

EXPLANATORY STATEMENT

ASIC CORPORATIONS (REPEAL) INSTRUMENT 2016/391

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Repeal) Instrument 2016/391* (the **repeal instrument**) under subsection 341(1) of the *Corporations Act 2001* (the **Act**).

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 directors, the companies, registered schemes or disclosing entities themselves, or auditors of the company, registered schemes or disclosing entities, from any of the requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act.

This instrument is a repeal instrument. 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 an instrument, the power includes a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary the instrument.

A. Repeal of ASIC Class Order [CO 14/632]

1. Background

Accounting Standard AASB 2011-4 deleted certain individual key management personnel disclosures from *AASB 124: Related Party Disclosures (AASB 124)* as of 1 July 2013. The relevant disclosures were determined to be more in the nature of governance disclosures that are better dealt with as part of the Act and should be reported on in an entity's remuneration report as opposed to in the notes to the financial statements.

The requirement to include the disclosures in the remuneration report was introduced into the *Corporations Regulations 2001* (the **Corporations Regulations**) by the *Corporations and Related Legislation Amendment Regulation 2013 (No.1)* (the **first amending regulation**).

The new disclosures were included in subregulation 2M.3.03(1) and were effective for remuneration reports applying to financial years beginning on or after 1 July 2013.

Two issues arise with respect to the first amending regulation.

Firstly, the original requirements in AASB 124 were specifically restricted to requiring disclosure of equity instruments (such as shares and options) issued or issuable by the disclosing entity (such as a listed company) and any of its subsidiaries. The first amending regulation omitted to restrict the regulations to those equity instruments issued or issuable by the disclosing entity and its subsidiaries.

The first amending regulation therefore has the effect of requiring a director to disclose in a remuneration report all of his or her personal shareholdings in any company (where provided as remuneration), even those holdings unrelated to the company the remuneration report is being prepared for. This consequence appears unintentional as the Explanatory Statement to the first amending regulation makes it clear that intention was to directly transplant the requirements from AASB 124 into the Corporations Regulations for the purpose of related party disclosure.

Secondly, AASB 124 required the disclosures in relation to the equity instruments being disclosed to be separated into each class of equity instrument. The requirement for separate class disclosure was also omitted from subregulation 2M.3.03(1) of the Corporations Regulations. The loss of this more granular disclosure could detract from the informational value of the disclosure.

ASIC Class Order [CO 14/632] (the *principal instrument*) was made in June 2014 to address these issues on an interim basis pending further amendments to the Corporations Regulations. It initially applied in relation to financial years ended on or before 30 September 2014.

In November 2014, the Department of the Treasury released for public consultation an exposure draft of the Corporations Amendment (Remuneration Disclosures) Regulation 2014 (the *exposure draft regulations*). These exposure draft regulations will address, among other things, the issues addressed by the principal instrument. The exposure draft regulations indicate that the amendments will apply in relation to financial years ending on or after the day the amending regulation commences.

Pending the commencement of the exposure draft regulations, the principal instrument was amended by:

- ASIC Class Order [CO 14/855] to extend its operation to apply in relation to financial years ended on or before 31 March 2015;

- ASIC Corporations (Amendment) Instrument 2015/455 to extend its operation to apply in relation to financial years ended on or before 31 December 2015; and
- ASIC Corporations (Amendment) Instrument 2016/45 to extend its operation to apply in relation to financial years ended on or before 31 December 2016.

The *Corporations Amendment (Remuneration Disclosures) Regulation 2016 (Regulation)* commenced on 16 April 2016 and applies in relation to financial years ending on or after that date.

Purpose of the instrument

The purpose of this repeal instrument is to repeal the principal instrument. The principal instrument is no longer required due to the commencement of the Regulation, which amends the Corporations Regulations to clarify and correct the remuneration disclosure requirements.

2. Operation of the instrument

This repeal instrument repeals the principal instrument.

3. Consultation

ASIC consulted with the Department of the Treasury before making this repeal instrument.

ASIC did not engage in further consultation on the basis that the amendments foreshadowed by the exposure draft regulations were the subject of public consultation during November to December 2014. The Regulation has now commenced and this repeal instrument removes the temporary relief provided by the principal instrument pending commencement of the Regulation.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal) Instrument 2016/391

ASIC Corporations (Repeal) Instrument 2016/391 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 of legislative instrument

ASIC Corporations (Repeal) Instrument 2016/391 repeals ASIC Class Order [CO 14/632].

The *Corporations Act 2001* requires disclosing entities to prepare a directors' report as part of their financial report which includes a report on the remuneration of key management personnel.

ASIC Class Order [CO 14/632] was made by ASIC to address drafting anomalies in key management personnel disclosure requirements that were moved from accounting standard AASB 124 *Related Party Disclosures (AASB 124)* into the *Corporations Regulations 2001* for financial years starting on or after 1 July 2013.

This instrument repeals ASIC Class Order [CO 14/632] as the drafting anomalies it addressed have now been amended by the *Corporations Amendment (Remuneration Disclosures) Regulation 2016*.

Human rights implications

This class order does not engage any of the applicable rights or freedoms.

Conclusion

This class order is compatible with human rights as it does not raise any human rights issues.