

Attachment to CP 320: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/XXX

I, **[INSERT]**, delegate of the Australian Securities and Investments Commission,
make the following legislative instrument.

Date 2019

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/XXX*.

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.

3 Authority

This instrument is made under paragraph 601QA(1)(b) of the *Corporations Act 2001* (the **Act**).

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Part 2—Declaration

4 Changes to section 601GC of the *Corporations Act 2001*

(1) Chapter 5C of the Act applies to all persons in relation to a registered scheme as if section 601GC of the Act were modified or varied as follows:

(a) in subsection (1) omit “The”, substitute “Subject to this section, the”; and

(b) after subsection (1) insert:

“(1A) If the constitution of a scheme sets out a procedure for varying or cancelling rights of a class of members of the scheme, or rights attached to a class of interests under the scheme, those rights may be varied or cancelled by a resolution under paragraph (1)(a) only if that procedure is complied with.

(1AAA) The constitution of the scheme may be modified, or repealed and replaced with a new constitution, by the responsible entity if at least one of the following is satisfied at the time of the modification, or repeal and replacement:

(a) a meeting of members is unable to be held because the quorum requirement in either subsection 252R(2) or the scheme’s constitution is not capable of being satisfied because the scheme has an insufficient number of members;

(b) every member of the scheme is not entitled to vote at a meeting of members because of section 253E;

(c) all interests in the scheme were issued:

(i) in situations that did not require the responsible entity to give a Product Disclosure Statement; and

(ii) without disclosure to investors under Part 6D.2; and

(iii) without a prospectus under Division 2 of Part 7.12 of the old Corporations Law.

(1AAB) The responsible entity may only make the modification, or repeal and replacement, under subsection (1AAA) if, before the modification, or repeal and replacement, both of the following are satisfied:

(a) the responsible entity has provided to each member of the scheme, the auditor of the scheme and the auditor of the scheme’s compliance plan, all the information that the responsible entity reasonably expects to be material

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to the decision of a member whether to consent to the modification, or repeal and replacement;

- (b) after the information in paragraph (a) has been provided, every member of the scheme has given their written consent, to the modification, or repeal and replacement.

(1AAC) In this section:

old Corporations Law means the Corporations Law of each State and Territory as in force from time to time before 13 March 2000.

Passport Rules

(1AAD) The responsible entity of a registered scheme may modify the constitution of the scheme to the extent the responsible entity reasonably considers necessary to ensure the constitution:

- (a) is consistent with section 4 of the Passport Rules for this jurisdiction; and
- (b) specifies a right of withdrawal and contains provisions for making and dealing with withdrawal requests that are consistent with Division 7.1 of Part 7 of those Rules.

Any modifications made to the constitution under this subsection may be made before the scheme has a status of being an Australian passport fund but only have operative effect while the Passport Rules for this jurisdiction apply in relation to the fund.”.

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