

EXPLANATORY STATEMENT for
ASIC Corporations (Repeal and Transitional) Instrument 2017/271

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Repeal and Transitional) Instrument 2017/271* (the *Instrument*) under s601QA(1)(a) and 911A(2)(l) of the *Corporations Act 2001*.

Subsection 601QA(1)(a) provides that ASIC may exempt a person from a provision of Chapter 5C of the Act.

Paragraph 911A(2)(l) provides that ASIC may exempt a person from the requirement to hold an Australian financial services licence for a financial service they provide. This is done by granting an exemption in writing and publishing it in the *Gazette*.

Paragraph 926A(2)(a) provides that ASIC may exempt a person from Part 7.6 of the Act.

The *Instrument* repeals one class order. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the *Act*), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

1. Background

Under the Legislation Act 2003, 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, such as a class order, must be remade before the sunset date. The purpose of sunset is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

ASIC Class Order [CO 04/526] Foreign collective investment schemes ([CO 04/526]) provides relief for collective investment schemes from the requirement to register as a managed investment scheme or obtain an Australian financial services licence where the relevant overseas regulatory regime delivers regulatory outcomes sufficiently equivalent to our own regulatory regime.

[CO 04/526] is to sunset on 1 April 2017.

In order to provide certainty while the policy settings for recognition of foreign investment schemes are reviewed, ASIC has decided to extend the operation of [CO 04/526] for two years. This will allow sufficient time to review the existing policy settings including in light of other regulatory developments, such as the Government's announcement of the introduction of new collective investment vehicles, including a corporate collective investment vehicle (CCIV) and partnership collective investment vehicle (PCIV), and implementation of the Asia Region Funds Passport (ARFP) regime.

2. Purpose of the instrument

The purpose of *ASIC Corporations (Repeal and Transitional) Instrument 2017/271* is to preserve the effect of [CO 04/526] for two years. The two year period will allow an opportunity to review whether the policy settings for recognition of foreign collective investment schemes remain appropriate.

3. Operation of the instrument

The Instrument operates to repeal [CO 04/526] while providing transitional relief to extend its effect for two years.

Schedule 1 – Repeal of sunseting legislative instrument

Schedule 1 provides that [CO 04/526] is repealed in full.

Schedule 2 – Transitional continuation of relief

Subitem (1) of Schedule 2 provides that the exemptions specified in [CO 04/526] continue to apply by force of this instrument, in the circumstances and on the conditions specified in relation to the exemption. The exemption from the requirement to hold a financial services licence is continued under paragraph 926A(2)(a) in accordance with ASIC's current practices for giving such relief.

Subitem (2) provides that subitem (1) has effect for a period of 2 years from the date of the commencement of the instrument.

4. Consultation

ASIC consulted stakeholders on its proposal to continue the effect of the instrument for a period of two years. We received no adverse comments from stakeholders.

Once there is more certainty around policy settings in light of other regulatory developments, we will revisit the Instrument.

Following the review, ASIC will publically consult on any proposed changes to the underlying exemptions and their associated conditions.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal and Transitional) Instrument 2017/271

ASIC Corporations (Repeal and Transitional) Instrument 2017/271 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

This instrument facilitates recognition of collective investment schemes where the relevant overseas regulatory regime delivers regulatory outcomes sufficiently equivalent to our own regulatory regime. It continues relief previously available under *ASIC Class Order [CO 04/526] Foreign collective investment schemes* for a period of 2 years to allow review of the policy settings in light of other regulatory developments.

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