

ASIC Class Order [CO 98/98]

Small proprietary companies which are controlled by a foreign company but which are not part of a large group

This instrument has effect under s341(1) of the *Corporations Act 2001*.

This compilation was prepared on 7 March 2011 taking into account amendments up to [CO 07/505]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Subsection 341(1) — Class Order and Revocation

Pursuant to subsection 341(1) of the *Corporations Act 2001* (“the Act”) the Australian Securities and Investments Commission (“ASIC”) hereby makes an order in respect of each company in the class of companies mentioned in the Schedule (“the Company”) relieving the Company from compliance with Parts 2M.2 and 2M.3 insofar as Parts 2M.2 and 2M.3 are applicable pursuant to subsection 292(2)(b) of the Act in relation to a financial year (“the Relevant Financial Year”) where:

- (a) the directors of the Company have resolved, no earlier than three months before the commencement of the Relevant Financial Year, that the relief available under this order be applied in respect of the Relevant Financial Year; and
- (b) notice of the resolution mentioned in paragraph (a) signed by a director or company secretary is lodged with ASIC using Form 384:
 - (i) if the Relevant Financial Year is the first financial year of the Company after its registration, within three months of date of registration of the Company;
 - (ii) if the Company became controlled by a foreign company during the Relevant Financial Year (and has not previously been controlled by a foreign company during the Relevant Financial Year), within three months of date upon which the Company became controlled by the foreign company;
 - (iii) if the Relevant Financial Year ended between 28 June 2007 and 30 June 2007 (inclusive), within 4 months of the end of the Relevant Financial Year;

- (iv) if the Relevant Financial Year ends between 1 July 2007 and 30 June 2008 (inclusive), by 31 October 2007; and
 - (v) otherwise, before the commencement of the Relevant Financial Year, but not more than three months before the commencement of the Relevant Financial Year,
- or such other time as is approved in writing by an ASIC Officer to whom ASIC's powers and functions under s340 have been delegated.

SCHEDULE

A small proprietary company which is controlled by a foreign company for all or part of the Relevant Financial Year, other than a company which is a part of a group which is a large group.

Interpretation

In this order:

For the purposes of paragraph (a) of this order, a resolution of the directors of the Company made for the purposes of this order as in force immediately before the commencement of ASIC Class Order [CO 07/505] (the “amending order”) is taken to be a resolution made for the purposes of this order as amended by the amending order;

“combined” means the result of aggregating the financial information of the entities in the group, being financial information in respect of each entity for that part of the Relevant Financial Year that each entity is part of the group, and making all such adjustments as would be required in preparing consolidated financial statements in accordance with accounting standards in force at the end of the Relevant Financial Year (even if the standard does not otherwise apply to the financial year of some or all of the entities concerned in respect of that, or any, financial year);

“entity” means a company, a registered scheme, a disclosing entity, any other corporation, a partnership, an unincorporated body or a trust;

“group” means the Company together with all of the following:

- (a) any entity which controlled the Company at any time during, or at the end of, the Relevant Financial Year and which was registered or formed in Australia or carries on business in Australia; and
- (b) any other entity (“an Other Entity”) which is both:
 - (i) controlled at any time during, or at the end of, the Relevant Financial Year by any foreign company which at the same time controls the Company; and

- (ii) registered or formed in Australia or carries on business in Australia during that part of the Relevant Financial Year when it is controlled by the same foreign company as controls the Company; and
- (c) any entity which is controlled at any time during, or at the end of, the Relevant Financial Year by the Company (whether or not it carries on business or is formed or registered in Australia); and
- (d) any entity which is controlled by an Other Entity during that part of the Relevant Financial Year when the Other Entity is controlled by the same foreign company as controls the company (whether or not it carries on business or is formed or registered in Australia);

“large group” means a group, which for the Relevant Financial Year, satisfies at least 2 of the following paragraphs:

- (a) the combined revenue of the group for the Relevant Financial Year is \$25 million, or any other amount prescribed for the purposes of paragraph 45A(2)(a) of the Act, or more;
- (b) the combined value of gross assets of the group at the end of the Relevant Financial Year is \$12.5 million, or any other amount prescribed for the purposes of paragraph 45A(2)(b) of the Act, or more;
- (c) the group has 50 or more employees (part-time employees being counted as an appropriate fraction of a full-time equivalent) at the end of the Relevant Financial Year;

“revenue” means the revenue calculated in accordance with accounting standards in force at the end of the Relevant Financial Year as if all of the entities were reporting entities (even if a standard does not otherwise apply to some or all of the entities concerned in respect of that, or any financial year); and

“value of gross assets” means the value of gross assets calculated in accordance with accounting standards in force at the end of the Relevant Financial Year as if all of the entities were reporting entities (even if a standard does not otherwise apply to some or all of the entities concerned in respect of that, or any, financial year).

Pursuant to subsection s341(1) of the Corporations Law the Australian Securities and Investments Commission hereby revokes Class Order Number 97/2347 dated 23 December 1997 with effect from:

- (i) in respect of entities which apply the relief provided by Class Order 98/0095 dated 10 July 1998, financial years ending after 7 July 1998; and
- (ii) in all other cases, financial years ending after 30 June 1998.

Notes to ASIC Class Order [CO 98/98]

Note 1

ASIC Class Order [CO 98/98] (in force under s341(1) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

Table of Instruments

Instrument number	Date of making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 98/98]	10/7/1998 (<i>see</i> F2006B01085)	10/7/1998	
[CO 00/321]	8/2/2000 (<i>see</i> F2006B00369)	8/2/2000	-
[CO 03/67]	7/2/2003 (<i>see</i> 2006B01086)	7/2/2003	-
[CO 07/505]	13/7/2007 (<i>see</i> F2007L02228)	17/7/2007	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Introductory words	am. [CO 07/505]
Para (b)	am. [CO 07/505]
Para (b)(i)	am. [CO 00/321]
Para (b)(ii)	am. [CO 07/505]
Para (b)(iii)	am. [CO 07/505]
Para (b)(iv)	ad. [CO 07/505]
Para (b)(v)	ad. [CO 07/505]
Schedule – Interpretation	am [CO 03/67] and [CO 07/505]
Schedule Para (a).....	am. [CO 00/321]
Schedule Para (b).....	am. [CO 00/321]
Schedule Para (c).....	am. [CO 00/321]