

Attachment to CP 364: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Employee Share Schemes) Instrument 2022/[]

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

Date

[Signature]

[Name]

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is the *ASIC Corporations (Employee Share Schemes) Instrument 2022/[]*.

2 Commencement

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

Note: The register may be accessed at www.legislation.gov.au

3 Authority

This instrument is made under subsection 1100ZK(2) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Salary sacrifice arrangements

Division 1A of Part 7.12 of the Act applies in relation to all persons as if section 1100T of the Act were modified or varied as follows:

- (a) in paragraph 1100T(b), after “deductions”, insert “other than payments in the form of future gross (before-tax) salary or wages”;
- (b) in subparagraph 1100T(d)(i):
 - (i) after “any” (wherever occurring), insert “payments or”; and
 - (ii) after “deductions” (second occurring), insert “(other than payments in the form of future gross (before-tax) salary or wages)”;
- (c) in subparagraph 1100T(d)(ii), after “payments”, insert “(other than payments in the form of future gross (before-tax) salary or wages)”.

6 Financial information prepared under a foreign standard

Division 1A of Part 7.12 of the Act applies in relation to all persons as if section 1100X were modified or varied as follows:

(a) omit paragraph 1100X(2)(c), substitute:

“(c) otherwise:

- (i) in any case—a balance sheet and profit and loss statement prepared in compliance with either the accounting standards or the international accounting standards (within the meaning of the *Australian Securities and Investments Commission Act 2001*); or
- (ii) if the body corporate is a foreign company, but is not a registered foreign company—a balance sheet and profit and loss statement (together ***foreign financial statements***) together with the additional information referred to in subsection (2A) where the body corporate reasonably believes:
 - (A) the foreign financial statements are prepared in accordance with a standard (***foreign standard***) that is not covered by subparagraph (2)(c).”; and
 - (B) the body corporate is required or permitted to provide the foreign financial statements under the foreign standard in its place of origin.”;

(b) after subsection 1100X(2), insert:

“(2A) For the purposes of subparagraph 1100X(2)(c)(ii), the additional information is either:

- (a) a confirmation that there is no material difference between the foreign financial statements and the information that would otherwise be required under subparagraph 1100X(2)(c)(i); or
- (b) a reconciliation of the material differences between the foreign financial statements and the information that would be required under paragraph 1100X(2)(c)(i).”;

(c) after paragraph 1100X(3)(a), insert:

“(aa) if the ESS interests are not ordinary shares— a copy of a valuation of the ESS interest prepared by an independent expert.”;

7 Regulatory relief for certain subsequent sale offers of ESS interests

Division 1A of Part 7.12 of the Act applies in relation to all persons as if section 1100ZD of the Act were omitted and substituted with:

“1100ZD Regulatory relief for certain subsequent sale offers of ESS interests

- (1) The provisions of Part 6D.2, 6D.3 and 7.9 do not apply in relation to an offer of a financial product in a body corporate or a registered scheme for sale if:
 - (a) the body corporate or scheme operates an employee share scheme; and
 - (b) the financial product is not in a class of financial products that is able to be traded on a financial market covered by section 1100K; and
 - (c) the person making the offer reasonably believes that:
 - (i) the person acquired the financial product under the employee share scheme or in accordance with this subsection; and
 - (ii) the person is making the offer only to persons who are ESS participants in relation to the body corporate or registered scheme.
- (2) The provisions of Part 6D.2, 6D.3 and 7.9 do not apply in relation to an offer of a financial product in a body corporate or a registered scheme for sale if:
 - (a) the body corporate or scheme operates an employee share scheme; and
 - (b) the financial product is in a class of financial products that is able to be traded on a financial market covered by section 1100K; and
 - (c) the person making the offer reasonably believes that the financial product was acquired under the employee share scheme or on a financial market covered by section 1100K; and
 - (d) the body corporate or the responsible entity of the scheme did not issue the financial product with the purpose of the person to whom the financial product was issued:
 - (i) selling or transferring the financial product; or
 - (ii) granting, issuing or transferring interests in, or options or warrants over, the financial product.”.