

Corporations (Change of Incorporation) Regulations 2002

2002 No. 168

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 168

Issued by the Authority of the Parliamentary Secretary to the Treasurer

Corporations Act 2001

Corporations (Change of Incorporation) Regulations 2002

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing, among other things, matters that are required by the Act to be prescribed by regulations, or necessary or convenient to be prescribed by regulations for carrying out or giving effect to the Act.

Section 5H(1)(a) of the Act states that a body is taken to be registered as a company of a particular type under the Act if a law of a State or Territory provides that the body is a deemed registration company for the purposes of this section.

The purpose of the regulations is to facilitate the registration of Westpac Banking Corporation as a company under the *Corporations Act 2001* to modernise its company structure.

Westpac was established as the Bank of New South Wales, a body politic and corporate or joint stock company under the *Bank of New South Wales Act 1850* (New South Wales). Joint stock companies are an older form of corporate entity with some but not all features of a modern company. Westpac considers the modernisation of its company structure to be essential.

The *Westpac Banking Corporation (Transfer of Incorporation) Act 2000* (NSW) provides for the registration of Westpac as a public company limited by shares under the Act. It makes Westpac a deemed registration company for the purposes of section 5H.

The Regulations:

- exempt Westpac from the requirement in section 148 of the Act that it have "Limited" in its name by deleting section 148 (2);
- allow Westpac to retain its Australian Registered Business Number (ARBN) as its Australian Company Number (ACN) after the conversion, by inserting a new subsection 118(1)(B) to the Act;
- allow the continued use of the letters ARBN instead of ACN on public documents and negotiable instruments for a period of two years following the date of registration by inserting subsection 2(A) after subsection 153 (2);
- address a series of issues to do with share capital including specifying that:

- provisions of section 254C of the Act which abolishes par value of shares, apply to shares in the Westpac issued both before and after the date of registration, so that they have no par value;
- the amount paid on a share issued before the date of registration is the sum of all amounts paid to Westpac at any time for the share (but not including any premium);
- the amount unpaid on a share issued before the date of registration is the difference between issue price of the share (but not including any premium) and the amount paid on the share;

the liability of a Westpac shareholder for calls (i.e. demands for payment) in respect of money unpaid on shares is not affected by the removal of par value;

after the registration of Westpac as a company any amount standing to the credit of Westpac in Westpac's Share Premium Reserve and Capital Redemption Reserve becomes part of Westpac's share capital;

- exempt Westpac from the requirement in section 5H(2)(a) of the Act that a notice giving the name and address of each person who is to be a member of a company on registration be lodged before the registration day; and
- specify that a benefit given to a Westpac company director in accordance with an agreement with the director on the terms referred to in Clause 56 (4B) of the Deed of settlement (whether entered into before, on, or after that date) is taken to be a benefit under section 200E of the Act for the purposes of Division 2 of Part 2D.2 of the Act. A reference in this regulation to the giving of a benefit is a reference to the giving of a benefit under Division 2 of Part 2D.2 of the Act.

The State and the Northern Territory Ministers on the Ministerial Council for Corporations have been consulted on the proposed regulations and have given their agreement, as required by the Corporations Agreement between State, Northern Territory and Commonwealth Ministers.

Details of the proposed Regulations are in the Attachment.

Details of the Regulations are set out in the Attachment.

The Regulations commence on gazettal.

ATTACHMENT

Corporations (Change of Incorporation) Regulations 2002

Regulation 1 - Name of regulations

Regulation 1 provides for the name of the regulations.

Regulation 2 - Commencement

Regulation 2 provides that the regulations will commence on gazettal.

Proposed Regulation 3 Definition

Regulation 3 provides that in these Regulations: Act means the Corporations Act 2001.

Regulation 4

Regulation 4 provides that for subsection 5H (5) of the *Corporations Act 2001*, the operation of the Act is modified in accordance with Schedule 1 to facilitate the registration of Westpac Banking Corporation.

Schedule 1

Item 1 in Schedule 1 omits paragraphs 511(2) (a), (h) and (i).

Item 2 in Schedule 1 inserts in section 9, after the definition of deed of company arrangement:

"deed of settlement has the meaning given by subsection 3 (1) of the *Westpac Banking Corporation (Transfer of Incorporation) Act 2000 of New South Wales*."

Item 3 in Schedule 1 inserts in section 9, after the definition of registrable body:

"registration date has the meaning given by subsection 3 (1) of the *Westpac Banking Corporation (Transfer of Incorporation) Act 2000 of New South Wales*."

Item 4 in Schedule 1 inserts in section 9, after the definition of serious fraud:

"share means a share, within the meaning given by the deed of settlement, in the capital of Westpac."

Item 5 inserts in section 9, after definition of wages:

"Westpac means Westpac Banking Corporation."

Item 6 in Schedule 1 inserts after subsection 118 (I):

"(1A) ASIC must, on the registration day, issue a certificate of registration in accordance with paragraph (1) (c) to a body that, under section 5H, is taken to be registered.

(1B) For paragraph (1) (a), the ACN for Westpac is to be 007 457 141."

Item 7 in Schedule 1 substitutes the following for section 122:

"122 INCORPORATION AND OTHER EXPENSES

(1) Westpac may use any amount standing to the credit of Westpac in the Share Premium Reserve, mentioned in clause 98(i) of the deed of settlement, immediately before the registration date:

(a) to provide for the premium payable on the redemption of debentures or redeemable preference shares issued before the registration date; and

(b) to write off.

(i) the preliminary expenses of Westpac incurred before the registration date; and

(ii) expenses incurred, payments made or discounts allowed on or before the registration date for the issue of shares in, or debentures of, Westpac."

Item 8 in Schedule 1 omits in subsection 148 (1):

"(2) or"

Item 9 in Schedule 1 omits subsection 148 (2).

Item 10 in Schedule 1 inserts after subsection 153 (2):

"(2A) However, Westpac may use the expression "Australian Registered Body Number" followed by its ARBN instead of the expression "Australian Company Number" followed by its ACN until 2 years after the registration date."

Item 11 in Schedule 1 inserts after subsection 200E (1):

(1A) A benefit given to a director of the company on or after the registration date, under an agreement entered into in accordance with clause 56 (4B) of the deed of settlement before, on or after the registration date, is taken to have been approved under subsection (1)"

Item 12 in Schedule 1 inserts after section 254B:

"254BA REFERENCES IN CONTRACTS AND OTHER DOCUMENTS TO PAR VALUE

(1) This section applies for the purpose of interpreting and applying the following:

(a) a contract entered into by Westpac before the registration date;

(b) a trust deed or other document executed by or in relation to Westpac before the registration date;

(c) the deed of settlement.

(2) A reference to the par value of a share issued by Westpac is taken to be a reference to:

- (a) if the share is issued before the registration date - the par value before the registration date; or
 - (b) if the share is issued on or after the registration date but is a share in a class of shares issued before the registration date - the par value of a share in the class of shares before the registration date; or
 - (c) if the share is issued on or after the registration date and is not a share in a class of shares issued before the registration date - the par value for a share in the class of shares determined by the directors.
- (3) A reference to share premium is taken to be a reference to any residual share capital in relation to the share.
- (4) A reference to a right to a return of capital on a share issued by Westpac is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par value.
- (5) A reference to the aggregate par value of Westpac's issued share capital is taken to be a reference to that aggregate as it existed immediately before the registration date and:
- (a) increased to take account of the par value of shares issued on or after the registration date; and
 - (b) reduced to take account of the par value of shares cancelled on or after the registration date.

Item 13 in Schedule 1:

Section 254C

omits:

"company"

and inserts:

"company, whether issued before, on or after the registration date."

Item 14 in Schedule 1 inserts After Part 2H. 1:

"PART 2H.1A SHARE CAPITAL

254HA Share capital of Westpac

On and after the registration day, the share capital of Westpac is taken to include any amounts in:

- (a) the Capital Redemption Reserve mentioned in clause 99 (3) of the deed of settlement; or
- (b) the Share Premium Reserve mentioned in clause 98 (1) of the deed of settlement."

Item 15 in Schedule 1 inserts after subsection 254M (1):

"(1A) For a share issued by Westpac before the registration date:

(a) the amount paid on the share is the sum of all amounts paid to Westpac at any time for the share (but not including any premium); and

(b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share.

(1B) The liability of the shareholder for calls on the share is not affected by the removal of the par value of the share by section 254C."