

DRAFT EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No.

Issued by the Authority of the Minister for Human Services, Financial Services,
Superannuation and Corporate Law

Corporations Act 2001
Corporations Amendment Regulations 2009 (No.)

The *Corporations Act 2001* (the Act) makes provision in relation to corporations and financial products and services.

Section 1364 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed by regulations or necessary or convenient to be prescribed by regulations for the carrying out or giving effect to the Act.

The Act has been amended by the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* (Modernisation Act) in relation to a number of financial services matters, including the regulation of debentures.

Debentures are debt instrument used by the issuer to raise funds from investors, who receive interest in return. Debentures are principally regulated under Chapter 2L of the Act which requires that any offer of debentures (that require a disclosure document for investors) are required to have in place a trust deed and appoint a trustee which acts in the interests of debenture holders.

Section 283BCA of the Act, requires that ASIC must establish and maintain a register relating to debenture holder trustees. The Section also allows for regulations to prescribe the way in which the register is established or maintained, including the details that must be entered into the register by ASIC.

The purpose of the proposed Regulations is to prescribe the information that ASIC must include in the register of trustees for debenture holders, being:

- the name and address of the trustee;
- the trustee's ACN or ABN, as applicable;
- the name and address of the borrower (also known as the issuer) who appointed the trustee;
- the name of the trust to which the trustee has been appointed to act; and
- the date the trust deed was executed (that is understood to be the date the document becomes legally effective).

The register is publicly available for inspection, copying or extractions, including online.

The Regulations would also require ASIC to amend the details entered on the register on receipt of a notice from the borrower under subsection 283BC(2) of the Act that the trust deed has been revoked.

Details of the proposed Regulations are set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the regulations may be exercised.

The proposed Regulations will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulations will commence on the commencement of items 2 and 3 of Schedule 3 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

The Regulations will commence on the commencement of items 2 and 3 of Schedule 3 to the Modernisation Bill (once enacted).

Details of the proposed Corporations Amendment Regulations 2009 (No.)

Regulation 1 – Name of Regulations

This regulation would provide that the name of the Regulations is the *Corporations Amendment Regulations 2009 (No.)*.

Regulation 2 – Commencement

This regulation would provide for the Regulations to commence on the commencement of items 2 and 3 of Schedule 3 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

Regulation 3 – Amendment of *Corporations Regulations 2001*

This regulation would provide that the *Corporations Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendment

Item [1] – After Chapter 2K

Item 1 would insert a new regulation under the headings: *Chapter 2L Debentures, Part 2L.2, Duties of borrower*. As required under S283BCA of the Act, the new regulation, 2L.2.01, would prescribe the information (in 1(a) to (e)) that ASIC must enter in to the register of debenture trustees (also referred to as the register in relation to a trustee for debenture holders).

That information is:

- the name and address of the trustee;
- the trustee's ACN or ABN, as applicable;
- the name and address of the borrower who appointed the trustee;
- the name of the trust for which the trustee has been appointed to act; and
- the date the trust deed was executed (understood to be the date the document becomes legally effective).

Subregulation (2) would also require ASIC, on receipt of a notice from the borrower under subsection 283BC(2) of the Act that the trust deed has been revoked, to amend the register by removing the details on the register.