

ASIC Corporations (Changing Scheme and Retail CCIV Constitutions) Instrument 2019/700

**About this compilation**

**Compilation No. 1**

This is a compilation of *ASIC Corporations (Changing Scheme and Retail CCIV Constitutions) Instrument 2019/700*) as in force on 15 November 2022. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the ***endnotes***) include information

about amending instruments and the amendment history of each amended provision.

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC (Changing Scheme and Retail CCIV Constitutions) Instrument 2019/700.*

3 Authority

This instrument is made under subsections 601QA(1) and 1243(2) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

***Act*** means the *Corporations Act 2001*.

Part 2—Declaration

5 Registered scheme – changing the constitution

Chapter 5C of the Act applies to all persons in relation to a registered scheme as if section 601GC of the Act were modified or varied by, after subsection (1), inserting the following subsections:

“(1B) If the constitution of a scheme sets out a procedure for varying or cancelling rights of a class of members of the scheme, or rights attached to a class of interests under the scheme, those rights may be varied or cancelled by a resolution under paragraph (1)(a) only if that procedure is complied with.

*Passport Rules*

(1C) Despite subsection (1), the responsible entity of a registered scheme may modify the constitution of the scheme to the extent the responsible entity reasonably considers necessary to ensure the constitution:

1. is consistent with section 4 of the Passport Rules for this jurisdiction; and
2. specifies a right of withdrawal and contains provisions for making and dealing with withdrawal requests that are consistent with Division 7.1 of Part 7 of those Rules.

Any modifications made to the constitution under this subsection may be made before the scheme has a status of being an Australian passport fund but only have operative effect while the Passport Rules for this jurisdiction apply in relation to the fund.

*Other scenarios*

(1D) Despite subsection (1), the constitution of the scheme may be modified, or repealed and replaced with a new constitution, by the responsible entity if at least one of the following is satisfied at the time of the modification, or repeal and replacement:

(a) a meeting of members is unable to be held because the quorum requirement in either subsection 252R(2) or the scheme’s constitution is not capable of being satisfied because the scheme has an insufficient number of members;

(b) every member of the scheme is not entitled to vote at a meeting of members because of section 253E;

(c) all interests in the scheme were issued in situations that:

(i) did not require the responsible entity to give a Product Disclosure Statement; and

(ii) did not need disclosure under Part 6D.2, or under Division 2 of Part 7.12 of the old Corporations Law.

(1E) The responsible entity may only make the modification, or repeal and replacement, under subsection (1D) if, before the modification, or repeal and replacement, both of the following are satisfied:

(a) the responsible entity has provided to each member of the scheme, the auditor of the scheme and the auditor of the scheme’s compliance plan, all the information that the responsible entity reasonably expects to be material to the decision of a member whether to consent to the modification, or repeal and replacement;

(b) after the information in paragraph (a) has been provided, every member of the scheme has given their written consent, to the modification, or repeal and replacement.”.

6 Retail CCIV – changing the constitution

Part 8B.3 of the Act applies in relation to a retail CCIV as if section 1223D of the Act were modified or varied by, after subsection (2), inserting the following subsections:

“(2A) If the constitution of a retail CCIV sets out a procedure for varying or cancelling rights of a class of members of the retail CCIV, or rights attached to a class of shares in the retail CCIV, those rights may be varied or cancelled by a resolution under subparagraph (2)(a)(i) or (iii) only if that procedure is complied with.

*Passport Rules*

(2B) Despite subsection (2), the corporate director of a retail CCIV may modify the constitution of the retail CCIV to the extent the corporate director reasonably considers necessary to ensure the constitution:

(a) is consistent with section 4 of the Passport Rules for this jurisdiction; and

(b) specifies a right of withdrawal and contains provisions for making and dealing with withdrawal requests that are consistent with Division 7.1 of Part 7 of those Rules.

Any modifications made to the constitution under this subsection may be made before a sub-fund of the retail CCIV has a status of being an Australian passport fund but only have operative effect while the Passport Rules for this jurisdiction apply in relation to the fund.

*Other scenarios*

(2C) Despite subsection (2), the constitution of the retail CCIV may be modified, or repealed and replaced with a new constitution, by the corporate director if at least one of the following is satisfied at the time of the modification, or repeal and replacement:

(a) a meeting of members is unable to be held because the quorum requirement in either subsection 252R(2) or the retail CCIV’s constitution is not capable of being satisfied because the retail CCIV has an insufficient number of members;

Note: Section 252R applies in relation to a CCIV and its members subject to the modifications in Subdivision B of Division 6 of Part 8B.3.

1. every member of the retail CCIV is not entitled to vote at a meeting of members because of section 253E;

Note: Section 253E applies in relation to a CCIV subject to the modifications in Subdivision B of Division 6 of Part 8B.3.

(c) all shares in the retail CCIV were issued in situations that did not require the retail CCIV to give a Product Disclosure Statement.

(2D) The corporate director may only make the modification, or repeal and replacement, under subsection (2C) if, before the modification, or repeal and replacement, both of the following are satisfied:

(a) the corporate director has provided to each member of the retail CCIV, the auditor of the retail CCIV and the auditor of the retail CCIV’s compliance plan, all the information that the corporate director reasonably expects to be material to the decision of a member whether to consent to the modification, or repeal and replacement;

(b) after the information in paragraph (a) has been provided, every member of the retail CCIV has given their written consent to the modification or repeal and replacement.”.

Endnotes

Endnote 1—Instrument history

| Instrument number | Date of FRL registration | Date of commencement | Application, saving or transitional provisions |
| --- | --- | --- | --- |
| 2019/700 | 12/09/2019 (*see* F2019L01185) | 13/09/2019 |  |
| 2022/0940 | 14/11/2022 (*see* F2022L01459) | 15/11/2022 | - |

Endnote 2—Amendment history

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed rs. = repealed and substituted

| Provision affected  | How affected |
| --- | --- |
| Section 1 | am. 2022/0940 |
| Section 2 | rep. s48D LA |
| Section 3 | am. 2022/0940 |
| Section 5 (heading)  | rs. 2022/0940 |
| Section 6 | ad. 2022/0940 |