



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Amendment) Instrument 2021/506

I, Claire LaBouchardiere, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 1 October 2021

Claire LaBouchardiere

Contents

Part 1—Preliminary	3
1 Name of legislative instrument	3
2 Commencement	3
3 Authority	3
4 Schedules	3
Schedule 1—Amendments	3
ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251	3

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Amendment) Instrument 2021/506*.

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.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended as set out in the applicable items in the Schedule.

Schedule 1—Amendments

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

1 Section 4

Insert the following definitions in appropriate alphabetical order:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

deed administrator means the administrator of a deed of company arrangement executed by the company.

external administration, in relation to a company, means where:

- (a) an administrator has been appointed in relation to the company by:
 - (i) the company under section 436A of the Act; or
 - (ii) a liquidator or provisional liquidator of the company under section 436B of the Act; or

- (iii) a person who is entitled to enforce a security interest in the whole, or substantially the whole, of the company's property under section 436C of the Act; or
- (b) a deed of company arrangement has been executed by the company; or
- (c) a provisional liquidator has been appointed in relation to the company; or
- (d) a managing controller has been appointed to the whole, or substantially the whole, of the property of the company.

licensee 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 the appointment.

2 Section 4 (definition of *deferral period*)

Omit the definition, substitute:

deferral period means:

- (a) where a relevant external administrator has been appointed and the external administration of the company subsequently ends between the date of appointment of the relevant external administrator and the day that is 6 months after the appointment of the relevant external administrator—the period starting on the day of appointment of the relevant external administrator and ending on the day that is 6 months after the appointment of the relevant external administrator; or
- (b) where a relevant external administrator has been appointed and the company is still under external administration on the day after the day that is 6 months after the appointment of the relevant external administrator—the period starting on the day of appointment of the relevant external administrator and ending on the earlier of the following:
 - (i) 24 months after the day of appointment of the relevant external administrator; or
 - (ii) where a deed administrator is appointed following the appointment of the relevant external administrator—the day (if any) on which a director of the company has the right to, or is able to, perform or exercise all or most of the management powers or functions of a director of the company under the deed of company arrangement or with the consent of the deed administrator; or
 - (iii) the day the external administration of the company ends.

3 Section 4 (definition of *relevant external administrator*)

Omit the definition, substitute:

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

- (a) an administrator of the company appointed by:
 - (i) the company under section 436A of the Act; or
 - (ii) a liquidator or provisional liquidator of the company under section 436B of the Act; or
 - (iii) a person who is entitled to enforce a security interest in the whole, or substantially the whole, of the company's property under section 436C of the Act; or
- (b) a managing controller appointed to the whole, or substantially the whole, of the property of the company; or
- (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 the appointment.

4 Paragraphs 6(1)(a) and 6(1)(b)

Repeal paragraphs, substitute:

- (a) at least once in each calendar year and within 5 months after the end of its financial year; or

5 Paragraph 6(1)(c)

Omit “this paragraph (c)”, substitute “this paragraph (b)”.

6 Paragraph 6(1)(c)

Renumber as paragraph 6(1)(b).

7 After section 6

Insert:

6A Public companies under external administration: AGMs

- (1) A public company that does not have to comply with Part 2M.3 of the Act because of subsection 8(1) or 8(2) 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 and within 5 months after the end of its financial year; or
- (b) 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 (b), a continuing obligation on the company on or after the appointment of a relevant external administrator;

where, but for this subsection, the company would otherwise be required to hold an AGM during the deferral period.

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

- (2) A company relying on the exemption in subsection (1) must:
 - (a) hold an AGM within 2 months after the end of the deferral period; and
 - (b) lay before that AGM all outstanding financial reports deferred because of subsection 8(1) or 8(2) of this instrument.

Conditions

- (3) Before the end of the period within which the company would, but for subsection (1), otherwise be required to hold its next AGM under section 250N after the start of the deferral period, the company must:
 - (a) arrange for a notice of the company's intention to rely on section 6A of this instrument to be published:
 - (i) both:
 - (A) in a prominent place on the company's website (if any); and
 - (B) in a place that is readily accessible on a website (if any) 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.
- (4) The company must have adequate arrangements in place during the deferral period to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the company about:
 - (a) the external administration of the company; and
 - (b) the company's obligations to hold any AGMs not held during the deferral period because of subsection (1).

Exclusion

- (5) This section does not apply to a company in relation to a financial year or half-year, if ASIC has given written notice to the company, stating that the company is excluded from relying on the relief in subsection 6A(1) of this instrument, and ASIC has not withdrawn the notice.

8 Paragraph 7(2)(c)

Omit “lodgment”, substitute “lodgement”.

9 Section 8

Repeal section, substitute:

8 Companies under external administration: 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 24 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;
 - (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 during the deferral period; and
 - (c) must arrange for a notice of the company's intention to rely on section 8 of this instrument to be published before the financial reporting obligations under Part 2M.3 of the Act would otherwise have arisen, but for subsection 8(1) of this instrument, after the start of the deferral period:
 - (i) both:
 - (A) in a prominent place on the company's website (if any); and
 - (B) in a place that is readily accessible on a website (if any) 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.

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 (if any); and
 - (B) in a place that is readily accessible on a website (if any) 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 prescribed notice.

Note: A company that need not comply with the condition specified in paragraph (3)(a) as a result of this subsection will still need to lodge annual and half year reports with ASIC under sections 319 and 320 by no later than the last day of the deferral period.

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;
 - (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; or
 - (d) a company in relation to a financial year or half-year, if ASIC has given written notice to the company, stating that the company is excluded from relying on the relief in subsection 8(1) or 8(2) of this instrument, and ASIC has not withdrawn the notice.

10 After section 8

Insert:

8A Application for review by Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision made by ASIC under subsection 6A(5) or 8(5)(d) of this instrument.

11 Section 10

In subsections 10(1), 10(2) and 10(3), before “deferral period”, insert “licensee”.