



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 29

Financial reporting by Australian entities in dual- listed company arrangements

Chapter 2M — Financial reporting and audit

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From 5 July 2007, this document may be referred to as Regulatory Guide 29 (RG 29) or Practice Note 71 (PN 71). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 29.1) or their practice note number (e.g. PN 71.1).

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Introduction

RG 29.1 This guide refers to reporting requirements for Australian companies that enter into “dual-listed company” (“DLC”) arrangements.

RG 29.2 The key features of the DLC structure proposals put to ASIC are summarised in the attachment to this guide. ASIC has considered the features described in the attachment in preparing this guide.

Financial reporting requirements

RG 29.3 Entities in DLC arrangements reporting under Chapter 2M must prepare financial statements in accordance with Australian accounting standards and other financial reporting requirements of the Corporations Act (“Australian financial reporting requirements”), including Australian equivalents of International Financial Reporting Standards. ASIC would not envisage granting relief to allow the Australian entity to report in accordance with a foreign GAAP.

RG 29.4 Given the unique nature of DLC arrangements that involve listed companies in two different jurisdictions, ASIC will consider applications from the Australian listed entity for case-by-case relief from the requirement to distribute single entity financial statements for the listed Australian entity. Conditions of relief would include providing certain summarised single entity financial information in the full financial report, and making the full single entity financial statements available on the entity’s website, and to members free of charge on request (including a standing request).

RG 29.5 Any applications for relief in relation to single entity financial statements should be prepared with regard to the requirements of s340 and 342 of the *Corporations Act 2001*, as well as Regulatory Guide 43 *Accounts and audit relief* (RG 43) and Regulatory Guide 51 *Applications for relief* (RG 51).

Information reported overseas

RG 29.6 The Australian entity in a DLC structure must distribute or make available single entity, consolidated and, where applicable, combined information to all of its members in the manner described in s314–316 of the Corporations Act. The full financial report would include the full single entity information and full consolidated information. Any concise financial report would include concise

consolidated information but need not include single entity information. This information would be in accordance with Australian reporting requirements.

RG 29.7 In addition, the full financial report and concise financial report should contain a prominent note stating that members of the Australian entity may request that any financial report or other financial statement information (including a reconciliation to foreign GAAP) lodged or distributed in another jurisdiction by either of the two listed entities in the DLC structure (eg a US Form 20F) be sent to them at no charge.

RG 29.8 That annual information should be presented in English and should be lodged with the ASX on the next business day after it is disclosed in the other country (see also s323DA of the Corporations Act and, for an exempt foreign entity listed in Australia, rule 1.15.2 of the ASX Listing Rules). The information should also be made freely available on the company's internet site no later than the next business day after being lodged with the ASX.

RG 29.9 The information detailed in RG 29.7] should be sent to members who request that information by the later of:

- (a) 7 days after the request is made; and
- (b) 7 days after the information is first lodged with the ASX.

RG 29.10 Half-year financial statement information lodged or distributed by either of the DLC companies in countries other than Australia should also be lodged with the ASX (see also s323DA of the Corporations Act and, for an exempt foreign entity listed in Australia, rule 1.15.2 of the ASX Listing Rules). The Australian entity should make this information available on its internet site if the entity's own half-year financial report is made available either on its own internet site or on the internet site of the other listed entity in the DLC structure. The information should be made freely available no later than the next business day after being lodged with the ASX.

RG 29.11 Having regard to the requirements of s295(2) of the Corporations Act, the financial report of the Australian entity in a DLC structure must only include financial statements prepared in accordance with Australian financial reporting requirements and may not include financial statements prepared in accordance with foreign GAAP. Some information may be included in accordance with foreign accounting standards (eg a GAAP reconciliation) provided that it is not in the form of financial statements and is not given undue prominence relative to the information prepared in accordance with Australian financial reporting requirements.

Attachment to RG 29

Features of DLC structures considered by ASIC

1. DLC structures are formed by way of agreements between two entities and amendments to their constitutions. The arrangement does not involve any agreements between shareholders but the shareholders of each company will approve DLC arrangements between the companies and the changes to the constitutions of the companies.
2. The key features of the DLC structures put to ASIC are:
 - (a) Each company retains its legal identity and, except for transfers necessary for dividend equalisation purposes, assets and businesses are only transferred between the two companies for fair values.
 - (b) The votes of the shareholders of one company are taken into account for resolutions of the second company through a mechanism involving the use of special purpose entities, except for certain matters involving “class rights”. The effect is that the shareholder groups of the companies vote on resolutions of both companies as if they were a single group. The votes exercisable by each group of shareholders are in proportion to an “Equalisation Ratio” that is determined on a basis agreed at the commencement of the DLC arrangements. Subsequent to commencement of the DLC arrangements, the Equalisation Ratio may be adjusted for the effects of share capital changes for either entity (eg certain new issues or buy-backs).
 - (c) There is no change in the respective shareholders of each company as a result of entering into the DLC arrangement, although there is a sharing of rights between the shareholders’ groups.
 - (d) The companies have separate boards appointed at separate general meetings, but these boards have common directors.
 - (e) The entities seek to declare equalised dividends and other distributions, on the basis of the Equalisation Ratio.
 - (f) There are arrangements for equalisation payments between the two companies to enable a company that is unable to pay a dividend to do so.
 - (g) The shareholders of each company retain the right to terminate the DLC structure at any time without any significant penalty at a meeting at which the shareholders of the other company have no voting rights on any resolution to effect such a termination, subject to such termination also being separately agreed by the

shareholders of the other company in a similar manner at a meeting of the other company.

- (h) The two companies may enter into deeds of cross guarantee.
- (i) The constitutions of the companies allow shareholders of the two companies to participate on winding up of both companies by reference to Equalisation Ratio.