



# **Corporations Amendment Regulation 2012 (No. 6)**

**Select Legislative Instrument 2012 No. 172 as amended**

made under the

*Corporations Act 2001*

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This compilation was prepared on 12 December 2012  
taking into account amendments up to SLI 2012 No. 308

Prepared by the Office of Parliamentary Counsel, Canberra

**1 Name of regulation** [see Note 1]

This regulation is the *Corporations Amendment Regulation 2012 (No. 6)*.

**2 Commencement**

This regulation commences on 12 July 2013.

**3 Amendment of *Corporations Regulations 2001***

Schedule 1 amends the *Corporations Regulations 2001*.

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## Schedule 1      Amendments

(section 3)

### [1]      Regulation 5C.11.01

*substitute*

#### 5C.11.01    Certain schemes not managed investment schemes

- (1) For paragraph (n) of the definition of *managed investment scheme* in section 9 of the Act, each of the following schemes is declared not to be a managed investment scheme:
- (a) an approved benefit fund within the meaning given by subsection 16B (1) of the *Life Insurance Act 1995*;
  - (b) a scheme (a *litigation funding scheme*) that has all of the following features:
    - (i) the dominant purpose of the scheme is for each of its general members to seek remedies to which the general member may be legally entitled;
    - (ii) the possible entitlement of each of its general members to remedies arises out of:
      - (A) the same, similar or related transactions or circumstances that give rise to a common issue of law or fact; or
      - (B) different transactions or circumstances but the claims of the general members can be appropriately dealt with together;
    - (iii) the possible entitlement of each of its general members to remedies relates to transactions or circumstances that occurred before or after the first funding agreement (dealing with any issue of interests in the scheme) is finalised;

- (iv) the steps taken to seek remedies for each of its general members include a lawyer providing services in relation to:
  - (A) making a demand for payment in relation to a claim; or
  - (B) lodging a proof of debt; or
  - (C) commencing or undertaking legal proceedings; or
  - (D) investigating a potential or actual claim; or
  - (E) negotiating a settlement of a claim; or
  - (F) administering a deed of settlement or scheme of settlement relating to a claim;
- (v) a person (the **funder**) provides funds, indemnities or both under a funding agreement (including an agreement under which no fee is payable to the funder or lawyer if the scheme is not successful in seeking remedies) to enable the general members of the scheme to seek remedies;
- (vi) the funder is not a lawyer or legal practice that provides a service for which some or all of the fees, disbursements or both are payable only on success;
- (c) a scheme (a **litigation funding scheme**) that has all of the following features:
  - (i) the scheme relates to an externally-administered body corporate;
  - (ii) the creditors or members of the body corporate provide funds (including through a trust), indemnities or both to the body corporate or external administrator;
  - (iii) the funds, indemnities or both enable the external administrator or the body corporate to:
    - (A) conduct investigations; or
    - (B) seek or enforce a remedy against a third party; or
    - (C) defend proceedings brought against the body corporate in relation to the external administration of the body corporate (other than in relation to allegations, made by

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- creditors or members of the body corporate, of negligence or non-performance of duties by the external administrator);
- (d) an arrangement (a ***litigation funding arrangement***) that has all of the following features:
- (i) the dominant purpose of the arrangement is:
    - (A) for a general member to seek remedies to which the general member may be legally entitled; or
    - (B) proving claims made by one individual under Division 6 of Part 5.6 of the Act (which may include the funding of the preparation and the lodgement of the proofs);
  - (ii) the steps taken to seek remedies include a lawyer providing services in relation to:
    - (A) making a demand for payment in relation to a claim; or
    - (B) lodging a proof of debt; or
    - (C) commencing or undertaking legal proceedings; or
    - (D) investigating a potential or actual claim; or
    - (E) negotiating a settlement of a claim; or
    - (F) administering a deed of settlement or scheme of settlement relating to a claim;
  - (iii) a person (the ***funder***) provides funds, indemnities or both under a funding agreement (including an agreement under which no fee is payable to the funder or lawyer if the arrangement is not successful in seeking remedies) to enable the general member of the arrangement to seek remedies;
  - (iv) the funder is not a lawyer or legal practice that provides a service for which some or all of the fees, disbursements or both are payable only on success;
  - (v) the arrangement is not a litigation funding scheme.

(2) In this regulation:

***external administrator*** includes an administrator, a liquidator (including a provisional liquidator) and a controller.

***general member:***

- (a) in relation to a litigation funding scheme—means a member of the scheme who:
  - (i) is not the funder; and
  - (ii) is not a lawyer providing services for the purposes of the scheme; and
- (b) in relation to a litigation funding arrangement—means the party to the arrangement who:
  - (i) is not the funder; and
  - (ii) is not a lawyer providing services for the purposes of the arrangement.

**[1A] After regulation 7.1.04G**

*insert*

**7.1.04N Specific things that are financial products—litigation funding schemes and arrangements**

For paragraph 764A (1) (m) of the Act:

- (a) an interest in a litigation funding scheme mentioned in regulation 5C.11.01 is a financial product; and
- (b) an interest in a litigation funding arrangement mentioned in regulation 5C.11.01 is a financial product.

**[1B] After subregulation 7.1.06 (2)**

*insert*

- (2A) A litigation funding scheme mentioned in regulation 5C.11.01 is not a credit facility.
- (2B) A litigation funding arrangement mentioned in regulation 5C.11.01 is not a credit facility.

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**[2] Sub-subparagraph 7.6.01 (1) (la) (iii) (B)**

*omit*

service.

*insert*

service;

**[3] Sub-subparagraph 7.6.01 (1) (oa) (iii) (C)**

*omit*

authority.

*insert*

authority;

**[4] Subparagraph 7.6.01 (1) (w) (ii)**

*omit*

client.

*insert*

client;

**[5] After paragraph 7.6.01 (1) (w)**

*insert*

- (x) a service in relation to a litigation funding scheme mentioned in regulation 5C.11.01;
- (y) a service in relation to a litigation funding arrangement mentioned in regulation 5C.11.01.

**[6] After regulation 7.6.01AA***insert***7.6.01AB Obligation on persons providing exempt financial service**

- (1) For paragraph 926B (1) (c) of the Act, Part 7.6 of the Act applies as if section 911A of the Act were modified to insert the following subsection after subsection (5A):

- ‘(5B) If the regulations prescribe an exemption under paragraph (2)(k) that covers the provision of a service by a person in relation to:
- (a) a litigation funding scheme mentioned in regulation 5C.11.01 of the *Corporations Regulations 2001*; or
  - (b) a litigation funding arrangement mentioned in that regulation;
- the regulations may require the person to have adequate practices, and follow certain procedures, for managing conflicts of interest in relation to the scheme or arrangement.’

- (2) For subsection 911A (5B) of the Act, if a person is providing, or has provided, a financial service covered by the exemption mentioned in paragraph 7.6.01 (1) (x) or (y), the person must:
- (a) maintain, for the duration of the litigation funding scheme or arrangement, adequate practices for managing any conflict of interest that may arise in relation to activities undertaken by the person, or an agent of the person, in relation to the scheme or arrangement; and
  - (b) follow the written procedures mentioned in subregulation (4) for the duration of the scheme or arrangement.

*Note* The exemption mentioned in paragraph 7.6.01 (1) (x) relates to a litigation funding scheme mentioned in regulation 5C.11.01. The exemption mentioned in paragraph 7.6.01 (1) (y) relates to a litigation funding arrangement mentioned in that regulation.

- (3) A person commits an offence if the person contravenes subregulation (2).

Penalty: 50 penalty units.



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- (4) For subregulation (2), a person has adequate practices for managing a conflict of interest that may arise if the person can show through documentation that:
- (a) the person has conducted a review of the person's business operations that relate to the scheme or arrangement to identify and assess potential conflicting interests; and
  - (b) the person:
    - (i) has written procedures for identifying and managing conflicts of interest; and
    - (ii) has implemented the procedures; and
  - (c) the written procedures are reviewed at intervals no greater than 12 months; and
  - (d) the written procedures include procedures about the following:
    - (i) monitoring the person's operations to identify potential conflicting interests;
    - (ii) how to disclose conflicts of interest to general members and prospective general members;
    - (iii) managing situations in which interests may conflict;
    - (iv) protecting the interests of general members and prospective general members;
    - (v) how to deal with situations in which a lawyer acts for both the funder and general members;
    - (vi) how to deal with a situation in which there is a pre-existing relationship between any of a funder, a lawyer and a general member;
    - (vii) reviewing the terms of a funding agreement to ensure the terms are consistent with Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001*;
    - (viii) recruiting prospective general members; and
  - (e) the terms of the funding agreement are reviewed to ensure the terms are consistent with Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001*; and

- (f) the matters mentioned in paragraphs (a) to (e) are implemented, monitored and managed by:
  - (i) if the person is an entity other than an individual—the senior management or partners of the person; or
  - (ii) if the person is an individual that represents an entity—the senior management or partners of the entity.

**[7] Regulation 7.7.21**

*substitute*

**7.7.21 Exemption from application of Part 7.7 of the Act**

For paragraph 951C (1) (a) of the Act, Part 7.7 of the Act does not apply to a financial services licensee or an authorised representative in respect of financial services provided to retail clients who are not in this jurisdiction.

*Note* Regulation 7.9.98 also contains exemptions from the operation of Part 7.7 of the Act.

**[8] After regulation 7.8.25**

*insert*

**7.8.26 Exemption from application of section 992A of the Act**

For paragraph 992C (1) (a) of the Act, section 992A of the Act does not apply to a person to the extent that the person is offering a financial product for issue or sale in relation to:

- (a) a litigation funding scheme mentioned in regulation 5C.11.01; or
- (b) a litigation funding arrangement mentioned in regulation 5C.11.01.

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**[9] After regulation 7.9.98**

*insert*

**7.9.98A Exemption from application of Part 7.9 of the Act**

For paragraph 1020G (1) (a) of the Act, Part 7.9 of the Act does not apply to a person to the extent that the person is:

- (a) issuing or selling:
  - (i) a litigation funding scheme mentioned in regulation 5C.11.01; or
  - (ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or
- (b) making a recommendation to acquire:
  - (i) a litigation funding scheme mentioned in regulation 5C.11.01; or
  - (ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or
- (c) making an offer relating to the issue or sale of:
  - (i) a litigation funding scheme mentioned in regulation 5C.11.01; or
  - (ii) a litigation funding arrangement mentioned in regulation 5C.11.01; or
- (d) advertising:
  - (i) a litigation funding scheme mentioned in regulation 5C.11.01; or
  - (ii) a litigation funding arrangement mentioned in regulation 5C.11.01.

**Table of Instruments**

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**Notes to the *Corporations Amendment Regulation 2012 (No. 6)***

**Note 1**

The *Corporations Amendment Regulation 2012 (No. 6)* (in force under the *Corporations Act 2001*) as shown in this compilation comprises Select Legislative Instrument 2012 No. 172 amended as indicated in the Tables below.

**Table of Instruments**

<b>Year and Number</b>	<b>Date of FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
2012 No. 172	13 July 2012 (see F2012L01549)	12 July 2013	
2012 No. 308	11 Dec 2012 (see F2012L02414)	12 Dec 2012	—

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
S. 2.....	rs. 2012 No. 308
<b>Schedule 1</b>	
Item 1 .....	rs. 2012 No. 308
Item 1A.....	ad. 2012 No. 308
Item 1B.....	ad. 2012 No. 308
Item 5 .....	rs. 2012 No. 308
Item 6 .....	rs. 2012 No. 308
Item 7 .....	rs. 2012 No. 308
Item 8 .....	rs. 2012 No. 308
Item 9 .....	rs. 2012 No. 308
Item 10 .....	rep. 2012 No. 308