



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395 and

ASIC Corporations (Amendment) Instrument 2020/396

This is the Explanatory Statement for the *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395* and *ASIC Corporations (Amendment) Instrument 2020/396*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395* implements temporary measures aimed at facilitating financial reporting by unlisted entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. The temporary measures are intended to allow unlisted entities up to one additional month to complete financial reports and have those reports audited, in compliance with the financial reporting and audit requirements of the *Corporations Act 2001* (the *Act*).
2. ASIC will continue to monitor the appropriateness of these legislative instruments having regard to the feedback from relevant stakeholders.
3. The instrument affects the operation of sections 315, 319, 320, 601HG and 989A of the *Act* by allowing one additional month to report to members and lodge reports with ASIC. The instrument applies for full years and half-years ending from 31 December 2019 to 31 March 2020 where the reporting deadline has not already passed.
4. The amending instrument amends the *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* to preserve the grandfathered status of certain proprietary companies that use the relief under the primary instrument. Grandfathered proprietary companies must meet certain conditions, including reporting to members within the statutory deadline each year, to be exempt from lodging financial reports with ASIC.

Purpose of the instruments

5. The purpose of the instruments is to assist unlisted entities affected by the impacts of COVID-19 by enabling them more time to report and have audits. This includes unlisted public companies, proprietary companies, registered schemes, disclosing entities and Australian Financial Services licensees.
6. Where possible, entities should continue to lodge within the statutory deadlines having regard to the information needs of shareholders, creditors and other users of their financial reports, or to meet borrowing covenants or other obligations.

Consultation

7. Before making these instruments, ASIC engaged with a range of stakeholders to understand the invite feedback on the impacts of COVID-19 on reporting and audit, including remote working arrangements and other factors.

Operation of the instruments

8. The extended deadlines for the lodgment of financial reports, directors' reports and audit reports for unlisted entities are summarised below. The deadlines are calculated as periods after balance dates and references to Chapters are to Chapters of the *Act*:
 - (a) Under Chapter 2M the deadline for lodgment of full year financial reports, directors' reports and auditor's reports for:
 - (i) unlisted disclosing entities and for unlisted registered schemes, is extended from 3 to 4 months; and
 - (ii) all other unlisted entities is extended from 4 to 5 months (will apply to public and proprietary companies that are not disclosing entities or registered schemes);

Note: an extension of the deadline for unlisted registered schemes to lodge compliance plan audit reports will automatically occur as a result of the extension for registered schemes. The period for auditors to complete the compliance plan audit report will be extended from 3 months to 4 months.

9. Under Chapter 2M the deadline for lodgment of half-year financial reports, directors' reports and audit/review reports for unlisted disclosing entities (including unlisted registered schemes that are disclosing entities) is extended from 75 days to 75 days plus 1 month; and
10. Under Chapter 7, the deadline for lodgment of profit and loss and balance sheets (and other associated information) for:
 - (a) AFS licensees that are not bodies corporate is extended from 2 months to 3 months;

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- (b) unlisted AFS licensees that are body corporates and also disclosing entities is extended from 3 months to 4 months; and
 - (c) all other body corporate licensees that are not listed is extended from 4 months to 5 months.
11. For example, the normal deadline for an unlisted public company that is not a disclosing entity to lodge its reports for the year ended 31 March 2020 is 31 July 2020 and the extended deadline will be 31 August 2020.
 12. The extended deadlines will only apply where the normal reporting deadline has not already passed. For example, the deadline for a 31 December 2019 year end financial report of a managed investment scheme was 31 March 2020 and no extended period will apply. However, the deadline for a proprietary company that is not a disclosing entity is 30 April 2020 and the extended deadline will be 31 May 2020.
 13. Similar extended deadlines will be available for sending reports to members, but note some of those deadlines also operate by reference to the date of the next AGM. ASIC media release 20-068MR *Guidelines for meeting upcoming AGM and financial reporting requirements* provides information on the ASIC ‘no action’ position for Annual General Meetings of public companies with 31 December 2019 year ends.
 14. Where a grandfathered proprietary company uses the extended deadline relief, it will continue to retain its grandfathered status. The directors’ report must disclose that the company has applied ASIC relief to report to members no later than 1 month after the normal reporting deadline.

Legislative authority

15. The principal instrument is made under subsections 341(1), 601QA(1) and 992B(1) of the Act. The amending instrument is made under subsection 341(1) of the Act.
16. 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 Act.
17. Subsection 601QA(1) provides that ASIC may exempt a specified class of persons from a provision of Chapter 5C of the Act or declare that the Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
18. Subsection 992B(1) 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 7.8 of the Act.

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19. Under subsection 33(3) of the *Acts Interpretation Act 1901* (the *AIA*), where an Act confers a power to make any instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend any such instrument.
 20. Both legislative instruments are disallowable legislative instruments.

Statement of Compatibility with Human Rights

21. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

1. *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395* implements temporary measures aimed at facilitating financial reporting by unlisted entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. The measures are intended to allow unlisted entities sufficient time to complete their financial reports and for those reports to be audited. *ASIC Corporations (Amendment) Instrument 2020/396* amends the *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* to preserve the grandfathered status of certain proprietary companies that use the relief under the primary instrument..

Assessment of human rights implications

2. The instruments do not engage any of the applicable rights or freedoms

Conclusion

3. This instrument 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*.