

ASIC CLASS ORDER [CO 07/0505]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Subsections 341(1) and 601CK(7) – Variations and Revocations

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.

Subsection 601CK(7) of the Act provides that ASIC may make a declaration that section 601CK of the Act does not apply to specified foreign companies.

1. Background – amendments to ASIC Class Order [CO 98/0096] “Synchronisation of financial year with foreign parent company”

ASIC Class Order [CO 98/0096] “Synchronisation of financial year with foreign parent company” under s.341(1) permits a company, registered scheme or disclosing entity to synchronise its financial year with that of its ultimate foreign parent entity in certain instances.

The basis for determining which proprietary companies are required to prepare and lodge financial reports is the “large/small test” in s.45A of the Act. Prior to amendments to this test that took effect for financial years ending on or after 28 June 2007 under the Corporations Legislation Amendment (Simpler Regulatory System) Act 2007 (“SRS Act”), a proprietary company was large (ie not small) for a financial year if it met at least two of three criteria:

- (a) consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) was \$10 million or more;
- (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) was \$5 million or more;
- (c) the company and the entities it controls (if any) had 50 or more employees at the end of the financial year.

Subject to certain exceptions, a small proprietary company that is not controlled by a foreign company is not required to prepare and lodge a financial report under Chapter 2M of the Act.

Following the amendments made by the SRS Act, a proprietary company is large for a financial year if it meets at least two of three criteria:

- (a) consolidated revenue for the financial year of the company and the entities it controls (if any) is \$25 million or more;

- (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is \$12.5 million or more;
- (c) the company and the entities it controls (if any) have 50 or more employees at the end of the financial year.

A proprietary company cannot take advantage of relief under Class Order [CO 98/0096] to synchronise its financial year with a parent entity by having a financial year of less than 12 months if that would result in the company being small and not being required to prepare and lodge a financial report. Class Order [CO 98/0096] applies a modified version of the large/small test that has regard to the consolidated gross operating revenue for the preceding 12 month period. Class Order [CO 07/0505] revises that criterion from \$10 million to \$25 million, consistent with the change made by the SRS Act.

2. Background – amendments to ASIC Class Order [CO 98/0098] “Small proprietary companies which are controlled by a foreign company but which are not part of a large group”

ASIC Class Order [CO 98/0098] “Small proprietary companies which are controlled by a foreign company but which are not part of a large group” under s.341(1) relieves small proprietary companies which are controlled by a foreign company from the requirement to prepare and lodge an audited financial report provided that it is not part of a “large group” and meets certain other conditions.

A modified version of the large/small test is used in Class Order [CO 98/0098]. The “large group” test applies the size criteria to an aggregation of a proprietary company, its siblings in Australia and their controlled entities. Class Order [CO 07/0505] revises the amounts in the large group test, consistent with the changes in corresponding amounts under the SRS Act.

The SRS Act was given Royal Assent on 28 June 2007 and the revised large/small test applies for financial years ending on or after 28 June 2007.

Conditions of relief under [CO 98/0098] include that the directors have resolved to take advantage of the relief no more than 3 months before the commencement of the financial year and that notice of that resolution has been lodged for the public record before the commencement of the financial year. Class Order [CO 07/0505] gives additional time for the notice to be lodged for financial years ending 28 June 2007 to 30 June 2008.

3. Background – amendments to ASIC Declaration [CO 02/1432] “Registered foreign companies - financial reporting requirements”

This declaration provides a small registered foreign company which is subject to similar restrictions to an Australian proprietary company (and which is not required to prepare financial statements in its place of origin) with relief from the requirement to lodge financial statements provided that:

- (a) it is not part of a large group; or
- (b) it is controlled by a parent which consolidates the registered foreign company for the entire financial year and lodges its financial statements with ASIC.

The “large group” test is the same as the test in Class Order [CO 98/0098] and is similarly amended by Class Order [CO 07/0505]. Declaration [CO 07/0505] contains no conditions concerning directors’ resolutions or lodgement of a notice prior to commencement of the financial year with ASIC.

4. Class Order [CO 07/0505] “Variation and revocation of financial reporting instruments”

Class Order [CO 07/0505] “Variation and revocation of financial reporting instruments”:

- (a) varies Class Order [CO 98/0096] to revise the size test as outlined above;
- (b) varies Class Order [CO 98/0098] to:
 - (i) revise the “large group” test as outlined above; and
 - (ii) give additional time for the lodgement of notice of directors’ resolutions for financial years ending between 28 June 2007 and 30 June 2008;
- (c) varies Declaration [CO 02/1432] to revise the “large group” test as outlined above;
- (d) revokes Class Order [CO 05/0083] “Timing of auditor's independence declaration”, which is no longer required because the relief it provided has been incorporated into the Act by the SRS Act; and
- (e) revokes Class Order [CO 05/0910] “Auditor's independence declaration — exemption”, which is no longer required because the relief it provided has been incorporated into the Act by the SRS Act.

5. Consultation

As [CO 07/0505] is of a minor or machinery nature and does not substantially alter existing arrangements, ASIC did not undertake any consultation with stakeholders before that class order was made.