



Australian Business Investment Partnership (Consequential Amendment) Bill 2009

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Australian Business Investment Partnership (Consequential Amendment) Bill 2009

Date introduced: 12 March 2009

House: House of Representatives

Portfolio: Treasury

Commencement: the formal parts of the Act (Sections 1–3) commence on Royal Assent. Schedule 1 commences at the same time as the *Australian Business Investment Partnership Act 2009* commences.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To exempt the proposed Australian Business Investment Partnership Limited (ABIP) company from the requirement to hold an Australian financial services licence (AFSL) under the *Corporations Act 2001*.

Background

The Australian Business Investment Partnership (Consequential Amendment) Bill 2009 (the Bill) is part of a package of two Bills which facilitates the establishment of the Australian Business Investment Partnership (ABIP), with the main Bill being the Australian Business Investment Partnership Bill 2009. The Bills Digest for that Bill should be consulted for information about the policy background to ABIP.

The requirement to hold an Australian financial services licence (AFSL), its relevance to the proposed ABIP, and the rationale for the proposed exemption from the AFSL is summarised in the Explanatory Memorandum to the Bill:¹

Under the Corporations Act an Australian financial services licence (AFSL) authorises a company or its representatives to provide financial services to clients. Without an AFSL, a company generally cannot carry on a financial services business.

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1. Explanatory Memorandum, Australian Business Investment Partnership (Consequential Amendment) Bill 2009 pp. 3–4.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

AFSLs are regulated under the Corporations Act. Subsection 911A(2) sets out the circumstances in which a person who provides a financial service will nevertheless be exempt from having to hold an AFSL.

A company carries on a financial services business where it provides financial product advice, deals in a financial product, makes a market for a financial product, operates a registered scheme or provides a custodial or depository service.

ABIP will provide liquidity support for viable commercial property assets where financiers have withdrawn from debt financing arrangements as a result of the global financial crisis. ABIP will also provide financing arrangements in other areas of commercial lending if those arrangements are unanimously agreed by the members of ABIP.

Whilst the statutory concept of providing a financial service in Section 766A of the Corporations Act does not extend to the provision of credit per se, it is arguable that activities of ABIP incidental to the provision of credit, would constitute providing a financial service within the meaning of Section 766A.

Requiring ABIP Limited to obtain an AFSL for its borrowing and lending activities would be disproportionate given the sophisticated nature of its possible client base and the limited scope and duration of its activities, noting that ABIP:

- will only have five shareholders;
- is only intended to lend for 2 years; and
- its functions are strictly limited by the legislation providing for its incorporation.

Financial implications

The Explanatory Memorandum states that the Bill has no financial impact.²

Main provisions

Existing subsection 911A(2) of the *Corporations Act 2001* lists a range of circumstances in which a person carrying on a financial services business is exempted from the requirement to hold an AFSL. **Item 1** of Schedule 1 inserts **new paragraph 911A(2)(ja)** to include a service ‘provided by Australian Business Investment Partnership Limited in accordance with the *Australian Business Investment Partnership Act 2009*’ within the list of exemptions.

2. *ibid.*, p. 4.

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