

EXPLANATORY STATEMENT for
ASIC Corporations (Synchronisation of Financial Years) Instrument
2016/189

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189* under subsection 341(1) of the *Corporations Act 2001* (the Corporations Act).

Subsection 341(1) 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.

1. Background

Section 323D(1) of the Corporations Act states that the first financial year of a company, registered scheme or disclosing entity (entity) commences on the day on which the entity is registered or incorporated, and lasts for 12 months or a period determined by the directors of no longer than 18 months.

Generally, a subsequent financial year must be 12 months long, although s323D specifically allows it to be longer or shorter by seven days. In certain cases, a subsequent financial year may be for a period of less than 12 months, provided that the change is made in good faith and is in the best interests of the entity.

An entity that has to prepare consolidated financial statements (parent entity) must ensure that the financial years of its controlled entities are synchronised with its own financial year. Similarly, there may be circumstances where an entity is required by foreign laws to have its financial year synchronised with a parent entity that was not incorporated or formed in Australia (foreign parent).

2. Purpose of the instrument

The relief under *ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189* is available to an entity that does not meet the requirements in subsection 323D(2A) for changing its financial year, and its foreign parent is required by law in its place of origin to cause the entity's financial year to be changed.

Class Order [CO 98/96] is repealed by Schedule 2 to the *ASIC Corporations (Amendment and Repeal) Instrument 2016/247*.

3. Operation of the instrument

The instrument allows an entity to change its financial year for the purpose of synchronising the financial year with that of a foreign parent. The entity or a director must reasonably believe that the foreign parent was required by the foreign law to cause the financial year of the entity to change and the change is made in accordance with that requirement.

If the financial year under the foreign law is equal to or greater than 12 months, the directors of the entity must be of the opinion that the entity will be able to pay its debts as and when they become due and payable. The opinion must be formed no earlier than 12 months and no later than 15 months after the commencement of the financial year. The opinion must be evidenced in the minutes of a meeting of directors.

If the financial year under the foreign law is less than 12 months, the requirements of the Corporations Act, the *Corporations Regulations 2001*, the *Corporations (Fees) Regulations 2001* and any disallowable legislative instruments made by ASIC are applied in respect of that financial year as if the reference to financial year is reference to a period of 12 months ending at the end of the financial year under the foreign law.

The notes to the financial statements must include a brief statement as to the relief provided by the instrument.

4. Consultation

ASIC has consulted with stakeholders through Consultation Paper 240 which was issued on 1 October 2015 and was open for comment to 30 October 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 (Synchronisation of Financial Years) Instrument 2016/189

ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189 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 legislative instrument is to allow an entity to change its financial year for the purpose of synchronising it with the financial year of a foreign parent.

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