
EXPLANATORY STATEMENT for

ASIC Corporations (Repeal) Instrument 2015/684

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes the *ASIC Corporations (Repeal) Instrument 2015/684* under paragraphs 926A(2)(c), 992B(1)(c), 1020F(1)(a) and 1020F(1)(c) of the *Corporations Act 2001* (the Act).

Paragraph 926A(2)(c) provides that ASIC may declare that Part 7.6 of the Act (other than Divisions 4 and 8) applies in relation to a person or class of persons as if specified provisions were modified.

Paragraph 992B(1)(c) provides that ASIC may declare that Part 7.8 of the Act applies in relation to a person or class of persons as if specified provisions were modified.

Paragraph 1020F(1)(a) provides that ASIC may exempt a person or class of persons from Part 7.9 of the Act or specified provisions in that Part and paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a class of persons as if specified provisions were modified.

1. Background

Under the *Legislative Instruments Act 2003* (Legislative Instruments Act), legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve them. To preserve its effect, a legislative instrument must be remade before its sunset date.

In May 2015, ASIC released Consultation Paper 230 *Remaking ASIC class orders on banking and insurance* (CP 230). CP 230 outlined ASIC’s proposals for dealing with four legislative instruments due to sunset between 1 October 2015 and 1 October 2017. Following CP 230, ASIC has remade three of the relevant legislative instruments to preserve their effect. The instruments that have been remade are:

- ASIC Class Order [CO 04/909] ([CO 04/909]) *Agency banking*, which reduced unnecessary regulatory requirements in relation to the authorisation of distributors of basic deposit products;

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- ASIC Class Order [CO 05/681] ([CO 05/681]) *Transitional relief for deposit product providers — PDSs and periodic statements*, which removed the unnecessary burden of disclosing:
 - interest rates in a Product Disclosure Statement for a deposit product; and
 - a termination value in a periodic statement for a deposit product; and
 - ASIC Class Order [CO 05/1070] ([CO 05/1070]) *General insurance distributors*, which reduced unnecessary regulatory requirements in relation to the authorisation of distributors of general insurance products.

[CO 04/909] and [CO 05/1070] have been remade as the *ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682*. [CO 05/681] has been remade as the *ASIC Corporations (Deposit Product Disclosure) Instrument 2015/683*.

ASIC Class Order [CO 06/623]

ASIC has decided not to remake the fourth legislative instrument discussed in CP 230. That instrument is ASIC Class Order [CO 06/623] ([CO 06/623]) *Relief for certain general insurers from s981B account requirements*.

ASIC made [CO 06/623] for the avoidance of doubt. At the time there was a concern that the client money requirements under Subdivision A of Division 2 of Part 7.8 and section 1017E of the Act may apply inappropriately where one insurer received premium payments as the agent of another insurer. [CO 06/623] dealt with this issue by exempting the insurer that receives the payments from the client money handling provisions in Part 7.8 if that insurer complies with the money handling obligations under section 1017E.

However, the client money handling requirements in the Act apply in the same way regardless of whether premium payments are collected by the insurer that issues the contract or by another insurer acting as the issuer's agent. The exemption from Subdivision A of Division 2 of Part 7.8 contained in paragraph 981A(2)(c) extends to money collected by insurers that act as agents of the issuing insurer. This exemption will apply to the money if it is treated in accordance with section 1017E. As a result, the relief provided by [CO 06/623] is otherwise available under the ordinary operation of the Act.

2. Purpose of the instrument

The purpose of the *ASIC Corporations (Repeal) Instrument 2015/684* is to:

- repeal [CO 04/909], [CO 05/681] and [CO 05/1070] now that new legislative instruments preserving their effect have been made; and
- repeal [CO 06/623] as it is no longer required.

3. Operation of the instrument

Clause 4 of the provides that each of the instruments set out in Schedule 1 are amended or repealed as set out in that Schedule. Schedule 1 provides that [CO 04/909], [CO 05/681], [CO 05/1070] and [CO 06/623] are repealed in full.

4. Consultation

As part of its review of [CO 04/909], [CO 05/681], [CO 05/1070] and [CO 06/623], ASIC released CP 230. CP 230 outlined ASIC's proposals to:

- remake [CO 04/909] and [CO 05/1070] as a single legislative instrument;
- remake [CO 05/681]; and
- repeal [CO 06/623].

ASIC received 3 submissions in response to CP 230. No submissions received raised any concerns with ASIC's proposals.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal) Instrument 2015/684

ASIC Corporations (Repeal) Instrument 2015/684 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

ASIC Corporations (Repeal) Instrument 2015/684 repeals three legislative instruments that have been remade to preserve their effect beyond their sunset dates. It also repeals a fourth legislative instrument that is no longer required.

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.

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