

ASIC CLASS ORDER [CO 05/542]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Subsections 341(1) - Order

Subsections 341(1) of the *Corporations Act 2001* (the Act) provides that the Australian Securities and Investments Commission (ASIC) may make an order in respect of a specified class of companies, registered schemes or disclosing entities that relieves the entities in question, their directors and/or auditors from specified requirements of Parts 2M.2, 2M.3 or 2M.4 (other than Division 4) of the Act.

1. Background

ASIC Class Order 98/1418 "Wholly-owned entities" relieves certain wholly-owned companies from the requirement to prepare and lodge audited financial statements under Chapter 2M of the Act where they enter into deeds of cross guarantee with their parent entity and meet certain conditions.

One condition is that any new deed of cross guarantee or any new assumption deed adding a new company to a deed of cross guarantee is accompanied by a certificate by a legal practitioner. That certificate must include a statement concerning aspects of execution of the new deed.

2. Class Order 05/542 "Variation of Class Order 98/1418 re certificates by legal practitioners"

Class Order 05/542 "Variation of Class Order 98/1418 re certificates by legal practitioners" varies Class Order 98/1418 to clarify the level of certification required by a legal practitioner and create greater certainty for lawyers giving certificates. In particular, the amendments make it clear that the lawyer need only certify that:

- (a) for each party that is a company, a deed appears to have been signed or sealed in accordance with section 127 of the Act, and that the lawyer has no reason to suspect that the deed has not been duly executed by the company; and
- (b) for each party that is not a company, after making such enquiries as were reasonable in the circumstances, the lawyer is of the opinion that the deed has been properly executed by each party that is not a company.

3. Consultation

As Class Order 05/542 is minor and machinery in nature, ASIC did not undertake any consultation with stakeholders before that class order was made.