

ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 12 September 2019

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

3 Authority

This instrument is made under subsection 601QA(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

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

Part 2—Declaration

5 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(1D) Despite subsection (1), the constitution of the scheme may be modified, or repealed and replaced with a new constitution, by the responsible entity if at least one of the following is satisfied at the time of the modification, or repeal and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.”.