



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 174

# Relief for externally administered companies and registered schemes being wound up

August 2014

### About this guide

This guide describes when we will give relief from the financial reporting provisions of the *Corporations Act 2001* (Corporations Act) to externally administered companies and registered managed investment schemes (registered schemes) being wound up. It also describes when we will give relief to externally administered public companies from the requirement to hold an AGM.

### 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 draft guide was issued in August 2014 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 174, issued 5 June 2003 and reissued 5 July 2007.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 obligations.

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## A Overview

### Key points

Companies, registered managed investment schemes (registered schemes) and disclosing entities have financial reporting obligations, and public companies are required to hold annual general meetings (AGMs).

These financial reporting and AGM obligations apply even if a company or disclosing entity is under external administration or a registered scheme is being wound up.

ASIC provides limited relief from the financial reporting obligations and AGM obligations under Class Order [CO 14/xxx] *Externally administered companies and registered schemes being wound up: Relief from financial reporting and AGM obligations*. This relief does not extend to the obligation to keep financial records.

We may grant individual relief from the financial reporting and AGM obligations in other circumstances if our policy objectives are met.

### The purpose of this guide

- RG 174.1 The purpose of this guide is to assist externally administered companies and external administrators to understand the circumstances in which ASIC will grant relief from the financial reporting obligations in the *Corporations Act 2001* (Corporations Act) and, for externally administered public companies, when we will grant relief from the AGM obligations.
- RG 174.2 This guide will also assist responsible entities or other persons who have responsibility for winding up a registered scheme to understand when we will grant financial reporting relief for registered schemes.
- RG 174.3 This guide does not deal with or affect:
- (a) the administration of a compromise or arrangement under Pt 5.1 (arrangements and reconstructions);
  - (b) the reporting obligations of external administrators and the obligation to convene a meeting of members or contributories during the course of an external administration;
  - (c) externally administered companies that do not have independent financial reporting obligations—for example, because they are wholly owned subsidiaries that have entered into a deed of cross guarantee and have relief from the financial reporting obligations on that basis; or

- (d) insolvent natural persons, partnerships, trusts (other than registered schemes) or bodies that are not companies, registered schemes or disclosing entities.

Note: In this guide, references to chapters (Chs), parts (Pts), or sections (s) are to the Corporations Act, unless otherwise specified.

- RG 174.4 Most disclosing entities are either companies or registered schemes. However, we consider that the policy settings in this guide also apply in relation to a request for financial reporting relief made by a disclosing entity that is neither a company nor a registered scheme and is winding up.

## What are the financial reporting obligations in Pt 2M.3?

- RG 174.5 The financial reporting provisions in the Corporations Act impose on companies, registered schemes and disclosing entities requirements about keeping financial records, annual financial reporting, half-yearly reporting and disclosure. The audit provisions provide users with an independent opinion on whether the entity's financial report complies with accounting standards and gives a true and fair view of the entity's financial position and performance.
- RG 174.6 The financial reporting and audit provisions are directed at maintaining investor confidence, enhancing market efficiency and ensuring the accountability of management through the provision of timely and reliable financial information.
- RG 174.7 Public financial reporting makes information available to a wide range of users to help them make economic decisions. Users include present and prospective shareholders; present and prospective creditors; and customers, employees, governments and the public.
- RG 174.8 The types of users and their need for financial reports may vary depending on whether:
- (a) the entity is solvent;
  - (b) the entity is under a form of external administration;
  - (c) members have any residual economic interest in the entity; and
  - (d) there is any other economic information about the entity.
- RG 174.9 Table 1 summarises the financial reporting obligations of companies, registered schemes and disclosing entities.

Note: For registered schemes, the scheme's responsible entity is responsible for the performance of the scheme's financial reporting obligations, and the directors and officers of the responsible entity are taken to be the directors and officers of the scheme.

**Table 1: Summary of financial reporting obligations in Pt 2M.3**

Step	Comments	Type of entity
1 Prepare the financial report: s292	<p>The financial report includes:</p> <ul style="list-style-type: none"> <li>• the financial statements;</li> <li>• disclosures and notes; and</li> <li>• the directors' declaration.</li> </ul>	<p>Applies to:</p> <ul style="list-style-type: none"> <li>• disclosing entities;</li> <li>• public companies (not including small companies limited by guarantee unless these are directed to do so);</li> <li>• large proprietary companies;</li> <li>• registered schemes;</li> <li>• small proprietary companies that are directed to do so; and</li> <li>• small foreign-controlled proprietary companies.</li> </ul>
2 Prepare the directors' report: s298	<p>Unless the report relates to a company limited by guarantee, it has a general component (s299 and 299A) and a specific component for listed companies (s300A).</p> <p>See s285A for an overview of the obligations of companies limited by guarantee.</p>	<p>Applies to:</p> <ul style="list-style-type: none"> <li>• disclosing entities;</li> <li>• public companies (not including small companies limited by guarantee unless these are directed to do so);</li> <li>• large proprietary companies;</li> <li>• registered schemes;</li> <li>• small proprietary companies that are directed to do so; and</li> <li>• small foreign-controlled proprietary companies.</li> </ul>
3 Have the financial report audited and obtain the auditor's report: s301, 307 and 308	<p>A small proprietary company preparing a financial report in response to a shareholder direction under s293 only has to have it audited if the direction asks for it.</p> <p>There are similar rules for companies limited by guarantee.</p> <p>Under s312, officers must assist the auditor in the conduct of the audit.</p> <p>ASIC may use its powers under s349 and 341 to relieve large proprietary companies from the audit requirements in appropriate cases: s342(2) and (3).</p>	<p>Applies to:</p> <ul style="list-style-type: none"> <li>• disclosing entities;</li> <li>• public companies (not including small companies limited by guarantee unless these are directed to do so);</li> <li>• large proprietary companies;</li> <li>• registered schemes;</li> <li>• small proprietary companies that are directed to do so; and</li> <li>• small foreign-controlled proprietary companies.</li> </ul>
4 Provide the financial report, directors' report and auditor's report to members: s314	<p>Unless the report relates to a company limited by guarantee, a concise financial report may be provided to members instead of the full financial statements: s314(1) and (2).</p> <p>For the deadlines, see s315(1)–(4).</p>	<p>Applies to:</p> <ul style="list-style-type: none"> <li>• disclosing entities;</li> <li>• public companies (not including small companies limited by guarantee unless these are directed to do so);</li> <li>• large proprietary companies;</li> <li>• registered schemes;</li> <li>• small proprietary companies that are directed to do so; and</li> <li>• small foreign-controlled proprietary companies.</li> </ul>

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Step	Comments	Type of entity
5 Lodge the financial report, directors' report and auditor's report with ASIC: s319	The deadlines depend on the type of company: see s319(3).  Companies that have the benefit of the grandfathering in the relevant Pt 10.1 transitional provisions do not have to lodge a report.	Applies to: <ul style="list-style-type: none"> <li>• disclosing entities;</li> <li>• public companies;</li> <li>• large proprietary companies;</li> <li>• registered schemes; and</li> <li>• small foreign-controlled proprietary companies.</li> </ul>
6 Lay before the AGM the financial report, directors' report and auditor's report: s317	For the AGM deadlines, see s250N.	Applies to public companies.

Note: See s285 for an overview of the obligations in Ch 2M, and s285A for an overview of the obligations of companies limited by guarantee.

## How do the financial reporting obligations apply to externally administered companies and registered schemes being wound up?

RG 174.10 There are a number of types of external administration that each affect companies in different ways. The types of external administration are:

- (a) court liquidation;
- (b) voluntary winding-up;
- (c) provisional liquidation;
- (d) controllership;
- (e) voluntary administration;
- (f) deed of company arrangement (DOCA); and
- (g) court-approved scheme of arrangement.

RG 174.11 A company does not cease to have the status of a company on the appointment of an external administrator. Accordingly, unless ASIC relief applies, obligations that are imposed on a company—such as the financial reporting and AGM obligations—continue to apply while the company is under external administration.

RG 174.12 In addition to the preparation of financial reports, external administrators of companies are required to prepare and lodge with ASIC a range of other documents. These include notices of appointment, notices relating to meetings of creditors, presentations of accounts and statements, and notices and other information required by order or direction of a court: see Regulatory Guide 16 *External administrators: Reporting and lodging* (RG 16) for a full list of these reporting requirements and reference to which of these reports are publicly accessible.

RG 174.13 Registered schemes that are being wound up must also continue to comply with their financial reporting obligations in Pt 2M.3, and prepare final

audited accounts in accordance with the scheme constitution before finalising the winding-up and deregistration.

## Our general approach to financial reporting relief

- RG 174.14 We do not give relief from the obligation to keep financial records. References in this guide to financial reporting obligations do not include the record-keeping obligations: s286.
- RG 174.15 We generally grant relief from the financial reporting obligations for externally administered companies and registered schemes that are being wound up if we are satisfied that the benefit of the financial report is outweighed by the burden of preparing the report. We take into account the impact of that burden on members and creditors.
- RG 174.16 We recognise that the information needs of users of a company's or registered scheme's financial information need to be balanced with the costs associated with preparing audited financial reports, particularly in the context of companies under financial strain.
- RG 174.17 We have granted class order relief, and may grant individual relief, from some or all of the financial reporting obligations to companies under external administration and registered schemes that are being wound up. Before granting relief, we must be satisfied that complying with the obligations would:
- (a) make the financial report or other reports misleading;
  - (b) be inappropriate in the circumstances; or
  - (c) impose an unreasonable burden: s342(1).
- Sections B and C of this guide describe the circumstances in which we may be satisfied that one of these tests will be met.
- RG 174.18 In broad terms, our general approach is to:
- (a) give exemption relief where the company or registered scheme will cease;
  - (b) give deferral relief for a specified period of time where it is uncertain whether the company or registered scheme will continue in business or cease; or
  - (c) give deferral relief for a specified period after the commencement of the external administration to allow additional time for financial reports to be prepared.
- RG 174.19 The Corporations Act does not currently include a framework for external administration in the case of registered schemes as it does for companies. Accordingly, we have taken a slightly different approach in some respects in order to provide appropriate relief for registered schemes that are winding up



and to reflect the fact that the business of a scheme is carried out by a responsible entity. In particular, some of our relief for registered schemes is limited to schemes that have, or are likely to have, a very low level of net assets.

Note: Registered schemes that are being wound up and will cease to carry on a business must prepare final audited accounts in accordance with the scheme constitution before deregistration.

## Class order relief under [CO 14/xxx]

RG 174.20 [CO 14/xxx] *Externally administered companies and registered schemes being wound up: Relief from financial reporting and AGM obligations* grants relief from the financial reporting obligations for companies subject to certain forms of external administration and to registered schemes that are being wound up in certain circumstances.

RG 174.21 Table 2 summarises the relief available under our class order.

**Table 2: Financial reporting obligations—Class order relief under [CO 14/xxx]**

Type of external administration	Type of relief	Conditions of relief	Reference
Applies to companies in liquidation, including companies concurrently in liquidation and controllership, but excluding: <ul style="list-style-type: none"> <li>companies where a voluntary administrator or deed administrator has been appointed; and</li> <li>companies that are Australian financial services (AFS) licensees.</li> </ul>	<i>Exemption</i> from all of the financial reporting obligations	Companies must answer reasonable inquiries from members.	RG 174.30– RG 174.36
Applies to registered schemes that are being wound up, where: <ul style="list-style-type: none"> <li>the responsible entity has resolved that the scheme is insolvent;</li> <li>the value of the net assets of the scheme is no more than \$5,000 throughout the relevant financial year; and</li> <li>ASIC has been formally notified of the commencement of the winding-up of the scheme.</li> </ul>	<i>Exemption</i> from all of the financial reporting obligations	The responsible entity must answer reasonable inquiries from members.	RG 174.90– RG 174.95

Type of external administration	Type of relief	Conditions of relief	Reference
<p>Applies to:</p> <ul style="list-style-type: none"> <li>companies under voluntary administration;</li> <li>companies where a managing controller has been appointed to the whole or substantially the whole of the company's property; and</li> <li>companies in provisional liquidation.</li> </ul>	<p><i>Deferral</i> of all of the financial reporting and annual reporting obligations for a period of six months from the date that the relevant external administrator is first appointed.</p> <p>If the company is an AFS licensee, deferral of the AFS licensee reporting obligations in Div 6 of Pt 7.8 for six months from the date that the relevant external administrator is first appointed.</p> <p>If the company has more than 100 members, relief to use specified alternative methods to distribute an annual report to members at the end of the above deferral period.</p>	<p>Companies must answer reasonable inquiries from members.</p> <p>If alternative distribution methods are used, notice must be given on the external administrator's website that the annual report has been lodged and is available free of charge.</p> <p>If ASIC has cancelled or suspended an AFS licence under s915H, the specification must not require ongoing compliance with the financial reporting obligations in Pt 2M.3 or AFS licensee reporting obligations in Div 6 of Pt 7.8.</p>	<p>RG 174.37– RG 174.54</p>

## Individual relief

RG 174.22 We may grant an individual deferral of the financial reporting obligations. Whether we grant relief, the nature of the relief and the conditions that we impose on the relief will depend on the circumstances of the externally administered company or registered scheme being wound up.

RG 174.23 Table 3 summarises the individual relief that may be available.

**Table 3: Financial reporting obligations—Individual relief that may be available**

Type of external administration	Details of relief	Conditions of relief	Reference
<p>Applies to:</p> <ul style="list-style-type: none"> <li>companies under voluntary or deed administration;</li> <li>companies where a managing controller has been appointed to the whole or substantially the whole of the company's property; and</li> <li>companies in provisional liquidation.</li> </ul>	<p><i>Deferral</i> of all of the financial reporting obligations for a period of up to 12 months or a specified financial reporting period.</p> <p>If the company is an AFS licensee, deferral of the AFS licensee reporting obligations in Div 6 of Pt 7.8 for 12 months from the date that the relevant external administrator is first appointed.</p>	<p>Depends on the company's circumstances.</p> <p>Usual conditions require:</p> <ul style="list-style-type: none"> <li>notice to be given to the market operator(s);</li> <li>notification on a website; and</li> <li>answering reasonable inquiries from members.</li> </ul> <p>If ASIC has cancelled or suspended an AFS licence under s915H, the specification must not require ongoing compliance with the financial reporting obligations in Pt 2M.3 or AFS licensee reporting obligations in Div 6 of Pt 7.8.</p>	<p>RG 174.55– RG 174.78</p> <p>RG 174.68– RG 174.70</p>

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Type of external administration	Details of relief	Conditions of relief	Reference
Applies to registered schemes <i>that are being wound up</i> (whether or not the responsible entity is under external administration), where: <ul style="list-style-type: none"> <li>the value of the net assets of the scheme is unknown but, in the reasonable opinion of the responsible entity, is likely to be no more than \$5,000 throughout the relevant financial year; and</li> <li>ASIC has been formally notified of the commencement of the winding-up of the scheme.</li> </ul>	<i>Deferral</i> of all of the financial reporting obligations for a period of up to 12 months.	Depends on the registered scheme's circumstances.  Usual conditions require: <ul style="list-style-type: none"> <li>notice to be given to the market operator(s);</li> <li>notification on a website; and</li> <li>answering reasonable inquiries from members.</li> </ul>	RG 174.96– RG 174.99
Applies to registered schemes <i>that are not being wound up</i> , where the responsible entity is under external administration.	<i>Deferral</i> of all of the financial reporting obligations for a period of up to 12 months.	Depends on the registered scheme's circumstances.  Usual conditions require: <ul style="list-style-type: none"> <li>notice to be given to the market operator(s);</li> <li>notification on a website; and</li> <li>answering reasonable inquiries from members.</li> </ul>	RG 174.100– RG 174.108

## AGM relief for public companies

RG 174.24 [CO 14/xxx] exempts companies in liquidation from holding an AGM. Liquidation generally signals the end of the life of a company through the orderly winding-up of its assets, and the distribution of proceeds to members and creditors, making the convening of an AGM an unnecessary expense.

Note: A liquidator must lodge with ASIC minutes of all meetings of members and creditors, committee of inspection meetings, and detailed lists of receipts and payments every six months. A copy of these can be obtained from any ASIC Business Centre, on payment of the relevant fee.

RG 174.25 ASIC may also individually exempt an externally administered public company from the obligation to hold an AGM, or extend the period of time in which a public company is required to hold an AGM.

RG 174.26 We will generally provide AGM relief to align with financial reporting relief—that is, if we have provided a deferral of the financial reporting obligations, we will generally provide an extension of time in which to convene the AGM. This is because the consideration of financial reports is one of the primary functions of the AGM.

RG 174.27 Section D describes the class order and individual relief we provide in relation to AGMs.

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## B Financial reporting relief for externally administered companies

### Key points

Our class order relief in [CO 14/xxx] exempts companies in liquidation from their financial reporting obligations.

[CO 14/xxx] also extends the time in which an externally administered company must report by six months from the date of the first appointment of an external administrator where the Corporations Act deadline for lodging the report or reporting to members occurs during this six-month period.

We may also grant an individual deferral of the financial reporting obligations to externally administered companies in other circumstances if our policy objectives are met.

- RG 174.28 The financial reporting provisions in the Corporations Act impose on companies and disclosing entities requirements about keeping financial records, annual financial reporting, half-yearly reporting and disclosure. These provisions are directed at maintaining investor confidence, enhancing market efficiency and ensuring the accountability of management through the provision of timely and reliable financial information.
- RG 174.29 Despite the importance of a company's financial information for its various users, we consider that it may be appropriate to reduce the compliance burden imposed by the financial reporting obligations for externally administered companies, provided that our policy objectives are met.

### Class order relief under [CO 14/xxx]

- RG 174.30 [CO 14/xxx] grants class order relief from the financial reporting obligations to companies that are subject to certain forms of external administration.

### Class order exemption for companies in liquidation

- RG 174.31 [CO 14/xxx] provides an exemption from the financial reporting obligations to companies in liquidation, provided that those companies are not AFS licensees.
- RG 174.32 Our class order relief is based on the view that complying with the financial reporting obligations in circumstances of liquidation would make the financial reports misleading, would be inappropriate in the circumstances and would impose an unreasonable burden: s342(1).

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RG 174.33 The exemption applies even if a controller is concurrently appointed to the property of the company. It does not apply if a voluntary administrator has also been appointed, or if the company is subject to a deed of company arrangement (DOCA). This is because the winding-up is suspended if a voluntary administrator is appointed by the liquidator, or while a company is subject to a DOCA: see *Mercy & Sons Pty Ltd v Wanari Pty Ltd* (2000) 35 ACSR 70, and *Re Nardell Coal Corporation Pty Ltd* [2004] NSWSC 281. The appointment of a controller to the property of the company does not suspend a winding-up.

RG 174.34 AFS licensees are excluded from this relief because they are subject to minimum financial requirements at all times. The obligations for an AFS licensee to have available adequate financial resources to provide the financial services covered by the AFS licence and to carry out supervisory arrangements (see s912A(1)(d)) continue to apply for as long as the AFS licence is held by the licensee. Because of this, we consider that it is anomalous to grant a class order exemption from the financial reporting obligations in Pt 2M.3 and the reporting obligations for AFS licensees in Div 6 of Pt 7.8 (AFS licensee reporting obligations) while the body corporate holds an AFS licence.

Note: For more information on the financial requirements that apply to AFS licensees, see Regulatory Guide 166 Licensing: *Financial requirements* (RG 166).

RG 174.35 Where there are no prospects for a company in liquidation that is an AFS licensee to continue in business, the company should apply for the cancellation of its AFS licence under s915B.

Note: Our class order exemption will not apply if the company's AFS licence has been cancelled but the company is subject to a specification under s915H that requires ongoing compliance with Div 6 of Pt 7.8.

RG 174.36 Our class order exemption applies not only to the current financial reporting obligations in Pt 2M.3, it also applies to any outstanding financial reporting obligations in Pt 2M.3 from previous years and, if the company was an AFS licensee whose licence has been cancelled, any outstanding AFS licensee reporting obligations from Div 6 of Pt 7.8—that is, the relief includes the provision of an exemption for any obligations that the company was subject to before the appointment of the liquidator.

### **Class order deferral for companies in other forms of administration**

RG 174.37 We have granted class order relief which provides a six-month deferral of the financial reporting obligations for externally administered companies from the date of the first appointment of a voluntary administrator, controller or provisional liquidator.

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- RG 174.38 Compliance with the financial reporting obligations during the six-month period following the appointment of an external administrator will generally impose an unreasonable burden. The burden arises from the combination of time constraints, and financial and human resource constraints, imposed on the company and the external administrator in these forms of external administration.
- RG 174.39 We think that this burden is disproportionate to the value that the company's Pt 2M.3 reports may have for relevant users during this period. A deferral of the financial reporting obligations for these companies reduces the severity of the burden during this period, and preserves the company's limited assets for the benefit of all parties while its prospects are being determined.
- RG 174.40 The deferral of six months gives the external administrator time to attend to the most urgent post-appointment matters, become familiar with the affairs of the company and cause the Pt 2M.3 reports to be prepared, audited, lodged and (for annual reports) distributed.
- RG 174.41 The class order provides relief where the appointment of the external administrator occurs no earlier than three months before the financial year or half-year balance date and no later than the deadline for lodging the annual or half-year report.
- RG 174.42 The class order does not provide relief if the external administrator is appointed more than three months before the company's reporting date for the next due annual or half-year report. If the external administrator is appointed more than three months before a reporting date, the deadlines under Pt 2M.3 for lodging and (for annual reports) distributing the reports will already provide a period of approximately six months or more.
- RG 174.43 The class order also does not provide relief in relation to an annual or half-year report that should have been lodged by the company before the external administrator was appointed.
- RG 174.44 If a company that is relying on our class order relief becomes subject to a second (either concurrent or immediately consecutive) external administration that is covered by the class order deferral, the period of deferral is determined by the date of the appointment of the first external administrator. While we acknowledge that each new external administration may create its own burden, on balance, we think that a subsequent appointment in itself does not warrant a longer deferral period under the class order.
- RG 174.45 In the infrequent case where a voluntary administrator is appointed under s436B by a liquidator, the company may technically be under administration and in liquidation concurrently, if the liquidation has not been formally terminated. For the purposes of the class order, the company is taken to be

solely under administration, and it no longer obtains the exemption granted for companies in liquidation.

RG 174.46 We have not included in our class order relief companies that are subject to a DOCA. DOCAs are not an initial form of external administration and usually the deed administrator is the same person as the preceding Pt 5.3A administrator: see s444A(2). The initial burden created by time constraints, and financial and human resources constraints, is therefore less severe. However, a company subject to a DOCA may apply for individual relief if it considers that, in its particular circumstances, compliance with the financial reporting obligations would impose an unreasonable burden: see RG 174.55–RG 174.67.

RG 174.47 Our class order deferral also applies to the obligations in Div 6 of Pt 7.8 that require AFS licensees to prepare and lodge with ASIC audited financial statements. Financial statements lodged under Div 6 of Pt 7.8 are not public documents. We think that the burden imposed by this requirement is likely to be disproportionate to the value that the reports may have for ASIC during this period. A deferral of the obligations in Div 6 of Pt 7.8 for these companies may reduce the severity of the burden during this period, and preserve the company's limited assets for the benefit of all parties while its prospects are being determined.

Note: Our class order deferral will not apply if a company's AFS licence has been suspended or cancelled but the AFS licensee is subject to a specification under s915H requiring ongoing compliance with Div 6 of Pt 7.8, or if we have extended the time for lodgement under s989D(3).

### **Conditions of class order deferral**

RG 174.48 During the period of the class order deferral, the company must answer members' reasonable inquiries about the consequences of the external administration for them.

RG 174.49 Notice of the appointment of an external administrator must be lodged with ASIC and advertised, usually in a national or relevant daily newspaper: see, for example, s427, 450A(1) and 450B, and the Rules of Court for provisional liquidators under the Federal Court and Supreme Courts of the States and Territories.

RG 174.50 As a result of these notices, members may contact the external administrator for information about the company. The condition of our class order relief clarifies that the information must be given to a member free of charge, provided that the member's inquiries are reasonable.

### **Alternative distribution methods for annual reports**

RG 174.51 Our class order deferral allows an externally administered company with more than 100 members to use alternative methods of distributing a deferred

annual report to members, instead of sending it to them. The company or administrator must give prominent notice on the external administrator's website that the annual report has been lodged with ASIC and is available to members free of charge if the member requests this in writing from the external administrator.

- RG 174.52 The costs involved in sending information to members impose a burden on the company, and the greater the number of members, the greater the burden may be. When a company is externally administered, the cost of sending the annual report may be borne by the creditors, even though that information is not sent to creditors. We have taken the view that, in the case of externally administered companies covered by our class order, the burden imposed by a requirement to send the deferred annual report to each member is unreasonable, and that relief from the distribution requirements prescribed by s314(1) is therefore appropriate.

### **Notifying the market operator of reliance on class order relief**

- RG 174.53 Our class order provides that a listed company relying on our class order relief should notify the relevant market operator. There may also be listing rule requirements for a company to notify the relevant market operator of its reliance on the class order. Failure to notify the market operator will not result in the company losing the benefit of our class order relief.
- RG 174.54 An external administrator of a company (whether listed or unlisted) may also choose to give notice that the company is relying on our class order—for example, by publishing a notice on a website maintained by the external administrator or by notifying a market operator. This notification is not a condition of relief but rather a matter of best practice.

## **Individual deferrals**

- RG 174.55 We may grant an individual deferral of the financial reporting obligations. Whether we grant relief, the nature of relief, and the conditions we impose on relief will depend on the circumstances of the externally administered company.
- RG 174.56 We will not grant relief from the financial reporting obligations merely because a company is being externally administered. When forming opinions or making recommendations about a company, external administrators and directors should make allowances for all the company's legal obligations, including the obligations in Pt 2M.3. Creditors should be made aware of the costs of meeting these obligations when considering resolutions about the company's future.

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- RG 174.57 We expect that an application for financial reporting relief by an externally administered company will usually rely on the grounds of creating an unreasonable burden (s342(1)(c)), rather than on the grounds of making misleading statements (s342(1)(a)) or being inappropriate in the circumstances (s342(1)(b)).
- RG 174.58 In general, it will be difficult for an externally administered company to satisfy us that a case for relief is made on the grounds that:
- (a) the report would be misleading—we would need to be satisfied that the problem could not reasonably be remedied by including appropriate additional information, explanations and notes in the reports; or
  - (b) it would be inappropriate in the circumstances to comply with the Corporations Act—it is not sufficient to assert that the reports would be irrelevant, or of no benefit to users of the reports.

Note: An application on this basis would need to demonstrate that there is an anomaly in the Corporations Act, or that compliance would give rise to consequences not intended by Parliament. In our view (other than for liquidation), the provisions in Ch 5 and the statutory obligations of an external administrator in Ch 5 do not demonstrate an anomaly in the Act, or that compliance with Pt 2M.3 by an externally administered company is inherently inappropriate.

### Satisfying the ‘unreasonable burden’ test

- RG 174.59 There are a number of situations where we are likely to be satisfied that compliance by an externally administered company with the financial reporting obligations would impose an unreasonable burden and that a deferral of the financial reporting obligations is appropriate.
- RG 174.60 During the initial period after the appointment of an external administrator, compliance with the financial reporting obligations will create a significant burden. The burden arises from the combination of time constraints, and financial and human resource constraints, on a company under administration:
- (a) *Time constraints*: Under the Corporations Act, an external administrator is required to complete a number of tasks within a short timeframe. For example, an administrator must convene and hold two creditors’ meetings and investigate the company’s business, property, affairs and financial circumstances: s436E, 438A and 439A. It may be extremely difficult for an external administrator to complete these tasks, and prepare or obtain the financial and other reports required under Pt 2M.3.
  - (b) *Financial constraints*: Compliance with the financial reporting obligations may deplete the already limited financial resources of a company under external administration.
  - (c) *Human resource constraints*: In light of the company’s time and financial constraints, the external administrator may have limited

human resources available despite the external administrator's reasonable efforts.

RG 174.61 Users of the financial and other reports, such as creditors, potential creditors, members and employees, clearly have an interest in the financial and other affairs of a company that has entered into external administration. However, they also have an interest in preserving the company's limited assets and in its possible revitalisation. It is unlikely that they would want the company's resources unnecessarily depleted in order to provide them with information about the company's financial and other affairs when information may be available through other sources, such as reports by administrators to creditors.

RG 174.62 We are generally likely to grant a deferral of all the financial reporting obligations (including any previously deferred financial reporting obligations) for up to 12 months, where:

- (a) the external administrator exercises all or most of the management functions and powers; and
- (b) it is uncertain whether members have an ongoing economic interest in the company.

Note: See the 'Key terms' list in this guide for our definition of 'ongoing economic interest'.

RG 174.63 In assessing the unreasonable burden in the context of an externally administered company, we will generally consider the following factors:

- (a) whether a deferral of the financial reporting obligations may preserve the assets of the company for the benefit of members, creditors and other parties while an assessment is made of the return to members and creditors and other obligations owed to third parties;
- (b) the expected costs of compliance with the financial reporting obligations, who bears these costs and the extent to which these costs may affect the company's prospects;
- (c) the expected benefits of having the company comply with the financial reporting obligations, taking into account:
  - (i) who would be the relevant users of the Pt 2M.3 reports that would result from compliance, and what is the likely extent and nature of their use; and
  - (ii) the ability and efficiency of creditors, potential creditors, members and other relevant users to independently obtain, in a timely manner, audited or other reliable financial information about the company from the directors or external administrator;

- (d) whether, as a result of the appointment of the external administrator, the management functions and powers are exercised by the external administrator or the directors;
- (e) the extent to which the appointment of the external administrator has disrupted the company's routine for complying with the financial reporting obligations;
- (f) whether the company is an AFS licensee or whether we have suspended or cancelled the company's AFS licence and are allowing the licence to continue in limited effect; and
- (g) any public interest considerations.

Note: We may allow a suspended or cancelled AFS licence to continue in effect as though the suspension or cancellation had not happened for the purposes of specified provisions of the Corporations Act in relation to specified matters, a specified period or both: s915H.

RG 174.64 We may also grant a deferral of all the financial reporting obligations (including any previously deferred financial reporting obligations) for up to 12 months to a company subject to a DOCA. We will only grant this relief if we are satisfied that the company should have additional time to prepare, lodge and (for annual reports) distribute the Pt 2M.3 reports that were deferred during the preceding Pt 5.3 administration (because of our class order relief and/or an individual deferral), as well as the Pt 2M.3 reports that are next due. We will consider each of the factors set out in RG 174.63 when deciding whether to grant this relief.

RG 174.65 Compliance with the financial reporting obligations may also impose an unreasonable burden on a company under a DOCA—at least in the initial period after the execution of the deed. However, we note that for most companies under a DOCA, the burden created by financial constraints, and time and human resource constraints, will be less severe. The burden is unlikely to be disproportionate to the value of the financial and other reports for the users of those reports.

Note: See *Incat Australia Pty Ltd v ASIC* (2000) 33 ACSR 462, which found that a burden need not be 'overwhelming' in the sense of 'crushing' for it to be unreasonable. See also *Brightstar Logistics Pty Ltd v Australian Securities and Investments Commission (No 2)* [2010] FCA 435 at [59–67] (7 May 2010).

RG 174.66 We may grant a deferral of all the financial reporting obligations for up to three months where:

- (a) a controller has been appointed to the property of the company;
- (b) the directors retain all or most of the management functions and powers; and
- (c) we are satisfied that the appointment of the controller has significantly disrupted the company's management and financial routine, and created

significant practical difficulties for the company in complying with the financial reporting obligations.

We may also grant further deferrals of up to three months in rare cases if significant disruption and practical difficulties continue to mean that a deferral remains appropriate.

Note: A controller is not able to apply for relief under s340: see RG 174.139–RG 174.141RG 174.63.

RG 174.67 We are also generally likely to grant a deferral of the obligations that an AFS licensee has under Div 6 of Pt 7.8 to prepare and lodge audited financial statements for up to 12 months where the licensee has similar relief from the financial reporting obligations in Pt 2M.3. We will generally consider the factors set out in RG 174.63 when deciding whether to grant this relief. Financial statements lodged under Div 6 of Pt 7.8 are not public documents. We think that the burden of preparing and lodging audited financial statements is likely to be disproportionate to the value that the reports may have for ASIC while the company's prospects are being determined.

Note: AFS licensees must have available adequate financial resources to provide the financial services covered by the AFS licence and to carry out supervisory arrangements: see RG 174.33–RG 174.35. Any granting of a deferral of the financial reporting obligations in Pt 2M.3 or the AFS licensee reporting obligations in Div 6 of Pt 7.8 does not relieve the company from the obligation to have adequate financial resources. We will not grant a deferral if the company's AFS licence has been suspended or cancelled subject to a specification under s915H that requires ongoing compliance with Div 6 of Pt 7.8, or if we have extended the time for lodgement under s989D(3).

## Conditions of an individual deferral

### Notifying the market operator

RG 174.68 If a company is listed, we will generally impose conditions on an individual deferral that:

- (a) require the company to notify the relevant market operator(s) of our relief; and
- (b) prohibit the company from using a transaction-specific prospectus under s713 until 12 months after the reporting date of the first Pt 2M.3 reports that the company lodges after it ceases to rely on our relief.

### Notification on a website

RG 174.69 We will generally impose a condition on individual relief that requires an external administrator of a company, whether it is listed or unlisted, to give notice of the relief on a website maintained by the external administrator in a way that is readily accessible.

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**Notifying ASIC of changed circumstances**

- RG 174.70 In some cases, we may grant an individual deferral of the financial reporting obligations on the basis that certain circumstances continue to exist. In these cases we may, as a safeguard, impose a condition that requires the external administrator on behalf of the company to notify ASIC in writing immediately if those circumstances change.

**Alternative distribution methods for annual reports**

- RG 174.71 If we grant a deferral of the requirement to prepare and lodge an annual report, we may specify alternative methods for distributing the annual report to members, such as those that a company may use under our class order relief: see RG 174.51–RG 174.52.

**Other conditions**

- RG 174.72 We will generally not impose a condition requiring an externally administered company, the external administrator or the directors to send to members any document that the external administrator is required under Ch 5 to send to creditors or to lodge with ASIC.

**What happens when a deferral comes to an end?**

- RG 174.73 Other than in exceptional circumstances, an individual deferral will be for 12 months. This time limit will provide an appropriate balance between the interests of users of financial and other reports and the burden created by compliance with the reporting obligations.
- RG 174.74 An application may be made for a further deferral before an existing deferral expires. We will assess any further application for a deferral, taking into account:
- (a) whether the unreasonable burden underpinning the initial relief still exists;
  - (b) whether any additional burden has arisen; and
  - (c) whether there have been any material changes in circumstances in the intervening period.
- RG 174.75 A company that has a class order deferral, or that has been granted an individual deferral, must comply with any deferred financial reporting obligations in accordance with the Corporations Act before the deferral expires, except where a liquidator is appointed or the company ceases. This recognises that complete financial information for the life of a company is useful after a deferral comes to an end.

RG 174.76 Compliance with the accounting standards will ensure that the delayed financial reports contain all the relevant information.

Note: See, in particular, Australian Accounting Standards AASB 110 *Events after the reporting period* and AASB 134 *Interim financial reporting*.

RG 174.77 If a liquidator is appointed and the winding-up of the company has not been suspended or stayed, the company will be exempt from past outstanding and future reporting obligations under [CO 14/xxx].

RG 174.78 Depending on the company's circumstances, we may grant an exemption from some or all of the previously deferred financial reporting obligations where the deferral has been ongoing for a long period of time and we are satisfied that the burden of preparing financial reports from the commencement of the administration is disproportionate to the benefits if we are satisfied that members have adequate information in the circumstances. We may also impose conditions on this relief—for example, that shareholder approval must be obtained.

## Individual relief in other situations

RG 174.79 In other situations, we will consider the key factors set out in RG 174.63 when deciding whether we are satisfied that complying with the financial reporting obligations would impose an unreasonable burden for an externally administered company. If we refuse to grant individual relief from all of the financial reporting obligations, we may in appropriate cases provide individual relief from some of the financial reporting obligations.

RG 174.80 In particular, we may grant relief from any or all of the obligations to:

- (a) provide a directors' declaration under s295 or 303;
- (b) provide a directors' report under s298 or 306;
- (c) obtain an audit report or review under s301 or 302;
- (d) comply with s327B(1)(b) on filling a vacancy in the office of auditor, if the company is a public company;
- (e) prepare and lodge half-year reports under s302;
- (f) comply with a member's request under s316(1) for a full financial report, directors' report and auditor's report; and
- (g) send the annual report to members under s314(1): see RG 174.51–RG 174.52.

Note: An administrator may perform any function, and exercise any power, that the company or any of its officers could perform or exercise if the company were not under administration: s437A. A director includes any person who is not validly appointed as a director if they act in the position of a director unless the contrary intention appears: s9.

## Concurrent administrations

- RG 174.81 A company may be under more than one form of external administration at the time when compliance with the financial reporting obligations or the AGM obligations is due, or during the period when preparations for that compliance would normally be undertaken. The class order exemption for companies in liquidation will not apply if there is also a voluntary administrator or a deed administrator appointed. This is because the appointment of a voluntary administrator or deed administrator will suspend the winding-up of the company while its prospects are being determined.
- RG 174.82 Where a liquidator and controller are appointed to a company concurrently, an exemption under our class order may still be available, because the appointment of a controller will not interfere with the winding-up process in the same way as the appointment of a voluntary administrator or deed administrator.

## C Financial reporting relief for registered schemes

### Key points

[CO 14/xxx] grants an exemption to registered schemes from the financial reporting obligations in Pt 2M.3 where the winding-up of the scheme has commenced, and:

- the scheme is insolvent;
- the scheme has net assets of no more than \$5,000 throughout the relevant financial year; and
- ASIC has been formally notified of the commencement of the winding-up of the scheme.

We will also consider an individual deferral for a registered scheme where the winding-up of the scheme has commenced and it is unclear whether the scheme has net assets of no more than \$5,000 throughout the relevant financial year.

We will also consider individual relief from the requirement to obtain and lodge a compliance plan audit report.

RG 174.83 The financial reporting provisions in the Corporations Act impose on registered schemes and disclosing entities requirements about keeping financial records, annual financial reporting, half-yearly reporting and disclosure. These provisions are directed at maintaining investor confidence, enhancing market efficiency and ensuring the accountability of management through the provision of timely and reliable financial information.

RG 174.84 Despite the importance of a registered scheme's financial information for its various users, we consider that it may be appropriate to reduce the compliance burden imposed by the financial reporting obligations for registered schemes being wound up, or in circumstances where the responsible entity becomes externally administered, provided that our policy objectives are met.

### Winding up a registered scheme

RG 174.85 A registered scheme cannot technically become insolvent because a scheme is not a separate legal entity that incurs debts in its own right. The responsible entity is the legal entity that holds the scheme property and incurs debts to scheme creditors on behalf of the scheme. The responsible entity may have a right of indemnity over scheme property for debts it has incurred: s601GA(2). The responsible entity must pay all debts for which it



is liable as they become due and payable (except to the extent that creditors have agreed to limit their recourse against the responsible entity personally so that they can only resort to the scheme assets).

RG 174.86 Based on the courts' consideration, a registered scheme may generally be described as 'insolvent' when scheme property is insufficient to meet the scheme liabilities to scheme creditors as they fall due, whether or not the responsible entity, as a separate legal entity, is itself insolvent or under some form of external administration. As the court observed in *Capelli v Shepard & Ors* [2010] VSCA 2 at [93]:

a scheme may colloquially be characterised as insolvent in the sense that ... the liabilities referable to it cannot be satisfied as they fall due from its income or readily realisable assets.

RG 174.87 Part 5C.9 provides procedures for the winding-up of a registered scheme. A decision to wind up a registered scheme may be made for a number of reasons, including where:

- (a) it is considered that the scheme's purpose cannot be achieved;
- (b) the members vote to wind up the scheme;
- (c) a court orders the winding-up of the scheme; or
- (d) the constitution requires the scheme to be wound up.

Winding-up involves realising all the assets of the registered scheme, deducting reasonable costs (including amounts owed to unpaid creditors) and distributing the balance, if any, among members according to the scheme constitution and the respective interests of members in the scheme.

Note: In *Mier v FN Management Pty Ltd* (2005) 23 ACLC 1888, Keane JA noted that the winding-up of a registered scheme should follow the same path as the winding-up of a company. See also *Re Stacks Managed Investments Ltd* (2005) 23 ACLC 1,647 at [42] for commentary on the winding-up of trust-based schemes.

RG 174.88 Unlike the winding-up of a company, Pt 5C.9 does not include an express power for the court to direct the winding-up of a registered scheme on the grounds that it is insolvent.

## Financial reporting relief for registered schemes

RG 174.89 Under s340 and 341, and for a disclosing entity under s111AT, we may grant relief to a registered scheme from any or all of the financial reporting obligations in Pt 2M.3.

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## **Class order exemption for ‘insolvent’ registered schemes being wound up**

RG 174.90 We have granted an exemption under [CO 14/xxx] from the financial reporting obligations in Pt 2M.3 of registered schemes that are being wound up, where :

- (a) the scheme is ‘insolvent’ (i.e. the scheme property is insufficient to meet the scheme liabilities to scheme creditors as they fall due);
- (b) the value of net assets (tangible and intangible) of the scheme, determined in accordance with Australian accounting standards, is no more than \$5,000 throughout the relevant financial year; and
- (c) the responsible entity, or other person appointed by the court, has commenced winding up the scheme by lodging with ASIC a notice of commencement of winding up a registered scheme.

Note: We consider that formal notification of the winding-up of a scheme occurs when a Form 5138 *Notification of commencement or completion of winding up of a registered scheme* is lodged with ASIC.

RG 174.91 The burden of compliance with the financial reporting obligations by the registered scheme will ultimately be borne by its members and creditors. We consider that relief from the reporting obligations in Ch 2M, as outlined in RG 174.90, may reduce the costs of winding up the scheme where it is likely that there is going to be little or no return to members. In general, we consider that, where the requirements for our class order relief are satisfied, there is a sufficient and reasonable basis to conclude that the scheme will cease after an orderly disposal of the whole, or substantially the whole, of the scheme’s assets. Our class order exemption is only available where the scheme is insolvent and the value of the scheme’s net assets is no more than \$5,000 throughout the relevant financial year.

Note: Our class order exemption does not apply where the conditions have been met for only part of a financial year.

### **Determination of a scheme’s solvency and value of net assets**

RG 174.92 We consider that the responsible entity, or other person appointed by the court to wind up the scheme, is best placed to make a determination on the scheme’s solvency and the value of the scheme’s net assets for the purposes of relying on our class order exemption. The responsible entity must pass a resolution to the effect that the scheme property is insufficient to meet the debts of the responsible entity in that capacity as and when they become due and payable. Where a person other than the responsible entity is appointed by the court to wind up the scheme, they should ensure that they have properly documented their determination that the scheme is insolvent, and the basis for their determination, before relying on the class order exemption.

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A copy of the resolution or determination should be provided to ASIC with the formal notification of the winding-up of the scheme.

- RG 174.93 The responsible entity, or other person appointed by the court, should also determine the scheme's solvency and the value of the scheme's net assets before the due date for reporting to ensure that the scheme complies with our class order relief.

#### **Responsible entity's obligations where a class order exemption applies**

- RG 174.94 Where our class order provides an exemption to a registered scheme, the responsible entity of the scheme is generally required to comply with its financial reporting obligations in Pt 2M.3 and the AFS licensee reporting obligations in Div 6 of Pt 7.8—including in relation to information that pertains to that scheme—unless class order relief or an individual deferral of the financial reporting obligations otherwise applies to the responsible entity.

#### **Failure to comply with the scheme constitution where a class order exemption applies**

- RG 174.95 Generally, the constitution of a registered scheme will contain a provision requiring an independent audit of the financial statements to be prepared and lodged with ASIC on the completion of the winding-up of the scheme. Where a scheme is relying on our class order exemption, we will take no action against the responsible entity and its officers for failure to comply with any provisions in the scheme's constitution to arrange for an audit of the final accounts to be undertaken. However, notification of the completion of the winding-up of the scheme will have to be provided to members.

#### **Individual deferrals for registered schemes being wound up in other situations**

- RG 174.96 We will consider granting an individual deferral of up to 12 months from the financial reporting obligations in Pt 2M.3 of a registered scheme, where:
- (a) the value of the net assets (tangible and intangible) of the scheme, determined in accordance with Australian accounting standards, is unknown but, in the reasonable opinion of the responsible entity, is likely to be no more than \$5,000 throughout the relevant financial year; and
  - (b) the responsible entity, or other person appointed by the court, has commenced winding up the scheme by lodging with ASIC a notice of commencement of winding up a registered scheme.
- RG 174.97 Unlike our class order relief, our individual relief for registered schemes being wound up is intended to apply to schemes that are being wound up where the scheme's solvency is uncertain or unknown.

- RG 174.98 When we assess an application for an individual deferral, we will consider the following factors:
- (a) whether a deferral of the financial reporting obligations may preserve the assets of the registered scheme for the benefit of members, creditors and other parties while an assessment is made of the return to members and creditors and other obligations owed to third parties;
  - (b) the expected costs of compliance with the financial reporting obligations, who will bear the costs of compliance and the extent to which these costs may affect the outcome of the winding-up of the scheme; and
  - (c) the expected benefits of having the scheme comply with the financial reporting obligations, taking into account:
    - (i) who would be the relevant users of the Pt 2M.3 reports that would result from compliance, and what is the likely extent and nature of their use; and
    - (ii) the ability and efficiency of creditors, potential creditors, members and other relevant users to independently obtain, in a timely manner, audited or other reliable financial information about the registered scheme from the directors or other persons appointed by the court to wind up the scheme.

RG 174.99 A registered scheme that has been granted an individual deferral must comply with any deferred financial reporting obligations in accordance with the Corporations Act before the relief expires. We will consider a further individual deferral in rare and exceptional circumstances.

### **Individual deferrals for registered schemes where the responsible entity is under external administration**

RG 174.100 We will not grant relief from the financial reporting obligations of a registered scheme merely because a responsible entity is itself being externally administered.

RG 174.101 However, we recognise that, where a responsible entity enters into a form of external administration, there may be also be an initial period of disruption to the registered scheme while the external administrator becomes familiar with the state of affairs of the responsible entity and the scheme. In this situation, a deferral of the financial reporting obligations of the registered scheme will reduce the severity of the burden on the responsible entity during this period, and in some circumstances may be appropriate to preserve the assets of the scheme while its prospects and obligations are being determined.

RG 174.102 Where a controller or voluntary external administrator has been appointed to the responsible entity, and the responsible entity has the benefit of a deferral

under [CO 14/xxx], we will consider granting an individual deferral of all the financial reporting obligations in Pt 2M.3 of a registered scheme. The responsible entity must demonstrate that the appointment of the controller or external administrator has significantly disrupted the management and financial routine of the registered scheme, and created practical difficulties for the scheme to comply with the financial reporting obligations.

- RG 174.103 Where a liquidator has been appointed to the responsible entity, and the responsible entity has an exemption under [CO 14/xxx], we will also consider granting an individual deferral of all the financial reporting obligations of the registered scheme where the appointment of the liquidator has significantly disrupted the management and financial routine of the scheme and created practical difficulties for the scheme to comply with the financial reporting obligations.
- RG 174.104 When considering an individual deferral, we will also consider the steps being taken by the responsible entity to comply with the financial reporting obligations of the scheme.
- RG 174.105 A registered scheme that has been granted a deferral must comply with any deferred financial reporting obligations in accordance with the Corporations Act before the relief expires.

#### **Benefits for users**

- RG 174.106 When we are considering any application for a deferral for a registered scheme where the responsible entity is under external administration, we will also assess the expected benefits of having the scheme comply with the financial reporting obligations. We will consider the following factors:
- (a) who would be the relevant users of the Pt 2M.3 reports that would result from compliance, and what is the likely extent and nature of their use; and
  - (b) the ability and efficiency of creditors, potential creditors, members and other relevant users to independently obtain, in a timely manner, audited or other reliable financial information about the registered scheme from the directors or other persons appointed by the court to wind up the scheme.
- RG 174.107 We may impose conditions on an individual deferral, including that notice is provided on a website maintained by the responsible entity or external administrator in a way that is readily accessible.

#### **Duration of an individual deferral**

- RG 174.108 Other than in exceptional circumstances, an individual deferral for a registered scheme will last no longer than 12 months. This will provide an appropriate balance between:

- (a) the interests of users of the financial reports, including that members and creditors of an externally administered responsible entity and the scheme have access to the public information required to be lodged with ASIC under Ch 5C; and
- (b) the burden created by compliance with the financial reporting obligations.

## Compliance plan audit

RG 174.109 We will generally not grant relief from the requirement in s601HG to obtain a compliance plan audit report even if we have granted relief from the financial reporting obligations of the registered scheme. The compliance plan audit report is to be lodged with ASIC within three months after the end of the financial year of the registered scheme.

RG 174.110 We monitor the lodgement of these reports on an ongoing basis to consider whether the responsible entity has designed measures that adequately address the risks of not complying with its obligations under the scheme constitution and the Corporations Act, and has adequate arrangements for monitoring, reviewing and auditing the outcomes of its compliance activities.

RG 174.111 We consider the circumstances where we would provide relief from the requirement to obtain and lodge a compliance plan audit report are likely to be rare and exceptional. We will consider individual relief where:

- (a) the responsible entity is in liquidation and does not hold an AFS licence;
- (b) the value of net assets of the scheme (determined in accordance with Australian accounting standards) is unknown but, in the reasonable opinion of the responsible entity, is likely to be no more than \$5,000 throughout the relevant financial year; and
- (c) the responsible entity, or other person appointed by the court, has commenced winding up the scheme by lodging with ASIC a notice of commencement of winding up a registered scheme.

We will also take into consideration the factors outlined in Regulatory Guide 136 *Managed Investments: Discretionary powers and closely related schemes* (RG 136) at RG 136.12.

## D AGM relief for public companies

### Key points

[CO 14/xxx] exempts public companies in liquidation from the requirement to hold an AGM.

ASIC may also provide individual relief from the AGM requirements in certain circumstances. This will generally be in the form of an extension of time in which to hold an AGM.

- RG 174.112 A public company must hold an AGM at least once in each calendar year and within five months after the end of its financial year: s250N. This obligation applies under the Corporations Act even when a company is under external administration.
- RG 174.113 We may exempt an externally administered public company from the obligation to hold an AGM: s250PAB. We may also extend the period within which a public company is required to hold an AGM: s250P.

### Class order relief under [CO 14/xxx]

- RG 174.114 [CO 14/xxx] exempts companies in liquidation from the requirement to hold an AGM. This relief extends to any obligation to hold an AGM that has been deferred through an earlier extension of time.
- RG 174.115 The safeguard function served by the AGM in ordinary circumstances is diminished when a company enters into liquidation. The business ordinarily conducted at an AGM—including the appointment and replacement of directors, and the presentation of financial reports to members—will no longer be relevant and the AGM will be an unnecessary expense.

### Individual extensions of time

- RG 174.116 We may extend the time in which an externally administered public company is required to hold an AGM if:
- (a) we receive an application before the end of the period within which the meeting must otherwise be held; and
  - (b) we are satisfied that there is sufficient cause for an extension.
- RG 174.117 We may also impose conditions on any extension of time.
- RG 174.118 We consider that sufficient cause for an extension of time will include circumstances where an externally administered public company has been granted relief from all of the financial reporting obligations or a deferral of these obligations. Such relief will generally extend the period of time within

which the company must hold an AGM until two months after the financial reporting relief expires.

RG 174.119 If an applicant for an AGM extension does not have financial reporting relief, we will assess whether there is sufficient cause for an extension by considering the factors in RG 174.63. If we are satisfied that there is a case for an extension, this will generally be for up to three months.

RG 174.120 Table 4 summarises the circumstances where an extension may be available.

**Table 4: Individual extensions of time that may be available for AGMs**

Nature of financial reporting relief	Extension of time for AGM	Conditions of extension
Company has been granted a deferral of all the financial reporting obligations	AGM may be held up to two months after the financial reporting relief expires	<p>The first annual report required after the financial reporting relief expires must be distributed to members no later than 21 days before the AGM: see s315(1)(a).</p> <p>If the company is listed, it must notify the relevant market operator(s) of the extension.</p> <p>Other conditions will depend on each case and the conditions of the financial reporting relief.</p>
Company has been granted a deferral of some of the financial reporting obligations	<p>Depending on the circumstances (see RG 174.77):</p> <ul style="list-style-type: none"> <li>• the AGM may be held up to two months after the financial reporting relief expires; or</li> <li>• the AGM may be held up to three months after the deadline for holding an AGM</li> </ul>	As above or below, depending on the circumstances and the particular extension granted.
Company has no financial reporting relief	The AGM may be held up to three months after the deadline for holding an AGM	<p>The annual report must be distributed to members within four months after the end of the financial year: see s315(1)(b).</p> <p>If the company is listed, it must notify the relevant market operator(s) of the extension.</p> <p>Other conditions will depend on each case.</p>



## Individual AGM exemptions

- RG 174.121 ASIC has the power to grant an individual exemption from the AGM obligations: s250PAB. We will generally only grant an individual exemption in rare and exceptional circumstances. We are more likely to grant an extension of time to hold an AGM. This is because of the importance of AGMs as a safeguard for members.
- RG 174.122 Where we have only granted limited individual financial reporting relief, our approach to relief from the obligation to hold an AGM and the type of relief we may grant will depend on our assessment of the key factors set out in RG 174.63—in particular:
- (a) whether financial or other information will be distributed to members;
  - (b) the extent to which the external administration affects the ability of members to influence the management or performance of the company; and
  - (c) whether the members or creditors would bear the costs of arranging and holding an AGM.
- RG 174.123 Depending on the company's circumstances, we may grant relief from some or all of the previously extended AGMs, where the deferral of the financial reporting obligations and the AGM extensions have been ongoing for a long period of time and we are satisfied that the burden of holding the AGMs is disproportionate to the benefits. We may also impose conditions on this relief—for example, that members will be able to consider any outstanding financial reports at the next AGM.

## E Applying for relief

### Key points

Companies and registered schemes may apply for relief from the financial reporting obligations before the obligation arises. ASIC does not have the power to grant retrospective relief.

Applications for financial reporting relief, and AGM relief for a public company, may be made by the company's directors or a voluntary administrator.

A deed administrator may make an application for relief where it is expressly authorised by the DOCA to perform any function or exercise any power that the directors could perform or exercise if the company were not under external administration.

Applications for financial reporting relief for a registered scheme may be made by the directors or a voluntary administrator of the responsible entity.

### General considerations when applying for relief

- RG 174.124 Relief from the financial reporting requirements in Pt 2M.3 may be granted by class order (s341) or individually (s340) for a particular company or registered scheme. We consider individual applications for relief on a case-by-case basis.
- RG 174.125 You should first check whether you can rely on relief under an existing class order. If not, you will need to make an individual application asking ASIC to grant you relief.

### Our prospective relief powers

- RG 174.126 ASIC's powers to grant financial reporting relief and AGM relief are prospective. We have no power to grant retrospective relief. Relief will not remedy any past breach of the Corporations Act: see RG 51.54–RG 51.62 for further details.

### Sufficient time

- RG 174.127 You should ensure that there will be sufficient time for us to consider your relief application and serve notice of any order on the company or registered scheme before any statutory timeframe for which the relief is required has expired. Section 340 applications should normally be lodged no later than one month before the end of the financial period for which the relief is being sought.

- RG 174.128 When making an application for relief, applicants are required to provide ASIC with detailed information addressing the relevant factors for each type of relief. Applications that do not address these factors may be delayed or may not be accepted for lodgement. Applicants must allow sufficient time for ASIC to consider the application.
- RG 174.129 Additional time should be allowed for applications that are novel or outside the scope of existing policy.

### **Applications by listed companies or schemes**

- RG 174.130 In addition to addressing the relevant factors that ASIC will consider (see RG 174.63 and RG 174.98), an application for relief by an externally administered listed entity (whether or not the quotation of the entity's securities has been suspended) must also:
- (a) name the financial market(s) on which the entity is listed;
  - (b) state whether the quotation of the entity's financial products has been suspended and, if so, provide details; and
  - (c) state whether the entity has applied, or intends to apply, for a waiver of any listing rules that are related to the entity's obligations under the Corporations Act.

Note: Entities listed on ASX, for example, may need to seek a waiver of the listing rules relating to giving financial reports to ASX. This will enable ASIC to liaise, where necessary, with the relevant market operator about the application.

### **Concurrent administrations**

- RG 174.131 Because the financial reporting obligations and AGM obligations are imposed on the company, it will be necessary in the case of concurrent external administrator appointments to identify the natural person or persons with the legal and practical capacity to:
- (a) cause the company to comply with these obligations;
  - (b) apply to ASIC for relief from these obligations; or
  - (c) cause the company to comply with any conditions imposed on relief from these obligations.
- RG 174.132 In certain situations, the directors of the company may retain sufficient legal and practical capacity to do these things. In other cases, one of the external administrators may clearly have the dominant capacity to do these things or cause these things to be done on the company's behalf.
- RG 174.133 Where it is not clear which of several external administrators has the dominant legal and practical capacity to do these things on the company's behalf, the external administrators will need to act together to make a valid application for relief: see RG 174.81–RG 174.82.

## Who may apply for relief

RG 174.134 Applications for relief are normally made by the directors of a company or the responsible entity of a registered scheme. However, when a company is under external administration, there may not be any directors or the powers of the directors may be suspended. There may also be different external administrators appointed concurrently. Similarly, when a registered scheme is being wound up, there may not be any directors of the responsible entity or their powers may be suspended if the responsible entity is also under external administration. In some cases, a person other than the responsible entity may be appointed to take responsibility for winding up the scheme.

RG 174.135 Table 5 summarises who may apply for financial reporting relief and AGM relief.

**Table 5: Summary of who may apply for relief**

External administration	Who may apply under s340 or s111AT*	Who may apply under s992B	Who may apply for an AGM extension of time
Companies under voluntary administration	Voluntary administrator	Voluntary administrator	Voluntary administrator
Companies subject to a DOCA	Directors (if any) <i>or</i> Deed administrator if the DOCA expressly provides that the deed administrator has the powers of directors	Directors (if any) <i>or</i> Deed administrator if the DOCA expressly provides that the deed administrator has the powers of directors or if there are no directors	Directors (if any) <i>or</i> Deed administrator if the DOCA expressly provides that the deed administrator has the powers of directors or if there are no directors
Companies in liquidation	Not required, if [CO 14/xxx] applies. Otherwise, the liquidator	Not required, if [CO 14/xxx] applies. Otherwise, the liquidator	Not required, if [CO 14/xxx] applies. Otherwise, the liquidator
Companies in provisional liquidation	Provisional liquidator	Provisional liquidator	Provisional liquidator
Registered schemes being wound up	Directors of the responsible entity (if any) <i>or</i> Voluntary administrator, liquidator or provisional liquidator of the responsible entity <i>or</i> Deed administrator if the DOCA expressly provides that the deed administrator has the powers of directors	Not applicable	Not applicable

\* Only companies and registered schemes that are disclosing entities may apply under s111AT.

## Applying for relief under s340

RG 174.136 Section 340(3) requires that an application for relief must be:

- (a) authorised by a resolution of the directors;
- (b) in writing and signed by a director; and
- (c) lodged with ASIC.

Note: If the relief application is for a registered scheme, the reference to 'directors' in s340(3) means directors of the responsible entity of the registered scheme.

### Voluntary administrators

RG 174.137 A voluntary administrator of a company may apply for relief under s340, whether or not there are any directors appointed, because a voluntary administrator may perform any function and exercise any power that the entity or any of the company's officers could perform or exercise if the entity were not under administration: s437A.

### Deed administrators

RG 174.138 We consider that a deed administrator will not be able to apply for relief under s340 unless the DOCA provides that the deed administrator may perform any function and exercise any power that the directors could perform or exercise if the company were not under external administration. Otherwise, the application must be made by the directors under s340(3). If the deed administrator still exercises all or most of the management functions and powers of the company, the application must also be authorised by the external administrator.

### Controllers

RG 174.139 We consider that a controller or managing controller will not be able to apply for relief on behalf of a company or registered scheme. This is because the powers of a controller under s420 do not extend to performing the functions and exercising the powers of directors—making it impossible for a controller to comply with s340(3). In these circumstances, the application must be made by the directors under s340(3).

RG 174.140 Where a controller is appointed to the whole, or substantially the whole, of the property comprising the undertaking of the company or registered scheme, and the directors of the company or responsible entity retain all or most of the management functions and powers of the company or responsible entity and therefore the scheme, we consider that the directors would retain sufficient legal and practical capacity to apply to ASIC for relief from the financial reporting obligations of the company or scheme if the application complies with s340(3).

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RG 174.141 However, where a controller is appointed to the whole, or substantially the whole, of the property comprising the undertaking of the company or registered scheme, and the controller also has control over the management of all the day-to-day operations of the company or scheme, we consider that the controller and the directors (if any) need to act together to cause the company or scheme to either comply with the financial reporting obligations or to apply to ASIC for relief from those obligations.

### **Registered schemes**

RG 174.142 The directors of the responsible entity of a registered scheme may apply for relief for the registered scheme. We consider that a voluntary administrator, liquidator or provisional liquidator of a responsible entity may also apply for relief for the registered scheme. This is because they are able to perform the functions and have the powers of the directors of the responsible entity. We consider that a deed administrator of a responsible entity will only be able to apply for relief under s340(3) if the DOCA expressly provides that the deed administrator has the powers of directors.

RG 174.143 If there is a person other than the responsible entity appointed to wind up the registered scheme, they will need to act together with the directors or the external administrator of the responsible entity having legal capacity to cause the scheme to either comply with the financial reporting obligations or to apply to ASIC for relief from those obligations.

### **Applying for relief under s111AT**

RG 174.144 A listed company or registered scheme may also apply for financial reporting relief under s111AT where it is unable to make an application under s340(3) for any of the reasons set out above.

RG 174.145 Where there are no directors of an externally administered company or responsible entity, or the directors do not retain sufficient legal and practical capacity to apply for relief under s340(3), the external administrator may apply for relief under s111AT. Where it is not clear which of several external administrators has the dominant legal and practical capacity to do these things on behalf of the company or registered scheme, the external administrators will need to act together to make a valid application: see RG 174.131–RG 174.133.

### **Applying for relief under s992B**

RG 174.146 Where there are no directors of an externally administered company that holds an AFS licence, or the directors do not retain sufficient legal and practical capacity to apply for relief under s992B, the external administrator may apply for relief under s992B. Where it is not clear which of several external administrators has the dominant legal and practical capacity to do

these things on behalf of the company, the external administrators will need to act together to make a valid application: see RG 174.131–RG 174.133.

### Applying for AGM extensions of time

- RG 174.147 An application for an extension of time to hold an AGM must be made by lodging a Form 2501 *Application for extension of time to hold annual general meeting*.
- RG 174.148 Applications for AGM relief must be received by ASIC before the end of the period within which the meeting must otherwise be held under s250N, and allow sufficient time for us to consider the application. If a number of companies in a group all require extensions of time, and the group contains a mixture of listed and unlisted public companies, all applications should be lodged at one regional office.

### Applying for AGM relief under s250PAB

- RG 174.149 An application for an exemption under s250PAB may be made by:
- (a) the liquidator of a company that is being wound up (s250PAB(1));
  - (b) the administrator of a company under administration (s250PAB(2)); or
  - (c) the administrator of a DOCA (s250PAB(3)).

### Applying for a no-action letter

- RG 174.150 In very limited circumstances, we may grant a no-action letter in relation to past breaches of the Corporations Act: see RG 108 *No-action letters* (RG 108).
- RG 174.151 Where there are no directors of an externally administered company or responsible entity—or the directors do not retain sufficient legal and practical capacity to apply for relief under s340(3), and relief is unavailable under s340 or 111AT—the external administrator may apply for a no-action letter. Where it is not clear which of several external administrators has the dominant legal and practical capacity to do these things on behalf of the company or registered scheme, the external administrators will need to act together to make a valid application: see RG 174.131–RG 174.133.
- RG 174.152 A no-action letter is an expression of our regulatory intention about how we will exercise our powers. The purpose of a no-action letter is to provide an indication of the future regulatory action that we will, or will not, take. A no-action letter does not relieve a company or registered scheme from the financial reporting or AGM obligations.
- RG 174.153 A no-action letter will state that we do not intend to take regulatory action in relation to particular conduct on the basis of our understanding of the facts of the particular case at the particular time that an application for a no-action letter is made.

## How to submit an application for relief

- RG 174.154 Applications for relief may be lodged at any ASIC office. However, applications relating to listed public companies will be dealt with more quickly if they are lodged at the regional office in the state in which the company has its principal place of business (or the regional office that the company usually deals with).
- RG 174.155 Applications relating to unlisted public companies should be sent to:
- ASIC Information Processing Centre
  - Customer Service Branch
  - Gippsland Mail Centre
  - Morwell VIC 3841
- RG 174.156 Please also send a copy of your application to [applications@asic.gov.au](mailto:applications@asic.gov.au). You can also contact ASIC's Infoline on 1300 300 630 for information and assistance.

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## Key terms

Term	Meaning in this document
AASB 101 (for example)	An accounting standard issued by the Australian Accounting Standards Board (in this example numbered 101)
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
AFS licensee reporting obligations	The obligations in Div 6 of Pt 7.8 of the Corporations Act that require AFS licensees to prepare and lodge with ASIC an audited annual profit and loss statement and balance sheet
AGM	An annual general meeting of a company that s250N of the Corporations Act requires to be held  Note: This is a definition contained in s9.
AGM obligations	The obligations in s250N of the Corporations Act
annual report	The reports referred to in s314(1) of the Corporations Act.  A company, registered scheme or disclosing entity must report to members for a financial year by providing either of the following in accordance with s314(1AA) or (1AE): <ul style="list-style-type: none"> <li>• all of the following reports: <ul style="list-style-type: none"> <li>– the financial report for the year;</li> <li>– the directors' report for the year (see s298–300A); and</li> <li>– the auditor's report on the financial report; or</li> </ul> </li> <li>• a concise report for the year that complies with s314(2)</li> </ul>
ASIC	Australian Securities and Investments Commission
ASX	The exchange market operated by ASX Limited
[CO 14/xxx] (for example)	An ASIC class order (in this example numbered 14/xxx)

Term	Meaning in this document
controller	In relation to property of a corporation, means: <ul style="list-style-type: none"> <li>• a receiver, or receiver and manager, of that property; or</li> <li>• anyone else who (whether or not as agent for the corporation) is in possession, or has control, of that property for the purpose of enforcing a security interest, and has a meaning affected by s434F(b) of the Corporations Act, which deals with two or more persons appointed as controllers. It therefore includes 'managing controller', 'receiver' and 'receiver and manager'</li> </ul>
controllership	Where a controller is appointed to property of a company
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
deed administrator	An administrator of a DOCA
deed of company arrangement	A deed of company arrangement executed under Pt 5.3A of the Corporations Act or such a deed as is varied and in force from time to time
deregistration	For a company, means the deregistration of a company under s601AA, 601AB or 601AC of the Corporations Act. A company ceases on deregistration: s601AD(1). For a registered scheme, means the deregistration of a registered scheme that has been wound up under s601PB of the Corporations Act
disclosing entity	Has the meaning given by s111AC
DOCA	A deed of company arrangement
entity	A company, registered scheme or disclosing entity
external administration	Where an external administrator is appointed to a company
external administrator	For a company, means a voluntary administrator, deed administrator, controller, provisional liquidator or liquidator For a disclosing entity that is neither a company nor scheme, the person taking responsibility for ensuring the disclosing entity is wound up in accordance with its constitution, rules and applicable laws

Term	Meaning in this document
externally administered company	<p>A company:</p> <ul style="list-style-type: none"> <li>• under voluntary administration;</li> <li>• subject to a DOCA;</li> <li>• where a controller has been appointed (whether or not by a court) and is acting;</li> <li>• in provisional liquidation;</li> <li>• in liquidation; or</li> <li>• concurrently in two or more of the forms of external administration referred to above.</li> </ul> <p>An externally administered company may be either a public company or a proprietary company</p>
externally administered disclosing entity	<p>A disclosing entity that has an external administrator appointed. An externally administered disclosing entity will therefore be:</p> <ul style="list-style-type: none"> <li>• a body that is included in the official list of a prescribed financial market that has an external administrator appointed;</li> <li>• an externally administered company whose securities were issued under a disclosure document and remain widely held (i.e. by 100 or more persons);</li> <li>• a registered scheme that is being wound up and whose managed investment products were made available under a product disclosure statement and remain widely held (i.e. by 100 or more persons);</li> <li>• a body that issued securities as consideration for a takeover or merger which remain widely held (i.e. by 100 or more persons) and that has an external administrator appointed; or</li> <li>• a body that has issued debentures that require the appointment of a trustee under Ch 2L of the Corporations Act, or under a recognised offer (i.e. an offer of debentures made under the mutual recognition of securities offers provisions in Ch 8 of the Corporations Act ), and that has an external administrator appointed</li> </ul>
financial and other reports	Has the same meaning as Pt 2M.3 reports
financial reporting obligations	Has the same meaning as Pt 2M.3 obligations
half-year report	The reports referred to in s302 of the Corporations Act
listing rules	Has the same meaning as in s9 of the Corporations Act

Term	Meaning in this document
liquidation	For a company, the process for: <ul style="list-style-type: none"> <li>• the winding-up of a company business;</li> <li>• the collection and realisation of assets;</li> <li>• the application of the proceeds to the company's creditors; and</li> <li>• should a surplus remain, repayment to the members</li> </ul>
liquidator	A person appointed by the members or creditors of a company or by the court to wind up the affairs and distribute the property of a company
managing controller	Has the same meaning as in s9 of the Corporations Act
ongoing economic interest	In relation to the members of a company, this means that: <ul style="list-style-type: none"> <li>• the monetary value of, or rate of return for, each share in the company is, or is likely to be, more than nominal; or</li> <li>• the company is likely to cease being externally administered and is likely to carry on a business</li> </ul>
Part 2M.3 obligations	The obligations in Pt 2M.3 of the Corporations Act to prepare, obtain, distribute and lodge the financial and other reports
Part 2M.3 reports	The financial reports, directors' reports, auditor's reports and concise reports required under Pt 2M.3 of the Corporations Act
proprietary company	A company that is registered as, or converts to, a proprietary company under the Corporations Act: s45A
provisional liquidator	A person appointed by the court under s472(2) of the Corporations Act
public company	A company other than a proprietary company
RG 43 (for example)	An ASIC regulatory guide (in this example numbered 43)
receiver	A person appointed to receive property of a company who does not manage, and under the terms of the person's appointment does not have power to manage, the affairs of the company
receiver and manager	Has the same meaning as in s9 of the Corporations Act
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
registered scheme that is being wound up	A registered scheme that is being wound up under Pt 5C.9 of the Corporations Act
relevant market operator	Has the same meaning as in s9 of the Corporations Act

Term	Meaning in this document
reporting date	The end of the reporting period to which the financial and other reports relate
responsible entity	Has the same meaning as in s9 of the Corporations Act For a registered scheme, the company named in ASIC's record of the scheme's registration as the responsible entity or temporary responsible entity of the scheme.
s250N (for example)	A section of the Corporations Act (in this example numbered 250N)
small proprietary company	Has the same meaning as in s45A(2) of the Corporations Act  A proprietary company is a small proprietary company for a financial year if it satisfies at least two of the following paragraphs: <ul style="list-style-type: none"> <li>• the consolidated revenue for the financial year of the company and the entities it controls (if any) is less than \$25 million, or any other amount prescribed by the Corporations Regulations for the purpose of this paragraph;</li> <li>• the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than \$12.5 million, or any other amount prescribed by the Corporations Regulations for the purposes of this paragraph; and</li> <li>• the company and the entities it controls (if any) have fewer than 50, or any other number prescribed by the Corporations Regulations for the purpose of this paragraph, employees at the end of the financial year.</li> </ul>
voluntary administration	The external administration of a company by a person appointed under s436A, 436B or 436C of Pt 5.3A of the Corporations Act but does not include external administration under a DOCA
winding-up	For a company, the process for: <ul style="list-style-type: none"> <li>• the winding-up of a company business;</li> <li>• the collection and realisation of assets;</li> <li>• the application of the proceeds to the company's creditors; and</li> <li>• should a surplus remain, repayment to the members.</li> </ul> For a scheme, the process for winding up under a provision in Pt 5C.9 of the Corporations Act

## Related information

### Headnotes

AGMs, annual general meetings, administration, administrator, corporations, companies, controllers, deed administrator, deed of company arrangement, DOCA, externally administered companies, extension of time to hold an AGM, external administration, externally administered companies, financial reporting, financial reporting relief, insolvency, liquidation, managing controllers, provisional liquidation, receivers, receivers and managers, voluntary administrator

### Class orders

[CO 14/xxx] *Externally administered companies and registered schemes being wound up: Relief from financial reporting and AGM obligations*

### Regulatory guides

RG 43 *Accounts and audit relief*

RG 44 *Annual general meeting—Extension of time*

RG 51 *Applications for relief*

RG 95 *Disclosing entity provisions relief*

RG 108 *No-action letters*

RG 136 *Managed Investments: Discretionary powers and closely related schemes*

RG 166 *Licensing: Financial requirements*

### Legislation

Corporations Act, Pt 1.2A, Div 8 of Pt 2G.2, Pt 2M.3, Ch 5, Subdiv C of Pt 7.8, s111AT, s250N, 250P, s340–342, s992B, s1311, s1312, s1314, Sch 3

Corporations Regulations, Sch 8A

Corporations (Fees) Regulations 2001, Sch 1

*Crimes Act 1914*, s4AA

## **Cases**

*Mercy & Sons Pty Ltd v Wanari Pty Ltd* (200) 35 ACSR 70

*Re Nardell Coal Corporation Pty Ltd* [2004] NSWSC 281

*Incat Australia Pty Ltd v ASIC* (2000) 33 ACSR 462

*Brightstar Logistics Pty Ltd v Australian Securities and Investments Commission (No 2)* [2010] FCA 435

*Capelli v Shepard* [2010] VSCA 2 at [93]

*Re Stacks Managed Investments Ltd* (2005) 23 ACLC 1,647 at [42]

*Mier v FN Management Pty Ltd* (2005) 23 ACLC 1888

## **Consultation papers and reports**

CP 35 Financial reporting and AGM obligations for companies in external administration under Pt 5.3A (September 2002)

## **Media and other releases**

[MR 02/321] (5 September 2002)

[INFO 163]

## **ASIC forms**

Form 2501 *Application for extension of time to hold annual general meeting*

Form 5138 *Notification of commencement or completion of winding up of a registered scheme*