



Corporations Law Amendment (ASX) Act 1997

No. 199, 1997

An Act to amend the Corporations Law

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Corporations Law Amendment (ASX) Act 1997

No. 199, 1997

An Act to amend the Corporations Law

[Assented to 16 December 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporations Law Amendment (ASX) Act 1997*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

- (1) The Corporations Law, and each Act that is specified in a Schedule to this Act, is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) In this Act:

Corporations Law means the Corporations Law set out in section 82 of the *Corporations Act 1989*.

Schedule 1—Amendment of the Corporations Law

1 Section 9 (paragraph (a) of the definition of *member*)

Repeal the paragraph, substitute:

- (a) when used in Chapter 6 or Chapter 7 (except Part 7.1A and the provisions mentioned in paragraph (aa) of this definition) in relation to a securities exchange or stock exchange, means:
 - (i) a person who is a member organisation of that exchange; or
 - (ii) a person who is a partner in a partnership that is a member organisation of that exchange; or
- (aa) when used in section 769, 769A or 772A, subsection 776(2), section 779, subsection 786(8) or 910(3) or section 913 or 1115, in relation to a securities exchange or stock exchange, means:
 - (i) a person who is a member organisation of that exchange; or
 - (ii) a person who is a partner in a partnership that is a member organisation of that exchange; or
 - (iii) a person who is recognised under the business rules of the exchange as a suitably qualified affiliate of the exchange and who is involved in the carrying on of a business of dealing in securities (whether as an employee, director or in any other capacity); or

2 Section 9 (paragraph (a) of the definition of *member organisation*)

Repeal the paragraph, substitute:

- (a) in relation to a securities exchange or stock exchange:
 - (i) a person who is recognised under the business rules of the exchange as a suitably qualified participant of the exchange and who carries on a business of dealing in securities otherwise than in partnership; or
 - (ii) a partnership that is recognised under the business rules of the exchange as a suitably qualified participant of the

exchange and that carries on a business of dealing in securities; and

3 Section 761 (paragraph (a) of the definition of *business rules*)

Repeal the paragraph, substitute:

- (a) in the case of a body corporate that conducts, or proposes to conduct, a stock market—any rules, regulations or by-laws that are made by the body corporate, or that are contained in its constitution, and that govern:
 - (i) the activities or conduct of that stock market; or
 - (ii) the activities or conduct of persons in relation to that stock market;other than rules, regulations or by-laws that are listing rules of the body corporate; and

4 After Part 7.1

Insert:

**Part 7.1A—The Australian Stock Exchange
Limited
Division 1—Change of company type**

766A Exchange may change its type under this Division

Under this Division, the Exchange may change its type to a public company limited by shares.

Note: A change of type under this Division will override subsection 36B(2) of the *Securities Industry Act 1980*, so far as that subsection deems the Exchange to be a company limited by guarantee.

766B Applying for change of type

Lodging application

- (1) To change its type, the Exchange must lodge an application with the Commission under the Corporations Law of the Capital Territory.

Contents of the application

- (2) The application must be accompanied by the following:
 - (a) a copy of the 18 October 1996 special resolutions dealing with the change of type;
 - (b) a statement signed by the directors of the Exchange that in their opinion the Exchange's creditors are not likely to be materially prejudiced by the change of type and that sets out their reasons for that opinion;
 - (c) the following information:
 - (i) the total number of shares to be issued upon the change of type;
 - (ii) the amount of capital to be applied in paying up each share;
 - (iii) the amount per share remaining unpaid;
 - (d) a copy of proposed amendments of the constitution, business rules and listing rules of the Exchange;
 - (e) a copy of the Minister's written approval of the proposed amendments.
- (3) The following provisions do not apply to the proposed amendments referred to in paragraph (2)(d):
 - (a) section 774;
 - (b) any requirement in the constitution, business rules or listing rules of the Exchange that would normally apply to the making of amendments of the constitution, business rules or listing rules.

766C Change of type

- (1) As soon as practicable after it receives an application in accordance with section 766B, the Commission must publish a notice in the *Gazette*, notifying a date as the date on which the change of type will take effect.
- (2) The change of type takes effect at the beginning of the day notified in the *Gazette*.
- (3) The Commission must appropriately alter the details of the Exchange's registration and give the Exchange a new certificate of registration.

- (4) A court is not to make an order reversing the alteration of the details of the Exchange's registration made by the Commission under subsection (3).

766D Effect of change of type

- (1) The change of type does not:
- (a) create a new legal entity; or
 - (b) affect the Exchange's existing property, rights or obligations (except as provided by subsection (2)); or
 - (c) render defective any legal proceedings.
- (2) On the change of type, the following things happen:
- (a) the liability of each member and past member as a guarantor on the winding up of the Exchange is extinguished;
 - (b) the members cease to be members of the Exchange;
 - (c) shares are taken to be issued equally among all persons who satisfy the criteria set out in Articles 83 and 84 of the Exchange that were added by the 18 October 1996 special resolutions dealing with the change of type, and each of those persons becomes a member of the Exchange and is taken to have consented to be a member of the Exchange;
- Note: The Exchange must maintain a register of members that complies with subsection 216B(3).
- (d) the proposed amendments of the constitution, business rules and listing rules of the Exchange take effect.
- (3) If shares are issued according to this section, a court is not to make an order reversing the issue of the shares.
- (4) This Division does not, by implication:
- (a) prevent the Exchange from changing its constitution, business rules or listing rules in accordance with this Law; or
 - (b) prevent the Exchange from later changing its type in accordance with this Law; or
 - (c) prevent the Exchange from being registered as a company under the Corporations Law of another jurisdiction, and ceasing to be incorporated under the Corporations Law of this jurisdiction, as provided by sections 147 and 147A.

Division 2—Limitations on holding shares in the Exchange

766E Unacceptable ownership situation

- (1) For the purposes of this Division, an unacceptable ownership situation exists if any one person is entitled to more than 5% of the voting shares in the Exchange.
- (2) For the purposes of this Division, a person's entitlement to voting shares in the Exchange is determined in the same way as a person's percentage entitlement to voting shares in a company is determined for the purposes of Part 6.2.

766F Causing an unacceptable ownership situation

A person or persons (the *acquirers*) are guilty of an offence if:

- (a) the acquirers acquire any shares in the Exchange, or enter into a relevant agreement to acquire shares in the Exchange; and
- (b) the acquisition has the result that:
 - (i) a person who was not previously entitled to more than 5% of the voting shares in the Exchange becomes entitled to more than 5% of the voting shares in the Exchange; or
 - (ii) a person who was previously entitled to more than 5% of the voting shares in the Exchange becomes entitled to a greater percentage of the voting shares in the Exchange; and
- (c) the acquirers knew the acquisition would have that result, or were reckless as to whether the acquisition would have that result.

766G Exchange's obligation to avoid unacceptable ownership situation

- (1) The Exchange must take all reasonable steps to ensure that an unacceptable ownership situation does not exist in relation to the Exchange.
- (2) If the Exchange knowingly or recklessly contravenes subsection (1), the Exchange is guilty of an offence.

766H Remedial orders

- (1) If an unacceptable ownership situation exists in relation to the Exchange, the Court may, on application by an eligible applicant, make such orders as the Court considers appropriate for the purpose of ensuring that the unacceptable ownership situation ceases to exist. For this purpose, *eligible applicant* means:
 - (a) the Minister; or
 - (b) the Commission; or
 - (c) the Exchange; or
 - (d) a shareholder of the Exchange.
- (2) The Court's orders may include:
 - (a) an order directing the disposal of shares; or
 - (b) an order restraining the exercise of any rights attached to shares; or
 - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
 - (d) an order that any exercise of rights attached to shares be disregarded; or
 - (e) an order directing any person to do or refrain from doing a specified act, for the purpose of securing compliance with any other order made under this section; or
 - (f) an order containing such ancillary or consequential provisions as the Court thinks just.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) Before making an order under this section, the Court may direct that notice of the application be given to such persons as the Court thinks fit or be published in such manner as the Court thinks fit, or both.
- (5) The Court may, by order:
 - (a) rescind, vary or discharge an order made by the Court under this section; or
 - (b) suspend the operation of such an order.

766I This Division extends to things outside Australia etc.

This Division applies, according to its tenor, in relation to:

- (a) natural persons, whether resident in this jurisdiction or in Australia or not and whether Australian citizens or not; and
- (b) all bodies corporate and unincorporated bodies, whether formed or carrying on business in this jurisdiction or in Australia or not; and
- (c) acts and omissions outside this jurisdiction, whether in Australia or not.

5 After section 769

Insert:

769A Ongoing requirements to be observed by securities exchange

- (1) A securities exchange must:
 - (a) to the extent reasonably practicable, do all things that are necessary to ensure that each stock market of the exchange is an orderly and fair market; and
 - (b) have adequate arrangements for monitoring and enforcing compliance with its business rules and listing rules; and
 - (c) have adequate arrangements for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of:
 - (i) the exchange's business rules; or
 - (ii) this Chapter; or
 - (iii) the conditions of a licence held by the member; and
 - (d) have adequate arrangements for the settlement of transactions that result from trading in securities on a stock market of the exchange; and
 - (e) have adequate arrangements for investigating complaints by investors relating to the transaction of the business of investors on a stock market of the exchange.
- (2) A contravention of subsection (1) is not an offence.

769B Minister's directions to comply with ongoing requirements

- (1) If the Minister is of the opinion that a securities exchange is not complying with the requirements of section 769A, the Minister may publish a notice in the *Gazette*, directing the exchange to do

specified things that the Minister believes will promote compliance by the exchange with those requirements.

- (2) A securities exchange must comply with a direction under subsection (1).
- (3) If a securities exchange contravenes a direction under subsection (1), the Court, on application by the Commission, may order the exchange to comply with the direction.

769C Annual report by securities exchange about compliance with ongoing requirements

- (1) Within 3 months after the end of each of its financial years, a securities exchange must prepare and give the Commission a report on the extent to which the exchange complied with the requirements of section 769A during the financial year. The Commission must give the report to the Minister.
- (2) The report must be accompanied by:
 - (a) any other information and statements prescribed by the regulations; and
 - (b) any audit report required by the Minister under subsection (3).
- (3) The Minister may require a securities exchange to obtain an audit report on the annual report and on any information or statements required under paragraph (2)(a). The audit report must be prepared, as the Minister requires, either by the Commission or by some other person or body nominated by the Minister.

769D Special report by securities exchange about compliance with ongoing requirements

- (1) The Minister may, at any time, require a securities exchange to prepare and give the Commission a special report on the extent to which the exchange is complying with the requirements of section 769A. The Commission must give the report to the Minister.
- (2) The special report must be accompanied by any audit report required by the Minister under subsection (3).

- (3) The Minister may require a securities exchange to obtain an audit report on the special report. The audit report must be prepared, as the Minister requires, either by the Commission or by some other person or body nominated by the Minister.
- (4) A securities exchange must give the reports to the Commission, within the time required by the Minister.

6 After section 772

Insert:

772A Business rules bind securities exchange and its members

The business rules of a securities exchange have effect, by force of this section, as a contract under seal:

- (a) between the exchange and each member; and
- (b) between a member and each other member;

under which each of those persons agrees to observe and perform the provisions of the business rules as in force for the time being, so far as those provisions are applicable to that person.

772B Self-listing by securities exchanges

Self-listing allowed

- (1) A body corporate that is a securities exchange may be included in its own official list.

Quotation of securities of securities exchange on its own stock market

- (2) Securities of a securities exchange may be granted quotation on a stock market of the exchange if the exchange has entered into such arrangements as the Commission requires:
 - (a) for dealing with possible conflicts of interest that might arise from the quotation of securities of the exchange on a stock market of the exchange; and
 - (b) for the purpose of ensuring the integrity of trading in securities of the exchange.

The exchange must comply with the arrangements.

- (3) An arrangement under subsection (2) may provide for the exchange to pay fees to the Commission (on behalf of the Commonwealth) for services provided by the Commission under the arrangement, or otherwise provided under, or for the purposes of, this section. The fees may be recovered by the Commission as a debt due to the Commonwealth.
- (4) The listing rules of a self-listing exchange must provide for the Commission, instead of the exchange, to make decisions and to take action (or require the exchange to take action on the Commission's behalf) on the following matters:
 - (a) the admission of the exchange to its own official list;
 - (b) the removal of the exchange from its own official list;
 - (c) granting, stopping or suspending the quotation of securities of the exchange on a stock market of the exchange.

Powers and functions of Commission

- (5) The Commission has such powers and functions as are provided for it in arrangements made for the purposes of subsection (2) or in listing rules made for the purposes of subsection (4).

Note: Under section 776, the Commission may require a securities exchange to provide assistance to the Commission for the performance of the Commission's functions.

Exemptions and modifications for self-listing exchanges

- (6) The Commission may:
 - (a) exempt a self-listing exchange from a modifiable provision;
or
 - (b) declare that a modifiable provision applies to a self-listing exchange as if specified provisions were omitted, modified or varied as specified in the declaration.
- (7) An exemption or declaration under subsection (6) must be in writing and the Commission must publish notice of it in the *Gazette*.
- (8) An exemption under subsection (6) may apply unconditionally or subject to specified conditions.

- (9) If a self-listing exchange is subject to conditions under subsection (8), it must comply with those conditions.
- (10) The Court, on application by the Commission, may order a self-listing exchange to comply with a condition in a specified way.

Definitions

- (11) In this section:

modifiable provision means:

- (a) section 235 and any of the provisions of Chapters 6 and 7; or
- (b) regulations made for the purposes of any provision covered by paragraph (a).

self-listing exchange means a securities exchange whose securities have been granted quotation on a stock market of the exchange.

7 Schedule 3

Insert each of the following items in its appropriate place according to the order that the provision referred to in the item appears in the *Corporations Law*:

Section 766F

Penalty: 400 penalty units.

Section 766G

Penalty: 500 penalty units.

*[Minister's second reading speech made in—
Senate on 18 November 1997
House of Representatives on 27 November 1997]*

(208/97)

