



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251**

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I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date            25 May 2015

Grant Moodie

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## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is *ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

### 3 Authority

This instrument is made under sections 250PAA, 341, 601QA and 992B of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*deferral period* means the period starting on the day of appointment of a relevant external administrator and ending on the day that is 6 months after the day of appointment.

*liquidator* does not include a provisional liquidator.

*prescribed notice* means a notice that contains statements to the following effect:

- (a) the reports for the relevant financial year of the company have been lodged with ASIC; and
- (b) the company will send copies of the reports to a member of the company free of charge if the member asks for the reports in writing; and
- (c) the reports are available for download on the relevant website together with a hypertext link to the reports.

*Regulations* means the *Corporations Regulations 2001*.

*relevant external administrator*, in relation to a company, means:

- (a) an administrator of the company (but does not include an administrator of a deed of company arrangement in relation to the company);
- (b) a managing controller appointed to the whole or substantially the whole of the property of the company;
- (c) a provisional liquidator of the company;

where no other person was acting in one of those capacities in relation to the company at the time of their appointment.

***scheme insolvency resolution***, in relation to a registered scheme, means a resolution to the effect that, for a period of at least 12 months, the scheme property has been insufficient to meet the debts of the responsible entity of the scheme incurred in that capacity as and when they were due and payable.

## Part 2—Exemptions

### 5 Companies being wound up

- (1) A company does not have to comply with Part 2M.3 of the Act:
  - (a) in relation to a financial year or half-year of the company if, as at the day the company would otherwise have been required to lodge a report under that Part for the financial year or half-year, the company has a liquidator appointed to it; and
  - (b) in relation to any earlier financial year or half-year of the company, but only to the extent that Part would have imposed, but for this paragraph (b), a continuing obligation on the company from the date of appointment of the liquidator.

Note: A company that is required to do an act under Part 2M.3 of the Act within a particular period or before a particular time continues to be subject to an obligation to do the act even after the period has ended or that time has passed: section 1314 of the Act. Paragraph (b) does not affect any liability under that Part that existed at any time before the date of appointment of the liquidator.

#### *Condition*

- (2) The company must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the company about the winding up.

#### *Exclusion*

- (3) This section does not apply to a company that:
  - (a) holds an Australian financial services licence; or
  - (b) has an administrator appointed to it under Part 5.3A of the Act; or
  - (c) is subject to a deed of company arrangement.

### 6 Public companies being wound up: AGMs

- (1) A public company that does not have to comply with Part 2M.3 of the Act in relation to a financial year of the company because of paragraph 5(1)(a) of this instrument does not have to comply with the requirement under section 250N of the Act to hold an AGM:
  - (a) at least once in each calendar year where the calendar year corresponds to the year that is 5 months after the end of the financial year; or

- (b) within 5 months after the end of the financial year; or
- (c) in relation to any earlier financial year of the company, but only to the extent that section of the Act would have imposed, but for this paragraph (c), a continuing obligation on the company on or after the appointment of the liquidator.

#### *Condition*

- (2) The company must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the company about the winding up.

## **7 Schemes being wound up**

- (1) A responsible entity of a registered scheme being wound up does not have to comply with Part 2M.3 of the Act in relation to a financial year or half-year of the scheme where, by no later than the day the responsible entity would otherwise have been required to lodge a report for the scheme under that Part for the financial year or half-year:

- (a) either:
  - (i) the responsible entity has lodged a notice under regulation 5C.9.01 of the Regulations in the approved form telling ASIC that the winding up of the scheme has commenced; or
  - (ii) a person appointed under subsection 601NF(1) of the Act has lodged a notice telling ASIC that the person has been appointed by the Court to take responsibility for ensuring the scheme is wound up in accordance with the scheme's constitution; and
- (b) the responsible entity or the person appointed under subsection 601NF(1) of the Act has lodged a copy of a scheme insolvency resolution.

Note: The notices required to be lodged under paragraphs (a) and (b) need not be lodged at the same time. However, the responsible entity will not be covered by this subsection (1) unless both paragraphs (a) and (b) have been satisfied.

- (2) The responsible entity also does not have to comply with:
  - (a) Part 2M.3 of the Act in relation to any subsequent financial year or half-year of the scheme; and
  - (b) section 601HG of the Act in relation to the financial year or subsequent financial year of the scheme; and

- (c) an approved form made for the purposes of regulation 5C.9.01 of the Regulations to the extent the form requires the lodgment of a copy of the scheme's audited financial report and auditor's report prepared for the period since the date of the last financial report and completion of the winding up of the scheme.

Note: Section 601NFA of the Act, as notionally inserted by this instrument, imposes alternative reporting obligations where a registered scheme is being wound up.

## 8 Companies under other external administrations

### Deferral of financial reporting obligations

- (1) A company in relation to which a relevant external administrator has been appointed does not have to comply with any of the following obligations under Part 2M.3 of the Act in relation to a financial year or half-year of the company:
  - (a) report to members of the company under section 314 within the time required by section 315;
  - (b) send reports to a member in accordance with a request under subsection 316(1) within the time required by subsection 316(2);
  - (c) send reports to a member in accordance with a request under subsection 316A(1) within the time required by subsection 316A(3);
  - (d) lodge reports with ASIC under subsection 319(1) within the time required by subsection 319(3);
  - (e) lodge half-year reports with ASIC under subsection 320(1) within the time required by that subsection;

where, but for this subsection (1), the obligation would otherwise have arisen within 6 months after the date of appointment of the relevant external administrator.

This subsection (1) applies until the last day of the deferral period.

- (2) The company also does not have to comply with an obligation under Part 2M.3 of the Act of a kind specified in subsection (1) in relation to any earlier financial year or half-year of the company but only to the extent that Part would have imposed, but for this subsection (2), a continuing obligation on the company from the date of appointment of the relevant external administrator.

This subsection (2) applies until the last day of the deferral period.

*Conditions*

- (3) The company:
- (a) must comply with any obligation to which subsection (1) or (2) applies by no later than the last day of the deferral period; and
  - (b) must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the company about the relevant external administration.

*Alternative distribution method for annual reports*

- (4) A company relying on paragraph (1)(a), (b) or (c) (or subsection (2) in relation to any of those paragraphs) need not comply with the condition specified in paragraph (3)(a) if, by no later than the last day of the deferral period, the company:
- (a) arranges for a prescribed notice to be published:
    - (i) both:
      - (A) in a prominent place on the company's website; and
      - (B) in a place that is readily accessible on a website maintained by the relevant external administrator or any external administrator appointed after the relevant external administrator; and
    - (ii) if the company is listed on a prescribed financial market—on a website maintained by the operator of the financial market; and
  - (b) puts in place adequate arrangements to distribute and make available the reports in accordance with the notice.

*Exclusion*

- (5) This section does not apply to:
- (a) a small proprietary company that has been given a direction under either section 293 or 294 of the Act in relation to the financial year;
  - (b) a small company limited by guarantee that has been given a direction under either section 294A or 294B of the Act in relation to the financial year; or
  - (c) a company that has been given a direction to lodge reports under section 321 of the Act in relation to the financial year or half-year.



## 9 Financial services licensees being wound up

- (1) A company that held an Australian financial services licence as at the end of a financial year of the company does not have to comply with Subdivision C of Division 6 of Part 7.8 of the Act:
  - (a) in relation to the financial year if, as at the day the company would otherwise have been required to lodge a report under that Subdivision for the financial year, the company has a liquidator appointed to it; and
  - (b) in relation to any earlier financial year of the company but only to the extent that Subdivision would have imposed, but for this paragraph (b), a continuing obligation on the company on or after the appointment of the liquidator.

Note: In this section, the definition of *liquidator* in section 4 of this instrument overrides paragraph (b) of the definition of *liquidator* in section 9 of the Act.

### *Exclusion*

- (2) This section does not apply to a company that:
  - (a) has an administrator appointed to it under Part 5.3A of the Act; or
  - (b) is subject to a deed of company arrangement; or
  - (c) continues to hold an Australian financial services licence.

## 10 Financial services licensees under other external administrations

### **Deferral of financial reporting obligations**

- (1) A financial services licensee that is a company in relation to which a relevant external administrator has been appointed does not have to comply with an obligation under Subdivision C of Division 6 of Part 7.8 of the Act to lodge reports with ASIC in relation to a financial year of the licensee where, but for this subsection (1), the obligation would otherwise have arisen within 6 months after the date of appointment of the relevant external administrator.

This subsection (1) applies until the last day of the deferral period.

- (2) The financial services licensee also does not have to comply with an obligation to lodge reports with ASIC under that Subdivision in relation to any earlier financial year of the licensee but only to the extent that Subdivision would have imposed, but for this subsection (2), a continuing obligation on the licensee from the date of appointment of the relevant external administrator.

This subsection (2) applies until the last day of the deferral period.

*Condition*

- (3) The financial services licensee must lodge the reports with ASIC by no later than the last day of the deferral period.

## **11 Effect of specifications under section 915H of the Act**

For the purposes of sections 7, 9 and 10 of this instrument, if a specification given under section 915H of the Act to a financial services licensee whose licence has been cancelled or suspended is inconsistent with the relief given by this instrument, the specification will prevail, and the relief will, to the extent of the inconsistency, not apply.

## **12 Transitional arrangements**

- (1) The exemptions made by, and the conditions imposed by, paragraphs 4 to 8 of ASIC Class Order [CO 03/392] as in force immediately before the day of its repeal are, with effect from the date of repeal, made and imposed by this subsection (1).
- (2) Subsection (1) applies for a period of 12 months commencing from the day of repeal of the class order.

## Part 3—Declaration

### 13 Schemes being wound up

- (1) Chapter 5C of the Act applies to all persons as if the following section were inserted after section 601NF:

**“601NFA Reporting obligations during winding up**

- (1) This section applies to:
- (a) a responsible entity of a registered scheme being wound up; or
  - (b) a person (the *responsible person*) appointed under subsection 601NF(1) to take responsibility for ensuring a registered scheme is wound up in accordance with the scheme’s constitution.
- (2) This section only applies where a copy of a scheme insolvency resolution has been lodged with ASIC by the responsible entity or responsible person.
- (3) The responsible entity or responsible person who lodges the copy of the scheme insolvency resolution must prepare a report for each relevant period during the winding up and on the completion of the winding up, which includes the following information unless disclosure of that information would be prejudicial to the winding up:
- (a) information about the progress and status of the winding up of the scheme, including details (as applicable) of:
    - (i) the actions taken during the period;
    - (ii) the actions required to complete the winding up;
    - (iii) the actions proposed to be taken in the next 12 months;
    - (iv) the expected time to complete the winding up; and
  - (b) financial information about receipts and payments for the scheme during the period; and
  - (c) the following information as at the end of the period:
    - (i) the value of scheme property; and
    - (ii) any potential return to scheme members.

- (4) A report required to be prepared under this section in relation to a relevant period must be made available to scheme members within 3 months after the end of the relevant period.
- (5) The responsible entity or responsible person who lodges the copy of the scheme insolvency resolution must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the scheme about the winding up.
- (6) In this section:

*relevant period*, in relation to a report, means:

- (a) for a report on the completion of a winding up that has taken less than 12 months to complete—the period commencing from the day the winding up commenced and ending on the day of completion of the winding up;
- (b) for a report on the completion of a winding up that has taken more than 12 months to complete—the period commencing on the day after the end of the immediately preceding relevant period and ending on the day of the completion of the winding up;
- (c) otherwise—a period of at least 12 months.

*scheme insolvency resolution* means a resolution to the effect that, for a period of at least 12 months, the scheme property of the scheme has been insufficient to meet the debts of the responsible entity of the scheme incurred in that capacity as and when they were due and payable.”.