



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations and Credit (Repeal) Instrument 2020/839

This is the Explanatory Statement for *ASIC Corporations and Credit (Repeal) Instrument 2020/839*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Corporations Act 2001

National Consumer Credit Protection Act 2009

Summary

1. In 2016, ASIC established the ASIC Sandbox that provided conditional relief to allow fintech businesses to test certain products and services for 12 months without holding a licence under either the *Corporations Act 2001* (***Corporations Act***) or the *National Consumer Credit Protection Act 2009* (the ***National Credit Act***).
2. This licensing exemption—provided under *ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175* and *ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176*—was available to businesses providing certain financial services or engaging in certain credit activities that would usually require an Australian Financial Service (AFS) licence or Australian Credit Licence (credit licence).
3. ASIC's relief was intended to assist new businesses to test their services in an environment with a reduced regulatory burden, thereby addressing some of the key barriers to innovation that we had identified.
4. Effective 1 September 2020 the ASIC Sandbox has been superseded by the Government's Enhanced Regulatory Sandbox (***ERS***) that permits eligible entities to test a wider suite of financial services / products or engage in a wider range of credit activities for a longer duration of up to 24 months.
5. The ERS is enabled by the following regulations:
 - *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020* – for exemptions from the AFS licence requirement; and

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- *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* – for exemptions from the credit licence requirement;

Purpose of the instrument

6. The *ASIC Corporations and Credit (Repeal) Instrument 2020/839* repeals the following two ASIC instruments which established the ASIC Sandbox since the ASIC Sandbox is no longer available for testing:
 - *ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175*; and
 - *ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176*

(the ASIC Sandbox instruments)

Consultation

7. ASIC has consulted with the Office of Best Practice Regulation (OBPR) to confirm that no Regulation Impact Statement (RIS) is required for repeal of the ASIC Sandbox instruments.
8. No other consultation was undertaken in relation to the repeal of the ASIC Sandbox instruments since the ASIC Sandbox has been superseded by the ERS.

Operation of the instrument

9. Section 4 provides that each instrument specific in a Schedule to the instrument is repealed at set out in the items in the Schedule.

Schedule 1 repeals:

- *ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175*; and
- *ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176*

Legislative authority

10. The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations and Credit (Repeal) Instrument 2020/839* (the Repeal instrument) under paragraph 926A(2)(a) of the Corporations Act and paragraph 109(3)(a) of the National Credit Act.
11. Paragraph 926A(2)(a) of the Corporations Act provides that ASIC may exempt a person or class of persons from all or specified provisions in Part 7.6 of the Corporations Act.

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12. Paragraph 109(3)(a) of the National Credit Act provides that ASIC may exempt a person or class of persons from all or specified provisions to which Part 2–6 of the National Credit Act applies.
 13. Under subsection 33(3) of the *Acts Interpretation Act 1901* 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.

Statement of Compatibility with Human Rights

15. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations and Credit (Repeal) Instrument 2020/839

Overview

1. *ASIC Corporations and Credit (Repeal) Instrument 2020/839* repeals *ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175* and *ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176*.

Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. This instrument 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*.