

EXPOSURE DRAFT



EXPOSURE DRAFT (03/08/2022)

Corporations Amendment (Litigation Funding) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley
Governor-General

By His Excellency's Command

Stephen Jones [DRAFT ONLY—NOT FOR SIGNATURE]
Assistant Treasurer
Minister for Financial Services

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1 Name

This instrument is the *Corporations Amendment (Litigation Funding) Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Corporations Regulations 2001

1 After subregulation 5C.11.01(2)

Insert:

- (2A) A scheme (a *litigation funding scheme*) that has all of the following features is declared not to be a managed investment scheme:
- (a) the dominant purpose of the scheme is for each of its general members to seek remedies to which the general member may be legally entitled;
 - (b) the possible entitlement of each of its general members to remedies arises out of:
 - (i) the same, similar or related transactions or circumstances that give rise to a common issue of law or fact; or
 - (ii) different transactions or circumstances but the claims of the general members can be appropriately dealt with together;
 - (c) the possible entitlement of each of its general members to remedies relates to transactions or circumstances that occurred before or after the first funding agreement (dealing with any issue of interests in the scheme) is finalised;
 - (d) the steps taken to seek remedies for each of its general members include a lawyer providing services in relation to:
 - (i) making a demand for payment in relation to a claim; or
 - (ii) lodging a proof of debt; or
 - (iii) commencing or undertaking legal proceedings; or
 - (iv) investigating a potential or actual claim; or
 - (v) negotiating a settlement of a claim; or
 - (vi) administering a deed of settlement or scheme of settlement relating to a claim;
 - (e) a person (the *funder*) provides funds, indemnities or both under a funding agreement (including an agreement under which no fee is payable to the funder or lawyer if the scheme is not successful in seeking remedies) to enable the general members of the scheme to seek remedies;
 - (f) the funder is not a lawyer or legal practice that provides a service for which some or all of the fees, disbursements or both are payable only on success.

2 Subregulation 5C.11.01(3)

Omit “an *insolvency*”, substitute “a”.

3 Paragraph 5C.11.01(4)(e)

Repeal the paragraph, substitute:

- (e) the arrangement is not a litigation funding scheme.

4 Paragraph 5C.11.01(5)(e)

Repeal the paragraph, substitute:

- (e) the arrangement is not a litigation funding scheme.

5 Subregulation 5C.11.01(6) (definition of *general member*)

Repeal the definition, substitute:

general member:

- (a) in relation to a litigation funding scheme—means a member of the scheme who:
 - (i) is not the funder; and
 - (ii) is not a lawyer providing services for the purposes of the scheme; and
- (b) in relation to a litigation funding arrangement—means the party to the arrangement who:
 - (i) is not the funder; and
 - (ii) is not a lawyer providing services for the purposes of the arrangement.

6 Regulation 7.1.04N (heading)

Omit “funding schemes and arrangements relating to insolvency and litigation”, substitute “litigation funding schemes and arrangements”.

7 Subregulation 7.1.04N(2) (heading)

Repeal the heading.

8 Paragraph 7.1.04N(2)(a)

Omit “an insolvency”, substitute “a”.

9 Subregulations 7.1.04N(3) and (4)

Repeal the subregulations.

10 Paragraph 7.1.06(2A)(a)

Omit “an insolvency”, substitute “a”.

11 Paragraph 7.1.06(2A)(b)

Omit “5C.11.01;”, substitute “5C.11.01.”.

12 Paragraph 7.1.06(2A)(c)

Repeal the paragraph.

13 Paragraph 7.6.01(1)(x)

Omit “an insolvency”, substitute “a”.

14 Subregulation 7.6.01AB(1) (paragraph 911A(5C)(a) of the *Corporations Act 2001*)

Omit “an insolvency”, substitute “a”.

15 Paragraph 7.6.01AB(2)(a)

Omit “insolvency”.

16 Subregulation 7.6.01AB(2) (note)

Omit “an insolvency”, substitute “a”.

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Schedule 1 Amendments

17 Sub-subparagraph 7.6.04(1)(k)(ii)(B)

Omit “licence;”, substitute “licence.”.

18 Paragraph 7.6.04(1)(l)

Repeal the paragraph.

19 Subregulation 7.6.04(2A)

Repeal the subregulation.

20 Paragraph 7.8.21A(g)

Omit “scheme:”, substitute “scheme that is in the nature of a litigation funding scheme, or a litigation funding arrangement, mentioned in regulation 5C.11.01;”.

21 Subparagraphs 7.8.21A(g)(i) and (ii)

Repeal the subparagraphs.

22 Subparagraphs 7.9.98A(a)(i), (b)(i), (c)(i) and (d)(i)

Omit “an insolvency”, substitute “a”.

23 In the appropriate position in Chapter 10

Insert:

Part 10.48—Application provisions relating to the Corporations Amendment (Litigation Funding) Regulations 2022

10.48.01 Application of amendments relating to litigation funding

The amendments made by the *Corporations Amendment (Litigation Funding) Regulations 2022* apply in relation to:

- (a) a litigation funding scheme mentioned in regulation 5C.11.01(2A) entered on or after the commencement of those regulations; and
- (b) a litigation funding scheme mentioned in regulation 5C.11.01(2A) entered before that commencement, but only in relation to so much of the duration of the scheme that occurs on or after that commencement.