ASIC
Australian Securities & Investments Commission

REGULATORY GUIDE 74

Acquisitions approved by members

December 2011

About this guide

This guide is for entities subject to Ch 6 of the Corporations Act—that is, companies with more than 50 members, listed companies and listed managed investment schemes.

It sets out our guidance on the takeovers exception for acquisitions approved by members contained in item 7 of s611 (item 7) of the Corporations Act, including guidance on the disclosure required and the voting restrictions imposed by item 7. It also explains how we monitor compliance with these requirements and our policy on the exercise of our discretionary powers in relation to item 7.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This regulatory guide was issued in December 2011 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Policy Statement 74, issued 8 December 1993, updated 31 January 1994, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A Overview

Key points

Acquisitions approved by members under item 7 of s611 (item 7) of the Corporations Act are one of the exceptions to the prohibitions in s606. This guide:

- explains the disclosure requirements for seeking approval under item 7 (see Section B);
- discusses the voting restrictions imposed by item 7 (see Section C);
- explains the relief we give for trust schemes (see Section D);
- discusses specific issues that can arise with item 7 acquisitions, including a change in circumstances before completion of the acquisition, the length of time between member approval and acquisition, an acquisition involving convertible securities, pre-meeting arrangements, item 7 placements that are inter-conditional with other control transactions, and related takeover announcements (see Section E); and
- sets out how we monitor item 7 acquisitions and apply the policy set out in this guide (see Section F).

Item 7 acquisitions

RG 74.1 Item 7 of s611 (item 7) of the *Corporations Act 2001* (Corporations Act) allows members to approve an acquisition of relevant interests in voting shares that would otherwise contravene the prohibitions in s606. Item 7 contains disclosure requirements to ensure that members are able to make an informed decision about whether or not to approve the acquisition. The voting restrictions ensure that only members who are not associated with the parties to the transaction are able to vote in favour of the proposal.

Disclosure required for item 7 acquisitions

RG 74.2 Item 7 requires certain material information to be disclosed to members: see RG 74.10–RG 74.16. Section B discusses the disclosure required by item 7, including:

(a) the information that is required in a notice of meeting seeking approval for an acquisition (see RG 74.17–RG 74.28);

(b) the requirements for independent expert reports and reports prepared by directors, and the limited circumstances in which a report may not be required (see RG 74.29–RG 74.42); and

(c) the requirement for entities to ensure that a notice of members' meeting is clear, concise and effective (see RG 74.43–RG 74.44), and that members have adequate time to consider the information, including any new information that arises after dispatch of the meeting documents (see RG 74.45–RG 74.47).

Entitlement to vote

RG 74.3 Section C discusses the voting restrictions in item 7, which ensure that the acquisition is approved only by members who are not associated with the acquirer or the vendor: see RG 74.48–RG 74.50.

RG 74.4 Section C also describes the relief we may give from the voting restrictions:

(a) for trustees and nominees (see RG 74.51–RG 74.52); or

(b) if the proposed acquisition involves an offer to all members (see RG 74.53–RG 74.57).

Relief for trust schemes

RG 74.5 Section D discusses relief for trust schemes. A trust scheme is a colloquial term for a type of transaction used to acquire control of a listed managed investment scheme. Trust schemes generally require relief from the voting restrictions in item 7(a)(ii) and various provisions in Chs 5C and 7.

Other aspects of item 7 acquisitions

RG 74.6 Section E discusses specific issues that can arise with item 7 acquisitions, including:

(a) when there is a change in circumstances after dispatch of a notice of meeting for an item 7 resolution but before the meeting is held—this may mean that further disclosure is required (see RG 74.81–RG 74.86);

(b) when there is a change in circumstances after the meeting is held—this may mean that fresh item 7 approval is required (see RG 74.87–RG 74.88);

(c) if there is a significant delay between approval and completion of an item 7 acquisition (see RG 74.89);

(d) when an acquisition involves convertible securities (see RG 74.90–RG 74.93);

(e) when there are pre-meeting arrangements (see RG 74.94–RG 74.96);

(f) when item 7 placements are inter-conditional with other control transactions (see RG 74.97–RG 74.102); and

(g) when takeover announcements are connected with an item 7 acquisition (see RG 74.104–RG 74.108).

Application of our policy

RG 74.7 Section F sets out how we monitor item 7 acquisitions and apply the policy set out in this guide, including guidance on:

(a) how we encourage entities to give us draft notices of meetings for item 7 acquisitions before they are sent to members to reduce the risk of regulatory action (see RG 74.109–RG 74.113); and

(b) when we may take action if the requirements of item 7 are not met, including an application to the Takeovers Panel or court (see RG 74.114–RG 74.116).

Terminology used in this guide

RG 74.8 Item 7 and this guide are potentially relevant to any entity subject to Ch 6—that is, companies with more than 50 members, listed companies and listed managed investment schemes. For ease of reference, this guide uses the term 'entity' and 'securities', except when we are quoting the Corporations Act or need to distinguish between companies and managed investment schemes.

RG 74.9 Other key terms are defined in the 'Key terms' at the end of this guide.

B Disclosure required for item 7 acquisitions

Key points

Item 7 requires disclosure of detailed information so that members can make an informed decision about a proposal that may affect control of their entity: see RG 74.10–RG 74.16.

This section discusses information that is material to the decision on how to vote on an item 7 resolution: see RG 74.17–RG 74.28. In particular, members should generally be provided with an analysis of the item 7 acquisition that complies with Regulatory Guide 111 *Content of expert reports* (RG 111): see RG 74.29–RG 74.42.

This section also discusses how the information should be presented (see RG 74.43–RG 74.44) and the dispatch of the notice of meeting documents to members: see RG 74.45–RG 74.47.

Context of information required by item 7

RG 74.10 Chapter 6 aims to ensure that the basic rights of members are protected when control of the entity may change. Those rights are set out in general terms in s602.

RG 74.11 Item 7 allows members to approve an acquisition of securities that would otherwise contravene the prohibitions in s606. It recognises that members may choose to give up an equal opportunity to participate in any benefits accruing to other members if the acquisition may change control of the entity, which is one of their basic rights under s602.

RG 74.12 However, members voting on an item 7 resolution are entitled to all the other rights set out in s602, including the right to:

(a) know the identity of persons who propose to acquire a substantial interest in their entity;

(b) be given a reasonable time to consider the proposal; and

(c) be given enough information to assess the merits of the proposal (s602(b)).

These rights are reflected in the disclosure requirements of item 7.

Duty of target directors to give disclosure

RG 74.13 Item 7 requires certain material information to be disclosed to members. The principle in s602(b) also requires members to be given enough information to assess the merits of a proposal.

RG 74.14 Directors also have a duty at common law to give full and proper disclosure. At common law, a notice of meeting must disclose all information needed to fully and fairly inform members of the nature of the proposed resolutions and to enable members to judge for themselves whether to attend the meeting and vote for or against the proposed resolutions: see *Bulfin v Bebarfald's Ltd* (1938) 38 SR (NSW) 423 at 440, *Fraser v NRMA Holdings Limited* (1995) 127 ALR 543 at 554, *Lion Nathan Australia Pty Ltd v Coopers Brewery Ltd and Others* (2005) 55 ACSR 583 and *ENT Pty Ltd v Sunraysia Television Ltd* (2007) 61 ACSR 626.

Failure to give full disclosure

RG 74.15 If directors fail in their duty to make proper and full disclosure, the courts may make remedial orders—for example, the courts may declare the resolution to be invalid and of no effect: see *Bain & Company Nominees Pty Ltd v Grace Bros Holdings Ltd* (1983) 1 ACLC 816, *Bancorp Investments Ltd v Primac Holdings Ltd* (1985) 3 ACLC 69, *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 4 ACLC 711 and *Devereaux Holdings Pty Ltd v Parry Corporation Ltd* (1985) 9 ACLR 837.

RG 74.16 The Takeovers Panel may also make remedial orders if deficient disclosure amounts to unacceptable circumstances—see, for example, *LV Living Limited* [2005] ATP 5 and *Axiom Properties Ltd 01* [2006] ATP 1.

Disclosure of material information: Item 7(b)

RG 74.17 Members asked to approve an acquisition under item 7 must be given all information known to the acquirer, its associates or the target entity that is material to the decision on how to vote on the resolution: see item 7(b).

RG 74.18 Item 7(b) specifies that the material information to be given to members includes:

(a) the identity of the person proposing to make the acquisition and their associates;

(b) the maximum extent of the increase in that person's voting power in the company;

(c) the voting power the person would have as a result of the acquisition;

(d) the maximum extent of the increase in the voting power of each of the acquirer's associates that would result from the acquisition; and

(e) the voting power that each of the acquirer's associates would have as a result of the acquisition.

RG 74.19 To be effective, the resolution seeking approval should be specific rather than general. For example, disclosing the identity of the acquirer would ordinarily involve naming the acquirer. The resolution should also make it clear that approval is being sought for the purposes of item 7 and seek approval for the acquirer's acquisition of a relevant interest in the target entity's securities: see the Takeovers Panel's comments in *LV Living Limited* [2005] ATP 5 at paragraph 102.

Acquirer's responsibility to provide information

RG 74.20 Item 7 specifically requires members to be provided with material information known to the acquirer and its associates (in addition to information known to the target entity). The item 7 approval will be invalid and the acquirer will contravene s606 if this information is not provided. The acquirer should preferably also have a contractual obligation to provide necessary information to the target (under the terms of the agreement between the acquirer and the target entity). This will assist the target directors in ensuring members are fully informed.

Disclosure of voting power

RG 74.21 Item 7(b)(ii) and item 7(b)(iv) require disclosure of the maximum increase in the voting power of the acquirer and the acquirer's associates as a result of the acquisition. This is vital information that should be set out clearly and prominently in the notice of meeting documents.

RG 74.22 Item 7(b)(iii) and item 7(b)(v) also require disclosure of the voting power of the acquirer and the acquirer's associates as a result of the acquisition. This information on maximum voting power should also be set out clearly and prominently. We consider that it is sufficient to disclose maximum voting power under item 7(b)(iii) and item 7(b)(v) when it is not possible to estimate the actual voting power. Preferably, the resolution itself should also specify the maximum voting power that the acquirer and its associates may obtain.

RG 74.23 If the acquirer's and associates' voting power will depend on a number of factors, the meeting documents should clearly disclose these factors. For example, if the number of securities and, therefore, voting power will be determined by a formula, then this formula should be clearly disclosed and explained. We consider it is good practice to include tables and worked examples.

Note: See also the disclosure requirement under ASX Listing Rule 7.3.1.

RG 74.24 Disclosure of the parties' voting power may be particularly complex when the item 7 acquisition is part of a larger transaction or series of transactions—for example, when the acquirer will be issued securities under a placement and also plans to underwrite a rights issue. In these circumstances, it is particularly important that the notice of meeting clearly explains the effect that the item 7 acquisition and any other transactions will have on control of the entity.

Other material information required in the notice of meeting

RG 74.25 To ensure full and proper disclosure of all material information, members should be given the following information in the notice of meeting or accompanying explanatory material:

(a) an explanation of the reasons for the proposed acquisition;

(b) when the proposed acquisition is to occur;

(c) the material terms of the proposed acquisition;

(d) details of the terms of any other relevant agreement between the acquirer and the target entity or vendor (or any of their associates) that is conditional on (or directly or indirectly depends on) members' approval of the proposed acquisition;

(e) a statement of the acquirer's intentions regarding the future of the target entity if members approve the acquisition and, in particular:

  (i) any intention to change the business of the entity;

  (ii) any intention to inject further capital into the entity;

  (iii) the future employment of present employees of the entity;

  (iv) any proposal where assets will be transferred between the entity and the acquirer or vendor or their associates; and

  (v) any intention to otherwise redeploy the fixed assets of the entity;

(f) any intention of the acquirer to significantly change the financial or dividend distribution policies of the entity;

(g) the interests that any director has in the acquisition or any relevant agreement disclosed under RG 74.25(d); and

(h) the following details about any person who is intended to become a director if members approve the acquisition:

  (i) name;

  (ii) qualifications and relevant professional or commercial experience;

  (iii) any associations that the proposed director has with the acquirer, vendor or any of their associates; and

  (iv) any interest that the proposed director has in the acquisition or any relevant agreement disclosed under RG 74.25(d).

RG 74.26 The information listed in RG 74.25 is indicative and merely sets out information that would generally be required at a minimum (in addition to the disclosure required by item 7(b)(i)–(v)). The directors should also assess whether members would reasonably require any additional information to decide how to vote on the resolution. Disclosure on issues that are likely to affect the future of the entity (such as the acquirer's intentions) is particularly important if the acquirer may gain control of the entity if the item 7 acquisition is approved.

RG 74.27 Members should also be provided with:

(a) the recommendation of each director on how non-associated members should vote on the resolution and the reasons for that recommendation (or the reasons why the director is not giving a recommendation); and

(b) an analysis of the proposed acquisition that complies with the requirements in Regulatory Guide 111 *Content of expert reports* (RG 111) (see RG 74.29–RG 74.37).

RG 74.28 For a listed entity, the listing rules of the relevant market operator may require additional information to be disclosed. Entities should also consider whether the related party provisions in Ch 2E or Pt 5C.7 are applicable to the transaction: see Regulatory Guide 76 *Related party transactions* (RG 76).

Detailed analysis of the proposed acquisition

RG 74.29 We consider that the directors of the target entity should provide members with an independent expert report or a detailed directors' report on the proposed transaction to satisfy the obligation to disclose all material information on how to vote on the item 7 resolution. This analysis should comply with RG 111: see RG 74.35.

RG 74.30 If two or more reports are obtained for a proposed item 7 acquisition, the directors should provide a copy of each report to members: see Regulatory Guide 112 *Independence of experts* (RG 112) at RG 112.59.

Independent expert report

RG 74.31 The analysis of the proposed transaction should usually be in the form of an independent expert report, which is standard market practice.

> Note: The Takeovers Panel Guidance Note 15 *Trust scheme mergers* (Guidance Note 15) at paragraph 19 requires an independent expert report for trust schemes.

RG 74.32 Directors should only prepare a report themselves if they have sufficient expertise, experience and resources to prepare a report (using specialist valuations if required) on which the non-associated members may rely. The members should not receive lesser quality information from directors than they would from an independent expert.

RG 74.33 Directors should only prepare a detailed analysis of an item 7 acquisition if they are not associated with the proposal. If a majority of the directors have an interest in an item 7 resolution to put to members, the directors will probably only satisfy their disclosure obligation by obtaining an independent expert report.

RG 74.34 We closely examine any report prepared by directors to ensure it is adequate. In our experience of reviewing item 7 documents, there is a significant risk that a report prepared by directors will not provide all material information to members.

Content of report

RG 74.35 The report provided to members should comply with RG 111 (whether it is prepared by an independent expert or the directors themselves). RG 111 requires an expert to focus on the purpose and outcome of a transaction, rather than the legal mechanism to effect the transaction. If an independent expert has prepared the report, it must also comply with RG 112.

RG 74.36 If the effect of an item 7 acquisition on a target entity's shareholding will be similar to a takeover bid, the report should analyse whether the transaction is fair and reasonable in accordance with RG 111.10–RG 111.17. For further guidance about how to perform this analysis for item 7 transactions involving an issue of securities, see RG 111.24–RG 111.27.

RG 74.37 If a transaction will not have a similar effect to a takeover bid (e.g. approval is sought for a sale of securities), the report should provide the information set out in RG 111.41–RG 111.46. This includes an analysis of the advantages and disadvantages of the transaction.

Consent for use of expert report

RG 74.38 Directors should not present a report to members unless the expert consents to use of their report and opinion in the form and context used.

RG 74.39 The directors should also ensure that the notice of meeting does not quote the expert's statements out of context. For example, it may be misleading to quote an expert's opinion without stating the key assumptions on which it is based.

Non-provision of expert report or directors' report

RG 74.40 In some exceptional circumstances, a resolution may be valid even though the members are not provided with an expert report or a detailed directors' report. For example, the non-associated members' interests may occasionally be materially damaged by the delay or expense involved in obtaining such a report: see the Takeovers Panel's comments in *LV Living Limited* [2005] ATP 5 at paragraph 103. This would normally be the case only when such delay or expense would be likely to force the entity into immediate liquidation. In such circumstances, given the position of the entity, the information likely to be material to members will differ.

RG 74.41 Generally, however, there is a risk that item 7 approval will be invalid if it is obtained without either an expert report or detailed directors' report. The parties will also risk an application seeking a declaration of unacceptable circumstances if item 7 approval is obtained without an expert report or detailed directors' report.

RG 74.42 The target entity should inform us if it does not plan to provide either an expert report or directors' report before the notice of meeting is sent to members.

'Clear, concise and effective' disclosure

RG 74.43 A notice of members' meeting should be worded and presented in a 'clear, concise and effective' manner: see s249L(3). This is particularly important when approval is sought for an item 7 resolution, given the complex information required.

> Note: Although s249L(3) applies only to meetings of a company's members and not to meetings of members of a managed investment scheme, we expect that a notice of meeting of members of a managed investment scheme would also be worded and presented in a 'clear, concise and effective' manner.

RG 74.44 We consider that an item 7 notice of meeting should:

(a) highlight key information (both positive and negative) in a summary up-front, especially the maximum increase in voting power;

(b) be easy to navigate (e.g. through the use of numbered sections, cross-references and tables of contents for longer documents);

(c) use plain language; and

(d) be as brief as possible.

> Note: See also Section B of Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228) for more guidance on how to make disclosure 'clear, concise and effective'.

Dispatch of information

RG 74.45 To satisfy s249HA, a listed company must dispatch the notice of meeting to members at least 28 days before the date of the meeting.

RG 74.46 Unlisted companies and registered schemes must give at least 21 days notice of a meeting (unless the constitution specifies a longer period of notice): see s249H(1) and 252F.

RG 74.47 After dispatch of the original meeting documents, a target entity may need to give supplementary or corrective information to members: see RG 74.83. If members would not have adequate time to consider the supplementary or corrective information, the entity will need to postpone the meeting or convene a new meeting: see RG 74.86.

C Entitlement to vote

Key points

This section describes our view on how the voting restrictions in item 7(a) apply (see RG 74.48–RG 74.50) and the relief we may give:

- for trustees and nominees (see RG 74.51–RG 74.52); or
- if the proposed acquisition involves an offer to all members (see RG 74.53–RG 74.57).

Voting restrictions: Item 7(a)

RG 74.48 It is a condition of approval under item 7(a) that no votes are cast in favour of the resolution by:

> '(i) the person proposing to make the acquisition and their associates; or
>
> (ii) the persons (if any) from whom the acquisition is to be made and their associates.'

RG 74.49 The persons specified in item 7(a) must not vote in favour of the resolution. However, the voting restriction in item 7(a) does not prevent these persons from voting against the resolution: see *Village Roadshow Ltd v Boswell Film GmbH* (2004) 49 ACSR 27 at 33 (referring to corresponding words in s257D(1)(a)).

Associates of an issuer may vote on issues of shares

RG 74.50 Item 7(a)(ii) prevents the person from whom the acquisition is to be made and their associates from voting in favour of the resolution. If the acquisition occurs through an issue of shares, there is no 'person from whom the acquisition is to be made'. This means that item 7(a)(ii) does not prevent an associate of the issuer from voting in favour of the resolution: see *McMillan Properties Pty Ltd v W C Penfold Ltd* (2001) 40 ACSR 319 at 325–26. The acquirer and the acquirer's associates are precluded from voting in favour of the resolution by item 7(a)(i).

Relief for trustees and nominees

RG 74.51 A person who is precluded from voting in favour of an item 7 resolution because they are the acquirer or the person from whom the acquisition will be made (or an associate of those persons) may hold shares on trust or as a nominee for other persons who would not be precluded from voting if they held shares directly.

RG 74.52 We may give relief to permit the counting of votes that would otherwise be disregarded because of item 7(a) for shares held by a trustee for another person (the 'beneficial holder') provided that:

(a) the beneficial holder is not an associate of the trustee;

(b) item 7(a) would not restrict the beneficial holder from voting if they held the shares directly; and

(c) the beneficial holder directs the trustee to vote in favour of the resolution.

Note: The trustee may be subject to other prohibitions on voting. For example, s253E prevents a responsible entity and its associates from voting on a resolution at a meeting of scheme members if they have an interest in the resolution other than as a member: see Guidance Note 15, paragraph 26 at footnote 31.

Relief for offers to all members

RG 74.53 If a proposed acquisition involves an offer to all members, an item 7 resolution will not be possible without ASIC relief because all the members will be precluded from voting by item 7(a)(ii). We will consider applications from the acquirer to modify item 7(a)(ii) so that members who have an interest in the transaction as ordinary members (and as offerees), rather than having a special interest in the transaction, will be permitted to vote in favour of the resolution.

Note: The acquirer and any member associated with the acquirer will still be precluded from voting by item 7(a)(i).

RG 74.54 In deciding whether to grant relief, and on what terms, we will consider the purposes of Ch 6 as set out in s602. We will review whether the transaction complies with these purposes. We will also closely review the draft disclosure before granting relief.

RG 74.55 If the target entity is a company, we will consider why the parties are seeking approval under item 7 rather than proceeding with a takeover bid or a scheme of arrangement under Pt 5.1: see RG 74.56–RG 74.57. If the target entity is a managed investment scheme, we accept that a trust scheme is usually a valid alternative to a takeover bid (given that Pt 5.1 does not apply to managed investment schemes): see RG 74.58–RG 74.65.

Offers to all members of a company

RG 74.56 We will not give relief to allow an offer to all members of a company to proceed via item 7 unless we are satisfied that there is a commercial or legal reason why it is not practical to structure the offer as a takeover bid or scheme of arrangement. This reflects our general approach to applications for relief, which is that we will not be inclined to provide relief if there is a

lawful and effective way of doing something without relief: see Regulatory Guide 51 *Applications for relief* (RG 51) at RG 51.55.

RG 74.57 In considering any such applications for relief, we will also be mindful that the Corporations Act contains shareholder protections for bids and schemes of arrangement. We will need to be satisfied that the protections and principles of Ch 6 would not be undermined by providing relief to permit the transaction to proceed via an item 7 resolution.

D Relief for trust schemes

Key points

A trust scheme is a colloquial term for a type of transaction used to acquire control of a listed managed investment scheme: see RG 74.58–RG 74.61.

A trust scheme generally requires relief from:

- the voting restrictions in item 7(a)(ii) (see RG 74.62–RG 74.65);
- Ch 5C for non-liquid schemes and equal treatment obligations (see RG 74.66–RG 74.71); and
- Ch 7 disclosure requirements (see RG 74.72–RG 74.80).

How trust schemes operate

RG 74.58 A person wanting to acquire control of a listed managed investment scheme may do so through a transaction commonly referred to as a 'trust scheme'.

RG 74.59 Trust schemes may take different forms but generally they involve the acquirer acquiring all the interests of the target managed investment scheme. The target members will usually be offered cash or scrip consideration for the transfer or redemption of their interests.

RG 74.60 The responsible entity will seek members' approval under item 7 for the acquirer's acquisition of a relevant interest in all the interests of the target managed investment scheme (which would otherwise contravene s606). This will require relief from the voting restrictions in item 7(a)(ii): see RG 74.62–RG 74.65.

RG 74.61 The responsible entity will also seek members' approval for an amendment to the target managed investment scheme's constitution under s601GC. If the trust scheme as a whole is approved, this amendment to the constitution will facilitate the acquirer's acquisition of the target managed investment scheme (either by compulsory transfer of the members' interests to the acquirer or the compulsory redemption of all interests other than those held by the acquirer and its associates).

Relief from the item 7 voting restrictions

RG 74.62 A trust scheme involves the acquirer acquiring a relevant interest in the interests of all (or most) members and has a similar effect to a takeover bid. We accept that a trust scheme is usually a valid alternative to a bid because Pt 5.1 does not apply to managed investment schemes and so a scheme of arrangement is not an option.

RG 74.63 If a trust scheme involves an offer to all non-associated members, the parties need relief from the 'vendor' voting restrictions in item 7(a)(ii). These restrictions would otherwise provide that no votes may be cast in favour of an item 7 resolution by the person from whom the acquisition is to be made.

RG 74.64 The person seeking to acquire the target managed investment scheme should apply for relief from item 7(a)(ii) because the acquirer is the person who will otherwise contravene s606.

RG 74.65 Before giving relief from item 7(a)(ii), we will review the draft disclosure closely. We also need to be satisfied that the trust scheme will not undermine the protections and principles of Ch 6. This is because the specific protections that would apply to a takeover bid will not automatically apply to a trust scheme. We take into account whether the parties will comply with all the requirements of Guidance Note 15 (although actual compliance remains the responsibility of the parties). Trust schemes that do not comply with Guidance Note 15 risk an application to the Takeovers Panel for a declaration of unacceptable circumstances.

Chapter 5C relief

Relief for non-liquid schemes that will involve compulsory withdrawal of members' interests

RG 74.66 Part 5C.6 establishes a framework under which a responsible entity may make withdrawal offers. This framework aims to ensure that each member is treated equally and has an equal opportunity to participate in the consideration provided when members' interests in a scheme are withdrawn.

RG 74.67 The responsible entity will need relief from Pt 5C.6 if:

(a) the managed investment scheme is not liquid under Pt 5C.6; and

(b) the proposed trust scheme involves the responsible entity making withdrawal offers to members.

RG 74.68 Part 5C.6 is also based on the responsible entity realising property of the managed investment scheme and distributing the net proceeds on a pro rata basis to all members who have accepted the withdrawal offer. The

responsible entity may need relief if the trust scheme does not involve this realisation and distribution of scheme property (such as when the acquirer provides cash or scrip consideration to members of the target scheme for their interests).

RG 74.69 We consider that a properly conducted trust scheme will satisfy the legislative purposes of Pt 5C.6 because members will have an equal opportunity to participate in the benefits of the scheme. This is because all members of the target scheme will receive consideration for the withdrawal of their interests, which should be of the same value per interest and in the same form.

Relief from equal treatment obligations

RG 74.70 Section 601FC(1)(d) requires equal treatment of members of the same class and fair treatment of the members of all classes. The responsible entity will need relief from this requirement if the terms of the trust scheme exclude foreign members from receiving scrip consideration offered under the scheme.

RG 74.71 We consider that a properly conducted trust scheme will satisfy the legislative purpose of the equal treatment requirement in s601FC(1)(d) because it will treat members of the same class fairly and give fair treatment to the members of all classes. We are usually prepared to grant the responsible entity relief from s601FC(1)(d) to permit unequal treatment of foreign members provided that:

(a) the foreign members will be fully informed about the proposed transaction and be given an opportunity to vote;

(b) the foreign members comprise a small percentage of interests in the target scheme;

(c) through a sale facility, the foreign members will receive cash for their interests for an amount that is, as far as practicable, the same as the value that other members will receive; and

(d) the issuer of the scrip consideration would otherwise be required to comply with foreign regulatory requirements that would be onerous in the circumstances.

Chapter 7 relief

RG 74.72 Trust schemes may require relief from certain provisions in Ch 7 that, for example, would otherwise require provision of a Financial Services Guide (FSG) or require the parties to hold an Australian financial services (AFS) licence: see RG 74.73–RG 74.77. We will usually give relief from these provisions for trust schemes on the basis that compliance with the Ch 7 requirement would be disproportionately burdensome, and dispensing with the requirement will not compromise the protection of scheme members.

Relief for providing general financial product advice

RG 74.73 Information in a notice of meeting for a proposed trust scheme might satisfy the definition of financial product advice in s766B. Section 911A requires a person who provides financial product advice to hold an AFS licence authorising them to provide such advice.

RG 74.74 When the responsible entity of the target scheme, and/or the acquirer, prepares the notice of meeting and does not have an authorisation to provide financial product advice, we may grant licensing relief on the basis that compliance with the licensing provisions would be disproportionately burdensome.

> Note: Class Order [CO 03/606] *Financial product advice—exempt documents* provides similar relief for schemes of arrangement, bidder's statements and acquisitions under item 7 in relation to companies. The policy rationale of [CO 03/606] will usually be relevant to a trust scheme.

Relief from FSG requirements

RG 74.75 Section 941A requires that an FSG be given to a retail client if the providing entity provides a financial service. It is arguable that s941A would require the responsible entity or the acquirer to give members an FSG when they give them the notice of meeting for a trust scheme (which includes general financial product advice): see RG 74.73.

RG 74.76 We will usually give the responsible entity and acquirer relief from this requirement for a trust scheme because an FSG will not provide members with any additional relevant information about these parties or their financial services (given the extensive disclosure required under item 7 and Guidance Note 15).

> Note: In accordance with Class Order [CO 04/1572] *Secondary Services: Financial Services Guide relief for experts*, the expert report on the trust scheme should include an FSG.

Relief from Pt 7.9, Div 5A for unsolicited offers

RG 74.77 Part 7.9, Div 5A prohibits certain unsolicited off-market offers to purchase financial products. A trust scheme usually involves an offer to purchase all the interests in the target scheme not held by the acquirer and its associates and may require relief from Pt 7.9's prohibition on unsolicited offers. We generally provide this relief from Pt 7.9, Div 5A because of the extensive disclosure required for trust schemes.

> Note: We consider this is analogous to s1019D(1)(d), which provides an exemption from Pt 7.9, Div 5A for bids and schemes of arrangement. It is also analogous to Class Order [CO 05/850] *Unsolicited offers under a regulated foreign takeover bid*, which provides relief from the provisions of Pt 7.9, Div 5A for foreign schemes regulated under the laws of certain foreign countries on the basis that the foreign disclosure is comparable to a scheme of arrangement.

Relief for scrip trust schemes

RG 74.78 Trust schemes involving scrip consideration (such as interests in another managed investment scheme) may require relief from s1016A(2), 1013B(1) and 1015C if the acquirer is obliged to give a Product Disclosure Statement (PDS) to members and the relief under Class Order [CO 07/10] *Technical disclosure relief for reconstructions and capital reductions* is unavailable. [CO 07/10] may be unavailable if the trust scheme does not technically involve a reconstruction or arrangement that is between the responsible entity and members.

RG 74.79 If [CO 07/10] does not apply, a scrip trust scheme may require individual relief from the following requirements:

(a) application forms (s1016A(2))—these will not usually be appropriate for a trust scheme because the financial product consideration will be issued to all eligible members if the trust scheme proceeds;

(b) PDS labelling (s1013B(1))—the requirement to label a PDS is not appropriate for a scrip trust scheme because the PDS will often form part of the notice of meeting material and will not be a stand-alone document; and

(c) PDS delivery (s1015C)—in a scrip trust scheme, the notice of meeting material that includes the PDS will be sent to each member at the address recorded for the member in the responsible entity's register of members (rather than the address nominated by each member).

RG 74.80 Individual relief from these provisions for scrip trust schemes will usually be given for the same policy reasons underlying [CO 07/10] and be based on the class order.

E Other aspects of item 7 acquisitions

Key points

Adequate disclosure is central to the validity of approval under item 7. This has implications when there is:

- a change in circumstances after the notice of meeting is dispatched to members (see RG 74.81–RG 74.86) or after item 7 approval (see RG 74.87–RG 74.88);
- a long delay between member approval and item 7 acquisition (see RG 74.89); and
- an acquisition involving convertible securities (see RG 74.90–RG 74.93).

This section also discusses issues that can arise when:

- there are pre-meeting arrangements (see RG 74.94–RG 74.96);
- item 7 placements are inter-conditional with other control transactions (see RG 74.97–RG 74.102); and
- the notice of meeting for item 7 approval also announces a takeover bid for the target entity's remaining securities (see RG 74.104–RG 74.108).

Changes in circumstances

A change before the meeting has been held

RG 74.81 A change in circumstances after dispatch of the notice of meeting but before the meeting is held may result in non-disclosure of material information required under item 7. This non-disclosure may mean that any approval obtained is invalid: see *LV Living Limited* [2005] ATP 5 at paragraph 103. The Takeovers Panel may also declare that there are unacceptable circumstances if the resulting acquisition is materially different from the one approved by members: see the discussion in *Focus Technologies Ltd* [2002] ATP 08 at paragraph 30.

RG 74.82 We will consider giving relief to accommodate certain changes in circumstances that are contemplated before the notice of meeting is sent. For example, we may give relief when the acquirer wants to be able to nominate which of its wholly owned subsidiaries will be issued the securities under the transaction.

RG 74.83 If a material change in circumstances occurs after dispatch of the notice of meeting but before the meeting takes place, the target entity should give supplementary information to members. This would usually include an updated independent expert report and advice on whether the directors'

recommendation on how to vote has changed and, if so, why. The target entity should also inform members that they are able to revoke existing proxies.

RG 74.84 It is important that members have adequate time to consider any supplementary information distributed before voting on an item 7 acquisition. Generally, we consider that members (including those voting by proxy) need to receive new information at least 10 days before being required to vote. This is consistent with our policy in Regulatory Guide 60 *Schemes of arrangement* (RG 60) at RG 60.92–RG 60.93.

RG 74.85 In some circumstances, it may be acceptable for members to receive supplementary information shortly before the meeting is to be held. This depends on a number of factors, including:

(a) whether the information is already available (e.g. through a competing takeover bid's documents, market announcements or media coverage);

(b) the quantity and complexity of the supplementary information;

(c) whether the supplementary information was foreshadowed in the original disclosure; and

(d) the significance of the supplementary information and the nature of any additional recommendations provided by the entity's directors.

Some of these factors are mentioned in *PowerTel Ltd 01* [2003] ATP 25 at paragraphs 23–27 and *Troy Resources NL v Taipan Resources NL* (2000) 36 ACSR 197.

RG 74.86 The target entity should postpone the meeting, or convene a new one, if the change in circumstances makes the acquisition a substantially new transaction from the one for which approval was initially sought, and there is not enough time to give updated disclosure to members before the meeting.

A change after item 7 approval but before acquisition is completed

RG 74.87 Fresh approval under item 7 should be sought if:

(a) a change in circumstances happens after approval has been obtained but before the acquisition is completed; and

(b) the change means the transaction is materially different from the one approved by members.

RG 74.88 This would be the case if subsequent events increased the voting power that the acquirer would have after completion of the item 7 acquisition beyond the voting power identified in the notice of meeting—for example, if the acquirer purchased shares on market before completion, or if the company's share capital was consolidated (but the shares to be issued to the acquirer

under the item 7 acquisition were not consolidated): see the Takeovers Panel's comments in *Re Australian Pipeline Trust (No. 1R)* (2006) 59 ACSR 341 at 357.

Time between member approval and item 7 acquisition

RG 74.89 An item 7 acquisition that will only be completed in the distant future may deter other takeover bids and undermine the efficient market for control of the target entity. It may also be difficult for the directors to satisfy their obligation to give full disclosure for an acquisition that will complete in the distant future: see RG 74.13–RG 74.16.

An acquisition involving convertible securities

RG 74.90 The takeovers prohibition in s606 only applies to relevant interests in issued voting shares (and voting interests in the case of managed investment schemes). Convertible securities over unissued shares (e.g. options and convertible notes) do not ordinarily give rise to an acquisition of a relevant interest in a voting share. This means that the acquisition of convertible securities does not usually contravene s606, and item 7 approval is not required.

RG 74.91 However, the holder of convertible securities will need to rely on item 7 or another s611 exception for the issue of shares on conversion if these new shares cause the acquirer (or someone else) to exceed the 20% threshold in s606. For this reason, entities often seek item 7 approval before granting the convertible securities. This may be problematic if the convertible securities have a long exercise or conversion period: see RG 74.89.

> Note: The item 7 resolution should seek approval for the issue of shares on conversion (or exercise) of the convertible security and not just for the issue of the convertible security itself: see *LV Living Limited* [2005] ATP 5.

RG 74.92 If item 7 approval is sought for the issue of shares on the conversion of convertible securities, members should be told the number of shares that the holder will acquire on conversion: see *NCSC v Consolidated Gold Mining Areas NL (No. 2)* (1985) 3 ACLC 520. If the number of shares depends on a formula, and the exact number cannot be ascertained at the time of seeking item 7 approval, it will be necessary to disclose the maximum voting power that the acquirer and its associates will have after conversion of the convertible securities: see item 7(b)(ii)–(v) and RG 74.21–RG 74.24. Fresh approval is likely to be required if the holder of convertible securities acquires additional shares before conversion and exceeds the maximum voting power approved under item 7: see RG 74.87.

RG 74.93 Item 7(b)(i) requires the identity of the acquirer and its associates to be disclosed. Therefore, approval obtained for the issue of shares on conversion of the convertible securities will only apply to the person named in the resolution. Approval will not have been given to any person to whom the convertible securities are transferred.

Pre-meeting arrangements: s609(7)

RG 74.94 Usually, the acquirer and the vendor enter into a pre-meeting agreement before approval is sought under item 7. Due to s608(8), this type of pre-meeting arrangement may contravene the takeovers prohibition in s606. However, pre-meeting agreements do not give rise to a relevant interest if they:

(a) are conditional on a resolution under item 7 being passed;

(b) do not confer any control over, or power to substantially influence the exercise of, a voting right attached to securities; and

(c) do not restrict disposal of securities for more than three months from the date when the agreement is entered into: s609(7).

Note: The agreement should not restrict the disposal of securities after the date of the meeting if shareholders do not approve the item 7 resolution: see *PowerTel Ltd 01* [2003] ATP 25.

RG 74.95 Section 609(7) presumes that the parties intend to seek item 7 approval. If the parties do not intend to seek item 7 approval, or do not act to seek approval, they may risk an application to the Takeovers Panel for a declaration of unacceptable circumstances: see *oOh!media Group Limited* [2011] ATP 9 at paragraph 52.

RG 74.96 A person must still lodge a substantial holding notice for any substantial holding the person would have but for the operation of s609(7): see s671B(7).

Related takeovers and other control transactions

Item 7 placements that are inter-conditional with other control transactions

RG 74.97 Item 7 transactions that occur at or around the same time as a takeover bid by the acquirer can raise particular issues. We will consider the overall effect of the item 7 transaction and the bid when examining such transactions.

RG 74.98 We will consider whether the effect of the combined transactions is consistent with the principles in s602(a) and (c) that:

(a) the acquisition of control of voting shares in a listed entity takes place in an efficient, competitive and informed market: s602(a); and

(b) members are given an equal opportunity to participate in the benefits accruing to other members if the transaction may change control of the entity: s602(c).

Note 1: Item 7 recognises that disinterested members may choose to give up this opportunity through an informed vote: see RG 74.10–RG 74.12.

Note 2: When considering such transactions, we will take into account whether the combination of the item 7 placement with a takeover bid may be contrary to the purpose of the voting exclusion in item 7.

RG 74.99 These issues may arise in the context of a cash bid that is inter-conditional with an item 7 transaction involving the issue of target securities to the bidder (i.e. the issue under item 7 will only proceed if the bid becomes unconditional and the bid will only become unconditional if the item 7 resolution is approved). In this case:

(a) a security holder who wished to accept the bid would not have an interest in the target following acceptance. They would therefore be indifferent to the issue price and dilutive effect of the item 7 resolution. They would be likely to regard approval of the item 7 resolution as simply being a precondition to receiving the cash consideration under the bid; and

(b) the effect of the combined item 7 approval and bid would be to deliver the bidder a higher voting power than it could obtain from acceptances under the bid alone (assuming acceptances fall short of the compulsory acquisition thresholds). This increased voting power may place pressure on target holders to accept this bid, particularly if they considered that the item 7 placement would be likely to dilute the value of their shares.

Note: Similar concerns may arise for an item 7 placement that is inter-conditional with a scrip takeover bid. In this case, it would be in the interests of target members who wished to accept the bid for the placement to occur at a low price (given that they would acquire the bidder's scrip under the takeover bid). In contrast, it would be in the interests of remaining members for the placement to occur at a high price.

RG 74.100 There may be circumstances in which the combination of a takeover bid and an item 7 transaction would raise s602 concerns. However, in our view, an item 7 transaction made following a takeover bid, and that is voted on by the remaining members after the bid (other than the bidder and its associates), would generally not raise such concerns.

RG 74.101 Item 7 transactions that occur at or around the same time as other transactions that are likely to affect the control of an entity (e.g. a buyback, selective reduction of capital or scheme of arrangement) may raise similar concerns.

RG 74.102 By structuring a transaction in a manner that raises the concerns described above, parties may risk an application for a declaration of unacceptable circumstances to the Takeovers Panel.

RG 74.103 We encourage any person proposing an item 7 transaction in combination with a takeover bid or other transaction that may affect the control of an entity to consult with us very early in the planning stage.

Item 7 transactions and s631

RG 74.104 Even where the combination of an item 7 approval and a takeover bid does not raise concerns of the kind discussed in RG 74.97–RG 74.103, the application of s631 can give rise to difficulties in relation to implementing the transactions. Section 631 provides that a person must make a takeover bid within two months after publicly proposing to make such a bid.

RG 74.105 If documents seeking item 7 approval (e.g. to acquire securities from a major holder) state that the acquirer will make a takeover bid for the remaining securities in the entity, then s631 will apply to that takeover announcement. These statements should not be made unless:

(a) the proposed bidder consents to the statement being included in the notice of meeting documents; and

(b) the proposed bidder complies with s631(2) and is not reckless as to whether the bid will be made in giving its consent.

RG 74.106 Section 631(1) requires the terms and conditions of the bid to be the same as, or not substantially less favourable than, those in the public proposal. Therefore, a notice of meeting that publicly announces a takeover bid should inform members of the key conditions to which the proposed bid will be subject.

RG 74.107 We will consider granting relief from the two month deadline in s631(1)(b) to allow the bidder to dispatch takeover offers within two months of the date on which members approve the item 7 transaction. However, we will not grant this relief, for example, if we consider that the overall structure may be contrary to the principles in s602: see RG 74.97–RG 74.102.

RG 74.108 Members may approve an item 7 acquisition based on representations that a takeover bid will be made. Failure to make a bid in these circumstances may constitute unacceptable circumstances or a contravention of the Corporations Act (e.g. a contravention of s1041H).

F Application of our policy

Key points

We strongly encourage entities to give us draft notices of meetings and accompanying explanatory material before seeking approval under item 7: see RG 74.109–RG 74.113.

Our surveillance program for takeovers focuses on the quality, accuracy and utility of information provided to non-associated members in the explanatory material for an item 7 resolution: see RG 74.114–RG 74.116.

Giving draft documents to ASIC

RG 74.109 We strongly encourage you to give us draft item 7 documents 14 days before they are printed for dispatch to members. A longer period is likely to be required if you are also applying for relief from any provision of the Corporations Act. We also encourage you to give us a draft copy of any supplementary information that you propose to give to members if timing permits: RG 74.84.

RG 74.110 Providing draft item 7 documents to us gives you the opportunity to resolve any concerns we may have before the documents are dispatched to members, and reduces the risk that we will need to take action that may delay or disrupt an item 7 acquisition.

RG 74.111 We prefer draft meeting documents to be emailed to applications@asic.gov.au. We also request that you send us three unbound paper copies to:

Manager, Applications
Australian Securities and Investments Commission
GPO Box 9827
[Your capital city]

RG 74.112 We encourage you to contact us as early as possible if there are likely to be particular issues with a transaction (e.g. if an expert report will not be provided).

RG 74.113 We may comment on documents but we do not always do so. The fact that we do not comment on your draft documents does not indicate approval of the content of documents, nor would it stop us from taking action regarding the item 7 acquisition.

Surveillance and enforcement

RG 74.114 Our takeovers surveillance program focuses on item 7 documents because of their important role in providing an independent opinion to non-associated members on the merits of the proposed acquisition and maintaining an informed market generally.

RG 74.115 We will try to resolve any disclosure or other concerns with the target entity or proposed acquirer before taking formal action. This is because the efficiency of the market will generally be affected less if an item 7 acquisition, once started, is allowed to continue. We will therefore generally seek additional or corrective disclosure as a primary remedy if a contravention is discovered early and the interests of non-associated members can be protected in this way. However, we will take action to halt an item 7 acquisition if it appears necessary.

RG 74.116 We may take regulatory action in relation to an item 7 acquisition if, for example, deficient disclosure is not rectified or the voting restrictions have not been observed. In these types of circumstances, we may:

(a) apply to the Takeovers Panel for a declaration of unacceptable circumstances and seek appropriate remedial orders;

(b) apply to the court for orders requiring additional disclosure; or

(c) apply to the court for a declaration that the item 7 resolution is invalid and seek appropriate orders.

Key terms

Term	Meaning in this document
acquirer	A person proposing to make an acquisition to be approved by an item 7 resolution
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act
ASIC	Australian Securities and Investments Commission
associate	Has the meaning given in s12 of the Corporations Act
Ch 2E (for example)	A chapter of the Corporations Act (in this example numbered 2E)
[CO 03/606] (for example)	An ASIC class order (in this example number 03/606)
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
entity	A company with more than 50 members, a listed company or a listed managed investment scheme
FSG (Financial Services Guide)	A document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 Note: This is a definition contained in s761A of the Corporations Act.
Guidance Note 15	Takeovers Panel Guidance Note 15 *Trust scheme mergers*
item 7	Item 7 of s611 of the Corporations Act
item 7 acquisition	An acquisition of relevant interests in an entity's voting shares approved or to be approved under item 7
item 7 resolution	An ordinary resolution of members to approve an acquisition of relevant interests in an entity's voting shares under item 7
non-associated member	A member of the target entity who is not associated with the acquirer or person from whom the item 7 acquisition is to be made or any of their associates
PDS (Product Disclosure Statement)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A of the Corporations Act for the exact definition.
Pt 5.1 (for example)	A part of the Corporations Act (in this example numbered 5.1)
relevant interest	Has the meaning given by s608 and 609 of the Corporations Act

Term	Meaning in this document
RG 111 (for example)	An ASIC regulatory guide (in this example numbered 111)
s611 (for example)	A section of the Corporations Act (in this example numbered 611), unless otherwise specified
scheme of arrangement	A scheme of arrangement conducted under Pt 5.1 of the Corporations Act
Takeovers Panel	Takeovers Panel established under s171 of the *Australian Securities and Investments Commission Act 2001* and given various powers under Pt 6.10 of the Corporations Act
trust scheme	A type of item 7 transaction used to acquire control of a managed investment scheme
voting interest	Has the meaning given in s9 of the Corporations Act
voting power	Has the meaning given in s610 of the Corporations Act
voting share	Has the meaning given in s9 of the Corporations Act

Related information

Headnotes

disclosure, exception to s606, item 7 of s611, member approval, relevant interest, takeover bids, trust schemes, unacceptable circumstances, voting restrictions

Class orders

[CO 03/606] *Financial product advice—exempt documents*

[CO 04/1572] *Secondary Services: Financial Services Guide relief for experts*

[CO 05/850] *Unsolicited offers under a regulated foreign takeover bid*

[CO 07/10] *Technical disclosure relief for reconstructions and capital reductions*

Regulatory guides

RG 51 *Applications for relief*

RG 60 *Schemes of arrangement*

RG 76 *Related party transactions*

RG 111 *Content of expert reports*

RG 112 *Independence of experts*

RG 228 *Prospectuses: Effective disclosure for retail investors*

Legislation

Corporations Act, Chs 2E, 5C, 6, 7; Pt 5.1; s249H(1), 249HA, 249L(3), 252F, 253E, 257D(1), 601FC(1), 601GC, 602, 606, 608, 609, 611 (item 7), 631, 671B, 766B, 911A, 941A, 1013B(1), 1015C, 1016A(2), 1019D and 1041H

Cases

Axiom Properties Ltd 01 [2006] ATP 1; *Bain & Company Nominees Pty Ltd v Grace Bros Holdings Ltd* (1983) 1 ACLC 816; *Bancorp Investments Ltd v Primac Holdings Ltd* (1985) 3 ACLC 69; *Bulfin v Bebarfalds Ltd* (1938) 38 SR (NSW) 423; *Chequepoint Securities Ltd v Claremont Petroleum NL*

(1986) 4 ACLC 711; *Devereaux Holdings Pty Ltd v Parry Corporation* (1985) 9 ACLR 837; *ENT Pty Ltd v Sunraysia Television Ltd* (2007) 61 ACSR 626; *Focus Technologies Ltd* [2002] ATP 08; *Fraser v NRMA Holdings Limited* (1995) 127 ALR 543 at 554; *LV Living Limited* [2005] ATP 5; *Lion Nathan Australia Pty Ltd v Coopers Brewery Ltd and Others* (2005) 55 ACSR 583; *McMillan Properties Pty Ltd v W C Penfold Ltd* (2001) 40 ACSR 319; *NCSC v Consolidated Gold Mining Areas NL (No. 2)* (1985) 3 ACLC 520; *oOh!media Group Limited* [2011] ATP 9; *PowerTel Ltd 01* [2003] ATP 25; *Re Australian Pipeline Trust (No. 1R)* (2006) 59 ACSR 341; *Troy Resources NL v Taipan Resources NL* (2000) 36 ACSR 197; *Village Roadshow Ltd v Boswell Film GmbH* (2004) 49 ACSR 27