ASIC Industry Funding Model: Consultation Questions and Answers

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| **Question** | **Answer** |
| **General Questions** | |
| **Q:** If a regulated entity becomes insolvent and is unable to pay their annual levy, will that levy amount be shared across remaining entities in that subsector for that year? | **A:** No. ASIC will engage in its debt collection processes to recover the amount of debt from that entity, as per current arrangements.  Once the rates of levy for a subsector are set for a year, they will not be adjusted. |
| **Q:** Will there be late payment penalties and sanctions? | **A:** Yes. If any levy payable by a person is unpaid, a simple interest rate of 20% per annum is intended to be applied to any unpaid amounts.  If amounts of levy are unpaid after twelve months, further administrative sanctions may be taken. |
| **Q:** Will an entity that satisfies multiple definitions have to pay more than one rate of levy? | Yes. The levies are per regulated activity undertaken by entities.  For example, if an entity is authorised as a deposit product provider and a payment product provider, the entity will pay both levies to recover ASIC's costs to regulate both deposit and payment product providers. |
| **Q.** Will ASIC advise each entity what subsectors they meet the definition for under the industry funding model? | No. As is the case for current regulatory obligations, each regulated entity will be responsible for determining what subsectors they belong to under the proposed industry funding model. Currently entities are required to meet all regulatory obligations, including data reporting obligations, associated with that subsector. |
| **Q:** Will all entities be responsible for inputting data into the portal, even where ASIC may already have this data? | Yes in the first instance, except for [data collected through ASIC’s real time market surveillance system.  It is intended that entities will have an obligation to enter all data into the portal that will be used to calculate levies in October each year. This is to ensure that the levies are as accurate as possible for all subsectors. The ownership of the data falls on the entity, and while ASIC may already have the data in some cases, it may not be current or on the same consistent definition.  The Government is currently investigating the level of pre-population that can be incorporated into the portal for the December 2017 release. The design of the portal will be subject to targeted industry consultation. Parties interested in being included in this consultation process should nominate themselves via the [ASICfunding@treasury.gov.au](mailto:ASICfunding@treasury.gov.au) email address.  Regardless of the level of pre-population, it is the responsibility of the entity to ensure that information that they provide to ASIC is correct and accurate, and that they report against all sub-sectors that they may be required to. |
| **Q:** Will the proposed fees-for-service commence in 2017-18? | **A:** No. The Government will consult on revised fees-for-service proposals in 2017. In the meantime, the existing fees schedule in the *Corporations (Fees) Act 2001* will continue to apply. |
| **Q:** Will the proposed levies offset the costs of financial counselling? | **A:** No. Only ASIC’s regulatory costs would be offset under an industry funding model. |
| **Q:** Will the proposed levies be tax deductible? | **A:** The Government is currently considering the most appropriate tax treatment of the proposed industry funding levies. It is understood that other cost recovery levies are tax deductible (for example, the Financial Institutions Supervisory Levies) and welcomes industry’s views on this issue. |
| **Investment Managers, Superannuation and Related Services** | |
| **Q:** Does the definition of ‘insurance product distributor’ exclude superannuation trustees that provide insurance? | **A:** The definition of ‘insurance product distributor’ does not expressly exclude superannuation trustees.  A superannuation trustee will be required to pay the insurance product distributor levy if the trustee has the relevant authorisation on their AFS licence.  The insurance product distributor authorisation applies to an entity that:   1. has an authorisation on their licence to deal in a financial product by arranging for another person to issue general/life insurance products; and 2. does not have an authorisation to deal in a financial product by issuing general and/or life risk insurance products. |
| **Q:** Will the definition of MDA operators be amended to include a reference to the new legislative instrument? | **A:** Yes. The MDA operator definition will be updated to refer to the new legislative instrument: *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968.* |
| **Q:** How will new operators of an investor directed portfolio service (IDPS) be levied? | **A:** It is currently proposed that all IDPS operators will be subject to a $47,000 flat levy in the first year of the industry funding model. From the second year onwards, each IDPS operator will be liable to pay a flat levy, plus a graduated levy based on revenue from IDPS activity.  Because ASIC does not have accurate data on IDPS revenue, it is not currently possible to estimate what the flat levy for IDPS operators will be from year two onwards. |
| **Deposit takers and credit** | |
| **Q:** Under an industry funding model, will credit licensees continue to lodge their annual compliance certificates? | **A:** Yes. Credit licensees will still be required to lodge their annual compliance certificates under an industry funding model as these certificates report more information than required under the industry funding model.  However credit licensees will no longer be required to pay the relevant fee for lodging the annual compliance certificate. These fees will be replaced by the annual levies from commencement of industry funding. |
| **Q:** For the purpose of the levy metric definitions, do the phrases ‘amount of credit’, ‘credit service’ and ‘credit contracts’ have the same meanings as in the *National Consumer Credit Protection Act 2009*? | **A:** Yes. The phrases 'amount of credit', 'credit contracts' and 'credit service' are all defined in the *National Consumer Credit Protection Act 2009* (National Credit Act).  When calculating the amount of credit intermediated or credit provided, regulated entities should only include credit regulated under the National Credit Act. |
| **Q:** Do ASIC levies apply to multiple different stages of intermediation in relation to a single credit contract, for example, where the same loan application is handled by more than one licensee (as referrer / broker / aggregator)? | **A:** Yes. ASIC regulates the conduct and activities of each licensee within this example. The level of activity undertaken by each licensee is used as a proxy for ASIC's regulatory effort. ASIC will use the credit volume data to apportion ASIC's costs in regulating credit intermediaries across the subsector. ASIC will only collect its cost of regulating the credit intermediaries subsector from credit intermediaries. |
| **Q:** The proposed levy metric for credit providers is the amount of ‘credit provided’ in the previous financial year. Does that refer to credit approved or actual credit lent? | **A:** When calculating the amount of credit provided, regulated entities should include the amount of actual credit lent (rather than approved) during the period. |
| **Q:** For the credit providers and deposit product providers what date will be used to calculate the total amount of credit provided and total deposits that are the basis for the graduated levy? | **A:** The annual levy for credit providers and credit intermediaries will be based on the total amount of credit provided or intermediated in the previous financial year. That is the amount of new credit written from 1 July to 30 June in the relevant year. For deposit product providers it will be the deposits as at 30 June. |
| **Financial advisers** | |
| **Q:** Will the general advice provider levy apply to entities that provide general advice but are exempt from the requirement to hold an AFS licence because of an ASIC class order instrument? | **A:** The general advice provider levy is only payable by entities that are authorised to provide financial product advice, which is general advice, on their AFS licence.  If an entity provides general advice and is exempt from the requirement to hold an AFS licence because of an ASIC class order, they are currently not subject to the levy. The main issue is that it is difficult for ASIC to identify who is currently relying on the exemptions in the class order instruments. The legislation provides scope for ASIC to charge exempt entities in the future and the Government will give this issue further consideration. |
| **Insurance** | |
| **Q:** Are the definitions of ‘net policy revenue’ and ‘net premium revenue’ intended to apply to revenue generated in Australia? | **A:** Yes. The definitions of ‘net policy revenue’ and ‘net premium revenue’ are intended to apply to policy revenue and gross earned premiums generated in Australia as this corresponds to the regulatory remit of ASIC. |
| **Q:** Could general insurance providers and life insurance providers pay a separate levy? | **A:** The industry funding model needs to effectively balance complexity against specificity. Additional specificity would increase ASIC’s costs of administering the model, which would then be passed through to regulated entities.  However, the Government is actively considering what the most appropriate activity metric and definition for each industry subsector will be. This decision will be informed by the outcomes of consultation on the proposed ASIC industry funding model. |
| **Market Intermediaries and Infrastructures** | |
| **Q:** The proposed graduated levy for investment banks is based on an entity’s share of total Australian-sourced revenue from investment banking activities. Is it intended to be based on net or gross revenue? | **A:**  The Government is actively considering what the most appropriate activity metric for each industry subsector will be. This decision will be informed by the outcomes of consultation on the proposed ASIC industry funding model. |
| **Q:** For the market participant levy, is the proposal that ASIC will do real-time supervision of futures transactions on ASX 24? | **A:** ASX24 message and transaction data is currently uploaded to the ASIC Market and Analytics Intelligence (MAI) system over night and reports are generated on a T+1 basis. That is, the messages are ingested by the system and processed.The IFM proposal is simply to extend to ASX24 market participants the market supervision levy arrangements which currently apply to participants of the cash equity markets. |
| **Q:** Will the levy for futures market participant be based on transaction and message data reported to ASIC? | Yes. To make this clearer, the Government will consider amending the proposed definition of ‘transactions and messages’ to:  'Transactions are the total number of transactions executed on, or reported to, the cash equity and futures markets by a participant during the billing period that:   1. are reported by the operators of the cash equity and futures markets to ASIC’s Market Surveillance System; and 2. are recognised by ASIC’s Market Surveillance System as executed transactions.   Messages are the total number of messages by a participant in the cash equity and futures markets during the billing period that:   1. are reported by the operators of the cash equity and futures markets to ASIC’s Market Surveillance System; and 2. are recognised by ASIC’s Market Surveillance System as orders or executed transactions'.   Entities should indicate whether they support this proposed amendment in their formal submissions. |
| **Q:** Will companies that have a low value financial market exemption be required to pay the exempt market levy of $45,000? | **A:** No. Companies that have a low value financial market exemption (LVMs) will not be required to pay the proposed exempt market levy of $45,000. LVMs will be removed from the definition of exempt markets for the purpose of the funding model. |
| **Corporate** | |
| **Companies** | |
| **Q:** Is the market capitalisation levy metric for publicly listed companies intended to capture market capitalisation domestically and overseas? | **A:** No. The levy metric applies only to domestic market capitalisation. To make this clearer, the Government will consider amending the proposed definition of ‘market capitalisation’ to:  *“The* ***domestic*** *value of a company that is traded on a licensed market, calculated by multiplying the total number of shares at close of the market by the share price at 30 June.”*  Entities should indicate whether they support this proposed amendment in their formal submissions. |
| **Q:** Why is the levy for publicly listed companies subject to a minimum and maximum levy? | **A:** Larger entities generally pose a higher risk to the Australian economy as the number of investors and the entity's significance to the market are large. However, as ASIC’s costs to regulate publicly listed, disclosing companies do not fall below (due to fixed costs) or rise above (due to economies of scale) certain thresholds, their levies will be subject to a minimum and maximum. |
| **Q:** Will the Annual Review Fee continue to be charged? | **A:** Yes. The Annual Review Fee for companies is an ASIC Registry fee, charged through ASIC’s registry business to recover the costs of maintaining data the on the 31 registers for which ASIC is responsible.  The costs associated with ASIC’s registry business are outside the scope of the industry funding model, which will only recover the costs of ASIC’s regulatory activities. |
| **Q:** Why is the Government proposing to charge a flat annual levy of $5 for small proprietary companies? | **A:** The proposed levy for small proprietary companies has been determined based on the amount of effort and resources ASIC spends in regulating this subsector.  The Government is considering the most efficient way to recover these costs from small proprietary companies, including collecting the levy along with small proprietary companies’ Annual Review Fee.  The Government welcomes submissions on the most appropriate way to collect this levy. |
| **Q:** Would it be possible to separate companies into additional subsectors? | The industry funding model needs to effectively balance complexity against specificity. Additional specificity would increase ASIC’s costs of administering the model, which would then be passed through to regulated entities.  The Government is actively considering what the most appropriate activity metric and definition for each industry subsector will be. This decision will be informed by the outcomes of consultation on the proposed ASIC industry funding model. |
| **Auditors** | |
| **Q:** Why has market capitalisation of audited entities not been adopted as the relevant levy metric for audit firms and authorised audit companies? | **A:** The Government is actively considering what the most appropriate activity metric for each industry subsector will be. This decision will be informed by the outcomes of consultation on the proposed ASIC industry funding model. |
| **Q:** Will audit fee revenue be assessed at a point in time or on average? | **A:** The levy payable by authorised audit companies and audit firms that audit publicly listed entities is currently proposed to be calculated based on audit fee revenue over the total financial year.  The Government is actively considering what the most appropriate activity metric for each industry subsector will be. This decision will be informed by the outcomes of consultation on the proposed ASIC industry funding model. |
| **Registered liquidators** | |
| **Q:** What financial literacy work does ASIC undertake in relation to registered liquidators? | **A:** Registered liquidators' share of financial literacy costs is estimated to be less than 1% of the total $8.5 million regulatory costs for this sector.  As the proposed industry funding model is an 'ex-post' model, the amount recovered from Registered Liquidators for financial literacy costs will reflect ASIC's actual activity in this area. That is, it might prove to be more or less than the estimate of 1%.  The most significant costs that registered liquidators can influence over time, through their behaviour and conduct, relate to ASIC's surveillance and enforcement activities.  The main activities ASIC currently undertakes in 2016-17 that contribute to the estimated $8.5m to be recovered from liquidators are:   * proactive risk-based and reactive surveillances and, where ASIC identifies breaches of Corporations legislation and/or professional standards, take appropriate action which may result in suspension or cancellation of their registration as liquidators, the entering of enforceable undertakings or other negotiated settlements. Administrative action is available in the CALDB or in a superior court. Following the commencement of the Insolvency Law Reform Act 2016, from 1 March 2017, a disciplinary committee replaces CALDB for liquidator matters. The Courts may make orders for compensation to companies or creditors. In the more egregious cases, criminal conduct can be the subject of a brief to the CDPP. * project-based work to review the independence, competence and remuneration of liquidators. * review liquidator compliance with statutory lodgements and publication of notices to identify systematic non-compliance * educate and guide registered liquidators on ASIC’s expectations concerning specific issues and behaviours. * respond to reports of misconduct about registered liquidators * undertake policy work related to registered liquidators.   A link to 2016-17 summary business plan has also been published on ASIC's website: <http://download.asic.gov.au/media/4060345/asics-2016-17-insolvency-practitioners-summary-business-plan.pdf>  ASIC's corporate plan is available at:  <http://asic.gov.au/about-asic/what-we-do/our-role/asics-corporate-plan-2016-2017-to-2019-2020/> |
| **Q:** How does the proposed cost allocation for registered liquidators of $8.5 million compare with previous years? | **A:** The proposed cost allocation to registered liquidators has remained stable over the last two years.  In the 2012-13 budget, the Government approved $11.4 million funding over 4 years to modernise and harmonise the regulatory framework for insolvency practitioners. The Government's insolvency law reforms responded to the Senate Economics Reference Committee's report, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework* in September 2010.  Of the $11.4 million funding approved by the Government, $6.5 million was for capital expenditure to build the insolvency notices website and the liquidator portal. The remaining funding of approximately $1.2 million per annum funded ASIC's increased focus on regulating registered liquidators (including additional enforcement costs). The additional $1.2 million funding has been subject to Government efficiency dividends and targeted savings initiatives since the funding was originally approved. |