
EXPLANATORY STATEMENT for
ASIC Corporations (Amendment and Repeal) Instrument 2016/182

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Amendment and Repeal) Instrument 2016/182* under subsections 111AT(1), 341(1), 352(1), 741(1) and 1020F(1) and paragraph 911A(2)(l) of the *Corporations Act 2001* (the Corporations Act).

Subsection 111AT(1) provides that ASIC may, by writing, exempt specified persons from all or specified disclosing entity provisions either generally or as otherwise specified and either unconditionally or subject to specified conditions.

Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Corporations Act.

Subsection 352(1) provides that a document may be lodged with ASIC electronically only if ASIC and the person seeking to lodge it (either on their own behalf or as agent) have agreed, in writing, that it may be lodged electronically or ASIC has approved, in writing, the electronic lodgement of documents of that kind.

Subsection 741(1) provides that ASIC may exempt a person from a provision of Chapter 6D of the Corporations Act or declare that Chapter 6D applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsection 1020F(1) provides that ASIC may exempt a person or a financial product or class of financial products from all or specified provisions of Part 7.9 of the Corporations Act or declare that Part 7.9 applies to a person, financial product or class of financial products as if specified provisions were omitted, modified or varied as specified in the declaration.

Paragraph 911A(2)(l) provides that a person is exempt from the requirement to hold an Australian financial services licence for a financial service they provide if the provision of the service is covered by an exemption specified by ASIC in writing and published in the *Gazette*.

Under subsection 33(3) of the Acts Interpretation Act 1901 (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

ASIC Corporations (Amendment and Repeal) Instrument 2016/182:

- (a) repeals Class Order [CO 98/100] *Rounding in financial reports and directors' reports*, Class Order [CO 98/104] *Dual lodgement relief for NSX-listed disclosing entities*, Class Order [CO 00/2451] *Electronic lodgement of certain reports with the ASX approval*, Class Order [CO 03/823] *Relief from licensing, accounting and audit requirements for foreign authorised deposit-taking institutions*, Class Order [CO 06/6] *Electronic lodgement relief for ASX-listed entities* and Class Order [06/68] *Conditional relief for foreign licensees from financial reporting and record keeping obligations*; and
- (b) makes consequential amendments to *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* and Class Order [CO 09/425] *Share and interest purchase plans*.

1. Background

Under the *Legislation Act 2003*, legislative instruments cease automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them.

To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunseting is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

[CO 98/100], [CO 06/6] and [CO 06/68] are due to sunset on 1 April 2016, [CO 98/104] is due to sunset on 1 October 2016 and [CO 00/2451] and [CO 03/823] are due to sunset on 1 April 2017. ASIC has reviewed its policy underlying the relief. In light of this review and following public consultation, ASIC considers that the class order relief is necessary, fit-for-purpose and relevant.

As such, ASIC has decided to:

- (a) reissue the relief underlying [CO 98/100] in a new legislative instrument, *ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191*;
- (b) reissue the relief underlying [CO 06/6], [CO 98/104] and [CO 00/2451] in a new legislative instrument, *ASIC Corporations (Electronic Lodgement of Financial Reports) Instrument 2016/181*; and
- (c) reissue the relief underlying [CO 03/823] and [CO 06/68] in a new legislative instrument, *ASIC Corporations (Foreign Licensees and ADIs) Instrument 2016/186*.

2. Purpose of the instrument

In light of the relief in [CO 98/100], [CO 98/104], [CO 00/2451], [CO 03/823], [CO 06/6] and [CO 06/68] being remade in new legislative instruments, the purpose of *ASIC Corporations (Amendment and Repeal) Instrument 2016/182* is to repeal [CO 98/100], [CO 98/104], [CO 00/2451], [CO 03/823], [CO 06/6] and [CO 06/68] and to make consequential amendments to *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* and [CO 09/425].

3. Operation of the instrument

ASIC Corporations (Amendment and Repeal) Instrument 2016/182 repeals [CO 98/100], [CO 98/104], [CO 00/2451], [CO 03/823], [CO 06/6] and [CO 06/68] and makes consequential amendments to *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* and [CO 09/425].

4. Consultation

ASIC has not consulted on this instrument as it is machinery in nature.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Amendment and Repeal) Instrument 2016/182

ASIC Corporations (Amendment and Repeal) Instrument 2016/182 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

This instrument revokes certain sunset class orders which have been remade as new legislative instruments and makes consequential amendments to class orders which refer to the revoked instruments.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission