

EXPLANATORY STATEMENT for
ASIC Corporations (Electronic Lodgment of Financial Reports)
Instrument 2016/181

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Electronic Lodgment of Financial Reports) Instrument 2016/181* under sections 341 and 352 of the *Corporations Act 2001* (the Corporations Act).

Section 341 provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Corporations Act.

Section 352 provides that a document may be lodged with ASIC electronically only if ASIC and the person seeking to lodge it (either on their own behalf or as agent) have agreed, in writing, that it may be lodged electronically or ASIC has approved, in writing, the electronic lodgement of documents of that kind.

1. Background

Subsections 319(1) and 320(1) of the Corporations Act require a company, registered managed investment scheme or disclosing entity to lodge a financial report, a directors' report and an auditor's report (the reports) for a financial year or half-year with ASIC.

The Listing Rules of ASX Limited (ASX), National Stock Exchange of Australia Limited (formerly Stock Exchange of Newcastle Limited) (NSX), SIM Venture Securities Exchange Limited (SIM VSE) and Sydney Stock Exchange Limited (formerly Asia Pacific Stock Exchange Limited) (SSX) require the reports lodged by a listed entity under sections 319 or 320 to be lodged with the relevant market

operator (i.e. ASX, NSX, SIM VSE or SSX) at the same time they are lodged with ASIC.

Regulatory Guide 28 *Relief from dual lodgement of financial reports* (RG 28) sets out the arrangements ASIC has agreed with ASX to avoid the need for dual lodgement of the reports.

Subsection 352(1) of the Corporations Act allows a document to be lodged with ASIC electronically if ASIC has approved, in writing, the electronic lodgement of documents of that kind. The document is taken to be lodged with ASIC if it is lodged in accordance with the approval.

2. Purpose of the instrument

The instrument allows entities listed on ASX, NSX, SIM VSE or SSX to lodge the reports electronically with the relevant market operator without also having to separately lodge the reports with ASIC.

Class Orders [CO 98/104], [CO 00/2451] and [CO 06/6] are repealed by Schedule 2 to the *ASIC Corporations (Amendment and Repeal) Instrument 2016/182*.

3. Operation of the instrument

A listed disclosing entity which is a company or registered scheme can lodge the reports with ASIC electronically where:

- the market operator is appointed as agent for ASIC;
- the report is lodged with the market operator as agent for ASIC; and
- the entity has adequate arrangements in place to ensure a signed copy of the reports is kept for a period of not less than 7 years after electronic lodgement.

An entity lodging its report electronically need not lodge the forms required by regulations 1.0.08 and 1.0.09.

While the reports may be lodged electronically, late lodgement fees will apply if lodgement occurs after the lodgement deadline.

4. Consultation

ASIC has consulted with stakeholders through Consultation Paper 243 which was issued on 19 November 2015 and was open for comment to 18 December 2015.

The Office of Best Practice Regulation has assessed that a Regulatory Impact Statement is not necessary for this instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Electronic Lodgment of Financial Reports) Instrument 2016/181

ASIC Corporations (Electronic Lodgment of Financial Reports) Instrument 2016/181 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

The objective of the instrument is to allow listed disclosing entities to lodge reports with ASIC electronically through agency arrangements with market operators.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission