Note: From 27 July 2020, applications for relief should be submitted through the ASIC Regulatory Portal. For more information, see how you apply for relief.

REGULATORY GUIDE 102

# Tender offers by vendor shareholders

**Chapter 6 — Acquisition of shares**

*Issued 2/10/1995*

*From 5 July 2007, this document may be referred to as Regulatory Guide 102 (RG 102) or Policy Statement 102 (PS 102). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 102.1) or their policy statement number (e.g. PS 102.1).*

## Headnotes

*Sections 615(1), 615(4), 622A, 641, 648, 665, 666, 697, 698, 708, 728, 730, 732, 746, 1043, 1078; acquisition; controlling parcel; subsequent takeover; substantial shareholding; tender process; relief for prospective and successful tenderers.*

## Contents



# Purpose

RG 102.1 This guide indicates the circumstances in which the ASC will exercise its discretionary powers in order to facilitate the sale of shares by tender where at least 20% of a company's shares are being offered for sale. It also sets out the procedures the ASC will require of any shareholders seeking to sell their shares in this manner.

RG 102.2 Single shareholders, or groups of shareholders, who believe that the value of their shares would be enhanced if sold in a single large parcel, may seek to sell their shares by way of tender.

RG 102.3 Although the legislation does not prohibit shareholders from offering a parcel of shares for sale by tender, offering more than 20% of the voting shares in a company will contravene some provisions of the Corporations Law (Law) unless relief is granted by the ASC.

RG 102.4 In a successful tender process under this guide, by the time a full takeover is made for all shares in the target company, it is likely that control of the company will have passed to the successful tenderer. Therefore, control of the target company is not determined by a public auction in a successful takeover, but by the auction conducted in the tender process. Accordingly, the ASC will not grant relief unless it is convinced that the tender process has been a serious test of the market.

RG 102.5 However, in noting that control of the company may pass before the takeover bid is made, two things must be borne in mind. The first is that minority shareholders quickly receive an opportunity to accept the *same* price for their shares as received by the persons who initiated the tender (the vendor).

RG 102.6 The second is that self-interest of the vendor, in extracting the highest possible price for its control parcel, works in the interests of the minority shareholders. The vendor is likely to be able to extract a control premium because of the size of its parcel and its better knowledge of the target which it can use in selling its shares. The vendor is likely to have added information or insight into the target because of its controlling position in the target company. As well, it is likely to be a professional investor who has specialised resources to monitor its large investments.

RG 102.7 If control of the company passes at too low a price, nothing prevents a further offeror making a rival bid at a higher price. This may induce the successful tenderer to sell its recently acquired parcel or induce the successful tenderer to increase its bid to achieve compulsory acquisition of the target.

RG 102.8 The policy of Chapter 6 of the Law is not to maximise the price received by minority shareholders. It is to promote information efficiency and ensure that all shareholders in a company, as far as practicable, receive equal opportunity to share in the benefits which accrue to shareholders under any proposal under which a person would acquire a substantial interest in the company. Therefore, although the ASC’s policy will facilitate the vendor achieving the highest price for itself and for minority shareholders, it is not specifically designed or structured to maximise the sale price. The ASC’s policy is designed to ensure equal opportunities for all shareholders while facilitating the sale by the major shareholder(s) of their shares.

## Small parcels

RG 102.9 This guide may be applied to parcels other than a clearly controlling parcel of shares in the target company. For example, the target may have a diffused register and the largest parcel of shares in the target company may be 25%. Alternatively, there may be more than one parcel of more than 20% in the target and the smaller one is sought to be sold by tender.

RG 102.10 In these cases control may not necessarily pass with the sale of the parcel. However, the ASC will provide relief under the terms of this guide to allow these parcels to be sold by tender.

RG 102.11 Where the parcel is only slightly greater than 20%, the premium payable for the parcel as a whole may not be sufficiently great to warrant the costs and delay of the tender process and subsequent takeover. The ASC expects this guide will be used mainly for parcels significantly greater than 20%.

## Tender formats

RG 102.12 A tender offer will usually take the following form:

(a) a decision will be taken by a person to offer (or by a group of persons to offer jointly) a parcel of shares for sale by way of tender;

(b) an invitation to tender will be advertised;

(c) prospective tenderers may be allowed access to information on the target company, by the vendor or the company;

(d) tenderers will prepare and submit their offers;

(e) tenders will be received by the vendors and the successful tenderer notified; and

(f) the successful tenderer will make a takeover offer (Part A or Part C) for the remaining shares in the company.

RG 102.13 Alternatively, the vendor may not sell its parcel of shares immediately to the successful tenderer. Instead, the vendor may enter into an agreement with the successful tenderer that the tenderer will make a takeover offer for all the shares in the target company, and that the vendor, in its turn, will accept the tenderer’s takeover offer for all of its shares.

RG 102.14 Both processes involve three groups of participants: the vendors; the prospective tenderers; and the successful tenderer. They will involve a fourth group if the board of the target, once the company is “in play”, wishes to be involved to maximise the price offered to the minority shareholders. If this alternative is adopted, the target board will definitely be involved in the takeover but not necessarily in the tender process. The responsibilities of each of these three groups are considered in turn.

RG 102.15 The ASC considers that sale of the tender parcel into a takeover bid is preferable to the process of purchase followed by a takeover bid for the remaining shares. Its reasons for this view include:

(a) all shareholders are likely to receive their consideration at the same time;

(b) all shareholders' contracts (including the vendor's) are subject to the same conditions (such as prescribed occurrences); and

(c) the process is arguably more transparent to the market.

RG 102.16 A purchase followed by a takeover bid for the remaining shares may require closer scrutiny to ensure equality of treatment between all shareholders in the target company.

# Vendors

## Prospectus provisions: Secondary sale of shares

### *Quoted shares*

RG 102.17 Following the *Corporate Law Reform Act 1994*, a prospectus is not required to offer quoted shares for secondary sale. This is providing that the shares were not issued to the vendor for the purpose of on-sale, in which case s1030 applies.

### *Unquoted shares*

RG 102.18 The provisions of Div 3A of Pt 7.12 regulate the disclosure required for advertising and secondary sale of unquoted securities. They do not apply to excluded offers (s66(3), s1043A and reg 7.12.06), nor to securities issued for the purpose of on-sale.

RG 102.19 The vendor must lodge a notice which conforms with either s1043C (if the tender parcel is 30% or more of the voting shares, or a class of voting shares, in the company) or s1043D (if it is less than 30%). A notice under s1043C will closely resemble a prospectus in information content (reg 7.12.08B). A notice under s1043D need only contain the information prescribed (reg 7.12.08C).

RG 102.20 The vendor must attach a copy of the relevant notice to any document it issues containing the offer of the tender shares.

### *Advertising*

RG 102.21 The vendor may *broadcast or publish* an advertisement offering the tender shares for sale. However, an advertisement offering unquoted shares must state that the vendor will provide a copy of the relevant notice free of charge to anyone who asks for it. Any advertisement must not be false or misleading.

### *Relationship between advertising and sharehawking*

RG 102.22 However, if:

(a) the offers do not meet any of the exceptions in s1077A or s1078 (eg, the shares are unlisted, they are not exempt securities and the minimum parcel which may be purchased is less than $500,000); and

(b) they are sent by post, telephone or other eligible communication service,

the vendors may breach s1078(1). The ASC, pursuant to its powers under s1084, will consider applications to modify s1078(1) to allow the advertising, on condition that the notices do not contain false or misleading matter.

## Sharehawking

RG 102.23 Section 1078(1) prohibits a person going from place to place offering shares for sale. This includes sending written offers. There is no test of offering to the public.

RG 102.24 There are various exceptions to the prohibition in s1078(1): see s66(3), s69A, s1077A, s1078(3A), s1078(4), reg 7.12.06 and reg 7.12.17. These apply if, inter alia:

(a) the minimum purchase amount is more than $500,000 (this will normally include most tender offers to which this guide relates); or

(b) the shares are listed, this is stated in the offer, and the offers are made by a licensed securities dealer by way of an eligible communications service (see definition in s9); or

(c) the offer is made by a securities dealer:

  (i) with whom the offeree has a written agreement appointing the dealer as dealer or securities adviser to the offeree; or

(ii) through whom the offeree has acquired securities in the previous 12 months; or

(d) the offer is one of certain excluded offers; or

(e) the securities are exempt securities under s69A.

RG 102.25 The ASC will consider applications for modifications to and exemptions from s1078(1) from shareholders wishing to offer shares for sale by tender, and may grant such applications pursuant to its powers under s1084(6). In considering these applications, the ASC will take into account, inter alia, the amount of information generally available about the security to be offered and the nature of the information which the vendor under the tender offer intends to provide to prospective tenderers.

# Joint vendors

RG 102.26 Where the shares the subject of the tender process are to be offered for sale jointly by two or more previously unassociated shareholders who wish to combine their holdings, those shareholders must ensure that:

(a) the substantial shareholding provisions of the Law are not contravened; and

(b) the joint tenderers, and any of their associates, do not acquire voting shares in the target company in contravention of s615.

## Substantial shareholding provisions

RG 102.27 Shareholders who wish to combine their holdings, in order to make a joint tender offer of a parcel of shares which constitutes more than 20% of the issued capital, may apply to the ASC for a certificate under s708(3) and for an exemption from s615 pursuant to the ASC’s powers under s728.

RG 102.28 The ASC will only grant a s708(3) certificate on condition that the joint vendors advise the market, concurrent with calling for tenders, of their association and its extent.

## Section 615

RG 102.29 The ASC will only grant an exemption from s615 for shareholders to come together as joint vendors on two conditions. Those conditions are: first, that the agreement and association between the joint vendors falls away if the sale does not proceed; and, second, that neither party purchases shares from the other, which would breach s 615 in the absence of the relief.

RG 102.30 The ASC's relief under this guide does not allow a joint vendor to purport to acquire shares in the target in the six months after the sale was unsuccessful under s618 on the basis that the shares of the other joint vendor should be counted under "VD" in the calculation in s618(1)(b).

RG 102.31 For the rest of this guide, joint and single vendors are referred to in the singular.

# Escalation clauses

RG 102.32 The ASC will not modify s697 to allow a vendor to include an escalation clause in the tender agreement. It is open for the vendor to negotiate with the successful tenderer how the sale will proceed. The vendor may sell prior to the takeover, or it may sell into a takeover scheme or announcement.

RG 102.33 If the vendor sells into a takeover scheme, an escalator clause will be unnecessary because the vendor will receive the statutory escalator clauses under s654(2), s665 or s666. If the vendor sells into a takeover announcement, it will have certainty and must trade off the benefits of early payment against no statutory escalator.

RG 102.34 If the vendor chooses to sell its shares to the tenderer prior to the takeover it will receive two benefits: it will receive payment earlier than other shareholders, and it will have a certain contract rather than one dependant on prescribed occurrences.

RG 102.35 It is inappropriate to allow the vendor the benefits of early payment and certainty and also the benefit of an escalator clause where other shareholders receive only the benefit of the statutory escalator clauses.

## Prospective tenderers

RG 102.36 Where a parcel of shares is offered for sale by way of tender, the submission of a tender to purchase the shares may breach s615(4). However, s615(4) is ancillary to s615(1), and the ASC will consider favourably applications for exemptions from s615(4) from persons wishing to submit tenders. The ASC is required to publish all instruments of exemption in the *Commonwealth of Australia Gazette*.

RG 102.37 The documents offering the shares for sale by tender should state that each prospective tenderer will need to apply to the ASC for an exemption from s615(4). Alternatively, the ASC will accept an application from one prospective tenderer, or from the vendor, for a Class Order giving relief for all tenderers. This will ensure the commercial confidence of unsuccessful tenderers.

RG 102.38 Each tenderer must disclose in its tender the highest price it has paid in the last four months for shares in the relevant class.

# The successful tenderer

RG 102.39 More significantly, the eventual acquisition of a parcel of shares by a successful tenderer will also breach s615(1) unless an exemption is granted by the ASC. For this reason, any proposed agreement to result from the tender process should be expressed to have no force or effect until an exemption from s615 is granted to the successful tenderer.

RG 102.40 The ASC will not grant an exemption from s615 before the tender process is final, as the ASC will only grant an exemption to a specified person or persons.

RG 102.41 However, in order to increase the degree of certainty associated with the tender proceedings, the vendor may apply to the ASC for an “in principle” decision to grant an exemption from s615 in response to an application by the successful tenderer. The ASC will usually make such a decision subject to the conditions set out in this guide being met and any other conditions which are appropriate for the particular circumstances.

RG 102.42 The ASC will only grant relief if it is satisfied that the tender was conducted at arms-length.

RG 102.43 An exemption from s615 for a successful tenderer will be conditional on the successful tenderer making takeover offers in accordance with s616 or s617 for the remaining shares in the target company within 30 days of the day on which the contract of sale, or agreement to accept a takeover offer, under the tender becomes binding.

## Terms and conditions of takeover bid

RG 102.44 The takeover offer which the successful tenderer is obliged to make must be:

(a) for a cash consideration, or include a solely cash alternative (the ASC may allow other than solely cash consideration if the vendor is selling into the takeover offer);

(b) at a price no less than that paid or agreed by the tenderer under the tender; and

(c) subject only to prescribed occurrence defeating conditions (if any).

RG 102.45 If the successful tenderer is in control of the target company at the time of the takeover bid because it has purchased the tender parcel shares prior to the takeover bid rather than requiring the vendor to sell into the bid, the ASC will not grant relief to allow the offeror to include a prescribed occurrence defeating condition in the terms of its offers.

RG 102.46 If the offeror has only entered into an agreement in relation to accepting its takeover bid, many of the prescribed occurrence conditions may be under its direct control when it makes its takeover bid and s662(2) will operate to excise parts of the condition from the bid. If the tenderer takes control of the target during the offer, it would constitute unacceptable circumstances for it to assert that its bid should lapse because of a defeating condition under its control.

## Section 622A

RG 102.47 Under s622A, the successful tenderer would not contravene s615 by acquiring more than 20% of the voting shares in an unlisted company by way of a s1043C or s1043D secondary sale notice lodged with the ASC. This is provided that the offer was made to each member of the company. However, the other provisions of the Law apply and vendors and potential tenderers may need relief from particular provisions of the Law depending on their individual circumstances. They are strongly advised to seek their own commercial legal advice in such cases.

RG 102.48 The ASC would consider referring the acquisition to the Corporations and Securities Panel if a tenderer relied on this provision and did not proceed to make a follow-up takeover bid. The ASC would also consider referring the acquisition to the Corporations and Securities Panel if the offer had not been a fair test of the market.

### Section 648 — offeror connected with target company

RG 102.49 The target company may apply for an exemption from compliance with s648.

RG 102.50 The independent expert report required under s648 is an important protection for minority offerees where an offeror has a strong connection or commonality of interest with the target company.

RG 102.51 However, the ASC recognises that an offeror may obtain a strong connection, such as a prescribed shareholding (an entitlement of not less than 30% of the voting shares) solely by virtue of the tender process.

RG 102.52 The need for a detached viewpoint as provided by an expert is not as essential in these circumstances. This is because the potential for conflict of interest is not inherent in the relationship between the offeror and the target company. In addition, the vendor is likely to have had the advantage of a similarly close connection with the company, and is likely to have been able to use that connection and information to extract a higher price for the target company. The higher price is then offered equally to the minority shareholders.

RG 102.53 As a result, the ASC will normally grant an application for an exemption from the requirements of s648 if the “connections” outlined in s648(1) have been created solely as a consequence of the tender process.

## Section 701 — compulsory acquisition

RG 102.54 The ASC will modify the definition of “shares subject to acquisition” in s701(1)(a) so that a person who commences its tender offer from an entitlement of less than 10% of the voting shares in the target is not required to comply with the three-quarters of offerees or shareholder tests in s701(2)(c). Regardless of the percentage of voting shares in the target that the offeror was entitled to at the commencement of the process, by the time it makes its takeover bid it will be entitled to the tender parcel and therefore be required to meet the three-quarters test. However, it may have commenced the whole process as an outsider and the rationale of the guide is that the selling person will have used its controlling stake to extract the highest possible offer price.

RG 102.55 The fact that the offeror commenced with an entitlement to the tender parcel should not, of itself, trigger the three-quarters of offerees or shareholders test in s701(2)(c). This is consistent with this guide's treatment of expert reports under s648. If the successful tenderer commenced the tender process with less than 10% of the voting shares of the target, then acquired the controlling parcel and also received acceptances of its takeover offer to achieve an entitlement of 90% of the target class of shares, that is a sufficient test of the fairness and reasonableness of the offer. The additional test of three-quarters of shareholders or offerees is not needed.

## Role of target board

RG 102.56 Although not necessarily directly involved in the tender process, the board of the target company may consider that it has an obligation to assess the implication for the company as a whole of the possible change of control which a successful tender process would cause. The target board may co-operate with the tenderer in order to maximise both the amount of information available to the potential tenderers and the number and range of potential tenderers, in order to increase the amount offered in the resulting takeover to minority shareholders.

RG 102.57 It is possible that the company and its board may become associates of the vendor or vendors and breach s615 in the process of assisting in the tender process. The ASC will consider applications from the target company's board in such circumstances for exemption from s615, to the extent that the board is merely facilitating the tender process to maximise the return to all shareholders of the tender process.

RG 102.58 Directors of the target company should be careful to avoid inhibiting the making of the takeover offer to minority shareholders. This may constitute unacceptable circumstances under s732(2)(b).

## Section 698 — benefits to offerees

RG 102.59 An offer by a potential tenderer to enter into an agreement to acquire the vendor's shares and to make the takeover bid is prohibited by s698(1) or 698(2). This is because the tenderer offers the vendor the benefit of the agreement. It gives the vendor the right to sue for specific performance of the agreement (or damages). The breach occurs at the time of making the tender offer, not at the time of making the takeover bid. The benefit offered to the vendor is not likely to induce the vendor to sell at a lower price in anticipation of some other benefit, purportedly unrelated to the takeover, which other offerees will not receive. Therefore the ASC will modify s 698 to the extent required to allow the potential tenderers to offer the vendor the benefit of the agreement.

RG 102.60 Because the breach occurs at the time of the tender offer, potential tenderers need to have received individual or class relief before making their tenders, or express the tenders to be of no effect until relief has been granted.

RG 102.61 However, following from the decision of the High Court in *Sagasco Ltd v Magellan Petroleum Ltd* (1992) 10 ACLC 1,617, a tender process in which the vendor is paid before the subsequent takeover is not a benefit prohibited under s698. The High Court decided that mere early payment of an equal consideration does not constitute such a benefit.

## Price-sensitive information

RG 102.62 Frequently, because of its major shareholding in the target company, the vendor shareholder will have significant information or insights into the operations and future of the target company. Tenderers, or potential tenderers, to whom this information is provided would breach the insider trading provisions of Pt 7.11 of the Law if they made use of this information other than as tenderers and in making the takeover offer.

RG 102.63 This is more likely if the board of the target company chooses to take part in the tender process to facilitate the highest tender price being offered to the minority shareholders.

RG 102.64 Any confidential, price-sensitive information disclosed to the successful tenderer must be included in the Part A or Part C statement. Non disclosure of this information would contravene s704, cl 17 Part A s750 and s1002G.

RG 102.65 All parties concerned should ensure that they put in place sufficient internal trading controls to ensure that they do not breach the insider trading provisions. The ASC would not object to potential tenderers being required to sign confidentiality agreements with the vendor or the target company.

# Disclosure to the market

RG 102.66 The vendor must advise the securities exchange on which the target is listed of its decision to dispose of its shares in the target company by tender. It should do this at, or before, the time it dispatches invitations to tender. Unless commercially confidential information is included in the tender documents, the vendor should provide a copy of the tender document to the securities exchange.

RG 102.67 It will be a condition of relief that the identity of the successful tenderer be announced to the market (including to the securities exchange if the target is listed) immediately following the ASC granting relief.

# Tender by agreement to sell into bid

RG 102.68 If the vendor chooses to structure the tender sale by way of an agreement to sell into a takeover bid by the successful tenderer in return for the tenderer agreeing to make the takeover bid at the agreed price, the offer by the tenderer will still breach s615(4) and s698, and entering into the agreement will breach s615(1). The ASC will apply similar policy considerations in determining applications for this form of tender sale.

# Regional office to oversee tender process

## Tender document

RG 102.69 Before being issued, the document offering the shares for sale by tender should be lodged with the relevant ASC Regional Office. The Regional Office should have indicated that it has no objections to the document.

RG 102.70 The tender documents should set out the relevant relief, including the expected time sequence required by the vendor, potential tenderers and the successful tenderer.

## Tender process

RG 102.71 The vendor should provide the ASC with a description of the tender process, including the identity or descriptions of persons who have been solicited for expressions of interest. In order for the ASC to be satisfied that the auction by tender process has been efficient, the vendor should ensure that the shares are marketed sufficiently widely. Frequently this will include advertising nationally and overseas.

RG 102.72 Tenders should be invited on the basis of publicly available information or non-public information provided *equally* to all interested tenderers (subject to any confidentiality agreement). Equal information includes equal notice to all tenderers of any extension of time, and so on.

RG 102.73 The vendor may reasonably require some proof of bona fides and financial capacity before providing non-public information to potential tenderers or including them in further rounds of negotiation.

RG 102.74 The terms of the tender must include a requirement that the successful tenderer must make an application for an exemption from s615(1) *no later than five business days after being informed* of being the successful tenderer. The ASC may refuse to grant relief if the successful tenderer applies later than five business days after being advised of its success.

## Conditions of granting relief

RG 102.75 The vendor should submit to the ASC, after tenders have closed, and before announcing the successful tenderer, a letter identifying the successful tenderer and confirming that no better offer was received. Normally the highest offer will be the best offer; however, an offer may be higher but clearly not be better. An example is if the higher offer, despite the tender terms, contains defeating conditions, or the tenderer has not proven its financial capacity to meet the terms of the tender and the subsequent bid.

RG 102.76 The ASC will not normally grant relief for any other than the best tender, although the vendors may accept no tender.

RG 102.77 The ASC expects that to assist it determine that the tender process has been a fair test of the market, the vendor will provide the ASC with the following information, as far as the vendor knows, in relation to each tenderer:

(a) the names and a brief description of each tenderer;

(b) the names of their advisers;

(c) directors and associates; and

(d) bid price, terms and ranking.

RG 102.78 It is important to repeat that the ASC will *not* grant s615 relief to any tenderer until the tender process is finalised, and the ASC is convinced that the tender process has been fair and at arms-length and that no benefits prohibited by s 698 have been offered or accepted.

### Timeliness of tender process

RG 102.79 Tender sales which take an extended time to complete are likely to create prolonged disturbances in the market for the target company's shares. The ASC must seek to reduce disturbances of this sort, under s1(2) of the ASC Law. The ASC will look carefully at the proposed tender process to ensure that it will be concluded in a straightforward and timely manner. Provisions in the tender process which give the vendor extensive discretion to negotiate over several rounds with tenderers will not assist an efficient and certain securities market. The ASC may refuse to grant relief if it is not satisfied that the tender will be settled quickly and straightforwardly.

## Consultation

RG 102.80 Because all shareholders will quickly receive an equal opportunity to share in the benefits accruing from the tender process, and the tender process will provide adequate opportunity for any potential tenderers to submit a tender, no person's rights will be directly and materially adversely affected. Therefore, the ASC is not obliged to consult third parties prior to deciding an application under this guide.

RG 102.81 However, because of the assistance it may provide to the tender process and to the ASC, it is recommended that the vendor consents to the ASC, if it wishes, consulting the board of the target company. The vendor should consult with the ASC about the timing of any consultation with the target company and the effects that the target's continuous disclosure obligations would have on the confidentiality of the information.

## Summary

RG 102.82 A person wishing to dispose of their shares by way of tender should consider the following items and take the appropriate action:

(a) Section 1078 complied with, existing exception applies, or exemption granted.

(b) Certificate under s708(3) and exemption from s615 sought to allow joint vendors to make the tender invitations jointly.

(c) Application for exemption from s698 made.

(d) All proposed agreements expressed to have no force or effect until ASC has granted an exemption from s615.

(e) Vendor makes an application for "in principle" decision to grant an exemption from s615 to the successful tenderer (optional).

(f) Tender documents lodged with the ASC's delegate and advice of no objection received.

(g) Tenderers receive s615(4) relief prior to lodging tenders.

(h) Copies of all tenders received provided to the Regional Office which has processed the applications.

## Enforcement and surveillance

RG 102.83 The ASC considers that the major enforcement issues in tender offers are equality of treatment between members of the target company, and prevention of a false market in the target company's shares.

RG 102.84 The ASC will look closely at any attempt by the successful tenderer not to proceed with the subsequent takeover by reliance on a prescribed occurrence. This may constitute unacceptable circumstances. The ASC would refer such a matter to the Corporations and Securities Panel.

RG 102.85 Tenderers must also be aware of the possibility of breaching s746(4). Announcement of the successful tenderer will constitute an announcement by, or on behalf of, the successful tenderer of an intention to make a takeover bid for the target company. The ASC will enforce this provision strictly.

## Applications

RG 102.86 Applications may be made at any Regional Office of the ASC, with the appropriate fees for the different aspects of relief required for the particular tender offer. All applications and document lodgements relating to a particular tender should be made to the same Regional Office. The successful tenderer should lodge its takeover documents at the Regional Office which has processed the applications for tender relief.