

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211



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ASIC

Australian Securities & Investments Commission

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211

About this compilation

Compilation No. 1

This is a compilation of *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* as in force on 13 November 2018. It includes commenced amendment affecting the legislative instrument to that

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the **endnotes**) include information about amending instruments and the amendment history of each amended provision.

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Part 1—Preliminary

Name of legislative instrument

This is the *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*.

Authority

This instrument is made under subsections 765A(2) and 1020F(1) and paragraphs 601QA(1)(a), 926A(2)(a), 951B(1) and 992B(1)(a) of the *Corporations Act 2001*.

Definitions

In this instrument:

Act means the *Corporations Act 2001*.

device means any object by which a person may use a low value non-cash payment facility or gift facility.

eligible non-cash payment facility means a non-cash payment facility that:

- (a) is issued by a financial services licensee; or
- (b) is issued by a participant in a designated payment system, within the meaning of section 7 of the *Payment Systems (Regulation) Act 1998*, and that relates to the system.

expiry date means a date after which a non-cash payment facility cannot be used to make non-cash payments.

facility has a meaning affected by section 762C of the Act

gift facility means a non-cash payment facility in relation to which all of the following apply:

- (a) the amount available for making non-cash payments under the facility:
 - (i) is set when the facility is issued;
 - (ii) cannot be increased after the facility is issued unless it is because of the reversal of a payment made under the facility or the correction of an error;
 - (iii) cannot be withdrawn from the facility by means of a non-cash payment unless all of the following apply:
 - (A) one or more non-cash payments have already been made using the facility;
 - (B) the amount available for making non-cash payments is an amount that, in the reasonable opinion of the issuer of the facility, is unlikely to be able to be conveniently used under the facility;
 - (C) the withdrawal is of the full amount standing to the credit of the facility;
- (b) the facility may be used to make non-cash payments more than one occasion;
- (c) the facility is only promoted or marketed as a gift product;
- (d) where the facility has an expiry date and the person holds the facility is provided with a device to use the facility:
 - (i) the expiry date is prominently set out on the device in a manner that makes it clear that it is an expiry date; or

- (ii) the date of issue of the facility (or a date that is not later than 3 months after that date) is prominently displayed on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
- (e) where the facility has an expiry date but no device is provided, the expiry date is prominently displayed in a manner that:
 - (i) could reasonably be expected to come to the attention of a person who is given, or given use, of the facility at the time it is given and at the time it is used; and
 - (ii) makes clear that it is an expiry date;
- (f) the facility is not a component of another financial product.

low value non-cash payment facility means a non-cash payment facility in relation to which all of the following apply:

- (a) the total amount available for making non-cash payments under all facilities of the same class issued by that issuer and held by any person at any one time does not exceed \$1,000;
- (b) the total amount available for making non-cash payments under all facilities of the same class issued by that issuer does not exceed \$10,000,000 at any time;
- (c) the facility is not a component of another financial product.

loyalty scheme means a non-cash payment facility in relation to which all of the following apply:

- (a) the facility is issued as part of a scheme the dominant purpose of which is to promote the purchase of goods from, or the use of services of, the issuer of the facility or another person;
- (b) a person who uses or holds the facility is allocated credits (however described) as a result of the purchase of goods from, or the use of the services of, the issuer of the facility or the other person;
- (c) the credits allocated under the facility can be used to make a payment or part payment for goods or services to obtain some other benefit;
- (d) the facility is not a component of another financial product.

makes non-cash payments has the meaning given by section 763D of the Act.

non-cash payment facility means a facility through which, through the acquisition of which, a person makes non-cash payments.

offer has a meaning affected by subsection 1010C(2) of the Act.

prepaid mobile facility means a non-cash payment facility

relation to which all of the following apply:

- (a) the facility is part of an arrangement for the supply of a public mobile telecommunications service under which the service may be used to the extent it is covered by the amount (the ***prepaid amount***) paid in advance which remains unused;
- (b) the non-cash payments made under the facility are debited against the prepaid amount;
- (c) the facility is not a component of another financial product.

public mobile telecommunications service has the meaning given by section 32 of the *Telecommunications Act 1997*.

2—Relief for non-cash payment facilities

Loyalty schemes

Operation of a loyalty scheme

- (1) A person does not have to comply with subsection 601ED of the Act in relation to a loyalty scheme.

Declaration not to be a financial product

- (2) A loyalty scheme is not a financial product for the purposes of Chapter 7 of the Act.

Road toll facilities

A facility through which, or through the acquisition of which, a person makes a non-cash payment of a toll for the use of a road or no other kind of non-cash payment, is not a financial product for the purposes of Chapter 7 of the Act.

Non-cash payment facilities used for third party payments

A financial services licensee does not have to comply with subsection 911A(1) of the Act for the provision of a financial service if:

- (a) the financial service is provided in the ordinary course of the licensee's business; and
- (b) the financial service consists of either or both of the following:
 - (i) advising a person in relation to an eligible non-cash payment facility that the person may use, or has used, to pay a person other than the licensee for goods or services;
 - (ii) arranging for a person to deal (other than by way of issue) in an eligible non-cash payment facility that the person may use to pay a person other than the licensee for goods or services; and
- (c) the licensee is not the issuer of a non-cash payment facility; and
- (d) the licence held by the licensee does not cover the provision of a financial service referred to in paragraph (b).

Low value non-cash payment facilities

Exemptions

- (1) A person providing financial services in relation to a low value non-cash payment facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a low value non-cash payment facility does not have to comply with Part 7.6 (other than subsection 911A(1) and Divisions 4 and 8), Divisions 2, 3 and 4 of Part 7.7 and Divisions 2, 3, 5 and 6 of Part 7.8 in relation to those services.
- (3) An authorised representative of a financial services licensee providing financial services in relation to a low value non-cash payment facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

Note: The person will not be able to rely on the exemptions in the circumstances specified in subsection (6).

Conditions: Issuers of low value non-cash payment facilities

- (4) An issuer of a low value non-cash payment facility who relies on any of the exemptions in subsections (1), (2) and (3) must take reasonable steps to ensure that all of the following are satisfied:
 - (a) before or at the time the low value non-cash payment facility is offered to a person as a retail client, the person is given a written document (**disclosure document**) which sets out the terms and conditions of the facility separately sets out in a prominent manner information about:
 - (i) whether any of the terms and conditions of the facility may be unilaterally varied by the issuer and a statement of how a person (**client**) who holds the facility may get information about the new terms and conditions;
 - (ii) whether the facility has an expiry date and, if so, where the expiry date may be found;
 - (iii) the procedures for dealing with any unauthorised or mistaken transactions relating to the facility or the loss or theft of the device (if any) through which the facility is used;
 - (iv) fees or charges for acquiring and using the facility and where any fees or charges are subject to change during the life of the facility, a statement of how the client may get information about the new fees or charges;
 - (b) the information in the disclosure document is worded and presented in a clear, concise and effective manner;
 - (c) where the facility has an expiry date and the client is provided with a device to use the facility:

- (i) the expiry date is prominently set out on the device in a manner that makes it clear that it is an expiry date; or
 - (ii) the date of the issue of the facility (or a date no more than 3 months after that date) is prominently set out on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
- (d) where the facility has an expiry date but no device is provided, the expiry date is set out in the disclosure document or in a written statement attached to the disclosure document;
- (e) a convenient means is available, that involves no charge by the issuer or its associates, for the client to do all of the following:
- (i) check the amount standing to the credit of the facility;
 - (ii) check any expiry date associated with the facility;
 - (iii) obtain at reasonable intervals a record of the payments and transactions under the facility;
- (f) if the terms and conditions of the facility are unilaterally varied, or the fees or charges for using the facility are changed during the life of the facility:
- (i) information about the variation or change is:
 - (A) made available to the client in accordance with the information in the disclosure document referred to in paragraph (a)(i) or (iv); and
 - (B) displayed in a clear and prominent way at each place and each website the facility may be acquired; and
 - (ii) the new terms and conditions or fees and charges are made available to the client on request;
- (g) if a low value non-cash payment facility is issued to a person as a retail client, the issuer maintains an internal dispute resolution procedure that:
- (i) complies with standards and requirements made or approved by ASIC for the purposes of subparagraph 912A(2)(a)(i) of the Act, or approved by such an instrument under that provision; and
 - (ii) covers complaints against the issuer made by retail clients in connection with financial services provided in relation to the facility.

Conditions: Other people

- (5) A person who relies upon any of the exemptions in subsections (1), (2) and (3) but is not the issuer of the low value non-cash payment facility must take reasonable steps to ensure that all of the following are satisfied:
- (a) before or at the time the low value non-cash payment facility is issued to the client, the issuer has taken

facility is offered to a person as a retail client, the person is provided with the disclosure document;

- (b) where the facility has an expiry date and the client is provided with a device to use the facility:
 - (i) the expiry date is prominently set out on the device in a manner that makes it clear that it is an expiry date; or
 - (ii) the date of the issue of the facility (or a date no more than 3 months after that date) is prominently set out on the device together with a statement that the facility cannot be used after a specified period after the date set out on the device;
- (c) where the facility has an expiry date but no device is provided, the expiry date is set out in the disclosure document or in a written statement attached to the disclosure document.

Non-compliance with conditions

- (6) If a condition in subsection (4) or (5) applies to a person and the person does not comply with the condition, the exemptions in subsections (1), (2) and (3) cease to apply to the person.

Gift facilities

- (1) A person providing financial services in relation to a gift facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a gift facility does not have to comply with Part 7.6 (other than subsection 911A(1) and Divisions 4 and 8), Divisions 2, 3 and 4 of Part 7.7 and Divisions 2, 3, 5 and 6 of Part 7.8 in relation to those services.
- (3) An authorised representative of a financial services licensee providing financial services in relation to a gift facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

Prepaid mobile facilities

- (1) A person providing financial services in relation to a prepaid mobile facility does not have to comply with subsection 911A(1), section 992A and Part 7.9 of the Act in relation to those services.
- (2) A financial services licensee providing financial services in relation to a prepaid mobile facility does not have to comply with Part 7.6 (other than subsection 911A(1) and Divisions 4 and 8), Divisions 2, 3 and 4 of Part 7.7 and Divisions 2, 3, 5 and 6 of Part 7.8 in relation to those services.
- (3) An authorised representative of a financial services licensee providing financial services in relation to a prepaid mobile facility does not have to comply with Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to those services.

Requirement to confirm transactions for travellers' cheques

Travellers' cheques are exempt from section 1017F of the Act.

Notes

Note 1—Instrument history

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
2016/211	22/3/2016 (<i>see</i> F2016L00367)	23/3/2016	
2018/752	12/11/2018 (<i>see</i> F2018L01566)	13/11/2018	-

Note 2—Amendment history

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed
= repealed and substituted

Provision affected	How affected
Section 2	rep. s48D LA
Section 3	rep 2018/752