

EXPLANATORY STATEMENT for ASIC Corporations (Repeal) Instrument 2017/246

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Repeal) Instrument 2017/246 under subsections 341(1) and 601CK(7), of the *Corporations Act 2001* (the Corporations 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 any of the 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.

Subsection 601CK(7) provides that ASIC may, by *Gazette* notice declare that section 601CK does not apply to specified foreign companies.

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.

ASIC Corporations (Repeal) Instrument 2017/246 repeals Class Order [CO 98/98] *Small proprietary companies which are controlled by a foreign company but which are not part of a large group* and Class Order [CO 02/1432] *Registered foreign companies – financial reporting requirements*.

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 the sunset date. The purpose of sunset is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

[CO 98/98] and [CO 02/1432] are due to sunset on 1 April 2017. ASIC has reviewed its policy underlying the relief. In light of this review and following public consultation, ASIC considers that the class order relief is necessary, fit-for-purpose and relevant.

As such, ASIC has decided to reissue the relief underlying [CO 98/98] and [CO 02/1432] in a new legislative instrument, ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204.

2. Purpose of the instrument

In light of the relief in [CO 98/98] and [CO 02/1432] being remade in a new legislative instrument, the purpose of ASIC Corporations (Repeal) Instrument 2017/246 is to repeal [CO 98/98] and [CO 02/1432].

3. Operation of the instrument

Schedule 1 of ASIC Corporations (Repeal) Instrument 2017/246 repeals [CO 98/98] and [CO 02/1432].

4. Consultation

ASIC has not consulted on this instrument as it is machinery in nature.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal) Instrument 2017/246

ASIC Corporations (Repeal) Instrument 2017/246 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 a new legislative instrument.

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