
EXPLANATORY STATEMENT for
ASIC Corporations (Amendment) Instrument 2016/514

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Amendment) Instrument 2016/514* (amending instrument) under subsection 601QA(1) of the *Corporations Act 2001 (Act)*.

Subsection 601QA(1) of the Act provides that ASIC may exempt a person from a provision of Chapter 5C of the Act or declare that Chapter 5C applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Under subsection 33(3) of the *Acts Interpretations Act 1901* (as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

1. Background

On 5 May 2016, the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (and supporting legislation) created a new tax system for managed investment trusts.

ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489 (the principal instrument) provides relief to, among other things, enable a responsible entity of a registered scheme to change the scheme's constitution without a members' meeting where it reasonably considers the changes to be necessary for or incidental to the scheme being able to be operated as an attribution managed investment trust in a manner permitted by *the Income Tax Assessment Act 1997*.

A responsible entity may make a change to the scheme's constitution in reliance on relief provided by the principal instrument where it has followed the procedure in notional subsection 601GCA(3) (as inserted by the principal instrument).

2. Purpose of the instrument

The purpose of the amending instrument is to amend the principal instrument to clarify that where all members of a registered scheme acquired their interests in the scheme as wholesale clients, the responsible entity of a registered scheme may rely on

either the procedure under notional paragraph 601GCA(3)(a) or 601GCA(3)(b) in order to change the constitution under notional subsection 601GCA(1) (as inserted by the principal instrument).

3. Operation of the instrument

The amending instrument amends section 6 of the principal instrument by omitting 'other' from notional paragraph 601GCA(3)(b).

4. Consultation

ASIC did not undertake a formal consultation process on the amending instrument on the basis that it makes a minor amendment to clarify the intended effect of the principal instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Amendment) Instrument 2016/514

ASIC Corporations (Amendment) Instrument 2016/514 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.

Overview

The purpose of the amending instrument is to make a minor amendment to ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489 (the principal instrument).

The principal instrument provides relief to enable responsible entities of registered schemes to amend scheme constitutions without the need for a members' meeting to approve the amendments and also exempts responsible entities from having to comply with the duty to treat members who hold interests of the same class equally so that attributions of amounts related to the income and tax offsets of the scheme to members may be made in accordance with the requirements under the new tax system.

The amending instrument amends the principal instrument to clarify the procedures that may be followed by a responsible entity to change the constitution of a registered scheme in reliance on relief under the principal instrument where all members of the scheme acquired their interests in the scheme as wholesale clients.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.