

Attachment 4 to CP 240: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Synchronisation of Financial Years) Instrument 2015/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission,
make the following legislative instrument.

Date 2015

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Synchronisation of Financial Years) Instrument 2015/XX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at www.comlaw.gov.au.

3 Authority

This instrument is made under subsection 341(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Order

5 Relief to enable synchronisation of financial year with that of a foreign parent

- (1) An entity that is a company, registered scheme or disclosing entity and a director of the entity do not have to comply with a requirement arising from or under Part 2M.3 of the Act to the extent that:
 - (a) apart from this order, the entity or director would not comply with the requirement; and
 - (b) the non-compliance would result merely from:
 - (i) the entity or director complying with the requirement in relation to a period that:
 - (A) is not a financial year of the entity within the meaning of section 323D of the Act; and
 - (B) is a financial year of the entity within the meaning of the law (*foreign law*) in the place of origin of a controlling entity (*foreign parent*) which was not incorporated or formed in Australia; or
 - (ii) the entity or director complying with the requirement in relation to a period that:
 - (A) is not a half-year of the entity; and
 - (B) would be a half-year of the entity if the financial year of the entity within the meaning of the foreign law were the financial year of the entity for the purposes of subsection 323D(5) of the Act; and
 - (c) the entity or director is complying with the requirement in relation to that period solely for the purpose of synchronising the financial year (within the meaning of the foreign law) of the entity with the financial year of the foreign parent.

Where relief applies

- (2) The relief in subsection (1) is available where both of the following apply:
 - (a) the entity or director reasonably believes that:
 - (i) the foreign parent was required by the foreign law to cause the financial year (within the meaning of the foreign law) of the entity to be changed; and

- (ii) the financial year (within the meaning of the foreign law) of the entity has been changed in accordance with that requirement;
- (b) the financial year (within the meaning of the foreign law) is no longer than 18 months.

Conditions

- (3) The relief in subsection (1) is subject to the following conditions:
 - (a) if the financial year (within the meaning of the foreign law) is equal to or greater than 12 months, the directors of the entity have formed the opinion no earlier than 12 months and no later than 15 months after the commencement of that financial year that there are reasonable grounds to believe that the entity will be able to pay its debts as and when they become due and payable (and evidenced this opinion in the minutes of a meeting of directors); and
 - (b) if the financial year (within the meaning of the foreign law) is a period of less than 12 months, the requirements of the Act, the *Corporations Regulations 2001*, the *Corporations (Fees) Regulations 2001* and any disallowable legislative instruments made by ASIC are applied in respect of that financial year as if:
 - (i) paragraph 45A(2)(a) of the Act applied as if the reference to “the financial year” in that paragraph were a reference to the period of 12 months ending at the end of the financial year (within the meaning of the foreign law); and
 - (ii) paragraph 45A(3)(a) of the Act applied as if the reference to “the financial year” in that paragraph were a reference to the period of 12 months ending at the end of the financial year (within the meaning of the foreign law);
 - (c) if the entity or the director is relying on the relief in subparagraph (1)(b)(i), the notes to the financial statements of the entity that form part of the financial report prepared for the purposes of subsection 292(1) of the Act include a brief statement as to the relief provided by this instrument;
 - (d) if the entity or the director is relying on the relief in subparagraph (1)(b)(ii), the notes to the financial statements of the entity that form part of the financial report prepared for the purposes of section 302 of the Act include a brief statement as to the relief provided by this instrument.