



ASIC

Australian Securities & Investments Commission

ASIC grants interim class order relief from regulation for all funded representative actions and funded proof of debt arrangements

Friday 7 May 2010

ASIC today announced its intention to grant interim class order relief to lawyers and funders involved in legal proceedings structured as funded representative proceedings and funding claims lodged with liquidators to prove in the winding up of an insolvent company (proof of debt arrangements).

The relief, which will apply until 30 September 2010, is from the requirements that would otherwise apply to funded representative proceedings and funded proof of debt arrangements as 'managed investment schemes' under Chapter 5C and Chapter 7 of the *Corporations Act 2001* (the Corporations Act).

The relief means that current funded representative proceedings and proof of debt arrangements can progress, and new funded representative proceedings and proof of debt arrangements can be commenced without needing to comply with specific requirements, including:

- registering the scheme with ASIC;
- adopting a complying constitution and compliance plan for the scheme;
- appointing an AFS licensed public company as 'responsible entity';
- preparing a Product Disclosure Statement; and
- providing ongoing disclosure to members of the scheme.

The relief follows an announcement on 4 May 2010, by The Honourable Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, of the Federal Government's intention to exempt, by way of regulation amending the Corporations Act, representative proceedings and proof of debt arrangements from the definition of managed investment scheme in s9 of the Corporations Act.

The relief granted by ASIC will allow time for the implementation of the new legislative and policy regime for these representative proceedings and proof of debt arrangements.

The form of the relief is similar to the individual relief granted for some class actions and proof of debt arrangements previously granted by ASIC and does not necessarily reflect the proposed regulations.

The Minister also announced that the Federal Government is considering providing an exemption from the licensing and other requirements in Chapter 7 of the Corporations Act, subject to appropriate arrangements being put in place to manage conflicts of interest. To supplement the proposed regulations and provide clarity for industry participants, ASIC may produce a regulatory guide about managing the conflicts of interest that may arise, following a public consultation process.

Background

On 20 October 2009, the Full Court of the Federal Court handed down its decision in *Brookfield Multiplex Ltd v International Litigation Funding Partners Pte Ltd* [2009] FCAFC 147. The Full Court held that a funded representative action being maintained against Brookfield Multiplex was a 'managed investment scheme' within the meaning of s9 of the Corporations Act.

In November 2009, ASIC granted transitional relief to lawyers and litigation funders involved in legal proceedings structured as funded class actions commenced before 4 November 2009. Applications in respect of class actions to be commenced after that date have been considered on a case-by-case basis. (See [ASIC media release 09-218MR](#) ASIC grants transitional relief from regulation for funded class actions).

A managed investment scheme must be registered with ASIC in certain circumstances, including where it has more than 20 members or is promoted by a professional promoter. To qualify for registration, it must be operated by a public company that holds an Australian financial services licence and must have a constitution and compliance plan that meet the requirements of Chapter 5C of the Corporations Act.

The offer of interests in a registered managed investment scheme must generally be made through a complying Product Disclosure Statement that contains information about the scheme.

[Download \[CO 10/333\] Funded representative proceedings and funded proof of debt arrangements](#)