



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Auditor Independence) Instrument 2021/75

This is the Explanatory Statement for *ASIC Corporations (Auditor Independence) Instrument 2021/75*.

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

Summary

1. *ASIC Corporations (Auditor Independence) Instrument 2021/75 (Legislative Instrument)* provides relief to the lead auditor from reporting minor financial interests in an entity audited by an audit firm where the interest is held by any other partner of the firm or their close family members.

Background

2. Section 307C of the Act requires an auditor to provide a declaration to the directors of a company stating compliance with the independence requirements of the Act and requirements of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code). The auditor's independence declaration forms part of the directors' report and accompanies the financial report which is sent or available to members and generally lodged with ASIC for the public record.
3. In recent years, ASIC has granted individual relief to lead auditors from reporting minor inadvertent breaches of the requirements of the Code concerning small interests in audited entities held by close relatives of other partners in the audit firm. Those other partners are not involved in the audit and the investments arise in circumstances, such as:
 - (a) A daughter of a partner divested shares in a large listed company prior to the firm becoming auditor but subsequently received three shares under a dividend reinvestment plan; and
 - (b) The spouse of a partner received a small number of shares in a company as a result of employment with the company 15 years previously. The spouse was not aware of the shareholding until contacted by the company's share registry during the current year.

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4. The Act provides an exclusion from reporting breaches of the independence provisions in the Act where a statutory defence applies that the auditor's firm had in place a quality control system that provided reasonable assurance that the auditor and its employees complied with those auditor independence provisions. There is no such exclusion for minor breaches of the Code.
 5. ASIC may only relieve an auditor from complying with the requirements for the auditor's independence declaration where one of three pre-conditions in s342(2) of the Act is met. One of the pre-conditions is that compliance with the requirement would impose unreasonable burdens – that is the expected costs are out of all proportion to the expected benefits. Compliance with the requirement to report such minor breaches of the independence provisions in the Code imposes unreasonable burdens by adding unnecessary detail to an annual report that could detract from more important information. It is likely that additional explanation would be needed in the auditor's independence declaration as to why the breach is not significant.

Purpose of the Legislative Instrument

6. We may grant relief from all or some of the provisions of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the *Corporations Act 2001* if the relevant requirements would, among other things, impose an unreasonable burden on an entity, its directors or its auditor (sections 341 and 342 of the *Corporations Act 2001*).
7. *ASIC Corporations (Auditor Independence) Instrument 2021/75* provides relief from reporting minor financial interests in an entity audited by an audit firm where the interest is held by any other partner of the firm or their close family members. The fair value of the financial interest must not exceed \$10,000 and the holder of the interest must not have been aware that it was a financial interest in the auditor entity or a controlled entity at the time that the breach occurred. The relief is not to be available for financial interests held by the lead auditor, review auditor, a member of the audit engagement team, or any of their immediate family.
8. The lead auditor for the audit is relieved from reporting certain minor inadvertent breaches of a professional code of ethics in the auditor's independence declaration that accompanies the public financial report of a company.
9. The relief is to be available where the auditor operates through a partnership, through an authorised audit company or as a sole practitioner and satisfies all the conditions in the instrument.
10. ASIC has reviewed its policy underlying the relief. In light of this review and following appropriate consultation, ASIC considers that the relief is necessary, fit-for-purpose and relevant.

Consultation

11. ASIC consulted the staff of the Australian Professional Ethical Standards Board and auditor independence partners of the largest four audit firms. All were supportive of providing relief and feedback obtained has been appropriately considered when drafting the instrument.
12. The Office of Best Practice Regulation has assessed that the Regulatory Impact Statement is not necessary for this instrument.

Operation of the Legislative Instrument

18. The Legislative Instrument allows the lead auditor for the audit to be relieved from the requirement to disclose a contravention of paragraph R510.4(c) of the Code in relation to a financial interest held by a relevant person in the relevant entity or a controlled entity in the auditor's independence declaration pursuant to section 307C of the *Corporations Act 2001*.
19. The Legislative Instrument commences on the day after it is registered on the Federal Register of Legislation.
20. The Legislative Instrument will be repealed on 30 April 2026.
21. The subject matter and policy implemented by the Legislative Instrument is more appropriate for a legislative instrument rather than primary legislation because the matters contained in the Legislative Instrument only affect a relatively small subset of entities. The Legislative Instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result. On this basis, it is appropriate for ASIC to provide relief through its exemption and modification powers, as the matters contained in this particular instrument are of a highly specific nature which are more appropriate for legislative instrument rather than primary legislation.

Legislative authority

23. The Legislative Instrument is made under subsection 341(1) of the *Corporations Act 2001*.
24. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the *Corporations Act 2001*), 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 or revoke any such instrument.
26. The Legislative Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

27. 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*.

ASIC Corporations (Auditor Independence) Instrument 2021/75

Overview

1. *ASIC Corporations (Auditor Independence) Instrument 2021/75* provides relief to the lead auditor from reporting minor financial interests in an entity audited by an audit firm where the interest is held by any other partner of the firm or their close family members.

Assessment of human rights implications

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

Conclusion

3. These instruments are 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*.