxy or representative, a takeover offeror or an agent acting on instructions of a client. See sections 10 to 17 of the Corporations act for details.</p>	Reg. 7.1.29(3)(e)
Advice in relation to a self managed super fund	<p>Arranging for another person to provide services in relation to interests in a self managed superannuation fund where the person receiving the advice or service is a going to be a trustee director, employer sponsor or controller of the fund and the service relates to advice on superannuation laws and does not extend to particular investments or financial products managed by the fund.</p> <p>If the advice is financial product advice provided to a retail client — the advice includes, or is accompanied by, a written statement that:</p> <ul style="list-style-type: none"> <li>• the person providing the advice is not licensed to provide financial product advice under the Act; and</li> <li>• the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.</li> </ul>	Regs. 7.1.29(3)(f) and 7.1.29(5)(6)
Registration and transfer documents to effect an investment	Arranging for another person to provide advice or deal in a financial product where the person is preparing a document of registration or transfer in order to complete administrative tasks on instructions from the adviser.	Reg. 7.1.29(3)(g)
Advice on using financial products as security to acquire other products	Advice about the provision of financial products as security, other than where the security is provided for the acquisition of other financial products.	Reg. 7.1.29(3)(h)
Certain advice and transactions relating to an employee share schemes	General advice on an offer of financial products under an eligible employee share scheme where the person giving the advice is the corporation whose financial products are being issued or sold under the scheme, or an entity that that corporation control or dealing in the financial products offered under an eligible employee share scheme.	s.911A(2)(ed)
Certain taxation advice	<p>Advice given by a tax agent registered under Part VIIA of the Income Tax Assessment Act 1936, that is given in the ordinary course of activities as such an agent and that is reasonably regarded as a necessary part of those activities.</p> <p>Advice on taxation issues including advice in relation to</p>	<p>s.766B(5)(c)</p> <p>Reg. 7.1.29(4)</p>

Description	Scope/Conditions	Reference
	<p>the taxation implications of financial products where:</p> <ul style="list-style-type: none"> <li>• the adviser will not receive a benefit (other than from the person advised or an associate of the person advised) as a result of the client acquiring a financial product mentioned in the advice, or a financial product that falls within a class of financial products mentioned in the advice;</li> <li>• the advice is not financial product advice to a retail client; or</li> <li>• if the advice is financial product advice to a retail client it includes, or is accompanied by, a written statement that: <ul style="list-style-type: none"> <li>• the person providing the advice is not licensed to provide financial product advice under the Act; and</li> <li>• taxation is only one of the matters that must be considered when making a decision on a financial product; and</li> <li>• the client should consider taking advice from the holder of an Australian Financial Services Licence before making a decision on a financial product.</li> </ul> </li> </ul>	
Salary sacrifice and remuneration packaging	Advice to that relates only to the structuring of remuneration packages for a person's employees.	Reg. 7.1.32
Investment allocation advice	<p>Advice to that consists only of a recommendation or statement of opinion provided to a person about the allocation of the person's funds that are available for investment among 1 or more of the following:</p> <ul style="list-style-type: none"> <li>• shares;</li> <li>• debentures;</li> <li>• debentures, stocks or bonds issued, or proposed to be issued, by a government;</li> <li>• deposit products;</li> <li>• managed investment products;</li> <li>• investment life insurance products;</li> <li>• superannuation products;</li> <li>• other types of asset.</li> </ul> <p>Note: This regulation does not apply to a recommendation or statement of opinion that relates to specific financial products or classes of financial products.</p>	Reg. 7.1.33A
General advice about types/classes of financial products where no remuneration is received and no intention to influence a decision to acquire the product	<ul style="list-style-type: none"> <li>• Advice that is not about a particular financial product or an interest in a particular financial product; and</li> <li>• Advice that is not personal advice and is not intended to influence the other person in making a decision in relation to a particular financial product or an interest in a particular financial product (or which could reasonably be regarded as being intended to have such an influence).</li> </ul> <p>By giving the advice neither the advisor, nor an associate of the advisor, receives any remuneration (including commission) or other benefit that is related to the advice given apart from remuneration (including commission) or other benefit that the advisor or the associate would have</p>	Reg.7.1.33G

Description	Scope/Conditions	Reference
	received if the advice was not given.	
Certain legal advice	Advice given by a lawyer in his or her professional capacity, about matters of law, legal interpretation or the application of the law to any facts and any other advice given by a lawyer in the ordinary course of activities as a lawyer, that is reasonably regarded as a necessary part of those activities.	s.766B(1)(5)(a)
Lawyers acting on instructions	<p>A financial service provided by a lawyer to their client if:</p> <ul style="list-style-type: none"> <li>• the financial service consists of: <ul style="list-style-type: none"> <li>• arranging for a person deal in a financial product ( e.g. by that person applying for or acquiring a financial product for the client); or</li> <li>• dealing as an agent or otherwise on behalf of a client, an associate of a client or a relative of a client; and</li> </ul> </li> <li>• the lawyer is acting: <ul style="list-style-type: none"> <li>• on the instructions of the client, an associate of the client or a relative of the client; and</li> <li>• in his or her professional capacity; and</li> <li>• in the ordinary course of his or her activities as a lawyer; and</li> </ul> </li> <li>• the financial service can reasonably be regarded as a necessary part of those activities; and</li> <li>• the lawyer has not received, and will not receive, a benefit in connection with those activities other than: <ul style="list-style-type: none"> <li>• the payment of professional charges in relation to those activities; and</li> <li>• reimbursement for expenses incurred or payment on account of expenses to be incurred on behalf of the client, an associate of the client or a relative of the client;</li> </ul> </li> </ul> <p>from the client or from another person on behalf of the client.</p>	
Referring a person to financial services provider	<p>Informing a person that a financial services licensee, or a representative of the financial services licensee, is able to provide a particular financial service, or a class of financial services and giving information about how the person may contact the financial services licensee or representative.</p> <p>Note: if the referrer is not a representative of the licensee or a related body corporate of the licensee, the referrer discloses any benefits (including commission) the person or their associates may receive in respect of the service. The disclosure must be made in the same form and at the same time as making the referral.</p>	Reg. 7.6.01(1)(e)(ea)
Service is incidental and not significant to the person's business	Where a financial service is provided by a person and the financial service is provided in the ordinary course of their business and this is not a significant part of their business.	Reg. 7.6.01(1)(l)
Generic 'rate of investment	Information supplied in response to a request made by a	s.766B(7)

Description	Scope/Conditions	Reference
return' advice	person (the <i>inquirer</i> ) about: <ul style="list-style-type: none"> <li>• the cost of a financial product; or</li> <li>• rate of return on a financial product;</li> </ul> where the request could also have been complied with (but was not also so complied with) by telling the inquirer equivalent information about one or more other financial products.	
Activities relating to administration, receivership, management, liquidation, deeds of arrangements and deceased estates	Advice or other activities by a person acting in any of the following capacities: <ul style="list-style-type: none"> <li>• an official receiver or trustee within the meaning of the Bankruptcy Act 1966;</li> <li>• a receiver, receiver and manager, or liquidator (whether appointed by a court or otherwise);</li> <li>• a person appointed by a court to carry on a financial services business;</li> <li>• the Public Trustee acting under a law, prescribed by regulations made for the purposes of this paragraph, of a State or Territory;</li> <li>• an administrator of a body corporate;</li> <li>• as an administrator of a deed of company arrangement executed by a body corporate;</li> <li>• as a trustee or person administering a compromise or arrangement between a body corporate and another person or persons;</li> <li>• as a personal representative of a deceased person other than a deceased financial services licensee;</li> <li>• subject to subsection (3), as a personal representative of a deceased financial services licensee;</li> <li>• in the administration of a bankrupt estate or in the winding up of a body corporate or partnership.</li> </ul>	s.911A(2)(f)