



# Corporations Regulations 2001

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**Volume 1: regulations 1.0.01–6D.5.03**

Volume 2: regulations 7.1.02–7.6.08E

Volume 3: regulations 7.7.01–8B.5.20

Volume 4: regulations 9.1.01–12.9.03

Volume 5: Schedules 1, 2 and 2A

Volume 6: Schedules 3–13

Volume 7: Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Corporations Regulations 2001* that shows the text of the law as amended and in force on 31 May 2023 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Note about these Regulations

These Regulations are made under the *Corporations Act 2001*. To assist users of these Regulations, these Regulations follow, as far as possible, the drafting style, structure and numbering of the *Corporations Regulations 1990* that were made under the *Corporations Act 1989*. Because some provisions of the *Corporations Regulations 1990* are not remade in these Regulations, some gaps appear in the numbering of these Regulations. Also, the drafting style departs in minor ways from that used in the *Corporations Regulations 1990*.

## Chapter 1—Introductory

### Part 1.0—Miscellaneous

#### 1.0.01 Name of Regulations

These Regulations are the *Corporations Regulations 2001*.

#### 1.0.02 Interpretation

(1) In these Regulations:

**ABN** (Australian Business Number) has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

**ACH** means Australian Clearing House Pty Limited.

**Act** means the *Corporations Act 2001*.

**agent** means a person appointed under subsection 601CG(1) of the Act.

**APFRN**: see *Australian Passport Fund Registration Number*.

**approved deposit fund** (or **ADF**) has the same meaning as in the SIS Act.

**approved foreign bank**:

- (a) in relation to a participant of a licensed market, means a bank:
  - (i) established by or under the law of a foreign country; and
  - (ii) in relation to which there is in force an approval given by the market licensee in accordance with its operating rules or by ASIC under the market integrity rules; and
- (b) in relation to a financial services licensee other than a participant of a licensed market, means a bank:
  - (i) regulated by an overseas regulator; and
  - (ii) in relation to which there is in force an approval given by ASIC for the purposes of this definition.

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**approved form**, in relation to a provision of the Act or of these Regulations, means the form that is approved under paragraph 350(1)(b) of the Act for use for that provision.

**associated provisions**, in relation to provisions (the **core provisions**) of the relevant old legislation as in force at a particular time, include (but are not limited to):

- (a) any regulations or other instruments that are or were in force for the purposes of any of the core provisions at that time; and
- (b) any interpretation provisions that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and
- (c) any provisions relating to liability (civil or criminal) that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and
- (d) any provisions that limit or limited, or that otherwise affect or affected, the operation of any of the core provisions at that time (whether or not they also limit or limited, or affect or affected, the operation of other provisions).

**ASTC** means ASX Settlement and Transfer Corporation Pty Limited.

**ASTC certificate cancellation provisions** means the provisions of the ASTC operating rules that deal with:

- (a) the cancellation of certificates or other documents of title to Division 4 financial products; and
- (b) matters incidental to the cancellation of those certificates or documents.

**ASTC-regulated transfer** means a transfer of a Division 4 financial product:

- (a) within the meaning of:
  - (i) Division 4 of Part 7.11 of the Act; and
  - (ii) regulations relating to transfer made for sections 1074A and 1074E of the Act; and
- (b) that is effected through ASTC; and
- (c) that, according to the ASTC operating rules, is an ASTC-regulated transfer.

**Australian Passport Fund Registration Number** or **APFRN** has the same meaning as in Chapter 8A of the Act.

**benefit fund** has the meaning given by section 16B of the *Life Insurance Act 1995*.

**building society** has the same meaning as in section 16 of the RSA Act.

**capital guaranteed**, for a superannuation product or an RSA product, means that the contributions and accumulated earnings may not be reduced by a negative investment return or a reduction in the value of an asset in which the product is invested.

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**capital guaranteed fund** means a public offer superannuation fund, or a sub-fund of a public offer superannuation fund, that has the following characteristics:

- (a) its investments comprise 1 or more of the following only:
  - (i) deposits with an ADI;
  - (ii) investments in a capital guaranteed superannuation product or RSA product;
- (b) the contributions and accumulated earnings of its members cannot be reduced by negative investment returns (within the meaning of subregulation 5.01(1) of the SIS Regulations) or by any reduction in the value of its assets.

**capital guaranteed member** means a member whose interest in a public offer superannuation fund is fully invested in a capital guaranteed fund.

**carbon abatement contract** has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

**choice product** has the same meaning as in the SIS Act.

**client money reporting infringement notice**: see regulation 7.8.05A.

**client money reporting infringement notice period**: see regulation 7.8.05A.

**CPI** means the Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Bureau of Statistics.

**Division 3 asset** means:

- (a) shares mentioned in paragraph 1073A(1)(a) of the Act; or
- (b) debentures mentioned in paragraph 1073A(1)(b) of the Act; or
- (c) interests in a registered scheme mentioned in paragraph 1073A(1)(c) of the Act; or
- (ca) a CGS depository interest mentioned in paragraph 1073A(1)(da) of the Act; or
- (d) securities mentioned in paragraph 1073A(1)(e) of the Act.

**Division 3 rights** means:

- (a) rights mentioned in paragraph 1073A(1)(d) of the Act; and
- (b) rights related to securities mentioned in paragraph 1073A(1)(e) of the Act.

**Division 3 securities** means Division 3 assets and Division 3 rights.

**Division 4 financial product** has the meaning given by regulation 7.11.03.

**enduring power of attorney** means an enduring power of attorney that complies with a law of a State or Territory.

**Exchange body** means:

- (a) Australian Stock Exchange Limited; or
- (b) a subsidiary of Australian Stock Exchange Limited.

**excluded ADF** has the same meaning as in the SIS Act.

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***exempt public sector superannuation scheme (EPSSS)*** has the same meaning as in the SIS Act.

***financial business*** means a business that:

- (a) consists of, or includes, the provision of financial services; or
- (b) relates wholly or partly to the provision of financial services.

***form*** means an approved form or a prescribed form.

***friendly society*** has the meaning given by section 16C of the *Life Insurance Act 1995*.

***friendly society funeral product***: see subregulation 7.6.01(7).

***FSR commencement*** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.

***funeral services entity***: see subregulation 7.6.01(7).

***generic MySuper product***: a class of beneficial interest in a superannuation entity is a ***generic MySuper product*** if:

- (a) the superannuation entity is a regulated superannuation fund; and
- (b) the RSE licensee of the fund (within the meaning of the SIS Act) is authorised to offer that class of beneficial interest in the fund as a MySuper product under section 29T of the SIS Act; and
- (c) the RSE licensee of the fund (within the meaning of the SIS Act) is not authorised to offer that class of beneficial interest in the fund as a MySuper product because section 29TA or 29TB of the SIS Act is satisfied in relation to the class.

***income stream financial product*** means an annuity or other facility that is a financial product which provides an income stream, including:

- (a) an income stream that is an investment life insurance product; or
- (b) an income designated under section 9 of the *Social Security Act 1991* or section 5H of the *Veterans' Entitlements Act 1986*;

but does not include any of the following:

- (c) a financial product under paragraph 764A(1)(ba) of the Act;
- (d) anything that is not a financial product under section 765A of the Act;
- (e) available money;
- (f) deposit money;
- (g) a managed investment product;
- (ga) a foreign passport fund product;
- (h) a security;
- (i) a loan that has not been repaid in full;
- (j) gold, silver or platinum bullion.

Note: In accordance with subsections 761G(6) and (7) of the Act, superannuation products and RSA products are not income stream financial products.

***investment-based financial product*** means:

- (a) a financial product under section 763B of the Act; or
  - (b) a financial product under paragraph 764A(1)(ba), (bb) or (j) of the Act; or
  - (c) a financial product under paragraph 764A(1)(m) of the Act that is specified to be an investment-based financial product; or
  - (d) a security; or
  - (e) a managed investment product; or
  - (f) an investment life insurance product; or
  - (g) a deposit product; or
  - (ga) a carbon unit;
  - (gb) an Australian carbon credit unit;
  - (gc) an eligible international emissions unit;
- but does not include any of the following:
- (h) anything that is not a financial product under section 765A of the Act;
  - (i) an income stream financial product.

Note: In accordance with subsections 761G(6) and (7) of the Act, superannuation products and RSA products are not income stream financial products.

**Lloyd's** has the same meaning as in the *Insurance Act 1973*.

**margin loan**, or **margin lending**, means a standard margin lending facility.

**medical indemnity insurance product** means an arrangement:

- (a) under which medical indemnity cover is provided to:
  - (i) a medical practitioner as defined in section 4 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*; or
  - (ii) a registered health professional prescribed by regulations made under the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* for the purposes of a provision of Part 3 of that Act; and
- (b) to which the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* applies.

**minor fee**, for a margin loan, means a fee or cost for the margin loan that does not relate to the ordinary acquisition, operation or closure of the loan and which is less than \$10.

**MySuper product** has the same meaning as in the SIS Act.

**NFPFRN**: see *Notified Foreign Passport Fund Registration Number*.

**non-cash payment financial product** means a financial product under section 763D of the Act, other than:

- (a) a derivative; or
- (b) a financial product under paragraph 764A(1)(k) of the Act; or
- (c) anything that is not a financial product under section 765A of the Act.

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**non-Division 3 securities** means financial products to which Division 3 or 4 of Part 7.11 of the Act applies because of a declaration made by ASIC under paragraph 1075A(1)(b) of the Act.

**Notified Foreign Passport Fund Registration Number** or **NFPFRN**, for a notified foreign passport fund, is the unique registration code allocated to the fund by the home regulator for the fund.

**old Corporations Act** means the *Corporations Act 2001* as in force immediately before the FSR commencement.

**policy committee** has the same meaning as in the SIS Act.

**pooled superannuation trust** (or **PST**) has the same meaning as in the SIS Act.

**pre-FSR securities** means securities defined in subsection 92(3) of the old Corporations Act.

**preserved benefits** means preserved benefits under:

- (a) Subdivision 6.1.2 of the SIS Regulations; or
- (b) Subdivision 4.1.2 of the RSA Regulations.

**proper ASTC transfer** means:

- (a) an ASTC-regulated transfer of a Division 4 financial product effected:
  - (i) through the prescribed CS facility operated by the ASTC; and
  - (ii) in accordance with the operating rules of the ASTC; and
- (b) an ASTC-regulated transfer that the ASTC, in accordance with its operating rules, determines:
  - (i) to comply substantially with the applicable provisions of those operating rules; and
  - (ii) to be taken to be, and always to have been, a proper ASTC transfer.

**public offer entity** has the same meaning as in the SIS Act.

**public offer superannuation fund** has the same meaning as in the SIS Act.

**qualifying gas exchange product** means an arrangement for the physical delivery of natural gas or related goods or services, including pipeline capacity.

**qualifying gas trading exchange** means a facility:

- (a) established by the Australian Energy Market Operator Limited (ACN 072 010 327) exercising its functions under subsection 91BRK(1) of the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008* (SA); and
- (b) through which persons may elect to buy and sell natural gas or related goods or services (including pipeline capacity).

**recipient:**

- (a) in relation to an infringement notice given under regulation 7.2A.04, has the meaning given by regulation 7.2A.03; and

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- (b) in relation to a client money reporting infringement notice, has the meaning given by regulation 7.8.05A; and
- (c) in relation to an infringement notice given under regulation 7.5A.104, has the meaning given by regulation 7.5A.103.

**registration number** means:

- (a) for a company—the number allotted to the company under paragraph 118(1)(a) or 601BD(1)(a) of the Act; or
- (b) for a registered body—the number allotted to it under section 601CB or 601CE of the Act; or
- (c) for an auditor—the number allotted to a person on registration of that person as an auditor.

**regulated superannuation fund** has the same meaning as in the SIS Act.

**restricted non-preserved benefits** means restricted non-preserved benefits under:

- (a) Subdivision 6.1.3 of the SIS Regulations; or
- (b) Subdivision 4.1.3 of the RSA Regulations.

**retirement savings account** has the same meaning as in the RSA Act.

**risk-based financial product** means:

- (a) a financial product under section 763C of the Act; or
- (b) a life risk insurance product;

but does not include any of the following:

- (c) a derivative;
- (d) anything that is not a financial product under section 765A of the Act.

Note: In accordance with subsections 761G(5) and (7) of the Act, general insurance products are not risk-based financial products.

**RSA Act** means the *Retirement Savings Accounts Act 1997*.

**RSA Regulations** means the *Retirement Savings Accounts Regulations 1997*.

**settlement documents**, in relation to a transaction, means:

- (a) if the agreement for the transaction has not been discharged—documents the supply of which in accordance with the agreement is sufficient to discharge the obligations of the seller under the agreement, in so far as the obligations relate to the supply of documents in connection with the transaction; or
- (b) if the agreement for the transaction has been discharged, whether by performance or otherwise—documents the supply of which in accordance with the agreement would, if the agreement had not been discharged, be sufficient to discharge the obligations of the seller under the agreement, in so far as the obligations relate to the supply of documents in connection with the transaction.

## Regulation 1.0.02

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***simple managed investment scheme*** means a registered scheme (other than a passport fund) which is or was offered because it meets 1 of the following requirements:

- (a) the scheme invests at least 80% of its assets in money in an account with a bank on the basis that the money is available for withdrawal:
  - (i) immediately during the bank's normal business hours; or
  - (ii) at the end of a fixed-term period that does not exceed 3 months;
- (b) the scheme invests at least 80% of its assets in money on deposit with a bank on the basis that the money is available for withdrawal:
  - (i) immediately during the bank's normal business hours; or
  - (ii) at the end of a fixed-term period that does not exceed 3 months;
- (c) the scheme invests at least 80% of its assets under 1 or more arrangements by which the responsible entity of the scheme can reasonably expect to realise the investment, at the market value of the assets, within 10 days.

***simple sub-fund product*** means a security in a retail CCIV that is, or was, offered because the security is referable to a sub-fund of the CCIV (other than a passport fund) that meets one of the following requirements:

- (a) the CCIV, in respect of the sub-fund, invests at least 80% of the assets of the sub-fund in money in an account with a bank on the basis that the money is available for withdrawal:
  - (i) immediately during the bank's normal business hours; or
  - (ii) at the end of a fixed-term period that does not exceed 3 months;
- (b) the CCIV, in respect of the sub-fund, invests at least 80% of the assets of the sub-fund in money on deposit with a bank on the basis that the money is available for withdrawal:
  - (i) immediately during the bank's normal business hours; or
  - (ii) at the end of a fixed-term period that does not exceed 3 months;
- (c) the CCIV, in respect of the sub-fund, invests at least 80% of the assets of the sub-fund under one or more arrangements by which the corporate director of the CCIV can reasonably expect to realise the investment, at the market value of the assets, within 10 days.

***SIS Act*** means the *Superannuation Industry (Supervision) Act 1993*.

***SIS Regulations*** means the *Superannuation Industry (Supervision) Regulations 1994*.

***sub-plan***, in relation to a regulated superannuation fund, means a segment of the fund comprising a member or members of the fund, being a sub-plan that the trustee determines should be made.

***successor fund*** has the same meaning as in the SIS Regulations.

***superannuation entity*** has the same meaning as in the SIS Act.

***superannuation interest*** has the same meaning as in the SIS Act.

**superannuation lump sum** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**superannuation scheme** means a complying superannuation fund within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**superannuation-sourced money** means money in relation to which:

- (a) the provider of a financial service knows that the money:
  - (i) will be paid to a person as a superannuation lump sum by the trustee of a regulated superannuation fund; or
  - (ii) has been paid as an eligible termination payment (within the meaning of these Regulations as in force immediately before 1 July 2007) or as a superannuation lump sum at any time during the previous 6 months; or
- (b) the provider of the financial service ought reasonably to know that fact.

**trustee** in relation to a superannuation scheme, includes a person responsible for the administration and management of the scheme.

**unrestricted non-preserved benefits** means unrestricted non-preserved benefits under:

- (a) Subdivision 6.1.4 of the SIS Regulations; or
- (b) Subdivision 4.1.4 of the RSA Regulations.

**warrant** means a financial product:

- (a) that is:
    - (i) a derivative under section 761D of the Act; or
    - (ii) a financial product that would, apart from the effect of paragraph 761D(3)(c) of the Act, be a derivative for section 761D of the Act, and is excluded by that paragraph only because:
      - (A) it is a security under paragraph (c) of the definition of **security** in section 761A of the Act; or
      - (B) it is a legal or equitable right or interest mentioned in subparagraph 764A(1)(b)(ii) of the Act; or
      - (C) it is a legal or equitable right or interest mentioned in subparagraph 764A(1)(ba)(ii) of the Act; or
      - (D) it is a legal or equitable right or interest mentioned in subparagraph 764A(1)(bb)(ii) of the Act; and
  - (b) that is transferable.
- (2) In these Regulations, a reference to a form by number is a reference to the form so numbered in Schedule 2.

## Regulation 1.0.02A

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### 1.0.02A Prescribed financial market

For the definition of *prescribed financial market* in section 9 of the Act, the following financial markets are prescribed:

- (a) Asia Pacific Exchange Limited;
- (b) ASX Limited;
- (c) Chi-X Australia Pty Ltd;
- (d) National Stock Exchange of Australia Limited;
- (e) SIM Venture Securities Exchange Ltd.

### 1.0.02B Proprietary company thresholds (Act s 45A)

- (1) For the purposes of paragraphs 45A(2)(a) and (3)(a) of the Act, the amount of \$50 million is prescribed.
- (2) For the purposes of paragraphs 45A(2)(b) and (3)(b) of the Act, the amount of \$25 million is prescribed.
- (3) For the purposes of paragraphs 45A(2)(c) and (3)(c) of the Act, the number 100 is prescribed.

### 1.0.03 Prescribed forms (Act s 350)

- (1) A form in Schedule 2 mentioned in an item in column 4 of Schedule 1 is prescribed for the provision of the Act, or of these Regulations, that is specified in the item in column 2.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

- (a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and
  - (b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.
- (2) In a form, unless the contrary intention appears, a reference to a Chapter, Part, Division, section, subsection, paragraph or subparagraph is a reference to that Chapter, Part, Division, section, subsection, paragraph or subparagraph of the Act.

### 1.0.03A Documents that must be in the prescribed form

*Documents lodged under the Act*

- (1) A document mentioned in the table under a provision of the Act mentioned in the table must be in the prescribed form.

Item	Document	Provision of the Act
1A	Certificate to the effect that all documents accompanying a notice lodged under section 263 or 264 of the Act have been duly stamped as required by any applicable law relating to stamp duty	Paragraph 265(4)(b)

Regulation 1.0.03B

Item	Document	Provision of the Act
1B	Notice stating that a person other than the original chargee has become the holder of a registrable charge on property of a company	Subsection 268(1)
1C	Notice setting out particulars of a variation in the terms of a registrable charge on property of a company	Subsection 268(2)
1	Notice of appointment to administer a compromise or arrangement	Subsection 415(1)
2	Notice that an order for the appointment of a receiver of property has been obtained or of the appointment of a receiver	Paragraph 427(1)(a)
3	Notice of the appointment of a person to enter into possession or take control of the property of a corporation	Paragraph 427(1A)(a)
4	Notice of entering into possession or taking control	Paragraph 427(1B)(a)
5	Notice that the person has ceased to be a controller	Paragraph 427(4)(a)
6	Written notice stating that a company is taken to have passed a resolution to wind up the company	Paragraph 446A(5)(a)
7	Notice of the appointment of an administrator	Paragraph 450A(1)(a)
8	Notice of failure to execute deed of company arrangement	Paragraph 450C(a)
9	Notice of termination of deed of company arrangement	Paragraph 450D(a)
10	Notice of filing of application to wind up a company	Paragraph 470(1)(a)
11	Notice of making of order to wind up a company	Paragraph 470(1)(b)
12	Notice of withdrawal or dismissal of application to wind up a company	Paragraph 470(1)(c)
15	Written notice disclaiming property	Subsection 568A(1)
20	A copy of the whole or a specified part of the register of members of a notified foreign passport fund	Subsection 1213P(4)

*Documents lodged under the Passport Rules*

- (2) If the Passport Rules for this jurisdiction contain a requirement to lodge a document with ASIC (however the lodgement is described), the document must be lodged with ASIC in the prescribed form.

Note: The requirement in the Passport Rules need not use the word “lodge”. For example, if the Passport Rules contain a requirement to notify ASIC of a matter or to provide a document to ASIC, subregulation (2) requires the notification or document to be in the prescribed form.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

- (a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and
- (b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

**1.0.03B Documents that must be lodged with ASIC**

A document mentioned in an item in the table for a provision mentioned in the item must be lodged:

### Regulation 1.0.03C

- (a) with ASIC; and
- (b) if the document is mentioned for subsection 430(1) of the Act—by a controller, within 7 days of the controller receiving a report under that subsection.

Item	Document	Provision of the Act
1	Statement in writing in the prescribed form verifying a report about the affairs of a company	Subsection 430(1) or 475(1) or (2)
2	Report about the affairs of a company	Subsection 430(1)

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

- (a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and
- (b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

On 23 December 2004, forms for the documents mentioned in item 1 of the table are not prescribed in these Regulations.

### 1.0.03C Documents that must be in a form approved by ASIC

A document mentioned in the table under a provision of the Act mentioned in the table must be in a form approved by ASIC (if a form has been approved).

Item	Document	Provision of the Act
3	Notice of termination of deed of company arrangement	Paragraph 450D(b)

Note: The documents mentioned in the table are not required to be lodged with ASIC under the Act, and are not documents to which section 350 of the Act applies.

### 1.0.04 Directions and instructions in forms

A form must be completed in accordance with the directions and instructions specified in the form.

### 1.0.05 Documents and information required by forms

- (1) If a form requires:
  - (a) the lodging of a document; or
  - (b) the giving of information:
    - (i) by completing the form in the prescribed manner; or
    - (ii) by supplying or completing another document;the document or information is taken to be the document or information required for the provision of the Act or of these Regulations for which the form is approved under paragraph 350(1)(b) of the Act or included in Schedule 2.
- (2) If the Act requires particulars to be provided by the giving of information in a form, the particulars included in the form are taken to be the particulars required:

Regulation 1.0.05A

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- (a) if the form is an approved form—for the provision of the Act for which the form is approved under paragraph 350(1)(b) of the Act; and
- (b) if the form is a prescribed form—for the provision of the Act for which the form is included in Schedule 2.

**1.0.05A Lodgment with ASIC**

- (1) For the definition of ***lodge with ASIC*** in section 761A of the Act, the definition relates to each provision of Chapter 7 of the Act that includes the expression ***lodge with ASIC***.
- (2) For paragraph 1364(2)(c) of the Act:
  - (a) a statement that is to be given to ASIC in accordance with subsection 912C(1) of the Act may be lodged with ASIC in the prescribed form; and
  - (b) written notice that is to be lodged with ASIC in accordance with subsection 912DAC(1) of the Act may be lodged with ASIC in the prescribed form; and
  - (d) information that is to be given to ASIC in accordance with subsection 912E(2) of the Act may be lodged with ASIC in the prescribed form; and
  - (e) information that is to be provided to ASIC in accordance with paragraph 913B(1)(ca) of the Act may be lodged with ASIC in the prescribed form; and
  - (f) a document that is to be lodged with ASIC for Part 10.2 of the Act must be lodged in the prescribed form.

**1.0.06 Annexures accompanying forms**

- (1) In this regulation:  
***annexure*** includes a document that is with a form.
- (2) An annexure to a form must:
  - (a) have an identifying mark; and
  - (b) be endorsed with the words:  
‘This is the annexure of (*insert the number of pages*) pages marked (*insert an identifying mark*) mentioned in the (*insert a description of the form*) signed by (*insert ‘me’ or ‘us’*) and dated (*insert the date of signing*)’; and
  - (c) be signed by each person signing the form to which the document is annexed.
- (3) The pages in an annexure must be numbered consecutively.
- (4) If a form has a document annexed, the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.

## Regulation 1.0.07

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### 1.0.07 General requirements for documents

Unless ASIC otherwise approves, a document to be lodged must:

- (a) be on white or light pastel colour paper:
  - (i) of international A4 size; and
  - (ii) of medium weight and good quality; and
- (b) be clearly printed or written in black or dark blue in a manner that is permanent and will make possible a reproduction, by photographic, computerised or other electronic means that is satisfactory to ASIC; and
- (c) not be a carbon copy or a copy reproduced by any spirit duplication method; and
- (d) subject to paragraph (h), have margins of not less than 10 millimetres on all sides; and
- (e) if it comprises 2 or more sheets, be fastened together securely in the top left-hand corner; and
- (f) for a document for a corporation, managed investment scheme or sub-fund of a CCIV (the *subject*)—display on the first page of the document or, if the document is a single sheet, on that sheet:
  - (i) the subject's name; and
  - (ii) subject to regulation 7.6.03, the subject's ACN, ARBN, ARSN or ARFN; and
  - (iii) subject to regulation 7.6.03, if the last 9 digits of the subject's ABN are the same, and in the same order, as the last 9 digits of the subject's ACN, ARBN, ARSN or ARFN—the subject's ABN; and
  - (iv) if the subject is a managed investment scheme that is a notified foreign passport fund—the NFPFRN for the fund and any other unique number for the fund allocated to the fund by ASIC; and
- (fa) for all documents—display on the first page of the document or, if the document is a single sheet, on that sheet:
  - (i) the title of the document; and
  - (ii) the section number of the Act under which the document is being lodged; and
- (g) have the following information at the top left-hand of the first sheet:
  - (i) registered agent number (if any); and
  - (ii) lodging party or agent name; and
  - (iii) address; and
  - (iv) telephone number; and
  - (v) facsimile number (if any); and
  - (vi) DX number and applicable suburb or city (if any); and
- (h) at the top right-hand of the first sheet, have a blank space that measures 35 millimetres from the top of the page and 65 millimetres from the right-hand side of the page; and
- (j) if the document is a form relating to a no liability company, be completed by inserting the words 'No Liability' in place of the word 'Limited'; and
- (k) in the case of an unlimited company, have the word 'Limited' omitted; and

- (l) if the document contains maps or charts on which areas have been distinguished by colour, also distinguish those areas by hatching, numbering or lettering.

Note: In addition to the requirements in paragraph (f), if a managed investment scheme is also an Australian passport fund, all documents relating to the fund lodged with ASIC must also include the scheme's APFRN: see section 1212B of the Act.

### **1.0.08 Information to accompany financial documents lodged for financial years**

- (1) A document lodged under subsection 319(1) of the Act for a financial year must be accompanied by the approved form setting out the following information:
  - (a) if the disclosing entity is a company (other than a retail CCIV):
    - (i) the ACN of the company or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN, the ABN of the company; and
    - (ii) the dates on which the financial year to which the document relates begins and ends; and
    - (iii) a statement of certification in accordance with regulation 1.0.16; or
  - (b) if the disclosing entity is a body (other than a company):
    - (i) the ARBN of the body or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARBN, the ABN of the body; and
    - (ii) the dates on which the financial year to which the document relates begins and ends; and
    - (iii) a statement of certification in accordance with regulation 1.0.16; or
  - (c) if the disclosing entity is a registered scheme:
    - (i) the ARSN of the scheme or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARSN, the ABN of the scheme; and
    - (ii) the dates of the beginning and end of the half-year to which the document relates; and
    - (iii) the name of the responsible entity of the scheme and the name of the scheme; and
    - (iv) a statement of certification in accordance with regulation 1.0.16; or
  - (d) if the disclosing entity is a retail CCIV:
    - (i) the name of the sub-fund of the CCIV in respect of which the document is lodged; and
    - (ii) the name of the corporate director of the CCIV; and
    - (iii) the ACN of the CCIV or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN, the ABN of the company; and
    - (iv) the ARFN of that sub-fund of the CCIV or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARFN, the ABN of that sub-fund; and
    - (v) the dates on which the financial year to which the document relates begins and ends; and

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- (vi) a statement of certification in accordance with regulation 1.0.16.

Note: Section 1232C of the Act extends section 292 of the Act to preparing annual financial reports and directors' reports for sub-funds of retail CCIVs, and applies Division 1 of Part 2M.3 of the Act accordingly.

- (2) A document lodged by a notified foreign passport fund under subsection 319(1AA) of the Act for a financial year must be accompanied by the approved form setting out the following information:
  - (a) the NFPFRN for the fund and any other unique number for the fund allocated to the fund by ASIC;
  - (b) the name of the fund;
  - (c) the name and ARBN of the operator of the fund;
  - (d) the dates on which the financial year to which the document relates begins and ends;
  - (e) a statement of certification in accordance with regulation 1.0.16.

### **1.0.09 Information to accompany financial documents etc lodged for half-years**

A document lodged under section 320 of the Act for a half-year must be accompanied by the approved form setting out the following information:

- (a) if the disclosing entity is a company (other than a retail CCIV):
  - (i) the ACN of the company or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN, the ABN of the company; and
  - (ii) the dates on which the half-year to which the document relates begins and ends; and
  - (iii) a statement of certification in accordance with regulation 1.0.16; or
- (b) if the disclosing entity is a body (other than a company):
  - (i) the ARBN of the body or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARBN, the ABN of the body; and
  - (ii) the dates on which the half-year to which the document relates begins and ends; and
  - (iii) a statement of certification in accordance with regulation 1.0.16; or
- (c) if the disclosing entity is a registered scheme:
  - (i) the ARSN of the scheme or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARSN, the ABN of the scheme; and
  - (ii) the dates of the beginning and end of the half-years to which the document relates; and
  - (iii) the name of the responsible entity of the scheme and the name of the scheme; and
  - (iv) a statement of certification in accordance with regulation 1.0.16; or
- (d) if the disclosing entity is a retail CCIV:
  - (i) the name of the sub-fund of the CCIV in respect of which the document is lodged; and

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- (ii) the name of the corporate director of the CCIV; and
- (iii) the ACN of the CCIV or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN, the ABN of the company; and
- (iv) the ARFN of that sub-fund of the CCIV or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARFN, the ABN of that sub-fund; and
- (v) the dates on which the financial year to which the document relates begins and ends; and
- (vi) a statement of certification in accordance with regulation 1.0.16.

Note: Section 1232F of the Act extends section 302 of the Act to preparing half-year financial reports and directors' reports for sub-funds of retail CCIVs (if there are ED securities referable to the sub-fund), and applies Division 2 of Part 2M.3 of the Act accordingly.

### 1.0.10 Continuous disclosure notices

A document lodged under section 675 or 675A of the Act must be accompanied by Form 1003 setting out the following information:

- (a) if the disclosing entity is a body:
  - (i) the ACN or ARBN of the body or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ACN or ARBN, the ABN of the body; and
  - (ii) a statement of certification in accordance with regulation 1.0.16; or
- (b) if the disclosing entity is a registered scheme:
  - (i) the ARSN of the scheme or, if the last 9 digits of its ABN are the same, and in the same order, as the last 9 digits of its ARSN, the ABN of the scheme; and
  - (ii) the name of the responsible entity of the scheme and the name of the scheme; and
  - (iii) a statement of certification in accordance with regulation 1.0.16.

### 1.0.11 Certain documents to be signed by personal representatives etc

Unless these Regulations state otherwise, a document relating to a corporation that is a proprietary company to which section 201F of the Act applies that does not have a director or secretary must be signed by the personal representative or trustee mentioned in that section.

### 1.0.12 Form of notice of resolution

A copy of a resolution lodged under subsection 136(5), 157(2), 162(3), 246F(3), 254H(4), 254N(2), 256C(3), 260B(7), 461(2), 506(1B), 507(11) or 510(1A) of the Act must be set out in, or annexed to, a notice in accordance with the approved form.

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### **1.0.13 Time for lodging documents**

If:

- (a) a document must be lodged; and
  - (b) the period within which the document must be lodged is not prescribed;
- the document must be lodged:
- (c) if paragraph (d) does not apply—within one month; or
  - (d) if the document is to be lodged by a foreign company and ASIC allows a further period because of special circumstances—that further period;
- after the happening of the event to which the document relates.

### **1.0.14 Address of registered office or place of business**

If notice must be given under these Regulations of:

- (a) the address of an office or a proposed office; or
  - (b) the address of a place of business;
- of a corporation or a person, the notice must include:
- (c) if applicable, the number of the room in which; and
  - (d) if applicable, the number of the floor or level on which; and
  - (e) the place in Australia in which;
- the office or place of business is, or is to be, situated.

### **1.0.15 Affidavits and statements in writing**

- (1) An affidavit or statement in writing must be sworn or made, on behalf of a corporation, by a director or a secretary of the corporation.
- (2) If an affidavit is sworn outside Australia, the affidavit is sufficient if it appears to be sworn in accordance with the requirements of the law of that place.

### **1.0.16 Certification and verification of certain documents**

- (1) A document relating to a corporation or registered scheme that is to be certified or verified must be certified or verified in the approved form and signed by:
  - (a) a director or secretary of the corporation, or of the responsible entity of the scheme, who resides in Australia or an external territory; or
  - (b) an agent of the corporation or entity or, if the agent is a company, a director or secretary of the company who resides in Australia or an external territory.
- (2) Subregulation (1) does not apply to a document relating to a notified foreign passport fund.
- (3) A document relating to a notified foreign passport fund that is to be certified or verified must be certified or verified in the approved form and signed by:
  - (a) a director or secretary of the operator of the fund; or
  - (b) the local agent for the operator of the fund; or

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- (c) if the local agent is a company—a director or secretary of that company.

**1.0.17 Documents signed or sworn in accordance with the rules**

- (1) A document that is signed in accordance with the rules is taken to have been signed in accordance with regulation 1.0.11.
- (2) An affidavit or statement that is sworn or made in accordance with the rules is taken to have been sworn or made in accordance with regulation 1.0.15.

**1.0.18 Prescribed provisions (Act s 53)**

For section 53 of the Act, the following provisions of the Act are prescribed:

- (a) section 657A;
- (b) paragraphs 12(2)(b) and (c) of the Act.

**1.0.20 Copies of orders to be lodged**

A person who obtains an order of the Court under or for:

- (e) subsection 484(1); or
- (ea) paragraph 484(2)(c); or
- (f) section 583; or
- (g) section 585; or
- (h) section 601ND; or
- (j) section 1322;
- of the Act, must lodge an office copy of the order with ASIC.

**1.0.21 Identification of lodged orders**

If an order or copy of an order of a court is lodged with ASIC, it must be accompanied by a cover page in Form 105 identifying the legislative provision or other law under which the order was made and the nature of the order.

**1.0.22 Territorial application of Act**

For subsection 5(9) of the Act, each of the external Territories is included in this jurisdiction for the purposes of Chapter 7 of the Act (other than Parts 7.2 to 7.5 and Part 7.11) in relation to:

- (a) a superannuation product within the meaning of section 761A of the Act; and
- (b) an RSA product within the meaning of section 761A of the Act; and
- (c) a financial service that relates to a superannuation product within the meaning of section 761A of the Act; and
- (d) a financial service that relates to an RSA product within the meaning of section 761A of the Act.

## **Part 1.1—Prescribed amounts**

### **1.1.01 Prescribed amounts**

The amount specified in an item in column 3 of Schedule 4 is prescribed in relation to the matter specified in the item in column 2.

## **Part 1.2—Interpretation**

### **Division 1—General**

#### **1.2.01 Remuneration recommendations (Act s 9B)**

For paragraph 9B(2)(f) of the Act, a recommendation, or advice or information, provided in relation to one or more members of the key management personnel for a company by an employee of a company within the same consolidated entity, is not a remuneration recommendation.

## Part 1.2A—Disclosing entities

### 1.2A.01 Securities declared not to be ED securities

For section 111AJ of the Act, the following securities are declared not to be ED securities:

- (a) securities of a body that, under the listing rules of the Australian Stock Exchange Limited, is an exempt foreign entity; or
- (b) securities that are quoted on Australian Bloodstock Exchange Limited.

### 1.2A.02 Foreign companies issuing securities under foreign scrip offers etc exempt from disclosing entity provisions

- (1) For section 111AS of the Act, a foreign company is exempt from the disclosing entity provisions in respect of ED securities under section 111AG of the Act if:
  - (a) the company issues the securities in connection with a foreign takeover bid or foreign scheme of arrangement; and
  - (b) the securities issued are, at the time of issue, securities in a class of securities quoted on an approved foreign exchange; and
  - (c) the terms and conditions of the issue to citizens and Australian permanent residents are the same as those applying to each other person receiving securities that are in the same class; and
  - (d) the same notices, documents or other information (or, where applicable, an English translation of these) (modified, if necessary, to include any additional information for the purposes of complying with Chapter 6D of the Act) are given to Australian citizens or permanent residents as are given to each other person; and
  - (e) the notices, documents and other information are given to Australian citizens and permanent residents at the same time, or as soon as practicable after, they are given to those other persons; and
  - (f) in relation to the issue—the company complies with all legislative and stock exchange requirements in the place in which is located:
    - (i) the approved foreign exchange; or
    - (ii) if more than one—the principal approved exchange; on which the company's securities are quoted.

- (2) In this regulation:

***approved foreign exchange*** includes:

- (a) American Stock Exchange Inc.;
- (b) New York Stock Exchange Inc.;
- (c) New Zealand Stock Exchange;
- (d) The Stock Exchange of Hong Kong Ltd;
- (e) Stock Exchange of Singapore Limited;
- (f) The Amsterdam Stock Exchange;

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- (g) the Frankfurt Stock Exchange;
- (h) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;
- (i) the Milan Stock Exchange;
- (j) the NASDAQ National Market;
- (k) the Paris Bourse;
- (l) the Tokyo Stock Exchange;
- (m) the Toronto Stock Exchange;
- (n) the Zurich Stock Exchange.

***foreign scheme of arrangement*** means a compromise or arrangement that is subject to court approval under subsection 411(6) of the Act, between:

- (a) a foreign company and a class of its creditors; or
- (b) a foreign company and a class of its members.

***foreign takeover bid*** means a bid to acquire some or all of the securities of:

- (a) all holders of a class of securities of a foreign company; or
- (b) all holders of those securities except the bidder or the bidder and associates of the bidder.

**1.2A.03 Foreign companies issuing securities under employee share scheme exempt from the disclosing entity provisions**

- (1) For section 111AS of the Act, a foreign company is exempt from the disclosing entity provisions in respect of an offer of shares in the company for issue or sale:
  - (a) that is made to employees of the company, or of an associated body corporate, under an employee share scheme; and
  - (b) in relation to which a disclosure document is lodged with ASIC.
- (2) Subregulation (1) is not affected by any action of an employee, the result of which is that another person who is not an employee acquires an interest in a share issued under the employee share scheme.
- (3) For this regulation:
  - (a) an ***employee share scheme*** is a scheme under which a company offers for issue or sale shares (or options over issued shares) in the company only to a person who is a full-time or part-time director or employee of the company or of an associated body corporate when the offer is made; and
  - (b) a body corporate is an ***associated body corporate*** in relation to a foreign company if:
    - (i) the body corporate is related to the company within the meaning of section 50 of the Act; or
    - (ii) the body corporate is entitled to at least 20% of the voting shares of the company; or
    - (iii) the company is entitled to at least 20% of the voting shares of the body corporate.

## Chapter 2A—Registration of companies

### Part 2A.1—Size of partnerships or associations (Act s 115(2))

#### 2A.1.01 Size of partnerships or associations

- (1) For paragraph 115(1)(b) of the Act, the number prescribed for a kind of partnership or association is the number specified in the following table for that kind of partnership or association:

Item	Kind of partnership or association	Number
1	(a) Actuaries, medical practitioners, patent attorneys, sharebrokers, stockbrokers or trademark attorneys (b) Partnerships or associations of the kind specified in subregulation (2)	50
2	Architects, pharmaceutical chemists or veterinary surgeons	100
3	Legal practitioners	400
4	Accountants	1 000

- (2) For paragraph (b) of item 1 of the table in subregulation (1), the partnership or association is one that:
- (a) has as its primary purpose collaborative scientific research; and
  - (b) includes as members:
    - (i) at least 1 university; and
    - (ii) at least 1 private sector participant;whether or not it also includes government agencies or publicly funded research bodies.
- (3) In subregulation (2):

***private sector participant*** means an entity that obtains the majority of its revenue from sources other than Commonwealth, State or Territory appropriations.

## **Part 2A.2—Change of place of registration of company (Act s 119A(3))**

### **2A.2.01 Approval of application for change of place of registration**

- (1) An application to ASIC for a change in the State or Territory in this jurisdiction in which a company is taken to be registered must be approved by a special resolution of the company.
- (2) A copy of the special resolution must be given to ASIC within 14 days after the day on which it is passed.

### **2A.2.02 Special resolution may be set aside by Court order**

- (1) Within 28 days after the passing of a special resolution approving an application for a change in the State or Territory in this jurisdiction in which a company is taken to be registered, a member, or members, of the company having at least 10% of the votes capable of being cast on the special resolution may apply in writing to the Court to have the resolution set aside.
- (2) A member may, with the written consent of other members mentioned in subregulation (1), apply on their behalf to the Court under that subregulation.
- (3) The Court may order the special resolution to be set aside if the Court is satisfied that it would unfairly prejudice the applicant or applicants if the State or Territory in which the company is taken to be registered were changed in accordance with the resolution.
- (4) The company must give ASIC a copy of the Court order within 14 days after the day on which it is made.

### **2A.2.03 Application for change of place of registration**

- (1) A company may, in accordance with a special resolution of the company, apply to ASIC for a change in the State or Territory in this jurisdiction in which the company is taken to be registered.
- (2) The application must be in accordance with the approved form.

### **2A.2.04 Change of place of registration**

- (1) On application under regulation 2A.2.03, ASIC must alter the details of the company's registration to show the change in the State or Territory in this jurisdiction in which the company is taken to be registered if:
  - (a) the company has passed a special resolution approving the application for the change; and
  - (b) the Court has not made an order setting aside the special resolution; and

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- (c) the relevant Minister of the State or Territory in which the company is taken to be registered has approved the change under subparagraph 119A(3)(a)(i) of the Act; and
  - (d) ASIC is not aware of any other reason why the change should not be made.
- (2) ASIC must not alter details of the company's registration until 28 days after the day on which the application was made.
- (3) ASIC must give the company a new certificate of registration after it alters details of the company's registration.

## Chapter 2B—Basic features of a company

### Part 2B.6—Names

#### 2B.6.01 Availability of names (Act s 147)

- (1) For paragraphs 147(1)(a) and (b) of the Act, the rules for ascertaining whether a name is identical with another name are the rules set out in Part 1 of Schedule 6.
- (2) For paragraph 147(1)(c) of the Act, a name is unacceptable for registration under the regulations if it is unacceptable under the rules set out in Part 2 of Schedule 6.

#### 2B.6.02 Consents required for use of certain letters, words and expressions

- (1) This regulation applies to a name if:
  - (a) the name:
    - (i) is the subject of an application for registration of a name under section 117 of the Act; or
    - (ii) is the subject of an application for reservation of a name under section 152 of that Act; or
    - (iii) for an application for a change of name under section 157 of the Act—is the name to which the previous name is to be changed; and
  - (b) the name is, uses or includes:
    - (i) letters, or a word or expression, specified in column 2 of an item in Part 4 or 5 of Schedule 6; or
    - (ii) other letters, or another word or expression (whether or not in English), that is of like import to the letters, word or expression specified in the item.
- (2) In paragraph (1)(b), a reference to letters, a word or an expression being used includes a reference to the letters, word or expression being used:
  - (a) as part of another word or expression; or
  - (b) in combination with other words or letters, or other symbols.
- (3) However, this regulation does not apply to use of the letters ADI as part of another word.

Example: The letters *adi* appear in the word *traditional*. This regulation does not apply to use of the word *traditional*.
- (4) If an item in Part 4 of Schedule 6 applies in relation to the name, the application must be accompanied by the written consent of the Minister who is specified in the item.
- (5) If an item in Part 5 of Schedule 6 applies in relation to the name, the application must be accompanied by the written consent of the public authority, instrumentality or agency that is specified in the item.

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**2B.6.02A Exemption from requirement to include “Limited” in name**

- (1) For the purposes of subsections 5H(5) and 5I(1) of the Act, subsection 148(2) of the Act does not apply in relation to Westpac Banking Corporation (ABN 33 007 457 141).
- (2) For the purposes of subsection 5I(1) of the Act, the *Westpac Banking Corporation (Transfer of Incorporation) Act 2000* (NSW) is the specified law.

**2B.6.03 Exemptions from requirement to set out name and ACN on certain documents (Act s 155)**

For section 155 of the Act, the exemptions provided for in Schedule 7 apply in relation to the requirements of subsection 153(2) of the Act.

## **Chapter 2C—Registers**

### **Part 2C.1—Registers generally**

#### **Division 2C.1.1—Location of register**

##### **2C.1.01 Form of notice**

A notice to be lodged under subsection 172(2) of the Act must be in a form approved by ASIC (if a form has been approved).

## **Division 2C.1.2—Right to inspect and get copies of register**

### **2C.1.02 Form of register**

For subsection 173(3) of the Act, a copy of a register must be provided as a delimited text file:

- (a) produced by a commercially available spreadsheet or database application; and
- (b) copied onto a CD-ROM or a USB portable memory device.

### **2C.1.03 Improper purposes for getting copy of register**

For paragraph 173(3A)(b) of the Act, the following purposes are prescribed:

- (a) soliciting a donation from a member of a company;
- (b) soliciting a member of a company by a person who is authorised to assume or use the word stockbroker or sharebroker in accordance with section 923B of the Act;
- (c) gathering information about the personal wealth of a member of a company;
- (d) making an offer that satisfies paragraphs 1019D(1)(a) to (d) of the Act;
- (e) making an invitation that, were it an offer to purchase a financial product, would be an offer that satisfies paragraphs 1019D(1)(a) to (d) of the Act.

Note: See subsection 1019D(1) of the Act for a description of unsolicited offers to purchase financial products off-market.

### **2C.1.04 Information to be included in application for copy of register**

For paragraph 173(3A)(c) of the Act, the information that must be contained in an application is the name and address of the applicant.

Note: An application must also state the purpose for accessing a copy of a register—see subsection 173(3A) of the Act.

## **Division 2C.1.3—Use of information on registers by bodies corporate**

### **2C.1.05 Contact with members after failure to provide copy of register**

- (1) This regulation applies if a body corporate mentioned in regulation 12.8.02 has failed to give a person a copy of the part of the register of members of the body who hold member shares:
  - (a) within 28 days after the person's request for a copy; or
  - (b) if a longer period has been allowed by ASIC—within the longer period.
- (2) If the person:
  - (a) makes a statutory declaration that the person intends to use information that is contained in that part of the register:
    - (i) for the purpose of contacting members of the body, or sending material to members of the body, for a purpose mentioned in subsection 177(1A) of the Act; and
    - (ii) in a way that does not contravene that subsection or another law; and
  - (b) gives the statutory declaration to the body corporate; and
  - (c) pays the reasonable costs of contacting the members, or sending material to the members;

the body corporate must do everything that is reasonably possible to arrange for the members to be contacted, or for the material to be sent to the members, on the person's behalf by a third party service provider nominated by the body corporate.
- (3) If the body corporate believes on reasonable grounds that the person intends to use information that is contained in that part of the register:
  - (a) for a purpose that is not in accordance with subparagraph (2)(a)(i); or
  - (b) in a way that is not in accordance with subparagraph (2)(a)(ii);

the body corporate is not required to arrange for the members to be contacted or for the material to be sent to the members on the person's behalf, and may terminate any existing arrangement.
- (4) The arrangements made by the body corporate must ensure that, to the extent reasonably possible:
  - (a) the details, from the register of members, of each member to whom material is to be sent, or with whom contact is to be made, will be provided to the third party service provider within 14 days after the person pays the costs mentioned in subregulation (2); and
  - (b) a copy of any material that is to be sent to a member will be provided to the third party service provider within 28 days after the person provides the material to the body corporate; and
  - (c) if material is not to be sent to a member—written details of the contact that is to be made with a member must be provided to the third party service provider within 28 days after the person provides the written details to the body corporate; and

## **Chapter 2C** Registers

### **Part 2C.1** Registers generally

#### **Division 2C.1.3** Use of information on registers by bodies corporate

##### **Regulation 2C.1.05**

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- (d) for any material that is to be sent to a member—the material will be sent to the member within 14 days after the body corporate provides the material to the third party service provider; and
  - (e) if material is not to be sent to a member—contact will be made with the member within 14 days after the body corporate provides, to the third party service provider, the written details of the contact that is to be made with the member.
- (5) An arrangement made under subregulation (2) must:
  - (a) allow for contact to be made, or material to be sent, for a period of 6 months after the period mentioned in subregulation (1); and
  - (b) require the person to pay the reasonable costs of contacting the members or sending material to the members to be paid on each occasion before the contact is made or the material is sent.
- (6) A reference in subregulation (1) to the register of members of a body corporate who hold member shares includes a reference to:
  - (a) the register of members of a body corporate that is a company limited by guarantee; and
  - (b) the register of members of a body corporate limited by shares and guarantee, who do not hold shares in the body.

## Chapter 2D—Officers and employees

### Part 2D.2—Restrictions on indemnities, insurance and termination payments

#### Division 2D.2.2—Termination payments

##### 2D.2.01 Meaning of *base salary*

- (1) For the definition of ***base salary*** in section 9 of the Act, the matters specified in the following table are base salary.

Item	Matter
1	The components of a short-term employee benefit that: (a) are not dependent on the satisfaction of a performance condition; and (b) are specified in paragraphs (a), (c) and (d) of column 3 of item 6 in the table in subregulation 2M.3.03(1); and (c) are paid during the relevant period
2	A superannuation contribution that: (a) is not dependent on the satisfaction of a performance condition; and (b) is paid during the relevant period
3	A share-based payment that: (a) is not dependent on the satisfaction of a performance condition; and (b) is specified in column 3 of item 11 in the table in subregulation 2M.3.03(1); and (c) is paid during the relevant period
4	A liability or prospective liability to pay tax in respect of a fringe benefit taxable amount under: (a) the <i>Fringe Benefits Tax Assessment Act 1986</i> ; or (b) the <i>Fringe Benefits Tax Act 1986</i> ; that relates to the provision of a matter specified in item 1, 2 or 3

- (2) For subregulation (1):
- (a) if a person has held an office in relation to a company:
- (i) throughout a period of more than 12 months; or
- (ii) throughout a number of periods of more than 12 months in total;  
the ***relevant period*** for that person is the last 12 months of that period or the last 12 months of the total period; and
- (b) if a person has held an office in relation to a company:
- (i) throughout a period of 12 months or less; or
- (ii) throughout a number of periods of 12 months or less in total;  
the ***relevant period*** for that person is that period or the total period.

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**2D.2.02 Meaning of *benefit***

- (1) For paragraph 200AB(1)(e) of the Act, each of the following things is specified:
- (a) any kind of pension, other than a pension paid from a superannuation fund or a superannuation annuity (whether it is paid from an Australian or a foreign fund);
  - (b) an amount paid as a voluntary out-of-court settlement in a matter relating to the termination of employment;
  - (c) a payment:
    - (i) that is made as part of a restrictive covenant, restraint-of-trade clause or non-compete clause (however described); and
    - (ii) the value of which, when added to the value of all other payments (if any) already made or payable in connection with the person's retirement from board or managerial offices in the company and related bodies corporate, exceeds the payment limit set by section 200G of the Act.

**Note:** Subsection 200AB(1) of the Act provides that a benefit includes specified things. Paragraph 200AB(1)(e) of the Act provides that a benefit includes a thing specified in regulations. Things that are not specified in subsection 200AB(1) of the Act or subregulation (1) may also be benefits for the purposes of the Act.

- (2) For subsection 200AB(2) of the Act, each of the following things is specified:
- (a) a deferred bonus, including a benefit attributable to:
    - (i) the release of the deferred bonus from a restriction relating to death or incapacity; or
    - (ii) the investment of the deferred bonus; or
    - (iii) another change to the value of the deferred bonus;
  - (b) a payment from a defined benefits superannuation scheme that was in existence when this regulation commenced;
  - (c) a genuine superannuation contribution that is paid by an employer or employee on or after the commencement of this regulation;
  - (d) genuine accrued benefits that are payable under a law within the meaning of section 200H of the Act;
  - (e) a payment made under a requirement imposed by a law of another country;
  - (f) a reasonable payment that is made:
    - (i) in accordance with a policy of the company or body that applies to all employees; and
    - (ii) as a result of a genuine redundancy; and
    - (iii) having regard to the length of a person's service in an office or position;
  - (g) a payment from a prescribed superannuation fund due to death or incapacity.

**Example for paragraph (d):** A payment of annual leave, long service leave or sick leave.

**Note:** Subsection 200AB(2) of the Act provides that a benefit does not include a thing specified in regulations. Things that are not specified in subregulation (2) may also not be benefits for the purposes of the Act.

(3) In this regulation:

*deferred bonus* includes an amount, or property, that:

- (a) is earned by, accrued by or allocated to a person as remuneration in respect of a period of employment before the person's retirement; and
- (b) is not paid, provided or released to the person at the time at which it is earned, accrued or allocated.

*prescribed superannuation fund* has the meaning given by section 200B of the Act.

### **2D.2.03 When benefit given in connection with retirement from an office or a position**

- (1) For subsection 200A(1A) of the Act, each of the following circumstances is specified in relation to a benefit:
- (a) circumstances in which the benefit is the automatic vesting of share-based payments for a person on or as a result of retirement from an office or a position;
  - (b) circumstances in which the benefit is the accelerated vesting of share-based payments for a person on or as a result of retirement from an office or a position; and
  - (c) circumstances in which the benefit is a payment made to a person in lieu of the giving of notice of termination.

Note: Subsection 200A(1A) of the Act provides that a benefit is given in connection with a person's retirement from an office or a position if the benefit is given in circumstances specified in regulations.

- (2) For paragraph 200F(1)(b) of the Act, a benefit requires shareholder approval:
- (a) if it:
    - (i) is a deferred bonus under paragraph 2D.2.02(2)(a); and
    - (ii) is subject to automatic or accelerated vesting under subregulation (1); and
    - (iii) exceeds the payment limit set by section 200G of the Act; and
  - (b) if it is not a benefit attributable to the release of a deferred bonus from a restriction due to death or incapacity.

## **Part 2D.6—Disqualification from managing corporations**

### **Division 2D.6.1—Automatic disqualification (Act s 206B)**

#### **2D.6.01 Prescribed foreign jurisdictions (Act s 206B(7))**

For section 206B of the Act, a foreign country, or part of a foreign country, mentioned in the following table is prescribed.

<b>Item</b>	<b>Country or part of country</b>
1	New Zealand

## Part 2D.7—Ban on hedging remuneration of key management personnel

### 2D.7.01 Hedging arrangements (Act s 206J(3))

- (1) For subsection 206J(3) of the Act, an arrangement in the following table is to be treated as an arrangement that has the effect of limiting the exposure of a member mentioned in subsection 206J(1) of the Act to the risk mentioned in that subsection.

Item	Arrangement
1	A put option on incentive remuneration
2	A short position on shares that forms part of incentive remuneration
3	An income protection insurance contract in which the insurable risk event affects the financial value of remuneration or equity or an equity-related instrument for the key management personnel

- (2) For subsection 206J(3) of the Act, an arrangement in the following table is not to be treated as an arrangement that has the effect of limiting the exposure of a member mentioned in subsection 206J(1) of the Act to the risk mentioned in that subsection.

Item	Arrangement
1	An income protection insurance contract in which the insurable risk event is the death, incapacity or illness of any of the key management personnel
2	A foreign currency risk arrangement

- (3) In this regulation, a **short position** is a position in relation to shares in a listed entity where the quantity of the shares that a person has is less than the quantity of the shares that the person has an obligation to deliver.
- (4) In subregulation (3), the person has the shares if:
- (a) the person is holding the shares on the person's own behalf; or
  - (b) another person is holding the shares on the person's behalf; or
  - (c) the person has entered into an agreement to buy the shares but has not received the shares; or
  - (d) the person has vested title in the shares in a borrower, or in an entity nominated by the borrower, under a securities lending arrangement.
- (5) In subregulation (3), the shares that the person has an obligation to deliver are the shares that the person:
- (a) has an obligation to deliver under a sale agreement where the shares have not been delivered; or

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- (b) has an obligation to vest title in a lender under a securities lending arrangement; or
- (c) has any other non-contingent legal obligation to deliver.

## **Chapter 2E—Related party transactions**

### **2E.1.01 Small amounts given to related entity**

For subsection 213(1) of the Act, \$5 000 is prescribed.

## Chapter 2G—Meetings

### Part 2G.2—Meetings of members of companies

#### Division 6—Proxies and body corporate representatives

##### 2G.2.01 Authentication of appointment of proxy (Act s 250A)

- (1) For subsection 250A(1) of the Act, an electronic authentication of an appointment of a proxy must include:
  - (a) a method of identifying the member; and
  - (b) an indication of the member's approval of the information communicated.
- (2) If a member appoints a proxy by e-mail or Internet-based voting:
  - (a) the member must be identified by personal details (for example, the member's name, address and date of birth); and
  - (b) the member's approval of the information communicated must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

## Chapter 2K—Charges

### Part 2K.2—Registration

#### **2K.2.01 Lien or charge on crop or wool, or stock mortgage, that is a registrable security: prescribed law—subsection 262(5) of the Act**

For subsection 262(5) of the Act, each of the following laws is a prescribed law of a State or Territory:

##### NEW SOUTH WALES

Parts II and III of the Liens on Crops and Wool and Stock Mortgages Act 1898

Parts 2 and 3 (to the extent that Part 3 applies to agricultural goods mortgages) of the *Security Interests in Goods Act 2005*

##### VICTORIA

Parts VII and VIII of the *Instruments Act 1958*

##### QUEENSLAND

Part II (being provisions that apply in relation to registration of instruments that are stock mortgages, liens upon crops and liens on wool) and Part IV (other than section 24) of the *Bills of Sale and Other Instruments Act 1955*

*The Liens on Crops of Sugar Cane Act 1931*

##### WESTERN AUSTRALIA

Sections 7 and 8 and Parts IX, X and XI of the *Bills of Sale Act 1899*

##### SOUTH AUSTRALIA

*Liens on Fruit Act, 1923*

*Stock Mortgages and Wool Liens Act, 1924*

##### TASMANIA

Sections 36 of the *Bills of Sale Act 1900*

*Stock, Wool and Crop Mortgages Act 1930*

##### AUSTRALIAN CAPITAL TERRITORY

Parts IV and V of the *Instruments Act 1933*.

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**2K.2.02 Time period for the provisional registration of charges**

For paragraph 265(5)(b) of the Act, the period in which a certificate to the effect set out in paragraph 265(4)(b) of the Act must be produced to ASIC is 90 days after the notice is lodged.

**2K.2.03 Charge that is a registrable security: specified law—paragraphs 273A(4)(b), 273B(3)(b) and 273C(3)(b) of the Act**

For paragraphs 273A(4)(b), 273B(3)(b) and 273C(3)(b) of the Act the following law is a specified law of a State or Territory:

NEW SOUTH WALES

*Security Interests in Goods Act 2005*

## **Chapter 2L—Debentures**

### **Part 2L.2—Duties of borrower**

#### **2L.2.01 Register relating to trustees for debenture holders**

- (1) For subsection 283BCA(2) of the Act, ASIC must enter the following details in the register in relation to a trustee for debenture holders:
  - (a) the name and address of the trustee;
  - (b) either:
    - (i) if the trustee has an ACN—the trustee’s ACN; or
    - (ii) the trustee’s ABN;
  - (c) the name and address of the borrower who appointed the trustee;
  - (d) the name of the trust for which the trustee has been appointed to act;
  - (e) the day the trust deed was executed.
- (2) If ASIC receives a notice from a borrower under subsection 283BC(2) of the Act that the trustee has revoked the trust deed, it must amend the register by removing the details entered on the register in relation to the trustee.

## Chapter 2M—Financial reports and audit

### Part 2M.3—Financial reporting

#### Division 1—Annual financial reports and directors' reports

##### 2M.3.01 Disclosures required by notes to consolidated financial statements— annual financial reports (Act s 295)

- (1) For paragraph 295(3)(a) of the Act, if paragraph 295(2)(b) of the Act applies to a parent entity, the following disclosures are required in the notes to the financial statements of the consolidated entity:
  - (a) current assets of the parent entity;
  - (b) total assets of the parent entity;
  - (c) current liabilities of the parent entity;
  - (d) total liabilities of the parent entity;
  - (e) shareholders' equity in the parent entity separately showing issued capital and each reserve;
  - (f) profit or loss of the parent entity;
  - (g) total comprehensive income of the parent company;
  - (h) details of any guarantees entered into by the parent entity in relation to the debts of its subsidiaries;
  - (i) details of any contingent liabilities of the parent entity;
  - (j) details of any contractual commitments by the parent entity for the acquisition of property, plant or equipment;
  - (k) comparative information for the previous period for each of paragraphs (a) to (j).
- (2) The disclosures in subregulation (1) must be calculated in accordance with accounting standards in force in the financial year to which the disclosure relates.
- (3) In this regulation:

**parent entity** means a company, registered scheme or disclosing entity that is required by the accounting standards to prepare financial statements in relation to a consolidated entity.

##### 2M.3.03 Prescribed details (Act s 300A)

- (1) For paragraph 300A(1)(c) of the Act, the details set out in the table relating to a person are prescribed.

Item	Condition (if any)	Details
<i>General</i>		
1		The person's name

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Item	Condition (if any)	Details
2		Each position held by the person in the financial year
3	If the person has held a position mentioned in item 2 for less than the whole financial year	(a) The date on which the person began holding the position (b) The date (if any) on which the person ceased to hold the position
4	If there has been a change in the chief executive officer or a director of the entity during the period: (a) starting immediately after the reporting date; and (b) ending immediately before the date on which the financial report is authorised for issue	(a) The name of each person involved in the change (b) The position involved (c) The date on which the change occurred
5	If a person (other than a director or chief executive officer) has retired during the period: (a) starting immediately after the reporting date; and (b) ending immediately before the date on which the financial report is authorised for issue	(a) The person's name (b) The position involved (c) The date on which the retirement took effect
<i>Payments and benefits</i>		
6	Note: See subregulation (2).	The person's short-term employee benefits, divided into at least the following components: (a) cash salary, fees and short-term compensated absences; (b) short-term cash profit-sharing and other bonuses; (c) non-monetary benefits; (d) other short-term employee benefits
7	Note: See subregulation (2).	The person's post-employment benefits, divided into at least the following components: (a) pension and superannuation benefits; (b) other post-employment benefits
8	Note: See subregulation (2).	The person's long-term employee benefits other than benefits mentioned in items 6 and 7, separately identifying any amount attributable to a long-term incentive plan
9	Note: See subregulation (2).	The person's termination benefits

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Item	Condition (if any)	Details
10	For any position the person started to hold during the financial year	<p>Payments (if any) made to the person, before the person started to hold the position, as part of the consideration for the person agreeing to hold the position, including:</p> <p>(a) the monetary value of the payment; and</p> <p>(b) the date of the payment</p>
11	Note: See subregulation (2).	<p>Share-based payments made to the person, divided into at least the following components:</p> <p>(a) equity-settled share-based payment transactions, showing separately:</p> <p>(i) shares and units; and</p> <p>(ii) options and rights;</p> <p>(b) cash-settled share-based payment transactions;</p> <p>(c) all other forms of share-based payment compensation (including hybrids)</p>
<i>Compensation</i>		
12	For each grant of a cash bonus, performance-related bonus or share-based payment compensation benefit made to a person, whether part of a specific contract for services or not	<p>The terms and conditions of each grant affecting compensation in the reporting period or a future reporting period, including the following:</p> <p>(a) the grant date;</p> <p>(b) the nature of the compensation granted;</p> <p>(c) the service and performance criteria used to determine the amount of compensation;</p> <p>(d) if there has been any alteration of the terms or conditions of the grant since the grant date—the date, details and effect of each alteration;</p> <p>(e) the percentage of the bonus or grant for the financial year that was paid to the person, or that vested in the person, in the financial year;</p> <p>(f) the percentage of the bonus or grant for the financial year that was forfeited by the person (because the person did not meet the service and performance criteria for the bonus or grant) in the financial year;</p> <p>(g) the financial years, after the financial year to which the report relates, for which the bonus or grant will be payable if the person meets the service and performance criteria for the bonus or</p>

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Item	Condition (if any)	Details
		grant; (h) estimates of the maximum and minimum possible total value of the bonus or grant (other than option grants) for financial years after the financial year to which the report relates
13	For each contract for services between a person and the disclosing entity (or any of its subsidiaries)	Any further explanation that is necessary in addition to those prescribed in paragraph 300A(1)(ba) of the Act and item 12 to provide an understanding of: (a) how the amount of compensation in the current reporting period was determined; and (b) how the terms of the contract affect compensation in future periods
14	If the terms of share-based payment transactions (including options or rights) granted as compensation to key management personnel have been altered or modified by the disclosing entity or any of its subsidiaries during the reporting period	(a) The date of the alteration (b) The market price of the underlying equity instrument at the date of the alteration (c) The terms of the grant of compensation immediately before the alteration, including: (i) the number and class of the underlying equity instruments, exercise price; and (ii) the time remaining until expiry; and (iii) each other condition in the terms that affects the vesting or exercise of an option or other right (d) The new terms (e) The difference between: (i) the total of the fair value of the options or other rights affected by the alteration immediately before the alteration; and (ii) the total of the fair value of the options or other rights immediately after the alteration
15	If options and rights over an equity instrument issued or issuable by the disclosing entity or any of its subsidiaries have been provided as compensation to a person during the reporting period Note: See subregulation (3).	(a) The number of options and the number of rights that: (i) have been granted; and (ii) have vested; during the reporting period (b) The terms and conditions of each grant made during the reporting period, including: (i) the fair value per option or right at

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Item	Condition (if any)	Details
		grant date; and (ii) the exercise price per share or unit; and (iii) the amount, if any, paid or payable by the recipient; and (iv) the expiry date; and (v) the date or dates when the options or rights may be exercised; and (vi) a summary of the service and performance criteria that must be met before the beneficial interest vests in the person
16	If an equity instrument that is issued or issuable by the disclosing entity or any of its subsidiaries has been provided as a result of the exercise during the reporting period of options and rights that have been granted as compensation to a person Note: See subregulation (3).	(a) The number of equity instruments (b) If the number of options or rights exercised differs from the number of equity instruments disclosed under paragraph (a)—the number of options or rights exercised (c) The amount paid per instrument (d) The amount unpaid per instrument
<i>Remuneration disclosure</i>		
17	For an option or right over equity instruments: (a) issued or issuable by the disclosing entity or any of its subsidiaries; and (b) held, whether directly, indirectly or beneficially, by any of the following: (i) each key management person; (ii) a close member of the family of that person; (iii) an entity over which the person or the family member has, either directly or indirectly, control, joint control or significant influence	The number of each of the following: (a) options and rights held at the start of the reporting period; (b) options and rights granted during the reporting period as compensation; (c) options and rights exercised during the reporting period; (d) options and rights resulting from any other change during the reporting period; (e) options and rights held at the end of the reporting period; (f) options and rights vested at the end of the reporting period; (g) options and rights vested and exercisable at the end of the reporting period; (h) options and rights vested and unexercisable at the end of the reporting period
18	For an equity instrument (other than an option or a right): (a) issued or issuable by the disclosing entity or any of its subsidiaries; and (b) held, whether directly, indirectly or beneficially, by any of the following: (i) each key management person;	The number of each of the following: (a) equity instruments held at the start of the reporting period; (b) equity instruments granted during the reporting period as compensation; (c) equity instruments received during the reporting period on the exercise of an

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Item	Condition (if any)	Details
	<ul style="list-style-type: none"> <li>(ii) a close member of the family of that person;</li> <li>(iii) an entity over which the person or the family member has, either directly or indirectly, control, joint control or significant influence</li> </ul>	<ul style="list-style-type: none"> <li>option or right;</li> <li>(d) equity instruments resulting from any other change during the reporting period;</li> <li>(e) equity instruments held at the end of the reporting period;</li> <li>(f) equity instruments if included in the number disclosed under paragraph (e), held nominally at the end of the reporting period</li> </ul>
19	<p>For a transaction (other than share-based payment compensation) that:</p> <ul style="list-style-type: none"> <li>(a) involves an equity instrument issued or issuable by the disclosing entity or any of its subsidiaries; and</li> <li>(b) has occurred, during the reporting period, between the disclosing entity or any of its subsidiaries and any of the following: <ul style="list-style-type: none"> <li>(i) a key management person;</li> <li>(ii) a close member of the family of that person;</li> <li>(iii) an entity over which the person or the family member has, either directly or indirectly, control, joint control or significant influence;</li> </ul> </li> </ul> <p>if the terms or conditions of the transaction were more favourable than those that it is reasonable to expect the entity would adopt if dealing at arms-length with an unrelated person</p>	<ul style="list-style-type: none"> <li>(a) The nature of each different type of transaction</li> <li>(b) For each transaction, the terms and conditions of the transaction</li> </ul>
20	<p>For the aggregate of loans made, guaranteed or secured, directly or indirectly, by the disclosing entity and any of its subsidiaries, in the reporting period in relation to:</p> <ul style="list-style-type: none"> <li>(a) all key management personnel; and</li> <li>(b) close members of the family of a member of the key management personnel; and</li> <li>(c) an entity over which any of the persons mentioned in paragraphs (a) and (b) have, directly or indirectly, control, joint control or significant influence</li> </ul>	<ul style="list-style-type: none"> <li>(a) The amount outstanding at the start of the reporting period</li> <li>(b) The amount of interest paid and payable in the reporting period to the disclosing entity or to any of the entity's subsidiaries</li> <li>(c) The difference between the amount disclosed under paragraph (b) and the amount of interest that would have been charged on an arms-length basis</li> <li>(d) Each write-down and each allowance for doubtful receivables recognised by the disclosing entity or by any of the entity's subsidiaries</li> <li>(e) The amount outstanding at the end of the reporting period</li> </ul>

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Item	Condition (if any)	Details
		<p>(f) The number of key management personnel included in the group aggregate at the end of the reporting period</p> <p>(g) A summary of the terms and conditions of the loans</p>
21	<p>If the aggregate of loans made, guaranteed or secured, directly or indirectly, by the disclosing entity and any of its subsidiaries, in the reporting period in relation to:</p> <p>(a) a particular key management person; and</p> <p>(b) close members of the family of the key management person; and</p> <p>(c) an entity over which any of the persons mentioned in paragraphs (a) and (b) has, directly or indirectly, control, joint control or significant influence;</p> <p>is greater than \$100 000</p>	<p>(a) The amount outstanding at the start of the reporting period</p> <p>(b) The amount of interest paid and payable in the reporting period to the disclosing entity or to any of the entity's subsidiaries</p> <p>(c) The difference between the amount disclosed under paragraph (b) and the amount of interest that would have been charged on an arms-length basis</p> <p>(d) Each write-down and each allowance for doubtful receivables recognised by the disclosing entity or by any of the entity's subsidiaries</p> <p>(e) The amount outstanding at the end of the reporting period</p> <p>(f) The highest amount of the key management person's indebtedness during the reporting period</p> <p>(g) A summary of the terms and conditions of the loans</p>
22	<p>For a transaction during the reporting period between the disclosing entity, or any of its subsidiaries, and a key management person, a close member of the family of that person, or an entity over which the key management person or the family member has, directly or indirectly, control, joint control or significant influence, other than a transaction mentioned in item 19, 20 or 21 or subregulation (3B)</p>	<p>(a) Each type of transaction of a different nature</p> <p>(b) The terms and conditions of each type of transaction or, if there are different categories of terms and conditions within a type of transaction, the terms and conditions of each category of transaction</p> <p>(c) For each type of transaction or, if there are different categories of terms and conditions within a type of transaction, for each category of transaction:</p> <p>(i) the names of the persons involved in the transaction; and</p> <p>(ii) the aggregate amount recognised</p>
23	<p>For each aggregate amount disclosed under item 22</p>	<p>(a) The total of amounts recognised as revenue, separately identifying, if applicable, the total amounts recognised as:</p> <p>(i) interest revenue; or</p> <p>(ii) dividend revenue</p>

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Item	Condition (if any)	Details
		<p>(b) The total of amounts recognised as expense, separately identifying, if applicable, the total amounts recognised as:</p> <p>(i) interest expense; or</p> <p>(ii) write-downs of receivables and allowances made for doubtful receivables</p> <p>(c) Any further disclosures necessary to provide an understanding of the effects of the transactions on the financial statements prepared in accordance with Australian Accounting Standards</p>
24	For each transaction identified under item 22	<p>(a) The total of all assets, classified into current and non-current assets, and, if applicable, any allowance for doubtful receivables at the end of the reporting period</p> <p>(b) The total of all liabilities, classified into current and non-current liabilities</p>

(2) For items 6, 7, 8, 9 and 11 of the table:

- (a) the information of the kind described in the item for the previous financial year must also be disclosed in the financial year to which the item relates (to give comparative information for the purposes of the item); but
- (b) paragraph (a) does not apply in relation to the first financial year in which paragraph 300A(1)(c) of the Act applies in relation to a person.

Note: The effect of paragraph (b) is that no comparative information is required in the first period of reporting on a specific individual.

(3) For items 15 to 19 of the table, a disclosure required by the item must:

- (a) be separated into each class of equity instrument; and
- (b) identify each class of equity instrument by:
  - (i) the name of the disclosing entity or the relevant subsidiary that issued the equity instrument; and
  - (ii) the class of equity instrument; and
  - (iii) if the instrument is an option or right—the class and number of equity instruments for which it may be exercised.

(3A) For items 20 and 21 of the table in subregulation (1), loans do not include loans involved in transactions that are in substance options, including non-recourse loans.

(3B) A transaction with, or an amount that is receivable from or payable under a transaction to, a key management person, a close member of the family of that person, or an entity over which the person or the family member has, directly or indirectly, control, joint control or significant influence, is excluded from the requirements of items 22 to 24 if:

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- (a) the transaction occurs within a normal employee, customer or supplier relationship on terms and conditions no more favourable than those that it is reasonable to expect the entity would have adopted if dealing at arms-length with an unrelated person; and
  - (b) information about the transaction does not have the potential to affect adversely decisions about the allocation of scarce resources made by users of the financial statements, or the discharge of accountability by the key management person; and
  - (c) the transaction is trivial or domestic in nature.
- (3C) Items 17 to 24 of the table in subregulation (1) apply in relation to a directors' report for a financial year commencing on or after 1 July 2013.
- (4) For subregulation (1), a company must apply the requirements of relevant accounting standards when disclosing the information mentioned in the subregulation.
- (5) In subregulation (1), an expression that is:
  - (a) used in the subregulation; and
  - (b) defined in a relevant accounting standard that is applied for the purpose of disclosing information;has the meaning given by that accounting standard.

## Part 2M.4—Auditor

### 2M.4.01A Membership designations (Act s 324BE)

For paragraph 324BE(1)(b) of the Act, a designation mentioned in an item of the table is prescribed for membership of the professional accounting body mentioned in the item.

Membership designations		
Item	Professional accounting body	Designation
1	Institute of Chartered Accountants in Australia	CA; or FCA
2	CPA Australia	CPA; or FCPA
3	Institute of Public Accountants	FIPA; or MIPA

### 2M.4.01 Notice of appointment of auditors

The responsible entity of a registered scheme must lodge a notice in the approved form telling ASIC of the appointment by the entity of an auditor of the scheme under section 331AB of the Act within 14 days of the appointment.

## Part 2M.4A—Annual transparency reports for auditors

### 2M.4A.01 Application

This Part applies in relation to annual transparency reports for:

- (a) the transparency reporting year in which Schedule 1 to the *Corporations Legislation Amendment (Audit Enhancement) Act 2012* commences; and
- (b) all later transparency reporting years.

Note: For the definitions of *annual transparency report* and *transparency reporting year*, see section 9 of the Act.

### 2M.4A.02 Content of annual transparency report (Act s 332B)

- (1) For subsection 332B(1) of the Act, Schedule 7A sets out the information that an annual transparency report published in accordance with subsection 332A(2) of the Act must contain.
- (2) If the report is published by an audit firm or authorised audit company, see Part 2 of Schedule 7A.
- (3) If the report is published by an individual auditor, see Part 3 of Schedule 7A.

## **Part 2M.6—Modification of the operation of Chapter 2M of the Act**

### **2M.6.01 Modifications (Act s 343)**

For section 343 of the Act, the operation of Chapter 2M of the Act is modified in accordance with this Part.

### **2M.6.05 Conduct of auditor—relevant relationships**

The operation of Chapter 2M of the Act in relation to:

- (a) all companies; and
- (b) all registered schemes; and
- (c) all disclosing entities;

is modified as set out in Schedule 5C.

## Chapter 2N—Updating ASIC information about companies and registered schemes

### Part 2N.2—Extract of particulars

#### 2N.2.01 Particulars ASIC may require in an extract of particulars (Act s 346B)

*Particulars for a company*

- (1) For the purposes of section 346B of the Act, the following particulars are prescribed for a company (other than a CCIV):
  - (a) ACN;
  - (b) name;
  - (c) address of registered office;
  - (d) address of principal place of business in this jurisdiction;
  - (e) for each director and company secretary:
    - (i) the person's name; and
    - (ii) the person's usual residential address, or, if the person is entitled to have an alternative address under subsection 205D(2) of the Act, that alternative address; and
    - (iii) the person's date and place of birth;
  - (f) the date of appointment or cessation of each director, secretary or alternate director;
  - (g) for issued shares—the classes into which the shares are divided, and for each class of share issued:
    - (i) the number of shares in the class; and
    - (ii) the total amount paid up for the class; and
    - (iii) the total amount unpaid for the class;
  - (h) for a proprietary company—the names and addresses of:
    - (i) if the company has 20 or fewer members—all members; or
    - (ii) if the company has more than 20 members—the top 20 members in each class;
  - (i) for a proprietary company that has a share capital:
    - (i) the total number of shares in each class held by each of the members mentioned in paragraph (h); and
    - (ii) whether or not the shares are fully paid; and
    - (iii) whether or not the shares are beneficially owned;
  - (j) for the ultimate holding company—its name and either:
    - (i) its ACN or ARBN if registered in this jurisdiction; or
    - (ii) the place at which it was incorporated or formed if not registered in this jurisdiction.

*Particulars for a CCIV*

- (1A) For the purposes of section 346B of the Act, the following particulars are prescribed for a CCIV:
- (a) ACN;
  - (b) name;
  - (c) address of registered office;
  - (d) for the corporate director of the CCIV:
    - (i) the ACN of the corporate director; and
    - (ii) the name of the corporate director; and
    - (iii) the date of appointment of the corporate director;
  - (e) for each sub-fund of the CCIV:
    - (i) the ARFN of the sub-fund; and
    - (ii) the name of the sub-fund;
  - (f) for issued shares—the sub-funds to which the shares are referable, and for each sub-fund:
    - (i) the classes of shares referable to the sub-fund; and
    - (ii) the number of shares referable to the sub-fund in each of those classes; and
    - (iii) for each of those classes—the total amount paid up for shares referable to the sub-fund in the class; and
    - (iv) for each of those classes—the total amount unpaid for shares referable to the sub-fund in the class.

*Particulars for a registered scheme*

- (2) For the purposes of section 346B of the Act, the following particulars are prescribed for a registered scheme:
- (a) ARSN;
  - (b) name;
  - (c) name and ACN of the responsible entity;
  - (d) if the scheme is a managed investment scheme that is a unit trust:
    - (i) issued interests in the scheme; and
    - (ii) the classes into which the interests are divided; and
    - (iii) for each class of interest issued—the number of interests in the class, the total amount paid up for the class and the total amount unpaid for the class;
  - (e) if the scheme is a managed investment scheme that is not a unit trust:
    - (i) issued interests in the scheme; and
    - (ii) a description of the nature of the interests (for example, interest in a limited partnership, right to participate in a timesharing scheme); and
    - (iii) the number of the interests; and
    - (iv) the total amount paid for the interests; and
    - (v) the total amount unpaid for the interests.

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### *Additional particulars for an Australian passport fund*

- (3) For the purposes of section 346B of the Act, the following particulars are prescribed for a registered scheme that is an Australian passport fund, in addition to the particulars prescribed for the scheme under subregulation (2):
- (a) the APFRN for the fund;
  - (b) if the fund has or had a name in a participating economy (including Australia) that is different from its current name in Australia, then for each name that the fund has or had in a participating economy:
    - (i) that name; and
    - (ii) the name of each participating economy in which the fund has or had that name; and
    - (iii) for each such economy—the start date and (if applicable) the end date of each period during which the fund has or had that name in that economy.

### *Particulars for a notified foreign passport fund*

- (4) For the purposes of section 346B of the Act, the following particulars are prescribed for a notified foreign passport fund:
- (a) the NFPFRN for the fund and any other unique number for the fund allocated to the fund by ASIC;
  - (b) the name of the fund;
  - (c) the name of the home economy for the fund;
  - (d) in relation to the operator of the fund:
    - (i) the name and ARBN of the operator; and
    - (ii) the name and address of each local agent of the operator; and
    - (iii) the address of the operator's registered office or principal place of business in its place of origin;
  - (e) if the fund has or had a name in a participating economy (including Australia) that is different from its current name in Australia, then for each name that the fund has or had in a participating economy:
    - (i) that name; and
    - (ii) the name of each participating economy in which the fund has or had that name; and
    - (iii) for each such economy—the start date and (if applicable) the end date of each period during which the fund has or had that name in that economy.

### *Definitions*

- (5) In this regulation:

***participating economy*** has the same meaning as in Chapter 8A of the Act.

## Part 2N.4—Return of particulars

### 2N.4.01 Particulars ASIC may require in a return of particulars (Act s 348B)

#### *Particulars for a company*

- (1) For the purposes of section 348B of the Act, the following particulars are prescribed for a company (other than a CCIV):
  - (a) the personal details of a director, secretary or alternate director mentioned in subsection 205B(3) of the Act;
  - (b) the date of appointment or cessation of a director, secretary or alternate director;
  - (c) the date of change of name or change of address of a director, secretary or alternate director;
  - (d) evidence that a specified person is (or is not) a director, secretary or alternate director;
  - (e) completion of a declaration indicating that the company is a special purpose company within the meaning of regulation 3 of the *Corporations (Review Fees) Regulations 2003*;
  - (f) the name of the ultimate holding company;
  - (g) the date on which a company became, or ceased to be, the ultimate holding company;
  - (h) the previous name, or the new name, of the ultimate holding company;
  - (i) the date of issue, cancellation, or transfer of shares;
  - (j) the date of any change to amounts paid on shares;
  - (k) a statement of whether or not shares for one or more members are beneficially owned;
  - (l) the date of any change to beneficial ownership of shares;
  - (m) any of the following information from the share structure table for a class of share:
    - (i) the share class code;
    - (ii) the full title of the class of share;
    - (iii) the total number of shares in the class that have been issued;
    - (iv) the total amount paid for shares in the class;
    - (v) the total amount unpaid for shares in the class;
  - (n) the date on which a new member's name was entered in the register of members;
  - (o) a statement that the company is:
    - (i) a small proprietary company mentioned in subsection 45A(2) of the Act; or
    - (ii) a large proprietary company mentioned in subsection 45A(3) of the Act; or

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- (iii) a foreign controlled small proprietary company mentioned in paragraph 292(2)(b) of the Act;
- (p) a statement that the company is listed (or not listed) on a financial market, and the name of the financial market (if any);
- (q) a statement of whether the company complies with subsection 348C(2) or (3) of the Act;
- (r) information that the company is required to provide under subsection 142(2), 146(1), 205B(1) or (4), 254X(1) or 319(1) of the Act.

#### *Particulars for a CCIV*

- (1A) For the purposes of section 348B of the Act, the following particulars are prescribed for a CCIV:
- (a) for the corporate director of the CCIV:
    - (i) the name of the corporate director; and
    - (ii) the address of the corporate director; and
    - (iii) the date of appointment or cessation of the corporate director; and
    - (iv) the date of change of name or change of address of the corporate director; and
    - (v) evidence that a specified person is (or is not) the corporate director;
  - (b) the date on which a new member's name was entered in the register of members kept by the CCIV;
  - (c) for each sub-fund of the CCIV:
    - (i) the date of issue, cancellation, or transfer of shares referable to the sub-fund; and
    - (ii) the classes of shares referable to the sub-fund; and
    - (iii) for each of those classes—the total number and value of shares referable to the sub-fund in the class; and
    - (iv) for each of those classes—the total amount paid up for shares referable to the sub-fund in the class; and
    - (v) for each of those classes—the total amount unpaid for shares referable to the sub-fund in the class;
  - (d) for each sub-fund of the CCIV—a statement that the sub-fund is listed (or not listed) and, if the sub-fund is listed, the name of the prescribed financial market for which the sub-fund or the CCIV is included in the official list;
  - (e) for each financial year specified in the return of particulars for each sub-fund of a retail CCIV—the name of each auditor of a financial report for the sub-fund for that year;
  - (f) for a retail CCIV—the name of the auditor of the compliance plan for the retail CCIV;
  - (g) if a sub-fund of the CCIV is an Australian passport fund—the name of the implementation reviewer for the Australian passport fund for each review period for the Australian passport fund specified in the return of particulars.

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*Particulars for a registered scheme*

- (2) For the purposes of section 348B of the Act, the following particulars are prescribed for a registered scheme:
- (a) the date on which a new member's name was entered in the register of members;
  - (b) the new name of the responsible entity of the scheme;
  - (c) information that the scheme is required to provide under subsection 319(1) of the Act;
  - (d) for each financial year for the scheme specified in the return of particulars—the name of each auditor of a financial report for the scheme for that year;
  - (e) the name of the auditor of the compliance plan for the scheme;
  - (f) if the scheme is an Australian passport fund—the name of the implementation reviewer for the fund for each review period for the fund specified in the return of particulars.

*Particulars for a notified foreign passport fund*

- (3) For the purposes of section 348B of the Act, the following particulars are prescribed for a notified foreign passport fund:
- (a) the date on which a new member's name was entered in the register of members;
  - (b) the new name of the operator of the fund;
  - (c) information that the fund is required to provide under subsection 319(1AA) of the Act;
  - (d) for each financial year for the fund specified in the return of particulars—the name of each auditor of a report for the fund for that year that is prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;
  - (e) the name of the implementation reviewer for the fund for each review period for the fund specified in the return of particulars.

*Definitions*

- (4) In this regulation:

**implementation reviewer**, for a passport fund, has the same meaning as in the Passport Rules for this jurisdiction.

**review period**, for a passport fund, has the meaning given by subsection 15(1) of the Passport Rules for this jurisdiction.

## Chapter 5—External administration

### Part 5.1—Arrangements and reconstructions

#### 5.1.01 Prescribed information for paragraph 411(3)(b) and subparagraph 412(1)(a)(ii) of the Act

- (1) For paragraph 411(3)(b) and subparagraph 412(1)(a)(ii) of the Act, unless ASIC otherwise allows, the explanatory statement must:
  - (a) for a proposed arrangement between a Part 5.1 body and its creditors, or a class of its creditors:
    - (i) state the matters set out; and
    - (ii) have annexed to it the reports and copies of documents mentioned in Part 2 of Schedule 8; and
  - (b) for a proposed arrangement between a Part 5.1 body and its members, or a class of its members, other than a proposed arrangement mentioned in paragraph (c):
    - (i) state the matters set out; and
    - (ii) have annexed to it the reports and copies of documents mentioned in Part 3 of Schedule 8; and
  - (c) for a proposed arrangement between a Part 5.1 body and its members, or a class of its members, in relation to the reconstruction of a corporation, or the amalgamation of 2 or more corporations, if:
    - (i) the whole or part of the undertaking or of the property of a corporation is to be transferred to a trustee to be held beneficially on behalf of the unit holders of the trust; or
    - (ii) the shares in the corporation that are held by members are to be cancelled and control is to pass to a trustee to be held on behalf of a unit holder of the trust;state the matters set out and have annexed to it the documents and, if the trustee of that business operates no other business in relation to that trust, the reports mentioned, in Part 4 of Schedule 8.
- (2) For the purposes of Schedule 8, *securities exchange* means Australian Stock Exchange Limited.

#### 5.1.02 Giving notice under subsection 414(2) or (9) of the Act

A notice under subsection 414(2) or (9) of the Act must be given to a person:

- (a) by personal delivery; or
- (b) by prepaid post to the person's address shown in the books of the transferor company.

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**5.1.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 415D of the Act**

For the purposes of subparagraph 415D(6)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

## **Part 5.2—Receivers, and other controllers, of corporations**

### **5.2.01 Controller’s notice to owner or lessor of property—how given**

A notice under subsection 419A(3) of the Act must be given to the owner or lessor, as the case may be, by personal delivery or by prepaid post to the owner’s or lessor’s usual place of residence or business or the place of residence or business last known to the controller.

### **5.2.02 Certified copies of reports**

A copy of:

- (a) a report that must be lodged; and
- (b) a certificate or other document annexed to that report;

must be certified in writing to be a true copy by:

- (c) for a copy lodged for paragraph 429(2)(c) of the Act—the controller of property of the corporation; or
- (f) for a copy lodged for subsection 475(7) of the Act—by the liquidator or provisional liquidator of the company.

### **5.2.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 434J of the Act**

For the purposes of subparagraph 434J(5)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

## **Part 5.3A—Administration of a company's affairs with a view to executing a deed of company arrangement**

### **5.3A.03A Notice of first meeting of creditors**

- (1) This regulation is made for paragraph 436E(3)(b) of the Act.
- (2) The information about a meeting that is to be set out in a notice is at least the following information:
  - (a) the name of the company;
  - (b) any trading name of the company;
  - (c) the ACN of the company;
  - (d) the section of the Act or, in the case of a combined notice, the sections of the Act under which the notice is being given;
  - (e) the time, date and place for the meeting;
  - (f) the purpose for which the meeting is being convened under that section;
  - (g) the time and date by which proofs of debt, and proxies for the meeting, are to be submitted;
  - (h) the name and contact details of the administrator;
  - (i) the date on which the administrator was appointed;
  - (j) the section of the Act under which the administrator was appointed.

### **5.3A.05 Administrator's notice to owner or lessor of property—how given**

A notice under subsection 443B(3) of the Act must be given to the owner or lessor, as the case may be, by personal delivery or by prepaid post to the owner's or lessor's usual place of residence or business or the place of residence or business last known to the administrator.

### **5.3A.06 Provisions included in deed of company arrangement**

For subsection 444A(5) of the Act, the prescribed provisions are those set out in Schedule 8A.

### **5.3A.06A Notice of resolution to wind up voluntarily**

- (1) This regulation is made for paragraph 446A(5)(b) of the Act.
- (2) The notice must be published by the end of the next business day after a liquidator is appointed to administer the winding up of the company.

### **5.3A.07A Notice of appointment of administrator**

- (1) This regulation is made for paragraph 450A(1)(b) of the Act.

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- (2) The information about an appointment that is to be set out in a notice is at least the following information:
  - (a) the name of the company;
  - (b) any trading name of the company;
  - (c) the ACN of the company;
  - (d) the section of the Act or, in the case of a combined notice, the sections of the Act under which the notice is being given;
  - (e) the name and contact details of the administrator;
  - (f) the date on which the administrator was appointed;
  - (g) the section of the Act under which the administrator was appointed.
- (3) The period within which the notice is to be published is 3 business days after an administrator is appointed.

**5.3A.50 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 451E of the Act**

- (1) For the purposes of subparagraph 451E(5)(b)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation (2) is prescribed.
- (2) The kinds of contracts, agreements or arrangements are as follows:
  - (a) an agreement (within the meaning of the *Convention* defined in section 3 of the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*);
  - (b) a contract, agreement or arrangement that is a licence, permit or approval issued by:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority of the Commonwealth or of a State or a Territory; or
    - (iii) a local governing body established by or under a law of a State or Territory;
  - (c) a contract, agreement or arrangement relating to Australia's national security, border protection or defence capability;
  - (d) a contract, agreement or arrangement for the supply of goods or services to a public hospital or a public health service;
  - (e) a contract, agreement or arrangement for the supply of goods or services by or on behalf of a public hospital or a public health service;
  - (f) a contract, agreement or arrangement for the supply of essential or critical goods or services to, or the carrying out of essential or critical works for:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority of the Commonwealth or of a State or a Territory; or
    - (iii) a local governing body established by or under a law of a State or Territory; or
    - (iv) the public on behalf of an entity covered by subparagraph (i), (ii) or (iii);

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Note: Examples of these essential or critical goods, services or works include public transport services, public security or safety services, and works affecting essential public infrastructure.

- (g) a contract, agreement or arrangement that is, or is directly connected with, a derivative;
- (h) a contract, agreement or arrangement that is, or is directly connected with, a securities financing transaction;
- (i) a contract, agreement or arrangement for the underwriting of an issue, or sale, of securities, financial products, bonds, promissory notes, or syndicated loans;
- (j) a contract, agreement or arrangement under which a party is or may be liable to subscribe for, or to procure subscribers for, securities, financial products, bonds, promissory notes, or syndicated loans;
- (k) a contract, agreement or arrangement that is, or governs, securities, financial products, bonds, promissory notes, or syndicated loans;
- (l) a contract, agreement or arrangement under which securities are offered, or may be offered, under a rights issue;
- (m) a contract, agreement or arrangement for the sale of all or part of a business, including by way of the sale of securities or financial products;
- (n) a contract, agreement or arrangement for the issue of an instrument that:
  - (i) is a security, financial product, bond, promissory note, or syndicated loan; and
  - (ii) belongs to a class of such instruments, each of which is fungible, and the first of which was issued before 1 July 2018;
- (o) a contract, agreement or arrangement that is, or is directly connected with, a margin lending facility (within the meaning of Chapter 7 of the Act);
- (p) a contract, agreement or arrangement that is:
  - (i) a covered bond (within the meaning of the *Banking Act 1959*); or
  - (ii) for issuing such a bond; or
  - (iii) directly connected with such a bond or the issuing of such a bond;
- (q) a contract, agreement or arrangement providing for the management of financial investments;
- (r) a contract, agreement or arrangement that involves a special purpose vehicle, and that provides for securitisation or a public-private partnership;
- (s) a contract, agreement or arrangement that involves a special purpose vehicle, and that provides for a project finance arrangement under which:
  - (i) a financial accommodation is to be repaid or otherwise discharged primarily from the project's cash flow; and
  - (ii) all or substantially all of the project's assets, rights and interests are to be held as security for the financial accommodation;
- (t) a contract, agreement or arrangement for the keeping in escrow of:
  - (i) code, or passwords, for computer software; or
  - (ii) material directly associated with such code or passwords;
- (u) a contract, agreement or arrangement for the commercial charter of a ship if:

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- (i) the ship is not an Australian ship (within the meaning of the *Shipping Registration Act 1981*); and
- (ii) the charter is by an Australian national (within the meaning of that Act) for the purposes of exporting goods from Australia, or from an external Territory, to another country;
- (v) a contract, agreement or arrangement under which the priority of security interests in particular property is changed or can change;
- (w) a contract, agreement or arrangement that is a flawed asset arrangement;
- (x) a contract, agreement or arrangement that is, or is directly connected with, a factoring arrangement (within the meaning of the *ASIC Corporations (Factoring Arrangements) Instrument 2017/794*);
- (y) a contract, agreement or arrangement that is the operating rules (other than the listing rules) of a financial market;  

Note: The operating rules of a licensed market (within the meaning of Chapter 7 of the Act) are a contract, see subsection 793B(1) of the Act.
- (z) a contract, agreement or arrangement that is the operating rules of a clearing and settlement facility;  

Note: The operating rules of a licensed CS facility (within the meaning of Chapter 7 of the Act) are a contract, see subsection 822B(1) of the Act.
- (za) a contract, agreement or arrangement that confers rights on the operator of a financial market, or the operator of a clearing and settlement facility, in relation to the operation of the market or facility;
- (zb) a contract, agreement or arrangement of which the parties include the Reserve Bank of Australia and the operator of a clearing and settlement facility;
- (zc) a contract, agreement or arrangement under which participants (within the meaning of Chapter 7 of the Act) in a clearing and settlement facility may settle obligations on behalf of other participants (within the meaning of that Chapter) in the facility;
- (zd) a legally enforceable arrangement referred to in paragraph 9(1)(b) of the *Payment Systems and Netting Act 1998* that supports an approved RTGS system (within the meaning of that Act);  

Note: The arrangement includes the rules that are part of that arrangement.
- (ze) an approved netting arrangement (within the meaning of the *Payment Systems and Netting Act 1998*);  

Note: The arrangement includes the rules that are part of that arrangement.
- (zf) a contract, agreement or arrangement that confers rights on:
  - (i) the operator of an approved RTGS system (within the meaning of the *Payment Systems and Netting Act 1998*); or
  - (ii) the coordinator of an approved netting arrangement (within the meaning of that Act);in relation to the operation of that system or netting arrangement;
- (zg) a contract, agreement or arrangement under which the parties to an arrangement covered by paragraph (zd) or (ze) (the **main arrangement**) may settle obligations on behalf of other parties to the main arrangement;

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- (zh) a close-out netting contract (within the meaning of the *Payment Systems and Netting Act 1998*);
- (zi) a contract, agreement or arrangement under which security is given over financial property (within the meaning of the *Payment Systems and Netting Act 1998*) in respect of eligible obligations (within the meaning of that Act) of a party to a contract covered by paragraph (zh);
- (zj) a netting market (within the meaning of the *Payment Systems and Netting Act 1998*);
- (zk) a market netting contract (within the meaning of the *Payment Systems and Netting Act 1998*);
- (zl) a contract, agreement or arrangement under which security is given, in accordance with a market netting contract covered by paragraph (zk), in respect of obligations of a party to the market netting contract;
- (zm) a contract, agreement or arrangement that is an outsourcing arrangement for the purposes of *Prudential Standard CPS 231 Outsourcing* or *Prudential Standard SPS 231 Outsourcing*;

Note 1: In 2018, *Prudential Standard CPS 231 Outsourcing* was set out in the Banking, Insurance and Life Insurance (prudential standard) determination No. 6 of 2016.

Note 2: In 2018, *Prudential Standard SPS 231 Outsourcing* was set out in the Superannuation (prudential standard) determination No. 3 of 2012.

- (zn) a contract, agreement or arrangement entered into or renewed on or after 1 July 2018, but before 1 July 2023, as a result of either of the following:
  - (i) the novation of, or the assignment of one or more rights under, a contract, agreement or arrangement entered into before 1 July 2018;
  - (ii) a variation of a contract, agreement or arrangement entered into before 1 July 2018;
- (zo) a contract, agreement or arrangement entered into on or after 1 July 2018, but before 1 July 2023, for the provision of any of the following kinds of work, goods or services for a particular project:
  - (i) building work (within the meaning of the *Federal Safety Commissioner Act 2022*);
  - (ii) work to be carried out anywhere in Australia that, if carried out in New South Wales, would be covered by paragraph 5(1)(d) or (f) of the *Building and Construction Industry Security of Payment Act 1999* (NSW) and not be excluded by subsection 5(2) of that Act;
  - (iii) goods or services to be provided anywhere in Australia that, if provided in New South Wales, would be related goods and services (within the meaning of the *Building and Construction Industry Security of Payment Act 1999* (NSW));if the total payments under all contracts, agreements or arrangements for the project for work, goods or services of those kinds is at least \$1 billion;
- (zp) a contract, agreement or arrangement that:
  - (i) is entered into to enable the satisfactory completion of a contract, agreement or arrangement covered by paragraph (zo); and
  - (ii) is for the provision of a kind of work, goods or services covered by that paragraph;

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**Part 5.3A** Administration of a company's affairs with a view to executing a deed of company arrangement

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(zq) a contract, agreement or arrangement that is for reinsurance or retrocession.

## Part 5.3B—Restructuring of a company

### Division 1—Preliminary

#### 5.3B.01 Definitions

In this Part, unless the contrary intention appears:

***accepted***, in relation to a proposal to make a restructuring plan, has the meaning given by subregulation 5.3B.25(1).

***admissible debt or claim***, in relation to a company under restructuring or a company's restructuring plan, means a debt or claim that would be admissible to proof against the company under subsection 553(1) of the Act if:

- (a) the company were wound up; and
- (b) the relevant date were:
  - (i) if the company is under restructuring—the beginning of the restructuring; and
  - (ii) if the company has made a restructuring plan—the beginning of the restructuring that ended when the plan was made;

but does not include:

- (c) the entitlements of an employee of the company; or
- (d) a debt or claim that would be admissible to proof under subsection 553(1A) of the Act.

Note: Employee ***entitlements*** are defined in subsections 596AA(2) and (3) of the Act and include superannuation contributions payable by the company.

***affected creditor*** means:

- (a) in relation to a proposal to vary or terminate a company's restructuring plan—a creditor of the company who is a party (as creditor) to the plan; or
- (b) in relation to a proposal by a company to make a restructuring plan—a person who would be a party to the restructuring plan if it were made.

***excluded creditor***, in relation to a company under restructuring, means a creditor of the company who:

- (a) is the restructuring practitioner for the company; or
- (b) was, at the time the restructuring began, a related creditor of the company;  
or
- (c) was, on becoming an affected creditor, a related entity of the restructuring practitioner.

***make***, in relation to a restructuring plan, has the meaning given by regulation 5.3B.26.

***proposal period***, in relation to a company under restructuring, has the meaning given by regulation 5.3B.17.

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***propose***, in relation to a restructuring plan, has the meaning given by regulation 5.3B.14.

***related creditor*** of a company means a person who is a related entity, and a creditor, of the company.

***restructuring proposal statement*** means a statement made by a company under regulation 5.3B.16.

## **Division 2—Restructuring**

### **Subdivision A—Restructuring generally**

#### **5.3B.02 When restructuring ends**

- (1) For the purposes of paragraph 453A(b) of the Act, the restructuring of a company ends if:
  - (a) the company makes a declaration under subregulation (2); or
  - (b) the company fails to propose a restructuring plan within the proposal period; or
  - (c) the company's proposal to make a restructuring plan lapses under regulation 5.3B.20; or
  - (d) the restructuring practitioner for the company terminates the restructuring under section 453J of the Act; or
  - (e) the Court orders that the restructuring of the company is to end; or
  - (f) an administrator of the company is appointed under section 436A, 436B or 436C of the Act; or
  - (g) a liquidator or provisional liquidator of the company is appointed; or
  - (j) the company makes a restructuring plan.
- (2) The directors of a company under restructuring:
  - (a) may make a declaration in writing that the restructuring of the company is to end on a specified day for any reason; and
  - (b) must give a copy of the declaration to:
    - (i) the company's restructuring practitioner; and
    - (ii) the company's creditors;before the day specified in the declaration.

#### **5.3B.03 Eligibility criteria for restructuring**

- (1) For the purposes of paragraph 453C(1)(a) of the Act, the test for eligibility is that the total liabilities of the company on the day the restructuring begins must not exceed \$1 million.
- (2) For the purposes of paragraph 453C(1)(b) of the Act, a period of 7 years is prescribed.
- (3) For the purposes of paragraph 453C(1)(c) of the Act, a period of 7 years is prescribed.
- (4) For the purposes of paragraph 453C(2)(b) of the Act, a prescribed circumstance is that:
  - (a) the other company is a related body corporate of the company in relation to which the eligibility criteria are to be met; and
  - (b) the other company is, or has been:

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- (i) under restructuring; or
- (ii) the subject of a simplified liquidation process; and
- (c) if subparagraph (b)(i) applies—the restructuring practitioner for the other company was appointed no more than 20 business days before the day on which the restructuring of the company in relation to which the eligibility criteria are to be met began; and
- (d) if subparagraph (b)(ii) applies—the other company began to follow the simplified liquidation process no more than 20 business days before the day on which the restructuring of the company in relation to which the eligibility criteria are to be met began.

*Definitions*

- (5) In this regulation:

**liability** means any liability to pay an admissible debt or claim.

**5.3B.04 Transactions or dealings in the ordinary course of business**

- (1) For the purposes of subsection 453L(4) of the Act, this regulation prescribes the circumstances in which entering into a transaction or dealing by a company is to not be treated as in the ordinary course of the company's business.
- (2) The circumstances are as follows:
  - (a) the transaction or dealing is for the purposes of satisfying an admissible debt or claim;
  - (b) the transaction or dealing relates to the transfer or sale of the whole or a part of the business;
  - (c) the transaction or dealing relates to the payment of a dividend.

**5.3B.05 Consent to transactions or dealings outside the ordinary course of business**

- (1) This regulation applies if the restructuring practitioner for a company under restructuring consents to a transaction or dealing under paragraph 453L(2)(b) of the Act.
- (2) The consent must be given:
  - (a) in writing; or
  - (b) if the restructuring practitioner is satisfied that the delay caused by giving a written consent would not be in the best interests of the company's creditors as a whole—orally.
- (3) If the consent is given in writing, the written consent must specify any conditions imposed on the consent.
- (4) If the consent is given orally, the restructuring practitioner must, within 2 business days after the day on which the consent is given:

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- (a) make a written record of the consent and any conditions imposed on the consent; and
  - (b) provide a copy of the written record to the company.
- (5) The restructuring practitioner must keep a record of the consent for 5 years after the day on which the consent is given.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

### **5.3B.06 Termination of restructuring**

For the purposes of paragraph 453J(3)(b) of the Act, the following information is prescribed:

- (a) the following details about the company:
  - (i) the name of the company;
  - (ii) any trading name of the company;
  - (iii) the ACN of the company;
  - (iv) the address of the company's registered office;
  - (v) any website maintained by or on behalf of the company;
  - (vi) the company's email address (if any);
- (b) the following details about the restructuring practitioner:
  - (i) the restructuring practitioner's name;
  - (ii) the address and telephone number of the principal place where the restructuring practitioner practises as a registered liquidator;
  - (iii) if the restructuring practitioner practises as a registered liquidator as a member of a firm or under a name or style other than the person's own name—the name of that firm or the name or style under which the person practises;
  - (iv) the Registered Liquidator Number for the restructuring practitioner as specified on the Register of Liquidators;
- (c) the day on which the restructuring of the company began;
- (d) the day on which the notice is given to the company;
- (e) the reason for terminating the restructuring of the company;
- (f) the signature of the restructuring practitioner;
- (g) any other information that the restructuring practitioner considers appropriate.

### **Subdivision B—Restructuring practitioner for company under restructuring**

#### **5.3B.07 Authority**

This Subdivision is made for the purposes of subsection 453E(2) of the Act.

Regulation 5.3B.08

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**5.3B.08 Powers of restructuring practitioner for company under restructuring**

The restructuring practitioner for a company under restructuring has the power to investigate the company's business, property, affairs and financial circumstances for the purposes of:

- (a) preparing a declaration under regulation 5.3B.18; or
- (b) deciding whether to terminate the restructuring of the company; or
- (c) resolving a disagreement under regulation 5.3B.22; or
- (d) performing or exercising any other function, duty or power as restructuring practitioner for the company.

**5.3B.09 Replacement restructuring practitioner must fulfil certain past requirements**

- (1) This regulation applies in relation to a restructuring practitioner for a company (the **replacement practitioner**) who is appointed under subsection 456E(1) of the Act.

*Replacement practitioner must resolve existing creditor disputes*

- (2) If:
- (a) before the appointment, a notice was given under subregulation 5.3B.22(2) to the restructuring practitioner for the company (the **former practitioner**) setting out a creditor's disagreement with the schedule of debts and claims included with the company's restructuring proposal statement; and
  - (b) at the time of the appointment, the former practitioner has not given notice under subregulation 5.3B.22(6) or (7) in relation to the disagreement;
- the replacement practitioner must give the notice under subregulation 5.3B.22(6) or (7), as the case requires, as soon as practicable after the appointment.

*Replacement practitioner must lodge outstanding notices etc.*

- (3) If:
- (a) before the appointment, a restructuring practitioner for the company was required to do a thing under Subdivision B or C of Division 5; and
  - (b) at the time of the appointment, the thing has not been done;
- the replacement practitioner must do the thing within 2 business days after the day on which the replacement practitioner is appointed.

**5.3B.11 Protection from liability**

A person who is or has been the restructuring practitioner for a company under restructuring is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under the Act or these regulations relating to the restructuring of the company.

**Subdivision C—Stay on enforcing rights merely because the company is under restructuring etc.**

**5.3B.12 Prescribed kinds of contracts, agreements or arrangements under which rights are not subject to the stay in section 454N of the Act**

For the purposes of subparagraph 454N(5)(c)(i) of the Act, each of the kinds of contracts, agreements or arrangements referred to in subregulation 5.3A.50(2) is prescribed.

## Division 3—Restructuring plan

### Subdivision A—Preliminary

#### 5.3B.13 Authority

Unless otherwise specified, this Division is made under section 455B of the Act.

### Subdivision B—Proposing a restructuring plan

#### 5.3B.14 How a restructuring plan is *proposed*

- (1) A company under restructuring *proposes* a restructuring plan if:
  - (a) the company prepares:
    - (i) a restructuring plan that complies with the requirements in regulation 5.3B.15; and
    - (ii) a restructuring proposal statement that complies with the requirements in regulation 5.3B.16; and
  - (b) the company executes the restructuring plan during the proposal period; and
  - (c) the company's restructuring practitioner prepares and signs a declaration in accordance with regulation 5.3B.18; and
  - (d) the restructuring practitioner gives a copy of the restructuring plan, restructuring proposal statement and declaration in accordance with subregulation 5.3B.21(1); and
  - (e) immediately before the restructuring practitioner gives the copies in accordance with subregulation 5.3B.21(1), regulation 5.3B.24 is satisfied in relation to the company.
- (2) For the purposes of subsection 455A(3) of the Act, the company is taken to have proposed the restructuring plan on the day the company's restructuring practitioner does the things mentioned in paragraph (1)(d).

#### 5.3B.15 Contents of restructuring plan

- (1) A company under restructuring must prepare a restructuring plan that complies with the requirements of this regulation.
- (2) The restructuring plan must:
  - (a) be in the form approved under regulation 5.3B.65 (if any); and
  - (b) identify the company's property that is to be dealt with; and
  - (c) specify how the property is to be dealt with; and
  - (d) provide for the remuneration of the restructuring practitioner for the plan; and
  - (e) specify the date on which the restructuring plan was executed.
- (3) The restructuring plan may:

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- (a) authorise the restructuring practitioner for the plan to deal with the identified property in the way specified in the plan; and
  - (aa) provide that, when performing a function or duty, or exercising a power, as restructuring practitioner for the plan, the restructuring practitioner is taken to act as agent for and on behalf of the company; and
  - (b) provide for any matter relating to the company's financial affairs; and
  - (c) be expressed to be conditional on the occurrence of a specified event within a specified period of no longer than 10 business days after the day on which the proposal to make the restructuring plan is accepted.
- (4) The restructuring plan must not:
- (a) provide for the transfer of property (other than money) to a creditor; or
  - (b) provide for the company to make payments under the plan, in respect of an admissible debt or claim, after 3 years beginning on the day the plan is made.

**5.3B.16 Restructuring proposal statement**

- (1) A restructuring plan must be accompanied by a restructuring proposal statement.
- (2) The restructuring proposal statement must:
- (a) include a schedule of debts and claims; and
  - (b) be in the form approved under regulation 5.3B.65 (if any); and
  - (c) contain such information as the form requires.

**5.3B.17 Meaning of *proposal period***

- (1) The ***proposal period***, in relation to a company that is under restructuring, is the period of 20 business days beginning on the day the restructuring begins.

*Restructuring practitioner may extend proposal period*

- (2) The company's restructuring practitioner may, on application by the company, extend the proposal period by no more than 10 business days if the restructuring practitioner is satisfied on reasonable grounds that requiring the company to give a restructuring plan within the proposal period would not be reasonable in the circumstances.
- (3) The restructuring practitioner may not extend the proposal period more than once under subregulation (2).

*Court may extend proposal period*

- (4) The Court may, on application by the company, order an extension of the proposal period.

*Notification of extension*

- (5) Within 2 business days after the day on which the proposal period is extended under subregulation (2) or (4), the restructuring practitioner must:

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- (a) lodge with ASIC notice of the extension:
  - (i) in the prescribed form (if any); and
  - (ii) in accordance with subregulation 5.6.75(4); and
- (b) give a copy of the notice to as many of the company's creditors as reasonably practicable.

**5.3B.18 Restructuring practitioner must make declaration in relation to restructuring plan**

- (1) As soon as practicable after a company executes a restructuring plan, the company's restructuring practitioner must make a declaration in accordance with this regulation.
- (2) The declaration must:
  - (a) if the restructuring practitioner believes on reasonable grounds that:
    - (i) the eligibility criteria for restructuring are met in relation to the company; and
    - (ii) if the restructuring plan is made, the company is likely to be able to discharge the obligations created by the plan as and when they become due and payable;state that; and
  - (b) if the restructuring practitioner believes on reasonable grounds that all information required to be set out in the company's restructuring proposal statement has been set out in that statement—state that; and
  - (c) if the restructuring practitioner does not believe on reasonable grounds a matter mentioned in paragraph (a) or (b)—identify the matter in relation to which a belief on reasonable grounds could not be formed and set out the reasons for that conclusion; and
  - (d) if, at the time a person became an affected creditor, the person was a related entity of the restructuring practitioner—specify the name of the affected creditor and the nature of the relationship between the affected creditor and the restructuring practitioner.

Note: A declaration must not be false or misleading in a material particular, or omit anything that would render it materially false or misleading: see section 1308 of the Act.

- (3) The declaration must be signed by the restructuring practitioner.

*Offence*

- (4) The restructuring practitioner for a company commits an offence if:
  - (a) the restructuring practitioner prepares a declaration under this regulation; and
  - (b) the restructuring practitioner does not:
    - (i) make reasonable inquiries into the company's business, property, affairs and financial circumstances; or
    - (ii) take reasonable steps to verify the company's business, property, affairs and financial circumstances;

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for the purpose of assessing the accuracy and completeness of the information provided by the company in the restructuring plan and restructuring proposal statement.

Penalty: 50 penalty units.

- (5) An offence based on subregulation (4) is an offence of strict liability.

**5.3B.19 Restructuring practitioner must notify company of defect in restructuring plan**

- (1) The restructuring practitioner for a company under restructuring commits an offence if:
- (a) at any time before the restructuring practitioner prepares a declaration under regulation 5.3B.18 in relation to the company's restructuring plan:
    - (i) the restructuring practitioner becomes aware that the information in the plan, or in the restructuring proposal statement that accompanies the plan, is incomplete or inaccurate; and
    - (ii) the restructuring practitioner has reasonable grounds to believe that, if the plan is made, the matter to which the incompleteness or inaccuracy relates is likely to affect the company's ability to meet its obligations under the plan; and
  - (b) the restructuring practitioner does not, as soon as practicable after becoming so aware:
    - (i) notify the company of the incompleteness or inaccuracy; and
    - (ii) provide an opportunity for the company to address the incompleteness or inaccuracy.

Penalty: 50 penalty units.

- (2) An offence based on subregulation (1) is an offence of strict liability.

**5.3B.20 Proposal to make restructuring plan lapses**

- (1) A company's proposal to make a restructuring plan lapses if:
- (a) the restructuring plan is not accepted in accordance with subregulation 5.3B.25(1); or
  - (b) the company's restructuring practitioner cancels the proposal to make the plan in accordance with subregulation (2).
- (2) The restructuring practitioner for a company may cancel the company's proposal to make a restructuring plan if, before the restructuring plan is made, the restructuring practitioner:
- (a) becomes aware that the information in the plan is incomplete or inaccurate, and has reasonable grounds to believe that, if the plan is made, the matter to which the incompleteness or inaccuracy relates is likely to affect the company's ability to meet its obligations under the plan; or
  - (b) becomes aware that one or more affected creditors were not disclosed in the company's restructuring proposal statement; or

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- (c) becomes aware that the company's restructuring proposal statement was deficient because it omitted a material particular or because it was incorrect in a material particular; or
- (d) becomes aware of a material change in the company's circumstances that:
  - (i) was not foreshadowed in the company's restructuring proposal statement; and
  - (ii) in the opinion of the restructuring practitioner, is capable of affecting an affected creditor's decision whether or not to accept the restructuring plan.

**5.3B.21 Proposing a restructuring plan to creditors**

- (1) As soon as practicable after a company executes a restructuring plan, the restructuring practitioner for the company must do the following:
  - (a) give to as many of the company's affected creditors as reasonably practicable a copy of:
    - (i) the company's restructuring plan; and
    - (ii) the restructuring plan standard terms; and
    - (iii) the company's restructuring proposal statement; and
    - (iv) the declaration prepared by the restructuring practitioner under regulation 5.3B.18;
  - (b) ask each affected creditor to:
    - (i) give a written statement setting out whether or not the restructuring plan should be accepted; and
    - (ii) if the creditor agrees with the company's assessment of the amount of the creditor's admissible debts or claims—verify the creditor's admissible debts or claims as set out in the schedule of debts and claims included with the restructuring proposal statement; and
    - (iii) if the creditor disagrees with the company's assessment of the amount of the creditor's admissible debts or claims—notify the restructuring practitioner in accordance with regulation 5.3B.22;
  - (c) inform each affected creditor of the person to whom the statement should be given and of the need to give the statement before the end of the acceptance period.
- (2) Paragraphs (1)(b) and (c) do not apply in relation to an excluded creditor.

*Definitions*

- (3) In this regulation:

***acceptance period*** means:

- (a) the period of 15 business days beginning on the day the company's restructuring practitioner gives documents in accordance with subregulation (1); or
- (b) if creditors are given a notice under paragraph 5.3B.22(7)(d)—the longer of:

Regulation 5.3B.22

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- (i) the period of 15 business days beginning on the day the company's restructuring practitioner gives documents in accordance with subregulation (1) of this regulation; and
- (ii) the period beginning on the day the company's restructuring practitioner gives documents in accordance with subregulation (1) of this regulation and ending on the last day of the period of 5 business days after the day on which the notice under paragraph 5.3B.22(7)(d) is given; or
- (c) such other period as the Court orders under regulation 5.3B.60.

*restructuring plan standard terms* means the terms specified in subregulation 5.3B.27(1).

**5.3B.22 Creditors may dispute schedule of debts and claims before restructuring plan is made**

- (1) This regulation applies in relation to a person if:
  - (a) the person is a creditor of a company that is proposing to make a restructuring plan; and
  - (b) the plan has not been made; and
  - (c) the person disagrees with the schedule of debts and claims included with the company's restructuring proposal statement because:
    - (i) the person's admissible debts or claims are not specified; or
    - (ii) the company's assessment of the person's admissible debts or claims is incorrect; or
    - (iii) the person is incorrectly specified as an excluded creditor.

*Creditor may notify restructuring practitioner of disagreement*

- (2) The person may give written notice of the disagreement to the company's restructuring practitioner.
- (3) The notice:
  - (a) may be given:
    - (i) if the person received a copy of the plan—within 5 business days after the day on which the person receives the plan; or
    - (ii) if the person otherwise became aware of the plan—within 5 business days after the day on which the person becomes so aware; or
    - (iii) after the period specified in subparagraph (i) or (ii), if the notice includes a statement setting out the person's reasons for not giving the notice within that period; and
  - (b) if the disagreement relates to the person's admissible debts or claims:
    - (i) must include detailed particulars of the debt or claim sought to be proved; and
    - (ii) in the case of a debt, must include a statement of account; and
    - (iii) must specify the vouchers (if any) by which the statement can be substantiated; and

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- (c) if the disagreement relates to the person's status as an excluded creditor—must include detail sufficient to resolve the disagreement.
- (4) The restructuring practitioner may, after receiving the notice, request that the person or the directors of the company:
  - (a) give the restructuring practitioner information about the company's business, property, affairs and financial circumstances; and
  - (b) verify the information by statutory declaration.

*Restructuring practitioner may refuse to consider disagreement*

- (5) If the notice is given after the period specified in subparagraph (3)(a)(i) or (ii), the restructuring practitioner may refuse to consider the disagreement if the restructuring practitioner is satisfied that the person did not take all reasonable steps to give notice within that period.
- (6) If the restructuring practitioner refuses to consider the disagreement:
  - (a) the restructuring practitioner is taken to have recommended that the schedule of debts and claims not be varied; and
  - (b) the restructuring practitioner must give written notice to the company and the person setting out the restructuring practitioner's reasons for the refusal; and
  - (c) subregulation (7) does not apply.

*Restructuring practitioner must resolve disagreement as soon as practicable*

- (7) If:
  - (a) a person gives notice under subregulation (2) of a disagreement to the restructuring practitioner for a company; and
  - (b) the restructuring practitioner has not refused to consider the disagreement under subregulation (5);the restructuring practitioner must:
  - (c) give written notice to the company and the person:
    - (i) setting out the restructuring practitioner's recommendations for resolving the disagreement; and
    - (ii) giving reasons for the recommendations; and
  - (d) if the restructuring practitioner recommends that the schedule of debts and claims be varied and is of the opinion that the variation is significant—give written notice to the company and as many of the company's creditors as reasonably practicable:
    - (i) stating that fact; and
    - (ii) outlining the creditors' rights under regulation 5.3B.23.
- (8) If the restructuring practitioner recommends that the schedule of debts and claims be varied, the company must vary the schedule in accordance with the recommendation as soon as practicable.

### 5.3B.23 Creditors may change vote

- (1) This regulation applies if:
  - (a) a company proposes to make a restructuring plan; and
  - (b) an affected creditor of the company gave a statement under paragraph 5.3B.21(1)(b) in relation to the plan.
- (2) At any time before the end of the acceptance period, the creditor may:
  - (a) withdraw the statement; and
  - (b) give a new statement under paragraph 5.3B.21(1)(b) in relation to the plan.
- (3) A statement may be withdrawn, and a new statement may be given, more than once before the end of the acceptance period.

#### *Definitions*

- (4) In this regulation:  
*acceptance period* has the same meaning as in subregulation 5.3B.21(3).

### 5.3B.24 Company under restructuring must do certain things

This regulation is satisfied in relation to a company under restructuring if:

- (a) the company has:
  - (i) paid the entitlements of its employees that are payable; and
  - (ii) given returns, notices, statements, applications or other documents as required by taxation laws (within the meaning of the *Income Tax Assessment Act 1997*); or
- (b) the company is substantially complying with the matter concerned.

Note: Employee *entitlements* are defined in subsections 596AA(2) and (3) of the Act and include superannuation contributions payable by the company.

## Subdivision C—Accepting a proposal for a restructuring plan

### 5.3B.25 Acceptance of restructuring plan

#### *When restructuring plan is accepted*

- (1) A company's restructuring plan is **accepted** if, at the end of the last day of the acceptance period, the majority in value of those creditors from whom the restructuring practitioner for the plan has received a statement under paragraph 5.3B.21(1)(b) stated that the restructuring plan should be accepted.
- (2) For the purposes of subregulation (1):
  - (a) the value of an affected creditor is to be worked out:
    - (i) by reference to the value of the creditor's admissible debts or claims that are known at the time the restructuring began; or

### Regulation 5.3B.26

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- (ii) if a person is an affected creditor because the person purchased another creditor's admissible debts or claims—by reference to the value of the purchase price; and
- (b) where there have been mutual credits, mutual debts or other mutual dealings between the company and an affected creditor:
  - (i) an account is to be taken of what is due from the one party to the other in respect of those mutual dealings; and
  - (ii) the sum due from the one party is to be set off against any sum due from the other party; and
  - (iii) the value of the affected creditor is to be worked out only by reference to the balance of the account; and
- (c) disregard an affected creditor who is an excluded creditor.

Note: For the purposes of subparagraph (a)(ii), the purchase price would normally be the price stated in the contract for the purchase of the admissible debt or claim. However, if the amount paid by the person is different from the price stated in the contract, then the purchase price would be the amount that was actually paid.

#### *Offence*

- (3) A person commits an offence if:
  - (a) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and
  - (b) the person does so with the intention of securing the affected creditor's acceptance or non-acceptance of the restructuring plan.

Penalty: 50 penalty units.

#### *Definitions*

- (5) In this regulation:

***acceptance period*** has the same meaning as in subregulation 5.3B.21(3).

### 5.3B.26 How a restructuring plan is *made*

- (1) If a company's proposal to make a restructuring plan is accepted in accordance with regulation 5.3B.25, the company is taken to have ***made*** the restructuring plan.
- (2) The restructuring plan is taken to have been ***made***:
  - (a) if the plan is expressed to be conditional on the occurrence of a specified event within a specified period and the event occurs within that period—on the day after the end of that period; and
  - (b) otherwise—on the day after the end of the acceptance period.
- (3) A restructuring plan that has been made has the same force and validity as if it were a deed executed by each of the parties to the plan.

*Definitions*

- (4) In this regulation:

*acceptance period* has the same meaning as in subregulation 5.3B.21(3).

**5.3B.27 Standard terms for restructuring plans**

- (1) A restructuring plan made by a company is taken to include all of the following terms:
- (a) all admissible debts and claims rank equally;
  - (b) if the total amount paid by the company under the plan in respect of those debts or claims is insufficient to meet those debts or claims in full, those debts or claims will be paid proportionately;
  - (c) a creditor is not entitled to receive, in respect of an admissible debt or claim, more than the amount of the debt or claim;
  - (d) the amount of an admissible debt or claim will be ascertained as at the time immediately before the restructuring began;
  - (e) if a creditor is a secured creditor:
    - (i) if the creditor does not realise the creditor's security interest while the plan is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the plan, to be a creditor only to the extent (if any) by which the amount of the creditor's admissible debt or claim exceeds the value of the creditor's security interest; and
    - (ii) if the creditor realises the creditor's security interest while the plan is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the plan, to be a creditor only to the extent of any balance due to the creditor after deducting the net amount realised.
- (2) A restructuring plan is void to the extent that it is inconsistent with any of the matters set out in subregulation (1).

**5.3B.28 Parties to restructuring plan**

The parties to a restructuring plan are:

- (a) the company to which the plan relates; and
- (b) any person who has an admissible debt or claim in relation to the plan.

**5.3B.29 Effect of restructuring plan**

- (1) This regulation applies on and after the day on which a restructuring plan is made in relation to a company.
- (2) The plan is binding on:
- (a) subject to subregulations (3) and (4)—a creditor of the company to the extent that the creditor has an admissible debt or claim in relation to the plan; and
  - (b) the company; and

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- (c) the company's officers and members; and
  - (d) the restructuring practitioner for the plan.
- (3) If a creditor of the company is a secured creditor, the plan is binding on the creditor:
- (a) if the value of the creditor's security interest is less than the value of the creditor's admissible debts or claims—only to the extent of the difference between the values; and
  - (b) if the value of the creditor's security interest is equal to or more than the value of the creditor's admissible debts or claims—only to the extent that the creditor consents to be bound by the plan.
- (4) The fact that a restructuring plan has been made does not prevent a secured creditor from realising or otherwise dealing with the security interest, unless:
- (a) the secured creditor accepted the proposal to make the plan and the plan prevents the secured creditor from doing so; or
  - (b) the Court so orders under subregulation 5.3B.64(2).
- (5) The fact that a restructuring plan has been made does not affect a right that an owner or lessor of property has in relation to that property, unless:
- (a) the owner or lessor accepted the proposal to make the plan and the plan affects that right; or
  - (b) the Court so orders under subregulation 5.3B.64(4).
- (6) Subregulation (5) does not apply in relation to an owner or lessor of PPSA retention of title property of the company.

**Note:** Subregulation (3) applies in relation to an owner or lessor of PPSA retention of title property of the company. Such an owner or lessor is a secured creditor of the company (see section 51F of the Act (meaning of *PPSA retention of title property*)).

**5.3B.30 Protection of company's property from persons bound by restructuring plan**

- (1) Until a restructuring plan terminates, this regulation applies to a person bound by the plan.
- (2) A person bound by the plan cannot:
- (a) make an application for an order to wind up the company on the basis of an admissible debt or claim; or
  - (b) proceed with such an application made before the plan became binding on the person.
- (3) A person bound by the plan cannot:
- (a) begin or proceed with a proceeding against the company or in relation to any of its property to recover an admissible debt or claim; or
  - (b) begin or proceed with an enforcement process in relation to property of the company to recover an admissible debt or claim;
- except:
- (c) with the leave of the Court; and

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(d) in accordance with such terms (if any) as the Court imposes.

(4) In subregulation (3):

*property* of a company includes:

- (a) any PPSA retention of title property of the company; and
- (b) any other property used or occupied by, or in the possession of, the company.

Note: See sections 9 (definition of *property*) and 51F (definition of *PPSA retention of title property*) of the Act.

### 5.3B.31 When restructuring plan terminates

(1) A company's restructuring plan terminates:

- (a) on the day on which all of the following conditions are satisfied:
  - (i) the company's obligations under the plan have been fulfilled;
  - (ii) the obligations of any other party to the plan have been fulfilled;
  - (iii) all admissible debts or claims have been dealt with in accordance with the plan; or
- (b) if the Court makes an order under regulation 5.3B.63 terminating the plan—on the day the Court determines and specifies in the order; or
- (c) if both of the following conditions are satisfied:
  - (i) the plan is expressed to be subject to the occurrence of a specified event within a specified period of no longer than 10 business days after the day on which the plan is made;
  - (ii) the event does not occur within that period;  
on the next business day after the end of that period; or
- (d) if both of the following conditions are satisfied:
  - (i) there has been a contravention of the plan by a person bound by the plan;
  - (ii) the contravention has not been rectified within the period of 30 business days beginning on the day the contravention occurred;  
on the next business day after the end of that period; or
- (e) on the day on which an administrator of the company is appointed under section 436A, 436B or 436C of the Act; or
- (f) on the day on which a liquidator or provisional liquidator of the company is appointed;

whichever happens first.

(2) If a company's restructuring plan terminates because of the happening of the event mentioned in paragraph (1)(a):

- (a) the company is entitled to any property that was subject to the plan but that was not required by the plan to be distributed to creditors; and
- (b) the company is released from all admissible debts or claims.

(3) If a company's restructuring plan terminates because of the happening of an event mentioned in paragraph (1)(b), (c), (d), (e) or (f), any admissible debt or

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claim that has not been dealt with in accordance with the plan is taken to be due and payable on the business day after the day on which the termination occurs.

### 5.3B.32 Effect of termination or avoidance

The termination or avoidance, in whole or in part, of a restructuring plan does not affect the validity of anything that was done in good faith under the plan by a person before the person had notice of the termination or avoidance.

## Subdivision D—Restructuring practitioner for a restructuring plan

### 5.3B.33 Appointment of restructuring practitioner for restructuring plan

If a company under restructuring makes a restructuring plan, the company's restructuring practitioner is to be the restructuring practitioner for the restructuring plan unless the company, by resolution of the board, appoints someone else to be the restructuring practitioner for the plan.

### 5.3B.34 Vacancy in office of restructuring practitioner for restructuring plan

- (1) Where the restructuring practitioner for a company's restructuring plan:
  - (a) dies; or
  - (b) becomes prohibited from acting as restructuring practitioner for the plan; or
  - (c) resigns by notice in writing given to the company;the appointer may appoint someone else as restructuring practitioner for the restructuring plan.
- (2) In subregulation (1):

**appointer**, in relation to the restructuring practitioner for a company's restructuring plan, means:

  - (a) if the restructuring practitioner was appointed by the Court under Division 90 of Schedule 2 to the Act (review of the external administration of a company) or subregulation (4) of this regulation—the Court; or
  - (b) the company.
- (3) An appointment under subregulation (1) by the company must be made by resolution of the board.
- (4) Where a company has made a restructuring plan, but for some reason no restructuring practitioner for the plan is acting, the Court may appoint a person as restructuring practitioner for the plan on the application of ASIC or of an officer, member or creditor of the company.

### 5.3B.35 Declaration by new and replacement restructuring practitioners—relevant relationships

- (1) This regulation applies in relation to a person if:

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- (a) the person is the restructuring practitioner for a company's restructuring plan; and
  - (b) either:
    - (i) the person was not the company's restructuring practitioner immediately before the person was appointed as the restructuring practitioner for the plan; or
    - (ii) the person was appointed as the restructuring practitioner for the plan under subregulation 5.3B.34(1) otherwise than by the Court.
- (2) As soon as practicable after being appointed, the person must make a declaration of relevant relationships.
- Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).
- (3) The person must give a copy of the declaration under subregulation (2) to as many of the company's creditors as reasonably practicable.
- Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).
- (4) As soon as practicable after making a declaration under subregulation (2), the person must lodge a copy of the declaration with ASIC.
- Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).
- (5) In a prosecution for an offence constituted by a failure to include a particular matter in a declaration under this regulation, it is a defence if the defendant proves that:
- (a) the defendant made reasonable enquiries; and
  - (b) after making these enquiries, the defendant had no reasonable grounds for believing that the matter should have been included in the declaration.

**5.3B.36 Replacement declarations—relevant relationships**

- (1) If:
- (a) at a particular time, the restructuring practitioner for a company's restructuring plan makes a declaration of relevant relationships under section 453D of the Act or regulation 5.3B.35; and
  - (b) at a later time:
    - (i) the declaration has become out-of-date; or
    - (ii) the restructuring practitioner becomes aware of an error in the declaration;

the restructuring practitioner must, as soon as practicable, make a replacement declaration of relevant relationships.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

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- (2) The restructuring practitioner must give a copy of the replacement declaration under subregulation (1) to as many of the company's creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

- (3) As soon as practicable after making a replacement declaration under subregulation (1), the person must lodge a copy of the replacement declaration with ASIC.

Note: Failure to comply with this subregulation is an offence (see subsection 1311(1) of the Act).

- (4) In a prosecution for an offence constituted by a failure to include a particular matter in a declaration under this regulation, it is a defence if the defendant proves that:
- (a) the defendant made reasonable enquiries; and
  - (b) after making these enquiries, the defendant had no reasonable grounds for believing that the matter should have been included in the declaration.

### 5.3B.37 Functions of restructuring practitioner for restructuring plan

The functions of the restructuring practitioner for a company's restructuring plan are:

- (a) to receive money from, and hold money on trust for, the company; and
- (b) to pay the money to creditors in accordance with the plan; and
- (c) if requested to do so by the company's directors:
  - (i) to realise the property of the company that is available to pay creditors in accordance with the plan; and
  - (ii) to distribute the proceeds of the realisation of the property among the creditors in accordance with the plan; and
- (d) to answer questions about the performance or exercise of any of the restructuring practitioner's functions and powers as restructuring practitioner for the plan; and
- (e) to do anything that is incidental to the performance or exercise of those functions and powers; and
- (f) to do anything else that is necessary or convenient for the purpose of administering the plan.

### 5.3B.38 Replacement restructuring practitioner must lodge outstanding notices etc.

- (1) This regulation applies in relation to a restructuring practitioner for a restructuring plan (the *replacement practitioner*) who is appointed under subregulation 5.3B.34(1).
- (2) If:
- (a) before the appointment, a restructuring practitioner for the plan was required to do a thing under:

- (i) Division 4; or
  - (ii) Subdivision B or C of Division 5; and
  - (b) at the time of the appointment, the thing has not been done;
- the replacement practitioner must do the thing within:
- (c) 2 business days after the day on which the replacement practitioner is appointed; or
  - (d) if the requirement arose because the restructuring practitioner was given notice or became aware of a thing—within 2 business days after the day on which the replacement practitioner is given the notice or becomes so aware.

### **5.3B.39 When restructuring practitioner may dispose of encumbered property**

- (1) The restructuring practitioner for a company's restructuring plan must not dispose of:
    - (a) property of the company that is subject to a security interest; or
    - (b) property (other than PPSA retention of title property) that is used or occupied by, or is in the possession of, the company but of which someone else is the owner or lessor.
- Note: PPSA retention of title property is subject to a PPSA security interest, and so is covered by paragraph (a) (see definition of *PPSA retention of title property* in section 51F of the Act).
- (2) Subregulation (1) does not prevent a disposal:
    - (a) in the ordinary course of the company's business; or
    - (b) with the written consent of the secured party, owner or lessor, as the case may be; or
    - (c) with the leave of the Court.
  - (3) The Court may only give leave under paragraph (2)(c) if satisfied that arrangements have been made to adequately protect the interests of the secured party, owner or lessor, as the case may be.
  - (4) If the restructuring practitioner proposes to dispose of property under paragraph (2)(a), the Court may, by order, direct the restructuring practitioner not to carry out that proposal.
  - (5) The Court may only make an order under subregulation (4) on the application of:
    - (a) if paragraph (1)(a) applies—the secured party; or
    - (b) if paragraph (1)(b) applies—the owner or lessor, as the case may be.
  - (6) The Court may only make an order under subregulation (4) if it is not satisfied that arrangements have been made to protect adequately the interests of the applicant for the order.
  - (7) If:
    - (a) a company has made a restructuring plan that has not terminated; and
    - (b) property of the company is subject to a security interest; and

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- (c) the restructuring practitioner disposes of the property;  
the disposal extinguishes the security interest.
- (8) For the purposes of paragraph (2)(a), if:
  - (a) property is used or occupied by, or is in the possession of, a company; and
  - (b) another person is the owner of the property; and
  - (c) either:
    - (i) the property is PPSA retention of title property; or
    - (ii) the property is subject to a retention of title clause under a contract;  
and
  - (d) the owner demands the return of the property;a disposal of the property that occurs after the demand is made does not mean that the disposal is not in the ordinary course of the company's business.

#### 5.3B.42 Protection from liability

A person who is or has been the restructuring practitioner for a company's restructuring plan is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under the Act or these regulations relating to the plan.

#### 5.3B.43 Right of indemnity

A person who is or has been the restructuring practitioner for a company's restructuring plan is entitled to be indemnified out of the company's property (other than any PPSA retention of title property subject to a PPSA security interest that is perfected within the meaning of the *Personal Property Securities Act 2009*) for:

- (a) any debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, by the restructuring practitioner:
  - (i) in the performance or purported performance of the restructuring practitioner's functions or duties; or
  - (ii) in the exercise or purported exercise of the restructuring practitioner's powers; and
- (b) the remuneration to which the restructuring practitioner is entitled under Insolvency Practice Rules made under Subdivision DA of Division 60 of Schedule 2 to the Act.

#### 5.3B.44 Right of indemnity has priority over other debts

##### *General rule*

- (1) Subject to section 556 of the Act, a right of indemnity under regulation 5.3B.43 has priority over:
  - (a) all the company's unsecured debts; and

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- (b) any debts of the company secured by a PPSA security interest in property of the company if, when the restructuring of the company begins, the security interest is vested in the company because of the operation of any of the following provisions:
  - (i) section 267 or 267A of the *Personal Property Securities Act 2009* (property subject to unperfected security interests);
  - (ii) section 588FL of the Act (collateral not registered within time); and
- (c) subject otherwise to this section—debts of the company secured by a circulating security interest in property of the company.

*Debts secured by circulating security interests—receiver appointed before the beginning of restructuring etc.*

- (2) A right of indemnity under regulation 5.3B.43 does not have priority over debts of the company that are secured by a circulating security interest in property of the company, except so far as the secured party agrees, if:
  - (a) before the making of the restructuring plan, the secured party:
    - (i) appointed a receiver of property of the company under a power contained in an instrument relating to the security interest; or
    - (ii) obtained an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or
    - (iii) entered into possession, or assumed control, of property of the company for that purpose; or
    - (iv) appointed a person so as to enter into possession or assume control (whether as agent for the secured party or for the company); and
  - (b) the receiver or person is still in office, or the secured party is still in possession or control of the property.

*Debts secured by circulating security interests—receiver appointed after restructuring plan made etc.*

- (3) Subregulation (4) applies if:
  - (a) debts of the company are secured by a circulating security interest in property of the company; and
  - (b) after the company's restructuring plan is made, the secured party, consistently with Part 5.3B of the Act:
    - (i) appoints a receiver of property of the company under a power contained in an instrument relating to the security interest; or
    - (ii) obtains an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or
    - (iii) enters into possession, or assumes control, of property of the company for that purpose; or
    - (iv) appoints a person to enter into possession or assume control (whether as agent for the secured party or for the company).
- (4) A right of indemnity of the restructuring practitioner under regulation 5.3B.43 has priority over those debts only in so far as it is a right of indemnity for debts

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incurred, or remuneration accruing, before written notice of the appointment, or of the entering into possession or assuming of control, as the case may be, was given to the restructuring practitioner.

*Debts secured by circulating security interests—priority over right of indemnity in relation to repayment of money borrowed etc.*

- (5) A right of indemnity under regulation 5.3B.43 does not have priority over debts of the company that are secured by a circulating security interest in property of the company, except so far as the secured party consents in writing, to the extent that the right of indemnity relates to debts incurred for:
- (a) the repayment of money borrowed; or
  - (b) interest in respect of money borrowed; or
  - (c) borrowing costs.

#### **5.3B.45 Lien to secure indemnity**

- (1) To secure a right of indemnity under regulation 5.3B.43, the restructuring practitioner has a lien on the company's property.
- (2) A lien under subregulation (1) has priority over another security interest only in so far as the right of indemnity under regulation 5.3B.43 has priority over debts secured by the other security interest.

## **Division 4—The restructuring practitioner**

### **5.3B.46 Authority**

This Division is made for the purposes of subsection 456G(1) of the Act.

### **5.3B.47 Company must notify restructuring practitioner of certain matters**

- (1) The directors of a company that has made a restructuring plan that has not terminated must, within 2 business days after the day on which the directors become aware of the happening of an event mentioned in subregulation (4), give written notice of the event to the restructuring practitioner for the plan.
- (2) The restructuring practitioner must, within 2 business days after the day on which the restructuring practitioner receives the notice:
  - (a) lodge with ASIC notice in the prescribed form (if any) of the happening of the event; and
  - (b) give a copy of the notice to as many of the company's creditors as reasonably practicable.
- (3) If:
  - (a) a restructuring practitioner for the plan (the **replacement practitioner**) is appointed under subregulation 5.3B.34(1); and
  - (b) at the time of the appointment, notice of the happening of the event has not been lodged or given in accordance with subregulation (2);the directors must give written notice of the event to the replacement practitioner within 2 business days after the day on which the replacement practitioner is appointed.
- (4) The events that must be notified are as follows:
  - (a) an administrator of the company is appointed under section 436A, 436B or 436C of the Act;
  - (b) a liquidator or provisional liquidator of the company is appointed.

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**Division 5—Information, reports, documents etc.**

**Subdivision A—Preliminary**

**5.3B.48 Authority**

This Division is made for the purposes of section 457A of the Act.

**Subdivision B—Information, reports, documents etc. during restructuring**

**5.3B.49 Declaration by directors—eligibility to be under restructuring and other matters**

- (1) Within 5 business days after the day on which the restructuring of a company begins or such longer period as the company's restructuring practitioner allows, the directors of the company must give to the restructuring practitioner a declaration in accordance with this regulation.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

- (2) The declaration must:
- (a) be in the form approved under regulation 5.3B.65 (if any); and
  - (b) state whether, in the directors' opinion, there are reasonable grounds to believe that the company has entered into a transaction that would be voidable under section 588FE of the Act if:
    - (i) the company were being wound up because the company had resolved by special resolution that it be wound up voluntarily; and
    - (ii) the resolution had been passed on the day on which the declaration is given; and
    - (iii) the company were under restructuring immediately before the company passed the resolution; and
    - (iv) the relation-back day were the day on which the restructuring of the company began;other than a transaction that would be an unfair preference; and
  - (c) state whether, in the directors' opinion, there are reasonable grounds to believe that the eligibility criteria for restructuring were met in relation to the company at the time the restructuring began, and set out the reasons for that opinion.

Note: A declaration must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see section 1308 of the Act.

- (3) The declaration must be signed by each director of the company.

### **5.3B.50 Notice of appointment of restructuring practitioner for company**

- (1) Within 1 business day after the day on which a restructuring practitioner for a company is appointed, the restructuring practitioner must lodge with ASIC notice of the appointment:
  - (a) in the prescribed form (if any); and
  - (b) in accordance with subregulation 5.6.75(4).
- Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.
- (2) Within 1 business day after the day on which a restructuring practitioner for a company is appointed, the restructuring practitioner must give information about the following to as many of the company's creditors as reasonably practicable:
  - (a) the fact that the restructuring practitioner has been appointed in relation to the company;
  - (b) the name of the company;
  - (c) any trading name of the company;
  - (d) the ACN of the company;
  - (e) the name and contact details of the restructuring practitioner;
  - (f) the date on which the restructuring practitioner was appointed;
  - (g) the restructuring process and the process of making a restructuring plan, including:
    - (i) the proposal period in relation to the company; and
    - (ii) the amount of time in which an affected creditor may decide whether a proposed restructuring plan should be accepted; and
    - (iii) how an affected creditor may verify or dispute the creditor's admissible debts or claims;
  - (h) how a person may obtain further information about the restructuring process and the process of making a restructuring plan;
  - (i) the right of creditors to request information, reports and documents under sections 70-40 and 70-45 of Schedule 2 to the Act.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

### **5.3B.51 Notice of termination of appointment of restructuring practitioner for company**

Within 2 business days after the day on which the appointment of a person as restructuring practitioner for a company terminates, notice in the prescribed form (if any) of the termination must be lodged with ASIC:

- (a) if the termination is because of the death of the person—by the company; and
- (b) otherwise—by the person.

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### **5.3B.52 Notice of restructuring plan etc. given to affected creditors**

Within 2 business days after the day on which the restructuring practitioner for a company gives, in accordance with subregulation 5.3B.21(1), a copy of:

- (a) the company's restructuring plan; and
- (b) the company's restructuring proposal statement; and
- (c) the declaration prepared by the restructuring practitioner under regulation 5.3B.18;

the restructuring practitioner must lodge with ASIC in the prescribed form (if any):

- (d) the plan; and
- (e) the restructuring proposal statement; and
- (f) the declaration.

### **5.3B.53 Notice of end of restructuring**

If the restructuring of a company ends because of the happening of an event mentioned in subregulation 5.3B.02(1), the person who was the restructuring practitioner for the company immediately before the restructuring ended must, within 2 business days after the day on which the event happens:

- (a) lodge with ASIC notice in the prescribed form (if any) of:
  - (i) the ending of the restructuring; and
  - (ii) the reason for the ending; and
- (b) give a copy of the notice to as many of the company's creditors as reasonably practicable.

**Note:** Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

## **Subdivision C—Information, reports, documents etc. once restructuring plan is made**

### **5.3B.54 Notice of appointment of restructuring practitioner for restructuring plan**

Within 2 business days after the day on which a restructuring practitioner for a restructuring plan is appointed, the restructuring practitioner must lodge with ASIC notice of the appointment:

- (a) in the prescribed form (if any); and
- (b) in accordance with subregulation 5.6.75(4).

**Note:** Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

### **5.3B.55 Notice of making of restructuring plan**

If a company makes a restructuring plan, the restructuring practitioner for the plan must, within 2 business days after the day on which the plan is made:

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- (a) give to as many of the company's creditors as reasonably practicable a written notice:
  - (i) stating that the plan has been made; and
  - (ii) specifying the day on which the plan was made; and
- (b) lodge with ASIC notice in the prescribed form (if any) of the making of the plan, including information about:
  - (i) the total value of the debts and claims set out in the schedule of debts and claims included with the company's restructuring proposal statement; and
  - (ii) the number of affected creditors to whom the restructuring practitioner gave a copy of the documents mentioned in paragraph 5.3B.21(1)(a); and
  - (iii) the proportion in value of affected creditors that gave, before the end of the acceptance period, a statement under paragraph 5.3B.21(1)(b) that the plan should be accepted.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

### 5.3B.56 Notice of contravention of restructuring plan

#### *Director to notify restructuring practitioner*

- (1) If a director of a company that has made a restructuring plan becomes aware that:
  - (a) there has been a contravention of the plan by a person bound by the plan (who may be the director); or
  - (b) there is likely to be a contravention of the plan by a person bound by the plan (who may be the director);

the director must, within 2 business days after the day on which the director becomes aware of the contravention or likely contravention, give written notice of the contravention or likely contravention to the restructuring practitioner for the plan.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

#### *Restructuring practitioner to notify company's creditors*

- (2) If the restructuring practitioner for a restructuring plan receives notice under subregulation (1), or otherwise becomes aware, that:
  - (a) there has been a contravention of the plan by a person bound by the plan (who may be the restructuring practitioner); or
  - (b) there is likely to be a contravention of the plan by a person bound by the plan (who may be the restructuring practitioner);the restructuring practitioner must, within 2 business days after the day on which the restructuring practitioner receives the notice or becomes so aware:
  - (c) lodge with ASIC notice in the prescribed form (if any) of the contravention or likely contravention; and

### Regulation 5.3B.57

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- (d) give a copy of the notice to as many of the company's creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

#### **5.3B.57 Notice of termination of restructuring plan**

- (1) If a company's restructuring plan terminates because of the happening of the event mentioned in paragraph 5.3B.31(1)(a):
  - (a) the directors of the company must, within 2 business days after the day on which the directors become aware of the happening of the event, give written notice of the termination to the person (the **former practitioner**) who was the restructuring practitioner for the plan immediately before the termination; and
  - (b) the former practitioner must, within 2 business days after the day on which the former practitioner receives the notice:
    - (i) lodge with ASIC notice in the prescribed form (if any) of the termination; and
    - (ii) give a copy of the notice to as many of the company's creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

- (2) If a company's restructuring plan terminates because of the happening of an event mentioned in paragraph 5.3B.31(1)(b), (c), (d), (e) or (f):
  - (a) the directors of the company must, within 2 business days after the day on which the directors become aware of the happening of the event, give written notice of the termination and the reason for the termination to the person (the **former practitioner**) who was the restructuring practitioner for the plan immediately before the termination; and
  - (b) the former practitioner must, within 2 business days after the day on which the former practitioner receives the notice:
    - (i) lodge with ASIC notice in the prescribed form (if any) of the termination and the reason for the termination; and
    - (ii) give a copy of the notice to as many of the company's creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

#### **5.3B.58 Notice of termination of appointment of restructuring practitioner for restructuring plan**

Within 2 business days after the day on which the appointment of a person as restructuring practitioner for a company's restructuring plan terminates, notice in the prescribed form (if any) of the termination must be lodged with ASIC:

- (a) if the termination is because of the death of the person—by the company; and

(b) otherwise—by the person.

## Division 6—Powers of Court

### 5.3B.59 Authority

This Division is made for the purposes of subsection 458B(1) of the Act.

### 5.3B.60 Court may make orders in relation to creditor disputes before restructuring plan is made

- (1) This regulation applies if:
  - (a) a company proposes to make a restructuring plan; and
  - (b) a person notifies the company's restructuring practitioner under subregulation 5.3B.22(2) that the person disagrees with the schedule of debts and claims included with the company's restructuring proposal statement; and
  - (c) the restructuring practitioner:
    - (i) refuses to consider the disagreement under subregulation 5.3B.22(5); or
    - (ii) makes, or refuses to make, a recommendation under subregulation 5.3B.22(7) to vary the schedule of debts and claims.
- (2) The Court may, on the application of the company or a creditor of the company, make one or more of the following orders:
  - (a) that the restructuring practitioner consider the disagreement and make a recommendation in accordance with subregulation 5.3B.22(7);
  - (b) that the schedule of debts and claims be varied as set out in the order;
  - (c) that the acceptance period for the proposal to make the restructuring plan be extended.
- (3) If the Court makes an order under subregulation (2), the restructuring practitioner must, within 2 business days after the day on which the order is made:
  - (a) lodge with ASIC notice in the prescribed form (if any):
    - (i) setting out the terms of the order; and
    - (ii) outlining the creditors' rights under regulation 5.3B.23; and
  - (b) give a copy of the notice to as many of the company's creditors as reasonably practicable.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

### 5.3B.61 When Court may vary restructuring plan

- (1) A restructuring plan that has been made by a company must not be varied except in accordance with this regulation.
- (2) The Court may make an order varying a restructuring plan:
  - (a) on its own initiative; or

- (b) on the application of:
  - (i) the company; or
  - (ii) an affected creditor; or
  - (iii) the restructuring practitioner for the plan; or
  - (iv) ASIC.

### **5.3B.62 When Court may void or validate restructuring plan**

#### *Voiding of restructuring plan*

- (1) The Court may make an order declaring that all or part of a company's restructuring plan is void if the Court is satisfied that:
  - (a) there are reasonable grounds to believe that the plan, or a part of the plan, was not made in accordance with, or does not comply with, the Act or these regulations; or
  - (b) the restructuring practitioner for the plan has committed a breach of duty in relation to the plan; or
  - (c) the restructuring practitioner for the plan has breached a condition of the restructuring practitioner's registration as a liquidator; or
  - (d) the restructuring practitioner for the plan has breached a condition imposed under section 20-35 of Schedule 2 to the Act, to the extent that the condition relates to restructuring plans.
- (2) The Court may make any other order that it thinks appropriate in relation to the declaration.

#### *Validity of plan despite contravention*

- (3) The Court may make an order declaring that all or part of a company's restructuring plan is valid, despite a contravention of a provision of the Act or these regulations, if the Court is satisfied that:
  - (a) the provision was substantially complied with; and
  - (b) no injustice will result for anyone bound by the plan if the contravention is disregarded.

#### *Applications for orders under this regulation*

- (4) The Court may make an order under this regulation on the application of:
  - (a) the company; or
  - (b) an affected creditor; or
  - (c) the company's restructuring practitioner; or
  - (d) ASIC.
- (5) However, an application for an order under this regulation must not be made if the plan has terminated because of paragraph 5.3B.31(1)(a).

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**5.3B.63 When Court may terminate restructuring plan**

- (1) The Court may make an order terminating a company's restructuring plan if the Court is satisfied that:
  - (a) information about the company's business, property, affairs or financial circumstances that:
    - (i) was false or misleading; and
    - (ii) can reasonably be expected to have been material to the affected creditors in deciding whether to accept the plan;was contained in the plan or the restructuring proposal statement that accompanied the plan; or
  - (b) there was an omission from the plan or statement and the omission can reasonably be expected to have been material to such creditors in so deciding; or
  - (c) there has been a material contravention of the plan by a person bound by the plan; or
  - (d) effect cannot be given to the plan without injustice or undue delay; or
  - (e) the plan or a provision of it is, an act or omission done or made under the plan was, or an act or omission proposed to be so done or made would be contrary to the interests of the creditors of the company as a whole; or
  - (f) the plan should be terminated for some other reason.
- (2) The Court may make an order under this regulation:
  - (a) on its own initiative; or
  - (b) on the application of:
    - (i) the company; or
    - (ii) an affected creditor; or
    - (iii) the restructuring practitioner for the company or for the plan; or
    - (iv) ASIC.

**5.3B.64 Court may limit rights of secured creditor or owner or lessor**

- (1) This regulation applies where:
  - (a) a company is under restructuring; or
  - (b) a company makes a restructuring plan that has not terminated.
- (2) Subject to subsection 454C(3) of the Act, the Court may order a secured creditor of the company not to realise or otherwise deal with the security interest, except as permitted by the order.
- (3) The Court may only make an order under subregulation (2) if satisfied that:
  - (a) for the creditor to realise or otherwise deal with the security interest would have a material adverse effect on achieving the purposes of the plan; and
  - (b) having regard to:
    - (i) the terms of the plan; and
    - (ii) the terms of the order; and
    - (iii) any other relevant matter;

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the creditor's interests will be adequately protected.

- (4) The Court may order the owner or lessor of property that is used or occupied by, or is in the possession of, the company not to take possession of the property or otherwise recover it.
- (5) Subregulation (4) does not apply in relation to PPSA retention of title property of the company.
- (6) The Court may only make an order under subregulation (4) if satisfied that:
  - (a) for the owner or lessor to take possession of the property or otherwise recover it would have a material adverse effect on achieving the purposes of the plan; and
  - (b) having regard to:
    - (i) the terms of the plan; and
    - (ii) the terms of the order; and
    - (iii) any other relevant matter;the interests of the owner or lessor will be adequately protected.
- (7) An order under this regulation may be made subject to conditions.
- (8) An order under this regulation may only be made on the application of:
  - (a) if paragraph (1)(a) applies—the restructuring practitioner for the company; or
  - (b) if paragraph (1)(b) applies—the restructuring practitioner for the plan.

## **Division 7—Other matters**

### **5.3B.65 Approved forms**

ASIC may, in writing, approve a form for the purposes of a provision of this Part.

## Part 5.4—Winding up in insolvency

### 5.4.01AAA Statutory minimum and statutory period

- (1) For the purposes of paragraph (a) of the definition of *statutory minimum* in section 9 of the Act, the amount prescribed is:
  - (a) in relation to a company that is eligible for temporary restructuring relief—\$20,000; and
  - (b) otherwise—\$4,000.
- (2) For the purposes of paragraph (a) of the definition of *statutory period* in section 9 of the Act, the period prescribed is:
  - (a) in relation to a company that is eligible for temporary restructuring relief—6 months; and
  - (b) otherwise—21 days.
- (3) Paragraphs (1)(a) and (2)(a) do not apply in relation to statutory demands served on or after 1 August 2021.

### 5.4.01 Application to Court for winding up—prescribed agency

The Australian Prudential Regulation Authority is a prescribed agency for paragraph 459P(1)(g) of the Act.

### 5.4.01A Notice of application to wind up a company

- (1) This regulation is made for paragraph 465A(1)(c) of the Act.
- (2) The information about an application that is to be set out in a notice is at least the following information:
  - (a) if the court rules require particular information to be published for the application and the court has not dispensed with publication under the rules—that information;
  - (b) if the court rules do not require particular information to be published, or the court has dispensed with publication under the rules:
    - (i) the name of the company; and
    - (ii) any trading name of the company; and
    - (iii) the ACN of the company; and
  - (iiia) if paragraph 465A(1)(c) of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act—the ARFN of the sub-fund; and
  - (iv) the date on which the application was filed; and
  - (v) the identifying number allocated by the court when the application was filed; and
  - (vi) the name of the applicant; and
  - (vii) the address for service of the applicant; and

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- (viii) the name and address of the court where the application will be heard; and
- (ix) the time and date of the court hearing; and
- (x) the way in which documents that are filed in relation to the application may be obtained.

**Note:** If paragraph 465A(1)(c) of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act, that section translates most of this sub-regulation's references to the company so that they are references to the sub-fund.

#### **5.4.01B Notice of Court-ordered winding up**

- (1) This regulation is made for the purposes of subsection 465A(2) of the Act.
- (2) The information about an order by the Court that must be set out in a notice is at least the following information:
  - (a) the Court that made the order;
  - (b) the date the order was made;
  - (c) the name of the liquidator appointed to administer the winding up;
  - (d) the name of the company;
  - (e) any business name of the company;
  - (f) any ABN of the company;
  - (g) any ACN of the company;
  - (h) if subsection 465A(2) of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act—the ARFN of the sub-fund.

**Note:** If subsection 465A(2) of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act, that section translates most of this sub-regulation's references to the company so that they are references to the sub-fund.

#### **5.4.02 Compromise of debt by liquidator—prescribed amount**

For paragraph 477(2A)(a) of the Act, the amount of \$100,000 is prescribed.

## **Part 5.4C—Winding up by ASIC**

### **5.4C.01 Notice of intention to order winding up of a company**

- (1) For subparagraph 489EA(6)(b)(ii) of the Act, this regulation prescribes the manner of publishing notice of ASIC's intention to make an order under subsection 489EA(1), (2), (3) or (4) of the Act.
- (2) Notice is to be published on the publication website, established under subsection 5.6.75(1), at least 10 business days before ASIC makes the order.

## **Part 5.5—Voluntary winding up**

### **Division 1—Resolution for winding up**

#### **5.5.01 Notice of resolution to wind up voluntarily**

- (1) This regulation is made for paragraph 491(2)(b) of the Act.
- (2) The information about a resolution that is to be set out in a notice is at least the following information:
  - (a) the name of the company;
  - (b) any business name of the company;
  - (c) the ACN of the company;
  - (ca) if paragraph 491(2)(b) of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act—the ARFN of the sub-fund;
  - (d) the section of the Act under which the notice is being given;
  - (e) the name and contact details of the liquidator;
  - (f) the date on which the resolution was passed.
- (3) The notice must be published by the end of the next business day after a liquidator is appointed to administer the winding up of the company.

**Note:** If paragraph 491(2)(b) of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act, that section translates most of this regulation's references to the company so that they are references to the sub-fund.

## **Division 2—Simplified liquidation process**

### **Subdivision A—Preliminary**

#### **5.5.02 Declaration about eligibility for simplified liquidation process and other matters**

For the purposes of subsection 498(3) of the Act, the following information is prescribed:

- (a) whether, in the directors' opinion, there are reasonable grounds to believe that the company has entered into a transaction that would be voidable under section 588FE of the Act, other than a transaction that would be an unfair preference;
- (b) whether, in the directors' opinion, there are reasonable grounds to believe that, on the declaration being given, the eligibility criteria for the simplified liquidation process will be met in relation to the company, and the reasons for that opinion.

#### **5.5.03 Eligibility criteria for simplified liquidation process**

- (1) For the purposes of paragraph 500AA(1)(d) of the Act, the test for eligibility is that the total liabilities of the company on the day on which the triggering event occurred must not exceed \$1 million.
- (2) For the purposes of paragraph 500AA(1)(e) of the Act, a period of 7 years is prescribed.
- (3) For the purposes of paragraph 500AA(1)(f) of the Act, a period of 7 years is prescribed.
- (4) For the purposes of paragraph 500AA(2)(b) of the Act, a prescribed circumstance is that:
  - (a) the other company is a related body corporate of the company in relation to which the eligibility criteria are to be met; and
  - (b) the other company is, or has been:
    - (i) under restructuring; or
    - (ii) the subject of a simplified liquidation process; and
  - (c) if subparagraph (b)(i) applies—the restructuring practitioner for the other company was appointed no more than 20 business days before the day on which the company in relation to which the eligibility criteria are to be met began to follow the simplified liquidation process; and
  - (d) if subparagraph (b)(ii) applies—the other company began to follow the simplified liquidation process no more than 20 business days before the day on which the company in relation to which the eligibility criteria are to be met began to follow the simplified liquidation process.
- (5) For the purposes of paragraph 500AA(2)(c) of the Act, a prescribed circumstance is that:

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- (a) the company has been under restructuring; and
- (b) the restructuring terminated no more than 20 business days before the day on which the company began to follow the simplified liquidation process.

#### *Definitions*

- (6) In this regulation:

**liability** means any liability or obligation.

### **Subdivision B—Simplified liquidation process**

#### **5.5.04 Transactions that are not voidable**

- (1) This regulation is made for the purposes of paragraph 500AE(3)(b) of the Act.
- (2) An unfair preference of a company is not voidable despite subsection 588FE(2) of the Act, provided either subregulation (3) or (4) is satisfied.
- (3) This subregulation is satisfied if:
  - (a) the company is subject to the simplified liquidation process; and
  - (b) the transaction was entered into, or an act was done for the purposes of giving effect to it, before the day that is 3 months before the relation-back day; and
  - (c) no creditor under the transaction is a related entity of the company.
- (4) This subregulation is satisfied if:
  - (a) the company is subject to the simplified liquidation process; and
  - (b) the transaction was entered into, or an act was done for the purposes of giving effect to it:
    - (i) during the 3 months ending on the relation-back day; or
    - (ii) after that day but on or before the day when the winding up began; and
  - (c) either:
    - (i) the transaction results in the creditor receiving from the company no more than \$30,000 in value; or
    - (ii) if the transaction forms part of a series of related transactions, all of the related transactions result in the creditor receiving from the company no more than \$30,000 in value; and
  - (d) no creditor under the transaction is a related entity of the company.

#### **5.5.05 Reports by liquidator**

- (1) This regulation is made for the purposes of paragraph 500AE(3)(f) of the Act and applies in relation to the liquidator of a company that is subject to the simplified liquidation process.
- (2) If, in the opinion of the liquidator, there are reasonable grounds to believe that:

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- (a) a past or present officer or employee, or a member or contributory, of the company; or
  - (b) a person who has taken part in the formation, promotion, administration, management or winding up of the company;
- may have engaged in conduct constituting an offence under a law of the Commonwealth or a State or Territory in relation to the company that has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole, the liquidator must:
- (c) as soon as practicable, and in any event within 6 months, after first forming the opinion, lodge with ASIC a report in the prescribed form (if any) with respect to the matter and state in the report whether the liquidator proposes to make an application for an examination or order under section 597 of the Act; and
  - (d) give ASIC such information, and give to it such access to and facilities for inspecting and taking copies of any documents, as ASIC requires.
- (3) The liquidator may also, if the liquidator thinks fit, lodge further reports specifying any other matter that, in the liquidator's opinion, it is desirable to bring to the notice of ASIC.
- (4) If it appears to the Court, in the course of winding up a company, that:
- (a) a person mentioned in paragraph (2)(a) or (b) has engaged in conduct constituting an offence under a law of the Commonwealth or a State or Territory in relation to the company that has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole; and
  - (b) the liquidator has not lodged with ASIC a report with respect to the matter;
- the Court may, on the application of a person interested in the winding up, direct the liquidator to lodge such a report.

### **5.5.06 Notice of adoption of simplified liquidation process**

- (1) This regulation is made for the purposes of paragraph 500AE(3)(f) of the Act.
- (2) If the liquidator of a company adopts the simplified liquidation process on a day, the liquidator must, within 2 business days after that day, lodge with ASIC:
  - (a) notice in the prescribed form (if any) of the adoption; and
  - (b) a copy of the declaration given by the directors of the company to the liquidator in accordance with section 498 of the Act.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

## **Subdivision C—Ceasing of simplified liquidation process**

### **5.5.07 Liquidator must cease to follow the simplified liquidation process**

- (1) For the purposes of paragraph 500AC(1)(b) of the Act, a prescribed circumstance is that the liquidator believes on reasonable grounds that:

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- (a) the company, or a director of the company, has engaged in conduct; and
  - (b) the conduct involved fraud or dishonesty; and
  - (c) the conduct has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole.
- (2) The liquidator is taken to have ceased to follow the simplified liquidation process on the day on which the liquidator first held the belief.

#### **5.5.08 Transition from simplified liquidation process**

- (1) This regulation is made for the purposes of subsection 500AC(2) of the Act.

##### *Notice of cessation of process*

- (2) If the liquidator of a company ceases to follow the simplified liquidation process on a day, the liquidator must, within 2 business days after that day, lodge with ASIC notice in the prescribed form (if any) of the cessation.

**Note:** Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

##### *Validity of things done during process*

- (3) Subject to this regulation, the cessation of the simplified liquidation process in relation to a company does not affect the validity of anything that was done in good faith in relation to the company before the cessation.

##### *Reports by liquidator*

- (4) If, at any time during the simplified liquidation process, it appeared to the liquidator that one or more of the circumstances in paragraph 533(1)(a), (b) or (c) existed, section 533 of the Act applies in relation to the liquidator as if paragraph 533(1)(d) were modified by omitting “within 6 months” and substituting “within 6 months after the day on which the simplified liquidation process in relation to the company ended”.

#### **5.5.09 Working out whether the 25% in value of creditors test met**

For the purposes of paragraph 500AD(b) of the Act, a person who is a related entity, and a creditor, of the company is not to be taken into account.

## Part 5.6—Winding up generally

### 5.6.11 Application

In regulations 5.6.37 to 5.6.57, unless the contrary intention appears:

*proof of debt or claim* includes a statement of particulars of a debt or claim submitted in accordance with regulation 5.6.39, as well as a formal proof of debt or claim.

### 5.6.37 Establishing title to priority

Regulations 5.6.39 to 5.6.57 (inclusive) apply to the establishment of a title to priority as if it were a debt or claim.

### 5.6.39 Notice to submit particulars of debt or claim

*Companies not subject to the simplified liquidation process*

- (1) Subject to subregulations (1A) and (1B), a liquidator may from time to time fix a day, not less than 14 days after the day on which notice is given in accordance with subregulation (2), on or before which a creditor may submit particulars of his or her debt or claim.

*Companies subject to the simplified liquidation process*

- (1A) Subregulation (1) does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.
- (1B) A liquidator of a company that is subject to the simplified liquidation process must fix a single day that is 14 days after the day on which notice is given in accordance with subregulation (2), on or before which a creditor may submit particulars of his or her debt or claim.

*Notice requirements*

- (2) A notice under subregulation (1) or (1B) must be lodged with ASIC in accordance with subregulation 5.6.75(4).
- (3) A notice under subregulation (1) or (1B) must state at least the following information:
  - (a) the name of the company;
  - (b) any trading name of the company;
  - (c) the ACN of the company;
  - (ca) if Division 1 of Part 5.6 of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act—the ARFN of the sub-fund;
  - (d) the day fixed under subregulation (1) or (1B), as the case requires.

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- (4) A notice under subregulation (1B) may include a requirement that all, or a specified class, of debts or claims must be proved formally.

**Note:** If Division 1 of Part 5.6 of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act, that section translates most of this regulation's references to the company so that they are references to the sub-fund.

#### **5.6.40 Preparation of a proof of debt or claim**

- (1) A proof of debt or claim may be prepared by the creditor personally or by a person authorised by the creditor.
- (2) A proof prepared by an authorised person must state his or her authority and means of knowledge.

#### **5.6.41 Disclosure of security**

A proof of debt or claim must state:

- (a) whether the creditor is or is not a secured creditor; and
- (b) the value and nature of the creditor's security (if any); and
- (c) whether the debt is secured wholly or in part.

#### **5.6.42 Discounts**

In preparing a proof of debt or claim, a creditor must allow for all discounts for which an allowance would have been made if the company were not being wound up.

#### **5.6.43 Periodical payments**

- (1) If rent or any other payment:
- (a) falls due at stated times; and
  - (b) the relevant date is a time other than one of those times;
- the person entitled to the rent or other payment may submit a proof of debt or claim for a proportionate part of the rent or other payment, up to the date of the winding up order or resolution, as if the rent or payment accrued from day to day.
- (2) If the liquidator remains in control of premises rented to a company that is being wound up, subregulation (1) does not affect the right of the landlord of the premises to claim payment of rent by the company or the liquidator during the period of the company's occupation or the liquidator's control.

#### **5.6.43A Debt or claim of uncertain value—appeal to Court**

- (1) An appeal to the Court under subsection 554A(3) of the Act must be made:
- (a) within 21 days after the person aggrieved becomes aware of the liquidator's estimate or, if the period is extended under subregulation (2), within the extended period; and
  - (b) in accordance with the rules.

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- (2) On application by the person aggrieved before or after the end of the period of 21 days mentioned in subregulation (1), the Court may extend the period within which an appeal must be made.

**5.6.44 Debt discount rate (Act s 554B)**

The discount by which the amount payable on the future date is to be reduced under section 554B of the Act is 8% a year calculated from the declaration of the dividend to the time when the debt would have become payable according to the terms on which it was contracted.

**5.6.45 Employees' wages**

- (1) If the employees of a company make demands:
- (a) for wages or salaries (whether or not earned wholly or in part by way of commission), whether or not payable to the employees for annual leave or long service leave; or
  - (b) for retrenchment payments;
- one proof of debt or claim may be prepared and submitted on behalf of those employees.
- (2) A proof of debt or claim prepared and submitted under subregulation (1):
- (a) must have annexed to it a schedule setting out the names of the employees and the amounts due to each of them; and
  - (b) has the same effect as if separate proofs had been prepared and submitted by each of the employees named in the schedule.

**5.6.46 Production of bill of exchange and promissory note**

If a company is, or may become, liable on:

- (a) a bill of exchange; or
- (b) a promissory note; or
- (c) any other negotiable instrument or security;

it must be produced to the liquidator before a proof of debt or claim for the liability can be admitted, unless the Court otherwise orders.

**5.6.47 Admission of debt or claim without formal proof**

- (2) If a liquidator admits a debt or claim without formal proof, it is not necessary for the liquidator formally to admit the debt or claim in writing.
- (3) If a creditor's debt or claim has been admitted without formal proof, a notice of dividend is sufficient notice of the admission.
- (4) A liquidator must not reject a debt or claim without:
- (a) notifying the creditor of the grounds of the liquidator's rejection; and
  - (b) requiring that a formal proof of debt or claim be submitted for that debt or claim.

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### **5.6.48 Notice to creditors to submit formal proof**

#### *Companies not subject to the simplified liquidation process*

- (1) Subject to subregulation (1A), a liquidator may from time to time fix a day, not less than 14 days after the day on which notice is given in accordance with subregulation (2), on or before which creditors of the company whose debts or claims have not been admitted are formally to prove their debts or claims.

#### *Companies subject to the simplified liquidation process*

- (1A) Subregulation (1) does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.

**Note:** A notice given under subregulation 5.6.39(1B) may include a requirement that the creditors of a company that is subject to the simplified liquidation process must formally prove all or a specified class of debts or claims (see subregulation 5.6.39(4)).

#### *Notice requirements*

- (2) A liquidator must give a notice under subregulation (1):
  - (a) by lodging the notice with ASIC in accordance with subregulation 5.6.75(4); and
  - (b) to every person who, to the knowledge of the liquidator, claims to be a creditor of the company, and whose debt or claim has not been admitted.
- (3) A notice under subregulation (1) must state at least the following information:
  - (a) the name of the company;
  - (b) any trading name of the company;
  - (c) the ACN of the company;
  - (ca) if Division 1 of Part 5.6 of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act—the ARFN of the sub-fund;
  - (d) the day fixed under subregulation (1).

#### *Failure to comply with liquidator's requirements*

- (4) A creditor of the company who fails to comply with a requirement of a liquidator under subregulation (1) is excluded:
  - (a) from the benefit of a distribution made before his or her debt or claim is admitted; and
  - (b) from objecting to that distribution.

**Note:** If Division 1 of Part 5.6 of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act, that section translates most of this regulation's references to the company so that they are references to the sub-fund.

### **5.6.49 Formal proof of debt or claim**

- (1) A debt or claim may be formally proved by delivering or sending by post a formal proof of debt or claim to the liquidator.
  - (2) A formal proof of debt or claim:
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- (a) that is prepared and submitted in accordance with regulation 5.6.45—must be in accordance with Form 536; and
- (b) in any other case—must be in accordance with Form 535.

**5.6.50 Contents of formal proof of debt or claim**

- (1) A formal proof of debt or claim must:
  - (a) contain detailed particulars of the debt or claim sought to be proved; and
  - (b) in the case of a debt, include a statement of account; and
  - (c) specify the vouchers (if any) by which the statement can be substantiated.
- (2) The liquidator may at any time call for the production of the vouchers mentioned in subregulation (1).

**5.6.51 Costs of proof**

A creditor must bear the cost:

- (a) of proving his or her debt or claim; or
  - (b) of amending a proof of debt or claim;
- unless the Court otherwise orders.

**5.6.52 Liquidator to notify receipt of proof of debt or claim**

If a liquidator is requested to do so by the person submitting a proof of debt or claim, the liquidator must notify that person of the receipt of the proof and whether or not it has been admitted under regulation 5.6.47.

**5.6.53 Time for liquidator to deal with proofs**

- (1) A liquidator must, within:
  - (a) 28 days after receiving a request in writing from a creditor to do so; or
  - (b) if ASIC allows—any further period;in writing:
  - (c) admit all or part of the formal proof of debt or claim submitted by the creditor; or
  - (d) reject all or part of the formal proof of debt or claim; or
  - (e) require further evidence in support of it.
- (2) If the liquidator does not deal with a request under subregulation (1) in accordance with that subregulation, the creditor who submitted the proof may apply to the Court for a decision in respect of it.
- (3) If the liquidator gives notice in writing to a creditor that further evidence is required in support of the formal proof of debt or claim submitted by the creditor under subregulation (1), the period mentioned in that subregulation is taken not to have begun to run until the day on which the liquidator receives a sufficient written answer to his or her notice.

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**5.6.54 Grounds of rejection and notice to creditor**

- (1) Within 7 days after the liquidator has rejected all or part of a formal proof of debt or claim, the liquidator must:
  - (a) notify the creditor of the grounds for that rejection in accordance with Form 537; and
  - (b) give notice to the creditor at the same time:
    - (i) that the creditor may appeal to the Court against the rejection within the time specified in the notice, being not less than 14 days after service of the notice, or such further period as the Court allows; and
    - (ii) that unless the creditor appeals in accordance with subparagraph (i), the amount of his or her debt or claim will be assessed in accordance with the liquidator's endorsement on the creditor's proof.
- (2) A person may appeal against the rejection of a formal proof of debt or claim within:
  - (a) the time specified in the notice of the grounds of rejection; or
  - (b) if the Court allows—any further period.
- (3) The Court may extend the time for filing an appeal under subregulation (2), even if the period specified in the notice has expired.
- (4) If the liquidator has admitted a formal proof of debt or claim, the notice of dividend is sufficient notice of the admission.

**5.6.55 Revocation or amendment of decision of liquidator**

- (1) If the liquidator considers that a proof of debt or claim has been wrongly admitted, the liquidator may:
  - (a) revoke the decision to admit the proof and reject all of it; or
  - (b) amend the decision to admit the proof by increasing or reducing the amount of the admitted debt or claim.
- (2) If the liquidator considers that all of a proof of debt or claim has been wrongly rejected, the liquidator may:
  - (a) revoke the decision to reject the proof of debt or claim; and
  - (b) admit all of the proof or admit part of it and reject part of it.
- (3) If the liquidator:
  - (a) revokes a decision to admit a proof of debt or claim and rejects all of it; or
  - (b) amends that decision by reducing the amount of the admitted debt or claim;the liquidator must inform the creditor by whom it was lodged, in writing, of his or her grounds for the revocation or amendment.
- (4) If the liquidator revokes a decision to admit a proof of debt or claim and rejects all of it, or amends that decision by reducing the amount of the admitted debt or claim, the creditor must at once repay to the liquidator:
  - (a) the amount received as dividend for the proof; or

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- (b) the amount received as dividend that exceeds the amount that the creditor would have been entitled to receive if his or her debt or claim had been originally admitted for the reduced amount.
- (5) If the liquidator:
  - (a) revokes a decision to reject all of a proof of debt or claim; or
  - (b) amends a decision to admit part of a proof of debt or claim;by increasing the amount of the admitted debt or claim, the creditor by whom it was lodged is entitled to be paid, out of available money for the time being in the hands of the liquidator:
  - (c) the dividend; or
  - (d) an additional amount of dividend;that the creditor would have been entitled to receive if all of the debt or claim had been originally admitted, or the increased amount had been admitted, before the available money is applied to pay a further dividend.
- (6) The creditor is not entitled to disturb the distribution of any dividends declared before the liquidator revoked or amended the decision.

**5.6.56 Withdrawal or variation of proof of debt or claim**

A proof of debt or claim may be withdrawn, reduced or varied by a creditor with the consent of the liquidator.

**5.6.57 Oaths**

The liquidator in a winding up by the Court may:

- (a) administer an affirmation or oath; and
- (b) take an affidavit;

for the purposes of the liquidator's duties in relation to admitting a debt or claim.

**5.6.58 Liquidator to make out provisional list of contributories**

If the liquidator of a company considers it necessary to make calls on or adjust the rights of contributories, the liquidator must, as soon as practicable, make out a provisional list of contributories in accordance with Form 538.

**5.6.59 Time and place for settlement of list**

- (1) The liquidator must give to each person included in the list not less than 14 days' notice in writing, in accordance with Form 539, of the time and place appointed to settle the list.
- (2) The liquidator or a person acting on his or her behalf must lodge a statement in writing in the prescribed form that notice under subregulation (1) was given to each person included in the provisional list of contributories.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

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- (a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and
- (b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

On 23 December 2004, a form for the document mentioned in subregulation (2) is not prescribed in these Regulations.

- (3) A statement under subregulation (2) is evidence that the notice was sent to a person on the list at the address shown for that person, in the absence of evidence to the contrary.

### **5.6.60 Settlement of list of contributories**

- (1) Before settling the list of contributories, the liquidator must hear and determine any objection by a person to being included in the list.
- (2) The liquidator must settle the list of contributories and certify it, in accordance with Form 541, at the time and place specified in the notice given under regulation 5.6.59.

### **5.6.61 Supplementary list**

- (1) The liquidator may at any time vary or add to the list of contributories by:
  - (a) making out a provisional supplementary list of contributories in accordance with Form 542; and
  - (b) settling and certifying that list in accordance with Form 543.
- (2) Regulation 5.6.59 and subregulation 5.6.60(1) apply to making out, or settling and certifying, a supplementary list by the liquidator.

### **5.6.62 Notice to contributories**

- (1) Within 14 days after the settlement of the list, or supplementary list, of contributories, the liquidator must:
  - (a) notify each person included in the list, or supplementary list, of his or her inclusion; and
  - (b) at the same time give each person notice that he or she may appeal to the Court against his or her inclusion within:
    - (i) 21 days after service of the notice; or
    - (ii) if the Court allows—any further period.
- (2) A person may appeal against his or her inclusion in the list, or supplementary list, of contributories, within:
  - (a) 21 days after service on the person of the notice under subregulation (1); or
  - (b) if the Court allows—any further period.
- (3) The Court may extend the time for filing an appeal under subregulation (2), even if the period of 21 days specified in subregulation (1) has expired.
- (4) A notice for subregulation (1) must be in accordance with Form 544.

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- (5) The liquidator, or a person acting on the liquidator's behalf, must lodge a statement in writing in the prescribed form that notice under subregulation (1) was given to each person placed on the list, or supplementary list, of contributories.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

- (a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and
- (b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

On 23 December 2004, a form for the document mentioned in subregulation (5) is not prescribed in these Regulations.

- (6) A statement under subregulation (5) is sufficient evidence that the notice was sent to a person on the list at the address shown for that person, in the absence of evidence to the contrary.

**5.6.63 Dividend payable only on admission of a debt or claim**

A dividend in the winding up of the affairs of a company may be paid only to a creditor whose debt or claim has been admitted by the liquidator at the date of the distribution of dividends.

**5.6.64 Application of regulations 5.6.37 to 5.6.57**

For regulations 5.6.64 to 5.6.71, regulations 5.6.37 to 5.6.57 apply:

- (a) to the formal proof of a debt or claim; and
- (b) to the rejection and to an appeal against the rejection of all or part of a formal proof of a debt or claim.

**5.6.65 Liquidator to give notice of intention to declare a dividend**

- (1) Subject to subregulation (1A), the liquidator must give notice of his or her intention to declare a dividend not more than 2 months before the intended date:
- (a) by lodging a notice with ASIC in accordance with subregulation 5.6.75(4); and
  - (b) in writing, in accordance with Form 547 or, for a final dividend, in accordance with Form 548, to any person whose debt or claim has not been admitted and who:
    - (i) for a winding up by the Court—is shown as a creditor in the report on the affairs of the company under subsection 475(1) of the Act; or
    - (ii) for a members' voluntary winding up—appears in the company's records to be a creditor; or
    - (iii) for a creditors' voluntary winding up—is shown as a creditor in the list of creditors prepared in accordance with subparagraph 497(1)(a)(ii) of the Act; or
    - (iv) to the knowledge of the liquidator claims to be, or might claim to be, a creditor of the company.

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- (1A) The requirement in subregulation (1) that the notice must be given not more than 2 months before the intended date does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.
- (2) A notice in accordance with subregulation (1) must specify a date, not less than 21 days after the date of the notice, on or before which formal proof, in accordance with Form 535 or 536, of a debt or claim must be submitted to participate in the distribution.
- (2A) Also, the notice must state at least the following information:
  - (a) the name of the company;
  - (b) any trading name of the company;
  - (c) the ACN of the company;
  - (d) if Division 1 of Part 5.6 of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act—the ARFN of the sub-fund.
- (3) Subject to regulation 5.6.68, a person:
  - (a) who claims to be a creditor; and
  - (b) who does not submit a formal proof of a debt or claim on or before the date specified in the notice given under subregulation (1);is excluded from participating in the distribution to which that notice relates.

**Note:** If Division 1 of Part 5.6 of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act, that section translates most of this regulation's references to the company so that they are references to the sub-fund.

### **5.6.66 Time allowed for dealing with formal proof of debt or claim**

- (1) If the liquidator has given notice in accordance with subregulation 5.6.65(1), the liquidator must:
  - (a) within 14 days after the date shown in the notice; or
  - (b) within such further period as ASIC allows;in writing:
  - (c) before the end of that period:
    - (i) admit a formal proof of debt or claim received by the liquidator; or
    - (ii) reject it; or
    - (iii) admit part of it and reject part of it; or
    - (iv) require further evidence in support of it; and
  - (d) give notice of the liquidator's decision to the creditor who submitted the proof.
- (2) If, within whichever period is applicable under paragraph (1)(a) or (b) or subregulation (3), the liquidator does not, in writing, deal with a formal proof of debt or claim in accordance with paragraphs (1)(c) and (d), the creditor who submitted the proof may apply to the Court for a decision on it.
- (3) If the liquidator gives notice to a creditor that further evidence is required in relation to a formal proof of debt or claim submitted by the creditor:

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- (a) the liquidator must, in writing, deal with the formal proof of debt or claim in accordance with paragraphs (1)(c) and (d), within whichever period mentioned in paragraph (1)(a) or (b) is applicable; and
- (b) that period must be taken not to have begun to run until the day on which the liquidator receives a sufficient written answer to his or her request.

**5.6.67 Declaration and distribution of dividend**

- (1) The liquidator must, as soon as practicable, declare and distribute a dividend among the creditors whose debts or claims have been admitted.
- (2) The liquidator must distribute as dividend all money in hand except enough:
  - (a) to meet the costs of administration; or
  - (b) to give effect to the provisions of the Act.
- (3) If the liquidator declares a dividend, he or she must send a notice of that declaration, in accordance with Form 549, to every person entitled to receive payment of the dividend.

**5.6.67A Single declaration and distribution of dividend for companies in simplified liquidation**

The liquidator of a company that is subject to the simplified liquidation process may declare and distribute a dividend only once among creditors whose debts or claims have been admitted.

**5.6.68 Rights of creditor who has not proved debt before declaration of dividend**

- (1) If:
  - (a) a creditor's debt or claim has not been admitted before the declaration of a dividend; and
  - (b) the debt or claim is admitted;the creditor is entitled to be paid dividends that the creditor has failed to receive, out of any available money for the time being in the hands of the liquidator, before that money is applied to the payment of a further dividend.
- (2) A creditor is not entitled to disturb the distribution of a dividend declared before the creditor's debt or claim was admitted.
- (3) This regulation does not apply in relation to a creditor of a company that is subject to the simplified liquidation process.

**5.6.69 Postponement of declaration**

If the liquidator postpones the declaration of a dividend past the date shown for that purpose in the notice lodged with ASIC in accordance with subregulation 5.6.75(4), the liquidator must lodge another notice with ASIC for publication on the publication website of the liquidator's intention to declare a dividend.

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**5.6.70 Payment of dividend to a person named**

If a person to whom a dividend is payable lodges an authority in accordance with Form 550 with the liquidator, the liquidator must pay the dividend to the person to whom payment is directed by that authority.

**5.6.70A Prescribed rate of interest on debts and claims from relevant date to date of payment**

For section 563B of the Act, the prescribed rate of interest on the amount paid in respect of an admitted debt or claim for the period starting on the relevant date and ending on the day on which the payment is made is 8% a year.

**5.6.70B Notice of disclaimer**

- (1) This regulation is made for subsection 568A(2) of the Act.
- (2) The information about a disclaimer that is to be set out in a notice is at least the following information:
  - (a) the name of the company;
  - (b) any trading name of the company;
  - (c) the ACN of the company;
  - (ca) if subsection 568A(2) of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act—the ARFN of the sub-fund;
  - (d) the paragraph of subsection 568(1) of the Act under which the property is disclaimed;
  - (e) a description of the property;
  - (f) if the property is a contract (other than an unprofitable contract or a lease of land)—the date on which the Court granted leave under subsection 568(1A) of the Act;
  - (g) the name and contact details of the liquidator.

**Note:** If subsection 568A(2) of the Act applies for a sub-fund of a CCIV because of section 1237B of the Act, that section translates most of this sub-regulation's references to the company so that they are references to the sub-fund.

**5.6.71 Distribution of surplus in a winding up by the Court**

- (1) An order in a winding up by the Court authorising the liquidator to distribute any surplus to a person entitled to it must, unless the Court otherwise directs, have annexed to it a schedule in accordance with Form 551.
- (2) The liquidator must send to each person to whom any surplus is distributed a notice in accordance with Form 552.

**5.6.72 Distribution of surplus as directed**

If a person who receives a notice of distribution of surplus in accordance with subregulation 5.6.71(2) lodges with the liquidator an authority in accordance

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with Form 553, the liquidator must distribute that surplus to the person to whom payment is directed by that authority.

**5.6.73 Eligible unsecured creditor**

*Creditors that are eligible unsecured creditors*

- (1) For paragraph 579Q(1)(b) of the Act, the following creditors are specified:
  - (a) a creditor to which either of the following applies as a result of a modification of the Act made under paragraph 571(1)(d) of the Act:
    - (i) a debt payable by a company or companies in a group to any other company or companies in the group is not extinguished;
    - (ii) a claim that a company or companies in a group has against any other company or companies in the group is not extinguished;
  - (b) a creditor that is determined by a Court to be an eligible unsecured creditor.

*Creditors that are not eligible unsecured creditors*

- (2) For subsection 579Q(2) of the Act, a creditor that is determined by a Court not to be an eligible unsecured creditor is specified.

**5.6.74 Interpretation: prescribed countries**

For the definition of **prescribed country** in section 580 of the Act, the following countries are prescribed:

- (a) the Bailiwick of Jersey;
- (b) Canada;
- (c) the Independent State of Papua New Guinea;
- (d) Malaysia;
- (e) New Zealand;
- (f) the Republic of Singapore;
- (g) Switzerland;
- (h) the United Kingdom;
- (i) the United States of America.

**5.6.75 Publication in the prescribed manner**

- (1) ASIC must establish and maintain a website (the **publication website**) on which it publishes notices that have to be:
  - (a) published in the prescribed manner under Part 5.1, 5.3A, 5.3B, 5.4, 5.4B, 5.4C, 5.5, 5.6, 5.8 or 5A.1 of the Act; or
  - (b) lodged in accordance with this section.
- (2) ASIC is taken to have complied with a requirement to publish a notice, or a copy of a notice, in the prescribed manner if ASIC publishes the notice on the publication website.

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- (3) A person (other than ASIC) is taken to have complied with a requirement to publish a notice, or a copy of a notice, in the prescribed manner if the person electronically lodges the notice with ASIC for publication by ASIC.
- (4) A person electronically lodges a notice, or a copy of a notice, with ASIC if:
  - (a) the person:
    - (i) pays the fee prescribed under the *Corporations (Fees) Regulations 2001*; and
    - (ii) sends the notice in an electronic communication to the portal for ASIC's publication website, in the format required by ASIC; and
    - (iii) receives an electronic communication from ASIC that confirms the fee has been paid and the notice has been lodged; or
  - (b) the notice, or a copy of the notice, appears on the publication website.
- (5) If a person lodges a notice, or a copy of a notice, in accordance with subsection (4), ASIC must publish the notice or copy of the notice on the publication website.

Note: This regulation is made for section 1367A of the Act.

## **Part 5.7B—Recovering property or compensation for the benefit of creditors of insolvent company**

### **5.7B.01 Extension of temporary relief for insolvent trading safe harbour**

For the purposes of subparagraph 588GAAA(1)(b)(ii) of the Act, the period prescribed is the period starting on the day that section 588GAAA of the Act commenced and ending at the end of 31 December 2020.

## **Chapter 5B—Bodies corporate registered as companies, and registrable bodies**

### **Part 5B.2—Registrable bodies**

#### **5B.2.01 Certified copies of certificates of incorporation etc**

For paragraphs 601CB(a) and 601CE(a) of the Act, a certified copy of a current certificate of the incorporation or registration in its place of origin, or a document of similar effect, of:

- (a) a registrable Australian body; or
- (b) a foreign company;

that is lodged with an application for registration under Division 1 or 2 of Part 5B.2 of the Act, must be a copy that:

- (c) within the 3 months immediately before the day on which it is lodged; or
- (d) if ASIC permits—within a longer period;

has been certified to be a true copy by a person:

- (e) who has the custody of the original document under a law in force in the place of origin of the corporation or company; and
- (f) who exercises under that law functions similar to those exercised by ASIC.

#### **5B.2.02 Manner of certifying constituent documents**

For paragraphs 601CB(b) and 601CE(b) of the Act, a certified copy of a constitution of:

- (a) a registrable Australian body; or
- (b) a foreign company;

must be a copy that:

- (c) within the period of 3 months immediately preceding the day on which it is lodged; or
- (d) if ASIC permits—a longer period;

has been certified to be a true copy:

- (e) by a person:
  - (i) to whom the custody of the original document is committed under a law in force in the place of origin of the corporation or company; and
  - (ii) who exercises under that law functions similar to those exercised by ASIC; or
- (f) by a notary public; or
- (g) by a director or secretary of the body:
  - (i) if the body is a registrable Australian body—by a statement in writing; or
  - (ii) if the body is a foreign company—by affidavit.

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**5B.2.03 Manner of sending letters (Act ss 601CC(2) and 601CL(3))**

For subsections 601CC(2) and 601CL(3) of the Act, a letter must be sent by post.

**5B.2.04 Manner of sending notices (Act ss 601CC(3) and 601CL(4))**

For subsections 601CC(3) and 601CL(4) of the Act, a notice must be sent by prepaid certified mail.

**5B.2.05 Prescribed countries (Act s 601CDA(a))**

For paragraph 601CDA(a) of the Act, a country mentioned in the following table is prescribed:

Item	Country
1	New Zealand

**5B.2.06 Notices (Act s 601CV(1))**

- (1) A notice in writing of a change in a constitution or other document, in accordance with paragraph 601CV(1)(b) of the Act, must be accompanied by a copy of the instrument effecting the change or a copy of the document as changed, being a copy that is certified to be a true copy of that instrument or document by a person mentioned in paragraph 5B.2.02(e), (f) or (g).
- (2) A notice in writing of a change in director's powers, in accordance with subparagraph 601CV(1)(d)(i) of the Act, must be accompanied by a memorandum in writing executed by or on behalf of the foreign company after a change in those powers stating the powers of its directors as changed.

## Part 5B.3—Names of registrable Australian bodies and foreign companies

### 5B.3.01 Availability of names (Act s 601DC)

- (1) For paragraphs 601DC(1)(a) and (b) of the Act, the rules for ascertaining whether a name is identical with another name are the rules set out in Part 1 of Schedule 6.
- (2) For paragraph 601DC(1)(c) of the Act, a name is unacceptable for registration under the regulations if the name is unacceptable under the rules set out in Part 2 of Schedule 6.

### 5B.3.02 Consents required for use of certain letters, words and expressions

- (1) This regulation applies to a name if:
  - (a) the name:
    - (i) is the subject of an application for registration of a name under section 601BC, 601CB or 601CE of the Act; or
    - (ii) is the subject of an application for reservation of a name under section 601DA of that Act; or
    - (iii) for a notice of change of name under section 601DH of the Act—is the name to which the previous name is to be changed; and
  - (b) the name is, uses or includes:
    - (i) letters, or a word or expression, specified in column 2 of an item in Part 4 or 5 of Schedule 6; or
    - (ii) other letters, or another word or expression (whether or not in English), that is of like import to the letters, word or expression specified in the item.
- (2) In paragraph (1)(b), a reference to letters, a word or an expression being used includes a reference to the letters, word or expression being used:
  - (a) as part of another word or expression; or
  - (b) in combination with other words or letters, or other symbols.
- (3) However, this regulation does not apply to use of the letters ADI as part of another word.

Example: The letters *adi* appear in the word *traditional*. This regulation does not apply to use of the word *traditional*.
- (4) If an item in Part 4 of Schedule 6 applies in relation to the name, the application or notice must be accompanied by the written consent of the Minister who is specified in the item.

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- (5) If an item in Part 5 of Schedule 6 applies in relation to the name, the application or notice must be accompanied by the written consent of the public authority, instrumentality or agency that is specified in the item.

**5B.3.03 Exemptions from requirement to set out ARBN etc on certain documents (Act s 601DG)**

For section 601DG of the Act, the exemptions provided for in Schedule 7 apply in relation to the requirements of paragraphs 601DE(1)(b), (c) and (d) of the Act.

**5B.3.04 Notices (Act s 601DH(1))**

- (1) A notice in writing of a change of name in accordance with subsection 601DH(1) of the Act, must have annexed to it:
- (a) a copy of the certificate of incorporation or registration of the registered body, or a document of similar effect, being a certificate or document evidencing the change; or
  - (b) if no certificate or document of that kind exists—a copy of the instrument effecting the change;
- being a copy that is certified by a person mentioned in paragraph 5B.2.02(e), (f) or (g) to be a true copy of that certificate, document or instrument.

## **Chapter 5C—Managed investment schemes**

### **Part 5C.1—Registration of managed investment schemes**

#### **5C.1.01 Applying for registration**

- (1) An application under section 601EA of the Act to register a managed investment scheme must be in the approved form.
- (2) The form must state the name of the managed investment scheme.
- (3) The stated name must not be the same as the name of:
  - (a) another managed investment scheme that is the subject of an application for registration under section 601EA of the Act that is lodged but not yet determined; or
  - (b) a registered scheme; or
  - (c) a foreign passport fund in relation to which a notice of intention has been lodged under section 1213 of the Act if:
    - (i) the operator of the fund has not withdrawn the notice under subsection 1213(3) of the Act; and
    - (ii) ASIC has not rejected the notice of intention under section 1213B of the Act; or
  - (d) a notified foreign passport fund.
- (4) A statement made for paragraph 601EA(4)(c) of the Act must be in the approved form.

#### **5C.1.02 Change of name of registered schemes**

- (1) To change the name of a registered scheme, the responsible entity of the scheme must lodge a notice in the approved form stating the proposed name of the scheme.
- (2) The stated name must not be the same as the name of:
  - (a) another managed investment scheme that is the subject of an application for registration under section 601EB of the Act that is lodged but not yet determined; or
  - (b) a registered scheme; or
  - (c) a foreign passport fund in relation to which a notice of intention has been lodged under section 1213 of the Act if:
    - (i) the operator of the fund has not withdrawn the notice under subsection 1213(3) of the Act; and
    - (ii) ASIC has not rejected the notice of intention under section 1213B of the Act; or
  - (d) a notified foreign passport fund.

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- (3) On application in accordance with this regulation, ASIC must amend the record of the registration of the scheme to include the name of the scheme as proposed to be amended.

**5C.1.03 Modification (Act s 601QB)**

- (1) For section 601QB of the Act, the operation of Chapter 5C of the Act is modified in accordance with this regulation.
- (2) If:
- (a) a managed investment scheme is registered under section 601EB of the Act; and
  - (b) the managed investment scheme is also registered on the Australian Business Register; and
  - (c) the last 9 digits of the ABN of the registered scheme are the same, and in the same order, as the last 9 digits of its ARSN; and
  - (d) a document relating to the scheme is lodged with ASIC, and displays that ABN;
- section 601EC of the Act does not apply to the document.

## Part 5C.2—The responsible entity

### 5C.2.01 Duty of responsible entities' agents—surveillance checks

The agent of a responsible entity must take all reasonable steps to assist the entity and ASIC when ASIC is conducting a check whether the entity is complying with the constitution and compliance plan of a registered scheme and with the Act.

### 5C.2.02 Appointment of temporary responsible entities

ASIC, or a member of a registered scheme, may apply to the Court for the appointment of a temporary responsible entity of the scheme if ASIC or member reasonably believes that the appointment is necessary to protect scheme property or the interests of members of the scheme.

### 5C.2.03 Form of notices (Act ss 601FL(2) and 601FM(2))

A notice to be lodged under subsection 601FL(2) or 601FM(2) of the Act must be in the approved form.

### 5C.2.04 Notice of appointment of temporary responsible entities

As soon as practicable after the Court appoints a temporary responsible entity for a registered scheme on application by a member of the scheme under section 601FN of the Act, the member must lodge a notice in the approved form that tells ASIC of the appointment.

### 5C.2.05 Form of notices (Act s 601FP(3))

A notice to be lodged under subsection 601FP(3) of the Act must be in the approved form.

## **Part 5C.4—The compliance plan**

### **5C.4.01 Agents' authorities to be lodged**

If a compliance plan, or modification of a plan, lodged with ASIC under section 601HC or subsection 601HE(3) of the Act is signed by an agent of the directors of the responsible entity of the registered scheme to which the plan relates, the authority to do so, or a copy of the authority verified by a director of the entity, must be attached to the plan or modification.

### **5C.4.02 Agents to assist auditors of compliance plans**

An agent of the responsible entity of a registered scheme, and an officer of the agent, must:

- (a) allow the auditor of the scheme's compliance plan to have access to the books of the scheme; and
- (b) if the auditor requires the agent or entity to give the auditor information or an explanation for the audit—give the information or explanation to the auditor; and
- (c) otherwise assist the conduct of the audit.

## **Part 5C.5—The compliance committee**

### **5C.5.01 Responsible entities etc to assist compliance committees**

- (1) This regulation applies to a person who is the responsible entity of a registered scheme, an officer of the entity, an agent of the entity or an officer of the agent.
- (2) The person must:
  - (a) allow the compliance committee to have access to the books of the scheme; and
  - (b) if the committee requires the person to give the committee information or an explanation about the scheme—give the information or explanation to the committee; and
  - (c) otherwise assist the committee in the performance of its functions.

## **Part 5C.9—Winding up**

### **5C.9.01 Notice of commencement of winding up**

The responsible entity of a registered scheme must lodge a notice in the approved form telling ASIC that winding up of the scheme has commenced, or been completed, within 14 days of the commencement or completion.

## Part 5C.11—Exemptions and modifications

### Division 1—Exemptions

#### 5C.11.01 Certain schemes not managed investment schemes

- (1) This regulation is made for the purposes of paragraph (n) of the definition of ***managed investment scheme*** in section 9 of the Act.
- (2) An approved benefit fund (within the meaning of subsection 16B(1) of the *Life Insurance Act 1995*) is declared not to be a managed investment scheme.
- (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.
- (3) A scheme (a ***litigation funding scheme***) that has all of the following features is declared not to be a managed investment scheme:
  - (a) the scheme relates to a Chapter 5 body corporate;

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- (b) the creditors or members of the body corporate provide funds (including through a trust), indemnities or both to the body corporate or external administrator;
  - (c) the funds, indemnities or both enable the external administrator or the body corporate to:
    - (i) conduct investigations; or
    - (ii) seek or enforce a remedy against a third party; or
    - (iii) defend proceedings brought against the body corporate in relation to the external administration of the body corporate (other than in relation to allegations, made by creditors or members of the body corporate, of negligence or non-performance of duties by the external administrator).
- (4) An arrangement (a ***litigation funding arrangement***) that has all of the following features is declared not to be a managed investment scheme:
- (a) the dominant purpose of the arrangement is proving claims made by a general member who is an individual under Division 6 of Part 5.6 of the Act (which may include the funding of the preparation and the lodgement of the proofs);
  - (b) the steps taken under the arrangement 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;
  - (c) 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 arrangement is not successful in proving claims) to enable the general member to prove the claims;
  - (d) 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;
  - (e) the arrangement is not a litigation funding scheme.
- (5) An arrangement (a ***litigation funding arrangement***) that has all of the following features is declared not to be a managed investment scheme:
- (a) the dominant purpose of the arrangement is for a general member to seek remedies to which the general member may be legally entitled;
  - (b) the steps taken to seek remedies 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
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- (v) negotiating a settlement of a claim; or
    - (vi) administering a deed of settlement or scheme of settlement relating to a claim;
  - (c) 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 arrangement is not successful in seeking remedies) to enable the general member to seek remedies;
  - (d) 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;
  - (e) the arrangement is not a litigation funding scheme.
- (6) In this regulation:

**external administrator** includes an administrator, a liquidator (including a provisional liquidator) and a controller.

**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.

## **Division 2—Modifications**

### **5C.11.02 Modifications**

For section 601QB of the Act, the operation of the Act is modified in accordance with this Division.

### **5C.11.03 Register of members of registered schemes (Act s 169(1))**

The register of members of a registered scheme need not contain information about a member whose only interest in the scheme is as the holder of an option.

### **5C.11.03A How to work out the value of an interest**

If a registered scheme is quoted on 2 or more prescribed financial markets, paragraph 253F(a) of the Act is to be applied so that the value of an interest in the registered scheme is taken to be the last sale price, on the market on which the scheme is listed, on the trading day immediately before the day on which the poll is taken.

### **5C.11.04 Names of registered schemes (Act s 601EB(1))**

ASIC must not register a managed investment scheme under Part 5C.1 of the Act if the name of the scheme stated under subregulation 5C.1.01(2) does not comply with subregulation 5C.1.01(3).

### **5C.11.05A Schemes not required to be registered (Act s 601ED)**

Subsection 601ED(2) of the Act has effect as if the words ‘and Division 2 of Part 7.9 applied to the interests at that time’ were inserted after the words ‘when the issues were made’.

### **5C.11.06 Liability of responsible entities (Act s 601FB(4))**

In determining the liability under subsection 601FB(2) of the Act of the responsible entity of a registered scheme to the members of the scheme for an act or omission of an agent appointed by the entity under that subsection, the amount recovered under subsection 601FB(4) of the Act is to be disregarded.

## Chapter 5D—Licensed trustee companies

### Part 5D.1—Preliminary

#### 5D.1.01 Prescribed requirements for publication

For the definition of *publish* in section 601RAA of the Act:

- (a) a notice mentioned in paragraph 601WBH(b) of the Act is to be published in the *Gazette* and on the ASIC website; and
- (b) a notice mentioned in paragraph 601WDA(1)(b) or subsection 601WDA(3) of the Act is to be published in a national newspaper and on the transferring company's website.

#### 5D.1.01A Meaning of *trustee company*

- (1) For subsection 601RAB(1) of the Act, a company that is listed in Schedule 8AA is a trustee company for the purpose of the Act.
- (2) A company that performs the function of the Public Trustee of a State or Territory may only be listed in Schedule 8AA if:
  - (a) the State or Territory requests the Minister to prescribe the company as a trustee company; and
  - (b) the Minister agrees to the request.

#### 5D.1.02 Meaning of *traditional trustee company services and estate management functions*

- (1) For paragraph 601RAC(3)(f) of the Act, acting in any of the following capacities is prescribed:
    - (a) as trustee for the holders of debt securities of a body;
    - (b) as trustee of a trust established for purposes that include issuing debt securities (including loan-backed securities and mortgage-backed securities) or managing or servicing the assets of the trust;
    - (c) as trustee for the benefit of present or future creditors of another person when holding:
      - (i) mortgages, charges, guarantees, indemnities or other rights or benefits that have been given to secure debts owing to the creditors; and
      - (ii) the proceeds from the enforcement of any of the securities mentioned in subparagraph (i);
- Note: *Securities* is defined in section 92 of the Act.
- (d) as custodian for another trustee or for the responsible entity of a registered scheme or other commercial entity;
  - (e) as trustee of a managed investment scheme the main assets of which consist of land and improvements on the land where the trustee is not

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responsible for the daily management of the land or any business conducted on the land;

Note: **Managed investment scheme** is defined in section 9 of the Act.

- (f) as trustee for employee share or benefit schemes;
- (g) as trustee for trusts the main activities of which consist of making loans to, or otherwise investing in, companies or other commercial entities;
- (h) as an escrow agent;
- (i) as a person named in a will as an executor when not actively providing a service or function;
- (j) as a person named in a power of attorney as an attorney when not actively providing a service or function;
- (k) preparing a power of attorney for a person's medical treatment or for guardianship of a person's affairs;
- (l) preparing a living will or advance health directive of any kind.

(2) In this regulation:

**custodian** does not include a trustee establishing and operating a common fund.

**debt security** means:

- (a) any debenture, debenture stock, bond, note or other security of a corporation or body; or
- (b) any convertible note issued by a company or any convertible note in a unit trust scheme issued by the trustee of a unit trust scheme; or
- (c) any right to a security mentioned in paragraph (a) or (b);

whether or not it is a charge on the assets of the corporation, company, society or unit trust scheme.

**employee share or benefit scheme** means a scheme under which a company offers for issue or sale shares (or options over issued shares) in the company, or some other benefit in the company, only to a director or employee of the company, or of an associated body corporate, when the offer is made.

**escrow agent** means a person with whom is deposited a contract, deed, bond or other written agreement or property for delivery to the grantee, promisee or some other person on resolution of a dispute or fulfilment of some condition.

**loan-backed security** means:

- (a) an instrument or property:
  - (i) creating a right or interest (whether described as a unit, bond or otherwise) for a beneficiary; or
  - (ii) conferring a right or interest (whether described as a unit, bond or otherwise) on a beneficiary; or
  - (iii) consisting of a right or interest (whether described as a unit, bond or otherwise) of a beneficiary;

in a scheme under which the profits, distributions of capital or income in which beneficiaries share arise or arises from the acquisition, holding, management or disposal of a loan or pool of loans; or

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- (b) an instrument which evidences a right or interest mentioned in paragraph (a); or
- (c) a debt security:
  - (i) the payments under which by the person that issues or makes the instrument are derived mainly from the acquisition, holding, management or disposal of a loan or pool of loans; and
  - (ii) that is secured by a mortgage or charge over a loan or pool of loans.

***mortgage-backed security*** has the meaning given in regulation 5D.1.03.

### 5D.1.03 Meaning of *mortgage-backed security*

- (1) A ***mortgage-backed security*** is:
  - (a) an interest in a trust that entitles the holder of, or beneficial owner under, the interest to:
    - (i) the whole, or any part, of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or pool of mortgages; or
    - (ii) any amount payable by the mortgagor or mortgagors under a mortgage or mortgages (whether or not the amount is payable to the holder of, or beneficial owner under, the interest on the same terms as under the mortgage or mortgages); or
    - (iii) payments that are derived mainly from the income or receipts of a mortgage or pool of mortgages;and that may, in addition, entitle the holder, or beneficial owner, to a transfer or assignment of the mortgage or mortgages; or
  - (b) a debt security (whether or not in writing) the payments under which by the person who issues or makes the debt security are derived mainly from the income or receipts of a mortgage or pool of mortgages; or
  - (c) any of the following:
    - (i) an interest in a trust:
      - (A) creating a right or interest (whether described as a unit, bond or otherwise) for a beneficiary; or
      - (B) conferring a right or interest (whether described as a unit, bond or otherwise) on a beneficiary; or
      - (C) consisting of a right or interest (whether described as a unit, bond or otherwise) of a beneficiary;in a scheme under which any profit or income in which the beneficiaries share arises from the acquisition, holding, management or disposal of a mortgage, pool of mortgages or the income or receipts of a mortgage or pool of mortgages;
    - (ii) any instrument that evidences a right or interest mentioned in subparagraph (i);
    - (iii) a security (whether or not in writing) the payments under which by the person who issues or makes the security are derived mainly from the income or receipts of a mortgage or pool of mortgages;

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- (iv) an interest in a trust or a debt security (whether or not in writing);
  - (v) an instrument or property that creates an interest in, or charge over an interest in, a trust;
  - (vi) a debt security (whether or not in writing);
  - (vii) any other property to which paragraph (a) or (b) or subparagraph (i), (ii) or (iii) applies.
- (2) However, a mortgage-backed security does not include an instrument or property consisting of any of the following:
- (a) a mortgage;
  - (b) the transfer of a mortgage;
  - (c) a declaration of trust.

**5D.1.04 Interaction between trustee company provisions and State and Territory laws**

- (1) For paragraph 601RAE(4)(a) of the Act, the trustee company provisions are intended to apply to the exclusion of the provisions of State or Territory laws prescribed in Schedule 8AB.
- (2) For paragraph 601RAE(4)(b) of the Act, the trustee company provisions are intended not to apply to the exclusion of the State or Territory laws, or the provisions of State or Territory laws, prescribed in Schedule 8AC, so far as those laws relate to an administrator of a person's estate.
- (3) For paragraph 601RAE(4)(b) of the Act, the trustee company provisions are intended not to apply to the exclusion of the State or Territory laws, or the provisions of State or Territory laws, prescribed in Schedule 8AD.

## Part 5D.2—Powers etc of licensed trustee companies

### Division 2.1—Annual Information Returns

#### 5D.2.01 Obligation on licensed trustee company to provide an annual information return if requested

- (1) For section 601SAB of the Act, this regulation prescribes the obligation of a licensed trustee company to provide an annual information return.
- (2) The licensed trustee company commits an offence if:
  - (a) a person mentioned in subregulation (3) requests an annual information return; and
  - (b) the company does not provide the return to the person in accordance with the requirements in subregulations (5), (6) and (8) and regulation 5D.2.02.

Penalty: 500 penalty units.

- (2A) A person commits an offence if the person is involved in a contravention of subregulation (1) by a licensed trustee company.

Penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—500 penalty units.

- (3) A person may request an annual information return if the person is one of the following:
  - (a) in the case of the estate of a deceased person:
    - (i) if the person died testate—a beneficiary under the deceased person's will; or
    - (ii) if the person died intestate—a person who, under a law of a State or Territory, has, is entitled to, or claims to be entitled to, an interest in the deceased person's estate; or
    - (iii) a person who has commenced a proceeding in a court, under a law of a State or Territory, to seek to be included as a beneficiary of the deceased person's estate;
  - (b) in relation to a charitable trust:
    - (i) the settlor, or one of the settlors, of the trust; or
    - (ii) a person who, under the terms of the trust, has power to appoint or remove a trustee of the trust or to vary (or cause to be varied) any of the terms of the trust; or
    - (iii) a person, or a person's appointed successor, who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustee or trustees before distributing or applying money or other property for the purposes of the trust;
  - (c) in the case of any other trust:

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- (i) the settlor, or one of the settlors, of the trust; or
  - (ii) a person who, under the terms of the trust, has power to appoint or remove a trustee of the trust or to vary (or cause to be varied) any of the terms of the trust; or
  - (iii) a beneficiary of the trust.
- (4) The person must make the request for an annual information return in writing to the licensed trustee company and may indicate in the request which one of the following forms of return is required:
  - (a) by sending it to the person's postal address;
  - (b) by emailing it to a nominated email address.
- (5) The annual information return must be provided within 30 days after the request from the person is received by the licensed trustee company, and then annually.
- (6) The annual information return must be for the last financial year that the licensed trustee company has provided a service to the person who has requested the return.
- (7) However, the licensed trustee company is not required to provide an annual information return covering a period:
  - (a) before 1 July 2010; or
  - (b) before it provided a service to the person.
- (8) The annual information return must be provided as follows:
  - (a) if requested in a particular form—in the form requested;
  - (b) in all other cases—by sending it to the person's postal address.

**5D.2.02 Information to be included in annual information return**

The annual information return provided by a licensed trustee company must include the following:

- (a) for a person mentioned in subparagraphs 5D.2.01(3)(a)(i) and (ii) and (c)(iii):
  - (i) details of income earned on the person's interest in the trust or estate; and
  - (ii) details of expenses in operating the trust or estate in relation to the person's interest in the trust or estate; and
  - (iii) the net value of the person's interest in the trust or estate;
- (b) for any other person mentioned in subregulation 5D.2.01(3):
  - (i) details of income earned on the trust's assets; and
  - (ii) details of expenses in operating the trust's assets, including remuneration, commission or other benefits received by the trustee company; and
  - (iii) the net value of the trust's assets;
- (c) if required under the terms of the trust—a copy of the trust's audit report and financial statements for the year.

## **Division 2.2—Common funds**

### **5D.2.03 Common funds**

This Division is made for section 601SCC of the Act.

### **5D.2.04 Establishment of common funds**

- (1) A licensed trustee company may:
  - (a) establish accounts within a common fund; and
  - (b) establish a common fund on the basis of units or another suitable basis.
- (2) If the common fund includes money that is not estate money and that is not otherwise held in trust, the licensed trustee company is taken to hold the money in trust for the person on whose behalf the money is invested in the common fund.

### **5D.2.05 Deciding details about common funds**

- (1) A licensed trustee company that is establishing a common fund commits an offence if, at the time of establishing the fund, it does not ensure that its Board makes a decision, in writing, about the following:
  - (a) any limitation on the amount of money that will form the common fund;
  - (b) the investment strategy for the common fund, including the following:
    - (i) the class of investments in which the common fund may be invested;
    - (ii) the procedure for valuing the investments;
    - (iii) if the trustee company is to seek expert advice about proposed investments—the type of expert advice to be sought;
  - (c) the amount of fees that are to be paid by:
    - (i) the common fund for the provision of traditional trustee company services; and
    - (ii) each account in the common fund;
  - (d) the manner in which a withdrawal can be made from the common fund;
  - (e) the procedure for auditing the common fund;
  - (f) if the common fund is to have a limited life—the duration of the common fund;
  - (g) if the common fund is to have a minimum amount that may be invested in the fund on account of each estate—the minimum amount.

Penalty: 500 penalty units.

- (2) The licensed trustee company commits an offence if it does not:
  - (a) within 14 days of making the decision:
    - (i) send a copy of the decision to ASIC; and
    - (ii) publish a copy of the decision on its website; and

- (b) if requested by a person entitled to request an annual information return under subregulation 5D.2.01(3), make a copy of the decision available to the person within 30 days of the request being received.

Penalty: 500 penalty units.

- (3) A person commits an offence if the person is involved in a contravention of subregulation (1) or (2) by a licensed trustee company.

Penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—500 penalty units.

### **5D.2.06 Operation of common funds**

#### *Compliance with the Act and regulations*

- (1) A licensed trustee company may, from time to time and without liability for breach of trust, pay into or withdraw an amount from a common fund in accordance with the Act and these Regulations.

Note: Payments into a common fund may be prohibited where this is contrary to the conditions on which the company holds the money: see subsection 601SCB(3) of the Act.

#### *Withdrawals*

- (2) A licensed trustee company may do the following:
  - (a) withdraw an amount from a common fund for a purpose relating to a trust or estate that is part of the fund and is managed or administered by the company;
  - (b) withdraw from a common fund an amount at credit in the fund on account of a trust matter or a managed estate and invest the amount on the separate account of the matter or estate.
- (3) A licensed trustee company commits an offence if it pays interest from the common fund on withdrawn amounts on or after the day of the withdrawal.

Penalty: 500 penalty units.

#### *Derivatives*

- (4) A licensed trustee company commits an offence if:
  - (a) when managing and administering a common fund, the trustee company enters into a derivative; and
  - (b) at the time of entering into the derivative:
    - (i) the trustee company did not do so for the purpose of managing a financial risk arising from:
      - (A) variations in the expenses of the common fund; or
      - (B) variations in the revenue obtainable from investments made by the common fund; and

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- (ii) the arrangement was not in accordance with the trustee company's equitable and other duties as a trustee under the relevant State or Territory provisions set out in Schedule 8AE.

Penalty: 500 penalty units.

*Applying income from investment*

- (5) A licensed trustee company commits an offence if it applies income from investment of a common fund other than for:
  - (a) payment of the company's fee for the proper administration and management of the fund under the Act, regulations and terms of the common fund, proportionate to the value of the work done or the services rendered; and
  - (b) allocation in accordance with subregulation (6) in relation to the accounts from which the fund is derived.

Penalty: 500 penalty units.

- (6) For paragraph (5)(b), the allocation must be made at intervals not exceeding 6 months.

*Investments*

- (7) A licensed trustee company commits an offence if:
  - (a) the trustee company invests money committed to its administration or management; and
  - (b) the investment is:
    - (i) not in accordance with a decision of the Board made for the purpose of regulation 5D.2.05; and
    - (ii) not made in a manner in which trust funds may be invested by a trustee under the relevant State or Territory provisions set out in Schedule 8AE.

Penalty: 500 penalty units.

*Valuation of investments*

- (8) A licensed trustee company commits an offence if it does not comply with the following requirements about the valuation of investments of common funds:
  - (a) by the third business day of each month, the trustee company must decide the value of the investments in each common fund as at the first business day of the month;
  - (b) subject to subregulation (9), in deciding the value of securities listed on a financial market for a month, the trustee company must take the last sale price of the first business day of the month published by the market operator as the value of the listed securities;
  - (c) the trustee company must make withdrawals from the common fund and further investments on the basis of the last valuation of investments made by the company.

Penalty: 500 penalty units.

- (9) The requirement in paragraph 8(b) does not apply if, in a particular month, the licensed trustee company decides it is in the best interests of each account in the common fund that a sale price used for the valuation be one taken later in that month.

*Realising investments*

- (10) A licensed trustee company may sell investments belonging to a common fund.
- (11) A licensed trustee company that has realised an investment in a common fund commits an offence if it does not credit or debit a profit or loss from the investment to the unit holders of the common fund:
- (a) in proportion to the amount invested in the common fund by the unit holders at the time of the realisation; and
  - (b) within 14 days of the realisation.

Penalty: 500 penalty units.

*Offence for involvement in contravention*

- (12) A person commits an offence if the person is involved in a contravention of subregulation (3), (4), (5), (7), (8) or (11) by a licensed trustee company.

Penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—500 penalty units.

**5D.2.07 Register of investments**

- (1) A licensed trustee company commits an offence if it does not maintain a register of investments for each common fund in accordance with subregulation (2).

Penalty: 500 penalty units.

- (2) The register must contain:
- (a) a record identifying each investment made by the common fund; and
  - (b) details of amounts held to the credit of the common fund.

Note: For other obligations relating to common funds: see section 601SCB of the Act.

- (3) A person commits an offence if the person is involved in a contravention of subregulation (1) by a licensed trustee company.

Penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—500 penalty units.

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**5D.2.08 Financial reports**

- (1) A licensed trustee company must comply with this regulation in relation to each common fund established by the company that is not a registered scheme.

*Account keeping*

- (2) The licensed trustee company commits an offence if it does not keep accounts that:
- (a) correctly record and explain its transactions for the common fund and the fund's financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited.

Penalty: 500 penalty units.

*Auditing*

- (3) The licensed trustee company commits an offence if it does not:
- (a) have the financial statements for a financial year for the common fund audited by a registered company auditor; and
  - (b) obtain an auditor's report for the financial statements.

Penalty: 500 penalty units.

*Lodging financial statements with ASIC*

- (4) The licensed trustee company commits an offence if it does not lodge the audited financial statements for the fund with ASIC within 3 months of the end of the financial year.

Penalty: 500 penalty units.

*Request for financial information*

- (5) A person who is entitled to request an annual information return under subregulation 5D.2.01(3) may request, in writing, that the licensed trustee company provide the information mentioned in subregulation (7).
- (6) The licensed trustee company commits an offence if it does not provide the information mentioned in subregulation (7) to the person within 30 days of receiving the request under subregulation (5).

Penalty: 500 penalty units.

- (7) The information that must be provided is:
- (a) a copy of the common fund's financial statements and audit report; and
  - (b) the classes of investments in which the common fund is invested and how the investment is divided between each class; and
  - (c) the trustee company's investment strategy for the common fund.

*Offence for involvement in contravention*

- (8) A person commits an offence if the person is involved in a contravention of subregulation (2), (3), (4), or (6) by a licensed trustee company.

Penalty:

- (a) for an individual—50 penalty units; and
- (b) for a body corporate—500 penalty units.

Regulation 5D.3.01

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## Part 5D.3—Regulation of fees charged by licensed trustee companies

### 5D.3.01 Modification of section 601TAB of the Act: disclosure to clients of changed fees

For paragraph 601YAB(1)(b) of the Act, Chapter 5D of the Act applies as if section 601TAB of the Act were modified by inserting after subsection (3) the following subsections:

- ‘(4) A licensed trustee company is not required to comply with paragraph (1)(a) or (b) or (3)(a) in relation to a client who is a lost client, or an agent who is a lost agent.

- (5) In subsection (4):

**lost client** means a client who, at a particular time, is uncontactable.

**lost agent** means an agent who, at a particular time, is uncontactable.

- (6) In subsection (5):

**uncontactable**, in relation to a person who is a client or an agent of a licensed trustee company, means:

- (a) the licensed trustee company:
  - (i) never had an address for the person; or
  - (ii) sent at least 1 written communication to the person’s last known address which was returned unclaimed and the person has not, since the communication, given the company a contact address; and
- (b) if the person is an agent, the licensed trustee company made a reasonable attempt to get the agent’s address from the agent’s client or the client’s carers.’

## **Part 5D.4—Obligations of receiving company after transfer**

### **5D.4.01 Preserving rights under dispute resolution systems and compensation arrangements**

- (1) This regulation applies if ASIC makes a determination under subsection 601WBA(1) of the Act that there is to be a transfer of estate assets and liabilities from a transferring company to a receiving company.
- (2) For section 601SAB of the Act, the obligations of the receiving company include the provision to retail clients of access to the receiving company's compensation arrangements, and dispute resolution system, in relation to a complaint arising from the provision of traditional trustee services by the transferring company.
- (3) In this regulation:

***compensation arrangements***, for a receiving company, means the arrangements the receiving company is required to have under subsection 912B(1) of the Act.

***dispute resolution system***, for a receiving company, means the dispute resolution system the receiving company is required to have under paragraph 912A(1)(g) of the Act.

## Chapter 6—Takeovers

### Part 6.2—Exceptions to the prohibition

#### 6.2.01A Prescribed requirements

For the purposes of paragraph (b) of item 19A of the table in section 611 of the Act, the requirement that the company is an eligible CSF company at the time of the acquisition of the relevant interest is prescribed.

#### 6.2.01 Prescribed circumstances (Act s 611)

For item 20 in the table in section 611 of the Act, the acquisition of a relevant interest in voting shares in a following body corporate is prescribed:

- (a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown in right of a State or Territory;
- (b) a corporation sole;
- (f) a foreign company or recognised company in respect of which an exemption from compliance with subsection 61(1) of the *Co-operation Act 1923* of New South Wales is in force;
- (g) a society within the meaning of *The Co-operative and Other Societies Act of 1967* or *The Co-operative Housing Societies Act of 1958* of Queensland;
- (i) an association within the meaning of *The Primary Producers' Co-operative Associations Act of 1923* of Queensland;
- (j) an association, society, institution or body incorporated under the *Associations Incorporation Act 1981* of Queensland;
- (k) a body incorporated or deemed to be incorporated by or under a law of South Australia other than the Corporations Law of South Australia, the Companies Code (South Australia) or a corresponding previous enactment of South Australia;
- (l) a society (other than a society that is a financial institution) within the meaning of section 5 of the *Building Societies Act 1976* of Western Australia;
- (n) a co-operative company registered under Part VI of the *Companies (Co-operative) Act 1943* or a corresponding previous enactment of Western Australia;
- (o) a society registered under the *Co-operative and Provident Societies Act 1903* of Western Australia;
- (p) an association, society, institution or body incorporated under the *Associations Incorporation Act 1895* of Western Australia;
- (q) a trustee bank registered under the *Trustee Banks Act 1984* of Tasmania;
- (r) a society (other than a society that is a financial institution) registered under the *Co-operative Industrial Societies Act 1928* of Tasmania;

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- (ra) a society registered under the *Co-operative Housing Societies Act 1963* of Tasmania;
- (s) an association, society, institution or body incorporated under the *Associations Incorporations Act 1964* of Tasmania;
- (t) a body corporate created by section 75Q of the *Conveyancing and Law of Property Act 1884* of Tasmania;
- (u) a society (other than a society that is a financial institution) registered under the *Co-operative Societies Act 1939* of the Australian Capital Territory;
- (v) an association, society, institution or body incorporated under the *Associations Incorporation Act 1953* of the Australian Capital Territory;
- (w) a corporation constituted under the *Unit Titles Act 1970* of the Australian Capital Territory;
- (x) a society registered under the *Co-operatives Act 1997* of the Northern Territory.

**6.2.02 Other prescribed circumstances (Act s 611)**

For item 20 in the table in section 611 of the Act, the acquisition by a person of a relevant interest in voting shares in a body corporate that results from the person holding an office specified in Schedule 3 is prescribed.

## **Part 6.6—Variation of offers**

### **6.6.01 Right to withdraw acceptance**

- (1) For paragraph 650E(3)(a) of the Act, a notice under paragraph 650E(2)(a) of the Act relating to securities entered on a register or subregister of a prescribed CS facility must be in a form approved by the operating rules of that prescribed CS facility for Part 6.6 of the Act (which may include an electronic form).
- (2) For paragraph 650E(4)(a) of the Act, if securities are entered on a register or subregister of a prescribed CS facility, a person to whom section 650E of the Act applies must take the action that the operating rules of the prescribed CS facility require in relation to the return of the securities.
- (3) For paragraph 650E(5)(a) of the Act, if a person withdraws an acceptance of an offer, the bidder must take any action that the operating rules of the prescribed CS facility require in relation to any of the securities:
  - (a) to which the acceptance relates; and
  - (b) that are entered on a register or subregister of the prescribed CS facility.

## **Part 6.8—Acceptances**

### **6.8.01 Acceptance of offers made under off-market bid**

For paragraph 653A(b) of the Act, if the operating rules of a prescribed CS facility require an acceptance of an offer to which paragraph 653A(a) applies to be made in a particular way, to the extent that the acceptance relates to the securities in the offer, the acceptance must be made in that way.

### **6.8.02 Acceptances by transferees and nominees of offers made under off-market bid**

For paragraph 653B(4)(a) of the Act, a notice relating to securities entered on a register or subregister of a prescribed CS facility must be in a form approved by the operating rules of the prescribed CS facility for Part 6.8 of the Act (which may include an electronic form).

## **Part 6.10—Review and intervention**

### **6.10.01 Application for review of Panel decision (Act s 657EA)**

For subsection 657EA(3) of the Act, an application for review of a decision of the Panel must not be made later than 2 business days after the day on which the decision was made.

## **Chapter 6A—Compulsory acquisitions and buy-outs**

### **Part 6A.1—Compulsory acquisitions and buy-outs after takeover bid**

#### **6A.1.01 Terms on which securities to be acquired**

For paragraph 661C(4)(a) of the Act, an election relating to securities entered on an electronic register or subregister of a prescribed CS facility must be in an electronic form approved by the operating rules of the prescribed CS facility.

## Chapter 6CA—Continuous disclosure

### 6CA.1.01 Continuous disclosure: other disclosing entities

For paragraph 675(2)(d) of the Act, the disclosure of information under section 675 of the Act is not required if:

- (a) a reasonable person would not expect the information to be disclosed; and
- (b) the information is confidential; and
- (c) at least 1 of the following applies:
  - (i) the disclosure of the information would contravene a law;
  - (ii) the information is about a matter of supposition;
  - (iii) the information is not definite enough to make disclosure appropriate;
  - (iv) the information relates to an incomplete proposal or a matter that is in the course of negotiation;
  - (v) the information was prepared or created for the internal management purposes of the entity;
  - (vi) the information is a trade secret.

## Chapter 6D—Fundraising

### Part 6D.2—Disclosure to investors about securities

#### 6D.2.01 Exemption—member shares

Part 6D.2 of the Act does not apply to an offer of a member share within the meaning given by regulation 12.8.03.

#### 6D.2.02 Exemption—foreign companies

Part 6D.2 of the Act does not apply to an offer under a dividend reinvestment plan or bonus share plan of fully-paid shares in a foreign company to an existing holder of shares in the foreign company.

#### 6D.2.03 Sophisticated investors

- (1) For subparagraph 708(8)(c)(i) of the Act, \$2.5 million is specified.
- (2) For subparagraph 708(8)(c)(ii) of the Act, \$250 000 is specified.

Note: Under subsection 708(8) of the Act, an offer of a body's securities does not need disclosure to investors under Part 6D.2 of the Act if it appears from a certificate given by a qualified accountant no more than 6 months before the offer is made that the person to whom the offer is made:

- (a) has net assets of at least the amount specified in regulations made for the purposes of subparagraph 708(8)(c)(i); or
- (b) has a gross income for each of the last 2 financial years of at least the amount specified in regulations made for the purposes of subparagraph 708(8)(c)(ii).

#### 6D.2.04 Simple corporate bonds—base prospectus

- (1) For subsections 713C(5) and (6) of the Act, this regulation specifies:
  - (a) the information that must be contained in a base prospectus for simple corporate bonds; and
  - (b) the statements that must be set out in a base prospectus for simple corporate bonds.
- (2) Subregulation (1) does not prevent a base prospectus from containing other material or setting out other statements.
- (3) A base prospectus must contain a table of contents and sections dealing with the following matters:
  - (a) Section 1: What you need to know;
  - (b) Section 2: About the bonds;
  - (c) Section 3: About the issuer;
  - (d) Section 4: Risks;
  - (e) Section 5: Other information you should consider;
  - (f) Section 6: Glossary.

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### *Section 1: What you need to know*

- (4) The following statements, or statements to the same effect as the following statements, must be set out in section 1 of a base prospectus:
- (a) This document will be the base prospectus for these bonds for 3 years from the time it is lodged with the Australian Securities and Investments Commission.
  - (b) There will be a separate offer-specific prospectus for each offer of bonds during the life of this base prospectus.
  - (c) To make an informed investment decision about these bonds, you should read the offer-specific prospectus and this base prospectus before investing.
  - (d) This base prospectus alone is not an offer. The offer is contained in the offer-specific prospectus, this base prospectus and other information that is incorporated by reference into the offer-specific prospectus and this base prospectus.
  - (e) To find out more about the pros and cons of investing in corporate bonds, visit ASIC's MoneySmart website: <http://moneysmart.gov.au>.

### *Section 2: About the bonds*

- (5) The following information must be contained in section 2 of a base prospectus:
- (a) information on the program of the bonds (if applicable), including any pre-planned future issues of bonds;
  - (b) details of the key aspects of the bonds, including information about the following matters:
    - (i) the interaction between the coupon rate and yield;
    - (ii) the interest rate of the bonds;
    - (iii) the term of the bonds;
    - (iv) the maturity and redemption of the bonds;
    - (v) events that will constitute default;
    - (vi) guarantees in relation to the bonds and information about any guarantors;
    - (vii) security and ranking.

**Note:** If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, a base prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

### *Section 3: About the issuer*

- (6) The following information must be contained in section 3 of a base prospectus:
- (a) brief information about the issuing body that includes a summary of the body's:
    - (i) business; and
    - (ii) management personnel (including directors and senior managers); and
    - (iii) business strategy; and
    - (iv) governance arrangements;
  - (b) the trust deed relating to the issuing body;

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- (c) an explanation of the role of the trustee;
- (d) additional information about the issuing body that relates to the investment decision, and where that information can be obtained, including:
  - (i) a reference to the issuing body's annual report and financial report; and
  - (ii) a reference to any half-year report that the issuing body lodged with ASIC after it lodged an annual financial report and before it lodged the most recent copy of the base prospectus with ASIC; and
- (e) the key financial ratios, calculated in accordance with regulation 6D.2.06, that are relevant to the issuing body, accompanied by:
  - (i) an explanation of those key financial ratios; and
  - (ii) information about how a change to those key financial ratios may affect the bonds to be issued under the base prospectus.

**Note:** If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, a base prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

- (7) The following statements, or statements to the same effect as the following statements, must be set out in section 3 of a base prospectus:

A publicly listed entity must release financial reports and continuously disclose information that may have an impact on its share or bond price. This information is available publicly on the relevant market exchange. You should consider this information when making an investment decision about bonds. While this information is important, it is not considered part of the disclosure document for the offer of bonds using this base prospectus.

*Section 4: Risks*

- (8) The following information must be contained in section 4 of a base prospectus:
- (a) the main risks associated with bonds and an explanation of those risks;
  - (b) the issuing body's main business risks;
  - (c) if other risks specific to bonds may be relevant to a consumer's investment decision—an explanation of those other risks;
  - (d) if other business risks may be relevant to a consumer's investment decision—an explanation of those other risks.

**Note:** If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, a base prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

*Section 5: Other information you should consider*

- (9) The following information must be contained in section 5 of a base prospectus:
- (a) an explanation of the consequences, relating to taxation, of investing in bonds;
  - (b) information relating to privacy in general and the issuing body's obligations under privacy laws;
  - (c) any applicable selling restrictions.

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**Note:** If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, a base prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

- (10) The following statements, or statements to the same effect as the following statements, must be set out in section 5 of a base prospectus:
- (a) More information on the tax implications associated with investing in bonds can be found on the Australian Taxation Office's website:  
<http://www.ato.gov.au>.
  - (b) The following is a list of material referred to, but not set out in full, in this base prospectus. However, the material (or relevant extracts of the material) is incorporated by reference and, as such, forms part of the offer of bonds covered by this base prospectus.
- (11) Section 5 of a base prospectus must contain a list of material referred to, but not set out in full, in the prospectus.

#### *Section 6: Glossary*

- (12) The information that section 6 of a base prospectus must contain is information that is adequate to explain the meanings of terms required to understand the content of:
- (a) the base prospectus; or
  - (b) the offer-specific prospectus that is combined with the base prospectus to create a 2-part simple corporate bonds prospectus.

**Note:** See section 713B of the Act.

### **6D.2.05 Simple corporate bonds—offer-specific prospectus**

- (1) For subsections 713D(6) and (7) of the Act, this regulation specifies:
- (a) the information that must be contained in an offer-specific prospectus for an offer of simple corporate bonds; and
  - (b) the statements that must be set out in an offer-specific prospectus for an offer of simple corporate bonds.
- (2) Subregulation (1) does not prevent an offer-specific prospectus from containing other material or setting out other statements.
- (3) An offer-specific prospectus for an offer of simple corporate bonds must contain a table of contents and sections dealing with the following matters:
- (a) Section 1: What you need to know;
  - (b) Section 2: Key dates and offer details;
  - (c) Section 3: Offer-specific information you should consider.

#### *Section 1: What you need to know*

- (4) The following statements, or statements to the same effect as the following statements, must be set out in section 1 of an offer-specific prospectus:

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- (a) This offer-specific prospectus is not a summary of the information contained in the base prospectus.
- (b) This offer-specific prospectus is only relevant for this offer of bonds.
- (c) A base prospectus applies to this offer of bonds.
- (d) This offer-specific prospectus provides offer details, key dates and other relevant information for the offer. The base prospectus for this offer provides additional information that is also critical to your decision. You should take all of the information in the base prospectus into consideration before making your decision in relation to this offer.
- (e) To find out more about the pros and cons of investing in corporate bonds, visit ASIC's MoneySmart website: <http://moneysmart.gov.au>.

*Section 2: Key dates and offer details*

- (5) The following information must be contained in section 2 of an offer-specific prospectus:
  - (a) the terms of the offer, which must include the following:
    - (i) the name of the issuing body;
    - (ii) the size of the series, or tranche, to which the offer relates;
    - (iii) the face value of the bonds;
    - (iv) the term of the bonds;
    - (v) the maturity date of the bonds;
    - (vi) guarantees in relation to the bonds and information about any guarantors;
    - (vii) the interest rate of the bonds;
    - (viii) interest payment dates;
    - (ix) events that will constitute default;
    - (x) details of any existing security;
    - (xi) the structure of the offer;
    - (xii) the minimum size of an application for the bonds;
    - (xiii) the prescribed financial market on which the bonds will be listed;
  - (b) a short explanation of the circumstances in which the bonds can be redeemed;
  - (c) any fees and costs associated with the offer;
  - (d) either:
    - (i) if a provision of the base prospectus contains information about any selling restrictions—a reference to the provision; or
    - (ii) if subparagraph (i) does not apply—information about any selling restrictions;
  - (e) an explanation of where investors can obtain additional information about the offer, including:
    - (i) a reference to financial advisors or other professional advisors; and
    - (ii) the contact details of the issuing body.

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Note: If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, an offer-specific prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

### *Section 3: Offer-specific information you should consider*

- (6) The following information must be contained in section 3 of an offer-specific prospectus:
- (a) any significant information necessary to update the information in the base prospectus;
  - (b) any notices that the issuing body has issued to explain changes that have occurred to the base prospectus since it was lodged with ASIC;
  - (c) the key financial ratios, calculated in accordance with regulation 6D.2.06, that are relevant to the issuing body, accompanied by:
    - (i) details of any change in those key financial ratios since the last offer-specific prospectus was issued; or
    - (ii) if no offer-specific prospectus has previously been issued—details of any change in those key financial ratios compared with the key financial ratios at the time the base prospectus was lodged with ASIC;
  - (d) an explanation of how the issuing body will use the funds raised by issuing the bonds;
  - (e) a brief summary of the effect of the offer on the issuing body;
  - (f) the ranking of the bonds and any other debt on issue;
  - (g) an explanation of any changes to the risks disclosed in the base prospectus;
  - (h) the amount that anyone has paid or agreed to pay, or the nature and value of any benefit that anyone has given or agreed to give, to:
    - (i) any directors or proposed directors of the issuing body; or
    - (ii) a person named in the prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus; or
    - (iii) a promoter of the issuing body; or
    - (iv) an underwriter (but not a sub-underwriter) to the issue or sale or a financial services licensee named in the prospectus as a financial services licensee involved in the issue or sale.

Note: If information mentioned in this subregulation is contained in another document that has been lodged with ASIC, an offer-specific prospectus may refer to that lodged document instead of setting out the information (see section 713E of the Act).

### **6D.2.06 Simple corporate bonds—key financial ratios relevant to issuing body**

- (1) For paragraphs 6D.2.04(6)(e) and 6D.2.05(6)(c), the key financial ratios that are relevant to an issuing body are:
- (a) the gearing ratio; and
  - (b) the working capital ratio; and
  - (c) the interest cover ratio.

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(2) The key financial ratios referred to in subregulation (1) must be calculated in accordance with subregulations (3) to (5), based on the issuing body's most recent financial statements or, if applicable, the issuing body's consolidated financial statements.

(3) The gearing ratio must be calculated using the following formula:

$$\frac{\text{Total liabilities}}{\text{Total equity}}$$

(4) The working capital ratio must be calculated using the following formula:

$$\frac{\text{Current assets}}{\text{Current liabilities}}$$

(5) The interest cover ratio must be calculated using the following formula:

$$\frac{\text{EBITDA}}{\text{Net interest expense}}$$

where:

**EBITDA** means earnings before net interest expense, taxes, depreciation and amortisation, for the period to which the issuing body's most recent financial statements relate.

**net interest expense** means the interest expense net of interest revenue, taking account of any related hedging arrangements recognised in the profit and loss statements, for the period to which the issuing body's most recent financial statements relate.

Note: The issuing body's most recent financial statements may relate to a period that is less than 12 months.

## Part 6D.3A—Crowd-sourced funding

### 6D.3A.01 Offers that are eligible to be made under Part 6D.3A of the Act

#### *Class of securities*

- (1) For the purposes of paragraph 738G(1)(c) of the Act, this subregulation specifies fully-paid ordinary shares as a class of securities.

Note: Paragraph 738G(1)(c) of the Act requires securities to be of a class specified in the regulations for an offer for the issue of the securities to be eligible to be made under Part 6D.3A of the Act.

#### *Other requirements*

- (2) For the purposes of paragraph 738G(1)(f) of the Act, this subregulation specifies the requirement that the funds sought to be raised by the offer are not intended by the company to be used, to any extent, by:
  - (a) the company to issue a credit facility (within the meaning of regulation 7.1.06) to a related party of the company that is not a wholly-owned subsidiary of the company; or
  - (b) a related party of the company to issue a credit facility (within the meaning of regulation 7.1.06) to the company or to another related party of the company.

### 6D.3A.02 Contents of CSF offer document—general

- (1) For the purposes of subsection 738J(2) of the Act, this regulation, and regulations 6D.3A.03, 6D.3A.04, 6D.3A.05 and 6D.3A.06, specify the information that must be contained in a CSF offer document for a CSF offer of securities (the *securities on offer*) made by a company (the *offering company*).
- (2) Subregulation (1) does not prevent a CSF offer document from containing other information.

Note 1: The other information may be contained in a section identified in subregulation (3), in another section of the offer document or in an appendix to the offer document.

Note 2: An appendix to the offer document is part of the offer document.

- (3) The offer document must contain a table of contents and sections dealing with the following matters:
  - (a) Section 1: Risk warnings;
  - (b) Section 2: Information about the offering company;
  - (c) Section 3: Information about the offer;
  - (d) Section 4: Information about investor rights.
- (4) Information required to be contained in a section of the offer document may be presented in any order within the section.

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Note: The contents of the CSF offer document may be published in a commonly accessible digital format.

**6D.3A.03 Contents of CSF offer document—Section 1: Risk warnings**

The following statement must be set out in section 1 of the offer document:

“Crowd-sourced funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is speculative and carries high risks.

You may lose your entire investment, and you should be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating the platform on which this offer is published becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.”.

**6D.3A.04 Contents of CSF offer document—Section 2: Information about the offering company**

- (1) The following information must be contained in section 2 of the offer document:
  - (a) the name, ACN and type of the offering company;
  - (b) the address of the registered office of the offering company;
  - (c) the address of the principal place of business of the offering company;
  - (d) the names of each of the following persons, as well as his or her skills and experience relevant to the management of the offering company:
    - (i) each director of the offering company, and any person proposed by the offering company to be a director of the offering company;
    - (ii) each senior manager of the offering company, and any person proposed by the offering company to be a senior manager of the offering company;
  - (e) a description of the offering company’s business and its organisational structure;
  - (f) a description, or a summary, of the capital structure of the offering company (relating to both equity and debt in the offering company),

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including the classes (if any) of securities in the offering company, and the rights associated with the securities in the offering company;

- (g) a description of the main risks facing the offering company's business;
- (h) a description, or a summary, of the key provisions of the offering company's constitution that deal with any rights and liabilities that attach to the securities in the issuing company;
- (i) if the offering company is a proprietary company, a description or summary of the following:
  - (i) the key provisions of any agreement or proposed agreement between shareholders that deal with any rights and liabilities that attach to, or may affect, the securities in the issuing company;
  - (ii) any right of the directors of the company to refuse to register a transfer of shares in the company.

**Note:** For paragraph (a), the offering company will be one of the types set out in subsection 112(1) of the Act.

- (1A) If a summary of the information in paragraph (1)(f) is contained in section 2 of the offer document, then:
  - (a) the information in full must be contained in another section of, or in an appendix to, the offer document; and
  - (b) section 2 of the offer document must include a cross reference to the location of that information.
- (2) Section 2 of the offer document must also contain a copy, or a summary, of:
  - (a) if the offering company was registered before the financial year in which the CSF offer is to be made—the financial statements, that comply with the accounting standards, for the company for the most recently completed financial year; or
  - (b) if the offering company was registered during the financial year in which the CSF offer is to be made—the financial statements for the company for at least so much of that financial year as ends 1 month before the CSF offer is to be made.
- (2A) If a summary of the financial statements mentioned in subregulation (2) is contained in section 2 of the offer document, then:
  - (a) a copy of the statements must be contained in another section of, or in an appendix to, the offer document; and
  - (b) section 2 of the offer document must include a cross reference to the location of the statements.
- (3) Section 2 of the offer document must also contain the following information:
  - (a) if the offering company, or any person referred to in paragraph (1)(d), has been convicted of an offence against the Act—details of the offence, including a description of the circumstances giving rise to it;
  - (b) if a civil penalty under the Act has been imposed on the offering company, or any person referred to in paragraph (1)(d)—details of the penalty, including a description of the circumstances giving rise to it;

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- (c) if a person referred to in paragraph (1)(d) is or has been disqualified from managing corporations under Part 2D.6 of the Act—details of the disqualification, including a description of the circumstances giving rise to it;
- (d) if a person referred to in paragraph (1)(d) is or has been subject to a banning order under section 920A of the Act—details of the order, including a description of the circumstances giving rise to it;
- (e) if a person referred to in paragraph (1)(d) is or has been subject to a court order under paragraph 921A(2)(a) of the Act—details of the order, including a description of the circumstances giving rise to it;
- (f) if a person referred to in paragraph (1)(d) is or has been a director, secretary or senior manager of a corporation when it became insolvent—details of the insolvency, including a description of the circumstances giving rise to it;
- (g) if ASIC has accepted under subsection 93AA(1) of the ASIC Act an undertaking given by the offering company, or by any person referred to in paragraph (1)(d) in relation to the offering company—details of the undertaking, including a description of the circumstances giving rise to it;
- (h) if, during the 10-year period before the CSF offer is to be made, the offering company has:
  - (i) been convicted of any offence other than one against the Act; or
  - (ii) had imposed on it any penalty under any law other than the Act;details of the offence or penalty, including a description of the circumstances giving rise to it;
- (i) if, during the 10-year period before the CSF offer is to be made, any person referred to in paragraph (1)(d) has, in any of the capacities referred to in that paragraph with any company:
  - (i) been convicted of any offence other than one against the Act; or
  - (ii) had imposed on him or her a penalty under any law other than the Act;details of the offence or penalty, including a description of the circumstances giving rise to it.

**6D.3A.05 Contents of CSF offer document—Section 3: Information about the offer**

- (1) The following information must be contained in section 3 of the offer document:
  - (a) a description, or a summary, of the securities on offer, including information on the rights associated with those securities;
  - (b) the minimum subscription amount for the offer (see subsection 738L(8) of the Act);
  - (c) the maximum subscription amount for the offer (see subsection 738L(7) of the Act);
  - (d) the period that the offering company expects the offer to remain open;
  - (e) a description of how the offering company intends to use the proceeds from the offer (including a description of how the company intends to use any

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proceeds of the offer in excess of the minimum subscription amount for the offer).

- (1A) If a summary of the information mentioned in paragraph (1)(a) is contained in section 3 of the offer document, then:
- (a) the information in full must be contained in another section of, or in an appendix to, the offer document; and
  - (b) section 3 of the offer document must include a cross reference to the location of that information.
- (2) If any of the proceeds of the offer will be paid, directly or indirectly, to any of the following persons, section 3 of the offer document must also contain a description of the payment:
- (a) a person referred to in paragraph 6D.3A.04(1)(d);
  - (b) the CSF intermediary that will publish the offer, or any other person that is a related party (within the meaning of subsection 738G(3) of the Act) of that CSF intermediary;
  - (c) a person promoting or marketing the offer;
  - (d) a person that holds securities entitling the person to exercise more than 20% of the rights to vote at a general meeting of the offering company;
  - (e) a person that controls the offering company;
  - (f) any other person that is a related party (within the meaning of subsection 738G(3) of the Act) of the offering company.
- (3) Without limiting subregulation (2), proceeds of the offer will be paid indirectly to a person if those proceeds will be paid for the benefit of the person by an intermediary entity such as a nominee, trust or partnership.
- (4) Section 3 of the offer document must also contain a description of each previous CSF offer (if any) of securities by the following entities:
- (a) the offering company;
  - (b) for each person referred to in paragraph 6D.3A.04(1)(d) for the offering company—any other company that had, at the time of a previous CSF offer by that other company, the person as a director or senior manager;
  - (c) for each person that controls the offering company—any other company that the person controlled at the time of a previous CSF offer by that other company;
  - (d) any other company that is a related party (within the meaning of subsection 738G(3) of the Act) of the offering company.
- (5) The description of a previous CSF offer referred to in subregulation (4) must include a description of the outcome of the offer.

**6D.3A.06 Contents of CSF offer document—Section 4: Information about investor rights**

- (1) The following information must be contained in section 4 of the offer document:

- (a) a description of the cooling off rights contained in section 738ZD of the Act;
  - (b) a description of the effect of subsection 738ZA(5) of the Act (responsible intermediary for CSF offer to provide communication facility).
- (2) To the extent that any of the following provisions apply to the offering company, section 4 of the offer document must also contain a description of the effect of those provisions:
- (aa) subsection 301(2) of the Act (about when financial reports have to be audited);
  - (a) subsection 301(5) of the Act (about financial accounts not required to be audited for up to 5 years);
  - (b) subsections 250N(5) and (6) of the Act (about company not required to hold an AGM for up to 5 years);
  - (c) subsections 314(1AF) and (2A) of the Act (about annual financial reporting to members and making the reports accessible online);
  - (d) item 19A of the table in section 611 of the Act (about the exception to the prohibition on acquiring relevant interests in voting shares);
  - (e) section 738ZK of the Act (about Chapter 2E of the Act applying to proprietary companies that have one or more CSF shareholders).

Note: The provisions mentioned in paragraph (2)(a) or (b) only apply to an offering company covered under section 738ZI of the Act.

#### **6D.3A.07 Obligation of CSF intermediary relating to their platforms—applicant risk acknowledgement**

- (1) For the purposes of paragraph 738ZA(3)(b) of the Act, this regulation sets out the requirements for an acknowledgement by a person making an application pursuant to a CSF offer.
- (2) The following statement must be set out in the acknowledgement:

“I have read the CSF offer document. I understand this document is not a prospectus and contains less information than a prospectus.

I have read the risk warning and I understand that it contains some of the important information for making a decision about investing. However:

- (a) I understand that crowd-sourced funding is risky and that I may lose my entire investment; and
- (b) I confirm that I could bear that loss without suffering undue hardship; and
- (c) I understand that I may never be able to sell my shares and the value of my investment may be diluted over time.

I am aware that I can use the communication facility to ask questions and that there is a 5 business day cooling off period in relation to this investment.”.

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**6D.3A.08 Gatekeeper obligation of CSF intermediary—checks**

- (1) For the purposes of subsection 738Q(1) of the Act, this regulation prescribes the checks that a CSF intermediary needs to conduct before publishing any of the following documents (the *offer document*) on a platform of the intermediary:
  - (a) a CSF offer document (or a document purporting to be a CSF offer document);
  - (b) a supplementary CSF offer document (or a document purporting to be a supplementary CSF offer document);
  - (c) a replacement CSF offer document (or a document purporting to be a replacement CSF offer document);for a CSF offer of securities made by a company (the *offering company*).

*Identity of offering company*

- (2) The CSF intermediary must check the following information:
  - (a) the name, ACN and type of the offering company;
  - (b) the address of the registered office of the offering company;
  - (c) the address of the principal place of business of the offering company.

*Eligibility to crowd fund*

- (3) The CSF intermediary must check whether:
  - (a) the company satisfies the requirements in paragraphs 738H(1)(a), (b), (c), (d), (e) and (f) of the Act; and
  - (b) the offer document satisfies the requirements in subsection 738J(2) and section 738K of the Act.

*Information on directors etc.*

- (4) The CSF intermediary must check the following:
  - (a) the names and addresses of each person referred to in paragraph 6D.3A.04(1)(d);
  - (b) whether the offer document contains the information required by subregulation 6D.3A.04(3).

**6D.3A.09 Gatekeeper obligation of CSF intermediary—reasonable standard of checks**

- (1) For the purposes of subsection 738Q(2) of the Act, this regulation prescribes what constitutes a reasonable standard in relation to all the checks referred to in regulation 6D.3A.08.
- (2) To the extent that information to be checked is of a kind that is included in a register kept by ASIC under the Act, or on ASIC's website, a reasonable standard is to check:
  - (a) whether the information is included in that register or on that website; and

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- (b) if the information is so included—whether the information is contrary to any other information that the CSF intermediary has; and
- (c) if the information is the name and address of a person referred to in paragraph 6D.3A.04(1)(d)—whether the name and address is consistent with the name and address used by that person on an original, a certified copy or an authenticated electronic copy of:
  - (i) a primary photographic identification document; or
  - (ii) both a primary non-photographic identification document and a secondary identification document.
- (3) Subject to subregulation (4), for all other kinds of information or matters to be checked, a reasonable standard is to:
  - (a) explain in writing to the offering company what information or matters are required, including the level of detail required for such information and matters; and
  - (b) require the offering company to provide such information and matters to the CSF intermediary in accordance with a reasonable process that the CSF intermediary has developed, documented and implemented for this purpose.
- (4) A reasonable standard for checking whether the offer document (see subregulation 6D.3A.08(1)) satisfies the requirements in section 738K of the Act is to check the offer document in accordance with a reasonable process that the CSF intermediary has developed, documented and implemented for this purpose.
- (5) In this regulation:

***certified copy*** has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

***primary non-photographic identification document*** has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

***primary photographic identification document*** has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

***secondary identification document*** has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

#### **6D.3A.10 Obligation of CSF intermediary relating to their platforms—general CSF risk warning**

- (1) For the purposes of subsection 738ZA(2) of the Act, this regulation specifies the terms of a general CSF risk warning.
- (2) Those terms are as follows:

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“Crowd-sourced funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is speculative and carries high risks.

You may lose your entire investment, and you should be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating this platform becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.”.

## **Part 6D.5—Fundraising—miscellaneous**

### **6D.5.01 Warrants that are securities**

For paragraph 742(1)(b) of the Act, a warrant that is a security is exempted from all provisions of Chapter 6D of the Act.

### **6D.5.02 Modification of paragraph 708(8)(c) of the Act: renewal period for accountants' certificates**

For paragraph 742(1)(c) of the Act, section 708 of the Act applies as if paragraph 708(8)(c) of the Act were modified by omitting “6 months” and substituting “2 years”.

### **6D.5.03 Modification of section 738X of the Act: requirement to notify right to withdraw application only applies if defect is materially adverse**

For the purposes of paragraph 742(1)(c) of the Act, Chapter 6D of the Act applies as if section 738X of the Act were modified so that subsection 738X(7) of the Act only applies if the defect in the CSF offer document referred to in paragraph 738X(5)(a) of the Act is materially adverse from the point of view of an investor.