

ASIC Class Order [CO 03/1094]

Law societies — professional indemnity scheme and fidelity funds

Issued 22/12/2003

Effective 23/12/2003: ASIC Special Gazette 50A/03

A number of State and Territory law societies are obliged under the relevant State and Territory legislation to operate various professional indemnity and fidelity funds. The relevant legislation partially regulates these funds.

Pending the outcome of the Federal Government's "Review of discretionary mutual funds and direct offshore foreign insurers", Class Order [CO 03/1094] grants temporary relief for these funds.

A condition of the relief is that law societies must give warnings that these funds are not licensed under the Corporations Act.

Some of the relief has been provided for the avoidance of doubt.

This instrument has effect under s601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001*.

This compilation was prepared on 22 December 2010 taking into account amendments up to [CO 09/537]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraphs 601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) — Exemption

Under paragraphs 601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001* (the *Act*) the Australian Securities and Investments Commission exempts an eligible legal body from:

- (a) section 601ED of the Act for the operation of a managed investment scheme that is or arises from a fidelity or indemnity scheme for which the body is responsible; and
- (b) Divisions 2 to 5 of Part 7.9 and sections 992A and 992AA of the Act in relation to a financial product that arises from a fidelity or indemnity scheme for which the body is responsible; and
- (c) the requirement to hold an Australian financial services licence for the provision of a financial service where:
 - (i) the service consists of any or all of the following:

- (A) providing financial product advice;
- (B) dealing in financial products;
- (C) providing custodial or depository services; and

- (ii) the service is only provided to the extent reasonably necessary for the operation of a fidelity or indemnity scheme for which the body is responsible;

for so long as and on the condition that the relevant eligible law society:

- (d) makes available on its Internet website in a manner reasonably likely to come to the attention of a person seeking information on the site about the fidelity or indemnity scheme, a prominent notice to the effect that the body is not licensed under the Act in relation to the operation of the scheme and the scheme is not regulated under the *Insurance Act 1973*; or
- (e) if the society does not have an Internet website — displays at its principal place of business in an area likely to be accessed by members of the public, a prominent notice to the effect referred to in paragraph (d).

[*Historical note:* Introductory words amended 28/6/2005 [CO 05/678] by replacing '1 July 2005' with '1 July 2006'.

Further amended 13/6/2006 [CO 06/468] by replacing '1 July 2006' with '1 July 2008'.

Further amended 24/6/2008 [CO 08/385] by replacing '1 July 2008' with '1 July 2010'.

Further amended 21/7/2009 [CO 09/537] by deleting the words 'until 1 July 2010'.

Interpretation

For the purposes of this instrument:

1. an eligible legal body is **responsible** for a fidelity or indemnity scheme if:
 - (a) the body or the governing council of the body (however described) is conferred with functions in relation to the scheme by or under the law of a State or Territory; or
 - (b) the body has established the scheme under its rules (however described) made under the law of a State or Territory;
- [*Historical note:* Para 1 replaced 11/3/2004 [CO 04/265]. The paragraph formerly read: '1. an eligible legal body is **responsible** for a fidelity or indemnity scheme if the body is conferred with functions in relation to the scheme under the law of a State or Territory;'.]
2. an eligible law society is the **relevant** eligible law society for a fidelity or indemnity scheme if the society is the primary body representing legal practitioners in the State or Territory under the laws of which the scheme is established or regulated;

3. ***custodial or depository service*** has the meaning given by section 766E of the Act;

4. ***eligible law society*** means:

- (a) [deleted];
- (aa) Queensland Law Society Incorporated;
- (b) The Law Society of New South Wales;
- (c) The Law Society of South Australia;
- (ca) The Law Society of the Australian Capital Territory;
- (cb) The Law Society of Tasmania;
- (d) The Law Society of Western Australia Inc.;
- (e) Law Institute of Victoria Limited ACN 075 475 731;

[*Historical note:* Para 4 amended 11/3/2004 [CO 04/265] by inserting subparas (aa), (ca) and (cb). Further amended [CO 05/678] 28/6/2005 by deleting subpara (a) 'Law Society Northern Territory'.

Further amended 21/7/2009 [CO 09/537] by inserting subpara (e).]

5. ***eligible legal body*** means:

- (a) an eligible law society;
- (b) [deleted];
- (c) the Legal Contribution Trust established by section 5 of the *Legal Contribution Trust Act 1967* of Western Australia;
- (d) LawCover Pty Ltd ACN 003 326 618;

[*Historical note:* Para 5 amended 11/3/2004 [CO 04/265] by inserting subpara (d).

Further amended 28/6/2005 [CO 05/678] by deleting subpara (b) 'the Legal Practitioners' Fidelity Fund Committee established by section 86 of the *Legal Practitioners Act* of the Northern Territory'.]

6. ***fidelity or indemnity scheme*** means:

- (aa) the Solicitors' Fidelity Fund of the Australian Capital Territory established by section 132 of the *Legal Practitioners Act 1970* of the Australian Capital Territory;
- (ab) professional indemnity insurance arrangements under Part 9 of the *Legal Practitioners Act 1970* of the Australian Capital Territory;
- (a) the Legal Practitioners Fidelity Fund under Part 3.4 of the *Legal Profession Act 2004* of New South Wales;

- (b) The Solicitors Mutual Indemnity Fund under Division 3 of Part 3.3 of the *Legal Profession Act 2004* of New South Wales;
- (ba) insurance arrangements made under Division 3 of Part 3.3 of the *Legal Profession Act 2004* of New South Wales;
- (c) [deleted];
- (d) [deleted];
- (da) the Legal Practitioners' Fidelity Guarantee Fund established by section 12 of the *Queensland Law Society Act 1952* of Queensland and continued in existence by section 147 of the *Legal Profession Act 2004* of that State;
- (db) the Law Claims Levy Fund within the meaning of the Queensland Indemnity Rule;;
- (dc) professional indemnity insurance arrangements under the Queensland Indemnity Rule;
- (e) the legal practitioners' guarantee fund required to be maintained by section 57 of the *Legal Practitioners Act 1981* of South Australia;
- (f) the scheme providing professional indemnity insurance established under section 52 of the *Legal Practitioners Act 1981* of South Australia;
- (fa) professional indemnity insurance arrangements under Part 6 of the *Rules of Practice 1994* made by The Law Society of Tasmania under section 124 of the *Legal Profession Act 1993* of Tasmania;
- (g) the Solicitors' Guarantee Fund established under section 16 of the *Legal Contribution Trust Act 1967* of Western Australia;
- (h) insurance arrangements made under regulation 4 of the *Legal Practitioners (Professional Indemnity Insurance) Regulations 1995* of Western Australia and the associated mutual funds;
- (i) professional indemnity insurance arrangements under Part 3.5 of the *Legal Profession Act 2004* of Victoria;
- (j) the Legal Practitioners Fidelity Fund required to be maintained by section 6.7.15 of the *Legal Profession Act 2004* of Victoria;

[Historical note: Para 6 amended 11/3/2004 [CO 04/265] by inserting subparas (aa), (ab), (da), (db), (dc) and (fa).

Further amended 28/6/2005 [CO 05/678] by:

- deleting subpara (c) which read ‘the Legal Practitioners’ Fidelity Fund of the Northern Territory established by section 89 of the *Legal Practitioners Act* of the Northern Territory’;
- deleting subpara (d) which read ‘professional indemnity insurance arrangements pursuant to section 35B of the *Legal Practitioners Act* of the Northern Territory’;
- replacing subpara (da) which read ‘the Legal Practitioners’ Fidelity Guarantee Fund established by section 12 of the *Queensland Law Society Act 1952* of Queensland’;
- replacing subpara (db) which read ‘the Law Claims Levy Fund established by the *Queensland Law Society (Indemnity) Rule 1987* made by the council of the Queensland Law Society under paragraph 5A(1)(ha) of the *Queensland Law Society Act 1952* of Queensland’;
- replacing subpara (dc) which read ‘the Law Claims Levy Fund established by the *Queensland Law Society (Indemnity) Rule 1987* made by the council of the Queensland Law Society under paragraph 5A(1)(ha) of the *Queensland Law Society Act 1952* of Queensland’.

Further amended 13/6/2006 [CO 06/468] by:

- replacing subpara (a) which read ‘the Solicitors’ Fidelity Fund under Part 7 of the *Legal Profession Act 1987* of New South Wales;’;
- replacing subpara (b) which read ‘(b) the Solicitors’ Mutual Indemnity Fund under Division 2 of Part 3 of the *Legal Profession Act 1987* of New South Wales;’; and
- replacing subpara (ba) which read: ‘(ba) insurance arrangements made under Division 2 of Part 3 of the *Legal Profession Act 1987* of New South Wales;’.

Further amended 21/7/2009 [CO 09/537] by inserting subparas (i) and (j).]

7. ***financial product advice*** has the meaning given by section 766B of the Act; and.
8. ***Queensland Indemnity Rule*** means the *Queensland Law Society (Indemnity) Rule 1987* made by the Council of the Queensland Law Society under paragraph 5A(1)(ha) of the *Queensland Law Society Act 1952* of Queensland and, from the repeal of that rule, the *Queensland Law Society Indemnity Rule 2005* made by that Council under sections 226(2)(l) and 227 of the *Legal Profession Act 2004* of that State.

[*Historical note:* Para 8 inserted 28/6/2005 [CO 05/678]].

Commencement

This instrument takes effect on gazettal.

Dated this 22nd day of December 2003

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments
Commission

Notes to ASIC Class Order [CO 03/1094]

Note 1

ASIC Class Order [CO 03/1094] (in force under s601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the Tables below.

Table of Instruments

Instrument number	Date of making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 03/1094]	22/12/2003	23/12/2003	-
[CO 04/265]	11/3/2004	11/3/2004	-
[CO 05/678]	21/6/2005	28/6/2005	-
[CO 06/468]	6/6/2006	13/6/2006	-
[CO 08/385]	19/6/2008	24/6/2008	-
[CO 09/537]	14/7/2009	21/7/2009	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Introduction	am. [CO 05/678]; am. [CO 06/468]; am. [CO 08/385]; am [CO 09/537]
Para 1	rs. [CO 04/265]
Subpara 4(a)	rep. [CO 05/678]
Subpara 4(aa)	ad. [CO 04/265]
Subpara 4(ca)	ad. [CO 04/265]
Subpara 4(cb)	ad. [CO 04/265]
Subpara 4(e)	ad. [CO 09/537]
Subpara 5(b)	rep. [CO 05/678]
Subpara 5(d)	ad. [CO 04/265]
Subpara 6(aa)	ad. [CO 04/265]
Subpara 6(ab)	ad. [CO 04/265]
Subpara 6(a)	rs. [CO 06/468]
Subpara 6(b)	rs. [CO 06/468]
Subpara 6(ba)	rs. [CO 06/468]
Subpara 6(c)	rep. [CO 05/678]
Subpara 6(d)	rep. [CO 05/678]
Subpara 6(da)	ad. [CO 04/265]; rs. [CO 05/678]
Subpara 6(db)	ad. [CO 04/265]; rs. [CO 05/678]
Subpara 6(dc)	ad. [CO 04/265]; rs. [CO 05/678]
Subpara 6(fa)	ad. [CO 04/265]

Subpara 6(i)	ad. [CO 09/537]
Subpara 6(j)	ad. [CO 09/537]
Para 8	ad. [CO 05/678]
