



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 24

Disclosure of directors' interests — unissued shares

Chapter 3 — Internal administration (Part 3.2)

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From 5 July 2007, this document may be referred to as Regulatory Guide 24 (RG 24) or Practice Note 24 (PN 24). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 24.1) or their practice note number (e.g. PN 24.1).

Headnotes

Register of directors' shareholdings; interests with respect to unissued shares; rights or options "in respect of" the acquisition of shares; contracts "under which" a person has a right to call for shares; "benefit"; s235; and s236.

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Introduction

RG 24.1 This guide is issued for the guidance of officers of companies, especially directors, and their advisers. It supersedes NCSC Release 343.

RG 24.2 Section 235 of the Corporations Law (Law) requires a company to keep a register showing, with respect to each director of the company, up to date particulars of what, broadly speaking, may be called that director's connection with shares in, debentures of, or prescribed interests made available by the company or a related company. The director is required to give written notice to the company of relevant particulars and any changes in respect of those particulars (s236). This guide explains why s235(1)(c) and 235(1)(d) apply in relation to a director's connection with unissued shares. It does not address s235(1)(a) and 235(1)(b) in relation to unissued shares, the additional requirements imposed by s215 (register of options) or directors' fiduciary duties.

Contracts, rights and options regarding unissued shares

RG 24.3 The purpose of s235 and 236 is to ensure full disclosure by directors of details of their transactions relating to securities of the company or a related company. Full disclosure of directors' interests, including details of potential entitlement through exercise of existing rights, enhances the ability of shareholders and the public to ascertain objectively the extent of directors' interests in securities of the company or a related company.

RG 24.4 Paragraph 235(1)(c), among other things, requires the company to include in the register particulars of rights or options of the director (or the director and another person or persons) "in respect of" the acquisition or disposal of "shares" in the company or a related company.

RG 24.5 Paragraph 235(1)(d), among other things, requires the company to include in the register particulars of two types of contract "under" which a person has a right to "call for or to make delivery of" "shares" in the company or a related company. The first type of contract is one to which the director is a party but need not derive a benefit. The second type of contract is one to which the director need not be a party but under which the director is entitled to a benefit. "Benefit" means "any benefit whether by way of cash or otherwise" (s9). The contracts referred to in s235(1)(d) need not be in writing.

RG 24.6 Paragraphs 235(1)(c) and 235(1)(d) are not restricted to instances in which there are rights, options or contracts for the purchase of shares which have already been issued at the time when the rights, options or contracts are acquired or entered into. Both s235(1)(c) and 235(1)(d) are effective to require inclusion in the register of relevant particulars in cases in which shares are yet to be issued.

Example: A director of a company is granted options to subscribe for shares in the company. Although the shares have not been issued at the time of the acquisition of the options, the director must notify the company in writing, giving particulars of the options and the company must record the particulars in its register.

RG 24.7 A right or option to subscribe for unissued shares is properly characterised as one “in respect of” the acquisition of shares within the meaning of s235(1)(c) and any contract pursuant to which the shares are to be subscribed for is one “under which a person has a right to call for” shares within the meaning of s235(1)(d).

RG 24.8 An exhaustive list of the instances in which s235(1)(c) and/or s235(1)(d) apply cannot be provided. However, it is important to note that both paragraphs encompass instances in which the director is not the intended acquirer or disposer of the shares.

Example: A director of a company is entitled to a benefit conditional upon shares in the company being subscribed for by another person. The benefit might, for instance, be a commission. If the director is entitled to the commission under a contract under which the shares are to be acquired, then s235(1)(d) applies. In any event, s235(1)(c) applies because the director has a right “in respect of” the acquisition or disposal of shares, namely, a right to receive a commission once the shares are acquired.