REGULATORY GUIDE 60

Schemes of arrangement

September 2020

About this guide

This is a guide for companies and their advisers involved in, or affected by, schemes of arrangement between a company and its members under Pt 5.1 of the Corporations Act.

This guide explains:

- ASIC's role under the scheme provisions in Pt 5.1;
- the matters we consider when reviewing scheme documents; and
- how we determine whether to provide a 'no objection' statement under s411(17)(b).

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 September 2020 and is based on legislation and regulations as at the date of issue. In March 2024, we updated references to remade legislative instruments.

Previous versions:

- Superseded Regulatory Guide 60, issued December 2009, reissued September 2011 and updated (minor) July 2020
- Superseded Policy Statement 60, issued 4 August 1999, amended 25 February 2008, rebadged as a regulatory guide 5 July 2007
- Superseded Policy Statement 142, issued 4 August 1999 and rebadged as a regulatory guide 5 July 2007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 requirements.

Contents

A Overview

Key points

The scheme of arrangement process is primarily a court-supervised process. However, ASIC is involved with:

- the review of scheme documents (see Sections C–D);
- the protection of interests of any members affected by the scheme;
- the registration of scheme documents (see RG 60.12–RG 60.14); and
- reporting to the court on any complex issues or possible areas of objection (see Section F).

We will object to a proposed scheme of arrangement if:

- we consider that the scheme will deprive shareholders of the benefits or protections of a takeover under Ch 6; or
- the scheme documents do not meet the disclosure obligations outlined in Section D.

ASIC's role in schemes of arrangement

RG 60.1 Schemes of arrangement are regulated under Pt 5.1 of the *Corporations Act 2001* (Corporations Act) and are binding, court-approved agreements that allow the reorganisation of the rights and liabilities of members and creditors of a company. This guide only sets out how we will administer members' schemes and option holders' schemes.

RG 60.2 The court cannot approve a scheme of arrangement unless:

(a) it is satisfied that the scheme has not been proposed to avoid compliance with the takeover requirements in Ch 6; or

(b) ASIC has issued a statement under s411(17)(b) that we have no objection to the scheme.

Note: See *Re ACM Gold Limited and Mt Leyshon Gold Mines Ltd* (1992) 7 ACSR 231; *Re Foundation Healthcare Ltd* (2002) 43 ACSR 680; *Re Coles Group Ltd (No 2)* [2007] VSC 523.

RG 60.3 Parties proposing a scheme of arrangement under Pt 5.1 (proponents) must lodge the terms of the proposed scheme and the draft explanatory statement with us. We must be given an opportunity to examine this material prior to the court hearing to convene the relevant scheme meetings. We may make submissions to the court in relation to the scheme and the draft explanatory statement.

RG 60.4 Our role is to assist the court by:

(a) reviewing the content of scheme documents;

(b) reviewing the nature and function of the scheme;

(c) representing the interests of investors and creditors (where in many cases we may be the only party before the court other than the applicant);

(d) helping to ensure that all matters that are relevant to the court's decision are properly brought to the court's attention before it orders meetings or before it confirms a scheme; and

(e) registering scheme documents.

RG 60.5 Proponents should lodge scheme documents through the ASIC Regulatory Portal to enable ASIC to efficiently perform its role.

Review of scheme documents

RG 60.6 Section 411(2) requires us to be given at least 14 days' notice of the hearing of an application unless we or the court permit a shorter period. In almost all cases, this will be the minimum period required to examine the draft explanatory statement and the terms of the proposed scheme. If the scheme or the commercial proposal underlying it is complex, more than 14 days may be required for us to determine whether or not we should object to the confirmation of the scheme. If we have not had adequate time to consider the scheme or its documentation, we will ask the court to adjourn any application or hearing to call the scheme meetings or to confirm the scheme.

RG 60.7 Section 411(2)(a) allows us to consent to reducing the 14 days' notice requirement, but this will happen infrequently—for example, in the case of some small and simple schemes.

RG 60.8 For guidance on the matters we consider when reviewing scheme documents, see Section C.

Disclosure obligations

RG 60.9 Sections 411(3)(b) and 412(1)(a)(ii) require explanatory statements to contain the information prescribed by reg 5.1.01 and Sch 8 of the Corporations Regulations 2001 (Corporations Regulations), unless we grant a waiver from those requirements. We will object to a proposed scheme of arrangement if the information disclosed is not of the type and standard required under reg 5.1.01 and Sch 8, unless a waiver applies.

RG 60.10 We will also consider the disclosure principles in s602 and the disclosure obligations in s636 when determining whether shareholders are adequately informed and protected.

RG 60.11 For guidance on the type and standard of disclosure we expect in scheme documents generally, see Section D.

Registration of documents

RG 60.12 We must not register a copy of the explanatory statement unless it appears to comply with the Corporations Act and we consider it does not contain any matter that is false in a material particular or materially misleading in the form or context in which it appears: see s412(8).

> Note: The misleading and deceptive conduct provisions in s1041H also apply to schemes.

RG 60.13 We will not register an explanatory statement until it has been approved (or not objected to) by the court under s411(1) or (1A).

RG 60.14 Registration is only required for schemes which do not include a compromise between a company and its creditors: see s412(6). We will reject as artifice any scheme that tries to combine a members' scheme and an option holders' scheme into a single scheme to avoid the requirement of s412(6).

Second hearing: Confirmation of a scheme

RG 60.15 We will ordinarily not appear at the second hearing if we have no objection to the scheme. However, we will appear at this hearing if we consider that further matters have arisen that should be raised with the court.

Objections under s411(17)(b)

RG 60.16 Under s411(17)(b) we are required to decide whether we have no objection to the proposed scheme of arrangement. We are not required to determine or prove the purpose of the scheme.

RG 60.17 The primary question we will consider under s411(17)(b) is whether, having regard to the principles in s602, shareholders are adversely affected by the takeover being implemented by a scheme of arrangement rather than a takeover bid.

B Acquisitions under Ch 6 and Pt 5.1

Key points

We have no preference for acquisitions being conducted either as schemes of arrangement or takeovers, as long as shareholders are not deprived of the benefits or protections offered by Ch 6: see RG 60.18–RG 60.21.

Shareholder protection

RG 60.18 It is not the purpose of the Corporations Act to require persons to follow the takeover procedures set out in Ch 6 in preference to other regulated methods in all transactions involving acquisitions.

Note: See *Re The Bank of Adelaide* (1979) 22 SASR 481; *Re Wallace Dairy Co Ltd* (1980) ACLR 139; *Re ACM Gold Limited and Mt Leyshon Gold Mines Ltd* (1992) 7 ACSR 231; *Re Stockbridge Ltd* (1993) 9 ACSR 637; *Re Foundation Healthcare Ltd* (2002) 43 ACSR 680; *Re MIM Holdings Ltd* (2003) 45 ACSR 554; *Re Coles Group Ltd (No 2)* [2007] VSC 523.

RG 60.19 Shareholders should, however, receive equivalent (although not necessarily identical) treatment and protection, whether an acquisition is made under a scheme of arrangement or by any other type of acquisition (including capital reductions). As long as these protections are equivalent in nature, we do not favour one legal method over another.

RG 60.20 Section 602 sets out the underlying principles of fairness and disclosure of information in relation to the acquisition of shares, as well as emphasising the need for such acquisitions to occur in an efficient and competitive market. The principles in s602 relate to:

(a) sufficient time for shareholders to make a decision;

(b) sufficient information to make a decision; and

(c) reasonable and equal opportunities to share in any benefits that flow from a person acquiring a substantial interest in their company.

We will consider these principles and apply them equally to our role in schemes of arrangement as we do for other types of acquisition.

What the court has held

RG 60.21 In considering whether a scheme is fair and equitable, and should therefore be approved, the court has held the following:

(a) that it is ‘legitimate and appropriate for a court to keep in mind the provisions of the Acquisition of Shares Code’;

Note 1: See *Catto v Ampol Ltd* (1989) 7 ACLC 717.

Note 2: The Acquisition of Shares Code has been superseded by Ch 6 of the Corporations Act.

(b) 'the court keeps before it other legislative provisions including those relating to the regulation of takeovers, and endeavours to administer them in such a way which gives a harmonious practical and mutually supportive operation to each provision';

Note: See *Nicron Resources Ltd v Catto* (1992) 8 ACSR 219.

(c) 'the objectives of Ch 6 are relevant to the issue of the court exercising its discretion to approve a scheme of arrangement effecting a takeover. They indicate a legislative intent to protect members subject to a takeover'; and

Note: See *Re Coles Group Ltd (No 2)* [2007] VSC 523.

(d) 'thus while such information is not specifically required by the Corporations Act in the case of a court-approved scheme of arrangement (or a selective reduction of capital), nonetheless, particularly where what is being done is substantially equivalent to a conventional takeover, shareholders should not be deprived of equivalent information'.

Note 1: See *Re Archaean Gold NL* (1997) 23 ACSR 143.

Note 2: While the first two cases, cited in RG 60.21(a) and RG 60.21(b), concerned reductions of capital, the court, by analogy, has adopted a similar approach in the context of a scheme of arrangement: see *Re ACM Gold Limited and Mt Leyshon Gold Mines Ltd* (1992) 7 ACSR 231; *Re Stockbridge Ltd* (1993) 9 ACSR 637; *Re Archaean Gold NL* (1997) 23 ACSR 143; *Re Coles Group Ltd (No 2)* [2007] VSC 523.

Our approach

RG 60.22 Consistent with the court's approach, we will have regard to the principles in s602 and the disclosure requirements in s636, as well as the disclosure obligations under reg 5.1.01 and Sch 8 of the Corporations Regulations, when considering an acquisition under a scheme of arrangement that is capable, in whole or part, of being conducted under a takeover bid.

Note: See *Catto v Ampol Ltd* (1989) 7 ACLC 717; *Nicron Resources Ltd v Catto* (1992) 8 ACSR 219; *Re Archaean Gold NL* (1997) 23 ACSR 143*; Re Coles Group Ltd (No 2)* [2007] VSC 523.

Equality between classes of securities

RG 60.23 We consider that when there is more than one class of security in a scheme, the resolution put before each of the classes should be conditional on each other class passing the resolution put before it. In this way all members will have an equal opportunity to participate in the benefits accruing from an acquisition, and the equality principles in s602(c) will be met.

Collateral benefits and unequal consideration

RG 60.24 Consistent with the policy behind s602(c), we will closely consider a scheme if:

(a) some holders in a class of security in the target (target security) receive a collateral benefit in connection with the scheme; or

(b) there are collateral benefits associated with the consideration offered for each different class of target security (whether that consideration is offered under the scheme or under a separate agreement between the acquirer and the holder of the target security). In particular, we will consider if the consideration offered for each class is:

(i) proportionate to each of the others, taking into account the differences in rights or obligations between the security classes;

(ii) at a similar premium, for example, to market prices where applicable; and

(iii) reasonable, taking into account the amounts payable on the target securities, the time value of money, the opportunities inherent in convertible target securities, the ability of the target to repay convertible target securities in the absence of the scheme, or any other established criteria (such as those contained in the Takeovers Panel Guidance Note 21 *Collateral benefits* (GN 21)).

Note: Where holders receive a collateral benefit in connection with a scheme, we will generally not object to the scheme if the affected holders vote in a separate class and the explanatory statement explains the benefit and includes an independent valuation of the benefit.

Proposed timetable for completion

RG 60.25 The timetable proposed for completion of a scheme of arrangement should be consistent with the takeovers policy in Ch 6 relating to:

(a) the announcement of a bid (see s631(1)); and

(b) the offer period and formalities (see s620 and 624).

Notice of meeting

RG 60.26 The notice of a meeting sent to each class should not be misleading and should fairly inform the recipients of:

(a) the proper business of the meeting; and

(b) the compromise or arrangement proposed to each other security class.

Information provided in the explanatory statement

RG 60.27 The holders of target securities should have access to the same type and standard of information that would have been provided to them under s636 in a bidder's statement (but not in contradiction of any disclosure requirements under Sch 8 of the Corporations Regulations).

Interested parties

RG 60.28 Where, under an acquisition, the acquirer of target securities (acquirer) or its associates (together, interested parties) have the power to vote to approve the proposed scheme of arrangement, there should be adequate disclosure of:

(a) the power to vote;

(b) the identity of the holder of such power;

(c) the number and type of target securities in which the power is held; and

(d) whether the holder intends to vote on the proposed acquisition and, if so, the manner in which the holder intends to vote.

Note: See RG 60.97–RG 60.98 for a discussion of voting by interested parties.

Offers of scrip

RG 60.29 Where the acquirer intends to provide securities as consideration to the holders of target securities, the holders of target securities should be provided with sufficient information about the securities to allow them to decide how they will vote on the resolutions put before them: see the requirements for a bidder's statement detailed in s636(1)(g) and at RG 60.68–RG 60.69.

RG 60.30 We have prevented offers of proprietary company scrip consideration to retail investors and, where the consideration offered is public company scrip to be held under mandatory custodial arrangements, limited the ability to convert to a proprietary company if there are more than 50 non-employee beneficial owners.

Note: See ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734.

Agreements

RG 60.31 We will also examine the terms of any agreement entered into between the acquirer, or interested parties, and the target and, in particular, any conditions (whether precedent or subsequent) relating to successful completion of the agreement: see RG 60.44.

C Review of scheme documents

Key points

The proposed scheme and the draft explanatory statement must be lodged with us within a reasonable time before the hearing of the application (generally at least 14 days beforehand). Schemes that are novel or more complex may require more time: see RG 60.32–RG 60.34.

We will examine the scheme documents to ensure that they comply with the requirements of s411 and that they are consistent with the other obligations of the Corporations Act: see RG 60.40–RG 60.43.

We will consider, among other things, whether the scheme documentation has adequately dealt with factors such as conditions, end dates, third parties and scheme administrators: see RG 60.44–RG 60.55.

Factors affecting our review of scheme documents

RG 60.32 The court must be satisfied that we have had reasonable opportunity to examine the terms of the proposed scheme and the draft explanatory statement, as well as reasonable opportunity to make submissions to the court: see s411(2)(b).

RG 60.33 We consider the 14-day period referred to in s411(2)(a) will generally be the minimum period required to examine the scheme documents. Schemes that are novel or more complex will often require more time.

RG 60.34 We are likely to require more time to examine schemes such as:

(a) takeover type schemes;

(b) complex schemes;

(c) novel schemes;

(d) schemes of large size or value; and

(e) schemes with a high level of public interest or significance,

than other types of schemes, such as internal reconstruction schemes, schemes of little public interest or significance, or small and simple schemes.

Complex, novel or uncertain issues

RG 60.35 In *Re Archaean Gold NL* (1997) 23 ACSR 143 at 148, Santow J noted that:

> Schemes that are unopposed proceed effectively on an ex parte basis, through application by the proponents of the scheme. The court in the nature of things must therefore rely on the proponents of the scheme to anticipate the disclosure that is properly required and to draw any elements of the scheme that are potentially problematic to the court's attention.

RG 60.36 Proponents of a scheme should therefore raise with us any problematic, complex or novel issues, or areas of uncertainty, concerning the scheme arrangements or documentation. Issues that the proponents of a scheme should bring to our attention, for example, include questions of law that were the subject of counsel's advice, or any issue relating to the scheme where a company sought another expert's advice.

Reverse takeovers achieved by a scheme

RG 60.37 Issues that may be raised under a reverse takeover achieved by a scheme are similar to those raised under a reverse takeover achieved via Ch 6. Therefore, the concerns that we might take to court in relation to a reverse takeover scheme are similar to those we might take to the Takeovers Panel in relation to a Ch 6 reverse takeover (e.g. in relation to s602).

RG 60.38 A scheme results in a reverse takeover if:

(a) consideration for the members of the company proposing the scheme (the target company) is shares in the offeror company; and

(b) the scheme results in a change in control of the offeror company or has a material effect on control of the offeror company.

RG 60.39 We encourage any person proposing a scheme that will result in a member in the scheme company obtaining voting power in the offeror company of more than 20% to consult with us very early in the planning stage. We will consider such schemes on a case-by-case basis to determine if they result in a change in control of the offeror company, or have a material effect on control of the offeror company and therefore whether they result in a reverse takeover. We will monitor this area and, if it becomes necessary, will consider providing further guidance in the future.

> Note: Takeovers Panel Guidance Note 1 *Unacceptable circumstances* (GN 1) states that a bid that results in a reverse takeover may involve unacceptable circumstances (at GN 1.32(b)). A reverse takeover is defined very broadly as 'a change of control, or a material effect on control by an issue of shares as consideration for a bid, that either disenfranchises shareholders or does not meet the policy of Ch 6 (even if strictly it satisfies item 4 of s611—acquisitions that result from acceptances of a bid)'.

Compliance with the Corporations Act

RG 60.40 We will examine the scheme documents to ensure that they comply with the requirements of s411.

RG 60.41 Although s411 is widely or liberally construed, it cannot be used in certain circumstances—for example, to avoid the shareholder protections provided by a takeover under Ch 6 of the Corporations Act, or for an unlawful scheme.

> Note: See *Re Northumberland Insurance Co Ltd (No 3)* (1977) 3 ACLR 15.

RG 60.42 Additionally, we will examine whether the proposed scheme of arrangement contains a provision that is inconsistent with an express or implied provision of the Corporations Act. When a scheme involves another procedure under the Corporations Act, the scheme will not excuse compliance with the law relating to that procedure.

Note: See *Re Australian Consolidated Press* (1994) 14 ACSR 639.

RG 60.43 A scheme cannot be used to avoid a specific procedure laid down by the Corporations Act, although it can often be combined with that procedure. Examples of situations where the Corporations Act provides a specific power or procedure are:

(a) reducing the capital of a company (see s256B);

Note: See *Re Land & Concrete Pty Ltd and Others and the Companies Act* (1979) CLC 40-584.

(b) changing the status of a company (see Pt 2B.7);

Note: See *ASC v Marlborough Gold Mines Limited NL* (1993) 10 ACSR 230.

(c) amending the constitution of a company (see s136); and

(d) changing a company's name.

Note: See *Re Oceanic Steam Navigation Co Ltd* [1939] Ch 41.

Scheme conditions

RG 60.44 We will consider the appropriateness of any condition to which the operation of the scheme is subject. There must be adequate disclosure of any such condition in both the explanatory statement and the other scheme documents.

Note: The announcement of a scheme should include a copy of the scheme implementation agreement or a summary of all material conditions and termination rights to which the operation of the scheme is subject: see *BC Iron Limited* [2011] ATP 6.

Lock-up devices

RG 60.45 In deciding whether a break fee or other lock-up device in a scheme is appropriate, we will need to be satisfied that the device is not anti-competitive or coercive.

RG 60.46 To determine this we will take into account the matters considered in the Takeovers Panel Guidance Note 7 *Deal protection* (GN 7).

End date for a scheme

RG 60.47 ASIC prefers that a precise end date for the implementation of a scheme is specified in the scheme documents. If it is not possible to specify an end date, the scheme documentation should state clearly how the scheme is to be implemented and how the end date will be determined.

Third parties

RG 60.48 Some schemes are part of transactions that depend on the actions of third parties—for example, in a takeover type scheme, the acquiring company will not be a party to the scheme, but is likely to provide the consideration for the cancellation of target shares.

RG 60.49 We will aim to ensure that third parties in these situations are legally bound to fulfil these obligations—for example, we may request that a third party become contractually bound to provide these benefits.

> Note: See *Re Advance Bank Australia* (1996) 22 ACSR 476 and *Re Advance Bank Australia Ltd (No 2)* (1997) 22 ACSR 513.

RG 60.50 Depending on the significance of the arrangement to the scheme, proponents may need to submit relevant documentation to us for our consideration and, in certain cases, explain the arrangement in the explanatory statement.

RG 60.51 We will examine any disclaimer, release or indemnity provided to any person participating or otherwise involved in the scheme to ensure that it does not unnecessarily erode the effect of the scheme.

Scheme administrator

RG 60.52 In some cases a scheme administrator will be appointed to administer the scheme. However, this is not a requirement of the Corporations Act.

RG 60.53 We will consider whether a scheme administrator should be appointed. It may be appropriate, for example, to appoint an administrator when the scheme is implemented over an extended period of time and requires payment of the scheme consideration by instalments.

RG 60.54 Administrators should be contractually bound by the scheme document to discharge the functions and duties imposed upon them. The explanatory statement should disclose how a scheme administrator is bound and on what terms.

RG 60.55 The explanatory statement should also disclose how a scheme administrator will be remunerated.

D Disclosure obligations

Key points

The type and standard of disclosure we expect is prescribed under reg 5.1.01 and Sch 8 of the Corporations Regulations, unless we have waived these requirements.

This section provides additional guidance on:

- general disclosure obligations (see RG 60.58–RG 60.62);
- more specific disclosure obligations relating to certain types of schemes or certain classes of shareholder (see RG 60.63–RG 60.75);
- when an expert report is recommended or required for a scheme (see RG 60.76–RG 60.86);
- the types of situation where we may grant relief from the disclosure obligations (see RG 60.87–RG 60.91); and
- the disclosure obligations when there is a significant reduction in the taxation liabilities of the company that is the subject of the scheme (scheme company) or the scheme's proponents (see RG 60.92).

RG 60.56 Explanatory statements must disclose the information prescribed in reg 5.1.01 and Sch 8 of the Corporations Regulations, unless we grant a waiver from these requirements: see s411(3)(b) and 412(1)(a)(ii). These obligations require the disclosure of general information as well as the disclosure of more specific information relating to certain types of scheme or certain classes of shareholder.

RG 60.57 A number of judicial decisions have emphasised the need for candour and completeness in the disclosure of information in scheme documentation—for example, in *Phosphate Co-operative Co of Australia Ltd v Shears and Anor (No 3)* (1988) 5 ACLC 1046, the court stated that:

> The important issue about disclosure in the explanatory statement is that it should disclose all information that would tend to influence a sensible member's or creditor's decision on whether the scheme is in his interests.

General disclosure obligations

Advantages and disadvantages of the proposal

RG 60.58 We consider that the explanatory statement of a scheme should state clearly and prominently the comparative advantages and disadvantages of proceeding with or rejecting the scheme.

Identification of participants

RG 60.59 We will review scheme documents to ensure that they identify the criteria and the date for determining:

(a) the persons who are to participate in the scheme;

(b) the persons who are entitled to vote at the meeting of scheme participants; and

(c) the persons who will be bound by the scheme if it is approved by the court.

Classes of participant

RG 60.60 A scheme must be considered and voted on by each separate class of participant affected by the scheme.

RG 60.61 When a scheme involves separate classes, we expect the division of classes to be clearly specified in the scheme documents and disclosed in the explanatory statement, together with an explanation of why the divisions have been drawn.

RG 60.62 We will aim to ensure that the determination of classes for voting on a scheme is fair and equitable and takes into account the rights and obligations of each class in relation to the company and the effect of the scheme on them.

Specific disclosure obligations

Option holders

RG 60.63 The courts have predominantly held that option holders are to be treated as contingent creditors in a scheme. Despite this classification, we consider that the information that option holders require when considering whether or not to approve a scheme is much closer to the information required by members rather than creditors.

RG 60.64 We will consider applications to waive the creditor scheme information requirements for schemes involving option holders if the explanatory statement contains information suitable for a members' scheme. We will waive compliance in the form set out in Pro Forma 191 *Information to option/debenture holders* (PF 191).

List of option holders

RG 60.65 The explanatory statement must list the names of all known scheme creditors together with the debts owed to the creditors: see Sch 8, cl 8201(c) of the Corporations Regulations. Under s170 and 173 option holders may obtain

the names of other option holders. As they will be persons with like interests, option holders should be able to communicate with each other if they do not support the scheme. Information about other creditors does not appear relevant to an option holder's decision.

RG 60.66 We will consider applications to waive this requirement for option holders if the explanatory statement clearly sets out the rights of option holders under s170 and 173. Any ASIC relief will be in the form set out in Pro Forma 192 *Names and 'debts' to option holders* (PF 192).

Convertible note holders

RG 60.67 The information needed by convertible note holders is generally much closer to that needed by creditors. However, the equity conversion right of convertible notes means that an explanatory statement for a scheme that involves convertible note holders may need to contain information suitable for both creditors and members. The appropriate information will depend on the particular scheme.

Disclosure for a scrip takeover type scheme

RG 60.68 We consider that for schemes where an essential part of the overall transaction is that members accept shares in the acquiring company, disclosure in the explanatory statement should meet the requirements of a bidder's statement for a scrip bid.

> Note: Section 708(17) provides that the prospectus requirements in Ch 6D, Div 2 do not apply to a primary offer or invitation in a compromise or arrangement approved by a court under s411(1). Scheme proponents should also note that ASIC Corporations (On-Sale Disclosure Relief for Scrip Bids and Schemes of Arrangement) Instrument 2023/686 provides technical on-sale disclosure relief from s707(3) and 1012C in relation to securities received under the terms of a scheme.

RG 60.69 It is the responsibility of the directors of the target company to ensure that the scheme documentation contains this information before proposing the scheme to its members.

Scheme to remove minority shareholders

RG 60.70 We will aim to ensure that any scheme has the informed and uncoerced approval of those who may be adversely affected by it. This is most important in a scheme that will remove minority shareholders (an expulsion scheme), where the scheme has very different effects on different classes.

RG 60.71 When deciding whether to provide a statement under s411(17)(b), register an explanatory statement, make submissions to the court, or intervene in the proceedings of an expulsion scheme, we will consider whether minority shareholders are adequately informed and fairly treated.

RG 60.72 The explanatory statement for an expulsion scheme should disclose all material information available on the following matters:

(a) the purpose(s) of the scheme;

(b) the reasons for rejecting alternative means of achieving the purpose(s);

(c) the reasons for concluding that the consideration will be fair to those affected;

(d) the current and historical market prices of the shares;

(e) the value of the company both as a going concern and on liquidation;

(f) any reports or appraisals prepared in relation to the scheme;

(g) the possible tax implications of the scheme and suggestions to members to seek taxation advice;

(h) any special benefit(s) that will accrue to the majority shareholder following the acquisition of minority shareholdings; and

(i) any other material information known to the proponent or directors and relevant to making a decision on the proposed scheme.

The proponent of this type of scheme will often be best placed to assist in providing this information to the company for inclusion in the explanatory statement.

RG 60.73 Although it was concerned with a different process, the High Court decision in *Gambotto and Anor v WCP Limited and Anor* (1995) 16 ACSR 1 may provide a useful guide for reviewing fairness and disclosure in cases where minorities are to be expropriated. In relation to these issues, we will assess whether:

(a) all relevant information has been disclosed to minority shareholders;

(b) the consideration to be received by minority shareholders is fair, in so far as fairness is determined by minority shareholders receiving a reasonable and equal opportunity to share in the benefits that will flow to the majority shareholder if the scheme proceeds; and

(c) there is equal (but not necessarily identical) treatment of different classes—that is, any differences in consideration that a class receives is proportionate to the value of its securities or interests in the company.

RG 60.74 Whether the consideration is fair will depend on a number of factors such as the company's assets and liabilities, the market value of the company's securities, the past and likely future dividends and the nature of the corporation and its likely future.

RG 60.75 For more guidance on what is 'fair', see Regulatory Guide 111 *Content of expert reports* (RG 111).

Expert reports

RG 60.76 An explanatory statement must be accompanied by an independent expert report if the other party to a reconstruction in a scheme of arrangement holds at least 30% of the company or where there are common directors in the entities involved in the scheme of arrangement: see reg 5.1.01 and Sch 8, cl 8303 of the Corporations Regulations.

> Note: Even if an expert report is not required under the Corporations Regulations, it is common for a scheme company to commission one voluntarily for a transaction that is complex or effects a takeover.

RG 60.77 The expert must:

(a) state whether or not, in their opinion, the proposed scheme is in the best interests of the members of the scheme company; and

(b) set out their reasons for that opinion.

RG 60.78 The expert must not be an associate of the other party to the scheme: see Sch 8, cl 8303 of the Corporations Regulations and Regulatory Guide 112 *Independence of experts* (RG 112).

RG 60.79 If the expert report contains:

(a) a forecast of the profits or profitability of the company; or

(b) a statement that the market value of an asset or assets of the company or a related company differs from the value of the asset(s) shown in the books of the company or related company,

the report must not accompany the statement except with our consent in writing and in accordance with any conditions we may impose: see Sch 8, cl 8305 of the Corporations Regulations.

RG 60.80 Full details of the principles and matters that should be considered by a person preparing an expert report (whether the report is required by the Corporations Regulations or commissioned voluntarily) are set out in RG 111 and RG 112. We will only consent to an expert report that complies with these standards. Any consent will be in the form set out in Pro Forma 194 *Consent to expert's report* (PF 194).

Internal reconstructions

RG 60.81 In the case of an internal reconstruction, we will normally waive compliance with Sch 8, cl 8303 of the Corporations Regulations, requiring an independent expert report, if no person other than a member company of the group will be required to vote on the scheme. If the members of the holding company are required to vote, we may waive the requirements of Sch 8, cl 8303, subject to suitable alternative information being provided.

RG 60.82 We will examine more closely applications for relief that are associated with internal reconstructions if the scheme is likely to raise jurisdictional or taxation issues for members. The onus will be on the applicant to satisfy us that there are no such material issues, or that the information that is provided to members will be adequate. We will waive compliance in the form set out in Pro Forma 195 *'Best interest of the members' expert report* (PF 195).

Scheme to remove minority shareholders

RG 60.83 The ability of the company's directors to provide adequate independent information and advice to minority shareholders in expulsion schemes may frequently be questioned by minority shareholders or by the court. This is because, in most cases, the directors will be the nominees of the shareholder that is proposing the scheme in order to gain full ownership of the company. If the adequacy or independence of information is questionable, the scheme resolution may be invalid.

Note: See *Re Albert Street Properties Ltd* (1997) 23 ACSR 318.

RG 60.84 Directors should therefore strongly consider providing an independent expert report with the explanatory statement if one is not already required under s411(13), or Sch 8 of the Corporations Regulations.

RG 60.85 This report should provide a valuation of the shares. In addition, the report should state whether, in the opinion of the expert, the scheme is in the best interests of minority shareholders whose shares are being expropriated as well as continuing shareholders—that is, that it strikes a balance between the interests of these two groups. The report should also set out the reasons for this opinion.

Concise expert reports

RG 60.86 Although we recognise the benefit of concise expert reports (see RG 111.88–RG 111.89 and Table 2 in RG 111), s412(1)(a)(ii) requires an explanatory statement to contain all material information. The Corporations Act does not contain a mechanism that allows information to be incorporated by reference into an explanatory statement. Further, ASIC does not have the power to provide relief from s412(1)(a)(ii) to facilitate incorporation by reference. Accordingly, if an explanatory statement only contains a concise expert report, the concise report will need to include all material information that is contained in the full report. The concise expert report must include a statement that it includes all material information that is contained in the full report.

Waiver of disclosure obligations

RG 60.87 Regulation 5.1.01(1) and Sch 8 of the Corporations Regulations prescribe various information that must be included in a draft explanatory statement under s411(3)(b) or in a final explanatory statement under s412(1)(a)(ii). ASIC has the power to waive these disclosure requirements and we may impose conditions on any waiver we grant—for example, as mentioned in RG 60.63–RG 60.66, we may provide pro forma relief for schemes involving option holders.

RG 60.88 Proponents should submit applications for relief through the ASIC Regulatory Portal. They will need to pay fees for their application. We have provided details about payment options in the portal.

RG 60.89 Regulatory Guide 51 *Applications for relief* (RG 51) sets out how an applicant should make a relief application, including applying for a waiver from the disclosure requirements in reg 5.1.01 and Sch 8 of the Corporations Regulations.

Conditional financial disclosure relief

RG 60.90 An explanatory statement must disclose full particulars of any material change in the financial position of the company since the date of its last balance sheet laid before a general meeting of the company or sent to shareholders in accordance with s314 or 317: see Sch 8, cl 8302(h) of the Corporations Regulations.

RG 60.91 We are willing to grant conditional relief from this provision as long as the company provides an update of its financial position from its last formal, publicly released financial report (e.g. a half-yearly or audited financial report) and ensures that shareholders can easily access that original report.

Taxation considerations

RG 60.92 If we believe that a scheme of arrangement may involve a significant reduction in the taxation liabilities of the scheme company, or the scheme's proponents, we may require evidence that the proponent has informed the Australian Taxation Office (ATO) of the proposed scheme. Subject to s127 of the *Australian Securities and Investments Commission Act 2001* (dealing with confidentiality), we may raise matters concerning taxation with the ATO.

Distribution of explanatory statements

RG 60.93 Under s412(1) a scheme company is required to send an explanatory memorandum to its members with every notice convening a scheme meeting. While ASIC does not have the power to modify this requirement, the courts have in the past given orders allowing the explanatory statement to be distributed to members electronically.

Note: See *Alinta Limited (No 2)* [2007] FCA 1378.

Supplementary information

RG 60.94 If a scheme company proposes to amend the terms of a scheme, or otherwise provide supplementary information to its members, after the explanatory statement has been dispatched, that supplementary information will need to be given to ASIC for review prior to being given to the court for approval. We will apply the same principles in reviewing supplementary information as we do when reviewing explanatory statements: see RG 60.96 for the timing required for the dispatch of supplementary information.

Note: See *Re Citect Corporation Limited* (2006) 56 ACSR 663 and *Re Excel Coal Limited* (2006) 60 ACSR 184 for examples of where the court has approved amendments to the terms of a scheme after the explanatory statement has been dispatched.

E Voting on a scheme

Key points

We consider that shareholders should generally be given at least 10 days to consider any supplementary information before having to vote: see RG 60.95–RG 60.96.

Interested parties can vote on a scheme but they should disclose their interests and either not vote in favour of the scheme or vote in their own separate class: see RG 60.97–RG 60.98.

We would be concerned about any scheme that relied on proxy votes for approval or that appeared to involve some form of share splitting: see RG 60.99–RG 60.101.

Supplementary information

RG 60.95 If a scheme company proposes to amend the terms of a scheme, or otherwise provide supplementary information to its members, after the dispatch of the explanatory statement, it is important that all members who are required to vote on a scheme have adequate time to consider that supplementary information before they decide to accept or reject the scheme.

RG 60.96 It will generally be appropriate for scheme participants, including those voting by proxy, to be given at least 10 days to consider any supplementary documentation distributed before being required to vote on the scheme.

Voting

RG 60.97 The Corporations Act does not prohibit proponents or their associates (interested parties) who hold target shares or target securities from voting in relation to an acquisition. However, if the vote is to demonstrate approval by the remaining shareholders:

(a) interested parties should fully disclose their interests; and

(b) interested parties should either not vote in favour of the resolution to approve the scheme, or should vote in a separate class.

RG 60.98 When interested parties vote in the same class as other members or creditors because they have a divergent commercial interest that falls short of requiring they meet as a separate class, voting should be by ballot. This ballot should be retained by the company, or an audited record of the voting should be retained. This will assist the court in determining whether or not to approve the scheme.

Proxy schemes

RG 60.99 We note the decision of Santow J in *Re Advance Bank Australia* (1996) 22 ACSR 476 and *Re Advance Bank Australia Ltd (No 2)* (1997) 22 ACSR 513 concerning the use of a scheme of arrangement to approve a deemed granting of proxy votes by members of the company in relation to later meetings or resolutions. Santow J approved the Advance Bank scheme of arrangement on the basis that, among other things, the later resolutions would have been passed without reliance on the deemed proxies. This suggests that such proxies are only likely to be allowed when the relevant resolutions would be passed in any event without reliance on the proxies.

Share splitting

RG 60.100 Share-splitting devices employed by proponents or opponents of a scheme may be objectionable.

RG 60.101 If we feel there is evidence that a scheme vote has been unfairly influenced by activities such as share splitting, we would generally advise a court to utilise its powers under s411(4)(a)(ii)(A) to disregard the need for a majority vote.

F Second hearing: Confirmation of a scheme

Key points

We will ordinarily not appear at the second (confirmation) hearing of a scheme if we have no objection to the scheme, unless we feel there are matters that should be brought to the court's attention.

Whether we have an objection to a scheme under s411(17) will be based primarily on whether we consider shareholders are missing out on the protections and benefits they would receive under a Ch 6 takeover: see RG 60.104–RG 60.110.

If a shareholder undertakes to us that they will object to a scheme and the objection relates to the matters we take into account when deciding whether to give our 'no objection' statement under s411(17)(b), we will consider the objection before deciding whether to give our statement: see RG 60.111–RG 60.112.

ASIC appearance at second hearing

RG 60.102 ASIC will ordinarily not appear at the second hearing under s411(4)(b) if we have no objection to the scheme. However, we will appear at this hearing if we consider that further matters have arisen that should be raised with the court. For example, we may have concerns about the conduct of the scheme meetings, or we may consider that some aspects of the scheme need to be altered, or conditions need to be imposed under s411(6).

RG 60.103 We may appear at the second hearing even if we did not appear at the first hearing under s411(1). This will usually be when the scheme, or process, as a whole raises issues that we consider should be brought to the court's attention.

Objections under s411(17)

RG 60.104 Under s411(17)(b) we are required to decide whether we have no objection to the proposed scheme of arrangement. We are not required to determine or prove the purpose of the scheme.

RG 60.105 The primary question we will consider under s411(17) is whether, having regard to the principles in s602, shareholders are adversely affected by the takeover being implemented by a scheme of arrangement rather than a takeover bid. We will not consider whether the purpose of the scheme is to avoid making the acquisition under Ch 6 for reasons that do not adversely affect offerees.

RG 60.106 We will not oppose an application before the court on grounds arising out of s411(17) unless we have concerns relating to the disclosure provided or the principles set out in s602 or we have some other reason to oppose the scheme (e.g. public policy grounds). However, in these circumstances we may still make submissions, where we do not oppose the scheme proposal but wish to bring certain issues to the court's attention.

ASIC statement under s411(17)(b)

RG 60.107 We will state in writing that we have no objection to a scheme of arrangement if an applicant satisfies us that:

(a) all material information relating to the proposed scheme has been disclosed to us;

(b) the standard of disclosure to all members fulfils the requirements under reg 5.1.01 and Sch 8 of the Corporations Regulations;

(c) the standard of disclosure to, and treatment of, all members is equivalent to the standard that would be required by the disclosure requirements and the principles in s602 relating to the target securities in a takeover bid; and

(d) there are no other reasons to oppose the scheme (e.g. public policy grounds) and the other matters referred to in this guide (including at RG 60.23–RG 60.31) have been complied with.

RG 60.108 Our statement under s411(17)(b) will be in the form set out in Pro Forma 190 *No objection under s411(17)(b)* (PF 190).

RG 60.109 We will not provide a statement under s411(17)(b) until the second (confirmation) hearing because we will not be in a position to advise the court properly until we have had an opportunity to observe the entire scheme process. This is also consistent with the wording of s411(17), which relates the statement to the court's approval of the scheme.

RG 60.110 We recognise, however, that the proponents of a scheme may reasonably wish for an indication of our views before committing to the expense of calling a meeting or printing the scheme documentation. We will therefore provide a letter prior to the first hearing indicating whether we propose to make submissions to the court, or intervene to oppose the scheme, at this hearing. This letter will be in the form set out in Pro Forma 193 *Indication of intent under s411(17)(b)* (PF 193). We will expressly state in the letter that our position, as indicated, is based on the information provided by the scheme proponents to date and may change as we consider appropriate.

Note: Our preliminary s411(17) letter will also help proponents satisfy the court that we have had a reasonable opportunity to examine scheme materials and make submissions to the court as required by s411(2)(b).

Objection by a shareholder

RG 60.111 The courts have held that they are not required to consider whether a scheme's purpose is to avoid Ch 6 requirements if ASIC has provided a 'no objection' statement under s411(17)(b).

> Note 1: See *Re GIO Australia Holdings Ltd* [1999] NSWSC 1276 at [4]; *Re Hibernian Friendly Society (NSW) Ltd* (2002) 44 ACSR 206; *Re Citect Corporation Ltd* (2006) 56 ACSR 663; *Re Coles Group Ltd (No 2)* [2007] VSC 523.
>
> Note 2: The courts have held that even when ASIC provides a 'no objection' statement, an avoidance purpose is still a discretionary factor the courts may consider when deciding whether to approve a scheme: see *Re Coles Group Ltd (No 2)* [2007] VSC 523.

RG 60.112 If a shareholder undertakes to us that they will object to a scheme and the objection relates to the matters we take into account when deciding whether to give our 'no objection' statement under s411(17)(b), we will consider the objection before deciding whether to give our statement. We will not withhold our statement merely because there is an objector. We will apply a similar approach when deciding whether to give our 'indication of intent' letter before the first court hearing and what we might say in that letter.

G Procedural issues

Key points

This section provides guidance on the following procedural issues:

- the procedure for lodging scheme documents (see RG 60.113–RG 60.114);
- the fees associated with schemes of arrangement (see RG 60.115);
- where and when scheme documents will be published (see RG 60.116);
- when ASIC is likely to make an appearance in court for a particular scheme (RG 60.117–RG 60.118); and
- the different types of action we can take if we consider shareholders are not being adequately protected under the scheme of arrangement (RG 60.119–RG 60.120).

Lodgement requirements

RG 60.113 Proponents of a scheme should lodge copies of the relevant documents, and any supporting material and court process, using the ASIC Regulatory Portal. Hard copies of the documents are not required for lodgement.

RG 60.114 Proponents should send these documents no less than 14 days before the initial application to the court. Proponents should also submit any application for a waiver of disclosure requirements in Sch 8 of the Corporations Regulations, or request for a statement under s411(17)(b), through the ASIC Regulatory Portal. Proponents will need to pay fees for these transactions. We have provided details about payment options in the portal.

Fees

RG 60.115 The following fees items under the Corporations (Fees) Regulations 2001 apply to schemes of arrangement:

(a) Item 40 for any action a person requests us to carry out including:

(i) registration under s412(6);

(ii) consent to an expert report under Sch 8, Pt 3, cl 5 of the Corporations Regulations; and

(iii) exemption under reg 5.1.01;

(b) Item 41 for a statement under s411(17)(b); and

(c) Item 42 for examination/lodgement of an explanatory statement.

Publication of documents

RG 60.116 We will place all explanatory statements lodged with us, or registered by us, onto our public database. We will not do this until the statements are either registered under s412(6) or approved by the court for dispatch to members and/or creditors under s411(1) or (1A).

ASIC court appearances

RG 60.117 We will not normally appear before the court unless:

(a) we have been asked to assist the court or provide the court with our views—this may occur even if we have no specific issues of our own to raise and do not oppose the scheme;

(b) there are issues that we consider should be raised before the court and the parties may not raise or address those issues adequately;

(c) the proponents have not given us adequate time to consider the scheme documents; or

(d) we oppose calling the scheme meeting or confirming the scheme.

RG 60.118 Where we wish to oppose an application before the court or bring certain issues to the court's attention, we will consider, in the circumstances, whether to intervene under s1330, or whether to seek leave from the court to otherwise intervene or appear as a friend of the court.

ASIC action

RG 60.119 We have a number of options available to us if we consider that:

(a) the standard of disclosure to, and treatment of, members is not commensurate with the standard that would be required by reg 5.1.01 and Sch 8 of the Corporations Regulations, s636 and the s602 principles; or

(b) the information provided to shareholders about the proposed compromise or arrangement is otherwise unfair or misleading.

RG 60.120 We may:

(a) appear in court on an application under s411 (e.g. under s411(2)(b)(ii));

(b) take action for breach of directors' duties;

(c) seek orders under s232;

(d) seek injunctions or prosecutions for prohibited conduct under Pt 7.10, Div 2;

(e) seek orders under s1324B; and/or

(f) apply to the Takeovers Panel for a declaration of unacceptable circumstances.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Ch 6	A chapter of the Corporations Act (in this example, numbered 6)
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
GN 21 (for example)	Takeovers Panel guidance note (in this example numbered 21)
PF 190 (for example)	An ASIC pro forma (in this example numbered 190)
proponents	The parties proposing the scheme
Pt 5.1 (for example)	A part of the Corporations Act (in this example, numbered 5.1)
reconstruction	A compromise or arrangement between an entity and its members or between a managed investment scheme and the members of the scheme (including but not limited to a trust scheme or foreign scheme) other than a Pt 5.1 scheme
reg 5.1.01 (for example)	A regulation of the Corporations Regulations (in this example numbered 5.1.01)
RG 51 (for example)	An ASIC regulatory guide (in this example numbered 51)
s411 (for example)	A section of the Corporations Act (in this example, numbered 411)
scheme	A compromise or arrangement that gives rise to a scheme of arrangement under Pt 5.1 of the Corporations Act

Related information

Headnotes

arrangement, Australian Taxation Office (ATO), capital reduction, compromise, convertible note holders, creditors' scheme, disclosure, members' scheme, merger, minority shareholders, option holders, Pt 5.1 scheme, reconstruction, reverse takeovers, review of scheme documentation by ASIC, s411(17)(b) no objection letter, schemes of arrangement, share splitting, takeovers

Legislative instruments and pro formas

ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734

ASIC Corporations (On-Sale Disclosure Relief for Scrip Bids and Schemes of Arrangement) Instrument 2023/686

PF 190 *No objection under s411(17)(b)*

PF 191 *Information to option/debenture holders*

PF 192 *Names and 'debts' to option holders*

PF 193 *Indication of intent under s411(17)(b)*

PF 194 *Consent to expert's report*

PF 195 *'Best interest of the members' expert report*

Regulatory guides

RG 51 *Applications for relief*

RG 111 *Content of expert reports*

RG 112 *Independence of experts*

Legislation

Australian Securities and Investments Commission Act 2001 s127

Corporations Act 2001 Pt 5.1, s136, 232, 233, 256B, 411, 411(17)(b), 412, 413, 602, 620, 624, 631(1), 636, 1324B, 1330, Ch 6

Corporations Regulations 2001 regs 5.1.01, 7.12.02(b), 7.12.17, Sch 8

Cases

Re ACM Gold Limited and Mt Leyshon Gold Mines Ltd (1992) 7 ACSR 231

Re Advance Bank Australia (1996) 22 ACSR 476

Re Advance Bank Australia Ltd (No 2) (1997) 22 ACSR 513

Re Albert Street Properties Ltd (1997) 23 ACSR 318

Alinta Limited (No 2) [2007] FCA 1378

Re Archaean Gold NL (1997) 23 ACSR 143

ASC v Marlborough Gold Mines Limited NL (1993) 10 ACSR 230

Re Australian Consolidated Press (1994) 14 ACSR 639

Re BC Iron Limited [2011] ATP 6

Catto v Ampol Ltd (1989) 7 ACLC 717

Re Citect Corporation Ltd (2006) 56 ACSR 663

Re Coles Group Ltd (No 2) [2007] VSC 523

Re Excel Coal Limited (2006) 60 ACSR 184

Re Foundation Healthcare Ltd (2002) 43 ACSR 680

Gambotto and Anor v WCP Limited and Anor (1995) 16 ACSR 1

Re GIO Australia Holdings Ltd [1999] NSWSC 1276

Re Hibernian Friendly Society (NSW) Ltd (2002) 44 ACSR 206

Re Land & Concrete Pty Ltd and Others and the Companies Act (1979) CLC 40-584

Re MIM Holdings Ltd (2003) 45 ACSR 554

Nicron Resources Ltd v Catto (1992) 8 ACSR 219

Re Northumberland Insurance Co Ltd (No 3) (1977) 3 ACLR 15

Re Oceanic Steam Navigation Co Ltd [1939] Ch 41

Phosphate Co-operative Co of Australia Ltd v Shears and Anor (No 3) (1988) 5 ACLC 1046

Re Stockbridge Ltd (1993) 9 ACSR 637

Re The Bank of Adelaide (1979) 22 SASR 481

Re Wallace Dairy Co Ltd (1980) ACLR 139

Consultation papers

CP 127 *Schemes of arrangement: Statements under s411(17)(b)*

CP 365 *Remaking ASIC class orders on takeovers, compulsory acquisitions and relevant interests*

Other guidance

Takeovers Panel Guidance Note 1 *Unacceptable circumstances*

Takeovers Panel Guidance Note 7 *Deal protection*

Takeovers Panel Guidance Note 21 *Collateral benefits*