

**Australian Securities and Investments Commission  
Corporations Act 2001 — Subsection 341(1) — Variation**

Under subsection 341(1) of the *Corporations Act 2001* (the “Act”) the Australian Securities and Investments Commission varies Class Order [CO 98/1418] as follows:

1. in the first paragraph (introductory words), omit “and regulation 2M.6.02 of the Corporations Regulations”;
2. omit the heading “Restrictions on the Entity and Holding Entity” appearing above paragraph (b), substitute “Restrictions on the Entity, Holding Entity and Trustee”;
3. insert after paragraph (d):
  - “(da) Except in relation to a Deed of Cross Guarantee lodged with ASIC before 1 July 2004 — a company holds office as trustee under the Deed of Cross Guarantee;
  - (db) Except in relation to a Deed of Cross Guarantee lodged with ASIC before 1 July 2004 — if the person holding office as trustee under the Deed of Cross Guarantee is a Group Entity within the meaning of that Deed, another person that is a company holds office as alternative trustee under that Deed;”;
4. at the end of subparagraph (l)(ii) add “and” and insert after that subparagraph:
  - “(iii) where the lodgement of a Deed referred to in paragraph (ii) occurs on or after 1 July 2004 — an original of a Certificate relating to that Deed is also lodged with ASIC;”;
5. in paragraph (m) omit “The Deed of Cross Guarantee”, substitute “Where the Deed of Cross Guarantee has been lodged with ASIC before 1 July 2004, that Deed”;
6. omit subparagraph (o)(iv), substitute:
  - “(iv) The Entity paid to ASIC any fee due by the Entity in respect of the perusal of that evidence and in the case of a Deed of Cross Guarantee or an Assumption Deed lodged with ASIC before 1 July 2004 — that Deed; and”;
7. omit subparagraph (s)(i), substitute:
  - “(i) an Assumption Deed contemplated by the Deed of Cross Guarantee and either:
    - (A) lodged with ASIC together with a Certificate relating to that Deed; or

(B) where the Assumption Deed is lodged with ASIC before 1 July 2004 —approved by ASIC;”;

8. in subparagraph (s)(iii):

(a) omit “additional”, substitute “alternative”; and

(b) after “and” insert “where the variation is lodged with ASIC before 1 July 2004 —”;

9. after the definition of “borrower in relation to debentures” under the heading “Interpretation” insert:

““Certificate” in relation to a Deed of Cross Guarantee or an Assumption Deed to which an Entity is a party, means one or more certificates in writing addressed to the Entity, the trustee and any alternative trustee under the Deed of Cross Guarantee and to ASIC which together include statements to the following effect:

(a) that the Deed:

(i) is in exactly the same terms as ASIC Pro Forma 24 or 27 as the case requires except for the following:

(A) all instructions for the inclusion of specified information have been replaced by that information in a complete and accurate manner and any consequential changes of a minor or editorial nature that are necessary for the effective operation of the deed have been made;

(B) execution clauses have been added, deleted, modified or varied as required in order to facilitate the proper execution of the deed;

(C) the date has been completed;

(D) the headnote, the headings before the headnote and any editorial note have been omitted;

(E) in the case of an Assumption Deed which covers more than one Entity — such variations as are necessary to enable the additional entities to be covered;

(F) in the case of an Assumption Deed which covers making the trustee of the Deed of Cross Guarantee to which the Assumption Deed relates a member of the Closed Group — such variations as are necessary to enable the Assumption Deed to have that effect;

(ii) has been properly executed by the parties to it; and

(iii) is binding on, and enforceable against the parties to it in accordance with its terms;

- (b) that the Entity has satisfied all of its obligations under subsections 319(1) and (3) of the Act in relation to the 3 financial years before the first financial year for which the Entity seeks to take advantage of relief under this order; and
- (c) that none of the auditor's reports referred to in paragraph (b) are qualified;

where:

- (d) the certificate referred to in paragraph (a) is given by a lawyer who holds a practising certificate; and
- (e) the certificates referred to in paragraphs (b) and (c) are given either by such a lawyer or a registered company auditor;";

10. in the definition of "Deed of Cross Guarantee" under the heading "Interpretation":

- (a) omit paragraph (i), substitute:

"(i) is in exactly the same terms as ASIC Pro Forma 24 except for the following:

- (A) all instructions for the inclusion of specified information have been replaced by that information in a complete and accurate manner and any consequential changes of a minor or editorial nature that are necessary for the effective operation of the deed have been made;
- (B) execution clauses have been added as required in order to facilitate the proper execution of the deed;
- (C) the date has been completed;
- (D) the headnote, the headings before the headnote and any editorial note have been omitted;

(ia) in the case of a deed lodged with ASIC before 1 July 2004 — is substantially in the form set out in ASIC Pro Forma 24 and which has been approved by ASIC under this order;"; and

- (b) omit all the words after paragraph (iii), substitute:

"and includes such a deed as varied by:

(iv) an Assumption Deed contemplated by the Deed of Cross Guarantee and either:

- (A) lodged with ASIC together with a Certificate relating to that Deed; or
- (B) where the Assumption Deed is lodged with ASIC before 1 July 2004 — approved by ASIC;

- (v) a Revocation Deed contemplated by the Deed of Cross Guarantee; and

11. omit the definition of “financial services licensee” under the heading “Interpretation”.

Dated this 22nd day of June 2004

Signed by Brendan Byrne  
as a delegate of the Australian Securities and Investments Commission