

EXPLANATORY STATEMENT for
ASIC Corporations (Group Purchasing Bodies) Instrument 2018/751 and
ASIC Corporations (Repeal) Instrument 2018/750

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Group Purchasing Bodies) Instrument 2018/751* (**the New Instrument**) under subsections 601QA(1), 926A(2), 951B(1) and 992B(1) of the *Corporations Act 2001* (**Corporations Act**).

Paragraph 601QA(1)(a) provides that ASIC may exempt a person from a provision of Chapter 5C of the Act. Paragraph 601QA(2)(b) provides that the exemption may apply to all persons, specified persons, or a specified class of persons.

Paragraph 926A(2)(a) provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.6 of the Act other than Divisions 4 and 8.

Paragraph 951B(1)(a) provides that ASIC may exempt a person or a class of persons from all or specified provisions of Part 7.7 of the Act.

Paragraph 992B(1)(a) provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.8 of the Act.

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, 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.

ASIC also makes *ASIC Corporations (Repeal) Instrument 2018/750* (**the Repeal Instrument**) under subsections 601QA(1), 951B(1) and 992B(1) and paragraph 911A(2)(l) of the Act.

1. Background

Chapter 7 (“Financial services and markets”) of the Corporations Act prescribes a licensing regime for persons who provide financial services, and regimes for financial services disclosure and other conduct obligations. Chapter 5C (“Managed investment schemes”) of the Corporations Act prescribes a regime for the regulation of managed investment schemes.

Group purchasing bodies are persons who arrange or hold cover under risk management products (for example, insurance products) for other persons but neither issue such products nor provide any financial product advice.

The activities of group purchasing bodies may constitute providing financial services under Chapter 7 of the Corporations Act (through providing a custodial or depository service or arranging for persons to acquire a risk management product, and providing certain general information– which may constitute financial product advice). The arrangements that group purchasing bodies enter may also in some cases constitute a managed investment scheme under Chapter 5C (because some of the contributions they receive from persons to obtain cover are pooled or used in a common enterprise to produce financial benefits for contributors, in the form of access to cheaper or better cover).

[CO 08/1] gives exemptions to eligible group purchasing bodies from the obligations to hold an Australian financial services (AFS) licence for these limited financial services and to register a risk management scheme as a managed investment scheme. ASIC provided the exemptions in [CO 08/1] because it considers compliance with Chapters 5C and 7 of the Corporations Act is disproportionately burdensome for eligible group purchasing bodies, which are acting more in the nature of a purchaser of risk cover than a seller.

For group purchasing bodies that are AFS licensees, or authorised representatives, the exemptions are limited to where the body provides the relevant services to its officers, employees or their relatives. The exemptions are more limited in this scenario to reduce the risk of the exemptions being used to establish an unlicensed financial services business other than as contemplated by the exemptions.

Accountants sometimes organise audit insurance for their clients to cover any costs relating to dealing with audits on tax returns prepared by the accountant for the client. At the time when [CO 08/1] was made, the conduct of accountants in organising this kind of insurance cover was intended to be covered by the relief. Accountants may also provide other, unrelated financial services, such as advice in relation to acquiring or disposing of an interest in a self-managed superannuation fund (SMSF), which was previously covered by an AFS licensing exemption in regulation 7.1.29A of the Corporations Regulations 2001. Following repeal of that exemption in 2016, as part of the Future of Financial Advice reforms, accountants who provide financial product advice in relation to SMSFs are now required to hold an AFS licence (a ‘limited licence’) with authorisations covering a limited range of financial services relevant to SMSFs. This has had the unintended effect that accountants holding a limited licence can no longer rely on the exemptions in [CO 08/1] when providing group purchasing services to their clients.

[CO 08/1] will sunset on 1 October 2018.

2. Purpose of the instruments

The purpose of the Repeal Instrument is to repeal [CO 08/1].

The purpose of the New Instrument is to preserve the effect of [CO 08/1], pending a future more detailed ASIC review of the policy settings for the exemptions, and to reinstate the exemptions in relation to accountants who are limited licensees.

3. Operation of the New Instrument

The New Instrument gives exemptions to eligible group purchasing bodies from the obligations to register a ‘risk management scheme’ (as defined in the New Instrument) as a managed investment scheme and to hold an AFS licence covering the provision of the following financial services:

- dealing in a risk management product or an interest in a risk management scheme operated by the body;
- providing a custodial or depository service by holding a risk management product on trust for or on behalf of another person; and
- providing financial product advice in relation to a risk management product or an interest in a risk management scheme operated by the body to the extent that the advice is provided as a result of the body giving information or statements that are required by the conditions of the New Instrument.

A group purchasing body that is an AFS licensee or an authorised representative of a licensee does not have to comply with Divisions 2, 3 and 4 of Part 7.7 or Divisions 2, 3, 5 and 6 of Part 7.8 of the Corporations Act in relation to the above financial services.

Group purchasing bodies that are AFS licensees – other than limited licence holders – or authorised representatives of such licensees may only rely on the exemptions if:

- the persons who will be covered by the risk management product or issued an interest in the risk management scheme are officers or employees of the body or their relatives; and
- either the body provides financial services only incidentally to another relationship with the persons to be covered by the risk management product and does not carry on a business in order to make monetary payments to members (i.e. is an ‘incidental product provider’, as defined in the New Instrument) or the body meets requirements specified in the New Instrument relating to permitted types of receipts of payments.

Group purchasing bodies that are limited licence holders, authorised representatives of such licensees, or non-AFS licensees may only rely on the exemptions in the New Instrument if:

- the body does not carry on a business of issuing risk management products other than interests in a risk management scheme;
- the body does not provide any financial product advice in relation to the risk management product, other than financial product advice required by the conditions; and
- the body is either:
 - an “incidental provider” (which broadly covers bodies providing financial services only incidentally to another relationship with persons covered by a risk management product, where the body does not carry on any business in order to make monetary payments to members), or
 - a body that meets independence requirements, which include restrictions on receipt of payments and on associations with risk management product issuers and other licensees.

The New Instrument contains conditions relating to conduct (for example, disclosure and notification requirements) for the managed investment scheme exemption.

Group purchasing bodies that provide financial services under a multinational pooling arrangement are also eligible for the exemptions.

The New Instrument largely reflects the substance of [CO 08/1]. The only material change is the express extension of the relief to limited licence holders.

4. Consultation

ASIC has not consulted publicly on its proposal to remake the exemptions in [CO 08/1] and to expressly extend the exemptions to limited licence holders. The remaking of the exemptions involve only minor and machinery changes (e.g. reformatting and rewording for ease of reading) and the express extension of the exemptions to limited licence holders reinstates the status quo as existed before the introduction of the limited licence legislative regime.

Statement of Compatibility with Human Rights

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

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ASIC Corporations (Group Purchasing Bodies) Instrument 2018/751 (the New Instrument) and ASIC Corporations (Repeal) Instrument 2018/750 (the Repeal Instrument) 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.

Overview

The New Instrument gives limited exemptions to eligible group purchasing bodies of insurance or other risk management products from the obligations to register a 'risk management scheme' (as defined in the New Instrument) as a managed investment scheme under Chapter 5C of the Corporations Act 2001 (Corporations Act) and, under Chapter 7 of the Corporations Act, to hold an Australian financial services (AFS) licence covering the provision of the following financial services:

- dealing in a risk management product or an interest in a risk management scheme operated by the body;
- providing a custodial or depository service by holding a risk management product on trust for or on behalf of another person; and
- providing financial product advice in relation to a risk management product or an interest in a risk management scheme operated by the body to the extent that the advice is provided as a result of the body giving information or statements that are required by the conditions of the New Instrument.

A group purchasing body that is an AFS licensee or an authorised representative of a licensee does not have to comply with Divisions 2, 3 and 4 of Part 7.7 or Divisions 2, 3, 5 and 6 of Part 7.8 of the Corporations Act in relation to the above financial services.

The purpose of the Repeal Instrument is to repeal Class Order [CO 08/1] *Group purchasing bodies*, which will sunset on 1 October 2018 pursuant to the *Legislation Act 2003*. The purpose of the New Instrument is to preserve the effect of [CO 08/1] and to extend the exemptions to holders of limited licensees, as given meaning by subsection 989B(3) of the Corporations Act (as modified by regulation 7.8.12A of the Corporations Regulations 2001).

Human rights implications

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

Conclusion

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

Australian Securities and Investments Commission