



**ASIC**  
Australian Securities &  
Investments Commission

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## **ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734**

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

Date 22 September 2020

Grant Moodie

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## **Part 1—Preliminary**

### **1 Name of legislative instrument**

This is the *ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734*.

### **2 Commencement**

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

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

### **3 Authority**

This instrument is made under sections 655A and 741 of the *Corporations Act 2001*.

### **4 Definitions**

In this instrument:

*Act* means the *Corporations Act 2001*.

## Part 2—Declaration

### 5 Mandatory custodial arrangements in control transactions

Chapter 6 of the Act applies to all persons as if the following provisions were modified or varied:

- (a) in items 1 to 4 and 17 in the table in section 611, add on a new line:

“See also section 615A.”

- (b) after section 615, insert:

**“615A Mandatory custodial arrangements—exceptions 1 to 4 and 17**

- (1) This section applies to an acquisition of relevant interests where the consideration offered for the acquisition includes securities in a public company that must be held under a custodial arrangement.
- (2) The exceptions in items 1 to 4 (in relation to a takeover bid) and item 17 (in relation to a compromise or arrangement) of the table in section 611 only apply to the acquisition of relevant interests if the custodial arrangement includes conversion and termination provisions which can only be amended by a special resolution of beneficial owners.
- (3) In this section:

***arrangement*** means a contract, agreement, understanding, scheme or other arrangement (as existing from time to time).

***conversion and termination provisions***, in relation to securities in a public company held under a custodial arrangement, means provisions to the effect that, if the public company applies to ASIC under section 163 to change its type to a proprietary company at a time when it has more than 50 non-employee beneficial owners:

- (a) the custodial arrangement will terminate once the change of type takes effect; and
- (b) the beneficial owners will be registered as holders of the securities.

***custodial arrangement*** means an arrangement between a person (the ***custodian***) and another person (the ***beneficial owner***) (whether or not there are also other parties to the arrangement) under which securities are held on trust for, or on behalf of, the beneficial owner by the custodian or its nominee.

***special resolution of beneficial owners***, in relation to conversion and termination provisions included in a custodial arrangement,

means a resolution that has been passed by at least 75% of the votes cast by beneficial owners where:

- (a) only beneficial owners can vote on the resolution; and
- (b) each beneficial owner is entitled to cast a vote for each security held on trust for, or on behalf of, the beneficial owner under the custodial arrangement; and
- (c) Part 2G.2 applies as if each beneficial owner were a member of the company.”.

## **6 Proprietary scrip in control transactions**

Chapter 6D of the Act applies to all persons as if section 708 were modified or varied by, after subsection (18), inserting the following subsection:

*“Limitations*

- (18A) Subsections (17) and (18) do not apply to an offer of securities in a proprietary company.”