



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787

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

Date 20 August 2020

Anthony Graham

Contents

Part 1—Preliminary	3
1 Name of legislative instrument.....	3
2 Commencement	3
3 Authority.....	3
4 Definitions	3
Part 2—Exemptions	4
5 Obligation to give a Product Disclosure Statement.....	4
6 Conditions.....	5
7 Valuation of scheme property.....	5
8 Compliance with financial services laws in relation to register of members .	5
Part 3—Declarations	5
9 Withdrawal from registered litigation funding schemes.....	5
10 Valuation of scheme property.....	7
11 Content of Product Disclosure Statement.....	7

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787*.

2 Commencement

This instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislation; and
- (b) 22 August 2020.

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

3 Authority

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

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

active general member means a person who is a general member of a litigation funding scheme and who:

- (a) is party to any of the following agreements in relation to the scheme:
 - (i) a funding agreement with the funder;
 - (ii) a retainer or costs agreement with the lawyer or legal practice providing services for the purposes of the scheme; or
- (b) has notified the funder, lawyer or legal practice that the person agrees to, or wishes to, participate in the scheme.

funder has the meaning given by subregulation 7.1.04N(3) of the Regulations.

funding agreement has the same meaning as in subregulation 7.1.04N(3) of the Regulations.

general member has the meaning given by subregulation 7.1.04N(4) of the Regulations.

litigation funding scheme has the meaning given by subregulation 7.1.04N(3) of the Regulations.

offer has a meaning affected by sections 1010C and 1011C of the Act.

passive general member means a person who is a general member of a litigation funding scheme and who is not an active general member.

registered litigation funding scheme means a litigation funding scheme that is a registered scheme.

regulated person has the same meaning as in section 1011B of the Act.

Regulations means the *Corporations Regulations 2001*.

representative proceedings means, in relation to a litigation funding scheme, legal proceedings in relation to the litigation funding scheme that are referred to in paragraph 7.1.04N(3)(d)(iii) of the Regulations.

Note: Among other matters, such legal proceedings are commenced or undertaken for the purposes of seeking remedies for each of the general members of the litigation funding scheme.

Part 2—Exemptions

5 Obligation to give a Product Disclosure Statement

- (1) The responsible entity of a registered litigation funding scheme does not have to comply with section 1012B of the Act in relation to:
 - (a) an offer to issue an interest in the scheme to a person as a passive general member; or
 - (b) the issue of an interest in the scheme to a person as a passive general member.

Note: The application form requirements in section 1016A of the Act will not apply if the exemption in subsection (1) applies: see section 11 of *ASIC Corporations (Application Form Requirements) Instrument 2017/241*.

- (2) A regulated person does not have to comply with section 1012B of the Act in relation to an offer to arrange for the issue of an interest in a registered litigation funding scheme to a person as a passive general member.

Where exemptions apply

- (3) The exemptions in subsections 5(1) and 5(2) apply:
 - (a) to the responsible entity—where the responsible entity has made the Product Disclosure Statement for interests in the scheme publicly available on the responsible entity’s website for the scheme; and

- (b) to a regulated person other than the responsible entity—where the regulated person reasonably believes that the responsible entity has made the Product Disclosure Statement publicly available on the responsible entity’s website for the scheme.

6 Conditions

The responsible entity of a registered litigation funding scheme that relies on the exemption in subsection 5(1) must:

- (a) take all reasonable steps to ensure that each of the following contains a prominent reference to the Product Disclosure Statement for interests in the scheme and the website on which the Product Disclosure Statement may be accessed:
 - (i) any notice to members or prospective members of the scheme;
 - (ii) any advertising material in relation to the scheme; and
- (b) give a Product Disclosure Statement to any person who is a passive general member and who subsequently becomes an active general member. The Product Disclosure Statement must be given to such a person before the time the person becomes an active general member.

Note: Section 1012B of the Act will apply in relation to an offer relating to, or the issue of, an interest to a person as an active general member if the person is not already a passive general member.

7 Valuation of scheme property

The responsible entity of a registered litigation funding scheme does not have to comply with paragraph 601FC(1)(j) of the Act.

8 Compliance with financial services laws in relation to register of members

A financial services licensee that is the responsible entity of a registered litigation funding scheme that has one or more passive general members does not have to comply with paragraph 912A(1)(c) of the Act in relation to the requirements of section 168 and 169 of the Act.

Part 3—Declarations

9 Withdrawal from registered litigation funding schemes

Chapter 5C of the Act applies to the responsible entity of a registered litigation funding scheme that involves representative proceedings as if the provisions of that Chapter were modified or varied as follows:

- (a) in subsection 601GA(4), omit “If”, substitute “Subject to subsection (4A), if”;
- (b) after subsection 601GA(4) insert:

“(4A) If the registered scheme is a litigation funding scheme within the meaning of subregulation 7.1.04N(3) of the *Corporations Regulations 2001*, subsection (4) does not apply in relation to a right of a member who is a general member (within the meaning of subregulation 7.1.04N(4) of the *Corporations Regulations 2001*) to withdraw from the registered scheme.

Note: A member who is a general member has a right to withdraw under section 601KAA.”;

- (c) before section 601KA, insert:

“601KAA Registered schemes that are litigation funding schemes

- (1) This section applies to a registered scheme that is a litigation funding scheme.
- (2) Sections 601KA to 601KE do not apply in relation to a member of a registered scheme who is a general member.
- (3) The responsible entity must allow a member of the registered scheme who is a general member to withdraw from the registered scheme if and only if the member:
- (a) opts out of representative proceedings in relation to the scheme in accordance with the court rules or any order of the court in relation to the representative proceedings; or
- (b) otherwise ceases to have an interest in the outcome of the representative proceedings.
- (4) In this section:

general member has the meaning given by subregulation 7.1.04N(4) of the *Corporations Regulations 2001*.

litigation funding scheme has the meaning given by subregulation 7.1.04N(3) of the *Corporations Regulations 2001*.

representative proceedings means, in relation to a litigation funding scheme, legal proceedings in relation to the litigation funding scheme that are referred to in paragraph 7.1.04N(3)(d)(iii) of the *Corporations Regulations 2001*.

Note: Among other matters, such legal proceedings are commenced or undertaken for the purposes of seeking remedies for each of the general members of the litigation funding scheme.”.

10 Valuation of scheme property

Chapter 5C of the Act applies to the responsible entity of a registered litigation funding scheme as if paragraph 601HA(1)(c) were omitted.

11 Content of Product Disclosure Statement

Part 7.9 of the Act applies in relation to an interest in a registered litigation funding scheme as if that Part were modified or varied by:

- (a) omitting subregulation 7.9.16N(2) of the Regulations; and
- (b) omitting paragraph 1013D(1)(l) of the Act.