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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for consultation) Bill 2022: Rationalisation of ending ASIC instruments

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. |  |  |
| 2. Schedules 1 to 5 | The day after this Act receives the Royal Assent. |  |
| 3. |  |  |

Schedule 1—Voting control limits for proposed licensed trustee companies

Part 1—Amendments

Corporations Act 2001

1 Part 5D.5 (heading)

After “**licensed trustee companies**”, insert “**and proposed licensed trustee companies**”.

2 Section 601RAA

Insert:

***proposed licensed trustee company***means a company:

(a) that is a trustee company, or a corporation to which paragraph 51(xx) of the Constitution applies that proposes to become a trustee company; and

(b) that proposes to apply for an Australian financial services licence covering the provision of one or more traditional trustee company services.

3 Section 601VAA

Repeal the section, substitute:

601VAA Meaning of unacceptable control situation

For the purposes of this Part, an ***unacceptable control situation*** exists in relation to:

(a) a licensed trustee company and in relation to a particular person; or

(b) a proposed licensed trustee company and in relation to a particular person;

if the person’s voting power in the company is more than:

(c) 15%; or

(d) if an approval of a higher percentage is in force under Division 2 in relation to the company and in relation to the person—that higher percentage.

4 Subsection 601VBA(1)

After “licensed trustee company”, insert “or proposed licensed trustee company”.

5 Paragraphs 601VBA(1)(a) and (b)

Omit “trustee”.

6 Subsection 601VBB(1)

Omit all the words after “the Minister is satisfied that”, substitute:

: (a) in the case of a licensed trustee company—it would be in the interests of that company and its clients for the application to be granted; or

(b) in the case of a proposed licensed trustee company—it would be in the interests of that company and its clients for the application to be granted were that company a licensed trustee company.

7 Paragraphs 601VBB(2)(b) and 601VBB(4)(b)

Omit “licensed trustee”.

8 Subsection 601VBC(4)

Omit all the words after “the Minister is satisfied that”, substitute:

: (a) in the case of a licensed trustee company—it would be in the interests of that company and its clients for the application to be granted; or

(b) in the case of a proposed licensed trustee company—it would be in the interests of that company and its clients for the application to be granted were that company a licensed trustee company.

9 Paragraphs 601VBC(7)(b) and 601VBD(7)(b)

Omit “licensed trustee”.

10 Paragraphs 601VBE(1)(a)

After “licensed trustee company”, insert “or proposed licensed trustee company”.

11 Paragraph 601VBE(1)(b)

Omit “trustee”.

12 Subsection 601VBE(3)

Omit all the words after “the Minister is satisfied that”, substitute:

: (a) in the case of a licensed trustee company—it would be in the interests of that company and its clients for the application to be granted; or

(b) in the case of a proposed licensed trustee company—it would be in the interests of that company and its clients for the application to be granted were that company a licensed trustee company.

13 Subsection 601VBE(6)

Omit all the words after “the Minister is satisfied that”, substitute:

: (a) in the case of a licensed trustee company—the variation would be in the interests of that company and its clients; or

(b) in the case of a proposed licensed trustee company—the variation would be in the interests of that company and its clients were that company a licensed trustee company.

14 Paragraph 601VBE(9)(b)

Omit “licensed trustee”.

15 Subsection 601VBF(1)

After “licensed trustee company”, insert “or proposed licensed trustee company”.

16 Paragraph 601VBF(1)(a)

Omit all the words after “the Minister is satisfied that”, substitute:

: (i) in the case of a licensed trustee company—it would be in the interests of that company and its clients for the approval to be revoked; or

(ii) in the case of a proposed licensed trustee company—it would be in the interests of that company and its clients for the approval to be revoked were that company a licensed trustee company.

17 Paragraph 601VBF(1)(b)

Omit “trustee”.

18 Paragraph 601VBF(4)(b)

Omit “licensed trustee”.

19 Section 601VBH (heading)

Omit “**licensed trustee company and its clients**”, substitute “**the company concerned and its clients**”.

20 Section 601VBH

Omit all the words after “in relation to,”, substitute “a company, the Minister may seek the views of the company concerned and its clients”.

21 Paragraph 601VBI(3)(b)

Omit “licensed trustee”.

22 Subsection 601VBI(5)

Omit “licensed trustee”.

23 Section 601VCB

Omit “licensed trustee”.

Part 2—Repeals

ASIC Class Order [CO 12/340]

24 The whole of the instrument

Repeal the instrument.

Schedule 2—Information in a Financial Services Guide given in a time critical situation

Part 1—Amendments

Corporations Act 2001

1 Section 941E

Repeal the section, substitute:

941E Information must be up to date

(1) The information in the Financial Services Guide must be up to date as at the time when it is given to the client.

(2) However, if the Financial Services Guide is given to the client under subsection 941D(4), the information in the Financial Services Guide may be up to date as at the time the statement referred to in that subsection is given to the client.

Note: A Supplementary Financial Services Guide containing updated information may be given with a Financial Services Guide that has become out of date. The updated information is taken to be included in the Financial Services Guide (see section 943D).

Part 2—Repeals

ASIC Corporations (Financial Services Guide Given in a Time Critical Situation) Instrument 2022/498

2 The whole of the instrument

Repeal the instrument.

Schedule 3—Product Disclosure Statement requirements for general insurance quotes

Part 1—Amendments

Corporations Act 2001

1 Subsection 1012A(4)

Repeal the subsection, substitute:

This section has effect subject to other provisions

(4) This section does not apply to a regulated person for a recommendation situation if:

(a) one or more of sections 1012D, 1012DA, 1012E, 1012F, 1012G or 1014E apply to a regulated person for that recommendation situation; and

(b) for each of those sections that so applies—the regulated person complies with the requirements (if any) in that section for that recommendation situation.

2 Subsection 1012B(5)

Repeal the subsection, substitute:

This section has effect subject to other provisions

(5) This section does not apply to a regulated person for an issue situation if:

(a) one or more of sections 1012D, 1012DAA, 1012E, 1012F, 1012G, 1012GA or 1014E apply to a regulated person for that issue situation; and

(b) for each of those sections that so applies—the regulated person complies with the requirements (if any) in that section for that issue situation.

3 Subsection 1012C(10)

Repeal the subsection, substitute:

This section has effect subject to other provisions

(10) This section does not apply to a regulated person for a sale situation if:

(a) one or more of sections 1012D, 1012DA, 1012E or 1014E apply to a regulated person for that sale situation; and

(b) for each of those sections that so applies—the regulated person complies with the requirements (if any) in that section for that sale situation.

4 After section 1012G

Insert:

1012GA Product Disclosure Statement for certain general insurance product quotes may be provided later, or is not required

(1) A regulated person, in making an offer to issue, or an offer to arrange for the issue of, a general insurance product to a client, may deal with the product under this section only if:

(a) the offer is made by or at the same time as giving a quote to the client in the course of, or because of, a telephone call with the client that is not unsolicited contact (within the meaning of section 992A); and

(b) in the course of the phone call, but before the offer is made, the regulated person orally communicates the following information to the client in a clear, concise and effective manner:

(i) if the insurance cover under the product is subject to exclusions or limitations—that fact, and the fact that information about those exclusions and limitations is contained in the Product Disclosure Statement for the product;

(ii) that the level of insurance cover under the product may be different from the level of insurance cover under other general insurance products; and

(c) the regulated person asks the client whether the client wants to be given a Product Disclosure Statement for the product, but does not influence the client’s decision to elect to be given the Product Disclosure Statement.

(2) In the course of the telephone call:

(a) if the client informs the regulated person that the client wants to be given the Product Disclosure Statement—the regulated person must give the Product Disclosure Statement to the client as soon as practicable after the time the offer is made; or

(b) if the client informs the regulated person that the client does not want to be given the Product Disclosure Statement—the regulated person does not have to give the client the Product Disclosure Statement in relation to the making of the offer.

Note: The regulated person may need to give a Product Disclosure Statement to the client at or before the time specified in section 1012B if, in the course of the telephone call or later, the client applies for, or otherwise offers to acquire, the product, or the product is issued to the client.

(3) In this section:

***quote*** means, in relation to a general insurance product, a statement of the cost (and not merely an estimate of the likely cost) of the product if the cost is calculated by a regulated person having regard to information given to them by a client.

Part 2—Repeals

ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66

5 The whole of the instrument

Repeal the instrument.

Schedule 4—Describing debentures as secured notes

Part 1—Amendments

Corporations Act 2001

1 Subsection 283BH(1) (after table item 2)

Insert:

|  |  |  |
| --- | --- | --- |
| 2A | secured note | only if:  (a) the circumstances set out in subsection (4) are satisfied; and  (b) in a case described in subsection 283BHA(1), (2) or (3)—the requirements set out in that subsection are satisfied |

2 At the end of section 283BH

Add:

When debentures can be called secured notes

(4) The borrower may describe or refer to the debentures as secured notes if:

(a) the repayment of all money that has been, or may be, deposited or lent under the debentures has been secured by a first ranking security interest in favour of the trustee over the whole or any part of the property of the borrower or of any of the guarantors; and

(b) the property that constitutes the security for the security interest is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such money and all other liabilities that:

(i) have been or may be incurred; and

(ii) rank in priority to, or equally with, that liability.

283BHA Additional requirements for describing debentures as secured notes

Advertisements and publications

(1) If the borrower proposes to describe or refer to the debentures as secured notes in an advertisement or publication in relation to the offer, or intended offer, of debentures that requires a disclosure document—the borrower must ensure that the advertisement or publication includes:

(a) a statement that the secured notes are not bank deposits; and

(b) a statement that there is a risk that investors could lose some or all of their money.

Disclosure documents and quarterly reports

(2) If the borrower proposes to describe or refer to the debentures as secured notes in a disclosure document or in a quarterly report prepared under section 283BF—the borrower must ensure that the disclosure document or quarterly report includes statements of the following:

(a) key features of the security interest, including:

(i) that the security interest is first ranking; and

(ii) the type of security interest; and

(iii) the identity of the person providing the security interest; and

(iv) the property constituting the security for the security interest;

(b) that, in the borrower’s assessment, the property that constitutes the security for the security interest is sufficient and is reasonably likely to be sufficient to meet the liabilities referred to in paragraph 283BH(4)(b);

(c) if the value of the property that constitutes the security for the security interest may be affected by the financial position or performance of a related body corporate or related party of the borrower—that fact.

Borrower’s website

(3) If the borrower describes or refers to the debentures as secured notes on its website—the borrower must ensure that the reports, documents and notices mentioned in an item of the following table are published on the borrower’s website in the period specified in that item:

| Publication requirements | | |
| --- | --- | --- |
| Item | Document, report or notice | Period for publication |
| 1 | The most recent quarterly report prepared in relation to the borrower under section 283BF | As soon as practicable after a copy of the report is required to be lodged with ASIC |
| 2 | Each disclosure document (including any replacement or supplementary document) lodged with ASIC in relation to the borrower in the previous 13 months | As soon as practicable after a copy of the document is lodged with ASIC |
| 3 | Each continuous disclosure notice required to be lodged with ASIC under section 675 in relation to the borrower in the previous 12 months | As soon as practicable after the notice is required to be lodged with ASIC |

(5) In this section:

***advertisement or publication***, in relation to an offer, or intended offer, of debentures that requires a disclosure document, means:

(a) an advertisement for the offer or intended offer; or

(b) a publication of a statement that:

(i) directly or indirectly refers to the offer or intended offer; or

(ii) is reasonably likely to induce people to apply for the debentures.

***related party*** has the meaning given by section 228.

Part 2—Repeals

ASIC Corporations (Describing Debentures—Secured Notes) Instrument 2022/61

3 The whole of the instrument

Repeal the instrument.

Schedule 5—Notice requirements in the hardship provisions of the National Credit Code

Part 1—Amendments

National Consumer Credit Protection Act 2009

1 After subsection 72(4) of the *National Credit Code*

Insert:

(4A) Subsection (4) does not apply if the credit provider and the debtor agree to a change to the credit contract that defers or otherwise reduces the obligations of the debtor under that contract for a period not exceeding 90 days.

2 After subsection 73(1) of the *National Credit Code*

Insert:

(1A) Subsection (1) does not apply if the credit provider and the debtor agree to a change to the credit contract that defers or otherwise reduces the obligations of the debtor under that contract for a period not exceeding 90 days.

3 After subsection 177B(4) of the *National Credit Code*

Insert:

(4A) Subsection (4) does not apply if the lessor and the lessee agree to a change to the consumer lease that defers or otherwise reduces the obligations of the lessee under that lease for a period not exceeding 90 days.

4 After subsection 177C(1) of the *National Credit Code*

Insert:

(1A) Subsection (1) does not apply if the lessor and the lessee agree to a change to the consumer lease that defers or otherwise reduces the obligations of the lessee under that lease for a period not exceeding 90 days.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

5 After item 5 of Part 2 of Schedule 5

Insert:

5A Sections 72 and 73 of the new Credit Code

Item applies to credit contracts and consumer leases entered into before 1 March 2013

(1) This item applies in relation to credit provider and a debtor under a credit contract (within the meaning of the new Credit Code):

(a) entered into before 1 March 2013; and

(b) for which the debtor applied to the credit provider in accordance with former subsections 72(1) and (2) of the new Credit Code (as in force before 1 March 2013).

(2) This item also applies in relation to a lessor and a lessee under a consumer lease (within the meaning of the new Credit Code):

(a) entered into before 1 March 2013; and

(b) for which the lessee applied to the lessor in accordance with former subsections 72(1) and (2), and former section 177, of the new Credit Code (as in force before 1 March 2013);

in a corresponding way to the way this item applies to a credit provider and debtor under a credit contract.

Note: Former section 177 of the new Credit Code (as in force before 1 March 2013) has the effect that former sections 72 and 73 of that Code apply to consumer leases in the same way as they apply to credit contracts.

Notice requirements for changes to a credit contract or a consumer lease on grounds of hardship do not apply in certain circumstances

(4) Former subsection 72(3) of the new Credit Code (as in force before 1 March 2013) does not apply if the credit provider and the debtor agree to a change to the credit contract that defers or otherwise reduces the obligations of the debtor under that contract for a period not exceeding 90 days.

(5) Former subsection 73(1) of the new Credit Code (as in force before 1 March 2013) does not apply if the credit provider and the debtor agree to a change to the credit contract that defers or otherwise reduces the obligations of the debtor under that contract for a period not exceeding 90 days.

Part 2—Repeals

ASIC Class Order [CO 14/41]

6 The whole of the instrument

Repeal the instrument.