ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784

made under 994L(2) of the *Corporations Act 2001*

Compilation No. 2

Compilation date: **23/03/2024**

Includes amendments up to: **ASIC Corporations (Amendment) Instrument 2024/146 F2024L00370**

Authorised Version F2024C00395 registered 26/04/2024

About this compilation

This compilation

This is a compilation of the *ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784* that shows the text of the law as amended and in force on 23/03/2024 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784*.

3 Repeal

This instrument is repealed at the start of 5 October 2028.

4 Authority

This instrument is made under subsection 994L(2) of the *Corporations Act 2001*.

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5 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

ASIC Act means the *Australian Securities and Investments Commission Act 2001*.

credit facility has the same meaning as in paragraph 12BAA(7)(k) of the ASIC Act.

debit card has the meaning given by subsection 12DL(5) of the ASIC Act, provided that for the purposes of this instrument a debit card does not include a non-cash payment facility referred to in subparagraphs (b)(i) to (v) of the definition of ***stored value facility***.

facility has a meaning affected by section 762C of the Act.

financial product has a meaning affected by subsection 994AA(1) of the Act.

gift facility has the meaning given in *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.*

loyalty scheme has the meaning given in *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.*

makes non-cash payments has the meaning given by subsection 12BAA(6) of the ASIC Act.

non-cash payment facility means a facility through which, or through the acquisition of which, a person makes non-cash payments.

prepaid mobile facility has the meaning given in *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211.*

Regulations means the *Corporations Regulations 2001*.

stored value facility means a non-cash payment facility in relation to which both the following are satisfied:

(a) under the terms of the facility, the person may store value (however described) for the purpose of making non-cash payments at a later time;

(b) the facility is not any of the following:

(i) a facility that can only be used to make payments to one person;

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(ii) a gift facility;

(iii) a loyalty scheme;

(iv) a facility through which, or through the acquisition of which, a person makes a non-cash payment of a toll for the use of a road, but no other kind of non-cash payment;

(v) a prepaid mobile facility.

Part 2—Declaration

6 Declaration for Part 7.8A of the Corporations Act

Retail and wholesale client definitions

(1) Part 7.8A of the Act applies in relation to regulated persons, and any other persons who are required to make a target market determination, as if:

(a) section 761G of the Act were modified or varied as follows:

(i) in paragraph 761G(7)(c), omit "6 months", substitute "2 years";

(ii) after paragraph 761G(7)(c), insert:

"(ca) the financial product, or the financial service, is acquired by a company or trust controlled by a person who meets the requirements of subparagraph (c)(i) or (ii);";

(iii) after subsection 761G(7), insert:

"(7A) In determining the net assets of a person under subparagraph (7)(c)(i), the net assets of a company or trust controlled by the person may be included.

Note: ***control*** is defined in section 50AA.

(7B) In determining the gross income of a person under subparagraph (7)(c)(ii), the gross income of a company or trust controlled by the person may be included.

Note: ***control*** is defined in section 50AA.";

(iv) after subsection 761G(4), insert:

"(4A) For the purposes of this Chapter, if a financial product, or a financial service, is or would be provided to, or acquired by, a body corporate as a wholesale client, related bodies corporate of the client are taken to be wholesale clients in respect of the provision or acquisition of that financial product or financial service."; and

(b) the definition of ***professional investor*** in section 9 of the Act were modified or varied by omitting paragraph (e) of the definition and substituting:

"(e) the person has or controls gross assets of at least $10 million (including any assets held by an associate or under a trust that the person manages);".

Reporting complaint information to persons who make target market determinations

(2) Part 7.8A of the Corporations Act applies in relation to regulated persons as if subsection 994F(4) were modified or varied by:

(a) after "(which relates to complaints)" inserting "and the regulated person received complaints in relation to the product during the reporting period"; and

(b) omitting "determination:" and substituting "determination the number of complaints the regulated person received."; and

(c) omitting paragraphs 994F(4)(a) and (b).

Reporting other information to persons who make target market determinations

(3) Part 7.8A of the Corporations Act applies in relation to regulated persons as if subsection 994F(5) were modified or varied by:

(a) omitting "determination:" and substituting "determination all the information of that kind (if any) that the regulated person acquired during the reporting period."; and

(b) omitting paragraphs 994F(5)(c) and (d).

Meaning of excluded conduct

(4) Part 7.8A of the Corporations Act applies in relation to persons who make target market determinations and regulated persons as if subsection 994A(1) were modified or varied by omitting the definition of ***excluded conduct*** and substituting:

"***excluded conduct*** means:

(a) an excluded dealing; or

(b) providing personal advice; or

(c) in the course of providing personal advice about a financial product, giving:

(i) a disclosure document for that product under Part 6D.2 of the Act; or

(ii) a Product Disclosure Statement for the product under Part 7.9 of the Act.".

Provision of Product Disclosure Statements by employers

(5) Part 7.8A of the Corporations Act applies in relation to regulated persons who are employers as if regulation 7.8A.25 of the Regulations were modified or varied as follows:

(a) in paragraph 7.8A.25(2)(a), after "employer and employee", inserting:

"or that would be a default fund product for the employer and employee if there were no stapled fund for the employee";

(b) in subregulation 7.8A.25(3), after the definition of ***fund*** inserting:

"***stapled fund***, for an employee at a particular time, has the meaning given by section 32Q of the *Superannuation Guarantee (Administration) Act 1992*.".

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Part 3—Exemptions

7 Exemptions for Part 7.8A of the Corporations Act

Facilities for making non-cash payments

(1) Subsections 994B(1) and (2) of the Act do not apply to a financial product that:

(a) is a financial product only because it is a non-cash payment facility; and

(b) is neither of the following:

(i) a debit card;

(ii) a stored value facility.

Contracts to exchange currency that are to be settled immediately

(2) Subsections 994B(1) and (2) of the Act do not apply to a financial product referred to in section 765A(1)(m) of the Act.

Margin lending to non-natural persons

(3) Subsections 994B(1) and (2) of the Act do not apply to a credit facility that would be a margin lending facility within the meaning of section 761EA of the Act, but for the credit facility being provided to non-natural persons.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

exp = expires/expired or ceases/ceased to have Effect

F = Federal Register of Legislation

gaz = gazette

LA = Legislation Act 2003

LIA = Legislative Instruments Act 2003

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784	1/10/2021 (see F2021L01381)	All provisions other than s 6(5): 5/10/2021 s 6(5): 1/11/2021	
ASIC Corporations (Amendment) Instrument 2023/706	6/9/2023 (see F2023L01194)	7/9/2023	
ASIC Corporations (Amendment) Instrument 2024/146	22/3/2024 (see F2024L00370)	23/3/2024	

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Endnote 4—Amendment history

Provision affected	How affected
s 2	rep. s 48D LA
s 3	am. 2023/706
s 7(4)	rep. 2023/706
s 5	am.2024/146

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