



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Compromises or Arrangements) Instrument 2025/613

This is the Explanatory Statement for *ASIC Corporations (Compromises or Arrangements) Instrument 2025/613 (Instrument)*.

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

Summary

1. Chapter 6D of the Corporations Act 2001 (**Act**) regulates the making of offers for the issue or sale of securities and generally requires a disclosure document (e.g. a prospectus) for offers received in Australia, unless an exemption applies. Subsection 708(17) provides an exemption from this prospectus requirement for offers of securities made under a compromise or scheme of arrangement under Part 5.1 of the Act (**Part 5.1 scheme**) because investors do not need a prospectus in addition to the disclosure provided under Part 5.1.
2. Part 7.9 of the Act regulates offers of financial products and generally requires a Product Disclosure Statement (**PDS**) for offers of financial products received in Australia (unless an exemption applies). The Act does not provide any specific exemption for the offer or issue of financial products made under a Part 5.1 scheme. This means that an entity conducting a Part 5.1 scheme where a financial product is offered as consideration would ordinarily need to provide members with a PDS for that offer.

Disclosure relief for Part 5.1 schemes

3. The Instrument gives relief from Part 7.9's requirement for a PDS where financial products are offered under a Part 5.1 scheme. This relief is analogous to the prospectus exemption in subsection 708(17) and is given on the basis that members do not need a PDS in addition to the disclosure provided under Part 5.1.

Disclosure relief for certain foreign schemes of arrangement

4. The Act also does not provide any specific disclosure exemption for securities or financial products offered or issued under a scheme of arrangement regulated by foreign law (**foreign scheme**). This means that such offers would generally

need to be accompanied by a prospectus or PDS if they are received in Australia.

5. The requirement to prepare an Australian prospectus or PDS may mean Australian investors are excluded from receiving scrip under a foreign scheme. For this reason, the Instrument provides disclosure relief for foreign schemes that we consider are subject to regulation that is comparable to the Part 5.1 regime. These are schemes regulated under the laws of one of the following: Hong Kong, Malaysia, New Zealand, Singapore, South Africa or the United Kingdom (*approved foreign scheme*).

Purpose of the instrument

6. The purpose of the Instrument is to provide relief from the prospectus and PDS requirements to persons who:
 - (a) offer financial products as consideration under a Part 5.1 scheme; or
 - (b) offer securities or financial products to Australian residents under an approved foreign scheme.
7. The Instrument provides relief, on largely the same terms as *ASIC Corporations (Compromises or Arrangements) Instrument 2015/358* which was scheduled to expire on 1 October 2025.

Consultation

8. On 9 July 2025, ASIC published simple consultation CS 25 *Proposed remake of disclosure relief for offers of foreign securities and interests to Australian investors* on its website (**CS 25**).
9. On 9 July 2025, ASIC also published an accompanying news item *ASIC proposes to remake disclosure relief for offers of foreign securities and interests to Australian investors*.
10. ASIC brought CS 25 to the attention of its external stakeholders through the Corporate Finance Update published July 2025.
11. ASIC did not receive any submissions to CS 25 (which closed 15 August 2025).

Operation of the instrument

12. The Instrument commences on the day after it is registered on the Federal Register of Legislation

PDS relief for Part 5.1 schemes and approved foreign schemes

13. The Instrument provides an exemption from sections 1012A, 1012B and 1012D of the Act in relation to a recommendation to acquire, issue or sale, or an offer to issue or sell, a financial product under:
 - (a) a Part 5.1 scheme; or

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- (b) a compromise or arrangement between a foreign company and its members (or any class of them) under an approved foreign scheme.

Prospectus relief for approved foreign schemes

- 14. The Instrument provides an exemption from Parts 6D.2 and 6D.3 of the Act for an offer of securities under an approved foreign scheme between the foreign company and its members (or any class of them).

On-sale relief

- 15. The Instrument also gives relief from the on-sale restrictions in subsections 707(3) and 1012C(6) where an investor is issued scrip without disclosure in reliance on the Instrument. Without on-sale relief, a person who received securities or financial products described in subsections 707(3) and 1012C(6) under an approved foreign scheme conducted without a prospectus or PDS would be restricted from selling those securities or financial products in Australia within 12 months of receiving them.

Modification to subsection 708(17) and 1019D(1)(d)(iii)

- 16. The Instrument modifies subsection 708(17) and paragraph 1019D(1)(d)(iii) so that it refers to securities offered under a Part 5.1 compromise or arrangement that is approved at a meeting held "*or to be considered at a meeting held*" as a result of an order under subsection 411(1) or (1A). This clarification is required because the obligation to give retail investors a disclosure document would ordinarily arise before the Part 5.1 meeting is held.

Legislative instrument and primary legislation

- 17. The subject matter and policy implemented by the Instrument is more appropriate for a legislative instrument rather than primary legislation because the matters contained in the Instrument are highly specific and only apply where the offer is made in accordance with the laws of a relatively small number of countries which regulate arrangements and compromises in a similar manner as the Act. The Instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces anomalous outcomes that would be inconsistent with the intent of the primary law. If the matters in the Instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of entities. This would result in additional cost and unnecessary complexity for other users of the primary legislation.
- 18. It will be a matter for the Government and for Parliament as to whether the Act or Regulations may be amended in future to include the relief in the Instrument.

Duration of the instrument

- 19. The Instrument will expire after 5 years.

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20. This allows sufficient time for the Government and for Parliament to determine whether to amend the Act or Regulations to include the relief.

Legislative authority

21. ASIC makes the Instrument under subsections 741(1) and 1020F(1) of the Act.
22. Subsection 741(1) provides that ASIC may:
- (a) exempt a person from a provision of Chapter 6D; or
 - (b) declare that Chapter 6D applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
23. Subsection 1020F(1) provides that ASIC may:
- (a) exempt a person or class of persons from all or specified provisions of Part 7.9; or
 - (b) exempt a financial product or a class of financial products from all or specified provisions of Part 7.9; or
 - (c) declare that Part 7.9 applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.
24. The Instrument is disallowable under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

25. 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 (Compromises or Arrangements) Instrument 2025/613

Overview

1. This instrument gives relief from the Product Disclosure Statement (**PDS**) requirements in Part 7.9 of the *Corporations Act 2001 (Act)* where financial products are offered under a Pt 5.1 scheme. The instrument also gives relief from the disclosure requirements in Chapter 6D and the PDS requirements in Part 7.9 of the Act where securities or financial products are offered under a scheme regulated in Hong Kong, Malaysia, New Zealand, Singapore, South Africa or the United Kingdom.

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*.