
**EXPLANATORY STATEMENT for
ASIC CORPORATIONS (AMENDMENT AND REPEAL)
INSTRUMENT 2016/1182**

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

National Consumer Credit Protection Act 2009

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations and Credit (Amendment and Repeal) Instrument 2016/1182* (the **Amendment and Repeal Instrument**) under subsections 283GA(1), 341(1), 601QA(1), 601YAA(1), 741(1), 926A(2), 951B(1), 992B(1) and 1020F(1) and paragraph 911A(2)(l) of the *Corporations Act 2001* (the **Act**) and subsection 109(3) of the *National Consumer Credit Protection Act 2009* (the **NCCP Act**).

Subsection 283GA(1) of the *Act* provides that ASIC may exempt a person from a provision of Chapter 2L of the *Act* or declare that Chapter 2L applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsection 341(1) of the *Act* provides that ASIC may make an order in respect of a specified class of companies, registered schemes or disclosing entities that relieves any of the entities in question, their directors and auditors from specified requirements of parts 2M.2, 2M.3 or 2M.4 (other than Division 4) of the *Act*.

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

Paragraph 601YAA(1)(a) of the *Act* provides that ASIC may exempt a person or a class of persons from all or specified provisions of Chapter 5D of the *Act*.

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

Paragraph 911A(2)(1) of the *Act* provides that a person does not need to hold an Australian financial services licence for the provision of a financial service that is covered by an exemption specified by ASIC in writing and published in the *Gazette*.

Subsection 926A(2) of the *Act* provides that ASIC may:

- (a) exempt a person or financial product or a class of persons or financial products from all or specified provisions of Part 7.6 (other than Divisions 4 and 8) of the *Act*; or
- (b) declare that Part 7.6 (other than Divisions 4 and 8) of the *Act* applies in relation to a person or financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

Paragraph 951B(1)(a) of the *Act* provides that ASIC may exempt a person or a class of persons from all or specified provisions of Part 7.7 of the *Act*.

Subsection 992B(1) of the *Act* provides that ASIC may:

- (a) exempt a person or financial product or a class of persons or financial products from all or specified provisions of Part 7.8 of the *Act*; or
- (b) declare that Part 7.8 of the *Act* applies in relation to a person or financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsection 1020F(1) of the *Act* provides that ASIC may:

- (a) exempt a person or financial product or a class of persons or financial products from all or specified provisions of Part 7.9 of the *Act*; or
- (b) declare that Part 7.9 of the *Act* applies in relation to a person or financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

Paragraphs 109(3)(a) and (d) of the *NCCP Act* provide that ASIC may, by legislative instrument, exempt a class of persons from all or specified provisions to which Part 2-6 of the *NCCP Act* applies or declare that such provisions apply in relation to a class of persons as if specified provisions were omitted, modified or varied as specified in the declaration.

The *Amendment and Repeal Instrument* amends a number of existing ASIC class orders. 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

The *Act* requires certain entities to appoint registered company auditors, audit firms or authorised audit companies to conduct audits or perform other tasks. Audit firms and authorised audit companies must, among other things, include registered company auditors as members.

Part 9.2 of the *Act* specifies how individuals may be registered as auditors. ASIC must be satisfied that an individual meets the requirements in section 1280 of the *Act* before registering a person as a registered company auditor. Similarly, a company must be qualified to be registered under s 1299B of the *Act* for it to be registered as an authorised audit company.

Under subsection 1280(2), ASIC must register a person as an auditor if, among other things, ASIC is satisfied that the person satisfies all the components of an auditing competency standard approved by ASIC or had such practical experience in auditing as is prescribed. ASIC may, on application, approve an auditing competency standard under subsection 1280A(1).

ASIC Regulatory Guide 180 *Auditor Registration* assists auditors and prospective auditors for their application for registration as a registered company auditor or an authorised audit company. The Guide also explains how ASIC may exercise its power to approve an auditing competency standard.

In November 2004, CPA Australia and The Institute of Chartered Accountants in Australia (now operating as Chartered Accountants Australia and New Zealand) issued the auditing competency standard (the **CPA/ICAA standard**). Under the CPA/ICAA standard, applicants for registration were required to demonstrate their competency to carry out particular tasks in specific contexts. ASIC approved the CPA/ICAA standard under section 1280A. ASIC's approval was not lodged for registration on the Federal Register of Legislative Instruments.

The *Legislative Instruments Act 2003* (the **LI Act**) required legislative instruments made in 2004 to be lodged with the Attorney-General's Department by 1 October 2006 for registration on the Federal Register of Legislative Instruments. Failure to lodge such an instrument by that date results in the instrument being deemed to have been repealed.

In 2014 it came to ASIC's attention that the instrument by which it approved the CPA/ICAA standard was likely to be a legislative instrument. ASIC never lodged it for registration. On 1 October 2006 the instrument was possibly taken to have been repealed by the *LI Act*. Given that ASIC had been registering auditors in reliance on the CPA/ICAA standard, the legal effectiveness of those registrations was uncertain. This uncertainty meant the effectiveness of certain registrations of authorised audit companies since 1 October 2006 was also in doubt, since section 1299B obliges each of the directors of the company to be a registered company auditor.

To resolve the uncertainty ASIC made ASIC Class Order [CO 14/757] (*ICO 14/757*) which offered prospective relief, to those whose registration was in doubt, extent possible. [CO 14/757] allowed auditors whose registration may have been adversely affected by the failure to register the CPA/ICAA standard to have done acts and things that must be done by a registered company auditor and authorised audit company. It did this by modifying certain provisions of the *Act* (and legislative instruments made under the *Act*); and exempting the affected auditors from certain provisions of the *Act* (and legislative instruments made under the *Act*).

[CO 14/757] was rendered unnecessary in September 2016 as the Government introduced remedial legislation: the *Corporations Amendment (Auditor Registration) Act 2016 (Corporations Amendment)*. The *Corporations Amendment* ensures the validity of the registration of auditors in reliance on the CPA/ICAA standard since 1 October 2006, with effect from their purported registration.

The *Corporations Amendment* achieves the same purpose as [CO 14/757], providing relief to auditors whose registration may have been adversely affected since 1 October 2006.

2. Purpose of the instrument

The purpose of the Amendment and Repeal Instrument is to repeal [CO 14/757] which is now rendered unnecessary as a result of the Government's introduction of the *Corporations Amendment*.

The Amendment and Repeal Instrument also makes amendments to other ASIC instruments to remove the amendments made by [CO 14/757].

3. Operation of the Instrument

Schedule 1 of the *Amendment and Repeal Instrument* amends the following ASIC instruments to remove amendments made by [CO 14/757]:

- (a) *ASIC Class Order [CO 02/237]*;
- (b) *ASIC Class Order [CO 09/425]*;

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- (c) *ASIC Class Order [CO 10/654]*;
 - (d) *ASIC Class Order [CO 12/752]*;
 - (e) *ASIC Class Order [CO 13/760]*;
 - (f) *ASIC Class Order [CO 13/761]*;
 - (g) *ASIC Class Order [CO 13/762]*;
 - (h) *ASIC Class Order [CO 13/763]*;
 - (i) *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73*;
and
 - (j) *ASIC Corporations (Disclosing Entities) Instrument 2016/190*.

Schedule 1 of the *Amendment and Repeal Instrument* repeals *[CO 14/757]*.

4. Consultation

As discussed above, the *Corporations Amendment* achieved the same purpose as *[CO 14/757]*, accordingly *[CO 14/757]* is now redundant.

ASIC has not consulted on the making of this instrument. The instrument is of a technical nature and consultation would be unnecessary.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment) Instrument 2016/1182

*ASIC Corporations and Credit (Amendment and Repeal) Instrument 2016/1182 (the **Amendment and Repeal 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 Amendment and Repeal Instrument repeals ASIC Class Order [CO 14/757] which provides relief, so that acts and things that must be done by registered company auditors and authorised audit companies may also be done by auditors whose registration may have been adversely affected by the non-registration of the auditing competency standard of CPA Australia and The Institute of Chartered Accountants in Australia.

ASIC Class Order [CO 14/757] is now redundant as a result of the Government's introduction of the *Corporations Amendment (Auditor Registration) Act 2016*. That Act achieved the same purpose as the instrument, ensuring the validity of the registration of auditors whose registration may have been adversely affected since 1 October 2006.

Human rights implications

The Amending Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Amendment and Repeal Instrument is compatible with human rights as it does not adversely affect any human rights issues.