

# Attachment to CP 287: Draft instrument



**ASIC**

Australian Securities & Investments Commission

---

---

## **ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/XX**

---

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2017

**[DRAFT ONLY—NOT FOR SIGNATURE]**

<signature>

<insert name>

---

## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument.....	3
2 Commencement .....	3
3 Authority.....	3
4 Definitions .....	3
<b>Part 2—Exemptions</b>	<b>4</b>
5 Mortgage investment schemes with no more than 20 investors .....	4
6 Registering a scheme in relation to individual mortgage loans .....	5
7 Small industry-supervised mortgage investment schemes .....	5
<b>Part 3—Declaration</b>	<b>6</b>
8 Withdrawal rights for registered mortgage investment schemes.....	6

## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is the *ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/XX*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subsections 601QA(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*mortgage investment scheme* means a managed investment scheme that has, or is likely to have, at least 50% of non-cash assets invested in mortgage loans, and 100% of assets invested in mortgage loans or in an account with an Australian ADI.

*mortgage loan* means a loan secured by a mortgage over real property.

## Part 2—Exemptions

### 5 Mortgage investment schemes with no more than 20 investors

#### *Registration relief*

- (1) An operator of a mortgage investment scheme does not have to comply with subsection 601ED(5) of the Act in relation to the operation of the scheme.

#### *Licensing relief*

- (2) An operator of a mortgage investment scheme does not have to comply with the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of financial services in relation to interests in the scheme.
- (3) A person (other than a person to whom subsection (2) applies) does not have to comply with the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of financial services in relation to interests in a mortgage investment scheme in relation to which paragraphs (7)(a) to 7(c) appear to be satisfied except where the person is aware, or ought reasonably to be aware, that those paragraphs are not satisfied in relation to the scheme.

#### *Hawking relief*

- (4) An operator of a mortgage investment scheme does not have to comply with section 992AA of the Act in relation to an offer of an interest in the scheme to a person in the course of, or because of:
  - (a) an unsolicited meeting with the person; or
  - (b) an unsolicited telephone call to the person.

#### *Financial product disclosure relief*

- (5) An operator of a mortgage investment scheme does not have to comply with Part 7.9 of the Act in relation to any of the following:
  - (a) a recommendation to acquire an interest in the scheme;
  - (b) an offer to issue or sell an interest in the scheme;
  - (c) the issue or sale of an interest in the scheme.
- (6) A person (other than a person to whom subsection (5) applies) does not have to comply with Part 7.9 of the Act in relation to either of the following:

- (a) a recommendation to acquire an interest in a mortgage investment scheme;
- (b) an offer to arrange the issue of an interest in a mortgage investment scheme,

in relation to which paragraphs (7)(a) to (7)(c) appear to be satisfied except where the person is aware, or ought reasonably to be aware, that those paragraphs are not satisfied in relation to the scheme.

*Where exemptions apply*

- (7) The exemptions in subsections (1), (2), (4), and (5) are only available where all of the following are satisfied:
  - (a) the scheme, together with any other managed investment scheme operated by the operator or by an associate of the operator that has assets invested in mortgage loans, has no more than 20 members; and
  - (b) the operator, and any associate of the operator, does not operate a mortgage investment scheme registered under section 601EB of the Act; and
  - (c) except for the scheme, or any managed investment scheme that forms part of the scheme, the operator is not in the business of promoting managed investment schemes.

## **6 Registering a scheme in relation to individual mortgage loans**

*Registration relief*

An operator of a mortgage investment scheme registered under section 601EB of the Act does not have to comply with subsection 601ED(5) of the Act to the extent that it would require the operator to register a scheme in relation to each mortgage loan in relation to which the scheme operates.

Note: See also the declaration relating to withdrawal rights in section 8 of this instrument.

## **7 Small industry-supervised mortgage investment schemes**

*Transitional continuation of relief given by ASIC Class Order [CO 02/238]*

- (1) The exemption specified in section 4 of ASIC Class Order [CO 02/238] as in force immediately before its repeal, continues to apply by force of this subsection, in the circumstances and on the conditions specified in relation to the exemption.
- (2) Subsection (1) has effect for a period of 1 year commencing on the day this instrument commences.

## Part 3—Declaration

### 8 Withdrawal rights for registered mortgage investment schemes

Chapter 5C of the Act applies to a responsible entity of a mortgage investment scheme to which section 6 of this instrument applies as if subsection 601GA(4) and Part 5C.6 were modified or varied by, except for references in relation to the scheme's constitution:

- (a) omitting “scheme” (wherever appearing), substituting “scheme in relation to a particular mortgage loan”; and
- (b) omitting “members” (wherever appearing), substituting “members who have an interest in a particular mortgage loan”.