

EXPLANATORY STATEMENT for

ASIC Corporations (Amendment and Repeal) Instrument 2016/247

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 2016/247* under subsection 341(1) of the *Corporations Act 2001* (the Corporations Act).

Subsection 341(1) of the Corporations Act provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, which relieves 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.

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.

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 its 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.

ASIC Class Order [CO 98/101] (*JCO 98/101*) and ASIC Class Order [CO 98/2395] (*JCO 98/2395*) are due to sunset on 1 October 2016, ASIC Class Order [CO 98/96] (*JCO 98/96*) and ASIC Class Order [CO 98/2016] (*JCO 98/2016*) are due to sunset on 1 October 2017 and ASIC Class Order [CO 08/15] (*JCO 08/15*) is due to sunset on 1 April 2018.

ASIC has reviewed its policy underlying the relief provided by these instruments. In light of this review and following public consultation in ASIC Consultation Paper 240, 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 98/96] in a new legislative instrument, *ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189*;
- (b) reissue the relief underlying [CO 98/101] in a new legislative instrument, *ASIC Corporations (Uncontactable Members) Instrument 2016/187*;
- (c) reissue the relief underlying [CO 98/2016] and [CO 08/15] in a new legislative instrument, *ASIC Corporations (Disclosing Entities) Instrument 2016/190*; and
- (d) reissue the relief underlying CO [98/2395] in a new legislative instrument, *ASIC Corporations (Directors' Report Relief) Instrument 2016/188*.

2. Purpose of the instrument

In light of the relief in [CO 98/96], [CO 98/101], [CO 98/2016], [CO 98/2395] and [CO 08/15] being remade in new legislative instruments the purpose of *ASIC Corporations (Amendment and Repeal) Instrument 2016/247* is to:

- (a) make consequential amendments to *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* reflecting the repeals; and
- (b) repeal [CO 98/96], [CO 98/101], [CO 98/2016], [CO 98/2395] and [CO 08/15].

3. Operation of the instrument

Schedule 1 of the *ASIC Corporations (Amendment and Repeal) Instrument 2016/247* makes consequential amendments to the *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* which will update references to the repealed class orders.

Schedule 2 of the *ASIC Corporations (Amendment and Repeal) Instrument 2016/247* repeals [CO 98/96], [CO 98/101], [CO 98/2016], [CO 98/2395] and [CO 08/15].

4. Consultation

ASIC has not consulted on this instrument as it is machinery in nature but did consult on the remake of the relief instruments that it repeals. For this purpose ASIC issued ASIC Consultation Paper 240.

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 2016/247

ASIC Corporations (Amendment and Repeal) Instrument 2016/247 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 repeals certain sunset class orders which have been remade as new legislative instruments. It makes consequential amendments to *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* which refers to the repealed class orders.

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