Explanatory Statement

ASIC Corporations (Wholly-owned Companies) Instrument 2026/533

This is the Explanatory Statement for *ASIC Corporations (Wholly-owned Companies) Instrument 2026/533* (***Instrument***).

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

Summary

1. The Instrument provides relief for certain wholly-owned companies in a corporate group from financial reporting, audit and reporting-to-members obligations under Part 2M.3 of the *Corporations Act 2001* (***Act***) where, amongst other requirements, those companies are party to a deed of cross guarantee and the holding entity prepares and lodges consolidated financial statements for the relevant group.

2. The Instrument remakes, with amendments, *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* (***ASIC Instrument 2016/785***), which sunsetted on 1 October 2026.

Purpose of the Instrument

3. Part 2M.3 of the Act requires companies (except most small proprietary companies), disclosing entities and registered managed investment schemes to prepare and lodge a financial report, directors' report and auditor's report for a financial year. The costs of preparing a financial report and having it audited are significant. Where entities are wholly owned within a group of companies, and there is a deed of cross-guarantee within the group, the information needs of creditors and other stakeholders may be sufficiently met by the holding entity's consolidated financial statements, rather than individual financial statements for each of the wholly owned entities.

4. ASIC is satisfied that it would be an unreasonable burden within the meaning of s342 of the Act for wholly-owned entities to prepare stand-alone financial reports if the holding entity lodges consolidated financial statements for the relevant group.

5. The relief is available where a wholly-owned company enters into a deed of cross guarantee with its holding entity and other wholly-owned entities in the group and satisfies the other conditions of the Instrument.

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Consultation

6. ASIC consulted publicly on our proposal to remake the relief in CS 61 *Proposed remake of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*. We received four submissions.

7. Submissions generally supported remaking the relief to provide continuity and reduce duplicative financial reporting and audit requirements within wholly-owned groups. Submitters also raised feedback about accounting-standard references, the relationship with broader financial reporting instrument consolidation work that ASIC was engaged in (for example, as part of CS 54 *Proposed consolidation of financial reporting and auditing instruments*), and creditor protection safeguards.

8. We incorporated technical feedback received in relation to an accounting standard in submissions in finalising the Instrument. However, we considered that more significant changes raised in submissions, including potential changes to the creditor protection safeguards, were more appropriate for law reform and did not make changes in response.

Operation of the instrument

9. Section 5 of the Instrument provides a simplified outline for the Instrument. Its purpose is to assist readers in understanding the substantive provisions. However, the outline is not intended to be comprehensive, and readers should rely on the substantive provisions when considering the Instrument's effect.

10. Section 6 of the Instrument defines key terms used in the Instrument. They include a definition of 'deed of cross guarantee'.

11. A deed of cross guarantee is an instrument under which each entity enters into a covenant with the trustee to guarantee payment in full of any debt owed to creditors of each party to the deed by each other entity in certain circumstances. This may assist creditors that will not have access to the company's individual financial report to assess its financial position.

Financial reporting relief

12. Section 7 of the Instrument relieves a company that was party to a deed of cross guarantee at the end of the relevant financial year from specified obligations in Part 2M.3 of the Act. They include obligations to prepare a financial report and directors' report, have the financial report audited, report to members and send reports to members on request. The section also relieves the directors of the company from the obligation to lay those reports before the company's annual general meeting (***AGM***).

Where the financial reporting relief applies

13. Section 8 of the Instrument sets out the circumstances in which the financial reporting relief in section 7 is available.

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Nature of company

14. The relief is available to a company that was, at the end of the relevant financial year, a large proprietary company, a public company or a foreign-controlled small proprietary company to which paragraph 292(2)(b) of the Act applies: see paragraph 8(1)(a) of the Instrument.

15. Pursuant to paragraphs 8(1)(c)–(d) of the Instrument, there must be a holding entity in relation to the company at the end of the relevant financial year that was not a small proprietary company. Further, the relevant financial year of the company relying on the relief and the holding entity must end on the same date: see paragraph 8(1)(d) of the Instrument. There are also other requirements that relate to the company's holding entity in paragraph 8(1)(j) of the Instrument.

16. Paragraph 8(1)(b) of the Instrument excludes the following entities from relying on the relief:

    (a) disclosing entities;

    (b) borrowers in relation to debentures (that is, as defined in section 6 of the Instrument, a company that is or will be liable to repay money under a debenture, other than debentures issued pursuant to subsections 708(1), 708(8) or 708(11));

    (c) guarantors of such borrowers; and

    (d) financial services licensees.

Opt-in notice

17. Pursuant to paragraph 8(1)(f) of the Instrument, the company must lodge an opt-in notice using Form 389 *Opt-in/change of holding entity notice by wholly-owned company relieved from financial reporting obligations* (***Form 389***) if:

    (a) the company did not rely on the relief in the Instrument or its predecessor (*ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*) for the financial year before the relevant financial year; or

    (b) the company's holding entity was not the same for the relevant financial year and the preceding financial year.

18. The opt-in notice must be lodged by the relevant time (being not later than 4 months after the end of the relevant financial year): see paragraph 8(1)(f) and subsection 8(2) of the Instrument.

Initial steps for relying on relief – resolution for reliance and solvency statement

19. Pursuant to paragraph 8(1)(g), before the end of the first financial year (***first reliance year***) in respect of which the company relied on the relief in the Instrument (or a previous order):

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(a) the company's directors must have resolved that the company should obtain the benefit of the relief and have not revoked that resolution (sub-paragraph 8(1)(g)(i) of the Instrument); and

(b) unless its circumstances are described in paragraph 8(h)(ii) of the Instrument, the company's directors must have made a statement signed by at least one director stating that in the directors' opinion immediately before executing the deed of cross guarantee or assumption deed there were reasonable grounds to believe that the company would be able to pay its debts as and when they become due and payable (sub-paragraph 8(1)(h)(i) of the Instrument).

20. A solvency statement is also required from at least one director for other entities that became party to the deed of cross guarantee before the end of the first reliance year: see paragraph 8(1)(g)(ii) of the Instrument.

21. Pursuant to sub-paragraph 8(1)(m)(i) of the Instrument, the following must also be lodged with ASIC before the end of the relevant financial year:

(a) the deed of cross guarantee; and

(b) if the company became party to the deed of cross guarantee by an assumption deed, that assumption deed.

22. There is also a requirement in sub-paragraph 8(1)(m)(ii) of the Instrument to lodge a certificate given by a lawyer who holds a practising certificate as to the terms of the deed and execution (see the definition of 'certificate' in section 6 of the Instrument). The certificate must be lodged by the 'relevant time' as defined in subsection 8(2) of the Instrument.

Annual resolution at or about end of financial year

23. Pursuant to paragraph 8(1)(i) of the Instrument, at or about the end of the relevant financial year, the company's directors must have considered the advantages and disadvantages associated with the company remaining party to the deed of cross guarantee and resolved either that the company should remain a party to the deed of cross guarantee or seek to revoke it.

Deed of cross guarantee

24. Paragraph 8(1)(k) of the Instrument requires a company to hold office as trustee under the deed of cross guarantee. If the trustee is a Group Entity (within the meaning of that deed), there must also be a company that holds office as alternative trustee.

25. Paragraph 8(1)(q) of the Instrument requires that, at the relevant time (as defined in subsection 8(2) of the Instrument), neither the company relying on the relief nor the holding entity have terminated, repudiated or agreed to any variation of the deed of cross guarantee except as permitted by the paragraph (which includes via an assumption deed or revocation deed).

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26. Paragraph 8(1)(p) of the Instrument requires no party to the deed of cross guarantee to be a body regulated by APRA at the end of the relevant financial year.

Foreign entities

27. Pursuant to paragraph 8(1)(n) of the Instrument, each member of the closed group, other than the holding entity, must be a company (being a company registered under the Act) or a body incorporated in Australia, the United Kingdom, New Zealand, Singapore or Hong Kong at the end of the relevant financial year.

28. If a foreign entity (including the holding entity) is party to the deed of cross guarantee, the directors of the company relying on the relief and the directors of the holding entity must be satisfied that the deed is in a class of documents generally enforceable against the foreign entity. This satisfaction must occur before the holding entity lodges the consolidated financial statements, evidenced by resolutions of the directors and based on appropriate recent advice: see paragraph 8(1)(o) of the Instrument.

Consolidated financial statements

29. Paragraph 8(1)(r) of the Instrument requires that the holding entity prepare and lodge consolidated financial statements by the 'relevant time' (as defined in subsection 8(2) of the Instrument). It should be noted that some holding entities may need to lodge their financial statements at an earlier time under section 319 of the Act, for example, if they are a disclosing entity.

30. Paragraph 8(1)(s) of the Instrument applies to holding entities that are registered foreign companies. It provides that there are different requirements for the consolidated financial statements depending on whether the holding entity is controlled by an Australian entity or there is a law in the holding company's place of origin that applies to preparation of the consolidated financial statements.

31. Paragraph 8(1)(t) of the Instrument requires the consolidated financial statements to include adequate provision in relation to the liabilities of any parties to the deed of cross guarantee which are not consolidated where it is probable that those liabilities will not be fully met by the parties. This does not apply to a trustee or alternative trustee that is not a Group Entity (within the meaning of the deed).

32. Paragraph 8(1)(u) of the Instrument imposes requirements upon notes to the consolidated financial statements, including as to the nature of the deed of cross guarantee and the parties to the deed. 'Additional consolidated information' (as defined in section 6 of the Instrument) is required if:

    (a) the consolidated financial statements cover entities which are not members of the closed group or are not parties to the deed of cross guarantee; and

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(b) if there are parties to the deed of cross guarantee (other than a trustee or alternative trustee that is not a Group Entity) which are not controlled by the holding entity.

33. Pursuant to section 14 of the Instrument, the holding entity does not have to comply with subsection 292(1) of the Act to the extent that any non-compliance would result merely from the holding entity preparing a financial report that includes notes to the consolidated financial statements that have been prepared for the purposes of section 8 of the Instrument, including information specified in paragraph 8(1)(u).

34. Pursuant to paragraph 8(1)(w) of the Instrument, if a holding entity's financial report are required to be audited, the auditor must be satisfied that paragraphs 8(1)(r), (s), (t) and (u) (as applicable) have been complied with.

Statement as to ability to meet deed of cross guarantee liabilities

35. Paragraph 8(1)(v) of the Instrument provides that, if the holding entity is a company (being a company registered under the Act) or a registered foreign company controlled by an Australian entity, the directors' declaration of the holding entity must include a statement as to whether, as at the date of the declaration, there are reasonable grounds to believe that the members of the extended closed group will be able to meet any liabilities to which they are, or may become, subject because of the deed of cross guarantee.

36. For other holding entities that are registered foreign companies, this statement must be in a document signed by a director in accordance with a resolution of directors and lodged with ASIC by the relevant time: see sub-paragraph 8(1)(s)(iv).

Conditions when ceasing to rely on relief or being a wholly-owned entity

37. Paragraph 8(1)(x) of the Instrument requires the company to comply with the conditions in section 9 of the Instrument and certain requirements of ASIC Instrument 2016/785.

38. Pursuant to subsections 9(1)–(2), a company that ceases to rely on the relief in the Instrument and does not lodge an annual financial report for the first non-reliance year must lodge an opt-out notice using Form 399 *Opt-out notice by wholly-owned company relieved from financial reporting obligations* (***Form 399***). This notice must be lodged with ASIC no later than 4 months after the end of the first non-reliance year.

39. Pursuant to subsection 9(3), if a company relying on relief in the Instrument ceases to be a wholly-owned entity of the holding entity in a financial year, it must prepare and lodge a financial report and directors' report within two months of ceasing unless:

(a) within one month of ceasing, the company becomes party to another deed of cross guarantee and the company's directors have no reason to believe

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that the company will not be able to rely on the relief in respect of its next financial year;

(b) the company has relief under a provision of the Act or another ASIC instrument for the relevant financial year; or

(c) ASIC has given the company written notice that it does not need to prepare and lodge those documents.

Exclusion and merits review

40. Section 10 of the Instrument allows ASIC to exclude a company from relying on the relief in subsection 7(1) of the Instrument for a financial year by giving the company a written notice. The exclusion applies for the relevant financial year unless ASIC withdraws the notice or varies it so that it no longer applies to that year.

41. Section 11 of the Instrument provides for merits review by the Administrative Review Tribunal of ASIC decisions to give, withdraw or vary a notice under section 10 of the Instrument. The section also requires ASIC to take reasonable steps to notify an affected company of a decision under section 10 and of the company's review rights, although a failure to do so does not affect the validity of the ASIC decision.

Auditor appointment relief

42. Section 12 of the Instrument relieves public companies from the requirement under section 327B of the Act to appoint an auditor at an AGM, and for directors from the requirements under sections 327A or 327C of the Act relating to the appointment of an auditor.

43. Section 13 of the Instrument sets out when the relief in section 12 applies. The relief is available where the public company is party to a deed of cross guarantee and the directors, after making reasonable and diligent enquiries, have no reason to believe that the company will be unable to rely on the relief in section 7 of the Instrument for the financial year during which the relevant AGM is held or auditor appointment deadline occurs.

Electronic lodgement of documents

44. Section 15 of the Instrument permits lodgement in electronic format of any document that must be lodged under the Instrument if this is specified in *Approval of Electronic Lodgement (Email) Instrument 2026 No.3* or ASIC has otherwise approved electronic lodgement.

Commencement and transitional arrangements

45. Section 2 of the Instrument provides that it commences on the day after it is registered on the Federal Register of Legislation.

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46. Section 16 of the Instrument provides that the relief applies in relation to a financial year ending on or after 1 January 2027. ASIC Instrument 2016/785 will continue to apply, despite its repeal, to a financial year ending before 1 January 2027. This is intended to allow entities that had already begun preparing their financial report before the repeal of ASIC Instrument 2016/785 to continue in accordance with that instrument.

Incorporation by reference

47. The Instrument incorporates certain documents by reference because the content of those documents affects the operation of the Instrument. In particular, the Instrument refers to Accounting Standard AASB 10 *Consolidated Financial Statements* and Accounting Standard AASB 18 *Presentation and disclosure in Financial Statements* for the meaning of certain concepts and the content of certain financial information required under the Instrument. These Accounting Standards are made by the Australian Accounting Standards Board and are available free of charge on the Federal Register of Legislation at www.legislation.gov.au and on the AASB website.

48. The Instrument also incorporates ASIC Pro Forma 24 *Deed of cross guarantee* and ASIC Pro Forma 27 *Assumption deed*, each as at the date of the Instrument. These documents are incorporated because the Instrument requires them to be lodged with ASIC to be in, or consistent with, the relevant pro forma for the relief to apply. These documents are available free of charge from ASIC's website.

49. The Instrument also refers to the *Approval of Electronic Lodgement (Email) Instrument 2026 No. 3* (***Electronic Lodgement Instrument***), which specifies documents that may be lodged electronically for the purposes of the Instrument. The Electronic Lodgement Instrument is available free of charge on the ASIC website at www.asic.gov.au

50. The Instrument complies with section 14 of the *Legislation Act 2003*. Where the Instrument incorporates a document "as at the date of this instrument", the incorporation is fixed at that date. Where the Instrument refers to Accounting Standards in force at the end of a financial year, the incorporation operates by reference to the version of the relevant Accounting Standard in force at that time.

51. The Instrument also refers to Form 389 and Form 399. This is permitted because the incorporation by reference restriction in section 14 of the *Legislation Act 2003* does not apply in relation to a form: see subsection 14(4).

Legislative instrument and primary legislation

52. ASIC understands that the Government is progressing law reform for simplified reporting relief for group entities, which was announced as part of the Whole-of-Government Regulatory Reform Agenda in the 2026/27 Budget.

53. Providing relief for a period of 5 years will give the Government an opportunity to determine whether to amend the primary legislation or regulations to include

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the relief. If these are amended to include the relief, ASIC will repeal the Instrument.

Duration of the instrument

54. The Instrument will self-repeal at the start of 1 October 2031.

Legislative authority

55. The Instrument is made under subsection 341(1) of the Act.

56. Subsection 341(1) of the Act permits ASIC to make an order in respect of a specified class of entities relieving the entities, their directors and their auditors from all or specified requirements of Part 2M.3 of the Act, or declaring that Part 2M.3 applies as if specified provisions were omitted, modified or varied.

57. Subsection 342(1) of the Act provides that, to make an order under section 341, ASIC must be satisfied that complying with the relevant requirements would make the financial report or other reports misleading, be inappropriate in the circumstances or impose unreasonable burdens. ASIC is satisfied that the unreasonable burdens criterion has been met in relation to the relief contained in this instrument.

58. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power is taken to include a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend or vary such an instrument.

59. The Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

60. 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 Attachment A.

Impact analysis

61. A Dashboard Impact Analysis has been prepared for the Instrument in accordance with the Australian Government Policy Impact Analysis Framework. The Dashboard Impact Analysis is in Attachment B.

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Attachment A

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 (Wholly-owned Companies) Instrument 2026/533

Overview

1. *ASIC Corporations (Wholly-owned Companies) Instrument 2026/533* (the ***Instrument***) provides relief for certain wholly-owned companies in a corporate group from financial reporting, audit and reporting-to-members obligations under Part 2M.3 of the *Corporations Act 2001* where, amongst other requirements, those companies are party to a deed of cross guarantee and the holding entity prepares and lodges consolidated financial statements for the relevant group.

2. Assessment of human rights implications

3. The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. The 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*.

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