



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/857

I, Anthony Graham, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 22 September 2017

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/857*.

2 Commencement

This instrument commences at the same time as the commencement of the *ASIC Corporations (Repeal) Instrument 2017/858*.

3 Authority

This instrument is made under subsections 601QA(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

mortgage investment scheme means a managed investment scheme that has, or is likely to have, at least 50% of non-cash assets invested in mortgage loans, and 100% of assets invested in mortgage loans or in an account with an Australian ADI.

mortgage loan means a loan secured by a mortgage over real property.

Part 2—Exemptions

5 Mortgage investment schemes with no more than 20 investors

Registration relief

- (1) An operator of a mortgage investment scheme does not have to comply with subsection 601ED(5) of the Act in relation to the operation of the scheme.

Licensing relief

- (2) An operator of a mortgage investment scheme does not have to comply with the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of financial services in relation to interests in the scheme.

Note: *ASIC Corporations (Miscellaneous Technical Relief) Instrument 2015/1115* provides relief from subsections 911A(1) and 911B(1) of the Act to a person who provides financial services on behalf of a person who does not need an Australian financial services licence because of an exemption under section 926A of the Act.

- (3) A person (other than a person to whom subsection (2) applies) does not have to comply with the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of financial services in relation to interests in a mortgage investment scheme in relation to which paragraphs (7)(a) to 7(c) appear to be satisfied except where the person is aware, or ought reasonably to be aware, that those paragraphs are not satisfied in relation to the scheme.

Hawking relief

- (4) An operator of a mortgage investment scheme does not have to comply with section 992AA of the Act in relation to an offer of an interest in the scheme to a person in the course of, or because of:
 - (a) an unsolicited meeting with the person; or
 - (b) an unsolicited telephone call to the person.

Financial product disclosure relief

- (5) An operator of a mortgage investment scheme does not have to comply with Part 7.9 of the Act in relation to any of the following:
 - (a) a recommendation to acquire an interest in the scheme;
 - (b) an offer to issue or sell an interest in the scheme;
 - (c) the issue or sale of an interest in the scheme.

- (6) A person (other than a person to whom subsection (5) applies) does not have to comply with Part 7.9 of the Act in relation to either of the following:
- (a) a recommendation to acquire an interest in a mortgage investment scheme;
 - (b) an offer to arrange the issue of an interest in a mortgage investment scheme;
- in relation to which paragraphs (7)(a) to (7)(c) appear to be satisfied except where the person is aware, or ought reasonably to be aware, that those paragraphs are not satisfied in relation to the scheme.

Where exemptions apply

- (7) The exemptions in subsections (1), (2), (4), and (5) are only available where all of the following are satisfied:
- (a) the scheme, together with any other managed investment scheme operated by the operator or by an associate of the operator that has assets invested in mortgage loans, has no more than 20 members; and
 - (b) the operator, and any associate of the operator, does not operate a mortgage investment scheme registered under section 601EB of the Act; and
 - (c) except for the scheme, together with any other managed investment scheme referred to in paragraph (a), or any managed investment scheme that forms part of those schemes, the operator is not in the business of promoting managed investment schemes.

6 Registering a scheme in relation to individual mortgage loans

Registration relief

An operator of a mortgage investment scheme registered under section 601EB of the Act does not have to comply with subsection 601ED(5) of the Act to the extent that it would require the operator to register a scheme in relation to each mortgage loan in relation to which the scheme operates.

Note: See also the declaration relating to withdrawal rights in section 8 of this instrument.

7 Small industry-supervised mortgage investment schemes

Transitional continuation of relief given by ASIC Class Order [CO 02/238]

- (1) The exemption set out in ASIC Class Order [CO 02/238] in the paragraph under the heading “**4 Small industry-supervised schemes**” as in force immediately before its repeal, continues to apply by force of this

subsection, in the circumstances and on the conditions specified in relation to the exemption.

- (2) Subsection (1) has effect for a period of 1 year commencing on the day this instrument commences.

Part 3—Declaration

8 Withdrawal rights for registered mortgage investment schemes

Chapter 5C of the Act applies to all persons in relation to a mortgage investment scheme in respect of which the operator has relied on the exemption in section 6 as if subsection 601GA(4) and Part 5C.6 were modified or varied as follows:

- (a) after “members” (wherever appearing, other than at the end of subsection 601GA(4), in paragraph 601KB(2)(b), in subsection 601KB(4) and in section 601KE), inserting:
 - (i) in subsection 601KB(1) (wherever appearing) and in the formula in section 601KD:

“who have an interest in the particular mortgage loan”;
and
 - (ii) otherwise, “who have an interest in a particular mortgage loan”;
- (b) in paragraph 601KB(2)(b), after “members of the scheme” and “members of a particular class”, inserting “who have an interest in the particular mortgage loan”;
- (c) in subsection 601KA(3), after “member”, inserting “who has an interest in a particular mortgage loan”;
- (d) in the formula in section 601KD, after “member”, inserting “who has an interest in the particular mortgage loan”;
- (e) after “withdraw from the scheme” (wherever appearing) and “withdraw, wholly or partly, from the scheme” (in subsection 601KB(1)), inserting “in relation to the particular mortgage loan”;
- (f) after “scheme is liquid” (wherever appearing), inserting
 - (i) in subsection 601KA(4), “in relation to a particular mortgage loan”; and
 - (ii) otherwise, “in relation to the particular mortgage loan”;
- (g) after “scheme is not liquid” (wherever appearing) and “scheme that is not liquid” (wherever appearing), inserting:
 - (i) in subsection 601KB(1) and sections 601KC, 601KD and 601KE, “in relation to a particular mortgage loan”; and
 - (ii) otherwise, “in relation to the particular mortgage loan”;

- (h) in subsection 601KA(4), after “liquid assets”, inserting “in relation to the particular mortgage loan”;
- (i) in subsections 601KA(5) and (6), after “liquid assets” and “liquid asset”, inserting “in relation to a particular mortgage loan”;
- (j) in subsection 601KA(4), after “scheme property”, inserting “in relation to the particular mortgage loan”.