

Attachment 5 to CP 365: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Compulsory Acquisitions and Buyouts) Instrument 2023/XXX

I, [], delegate of the Australian Securities and Investments Commission,
make the following legislative instrument.

Date

[DRAFT ONLY – NOT FOR SIGNATURE]

[signature]

[insert name]

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Compulsory Acquisitions and Buyouts) Instrument 2023/XXX*.

2 Commencement

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

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

3 Authority

This instrument is made under subsection 669(1) of the Act.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Compulsory acquisitions and buyouts following takeover bid

Chapter 6A of the Act applies to all persons as if the following provisions were modified or varied as follows:

- (a) in section 661A:
 - (i) in subsection (1), at the end, insert:

“If the bidder compulsorily acquires securities in the bid class under this subsection, the bidder may also compulsorily acquire non-transferable securities in a different class where:

 - (a) the constitution of the company that issued the non-transferable securities or the terms of issue of the non-transferable securities restrict their transfer; and
 - (b) the non-transferable securities would be in the bid class but for the restriction referred to in paragraph (a); and
 - (c) if all the non-transferable securities were securities in the bid class, they would not exceed 10% of the securities in the bid class (by number, worked out at the end of the offer period).”;
 - (ii) omit subsection (2), substitute:

“(2) For the purposes of the 90% calculation in subparagraph (1)(b)(i), disregard any relevant interests that the bidder or their associates have merely because of the operation of paragraph 608(3)(a) (relevant interest by 20% interest in body corporate).

(2A) For the purposes of the 75% calculation in subparagraph (1)(b)(ii):

 - (a) exclude from the number of securities acquired and from the number of securities that the bidder offered to acquire under the bid, securities:
 - (i) in which the bidder or their associate has a relevant interest at the date of the first offer under the bid except where the relevant interest was acquired in reliance on item 2 of section 611 during the bid period; or
 - (ii) issued to an associate of the bidder during the offer period; and

(b) if the securities are convertible securities, exclude from the number of securities that the bidder offered to acquire under the bid convertible securities (other than any securities excluded because of paragraph (a)) where the holder by exercising the rights attached to those securities has:

- (i) another class of securities issued to them; or
- (ii) has the securities transformed into securities in another class,

in the period from the date set by the bidder under subsection 633(2) to the end of the offer period.”;

(iii) after subsection (4) insert:

“(4A) If the bidder compulsorily acquires non-transferable securities under subsection (1), the bidder:

- (a) must acquire all the non-transferable securities which were issued or granted before the end of the offer period and in which the bidder does not have a relevant interest; and
- (b) may elect to acquire any non-transferable securities in which the bidder has a relevant interest (no matter when they were issued or granted).”;

(iv) in subsection (5), at the end, insert:

“For the avoidance of doubt, this section also has effect despite anything in the terms of issue of the securities to be acquired.”;

(v) after subsection (5), insert:

“(6) In this section, *non-transferable securities* means securities issued under a scheme to or for the benefit of employees or non-executive directors of the company that issued the securities or of a related body corporate in relation to their employment or services.”;

(b) omit paragraph 661B(1)(c), substitute:

“(c) give the notice to each other person who is:

- (i) a holder of securities in the bid class; or

- (ii) if the bidder elects under paragraph 661A(4)(c) to acquire securities that come to be in the bid class after the notice is given—a holder of the convertible securities referred to in that paragraph; or
 - (iii) if the bidder elects to acquire non-transferable securities under subsection 661A(1)—a holder of the non-transferable securities; and”;
- (c) in subsection 661D(1) omit “in the bid class”;
- (d) after subsection 662A(2) insert:

“(2A) This section also does not apply to securities if the bidder has given the holder of the securities a compulsory acquisition notice under section 661B and the terms on which the bidder may acquire the securities are the same as the terms of the bid immediately before the end of the offer period.”;
- (e) in subsection 664A(4), at the end, insert:

“For the avoidance of doubt, this section also has effect despite anything in the terms of issue of the securities to be acquired.”;
- (f) in subsection 666B(2), at the end, insert:

“For the avoidance of doubt, if the person acquiring the securities complies with subsection (1), the transfer of the securities to the person is effective notwithstanding any restrictions on transfer of the securities contained in the constitution of the company that issued the securities or the terms of issue of the securities.”.