



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 7

Calculating time periods

Chapter 1 — Introductory and general topics

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Purpose

RG 7.1 This guide sets out how the ASC will interpret and apply the Corporations Law (Law) and the ASC Law in relation to time periods. The Law, particularly Chapter 6 dealing with the acquisition of shares, contains many references to time periods.

Law in relation to time periods

RG 7.2 In *Prowse v McIntyre* (1961) 111 CLR 264 at 280, Windeyer J observed that:

“... the law in reckoning time by days ordinarily takes no account of fractions of a day. The result is that, whenever a period of days has to be computed from an act or event that occurs within the

space of a day, a decision must be made whether to start the reckoning from the beginning or the end of that day. Much the same question arises when a period is to be calculated up to the time when an act is done or an event happens.”

RG 7.3 In *Prowse v McIntyre* at 274, Kitto J observed that:

“The beginning of a day is nothing but the end of the day before, and the end of the day is nothing but the beginning of the next.”

RG 7.4 In *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421, it was held that unless the context shows a contrary intention the expressions “not later than” and “not less than”, when used to define a period of time between two acts or events, mean that a full or clear period of time must expire between the two acts or events. In other words, a reference to “not less than” a certain period of time means a period exclusive of the days of the two acts or events. For example, “not less than 14 days” means 14 clear days exclusive of the days on which the two acts or events occur.

RG 7.5 Section 105 of the Law is relevant. It provides:

“105(1) ... Where, for any purpose, this Law:

- (a) prohibits, permits or requires the doing of an act or thing within, or by or before the end of; or*
- (b) otherwise prescribes, allows or provides for;*

a period or time before or after a particular day, act or event, the period shall be calculated without counting that day, or the day of that act or event, as the case may be.

105(2) ... Without limiting the generality of subsection (1), in calculating how many days a particular day, act or event is before or after another day, act or event, the first-mentioned day, or the day of the first-mentioned act or event, shall be counted but not the other day, or the day of the other act or event.

105(3) ... Where the last day of any period prescribed or allowed by this Law for the doing of anything falls on a day that is not a business day in the place in which the thing is to be or may be done, the thing may be done on the first day following which is a business day in that place.”

RG 7.6 Also relevant are the definitions of “month” and “calendar month” in s9 of the Law. “Month” is defined as “calendar month”. “Calendar month” means “a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before

the beginning of the corresponding day of the next month or, if there is no such day, ending at the expiration of the next month.”

RG 7.7 Section 109R of the Law provides that the singular includes the plural. Therefore, “calendar month” includes “calendar months”.

ASC's interpretation and application of the Law

RG 7.8 The definitions of month and calendar month mean that:

- (a) a period of six months after 30 June commences at the beginning of 1 July and concludes at the end of 31 December, ie immediately before the beginning of the corresponding day of the relevant month being 1 January. This interpretation differs from that in para 18 of NCSC Release 314; and
- (b) a period of four months before 28 February commences at the beginning of 28 October and concludes at the end of 27 February. A period of four months after 30 October commences at the beginning of 31 October and concludes at the end of February.

RG 7.9 Where a period of time (A) is expressed to be “before” an act or event (B), A concludes at the end of the day before the day on which B takes place.

Therefore:

- (a) if A is expressed as a number of days (n), A commences at the beginning of the nth day counting back from, and including, the day before the day on which B takes place; and
- (b) if A is expressed as one or more months, A commences at the beginning of the day in the relevant month having the same date as the day on which B takes place.

For example:

- (a) where B takes place on 30 November and A is three days, A commences at the beginning of 27 November; and
- (b) where B takes place on 30 November and A is four months, A commences at the beginning of 30 July.

RG 7.10 Where A is expressed to be “after” the act or event B, A commences at the beginning of the day after the day on which B takes place.

Therefore:

- (a) if A is expressed as a number of days (n), A concludes at the end of the nth day counting forward from, and including, the day after the day on which B takes place; and
- (b) if A is expressed as one or more months, A concludes at the beginning of the day in the relevant month that has the same date as the day after the day on which B takes place (this results from the definition of “calendar month” and differs from NCSC Release 314).

For example:

- (a) where B is 17 July and A is 28 days, A concludes at the end of 14 August; and
- (b) where B is 17 July and A is 6 months, A concludes at the beginning of 18 January.

RG 7.11 The Law has attempted to be more explicit than previous legislation in specifying time periods. In many cases, after stating the period of time, a provision will specify the day on which the period is to begin or end.

Where a day is specified as the day on which A begins or ends, that day is to be included in the calculation of A.

For example:

- (a) *“641(1)(b) ... during the 4 months ending on the day on which the first of the offers is sent.”*

If the first of the offers is sent on 24 October, A concludes at the end of 24 October and commences at the beginning of 25 June; and

- (b) *“644(1) ... within the 21 days ending on the day immediately before the day on which the statement is served.”*

If the statement is served on 24 October, A concludes at the end of 23 October and commences at the beginning of 3 October. A consequence of this change in wording is that, unlike s18(1) of the Companies (Acquisition of Shares) Act and Codes (CASA), s644(1) does not allow a Part A statement to be registered and served on a target company on the same day (see 1991 ASC Digest at MED REL 147).

RG 7.12 Difficulty has arisen over the interpretation of the following expressions of periods of time:

- (a) *“637(1) ... not earlier than 28 days and not later than 14 days before the day on which the offers are sent”;*

- (b) “638(3) ... *not earlier than one month, or later than 6 months, after the date of the offer*”;
- (c) “638(5) ... *a date that is not less than 7 days and not more than 14 days before the last day of the offer period*”;
- (d) “663(2)(a) ... *not less than 7 days before the last day of the offer period*”; and
- (e) s79(1) ASC Law “*not less than 14 days before the first day of the hearing*”.

Each provision (except for s663(2)(a) and s79(1)) requires the calculation of two separate time periods, by reference to a particular act or event. Applying s105(1) and 105(2), *Forster v Jododex* and the general principle that the law takes no account of fractions of a day, each separate period of time is calculated by excluding the day on which the act or event takes place and including the first or final day of the period (depending on whether the period is expressed to be “before” or “after” the act or event).

The following examples correspond to the provisions quoted in para 12 above:

- (a) if the offers are sent on 30 November, the period of time is from the beginning of 2 November to the end of 15 November;
- (b) if the date of the offer was 30 November, the earliest time at which the offer could close would be the end of 31 December, and the latest time at which the offer could close would be the end of 31 May the following year;
- (c) if the last day of the offer period is 24 October, the period of time is from the beginning of 10 October to the end of 16 October;
- (d) if the last day of the offer period is 24 October, the last moment that is not less than 7 days before the last day of the offer period is the end of 16 October; and
- (e) if the first day of the hearing is 24 October, the last moment that is not less than 14 days before that is the end of 9 October.

A contrary view on the provision in CASA corresponding to s638(3) was expressed by Bryson J in *Re Kargat Pty Ltd* (1989) 7 ACLC 839; 15 ACLR 527. In that case his Honour, without quoting authority and finding it unnecessary to refer particularly to s26 of the *Companies and Securities (Interpretation and Miscellaneous) Provisions Act 1980* and Codes (the Interpretation Code), took the view that an offer dated 19 May and expressed to close at 6pm on 19 June was valid. Presumably, any time on 19 June would have been acceptable. Whereas Bryson J appeared to

disregard the effect of s26 of the Interpretation Code, the ASC takes the view that s105(1) and 105(2) (which are in terms more comprehensive than s26 of the Interpretation Code) apply in calculating the time periods specified by s638(3) so that the date of the offer is disregarded for the purpose of determining the one and six month periods. When the definition of “calendar month” is applied, the result in the *Re Kargat* situation would be that the earliest time at which the offers could close would be the beginning of 20 June. The combined operation of s105(1) and 105(2) and the definition of calendar month when applied to s638(3), gives statutory effect to the principles laid down by the High Court in *Forster v Jododex*.

RG 7.13 The general rule that the act or event to which the time period refers is excluded, (another way of expressing the common law principle that fractions of a day are disregarded), does not apply where the contrary is indicated in the relevant provision.

For example:

- (a) “677(1) ... during the period beginning whenever the takeover announcement is made and ending immediately before the start of the closing phase of the offer period”;
- (b) “705(3)(b) ... during the period beginning when the takeover offer is sent or the takeover announcement is made and ending at the end of the offer period”;

In both cases, the period begins from the act or event, ie from the making of the announcement of the sending of the offer, and includes the remainder of the day on which the act or event took place; and

- (c) “638(2) ... a date that is not earlier than 3 days before the day on which the offer is sent and not later than that day”.

In this case the day on which the offer is sent is included in the set of dates which an offer may bear.

RG 7.14 Days which are not business days are included in the calculation of a time period. One exception is s674(1), where an offer does not begin until the first “trading day” after the end of 14 days following a takeover announcement.

RG 7.15 Subsection 105(3) provides that where the last day of a period falls on a day that is not a business day, the thing may be done on the next business day. The ASC is of the opinion that s105(3) has no application to a provision drafted in reverse requiring a thing to be done in a period of time before a specified event, such as the requirement in s637(1) that a Part A statement be served not later than 14 days before the day on which offers are sent.