



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2021/11

I, Joanna Bird, delegate of the Australian Securities and Investments Commission,
make the following legislative instrument.

Date 07 January 2021

Joanna Bird

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2021/11*.

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 subsection 1101AA(1) of the *Corporations Act 2001 (Act)*.

4 Definitions

In this instrument:

March 2020 Banking Code of Practice means the *Banking Code of Practice*, published on 12 December 2019 by the Australian Banking Association Incorporated (ABN 60 117 262 978).

Note 1: The March 2020 Banking Code of Practice is taken to be approved under section 1101A of the Act by operation of section 1672 of the Act.

Note 2: The March 2020 Banking Code of Practice, under its terms, took effect from 1 March 2020.

Part 2—Approval of variation

5 Approval of variations of the March 2020 Banking Code of Practice

- (1) Variation of the March 2020 Banking Code of Practice by making the amendments that are specified in the items in the Schedule to this instrument (regardless of their formatting) is approved.
- (2) The approval in subsection (1) applies:
 - (a) in relation to item 1 in the Schedule to this instrument—on and from the day this instrument commences; and
 - (b) in relation to items 2 to 5 in the Schedule to this instrument—on and from 1 March 2021; and

- (c) in relation to item 6 in the Schedule to this instrument—on and from 5 October 2021.

Schedule 1—Variations to the March 2020 Banking Code of Practice

1 Table of contents

Before the table of contents, insert the following:

COVID-19 SPECIAL NOTE

COVID-19 has changed the way we live, work and conduct business

Added to The Banking Code in June 2020

This Special Note is part of the Banking Code of Practice (1 March 2020 Release) and applies in relation to the coronavirus known as COVID-19.

This Special Note commences on 1 July 2020 and applies until 1 September 2021 in relation to banking services and guarantees during that time.

COVID-19 has changed the way we live, work and conduct business.

It continues to have a significant impact on the Australian economy. The financial sector has a key role to play in supporting our customers and helping build a bridge to recovery.

Like the key Government and regulatory agencies, the banking industry acknowledges the importance of the continued flow of credit to affected customers and industries in the current environment.

We note that the Council of Financial Regulators, which includes the Australian Treasury, The Reserve Bank of Australia, the Australian Securities and Investments Commission (ASIC), and the Australian Prudential Regulation Authority (APRA), have committed to take account of the circumstances in which lenders are currently operating when administering their respective laws and regulations.

Other agencies with an important role in enforcing this Code, such as the Australian Financial Complaints Authority (AFCA), and the Banking Code Compliance Committee (BCCC), have issued similar statements recognising the effect of COVID-19 on the industry.

In this environment, and in keeping with the commitments made by the agencies outlined above, it is important that banks have regard to both

their obligations under this Code and the broader critical need to preserve and restore the functioning of the economy when making decisions on the provision of banking services during this period.

These extraordinary circumstances may affect our internal resources and capacity, and the types of problems confronting our customers.

Consequently, the effects of COVID-19 may mean we are unable to fully comply with strict timing requirements for notices and communications under the Code.

While this special note applies, where we do not meet, but have made good faith efforts to comply with, the timing requirements in following paragraphs, we do not breach the Code: 101(b)&(c), 102, 148, 164, 205, and 206.

The substantive obligations in those paragraphs, along with all other requirements in other parts of this Code, continue to apply as usual.

During the period for which this Special Note operates:

1. On acknowledging your complaint, we will advise you of the possibility of delays to the usual required notifications during the complaints process.
2. Despite anything in this Special Note, we will inform you, within 45 days of your complaint (or such other time as specified for the relevant dispute in ASIC's Regulatory Guide 165), of your rights to apply for external dispute resolution if we have not resolved your complaint.

The effects of COVID-19 may also be relevant to our obligations under the Code when considering providing new or increased loans to your small business.

These effects include the inherent difficulties in making predictions for matters such as the pace of economic recovery, and in assessing your ability to service such loans.

In these circumstances, our obligation to engage with you in a fair, reasonable and ethical manner, and to exercise the care and skill of a diligent and prudent banker, will necessarily be informed by these matters and the effects of COVID-19 generally.

2 Chapter 1 (definition of “Banking service”)

Omit the definition, substitute:

“Banking service”

Banking service means any financial service or product provided by us in Australia to you:

- a) whether supplied directly or through an intermediary; and
- b) if provided by another party and distributed by us, extends only to the distribution or supply, and not to the service or product itself.

Examples of banking services the Code applies to:

- bank accounts and term deposits;
- credit cards, debit cards, prepaid cards;
- home loan, personal loans, bill facilities, overdrafts— in the Code these are included in the definition of “loans”;
- consumer credit insurance;
- payment services; and
- foreign currency exchange services.

However, banking services the Code does not apply to include:

- shares, bonds and other securities that we issue; and
- financial products and financial services for the purposes of Chapter 7 of the Corporations Act 2001, if you are a ‘wholesale client’ rather than a ‘retail client’ (unless you are a wholesale client only because of section 761G(7)(b)).

3 Chapter 1 (definition of “small business”)

Omit the definition, substitute:

What is a “small business”?

A business is a “small business” if at the time it obtains the banking service all of the following apply:

- a) it had an annual turnover of less than \$10 million in the previous financial year*; and
- b) it has fewer than 100 full-time equivalent employees*; and
- c) it has less than \$3 million total debt to all credit providers — including:
 - i) any undrawn amounts under existing loans;
 - ii) any loan being applied for; and
 - iii) the debt of all its related entities that are businesses.

However, a business is not a “small business” if it is a company listed on the Australian Stock Exchange, a government entity, or an Australian Financial Services Licensee that is authorised under its licence to operate registered managed investment schemes as a responsible entity or to provide custodial and depository services.

* Note: If the business is part of a group of bodies corporate (see s. 50 Corporations Act), paragraphs (a) and (b) are assessed on the basis of the group.

4 Paragraph 163

Omit the paragraph, substitute:

163. However, we may still deal with you directly in the following situations:

- a) if you ask us to;
- b) if we have made reasonable attempts to contact, or deal with, your financial counsellor or representative but we are unsuccessful; or
- c) if your representative is not a financial counsellor, and
 - i) we reasonably believe the representative is not acting in your best interests; or
 - ii) it is otherwise reasonable to do so in the circumstances.

If we decide to deal with you directly under (b), or (c), we will tell you, and will suggest other free alternatives that may be available to you.

5 Definitions (after the definition of “Enforcement proceedings”)

Insert:

“Financial Counsellor” means a financial counselling agency (including an organisation or individual) entitled to the benefit of an exemption under either the ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792 or ASIC Credit (Financial Counselling Agencies) Instrument 2017/793.

6 Paragraphs 204 to 206 (including the heading)

Omit the paragraphs (including the heading), substitute:

Timeframes for handling your complaint

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204. If we resolve your complaint to your satisfaction, or have given you an explanation and/or apology when we can take no further action to reasonably address your complaint, within five business days, we do not need to provide you with a written response as outlined in paragraph 203, unless you ask us.

This paragraph does not apply to a complaint relating to hardship, a declined insurance claim or the value of an insurance claim.

206. If we are unable to resolve your complaint within 30 days (or within 21 days if it involves a hardship notice, default notice or request to postpone enforcement), we will:
- a) tell you the reasons for the delay;
 - b) tell you the date by which you can reasonably expect to hear the outcome of our investigation; and
 - c) give you monthly updates on the progress;
 - d) tell you about your right to complain to AFCA if you are dissatisfied; and
 - e) provide you with contact details for AFCA.

However, for complaints involving hardship notices or postponement of enforcement, exceptions apply to the 21 day timeframe if we do not have sufficient information to make a decision or we reach an agreement with you. If we require further information from you then we will request it within 21 days of receiving the complaint.