



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401

This is the Explanatory Statement for *ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401*.

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

Summary

1. The *ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401* provides exemptions and modifications in relation to the hawking and product disclosure requirements in the *Corporations Act 2001* (the Act) in relation to issuing basic deposit products, linked non-cash payment facilities and debit cards due to adverse implications on consumers without debit cards – including vulnerable and elderly consumers – due to COVID-19.
2. The changes to the hawking requirements allow authorised deposit-taking institutions (**ADIs**) to offer to offer debit cards to eligible account holders through unsolicited meetings at a bank's place of business, or through unsolicited telephone calls.
3. The changes to the product disclosure requirements allow the ADIs to comply in relation to basic deposit products, linked non-cash payment facilities and debit cards by providing the information they typically provide no later than when the consumer receives the debit card.

Purpose of the instrument

4. Lockdown restrictions in response to COVID-19 may affect cohorts of consumers who rely on cash to make purchases for goods and services. This includes difficulties with accessing bank branches to withdraw funds – particularly for consumers who are required to self-isolate or where bank branches may be closed. Additionally, there is reduced acceptance of cash by merchants for public health reasons.
5. The Instrument is intended to address these challenges by facilitating ADIs providing their existing customer bases with debit cards. Debit cards will allow these consumers to:

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- a. access their deposits otherwise than by withdrawing cash; and
 - b. complete contactless purchases in stores, as well as card-not-present purchases (e.g. online or telephone-based transactions).
6. Based on the size of their affected customer bases and systems limitations, ADIs may seek to provide debit cards in different ways, including linking a debit card to the client's existing basic deposit product, or issuing a new basic deposit product that can be accessed using a debit card. Some ADIs may contact consumers – either in a bank branch or by telephone – to offer to provide them with a debit card (which in the situations described above will often involve the issue of a non-cash payment facility, and potentially a basic deposit product). Due of the number of affected consumers, some ADIs may only be able to address these issues by issuing new debit cards and distributing them by mail without prior contact.
 7. These options would typically be prohibited because of:
 - a. the hawking requirements in section 992A of the Act, which prohibit offers to issue products in the course of unsolicited meetings and unsolicited telephone calls in certain circumstances; and
 - b. the product disclosure requirements in Part 7.9 of the Act, which generally require information to be provided before the consumer is bound to acquire the product.
 8. The purpose of the Instrument is to amend these requirements in a limited way for the distribution of debit cards to existing customers in response to the COVID-19 outbreak.

Consultation

9. Before making this Instrument, ASIC engaged with a targeted range of stakeholders to discuss the proposals which the relief would facilitate, as well as the need for relief. The stakeholders included relevant industry associations and consumer representatives. A broader range of stakeholders was involved in the design and development of the proposals made possible by the Instrument.
10. The Prime Minister has granted an exemption from the need to complete regulatory impact analysis in the form of Regulation Impact Statements for all Australian Government measures made in response to COVID-19.

Operation of the instrument

11. Section 2 of the Instrument specifies that the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation. Section 3 of the Instruments specifies that the Instrument ceases to apply on 30 September 2020.

Changes to the hawking prohibitions

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12. Section 6 provides ADIs with an exemption from the prohibition in subsection 992A(1) of the Act on offering to issue products during an unsolicited meeting. The exemption only applies:
 - a. where the offer relates to an ‘eligible product’ – defined in the Instrument to mean a basic deposit product or a facility for making non-cash payments that is related to a basic deposit product;
 - b. where the offer is made to an ‘eligible account holder’ – defined in the Instrument to mean who holds a basic deposit product with an ADI but not a debit card from that ADI;
 - c. where the unsolicited meeting occurs at a place where the ADI carries on business (such as a bank branch); and
 - d. where the offer includes an offer to issue a debit card.
 13. The effect of section 6 is that if one of an ADI’s existing customers without a debit card is in a branch, the ADI may offer to issue that person with a debit card to ensure they can access their funds during the COVID-19 outbreak. The offer may be for a debit card to access an existing basic deposit product, or for a new basic deposit product and a debit card to access that new product.
 14. Subsection 7(1) modifies how the prohibition in subsection 992A(3) of the Act applies to similar offers made in the course of unsolicited telephone calls. The effect of the modification is that:
 - a. ADIs will be able to make offers during unsolicited telephone calls to consumers who are on the “No Contact/No Call” register for the purposes of the hawking requirements. However, where a consumer is not on the “No Contact/No Call” register, ADIs will still need to provide the consumer with an opportunity to be added to the register, or to specify the time and frequency of any future contacts.
 - b. Where an ADI complies with Part 7.9 of the Act by issuing a Product Disclosure Statement (PDS), this statement will not need to be provided before the consumer is bound to acquire the product. This reflects the modifications to Part 7.9 described below, as well as the fact that in some circumstances, ADIs may issue a new basic deposit product and debit card, and then provide the PDS to the consumer with the debit card.
 15. As with the exemption in section 6, the modifications in subsection 7(1) only apply to offers to eligible account holders, in relation to eligible products, where the offer includes an offer to issue a debit card.

Modification of product disclosure requirements

16. Regulation 7.9.07FA of the Regulations contains an exemption from the requirement to provide a PDS for products including eligible products. The

conditions that apply to the exemption include the provision of certain information, as well as asking the client if they would like additional information about amounts that are payable if they acquire the product.

17. The modifications in subsection 7(3) of the Instrument allow for ADIs to comply with this exemption in relation to their own eligible products by providing eligible account holders with the additional information, or a description of how that information can be obtained. The modifications also allow for the information required by the exemption to be provided by the later of:
 - a. if the eligible account holder is given a debit card, when they are given the debit card; and
 - b. otherwise—when the eligible product is issued.
18. Subsection 7(5) inserts a new section 1012GB into the Act, which provides that a PDS can be given later than the times typically required by Part 7.9. In particular, under that section ADIs who do not rely on the exemption provided by regulation 7.9.07FA are able to provide a PDS to eligible account holders in relation to their own products by the later of:
 - a. if the eligible account holder is given a debit card, when they are given the debit card; and
 - b. otherwise—when the eligible product is issued.
19. The effect of these modifications is that in situations where an eligible product is issued and then sent to the consumer, ADIs can comply with Part 7.9 by providing either a PDS, or the information described in notional section 1012D(7A) of the Act (inserted by regulation 7.9.07FA), with the debit card that is mailed to the eligible account holder.

Legislative instrument and primary legislation

20. The subject matter and policy implemented by the Instrument is more appropriate for a legislative instrument rather than primary legislation. The Instrument uses powers given by Parliament to ASIC, which allow ASIC to affect the operation of Chapter 7, and specifically Parts 7.8 and 7.9, of the Act to respond quickly and temporarily to issues in connection with or arising from COVID-19 which may prevent consumers without debit cards from accessing their deposits.

Legislative authority

21. This instrument is made under subsection 992B(1) and paragraph 1020F(1)(c) of the Act.
22. Subsection 992B(1) provides that ASIC may declare that Part 7.8 of the Act applies in relation to a person or a financial product, or a class of persons or

financial products, as if specified provisions from this Part were omitted, modified or varied as specified in the declaration.

23. Subsection 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions from this Part were omitted, modified or varied as specified in the declaration.
24. This Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

25. 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*.

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Overview

The ***ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401*** provides exemptions and modifications in relation to the hawking and product disclosure provisions of the *Corporations Act 2001* to facilitate timely distribution of debit cards banks' existing customers who are reliant on cash until 30 September 2020. The Instrument allows for unsolicited offers to issue debit cards to existing customers without those cards in certain circumstances, as well as allowing for product disclosure information to be provided at a later time with the debit card.

Assessment of human rights implications

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

Conclusion

- 2 This 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*.