
EXPLANATORY STATEMENT for
ASIC CORPORATIONS (AMENDMENT) INSTRUMENT
2016/1173

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Amendment) Instrument 2016/1173* (the **Amending Instrument**) under subsections 601QA(1), 926A(1), 992B(1) and 1020F(1) of the *Corporations Act 2001* (the **Act**).

Subsection 601QA(1) provides that ASIC may exempt a person from a provision of Chapter 5C of the Act (s601QA(1)(a)) or declare that Chapter 5C of the Act applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration (s601QA(1)(b)).

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

Subsection 926A(2) provides that ASIC may exempt a person from a provision of Part 7.6 (other than Divisions 4 and 8) of the Act (s 926A(2)(a)) or declare that Part 7.6 (other than Divisions 4 and 8) applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration (s 926A(2)(c)).

Subsection 951B(1) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.7 of the Act; or declare that Part 7.7 of the Act applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.

Subsection 992B(1) provides that ASIC may exempt a person from a provision of Part 7.8 of the Act (s 992B(1)(a)) or declare that Part 7.8 of the Act applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration (s 992B(1)(c)).

Subsection 1020F(1) provides that ASIC may exempt a person from a provision of Part 7.9 of the Act (s 1020F(1)(a)) or declare that Part 7.9 of the Act applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration (s 1020F(1)(c)).

The Amending Instrument makes minor changes to the *ASIC Corporations (Horse Schemes) Instrument 2016/790* (the **Principal Instrument**). The Amending Instrument also recitifies a typographical error in *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968* (the **MDA Instrument**)

The Amending Instrument will take effect on the day after it was registered on the Federal Register of Legislation.

1. Background

On 25 August 2016, ASIC made the Principal Instrument. The Principal Instrument was registered on the Federal Register of Legislation on 26 August 2016.

The Principal Instrument provides relief to some horse racing syndicates and horse breeding managed investment schemes from the requirement under section 601ED of the Act to register a managed investment scheme. The Principal Instrument continued the relief that was previously provided under three ASIC Class Orders and made some non-fundamental changes to the terms of the relief. The three ASIC Class Orders were Class Order [CO 02/319]: *Horse racing syndicates*, Class Order [CO 02/172] – *Horse breeding schemes: private broodmare syndication* and Class Order [CO 02/178] – *Horse breeding schemes: private stallion syndication*.

After the Principal Instrument was made, ASIC received feedback that expressed concerns about a provision of the Instrument, which was not included in the previous Class Order that dealt with horse racing syndicates, [CO 02/319]. The concerns related to s 5(3)(i) of the Principal Instrument, which provides that the Product Disclosure Statement (**PDS**) for a horse racing syndicate must include:

- (i) *for each horse to which the syndicate relates, the name and contact details of each owner of the horse's sire and dam;*

The feedback was to the effect that requiring the name of the owners of a syndicate racehorse's sire and dam, or the contact details of the owners, or both sets of information, would infringe the privacy of these owners. In addition, the names of the owners, their contact details, or both sets of information might be commercially sensitive. In practice, concerns about privacy, commercial sensitivity or both would tend to result in the information relating to the owners of the racehorse's sire and dam to be withheld. In addition, regardless of concerns about privacy or commercially sensitive information, the information required by s 5(3)(i) is sometimes unavailable to the promoter of a horse racing syndicate.

We are satisfied that these concerns are well-founded and that the information value of the matters under s 5(3)(i) is likely to be small. In relation to the breeding of a syndicate racehorse, the identity of the sire and dam of the racehorse tends to be

informative, as distinct from the identity of the owners of the sire and dam and their contact details.

The MDA Instrument was made by ASIC on 29 September 2016 and registered on the Federal Register of Legislation on 30 September 2016. After registration ASIC became aware of a minor typographical error in section 14 of the instrument. There was a reference to ‘section 14’ in subsection 14(1), which should have been a reference to ‘section 13’. This has been rectified by the Amending Instrument. Our view is that the “slip rule” would apply to the original error and therefore the correction is merely correcting the text rather than the actual state of the law.

2. Purpose of the Instrument

The purpose of the Amending Instrument is to:

- (a) delete s5(3)(i) from the Principal Instrument; and
- (b) correct the text in s 14(1) of the MDA Instrument.

3. Operation of the Instrument

The Amending Instrument, in Schedule 1 at Item 1, repeals s5(3)(i) from the Principal Instrument. The sequencing of the remaining paragraphs of s5(3) of the Principal Instrument is unaffected.

The Amending Instrument does not affect any other aspect of the Principal Instrument.

The repeal of the information required by s5(3)(i) of the Principal Instrument is deregulatory in nature because it reduces the amount of information that must be included in a PDS for a horse racing syndicate that is covered by the relief under the Principal Instrument. The change made enhances privacy because the change protects the privacy of the owners of the sire and dam of a syndicate racehorse.

The Amending Instrument, in Schedule 1 at Item 2, modifies s 14(1) of the MDA Instrument to omit the reference to section 14 and replace it with a reference to section 13.

4. Documents incorporated by reference

The Amending Instrument does not incorporate any documents by reference.

5. Consultation

In light of the minor nature of the change made by the Amending Instrument, we have not consulted publicly about the repeal of s5(3)(i) from the Principal Instrument or the modification to s 14(1) of the MDA Instrument.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment) Instrument 2016/1173

ASIC Corporations (Amendment) Instrument 2016/1173 (the Instrument) 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

The Instrument amends *ASIC Corporations (Horse Schemes) Instrument 2016/790* by deleting the requirement that the Product Disclosure Statement (**PDS**) for a horse racing syndicate contain the name and contact details of the owners of the sire and dam of a syndicate racehorse.

The Instrument also amends *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968* by correcting a typographical error.

Human rights implications

The Instrument engages the human right to privacy under Article 17 of the International Covenant on Civil and Political Rights, which is recognised by section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This is because the Instrument relates to the requirement under *ASIC Corporations (Horse Schemes) Instrument 2016/790* that the PDS for a horse racing syndicate contain the name and contact details of the owners of the sire and dam of a syndicate racehorse. The Instrument enhances the human right to privacy because dispensing with the relevant disclosure requirement in a horse racing syndicate PDS means that information does not have to be made available about the owners of the sire and dam of a syndicate racehorse.

Conclusion

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