



**ASIC**

Australian Securities & Investments Commission

---

---

## **ASIC Corporations (Amendment) Instrument 2018/697**

---

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 10 September 2018

Grant Moodie

---

## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument .....	3
2 Commencement .....	3
3 Authority .....	3
4 Schedule .....	3
5 Definitions .....	3
<b>Schedule 1—Amendments</b>	<b>4</b>
ASIC Class Order [CO 09/552] .....	4
ASIC Class Order [CO 12/749] .....	4
ASIC Class Order [CO 13/521] .....	4
ASIC Class Order [CO 13/656] .....	5
ASIC Class Order [CO 13/1410] .....	5
ASIC Class Order [CO 14/1252] .....	5
<i>ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251</i> .....	8
<i>ASIC Corporations (Sale Offers That Do Not Need Disclosure)</i> <i>Instrument 2016/80</i> .....	10
<i>ASIC Corporations (Uncontactable Members) Instrument 2016/187</i> .....	10
<i>ASIC Corporations (Managed Discretionary Account Services)</i> <i>Instrument 2016/968</i> .....	12
<i>ASIC Corporations (Application Form Requirements) Instrument 2017/241</i> ..	12
<i>ASIC Corporations (Disclosure Relief—Offers to Associates)</i> <i>Instrument 2017/737</i> .....	14
<i>ASIC Corporations (Wholesale Equity Scheme Trustees) Instrument 2017/84914</i>	

## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Amendment) Instrument 2018/697*.

### 2 Commencement

This instrument commences on the later of:

- (a) the day of commencement of Schedule 1 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018*; and
- (b) the day after this instrument is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subsections 341A(1), 655A(1), 601QA(1), 926A(2), 1020F(1) and 1217(1) of the *Corporations Act 2001*.

### 4 Schedule

Each instrument that is specified in the Schedule to this instrument is amended as set out in the applicable items in the Schedule.

### 5 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*Regulations* means the *Corporations Regulations 2001*.

## Schedule 1—Amendments

### ASIC Class Order [CO 09/552]

#### 1 Paragraph 4

After notional subsection 601GC(1AAC) of the Act insert:

*Passport Rules*

- (1AAD) The responsible entity of a registered scheme may modify the constitution of the scheme to the extent the responsible entity reasonably considers necessary to ensure the constitution:
- (a) is consistent with section 4 of the Passport Rules for this jurisdiction; and
  - (b) specifies a right of withdrawal and contains provisions for making and dealing with withdrawal requests that are consistent with Division 7.1 of Part 7 of those Rules.

Any modifications made to the constitution under this subsection may be made before the scheme has a status of being an Australian passport fund but only have operative effect while the Passport Rules for this jurisdiction apply in relation to the fund.

### ASIC Class Order [CO 12/749]

#### 2 Paragraph 5 (definition of *interposed entity* in notional subregulation 7.9.11S(8) of the Regulations)

After paragraph (a) of the definition, insert:

- (ab) a notified foreign passport fund; or

### ASIC Class Order [CO 13/521]

#### 3 Subparagraph 5(b)

After notional paragraph 636(1)(ga) of the Act, insert:

- (gb) if any foreign passport fund products are offered as consideration under the bid and:
  - (i) the bidder is the operator of the notified foreign passport fund to which those foreign passport fund products relate; or

- (ii) the bidder is a person that controls the operator of the notified foreign passport fund to which those foreign passport fund products relate; or
- (iii) the operator agrees to the bidder offering, or authorises, arranges for or permits the bidder to offer the foreign passport fund products;

all material that would be required by sections 1013C and 1013GA to be included in a Product Disclosure Statement given to a person in an issue situation (within the meaning of section 1012B) in relation to those foreign passport fund products;

**4 Subparagraph 5(d) (notional subparagraph 636(3)(d)(ii) of the Act)**

After “scheme”, insert “, notified foreign passport fund”

**ASIC Class Order [CO 13/656]**

**5 Subparagraph 4(a)**

Omit “Australia and New Zealand”, substitute “Australia, New Zealand and, in the case of an Australian passport fund, each host economy of the fund,”

**ASIC Class Order [CO 13/1410]**

**6 Paragraph 4 (notional subsection 912AAC(7) of the Act)**

Omit “The financial services licensee must:”, substitute “If the financial services licensee holds custodial property, it must:”

**7 Paragraph 4 (notional subsection 912AAC(9) of the Act)**

Omit “were the licensee,”, substitute “were the licensee and those subsections applied to the licensee,”

**ASIC Class Order [CO 14/1252]**

**8 Paragraph 4**

Omit “managed investment and superannuation products”, substitute “managed investment products, foreign passport fund products and superannuation products”

**9 Paragraph 5CB (notional subsection 1017D(3AA) of the Act)**

- (1) omit “managed investment product,”, substitute “managed investment product or a foreign passport fund product,”
- (2) omit paragraph (b), substitute:

- (b) if the issuer has published a notice on its website that, in respect of the scheme or fund to which the product relates, it will provide the relevant periodic statement within a specified period ending at least one month and less than six months after the end of the reporting period—within that specified period.

**10 Sub-subparagraph 6(a)(ib) (notional definition of *financial year* in clause 101 of Schedule 10 to the Regulations)**

Omit paragraph (a) of the definition, substitute:

- (a) in relation to a collective investment product—a financial year of the registered scheme or notified foreign passport fund to which the product relates; and

**11 Sub-subparagraph 6(a)(iii) (notional definition of *switching fee* in clause 101 of Schedule 10 to the Regulations)**

Omit “managed investment product” (twice occurring), substitute “collective investment product”

**12 Sub-subparagraph 6(a)(iv) (notional clause 101A of Schedule 10 to the Regulations)**

- (1) in subclause (1) omit “managed investment product”, substitute “collective investment product”
- (2) in paragraph (1)(d) omit “scheme property of a registered scheme”, substitute “scheme property of a registered scheme or the assets of a notified foreign passport fund,”
- (3) in paragraph (1)(d) omit “managed investment product.”, substitute “collective investment product.”
- (4) in subclause (3A) in the definition of *derivative financial product*, omit “managed investment product”, substitute “collective investment product”
- (5) in subclause (3A) in the definition of *reference asset*, omit “managed investment product”, substitute “collective investment product”
- (6) in subclause (4) omit “managed investment product”, substitute “collective investment product”

**13 Sub-subparagraph 6(a)(v) (notional clause 101B of Schedule 10 to the Regulations)**

Omit “superannuation entity or registered scheme”, substitute “superannuation entity, registered scheme or notified foreign passport fund”

**14 Subparagraph 6(baa) (notional paragraph (f) of clause 103 of Schedule 10 to the Regulations)**

Omit “registered scheme to which the managed investment products relate;”, substitute “registered scheme or a notified foreign passport fund to which the collective investment products relate;”

**15 Subparagraph 6(bd) (notional clause 104A of Schedule 10 to the Regulations)**

(1) omit “responsible entity,”, substitute “responsible entity or the operator of a notified foreign passport fund,”

(2) after “previous financial year”, omit the second occurring comma

**16 Paragraph 6**

After subparagraph 6(d), insert on a new line:

“(da) in paragraph 204(7)(a), omit “collective investment product:”, substitute “collective investment product or superannuation product.”

**17 Subparagraph 6(g) (notional clause 221 of Schedule 10 to the Regulations)**

Omit “*Managed investment products*”, substitute “*Collective investment products*”

**18 Subparagraph 6(h) (notional clause 222 of Schedule 10 to the Regulations)**

Omit “managed investment products”, substitute “collective investment products”

**19 Subparagraph 6(i) (notional subclause 301(1A) of Schedule 10 to the Regulations)**

Omit “managed investment product,”, substitute “collective investment product,”

**20 Subparagraph 6(j) (notional subclause 301(6) of Schedule 10 to the Regulations)**

Omit “managed investment product”, substitute “collective investment product”

**21 Subparagraph 6(l) (notional paragraph (d) of subclause 303(2) of Schedule 10 to the Regulations)**

Omit “managed investment product” (twice occurring), substitute “collective investment product”

## ***ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251***

### **22 Section 3**

Omit “sections 250PAA, 341, 601QA and 992B”, insert “sections 250PAA, 341, 341A, 601QA, 992B and 1217”

### **23 Section 4**

Insert the following definition in the appropriate alphabetical order:

***notified foreign passport fund insolvency resolution*** means a resolution to the effect that, for a period of at least 12 months, the assets have been insufficient to meet the debts incurred in operating the fund as and when they were due and payable.

### **24 Part 2**

After section 7, insert:

#### **7A Notified foreign passport funds being wound up**

- (1) An operator of a notified foreign passport fund being wound up does not have to comply with Part 2M.3 of the Act in relation to a financial year of the fund where, by no later than the day the operator would otherwise have been required to lodge a report for the fund under that Part for the financial year:
  - (a) the operator has lodged a notice under subsection 12(5) of the Passport Rules for this jurisdiction in the approved form telling ASIC that the winding up of the fund has commenced; and
  - (b) the operator has lodged a copy of a notified foreign passport fund insolvency resolution.

Note: The notices required to be lodged under paragraphs (a) and (b) need not be lodged at the same time. However, the operator will not be covered by this subsection (1) unless both paragraphs (a) and (b) have been satisfied.

- (2) The operator also does not have to comply with Part 2M.3 of the Act in relation to:
  - (a) any subsequent financial year of the fund; or
  - (b) any earlier financial year of the fund, but only to the extent that Part would have imposed, but for this subparagraph (b), a continuing obligation on the operator on or after the day that both paragraphs (1)(a) and (b) are satisfied.



**25 Part 3**

After section 13, insert:

**13A Notified foreign passport funds being wound up**

Chapter 8A of the Act applies to all entities as if the following section were inserted after section 1213M:

**1213MA Reporting obligations of a notified foreign passport fund during winding up**

- (1) This section applies to an operator of a notified foreign passport fund being wound up.
- (2) This section only applies where a copy of a notified foreign passport fund insolvency resolution has been lodged with ASIC by the operator.
- (3) The operator must prepare a report for each relevant period during the winding up and on the completion of the winding up, which includes the following information unless disclosure of that information would be prejudicial to the winding up:
  - (a) information about the progress and status of the winding up of the fund, including details (as applicable) of:
    - (i) the actions taken during the period;
    - (ii) the actions required to complete the winding up;
    - (iii) the actions proposed to be taken in the next 12 months; and
    - (iv) the expected time to complete the winding up; and
  - (b) financial information about receipts and payments for the fund during the period; and
  - (c) the following information as at the end of the period:
    - (i) the value of assets of the fund; and
    - (ii) any potential return to fund members.
- (4) A report required to be prepared under this section in relation to a relevant period must be made available to fund members within 3 months after the end of the relevant period.
- (5) The operator must have adequate arrangements in place to answer, within a reasonable period of time and without charge,

any reasonable questions asked by a member of the fund about the winding up.

(6) In this section:

*relevant period*, in relation to a report, means:

- (a) for a report on the completion of a winding up that has taken less than 12 months to complete—the period commencing from the day the winding up commenced and ending on the day of completion of the winding up;
- (b) for a report on the completion of a winding up that has taken more than 12 months to complete—the period commencing on the day after the end of the immediately preceding relevant period and ending on the day of the completion of the winding up;
- (c) for a report during the winding up—each period of 12 months.

*notified foreign passport fund insolvency resolution* means a resolution to the effect that, for a period of at least 12 months, the assets have been insufficient to meet the debts incurred in operating the fund as and when they were due and payable.

### ***ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2016/80***

#### **26 Subsection 5(3)**

Omit the subsection, substitute:

- (3) Subsections (1) and (2) apply in relation to:
  - (a) offers of securities, interests in a managed investment scheme or interests in a notified foreign passport fund for sale; and
  - (b) recommendations to acquire interests in a managed investment scheme or interests in a notified foreign passport fund by way of transfer;

where the securities or interests are covered by an exempt category.

### ***ASIC Corporations (Uncontactable Members) Instrument 2016/187***

#### **27 Section 4 (definition of *relevant entity*)**

Omit the definition, substitute:

**relevant entity** means a company, registered scheme, notified foreign passport fund or disclosing entity.

## 28 Section 5

- (1) after “314(1)” insert “or 314A(1) (as applicable)”;
- (2) omit paragraph (a), substitute:
  - (a) the member:
    - (i) in relation to a company, registered scheme or disclosing entity—has made the election referred to in paragraph 314(1AB)(a) and has in accordance with paragraph 314(1AB)(c) elected to receive a copy of the reports as a hard copy;
    - (ii) in relation to a notified foreign passport fund—has made the election referred to in paragraph 314A(3)(a) and has in accordance with paragraph 314A(3)(c) elected to receive a copy of the reports as a hard copy;

## 29 Section 6

Omit the section, substitute:

### 6 Condition

A relevant entity that relies on the relief in section 5 must send to the address shown in the register of members a notice that states:

- (a) in relation to a company, registered scheme or disclosing entity—the dispatch of concise reports or financial reports, directors’ reports and auditor’s reports to that person has been suspended but will be resumed on receipt of instructions (including a current address to do so);
- (b) in relation to a notified foreign passport fund—the dispatch of financial reports and auditor’s reports to that person has been suspended but will be resumed on receipt of instructions (including a current address to do so).

The notice must be sent at least once a year for 6 years after the date on which both paragraphs 5(b) and (c) first applied to the member.

***ASIC Corporations (Managed Discretionary Account Services)  
Instrument 2016/968***

**30 Section 15 (notional paragraph 912AEC(22)(a) of the Act)**

Omit “registered scheme;”, substitute “registered scheme or a notified foreign passport fund;”

***ASIC Corporations (Application Form Requirements)  
Instrument 2017/241***

**31 Section 4 (definition of *member approved switch arrangement*)**

Omit the definition, substitute:

***member approved switch arrangement*** means:

- (a) a written arrangement between the responsible entity of a registered scheme and its members where:
  - (i) the arrangement has been entered into as a result of members voting in favour of a resolution to approve the arrangement at a members’ meeting; and
  - (ii) under the arrangement all members will switch all or part of their interests to interests in another registered scheme operated by the responsible entity or a related body corporate; or
- (b) a written arrangement between the operator of a notified foreign passport fund and its members where:
  - (i) the arrangement has been entered into as a result of members voting in favour of a resolution to approve the arrangement at a members’ meeting; and
  - (ii) under the arrangement all members will switch all or part of their interests to interests in another notified foreign passport fund operated by the operator or a related body corporate.

**32 Section 4 (definition of *voluntary switch arrangement*)**

Omit the definition, substitute:

***voluntary switch arrangement*** means:

- (a) a written arrangement between the responsible entity of a registered scheme and a member that sets out the circumstances in which an application (***switch application***) by the member to switch from an interest in the scheme to an interest in another registered

scheme operated by the responsible entity or a related body corporate may be accepted; or

- (b) a written arrangement between the operator of a notified foreign passport fund and a member that sets out the circumstances in which an application (***switch application***) by the member to switch from an interest in the fund to an interest in another notified foreign passport fund operated by the operator or a related body corporate.

### 33 Section 4 (definition of *switch*)

Omit the definition, substitute:

***switch*** means:

- (a) the redemption of interests in a registered scheme and reinvestment of the proceeds in interests in another registered scheme; or
- (b) the redemption of interests in a notified foreign passport fund and reinvestment of the proceeds in interests in another notified foreign passport fund.

### 34 Part 2

After section 5 insert:

#### 5A Applications to switch between notified foreign passport funds operated by the same operator or its related bodies corporate

*Exemption*

- (1) An operator of a notified foreign passport fund does not have to comply with section 1016A of the Act in relation to the issue of an interest (***new interest***) in the fund that is made in accordance with a voluntary switch arrangement or a member approved switch arrangement.

*Where exemption is available*

- (2) The exemption in subsection (1) is available to an operator of a notified foreign passport fund where the operator has taken reasonable steps to ensure that:
  - (a) in the case of a voluntary switch arrangement—before the time (***relevant time***) of the switch application in relation to the new interest; and
  - (b) in the case of a member approved switch arrangement—before the time (***relevant time***) of the vote on the resolution to approve the arrangement;

it gave, or made available by a nominated electronic means, to the member:

- (c) a Product Disclosure Statement for the new interest that was not defective at the relevant time; and
- (d) information which describes the switch arrangement.”

**35 Section 10**

After “managed investment product” insert “and a foreign passport fund product”

***ASIC Corporations (Disclosure Relief—Offers to Associates)  
Instrument 2017/737***

**36 Section 5**

After “managed investment product”, insert “and a foreign passport fund product”

***ASIC Corporations (Wholesale Equity Scheme Trustees)  
Instrument 2017/849***

**37 Section 4 (definition of *investment product*)**

After paragraph (c), insert:

- (ca) a foreign passport fund product;
- (cb) an option to acquire, by way of transfer, a financial product covered by subparagraph 764A(1)(bb)(i) or (ii);