

ASIC Class Order [CO 98/98]

Small proprietary companies which are controlled by a foreign company but which are not part of a large group

Issued 10/7/1998

Related document: [IR 98/12]

Class Order [CO 98/98] provides relief to small proprietary companies which are controlled by a foreign company from the requirement to prepare and lodge an audited financial report provided that they are not part of a large group.

This class order replaces Class Order [CO 97/2347].

This instrument has effect under s341(1) of the *Corporations Act 2001*.

This compilation was prepared on 11 August 2009 taking into account amendments up to [CO 09/626]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Subsection 341(1) — Class Order and Revocation

Pursuant to subsection 341(1) of the *Corporations Act 2001* (“the Act”) the Australian Securities and Investments Commission (“ASIC”) hereby makes an order in respect of each company in the class of companies mentioned in the Schedule (“the Company”) relieving the Company from compliance with Parts 2M.2 and 2M.3 insofar as Parts 2M.2 and 2M.3 are applicable pursuant to subsection 292(2)(b) of the Act in relation to a financial year (“the Relevant Financial Year”) where:

- (a) the directors of the Company have resolved, no earlier than three months before the commencement of the Relevant Financial Year, that the relief available under this order be applied in respect of the Relevant Financial Year; and
- (b) unless the Company applied the relief available under this order in respect of the financial year immediately preceding the Relevant Financial Year, notice of the resolution mentioned in paragraph (a) signed by a director or company secretary is lodged with ASIC using Form 384 during the period commencing 3 months before the commencement of the Relevant Financial Year

and ending 4 months after the end of the Relevant Financial Year;
and

- (c) if the relief available under this order is not applied in respect of the financial year (the *first non-reliance year*) immediately following a financial year in which the relief was applied then, unless the Company lodges an annual financial report prepared under Chapter 2M of the Act for the first non-reliance year, notice the Company has ceased to apply the relief signed by a director or company secretary is lodged with ASIC using Form 394:
- (i) during the period commencing 3 months before the commencement of the first non-reliance year and ending 4 months after the end of the first non-reliance year; or
- (ii) such other time as is approved in writing by an ASIC Officer to whom ASIC's powers and functions under s.340 have been delegated.

[Historical note: [CO 98/98] amended 11/8/2009 [CO 09/626] by

- replacing subparagraph (b). Subparagraph (b) previously read:

“(b) unless the Company applied the relief available under this order in respect of the financial year immediately preceding the Relevant Financial Year, notice of the resolution mentioned in paragraph (a) signed by a director or company secretary is lodged with ASIC using Form 384:

(i) if the Relevant Financial Year is the first financial year of the Company after its registration, within three months of date of registration of the Company;

(ii) if the Company became controlled by a foreign company during the Relevant Financial Year (and has not previously been controlled by a foreign company during the Relevant Financial Year), within three months of date upon which the Company became controlled by the foreign company;

(iii) if the Relevant Financial Year ended between 28 June 2007 and 30 June 2007 (inclusive), within 4 months of the end of the Relevant Financial Year;

(iv) if the Relevant Financial Year ends between 1 July 2007 and 30 June 2008 (inclusive), by 31 October 2007; and

(v) otherwise, before the commencement of the Relevant Financial Year, but not more than three months before the commencement of the Relevant Financial Year,

or such other time as is approved in writing by an ASIC Officer to whom ASIC's powers and functions under s340 have been delegated; and”;
- replacing subparagraph (c)(i). Subparagraph (c)(i) previously read:

“(i) within 4 months after the end of the first non-reliance year; or”.

[CO 98/98] previously amended 18/12/2007 [CO 07/822] by:

- in paragraph (b) replacing the word “notice” and replacing it with the term “unless the Company applied the relief available under this order in respect of the financial year immediately preceding the Relevant Financial Year, notice”;
- at the end of paragraph (b) replacing the term “delegated.” with the term “delegated; and”;
- after paragraph (b) inserting new paragraph (c).

[CO 98/98] previously amended 17/7/2007 [CO 07/505] by:

- in the introductory words deleting the words “ending on or after 1 July 1998”.

The introductory words formerly read:

“Pursuant to subsection 341(1) of the *Corporations Act 2001* (“the Act”) the Australian Securities and Investments Commission (“ASIC”) hereby makes an order in respect of each company in the class of companies mentioned in the Schedule (“the Company”) relieving the Company from compliance with Parts 2M.2 and 2M.3 insofar as Parts 2M.2 and 2M.3 are applicable pursuant to subsection 292(2)(b) of the Act in relation to a financial year ending on or after 1 July 1998 (“the Relevant Financial Year”) where:”;

- in paragraph (b) deleting the words “(including, in respect of a year ending on or before 30 September 1999, Form 384 as specified by ASIC for the purposes of Class Order 97/0565 or Class Order 97/2347)”. Paragraph (b) formerly read: “notice of the resolution mentioned in paragraph (a) signed by a director or company secretary is lodged with ASIC using Form 384 (including, in respect of a year ending on or before 30 September 1999, Form 384 as specified by ASIC for the purposes of Class Order 97/0565 or Class Order 97/2347):”;
- in subparagraph (b)(ii) deleting the word “and” (second occurring);
- replacing subparagraph (b)(iii). Subparagraph (b)(iii) formerly read: “(iii) otherwise, before the commencement of the Relevant Financial Year, but not more than three months before the commencement of the Relevant Financial Year,”; and
- inserting subparagraph (b)(iv) and (b)(v).

Para (b)(i) of [CO 98/98] previously amended 8/2/2000 [CO 00/321] by replacing all occurrences of the word “incorporation” with the word “registration”.]

SCHEDULE

A small proprietary company which is controlled by a foreign company for all or part of the Relevant Financial Year, other than a company which is a part of a group which is a large group.

Interpretation

In this order:

For the purposes of paragraph (a) of this order, a resolution of the directors of the Company made for the purposes of this order as in force immediately before the commencement of ASIC Class Order [CO 07/505] (the “amending order”) is taken to be a resolution made for the purposes of this order as amended by the amending order;

“combined” means the result of aggregating the financial information of the entities in the group, being financial information in respect of each entity for that part of the Relevant Financial Year that each entity is part of the group, and making all such adjustments as would be required in preparing consolidated financial statements in accordance with accounting standards in force at the end of the Relevant Financial Year (even if the standard does not otherwise apply to the financial year of some or all of the entities concerned in respect of that, or any, financial year);

“entity” means a company, a registered scheme, a disclosing entity, any other corporation, a partnership, an unincorporated body or a trust;

[*Historical note:* Defn "entity" amended on 7/2/2003 by [CO 03/67] by deleting the words "a recognised company" after the words "a disclosing entity,".]

“group” means the Company together with all of the following:

- (a) any entity which controlled the Company at any time during, or at the end of, the Relevant Financial Year and which was registered or formed in Australia or carries on business in Australia; and
- (b) any other entity (“an Other Entity”) which is both:
 - (i) controlled at any time during, or at the end of, the Relevant Financial Year by any foreign company which at the same time controls the Company; and
 - (ii) registered or formed in Australia or carries on business in Australia during that part of the Relevant Financial Year when it is controlled by the same foreign company as controls the Company; and
- (c) any entity which is controlled at any time during, or at the end of, the Relevant Financial Year by the Company (whether or not it carries on business or is formed or registered in Australia); and
- (d) any entity which is controlled by an Other Entity during that part of the Relevant Financial Year when the Other Entity is controlled by the same foreign company as controls the company (whether or not it carries on business or is formed or registered in Australia);

[*Historical note:* Paras (a), (b) and (c) of the Schedule to [CO 98/98] were amended 8/2/2000 [CO 00/321] by replacing all occurrences of the word “incorporation” with the word “registration”.]

“large group” means a group, which for the Relevant Financial Year, satisfies at least 2 of the following paragraphs:

- (a) the combined revenue of the group for the Relevant Financial Year is \$25 million, or any other amount prescribed for the purposes of paragraph 45A(2)(a) of the Act, or more;
- (b) the combined value of gross assets of the group at the end of the Relevant Financial Year is \$12.5 million, or any other amount prescribed for the purposes of paragraph 45A(2)(b) of the Act, or more;
- (c) the group has 50 or more employees (part-time employees being counted as an appropriate fraction of a full-time equivalent) at the end of the Relevant Financial Year;

“revenue” means the revenue calculated in accordance with accounting standards in force at the end of the Relevant Financial Year as if all of the entities were reporting entities (even if a standard does not otherwise apply to some or all of the entities concerned in respect of that, or any financial year); and

“value of gross assets” means the value of gross assets calculated in accordance with accounting standards in force at the end of the Relevant Financial Year as if all of the entities were reporting entities (even if a standard does not otherwise apply to some or all of the entities concerned in respect of that, or any, financial year).

[*Historical note:* Interpretation section amended 17/7/2007 [CO 07/505] by:

- inserting before the definition of “combined” the paragraph beginning “For the purposes of paragraph (a) ...” and ending “... as amended by the amending order;”;
- deleting the definition of “gross operating revenue”. The definition formerly read:
 ““gross operating revenue” means the gross operating revenue calculated in accordance with accounting standards in force at the end of the Relevant Financial Year as if all of the entities were reporting entities (even if a standard does not otherwise apply to some or all of the entities concerned in respect of that, or any, financial year);”;
- replacing paragraph (a) of the definition of “large group”. The definition formerly read:
 “(a) the combined gross operating revenue of the group for the Relevant Financial Year is \$10 million or more;”;
- in paragraph (b) of the definition of “large group” replacing the term “\$5 million” with the term “\$12.5 million, or any other amount prescribed for the purposes of paragraph 45A(2)(b) of the Act;”;
- in paragraph (c) of the definition of large group deleting the word “and”; and
- inserting the definition of “revenue” after the definition of “large group”.]

Pursuant to subsection s341(1) of the Corporations Law the Australian Securities and Investments Commission hereby revokes Class Order Number 97/2347 dated 23 December 1997 with effect from:

- (i) in respect of entities which apply the relief provided by Class Order 98/0095 dated 10 July 1998, financial years ending after 7 July 1998; and
- (ii) in all other cases, financial years ending after 30 June 1998.

Dated the 10th day of July 1998

Signed by George Durbridge
as a delegate of the Australian Securities and Investments
Commission

[Historical note: [CO 98/98] further amended 7/2/2003 [CO 03/67] by replacing references to the Corporations Law with the Corporations Act 2001.]

EDITORIAL NOTE

Class Order [CO 98/98] should be read in conjunction with Policy Statement 58 [PS 58] Financial reporting requirements — Registered foreign companies and Australian companies with foreign company shareholders.

Notes to ASIC Class Order [CO 98/98]

Note 1

ASIC Class Order [CO 98/98] (in force under s341(1) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the Tables below.

Table of Instruments

Instrument number	Date of making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 98/98]	10/7/1998	10/7/1998	-
[CO 00/321]	8/3/2000	8/2/2000	-
[CO 03/67]	7/2/2003	7/2/2003	-
[CO 07/505]	10/7/2007	17/7/2007	-
[CO 07/822]	3/12/2007	18/12/2007	-
[CO 09/626]	11/8/2009	11/8/2009	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Introductory words	am. [CO 07/505]
Para (b)	am. [CO 07/505]; am [CO 07/822]; rs. [CO 09/626]
Para (b)(i)	am. [CO 00/321]
Para (b)(ii)	am. [CO 07/505]
Para (b)(iii)	am. [CO 07/505]
Para (b)(iv)	ad. [CO 07/505]
Para (b)(v)	ad. [CO 07/505]
Para (c)	ad. [CO 07/822]
Para (c)(i)	Rs. [CO 09/626]
Schedule -- Interpretation	am [CO 03/67]; am [CO 07/505]
Schedule Para (a)	am. [CO 00/321]
Schedule Para (b)	am. [CO 00/321]
Schedule Para (c)	am. [CO 00/321]

