

Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014

No. 100, 2014

An Act to amend the law relating to corporations, and for other purposes

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An Act to amend the law relating to corporations, and for other purposes

[*Assented to 11 September 2014*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporations Amendment (Simple Corporate Bonds and Other Measures) Act 2014.*

2 Commencement

(1) Each provision of this Act 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 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 11 September 2014 |
| 2. Schedule 1 | A single day to be fixed by Proclamation.  However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 19 December 2014  (F2014L01726) |

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments relating to simple corporate bonds etc.

Corporations Act 2001

1 Section 9 (before the definition of *AASB*)

Insert:

***2‑part simple corporate bonds prospectus*** has the meaning given by section 713B.

2 Section 9

Insert:

***base prospectus*** has the meaning given by subsection 713C(1).

3 Section 9

Insert:

***offer of simple corporate bonds*** has the meaning given by section 713A.

4 Section 9

Insert:

***offer‑specific prospectus***, in relation to an offer of simple corporate bonds, has the meaning given by subsection 713D(1).

5 Section 9

Insert:

***simple corporate bonds*** has the meaning given by section 713A.

6 Section 9

Insert:

***simple corporate bonds depository interest*** means a beneficial interest in simple corporate bonds, where the interest is or was issued by a simple corporate bonds depository nominee (as a simple corporate bonds depository nominee).

7 Section 9

Insert:

***simple corporate bonds depository nominee*** means a person who:

(a) issues to someone else one or more beneficial interests in simple corporate bonds that the person:

(i) owns legally; or

(ii) would own beneficially, apart from the issue of those interests; or

(iii) has a beneficial interest in; and

(b) does so with the agreement of the body that issued the bonds.

8 At the end of section 283AA

Add:

(4) The regulations may exempt a specified offer of debentures, or a specified class of offers of debentures, from subsection (1).

9 Paragraph 636(1)(g)

Omit “under section 710 to 713;”, substitute:

under whichever of the following is applicable:

(iii) sections 710 to 713;

(iv) sections 713C to 713E;

10 Subsection 700(1)

Omit “not include a security referred to in paragraph (e) or (f) of the definition of ***security*** in section 761A.”, substitute:

not include:

(a) a security referred to in paragraph (e) or (f) of the definition of ***security*** in section 761A; or

(b) a simple corporate bonds depository interest in simple corporate bonds, where the simple corporate bonds were issued under a 2‑part simple corporate bonds prospectus.

11 Section 705 (after table item 2)

Insert:

|  |  |  |
| --- | --- | --- |
| 2A | ***2‑part simple corporate bonds prospectus***  Must be used for any offer of simple corporate bonds. | content [713C, 713D, 713E]  procedure [717]  liability [728 and 729]  defences [731 and 733] |

12 At the end of section 705 (after the table)

Add:

Note: Subsection 709(1A) provides that if the offer period for an offer of simple corporate bonds begins during the 2‑year period beginning at the commencement of that subsection, a prospectus (other than a 2‑part simple corporate bonds prospectus) may be prepared.

13 After subsection 708(14)

Insert:

(14A) Subsection (14) does not apply to:

(a) an offer of simple corporate bonds; or

(b) an offer of debentures (other than simple corporate bonds), if the offer is made to holders of simple corporate bonds.

14 Subsection 709(1)

After “securities”, insert “(other than an offer of simple corporate bonds)”.

15 After subsection 709(1)

Insert:

(1A) If:

(a) an offer of simple corporate bonds needs disclosure to investors under this Part; and

(b) the offer period begins during the 2‑year period beginning at the commencement of this subsection;

either of the following must be prepared for the offer:

(c) a prospectus (other than a 2‑part simple corporate bonds prospectus) unless subsection (4) allows an offer information statement to be used instead;

(d) a 2‑part simple corporate bonds prospectus.

Note: See sections 713B to 713E for the contents of a 2‑part simple corporate bonds prospectus.

(1B) If a prospectus is prepared under paragraph (1A)(c), then, under section 712, the prospectus may simply refer to material already lodged with ASIC instead of including it.

(1C) If:

(a) an offer of simple corporate bonds needs disclosure to investors under this Part; and

(b) the offer period begins after the 2‑year period beginning at the commencement of this subsection;

a 2‑part simple corporate bonds prospectus must be prepared for the offer.

Note: See sections 713B to 713E for the contents of a 2‑part simple corporate bonds prospectus.

16 After subsection 709(2)

Insert:

(2A) Subsection (2) does not apply to an offer of simple corporate bonds.

17 Subsection 709(4)

After “prospectus”, insert “(other than a 2‑part simple corporate bonds prospectus)”.

18 At the end of section 710

Add:

(4) This section does not apply to a 2‑part simple corporate bonds prospectus.

19 At the end of section 711

Add:

Section does not apply to 2‑part simple corporate bonds prospectus

(9) This section does not apply to a 2‑part simple corporate bonds prospectus.

20 At the end of section 712

Add:

Section does not apply to 2‑part simple corporate bonds prospectus

(6) This section does not apply to a 2‑part simple corporate bonds prospectus.

21 At the end of section 713

Add:

Section does not apply to 2‑part simple corporate bonds prospectus

(7) This section does not apply to a 2‑part simple corporate bonds prospectus.

22 After section 713

Insert:

713A Offer of simple corporate bonds

Simple corporate bonds

(1) If the conditions set out in this section are satisfied in relation to an offer of securities for issue by a body:

(a) the offer is an ***offer of simple corporate bonds***; and

(b) the securities are ***simple corporate bonds***.

Securities must be debentures

(2) The securities must be debentures.

Securities must be quoted on a prescribed financial market

(3) The securities must be offered on the basis that:

(a) the securities have been admitted to quotation on a prescribed financial market; or

(b) an application for admission of the securities to quotation on a prescribed financial market has been made to the operator of that market; or

(c) an application for admission of the securities to quotation on a prescribed financial market will be made to the operator of that market within 7 days after the date of the prospectus.

(4) If, at a particular time, there is no prospectus, then, for the purposes of paragraph (3)(c), assume that:

(a) there is a prospectus; and

(b) the date of the prospectus is the first day of the offer period.

Securities must be in Australian currency

(5) The securities must be denominated in Australian currency.

Securities for fixed term

(6) The securities must be for a fixed term of not more than 15 years.

Principal payable at end of fixed term

(7) The principal in respect of the securities must be repaid by the issuing body to the holder at the end of the fixed term.

Interest rate must be fixed or floating

(8) The rate at which interest is payable on the securities must be:

(a) a fixed rate; or

(b) a floating rate that is comprised of a reference rate and a fixed margin.

Fixed rate etc. must not be decreased

(9) If a fixed rate of interest is payable on the securities, the rate must not be decreased during the term of the securities.

(10) If a floating rate of interest is payable on the securities, the fixed margin of the rate must not be decreased during the term of the securities.

Interest to be paid periodically etc.

(11) Interest payments on the securities:

(a) must be paid periodically; and

(b) must be paid no later than the end of the fixed term; and

(c) cannot be deferred or capitalised by the issuing body.

Security must not exceed $1,000

(12) The price payable for each security must not exceed $1,000.

Securities may only be redeemed before fixed term in specified circumstances

(13) The securities must not be redeemable (other than at the end of the fixed term) except in one or more of the following circumstances:

(a) at the option of the holders of the securities;

(b) as a result of the acceptance of offers made to the holders by the issuing body to buy back the securities;

(c) a change in a law, or in the application or interpretation of a law, with the effect that interest payable on the securities is not, or may not be, deductible by the issuing body for the purposes of calculating its taxation liability;

(d) a change in a law, or in the application or interpretation of a law, with the effect that:

(i) the issuing body, or any guarantor for the body, would be required to deduct or withhold an amount in respect of taxes from a payment to the holders; and

(ii) under the terms of the securities, that deduction or withholding would result in the body, or any guarantor, being required to pay an additional amount to the holders in relation to the amount deducted or withheld;

(e) there is a change of control of the issuing body (as defined in the terms of the securities) and the redemption does not take effect unless all securities issued under the offer are redeemed;

(f) fewer than 10% of the securities issued under the offer remain on issue and the redemption does not take effect unless all securities issued under the offer are redeemed.

Debt to security holders is not subordinated to debts to unsecured creditors

(14) The issuing body’s debts to holders of the securities must not be subordinated to any of the issuing body’s debts to unsecured creditors.

Securities not convertible

(15) The securities must not be convertible into another class of securities.

Securities are offered at single price

(16) The price payable for the securities must be the same for all persons who accept the offer.

Continuously quoted securities

(17) The issuing body must be a body that:

(a) has continuously quoted securities; or

(b) is a wholly‑owned subsidiary of a body corporate that:

(i) has continuously quoted securities; and

(ii) has guaranteed, or agreed to guarantee, the repayment of any money deposited or lent to the borrower under the securities; and

(iii) has guaranteed, or agreed to guarantee, the payment of any interest payable on the securities;

where trading in the securities on a prescribed financial market on which the securities are quoted was not suspended for more than a total of 5 days during the shorter of the following periods:

(c) the period during which the class of securities is quoted;

(d) the period of 12 months before the day on which the offer is made.

(18) If, at a particular time, there is no prospectus, then, in determining, for the purposes of subsection (17), whether a body has continuously quoted securities at that time, assume that:

(a) there is a prospectus; and

(b) the date of the prospectus is the first day of the offer period.

Auditor’s reports have not been modified

(19) If the condition in subsection (17) is satisfied because of the application of paragraph (17)(a) to the issuing body, the auditor’s report on:

(a) the issuing body’s financial report for the most recent financial year; or

(b) if a half‑year financial report was prepared by the issuing body after the issuing body’s financial report for the most recent financial year—the half‑year financial report;

must not include:

(c) a statement to the effect that the auditor is of the opinion that the financial report, or the half‑year financial report, as the case may be, is not in accordance with this Act; or

(d) a description of a defect or an irregularity in the financial report or the half‑year financial report, as the case may be; or

(e) a description of a deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307(b), (c) or (d); or

(f) an emphasis of matter paragraph related to going concern.

(20) If:

(a) the issuing body is a wholly‑owned subsidiary of a body corporate; and

(b) the condition in subsection (17) is satisfied because of the application of paragraph (17)(b) to the body corporate;

the auditor’s report on:

(c) the body corporate’s financial report for the most recent financial year; or

(d) if a half‑year financial report was prepared by the body corporate after the body corporate’s financial report for the most recent financial year—the half‑year financial report;

must not include:

(e) a statement to the effect that the auditor is of the opinion that the financial report, or the half‑year financial report, as the case may be, is not in accordance with this Act; or

(f) a description of a defect or an irregularity in the financial report or the half‑year financial report, as the case may be; or

(g) a description of a deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307(b), (c) or (d); or

(h) an emphasis of matter paragraph related to going concern.

ASIC power to exclude body from this section

(21) The issuing body must not be a body in relation to which a determination is in force under subsection (23).

(22) If the issuing body is a wholly‑owned subsidiary of a body corporate, the body corporate must not be a body in relation to which a determination is in force under subsection (23).

(23) ASIC may determine that a body is a body to which this subsection applies if ASIC is satisfied that, in the previous 12 months, any of the following provisions were contravened in relation to the body:

(a) subsection 283AA(1), 283AB(1) or 283AC(1);

(b) the provisions of Chapter 2M as they apply to the issuing body;

(c) section 674 or 675;

(d) section 724 or 728.

ASIC must publish a copy of the determination in the Gazette.

Regulations

(24) The securities must comply with such other conditions (if any) as are specified in the regulations.

(25) The offer must comply with such other conditions (if any) as are specified in the regulations.

(26) The issuing body must comply with such other conditions (if any) as are specified in the regulations.

(27) If the issuing body is a wholly‑owned subsidiary of a body corporate, the body corporate must comply with such other conditions (if any) as are specified in the regulations.

713B Simple corporate bonds—2‑part simple corporate bonds prospectus

(1) A ***2‑part simple corporate bonds prospectus*** for an offer of simple corporate bonds for issue by a body is the combination of the following documents prepared by the issuing body:

(a) the base prospectus that covers the period during which the offer is made;

(b) the offer‑specific prospectus for the offer.

Prospectus

(2) A 2‑part simple corporate bonds prospectus is taken to be a prospectus for the purposes of this Act.

Base prospectus is not taken to be a prospectus in its own right

(3) For the purposes of this Act, a base prospectus is taken not to be a prospectus in its own right.

Offer‑specific prospectus is not taken to be a prospectus in its own right

(4) For the purposes of this Act, an offer‑specific prospectus is taken not to be a prospectus in its own right.

Lodgement of prospectus

(5) For the purposes of this Act, a 2‑part simple corporate bonds prospectus for an offer of simple corporate bonds is taken to have been lodged with ASIC on the day the offer‑specific prospectus for the offer is lodged with ASIC.

Expiry date of prospectus

(6) For the purposes of this Act, the expiry date of a 2‑part simple corporate bonds prospectus for an offer of simple corporate bonds is taken to be the expiry date for the offer‑specific prospectus for the offer.

Prospectus must be published on body’s website

(7) A base prospectus must be available on the issuing body’s website throughout the covered period for the base prospectus (within the meaning of section 713C).

(8) An offer‑specific prospectus must be available on the issuing body’s website throughout the application period for the offer‑specific prospectus.

713C Simple corporate bonds—base prospectus

Base prospectus

(1) If a body prepares and lodges with ASIC a document that satisfies the conditions set out in subsections (2) and (3), the document is a ***base prospectus*** for simple corporate bonds offered by the body during the 3‑year period (the ***covered period***) beginning on the date on which the document is lodged with ASIC.

Document must be expressed to be the base prospectus

(2) The document must state that it is the base prospectus for all offers of simple corporate bonds made by the body during the covered period.

Document to be read with offer‑specific prospectus

(3) The document must state that:

(a) there will be an offer‑specific prospectus for each offer of simple corporate bonds during the covered period; and

(b) the disclosure document for each such offer will consist of:

(i) a base prospectus; and

(ii) the offer‑specific prospectus for the offer.

Note: See also section 713B (2‑part simple corporate bonds prospectus).

Replacement document

(4) If the document is a replacement document, the ***covered period*** is the period:

(a) beginning on the date on which the replacement document is lodged with ASIC; and

(b) ending at the end of the covered period for the original base prospectus.

Content of base prospectus

(5) A base prospectus must contain the information specified in the regulations.

(6) A base prospectus must set out the statements specified in the regulations.

713D Simple corporate bonds—offer‑specific prospectus

Offer‑specific prospectus

(1) If:

(a) a body proposes to make a particular offer of simple corporate bonds; and

(b) the body prepares and lodges with ASIC a document that satisfies:

(i) the conditions set out in subsections (2), (3) and (4); and

(ii) if the condition set out in subsection (5) is applicable—that condition;

the document is an ***offer‑specific prospectus*** for the offer.

Document must be expressed to be the offer‑specific prospectus

(2) The document must state that it is the offer‑specific prospectus for the offer.

Expiry date

(3) The document must state that no simple corporate bonds will be issued under the offer after the expiry date specified in the document. The expiry date must not be later than 13 months after the date the document is lodged with ASIC. The expiry date of a replacement document must be the same as that of the original document it replaces.

Note: Section 719A deals with replacement documents.

Document to be read with base prospectus

(4) The document must state that:

(a) there is a base prospectus that is applicable to the offer; and

(b) the disclosure document for each such offer will consist of:

(i) the offer‑specific prospectus for the offer; and

(ii) the base prospectus.

Note: See also section 713B (2‑part simple corporate bonds prospectus).

Minimum subscription—first offer

(5) If the offer is the first offer of simple corporate bonds made by the issuing body during:

(a) if the base prospectus that is applicable to the offer is not a replacement document—the covered period (within the meaning of subsection 713C(1)) for the base prospectus; or

(b) if the base prospectus that is applicable to the offer is a replacement document for the original base prospectus—the covered period (within the meaning of subsection 713C(1)) for the original base prospectus;

the document must state that the simple corporate bonds will not be issued under the offer unless a minimum amount of $50 million is raised under the offer. For the purpose of working out whether this condition has been satisfied, a person who has agreed to take simple corporate bonds as an underwriter is taken to have applied for those simple corporate bonds.

Content of offer‑specific prospectus

(6) An offer‑specific prospectus must contain the information specified in the regulations.

(7) An offer‑specific prospectus must set out the statements specified in the regulations.

Offer‑specific prospectus may amend applicable base prospectus

(8) An offer‑specific prospectus may include material that modifies or supplements the applicable base prospectus.

713E Simple corporate bonds—prospectus may refer to other material lodged with ASIC

(1) Instead of setting out information that is contained in a document (the ***lodged document***) that has been lodged with ASIC, a base prospectus or an offer‑specific prospectus may simply refer to the lodged document. The reference must:

(a) identify the lodged document or the part of the lodged document that contains the information; and

(b) inform people of their right to obtain a copy of the lodged document (or part) under subsection (5).

(2) The reference must also include:

(a) if the information is primarily of interest to professional analysts or advisers or investors with similar specialist information needs:

(i) a description of the contents of the lodged document (or part); and

(ii) a statement to the effect that the information in the lodged document (or part) is primarily of interest to those people; or

(b) in any other case—sufficient information about the contents of the lodged document to allow a person to whom the offer is made to decide whether to obtain a copy of the lodged document (or part).

(3) The lodged document (or part) referred to under subsection (1) is taken to be included in the base prospectus, or the offer‑specific prospectus, as the case may be.

(4) A person who wishes to take advantage of subsection (1) may lodge a document with ASIC even if this Act does not require the document to be lodged.

(5) If the base prospectus, or the offer‑specific prospectus, as the case may be, is taken to include a lodged document, or part of a lodged document, under subsection (1), the person making the offer must give a copy of the lodged document (or part) free of charge to anyone who asks for it during:

(a) in the case of a base prospectus—the covered period for the base prospectus (within the meaning of section 713C); or

(b) in the case of an offer‑specific prospectus—the application period for the offer‑specific prospectus.

23 After subsection 716(1)

Insert:

Date for 2‑part simple corporate bonds prospectus

(1A) Subsection (1) does not apply to a 2‑part simple corporate bonds prospectus.

(1B) For the purposes of this Act, the date of a 2‑part simple corporate bonds prospectus for an offer of simple corporate bonds is taken to be the date on which the offer‑specific prospectus for the offer is lodged with ASIC.

24 Section 717 (cell at table item 1, column headed “Sections”)

Repeal the cell, substitute:

|  |
| --- |
| 710  711  712  713  713C  713D  713E  714  715  716 |

25 Section 717 (cell at table item 4, column headed “Action required”)

After “section 719”, insert “or 719A”.

26 Section 717 (cell at table item 4, column headed “Sections”)

Repeal the cell, substitute:

|  |
| --- |
| 719  719A  724 |

27 Section 718

Before “A disclosure”, insert “(1)”.

28 At the end of section 718

Add:

(2) This section does not apply to a 2‑part simple corporate bonds prospectus.

Note: See section 713B (2‑part simple corporate bonds prospectus).

29 Section 719 (heading)

Repeal the heading, substitute:

719 Lodging supplementary or replacement document—general

30 At the end of section 719

Add:

Section does not apply to 2‑part simple corporate bonds prospectus

(6) This section does not apply to a 2‑part simple corporate bonds prospectus.

31 After section 719

Insert:

719A Lodging supplementary or replacement document—2‑part simple corporate bonds prospectus

Need for a supplementary or replacement document

(1) If the person making an offer of simple corporate bonds under a 2‑part simple corporate bonds prospectus becomes aware of:

(a) a misleading or deceptive statement in the 2‑part simple corporate bonds prospectus; or

(b) an omission from the 2‑part simple corporate bonds prospectus of information required by section 713C, 713D or 713E; or

(c) a new circumstance that:

(i) has arisen since the 2‑part simple corporate bonds prospectus was lodged with ASIC; and

(ii) would have been required by section 713C, 713D or 713E to be included in the 2‑part simple corporate bonds prospectus if it had arisen before the 2‑part simple corporate bonds prospectus was lodged;

that is materially adverse from the point of view of an investor, the person may:

(d) if the statement, omission or circumstance relates to the base prospectus component of the 2‑part simple corporate bonds prospectus:

(i) include material in an offer‑specific prospectus that supplements or modifies the base prospectus; or

(ii) lodge a replacement document with ASIC; or

(e) if the statement, omission or circumstance relates to the offer‑specific prospectus component of the 2‑part simple corporate bonds prospectus—lodge a supplementary or replacement document with ASIC.

Note 1: Section 728 makes it an offence to continue making offers after the person has become aware of a misleading or deceptive statement, omission or new circumstance that is materially adverse from the point of view of an investor unless the deficiency is corrected.

Note 2: Because of section 713E, a 2‑part simple corporate bonds prospectus may be taken to include information in another document. This should be taken into account when considering whether the prospectus is deficient.

Note 3: A base prospectus may be supplemented or modified by the offer‑specific prospectus for a particular offer, see subsection 713D(7).

Note 4: The power to issue a supplementary or replacement document is not limited to the situations dealt with in this section.

Note 5: This section applies to a document that has already been previously supplemented or replaced.

Note 6: See section 720 for the consents that need to be obtained before lodgement.

(2) If the person making the offer becomes aware that information in the base prospectus component of the 2‑part simple corporate bonds prospectus is not worded and presented in a clear, concise and effective manner, the person may lodge a replacement document with ASIC.

Note: A base prospectus may be supplemented or modified by the offer‑specific prospectus for a particular offer, see subsection 713D(7).

(3) If the person making the offer becomes aware that information in the offer‑specific prospectus component of the 2‑part simple corporate bonds prospectus is not worded and presented in a clear, concise and effective manner, the person may lodge a supplementary or replacement document with ASIC.

Form of supplementary document for offer‑specific prospectus

(4) At the beginning of a supplementary document for an offer‑specific prospectus, there must be:

(a) a statement that it is a supplementary document; and

(b) an identification of the offer‑specific prospectus it supplements; and

(c) an identification of any previous supplementary documents lodged with ASIC in relation to the offer; and

(d) a statement that it is to be read together with:

(i) the offer‑specific prospectus it supplements; and

(ii) any previous supplementary documents; and

(iii) the base prospectus that covers the period during which the offer is made.

The supplementary document must be dated. The date is the date on which the document is lodged with ASIC.

Form of replacement document for a base prospectus

(5) At the beginning of a replacement document for a base prospectus, there must be:

(a) a statement that it is a replacement document; and

(b) an identification of the base prospectus it replaces.

The replacement document must be dated. The date is the date on which the document is lodged with ASIC.

Form of replacement document for an offer‑specific prospectus

(6) At the beginning of a replacement document for an offer‑specific prospectus, there must be:

(a) a statement that it is a replacement document; and

(b) an identification of the offer‑specific prospectus it replaces.

The replacement document must be dated. The date is the date on which the document is lodged with ASIC.

Consequences of lodging a supplementary document for an offer‑specific prospectus

(7) If a supplementary document is lodged with ASIC in relation to an offer‑specific prospectus, the offer‑specific prospectus is taken to be the offer‑specific prospectus together with the supplementary document for the purposes of the application of this Chapter to events that occur after the lodgement.

Note: This subsection means, for example, that offers made after lodgement of the supplementary document must be accompanied by copies of both the original offer‑specific prospectus and the supplementary document.

Consequences of lodging a replacement document for a base prospectus

(8) If a replacement document is lodged with ASIC in relation to a base prospectus, the base prospectus is taken to be the replacement document for the purposes of the application of this Chapter to events that occur after the lodgement.

Note: This subsection means, for example, that offers made after lodgement of the replacement document must be accompanied by copies of the replacement document and not the original base prospectus.

Consequences of lodging a replacement document for an offer‑specific prospectus

(9) If a replacement document is lodged with ASIC in relation to an offer‑specific prospectus, the offer‑specific prospectus is taken to be the replacement document for the purposes of the application of this Chapter to events that occur after the lodgement.

Note: This subsection means, for example, that offers made after lodgement of the replacement document must be accompanied by copies of the replacement document and not the original offer‑specific prospectus.

32 Section 720 (cell at table item 1, column headed “Type of offer”)

After “issue”, insert “(other than an offer of simple corporate bonds under a 2‑part simple corporate bonds prospectus)”.

33 Section 720 (after table item 1)

Insert:

|  |  |  |
| --- | --- | --- |
| 1A | *Simple corporate bonds issue offers*  offer of simple corporate bonds under a 2‑part simple corporate bonds prospectus | every director of the body  every person named in the document as a proposed director of the body  if simple corporate bonds in a managed investment scheme made available by a body—every director of that body  if simple corporate bonds in a managed investment scheme made available by an individual—that individual |

34 Subparagraphs 724(1)(c)(ii) and (d)(ii)

After “713,” insert “713C, 713D, 713E,”.

35 Subsection 724(2) (note)

Omit “Section 719 deals”, substitute “Sections 719 and 719A deal”.

36 Subsection 724(3) (cell at table item 1, column headed “Circumstances”)

After “prospectus”, insert “(other than a 2‑part simple corporate bonds prospectus)”.

37 Subsection 724(3) (after table item 1)

Insert:

|  |  |  |
| --- | --- | --- |
| 1A | the disclosure document is a 2‑part simple corporate bonds prospectus | a supplementary or replacement document that corrects the deficiencies or changes the terms of the offer |

38 After subsection 727(3)

Insert:

Simple corporate bonds

(3A) Subsection (3) does not apply in relation to an offer of securities under a 2‑part simple corporate bonds prospectus if the securities are in the same class as existing securities that are quoted on a prescribed financial market immediately before the application period for the prospectus but for differences as to:

(a) the fixed term of the securities (if any); or

(b) the rate at which interest is payable under the securities; or

(c) the dates on which the holders are to be paid interest under the securities.

39 Paragraph 728(1)(b)

After “713,”, insert “713C, 713D, 713E,”.

40 Subparagraph 728(1)(c)(ii)

After “713,”, insert “713C, 713D, 713E,”.

41 After subsection 729(1)

Insert:

(1A) Table items 2 and 3 in subsection (1) do not apply to an offer of simple corporate bonds under a 2‑part simple corporate bonds prospectus.

42 Paragraph 730(1)(b)

After “713,”, insert “713C, 713D, 713E,”.

43 Subparagraph 730(1)(c)(ii)

After “713,”, insert “713C, 713D, 713E,”.

44 After subsection 730(1)

Insert:

(1A) For the purposes of subsection (1) of this section, disregard subsection 729(1A).

45 Section 761A (at the end of paragraph (f) of the definition of *security*)

Add “or”.

46 Section 761A (after paragraph (f) of the definition of *security*)

Insert:

(g) a simple corporate bonds depository interest;

47 After paragraph 1073A(1)(da)

Insert:

(db) a simple corporate bonds depository interest;

48 Subsection 1073E(1) (note)

Omit “(da)”, substitute “(db)”.

49 Paragraph 1317DAG(5)(a)

After “713(6),”, insert “713A(23),”.

Part 2—Amendments relating to false or misleading statements etc.

Corporations Act 2001

50 Subsection 1308(4)

After “not false or misleading”, insert “in a material particular”.

51 Subsection 1308(4)

Omit “the statement did not omit any matter or thing without which the document would be misleading”, substitute “the document did not omit any matter or thing without which the document would be misleading in a material respect”.

52 At the end of section 1308

Add:

(10) For the purposes of subsection (4), a person is taken to have taken reasonable steps to ensure that a statement was not false or misleading in a material particular if the person proves that:

(a) the person made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, the person believed on reasonable grounds that the statement was not misleading in a material particular.

(11) For the purposes of subsection (4), a person is taken to have taken reasonable steps to ensure that a document did not omit any matter or thing without which the document would be misleading in a material respect if the person proves that:

(a) the person made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, the person believed on reasonable grounds that there was no such omission.

(12) For the purposes of subsection (4), a person is taken to have taken reasonable steps to ensure that a statement was not false or misleading in a material particular if the person proves that:

(a) the person relied on information given to the person by:

(i) if the person is a body—someone other than a director, employee or agent of the body; or

(ii) if the person is an individual—someone other than an employee or agent of the individual; and

(b) the reliance placed on that information by the person was reasonable in all the circumstances.

(13) For the purposes of subsection (4), a person is taken to have taken reasonable steps to ensure that a document did not omit any matter or thing without which the document would be misleading in a material respect if the person proves that:

(a) the person relied on information given to the person by:

(i) if the person is a body—someone other than a director, employee or agent of the body; or

(ii) if the person is an individual—someone other than an employee or agent of the individual; and

(b) the reliance placed on that information by the person was reasonable in all the circumstances.

53 At the end of section 1309

Add:

(7) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information was not false or misleading in a material particular if the person proves that:

(a) the person made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, the person believed on reasonable grounds that the information was not misleading or deceptive in a material particular.

(8) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information did not have omitted from it any matter or thing the omission of which rendered the information misleading in a material respect if the person proves that:

(a) the person made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, the person believed on reasonable grounds that there was no such omission.

(9) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information was not false or misleading in a material particular if the person proves that:

(a) the person relied on information given to the person by:

(i) if the person is a body—someone other than a director, employee or agent of the body; or

(ii) if the person is an individual—someone other than an employee or agent of the individual; and

(b) the reliance placed on that information by the person was reasonable in all the circumstances.

(10) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information did not have omitted from it any matter or thing the omission of which rendered the information misleading in a material respect if the person proves that:

(a) the person relied on information given to the person by:

(i) if the person is a body—someone other than a director, employee or agent of the body; or

(ii) if the person is an individual—someone other than an employee or agent of the individual; and

(b) the reliance placed on that information by the person was reasonable in all the circumstances.

[*Minister’s second reading speech made in—*

*House of Representatives on 15 May 2014*

*Senate on 17 July 2014*]

(70/14)