



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/774

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2023/774*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2023/774* (the **Instrument**) repeals section 10 and amends paragraph 6(c) of *ASIC Corporations (Takeover Bids) Instrument 2023/683* (**ASIC Instrument 2023/683**), and adds new subparagraph 5(a)(iia) and amends paragraph 5(b) of *ASIC Corporations (Compulsory Acquisitions and Buyouts) Instrument 2023/684* (**ASIC Instrument 2023/684**). These changes are made to give effect to the original intent of the relevant instruments.

Purpose of the Instrument

2. The Instrument updates notional subparagraph 636(1)(g) in ASIC Instrument 2023/683, so that it is consistent with subparagraph 636(1)(g)(iii) and (iv) of the *Corporations Act 2001*, by referring to sections 710 to 713 and sections 713C to 713E as applicable material that would be required for a prospectus.
3. The Instrument repeals section 10 of ASIC Instrument 2023/683 and moves the substance of that relief to ASIC Instrument 2023/684 by inserting the word “or derivatives” in paragraph 661A(4)(c). The Instrument also corrects notional subparagraph 661B(1)(c) to clarify that the bidder’s election under subparagraph 661A(4)(c) is to acquire securities, and not derivatives, that come to be in the bid class after the notice is given.

Purpose of the Instrument

4. The Instrument repeals section 10 and amends paragraph 6(c) of *ASIC Corporations (Takeover Bids) Instrument 2023/683*, and adds new subparagraph 5(a)(iia) and amends paragraph 5(b) of *ASIC Corporations (Compulsory Acquisitions and Buyouts) Instrument 2023/684*.

Consultation

-
5. On 30 November 2022, ASIC released Consultation Paper 365 (**CP 365**) seeking feedback on proposals to remake nine class orders relating to takeovers, compulsory acquisitions and relevant interests (including [CO 12/1209], [CO 13/519], [CO 13/520], [CO 13/521], [CO 13/522], [CO 13/524], [CO 13/525], [CO 13/526], and [CO 13/528]). The consultation period closed on 23 January 2023 and ASIC took submissions to CP 365 into account in remaking the relevant class orders. Details of the submissions received are contained in REP 773 Response to submissions on CP 365 which is available on ASIC's website at www.asic.gov.au. No further consultation was required in respect of the Instrument because it gives effect to the policy intent of ASIC Instrument 2023/683 and ASIC Instrument 2023/684 as originally made.

Operation of the Instrument

6. The Instrument amends ASIC Instrument 2023/683 and ASIC Instrument 2023/684.

Legislative instrument and primary legislation

7. The subject matter and policy implemented by the Instrument is more appropriate for a legislative instrument rather than primary legislation because it provides administrative relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result.

Duration of the Instrument

8. The amendments made by the Instrument will cease to have effect on expiry of ASIC Instrument 2023/683 and ASIC Instrument 2023/684.

Legislative authority

9. The Instrument is made under subsections 655A(1) and 669(1) of the *Corporations Act 2001*.
10. 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 Act), 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.
11. As a legislative instrument, the Instrument is disallowable under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

12. 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 (Amendment) Instrument 2023/774

Overview

1. *ASIC Corporations (Amendment) Instrument 2023/774* (the **Instrument**) repeals section 10 and amends paragraph 6(c) of *ASIC Corporations (Takeover Bids) Instrument 2023/683*, and adds new subparagraph 5(a)(iia) and amends paragraph 5(b) of *ASIC Corporations (Compulsory Acquisitions and Buyouts) Instrument 2023/684*. It makes minor changes to these instruments to give effect to the policy intentions of the instruments as originally made.

Assessment of human rights implications

2. The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. The 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*.