

ASIC Corporations (Foreign Financial Services Provider—Queensland Fidelity and Indemnity Schemes) Instrument 2022/437

I, Rhys Bollen, delegate of the Australian Securities and Investments Commission, make the following notifiable instrument.

Date 31 May 2022

Rhys Bollen

**Contents**

[Part 1—Preliminary 3](#_Toc104459049)

[1 Name of notifiable instrument 3](#_Toc104459050)

[2 Commencement 3](#_Toc104459051)

[3 Authority 3](#_Toc104459052)

[4 Definitions 3](#_Toc104459053)

[Part 2—Exemption 5](#_Toc104459054)

[5 Queensland fidelity and indemnity scheme exemptions 5](#_Toc104459055)

[6 Conditions 6](#_Toc104459056)

Part 1—Preliminary

1 Name of notifiable instrument

This is the *ASIC Corporations (Foreign Financial Services Provider—Queensland Fidelity and Indemnity Schemes) Instrument 2022/437*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

3 Authority

This instrument is made under paragraphs 601QA(1)(a), 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

***Act*** means the *Corporations Act 2001*.

***captive insurer*** has the meaning given by section 2 of the *Insurance Act 1966 (Singapore)*.

***Lexon*** means Lexon Insurance Pte Limited ARBN 098 964 740.

***Licence***: see paragraph 5(2)(a).

***MAS*** means the Monetary Authority of Singapore.

***overseas regulatory authority*** means a foreign regulatory authority (other than MAS) which regulates financial services and which is established by or for the purposes of a foreign government or legislative body.

***Queensland fidelity or indemnity scheme*** means the professional indemnity insurance arrangements made pursuant to the Queensland Law Society Indemnity Rule and which Lexon is permitted to provide under the Licence and the associated scheme providing that insurance.

***Queensland Law Society*** means the Queensland Law Society Incorporated, being the body established under subsection 4(1) of the *Queensland Law Society Act 1952* (Qld), and continued in existence by section 508 of the *Legal Profession Act 2004* (Qld), and continued in existence under section 679 of the *Legal Profession Act 2007* (Qld).

***Queensland Law Society Indemnity Rule*** means the *Queensland Law Society Indemnity Rule 2005* made by the Council of the Queensland Law Society under sections 226(2)(1) and 227 of the *Legal Profession Act 2004* (Qld) and the replacement of those provisions by sections 231 and 232 of the *Legal Profession Act 2007* (Qld).

***Singaporean regulatory requirements*** means the rules that apply in relation to the financial services including any applicable legislation, instruments made under that legislation and any relevant policies or other documents (however described) issued by MAS.

Part 2—Exemption

5 Queensland fidelity and indemnity scheme exemptions

(1) Lexon does not have to comply with any of the following:

(a) section 601ED(5) of the Act in relation to the operation of a managed investment scheme that is or arises from the Queensland fidelity or indemnity scheme;

(b) Divisions 2 to 5 of Part 7.9 and section 992A of the Act in relation to a financial product that arises from the Queensland fidelity or indemnity scheme;

(c) subsection 911A(1) of the Act for the provision of a financial service where:

(i) the service consists of any or all of the following:

(A) providing financial product advice;

(B) dealing in a financial product;

(C) providing a custodial or depository service;

(D) claims handling and settling services; and

(ii) the service is only provided to the extent reasonably necessary for the operation of the Queensland fidelity or indemnity scheme where the Queensland Law Society is providing related services in respect of which it is exempt from the requirement to hold an Australian financial services licence because of *ASIC Corporations (Law Societies—Fidelity and Indemnity Schemes) Instrument 2022/435*.

(2) The exemption in subsection (1) is only available where all of the following are satisfied:

(a) Lexon has a current licence granted to it by MAS authorising it to be a captive insurer;

(b) Lexon is a wholly owned subsidiary of the Queensland Law Society;

(c) Lexon is registered under Division 2 of Part 5B.2 of the Act;

(d) Lexon’s primary business is the provision of financial services;

(e) Lexon has not notified ASIC in writing that it will not rely on this instrument;

(f) Lexon has provided ASIC with each of the following:

(i) a copy of the Licence, or evidence that paragraph (2)(a) is satisfied that ASIC has stated in writing is adequate;

(ii) a written notice that it will provide financial services in this jurisdiction in reliance on this instrument;

(iii) a copy of a deed of Lexon for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Act, which provides that:

(A) the deed is irrevocable except with the prior written consent of ASIC;

(B) Lexon submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the *Australian Securities and Investments Commission Act 2001*) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act;

(C) Lexon covenants to comply with any order of an Australian court in respect of any matter relating to the provision of the financial services;

(D) Lexon covenants that, on written request of either MAS or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist MAS to disclose to ASIC and ASIC to disclose to MAS any information or document that MAS or ASIC has that relates to Lexon;

(iv) written consents to the disclosures between ASIC and MAS of any information or document relating to Lexon. The consents must be in such form (if any) as ASIC specifies in writing.

6 Conditions

Lexon must:

(a) provide each of the financial services in this jurisdiction in a manner which it believes would comply, so far as possible, with the Singaporean regulatory requirements if the financial service were provided in Singapore in like circumstances; and

(b) notify ASIC in writing within 30 days of the details of:

(i) each significant change to, including the termination of, the Licence applying to Lexon relevant to the financial services Lexon provides or intends to provide in this jurisdiction; and

(ii) each significant change to the Singaporean regulatory requirements that is relevant to the financial services Lexon provides or intends to provide in this jurisdiction, including in the power or authority of MAS to supervise, monitor or procure compliance by Lexon with the Singaporean regulatory requirements applicable to the provision of those financial services, unless ASIC has stated in writing that notice of that change is not required for the purpose of this instrument; and

(iii) each significant particular exemption or other relief which Lexon obtains from the Singaporean regulatory requirements relevant to the financial services Lexon provides or intends to provide in this jurisdiction; and

(iv) each enforcement or disciplinary action taken by MAS or other overseas regulatory authority against Lexon; and

(c) provide written disclosure to all persons to whom the financial services are provided in this jurisdiction (before the financial services are provided) containing prominent statements to the following effect:

(i) Lexon is exempt from the requirement to hold an Australian financial services licence under the Act in respect of the financial services; and

(ii) Lexon is regulated by MAS under Singaporean laws, which differ from Australian laws; and

(d) if it becomes or should reasonably have become aware of matters that give it reason to believe that it has failed, in a material respect, to comply with any of the conditions set out in paragraphs (a) to (c):

(i) provide full particulars of the failure to ASIC, to the extent that Lexon knows those particulars or would have known them if it had undertaken reasonable enquiries; and

(ii) notify ASIC in writing in accordance with subparagraph (i) not more than 30 calendar days after it becomes or should reasonably have become aware of the failure.