



ASIC

Australian Securities &
Investments Commission

REGULATORY GUIDE 174

Relief for externally administered companies and registered schemes being wound up

October 2021

About this guide

This guide is for registered liquidators and other persons who are externally administering the affairs of companies and winding up registered managed investment schemes (registered schemes).

It explains when we will grant relief relating to:

- the financial reporting obligations of the Corporations Act;
- the Australian financial services (AFS) licensee financial reporting obligations (for companies and responsible entities that are or have been AFS licensees);
- the compliance plan audit obligations (for registered schemes); and
- the requirement to hold an annual general meeting (for public companies).

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 guide was issued in October 2021 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 174, issued May 2015, reissued December 2018
- Superseded Policy Statement 174, issued June 2003, rebadged as a regulatory guide 5 July 2007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.

Contents

A	Overview	4
	Purpose of this guide	4
	The financial reporting obligations	5
	Our approach to relief	9
B	Financial reporting relief for externally administered companies	16
	Exemption relief for companies in liquidation	16
	Deferral relief for externally administered companies not in liquidation	18
	Individual deferral relief for externally administered companies.....	25
	What happens when a deferral comes to an end?	32
	Individual exemption from previously deferred financial reporting obligations.....	34
	Individual relief from specific obligations	35
C	Financial reporting relief for registered schemes	36
	When is a registered scheme ‘insolvent’?	36
	Winding-up a registered scheme	37
	Exemption relief for ‘insolvent’ registered schemes being wound up	37
	Individual deferral relief for registered schemes being wound up ...	41
	Relief relating to compliance plan audit obligations	46
D	AGM relief for public companies	48
	Exemption from AGM obligation for companies in liquidation	48
	AGM deferral relief for externally administered public companies ..	49
	Individual extensions of time to hold an AGM	51
	Individual exemptions from the AGM obligation	53
E	Applying for relief	54
	General considerations when applying for relief	54
	Who may apply for relief	56
	How to apply for relief	61
	Key terms	62
	Related information	67

A Overview

Key points

Companies and registered managed investment schemes (registered schemes) have financial reporting obligations, and public companies must hold annual general meetings (AGMs). Companies that are Australian financial services (AFS) licensees, including responsible entities of registered schemes, also have AFS licensee financial reporting obligations. Responsible entities of registered schemes must also have their scheme compliance plans audited.

These obligations apply even if a company (including a responsible entity) is under external administration or a registered scheme is being wound up.

ASIC provides relief from the financial reporting and AGM obligations under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), in certain circumstances. We may also grant individual relief from the financial reporting, AGM and compliance plan audit obligations in other circumstances.

This relief does not extend to the obligation to keep financial records.

Purpose of this guide

RG 174.1 This guide will help externally administered companies and external administrators understand when we will grant relief from the financial reporting obligations in Pt 2M.3 of the *Corporations Act 2001* (Corporations Act) and, for externally administered public companies, when we will grant relief from the AGM obligations.

Note 1: In this guide, references to chapters (Chs), parts (Pts), or sections (s) are to the Corporations Act, unless otherwise specified.

Note 2: In this guide, 'external administrator' means, for a company, a voluntary administrator, deed administrator, controller, provisional liquidator or liquidator, and, for a disclosing entity that is not a company or a scheme, the person taking responsibility for ensuring that the disclosing entity is wound up in accordance with its constitution, rules and applicable laws.

RG 174.2 This guide will also help responsible entities or other persons who have responsibility for winding up a registered scheme understand when we will grant relief from the financial reporting and compliance plan audit obligations. It will also help externally administered companies (including responsible entities) that are or have been AFS licensees to understand when we will grant relief from any of the AFS licensee financial reporting obligations.

- 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 certain meetings depending on the type of external administration (e.g. meetings of creditors, contributories or committees of inspection);
 - (c) insolvent natural persons, partnerships, trusts (other than registered schemes) or bodies that are not companies, registered schemes or disclosing entities; and
 - (d) companies that enter into a restructuring process under Pt 5.3B (restructuring of a company).

The financial reporting obligations

RG 174.4 Part 2M.3 of the Corporations Act imposes on companies, registered schemes and disclosing entities requirements about annual financial reporting, half-yearly reporting, auditing and disclosure.

RG 174.5 These requirements are directed at maintaining investor confidence, enhancing market efficiency and ensuring the accountability of management through the provision of timely and reliable financial information. Auditing provides 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. Public financial reporting makes information available to a wide range of users to help them make economic decisions. Users include:

- (a) present and prospective shareholders or members;
- (b) present and prospective creditors; and
- (c) customers, employees, governments and the public.

Note: See Australian Accounting Standard [AASB 101](#) *Presentation of financial statements*, and [Regulatory Guide 43](#) *Financial reports and audit relief* (RG 43).

RG 174.6 The types of users and their need for financial reports may vary depending on:

- (a) whether the entity is solvent or insolvent;
- (b) whether the entity is under a form of external administration or, in the case of a registered scheme, being wound up;
- (c) the likelihood of members having any ongoing economic interest in the entity during and after the external administration or winding-up; and
- (d) whether there is any other economic information about the entity.

RG 174.7 Table 1 summarises the annual financial reporting obligations of companies, registered schemes and disclosing entities.

Table 1: Summary of annual financial reporting obligations

Obligation	Comments	Type of entity
Prepare the financial report: see s292	<p>The financial report includes:</p> <ul style="list-style-type: none"> • the financial statements; • disclosures and notes; and • the directors' declaration. 	<p>Applies to:</p> <ul style="list-style-type: none"> • disclosing entities; • public companies (not including small companies limited by guarantee unless these are directed to do so); • large proprietary companies; • registered schemes; • small proprietary companies that are directed to do so; • small foreign-controlled proprietary companies; and • small proprietary companies that have one or more CSF shareholders at any time during the financial year.
Prepare the directors' report: see s298	<p>Unless the report relates to a company limited by guarantee, it has a general component (see s299 for unlisted entities and s299A for listed entities) and a specific component (see s300 for unlisted entities and s300A for listed entities).</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"> • disclosing entities; • public companies (not including small companies limited by guarantee unless these are directed to do so); • large proprietary companies; • registered schemes; • small proprietary companies that are directed to do so; • small foreign-controlled proprietary companies; and • small proprietary companies that have one or more CSF shareholders at any time during the financial year.

Obligation	Comments	Type of entity
<p>Have the financial report audited and obtain the auditor's report: see s301, 307 and 308</p>	<p>A small proprietary company preparing a financial report in response to a shareholder direction under s293 is not required to have it audited if the direction did not request it.</p> <p>There are similar rules for companies limited by guarantee.</p> <p>A small proprietary company preparing a financial report because it had one or more CSF shareholders during the financial year is not required to have it audited if, at the end of the financial year, the company has raised less than the CSF audit threshold from all the CSF offers it has ever made.</p> <p>Under s312, officers must assist the auditor in the conduct of the audit.</p>	<p>Applies to:</p> <ul style="list-style-type: none"> • disclosing entities; • public companies (not including small companies limited by guarantee unless these are directed to do so); • large proprietary companies; • registered schemes; • small proprietary companies that are directed to do so; • small foreign-controlled proprietary companies; and • small proprietary companies that have one or more CSF shareholders at any time during the financial year.
<p>Provide the financial report, directors' report and auditor's report to members: see s314 and 316</p>	<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: see s314(1) and (2).</p> <p>For the deadlines, see s315(1)–(4) and 316(2).</p> <p>A small proprietary company preparing a financial report because it had one or more CSF shareholders during the financial year may provide the financial report or a concise financial report, by making a copy of the financial report or concise financial report readily accessible on a website: see s314(1AF).</p>	<p>Applies to:</p> <ul style="list-style-type: none"> • disclosing entities; • public companies (not including small companies limited by guarantee unless these are directed to do so); • large proprietary companies; • registered schemes; • small proprietary companies that are directed to do so; • small foreign-controlled proprietary companies; and • small proprietary companies that have one or more CSF shareholders at any time during the financial year.

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

Note 1: See s285 for an overview of the obligations in Ch 2M, and s285A for an overview of the obligations of companies limited by guarantee.

Note 2: A 'CSF shareholder' of a proprietary company means an entity that holds one or more securities of the company, having been issued with the securities through a CSF offer by the company under the crowd-sourced funding rules in Pt 6D.3A: see s9.

Note 3: The CSF audit threshold means \$3 million or any amount prescribed by the regulations: see s9.

- RG 174.8 Some companies and registered schemes are disclosing entities. Disclosing entities must prepare and lodge a half-year financial report and directors' report: see s302. They must also obtain and lodge an auditor's report of the half-year financial report: see s309.
- RG 174.9 AFS licensees must prepare and lodge a true and fair profit and loss statement and balance sheet for each financial year: see s989B. They must also lodge an auditor's report containing certain information.

How the 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:
- court winding-up;
 - voluntary winding-up;
 - provisional liquidation;
 - controllership;
 - administration (referred to in this guide as 'voluntary administration');
 - deed of company arrangement (DOCA); and
 - 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 While a company is under external administration, the powers of the directors may be suspended or restricted depending on the type of external administration: see s198G. The external administrator, on the other hand, may have control of the company’s business, property and affairs—and may, in some cases, 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 external administration: see, for example, s437A, 477 and 506. An external administrator is obliged to use their powers to cause the company to comply with its legal obligations, including the financial reporting and AGM obligations.
- RG 174.13 In addition to the preparation of financial reports, external administrators of companies must prepare and lodge with ASIC a range of other documents. These include notices of appointment, notices relating to meetings of creditors, returns in relation to the external administration of the company, 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 list of these reporting requirements and to find out which of these reports are publicly accessible.
- RG 174.14 Registered schemes that are being wound up must also continue to comply with their financial reporting and compliance plan audit obligations (see s601HG), and prepare final audited accounts in accordance with the scheme constitution before finalising the winding-up and deregistration.

Note: Under the Corporations Act, a registered 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.

Our approach to relief

- 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 report is outweighed by the burden of preparing the report. We take into account the impact of those benefits and burdens on members, creditors and external administrators.
- RG 174.16 We recognise that the information needs of users of a company or registered scheme’s financial information need to be balanced with the costs associated with preparing annual or half-year financial reports, particularly in the

context of companies or registered schemes whose continued operation is in doubt because of financial strain.

- RG 174.17 As described in Sections B and C of this guide, [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) grants:
- (a) exemption from Pt 2M.3 to companies in liquidation and insolvent registered schemes that are being wound up; and
 - (b) deferral of any financial reporting obligations under Pt 2M.3 to companies under external administration (not in liquidation) that:
 - (i) are outstanding at the time of the appointment of a relevant external administrator; and
 - (ii) arise during the period of deferral after a relevant external administrator is appointed (deferral relief).
- RG 174.18 The deferral relief is granted for a minimum period of six months and up to a maximum period of 24 months from the date of appointment of the relevant external administrator, subject to early cessation events applying after the initial six-month period.
- RG 174.19 We may also grant individual relief to defer the time for compliance with some or all of the financial reporting obligations for externally administered companies (that are not in liquidation) and certain registered schemes being wound up (individual deferral relief): see RG 174.24–RG 174.25.
- RG 174.20 Most disclosing entities are either companies or registered schemes. However, we consider that the policy settings in this guide also apply to a request for financial reporting relief made by a disclosing entity that is not a company or a registered scheme.
- RG 174.21 Before granting deferral relief or individual deferral relief, we must be satisfied that complying with the financial reporting obligation by the statutory deadline will impose unreasonable burdens: see s342(1).
- RG 174.22 Section B of this guide describes the circumstances in which we may be satisfied that this test will be met for externally administered companies. Section C describes our relief for registered schemes being wound up. Our approach differs between the two because the Corporations Act does not include a framework for external administration in the case of registered schemes, as it does for companies.

Financial reporting relief under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251

RG 174.23 Table 2 summarises the financial reporting relief available under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

Table 2: Exemption and deferral of financial reporting obligations under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251

Type of external administration	Type of relief	Conditions of relief	Reference
<p>Applies to companies in liquidation, including companies concurrently in liquidation and controllership, but excluding companies:</p> <ul style="list-style-type: none"> • under voluntary administration; • under a DOCA; and • that are AFS licensees. 	<p><i>Exemption</i> from Pt 2M.3 and any continuing obligations under Pt 2M.3.</p> <p><i>Exemption</i> from AFS licensee financial reporting obligations under Subdiv C of Div 6 of Pt 7.8 when a company ceases to hold an AFS licence before the due date for reporting.</p>	<p>Companies must have adequate arrangements in place to answer any reasonable questions asked by a member about the liquidation.</p>	<p>RG 174.32– RG 174.39</p>
<p>Applies to registered schemes that are being wound up if:</p> <ul style="list-style-type: none"> • ASIC has been formally notified of the commencement of the winding-up of the scheme; and • the scheme was insolvent for at least 12 months and a scheme insolvency resolution has been lodged with ASIC. 	<p><i>Exemption</i> from Pt 2M.3 and any continuing obligations under Pt 2M.3.</p> <p><i>Exemption</i> from compliance plan audit obligation.</p>	<p>The responsible entity or person appointed by the court to wind up the scheme must:</p> <ul style="list-style-type: none"> • have adequate arrangements in place to answer any reasonable questions asked by a member about the winding-up; and • make certain information on the winding-up available to members. <p>Note: See s601NFA, as notionally inserted by ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251.</p>	<p>RG 174.119– RG 174.132</p>
<p>Applies to certain companies:</p> <ul style="list-style-type: none"> • under voluntary administration; • under a DOCA; • when a managing controller has been appointed to the whole or substantially the whole of the company's property; or • in provisional liquidation. 	<p><i>Deferral</i> of:</p> <ul style="list-style-type: none"> • financial reporting obligations under Pt 2M.3 and any continuing obligations under Pt 2M.3 for a minimum period of six months and up to a maximum period of 24 months from the date of the appointment of the relevant external administrator; and • if the company is an AFS licensee—AFS licensee financial reporting obligations under Subdiv C of Div 6 of Pt 7.8 for a period of six months. 	<p>During the deferral period, companies must:</p> <ul style="list-style-type: none"> • if listed, give notice to the relevant market operator(s); • give notice on a website maintained by the company and a website maintained by the external administrator; and • have adequate arrangements in place to answer any reasonable questions asked by a member about the external administration. 	<p>RG 174.40– RG 174.70</p>

Type of external administration	Type of relief	Conditions of relief	Reference
	<p>If the company ceases to be under external administration before the end of the initial six-month period—the deferral period commences on the day of the first relevant external administrator’s appointment and ends on the day that is six months after the appointment of the relevant external administrator.</p> <p>If the company continues to be under external administration after the initial six-month period—the deferral period commences on the day of the relevant external administrator’s appointment and ends on the earlier of the following:</p> <ul style="list-style-type: none"> • 24 months after the day of the relevant external administrator’s appointment; • if a deed administrator is appointed following the appointment of the relevant external administrator, the day on which a director of the company has the right to, or is able to, perform or exercise all or most of the management powers or functions of a director of the company under the DOCA or with the consent of the deed administrator; or • the day on which the company exits external administration. <p>Relief to use alternative methods to distribute an annual report to members before the end of the deferral period.</p>	<p>By the end of the deferral period, companies must:</p> <ul style="list-style-type: none"> • report to members; • send reports to members on request; and • lodge reports with ASIC. <p>If alternative distribution methods are used for annual reports, notice must be given on the company’s and the external administrator’s website that the annual report has been lodged and is available free of charge.</p>	

Individual deferral relief

RG 174.24 We may grant individual deferral relief from some or all of the financial reporting obligations if an application for relief is made. Whether we grant individual deferral relief and the conditions that we impose will depend on the circumstances of the externally administered company (not in liquidation) or registered scheme being wound up.

Note: Individual deferral relief is unlikely to be relevant to companies that have a liquidator appointed because those companies are exempt under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

RG 174.25 Table 3 summarises the individual deferral relief that may be available.

Table 3: Individual deferral relief that may be available

Type of external administration	Details of relief	Conditions of relief	Reference
<p>Applies to companies:</p> <ul style="list-style-type: none"> • under voluntary administration; • under a DOCA; • when a managing controller has been appointed to the whole or substantially the whole of the company's property; or • in provisional liquidation. 	<p><i>Deferral of:</i></p> <ul style="list-style-type: none"> • some or all financial reporting obligations under Pt 2M.3 for a period of up to 24 months; and • if the company is an AFS licensee—AFS licensee financial reporting obligations under Subdiv C of Div 6 of Pt 7.8 for a period of up to 24 months. 	<p>Depends on the company's circumstances.</p> <p>Usual conditions require:</p> <ul style="list-style-type: none"> • if listed, notice to be given to the relevant market operator(s); • notification on a website maintained by the company and a website maintained by the external administrator; and • adequate arrangements in place to answer any reasonable questions asked by a member about the external administration. <p>Additional conditions may be imposed.</p>	<p>RG 174.71– RG 174.88, RG 174.89– RG 174.91 and RG 174.107</p>
<p>Applies to registered schemes if:</p> <ul style="list-style-type: none"> • ASIC has been formally notified of the commencement of the winding-up of the scheme; and • in the reasonable opinion of the responsible entity or person appointed by the court, the scheme is likely to be insolvent. 	<p><i>Deferral of:</i></p> <ul style="list-style-type: none"> • some or all financial reporting obligations for a period of up to 24 months; and • the compliance plan audit obligation for a period of up to 24 months. 	<p>Depends on the registered scheme's circumstances.</p> <p>Usual conditions require:</p> <ul style="list-style-type: none"> • if listed, notice to be given to the relevant market operator(s); • notification on a website maintained by the responsible entity or person appointed by the court responsible for winding up the scheme; • adequate arrangements in place to answer any reasonable questions asked by a member about the winding-up; and • making certain information about the winding-up available to members. 	<p>RG 174.133– RG 174.141 and RG 174.148– RG 174.162</p>

Type of external administration	Details of relief	Conditions of relief	Reference
Applies to registered schemes when the responsible entity is under external administration and where the appointment of the 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.	<p><i>Deferral of:</i></p> <ul style="list-style-type: none"> • some or all financial reporting obligations for a period of up to 24 months; and • the compliance plan audit obligation for a period of up to 24 months. 	<p>Depends on the registered scheme's circumstances.</p> <p>Usual conditions require:</p> <ul style="list-style-type: none"> • notice to be given to the market operator(s); • notification on a website maintained by the responsible entity and a website maintained by the external administrator; • adequate arrangements in place to answer any reasonable questions asked by a member about the external administration; and • making certain information about the winding-up available to members. 	RG 174.142– RG 174.147

Note: See RG 174.85 for details of our individual deferral relief if a controller who is not a managing controller is appointed to particular property of a company.

AGM relief for public companies

AGM exemption relief

RG 174.26 [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) 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 business, realisation 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 a return in relation to the external administration of the company that includes detailed lists of receipts and payments: see s70-5 of Sch 2 to the Corporations Act and [Form 5602 Annual administration return](#). A copy of these can be obtained online at [ASIC Connect](#), on payment of the relevant fee.

AGM deferral relief

RG 174.27 ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 also conditionally defers the time by which a public company in external administration (not in liquidation) must hold an AGM until two months after the deferral relief ends.

Individual AGM relief

RG 174.28 We may also consider individual relief on a case-by-case basis to exempt a public company from the obligation to hold an AGM if an external

administrator is appointed, or extend the period in which the externally administered public company must hold an AGM. Whether we will grant individual relief will depend on the individual circumstances of the public company under external administration (not in liquidation).

RG 174.29 We will generally provide individual AGM relief to align with our deferral relief or individual deferral relief. If we have provided deferral relief, or individual deferral relief from all financial reporting obligations and AGM deferral relief is not otherwise available, we will generally provide an extension of time in which to convene the AGM under s250P where possible. This is because the consideration of financial reports is one of the primary functions of the AGM.

RG 174.30 Section D describes the relief available under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) and the individual relief we provide in relation to AGMs.

Obligation to keep financial records

RG 174.31 We do not give relief from the obligation for companies, registered schemes, disclosing entities and AFS licensees to keep financial records. An externally administered company or the responsible entity of a registered scheme being wound up must still keep written financial records that:

- (a) correctly record and explain the company or registered scheme's transactions, financial position and performance; and
- (b) would enable the preparation and audit of true and fair financial statements, if required (see s286).

Note 1: Similar obligations apply to AFS licensees: see s988A.

Note 2: References in this guide to financial reporting obligations do not include the record-keeping obligations of companies and AFS licensees, or AFS licensee financial reporting obligations.

B Financial reporting relief for externally administered companies

Key points

[ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) exempts companies in liquidation from Pt 2M.3, provided that those companies are not AFS licensees.

It also grants a deferral of financial reporting obligations falling due within 24 months from the appointment of a relevant external administrator, and any continuing financial reporting obligations outstanding before the appointment of the relevant external administrator. The relief extends the due date for the obligation by a minimum period of six months and up to a maximum period of 24 months, with early cessation events applying after the initial six-month period.

This relief also applies to AFS licensee financial reporting obligations, but for a period of six months (licensee deferral relief).

We may also grant individual deferral relief to externally administered companies in other situations.

Exemption relief for companies in liquidation

RG 174.32 [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) provides an exemption from Pt 2M.3 to companies in liquidation, provided that those companies are not AFS licensees. Our relief is based on the view that complying with Pt 2M.3 in circumstances of liquidation would make the financial reports misleading, would be inappropriate in the circumstances and would impose an unreasonable burden: see s342(1).

RG 174.33 Creditors and members have access to information that must be prepared and lodged with ASIC by the liquidator under Ch 5 and Sch 2 to the Corporations Act. This information is useful to creditors and members because it helps them to evaluate and make decisions about the allocation of their resources while the company is being wound up by the liquidator, including:

- (a) whether the company's debts will be paid in full, in part, or not at all; and
- (b) whether there will be any surplus funds available for distribution to members on completion of the winding-up.

AFS licensees

RG 174.34 AFS licensees in liquidation may only rely on our exemption relief if they have cancelled and do not hold an AFS licence as at the date that they would

otherwise be required to lodge the relevant report with ASIC. Externally administered companies that hold an AFS licence are excluded from our relief because AFS licensees are subject to minimum financial requirements at all times.

- RG 174.35 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 so long as the AFS licence is held by the licensee. For this reason, we consider it would be inconsistent to grant an exemption from Pt 2M.3 and the AFS licence 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 174.36 When there are no prospects for a company in liquidation that is an AFS licensee to continue carrying on business, the company should apply for the cancellation of its AFS licence under s915B.

Note: [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) 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 the AFS licensee financial reporting obligations. If the company's AFS licence has been cancelled and it is not subject to a specification under s915H that requires ongoing compliance with the AFS licensee financial reporting obligations, the company may rely on our exemption relief.

Outstanding financial reporting obligations before liquidation

- RG 174.37 Our exemption relief for companies that have a liquidator appointed also applies to any outstanding financial reporting obligations from previous years. If the company was also an AFS licensee whose licence has been cancelled, then our exemption relief will also apply to any outstanding AFS licensee financial reporting obligations.

Note: A company that must do an act under Pt 2M.3, within a particular period or before a particular time, continues to be subject to an obligation to do the act even after the period has ended or that time has passed: see s1314.

Concurrent external administrations

- RG 174.38 When a liquidator and controller are appointed to a company concurrently, the exemption will 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.
- RG 174.39 The exemption is not available if a voluntary administrator has also been appointed, or if the company is subject to a 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.

Deferral relief for externally administered companies not in liquidation

- RG 174.40 [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) conditionally defers any financial reporting obligations under Pt 2M.3 for companies under external administration (not in liquidation) that:
- (a) are outstanding at the time of the appointment of a relevant external administrator; and
 - (b) arise during the period of deferral after a relevant external administrator is appointed.
- RG 174.41 The deferral relief is granted for a minimum period of six months and up to a maximum period of 24 months from the date of appointment of the relevant external administrator. The relief extends the due date for the obligations for a minimum period of six months to allow the relevant external administrator time to attend to the most urgent post-appointment matters and become familiar with the affairs of the company.
- RG 174.42 After the initial six-month deferral period, the early cessation events will apply to bring about an early end to the deferral relief when:
- (a) the company is no longer under external administration; or
 - (b) the deed administrator is no longer exercising all or most of the management powers and functions of the company under a DOCA.
- RG 174.43 We consider a deferral period of up to 24 months, with a minimum six-month deferral period, provides a balance between the interests of users of the financial reports and the burden imposed by compliance with the reporting obligations.
- RG 174.44 Compliance with the financial reporting obligations during the deferral period will generally impose unreasonable burdens. The burdens arise from a combination of time, financial and human resource constraints imposed on the company and the relevant external administrator in these forms of external administration:
- (a) *Time constraints:* Under the Corporations Act, an external administrator must complete a number of tasks within a short timeframe. For example, a voluntary administrator must convene and hold two creditors' meetings and investigate the company's business, property, affairs and financial circumstances: see s436E, 438A and 439A. It may be difficult for a voluntary 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 174.45 We consider the burdens to be disproportionate to the value that the company's financial report (and other reports) may have for relevant users during this period. A deferral of the financial reporting obligations for these companies reduces the severity of the burdens during this period, and preserves the company's limited assets for the benefit of all parties while its prospects are being determined.

RG 174.46 We consider 24 months to be a reasonable period of time for an external administration (not in liquidation) to progress. A deferral period of up to 24 months gives the relevant external administrator time to:

- (a) investigate the affairs of the company and report back to creditors;
- (b) progress the administration of the company; and
- (c) cause the Pt 2M.3 reports to be prepared, audited, lodged and (for annual reports) distributed—or apply for individual deferral relief depending on the company's circumstances—before the end of the deferral period.

Early cessation events

RG 174.47 Under our deferral relief, early cessation events will only apply after the minimum six-month deferral period. Our deferral relief will expire after the initial six-month deferral period either:

- (a) at the end of 24 months from the date of the appointment of the relevant external administrator; or
- (b) earlier than 24 months if either of the following early cessation events occur:
 - (i) the external administration comes to an end; or
 - (ii) the company is subject to a DOCA and the directors exercise all or most of the management powers and functions of the company under the DOCA or with the consent of the deed administrator.

RG 174.48 When an early cessation event occurs, the deferral period under our relief expires and any outstanding or deferred financial reports must be lodged on or before this time.

Example 1

A public company (not a disclosing entity) with a balance date of 30 June (of each year) must lodge its annual report by 31 October (of each year): see s319.

If a voluntary administrator is appointed to the company on 1 October 2021, our deferral relief would apply in relation to the 30 June 2021 and 30 June 2022 annual reports because the obligation to lodge these annual reports would otherwise fall due during the deferral period. Our deferral relief would not apply to the 30 June 2023 annual report because the due date for lodging that annual report is 31 October 2023, which is outside the 24-month period.

If the company exits voluntary administration on 25 October 2022, then it will trigger an early cessation event and our deferral relief will end. This means our deferral relief would apply to the company's annual report for 30 June 2021, but not the annual report for 30 June 2022. Consequently, the company will need to lodge its annual report for 30 June 2021 on or before 25 October 2022.

Example 2

A large proprietary company with a balance date of 31 December (of each year) must lodge its annual report by 30 April (of each year): see s319.

If a voluntary administrator is appointed to the company on 1 October 2021 and the company continues to be under external administration on 1 October 2023, the due date for lodgement and reporting of all outstanding and deferred financial reports to members will be deferred to 24 months after the appointment of the voluntary administrator (i.e. 1 October 2023).

The company may apply for individual deferral relief, which must be granted before the end of the 24-month deferral period—otherwise, the company will be in breach of its financial reporting obligations.

Example 3

A listed public company (disclosing entity) with a half-year balance date of 31 December (of each year) must lodge its half-year report by 16 March (of each year): see s320.

If a voluntary administrator is appointed to the company on 1 January 2022, the due date for lodging any outstanding or deferred half-year report will be deferred until the earlier of 1 January 2024 or the day an early cessation event occurs (i.e. the company exits external administration or the company is subject to a DOCA and the directors exercise all or most of the powers and functions of management of the company under the DOCA, or with the consent of the deed administrator, before 1 January 2024).

If an early cessation event occurs within six months of the appointment of the voluntary administrator, the company will still have six months from the date of appointment of the voluntary administrator to lodge any outstanding or deferred half-year report (i.e. until 1 July 2022).

Example 4

A listed public company (disclosing entity) with a balance date of 30 June (of each year) must lodge its annual report by 30 September (of each year): see s319.

If a voluntary administrator is appointed to the company on 30 September 2021, the due date for lodging the annual report and reporting to members will be deferred until 30 September 2023, or earlier if an early cessation event occurs on or after 1 April 2022. In addition, the date for lodging the 31 December 2021 half-year report will be deferred to 30 September 2023, or earlier if an early cessation event occurs on or after 1 April 2022.

AFS licensees

RG 174.49 We also provide licensee deferral relief for AFS licensee financial reporting obligations, but for a period of up to six months. Financial statements lodged in compliance with these obligations are not public documents. We consider the burden imposed by this requirement is likely to be disproportionate to the value the reports may have for ASIC during the relevant period. A deferral of the AFS licensee financial reporting obligations 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: If a specification given under s915H to an AFS licensee whose licence has been cancelled or suspended is inconsistent with the relief given by [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), the specification will prevail and the relief will, to the extent of the inconsistency, not apply—for example, if the AFS licensee is subject to a specification under s915H requiring ongoing compliance with the AFS licensee financial reporting obligations, or if we have extended the time for lodgement under s989D(3). In addition, we can seek out information using our powers if we need specific information on the financial position of the AFS licensee.

Outstanding financial reporting obligations before appointment of relevant external administrator

RG 174.50 Our deferral relief also applies to an annual or half-year report that should have been lodged by the company before the relevant external administrator was appointed (i.e. any continuing obligations in respect of outstanding financial reporting obligations under Pt 2M.3). If the company was also an AFS licensee, then our licensee deferral relief will also apply to any outstanding AFS licensee financial reporting obligations under Subdiv C of Div 6 of Pt 7.8.

Concurrent external administrations

RG 174.51 If a company that is relying on our deferral relief and/or licensee deferral relief becomes subject to a second (either concurrent or immediately consecutive) external administration (that is not a winding-up), the period of deferral is determined by the date of the appointment of the first relevant external

administrator. While we acknowledge that each new external administration may create its own burdens, on balance, we consider that a subsequent appointment does not, in itself, warrant a longer deferral period under the legislative instrument.

- RG 174.52 If a voluntary administrator is appointed under s436B by a liquidator, the company may technically be under voluntary administration and in (suspended) liquidation concurrently, if the liquidation has not been formally terminated. For the purposes of [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), the company is taken to be solely under voluntary administration and can therefore rely on our deferral relief or licensee deferral relief from the date of appointment of the voluntary administrator by the liquidator.
- RG 174.53 The appointment of a voluntary administrator by a liquidator will not affect any previously exempt financial reporting obligations. However, the company will no longer be able to rely on our exemption relief for companies in liquidation in relation to any subsequent financial reporting obligations (i.e. after the appointment of the voluntary administrator).

Example 5

A listed public company (disclosing entity) with a balance date of 30 June (of each year) must lodge its annual report by 30 September (of each year): see s319.

If a liquidator is appointed on 1 August 2022 and the liquidator appoints a voluntary administrator to the company on 30 September 2022 and the company then enters into a DOCA on 1 November 2022, the due date for lodging the annual report, reporting to members under s315 and for lodging the half-year report will still be deferred until 30 September 2024.

Deeds of company arrangement

- RG 174.54 Entering into a DOCA will not trigger our deferral relief or licensee deferral relief a second time. DOCAs are not an initial form of external administration and the deed administrator is usually the same person as the preceding voluntary administrator: see s444A(2). The initial burden created by time constraints, and financial and human resource constraints, is therefore less severe.
- RG 174.55 However, a company subject to a DOCA may still rely on our deferral relief and/or licensee deferral relief that applied from the date of appointment of the relevant external administrator until the end of the deferral period. A company may then apply for individual deferral relief if it considers that compliance with the financial reporting obligations would impose unreasonable burdens in its particular circumstances: see RG 174.82–RG 174.84.

Example 6

A listed public company (disclosing entity) with a balance date of 30 June (of each year) must lodge its annual report by 30 September (of each year).

If a voluntary administrator is appointed to the company on 30 September 2021, the due date for lodging the annual report and reporting to members under s315, and for lodging the half-year report, will be deferred until 30 September 2023 under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

The company enters into a DOCA on 1 February 2022. Under the DOCA, the deed administrator exercises all of the management powers and functions of the company and directors. The deed administrator has until 30 September 2023 to apply for and obtain further individual deferral relief or lodge the annual report. The fact that the company has entered into a DOCA does not extend the 24-month deferral period.

Direction to prepare a financial report

- RG 174.56 Our deferral relief for companies applies to public companies, large companies limited by guarantee, large proprietary companies, foreign-controlled proprietary companies that must prepare financial reports and small proprietary companies with one or more CSF shareholders at any time during the financial year. It does not apply if ASIC has given the company a direction to lodge a financial report: see s321. It also does not apply to small proprietary companies or small companies limited by guarantee that have been directed by its members or ASIC to prepare a financial report.

Alternative distribution methods for annual reports

- RG 174.57 Our deferral relief allows a company to use alternative methods of distributing a deferred annual report to members, instead of sending it to them. The company, whether it is listed or unlisted, must arrange for a notice to be published in:
- (a) a prominent place on the company's website; and
 - (b) a place that is readily accessible on a website maintained by the external administrator.
- RG 174.58 The notice must contain statements to the following effect:
- (a) the reports for the relevant financial year of the company have been lodged with ASIC;
 - (b) the company will send copies of the reports to a member of the company free of charge if the member asks for the reports in writing; and
 - (c) the reports are available for download on the relevant website together with a hyperlink to the reports.

- RG 174.59 The costs involved in physically sending information to members imposes 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 if that information is not being sent to the creditors.
- RG 174.60 We have taken the view that, in the case of externally administered companies covered by [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), 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. In addition, we think that many members are now accustomed to companies making their annual report available on a website or providing the option to receive electronic copies: see s314(1AA).
- RG 174.61 Our relief in relation to alternative distribution methods allows annual reports to be provided free of charge on request, and to be made available for download from a website.

Conditions of deferral relief

- RG 174.62 The deferral relief under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) is subject to a number of conditions.

Notifying the market operator

- RG 174.63 A listed company relying on our deferral relief will need to notify the relevant market operator. Failure to notify the relevant market operator at the start of the deferral period, before the company is obliged to comply with its financial reporting obligations under Pt 2M.3, will result in the company losing the benefit of our deferral relief.

Website notifications

- RG 174.64 A company, whether it is listed or unlisted, must:
- (a) give prominent notice of its reliance on ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 on a website maintained by the company (if any); and
 - (b) arrange for notice of the deferral on a website maintained by the external administrator (if any) in a way that is readily accessible.
- RG 174.65 These notifications are a condition of relief, and failure to do so at the start of the deferral period, before the company would otherwise be obliged to comply with its financial reporting obligations under Pt 2M.3, will result in the company losing the benefit of our deferral relief.

Information for members

- RG 174.66 Our deferral relief is only available if, during the period of the deferral, the company has adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the company about the external administration. Failure to comply with this condition will mean that the relief will not be available and will cease to operate on and from the time the condition has not been complied with.
- RG 174.67 Notice of the appointment of a relevant external administrator must be lodged with ASIC. Members and creditors can find out who to contact for information about the company using these notices.

Exclusion power

- RG 174.68 To ensure that our deferral relief does not give rise to unintended consequences, ASIC has the power under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) to exclude an externally administered company from relying on our deferral relief (exclusion power).
- RG 174.69 We may exercise our exclusion power when it is in the public interest for users of the financial reports to have access to audited financial information on a timely basis or when the benefit of financial reporting outweighs the cost to the company of preparing and lodging financial reports while the company is under external administration.
- RG 174.70 If we exercise our exclusion power, we will notify the company of our decision. Our decision to exclude an externally administered company from relying on our deferral relief is subject to a merits review on application to the Administrative Appeals Tribunal (AAT).

Individual deferral relief for externally administered companies

- RG 174.71 We may grant individual deferral relief from some or all of the financial reporting obligations, on application, when a company is under external administration. Whether we grant relief, and the conditions we impose, will depend on the circumstances of the externally administered company.

Note: Our individual deferral relief is unlikely to be relevant to companies that have a liquidator appointed because those companies are exempt under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

- RG 174.72 We will not grant individual deferral relief 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 of the company's legal obligations, including the financial reporting

obligations. Creditors should be made aware of the costs of meeting these obligations when considering resolutions about the company's future.

RG 174.73 We may only grant individual deferral relief if certain grounds exist. We expect that an application will usually rely on the ground that the relevant requirements in Pt 2M.3 impose unreasonable burdens: see s342(1)(c).

Note: It will generally be difficult for an externally administered company to satisfy us that a case for individual deferral relief is made on the grounds of a report being misleading (see s342(1)(a)) or compliance being inappropriate in the circumstances: see s342(1)(b). See [RG 43](#) at RG 43.13–RG 43.15.

Relief from all of the financial reporting obligations

RG 174.74 A company under external administration may seek relief from all the financial reporting obligations when:

- (a) it is unable to rely on our deferral relief; or
- (b) our deferral relief will expire soon and the company requires a further deferral period.

RG 174.75 We may, on application, grant further individual deferral relief from all of the financial reporting obligations (including any previously deferred financial reporting obligations) for a period of up to 24 months on a case-by-case basis, if:

- (a) the external administrator (who is not a liquidator) exercises all or most of the management functions and powers; and
- (b) we are satisfied that compliance will impose unreasonable burdens on the company during the external administration.

RG 174.76 When assessing whether compliance with the financial reporting obligations will impose unreasonable burdens on an externally administered company (not in liquidation), we will generally consider the following factors:

- (a) whether deferral of the financial reporting obligations may preserve the assets of the company for the benefit of members, creditors and other parties while the company's prospects are being determined;
- (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 extent to which the appointment of the external administrator continues to disrupt the company's routine for complying with the financial reporting obligations;
- (d) the likelihood of existing members having an ongoing economic interest in the company during and after the external administration;

- (e) the expected benefits of having the company comply with the financial reporting obligations during the external administration, taking into account:
 - (i) who the relevant users of the Pt 2M.3 reports would be, and the likely extent and nature of their use; and
 - (ii) the ability 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;
- (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 1: 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: see s915H.

Note 2: Any application for individual deferral relief should address these factors.

RG 174.77 We will consider whether the financial reporting obligations impose unreasonable burdens on entities in a corporate group on an entity-by-entity basis. We will take into account the factors set out at RG 174.76 and whether all or some of the entities:

- (a) are in external administration;
- (b) report on an individual or consolidated basis; and
- (c) rely or have relied on [ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#) or other ASIC relief.

Note: Companies that are under external administration and any entities owned by such companies are not eligible for relief under ASIC Corporations (Wholly-owned companies) Instrument 2016/785: see [Information Sheet 24 Deeds of cross-guarantee \(INFO 24\)](#).

Ongoing economic interest

RG 174.78 One factor relevant to whether complying with the financial reporting obligations will impose unreasonable burdens is whether members are likely to have an ongoing economic interest in the company during and after the external administration. If there is little or no likelihood of any ongoing economic interest for members, it is more likely that compliance will impose unreasonable burdens on the company and creditors. It is also possible that an unreasonable burden may be established even if there is some likelihood that members have an ongoing economic interest, based on the other factors described in RG 174.76.

- RG 174.79 A member's economic interest in a company arises from the rights and liabilities attaching to the particular share they have acquired, and will generally be pecuniary in nature—for example, the right to receive dividends or the ability to sell or transfer a share for valuable consideration. We think that a member may have an ongoing economic interest in an externally administered company that is not in liquidation if, for example:
- (a) it is possible that the company will pay or restructure its debts by selling assets, refinancing, recapitalising or by trading out of its financial difficulties under a DOCA, and then cease being externally administered and continue carrying on business with its existing members and/or new members;
 - (b) a member has a right to vote on a proposal affecting the company's prospects under the external administration;
 - (c) a member can, or might at some future time be able to or be required to, sell or transfer any share they hold in the company for valuable consideration; or
 - (d) a receiver is appointed to some but not all the property of the company.

Note: If a company is undertaking public fundraising for a recapitalisation, up-to-date financial reports are information that is reasonably required by investors in a disclosure document lodged under s710.

Relief from some of the financial reporting obligations

- RG 174.80 In some cases, a company may only require individual deferral relief from a particular financial reporting obligation. Or, if we refuse to grant individual deferral relief from all of the financial reporting obligations, we may, in appropriate cases, grant individual deferral relief from a financial reporting obligation. We may also impose conditions on this relief.
- RG 174.81 In particular, we may defer the obligation to:
- (a) obtain and lodge an audit report or review under s301 or 302;
 - (b) prepare and lodge half-year reports under s302;
 - (c) comply with a member's request under s316(1) for a full financial report, directors' report and auditor's report;
 - (d) send the annual report to members under s314(1) (see RG 174.57–RG 174.61); or
 - (e) comply with a shareholder direction under s293, or a member direction under s294A.

Deeds of company arrangement

- RG 174.82 If the company subject to a DOCA requires a longer deferral period, the company will need to seek individual deferral relief before the end of the

initial deferral period under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

- RG 174.83 When deciding whether to grant individual deferral relief, we will consider each of the factors set out in RG 174.76, including any previously deferred financial reporting obligations under ASIC Corporations (Externally-Administered Bodies) 2015/251. We will also consider whether the deed administrator is exercising most or all of the management powers or functions of the company under the DOCA.
- RG 174.84 We are unlikely to grant individual deferral relief if the directors are exercising most or all management powers or functions and the company will continue to carry on business on the completion of the DOCA. This recognises that the more likely it is that the company will continue to carry on business, the more useful it is to have complete and contemporaneous financial information about the company.

Controllers

- RG 174.85 We may grant individual deferral relief from the financial reporting obligations for up to six months, if:
- (a) a controller (not a managing 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.

Note: A controller is not able to apply for relief under s340: see RG 174.211–RG 174.214.

- RG 174.86 We consider the sale of certain types of property (or other circumstances) may justify granting individual deferral relief of up to six months if a controller (not a managing controller) is appointed—for example, the type of asset may be specialised and require more time to sell. We may also grant further deferrals of up to three months in rare cases if significant disruption and practical difficulties continue, and deferral remains appropriate.
- RG 174.87 We may also grant further individual deferral relief from the financial reporting obligations (including any previously deferred financial reporting obligations under ASIC Corporations (Externally-Administered Bodies) 2015/251), to a company with a managing controller appointed on a case-by-case basis. We will generally consider the factors set out in RG 174.76, including any previous deferrals of financial reporting obligations, when deciding whether to grant relief.

RG 174.88 If a managing controller is appointed to the property of the company and directors still have residual powers and are responsible for preparing and lodging the financial report then, in the absence of any relief, the managing controller must allow the directors such access to the company's books and records as is reasonably required to enable them to prepare and lodge the financial reports.

Note: Any director, creditor or member of a company may, unless the court otherwise orders, personally or by an agent inspect records kept by a managing controller of property of the company: see s421(2).

AFS licensees

RG 174.89 AFS licensees that are in external administration (not in liquidation) may seek individual deferral relief if:

- (a) they are unable to rely on our licensee deferral relief; or
- (b) require a further deferral of their AFS licensee financial reporting obligations before the end of the deferral period under our licensee deferral relief.

RG 174.90 We are generally likely to grant individual deferral relief from the AFS licensee financial reporting obligations for up to 24 months if the AFS licensee is able to rely on our licensee deferral relief. We will usually consider the factors set out in RG 174.76 when deciding whether to grant this relief.

RG 174.91 Financial statements lodged under the AFS licensee financial reporting obligations are not public documents. We consider the burden of preparing and lodging audited financial statements is likely to be disproportionate to the value the reports may have for ASIC while the company's prospects are being determined. In addition, we can seek out information using our powers if we need specific information on the financial position of the AFS licensee.

Note: An AFS licensee must have available adequate financial resources to provide the financial services covered by its licence and to carry out supervisory arrangements: see RG 174.34–RG 174.36. Any individual deferral relief from the financial reporting obligations, or the AFS licensee financial reporting obligations, does not relieve the company from the obligation to have adequate financial resources. We will not grant individual deferral relief if the company's AFS licence has been suspended or cancelled subject to a specification under s915H that requires ongoing compliance with the AFS licensee financial reporting obligations, or if we have extended the time for lodgement under s989D(3).

Outstanding financial reports before appointment

RG 174.92 We may grant individual deferral relief or an individual exemption in relation to financial reports that were outstanding as at the date of the appointment of a relevant external administrator. In particular, we will consider the extent to which the outstanding financial reports may provide

useful information to creditors and members for the reporting period before the external administration.

- RG 174.93 In deciding whether to give relief to further defer the lodgement of a financial report that should have been lodged by the company before the relevant external administrator was appointed, there may be additional considerations.

Conditions on individual deferral relief

- RG 174.94 Individual deferral relief is generally subject to a number of conditions.

Notifying the market operator

- RG 174.95 If a company is listed, we will generally impose a condition that requires the company to notify the relevant market operator(s) of our relief.

Note: A company that has relied on our deferral relief or has obtained individual deferral relief may not use a transaction-specific prospectus under s713: see s9 for a definition of ‘continuously quoted security’.

Website notifications

- RG 174.96 We will generally impose a condition that requires the company, whether it is listed or unlisted, to arrange for notice of the individual deferral relief to be published in:
- (a) a prominent place on the company’s website (if any); and
 - (b) a place that is readily accessible on a website maintained by the external administrator (if any).

Notifying ASIC of changed circumstances

- RG 174.97 In some cases, we may grant individual deferral relief 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 or it becomes apparent they will change.

Alternative distribution methods for annual reports

- RG 174.98 If we grant individual deferral relief from 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 [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#): see RG 174.57–RG 174.61.

Information to members

- RG 174.99 During the period of the deferral, the company must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the company about the external administration.
- RG 174.100 In some cases, we may grant individual deferral relief that requires certain information to be disclosed periodically, unless the disclosure would be prejudicial to the external administration or is otherwise disclosed in publicly available documents (e.g. minutes of meetings). For example, we may require information on the progress and status of the external administration to be disclosed, including details (as applicable) of:
- (a) the actions taken during the period;
 - (b) the actions required to complete the external administration;
 - (c) the actions proposed to be taken in the next 12 months;
 - (d) the expected time to complete the external administration; and
 - (e) financial information about receipts and payments for the external administration during the period.
- RG 174.101 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.

Failure to comply with a condition

- RG 174.102 Failure to comply with any condition of relief will mean that the individual deferral relief will not be available and will cease to operate on and from the date the condition has not been complied with.

What happens when a deferral comes to an end?

- RG 174.103 A company that has deferral relief, or licensee deferral relief, or has been granted individual deferral relief, must comply with any deferred financial reporting obligations under the Corporations Act or obtain further individual deferral relief before the deferral expires, except if a liquidator is appointed or the company ceases. This requirement recognises the usefulness of complete financial information for the life of a company after a deferral comes to an end. Compliance with the accounting standards will ensure that the delayed financial reports contain all relevant information.
- RG 174.104 In some cases, a deferral may end before the end of the deferral period. For example, it may end because the conditions of relief have not been met or

because the company has appointed a liquidator. If a liquidator is appointed during a deferral period and the winding-up of the company has not been suspended or formally terminated, the company will then be exempt from past outstanding and future reporting obligations under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

- RG 174.105 Before the end of the deferral period, the external administrator is responsible for causing the company to comply with its financial reporting obligations or applying for a further deferral of previously deferred financial reporting obligations. An application for further individual deferral relief must be made before an existing deferral expires. We do not have the power to grant retrospective relief. We will assess any further application for a deferral, taking into account:
- (a) any previous deferrals of financial reporting obligations;
 - (b) whether the unreasonable burden underpinning the initial deferral still exists, having regard to each of the factors set out in RG 174.76;
 - (c) whether any additional burden has arisen; and
 - (d) whether there have been any material changes in circumstances in the intervening period.

Controllers

- RG 174.106 We may grant further individual deferral relief, for a reasonable period of time, when a controllership has come to an end and the company is neither being wound up nor deregistered to allow the directors or remaining external administrator (if any) further time to arrange for the appointment of a liquidator or deregistration. We may also impose conditions on this relief—for example, that the company apply for deregistration within a certain time.

Individual relief to lodge ‘catch-up reports’

- RG 174.107 We generally expect that compliance with deferred financial reporting obligations will occur before the company exits external administration and the deferral relief ends. However, if a company requires additional time after the deferral relief ends to prepare and lodge outstanding reports (‘catch-up reports’) when it ceases to be under external administration, the company will need to lodge an application for relief to lodge catch-up reports before the end of the deferral period.
- RG 174.108 We recognise that, in some circumstances, requiring an externally administered company to prepare and lodge reports before the end of the deferral period may impose unreasonable burdens. We may allow companies a reasonable period, after exiting external administration, to prepare and lodge catch-up reports if at the time of the application:

- (a) an existing deferral relief will shortly expire because the company will cease to be under external administration (or the directors will exercise all or most of the management powers or functions of the company under the DOCA);
- (b) an externally administered company has insufficient resources to prepare and lodge catch-up reports before the external administration of the company ends;
- (c) we are satisfied that, after the directors are in control, the company will prepare and lodge the catch-up reports within a reasonable period after the individual deferral expires; and
- (d) there will be no prejudice to any users of that information.

Note 1: When considering prejudice to any user of that information, we consider the likely users of the information during the period from the end of the external administration to the date when the catch-up reports must be lodged.

Note 2: We may also impose conditions—for example, to ensure that securities of listed companies are not re-quoted until all of the catch-up reports have been lodged and to monitor compliance with the relief.

RG 174.109 Public companies seeking individual relief to lodge catch-up reports may need to consider whether they also need to seek a further deferral of their obligation to hold an AGM: see RG 174.189–RG 174.190.

Individual exemption from previously deferred financial reporting obligations

RG 174.110 Depending on the company's circumstances, we may grant an individual exemption from some or all of the previously deferred financial reporting obligations if:

- (a) the deferral has been ongoing for a long period of time (e.g. over five years);
- (b) we are satisfied that the burden of preparing financial reports from the commencement of the administration is disproportionate to the benefits; and
- (c) we are satisfied that members and creditors have adequate information in the circumstances.

Note: An exemption from some or all of the previously deferred financial reporting obligations does not affect the requirements under the Australian accounting standards to include prior year comparatives in financial reports prepared and lodged in subsequent financial years.

RG 174.111 We will carefully consider the key factors set out in RG 174.76. For example, we may be less inclined to grant an exemption if we have previously granted individual deferral relief under s340 and the external administrator has

subsequently failed to apply for further individual deferral relief. We may also impose conditions on this relief—for example, that member approval must be obtained: see also RG 174.94.

Individual relief from specific obligations

RG 174.112 In other situations, we will consider the key factors set out in RG 174.76 when deciding whether we are satisfied that compliance with specific financial reporting obligations, or other obligations under Ch 2M, would impose unreasonable burdens on an externally administered company. If we refuse to grant individual deferral relief from all of the financial reporting obligations we may, in appropriate cases, provide individual relief from specific financial reporting obligations. We may also impose conditions on this relief: see RG 174.94–RG 174.102.

RG 174.113 In particular, we may exempt or modify the obligation 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 if we are satisfied that there is little or no utility in the audit report or review (e.g. if the financial report has been deferred for a long period of time);
- (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 (e.g. if a company has been delisted or ceased to be a disclosing entity during the external administration);
- (f) comply with a member's request under s316(1) for a full financial report, directors' report and auditor's report;
- (g) send the annual report to members under s314(1) (see RG 174.57–RG 174.61); and
- (h) comply with a shareholder direction under s293, or a member direction under s294A.

C Financial reporting relief for registered schemes

Key points

[ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) grants an exemption to registered schemes from the financial reporting obligations when:

- ASIC has been formally notified of the commencement of the winding-up of the scheme ([Form 5138 Notification of commencement or completion of winding up of a registered scheme](#)); and
- the scheme has been insolvent for at least 12 months before the end of the relevant financial year or half-year and a scheme insolvency resolution has been lodged with ASIC.

ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 also exempts a responsible entity from the requirement to obtain and lodge a compliance plan audit report in these circumstances.

We will also consider an individual application for deferral of the financial reporting obligations for a registered scheme if:

- ASIC has been formally notified of the commencement of the winding-up of the scheme (Form 5138);
- the responsible entity is unable to resolve, or the person appointed by the court to wind up the scheme is unable to determine, whether the scheme is insolvent; and
- we are satisfied that compliance will impose unreasonable burdens.

When is a registered scheme ‘insolvent’?

RG 174.114 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: see 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 174.115 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 & Others* [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.

Winding-up a registered scheme

RG 174.116 Part 5C.9 provides procedures for winding-up a registered scheme. A decision to wind up a registered scheme may be made for a number of reasons, including:

- (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 scheme to be wound up; or
- (d) the constitution requires the scheme to be wound up.

RG 174.117 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.

Note: In *Mier v FN Management Pty Ltd* (2005) 23 ACLC 1,888, 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 174.118 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.

Exemption relief for 'insolvent' registered schemes being wound up

RG 174.119 We have granted an exemption under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) from the financial reporting obligations for registered schemes if:

- (a) a notice has been lodged by either:
 - (i) the responsible entity under reg 5C.9.01 of the Corporations Regulations 2001 (Corporations Regulations) in the approved form notifying ASIC that the winding-up of the scheme has commenced; or
 - (ii) a person appointed under s601NF(1) notifying ASIC that a person has been appointed by the court to take responsibility for ensuring that the scheme is wound up in accordance with its constitution; and

- (b) the responsible entity or the person appointed under s601NF(1) has lodged a copy of a scheme insolvency resolution (see RG 174.122–RG 174.124).

Note 1: We consider that formal notification of the winding-up of a scheme occurs when [Form 5138](#) is lodged with ASIC. Notices under RG 174.119 are only required to be lodged once, not for each financial year or half-year.

Note 2: Information about an appointment under s601NF should be submitted to ASIC in writing and include a copy of the relevant court order.

- RG 174.120 The burden of compliance with the financial reporting obligations by the registered scheme will ultimately be borne by its members and creditors. We consider relief from the financial reporting obligations may reduce the costs of winding-up the scheme.
- RG 174.121 To be able to rely on the exemption relief in [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), a registered scheme must be ‘insolvent’ for a period of 12 months before the lodgement of a scheme insolvency resolution. This period of time provides sufficient certainty that scheme property will not be available to meet the debts of the responsible entity in its capacity as responsible entity of the scheme.

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

Scheme insolvency resolution

- RG 174.122 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 for the purposes of relying on our exemption relief. If the responsible entity is winding up the scheme, the responsible entity must pass a scheme insolvency resolution to the effect that the scheme property has been insufficient to meet the debts of the responsible entity in that capacity as and when they have become due and payable for a period of at least 12 months before the end of the relevant financial year or half-year.
- RG 174.123 If the responsible entity has a liquidator or voluntary administrator appointed, then the liquidator or voluntary administrator may be best placed to determine the registered scheme’s solvency and may cause the responsible entity to pass a scheme insolvency resolution. If a managing controller is appointed, but not a liquidator or voluntary administrator, and the directors of the responsible entity are unwilling to act, then the managing controller may be best placed to determine the scheme’s solvency and lodge the scheme insolvency resolution.
- RG 174.124 If a person other than the responsible entity is appointed by the court to wind up the registered 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 exemption relief in ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251. A copy of the scheme insolvency resolution should be lodged with ASIC before the first reliance on the exemption.

Responsible entity's obligations

- RG 174.125 If [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) provides exemption relief to a registered scheme, the responsible entity or person appointed by the court to wind up the scheme must report to members for relevant periods in accordance with s601NFA, as notionally inserted by ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251.
- RG 174.126 Under s601NFA, the responsible entity or responsible person who lodges the copy of the scheme insolvency resolution must prepare a report for each relevant period during the winding-up and on the completion of the winding-up, including the following information (unless the disclosure of that information would be prejudicial to the winding-up):
- (a) information about the progress and status of the winding-up of the scheme, including details (as applicable) of:
 - (i) the actions taken during the period;
 - (ii) the actions required to complete the winding-up;
 - (iii) the actions proposed to be taken in the next 12 months; and
 - (iv) the expected time to complete the winding-up;
 - (b) financial information about receipts and payments for the scheme during the period; and
 - (c) the following information as at the end of the period:
 - (i) the value of scheme property; and
 - (ii) any potential return to scheme members.
- RG 174.127 The report should be made available to members within three months after the end of the relevant period—that is:
- (a) for a report on the completion of a winding-up that has taken less than 12 months to complete, the period commencing from the day the winding-up commenced and ending on the day of completion of the winding-up;
 - (b) for a report on the completion of a winding-up that has taken longer than 12 months, the period commencing on the day after the end of the immediately preceding relevant period and ending on the day of the completion of the winding-up; or
 - (c) otherwise, a period of 12 months.

- RG 174.128 The responsible entity or responsible person must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the registered scheme about the winding-up.
- RG 174.129 If ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 provides exemption relief to a registered scheme, the responsible entity must generally comply with its own financial reporting obligations and the AFS licensee financial reporting obligations, including in relation to information that pertains to that scheme. This is the case unless ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 or individual deferral relief from the financial reporting obligations also applies to the responsible entity.

Failure to comply with the scheme constitution

- RG 174.130 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 completion of the winding-up of the scheme. When a scheme is relying on an exemption under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), 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.

Note: The responsible entity or person appointed by the court to wind up the scheme is not required to make an application for no-action.

Financial reports on completion of a winding-up

- RG 174.131 Regulation 5C.9.01 of the Corporations Regulations requires that the responsible entity lodge [Form 5138](#) on completion of the winding-up of a registered scheme. Form 5138 currently requires that a copy of the scheme's audited financial report and auditor's report, prepared for the period since the date of the last financial report and the completion of the winding-up, be lodged with ASIC on completion of the winding-up.
- RG 174.132 We have granted an exemption under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 from the requirement to provide a copy of a scheme's final audited financial report and auditor's report when lodging [Form 5138](#) on completion of the winding-up.

Note: This exemption will cease on Form 5138 being amended to remove the requirement that a copy of the scheme's final audited financial report and auditor's report, prepared for the period since the date of the last financial report and completion of the winding-up, be lodged with ASIC on completion of the winding-up.

Individual deferral relief for registered schemes being wound up

- RG 174.133 We will consider granting individual deferral relief of up to 24 months from the financial reporting obligations if:
- (a) the responsible entity, or other person appointed by the court to wind up the scheme, has formally notified ASIC of the commencement of the winding-up of the registered scheme;
 - (b) either:
 - (i) the scheme is insolvent but has not been insolvent for at least 12 months before the end of the relevant financial year or half-year; or
 - (ii) in the reasonable opinion of the responsible entity or person appointed by the court, the scheme is likely to be insolvent; and
 - (c) we are satisfied that compliance with the financial reporting obligations will impose unreasonable burdens.

Example 7

A registered scheme with a balance date of 30 June (of each year) must lodge its annual report by 30 September (of each year) and a half-year report by 16 March (of each year).

If a person appointed by the court to wind up the registered scheme determines the scheme is insolvent on 15 February 2022, and notifies ASIC of the commencement of the winding-up of the scheme, the person can apply for individual deferral relief from the financial reporting obligations that are due on 16 March 2022 (if the scheme is also a disclosing entity) and 30 September 2022.

Insolvency and other requirements

- RG 174.134 Individual deferral relief is only intended to apply when the scheme is, or is likely to be, insolvent. We have adopted this approach because we recognise that in some cases the responsible entity or person appointed by the court to wind up the scheme will need additional time to progress the winding-up and determine whether the scheme is solvent or insolvent. The relief is intended to help preserve assets for the benefit of all parties while the prospects of the scheme are being determined.
- RG 174.135 When we assess an application for individual deferral relief, 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;
- (c) the extent to which the winding-up has disrupted the responsible entity's routine for complying with the financial reporting obligations;
- (d) whether the scheme is likely to be insolvent;
- (e) the expected benefits of having the scheme comply with the financial reporting obligations, taking into account:
 - (i) who the relevant users of the reports would be, and the likely extent and nature of their use; and
 - (ii) the ability of creditors, potential creditors, members and other relevant users to independently obtain, in a timely manner, audited or other reliable financial information about the scheme from the directors or other persons appointed by the court to wind up the scheme;
- (f) whether we have cancelled the responsible entity's AFS licence and are allowing the licence to continue in limited effect; and
- (g) any public interest considerations.

- RG 174.136 We consider the responsible entity or other person appointed by the court to wind up the registered scheme is best placed to determine the likelihood of a scheme being insolvent at some point during the wind-up if the scheme is not insolvent at the commencement of the winding-up. We will carefully consider the information provided to ASIC concerning the likelihood of the scheme becoming insolvent.
- RG 174.137 We remain of the view that a solvent registered scheme being wound up should comply with its financial reporting obligations. This is because members of a solvent scheme continue to have an economic interest in the scheme and the outcome of the winding-up. They are also entitled to receive the information that they are expecting to receive in accordance with the financial reporting obligations and the scheme's constitution.
- RG 174.138 If we receive applications involving multiple registered schemes operated by the same responsible entity, we will assess each scheme on its own merits.
- RG 174.139 A registered scheme that has been granted individual deferral relief must comply with any deferred financial reporting obligations under the Corporations Act before the relief expires—or apply for and be granted further individual deferral relief.
- RG 174.140 If the registered scheme becomes able to rely on the exemption in [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), we may grant an exemption from having to comply with previously deferred

financial reporting obligations. We may grant an exemption if we are satisfied that:

- (a) the burden of preparing financial reports from the commencement of the insolvency is disproportionate to the benefits; and
- (b) members and creditors have adequate information in the circumstances.

Note: Unless this relief is granted, all previously deferred financial reporting obligations must be complied with.

RG 174.141 On finalisation of the winding-up of an insolvent registered scheme, any previously deferred financial reporting obligations will cease on deregistration of the scheme.

Responsible entity in external administration

RG 174.142 We will generally not grant individual deferral relief to a registered scheme simply because its responsible entity is in external administration.

RG 174.143 However, we recognise that, when 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 scheme will reduce the severity of the burdens 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 174.144 If a managing controller or external administrator has been appointed to the responsible entity, and the responsible entity has the benefit of a deferral under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), we will consider granting individual deferral relief from the financial reporting obligations for a period of up to 24 months from the lodgement date for the financial reports. The responsible entity must demonstrate that the appointment of the managing controller or external administrator has significantly disrupted the management and financial routine of the registered scheme, and created practical difficulties for the scheme in complying with the financial reporting obligations.

RG 174.145 If a liquidator has been appointed to the responsible entity and the responsible entity has an exemption under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251, we will consider granting individual deferral relief from the financial reporting obligations of the registered scheme when the appointment of the liquidator has significantly disrupted the management and financial routine of the scheme and created practical difficulties for the scheme in complying with the financial reporting obligations.

- RG 174.146 When considering an application for individual deferral relief, we will consider the steps being taken by the responsible entity to comply with the financial reporting obligations of the scheme after the deferral.
- RG 174.147 We will also assess the expected benefits of having the registered scheme comply with the financial reporting obligations. We will consider the following factors:
- (a) who the relevant users of the reports would be, and the likely extent and nature of their use; and
 - (b) the ability of creditors, potential creditors, members and other relevant users to independently obtain, in a timely manner, audited or other reliable financial information about the scheme from the directors or other persons appointed by the court to wind up the scheme.

How does individual deferral relief work?

- RG 174.148 Individual deferral relief will generally be for 24 months from the due date for the next financial reporting obligation—usually lodgement of the report under s319—or the current deferred due date for lodgement. In addition, any other financial reporting obligations that occur during the 24-month period will also be deferred until the end of the deferral period.
- RG 174.149 A 24-month period is a reasonable period of time for the winding-up of the registered scheme to progress and for a review of whether or not compliance with the reporting obligations still imposes unreasonable burdens—and, therefore, if deferral should continue in the scheme’s particular circumstances. It also gives persons who feel that they may be adversely affected by a further deferral an opportunity to take action to oppose it.
- RG 174.150 Individual deferral relief for a registered scheme will generally not be granted for a period longer than 24 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; and
 - (b) the burden created by compliance with the financial reporting obligations.
- RG 174.151 This time limit provides a balance between the interests of users of the financial reports and the burden imposed by compliance with the reporting obligations. In some cases, we may grant individual deferral relief for a shorter period of time, depending on the circumstances.
- RG 174.152 Externally administered responsible entities must still keep written financial records that record and explain their transactions so that they can prepare financial statements for reporting purposes at the end of the deferral period: see RG 174.31. This ensures that externally administered responsible entities can still prepare financial statements if required.

Conditions on individual deferral relief

RG 174.153 Individual deferral relief is generally subject to a number of conditions.

Notifying the market operator

RG 174.154 If a registered scheme is listed, we will generally impose a condition that requires the responsible entity to notify the relevant market operator(s) of the individual deferral relief.

Notification on a website

RG 174.155 We will generally impose a condition that requires a responsible entity or other person appointed by the court responsible for the winding-up of the registered scheme to give notice of the individual deferral relief on a website maintained by the responsible entity or person appointed by the court, in a way that is readily accessible. This will generally be imposed whether or not the scheme is listed or unlisted.

Notifying ASIC of changed circumstances

RG 174.156 In some cases, we may grant individual deferral relief on the basis that certain circumstances continue to exist. In these cases, we may, as a safeguard, impose a condition that requires the responsible entity or other person appointed by the court to wind up the registered scheme to immediately notify ASIC in writing if those circumstances change or it becomes apparent they will change.

Alternative distribution methods for annual reports

RG 174.157 If we grant individual deferral relief from the requirement to prepare and lodge an annual report, we may specify alternative methods for distributing the annual report to members after the deferral, such as those methods that a company may use under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

Information for members

RG 174.158 During the period of the individual deferral, the responsible entity or person appointed by the court must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the registered scheme about the winding-up.

RG 174.159 We may also require the responsible entity or a person appointed by the court to wind up the registered scheme to make available to members, before the next date by which financial reports are to be lodged with ASIC, a report on the status of the scheme. Unless disclosure of certain information would be

prejudicial to the winding-up of the scheme, information that we may require to be made available to members includes:

- (a) the progress and status of the winding-up of the scheme, including details of actions taken during the period, actions required to wind up the scheme, actions proposed to be taken in the next period and the expected time to complete the winding-up;
- (b) the financial position of the scheme as at the date of appointment (based on available information);
- (c) details of any applicable relief and the impact on reporting; and
- (d) financial information about receipts and payments for the scheme during the period covered by the report.

RG 174.160 We may also require the responsible entity or person appointed by the court to wind up the registered scheme to make available to members—at least annually and on completion of the winding-up of the scheme (unless the disclosure of that information would be prejudicial to the winding-up)—the following information:

- (a) information on the progress of the winding-up and/or status of the scheme, including details of the actions taken during the period, actions required to complete the winding-up, actions proposed to be taken during the next reporting period and the expected time to complete the winding-up;
- (b) financial information about receipts and payments during the period covered by the report; and
- (c) information about the value of scheme property and any potential return to members.

RG 174.161 This information may be made available to members on a website—instead of by post or email—as long as members are made aware that the information will be provided in this way before the information is published to the website.

Failure to comply with a condition

RG 174.162 Failure to comply with any condition will mean that relief will not be available and will cease to operate on and from the date the condition has not been complied with.

Relief relating to compliance plan audit obligations

RG 174.163 We monitor the lodgement of compliance plan audit reports on an ongoing basis to consider whether the responsible entity has:

- (a) designed measures that adequately address the risks of non-compliance with its obligations under the scheme constitution and the Corporations Act;

- (b) adequate arrangements for monitoring, reviewing and auditing the outcomes of its compliance activities; and
- (c) complied with these measures.

RG 174.164 When we have granted relief from the financial reporting obligations, we consider the practical effect of that relief might cause the obligation to lodge a compliance plan audit with ASIC to cease.

RG 174.165 [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) provides relief from the obligation in s601HG to obtain a compliance plan audit report for registered schemes being wound up if:

- (a) the responsible entity, or other person appointed by the court, has formally notified ASIC of the commencement of the winding-up of the scheme; and
- (b) the scheme has been insolvent for at least 12 months before the end of the relevant financial year or half-year.

RG 174.166 While compliance plan audit reports are important to ASIC, they are likely to be of limited value in these circumstances—and compliance with the requirements is likely to impose unreasonable burdens if the scheme is insolvent and being wound up. In addition, we can seek out information using our powers if we need specific information from the registered scheme or responsible entity.

RG 174.167 If we have granted individual deferral relief from the financial reporting obligations, we will generally defer the compliance plan audit obligations in s601HG for the same period of time. We consider that compliance with the compliance plan audit obligations will impose unreasonable burdens on the responsible entity or other person appointed by the court to wind up the scheme.

RG 174.168 We will consider imposing similar conditions on any deferral of the compliance plan audit obligations as we will for individual deferral relief from the financial reporting obligations.

D AGM relief for public companies

Key points

A public company with more than one member must hold an AGM at least once in each calendar year and within five months after the end of its financial year: see s250N. This obligation applies under the Corporations Act even when a public company is under external administration.

[ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#):

- exempts public companies in liquidation from the requirement to hold an AGM; and
- defers any obligations that an externally administered public company has to hold an AGM during the period of deferral relief under the instrument until two months after the deferral relief ends.

We may also grant:

- individual relief to extend the time in which an externally administered public company must hold an AGM; and
- an individual exemption to an externally administered public company from the obligation to hold an AGM.

Exemption from AGM obligation for companies in liquidation

RG 174.169 [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) exempts public 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 174.170 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.

Example 8

A company has a financial year that ends on 30 June 2022. If the company does not have to comply with Pt 2M.3 for that financial year because of section 5(1) of [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), the company does not have to comply with the requirement to hold an AGM in 2022.

Example 9

A company has a financial year that ends on 31 December 2021. If the company does not have to comply with Pt 2M.3 for that financial year because of section 5(1) of [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), the company does not have to comply with the requirement to hold an AGM in 2022.

AGM deferral relief for externally administered public companies

- RG 174.171 [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) conditionally defers any obligation that an externally administered public company has to hold an AGM until two months after deferral relief provided under the legislative instrument expires.
- RG 174.172 An AGM is a forum at which a company's members meet with the company's management to consider financial reports, elect directors, appoint auditors if necessary and consider any other business: see s250R and s317. As the consideration of financial reports is one of the primary functions of the AGM, we consider it appropriate for externally administered public companies to defer their AGM until financial reports are available for consideration at the AGM.
- RG 174.173 We consider two months after deferral relief provided under the legislative instrument expires to be an appropriate period of time to organise an AGM, provide members with notice, and convene an AGM. A longer deferral beyond this period would generally deny members of the company access to information at a critical time and be contrary to their interests.

Note: Generally, companies must give at least 21 days notice of a meeting of a company's members unless the company has a constitution that specifies a longer minimum period: see s249H. Listed companies must give at least 28 days notice of a meeting of a company's members: see s249HA.

Conditions of AGM deferral relief

- RG 174.174 The AGM deferral relief is subject to a number of conditions.

Notifying the market operator

- RG 174.175 A listed company relying on our AGM deferral relief will need to notify the relevant market operator. If, during the period of deferral, the listed company fails to notify the relevant market operator before the obligation to hold an AGM would otherwise fall due under s250N, the listed company will lose the benefit of our AGM deferral relief under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

Website notifications

- RG 174.176 A company must:
- (a) give prominent notice of its reliance on [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) on a website maintained by the company (if any); and
 - (b) arrange for a notice of the deferral of the AGM on a website maintained by the external administrator (if any) in a way that is readily accessible.
- RG 174.177 These notifications are a condition of relief, and failure to do so before the obligation to hold an AGM would otherwise fall due during the period of deferral will result in the company losing the benefit of the AGM deferral relief under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251.

Information for members

- RG 174.178 Our AGM deferral relief is only available when, during the period of the deferral, the company has adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the company about:
- (a) the external administration; and
 - (b) the company's obligation to hold any AGMs not held during the AGM deferral period.
- RG 174.179 Failure to comply with this condition will mean that the relief will not be available and will cease to operate on and from the time the condition has not been complied with.

Deferred financial reports to be laid before next AGM

- RG 174.180 At the end of the AGM deferral period, the company must lay before the next AGM all outstanding financial reports deferred as a result of the deferral relief. This is a condition of our relief under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#). Failure to comply with this condition will mean our relief will cease to operate on and from the date the condition has not been complied with.

Exclusion power

- RG 174.181 To ensure that our AGM deferral relief does not give rise to unintended consequences, under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) ASIC has the power to exclude an externally administered company from relying on our AGM deferral relief.

- RG 174.182 We may exercise our exclusion power when it is in the public interest for members to have the opportunity to meet with and ask questions of the external administrator. We are unlikely to exercise our exclusion power if we have not also exercised our exclusion power in relation to deferral relief.
- RG 174.183 When we exercise our exclusion power, we will notify the company of our decision. Our decision to exclude an externally administered public company from relying on the AGM deferral relief is subject to a merits review on application to the AAT.

Individual extensions of time to hold an AGM

- RG 174.184 We may extend the time in which an externally administered public company must hold an AGM under s250P, when the company is not relying, or is unable to rely, on our AGM deferral relief, if we:
- (a) receive an application before the end of the period within which the meeting must otherwise be held; and
 - (b) are satisfied that there is sufficient cause for an extension.
- RG 174.185 We may also impose conditions on any extension of time.
- RG 174.186 We consider that sufficient cause for an extension of time may include circumstances when an externally administered public company (not in liquidation) has been granted individual deferral relief from some or all of the financial reporting obligations. The relief will generally extend the period of time within which the company must hold an AGM until two months after the individual deferral relief expires.
- RG 174.187 If an applicant for an AGM extension does not have individual deferral relief, we will assess whether there is sufficient cause for an extension by considering the following factors:
- (a) the reasons why the company does not have individual deferral relief;
 - (b) whether the extension would generally deny the members of the company access to information, or the conduct of business, at a critical time and contrary to their interests;
 - (c) whether other financial information will be available to members;
 - (d) the extent to which the external administration affects the ability of members to influence the management or performance of the company;
 - (e) whether the members or creditors would bear the costs of arranging and holding an AGM;
 - (f) whether the inability of a company to hold its AGM on time is due to other factors beyond its control (e.g. temporary or permanent loss of key personnel, including the external auditor—although in this case the

likelihood of an extension being granted will decrease as the extent of external interest in the company increases); or

- (g) we are persuaded that it is in the interests of the members and creditors to do so.

Note: If we are satisfied that there is a case for an extension, the extension will generally be granted for up to three months.

RG 174.188 Table 4 summarises the circumstances when an extension may be available.

Table 4: Individual extensions of time for AGMs of externally administered public companies under s250P

Nature of financial reporting relief	Extension of time for AGM	Conditions of extension
Company has been granted individual deferral relief from some or all of the financial reporting obligations	The AGM may be held up to two months after the individual deferral relief expires.	The first annual report required after the individual deferral relief expires must be distributed to members no later than 21 days before the AGM: see s315(1)(a). If the company is listed, it must notify the relevant market operator(s) of the extension. Other conditions will depend on each case and the conditions of the financial reporting relief.
Company has no individual deferral relief from the financial reporting obligations	The AGM may be held up to three months after the deadline for holding the AGM.	The annual report must be distributed to members within four months after the end of the financial year: see s315(1)(b). If the company is listed, it must notify the relevant market operator(s) of the extension. Other conditions will depend on each case.

Individual AGM deferral relief

RG 174.189 After the initial AGM deferral period under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#), we may, on application under s250PAB, grant a further deferral of any previously deferred AGM under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 on a case-by-case basis, if we:

- receive an application before the end of the period within which the meeting must otherwise be held under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251;
- have granted individual deferral relief or individual relief to lodge catch-up financial reports; and
- are satisfied that there is sufficient cause for a deferral.

RG 174.190 We generally will impose conditions on any individual AGM deferral relief. The individual AGM deferral relief will generally defer the time within

which the company must hold an AGM until two months after the individual deferral relief or individual catch-up relief expires.

Individual exemptions from the AGM obligation

- RG 174.191 ASIC has the power to grant an individual exemption from the AGM obligation: see s250PAB. We may grant an individual exemption subject to conditions in relation to any AGMs previously deferred under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) when individual deferral relief has been granted or when a company has individual relief to lodge catch-up financial reports. In other cases, 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 in other cases. This is because of the importance of AGMs as a safeguard for members.
- RG 174.192 If we have granted relief from specific obligations only (other than individual deferral 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 reasons why the company only has relief from specific obligations, and the other factors set out in RG 174.76 and RG 174.187.
- RG 174.193 Depending on the company's circumstances, we may grant exemption relief from some or all of the previously deferred or extended AGMs if:
- (a) the deferral of the financial reporting obligations and the AGM deferral or extensions have been ongoing for a long period of time; and
 - (b) we are satisfied that the burden of holding the AGMs is disproportionate to the benefits.
- RG 174.194 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

Applications for individual deferral relief from the financial reporting obligations for a company, and AGM relief for a public company, may be made by the directors or a voluntary administrator of the company.

A deed administrator may make an application for relief if 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 individual deferral relief from the financial reporting obligations for a registered scheme may be made by the directors or a voluntary administrator of the responsible entity.

Other persons may only have a limited ability to apply for relief.

ASIC does not have the power to grant retrospective relief.

General considerations when applying for relief

RG 174.195 Relief from the financial reporting obligations in Pt 2M.3 may be granted:

- (a) by legislative instrument for a specified class of companies, registered schemes or disclosing entities (see s341); or
- (b) individually (see s340 and 111AT) for a particular company or registered scheme.

RG 174.196 Relief from the requirement for a public company to hold an AGM may also be granted by legislative instrument for a specified class (see s250PAA), individually (see s250PAB) or by extension of time under s250P. We consider applications for individual relief on a case-by-case basis.

RG 174.197 An applicant should first check whether the company or registered scheme can rely on relief under an existing legislative instrument. If not, you will need to make an application asking ASIC to grant the company or scheme individual relief.

Our prospective relief powers

RG 174.198 ASIC's powers to grant individual deferral relief from the financial reporting obligations and AGM relief are prospective. We have no power to grant retrospective relief. We do not have power to grant relief to remedy any past breach of the Corporations Act: see [Regulatory Guide 51 Applications for relief](#) (RG 51) at RG 51.76 and RG 51.78 for further details.

Sufficient time

- RG 174.199 You should ensure that there will be sufficient time for ASIC to consider your relief application and serve notice of any order or extension on the applicant before any statutory timeframe for which the relief is required has expired. Applications should normally be lodged at least one month before the financial reporting obligation falls due or the date by which an AGM is otherwise required to be held for which the relief is being sought.
- RG 174.200 When applying for relief, an applicant must 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 174.201 Additional time should be allowed for applications that are novel or outside the scope of existing policy.

Applications by listed companies or registered schemes

- RG 174.202 In addition to addressing the relevant factors that ASIC will consider (see RG 174.76 and RG 174.135), an application for relief made by an externally administered listed company or listed scheme (whether or not the quotation of securities has been suspended) must also:
- (a) name the financial market(s) on which the company or scheme is listed;
 - (b) state whether the quotation of financial products has been suspended and, if so, provide details; and
 - (c) state whether the company or scheme has applied, or intends to apply, for a waiver of any listing rules that are related to the company or scheme's obligations under the Corporations Act.

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

Concurrent administrations

- RG 174.203 Given the financial reporting obligations and AGM obligations under the Corporations Act are imposed on the company or responsible entity, it will be necessary in the case of concurrent external administrator appointments to identify the natural person(s) with the legal and practical capacity to:
- (a) cause the company, responsible entity or person appointed by the court to wind up the scheme 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 174.204 In certain situations, the directors of a company under external administration 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 174.205 When 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 apply for relief: see RG 174.213 and RG 174.219.

Who may apply for relief

- RG 174.206 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, the powers of the directors may be suspended, or there may be different external administrators appointed concurrently: see s198G. Alternatively, a person other than the responsible entity may be appointed to take responsibility for winding up the scheme.
- RG 174.207 Table 5 summarises who may apply for individual deferral relief from the financial reporting obligations and AGM relief.

Table 5: Summary of who may apply for relief*

External administration	Who may apply under s340 or 111AT**	Who may apply under s992B	Who may apply for an AGM extension of time	Who may apply under s250PAB for relief from obligation to hold AGM
Companies under voluntary administration	Voluntary administrator	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	Directors (if any) <i>or</i> Deed administrator if the DOCA expressly provides that the deed administrator has the powers of directors	Deed administrator
Companies in liquidation	Not required, if ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 applies. Otherwise, the liquidator	Not required, if ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 applies. Otherwise, the liquidator	Not required, if ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 applies. Otherwise, the liquidator	Not required, if ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 applies. Otherwise, the liquidator

External administration	Who may apply under s340 or 111AT**	Who may apply under s992B	Who may apply for an AGM extension of time	Who may apply under s250PAB for relief from obligation to hold AGM
Companies in provisional liquidation	Provisional liquidator	Provisional liquidator	Provisional liquidator	Not applicable
Registered schemes being wound up	Directors of the responsible entity (if any) or Voluntary administrator, liquidator or provisional liquidator of the responsible entity or Deed administrator of the responsible entity if the DOCA expressly provides that the deed administrator has the powers of directors	Not applicable	Not applicable	Not applicable

* Controllers are unable to apply for relief under s340, s111AT (if a disclosing entity) or s250N, but may apply for a no-action letter: see RG 174.214 and RG 174.225–RG 174.230.

** Only companies and registered schemes that are disclosing entities may apply under s111AT. If a deed administrator of a disclosing entity cannot apply for relief under s340, then the deed administrator may be able to apply for relief under s111AT.

Applying for relief under s340

RG 174.208 There are strict requirements about the form an application under s340 must take in order for the application to be valid. 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 scheme.

Voluntary administrators

RG 174.209 A voluntary administrator of a company may apply for relief under s340, because a voluntary administrator may perform any function and exercise any power that the company or any of the company’s officers could perform or exercise if the company were not under administration: see s437A.

Deed administrators

RG 174.210 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 174.211 We consider that a controller will not be able to apply for relief on behalf of a company or registered scheme. This is because the powers of a receiver 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).

RG 174.212 In these circumstances, the application must be made by the directors under s340(3). If 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).

RG 174.213 However, if 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.

RG 174.214 If directors are uncooperative or unwilling to act, the managing controller should apply for a no-action letter and provide ASIC with details of the directors' failure to cooperate or assist the external administrator with making the application. If the company is also a disclosing entity, the managing controller may apply under s111AT: see RG 174.217–RG 174.220.

Registered schemes

RG 174.215 The directors of the responsible entity of a registered scheme may apply for relief for the scheme. We consider that a voluntary administrator, liquidator or provisional liquidator of a responsible entity may also apply for relief for the scheme under s340. 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 174.216 If there is a person other than the responsible entity appointed to wind up the registered scheme, the person will need to act together with the directors or the external administrator of the responsible entity having legal capacity to cause the scheme to apply to ASIC for relief. If this is not possible, the person may apply for a no-action letter detailing the reasons why it has not been possible to apply for relief under s340(3).

Applying for relief under s111AT

- RG 174.217 A listed company or registered scheme, or a company or scheme that is a disclosing entity, may also apply for relief under s111AT if it is unable to apply under s340(3) for any of the reasons set out above. This may provide managing controllers and persons appointed by the court to wind up a scheme in appropriate circumstances with an alternative means of obtaining relief.
- RG 174.218 If the directors of an externally administered company or responsible entity of a registered scheme that is a disclosing entity do not retain sufficient legal and practical capacity to apply for relief under s340(3), the external administrator may apply for relief under s111AT.
- RG 174.219 If 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 174.203–RG 174.205.
- RG 174.220 The application should set out the reasons why it has not been possible to apply for relief under s340(3).

Applying for relief under s992B

- RG 174.221 If the directors of an externally administered company that holds an AFS licence do not retain sufficient legal and practical capacity to apply for relief under s992B, the external administrator may apply for relief under s992B. If 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 174.203–RG 174.205.

Applying for AGM extensions of time

- RG 174.222 An application for an extension of time to hold an AGM must be made by lodging [Form 2501](#) *Application for extension of time to hold annual general meeting*.
- RG 174.223 The application 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 together.

Applying for AGM relief under s250PAB

- RG 174.224 An application for AGM relief under s250PAB may be made by:
- the administrator of a company under administration (see s250PAB(2)); or
 - the administrator of a DOCA (see s250PAB(3)).

Note: Our relief in [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) applies to companies that have a liquidator appointed, so although application by a liquidator is possible it will generally not be necessary.

Applying for a no-action letter

- RG 174.225 In very limited circumstances, we may grant a no-action letter for past breaches of the Corporations Act: see [Regulatory Guide 108](#) *No-action letters* (RG 108).
- RG 174.226 If the directors of an externally administered company or responsible entity 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 in relation to the financial reporting obligations.
- RG 174.227 If the directors of an externally administered company or responsible entity do not retain sufficient legal and practical capacity to apply for relief under s250P, and relief is not available under s250PAB, the external administrator may apply for a no-action letter in relation to the AGM obligations.
- RG 174.228 If 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 174.203–RG 174.205.
- RG 174.229 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 174.230 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. A no-action letter is not intended to affect the rights of third parties to take action.

How to apply for relief

RG 174.231 You should submit your application for relief through the [ASIC Regulatory Portal](#). You will need to pay fees for your application. We have provided details about payment options in the portal. For more information, see [how you apply for relief](#).

Key terms

Term	Meaning in this document
AAT	Administrative Appeals Tribunal
administrator	Has the same meaning as in s9 of the Corporations Act
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
AFS licensee financial reporting obligations	The obligations in Subdiv C of 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 deferral relief	In this guide, means relief under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 to defer the time by which a public company in external administration (not in liquidation) must hold an AGM until two months after the deferral relief ends
AGM obligation	The obligation in s250N of the Corporations Act that requires an AGM to be held
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"> • all of the following reports: <ul style="list-style-type: none"> – the financial report for the year; – the directors' report for the year (s298–300A); and – the auditor's report on the financial report; or • a concise report for the year that complies with s314(2)
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the exchange market operated by ASX Limited
compliance plan audit	The audit undertaken, and the report prepared, under s601HG of the Corporations Act

Term	Meaning in this document
controller	<p>In relation to property of a company, means:</p> <ul style="list-style-type: none"> • a receiver, or receiver and manager, of that property; or • anyone else who (whether or not as agent for the company) is in possession, or has control, of that property for the purpose of enforcing a security interest. <p>This meaning is 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'</p>
controllership	When 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 under Pt 5.3A of the Corporations Act
deferral relief	In this guide, means relief under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 to defer any financial reporting obligations under Pt 2M.3 of the Corporations Act to companies under external administration (not in liquidation) that are outstanding at the time of appointment of a relevant external administrator, and arise during the period of deferral after a relevant external administrator is appointed
deregistration	<p>For a company, means the deregistration of a company under s601AA, 601AB or 601AC of the Corporations Act. A company ceases on deregistration: see s601AD(1).</p> <p>For a registered scheme, means the deregistration of a registered scheme that has been wound up under s601PB of the Corporations Act</p>
disclosing entity	Has the meaning given by s111AC of the Corporations Act
DOCA	A deed of company arrangement executed under Pt 5.3A of the Corporations Act or such deed as varied and in force from time to time
external administration	In this guide, means when an external administrator is appointed to a company

Term	Meaning in this document
external administrator	<p>In this guide, means:</p> <ul style="list-style-type: none"> • for a company—a voluntary administrator, deed administrator, controller, provisional liquidator or liquidator; and • for a disclosing entity that is not a company or a scheme—the person taking responsibility for ensuring that the disclosing entity is wound up in accordance with its constitution, rules and applicable laws <p>Note: A person is not an external administrator of a company for the purposes of Sch 2 to the Corporations Act merely because the person has been appointed as a receiver, receiver and manager, or controller in relation to property of the company.</p>
externally administered company	<p>In this guide, means a company:</p> <ul style="list-style-type: none"> • under voluntary administration; • subject to a DOCA; • where a controller has been appointed (whether or not by a court) and is acting; • in provisional liquidation; • in liquidation; or • concurrently in two or more of the forms of external administration referred to above <p>Note 1: An externally administered company may be either a public company or a proprietary company.</p> <p>Note 2: A company is not under external administration for the purposes of Sch 2 to the Corporations Act merely because a receiver, receiver and manager, or other controller has been appointed in relation to property of the company.</p>
financial reporting obligations	<p>The obligations in Divs 1–5 of Pt 2M.3 in relation to:</p> <ul style="list-style-type: none"> • an annual financial report and directors' report; • a half-year financial report and directors' report; • an audit and the auditor's report; • annual financial reporting to members; and • lodging reports with ASIC
half-year report	<p>The reports referred to in s302 of the Corporations Act</p>
individual deferral relief	<p>Relief that we may grant, on application, to defer the time for compliance with some or all of the financial reporting obligations for externally administered companies (that are not in liquidation) and certain registered schemes being wound up</p>
licensee deferral relief	<p>In this guide, means relief under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 to companies that held an AFS licence at the end of a financial year and were under external administration (not in liquidation), to defer any financial reporting obligations under Subdiv C of Div 6 of Pt 7.8 of the Corporations Act that are outstanding at the time of appointment of a relevant external administrator, and arise during the period of deferral after a relevant external administrator is appointed</p>

Term	Meaning in this document
liquidation	For a company, the process for: <ul style="list-style-type: none"> • the winding-up of a company business; • the collection and realisation of company assets; • the application of the proceeds to the company's creditors; and • should a surplus remain, repayment to the members under: <ul style="list-style-type: none"> – a winding-up in insolvency or ordered by the court; – a members' voluntary winding-up; or – a creditors' voluntary winding-up
liquidator	A person appointed to wind up the affairs and distribute the property of an externally administered company
listing rules	Has the same meaning as in s761A of the Corporations Act
managing controller	Has the same meaning as in s9 of the Corporations Act
proprietary company	A company that is registered as, or converts to, a proprietary company under the Corporations Act Note: This is a definition contained in s45A(1).
provisional liquidator	A person appointed by the court under s472(2) of the Corporations Act
public company	A company other than a proprietary company
receiver	A person appointed under an instrument or by the court 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 meaning given 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 external administrator	Has the same meaning as in ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251
relevant market operator	Has the same meaning as in s9 of the Corporations Act
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
RG 16 (for example)	An ASIC regulatory guide (in this example numbered 16)

Term	Meaning in this document
s292 (for example)	A section of the Corporations Act (in this example numbered 292)
scheme insolvency resolution	In relation to a registered scheme, means a resolution to the effect that, for a period of at least 12 months, the scheme property has been insufficient to meet the debts of the responsible entity of the scheme incurred in that capacity as and when they were due and payable
small proprietary company	<p>A proprietary company is a small proprietary company for a financial year if it satisfies at least two of the following paragraphs:</p> <ul style="list-style-type: none"> • the consolidated revenue for the financial year of the company and the entities it controls (if any) is less than \$50 million, or any other amount prescribed by the Corporations Regulations for the purposes of this paragraph; • 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 \$25 million, or any other amount prescribed by the Corporations Regulations for the purposes of this paragraph; and/or • the company and the entities it controls (if any) have fewer than 100, or any other number prescribed by the Corporations Regulations for the purposes of this paragraph, employees at the end of the financial year <p>Note: This is a definition contained in s45A(2) of the Corporations Act. The proprietary company thresholds are contained in reg 1.0.02B of the Corporations Regulations.</p>
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
voluntary administrator	An administrator of a company but not a DOCA
winding-up	<p>For a company, has the same meaning as liquidation.</p> <p>For a registered scheme, the process for winding-up under a provision in Pt 5C.9 of the Corporations Act</p>

Related information

Headnotes

AFS licensee, AGM, AGM deferral relief, administration, administrator, annual general meeting, Australian financial services licensee, companies, compliance plan audit, controllers, corporations, deed administrator, deed of company arrangement, deferral period, deferral relief, DOCA, extension of time to hold an AGM, external administration, externally administered companies, financial reporting, financial reporting relief, insolvency, licensee deferral relief, liquidation, managed investment schemes, managing controllers, provisional liquidation, receivers, receivers and managers, registered managed investment schemes, responsible entities, voluntary administrator, winding-up

Legislative instruments

[ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#)

[ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#)

Regulatory guides

[RG 16](#) *External administrators: Reporting and lodging*

[RG 22](#) *Directors' statement as to solvency*

[RG 43](#) *Financial reports and audit relief*

[RG 51](#) *Applications for relief*

[RG 108](#) *No-action letters*

[RG 166](#) *Licensing: Financial requirements*

Legislation

Corporations Act, Chs 2M, 5; Pts 2M.3, 5.1, 5C.9, 5.3B, 7.8, 10.1; s9, 111AT, 198G, 249H, 249HA, 250N, 250P, 250PAA, 250PAB, 250R, 285, 285A, 286, 292, 293, 294A, 295, 298, 299, 299A, 300A, 301, 302, 303, 306, 307, 308, 312, 314, 315, 316, 317, 319, 320, 321, 327B, 340, 341, 342, 420, 421, 436B, 436E, 437A, 438A, 439A, 444A, 477, 506, 601GA, 601HG, 601NF, 601NFA, 710, 713, 912A, 915B, 915H, 988A, 989B, 989D, 992B, 1314; Sch 2, s70-5

Corporations Regulations, reg 5C.9.01

Cases

Capelli v Shepard & Others [2010] VSCA 2

Mercy & Sons Pty Ltd v Wanari Pty Ltd (2000) 35 ACSR 70

Mier v FN Management Pty Ltd (2005) 23 ACLC 1,888

Re Nardell Coal Corporation Pty Ltd [2004] NSWSC 281

Re Stacks Managed Investments Ltd (2005) 23 ACLC 1,647

Consultation papers and reports

[CP 337](#) *Externally administered companies: Extending financial reporting and AGM relief*

REP 703 *Response to submissions on CP 337 Externally administered companies: Extending financial reporting and AGM relief*

Information sheets

[INFO 24](#) *Deeds of cross-guarantee*

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*

[Form 5602](#) *Annual administration return*

[Form 5603](#) *End of administration return*