

EXPLANATORY STATEMENT for
ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795 (the Instrument) under paragraph 926A(2)(a) of the *Corporations Act 2001* (the Act).

Paragraph 926A(2)(a) 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 7.6 of the Act (other than Divisions 4 and 8).

1. Background

A mortgage offset account is a facility that lenders offer to borrowers with home loans. In general, the borrower deposits money into the offset account which is notionally offset against the balance of the loan so that the borrower pays interest only on the notionally reduced balance. Usually, the credit balance of the mortgage offset account is available to the borrower at call.

Mortgage offset accounts are financial products, as either a financial investment under s763B of the *Corporations Act 2001* (Corporations Act) or a deposit taking facility under s764A(1)(i) of the Corporations Act.

Many persons involved in the obtaining of credit, such as mortgage brokers, provide advice on mortgage offset accounts, or deal in those accounts, but do not provide any other financial services. Under the normal operation of the Corporations Act, these persons would need to obtain an Australian financial services (AFS) licence.

We made Class Order [CO 03/1048] *Mortgage Offset Accounts* ([CO 03/1048]) to permit the provision of financial product advice on a mortgage offset account and for arranging for another person to apply for, acquire, vary or dispose of a mortgage offset account without an AFS licence. As a result, persons who advise or deal in relation to mortgage offset accounts do not need to obtain an AFS licence solely for these purposes.

Under the *Legislation Act 2003*, [CO 03/1048] was due to sunset on 1 October 2017.

2. Purpose of the instrument

ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795 remakes [CO 03/1048] to preserve its effect beyond 1 October 2017.

We have reached the view that [CO 03/1048] is operating effectively and efficiently, and continues to form a useful part of the legislative framework.

3. Operation of the instrument

Section 5 exempts a person providing certain financial services in relation to a mortgage offset accounts from the requirement to hold an AFS licence. The exemption applies to:

- financial product advice relating to a mortgage offset account; and
- dealing in a mortgage offset account by arranging for another person to apply for, acquire, vary or dispose of a mortgage offset account.

Unlike [CO 03/1048], the Instrument does not require persons to be members of an ASIC-approved external dispute resolution (EDR) scheme. We reached the view that this requirement was redundant as the majority of the persons relying on [CO 03/1048] have separate obligations to obtain EDR scheme membership.

4. Consultation

ASIC released a public consultation paper on its proposal to remake [CO 03/1048] on 7 June 2017. The consultation period closed on 6 July 2017. No submissions were received.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795

ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795 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

ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795 exempts a person providing certain financial services in relation to a mortgage offset accounts from the requirement to hold an Australian financial services licence.

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