



Corporations Amendment Regulations 2007 (No. 6)

Select Legislative Instrument 2007 No. 197

I, PROFESSOR MARIE BASHIR, AC, CVO, Deputy for the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 28 June 2007

MARIE BASHIR
Deputy for the Governor-General
By Her Excellency's Command

CHRISTOPHER JOHN PEARCE
Parliamentary Secretary to the Treasurer

1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2007 (No. 6)*.

2 Commencement

These Regulations commence on 1 July 2007.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] After regulation 7.6.02

insert

7.6.02AAA Compensation arrangements if financial services provided to persons as retail clients (Act s 912B)

- (1) For paragraph 912B (2) (a) of the Act, arrangements mentioned in subsection 912B (1) of the Act are, unless the financial services licensee is an exempt licensee, subject to the requirement that the licensee hold professional indemnity insurance cover that is adequate, having regard to:
- (a) the licensee's membership of a scheme (or schemes) mentioned in paragraph 912A (2) (b) of the Act, taking account of the maximum liability that has, realistically, some potential to arise in connection with:
- (i) any particular claim against the licensee; and
 - (ii) all claims in respect of which the licensee could be found to have liability; and

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- (b) relevant considerations in relation to the financial services business carried on by the licensee, including:
- (i) the volume of business; and
 - (ii) the number and kind of clients; and
 - (iii) the kind, or kinds, of business; and
 - (iv) the number of representatives of the licensee.
- (2) For paragraph 912B (3) (c) of the Act, a matter that ASIC must have regard to, before approving particular arrangements under paragraph 912B (2) (b) of the Act, is whether those arrangements provide coverage that is adequate, having regard to matters of the kind mentioned in subregulation (1).
- (3) In this regulation, ***exempt licensee*** means:
- (a) a company or institution of any of the following kinds:
 - (i) a general insurance company regulated by APRA under the *Insurance Act 1973*;
 - (ii) a life insurance company regulated by APRA under the *Life Insurance Act 1995*;
 - (iii) an authorised deposit-taking institution regulated by APRA under the *Banking Act 1959*; or
 - (b) a licensee (***related licensee***):
 - (i) that is related, within the meaning of section 50 of the Act, to a company or institution mentioned in paragraph (a); and
 - (ii) in respect of which the company or institution has provided a guarantee that:
 - (A) ensures payment of the obligations of the related licensee to its retail clients to an extent that is adequate within the meaning of subregulation (1); and
 - (B) is approved in writing by ASIC.

Note A decision to refuse to approve a guarantee is a reviewable decision under section 1317B of the Act.

Security bonds held by ASIC

- (4) A security bond lodged with ASIC by a licensee in consequence of the operation of regulation 7.6.02AA (as affected by any instrument made by ASIC under paragraph 926A (2) (c) of the Act) may be discharged or returned by ASIC (in whole or in part), without application from the licensee or surety who provided the security, in any of the following circumstances:
- (a) the licensee certifies, in the form approved by ASIC, that it holds professional indemnity insurance, or has an alternative compensation arrangement in place that provides compensation protection for clients of the licensee, that is adequate to cover claims to which the security bond could apply;
 - (b) the licensee certifies, in the form approved by ASIC, that it holds professional indemnity insurance, or has an alternative compensation arrangement in place that, together with other financial resources available to it, provides compensation protection for clients of the licensee, that is adequate to cover claims to which the security bond could apply;
 - (c) the licensee is a company or institution of any of the following kinds:
 - (i) a general insurance company regulated by APRA under the *Insurance Act 1973*;
 - (ii) a life insurance company regulated by APRA under the *Life Insurance Act 1995*;
 - (iii) an authorised deposit-taking institution regulated by APRA under the *Banking Act 1959*;
 - (d) the licensee certifies, in the form approved by ASIC, that it holds a guarantee given by a company or institution mentioned in paragraph (c) that, together with other financial resources available to it, provides compensation protection for clients of the licensee that is adequate to cover claims to which the security bond could apply.

Note A decision to refuse to approve a guarantee is a reviewable decision under section 1317B of the Act.

Transitional

- (5) Subregulations (1), (2) and (3) take effect as follows:
- (a) for a financial services licensee whose licence commences before 1 January 2008 — on 1 July 2008;
 - (b) for a financial services licensee whose licence commences on or after 1 January 2008 — on the date of commencement of the licence.

[2] Subregulation 7.6.02AA (2)

substitute

- (2) Subregulation (1) operates only in relation to a financial services licensee (other than an exempt licensee under regulation 7.6.02AAA):
- (a) who has not complied with subsection 912B (1) of the Act, in its unmodified form; and
 - (b) until the licensee does so comply.
- (3) Subregulations (1) and (2) are not taken to displace, or diminish, the requirement for a financial services licensee to comply with subsection 912B (1) of the Act in its unmodified form.
- (4) A security bond lodged with ASIC by a financial services licensee in compliance with section 912B of the Act as modified by subregulation (1), or with any provision of the old Corporations Act, may be released by ASIC, at its discretion, if:
- (a) ASIC considers that, in relation to the licensee, a security bond is no longer required because the licensee:
 - (i) has complied with subsection 912B (1) of the Act, in its unmodified form; or
 - (ii) is an exempt licensee within the meaning of regulation 7.6.02AAA; and
 - (b) ASIC has published on its internet website, and in a daily newspaper having national circulation:
 - (i) a proposal that it release the security bond; and

- (ii) a direction to the web address at which further information may be obtained; and
- (c) ASIC has advertised, at that web address, the existence of the security bond, and an invitation to submit valid claims against the bond; and
- (d) 3 months after publication of the advertisement, no valid claim has been submitted.

[3] After regulation 7.7.03

insert

7.7.03A Financial Services Guide given by financial services licensee: compensation arrangements

- (1) For paragraph 942B (2) (k) of the Act, the Financial Services Guide given by a financial services licensee must include a statement about:
 - (a) the kind of compensation arrangements that the licensee has in place; and
 - (b) whether those arrangements satisfy the requirements for compensation arrangements under section 912B of the Act.
- (2) This regulation commences, for a particular financial services licensee, on the date that subregulations 7.6.02AAA (1), (2) and (3) take effect for that licensee.

[4] After regulation 7.7.06A*insert***7.7.06B Financial Services Guide given by authorised representative of financial services licensee: compensation arrangements**

- (1) For paragraph 942C (2) (m) of the Act, the Financial Services Guide given by the authorised representative of a financial services licensee must include a statement about:
 - (a) the kind of compensation arrangements that the licensee has in place; and
 - (b) whether those arrangements satisfy the requirements for compensation arrangements under section 912B of the Act.
- (2) This regulation commences, for a particular authorised representative, on the date that subregulations 7.6.02AAA (1), (2) and (3) take effect for the financial services licensee for whom he or she is a representative.

[5] Regulation 10.2.44*omit***[6] Regulation 10.2.45***omit*
