

Australian Securities and Investments Commission
Corporations Act 2001 — Subsection 601CK(7) — Declaration and Revocation

Under subsection 601CK(7) of the *Corporations Act 2001* (the Act) the Australian Securities and Investments Commission (ASIC) hereby declares that subsections 601CK(1) to (6) of the Act inclusive do not apply in relation to a calendar year commencing on or after 1 January 2002 (Relevant Calendar Year) in respect of each foreign company in the class of foreign companies mentioned in the Schedule.

Schedule

A foreign company (the Company) which:

- (a) is registered, or required to be registered, under Division 2 of Part 5B.2 of the Act; and
- (b) is subject to provisions corresponding with, and no less strict than, the restrictions, limitations and prohibitions that section 113 of the Act imposes on proprietary companies, whether contained in the law of the place under which the Company was incorporated or in the Company's constitution as required by that law; and
- (c) is not required by the law of its place of origin to prepare any one or more of the following:
 - (i) a balance sheet at the end of its last financial year;
 - (ii) a profit and loss statement for its last financial year; or
 - (iii) a cash flow statement for its last financial year; and
- (d) has not been a disclosing entity, borrower in relation to a debenture or guarantor of such a borrower at any time during the calendar year; and
- (e) is not large in relation to its last financial year; and
- (f) either:
 - (i) is not part of a group which is a large group in relation to its most recent financial year; or
 - (ii) was covered in consolidated financial statements which:
 - (A) cover the whole of that financial year; and
 - (B) were lodged with the ASIC by a company, registered foreign company, registered scheme or disclosing entity which controlled the Company for the whole of that financial year (or by two or more such entities which controlled the Company in procession for the whole of that financial year).

Interpretation

In this declaration:

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

“gross operating revenue” means the gross operating 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);

“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 incorporated 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) incorporated 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 incorporated 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 incorporated in Australia);

the Company is “large” if, for the Relevant Financial Year, at least 2 of the following paragraphs are satisfied:

- (a) the consolidated gross operating revenue of the Company for the Relevant Financial Year is \$10 million or more
- (b) the consolidated value of gross assets of the Company at the end of the Relevant

Financial Year is \$5 million or more

- (c) the Company and the entities it controls (if any) have 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;

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

- (a) the combined gross operating revenue of the group for the Relevant Financial Year is \$10 million or more
- (b) the combined value of gross assets of the group at the end of the Relevant Financial Year is \$5 million 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;

“Relevant Financial Year”, in relation to the Relevant Calendar Year, is the “last financial year” of the Company for the purposes of subsection 601CK(1) of the Act, being the financial year in respect of which the Company would be required to report in relation to the Relevant Calendar Year but for the relief provided by this order; 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).

Revocation

And under subsection 601CK(7) of the Act ASIC hereby revokes Class Order [CO 01/1594].

Dated the 24th day of December 2002.

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