

EXPLANATORY STATEMENT for

ASIC Corporations (Qualified Accountant) Instrument 2016/786

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Qualified Accountant) Instrument 2016/786 under subsection 88B(2) of the *Corporations Act 2001* (the Corporations Act).

Subsection 88B(2) of the Corporations Act provides that ASIC may, in writing, declare that all members of a specified professional body, or all persons in a specified class of members of a specified professional body, are qualified accountants for the purposes of the Corporations Act.

1. Background

Under paragraph 708(8)(c) of the Corporations Act, a body does not need to provide a disclosure document for an offer of its securities, as otherwise required by section 708 of the Corporations Act, to a person who has been certified by a qualified accountant as having net assets of at least \$2.5 million or gross income for each of the last two financial years of at least \$250,000.

Under paragraph 761G(7)(c) of the Corporations Act, certain financial products or financial services are only provided to a person as a retail client if a similar certification is given by a qualified accountant within the six months preceding the giving of the product or service.

A qualified accountant is a member of a professional body that is approved by ASIC under subsection 88B(2) of the Corporations Act.

2. Purpose of the instrument

Implicit in the use of the term ‘qualified accountant’ is that people who are able to be approved under subsection 88B(2) of the Corporations Act must be accountants.

The preparation of a certificate under paragraphs 708(8)(c) or 761G(7)(c) of the Corporations Act requires the same type of professional accounting expertise and skills as those used when compiling or auditing a financial report. This instrument declares that for the purposes of these provisions, a qualified accountant is the same as a ‘prescribed accountant’ as defined in ASIC Corporations (Audit Relief) Instrument 2016/784.

3. Operation of the instrument

A qualified accountant for the purposes of the Corporations Act can only be a member of a class of members of a professional body as specified by the instrument.

4. Consultation

ASIC consulted with stakeholders through Consultation Paper 267 which was issued for comment on 15 August 2016 and open for comment to 12 September 2016.

The Office of Best Practice Regulation has assessed that a Regulatory Impact Statement is not necessary for this instrument.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Qualified Accountant) Instrument 2016/786

ASIC Corporations (Qualified Accountant) Instrument 2016/786 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

The instrument specifies the members of professional bodies who are qualified accountants for the purposes of the Corporations Act.

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.

Australian Securities and Investments Commission