

## **EXPLANATORY STATEMENT for ASIC Corporations (Audit Relief) Instrument 2016/784**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Audit Relief) Instrument 2016/784 under section 341 of the *Corporations Act 2001* (the Corporations Act).

Section 341 of the Corporations Act 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. This includes regulations made for the purposes of those Parts. These provisions relate to financial reporting.

### **1. Background**

A large proprietary company or a small proprietary company that is controlled by a foreign company must prepare and lodge with ASIC a financial report, directors' report and auditor's report within four months after the end of the company's financial year pursuant to subsection 319(3) of the Corporations Act.

The financial report, directors' report and auditor's report must also be given to shareholders within these four months under subsection 315(4) of the Corporations Act.

The financial report includes the financial statements which contain statements of financial position, profit or loss and other comprehensive income, changes in equity and cash flows, and accompanying explanatory notes. The financial statements must comply with accounting standards.

The directors' report includes general and specific information about the company, including a review of operations for the financial year, prescribed by the Corporations Act.

The auditor must form an opinion on whether the company's financial report for the financial year complies with accounting standards and presents a true and fair view of the company's financial position and performance. In addition, the auditor must form an opinion on whether the company has kept proper accounting records and other records and registers (section 307 of the Corporations Act). The auditor must report to members in accordance with section 308 of the Corporations Act.

The distinction between large and small proprietary companies is based on revenue, assets and employees (subsection 45A(3) of the Corporations Act). The distinction is based on quantitative criteria rather than any qualitative criteria, which addresses the needs of potential users of the financial report.

Compliance with the audit requirements imposes a burden on the company, its officers and its auditors. Depending on the expected costs and benefits that an audit provides, subsection 342(2) of the Corporations Act contemplates that the burden may be unreasonable for proprietary companies in some cases. The burden is taken to be unreasonable where the expected costs are out of all proportion to the expected benefits in the circumstances contemplated by subsection 342(2).

## **2. Purpose of the instrument**

We may grant relief from all or some of the provisions of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Corporations Act if the relevant requirements would, among other things, impose an unreasonable burden on an entity, its directors or its auditor (sections 340 and 341 of the Corporations Act).

Subsection 342(2) of the Corporations Act sets out the matters that we must take into account in deciding whether the audit requirements impose an unreasonable burden on a proprietary company or a class of proprietary companies.

ASIC Corporations (Audit Relief) Instrument 2016/784 provides relief from the audit requirements to proprietary companies that satisfy the conditions in the instrument.

## **3. Operation of the instrument**

A large proprietary company or a small proprietary company that is controlled by a foreign company does not need to appoint an auditor or have its financial report audited if:

- the directors and shareholders agree that an audit is not required;
- the financial report is compiled by a prescribed accountant;
- the financial report is lodged within the deadlines under the Corporations Act;
- there is no proposed modified auditor's report or material disagreement with the auditor; and

- other conditions designed to ensure that the company is well managed and in a sound financial condition are satisfied.

If a company meets the conditions of the instrument, it does not need to apply for individual relief from the requirement to obtain an auditor's report on the financial report, but must obtain a compilation report by a prescribed accountant.

#### **4. Consultation**

ASIC consulted with stakeholders through Consultation Paper 267 which was issued for comment on 15 August 2016 and open for comment to 12 September 2016.

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 (Audit Relief) Instrument 2016/784**

ASIC Corporations (Audit Relief) Instrument 2016/784 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 instrument relieves certain proprietary companies from the requirement to appoint an audit and have its financial report audit provided it is well managed and in a sound financial condition.

#### **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 Investment Commission**