



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211

I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 18 March 2016

Stephen Yen

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*.

2 Commencement

This instrument commences at the same time as the commencement of the *ASIC Corporations (Repeal) Instrument 2016/212*.

3 Cessation

This instrument ceases to apply three years after it commences.

4 Authority

This instrument is made under subsections 765A(2) and 1020F(1) and paragraphs 601QA(1)(a), 926A(2)(a), 951B(1)(a) and 992B(1)(a) of the *Corporations Act 2001*.

5 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

device means any object by which a person may use a low value non-cash payment facility or gift facility.

eligible non-cash payment facility means a non-cash payment facility that:

- (a) is issued by a financial services licensee; or
- (b) is issued by a participant in a designated payment system, within the meaning of section 7 of the *Payments Systems (Regulation) Act 1998*, and that relates to that system.

expiry date means a date after which a non-cash payment facility cannot be used to make non-cash payments.

facility has a meaning affected by section 762C of the Act.

gift facility means a non-cash payment facility in relation to which all of the following apply:

- (a) the amount available for making non-cash payments under the facility:

- (i) is set when the facility is issued;
- (ii) cannot be increased after the facility is issued unless it is because of the reversal of a payment made under the facility or the correction of an error;
- (iii) cannot be withdrawn from the facility by means of a cash payment unless all of the following apply:
 - (A) one or more non-cash payments have already been made using the facility;
 - (B) the amount available for making non-cash payments is an amount that, in the reasonable opinion of the issuer of the facility, is unlikely to be able to be conveniently used under the facility;
 - (C) the withdrawal is of the full amount standing to the credit of the facility;
- (b) the facility may be used to make non-cash payments on more than one occasion;
- (c) the facility is only promoted or marketed as a gift product;
- (d) where the facility has an expiry date and the person who holds the facility is provided with a device to use the facility:
 - (i) the expiry date is prominently set out on the device in a manner that makes it clear that it is an expiry date; or
 - (ii) the date of issue of the facility (or a date that is no later than 3 months after that date) is prominently set out on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
- (e) where the facility has an expiry date but no device is provided, the expiry date is prominently displayed in a manner that:
 - (i) could reasonably be expected to come to the attention of a person who is given, or given use, of the facility at the time it is given and at the time it is used; and
 - (ii) makes clear that it is an expiry date;
- (f) the facility is not a component of another financial product.

low value non-cash payment facility means a non-cash payment facility in relation to which all of the following apply:

- (a) the total amount available for making non-cash payments under all facilities of the same class issued by that issuer and held by any person at any one time does not exceed \$1,000;
- (b) the total amount available for making non-cash payments under all facilities of the same class issued by that issuer does not exceed \$10,000,000 at any time;
- (c) the facility is not a component of another financial product.

loyalty scheme means a non-cash payment facility in relation to which all of the following apply:

- (a) the facility is issued as part of a scheme the dominant purpose of which is to promote the purchase of goods from, or the use of services of, the issuer of the facility or another person;
- (b) a person who uses or holds the facility is allocated credits (however described) as a result of the purchase of goods from, or the use of the services of, the issuer of the facility or the other person;
- (c) the credits allocated under the facility can be used to make a payment or part payment for goods or services or to obtain some other benefit;
- (d) the facility is not a component of another financial product.

makes non-cash payments has the meaning given by section 763D of the Act.

non-cash payment facility means a facility through which, or through the acquisition of which, a person makes non-cash payments.

offer has a meaning affected by subsection 1010C(2) of the Act.

prepaid mobile facility means a non-cash payment facility in relation to which all of the following apply:

- (a) the facility is part of an arrangement for the supply of a public mobile telecommunications service under which the service may be used to the extent it is covered by the amount (the ***prepaid amount***) paid in advance which remains unused;
- (b) the non-cash payments made under the facility are debited against the prepaid amount;
- (c) the facility is not a component of another financial product.

public mobile telecommunications service has the meaning given by section 32 of the *Telecommunications Act 1997*.

Part 2—Relief for non-cash payment facilities

6 Loyalty schemes

Operation of a loyalty scheme

- (1) A person does not have to comply with subsection 601ED(5) of the Act in relation to a loyalty scheme.

Declaration not to be a financial product

- (2) A loyalty scheme is not a financial product for the purposes of Chapter 7 of the Act.

7 Road toll facilities

A facility through which, or through the acquisition of which, a person makes a non-cash payment of a toll for the use of a road, but no other kind of non-cash payment, is not a financial product for the purposes of Chapter 7 of the Act.

8 Non-cash payment facilities used for third party payments

A financial services licensee does not have to comply with subsection 911A(1) of the Act for the provision of a financial service if:

- (a) the financial service is provided in the ordinary course of the licensee's business; and
- (b) the financial service consists of either or both of the following:
 - (i) advising a person in relation to an eligible non-cash payment facility that the person may use, or has used, to pay a person other than the licensee for goods or services;
 - (ii) arranging for a person to deal (other than by way of issue) in an eligible non-cash payment facility that the person may use to pay a person other than the licensee for goods or services; and
- (c) the licensee is not the issuer of a non-cash payment facility; and
- (d) the licence held by the licensee does not cover the provision of a financial service referred to in paragraph (b).

9 Low value non-cash payment facilities

Exemptions

- (1) A person providing financial services in relation to a low value non-cash payment facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a low value non-cash payment facility does not have to comply with Part 7.6 (other than subsection 911A(1) and Divisions 4 and 8), Divisions 2, 3 and 4 of Part 7.7 and Divisions 2, 3, 5 and 6 of Part 7.8 in relation to those services.
- (3) An authorised representative of a financial services licensee providing financial services in relation to a low value non-cash payment facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

Note: The person will not be able to rely on the exemptions in the circumstances specified in subsection (6).

Conditions: Issuers of low value non-cash payment facilities

- (4) An issuer of a low value non-cash payment facility who relies on any of the exemptions in subsections (1), (2) and (3) must take reasonable steps to ensure that all of the following are satisfied:
 - (a) before or at the time the low value non-cash payment facility is offered to a person as a retail client, the person is given a written document (**disclosure document**) which sets out the terms and conditions of the facility and separately sets out in a prominent manner information about:
 - (i) whether any of the terms and conditions of the facility may be unilaterally varied by the issuer and a statement of how a person (**client**) who holds the facility may get information about the new terms and conditions;
 - (ii) whether the facility has an expiry date and, if so, where the expiry date may be found;
 - (iii) the procedures for dealing with any unauthorised or mistaken transactions relating to the facility or the loss or theft of the device (if any) through which the facility is used;
 - (iv) fees or charges for acquiring and using the facility and where any fees or charges are subject to change during the life of the facility, a statement of how the client may get information about the new fees or charges;

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- (b) the information in the disclosure document is worded and presented in a clear, concise and effective manner;
 - (c) where the facility has an expiry date and the client is provided with a device to use the facility:
 - (i) the expiry date is prominently set out on the device in a manner that makes it clear that it is an expiry date; or
 - (ii) the date of the issue of the facility (or a date no later than 3 months after that date) is prominently set out on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
 - (d) where the facility has an expiry date but no device is provided, the expiry date is set out in the disclosure document or in a written statement attached to the disclosure document;
 - (e) a convenient means is available, that involves no charge by the issuer or its associates, for the client to do all of the following:
 - (i) check the amount standing to the credit of the facility;
 - (ii) check any expiry date associated with the facility;
 - (iii) obtain at reasonable intervals a record of the past 10 transactions under the facility;
 - (f) if the terms and conditions of the facility are unilaterally varied, or the fees or charges for using the facility are changed during the life of the facility:
 - (i) information about the variation or change is:
 - (A) made available to the client in accordance with the information in the disclosure document referred to in paragraph (a)(i) or (iv); and
 - (B) displayed in a clear and prominent way at each place and each website the facility may be acquired; and
 - (ii) the new terms and conditions or fees and charges are made available to the client on request;
 - (g) if a low value non-cash payment facility is issued to a person as a retail client, the issuer maintains an internal dispute resolution procedure that:
 - (i) complies with standards and requirements made or approved by ASIC for the purposes of subparagraph 912A(2)(a)(i) of the

Act, or approved by such an instrument under that provision;
and

- (ii) covers complaints against the issuer made by retail clients in connection with financial services provided in relation to the facility.

Conditions: Other people

- (5) A person who relies upon any of the exemptions in subsections (1), (2) and (3) but is not the issuer of the low value non-cash payment facility must take reasonable steps to ensure that all of the following are satisfied:
 - (a) before or at the time the low value non-cash payment facility is offered to a person as a retail client, the person is provided with the disclosure document;
 - (b) where the facility has an expiry date and the client is provided with a device to use the facility:
 - (i) the expiry date is prominently set out on the device in a manner that makes it clear that it is an expiry date; or
 - (ii) the date of the issue of the facility (or a date no later than 3 months after that date) is prominently set out on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
 - (c) where the facility has an expiry date but no device is provided, the expiry date is set out in the disclosure document or in a written statement attached to the disclosure document.

Non-compliance with conditions

- (6) If a condition in subsection (4) or (5) applies to a person and the person does not comply with the condition, the exemptions in subsections (1), (2) and (3) cease to apply to the person.

10 Gift facilities

- (1) A person providing financial services in relation to a gift facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a gift facility does not have to comply with Part 7.6 (other than subsection 911A(1) and Divisions 4 and 8), Divisions 2, 3 and 4 of Part 7.7 and Divisions 2, 3, 5 and 6 of Part 7.8 in relation to those services.

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- (3) An authorised representative of a financial services licensee providing financial services in relation to a gift facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

11 Prepaid mobile facilities

- (1) A person providing financial services in relation to a prepaid mobile facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a prepaid mobile facility does not have to comply with Part 7.6 (other than subsection 911A(1) and Divisions 4 and 8), Divisions 2, 3 and 4 of Part 7.7 and Divisions 2, 3, 5 and 6 of Part 7.8 in relation to those services.
- (3) An authorised representative of a financial services licensee providing financial services in relation to a prepaid mobile facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

12 Requirement to confirm transactions for travellers' cheques

Travellers' cheques are exempt from section 1017F of the Act.