



**ASIC**

Australian Securities & Investments Commission

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# **ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489**

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## **About this compilation**

### **Compilation No. 1**

This is a compilation of *ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489* as in force on 24 June 2016. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

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## **Part 1—Preliminary**

### **1 Name of legislative instrument**

This is the *ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489*.

### **3 Authority**

This instrument is made under subsection 601QA(1) of the *Corporations Act 2001*.

### **4 Definitions**

In this instrument:

*Act* means the *Corporations Act 2001*.

*attribution managed investment trust* (or *AMIT*) has the meaning given by section 276-10 of the ITA Act.

*ITA Act* means the *Income Tax Assessment Act 1997*.

## **Part 2—Exemption**

### **5 Equality of treatment: attribution for tax purposes**

A responsible entity of a registered scheme that is an AMIT does not have to comply with paragraph 601FC(1)(d) of the Act to the extent that it requires the responsible entity to treat the members of the scheme who hold interests of the same class equally where the responsible entity is attributing any part of a determined trust component of a particular character to the interests held by a member of the scheme in accordance with section 276-210 of the ITA Act.

Note: The attribution must be worked out on a fair and reasonable basis in accordance with the constituent documents of the AMIT: see subsection 276-210(3) of the ITA Act.

## Part 3—Declaration

### 6 Changing the scheme's constitution to meet AMIT requirements

Chapter 5C of the Act applies to a responsible entity as if Part 5C.3 were modified or varied as follows:

- (a) in paragraph 601GC(1)(b), omit “rights.”, substitute “rights; or”;
- (b) after paragraph 601GC(1)(b) insert:
  - “(c) by the responsible entity in accordance with section 601GCA.”;
- (c) after section 601GC insert:

#### “601GCA Changing the constitution to meet AMIT requirements

- (1) Subject to subsection (3), a responsible entity of a registered scheme may modify the constitution of the scheme to the extent that the responsible entity reasonably considers that the modification is necessary for or incidental to the scheme being able to be operated in a manner permitted by the ITA Act as an attribution managed investment trust with the responsible entity as its trustee.
- (2) Without limitation, modifications that may be made under subsection (1) include modifications which have the effect of:
  - (a) enabling the responsible entity to make a choice for the purposes of subparagraph 276-10(1)(e)(i) or paragraph 276-20(1)(d) of the ITA Act; or
  - (b) where applicable, enabling the responsible entity to treat each separate class of interests in the scheme as a separate attribution managed investment trust; or
  - (c) ensuring that the responsible entity is indemnified out of scheme property for any liability that:
    - (i) is incurred by the responsible entity in relation to the proper performance of its duties; and
    - (ii) either:
      - (A) is an attribution income tax liability of the responsible entity; or
      - (B) results from a member or former member making a claim against the responsible entity in relation to an attribution income tax liability of the member or former member that results from an attribution

by the responsible entity under section 276-210 of the ITA Act to the interests held by the member or former member.

- (3) The responsible entity may modify the constitution under subsection (1) where:
- (a) in the case where all members of the scheme acquired their interests in the scheme as wholesale clients—the responsible entity has taken reasonable steps to consult with each member of the scheme about the proposed modification of the constitution before making it; or
  - (b) in any case—the responsible entity:
    - (i) has published a notice that complies with subsection (4) on its website:
      - (A) for a period (the *relevant period*) of not less than 7 days; and
      - (B) in a way that it is likely to come to the attention of a person looking for information about the scheme on the website; and
    - (ii) has not received requests from members with at least 5% of the votes that may be cast on the resolution to call and arrange to hold a meeting as specified in the notice.
- (4) A notice complies with this subsection if it:
- (a) sets out a summary of the reason for, and the effect of, the proposed modification of the constitution; and
  - (b) states that the responsible entity will modify the constitution as proposed unless it receives requests to call and arrange to hold a meeting of the scheme's members to consider and vote on a special resolution to modify the constitution as proposed:
    - (i) from members with at least 5% of the votes that may be cast on the resolution; and
    - (ii) by a specified date that is the last day of the relevant period; and
  - (c) states that a request referred to in paragraph (b) must be made in writing and may be sent to a specified email address of the responsible entity; and
  - (d) is worded and presented in a clear, concise and effective manner.

- (5) The responsible entity may repeal and replace the constitution instead of modifying it where:
- (a) the replacement constitution has the effect that the constitution would have had if it had instead been modified in accordance with subsection (1); and
  - (b) subsection (3) had been satisfied as if references in subsections (3) and (4) to modifying the constitution included references to repealing and replacing it.
- (6) The responsible entity may modify or repeal and replace the constitution under subsections (1) and (5) even if the constitution includes provisions to the effect that it may only be modified or repealed and replaced in accordance with paragraphs 601GC(1)(a) or (b) or provisions to the effect of those paragraphs.
- (7) For the purposes of this section:

**attribution income tax liability** of a person in relation to a managed investment scheme means an income tax liability of the person under the ITA Act that results from the scheme being operated as an AMIT.

**attribution managed investment trust** (or **AMIT**) has the meaning given by section 276-10 of the ITA Act.

**ITA Act** means the *Income Tax Assessment Act 1997*.

**wholesale client** has the meaning given by section 761G.

- (8) To avoid doubt:
- (a) the consultation referred to in paragraph (3)(a) may take place partly or wholly before the commencement of this section; and
  - (b) the relevant period referred to in paragraph (3)(b) may be a period that partly or wholly occurs before the commencement of this section.

Note: The responsible entity must act in the best interests of the members in exercising the power in subsections (1) and (5) to modify, or repeal and replace the constitution: see paragraph 601FC(1)(c).

### **601GCB Notice of modification etc. of constitution for AMIT implementation**

- (1) This section applies if a responsible entity modifies or repeals and replaces the constitution of a registered scheme in accordance with section 601GCA.

- (2) The responsible entity must give each member of the scheme a notice in writing that sets out a summary of the reasons for, and the effect of, the modification or how the effect of the replacement constitution is different from that of the constitution before its repeal (as relevant).
- (3) The notice must be:
  - (a) given no later than the date of the giving of the first communication by the responsible entity to all members of the scheme after the date when the modification is made, or the repeal and replacement occurs; and
  - (b) worded and presented in a clear, concise and effective manner.”.



## Endnotes

### Endnote 1—Instrument history

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
2016/489	21/6/2016 ( <i>see</i> F2016L01050)	22/6/2016	
2016/514	23/6/2016 ( <i>see</i> F2016L01064)	24/6/2016	-

### Endnote 2—Amendment history

ad. = added or inserted   am. = amended   LA = *Legislation Act 2003*   rep. = repealed

rs. = repealed and substituted

Provision affected	How affected
Section 2	rep. s48D LA
Section 6 (notional paragraph 601GCA(3)(b))	am. 2016/514