



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38

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

Date 17 January 2020

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

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*.

conditional costs agreement means an agreement of the kind defined as a ***conditional costs agreement*** in section 181 of Schedule 1 (Legal Profession Uniform Law) to the *Legal Profession Uniform Law Application Act 2014* of the State of Victoria as in force on 17 January 2020 whether or not in that State or for the purposes of that Act.

Part 2—Declaration

5 Definition of *managed investment scheme*

Chapter 5C of the Act applies to all persons as if section 9 of the Act were modified or varied as follows:

(a) after the definition of *condition*, insert:

“*conditional costs agreement* means an agreement of the kind defined as a *conditional costs agreement* in section 181 of Schedule 1 (Legal Profession Uniform Law) to the *Legal Profession Uniform Law Application Act 2014* of the State of Victoria as at 17 January 2020 whether or not in that State or for the purposes of that Act.”;

(b) in the definition of *managed investment scheme*, after paragraph (ma) insert:

“(maa) a scheme for participating in and conducting legal proceedings where the members of the scheme:

- (i) have or may have an entitlement to a remedy arising out of the same or similar circumstances; and
- (ii) wholly or substantially fund their legal costs under conditional costs agreements;

(mab) a scheme for proving claims against a company under Division 6 of Part 5.6 (including the preparation and lodgement of the proofs) where the members of the scheme:

- (i) have or may have claims against the company arising out of the same or similar circumstances; and
- (ii) wholly or substantially fund their legal costs under conditional costs agreements;”.

Part 3—Exemption

6 Licensing

A person does not have to comply with subsection 911A(1) or 911B(1) of the Act for the provision of a financial service in relation to:

- (a) an interest in a managed investment scheme (a *conditional cost litigation scheme*) that is a scheme for participating in and conducting legal proceedings, where the members of the scheme:

- (i) have or may have an entitlement to a remedy arising out of the same or similar circumstances; and
 - (ii) wholly or substantially fund their legal costs under conditional costs agreements; or
- (b) an interest in a managed investment scheme (a **conditional cost proof of debt scheme**) that is a scheme for proving claims against a company under Division 6 of Part 5.6 of the Act (including the preparation and lodgement of the proofs) where the members of the scheme:
 - (i) have or may have claims against the company arising out of the same or similar circumstances; and
 - (ii) wholly or substantially fund their legal costs under conditional costs agreements; or
- (c) an arrangement (a **funding product**), or an interest (a **funding product**) in an arrangement of either of the following kind, to the extent that the arrangement or interest is a financial product other than an interest in a conditional cost litigation scheme or conditional cost proof of debt scheme:
 - (i) an arrangement for participating in and conducting legal proceedings brought by or on behalf of a person where the person's legal costs are wholly or substantially funded under a conditional cost agreement;
 - (ii) an arrangement for proving claims made by a person against a company under Division 6 of Part 5.6 of the Act (including the preparation and lodgement of the proofs) where the person's legal costs are wholly or substantially funded under a conditional cost agreement.

7 Hawking

A person does not have to comply with subsection 992A(1) or (3), or subsection 992AA(1), of the Act in relation to:

- (a) an interest in a conditional cost litigation scheme; or
- (b) an interest in a conditional cost proof of debt scheme; or
- (c) a funding product.

8 Financial product disclosure

A person does not have to comply with Part 7.9 of the Act in relation to:

- (a) an interest in a conditional cost litigation scheme; or
- (b) an interest in a conditional cost proof of debt scheme; or
- (c) a funding product.

Part 4—Application and transitional

9 Application

For the avoidance of doubt, the declaration in section 5 does not have effect for the purposes of section 601MB of the Act in relation to a contract entered into before the commencement of this instrument by a person to subscribe for an interest in:

- (a) a conditional cost litigation scheme; or
- (b) a conditional cost proof of debt scheme.

10 Transitional

This instrument has effect until 31 January 2023.