

ASIC Class Order [CO 13/898]

Representative proceedings and proof of debt arrangements funded by conditional costs agreements

This instrument has effect under s601QA(1)(b), 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001*.

This compilation was prepared on 10 July 2014 taking into account amendments up to [CO 14/571]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001—Subsections 601QA(1)(b), 926A(2)(a), 992B(1)(a) and 1020F(1)(a)—Declaration and Exemption

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraphs 601QA(1)(b), 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 13/898].

Commencement

3. This instrument commences on the day it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. Chapter 5C of the Act applies to all persons as if section 9 of the Act were modified or varied as follows:

- (a) after the definition of *condition*, insert:

“*conditional costs agreement* means an agreement of the kind defined as a *conditional costs agreement* in the Legal Profession Act 2004 of the State of Victoria as at 11 July 2013 whether or not entered into in that State or for the purposes of that Act.

Note: The definition of *conditional costs agreement* in similar legislation other States may not cover costs agreements that involve certain uplift fees. An agreement involving such fees is not for this reason alone precluded from being a *conditional costs agreement* for the purposes of this Act. It is up to lawyers to comply with the requirements of any applicable State or Territory legislation regarding uplift fees.”;

- (b) in the definition of *managed investment scheme*, after paragraph (ma) insert:
 - “(maa) a scheme for participating in and conducting legal proceedings where the members of the scheme:
 - (i) have or may have an entitlement to a remedy arising out of the same or similar circumstances; and
 - (ii) wholly or substantially fund their legal costs under conditional costs agreements;
 - (mab) a scheme for proving claims against a company under Division 6 of Part 5.6 (including the preparation and lodgement of the proofs) where the members of the scheme:
 - (i) have or may have claims against the company arising out of the same or similar circumstances; and
 - (ii) wholly or substantially fund their legal costs under conditional costs agreements;”.

Exemption

5. A person does not have to comply with subsection 911A(1) or 911B(1) of the Act for the provision of a financial service in relation to:
 - (a) an interest in a managed investment scheme (a *conditional cost litigation scheme*) that is a scheme for participating in and conducting legal proceedings, where the members of the scheme:
 - (i) have or may have an entitlement to a remedy arising out of the same or similar circumstances; and
 - (ii) wholly or substantially fund their legal costs under conditional costs agreements; or
 - (b) an interest in a managed investment scheme (a *conditional cost proof of debt scheme*) that is a scheme for proving claims against a company under Division 6 of Part 5.6 of the Act (including the preparation and lodgement of the proofs) where the members of the scheme:
 - (i) have or may have claims against the company arising out of the same or similar circumstances; and
 - (ii) wholly or substantially fund their legal costs under conditional costs agreements; or
 - (c) an arrangement (a *funding product*), or an interest (a *funding product*) in an arrangement of either of the following kind, to the extent that the arrangement or interest is a financial product other than an interest in a

conditional cost litigation scheme or conditional cost proof of debt funding scheme:

- (i) an arrangement for participating in and conducting legal proceedings brought by or on behalf of a person where the person's legal costs are wholly or substantially funded under a conditional cost agreement;
 - (ii) an arrangement for proving claims made by a person against a company under Division 6 of Part 5.6 of the Act (including the preparation and lodgement of the proofs) where the person's legal costs are wholly or substantially funded under a conditional cost agreement.
6. A person does not have to comply with subsection 992A(1) or (3), or subsection 992AA(1), of the Act in relation to:
- (a) an interest in a conditional cost litigation scheme; or
 - (b) an interest in a conditional cost proof of debt scheme; or
 - (c) a funding product.
7. A person does not have to comply with Part 7.9 of the Act in relation to:
- (a) an interest in a conditional cost litigation scheme; or
 - (b) an interest in a conditional cost proof of debt scheme; or
 - (c) a funding product.

Application

8. For the avoidance of doubt, the declaration in paragraph 4 does not have effect for the purposes of section 601MB of the Act in relation to a contract entered into before the commencement of this instrument by a person to subscribe for an interest in:
- (a) a conditional cost litigation scheme; or
 - (b) a conditional cost proof of debt scheme.
9. This instrument has effect until 12 July 2016.

Interpretation

10. In this instrument:

conditional costs agreement means an agreement of the kind defined as a ***conditional costs agreement*** in the Legal Profession Act 2004 of the State of

Victoria as at 11 July 2013 whether or not entered into in that State or for the purposes of that Act.

Note: The definition of *conditional costs agreement* in similar legislation other States may not cover costs agreements that involve certain uplift fees. An agreement involving such fees is not for this reason alone precluded from being a *conditional costs agreement* for the purposes of this Act. It is up to lawyers to comply with the requirements of any applicable State or Territory legislation regarding uplift fees.

Notes to ASIC Class Order [CO 13/898]

Note 1

ASIC Class Order [CO 13/898] (in force under s601QA(1)(b), 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

Table of Instruments

Instrument number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 13/898]	12/7/2013 (<i>see</i> F2013L01376)	12/7/2013	
[CO 14/571]	10/7/2014 (<i>see</i> F2014L00977)	10/7/2014	-

Table of Amendments

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

Provision affected	How affected
Para 9	am. [CO 14/571]