

Corporations Law Simplification program

Second Corporate Law  
Simplification Bill

Exposure Draft

Volume 1  
Provisions

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# SECOND CORPORATE LAW SIMPLIFICATION BILL

## Volume 2 Commentary

*The second bill in the simplification program covers the setting-up and running of a company. It encompasses material in chapters 2, 3 and 4 of the current Corporations Law.*

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## SETTING UP A COMPANY

This snapshot describes how to set up a company after the First and Second Corporate Law Simplification Bills commence.

To set up a new company, a person must apply to the ASC for registration of the company.

A proprietary company must have a share capital and must not engage in any activity which would require lodgment of a prospectus unless shares are offered only to existing shareholders or employees. A public company may have a share capital or be limited by guarantee.

A company must have at least 1 member and if it is a proprietary company can have no more than 50 shareholders (not counting employee shareholders). A proprietary company may have a single director who may also be the company secretary. A public company must have at least 3 directors and a company secretary.

A company can choose any name unless it is identical to a name reserved or registered under the Law for another body, or a name that is included on the National Business Names Register, or is unacceptable (for example, the name includes the word 'ANZAC').

A company must have a registered office. A public company must display its name and the words 'registered office' prominently at that office. A public company's registered office must be open for at least 3 hours each business day. A proprietary company does not need to keep its registered office open, but must, on request, provide access to relevant documents and registers.

A company must keep (generally at its registered office) registers of members, options, debenture holders and charges. Members of the public may inspect and obtain copies of these registers. A person must not use or disclose information obtained from a register to contact or send material to the holder of securities unless the use or disclosure is approved by the company or is relevant to the holding of the securities.

When a company is registered, the ASC allocates to it a unique Australian Company Number (ACN). A company's name and ACN must appear on its public documents. A company may elect to have a common seal. If it does, the seal must contain the company's name and ACN.

A company does not need to have a constitution. Instead it can use the replaceable rules contained in the Law to govern the management of its internal affairs.

If a company wishes to replace or discard any replaceable rule contained in the Law, it may do so by adopting a constitution by special resolution passed at a general meeting of the company. The replaceable rules and a company's constitution have effect as a contract.

The replaceable rules will not apply to proprietary companies with a single member who is also the sole director.

Copies of a company's constitution will be available from the ASC.

## **RUNNING A COMPANY**

This snapshot describes how to run a company after the First and Second Corporate Law Simplification Bills commence.

All shares are no par value shares. Shares are issued at a price determined by the directors and all money received is credited to the company's share capital account. A company may pay dividends but only out of profits.

A company must not acquire shares in itself unless it follows the procedures set out in the Law. If a company acquires control of an entity that holds shares in the company, then within the following 12 months either the company must cease to control that entity or the entity must cease to hold shares in the company.

A company may financially assist a person to acquire shares in the company or a holding company if the assistance does not involve a deterioration in the company's financial position that is material to the interests of the company or its creditors, or if it is given in good faith in the ordinary course of commercial dealing. In all other cases the assistance must first be approved by special resolution of the company's shareholders.

Before a company can return capital to its shareholders or undertake a share buy-back, it must be solvent and able to pass a balance sheet test (the company's assets (other than goodwill) must exceed its liabilities). A company may redeem redeemable preference shares out of profits or the proceeds of a fresh share issue.

Capital returns which treat all shareholders equally require shareholder approval by ordinary resolution passed at a general meeting of the company. A share buy-back which treats all shareholders equally requires shareholder approval if it exceeds the 10/12 limit, ie 10% of the smallest number, at any time during the last 12 months, of votes attaching to voting shares in the company. Selective capital reductions and selective buy-backs must be approved by shareholders by special resolution or by a resolution agreed to by all ordinary shareholders. The company is required to disclose relevant information of which it is aware to members to enable them to make informed decisions.

Shareholder approval is not required for any capital reduction which does not involve a diminution of liability in respect of unpaid share capital or the cancellation of any paid up share capital that is lost or is not represented by available assets.

A shareholder or a creditor may apply to the court for an injunction if the capital reduction or share buy-back would result in the company failing the balance sheet test immediately after the reduction or share buy-back takes place. A shareholder may also apply to the court for an order opposing a capital reduction on the grounds that it is not fair and reasonable.

A company's directors are personally liable if the company would be insolvent immediately after payment of a dividend, a reduction of capital, redemption of preference shares, the giving of financial assistance or a share buy-back. A shareholder or creditor may apply to the court for an injunction if the company would be insolvent immediately after the happening of any of those events.

The company has the burden of proof in any court application made to challenge a capital reduction or buy-back.

A directors' meeting may be held using any technology agreed to by all of the directors. A resolution may be passed by the directors without a directors' meeting if they all sign a document containing a statement that they are in favour of the resolution.

A proprietary company with more than 1 member may pass a resolution without a general meeting if all shareholders entitled to vote on the resolution sign a document stating that they are in favour of the resolution. However, resolutions to remove a director, to appoint a director in place of a director who has been removed, or to remove an auditor can only be passed at a general meeting.

A director may call a general meeting. The directors must hold a general meeting on the request of members who hold at least 5% of the votes that may be cast at the meeting or 200 members who are entitled to vote at

the meeting. Members holding at least 5% of the votes which may be cast at the general meeting may call and hold a general meeting.

A company may hold a general meeting at 2 or more venues using any technology that gives members a reasonable opportunity to participate. At least 21 days notice must be given for all meetings.

A single director of a proprietary company may pass a resolution by recording and signing any decision. A single member company is not required to hold general meetings. The member may pass a resolution by recording and signing any decision.

A company must keep sufficient accounting records to enable annual financial statements to be prepared and audited. Public companies and large proprietary companies (except those which have their annual accounts audited under the present Law and elect to continue operating under those rules) must prepare annual financial statements in accordance with applicable accounting standards, have those statements audited, sent to members and lodged with the ASC. A small proprietary company need only prepare annual financial statements if required to do so by the ASC or shareholders with 5% of the company shares.

Directors of companies which are required to prepare financial statements must state whether in their opinion there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due and in their report give members the information they need to be aware of in order to understand the company's overall position.

In particular the directors must comment on results of operations, key strategic initiatives and likely future developments in the company's business.

A company can elect to send shareholders a concise financial report, rather than the full annual financial statements, although a member can choose to receive the full statement and directors' report. Shareholders may also elect to receive nothing at all.

The directors of a company which has not lodged accounts with the ASC in the previous 12 months must pass a resolution stating whether in their opinion there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

A public company must hold an annual general meeting to enable members to consider its financial statements, directors' report and auditor's report. No proprietary company is required to hold an annual general meeting. The chairperson of an annual general meeting must allow a reasonable opportunity for the members at the meeting to ask questions about or make comments on the management of the company and to ask the company's auditor questions relevant to the auditor's report.

A company must lodge an annual return for each calendar year with the ASC to update key information available on the public record.

## REPLACEABLE RULES A NEW CONCEPT

This Bill gives companies the option of not having a constitution and introduces the concept of 'replaceable rules'.

Under the existing Law, the internal affairs of companies are governed by a 2 part constitution - the memorandum and articles of association. The memorandum must set out basic structural information about the company, for example, the company name, its share capital and how the liability of members is limited. This document has outlived its usefulness because if objects clauses are required they may be set out in articles.

The articles of association set out the rules governing the day to day internal management of a company, for example, the division of power between the directors and the members and how meetings are to be conducted. Companies may either have their own articles or may use the rules set out in Table A (Schedule 1 of the Law) with or without amendments.

The existing approach to governing internal administration is unsatisfactory in that:

- companies are often run without regard to their articles
- companies often have difficulties in locating a current copy of their articles, which in any case will often be out of date
- the process of keeping articles up to date with changes to the Law can be expensive (this will be even more the case after the commencement of the First Bill which will remove the requirement for proprietary companies to hold annual general meetings - these companies will need to hold meetings specifically to adopt amendments of articles).

Further, in the case of a proprietary company with only 1 shareholder who is also the sole director, articles will not serve any useful purpose.

These problems are addressed in this Bill which will put new rules (the replaceable rules) into the Law dealing with the internal administration of companies. These rules will be based on rules in existing Table A, varied as necessary in light of common commercial practices. They will be easy to find. They will be updated from time to time as the need arises and apply as amended (unless this is precluded by a company's constitution).

New companies will not have memorandums of association and will not be required to have articles, but may adopt a constitution if they wish to displace or modify the replaceable rules. These will not apply to existing companies unless they take positive action. Existing companies will be able to amend or repeal their constitution in the same way as articles and may elect to repeal their constitution so that the replaceable rules will apply to them. Existing companies will also be able to adopt some or all of the replaceable rules by reference or otherwise through their constitution.

A company's rules will be those replaceable rules contained in the Law as modified by the company's constitution, but not including those rules which are displaced. The company's constitution and replaceable rules will take effect as a contract between the company and each member, between the company and each director and company secretary and between a member and every other member under which each person agrees to observe and perform the company's constitution and replaceable rules.

A replaceable rule will be identified by the fact that the section or subsection of the Law will contain the words "(replaceable rule - see section 135)" in its heading. Some replaceable rules will apply only to proprietary companies and in these provisions the text refers expressly to a proprietary company and not merely to a company. Some rules will be replaceable rules for proprietary companies and mandatory rules for public companies. In these provisions, the section or subsection of the Law which contains the replaceable rule has in its heading the words "(replaceable rule for proprietary companies and mandatory rule for public companies - see section 135)".

Section 135 explains what a replaceable rule is and states that a breach of a replaceable rule is not a contravention of the Law and as a consequence does not give rise to civil or criminal liability under the Law

or give a person standing to seek an injunction under section 1324 of the Law. A breach of a replaceable rule will not give rise to a direct cause of action under the Law, although it can be used as the basis of an action for breach of contract. It could also be used as evidence in an action against the company or the directors, in particular, for a breach of the directors' duty of care under section 232 or an action for oppression under section 260.

The replaceable rules will not apply to single member proprietary companies where the sole member is also the sole director. A mandatory provision applicable to such companies will enable the member and director to exercise all the powers of the company (although a single member company will not be prevented from having a constitution).

## STRUCTURE OF THE BILL

The Bill has been developed in the light of the 7 Task Force Proposals that were released during May to December 1994 and the responses to them. The table shows how the chapters and schedules in the Bill align with the Proposals and on what pages they can be found in the exposure draft.

The chapters marked with an asterisk are not dealt with in this Bill. They are included only to show where provisions which will be dealt with in later segments of the Simplification Program will fit in.

Proposal	Bill	
	Core provisions	Transitionals and consequentials
Forming a company	Chapter 2A Registering a company	page 9 Schedule 1 page 179
Company names	Chapter 2B Basic elements of a company	page 17
	Chapter 2C Registers* Part 2.5 inserted by the First Bill  Chapter 2D Directors* <i>Existing Part 3.2</i>  Chapter 2E Financial benefits to related parties* <i>Existing Part 3.2A</i>	
Forming a company	Chapter 2F Members' rights and remedies	page 49 Schedule 1 page 179
Meetings	Chapter 2G Meetings	page 59 Schedule 2 page 205
Share capital	Chapter 2H Shares  Chapter 2J Transactions affecting share capital includes buy-back provisions inserted by First Bill	page 95 page 103 Schedule 3 page 213
	Chapter 2K Charges* <i>Existing Part 3.5</i>  Chapter 2L Debentures* Reserved for Division 4 of Part 7.12	
Accounts and audit	Chapter 2M Financial statements and audit	page 123 Schedule 4 page 225
Annual returns	Chapter 2N Annual returns and lodgments with the ASC	page 163 Schedule 5 page 237
Defunct companies	Chapter 5A Deregistration of companies	page 171 Schedule 6 page 239

## WHAT HAS HAPPENED TO CHAPTERS 2, 3 AND 4?

*Chapter 2 is repealed, apart from:*

- sections 206A to 206K (moved to Part 2J.2)
- section 208 (now section 1096A)
- section 213 (now section 1091C)
- section 216A to 216K (now Chapter 2C)
- Divisions 2, 3, 4, 4A and 5 of Part 2.2
- Division 2 moved to transitional provisions
- Divisions 3 and 5 moved to Chapter 5B
- Divisions 4 and 4A moved to Chapter 10

*Chapter 3 is repealed, apart from:*

- Part 3.2 (now Chapter 2D)
- Part 3.2A (now Chapter 2E)
- Part 3.4 (moved to Part 2F.1)
- Division 2 of Part 3.5 (now Chapter 2K)
- Division 1 of Part 3.7 (moved to Part 2M.4)

*Chapter 4 is repealed, apart from:*

- Part 4.1 (moved to Chapter 5B)

## CHAPTER 2A

### REGISTERING A COMPANY

#### Part 2A.1

##### What companies can be registered

112	Types of companies
113	Proprietary companies
114	Public companies
115	Restrictions on size of partnerships and associations
116	Trade unions cannot be registered

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##### How a company is registered

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118	ASC gives company ACN, registers company and issues certificate
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120	Members, directors and company secretary of a company on registration
121	Registered office
122	Paying expenses incurred in promoting and setting up company
123	Company may have common seal

## CHAPTER 2A - REGISTERING A COMPANY

### Part 2A.1 - What companies can be registered

#### 112 *Types of companies*

A company may be registered under this Law as either a proprietary *company* (see section 113) or as a *public company* (see section 114). A company need only have 1 member.

#### 113 *Proprietary companies*

- (1) A company must comply with subsection (2) if it is to:
  - (a) be registered as a proprietary company; or
  - (b) change to a proprietary company; or
  - (c) remain registered as a proprietary company.
- (2) A proprietary company:
  - (a) must be either:
    - (i) a company limited by shares; or
    - (ii) an unlimited company; and
  - (b) must have no more than 50 non-employee shareholders.
- (3) In applying paragraph (2)(b) :
  - (a) count joint holders of a particular parcel of shares as 1 person; and
  - (b) an employee shareholder is:
    - (i) a shareholder who is an employee of the company or of a subsidiary of the company; or
    - (ii) a shareholder who was an employee of the company, or of a subsidiary of the company, when they became a shareholder.
- (4) Subject to subsection (5), a proprietary company must not engage in any activity that would require the lodgment of a prospectus under Part 7.12 or a corresponding law.
- (5) Subsection (4) does not apply to an offer of shares to:
  - (a) existing shareholders of the company; or
  - (b) employees of the company or of a subsidiary of the company.
- (6) An act or transaction is not invalid merely because of a contravention of subsection (4).

**Note:** One consequence of a contravention of this section is that the ASC may require the proprietary company to change to a public company (see section 164).

#### 114 *Public companies*

- (1) A public company may be:
  - (a) a company limited by shares; or

- (b) a company limited by guarantee; or
  - (c) an unlimited company.
- (2) A company limited by guarantee must not issue shares in itself.

**115** *Restrictions on size of partnerships and associations*

A person must not participate in the formation of a partnership or association which has as an object gain for itself or for any of its members and which either:

- (a) has more than 20 members; or
- (b) has more than the number of members it is allowed to have under an application order made by the Minister under Part 1.3;

unless the partnership or association is incorporated or formed under an Australian law.

Note: See section 103 for the effect of a contravention of this section.

**116** *Trade unions cannot be registered*

A trade union cannot be registered under this Law.

**Part 2A.2 - How a company is registered**

**117** *Applying for registration*

- (1) Lodging application

To register a company, a person must lodge an application with the ASC.

Note 1: For the types of companies that can be registered see Part 2A.1.

Note 2: A name may be reserved for the company before the application is lodged (see Part 2B.6).

- (2) Contents of the application

The application must state the following:

- (a) the type of company that is proposed to be registered under the Corporations Law of this jurisdiction
- (b) the company's proposed name (unless the ACN is to be used)
- (c) the name and address of each person who has consented to become a member
- (d) the name, date and place of birth and residential address of each person who has consented, in writing, to become a director
- (e) the name, date and place of birth and residential address of each person who has consented, in writing, to become a company secretary
- (f) the address of the company's proposed registered office
- (g) for a public company - the proposed opening hours of its registered office (if they are not the standard opening hours)
- (h) the address of the company's proposed principal place of business (if it is not the address of the proposed registered office)

- (i) for a company limited by shares or an unlimited company - the number and class of shares each member has agreed, in writing, to take up and the amount each member has agreed, in writing, to pay for each share
- (j) for a company limited by guarantee - the proposed amount of the guarantee that each member has agreed to in writing.

If the company is to have a constitution on registration, a copy of the constitution must be lodged with the application.

(3) An applicant must not lodge an application unless the applicant has the consents and agreements referred to in subsection (2) before the application is lodged.

#### *118 ASC gives company ACN, registers company and issues certificate*

(1) If the ASC is satisfied that an application complies with section 117, the ASC must:

- (a) give the company an ACN; and
- (b) register the company; and
- (c) issue a certificate that:
  - (i) states the company's name, ACN (unless its ACN is used in its name) and type; and
  - (ii) states that the company is registered as a company under the Corporations Law of this jurisdiction; and
  - (iii) specifies the date of registration.

(2) Certificate is conclusive evidence of the matters in it

A certificate stating that a company has been registered under the Corporations law of any jurisdiction is conclusive evidence that:

- (a) all requirements of that Law for its registration have been complied with; and
- (b) the company was duly registered as a company under that Law on the date specified in the certificate.

(3) ASC must keep record of registration

The ASC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with the ASC.

#### *119 Company comes into existence on registration*

A company comes into existence on the date on which it is registered.

The company's name is the name specified in the certificate of registration.

Note: The company remains in existence until it is deregistered (see Chapter SA).

#### *120 Members, directors and company secretary of a company on registration*

Anyone listed with their consent as a member, director or company secretary of a company in an application for registration of the company becomes a member, director or company secretary of the company on its registration.

Note: A member's name must be entered in the register of members (see section 216B).

*121 Registered office*

The address listed for the company's registered office in the application for registration becomes the address of the company's registered office on registration.

*122 Paying expenses incurred in promoting and setting up company*

The expenses incurred in promoting and setting up a company may be paid out of the company's assets.

*123 Company may have common seal*

(1) A company may have a common seal. If a company does have a common seal, the company must set out on it:

- (a) the company's name only (if the company's ACN is used in its name); or
- (b) the company's name, ACN and the expression "Australian Company Number".

Note: For acceptable abbreviations see section 148.

(2) A person must not use, or authorise the use of, a seal that purports to be the company's common seal if the seal does not comply with the requirements set out in subsection (1).

*For consequential and transitional amendments for Chapter 2A see Schedule I*

## CHAPTER 2B

### BASIC FEATURES OF A COMPANY

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## CHAPTER 2B - BASIC FEATURES OF A COMPANY

### Part 2B.1 - Company powers and how they are exercised

#### 124 *Legal capacity and powers of a company*

(1) A company has the legal capacity and powers of an individual both in and outside this jurisdiction. A company also has all the powers of a body corporate, including the power to:

- (a) issue shares in the company
- (b) cancel shares in the company
- (c) issue debentures
- (d) distribute any of the company's property among the members, in kind or otherwise
- (e) give security by charging uncalled capital
- (f) grant a floating charge over the company's property
- (g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction
- (h) do anything that it is authorised to do by any other law (including a law of a foreign country).

(2) A company's legal capacity to do something is not affected by the fact that the company's interests are not, or would not be, served by doing it.

#### 125 *Constitution may limit powers and set out objects*

(1) If a company has a constitution, it may contain an express restriction on, or a prohibition of, the company's exercise of its powers. The exercise of a power by the company is not invalid merely because it is contrary to an express restriction or prohibition in the company's constitution.

(2) If a company has a constitution, it may set out the company's objects. An act of the company is not invalid merely because it is contrary to an object in the company's constitution.

#### 126 *Exercise of a company's power to make contracts*

(1) A company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. A company may make, vary, ratify or discharge a contract without using a seal.

(2) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.

#### 127 *Exercise of a company's power to execute deeds*

A company may execute a document as a deed if the document is expressed to be executed as a deed and signed by:

- (a) 2 directors of the company; or
- (b) a director and a company secretary of the company; or

- (c) for a proprietary company with only 1 director - that director in the presence of a witness who also signs their name and adds their own address.

## **Part 2B.2 - Contracts before registration**

### *128 Contracts before registration*

(1) If a person enters into, or purports to enter into, a contract on behalf of, or for the benefit of, a proposed company, the company becomes bound by the contract and entitled to its benefit if the company, or a company that is reasonably identifiable with it, is registered and ratifies the contract:

- (a) within a reasonable period after the contract is entered into; or
- (b) within any period agreed to by the parties to the contract.

(2) The person is released from any liability under the pre-registration contract if the company enters into another contract in substitution for it:

- (a) within a reasonable period after the pre-registration contract is entered into; or
- (b) within any period agreed to by the parties to the pre-registration contract.

(3) The person is liable to pay damages to each other party to the pre-registration contract if a company is not registered, or a company is registered but does not ratify the contract or enter into a substitute for it:

- (a) within a reasonable period after the contract is entered into; or
- (b) within the period agreed to by the parties to the contract.

The maximum amount the person is liable to pay to a party is the amount the company would be liable to pay to the party if the company had been registered and had ratified the contract and then completely failed to perform it.

(4) If proceedings are brought to recover damages under subsection (3) because the company is registered but does not ratify the pre-registration contract or enter into a substitute for it, the court may do anything that it thinks just in the circumstances, including ordering the company:

- (a) to pay all or part of the damages that the person is liable to pay
- (b) to transfer property that the company received because of the contract to a party to the contract
- (c) to pay an amount to a party to the contract.

(5) If the company ratifies the pre-registration contract but fails to perform all or part of it, the court may order the person to pay all or part of the damages that the company is ordered to pay.

### *129 Person may be released from liability but is not entitled to indemnity*

(1) Any of the other parties to the pre-registration contract may release the person who entered into, or purported to enter into, the contract from any liability in relation to that contract. The release must be in writing. The party giving the release is not entitled to recover damages under section 128 from the person.

(2) Despite any rule of law or equity, the person does not have any right of indemnity against the company in respect of the person's liability under this Part. This is so even if the person was acting, or purporting to act, as trustee for the company.

130 *This Part replaces other rights and liabilities*

This Part replaces any rights or liabilities anyone would otherwise have in relation to the pre-registration contract.

**Part 2B.3 - Assumptions people dealing with companies are entitled to make**

131 *Assumptions*

(1) A person is entitled to make the assumptions in subsections (3) to (9) in relation to:

- (a) dealings with a company; and
- (b) dealings with a person who has, or purports to have, directly or indirectly acquired title to property from a company.

The assumptions may be made even if an officer or agent of the company has acted or is acting fraudulently, or has forged a document, in connection with the dealings.

(2) If a person is entitled to assume a matter, the company or anyone referred to in paragraph (1)(b) is not entitled to assert in proceedings in relation to the dealings that the matter is incorrect.

(3) Constitution and replaceable rules complied with

A person may assume that the company's constitution (if any) and any replaceable rules that apply to the company have been complied with.

(4) Director or company secretary

A person may assume that anyone who appears, from information provided by the company that is available to the public from the ASC, to be a director or a company secretary of the company:

(5) Officer or agent

A person may assume that anyone who is held out by the company to be an officer or agent of the company:

- (a) has been duly appointed; and
- (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or secretary of a similar company.

(6) Officer or agent with authority to warrant that document is genuine or true copy -

A person may assume that anyone who is, or may be assumed to be, an officer or agent of the company who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.

(7) *Document duly executed* A person may assume:

- (a) that a document has been duly executed by the company if it is signed by 2 people, 1 of whom is, or may be assumed to be, a director of the company, and the other a director or a company secretary of the company; or
- (b) that a document has been duly executed by a proprietary company with only 1 director if it is signed by 1 person who is, or may be assumed to be, the sole director of the company and that person's signature is witnessed.

For the purposes of paragraph (b), a person may assume that the person who signs the document and states next to the signature that they are the sole director of the proprietary company is the sole director of that company.

(8) Document duly sealed

A person may assume that a document has been duly sealed by the company if it bears what appears to be an impression of the company's common seal and either:

- (a) the sealing of the document appears to be witnessed by 2 people, 1 of whom is, or may be assumed to be, a director of the company, and the other a director or a company secretary of the company; or
- (b) the sealing of the document appears to be witnessed by 1 person who is, or may be assumed to be, the sole director and sole company secretary of the company.

For the purposes of paragraph (b), a person may assume that anyone who witnesses the sealing of the document and states next to the signature that they are the sole director and sole company secretary of the company occupies both offices.

(9) Proper performance of duties

A person may assume that the officers and agents of the company properly perform their duties to the company.

*132 Person who knows or ought to know is not entitled to make assumptions*

A person is not entitled to make assumptions in relation to dealings referred to in subsection 131(1) if:

- (a) they actually know that the assumption is incorrect; or
- (b) they ought to know that the assumption is incorrect because of their connection or relationship with the company.

*133 Information available to the public from the ASC does not constitute constructive notice*

(1) A person is not taken to have information about a company merely because the information is available to the public from the ASC.

(2) Subsection (1) does not apply in relation to a document that has been lodged under Division 2 of Chapter 2K or a corresponding previous law to the extent that the document relates to a charge that is registrable under that Division or law.

**Part 2B.4 - Replaceable rules and constitution**

*134 Internal management of companies*

A company may choose to govern its internal management by a constitution, replaceable rules, or a combination of both. There are also rules about internal management in the common law and in provisions of this Law that are not replaceable rules.

*135 Replaceable rules*

(1) A section or subsection (except this section and section 138) whose heading contains the words:

- (a) replaceable rule - applies as a replaceable rule to:
  - (i) each company that is registered after the commencement of this Part; and

- (ii) any company registered before that commencement that repeals its constitution after that commencement; and
- (b) replaceable rule for proprietary companies and mandatory rule for public companies - applies:
  - (i) as a replaceable rule to any proprietary company that is registered after the commencement of this Part; and
  - (ii) as a replaceable rule to any company that is registered after that commencement and that changes to a proprietary company (but only while it is a proprietary company); and
  - (iii) as a replaceable rule to any proprietary company registered before that commencement that repeals its constitution after that commencement; and
  - (iv) as an ordinary provision of this Law to any public company whenever registered.

The section or subsection does not apply as a replaceable rule to a proprietary company while the same person is both its sole director and sole shareholder.

Note i: See section 224B for a provision that specifically applies to a proprietary company while the same person is both its sole director and sole shareholder.

Note 2: A company may include in its constitution (by reference or otherwise) a replaceable rule that does not otherwise apply to it.

- (2) Company's constitution can displace or modify replaceable rules

A provision of a section or subsection that applies to a company as a replaceable rule can be displaced or modified by the company's constitution.

- (3) Effect of replaceable rules

The replaceable rules as they apply to a company have effect as a contract (see section 138). A failure to comply with them is not a contravention of this Law (so the provisions about criminal liability, civil liability and injunctions do not apply).

Note: However a failure to comply with a replaceable rule may be evidence of a contravention of a provision of this Law (for example, section 232 (duty and liability of officer of corporation)).

### 136 *Constitution of a company*

- (1) A company has a constitution if:
  - (a) a copy of a constitution for the company is lodged with the application for registration of the company; or
  - (b) the company adopts a constitution by special resolution after the company's registration.,

Note: Immediately after the commencement of this Part, the memorandum and articles of a company registered under this Law before that commencement have effect as if they together constituted a constitution adopted by the company under paragraph (1)(b):

- (2) The company may modify or repeal its constitution, or a provision of its constitution, by special resolution.
- (3) The company's constitution may provide that the special resolution does not have any effect unless a further requirement specified in the constitution relating to that modification or repeal has been complied with.
- (4) Unless the constitution provides otherwise, the company may only modify or repeal a further requirement it adopts under subsection (3) if the further requirement is itself complied with.

(5) The company must lodge a copy of a special resolution with the ASC within 14 days after it is passed.

*137 Date of effect of adoption, modification or repeal, of constitution*

(1) A special resolution adopting, modifying or repealing a company's constitution takes effect:

- (a) if no later date is specified in the resolution - on the date on which resolution is passed; or
- (b) on a later date specified in the resolution.

(2) Subsection (1) does not apply to the date of effect of a special resolution passed in connection with a change of name, change of type or a variation or cancellation of class rights.

*138 Effect of constitution and replaceable rules*

(1) A company's constitution (if any) and any replaceable rules that apply to the company may be enforced as a contract:

- (a) between the company and each member; and
- (b) between the company and each director and company secretary; and
- (c) between a member and each other member;

under which each person agrees to observe and perform the constitution and rules so far as they apply to that person.

(2) Unless a member of a company agrees in writing to be bound, they are not bound by a modification of the constitution made after the date on which they became a member so far as the modification:

- (a) requires the member to take up additional shares; or
- (b) increases the member's liability to contribute to the share capital of, or otherwise to pay money to, the company; or
- (c) imposes or increases restrictions on the right to transfer the shares already held by the member, unless the modification is made in connection with the company's change from a public company to a proprietary company.

*139 Copies of constitution*

(1) A company that adopts a constitution after it is registered must lodge a copy of it with the ASC within 14 days after the special resolution adopting the constitution is passed.

(2) Company must lodge modification of constitution

A company must lodge with the ASC a copy of any modification of its constitution within 14 days after the special resolution making the modification is passed.

(3) ASC may require company to lodge consolidated constitution

A company must lodge with the ASC a consolidated copy of its constitution if the ASC directs it to do so.

(4) Company must send copy of constitution to member

A company must send a copy of its constitution to a member of the company within 7 days if the member:

- (a) asks the company, in writing, for the copy; and

- (b) pays any fee (up to the prescribed amount) required by the company.

## **Part 2B.5 - Registered office and places of business**

### *140 Registered office*

(1) A company must have a registered office in Australia. All communications and notices to the company may be addressed to its registered office.

Note: The application for registration of a company contains the address of its registered office (see section 117).

(2) A company must lodge notice of a change of address of its registered office with the ASC within 14 days after the date on which the change occurs. The notice must be in the prescribed form.

(3) A notice of change of address takes effect from the later of:

- (a) the 7th day after the notice was lodged; or
- (b) a later day specified in the notice as the date from which the change is to take effect.

### *141 Serving documents on a company*

(1) A document may be served on a company:

- (a) by leaving it at, or by posting it to, the company's registered office; or
- (b) by delivering a copy of the document personally to a director of the company who resides in Australia or in an external Territory; or

(c) if a liquidator of the company has been appointed - by leaving it at, or by posting it to, the address of the liquidator's office in the most recent notice of that address lodged with the ASC; or

(d) if an administrator of the company has been appointed - by leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with the ASC.

(2) This section does not affect the operation of an Australian law authorising, or a court's power to authorise, a document to be served on a company in a different way.

### *142 ASC may change address of registered office to a director's address*

(1) A company that does not occupy the premises at the address of its registered office must be able to show to the ASC the occupier's written consent to the company's use of those premises as its registered office.

(2) If the ASC becomes aware that the occupier of those premises:

- (a) has not consented to the use of the premises as the address of the company's registered office; or
- (b) has withdrawn that consent;

the ASC may give written notice to a director of the company who resides in Australia that the ASC intends to change the address of the company's registered office to the director's residential address.

(3) If the ASC is not notified of the address of the company's proposed new registered office under subsection 140(2) within 14 days after the notice is sent, the ASC may change the address of the company's registered office to the director's residential address.

### 143 *Change of address of principal place of business*

A company must lodge with the ASC notice of a change of address of its principal place of business within 14 days after the date on which the change occurs. The notice must be in the prescribed form.

### 144 *Company's name must be displayed at registered office etc.*

- (1) A public company must display its name and the words "Registered Office" prominently at its registered office.
- (2) Every company must display its name prominently at every office and place at which the company carries on business and that is open to the public.

### 145 *Opening hours of registered office of public company*

- (1) The registered office of a public company must be open to the public:
  - (a) each business day from at least 10am to 12 noon and from at least 2pm to 4pm; or
  - (b) at least 3 hours chosen by the company between 9am and 5pm each business day.
- (2) If the company chooses its own opening hours, the hours must be specified:
  - (a) if the company is to have its own opening hours from its registration - in the application for registration of the company under section 117; or
  - (b) if the company changes its opening hours at any time after its registration - in the most recent notice of change of opening hours lodged with the ASC under subsection (3).
- (3) The company must lodge notice of a change in the opening hours of its registered office with the ASC within 14 days after the day on which a change occurs. The notice must be in the prescribed form.

## *Part 2B.6 - Names*

### Division 1 - Selecting and using a name

#### 146 *A company's name*

- (1) A company's name on registration is:
  - (a) an available name chosen by the company or its ACN; and
  - (b) any other word required by subsection (2) or (3) to be part of that company's name.
- (2) Limited companies

Subject to sections 149 and 150, a limited public company must have the word "Limited" at the end of its name. A limited proprietary company must have the words "Proprietary Limited" at the end of its name.

- (3) Unlimited proprietary companies

An unlimited proprietary company must have the word "Proprietary" at the end of its name.

#### 147 *When a name is available*

- (1) A name is available to a company unless the name is:
  - (a) identical (under rules set out in the regulations) to a name that is reserved or registered under this Law for another body; or

- (b) identical (under rules set out in the regulations) to a name that is included on the national business names register in respect of another individual or body who is not the person applying to have the name; or
- (c) unacceptable for registration under the regulations.

(2) Minister may consent to a name being available to a company

The Minister may consent in writing to a name being available to a company, even if the name is:

- (a) identical to a name that is reserved or registered under this Law for another body; or
- (b) unacceptable for registration under the regulations.

The Minister's consent may be given subject to conditions.

#### 148 *Acceptable abbreviations*

(1) The abbreviations set out in the table may be used:

- (a) instead of words that this Law requires to be part of a company's name or to be included in a document or on a company's common seal; and
- (b) instead of words that are part of a company's name; and
- (c) with or without full stops.

Word	Abbreviation
Company	Co or Coy
Proprietary	Pty
Limited	Ltd
Australian	Aust
Number	No
and	&
Australian Company Number	ACN

(2) If a company's name includes any of these abbreviations, the word corresponding to the abbreviation may be used instead.

#### 149 *Exemption from using "Limited" in name*

(1) The ASC may register a company limited by guarantee without "Limited" in its name, or alter the registration of a company of that type by omitting "Limited" from its name, if it has a constitution that:

- (a) requires the company to pursue charitable purposes only and to apply its income in promoting those purposes; and
- (b) prohibits the company making distributions to its members or paying fees to its directors; or
- (c) requires the directors to approve all other payments the company makes to directors.

Note: Chapter 2E dealing with financial benefits to related parties also applies to payments to directors.

(2) The company must notify the ASC as soon as practicable if any of those requirements or the prohibitions in its constitution are not complied with or if its constitution is modified to remove any of those requirements or either of the prohibitions.

#### *150 Exemption from using "Limited" in name - pre-existing licences*

(1) A licence in force immediately before the commencement of this section that allowed a company to omit "Limited" from its name continues in force subject to subsection (3).

(2) The company must notify the ASC as soon as practicable if it:

- (a) breaches a condition of the licence; or
- (b) pursues objects or purposes that would have prevented it being granted the licence; or
- (c) applies its profits or other income to promote objects or purposes that would have prevented it being granted the licence; or
- (d) pays a dividend to its members; or
- (e) modifies its constitution to allow it to do anything set out in paragraphs (b) to (d).

(3) The ASC may revoke the company's licence if the company does anything set out in paragraphs (2)(a) to (e).

Note: For the ASC's power to include "Limited" in a company's name see section 158.

#### *151 Reserving a name*

(1) A person may lodge an application in the prescribed form with the ASC to reserve a name for a company. If the name is available, the ASC must reserve it.

Note: For available names, see section 147.

(2) The reservation lasts for 2 months from the date that the application was lodged. An applicant may lodge an application for an extension of the reservation during a period that the name is reserved, and the ASC may extend the reservation for 2 months.

(3) The ASC must cancel a reservation if the person who applied for it requests the ASC in writing to do so.

#### *152 Using a name and ACN on documents*

(1) A company must set out its name on all its public documents and eligible negotiable instruments.

(2) Subject to sections 153 and 154, the company must also set out the expression "Australian Company Number" followed by its ACN with its name, or with 1 of the references to its name, in the document or instrument. If the company's name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

Note 1: If a company has a common seal, its name and ACN must be set out on the seal (see section 123).

Note 2: A public company must display its name at its registered office (see subsection 144(1)).

Note 3: See also subsection 144(2).

#### *153 Exception to requirement to have ACN on receipts*

A company does not have to set out the expression "Australian Company Number" followed by its ACN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.

**154** *Exception to requirement to have ACN on transport documents*

- (1) A company may lodge an application with the ASC in the prescribed form for an exemption from the requirement in section 152 to set out the expression "Australian Company Number" followed by its ACN on transport documents (for example tickets, waybills or bills of lading).
- (2) The ASC may exempt the applicant, or a specified class of companies of which the applicant is a member, from that requirement if the ASC is satisfied that the exemption is necessary or desirable to promote or maintain consistency in international practices relating to the form, content or use of transport documents.
- (3) An exemption must be in writing and may be expressed to be subject to conditions.
- (4) A company that relies on the exemption must not contravene a condition to which the exemption is subject.
- (5) The exemption, or a variation or revocation of the exemption, takes effect when a copy is published in the Gazette.

**155** *Only certain companies can use certain words in their names*

A person must not carry on business under a name or title that:

- (a) has the words "Limited" or "No Liability" (or an abbreviation of those words) at the end; or
- (b) includes the word "Proprietary" (or an abbreviation of it);

unless allowed or required to do so under an Australian law.

**Division 2 - Changing a company's name**

**156** *Company changing its name*

- (1) If a company wants to change its name, it must:
  - (a) pass a special resolution adopting a new name; and
  - (b) lodge an application in the prescribed form with the ASC.
- (2) The company must lodge a copy of the special resolution with the ASC within 14 days after it is passed.
- (3) If the proposed name is available, the ASC must change the company's name by altering the details of the company's registration to reflect the change. The change of name takes effect when the alteration is made.

Note: For available names, see section 147.

**157** *ASC's power to direct company to change its name*

- (1) The ASC may direct a company in writing to change its name if:
  - (a) the name should not have been registered; or
  - (b) the company has breached a condition under subsection 147(3) on the use of the name.
- (2) The company must pass a resolution to change its name and lodge a copy of the resolution with the ASC within 2 months after the ASC makes the direction.

(3) If the company does not comply with subsection (2), the ASC may alter the details of the company's registration by changing the company's name to its ACN and any other words that section 146 requires. The change of name takes effect when the alteration is made.

**158 ASC's power to include "Limited" in company's name**

- (1) The ASC may change a company's name so that it includes the word "Limited" if:
- (a) the company ceases to satisfy a requirement in paragraph 149(1)(a) or (c) or a prohibition in paragraph 149(1)(b); or
  - (b) the company modifies its constitution to remove any of the requirements or a prohibition; or
  - (c) the ASC revokes a licence referred to in section 150 that applies to the company.
- (2) The ASC must alter the details of the company's registration to reflect the change of name. The change of name takes effect when the alteration is made.

**159 ASC must issue new certificate if company's name changes**

If the ASC has changed a company's name, it must give the company a certificate of registration in its new name.

**160 Effect of name change**

A change of company name does not affect the rights or obligations of the company or anybody else.

**Part 2B.7 - Changing company type**

**161 Changing company type**

- (1) A company may change to a company of a different type as set out in the table by:
- (a) passing a special resolution resolving to change its type; and
  - (b) lodging an application with the ASC in accordance with section 162.

<b>This type of company may change from</b>	<b>... to this type of company</b>
proprietary company limited by shares	unlimited proprietary company unlimited public company public company limited by shares
unlimited public company <i>Only if, within the last 3 years, it was not a limited company that became an unlimited company.</i>	proprietary company limited by shares public company limited by shares
unlimited proprietary company	unlimited public company
public company limited by shares	unlimited public company unlimited proprietary company proprietary company limited by shares
company limited by guarantee	public company limited by shares unlimited public company proprietary company limited by shares unlimited proprietary company

unlimited public company	public company limited by shares
<i>Only if, within the last 3 years, it was not a limited company that became an unlimited company.</i>	proprietary company limited by shares
	unlimited proprietary company
unlimited public company	unlimited proprietary company

Note: A public company seeking to change to a proprietary company must comply with the requirements for proprietary companies set out in section 113.

(2) The company must lodge a copy of the special resolution with the ASC within 14 days after it is passed.

### 162 *Application and accompanying documents*

(1) To change its type, a company must lodge with the ASC an application in the prescribed form accompanied by the following:

- (a) a copy of the special resolution that resolves to change the type of the company, specifies the new type and the company's new name (if a change of name is necessary)
- (b) a copy of any other special resolution passed in connection with the change of type
- (c) for a company limited by guarantee changing to a company limited by shares - a statement signed by the directors of the company that in their opinion the company's creditors are not likely to be prejudiced by the change of type and that sets out their reasons for that opinion
- (d) for a company limited by guarantee changing to a company limited by shares or an unlimited company - a list of the proposed shareholders that shows the number and class of shares to be issued to each shareholder
- (e) for a company limited by shares or a company limited by guarantee changing to an unlimited company:
  - (i) an assent to the change of type in the prescribed form signed by all the members of the company; and
  - (ii) a statement by a director or a company secretary of the company that all the members of the company have signed the assent.

(2) A special resolution mentioned in this section takes effect only when the ASC alters the details of the company's registration to reflect the company's new type.

Note: An offer of shares associated with a proposed change of type may be subject to the prospectus provisions (see section 1018).

### 163 *ASC changes type of company*

(1) In dealing with an application from a company limited by guarantee to change to a company limited by shares, the ASC must first be satisfied that the company's creditors are not likely to be materially disadvantaged by the change. In making its decision, the ASC may:

- (a) give a written direction to the company requiring the company to notify its creditors of the proposed change of type (the notification must be made in whatever way the ASC thinks is appropriate); or
- (b) consider submissions from creditors of the company.

(2) If the ASC is satisfied that the company's creditors are not likely to be materially disadvantaged by the change and the application complies with section 162, the ASC must alter the details of the company's registration to reflect the company's new type and issue a new certificate of registration to the company.

(3) If the application is for any other change of type and it complies with section 162, the ASC must alter the details of the company's registration to reflect the company's new type and issue a new certificate of registration to the company.

(4) A change of type under this section takes effect when the alteration is made.

**164** *ASC may direct a proprietary company to change to a public company in certain circumstances*

(1) The ASC may direct a proprietary company to change to a public company under section 162 if it is satisfied that the company has contravened section 113 (requirements for proprietary companies).

(2) A direction must:

(a) be in writing and be given to the company; and

(b) state that the company must comply with the direction within 2 months after the date on which the direction is given to it.

(3) If a proprietary company does not comply with a direction, the ASC may:

(a) change the company from a proprietary to a public company by altering the details of the company's registration to reflect the company's new type; and

(b) alter the details of the company's registration by making any changes to the company's name necessary because of the change of type; and

(c) issue a new certificate of registration to the company.

(4) A change of type under this section takes effect when the ASC alters the details of the company's registration to reflect the company's new type.

**165** *Effect of change of type*

(1) A change of type does not:

(a) create a new legal entity; or

(b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate; or

(c) affect the company's property, rights or obligations (except against the members of the company in their capacity as members); or

(d) render defective any legal proceedings by or against the company or its members.

(2) On the change of type of a company from a company limited by guarantee to a company limited by shares:

(a) the liability of each guarantor on the winding up of the company is extinguished and the guarantors cease to be members of the company; and

(b) anyone listed as a shareholder in the company's application change type becomes a member of the company.

Note: The company must maintain a register of members that complies with subsection 216B(3).

*For consequential and transitional amendments for Chapter 2B see Schedule 1*

## **CHAPTER 2C - REGISTERS**

*This Chapter will consist of existing Part 2.5.*

## **CHAPTER 2D - DIRECTORS**

*This Chapter will consist of existing Part 3.2.*

## **CHAPTER 2E - FINANCIAL BENEFITS TO RELATED PARTIES**

*This Chapter will consist of existing Part 3.2A.*

## CHAPTER 2F

### MEMBERS' RIGHTS AND REMEDIES

#### Part 2F.1

**Oppression** *Section 244A - section 260 is to be moved here*

#### Part 2F.2

**Statutory derivative actions** *Sections 254A, 254B etc. - reserved for new provisions on statutory derivative actions*

#### Part 2F.3

**Class rights**

- 246A Varying and cancelling class rights
- 246B Certain actions taken to be variation of rights
- 246C Application to Court to set aside variation, cancellation or modification
- 246D Date of effect of variation, cancellation or modification
- 246E Company must lodge documents and resolutions with the ASC
- 246F Member's copies of documents and resolutions
- 246G Company must notify ASC of rights carried by shares or division or conversion of shares

#### Part 2F.4

**Inspection of books**

- 247A Order for inspection of books of company or registered collective investment scheme
- 247B Company or directors may allow member to inspect books

## **CHAPTER 2F - MEMBERS' RIGHTS AND REMEDIES**

### **Part 2F.1 - Oppression**

*Section 260 will be moved here and renumbered as section 244A.*

### **Part 2F.2 - Statutory derivative actions**

*This Part (sections 245A, 245B etc.) will deal with statutory derivative actions.*

*Provisions to give effect to the Government's decision to introduce a new right of action to take statutory derivative actions are currently being drafted. It is expected that these provisions will be included in the Exposure Draft on collective investments which is to be released for public comment shortly.*

### **Part 2F.3 - Class rights**

#### **246A Varying and cancelling class rights**

(1) If a company's constitution sets out the procedure for varying or cancelling:

- (a) rights attached to shares in a class of shares in a company; or
- (b) rights of members in a class of members in a company without a share capital;

those rights may only be varied or cancelled in accordance with that procedure. The procedure may only be changed if the procedure itself is complied with.

(2) If the procedure is not set out in the constitution, rights may only be varied or cancelled by special resolution of the company and:

- (a) by special resolution passed at a meeting of the members of the class; or
- (b) with the written consent of at least 75 % of the members of the class.

(3) A company must give written notice of the variation or cancellation to the members of the class within 7 days after the variation or cancellation is made.

#### **246B Certain actions taken to be variation of rights**

(1) Unless rights attached to a particular share in a class of shares would be the same after the shares in the company are divided into classes:

- (a) the division is taken to be a variation of rights; and
- (b) all the members who would hold shares that have the same rights immediately after the division constitute a separate class for the purposes of this Part.

(2) If rights attached to some of the shares in a class of shares in a company are to be varied, all the members who would hold those shares immediately after the variation constitute a separate class for the purposes of this Part.

(3) Unless special rights of members in a company without a share capital are the same after 1 or more new classes of members are created:

- (a) the division is taken to be a variation of rights; and
- (b) all the members who would have the same rights immediately after the division constitute a separate class for the purposes of this Part.

- (4) A company's issue of shares to which rights are attached that are not provided for:
- (a) in the company's constitution; or
  - (b) in a document or resolution lodged under this Law or a corresponding previous law;

is taken to be a variation of rights attached to shares already issued unless the rights attached to the new shares are the same as the rights attached to shares already issued.

(5) A company's issue of new preference shares that rank equally with existing preference shares is taken to be a variation of rights attached to those existing shares unless the issue of the new preference shares was authorised by:

- (a) the terms of issue of the existing preference shares; or
- (b) the company's constitution as in force when those shares were issued.

*246C Application to Court to set aside variation, cancellation or modification*

- (1) If members of a class do not unanimously support:
- (a) a variation or cancellation of rights; or
  - (b) a modification of a company's constitution to allow rights to varied or cancelled;

members entitled to at least 10% of the votes in the class may apply to the Court to have the variation, cancellation or modification set aside.

- (2) An application may only be made within 1 month after the variation, cancellation or modification is made.
- (3) The members of the class who want to have the variation, cancellation or modification set aside may appoint 1 or more of themselves to make the application on their behalf. The appointment must be in writing.
- (4) The Court may set aside the variation, cancellation or modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the variation, cancellation or modification if the Court is not satisfied of unfair prejudice.
- (5) Within 14 days after the Court makes an order, the company must lodge a copy of it with the ASC.

*246D Date of effect of variation, cancellation or modification*

- (1) If members of a class unanimously support a variation, cancellation or modification, it takes effect:
- (a) if no later date is specified in the resolution or consent - on the date of the resolution or consent; or
  - (b) on a later date specified in the resolution or consent.
- (2) If a variation, cancellation or modification does not have unanimous support, it takes effect:
- (a) if no application is made to the Court to have it set aside - 1 month after the variation, cancellation or modification is made; or
  - (b) if an application is made to the Court to have it set aside - when the application is withdrawn or finally determined.

**246E** *Company must lodge documents and resolutions with the ASC*

(1) A company must lodge with the ASC a copy of each document (including an agreement or consent) or resolution that:

- (a) does any of the following:
  - (i) attaches rights to shares
  - (ii) varies or cancels rights attached to shares
  - (iii) varies or cancels rights of members in a class of members of a company that does not have a share capital
  - (iv) binds a class of shareholders; and
- (b) is not otherwise required to be lodged under this Law or a corresponding previous law.

(2) The document must be lodged within 14 days after it is made. The resolution must be lodged within 14 days after it is passed.

**246F** *Member's copies of documents and resolutions*

(1) A member of a company may ask the company in writing for a copy of a document or resolution referred to in section 246E. The company must send the copy to the member.

(2) If the company requires the member to pay for the copy, the company must send it:

- (a) within 21 days after the company receives the payment; or
- (b) within any longer period approved by the ASC.

(3) The amount of any payment the company requires cannot exceed the prescribed amount.

(4) If the company does not require payment for the copy, the company must send it:

- (a) within 21 days after the member asks for it; or
- (b) within any longer period approved by the ASC.

**246G** *Company must notify ASC of rights carried by shares or division or conversion of shares*

(1) A company must lodge with the ASC:

- (a) a notice relating to any rights attached to shares company if the rights are not provided for:
  - (i) in the company's constitution; or
  - (ii) in a document or resolution lodged under this Law or a corresponding previous law; and
- (b) a notice showing details of:
  - (i) any division of shares in the company into classes if the shares were not previously so divided; and
  - (ii) any conversion of shares in a class of shares in the company into shares of another class.

(2) A notice must be in the prescribed form and lodged within 14 days after the shares are issued or the division or conversion takes place.

#### **Part 2F.4 - Inspection of books**

##### *247A Order for inspection of books of company or registered collective investment scheme*

(1) On application by a member of a company or registered collective investment scheme, the Court may make an order:

- (a) authorising the member to inspect books of the company or scheme (but only if the member is a suitable person); or
- (b) authorising a suitable person to inspect books of the company or scheme on the member's behalf.

The Court may only make the order if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose.

(2) The Court may make any other orders it thinks appropriate, including an order limiting the use that a person may make of information obtained during the inspection.

(3) A person who inspects books under the order must not disclose information they acquire in the course of the inspection unless the disclosure is to:

- (a) the ASC; or
- (b) if the person is making the inspection on behalf of a member - the member.

##### *247B Company or directors may allow member to inspect books (replaceable rule - see section 135)*

Where the Law does not otherwise provide, the directors of a company, or an ordinary resolution passed at a general meeting of the company, may authorise a member to inspect books of the company.

*For consequential and transitional amendments for Chapter 2F see Schedule 1*

## **CHAPTER 2G**

### **MEETINGS**

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## CHAPTER 2G - MEETINGS

### Part 2G.1 - Directors' meetings

#### Division 1 - Resolutions and declarations without meetings

##### *248A Flying minutes (replaceable rule - see section 135)*

(1) A resolution may be passed by the directors of a company without a directors' meeting being held if all of the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(2) Copies of the document may be distributed for signing by different directors but each copy must have identical wording.

(3) The resolution is passed when the last director signs the document.

Note 1: The directors may also meet to pass a resolution.

Note 2: Passage of a resolution under this section must be recorded in the company's minute book (see section 251A).

##### *248B Resolutions and declarations of 1 director proprietary companies*

(1) Resolutions

The director of a proprietary company that has only 1 director may pass a resolution by recording and signing their decision.

(2) Declarations

The director of a proprietary company that has only 1 director may make a declaration by recording and signing the declaration. The recording of the declaration satisfies any requirement in this Law that the declaration be made at a meeting of the company's directors.

Note 1: For directors' declarations see sections 231 and 494.

Note 2: Passage of a resolution or the making of a declaration under this section must be recorded in the company's minute book (see section 251A).

#### Division 2 - Directors' meetings

##### *248C Calling and holding directors' meetings (replaceable rule - see section 135)*

(1) A directors' meeting may be called by a director giving notice to each other director.

(2) A directors' meeting may be held using any technology agreed to by all of the directors.

Note: If a director has appointed an alternate, the director may request that the notice must be sent to the alternate (see section 225B).

##### *248D Chairing directors' meetings (replaceable rule - see section 135)*

(1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chairperson.

(2) The directors must elect a director present to chair the meeting, or part of it, if:

(a) a director has not already been elected to chair that meeting; or

(b) a previously elected chairperson is not available or declines to act, for the meeting or the part of the meeting.

##### *248E Quorum at directors' meetings (replaceable rule - see section 135)*

Unless the directors determine otherwise, the quorum for a directors' meeting is 2.

Note 1: For special quorum rules for public companies see section 232A and 232B.

Note 2: For 1 director proprietary companies see section 248B.

**248F** *Passing of directors' resolutions (replaceable rule - see section 135)*

(1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

(2) The chairperson may vote and, if necessary, has a casting vote.

**248G** *Delegation to committees (replaceable rule - see section 135)*

(1) The directors may delegate any of their powers to a committee of directors.

(2) A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.

Note: Minutes of these meetings must be recorded in the company's minute book (see section 251A).

## **PART 2G.2 – MEMBERS' MEETINGS OF COMPANIES**

### Division 1 – Members' decisions without meetings

**249A** *Flying minutes of proprietary companies with more than 1 member*

(1) This section applies to resolutions and special resolutions of the members of proprietary companies that this Law or, if a company has a constitution, the company's constitution requires or permits to be passed by a general meeting. It does not apply to a resolution under section 329 to remove an auditor.

(2) A resolution may be passed without a general meeting being held if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(3) The document must be accompanied by all information or documentation that would be required to be given to members in relation to the resolution if the resolution was being proposed at a general meeting.

(4) Identical copies of the document and accompanying information may be distributed for signing by different members.

(5) The resolution is passed when the last member signs the document.

(6) The passage of the resolution satisfies any requirement in this Law that the resolution be passed at a general meeting.

(7) This section does not affect any rule of law relating to the assent of members not given at a company meeting.

Note 1: Members may also meet to pass resolutions and special resolutions.

Note 2: A body corporate representative may sign a flying minute (see section 250C).

Note 3: Passage of a special resolution or resolution under this section must be recorded in the company's minute book (see section 251A).

**249B** *Resolutions of 1 member companies*

The member of a company that has only 1 member satisfies any requirement in this Law that a special resolution or a resolution be passed at a members' meeting, by recording and signing their decision.

Note 1: A body corporate representative may sign such a resolution (see section 250C).

Note 2: Passage of a special resolution or resolution under this section must be recorded in the company's minute book (see section 251A).

## Division 2 - Who may call members' meetings

### *249C Calling of members' meetings by a director (replaceable rule - see section 135)*

A director may call a members' meeting of the company.

### *249D Calling of general meeting by directors when requested by members*

- (1) The directors of a company must call and hold a general meeting on the request of:
  - (a) members who hold at least 5 % of the votes that may be cast at the general meeting; or
  - (b) 200 members who are entitled to vote at the general meeting.
- (2) The request must be:
  - (a) in writing and state the objects of the meeting; and
  - (b) signed by the members; and
  - (c) served on the company.
- (3) The request may consist of copies signed by different members providing each copy has identical wording.
- (4) The percentage of votes members hold is to be worked out as at the close of business on the day the request is served on the company.
- (5) The directors must call the general meeting to be held not later than 2 months after the day the request was served on the company.

### *249E Failure of directors to call a general meeting*

- (1) Members entitled to cast at least 50% of the votes of all of the members who make a request under section 249D may call a general meeting if the directors do not do so within 21 days after the day the request was served on the company.
- (2) The meeting is to be called in the same way - so far as is possible - in which general meetings are usually called. The meeting must be held not later than 3 months after the day the request was served on the company.
- (3) To call the meeting, the members may ask the company to supply a written list of names and addresses of the persons entitled to receive notice of general meetings.
- (4) The company must send the list to the members within 7 days after the day the members ask for it.
- (5) Company must pay expenses from money payable to directors

The company must pay the reasonable expenses the members incurred because the directors failed to call and hold a general meeting. The directors must reimburse the company the amount of those expenses. If a director does not reimburse the company, the company must deduct the amount from any sums payable as fees to, or remuneration of, those directors.

### *249F Calling of general meetings by members*

- (1) Members holding at least 5 % of the votes which may be cast at a general meeting of the company may call and hold a general meeting.
- (2) The meeting is to be called in the same way - so far as is possible - in which general meetings are usually called.

(3) The percentage of votes members hold is to be worked out as at the close of business on the day the meeting is called.

#### *249G Calling of members' meetings by the Court*

(1) The Court may order a members' meeting of a company to be called -if it is impracticable to call the meeting in any other way in which it could be called.

(2) The Court may make the order on:

(a) application of any director; or

(b) application of any member who would be entitled to vote at the meeting.

Note: See section 1319 for the directions the Court may give for calling, holding or conducting a meeting it has ordered be called.

#### Division 3 - How to call members' meetings

#### *249H Amount of notice of meetings*

(1) Subject to subsections (2), (3) and (4), a company must give 21 days notice of members' meetings, or such longer period of notice of members' meetings as is set out in the company's constitution.

(2) Calling meetings on shorter notice

A company may call on shorter notice:

(a) a members' meeting (unless it is a meeting referred to in paragraph (b) or subsections (3) or (4)), if members holding at least 95 % of the votes that may be cast at the meeting agree beforehand; and

(b) an AGM, if all the members entitled to attend and vote at the AGM agree beforehand.

(3) Some public company meetings cannot be called on shorter notice

A public company must give at least 21 days notice of a meeting at which a resolution will be moved to:

(a) remove a director under section 227; or

(b) appoint a director in place of a director removed under that section.

(4) Other meetings cannot be called on shorter notice

A company must give at least 21 days notice of a meeting at which a resolution will be moved to remove an auditor under section 329.

#### *249J Notice of members' meetings to members and directors*

(1) Written notice of a members' meeting must be given individually to every member entitled to vote at the meeting and the directors.

(2) Notice to joint members (replaceable rule - section 135)

Notice to joint members may be given by sending it to the joint member named first in the register of members.

(3) How is notice given (replaceable rule - see section 135)

A company must give the notice of meeting:

- (a) personally; or
- (b) by sending it by post - the notice is taken to be served 3 days after it is posted; or
- (c) by sending it by fax - the notice is taken to be served on the business day after it is transmitted.

Note: A defect in the notice given may not invalidate a meeting (see section 1322).

#### **249K Auditor entitled to notice and other communications**

A company must give its auditor:

- (a) notice of a general meeting in the same way that a member of a company is entitled to receive notice; and
- (b) other communications relating to the general meeting that a member of the company is entitled to receive.

Note: An auditor may appoint an agent to attend a meeting (see subsection 249U(4)).

#### **249L Contents of notice of members' meetings**

A notice of a member's meeting of a company must:

- (a) set out the place, date and time; and
- (b) state the general nature of the business; and
- (c) if a special resolution is to be proposed - set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement on:
  - (i) a member's right to appoint a proxy; and
  - (ii) the need for the proxy to be a member of the company or not; and
- (e) if the company has a share capital - contain a statement that, if the member appoints more than 1 proxy, each proxy may be appointed to represent a specified proportion of the member's votes.

Note: See section 249W for rights to appoint proxy.

#### **249M Notice of adjourned meetings (replaceable rule - see section 135)**

When a meeting is adjourned, new notice of the resumed meeting does not need to be given unless the meeting is adjourned for 1 month or more.

### **Division 4 - Members' rights to put resolutions etc. at general meetings**

#### **249N Members may give company notice of members' resolutions**

(1) The following members may give a company notice of a special resolution or ordinary resolution that they propose to be moved at a general meeting:

- (a) members who hold at least 5 % of the votes that may be cast on the resolution; or
- (b) 200 members who are entitled to vote at a general meeting.

(2) The notice must be:

- (a) in writing; and

- (b) signed by the members giving the notice;
  - (c) and served on the company.
- (3) The notice may consist of copies signed by different members providing each copy has identical wording.
- (4) The percentage of votes members hold is to be worked out as at the close of business on the day the notice was served.

*249P Company's obligations to give notice of members' resolutions to company's members*

- (1) A resolution of which a company has been given notice under section 249N is to be considered at the next general meeting that occurs at least 1 month after the notice was served.
- (2) The company must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of the meeting.
- (3) The company need not give notice of the resolution:
- (a) if it is more than 1,000 words long or defamatory; or
  - (b) unless it is accompanied by a sum sufficient to meet the expenses that will be reasonably incurred in giving the notice.
- (4) Each requesting member is jointly and individually liable to the company for those expenses. At a general meeting, the company may resolve to meet the expenses itself.

*249Q Members may request statements be distributed to company members*

- (1) Members of a company may request the company give to all its members a statement provided by the requesting members about:
- (a) a special resolution or an ordinary resolution that is proposed to be moved at a general meeting; or
  - (b) any other matter that is to be considered at a general meeting.
- (2) The request must be made by:
- (a) members who hold at least 5 % of the votes that may be cast on a resolution to be moved at the general meeting; or
  - (b) 200 members who are entitled to vote at the general meeting.
- (3) The request must be:
- (a) in writing; and
  - (b) signed by the members making the request; and
  - (c) served on the company.
- (4) The request may consist of copies signed by different members providing each copy has identical wording.
- (5) The percentage of votes members hold is to be worked out as at the close of business on the day the request was made.

- (6) After service of the request, the company must give all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way as it gives notice of the meeting.
- (7) The company need not comply with the request:
- (a) if the statement is:
    - (i) more than 1,000 words long or defamatory; or
    - (ii) given to the company less than 10 days before the general meeting is to be held; or
  - (b) unless it is accompanied by a sum sufficient to meet the expenses that will be reasonably incurred in complying with the request.
- (8) Each requesting member is jointly and individually liable to the company for those expenses. At a general meeting, the company may resolve to meet those expenses itself.

#### Division 5 - Holding members' meetings

##### *249R Technology (replaceable rule - see section 135)*

A company may hold a members' meeting at 2 or more venues using any technology that gives members a reasonable opportunity to participate.

##### *249S Quorum (replaceable rule - see section 135)*

- (1) The quorum for a members' meeting of a company is 2.
- (2) An individual attending as a proxy or a body corporate's representative must be counted to determine whether or not a quorum is present. However, an individual cannot be counted more than once.

Note 1: For 1 member companies see section 249B.

Note 2: For rights to appoint proxies see section 249W.

Note 3: For body corporate representatives see section 250C.

- (3) A members' meeting that does not have a quorum present within 30 minutes after the start time set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify those things, the meeting is adjourned to the same day in the next week at the same time and place.
- (4) If no quorum is present at the resumed meeting within 30 minutes after the start time, the meeting is dissolved.

##### *249T Chairing members' meetings (replaceable rule - see section 135)*

- (1) The directors may elect an individual to chair members' meetings.
- (2) The directors at a members' meeting must elect a director present to chair the meeting, or part of it, if an individual has not already been elected to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting or part of the meeting.
- (3) The members at a members' meeting must elect a member present to chair that meeting, or part of it, if:
- (a) a chairperson has not previously been elected to chair that meeting; or
  - (b) a previously elected chairperson is not available to do it, or declines to act, for the meeting or part of the meeting.
- (4) The chairperson must adjourn a members' meeting if the majority present agrees or directs.

#### *249U Auditor's right to be heard at general meetings*

- (1) A company's auditor is entitled to attend any general meeting of the company.
- (2) The auditor is entitled to be heard at the meeting on any part of the meeting's business that concerns the auditor in their capacity as auditor.
- (3) The auditor is entitled to be heard even if:
  - (a) the auditor retires at the meeting; or
  - (b) the meeting passes a resolution to remove the auditor from office.
- (4) The auditor may authorise a person in writing as agent for the purpose of attending any general meeting.

Note: At an AGM, members may ask the auditor questions (see section 250R).

#### *249V Adjourned meetings*

- (1) Business at adjourned meetings (replaceable rule - see section 135)

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

- (2) A resolution passed at an adjourned meeting is passed on the day it was passed.

#### Division 6 - Proxies and body corporate representatives

249W Who can appoint a proxy? (replaceable rule for proprietary companies/mandatory rule for public companies - see section 135)

- (1) A member of a company who is entitled to attend and cast a vote at a members' meeting may appoint a person as the member's proxy to attend and vote instead of the member at the meeting.
- (2) If the member is entitled to cast more than 1 vote at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies, each proxy may be appointed to represent a specified proportion of the member's votes. If the proportion of votes is not specified, each proxy holds half of the member's votes.

#### *249X Rights of proxies*

- (1) A proxy appointed to attend and vote instead of a member has the same rights as the member to speak at the meeting and to vote on a poll.
- (2) Proxy's right to vote

If a company has a constitution, the constitution may provide that a proxy is entitled to vote on a show of hands. Otherwise a proxy may only vote on a poll.

#### *249Y Lists of proxies*

- (1) A company may send out with notices calling a members' meeting a list of persons who are prepared to act as proxies at the meeting.
- (2) Any list sent must be sent to all members entitled to appoint a proxy to attend and vote at the meeting.
- (3) The company may issue to a member who asks for it a proxy form or a list of persons willing to act as proxies, but only if it makes the same form or list available to any other member who asks for the form or list.

**249Z** *How to appoint a proxy*

- (1) An appointment of a proxy is valid if it is signed by the member of the company making the appointment and contains the following information:
  - (a) the member's name and address
  - (b) the company's name
  - (c) the proxy's name or the name of the office held by the proxy
  - (d) the meetings at which the proxy may be used.
- (2) If a company has a constitution, the constitution may provide that an appointment is valid even if it contains only some of the information that is required by subsection (1).
- (3) An undated appointment is taken to have been dated on the day it was given to the company.
- (4) An appointment may specify the way the proxy is to vote on a particular resolution. If it does, the proxy must vote that way.
- (5) An appointment does not have to be witnessed.

**250A** *Proxy documents to be given to company before meeting*

- (1) Certain documents to be given to company

If a person appoints a proxy for a members' meeting, the following documents must be given to the company at its registered office or at the place specified for the purpose in the notice calling the members' meeting:

- (a) a proxy's appointment
  - (b) if the appointment is signed by the appointor's attorney - the authority under which the form was signed or a certified copy of the authority.
- (2) Documents to be given before meeting

If the appointment and any authority are given to the company at least 48 hours before the members' meeting at which the proxy may be used, the proxy's appointment is effective for that meeting.

- (3) If a company has a constitution, the constitution may provide that the appointment and any authority given to the company less than 48 hours before the meeting is also effective.

**250B** *Validity of proxy vote (replaceable rule - see section 135)*

Unless the company has received written notice of the matter before the start of the members' meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy voted:

- (a) the appointing member dies; or
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment; or
- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member transfers the share in respect of which the proxy was given.

**250C** *Body corporate representative*

(1) A body corporate may appoint a representative to exercise all or any of the powers it has as a member, creditor or debenture holder:

- (a) at a members' meeting; or
- (b) in voting on members' resolutions of the company to be passed without meetings.

(2) The appointment must be made by resolution of the body's directors. It must set out:

- (a) the individual or office holder appointed; and
- (b) whether they are appointed to attend and vote at meetings or vote on members' special resolutions and ordinary resolutions without meetings, or to do all of those things; and
- (c) the meetings they are appointed to attend.

(3) Unless otherwise specified in the appointment, the body corporate's representative may exercise, on the body's behalf, all the powers that the body could exercise as a member, creditor or a debenture holder.

Note: For special resolutions and resolutions of members without meetings see sections 249A and 249B.

**Division 7 - Voting at members' meetings**

**250D** *How many votes does a member have? (replaceable rule - see section 135)*

(1) Company with share capital

Subject to any rights attached to any class of shares, at a members' meeting of a company with a share capital:

- (a) on a show of hands, each member has 1 vote; and
- (b) on a poll, each member has 1 vote for each share they hold.

(2) Company that does not have a share capital

Each member of a company that does not have a share capital has 1 vote both on a show of hands and a poll.

(3) The chairperson of a meeting may vote on a show of hands and on a poll if they are a member. The chairperson has a casting vote if necessary.

Note: For the rights of members to appoint proxies see section 249W.

**250E** *Jointly held shares (replaceable rule - see section 135)*

If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

**250F** *Objections to member's right to vote (replaceable rule - see section 135)*

A challenge to a member's right to vote at a members' meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson, whose decision is final.

**250G** *How is voting carried out? (replaceable rule - see section 135)*

(1) A special resolution or a resolution put to the vote at a members' meeting must be decided on a show of hands unless a poll is demanded.

(2) On a show of hands, a declaration by the chairperson is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

*250H Matters on which a poll may be demanded*

(1) A poll may be demanded on any special resolution or resolution except:

- (a) the election of the chairperson of a meeting; or
- (b) the adjournment of a meeting.

(2) If a company has a constitution, the constitution may allow for a poll to be demanded on the matters mentioned in paragraph (1)(a) or (b).

(3) A demand for a poll may be withdrawn.

*250J When a poll is effectively demanded*

(1) At any members' meeting, a poll may be demanded by:

- (a) 5 members present (including by proxy) entitled to vote on the resolution; or
- (b) members present (including by proxy) who hold at least 10% of the votes that may be cast on the resolution on a poll; or
- (c) the chairperson.

(2) If a company has a constitution, the constitution may provide that fewer members may demand a poll.

(3) The poll may be demanded before or at the time the voting results are declared.

(4) The percentage of votes members hold is to be worked out when the demand was made.

*250K When and how polls must be taken (replaceable rule - see section 135)*

(1) A poll demanded on a matter other than the election of a chairperson or the question of an adjournment must be taken when and in the manner the chairperson directs.

(2) If a company has a constitution and the constitution provides that a poll may be demanded on the election of a chairperson or on the question of an adjournment, it must be taken immediately.

Division 8 - Annual general meetings of public companies

*250L Public company must hold AGM*

(1) A public company must hold its first annual general meeting (or AGM) within 18 months after its registration.

(2) After the first AGM, the company must hold an AGM at least once a calendar year and within 5 months after the end of its financial year.

(3) The AGM is to be held in addition to any other meetings held by the company in the year.

(4) Provided proper notice of the meeting is given to each person entitled to it, the company may resolve that any general meeting called, or general meeting held, is to be its AGM.

Note 1: The company's financial statements, directors' report and auditor's report must be laid before the AGM (see section 319).

Note 2: The rules in Divisions 2 to 7 of this Part apply to an AGM.

#### *250M Extension of time for holding AGM*

- (1) A public company may lodge an application with the ASC to extend a period within which section 250L requires the company to hold an AGM.
- (2) The application is to be made in accordance with a resolution of the company's directors and be signed by a director.
- (3) ASC may extend time for AGM

If the company applies before the end of the period in which the company would otherwise be required to hold an AGM, the ASC may grant the application in writing. The ASC must specify the period of the extension.

- (4) A company granted an extension under subsection (3) must hold its AGM within the extended period.
- (5) The ASC may impose conditions on the granting of the application and the company must comply with those conditions.

#### *250N Circumstances where AGM is effectively held*

- (1) A company complies with the requirement to hold an AGM during a particular period of time specified in sections 250L or 250M if:
  - (a) the company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at its AGM; and
  - (b) the meeting was held during the period in which the AGM is required to be held.

#### *250P Business of AGM*

The business of an AGM may include any of the following, even if referred to in the notice of meeting:

- (a) the consideration of the financial statements and the reports of the directors and auditor
- (b) the election of directors
- (c) the fixing of the auditor's remuneration.

#### *250Q Questions and comments by members on company management at AGM*

The chairperson of an AGM must allow a reasonable opportunity for the members at the meeting to ask questions about or make comments on the management of the company.

#### *250R Questions by members of auditors at AGM*

The chairperson of an AGM must allow a reasonable opportunity for the members at the meeting to ask the company's auditor questions relevant to the conduct of the audit and the preparation of the audit report.

### **Part 2G.3 - Minutes and members' access to minutes**

#### *251A Minutes*

- (1) A company must keep minute books in which it records within 1 month:
  - (a) proceedings, special resolutions and ordinary resolutions of the members' meetings; and

- (b) proceedings and resolutions of directors' meetings (including a committee of directors); and
- (c) the passing of special resolutions and ordinary resolutions by members without a meeting;  
and
- (d) the passing of resolutions by directors without a meeting; and
- (e) if the company is a proprietary company with only 1 director - the making of declarations by the director.

Note 1: See section 248A for directors' resolutions passed without meetings.

Note 2: See section 248B for resolutions and declarations of the director of a 1 director proprietary company.

Note 3: See sections 249A and 249B for special resolutions and resolutions of members without meetings.

- (2) The minutes of a meeting must be signed by the chairperson of the meeting or the chairperson of the next meeting.
- (3) A director must sign minutes of:
  - (a) the passing of a resolution referred to in paragraph (1)(c) or (d); or
  - (b) the making of a declaration referred to in paragraph (1)(e).
- (4) A company must keep its minute books at:
  - (a) its registered office; or
  - (b) an office at its principal place of business in Australia; or
  - (c) another office approved by the ASC.
- (5) In the absence of evidence to the contrary, contents of the minute book that is so recorded and signed is evidence of the matters shown in the minute.

#### **251B** *Members' access to minutes*

- (1) A company must ensure that the minute books for its members' meetings and for special resolutions and ordinary resolutions of members passed without meetings are open for inspection by members free of charge.
- (2) A member of a company may ask the company in writing for a copy of:
  - (a) any minutes of a members' meeting or an extract of the minutes; or
  - (b) any minutes of special and ordinary resolutions passed by members without meetings.
- (3) If the company does not require the member to pay for the copy, the company must send it:
  - (a) within 21 days after the member asks for it; or
  - (b) within any longer period that the ASC approves.
- (4) If the company requires payment for the copy, the company must send it:
  - (a) within 21 days after the company receives the payment; or
  - (b) within any longer period that the ASC approves.

The amount of any payment the company requires cannot exceed the prescribed amount.

## **Part 2G:4 - Members' meetings of registered collective investment schemes**

### Division 1 - Calling members' meetings

#### *252A Calling of members' meetings by responsible entity*

The responsible entity of a registered scheme may call a members' meeting.

#### *2:252B Members may request responsible entity to call a members' meeting*

(1) The following members of a registered scheme may request the responsible entity to call and hold a members' meeting to consider and vote on a proposed special resolution or a proposed extraordinary resolution:

- (a) members who hold at least 5 % of the value of the votes that may be cast on the resolution; or
- (b) 200 members.

Note: To work out the value of a vote see section 252X.

(2) The request must:

- (a) be in writing and state the purpose of the meeting; and
- (b) be signed by the members; and
- (c) be served on the responsible entity; and
- (d) set out the resolution.

(3) request may be accompanied by a statement about the proposed resolution provided by the requesting members.

(4) request may consist of copies signed by different members providing each copy has identical wording.

(5) The percentage of the value of the votes members hold is to be worked out as at the close of business on the day the request was served.

#### *252C Responsible entity's obligations to call a members' meeting and to distribute resolutions and statements*

(1) After service of the request under section 252B, the responsible entity must:

- (a) call the meeting; and
- (b) distribute to all the scheme's members a copy of the proposed resolution and any statement under subsection 252B(3) at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of the meeting.

(2) The responsible entity does not have to distribute a copy of the resolution or statement if it is more than 1,000 words long or defamatory.

(3) The responsible entity must make the distribution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of the meeting.

(4) The meeting must be held not later than 2 months after service of the request.

#### *252D Failure of responsible entity to act*

- (1) If, in relation to the request under section 25213, the responsible entity has not called the members' meeting and made the distribution as required by subsection 252C(1) within 21 days after service of the request, the members who made the request may call the meeting and make the distribution.
- (2) The meeting is to be called and the distribution is to be made in the same way - so far as is possible - as members' meetings are usually called and information is usually distributed to members. The meeting must be held not later than 3 months after the day the request was served on the responsible entity.
- (3) To call the meeting, the requesting members may ask the responsible entity to supply a written list of names and addresses of the persons entitled to receive notice of members' meetings.
- (4) The responsible entity must send the list to the members within 7 days after the day the members ask for it.
- (5) Responsible entity must pay members' expenses

The responsible entity of the scheme must pay the reasonable expenses the members incurred because the responsible entity failed to make the distribution and call and hold the meeting.

#### *252E Calling of members' meetings by members*

- (1) Members of a registered scheme who hold at least 5 % of the value of the votes which may be cast at a members' meeting of the registered scheme, may call a members' meeting to consider and vote on a proposed special resolution or a proposed extraordinary resolution.

Note: To work out the value of a vote see section 252X.

- (2) The meeting is to be called in the same way - so far as is possible - in which members' meetings are called.
- (3) The percentage of the value of the votes members hold is to be worked out as at the close of business on the day the meeting is called.

#### *252F Calling of members' meetings by the Court*

- (1) The Court may order a members' meeting of a registered scheme to be held to consider and vote on a proposed special resolution or a proposed extraordinary resolution. The Court may do so if it is impracticable to call the members' meeting in any other way in which it could be called.

- (2) The Court may make the order on:

- (a) application of the responsible entity; or
- (b) application of any member of the registered scheme who would be entitled to vote at the meeting.

Note: See section 1319 for the directions the Court may give for calling, holding or conducting a meeting it has ordered be called.

#### *252G Notice of members' meetings*

- (1) The responsible entity of a registered scheme is to give 21 days notice of a members' meeting to:
  - (a) all the members of the registered scheme; and
  - (b) the directors of the responsible entity; and
  - (c) the auditor of the scheme; and
  - (d) the auditor of the scheme compliance plan.

(2) Notice to joint members may be given by sending it to the joint member named first in the register.

#### *252H Auditors to receive other communications*

The auditor of a registered scheme and the auditor of the scheme compliance plan must receive any other communications relating to the meeting that a member of the registered scheme is entitled to receive.

#### *252J Contents of notice of members' meetings*

A notice of a members' meeting of a registered scheme must:

- (a) set out the place, day and time; and
- (b) state the general nature of the business; and
- (c) if a special resolution or extraordinary resolution is to be proposed at the meeting - set out an intention to propose the special or extraordinary resolution and state the resolution; and
- (d) contain a statement on:
  - (i) a member's right to appoint a proxy; and
  - (ii) the need for the proxy to be a member of the responsible entity or not.

### Division 2 - Holding members' meetings

#### *252K Chairing members' meetings*

(1) The responsible entity may, in writing, appoint an individual to chair a meeting called under section 252B or 252D.

(2) The members present at a meeting called under section 252B or 252D must elect a member present to chair the meeting, or part of it, if:

- (a) an individual has not previously been appointed to chair the meeting; or
- (b) a previously appointed chairperson is not available to do it, or declines to act, for the meeting or part of it.

(3) The members present at a meeting called under section 252D, 252E or 252F must elect a member present to chair the meeting.

#### *252L Auditor's right to be heard at members' meetings*

(1) The auditor of a registered scheme and the auditor of the scheme compliance plan are entitled to attend any members' meeting of the registered scheme.

(2) The auditors are entitled to be heard at the meeting on any part of the meetings' business that concerns the auditors in their capacities as auditors.

(3) An auditor may in writing authorise a person as agent for the purpose of attending any members' meeting.

### Division 3 - Proxies and body corporate representatives

#### *252M Who can appoint a proxy?*

(1) A member of a registered scheme who is entitled to attend and cast a vote at a members' meeting may appoint a person as the member's proxy to attend and vote instead of the member at the meeting.

(2) If the member is entitled to cast more than 1 vote at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies, each proxy may be appointed to represent a specified proportion of the member's votes. If the proportion of the votes is not specified, each proxy holds half of the member's votes.

#### *252N Rights of proxy*

A proxy appointed to attend and vote instead of a member has the same rights as the member to attend and speak at the meeting and to vote on a poll.

#### *252P Lists of proxies*

(1) The responsible entity of a registered scheme may send out with notices calling a members' meeting a list of persons who are prepared to act as proxies at the meeting.

(2) Any list sent must be sent to all members entitled to appoint a proxy to attend and vote at the meeting.

(3) The responsible entity may issue to a member who asks for it a proxy form or a list of persons willing to act as proxies, but only if it makes the same form or list available to any other members who asks for the form or list.

#### *252Q How to appoint a proxy*

(1) An appointment of a proxy is valid if it is signed by the member of the registered scheme appointing the proxy and contains the following information:

- (a) the member's name and address
- (b) the registered scheme's name
- (c) the proxy's name or the name of the office held by the proxy
- (d) the meetings at which the proxy may be used.

(2) A registered scheme's constitution may provide that an appointment is valid even if it contains only some of the information that is required by subsection (1).

(3) An undated appointment is taken to have been dated on the day it was given to the responsible entity.

(4) An appointment may specify the way the proxy is to vote on a particular resolution. If it does, the proxy must vote that way.

(5) An appointment does not have to be witnessed.

#### *252R Proxy documents to be given to the responsible entity before meeting*

(1) The following documents must be given to the responsible entity of a registered scheme at its registered office:

- (a) a proxy's appointment
- (b) if the appointment is signed by the appointor's attorney - the authority under which the form was signed or a certified copy of the authority.

(2) Documents to be given before meeting

If the appointment and any authority are given to the responsible entity at least 48 hours before the meeting at which the proxy may be used, the proxy's appointment is effective for that meeting.

(3) A registered scheme's constitution may provide that the appointment and any authority given to the responsible entity less than 48 , hours before the meeting is also effective.

#### *252S Body corporate representative*

(1) A body corporate may appoint a representative to exercise all or any of the powers it has as a member at a members' meeting.

(2) The appointment must be made by resolution of the body's directors. It must set out:

- (a) the individual or office holder appointed; and
- (b) the meetings they are appointed to attend.

(3) Unless otherwise specified in the appointment, the body corporate's representative may exercise, on the body's behalf, all the powers that the body could exercise as a member.

#### Division 4 - Voting at members' meetings

##### *252T How many votes does a member have?*

(1) On a show of hands, each member of a registered scheme has 1 vote.

(2) On a poll, each member of the scheme has 1 vote for each collective investment interest they have, but the votes may have different values.

##### *252U How may a member vote?*

At a members' meeting, each member entitled to vote may vote personally. On a poll, a member entitled to vote who is not personally present at a meeting may vote by proxy.

##### *252V Certain members cannot vote or vote not counted*

(1) Responsible entity and associates

The responsible entity of a registered scheme and its associates (in relation to the power to exercise, or to control the exercise of, the voting power attached to a collective investment interest) are not entitled to vote personally at a members' meeting on a special, extraordinary or ordinary resolution if they have an interest in the resolution or matter other than as a member. They may vote as a proxy if their appointment specifies the way they are to vote on the resolution and they vote in that way.

(2) Jointly held collective investment interests

If a collective investment interest is held jointly and more than 1 member votes in respect of that interest, only the vote of the member whose name appears first in the register of member counts.

##### *252W Objections to a member's right to vote*

A challenge to a member's right to vote at a members' meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson, whose decision is final.

##### *252X How to work out the value of a vote cast on a poll*

(1) The value of a vote cast on a poll equals the value of the collective investment interest it attaches to.

(2) The value of a collective investment interest is:

- (a) if it is quoted on the stock market of a stock exchange - the last sale price on that market on the second trading day immediately before the day on which the poll is taken; or
- (b) if it is not quoted on a stock market of a stock exchange but there is a withdrawal provision in the registered scheme's constitution (whether operating or not) - the amount that would be paid for the interest under that provision on the second business day immediately before the day on which the poll is taken; or
- (c) in any other case - the amount that the responsible entity determines in writing to be the price that a willing but not anxious buyer would pay for the interest if it was sold on the second business day immediately before the day on which a poll is taken.

**252Y** *How is voting carried out?*

- (1) A special resolution or extraordinary resolution put to the vote at a members' meeting must be decided on a poll.
- (2) An ordinary resolution put to the vote must be decided on a show of hands unless a poll is demanded.

**252Z** *Poll may be demanded for ordinary resolution*

- (1) A poll may be demanded on any ordinary resolution except:
  - (a) the election of the chairperson of a meeting; or
  - (b) the adjournment of a meeting.
- (2) A registered scheme's constitution may allow for a poll to be demanded on the matters mentioned in paragraphs (1)(a) or (b). A demand for a poll may be withdrawn.

**253A** *When is a poll effectively demanded on an ordinary resolution?*

- (1) At a members' meeting, a poll may be demanded on an ordinary resolution by:
  - (a) 5 members present (including by proxy); or
  - (b) members present (including by proxy) who hold at least 10% of the value of the votes that may be cast on the resolution on a poll; or
  - (c) the chairperson.
- (2) A registered scheme's constitution may provide that fewer members may demand a poll.
- (3) The poll may be demanded before or at the time the voting results are declared.
- (4) The percentage of the value of the votes members hold is to be worked out as at close of business on the day the poll was demanded.

Note: To work out the value of a vote see section 252X.

**Division 5 - Minutes and members' access to minutes**

**253B** *Minutes*

- (1) The responsible entity of a registered scheme must keep minute books for recording minutes of members' meetings.
- (2) The minutes must be recorded within 1 month after the meeting was held and be signed by the chairperson of the meeting.

- (3) The responsible entity of a registered scheme must keep the minute books at:
- (a) its registered office; or
  - (b) an office at its principal place of business in Australia; or
  - (c) another office approved by the ASC.
- (4) In the absence of evidence to the contrary, contents of the minute book that is so recorded and signed is evidence of the matters shown in the minute.

*253C Members' access to minutes*

- (1) The responsible entity must ensure that the minute books for the registered scheme's members' meetings are open for inspection by members free of charge.
- (2) A member of a registered scheme may ask the responsible entity in writing for a copy of any minutes of a members' meeting.
- (3) If the responsible entity does not require the member to pay for the copy, the responsible entity must send it:
- (a) within 21 days after the member asks for it; or
  - (b) within any longer period that the ASC approves.
- (4) If the responsible entity requires payment for the copy, the responsible entity must send it:
- (a) within 21 days after the responsible entity receives the payment; or
  - (b) within any longer period that the ASC approves.

The amount of any payment the responsible entity requires cannot exceed the prescribed amount.

*For consequential and transitional amendments for Chapter 2G see Schedule 2*

## **CHAPTER 2H**

### **SHARES**

#### **Part 2H.1**

##### **Issue and terms**

- 254A Company may issue shares
- 254B Issue of preference shares
- 254C Issue of partly-paid shares
- 254D Pre-emption for existing shareholders of shares on issue in proprietary company
- 254E Court validation of issue
- 254F Certain kinds of shares must not be issued
- 254G Redemption must be in accordance with constitution
- 254H Other requirements about redemption
- 254J Consequences of contravening section 254G or 254H
- 254K Liability on partly-paid shares
- 254L Calls may be limited to when company is externally administered
- 254M Dividends to be paid out of profits
- 254N Other provisions about paying dividends
- 254P Does the company incur a debt?
- 254Q Dividend rights
- 254R Resolution to convert shares into larger or smaller number
- 254S Notice of issue to ASC
- 254T Notice of cancellation to ASC

## CHAPTER 2H - SHARES

### Part 2H.1 - Issue and terms

#### Division 1 - Power to issue shares

##### *254A Company may issue shares*

A company may issue shares on the terms and with the rights and restrictions the company determines.

##### *254B Issue of preference shares*

(1) A company may only issue preference shares, or convert shares into preference shares, if the company has a constitution that sets out the rights of the holders of the shares.

(2) Preference shares may be issued on the terms that they are liable to be redeemed, either at a fixed time, at the company's option or at the shareholder's option.

Note: For other provisions about redeemable preference shares see Division 2.

##### *254C Issue of partly-paid shares*

A company may issue partly-paid shares, whether or not on different terms as to the amount of calls to be paid and the time for paying calls.

Note: For other provisions about partly-paid shares see Division 3.

##### *254D Pre-emption for existing shareholders on issue of shares in proprietary company (replaceable rule for proprietary companies - see section 135)*

(1) Before issuing shares of a particular class, the directors of a proprietary company must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.

(2) To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:

- (a) the number of shares offered; and
- (b) the period for which it will remain open.

(3) The directors may issue any shares not taken up under the offer as they see fit.

(4) A resolution passed at a general meeting of the company may authorise the directors to make a particular issue of shares without complying with subsection (1).

##### *254E Court validation of issue*

(1) The Court may, on application by a company, a shareholder in the company, a creditor of the company or any other person whose interests have been or may be affected, make an order validating or confirming the terms of a purported issue of shares if:

- (a) the issue is or may be invalid for any reason; or
- (b) the terms of the issue are inconsistent with or not authorised by:
  - (i) this Law; or
  - (ii) another law of this jurisdiction; or
  - (iii) the company's constitution.

(20) When a copy of the order is lodged with the ASC, the shares are taken to have been validly issued at the time and on the terms they were issued.

*254F Certain kinds of shares must not be issued*

A company must not:

- (a) issue shares that have a par value; or
- (b) issue bearer shares; or
- (c) issue stock or convert shares into stock.

Division 2 - Redemption of redeemable preference shares

*254G Redemption must be in accordance with constitution*

A company may redeem and cancel redeemable preference shares. The redemption must be on the terms and in the manner provided by the company's constitution.

*254H Other requirements about redemption*

A company may only redeem redeemable preference shares:

- (a) if the shares are fully paid-up; and
- (b) out of profits or the proceeds of a new issue of shares made for the purpose of the redemption.

Note: For a director's duty to prevent insolvent trading on redeeming redeemable preference shares, see section 588G.

*254JU Consequences of contravening section 254G or 254H*

- (1) If a company redeems shares in contravention of section 254G or 254H:
  - (a) the contravention does not affect the validity of the redemption or of any contract or transaction connected with it; and
  - (b) the company is not guilty of an offence.
- (2) Any officer of the company who is involved in the contravention contravenes this subsection.

Note: Subsection (2) is a civil penalty provision as defined by section 1317DA and Part 9.413 provides for civil and criminal consequences of contravening it.

Division 3 - Partly paid shares

*254K Liability on partly-paid shares*

If shares are partly-paid, the shareholder is liable to pay calls on the shares in accordance with the terms on which the shares are on issue.

Note: The shareholder may also be liable as a contributory under sections 514 to 530 if the company is wound up.

*254L Calls may be limited to when company is externally administered*

A limited company's constitution may provide that the whole or a part of its unpaid share capital will only be called up if the company becomes an externally administered body corporate.

#### Division 4 - Dividends

##### *254M Dividends to be paid out of profits*

- (1) A dividend must be paid out of profits of the company.
- (2) The directors may capitalise profits by issuing fully-paid shares to members of the company.

Note: For a director's duty to prevent insolvent trading on payment of dividends, see section 588G.

##### *254N Other provisions about paying dividends (replaceable rule - see section 135)*

- (1) The directors may pay a dividend and fix its amount and time for payment.
- (2) A dividend may be paid by cash or by any other method (including a transfer of assets) that the directors think appropriate.
- (3) Interest is not payable on a dividend.

##### *254P Does the company incur a debt?*

- (1) The fixing of the amount or time for payment of a dividend does not create a debt (unless subsection (2) applies).
- (2) If a company has a constitution that provides for the declaration of dividends, the company incurs a debt when the dividend is declared.

##### *254Q Dividend rights*

- (1) Shares in public companies

Each share in a class of shares in a public company has the same dividend rights unless it has a constitution that provides for the shares to have different dividend rights.

- (2) Shares in proprietary companies (replaceable rule for proprietary companies - see section 135)

Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends to shareholders as they think fit.

#### Division 5 - Converting shares into a larger or smaller number of shares

##### *254R Resolution to convert shares into larger or smaller number*

- (1) A company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.
- (2) The conversion takes effect on:
  - (a) the day the resolution is passed; or
  - (b) a later date specified in the resolution.
- (3) Any amount unpaid on the shares being converted is to be divided equally among the new shares.
- (4) The company must lodge a copy of the resolution with the ASC within 1 month after it is passed.

## Division 6 - Notice requirements

### *254S Notice of issue to ASC*

(1) Within 1 month after issuing shares, a company must lodge a notice with the ASC in the prescribed form that sets out:

- (a) the number of shares that were issued; and
- (b) if the company has different classes of shares - the class to which each of those shares belongs; and
- (c) the amount unpaid on each of those shares; and
- (d) the amount paid, or agreed to be considered as paid, on each of those shares; and
- (e) the prescribed particulars about the issue of the shares, unless:
  - (i) the shares were issued for cash consideration under a written contract; or
  - (ii) the shares were issued for non-cash consideration under a written contract and a copy of the contract is lodged with the notice.

(2) If the shares were issued for non-cash consideration under a contract, the company must also lodge with the ASC a certificate stating that all stamp duty payable on the contract under any applicable law relating to stamp duty has been paid. This certificate must be lodged with the subsection (1) notice or at a later time permitted by the regulations or by the ASC.

(3) The company does not have to lodge a subsection (1) notice about the issue of shares to a person on the registration of the company or on the company changing its type.

Note: Information about shares issued in these situations will come to the ASC under subsections 117(2) and 162(1).

### *254T Notice of cancellation to ASC*

Within 1 month after cancelling shares, a company must lodge a notice with the ASC in the prescribed form that sets out:

- (a) the number of shares cancelled; and
- (b) the amount (if any) paid by the company (in cash or otherwise) on the cancellation of the shares; and
- (c) if the company has different classes of shares - the class to which each cancelled share belonged.

Note: Provisions under which a company cancels shares include section 254G (redeemable preference shares), section 256A (capital reductions), section 256G (forfeited shares), subsection 257J(3) (shares a company has bought back) and subsection 1024E(7) (shares returned to a company).

*For consequential and transitional amendments for Chapter 2H see Schedule 3*

## CHAPTER 2J

### TRANSACTIONS AFFECTING SHARE CAPITAL

255A Purpose

#### Part 2J.1

##### Reductions of capital

256A Company may make reduction not otherwise authorised

256B Shareholder approval

256C Consequences of failing to comply with sections 256A and 256B

256D Unlimited companies

256E Company title

256F Brokerage or commission

256G Cancellation of forfeited shares

256H Reductions because of lost capital

#### Part 2J.2

##### Share buy-backs

*Sections 257A to 257L - Division 4B of Part 2.4 is to be relocated here (these are the new buy-back provisions from the First Corporate Law Simplification Bill)*

#### Part 2J.3

##### Self-acquisition and control of shares

258A Company not to acquire its own shares

258B Company not to take security over shares in itself or holding company

258C Issue or transfer of shares to controlled entity is void

258D Company controls entity that holds shares in it - obligation to end control or dispose of shares

258E When a company controls an entity

#### Part 2J.4

##### Financial assistance

259A Financial assistance by a company for acquiring shares in the company or a holding company

259B Shareholder approval

259C Exempted financial assistance

259D Consequences of failing to comply with section 259A

## CHAPTER 2J - TRANSACTIONS AFFECTING SHARE CAPITAL

### 255A Purpose

This Chapter states the rules to be followed by a company for transactions affecting its share capital. The rules are designed to protect the interests of shareholders and creditors' by:

- (a) addressing the risk of these transactions leading to the company's insolvency
- (b) seeking to ensure fairness between the company's shareholders
- (c) requiring the company to disclose all material information.

### Part 2J.1 - Reductions of capital

#### Division 1 - Reductions not otherwise authorised by law

##### 256A Company may make reduction not otherwise authorised

- (1) A company may reduce its share capital in a way that is not otherwise authorised by law if:
  - (a) the reduction is fair and reasonable to all the company's shareholders; and
  - (b) the company's assets (other than goodwill) exceed its liabilities immediately after the reduction; and
  - (c) the company complies with section 256B (which requires shareholder approval).

A cancellation of a share for no consideration is a reduction of share capital, but paragraph (b) does not apply to this kind of reduction.

Note 1: Division 2 deals with some of the other situations in which reductions of share capital are authorised.

Note 2: For a director's duty to prevent insolvent trading on reductions of share capital, see section 588G.

- (2) The reduction is either an equal reduction or a selective reduction. The reduction is an *equal reduction* if:
  - (a) it relates only to ordinary shares; and
  - (b) it applies to each holder of ordinary shares in proportion to number of shares they hold; and
  - (c) the terms of the reduction are the same for each holder of ordinary shares.

Otherwise, the reduction is a *selective reduction*.

- (3) In applying subsection (2), ignore differences in the terms of the reduction that are:
  - (a) attributable to the fact that shares have different accrued dividend entitlements; or
  - (b) attributable to the fact that shares have different amounts unpaid on them; or
  - (c) introduced solely for the purpose of avoiding shareholders being left with odd lots; or
  - (d) introduced solely for the purpose of ensuring that each shareholder is left with a whole number of shares.

##### 256B Shareholder approval

- (1) Ordinary resolution required for equal reduction

If the reduction is an equal reduction, it must be approved by a resolution passed at a general meeting of the company.

(2) Special shareholder approval for selective reduction

If the reduction is a selective reduction, it must be approved by either:

- (a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person to whom capital is to be paid or whose liability to pay amounts unpaid on shares is to be reduced, or by their associates; or
- (b) a resolution agreed to by all ordinary shareholders at a general meeting.

The company must lodge a copy of the resolution under paragraph (a) or (b) with the ASC within 14 days after it is passed.

(3) Information to accompany the notice of meeting

The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision whether to vote in favour of the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

(4) Documents to be lodged with the ASC

Before the notice of the meeting is sent to shareholders, the company must lodge with the ASC a copy of:

- (a) the notice of the meeting; and
- (b) any document relating to the reduction that will accompany the notice of the meeting sent to shareholders.

(5) Notice to ASC of shareholder approval

The company must lodge with the ASC at least 14 days in advance of making the reduction a notice in the prescribed form stating that the shareholders have approved the reduction under this section.

*256C Consequences of failing to comply with sections 256A and 256B*

(1) The company must not make the reduction unless it complies with sections 256A and 256B.

(2) If the company contravenes subsection (1):

- (a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and
- (b) the company is not guilty of an offence.

(3) Any officer of the company who is involved in the contravention contravenes this subsection.

Note: Subsection (3) is a civil penalty provision as defined by section 1317DA and Part 9.413 provides for civil and criminal consequences of contravening it.

(4) If a court is satisfied that a person has suffered loss because of the contravention, the court may order the company to compensate the person for the loss.

Division 2 - Other share capital reductions

*256D Unlimited companies*

Nothing in this Law precludes an unlimited company from reducing its share capital in any way.

#### *256E Company title*

If a company has a constitution, the company may, under its constitution, grant To a shareholder, as a shareholder, a right to occupy or use real property that the company owns or holds under lease, whether the right is a lease or licence or a contractual right.

#### *256F Brokerage or commission*

A company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the company.

#### *256G Cancellation of forfeited shares*

A company may, by resolution passed at a general meeting, cancel shares that have been forfeited under the terms on which the shares are on issue.

#### *256H Reductions because of lost capital*

A company may reduce its share capital by cancelling any paid-up share capital that is lost or is not represented by available assets. This power does not apply if the company also cancels shares.

### **Part 2J.2 - Share buy-backs**

*Division 4B of Part 2.4 (the buy-back provisions in the First Corporate Law Simplification Bill) will be moved here and be renumbered as sections 257A to 257L. They will be amended in this Bill as introduced into Parliament to make them consistent with the reduction of capital provisions in Division 1 of Part 2J.1. The amendments will:*

- allow the buy-back of redeemable preference shares
- introduce a balance sheet test (see paragraph 256A(1)(b))
- for a buy-back approved by shareholders - require 14 days notice to the ASC before making the buy-back (see subsection 256B(S))
- require resolutions approving selective buy-backs to be lodged with the ASC within 14 days.

*The purpose section now appears as section 255A and applies generally to the Chapter.*

### **Part 2J.3 - Self-acquisition and control of shares**

#### *258A Company not to acquire its own shares*

(1) A company must not acquire shares, or units of shares, in itself except by a buy-back under section 257A or as permitted by subsection (2).

(2) Subsection (1) does not prohibit:

- (a) the acquisition of an interest (other than a legal interest) in fully-paid shares in the company if no consideration is given for the acquisition by the company or a related corporation; or
- (b) the purchase by the company of shares in the company under a court order; or
- (c) the acquisition by the company of shares in itself in circumstances covered by subsections 258B(3) to (5).

#### *258B Company not to take security over shares in itself or holding company*

(1) A company must not take security over shares, or units of shares, in itself or in a holding company of the company, except as permitted by subsection (2).

(2) A company may take security over shares in itself under a scheme that satisfies these conditions:

- (a) under the scheme, fully-paid shares in the company or a holding company of the company may be acquired by, or for the benefit of, the company's participating employees; and
- (b) the scheme has been approved by:
  - (i) a resolution passed at a general meeting of the company; and
  - (ii) if the company is a subsidiary of a listed corporation incorporated or formed in Australia or an external Territory - a resolution passed at a general meeting of the listed corporation; and
  - (iii) if subparagraph (ii) does not apply but the company has a holding company that is incorporated or formed in Australia or an external Territory and that is not itself a subsidiary of a body corporate so incorporated or formed - a resolution passed at a general meeting of that holding company.

Note: Section 9 defines participating employee.

- (3) If a company acquires shares in itself because it exercises rights under a security permitted by subsection (2), then, within the following 12 months, the company must cease to hold those shares.

The ASC may extend this period of 12 months.

- (4) Any voting rights attached to the shares cannot be exercised while the company continues to hold them.

- (5) If, at the end of the 12 months (or extended period), the company still holds any of the shares, the company commits an offence for each day while that situation continues.

#### *258C Issue or transfer of shares to controlled entity is void*

- (1) The issue or transfer of shares, or units of shares, of a company to an entity it controls is void unless:
  - (a) the issue or transfer is to the entity as a personal representative; or
  - (b) the issue or transfer is to the entity as trustee and neither the company nor any entity it controls has a beneficial interest in the trust, other than a beneficial interest that satisfies these conditions:
    - (i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money; and
    - (ii) that transaction was not entered into with an associate of the company or an entity it controls; or
  - (c) the issue to the entity is part of an issue to all the members of the company who hold shares of the class being issued and is made on a basis that does not discriminate unfairly, either directly or indirectly, in favour of the entity; or
  - (d) the transfer to the entity is by a wholly-owned subsidiary of a body corporate and the entity is also a wholly-owned subsidiary of that body corporate.

- (2) If paragraph (1)(c) or (d) applies to an issue or transfer of shares, or units of shares, section 258D applies.

#### *258D Company controls entity that holds shares in it - obligation to end control or dispose of shares*

- (1) This section applies as follows:

- (a) if a company acquires control of an entity that holds shares, or units of shares in the company - this section applies to those shares or units from when the company acquires control of the entity
- (b) if a company increases its control over an entity that holds shares, or units of shares, in it - this section applies to those shares or units from when the company increases its control
- (c) if a company issues shares to an entity it controls in the situation covered by paragraph 258C(1)(c) - this section applies to the shares from when they are issued
- (d) if shares, or units of shares, in a company are transferred to an entity it controls in the situation covered by paragraph 258C(1)(d) - this section applies to the shares, or units of shares, from when they are transferred.

(2) Within 12 months after this section starting to apply to the shares or units of shares, either:

- (a) the entity must cease to hold the shares or units of shares; or
- (b) the company must cease to control the entity.

The ASC may extend this period of 12 months.

(3) Any voting rights attached to the shares or units of shares cannot be exercised while the company continues to control the entity.

(4) If, at the end of the 12 months (or extended period), the company still controls the entity and the entity still holds the shares or units of shares, the company and the entity each commit an offence for each day while that situation continues.

(5) This section does not apply to shares, or units of shares, if:

- (a) they are held by the entity as a personal representative; or
- (b) they are held by the entity as trustee and neither the company nor any entity it controls has a beneficial interest in the trust, other than a beneficial interest that satisfies these conditions:
  - (i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money; and
  - (ii) that transaction was not entered into with an associate of the company or an entity it controls.

(6) A contravention of this section does not affect the validity of any transaction.

#### *258E When a company controls an entity*

(1) For the purposes of sections 258C and 258D, a company controls an entity if the company has the capacity to determine the outcome of decisions about the entity's financial or operating policies.

(2) In determining whether a company has this capacity:

- (a) the practical influence the company can exert (rather than the rights it can enforce) is the issue to be addressed; and
- (b) a practice or pattern of behaviour affecting the entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

## Part 2J.4 - Financial assistance

### 259A *Financial assistance by a company for acquiring shares in the company or a holding company*

- (1) A company may financially assist a person to acquire shares, or units of shares, in the company or a holding company of the company only if giving the assistance:
  - (a) does not involve a deterioration in the company's financial position that is material to the interests of its shareholders or creditors; or
  - (b) is approved by shareholders under section 259B (this section also requires advance notice to the ASC); or
  - (c) is exempted under section 259C.
- (2) The payment of a dividend for the purpose of giving financial assistance is financial assistance to which this section applies.
- (3) For the purposes of subsection (1), the acquisition of shares or units of shares includes acquisition by any means, including by issue or transfer.

Note: For a director's duty to prevent insolvent trading on giving financial assistance, see section 588G

### 259B *Shareholder approval*

- (1) Approval by company's own shareholders

Shareholder approval for financial assistance by a company is to be given by special resolution passed at a general meeting of the company.

- (2) Approval by shareholders of listed holding corporation

If after the acquisition referred to in section 259A occurs, the company will be a subsidiary of a listed corporation incorporated or formed in Australia or an external Territory, the financial assistance must also be approved by a special resolution passed at a general meeting of the corporation.

- (3) Approval by shareholders in ultimate Australian holding company

If subsection (2) does not apply but the company will, after the acquisition, have a holding company that is incorporated or formed in Australia or an external Territory and that is not itself a subsidiary of a body corporate so incorporated or formed, the financial assistance must also be approved by a special resolution passed at a general meeting of the body corporate that is or will be that holding company.

- (4) Information to accompany the notice of meeting

A company or other body that calls a meeting for the purpose of subsection (1), (2) or (3) must include with the notice of the meeting a statement setting out all the information known to the company or body that is material to the decision whether to vote in favour of the resolution. However, the company or body does not have to disclose information if it would be unreasonable to require it to do so because it had previously disclosed the information to its members.

- (5) Documents to be lodged with the ASC before notice of meeting is sent out

Before the notice of a meeting for the purpose of subsection (1), (2) or (3) is sent to members of a company or other body, the company or body must lodge with the ASC a copy of:

- (a) the notice of the meeting; and
- (b) any document relating to the financial assistance that will accompany the notice of the meeting sent to the members.

(6) The company must lodge with the ASC at least 14 days in advance of giving the financial assistance a notice in the prescribed form stating that the assistance has been approved under this section.

(7) The passing of a special resolution approving the company giving financial assistance does not relieve a director of the company from any duty under section 232 or otherwise, whether of a fiduciary nature or not, connected with the giving of the financial assistance.

(8) Lodgment of special resolutions

A special resolution passed for the purpose of subsection (1), (2) or (3) must be lodged with the ASC by the company, listed corporation or holding company within 14 days after it is passed.

#### *259C Exempted financial assistance*

(1) General exemptions based on ordinary course of commercial dealing

Financial assistance is exempted from section 259A if it is given in the ordinary course of commercial dealing and consists of:

- (a) acquiring or creating a lien on partly-paid shares in the company for amounts payable in respect of the shares; or
- (b) entering into an agreement with a person under which the person may make payments for shares by instalments.

(2) Special exemptions for financial institutions

If the company's ordinary business includes lending money or giving guarantees or security for loans made by other persons, financial assistance given by the company is exempted from section 259A if it is given in the ordinary course of that business and consists of:

- (a) making a loan on ordinary commercial terms; or
- (b) giving a guarantee or security for a loan made on ordinary commercial terms by another person.

(3) Special exemptions for subsidiaries of borrowing corporations Financial assistance is exempted from section 259A if:

- (a) the company is a subsidiary of a borrowing corporation; and
- (b) the financial assistance is a guarantee or other security given by the company for the repayment by the borrowing corporation of money that it is or will be liable to repay; and
- (c) the borrowing corporation is a borrowing corporation because it is or will be liable to repay the money; and
- (d) the guarantee or security is given by the company in the ordinary course of commercial dealing.

Note: Section 9 defines borrowing corporation.

(4) Special exemption for approved employee share schemes

Financial assistance is exempted from section 259A if it is given under a scheme:

- (a) under which assistance is given for the acquisition of fully-paid shares in the company or a holding company of the company by, or for the benefit of, the company's participating employees; and

- (b) that has been approved by:
  - (i) a resolution passed at a general meeting of the company; and
  - (ii) if the company is a subsidiary of a listed corporation incorporated or formed in Australia or an external Territory - a resolution passed at a general meeting of the listed corporation; and
  - (iii) if subparagraph (ii) does not apply but the company has a holding company that is incorporated or formed in Australia or an external Territory and that is not itself a subsidiary of a body corporate so incorporated or formed - a resolution passed at a general meeting of that holding company.

Note: Section 9 defines participating employee.

(5) Other exemptions

The following types of financial assistance are exempted from section 259A:

- (a) a discharge on ordinary commercial terms of a liability that the company incurred as a result of a transaction entered into on ordinary commercial terms.
- (b) a reduction of share capital in accordance with Division 1 of Part 2J.1

*259D Consequences of failing to comply with section 259A*

If a company provides financial assistance in contravention of section 259A:

- (a) the contravention does not affect the validity of the financial assistance or of any contract or transaction connected with it; and
- (b) the company is not guilty of an offence.

(2) Any officer of the company who is involved in the contravention contravenes this subsection.

Note: Subsection (2) is a civil penalty provision as defined by section 1317DA and Part 9.413 provides for civil and criminal consequences of contravening it.

*For consequential and transitional amendments for Chapter 2H see Schedule 3*

## **CHAPTER 2K - CHARGES**

*This Chapter will consist of existing Part 3.5.*

## **CHAPTER 2L - DEBENTURES**

*This Chapter is reserved for the matters currently dealt with in Division 4 of Part 7 12.*

## CHAPTER 2M

### FINANCIAL STATEMENTS AND AUDIT

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**Part 2M.4**

**Auditor**

*Sections 328 to 333 - Division 1 of Part 3.7 (as amended by Schedule 4) is to be relocated here*

**Part 2M.5**

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	335	Equity accounting
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## **CHAPTER 2M - FINANCIAL STATEMENTS AND AUDIT**

### **Part 2M.1 - Application to disclosing entities, companies and registered collective investment schemes**

285 *Who is covered by this Chapter?*

- (1) This chapter covers:
  - (a) all companies; and
  - (b) all registered schemes; and
  - (c) all disclosing entities incorporated or formed in this jurisdiction (whether or not they are companies or registered schemes).
- (2) How this Chapter applies to registered collective investment schemes

A registered scheme's responsible entity is responsible for the performance of obligations under this Chapter in respect of the scheme. For the purposes of this Chapter, the directors and officers of the responsible entity of a registered scheme are to be taken to be the directors and officers of the scheme.

### **Part 2M.2 - Financial records**

286 *Obligation to keep financial records*

- (1) A company, registered scheme or disclosing entity must keep written financial records that:
  - (a) correctly record and explain its transactions and financial position; and
  - (b) would enable true and fair financial statements to be prepared and audited or reviewed.

The obligation to keep financial records of transactions extends to transactions undertaken as trustee.

Note: Section 9 defines financial records.

- (2) Period for which records must be retained

The financial records must be retained for 7 years after the transactions covered by the records are completed.

287 *Language requirements*

- (1) The financial records may be kept in any language.
- (2) An English translation of financial records not kept in English must be made available within a reasonable time to a person who:
  - (a) is entitled to inspect the records; and
  - (b) asks for the English translation.

288 *Physical format*

If financial records are kept in electronic form, they must be convertible hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

289 *Place where records are kept*

- (1) A company, registered scheme or disclosing entity may decide where to keep the financial records.

(2) Records kept outside Australia

If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared and audited or reviewed.

(3) The ASC may direct a company, registered scheme or disclosing entity to produce specified financial records that are kept outside Australia.

(4) The direction must:

(a) be in writing; and

(b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and

(c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

(5) The company, registered scheme or disclosing entity must comply with the direction.

(6) Records or information to be kept at registered office or place notified to ASC

Financial records kept in Australia, or information required by subsection (2), must be kept:

(a) if they relate to a company - at the registered office of the company; or

(b) at a place of which the ASC has been given notice.

(7) A company, registered scheme or disclosing entity may lodge with the ASC written notice in the prescribed form specifying a place in Australia where financial records or information required by subsection (2) are to be kept. The notice must be lodged before starting to keep the records or information at the place.

*290 Director access*

(1) Personal access

A director of a company, registered scheme or disclosing entity has a right of access to the financial records at all reasonable times.

(2) Court order for inspection on director's behalf

On application by a director, the Court may authorise a suitable person to inspect the financial records on the director's behalf.

*291 Access by other people (signpost to other provisions)*

(1) Members

A member may apply to the Court under section 247A for an order for inspection of the financial records.

(2) Auditor

The auditor has a right of access to the financial records under section 313.

(3) Controllers

A controller of a corporation's property (for example, a receiver or receiver and manager) has a right of access to the financial records under section 431.

(4) ASC

The ASC has power under sections 28 to 39 of the *Australian Securities Commission Act 1989* to inspect financial records. It also has power under subsection 289(3) to call for the production of financial records kept outside Australia.

### Part 2M.3 - Financial statements and reports

#### Division 1 - Annual financial statements and directors' report

##### 292 *Financial deadline for financial year*

(1) The following table establishes the financial deadlines for financial years of companies, registered schemes and disclosing entities:

Financial deadline		
Type of company etc.		Deadline (after end of financial year)
Disclosing entity		3 months
Not disclosing entity	Public company	4 months
	Large proprietary company	4 months
	Small proprietary company – controlled by non-registered foreign company	4 months
	Small proprietary company – shareholder request under section 295	4 months (but see section (2))
	Small proprietary company – ASC direction under section 296	Date specified in ASC request
	Registered collective investment scheme	4 months

Note: See section 105 for the rules on how to work out when periods begin and end.

(2) If the shareholder request under section 295 is made after the end of the financial year, the deadline is the later of:

- (a) 2 months after the date on which the request is made; and
- (b) 4 months after the end of the financial year.

##### 293 *What has to be done by the financial deadline for a financial year?*

(1) Annual financial reporting - preparation, audit and lodgment with ASC

A company, registered scheme or disclosing entity that has to prepare financial statements and a directors' report for a financial year must do the following by the financial deadline for that year:

- (a) prepare the financial statements and the directors' report to members; and
- (b) have the financial statements audited; and

(c) lodge the financial statements, the director's report and the auditor's report on the statements with the ASC; and

(d) for a company or disclosing entity that was a borrowing corporation at the end of the financial year - give a copy of the financial statements, the directors' report and the auditor's report on the statements to the trustee for debenture holders.

Note: There are 2 exceptions to this rule:

- small proprietary companies preparing financial statements and reports in response to a shareholder request under section 295 do not have to lodge them and only have to have them audited if the request asks for the audit (see subsection 303(2)).
- companies that have the benefit of the grandfathering in subsection 321(3) have to prepare financial statements and have them audited but do not have to lodge them with the ASC.

(2) Annual financial reporting to members

The deadline for the financial year may also be relevant for determining the date by which the company, registered scheme or disclosing entity has to report to members (see subsection 317(1)).

#### *294 Who has to prepare annual financial statements and directors' report?*

(1) Financial statements and a directors' report must be prepared for each financial year by:

- (a) all disclosing entities; and
- (b) all public companies; and
- (c) all large proprietary companies; and
- (d) all registered schemes.

(2) A small proprietary company does not have to prepare the statements and directors' report unless:

- (a) requested to do so under section 295 or directed to do so under section 296; or
- (b) the company was controlled by a foreign company for all or part of the year and the foreign company was not a registered foreign company for the whole of the time in the year during which it controlled the small proprietary company.

#### *295 Small proprietary company - shareholder request*

(1) Shareholders holding at least 5 % of the voting shares in a small proprietary company may request the company to:

- (a) prepare financial statements and a directors' report for a financial year; and
- (b) send them to shareholders.

(2) The request must be:

- (a) served on the company; and
- (b) signed by the shareholders making the request; and
- (c) made no later than 12 months after the end of the financial year concerned.

(3) The request may do all or any of the following:

- (a) specify that the financial statements do not have to comply with some or all of the accounting standards

- (b) specify that a directors' report need not be prepared
- (c) ask that the financial statements be audited.

**296** *Small proprietary company - ASC direction*

- (1) ASC may direct a small proprietary company to comply with requirements of this Division for a financial year.
- (2) The direction may be general or may specify the particular requirements of this Division that the company is to comply with.
- (3) The direction must specify the date by which the documents have to be prepared, sent or lodged. The date must be a reasonable one in view of the nature of the direction.
- (4) The direction must:
  - (a) be made in writing; and
  - (b) be served on the company; and
  - (c) specify the financial year concerned; and
  - (d) be made no later than 6 years after the end of that financial year.

**297** *Contents of annual financial statements*

- (1) Basic contents

The financial statements for a financial year consist of:

- (a) a profit and loss statement for the year; and
- (b) a balance sheet as at the end of the year; and
- (c) a statement of cash flows for the year; and
- (d) if required by the accounting standards - a consolidated profit and loss statement, balance sheet and statement of cash flows; and
- (e) notes required by the accounting standards; and
- (f) other disclosures required by the regulations; and
- (g) a statement by the directors whether the documents and notes referred to in paragraphs (a) to (e) comply with accounting standards; and
- (h) a statement by the directors whether the documents and notes referred to in paragraphs (a) to (e) give a true and fair view; and
- (i) a statement by the directors setting out any other information or explanation necessary to give a true and fair view.

- (2) Early adoption of accounting standard

If an accounting standard is applied to the financial year by an election under subsection 334(4), the financial statements must also include a statement by the directors identifying the accounting standard and stating that it is applied to the year.

(3) Solvency statement

The financial statements must also include a statement whether, in the directors' opinion, there are reasonable grounds to believe that the company, registered scheme or disclosing entity will be able to pay its debts as and when they become due and payable.

298 Compliance with accounting standards and regulations

(1) Financial statements for a financial year must comply with the accounting standards. However, a small proprietary company's statements do not have to comply with particular accounting standards if:

- (a) the statements are prepared in response to a request under section 295; and
- (b) the request specifies that the statements do not have to comply with those accounting standards.

(2) Financial statements must comply with any further requirements in the regulations.

299 *Requirements for directors' statements*

(1) A statement under paragraph 297(1)(g), (h) or (i) or subsection 297(2) or (3) must:

- (a) be made in accordance with a resolution of the directors; and
- (b) specify the day on which it is made.

(2) The statement must be signed by a director.

300 *Annual directors' report - general*

(1) Before the financial deadline for a financial year, the company, registered scheme or disclosing entity must prepare a directors' report to members.

(2) The company, registered scheme or disclosing entity does not have to comply with subsection (1) for a financial year if:

- (a) all members agree in writing before the deadline for that year that they do not want the report; or
- (b) the company is a small proprietary company that is preparing financial statements in response to a request under section 295 and the request specified that a directors' report need not be prepared.

The report must give members the information they need in order to be to understand the overall position of:

- (a) the company, registered scheme or disclosing entity (if consolidated financial statements are not required); or
- (b) the consolidated entity (if consolidated financial statements are required).

(4) General discussion and analysis

The report must discuss and analyse:

- (a) results of operations (both overall and in key business segments); and
- (b) key strategic initiatives; and

- (c) major commitments and sources of funding for those commitments; and
- (d) unusual or infrequent events or transactions; and
- (e) likely future developments in the business; and
- (f) trends or events that have had a significant affect, or are likely to have a significant affect, on the business.

If consolidated financial statements are required, these details must be provided in relation to the consolidated entity.

- (5) Prejudicial information need not be disclosed

The report may omit material that would otherwise be included under paragraph (4)(e) or (f) if it is likely to result in unreasonable prejudice to:

- (a) the company, registered scheme or disclosing entity; or
- (b) if consolidated financial statements are required - the consolidated entity or any entity (including the company, registered scheme or disclosing entity that is part of the consolidated entity).

If material is omitted, the report must say so.

### 301 *Annual directors' report - specific details*

- (1) The annual directors' report for a financial year must also include details of:

- (a) dividends or distributions paid to members during the year; and
- (b) dividends or distributions recommended for payment to members, but not paid, during the year; and
- (c) the name of each person who has been a director of the company, registered scheme or disclosing entity at any time during or since the end of the year; and
- (d) options over unissued shares or interests granted (whether or not by the company, registered scheme or disclosing entity) during or since the end of the year to a director or to any of the 5 most highly remunerated officers of the company, registered scheme or disclosing entity as part of their remuneration (see subsections (2) and (3)); and
- (e) shares or interests issued by the company, registered scheme or disclosing entity during or since the end of the year as a result of the exercise of an option (see subsection (5)); and
- (f) unissued shares or interests under option as at the day the report is made (see subsection (4)); and
- (g) indemnities and insurance premiums for officers (see subsections (6) and (7)).

Details do not have to be included in the directors' report if they are included in the company's financial statements for the financial year.

Public companies and registered schemes must include additional information under subsections (8) and (9).

- (2) For the purpose of paragraph (1)(d), the rules about the meaning of remuneration in the context of related party transactions (see subsections 243K(4) to (7B)) must be taken into account.

Note: The rules in subsections 243K(4) to (7B) deal with matters such as fringe benefits, superannuation contributions, retirement benefits and indemnities.

(3) Options details

The details of an option granted are:

- (a) the company, registered scheme or disclosing entity granting the option; and
- (b) the name of the person to whom the option is granted; and
- (c) the number and class of shares or interests over which the option is granted.

(4) The details of unissued shares or interests under option are:

- (a) the number and classes of those shares or interests; and
- (b) the issue price, or the method of determining the issue price, of those shares or interests; and
- (c) the expiry date of the options; and
- (d) any rights that option holders have under the options to participate in any share issue or interest issue of the company, registered scheme or disclosing entity or of any other body corporate or registered scheme.

(5) Shares or interests issued as a result of exercise of option

The details of shares or interests issued as a result of the exercise of an option are:

- (a) the number of shares or interests issued; and
- (b) if the company, registered scheme or disclosing entity has different classes of shares or interests - the class to which each of those shares or interests belongs; and
- (c) the amount unpaid on each of those shares; and
- (d) the amount paid, or agreed to be considered as paid, on each of those shares or interests.

(6) Indemnities and insurance premiums for officers or auditors

The report for a company must include details of:

- (a) any indemnity that is given to an officer or auditor against a liability and that is covered by subsection 241(2) or (3), or any relevant agreement under which an officer or auditor may be given an indemnity of that kind; and
- (b) any premium that is paid, or agreed to be paid, for insurance against an officer's or auditor's liability and that is covered by subsection 241A(3).

Sections 241 and 241A contain general prohibitions against giving certain indemnities and paying certain insurance premiums. This subsection requires that transactions that are exceptions to these prohibitions are reported.

(7) The details required under subsection (6) are:

- (a) the name of the officer or auditor; and
- (b) the nature of the liability; and
- (c) for an indemnity given - the amount the company paid and any other action the company took to indemnify the officer or auditor; and

(d) for an agreement to indemnify - the amount that the relevant agreement requires the company to pay and any other action the relevant agreement requires the company to take to indemnify the officer or auditor; and

(e) for an insurance premium - the amount of the premium.

(8) Special rules for public companies

The report for a public company that is not a wholly-owned subsidiary of another company or of a recognised company must also include details of:

(a) each director's qualifications, experience and special responsibilities; and

(b) the number of directors' meetings held during the year and each director's attendance at those meetings; and

(c) the number of directors' committee meetings held during the year and each director's attendance at those meetings.

(9) Special rules for registered collective investment schemes

The report for a registered scheme must also include details of:

(a) the ratio of the scheme's management expenses to its net assets as at the end of the financial year; and

(b) the number of interests in the scheme held by the responsible entity or its associates as at the end of the financial year; and

(c) interests in the scheme issued during the financial year; and

(d) withdrawals from the scheme during the financial year; and

(e) the value of the scheme's assets as at the end of the financial year, and the basis for the valuation; and

(f) the number of interests in the scheme as at the date the report is made.

**302** *Requirements for annual directors' report*

(1) The annual directors' report must:

(a) be made in accordance with a resolution of the directors; and

(b) specify the day on which it is made. e report must be signed by a director.

**303** *Audit of annual financial statements*

(1) A company, registered scheme or disclosing entity must have the financial statements for a financial year audited in accordance with Division 3.

(2) A small proprietary company's financial statements for a financial year have to be audited if:

(a) the statements are prepared in response to a request under section 295; and

(b) the request did not ask for the financial statements to be audited.

## Division 2 - Half-year financial statements and directors' report

### 304 *Disclosing entity must prepare half-year financial statements and directors' report*

Within 75 days after the end of a half-year a disclosing entity must:

- (a) prepare financial statements and a directors' report; and
- (b) have the financial statements audited or reviewed; and
- (c) lodge the financial statements, the directors' report and the auditor's report on the statement with the ASC; and
- (d) for a disclosing entity that was a borrowing corporation at the end of the half-year - give a copy of the financial statements, the directors' report and the auditor's report on the statements to the trustee for debenture holders.

### 305 *Contents of half-year financial statements*

(1) The financial statements for a half-year consist of:

- (a) except where paragraph (b) applies:
  - (i) a profit and loss statement for the half-year; and
  - (ii) a balance sheet as at the end of the half-year; and
  - (iii) a statement of cash flows for the half-year; and
- (b) if required by the accounting standards - a consolidated and loss statement, balance sheet and statement of cash flows; and
- (c) notes required by the accounting standards; and
- (d) other disclosures required by the regulations; and
- (e) a statement by the directors whether the documents referred to paragraph (a) or (b) and the notes referred to paragraph (c) comply with accounting standards; and
- (f) a statement by the directors whether the documents referred to paragraph (a) or (b) and the notes referred to paragraph (c) give a true and fair view; and
- (g) a statement by the directors setting out any other information explanation necessary to give a true and fair view.

(2) Early adoption of accounting standard

If an accounting standard is applied to the half-year by an election under subsection 334(4), the financial statements must also include a statement by the directors identifying the accounting standard and stating that it is applied to the half-year.

(3) Solvency statement

The financial statements must also include a statement whether, in the directors' opinion, there are reasonable grounds to believe that the disclosing entity will be able to pay its debts as and when they become due and payable.

306 *Compliance with accounting standards and regulations*

Financial statements for a half-year must comply with the accounting standards and any further requirements in the regulations.

307 *Requirements for directors' statements*

- (1) A statement under paragraph 305(1)(e), (f) or (g) or subsection 305(2) or (3) must:
  - (a) be made in accordance with a resolution of the directors; and
  - (b) specify the day on which it is made.
- (2) The statement must be signed by a director.

308 *Half-year directors' report*

The directors of the disclosing entity must prepare a directors' report consists of:

- (a) a review of the entity's operations during the half-year and the results of those operations; and
- (b) the name of each person who has been a director of the entity at any time during or since the end of the half-year.

If consolidated financial statements are required, the report must cover consolidated entity.

309 *Audit or review of half-year financial statements*

A disclosing entity must have the financial statements for a half-year or reviewed in accordance with Division 3.

Division 3 - Audit and auditor's report

310 *Audit*

An auditor who conducts an audit of the financial statements for a financial year must form an opinion about:

- (a) whether the financial statements concerned give a true and fair view; and
- (b) whether the financial statements are in accordance with this Law; and
- (c) whether the financial statements are in accordance with accounting standards; and
- (d) whether the auditor has been given all necessary information and explanations; and
- (e) whether the company, registered scheme or disclosing entity has kept financial records that would enable financial statements to be prepared and audited or reviewed as required by this Division; and
- (f) whether the company, registered scheme or disclosing entity has kept other records and registers as required by this Law.

311 *Auditor's report on annual financial statements*

- (1) An auditor who audits the financial statements for a financial year must report to members on whether the auditor is of the opinion that the financial statements:
  - (a) give a true and fair view; and

- (b) are in accordance with this Law; and
- (c) are in accordance with accounting standards.

If not of that opinion, the auditor's report must say why.

- (2) If the auditor is of the opinion that the financial statements do not comply with an accounting standard, the auditor's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial statements.
- (3) The auditor's report must describe:
  - (a) any defect or irregularity in the financial statements; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 310(d), (e) or (f).
- (4) The report must specify the day on which it is made.

### 312 *Auditor's report on half-year financial statements*

#### (1) Audit of financial statements

An auditor who audits the financial statements for a half-year must report to members on whether the auditor is of the opinion that the financial statements:

- (a) give a true and fair view; and
- (b) are in accordance with this Law; and
- (c) are in accordance with accounting standards.

If not of that opinion, the auditor's report must say why.

- (2) If the auditor is of the opinion that the financial statements do not comply with an accounting standard, the auditor's report must, to the extent that it is practicable to do so, quantify the effect that non-compliance has on the financial statements.
- (3) The auditor's report must describe:
  - (a) any defect or irregularity in the financial statements; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 310(d), (e) or (f).
- (4) Review of financial statements

An auditor who reviews the financial statements for a half-year must report to members on whether the auditor became aware of any matter ~6 the course of the review that makes the auditor believe that the statements do not comply with Division 2.

- (5) A report under subsection (4) must:
  - (a) describe any matter referred to in subsection (4); and
  - (b) say why that matter makes the auditor believe that the statements do not comply with Division 2.
- (6) Report to specify day made

A report under subsection (1) or (4) must specify the day on which it is made.

### *313 Auditor's power to obtain information*

The auditor:

- (a) has a right of access at all reasonable times to the books of the company, registered scheme or disclosing entity; and
- (b) may require any officer to give the auditor information and explanations for the purposes of the audit or review.

### *314 Reporting to ASC*

The auditor conducting an audit or review must, as soon as possible, notify the ASC in writing if the auditor:

- (a) has reasonable grounds to suspect that a contravention of this Law has occurred; and
- (b) believes that the contravention cannot adequately be dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors.

### *315 Assisting auditor*

An officer of a company, registered scheme or disclosing entity must:

- (a) allow the auditor access to the books of the company, scheme or entity; and
- (b) give the auditor information or an explanation required under section 313; and
- (c) otherwise assist the conduct of the audit or review.

### *316 Special provisions on audit of borrowing corporations and guarantor bodies*

(1) Auditor to give trustee for debenture holders copies of reports, certificates etc

A borrowing corporation's auditor must give the trustee for debenture holders:

- (a) a copy of any report, certificate or other document that the auditor must give the borrowing corporation or its members under this Law, the debentures or the trust deed; and
- (b) a copy of any document that accompanies it.

The copies must be given within 7 days after the auditor gives the originals to the borrowing corporation or its members.

(2) Auditor to report on matters prejudicial to debenture holders' interests

The auditor of the borrowing corporation or a guarantor body must give the borrowing corporation or guarantor body a written report about any matter that:

- (a) the auditor became aware of in conducting the audit or review; and
- (b) in the auditor's opinion, is or is likely to be prejudicial to the interests of debenture holders; and
- (c) is relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties, under this Law or the trust deed.

The auditor must give a copy of the report to the trustee for debenture holders. The report and the copy must be given within 7 days after the auditor becomes aware of the matter.

## Division 4 - Annual financial reporting to members

### 317 *Annual financial reporting to members*

#### (1) Deadline

A public company must report to members by the earlier of:

- (a) 21 days before the annual general meeting; and
- (b) 4 months after the end of the financial year.

Any other company, registered scheme or disclosing entity must report to members for a financial year before the financial deadline for that year.

#### (2) Full or concise financial report

To report to members, the company, scheme or entity must either:

- (a) send members copies of:
  - (i) the financial statements for the year; and
  - (ii) the annual directors' report (see sections 300 and 301); and
  - (iii) the auditor's report on the statements or consolidated statements; or
- (b) send members a concise financial report for the year that complies with subsection (3).

#### (3) Concise financial report

A concise financial report consists of:

- (a) concise financial statements for the year drawn up in accordance with accounting standards made for the purposes of this paragraph; and
- (b) the annual directors' report (see sections 300 and 301); and
- (c) a statement by the auditor:
  - (i) that the financial statements or consolidated financial statements have been audited; and
  - (ii) whether, in the auditor's opinion, the concise financial report complies with the accounting standards for concise financial reports; and
- (d) a copy of any qualification in the auditor's report on the financial statements or consolidated financial statements; and
- (e) a statement that the full financial statements and reports will be sent to the member free of charge if the member asks for them.

### 318 *Member's choices as to annual financial information*

#### (1) A member may request the company, registered scheme or disclosing entity:

- (a) not to send them some or all of the material required by section 317; or
- (b) to send them full financial statements and reports.

A request may be a standing request or relate to a particular financial year (being the financial year in which the request is made or the previous or next financial year).

- (2) A request under paragraph (1)(a) has effect subject to any later request under paragraph (1)(b).
- (3) The company, registered scheme or disclosing entity must comply with request under paragraph (1)(b):
  - (a) by the reporting deadline (see subsection 317(1)) that applies to the financial year or to each financial year to which the request relates; or
  - (b) if the request relates to a financial year whose reporting period ended before the request was received - within 7 days after receiving the request.
- (4) Full financial statements and reports are to be sent free of charge unless the member has already received a copy of them free of charge.

### **319 Consideration of financial statements and reports at AGM**

A public company's directors must lay before the AGM:

- (a) the financial statements; and
- (b) the directors' report to members; and
- (c) the auditor's report.

### **320 Debenture holders entitled to annual financial report on request**

- (1) A debenture holder may ask the company or disclosing entity that issued the debenture for copies of:
  - (a) the last financial statements and reports sent to members under section 317; or
  - (b) the full financial statements and reports for the last financial year.
- (2) The company or entity must give the debenture holder the copies as soon as practicable after the request and free of charge.

## **Division 5 - Lodging financial statements and reports with the ASC**

### **321 Automatic lodgment of financial statements and reports with the ASC**

- (1) A company, registered scheme or disclosing entity that has to prepare financial statements and reports for a period must lodge the statements reports with the ASC before the financial deadline for the period. obligation extends to concise financial statements sent to members r section 317.
- (2) Subsection (1) does not apply to a small proprietary company that prepares statements and reports in response to a shareholder request section 295 or an ASC direction under section 296.
  - (a) the company is a large proprietary company at the end of the first financial year after the commencement of Schedule 4 of the First Corporate Law Simplification Act 1995; and
  - (b) the company's financial statements for the financial year ending during 1993 and each later financial year have been audited before the deadline for that year; and
  - (c) within 4 months after the end of the first financial year after the commencement of Schedule 4 of the First Corporate Law Simplification Act 1995, the company lodges with the ASC a notice that the company wants this subsection to apply to the company. (The ASC may extend this period.)

- (3) Subsection (1) does not apply to a large proprietary company that is not entity if:
- (a) the company was an exempt proprietary company on 30 June 1994; and
  - (b) company has continued to meet the definition of exempt proprietary company (as in force at 30 June 1994) at all times since that date; and
- (4) A company that has the benefit of subsection (3) must lodge with the ASC notice of any of the following events:
- (a) the resignation or retirement of the company's auditor
  - (b) the appointment of a new auditor (including details of the new auditor).

The notice must be lodged within 14 days after the resignation, retirement or appointment.

### *322 ASC power to require lodgment*

- (1) The ASC may direct a company, registered scheme or disclosing entity to lodge with the ASC a copy of its financial statements or reports for a period or -periods.
- (2) The direction must:
- (a) be made in writing; and
  - (b) be served on the company, registered scheme or disclosing entity; and
  - (c) specify the period or periods concerned; and
  - (d) be made no later than 6 years after the end of the period or periods; and
  - (e) specify the date by which the documents have to be lodged.

The date specified under paragraph (e) must be at least 14 days after date on which the direction is given.

### *323 Relodgment if financial statements or directors' reports amended after lodgment*

If financial statements or directors' reports are amended after they are lodged with the ASC, the amended financial statements must be lodged with the ASC within 14 days after the amendment.

## Division 6 - Special provisions about consolidated financial statements

### *324 Directors and officers of controlled entity to give information*

If a company, registered scheme or disclosing entity has to prepare consolidated financial statements, a director or officer of a controlled entity must give the company, registered scheme or disclosing entity all information requested that is necessary to prepare the consolidated financial statements.

### *325 Auditor's power to obtain information from controlled entity*

- (1) An auditor who audits or reviews consolidated financial statements:
- (a) has a right of access at all reasonable times to the books of any controlled entity; and
  - (b) may require any officer of the entity to give the auditor information and explanations for the purposes of the audit or review.

This is so even if the entity is no longer controlled by the company, registered scheme or disclosing entity whose financial statements are being audited.

(2) The information and explanations required under paragraph (1)(b) are to given at the expense of the company, registered scheme or disclosing whose financial statements are being audited.

### *326 Controlled entity to assist auditor*

If a company, registered scheme or disclosing entity has to prepare consolidated financial statements, an officer or auditor of a controlled entity must:

- (a) allow the auditor for the company or scheme access entity's books; and
- (b) give the auditor information or an explanation required under section 325; and
- (c) otherwise assist the conduct of the audit or review.

### Division 7 - Financial years and half-years

#### *327 Financial years and half-years*

(1) First financial year for company or incorporated body

The first financial year for a company or incorporated body starts on the day on which it is registered or otherwise incorporated. It lasts for 12 months or the period (not longer than 18 months) determined by the directors.

(2) First financial year for registered collective investment scheme

The first financial year for a registered scheme starts on the day on which it is registered. It lasts for 12 months or the period (not longer than 18 months) determined by the directors.

(3) Financial years after first year

Subsequent financial years must:

- (a) start at the end of the previous financial year; and
- (b) be 12 months long.

The directors may determine that the financial year is to be shorter (by not more than 7 days) or longer (by not more than 7 days).

(4) Synchronisation of financial years where consolidated financial statements required

A company, registered scheme or disclosing entity that has to prepare consolidated financial statements must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years. It must achieve this synchronisation by the end of 12 months after the situation that calls consolidation arises.

(5) To facilitate this synchronisation, the particular financial year for a consolidated entity in which the situation arises may be extended or shortened. The extended financial year cannot be longer than 18 months.

(6) Half-years

A half-year for a company or incorporated body or a registered scheme is the first 6 months of a financial year. The directors may determine that the half-year is to be shorter (by not more than 7 days) or longer (by not more than 7 days).

## **Part 2M.4 - Auditor**

*Division 1 of Part 3.7, as amended by Schedule 4, will be moved here and renumbered as sections 328 to 333.*

*The Task Force has not examined these provisions because they are presently under review by a Working Party, established in 1994 by the Federal Attorney-General, following consideration by the Ministerial Council for Corporations (MINCO). The report of the Working Party is expected to be completed by the end of 1995.*

## **Part 2M.5 - Accounting standards**

### **334 Accounting standards**

- (1) AASB's power to make accounting standards

The AASB may make accounting standards under section 32 of the *Corporations Act 1989*.

- (2) Application of standards

Accounting standards may:

- (a) be of general or limited application (including a limitation to specified bodies or undertakings); and
  - (b) differ according to differences in time, locality, place or circumstance.
- (3) An accounting standard applies to:
    - (a) periods ending after the commencement of the standard; or
    - (b) periods ending after a later date specified in the standard.
  - (4) A company, registered scheme or disclosing entity may elect to apply accounting standard to an earlier period unless the standard says otherwise. The election must be made in writing by the directors.

Note: The election must be recorded in the financial statements (see subsections 297(2) and 305(2)).

### **335 Equity accounting**

This Chapter (and, in particular, the provisions on consolidation of statements) does not prevent accounting standards from tinging equity accounting principles.

### **336 Comparative amounts**

The accounting standards for the preparation of financial statements for a period may require the inclusion in those statements of comparative amounts for earlier periods.

### **337 Interpretation of accounting standards**

In interpreting an accounting standard, unless the contrary intention appears:

- (a) expressions used in the standard have the same meaning as they have in this Chapter; and
- (b) the provisions of Part 1.2 apply.

### **338 Severing invalid provisions**

If an accounting standard would otherwise have been interpreted as being inconsistent with this Law, the standard is nevertheless to be valid to the extent to which it is not inconsistent with this Law.

339 *Evidence of text of accounting standard*

(1) section applies to a document that purports to be published by or on behalf of the AASB or ASC and to set out the text of:

- (a) a specified standard as in force at a specified time under section 32 of the Corporations Act 1989; or
- (b) a specified provision of a standard of that kind.

It also applies to a copy of a document of that kind.

(2) In the absence of evidence to the contrary, a document to which this section applies is proof in proceedings under the Corporations Law of this jurisdiction that:

- (a) the specified standard was in force at that time under that section; and
- (b) the text set out in the document is the text of the standard or provision referred to in paragraph (1)(b).

**Part 2M.6 - Exemptions and modifications**

340 *ASC's power to make specific exemption orders*

On an application made in accordance with subsection (3) in relation to a company, registered scheme or disclosing entity, the ASC may make an order in writing relieving any of the following from requirements of Parts 2M.2 and 2M.3:

- (a) the directors
- (b) the company, scheme or entity
- (c) the auditor.

Note: For the criteria for making orders under this section see section 342.

(2) The order may:

- (a) relate to all of the requirements of Parts 2M.2 and 2M.3 or specified requirements of those Parts; and
- (b) be expressed to be subject to conditions; and
- (c) be indefinite or limited to a specified period.

(3) The application is to be:

- (a) authorised by a resolution of the directors; and
- (b) in writing and signed by a director; and
- (c) lodged with the ASC.

(4) ASC must give the applicant written notice of the making, revocation or suspension of the order.

341 *ASC's power to make class orders*

(1) ASC may make an order in writing in respect of a specified class of s, registered schemes or disclosing entities, relieving any of the from all or specified requirements of Parts 2M.2 and 2M.3:

- (a) directors

- (b) the companies, registered schemes or disclosing entities themselves
- (c) auditors of the companies, registered schemes or disclosing entities.

Note: For the criteria for making orders under this section see section 342.

(2) The order may:

- (a) be expressed to be subject to conditions; and
- (b) be indefinite or limited to a specified period.

The ASC may revoke or suspend the order.

(3) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.

#### **342** *Criteria for specific exemption orders and class orders*

To make an order under section 340 or 341, the ASC must be satisfied that complying with the relevant requirements of Parts 2M.2 and 2M.3 would:

- (a) make the financial statements and reports misleading; or
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

#### **343** *Modification by regulations*

The regulations may modify the operation of this Chapter in relation to:

- (a) a specified company, registered scheme or disclosing entity; or
- (b) all companies, registered schemes or disclosing entities of a specified kind.

### **Part 2M.7 - Sanctions for contraventions of Chapter**

#### **344** *Contravention of Part 2M.2 or 2M.3*

A director of a company, registered scheme or disclosing entity contravenes this section if they fail to take all reasonable steps to comply with, or to secure compliance with, Part 2M.2 or 2M.3.

Note: This section is a civil penalty provision as defined by section 1317DA and Part 9.413 provides for civil and criminal consequences of contravening it, or being involved in a contravention of it.

*For consequential and transitional amendments for Chapter 2M see Schedule 4*

## **CHAPTER 2N**

### **ANNUAL RETURNS AND LODGMENTS WITH THE ASC**

#### **Part 2N.1**

<b>Annual returns</b>	345	Deadline for lodging annual return
	346	Solvency resolution
	347	Lodging annual return with ASC
	348	Contents of annual return - companies
	349	Contents of annual return - registered collective investment schemes

#### **Part 2n.2**

<b>LODGMENTS WITH THE ASC</b>	350	Signing application, return or notice lodged with ASC in writing
	351	Application, return or notice lodged with ASC electronically

## **CHAPTER 2N - ANNUAL RETURNS AND LODGMENTS WITH THE ASC**

### **Part 2N.1 - Annual returns**

#### **345** *Deadline for lodging annual return*

(1) Companies

A company must lodge an annual return for each calendar year with the ASC. The return must be lodged by 31 January in the next calendar year, unless the ASC and the company agree to a different lodgment date (see subsection (3)).

(2) Responsible entities of registered collective investment schemes

The responsible entity of a registered scheme must lodge with the ASC an annual return for each calendar year for the scheme. The --return for a scheme must be lodged within 3 months after the end of the scheme's financial year unless the ASC and the responsible entity agree to a different lodgment date (see subsection (3)).

(3) Agreed lodgment date

ASC and the company or the ASC and the responsible entity may to a different lodgment date. The agreement must be in writing may cover 1 or more calendar years. The annual return must be lodged by the agreed date.

(4) Company's obligation to lodge some returns or notices ceases on lodgment of annual return

A company's obligation to lodge a return or notice that it is required to lodge under section 140, 143, 242 or 2545, ceases if:

- (a) the company lodges its annual return; and
- (b) the annual return sets out the information required by the return or notice.

Note: The ASC may send a partly completed annual return to the company or the responsible entity. The company or the responsible entity may use the partly completed annual return to comply with the obligation to lodge an annual return by correcting any information in it that is not accurate, completing the rest and lodging it with the ASC.

#### **346** *Solvency resolution*

(1) Within 1 month before the annual return is lodged, the directors of a company must resolve whether, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

(2) Subsection (1) does not apply to a company that has lodged financial statements of the company with the ASC under Chapter 2M within 12 months before the annual return is lodged.

#### **347** *Lodging annual return with ASC*

An annual return may be lodged with the ASC:

- (a) in writing in the form approved by the ASC and signed in accordance with section 350; or
- (b) electronically in accordance with section 351.

#### **348** *Contents of annual return - companies*

A company's annual return must contain the information set out in this table, current as at the date when the annual return is signed or authenticated.

<b>Contents of annual return - company</b>	
1 ACN	
2 name	
3 address of registered office	
4 address of principal place of business	
5 each director and company secretary	<ul style="list-style-type: none"> <li>• name and address</li> <li>• date and place of birth</li> </ul> <p>The address must be the person's usual residential address. However, if the person is entitled to have an alternative address under subsection 242(5), the annual return may contain that address.</p>
6 issued shares	<p>The classes into which the shares are divided and for each class of share issued:</p> <ul style="list-style-type: none"> <li>• the number of shares in the class</li> <li>• the total amount paid up for the class</li> <li>• the total amount unpaid for the class.</li> </ul>
7 options granted	<p>The number of unissued shares in each class that are subject to options.</p>
8 all members (if company has 20 or fewer members) OR The top 20 members in each class (if company has more than 20 members) The requirement to list the top 20 members does not apply to a company limited only by guarantee.	<ul style="list-style-type: none"> <li>• the names and address of the members</li> </ul> <p>If the company has a share capital:</p> <ul style="list-style-type: none"> <li>• the total number of shares in each class held by each of them</li> <li>• whether or not the shares are fully paid</li> <li>• unless the company is a listed corporation – whether or not the shares are beneficially owned.</li> </ul> <p>If 2 or more shareholders in the top 20 shareholders in a class of shares each hold the same number of shares, the company must include the details set out above for each of them.</p>
9 company solvency not necessary if company lodged financial statements with ASC within last 12 months.	<p>Statement that the directors have resolved within the last month under section 346 that, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.</p>
10 ultimate holding company	<ul style="list-style-type: none"> <li>• name</li> <li>• its ACN if registered in Australia; or the place at which it was incorporated or formed if not registered in Australia.</li> </ul>

Note: If the details referred to in items 3, 4, 5 and 6 change after the annual return is lodged, the company must notify the ASC of the change (see section 140 (registered office), section 143 (principal place of business), section 242 (director and company secretary) and section 254S (issued shares)).

### 349 Contents of annual return - registered collective investment schemes

An annual return for a registered scheme must contain the information, set out in this table, current as at the date when the annual return is signed or authenticated.

<b>Contents of annual return - registered collective investment scheme</b>	
1 registration number of scheme	
2 name of scheme	
3 name and ACN of the responsible entity	
4 issued collective investment interests  Only if the scheme is a unit trust.	The classes into which the units are divided and for each class of unit issued: <ul style="list-style-type: none"> <li>• the number of units in the class</li> <li>• the total amount paid up for the class</li> <li>• the total amount unpaid for the class</li> </ul>
5 issued collective investment interests  Only if 4 does not apply.	<ul style="list-style-type: none"> <li>• a description of the nature of the interests (for example, interest in a limited partnership, right to participate in a timesharing scheme)</li> <li>• the number of those interests</li> <li>• the total amount paid for those interests</li> <li>• the total amount unpaid for those interests</li> </ul>
6 options granted	<ul style="list-style-type: none"> <li>• the number of unissued collective investment interests that are subject to options</li> <li>• for each of the classes of interests that is subject to options - the average exercise price</li> </ul>
7 all interest holders (if scheme has 20 or fewer interest holders)  OR  the top 20 interest holders in each class (if scheme has more than 20 interest holders)	<ul style="list-style-type: none"> <li>• the names and addresses of the interest holders</li> <li>• the total number of interests in each class held by each of them</li> <li>• whether or not the interests are fully paid</li> </ul> <p>If 2 or more interest holders in the top 20 interest holders each hold the same number of interests, the responsible entity must include the details set out above for each of them.</p>

### **Part 2N.2 - Lodgments with the ASC**

#### *350 Signing application, return or notice lodged with ASC in writing*

An application, return or notice lodged with the ASC in writing by, or on behalf of, a corporation or a registered scheme must be signed by a director or secretary of the corporation or of the responsible entity of the registered scheme. If the corporation is a foreign company, it may be signed by:

- (a) its agent; or
  - (b) if the agent is a corporation - a director or secretary of the agent.
- (2) An individual who lodges an application, return or notice with the ASC in writing must sign it.
  - (3) The person's name must be printed next to the signature.

351 *Application, return or notice lodged with ASC electronically*

An application, return or notice may be lodged with the ASC electronically only if the ASC and the person seeking to lodge it have agreed, in writing, that it may be lodged and authenticated electronically. If an agreement is in place, the application, return or notice must be lodged and authenticated in accordance with the agreement.

*For consequential and transitional amendments for Chapter 2N see Schedule 5*

## **CHAPTER 5A**

### **DEREGISTRATION OF COMPANIES**

- 601AA Deregistration - voluntary
- 601AB Deregistration - ASC initiated
- 601AC Deregistration - following amalgamation or winding up
- 601AD Effect of deregistration
- 601AE What the ASC does with the property
- 601AF ASC's power to fulfill outstanding obligations of deregistered company
- 601AG Claims against insurers of deregistered company
- 601AH Reinstatement

## CHAPTER 5A - DEREGISTRATION OF COMPANIES

### 601AA Deregistration - voluntary

#### (1) Who may apply for deregistration

An application to deregister a company may be lodged with the ASC by:

- (a) the company; or
- (b) a director or member of the company; or
- (c) a liquidator of the company.

If the company lodges the application, it must nominate a person to be given notice of the deregistration.

#### (2) Circumstances in which application can be made

A person may apply only if:

- (a) all the members of the company agree to the deregistration; and
- (b) the company is not carrying on business; and
- (c) the company's assets are worth less than \$1,000; and
- (d) the company has paid all fees and penalties payable under this Law; and
- (e) the company has no outstanding liabilities; and
- (f) the company is not a party to any legal proceedings.

#### (3) ASC may ask for information about officers

The applicant must give the ASC any information that the ASC about the current and former officers of the company.

#### (4) Deregistration procedure

If the ASC is satisfied that the application complies with subsections ), it must give notice of the proposed deregistration:

- (a) on the national database; and
- (b) in the *Gazette*.

When 2 months have passed since the *Gazette* notice, the ASC may deregister the company.

#### (5) The ASC must give notice of the deregistration to:

- (a) the applicant; or
- (b) the person nominated in the application to be given the notice.

### 601AB Deregistration - ASC initiated

#### (1) Circumstances in which the ASC may deregister

The ASC may decide to deregister a company if:

- (a) the company's annual return is at least 6 months late; and
- (b) the company has not lodged any other documents under this Law in the last 18 months; and
- (c) the ASC has no reason to believe that the company is carrying on business.

(2) The ASC may also decide to deregister a company if the company being wound up and the ASC has reasonable grounds for believing that:

- (a) the liquidator is no longer acting; or
- (b) the company's affairs have been fully wound up and a return that the liquidator should have lodged is at least 6 months late; or
- (c) the company's affairs have been fully wound up under Part 5.4 and the company has no property or not enough property to pay the costs of obtaining a Court order for the company's deregistration.

(3) Deregistration procedure

If the ASC decides to deregister a company under this section, it must give notice of the proposed deregistration:

- (a) to the company; and
- (b) to the company's liquidator (if any); and
- (c) to the company's directors; and
- (d) on the national database; and
- (e) in the *Gazette*.

When 2 months have passed since the *Gazette* notice, the ASC may deregister the company.

(4) The ASC does not have to give a person notice under subsection (3) if the ASC does not have the necessary information about the person's identity or address.

(5) The ASC must give notice of the deregistration to everyone who was notified of the proposed deregistration under paragraphs (3)(b) or (c).

#### *601AC Deregistration - following amalgamation or winding up*

(1) The ASC must deregister a company if the Court orders the deregistration of the company under:

- (a) paragraph 413(1)(d) (reconstruction and amalgamation of Part 5.1 bodies); or
- (b) subsection 481(5) (release of liquidator); or
- (c) subsection 509(6) (liquidator's return following winding up).

(2) The ASC must deregister a company if:

- (a) 3 months have passed since the company's liquidator lodged a return under section 509; and
- (b) no order under subsection 509(6) has been made during that period.

### 601AD *Effect of deregistration*

- (1) Company ceases to exist

A company ceases to exist on deregistration.

Note: The deregistration of a company does not affect any liabilities that people associated with the company incurred before deregistration.

- (2) Company's property vests in ASC

On deregistration, all the company's property vests in the ASC. If company property is vested in a liquidator immediately before deregistration, that property vests in the ASC. This subsection extends to property situated outside this jurisdiction.

Note: The ASC takes the property subject to any security or other interest over the property.

- (3) Company records to be kept by former directors

The directors of the company immediately before deregistration must company books for 3 years after the deregistration. This does not apply to books that a liquidator has to keep under subsection: 542(2).

### 601AE *What the ASC does with the property*

- (1) If property vested in the ASC under subsection 601AD(2) was held the company on trust, the ASC may:

- (a) continue to act as trustee; or
- (b) apply to a court for the appointment of a new trustee.

Note: Under paragraph (a), the ASC may be able to transfer the property to a new trustee chosen in accordance with the trust instrument.

- (2) If the company did not hold the property on trust, the ASC may:

- (a) dispose of or deal with the property as it sees fit; and
- (b) apply any money it receives to:
  - (i) defray expenses incurred by the ASC in exercising powers in relation to the company under this Chapter and
  - (ii) make payments authorised by subsection (3). The ASC must deal with the rest (if any) under Part 9.7.

- (3) Obligations attaching to property

The property remains subject to all liabilities imposed on the pro; under a law and does not have the benefit of any exemption that property might otherwise have because it is vested in the ASC. liabilities include a liability that:

- (a) is a charge or claim on the property; and
- (b) arises under a law that imposes rates, taxes or other charge

- (4) The ASC's obligation under subsection (3) is limited to satisfying liabilities out of the company's property to the extent that the p is properly available to satisfy those liabilities.

- (5) Accounts

The ASC must keep:

- (a) a record of property that it knows is vested in it under Chapter; and
- (b) a record of its dealings with that property; and
- (c) accounts of all money received from those dealings; and
- (d) all accounts, vouchers, receipts and papers relating to the property and the money.

#### *601AF ASC's power to fulfill outstanding obligations of deregistered company*

The ASC may do an act on behalf of the company or its liquidator if the ASC is satisfied that the company or liquidator would be bound to do the act if the company still existed.

Note: This power is a general one and is not limited to acts in relation to property vested in the ASC under subsection 601AD(2). The ASC has all the powers that automatically flow from the vesting of property in the ASC under that subsection and may exercise *those* powers whether or not the company was bound to do so.

#### *601AG Claims against insurers of deregistered company*

A person may recover from a deregistered company's insurer an amount that was payable to the company under the insurance contract if:

- (a) the company had a liability to the person; and
- (b) the insurance contract covered that liability.

#### *601AH Reinstatement*

##### (1) Reinstatement by ASC

The ASC may reinstate the registration of a company if the ASC is satisfied that the company should not have been deregistered.

Note: A company does not have to be reinstated merely to allow the company's insurance policies to be accessed (see section 601AG).

##### (2) Reinstatement by Court

Court may make an order that the ASC reinstate the registration a company if:

- (a) an application for reinstatement is made to the Court by:
  - (i) a person aggrieved by the deregistration; or
  - (ii) a former liquidator of the company; and
- (b) the Court is satisfied that it is just that the company's registration be reinstated.

(3) The Court may give any directions it thinks just for putting the company and other people in the same position, as far as possible, as if the company had not been deregistered.

Note: For example, the Court may direct the ASC to transfer to another person property vested in the ASC under subsection 601AD(2).

##### (4) ASC to give notice of reinstatement

The ASC must give notice of a reinstatement in the *Gazette*. If the ASC exercises its power under subsection (1) in response to an application by a person, the ASC must also give notice of the reinstatement to the applicant.

##### (5) Effect of reinstatement

If a company is reinstated, the company is taken to have continued existence as if it had not been deregistered. A person who was a director of the company immediately before deregistration becomes director again as from the time when the ASC or the Court reinstate the company. Any property of the company that is still vested in ASC reverts in the company.

*For consequential and transitional amendments for Chapter 5A see Schedule 6*

## **SCHEDULE 1 - REGISTERING A COMPANY, BASIC FEATURES OF A COMPANY AND MEMBERS' RIGHTS AND REMEDIES (CHAPTERS 2A, 2B AND 2F)**

### **Consequential amendments**

1. Section 9 (definition of "company")

Omit "incorporated" (first and second occurring), substitute "registered".

2. Section 9 (paragraph (a) of the definition of "company")

(a) Omit "220" , substitute " 140, 141 ".

(b) After "section 600F", insert "and subsection 118(2)".

3. Section 9 (definition of "company limited by guarantee") Omit "by the memorandum".

4. Section 9 (definition of "company limited by shares") Omit "by the memorandum".

5. Section 9 (paragraph (a) of the definition of "constitution")

Omit "memorandum and articles" (twice occurring), substitute "constitution".

6. Section 9 (paragraph (a) of the definition of "contributory")

(a) Omit "other than a no liability company" .

(b) Add at the end "and".

7. Section 9 (subparagraph (b)(ii) of the definition of "contributory")

Omit "and".

8. Section 9 (paragraph (c) of the definition of "contributory")

Omit.

9. Section 9 (definition of "registered office ")

Omit "217", substitute "140".

10. Section 9 (definition of "incorporated in Australia")

Omit, substitute:

incorporated in Australia, in relation to a body corporate, means incorporated by or under a law of the Commonwealth, or of a jurisdiction.

11. Section 9 (definitions of "limited company" and "unlimited company")

Omit, substitute:

limited company means a company limited by shares or a company limited by guarantee;

unlimited company means a company with a share capital formed on the principle of having no limit placed on the liability of its members.

12. Section 9 (definition of "register")

Omit, substitute:

register means register under this Law.

13. Section 9 (definitions of "abbreviation", "articles", "company having a share capital", "incorporate", "Division 1 company" "memorandum", "mining company", "mining purposes", "no liability company", "open", "registration number", "reserve", "sign", "Table A", "Table A proprietary company", "Table B")

Omit.

14. Section 9

Insert:

ACN is short for Australian Company Number. The ASC gives an ACN to company on its registration (see section 118);

ARBN is short for "Australian Registered Body Number". The ASC gives an ARBN to a registrable body on its registration under Chapter SB;

incorporation

(a) of a company and of a recognised company - means the company's first registration under the Corporations Law of any jurisdiction; and

(b) of any other incorporated body - means the body's incorporation under or by a law (other than this Law or a corresponding previous law);

standard opening hours means 10am to 12 noon and 2pm to 4pm each business day;

15. Paragraph 45A(1)(a)

Omit "120", substitute "118".

16. Paragraph 45A(1)(b)

Omit "168", substitute "162".

17. Subsection 45A(1) (Note)

Omit "116", substitute "113".

18. Section 76

Repeal.

19. Paragraph 83(2)(a)

Omit "217", substitute "140 or 145".

20. Subsection 88A(1)

Omit "body corporate", substitute "body".

21. Section 95

Repeal.

22. Section 99A

Repeal.

23. Subsection 102A(3)

Omit "subsection 383C(1)", substitute "subsections 154(1) and 601BG(1)".

24. Paragraph 103(2)(a)

Omit "112", substitute "115".

25. Paragraph 135(d)

Omit "374", substitute "601BA".

26. Section 222

Repeal.

27. Section 223

Repeal.

28. Paragraphs 224(1)(a) and (b)

Omit.

29. Subsection 224(1)

Add at the end.

; or

(i) is of unsound mind; or

(ii) is, or whose estate is, liable to be dealt with in any way under the law relating to mental health.

30. Subsection 224A(4)

Omit "articles of association", substitute "constitution".

31. After section 224A .

Insert:

*224B Single director/shareholder proprietary companies*

(1) Section applies to single director/shareholder proprietary companies

This section applies to a proprietary company while its only director is also its only shareholder.

(2) Company may appoint a director

The company may appoint a director by ordinary resolution.

(3) Powers and duties of director

The director is responsible for managing the business of the company. The director may exercise all the powers of the company except any powers that this Law or the company's constitution requires the company to exercise in general meeting.

Note: For example, the director may issue shares, borrow money and issue debentures.

(4) Eligible negotiable instruments

The director may sign, draw, accept, endorse or otherwise execute an eligible negotiable instrument. The director may determine that an eligible negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

(5) Director's remuneration

The director is to be paid any remuneration that the company determines by ordinary resolution. The company may also pay the director's travelling and other expenses properly incurred by the director in connection with the company's business.

*224C Company may appoint a director (replaceable rule - see section 135)*

A company may appoint a person as a director by ordinary resolution.

*224D Directors may appoint other directors (replaceable rule - see section 135)*

(1) The directors of a company may appoint a person as a director.

(2) If a person is appointed under this section as a director of a proprietary company, the company must confirm the appointment by ordinary resolution within 2 months after the appointment is made. If appointment is not confirmed, the person ceases to be a director of company immediately after the end of those 2 months.

(3) If a person is appointed under this section as a director of a public any, the company must confirm the appointment by ordinary resolution at the company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a director of the company immediately after the end of the annual general meeting.

32. Subsection 225(5)

Omit "articles", substitute "constitution".

33. After section 226

Insert:

*226A Powers and duties of directors (replaceable rule - see section 135)*

(1) The directors of a company are responsible for managing the business of the company.

(2) The directors may exercise all the powers of the company except any powers that this Law, the company's constitution or any replaceable rule that applies to the company requires the company to exercise in general meeting.

Note: For example, the directors may issue shares, borrow money and issue debentures.

*226B Eligible negotiable instruments (replaceable rule - see section 135)*

(1) Any 2 directors of a company that has 2 or more directors or the director of a proprietary company that has only 1 director may sign, draw, accept, endorse or otherwise execute an eligible negotiable instrument.

(2) The directors may determine that an eligible negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

*226C Managing director (replaceable rule - see section 135)*

(1) The directors of a company may appoint one or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors think appropriate.

(2) The appointment of a director as managing director terminates automatically if the director stops being a director.

(3) The directors may confer on a managing director any of the powers that the directors can exercise. The powers may be conferred with or without restrictions, either concurrently with, or to the exclusion of, the directors' powers.

(4) The directors may revoke or vary:

(a) an appointment; or

(b) any of the powers conferred on the managing director.

*226D Proprietary company may remove director (replaceable rule - see section 135)*

A proprietary company may by ordinary resolution:

(a) remove a director from office; and

(b) appoint another person as a director instead.

34. Subsection 227(1)

Omit "articles", substitute "constitution".

35. Subsection 227(12)

Omit "articles", substitute "constitution".

36. Paragraph 228(9)(a)

(a) Omit "articles", substitute "constitution".

(b) Omit "provide", substitute "provides".

37. Subsection 228(10)

(a) Omit "articles", substitute "constitution".

(b) Omit "provide", substitute "provides".

38. Subsection 228(12)

Omit "memorandum or articles", substitute "constitution".

39. Subsection 231(4)

Omit "articles", substitute "constitution".

40. Subsection 231(9)

Omit "articles", substitute "constitution".

41. After section 236

Insert:

*236A Directors' remuneration (replaceable rule - see section 135)*

- (1) The directors of a company are to be paid any remuneration that the company determines by ordinary resolution.
- (2) The company may also pay the directors' travelling and other expenses that they properly incur:
  - (a) in attending and returning from directors' meetings or any meetings of committees of directors; and
  - (b) in attending and returning from any general meetings of the company; and
  - (c) in connection with the company's business.

42. Subsection 238(1)

Omit "articles", substitute "company's constitution".

43. Subsection 238(2)

Omit "articles" (twice occurring), substitute "constitution".

44. After subsection 240(4)

Insert:

(4A) Terms and conditions (replaceable rule - see section 135)

A secretary holds office on the terms and conditions (including as to remuneration) as the directors determine.

45. Subsection 240(5)

Omit "and accessible".

46. Subsection 240(7)

Omit "memorandum or articles", substitute "constitution".

47. Subsection 241(IA)

Omit "memorandum, articles", substitute "constitution".

48. Subsection 263(3)

Omit "Part 4.1", substitute "Chapter SB".

49. Paragraph 266(1)(e)

Omit "Part 4.1", substitute "Chapter SB".

50. Paragraph 266(2)(b)

Omit "Part 4.1 ", substitute "Chapter SB" .

51. Subsection 411(10)

Omit ", notwithstanding subsection 171(8)".

52. Subsection 411(11)

(a) Omit "memorandum" (first occurring), substitute "constitution".

(b) Omit all the words after "been made".

53. Subsection 436A

Omit "under its common seal".

54. Subsection 442F(1)

Omit "164 and 166", substitute "131 and 132".

55. Paragraph 442F(1)(b)

Omit "subsection 164(3)", substitute "section 131".

56. Subsection 442F(2)

Omit "164 and 166" (twice occurring), substitute "131 and 132".

57. Paragraph 461(d)

Omit, substitute:

(d) the company has no member;

58. Paragraphs 462(2)(a), (b), (c) and (d)

Add at the end "or".

59. After paragraph 462(2)(e)

Insert:

(ea) the ASC (in the circumstances set out in subsection (2A)); or

60. After subsection 462(2)

Insert:

(2A) The ASC may apply for an order to wind up a company under paragraph (2)(ea) only if:

(a) the company has no members; and

(b) the ASC has given the company at least 1 month's written notice of its intention to apply for the order.

61. Subsection 493(1)

Omit "articles", substitute "constitution".

62. Subsection 495(4)

Omit "articles", substitute "company's constitution".

63. Section 501

(a) Omit "articles", substitute "company's constitution".

(b) Omit "provide", substitute "provides".

64. Section 516

Omit "sections 518 and 519", substitute "section 519".

65. Section 517

Omit "sections 518 and 519", substitute "section 519".

66. Section 518

Repeal.

67. Section 519

(a) Omit ", 517 and 518", substitute "and 517".

(b) Omit "paragraph 167(1)(a)", substitute "section 161".

68. Section 523

Omit all the words from and including "If the company" to and including "change of status is liable", substitute "If a limited company changes to an unlimited company under section 161, a past member who was a member at the time of the change is liable".

69. Section 524

Repeal, substitute:

**524 Past member of former limited company**

If a limited company changes to an unlimited company under section 161, a person who, at the time when the company applied for the change, was a past member and did not again become a member after that time need not contribute more than they would have been liable to contribute if the company had not changed type.

70. After subsection 544(1)

Insert:

(1A) If a liquidator has, or has control of, the money of a company that has no members, the liquidator must pay it to the ASC as soon as practicable for it to be dealt with under Part 9.7.

71. Subsection 544(3)

After "(1)", insert "or (1A)".

72. Subsection 547(3)

Omit "articles", substitute "company's constitution".

73. After Chapter 5A

Insert:

## **CHAPTER 5B -- FOREIGN COMPANIES AND OTHER BODIES THAT ARE NOT COMPANIES**

### **Part 5B.1 - Names of registrable Australian bodies and foreign companies**

#### *601BA Reserving a name*

- (1) A person may lodge an application with the ASC in the prescribed form to reserve a name for a registrable Australian body or a foreign company. If the name is available, the ASC must reserve it.
- (2) The original reservation lasts for 2 months from the date that the application was lodged. The ASC may grant extensions of the reservation. The period of an extension is to be 2 months and an application for an extension must be made before the end of the reservation (whether as originally made or as previously extended).
- (3) The ASC must cancel a reservation if the person who applied for it requests the ASC in writing to do so.

#### *601BB Acceptable abbreviations in names*

- (1) The abbreviations set out in the table may be used:
  - (a) instead of words that this Law requires to be part of a registrable Australian body's or foreign company's name or to be included in a document; and
  - (b) instead of words that are part of a registrable Australian body's or foreign company's name; and
  - (c) with or without full stops.

<b>Word</b>	<b>Abbreviation</b>
Australian	Aust
Australian Registered Body Number	ARBN
Registered	Regd
Number	No
Limited	Ltd

- (2) If a registrable Australian body's or foreign company's name includes any of these abbreviations, the word corresponding to the abbreviation may be used instead.

#### *601BC When is a name available*

- (1) A name is available to a registrable Australian body or a foreign company unless the name is:
  - (a) identical (under rules set out in the regulations) to a name that is reserved or registered for another body; or
  - (b) identical (under rules set out in the regulations) to a name that is included on the national business names register in respect of another individual or body who is not the applicant for registration; or
  - (c) that is unacceptable for registration under the regulations.

(2) Minister may consent to a name being available to a body

The Minister may consent in writing to a name being available to a registrable Australian body or foreign company, even if the name is:

- (a) identical to a name that is reserved or registered in respect of another body; or
- (b) a name that is unacceptable for registration under the regulations.

(3) Minister's consent may be given subject to such conditions as the Minister thinks fit.

**601BD Registered Australian bodies and registered foreign companies can carry on business with some names only**

A registered Australian body or registered foreign company must not carry on business under a name in this jurisdiction unless:

- (a) it is registered under that name under Chapter SB or a corresponding law; or
- (b) the name is registered for it under the law of this jurisdiction dealing with business names.

Note: Chapter SB deals with registrable Australian bodies and foreign companies.

**601BE Using a name and ARBN**

(1) Requirements for bodies that are not Australian banks

Subject to sections 601BF and 601BG, a registered Australian body or registered foreign company that is not an Australian bank must set out the following matters on all its public documents and eligible negotiable instruments published or signed in this jurisdiction:

- (a) its name
- (b) the expression "Australian Registered Body Number" followed by its ARBN
- (c) its place of origin
- (d) if the liability of its members is limited and this is not apparent from its name - notice of the limited liability of its members.

(2) Requirements for bodies and companies that are Australian banks

Subject to sections 601BF and 601BG, a body that is an Australian bank must set out its name and the expression "Australian Registered Body Number" followed by its ARBN on all its public documents and all its eligible negotiable instruments published or signed in this jurisdiction.

(3) Subject to sections 601BF and 601BG, the expression and the ARBN must be set out with the company's or body's name, or 1 of the references to its name, in the document or instrument. If the name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

**601BF Exception to requirement to have ARBN on receipts**

A registered Australian body or a registered foreign company does not need to set out the expression "Australian registered body number" followed by its ARBN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.

**601BG Exception to requirement to have ARBN on transport documents**

(1) A registered Australian body or a registered foreign company may lodge an application in the prescribed form with the ASC for an exemption from the requirement in section 601BE to set out the

expression "Australian registered body number" followed by its ARBN on transport documents like a ticket, waybill or bill of lading.

- (2) The ASC may exempt the applicant, or a specified class of registered Australian bodies and registered foreign companies of which the applicant is a member, from that requirement if it is satisfied that the exemption is necessary or desirable to promote or maintain consistency in international practices relating to the form, content or use of transport documents.
- (3) An exemption must be in writing and may be expressed to be subject to conditions.
- (4) A registered Australian body or a registered foreign company that relies on an exemption must not contravene a condition to which the exemption is subject.
- (5) An exemption, or a variation or revocation of the exemption, takes effect when a copy is published in the *Gazette*.

#### *601BH Notice of name change must be given to the ASC*

- (1) A registered Australian body or a registered foreign company must give the ASC written notice of a change to its name within 1 month after the date the change occurred.
- (2) If the proposed name is available, the ASC must alter the details of the body's or foreign company's registration to reflect the change. For the purposes of this Law, the change of name takes effect when the alteration is made.

Note 1: Names may be reserved (see section 601BA).

Note 2: For available names see section 601BC.

Note 3: The ASC must issue a new certificate reflecting the name change (see section 360).

#### *601BJ ASC's power to direct a registered name be changed*

- (1) ASC may direct a registered Australian body or registered foreign company in writing to change the name under which the body or company is registered if the name should not have been registered.
- (2) Within 2 months after the ASC makes the direction, the body or company must apply to the ASC to change the name under which it is registered.
- (3) If subsection (2) is not complied with, the ASC may alter the details of the body's or company's registration by changing its name to include its ARBN. For the purposes of this Law, the change of name takes effect when the alteration is made.

Note: The ASC must issue a new certificate reflecting the name change (see section 360).

### **Part 5B.2 - Non-companies**

*Division 3 of Part 2.2 will be moved here. Amendments will be made to:*

- omit paragraphs 137(3) (c) and (e) and paragraph 137(4) (c)
- omit subsections 139(2) and (3), and substitute:
  - a provision that states that all of the non-company's constitution (if any) is taken to be the company's constitution and binds the company, its officers and members accordingly
  - a provision that states that the replaceable rules do not apply to the non-company unless it had no constitution immediately before it was registered
- omit references to memorandum in subsection 140(6)
- replace "articles" with "constitution" in subsection 141(3)

*The following provisions of Division 5 of Part 2.2 will be included here:*

- section 148 (with amendments to bring 148(2) into line with

- section 118) section 149 section 150 (except subsection ISO(6))
- subsections 151(1), (3), (4), (5) and (6). Subsection 151(1) will be amended to provide that the replaceable rules do not apply to a company that is taken to have a constitution on registration unless the company repeals its constitution.

*The remainder of Part 4.1 will be moved here, with some minor technical amendments to bring the Part into line with amendments made elsewhere by the Bill*

74. Subsection 696(3)

Add at the end "to the public".

75. Subsection I047(4)

Omit "articles", substitute "constitution".

76. Paragraph 1051(1)(a)

Omit "articles", substitute "constitution".

77. Subsection 1064(7)

Omit "under the common or official seal of the corporation".

78. Subsection 1070(2)

Omit "Part 2.5", substitute "Chapter 2C".

79. Paragraphs 1085(1)(b) and (c)

Omit "articles", substitute "constitution".

80. Subsection 1087(1)

Omit, substitute:

(1) Certificate issued after the commencement of this section specifying held by 2 members of a company must state:

- (a) the name of the company and its jurisdiction of registration; and
- (b) the class of the shares; and
- (c) the amount paid and the amount unpaid on the shares.

81. Section 1088

Omit "articles", substitute "constitution".

82. Subsection 1091(1)

Omit "articles", substitute "constitution".

83. Paragraph 1091(1A)(b)

Omit "incorporation", substitute "registration".

84. Subsection 1091(7)

Omit "articles", substitute "constitution".

85. Subsection 1097(1) (definition of "issuing body")

After "incorporated", insert "or registered".

86. Subsection 1110(4)

Omit "memorandum, articles", substitute "constitution".

87. Subsection 1111(3)

Omit "memorandum, articles", substitute "constitution".

88. Subsection 1274(7)

Add at the end:

; and

(c) a certificate by the ASC that, during a period specified in the certificate, a particular company was registered, or taken to be registered, under this Law is to be received as *prima facie* evidence that during that period, that company was registered under this Law.

89. Subsections 1300(2) and (3)

Add at the end "to the public".

90. After subsection 1300(2)

Insert

(2A) If a person asks a proprietary company, in writing, to inspect a particular book of the company that the person has a right to inspect, the company must, within 7 days, make it available for inspection by the person at the place where it is required to be kept.

91. Section 1347

Repeal.

92. After Chapter 9

Insert:

## **CHAPTER 10 - NATIONAL SCHEME PROVISIONS**

### *1500 Recognition of companies from other jurisdictions*

(1) A recognised company has in this jurisdiction the same legal personality, capacity, attributes, power and type as if it were a company. Its powers include the power to hold land in this jurisdiction.

(2) Subsection (1) does not impose on a recognised company an obligation it would not have if that subsection had not been enacted.

Division 4 of Part 2.2 will be moved here. Amendments will be made

- omit references to companies limited both by shares and by guarantee and no liability companies from subsection 145(3)
- omit subsections 146(2) and (3) and substitute:

- a provision that states that a company's constitution (if any) immediately before the transfer of registration is taken to be the company's constitution and binds the company, its officers and members accordingly.
- a provision that states that any replaceable rule (modified or not) which applied to the company immediately before its registration is taken to apply to the company after its registration is transferred.
- omit subsections 146(4) and 147(5).

Division 4A of Part 2.2 will be moved here. Sections 148 and 149 and subsections 150 (3), 151 (S), 152 (1), 152 (3A), 152 (3B) and 152 (4) will be included here, with some minor technical amendments to bring those provisions into line with amendments made elsewhere by the Bill.

93. Schedule 1

Repeal.

94. Schedule 3

(a) *Insert after "Section 111AU":*

Subsection 113(2) - Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 117(3) - Penalty: 10 penalty units, or imprisonment for 3 months, or both.

Section 123 - Penalty: 10 penalty units, or imprisonment for 3 months, or both.

Section 146 - Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 152 - Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 154 - Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 164 - Penalty: 50 penalty units, or imprisonment for 1 year, or both.

Section 6G1BE - Penalty: 10 penalty units or imprisonment for 3 months, or both.

(b) Omit:

Subsection 116(2) - Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 219 - Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 362 - Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 369 - Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 383C(8) - Penalty: 10 penalty units or imprisonment for 3 months, or both.

*Transitional provisions*

95 Existing companies taken to be registered

(1) At commencement, each body corporate that was registered, or taken to be registered, under Part 2.2 of the Corporations Law of this jurisdiction as in force immediately before commencement, is taken to be registered under this section as a body corporate of whichever of the following types corresponds to its previous class and type:

(a) a proprietary company limited by shares

- (b) an unlimited proprietary company
  - (c) a proprietary company limited both by shares and by guarantee
  - (d) a public company limited by shares
  - (e) an unlimited public company
  - (f) a company limited by guarantee
  - (g) a public company limited both by shares and by guarantee
  - (h) a no liability company.
- (2) A body corporate taken to be registered under this section:
- (a) continues in existence as a body corporate; and
  - (b) is taken to be registered as a company under the Corporations Law of this jurisdiction.
- (3) Registration under this section does not:
- (a) create a new legal entity; or
  - (b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate; or
  - (c) affect the company's property, rights or obligations (except as against the members of the company in their capacity as members); or
  - (D) render defective any legal proceedings by or against the company or its members.

#### 96 Application of Law to existing companies

- (1) A provision of the Corporations Law of this jurisdiction or a corresponding previous law that applies to a company is taken to apply to anything that happened in relation to a company referred to in transitional section 95 before the date on which the company was registered unless:
- (a) before that date, the action was taken for the purposes of complying with a previous law corresponding to that provision; and
  - (b) the action would have complied with this Law if it had been in force when the action was taken.
- (2) A provision applies with any modifications that are necessary.

#### 97 Company's memorandum and articles have effect as constitution

- (1) The memorandum and articles of a company incorporated under Division 1 of Part 2.2 as in force before commencement have effect after commencement as if they together constituted a constitution adopted by the company under paragraph 136(1)(b) of this Law as in force after commencement.
- (2) Anything that was taken to be the memorandum and articles of a company under Division 2 of Part 2.2 as in force before commencement has effect after commencement as if it were a constitution adopted by the company under paragraph 136(1)(b) of Law as in force after commencement.

#### 98 Notifying ASC of constitution - proprietary companies incorporated between 1 January 1991 and commencement

(1) A proprietary company incorporated under this Law between 1 January 1991 and commencement must do 1 of the following within 2 years after commencement:

(a) if the company has repealed its constitution - certify to the ASC that it is repealed and specify the date on which the repeal took effect

(b) if the company's constitution consists of its memorandum and unamended Table A articles - lodge a copy of the memorandum with the ASC and certify to the ASC that, as at the date of the certificate:

(i) its constitution consists of the memorandum and those articles as in force immediately before that commencement; and

(ii) the company has not amended the articles

(c) otherwise - lodge with the ASC a consolidated copy of its constitution as in force as at the date of the lodgment.

(2) A certificate must be in the prescribed form.

99 Notifying ASC of constitution - proprietary companies registered before 1 January 1991

(1) In relation to its memorandum, a proprietary company registered before 1 January 1991 must do 1 of the following within 2 years after commencement:

(a) certify to the ASC that the company has not amended its memorandum on or after 1 January 1991

(b) if it has amended its memorandum on or after 1 January 1991 - lodge with the ASC a consolidated copy of the memorandum

(c) if it has repealed its memorandum after commencement - certify to the ASC that it has repealed its memorandum and specify the date on which the repeal took effect.

(2) In relation to its articles, a proprietary company registered before 1 January 1991 must do 1 of the following within 2 years after commencement:

(a) certify to the ASC that the company has not amended its articles of association on or after 1 January 1991

(b) if it has amended its articles on or after 1 January 1991 - lodge with the ASC a consolidated copy of the articles

(c) if it has repealed its articles after commencement - certify to the ASC that it has repealed its articles and specify the date on which the repeal took effect.

(3) A certificate must be in the prescribed form.

100 No liability companies

(1) A company that was a no liability company under this Law as in force immediately before commencement is taken to be registered as a no liability company until it ceases to be a no liability company. This Law continues to apply to the company as if the following provisions of this Law had not been omitted or repealed:

(a) paragraph (c) of the definition of "contributory" in section 9

(b) the definitions of "mining company", "mining purposes" and "no liability company" in section 9

- (c) subsection 368(2)
- (d) paragraph 371(g)
- (e) Part 4.3.

(2) If all the issued shares in a no liability company are paid up, the company may change to a proprietary company limited by shares or a public company limited by shares under Part 213.7 as in force after commencement. That Part (except subsections 163(1) and (2)) applies to the change with any modifications that are necessary.

#### 101 Companies limited both by shares and by guarantee

(1) A company that was limited both by shares and by guarantee under this Law as in force immediately before commencement is taken to be registered as a company of that type until it ceases to be a company limited both by shares and by guarantee. This Law continues to apply to the company as if:

- (a) section 518 of this Law had not been repealed; and
- (b) the amendments of sections 516, 517, 519 and 260 of this La had not been made.

(2) The company may change to one of the following types of companies under Part 213.7 as in force after commencement:

- (a) a proprietary company limited by shares
- (b) a public company limited by shares
- (c) a company limited by guarantee.

(3) That Part (except subsection 163(3)), with any modifications that are necessary, applies to the change as if the company were a company limited by guarantee seeking to change to a company limited by shares.

#### 102 Acts before external administration of existing company

(1) This section applies if action was validly taken as at the commencement of Division 2 of Part 2.2 as in force before the commencement of this section by, or in relation to, a company referred to in transitional section 95 under, or for the purposes of, Chapter 5 (except Part 5.2).

(2) On and after the commencement of that Division, this Law applies in relation to the company with any modifications that are necessary, as if:

- (a) the company had been a company, and this Law had been in force, at the time when that action was taken; and
- (b) that action had been validly taken under, or for the purposes of, that Chapter.

(3) Nothing in this section makes a person guilty of a contravention of this Law in respect of anything done or not done before the commencement of that Division.

#### 103 Effect of certificate issued under previous law

A certificate purporting to be issued under this Law or a corresponding previous law by the authority responsible for administering that Law or the corresponding previous law stating that a specified body corporate has been registered as a company under that Law or another corresponding previous law is conclusive evidence:

- (a) that:

(i) all the requirements necessary for the registration of the body corporate under that legislation; and

(ii) all matters related to the registration of the body corporate under that legislation;

have been complied with; and

(b) that the body corporate referred to in the certificate was duly registered as a company under that legislation and was taken to be a company duly incorporated under that legislation.

104 Company's registration number has effect as ACN

The registration number of a company incorporated before commencement has effect after commencement as if it were the company's ACN under this Law as in force after commencement.

105 Registered office

The situation, immediately before commencement, of the registered office of a company referred to in transitional section 95 has effect after commencement as if it were the address of the company's registered office under this Law as in force after commencement.

106 Opening hours of registered office of public company

The hours during which the registered office of a public company referred to in transitional section 95 must be open to the public under a notice lodged under subsection 218(2) or (4) of this Law as in force immediately before commencement have effect after commencement as if they were the hours specified in a notice lodged under subsection 145(3) as in force after commencement.

107 Reservation of name continues

If, immediately before commencement, a name was reserved, the reservation continues in force as if it were made under a corresponding provision of this Law as in force after commencement.

108 Continued operation of inspection orders under repealed provisions

(1) An order in force immediately before commencement under section 319 continues to have effect after commencement despite the repeal of that section.

(2) An application made, but not decided, before commencement under section 319 has effect after commencement as if it were an application for an order under section 247A of this Law as in force after commencement.

## **SCHEDULE 2 - MEETINGS (CHAPTER 2G)**

### **Consequential amendments**

1. Section 9 (definitions of "annual general meeting", "Exchange", "statutory meeting" and "statutory report")

Omit.

2. Section 9 (definitions of "resolution" and "special resolution")

Omit, substitute:

resolution means:

- (a) in relation to a body corporate - a resolution other than a special resolution; or
- (b) in relation to creditors or contributories - a resolution passed at a meeting of the creditors or contributories;

special resolution means:

- (a) in relation to a company, a resolution:
  - (i) of which notice as set out in paragraph 249L(c) has been given; and
  - (ii) that has been passed by at least 75 % of the votes cast by members entitled to vote on the resolution;
- (b) in relation to a registered scheme, a resolution:
  - (i) of which notice as set out in paragraph 252J(c) has been given; and
  - (ii) that has been passed by at least 75 % of the total value of the votes cast by members entitled to vote on the resolution;

Note: To work out the value of a vote see section 252X.

3. Section 9

Insert:

AGM means an annual general meeting of a company that section 250L or 250M requires to be held;

ASX means Australian Stock Exchange Limited;

class meeting, in relation to a company, means a meeting of a class of the company's members;

extraordinary resolution, in relation to a registered collective investment scheme, means a resolution:

- (a) of which notice as set out in paragraph 252J(c) has been given; and
- (b) that is passed by at least 50 % of the total value of the votes that may be cast by members (whether present or not) on the resolution;

Note: To work out the value of a vote see section 252X.

general meeting, in relation to a company, means a meeting of the company's members;

ordinary resolution, in relation to a company or a registered collective investment scheme, means a resolution that is passed by a majority of the votes cast by members of the company or scheme entitled to vote on the resolution;

members' meeting means:

- (a) in relation to a company - a general meeting or a class meeting of the company; and
- (b) in relation to a registered collective investment scheme - a meeting of the scheme's members;

4. Subsection 58C(2)

Omit "section 245", substitute "252L or 252M".

5. Subsection 70A(1) (Note 2)

Omit "section 245", substitute "252L and 252M".

6. Subsection 151(2)

Omit.

7. Paragraphs 152(1)(c) and 152(2)(b)

Omit "section 258", substitute "subsections 251A(4) and 251B(1)".

8. Paragraph 152(I)(d)

Omit "259(1)", substitute "subsections 251A(4) and 251B(1)".

9. Paragraph 152(4)(b)

Omit "259(2)", substitute "251B(2)".

10. After section 225

Insert:

**225A** *Alternate directors - appointing and terminating appointments (replaceable rule - see section 135)*

(1) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.

(2) The appointing director may terminate the alternate's appointment at any time.

(3) An appointment or its termination must be in writing. A copy must be given to the company.

Note: The ASC must be given notice of the appointment and termination of appointment of an alternate see section 242.

**225B** *Alternate directors - rights and powers (replaceable rule - see section 135)*

(1) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.

(2) When an alternate exercises the director's powers, the effect is the same as if the power were exercised by the director.

11. After subsection 227(3)

Insert:

(3A) Notice of an intention to move such a resolution must be given to the company 28 days or more before the meeting at which it is to be moved. However, if a meeting is held on a day that is less than 1 month after the notice has been given, the notice is properly given.

12. After subsection 231(1)

Insert:

(1 A) Director may vote on contracts (replaceable rule for proprietary companies - see section 135)

A director of a proprietary company may vote on a matter involving a contract or proposed contract with the company in which the director has an interest other than as a member, if the director has disclosed the nature of the interest at a meeting of the directors.

13. After subsection 238(1)

Insert:

(1A) The company must lodge with the ASC a copy of the special resolution required under subsection 238(1) within 14 days after it is passed.

14. Subsection 243ZB(4)

Omit "authorised under subsection 249(3)", substitute "appointed under section 250C".

15. Part 3.3

Repeal.

16. Section 255A

Repeal.

17. After subsection 329(1)

Insert:

(1A) Notice of an intention to move such a resolution must be given to the company 28 days or more before the meeting at which it is moved. However, if a meeting is held on a day that is less than 28 days after the notice has been given, the notice is properly given.

18. Subsection 332(8)

Omit.

19. Subsection 332(9)

Omit "section 245", substitute "section 250L or 250M".

20. Section 461

Add at the end:

(2) The company must lodge with the ASC a copy of the special resolution referred to in paragraph 461(1)(a) within 14 days after it is passed.

21. Paragraph 461(b)

Omit.

22. Subsection 467(6)

Omit.

23. After subsection 506(I)

Insert:

(1A) The company must lodge with the ASC a copy of the special resolution referred to in paragraph 506(1)(f) within 14 days after it is passed.

24. After subsection 507(2)

Insert:

(2A) The company must lodge with the ASC a copy of the special resolution referred to in subsection 507(2) within 14 days after it is passed.

25. After subsection 510(1)

Insert:

(1A) The company must lodge with the ASC a copy of the special resolution referred to in paragraph 510(1)(a) within 14 days after it is passed.

26. Section 1038

Repeal.

27. Schedule 3 (a)

(a) Omit:

Section 245:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

(b) Omit:

Section 258:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

(c) Insert:

Section 250L:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 250M

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 251A:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

## Transitional provisions

### 28 First AGM after commencement

- (1) If, by commencement, a company has held an AGM in the calendar year in which commencement occurs, then the requirement in section 250L of this Law as in force after commencement is satisfied in respect of that calendar year.
- (2) A company incorporated less than 18 months before commencement that has not held its first AGM by commencement must hold it within 18 months of its incorporation.
- (3) A company that was incorporated 18 months or more before commencement that has not held its first AGM by commencement must hold it within 7 days after commencement.

### 29 General transitional arrangements

Column 1 of the table sets out things that have been done before commencement (under provisions of this Law as then in force). Column 2 sets out how the things will be dealt with after commencement - either under the Law in force immediately before commencement (the old Law) or this Law as in force after commencement (the new Law).

Thing done before commencement	How it is to be dealt with after commencement
Requests made meetings under section 246 and meetings called under section 245, 246 or 247	The old Law applies to those requests and to the meetings called
Authority to act as a body corporate's representative under subsection 249(3)	The authority continues to operate after commencement as if it were made under section 250C of the new Law
Passing ordinary and special resolutions at meetings called before commencement	The old Law applies to the passing of the resolutions
Proceedings under subsection 251(1) for the Court to convene a meeting	The old Law applies to those proceedings
A requisition under subsection 252(1) to give notice of resolutions and circulate statements	The old Law applies to the requisition
A minute signed by a representative of a holding company as provided for in subsection 249(7)	The old Law applies
Notice received by company of intention to move a resolution under section 227 or 329 or to replace a director removed under section 227	The old Law applies
Document under section 255(1) containing a resolution has not been signed by all of the members of the proprietary company	The new Law applies to the resolution
A special resolution, resolution or agreement referred to in subsection 256(1) that has been passed or made	The old Law applies to the special resolution, resolution or agreement
Requests made by members under subsection 256(3) of the old Law applies to the request	The old Law applies to the request
<i>Proceedings</i> * meetings held before commencement * documents signed by all of the members of a proprietary company as provided for in section 255	The old Law applies to proceedings of the meetings, the documents and the minute books in which they are kept
Requests by members under subsection 259(2) for copies of minutes	The old Law applies to these requests

## **SCHEDULE 3 - SHARES AND TRANSACTIONS AFFECTING SHARE CAPITAL (CHAPTERS 2H AND 2J)**

### **Consequential amendments**

1. Section 9 (definition of "approving holding company")

Omit.

2. Section 216

Repeal.

3. After paragraph 216B(3)(f)

Insert:

; and (g) the amount unpaid on the shares.

4. Subsection 216B(4)

Omit.

5. Paragraph 239(b)

Omit, substitute:

(b) members who hold shares carrying at least 5 % of the votes attached to voting shares in the company;

6. Paragraphs 262(1)(b) and (c)

Omit, substitute:

(b) a charge on uncalled share capital;

(c) a charge on a call on shares made but not paid;

7. Subparagraph 411(4)(a)(ii)

Omit, substitute:

(ii) in the case of a compromise or arrangement between a body and its members or a class of members - a resolution in favour of the compromise or arrangement is:

(A) passed by a majority in number of the members, or members in that class, present and voting (either in person or by proxy); and

(B) if the body has a share capital - passed by 75% of the votes cast on the resolution; and

8. Subsection 414(2)

Omit "the holders of at least nine-tenths in nominal value of the shares included in that class of shares", substitute "members holding shares in that class carrying at least 90% of the votes attached to shares in that class".

9. Subsection 414(5)

Omit, substitute:

(5) Despite subsections (3) and (4), if the number of votes attached to the excluded shares is more than 10% of the votes attached to the excluded shares and the shares (other than excluded shares) to be transferred under the scheme or contract, those subsections do not apply unless:

(a) the transferee offers the same terms to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and

(b) the holders who approve the scheme or contract hold shares to which are attached at least 90% of the votes attached to the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least 75 % in number of the holders of those shares.

10. Subsection 414(9)

Omit "comprise or include nine-tenths in nominal value of the shares", substitute "have attached to them at least 90% of the votes attached to the shares".

11. Paragraph 420(2)(s)

Omit, substitute:

(s) if the receiver was appointed under an instrument that created a charge on uncalled share capital of the corporation:

(i) to make a call in the name of the corporation for the payment of money unpaid on the corporation's shares; or

(ii) on giving a proper indemnity to a liquidator of the corporation - to make a call in the liquidator's name for the payment of money unpaid on the corporation's shares;

12. Subsection 588G(IA)

Omit, substitute:

(IA) For the purposes of this section, if a company takes action set out in the table, it incurs a debt at the time set out in the table.

Action of company	When debt is incurred
paying a dividend	when the dividend is paid or, if the company has a constitution that provides for the declaration of dividends, when the dividend is declared
making a reduction of share capital to which Division 1 of Part 2J.1 applies (other than a reduction that consists only of the cancellation of a share or shares for no consideration)	when the reduction takes effect
buying back shares (even if the consideration is not a sum certain in money)	when the buy-back agreement is entered into
issuing redeemable preference shares that are redeemable otherwise than at its option	when the shares are issued
redeeming redeemable preference shares that are redeemable at its option	when the company exercises the option
financially assisting a person to acquire shares, or units of shares, in itself or a ding company	when the agreement to provide the assistance is entered into or, if there is no agreement, when the assistance is provided

13. Section 603 (paragraph (a) of the definition of "prescribed occurrence")

Omit, substitute:

(a) the company converting all or any of its shares into a larger or smaller number of shares (see section 254R);

14. Paragraph 636(1)(b)

(a) Omit "(whether by way of capital or premium)".

(b) Omit "paid up" substitute "unpaid".

15. Subsection 732(1)

Add at the end:

; or (f) a company reduces its share capital, or proposes to reduce its share capital, in a way that is unreasonable having regard to its effect on the control of that company or another company; or

(g) a company acquires a relevant interest in at least 5 % of its voting shares and the acquisition is unreasonable having regard to its effect on the control of that company or another company.

16. Subparagraph 740(5)(b)(iii)

Omit, substitute:

(iii) members who together hold shares carrying at least 10% of the votes attached to voting shares in the body corporate or in a related body corporate;

17. Subsections 1035(3) and (4)

Omit, substitute:

(3) In working out for the purposes of subsection (1) whether the minimum subscription has been subscribed for an allotment of shares, ignore any amounts payable otherwise than in cash.

(4) To count for the purposes of paragraph (1)(b), the amount payable on application for a share must be at least 5 % of the issue price of the share.

18. After section 1091

Insert:

*1091AA Transmission of shares on death (replaceable rule - see section 135)*

(1) If shares not held jointly

If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.

(2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

(a) the personal representative may:

(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(ii) by giving a completed transfer form to the company, transfer the shares to another person; and

(b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.

(3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.

(4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

(5) If shares held jointly

If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

*1091A Transmission of shares on bankruptcy (replaceable rule - see section 135)*

(1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:

(a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(b) by giving a completed transfer form to the company, transfer the shares to another person.

(2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.

(3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

(4) This section has effect subject to the Bankruptcy Act 1966.

19. After section 1091A

Insert:

*1091B Transmission of shares on mental incapacity (replaceable rule - see section 135)*

(1) If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

(a) the person may:

(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares, or

(ii) by giving a completed transfer form to the company, transfer the shares to another person; and

(b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.

(2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.

(3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

20. Relocation of section 213 as section 1091C

*Section 213 is renumbered as section 1091C and is moved to immediately after proposed new section 1091B.*

21. Before section 1092

Insert:

*1091D Registration of transfers (replaceable rule - see section 135)*

(1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.

(2) The directors are not required to register a transfer of shares in the company unless:

(a) the transfer and any share certificate have been lodged at the company's registered office; and

(b) any fee payable on registration of the transfer has been paid; and

(c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

(3) The directors may refuse to register a transfer of shares in the company if:

(a) the shares are not fully-paid; or

(b) the company has a lien on the shares.

(4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

*1091E Additional general discretion for directors of proprietary companies to refuse to register transfers (replaceable rule for proprietary companies - see section 135)*

The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

22. Relocation of section 208 as section 1096A

*Section 208 is renumbered as section 1096A and is moved to Division 2 of Part 7.13 immediately after section 1096.*

23. Subsection 1308(1)

Omit, substitute:

(1) A corporation must not advertise or publish:

(a) a statement of the amount of its capital that is misleading; or

(b) a statement in which the total of all amounts paid and unpaid on shares in the company is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated.

24. Section 1317DA

*Will be amended to refer to 254J(2), 256C(3) and 259D(2).*

25. Subsection 1324(1A)

Omit, substitute:

(1A) For the purposes of subsection (1):

(a) a company's contravention of:

(i) paragraph 256A(1)(a) (fair and reasonable test for share capital reduction); or

(ii) paragraph 256A(1)(b) (balance sheet test for share capital reduction); or

(iii) section 257C (balance sheet test for share buy-back);

affects the interests of a creditor or member of a company; and

(b) a contravention of this Law affects the interests of a creditor or member of a company if the insolvency of the company is an element of the contravention.

This subsection does not limit subsection (1) in any way.

(1B) If the ground relied on in an application for an injunction is conduct or proposed conduct of a company or other person that it is alleged constitutes, or would constitute:

(a) a contravention of paragraph 256A(1)(a) or 256A(1)(b) or section 257C; or

(b) a contravention of a provision of this Law involving the insolvency of the company because of:

(i) the company making a reduction of its share capital to which Division 1 of Part 2J.1 applies; or

(ii) the company buying back shares;

the Court must assume that the conduct constitutes, or would constitute, a contravention of that paragraph, section or provision unless the company or person proves otherwise.

### **Transitional provisions**

26 Conversion of shares into shares that do not have a par value

Shares issued before commencement cease to have a par value on commencement.

27. References to amount paid on shares issued before commencement For the purposes of the operation of this Law after commencement in relation to a share issued before commencement:

(a) the amount paid on the share is the sum of all amounts paid the company at any time for the share (but not including any to premium); and

(b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share (see paragraph (a)).

28 Transfer of money in share premium account and capital redemption reserve into the share capital account

Immediately after commencement, any amount standing to the credit of the company's share premium account and capital redemption reserve is transferred to its share capital account.

29 Use of amount standing to credit of share premium account

A company may use the amount standing to the credit of its share premium account as at commencement to:

- (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before commencement; or
- (b) write off:
  - (i) the preliminary expenses of the company incurred before commencement; or
  - (ii) expenses incurred, payments made, or discounts allowed, on or before commencement, in respect of any issue of shares in, or debentures of, the company.

30. Calls on partly-paid shares

The liability of a shareholder for calls in respect of money unpaid on shares issued before commencement (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.

31. References in pre-commencement contracts and other documents to par value

(1) This section applies for the purpose of interpreting and applying after commencement:

- (a) a contract entered into before commencement (including a company's constitution); or
- (b) a trust deed or other document executed before commencement.

(2) A reference to the par value of a share is taken to be a reference to the par value of the share immediately before commencement, or the par value that the share would have had if it had been issued then.

(3) A reference to a right to a return of capital on a share is taken to be a reference to a right to a return of the amount paid before commencement in respect of the share's par value, or the par value that the share would have had if it had been issued then.

(4) A reference to the aggregate par value of the company's issued share capital is taken to be a reference to that aggregate as it existed immediately before commencement.

32. Provisions in constitution about amount of share capital and division into shares

(1) Any provision in a company's constitution stating the amount of the company's share capital, and dividing that share capital into shares of a fixed amount, is repealed on commencement.

(2) If, before commencement, a company received a notice stating that this subsection is to apply to the company and that satisfies subsections (3) to (5), the following provision is inserted in the company's constitution on commencement in place of the provision repealed by subsection (1):

"The company must not issue shares if the issue would make the total number of the company's issued shares in a particular class exceed the total number of shares of that class into which the company's authorised share capital was divided immediately before the commencement of Chapter 2H of the Corporations Law. "

The provision has effect as an ordinary provision of the company's constitution and may be amended accordingly.

- (3) A notice for the purpose of subsection (2) must be:
- (a) in writing; and
  - (b) signed by:
    - (i) members holding at least 5 % of the votes that may be cast at a general meeting of the company; or
    - (ii) 200 members entitled to vote at a general meeting of the company.
- (4) The notice may consist of copies signed by different members provided each copy has identical wording.
- (5) The percentage of votes members hold is to be worked out as at the close of business on the day the notice was given to the company.
- (6) If subsection (2) applies to insert the provision into the company's constitution, the company must, within 14 days after commencement, lodge a notice with the ASC in the prescribed form that states that subsection (2) applies.

### 33 Conversion of stock into shares

A company must convert stock in the company into shares within 3 months after commencement. The company may disregard any stock that could only be converted into a fraction of a share.

### 34 Previous Law continues to apply to capital reductions initiated before commencement

If a company has called a meeting before commencement for the purpose of section 195 as then in force to consider a special resolution for a reduction of its share capital, this Law as in force immediately before commencement continues to apply to the reduction of capital.

### 35 Continued operation of other repealed provisions

The Corporations Law as in force immediately before commencement continues to apply to:

- (a) a body corporate's obligation under section 185 (as then in force) to dispose of shares; and
- (b) an application for an order, or an order made, under section 194 (as then in force); and
- (c) an application for an order, or an order made, under section 202 (as then in force).

## **SCHEDULE 4 - FINANCIAL STATEMENTS AND AUDIT (CHAPTER 2M)**

### **Consequential amendments**

1. Section 9 (definition of "accounting standard")

(a) Omit "except in section 288,".

(b) Omit "Parts 3.6 and 3.7", substitute "Chapter 2M".

2. Section 9 (definition of "administration ")

Omit ", or an entity within the meaning of Parts 3.6 and 3.7".

3. Section 9 (definition of "administrator")

(a) Omit ", or an entity within the meaning of Parts 3.6 and 3.7,".

(b) Omit "or entity".

4. Section 9 (paragraph (a) of the definition of "Board")

Omit.

5. Section 9 (paragraph (c) of the definition of "books")

Omit "accounts or accounting records", substitute "financial statements or financial records".

6. Section 9 (subparagraph (b)(ii) of the definition of "commencement")

Omit "Parts 3.6 and 3.7", substitute "Chapter 2M".

7. Section 9 (paragraph (b) of the definition of "entity")

Omit

8. Section 9 (definition of "financial year")

Omit "70A", substitute "327".

9. Section 9 (definition of "half-year")

Omit "50A(5)", substitute "327(6)".

10. Section 9 (definitions of "control", "executive officer", "holding company" and "parent entity")

Omit, substitute:

control of an entity (when used in Chapter 2E) has the meaning given by section 243E;

executive officer of a body corporate means a person who is concerned in, or takes part in, the management of the body (regardless of the person's designation and whether or not the person is a director of the body);

holding company in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary;

parent entity has the meaning given by subsection 243D(1);

11. Section 9 (definitions of "accounting period ", "accounting records".. "accounts". "applicable accounting standard "J, "audited or reviewed in accordance with this Law ", "chief entity" . "consolidated accounts ", "deadline ", "dormant ", "economic entity ", "financial statements ", "profit and loss account ", "profit or loss ", "reporting entity " and "undertaking ")

Omit.

12. Section 9

Insert:

AASB means the Australian Accounting Standards Board;

consolidated entity means a company, registered collective investment scheme or disclosing entity together with all the entities it is required by the accounting standards to include in consolidated financial statements;

financial deadline has the meaning given by subsection 292(1);

financial records includes:

- (a) documents of prime entry, including invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) whatever working papers and other documents are necessary to explain the methods by which financial statements are to be made up;

13. Subsection 45A(4)

Omit, substitute:

(4) When a company controls an entity

For the purposes of this section, a proprietary company controls an entity if the company has the capacity to determine the outcome of decisions about the entity's financial or operating policies.

(4A) In determining whether a proprietary company has this capacity:

- (a) the practical influence the company can exert (rather than the rights it can enforce) is the issue to be addressed; and
- (b) a practice or pattern of behaviour affecting the entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

14. Section 50A

Repeal.

15. Sections 53AAA, 58C and 62

Repeal.

16. Section 64A

Omit "Parts 3.2A, 3.6 and 3.7", substitute "Chapter 2E".

17. Section 70A

Repeal.

18. Paragraph 82A(1)(b) and subsection 82A(2)

Omit "within the meaning of Parts 3.6 and 3.7".

19. Section 111AO

Repeal, substitute:

111A0 Accounting requirements

A disclosing entity has to prepare financial statements and reports for half-years as well as full financial years. These requirements are set out in Chapter 2M.

20. Paragraphs 111AR(1)(a), (b) and (c)

Omit, substitute

(a) Chapter 2M as it applies to disclosing entities;

21. Subsections 111AZA(1) and 111AZD(1)

Omit ", or an entity within the meaning of Part 3.6, ", substitute "or entity".

22. Subsection 243C(3)

Omit.

23. Subsection 324(12)

Omit "accounts", substitute "financial statements".

24. Subsection 324(13)

Omit "accounts" (wherever occurring), substitute "financial statements".

25. Subsections 349(1), (3) and (6)

Omit "account" (wherever occurring), substitute "statement".

26. Paragraph 421(1)(d)

Omit "accounting", substitute "financial".

27. Paragraph 556(1)(dc)

Omit "Part 3.7", substitute "Part 2M.4".

28. Subsection 588E(4)

Omit, substitute:

(4) Subject to subsections (5) to (7), if it is proved that the company:

(a) has failed to keep financial records in relation to a period as required by subsection 286(1);  
or

(b) has failed to retain financial records in relation to a period for the 7 years required by subsection 286(2);

the company is to be presumed to have been insolvent throughout the period.

29. Subsection 588E(5)

Omit "289(1)", substitute "3(1)".

30. Subsection 588E(6)

(a) Omit "289(2)", substitute "286(2)".

(b) Omit "accounting" (wherever occurring), substitute "financial".

31. Section 591

Repeal.

32. Subsection 702(10)

Omit "accounting", substitute "financial".

33. Heading to Part 7.5

Omit "ACCOUNTS", substitute "FINANCIAL STATEMENTS".

34. Subsection 855(2)

Omit "Parts 3.6 and 3.7", substitute "Chapter 2M".

35. Paragraph 856(2)(a)

Omit "accounting", substitute "financial".

36. Subsections 856(3) and (4)

Omit "accounts", substitute "statements".

37. Subsection 856(12)

Omit "accounting", substitute "financial".

38. Paragraph 856(14)(a)

Omit "accounts", substitute "statements"

39. Subsection 857(1)

Omit "accounts", substitute "financial statements".

41. Paragraphs 1022AA(8) (a) and (b)

Omit, substitute:

(a) the provisions of Chapter 2M;

40. Subsection 860(2)

Omit "account", substitute "statement".

42. Subparagraph 1054(3)(c)(i)

Omit "accounts and balance sheet", substitute "financial statements".

43. Subsection 1058(5)

Omit "account" (wherever occurring), substitute "statement".

44. Subsection 1058(6)

Omit "accounts", (wherever occurring), substitute "financial statements".

45. Subsection 1058(14) and (15)

Omit, substitute:

(14) The provisions of Chapter 2M (other than subsections 301(3) to (9)) apply, with any necessary modifications, to every profit and loss statement and balance sheet made out and lodged under subsection (6) of this section by directors of the borrowing corporation as if:

(a) the profit and loss statement and balance sheet were a profit and loss statement and balance sheet referred to in those provisions; and

(b) references in those provisions to consolidated financial statement were references to the consolidated financial statements referred to in subsection (6) of this section.

(15) The provisions of Chapter 2M (other than subsections 301(3) to (9) and except so far as they relate to consolidated financial statements) apply, with any necessary modifications, to every profit and loss statement and balance sheet made out and lodged under subsection (5) of this section by the directors of a relevant guarantor body as if the profit and loss statement and balance sheet were a profit and loss statement and balance sheet referred to in those provisions.

46. Subsection 1058(16)

Omit "account" (wherever occurring), substitute "statement".

47. Paragraph 1058(17)(b)

Omit "subsection 317A(2)", substitute "paragraph 293(1)(d) or 304(d)".

48. Subsection 1058(20)

(a) Omit "accounts", substitute "statements".

(b) Omit "account", substitute "statement".

49. Subsection 1058(21)

Omit "account" (wherever occurring), substitute "statement".

50. Subsection 1116(1)

Omit "accounting", substitute "financial record".

51. Paragraph 1116(2)(a)

Omit "an accounting", substitute "a financial".

52. Paragraph 1116(2)(b)

Omit, substitute:

(b) in relation to a financial record, the 7 years after the transactions covered by the record are completed.

53. Subparagraphs 1126(2)(c)(viii) and 1132(2)(d)(viii)

Omit "accounting", substitute "financial".

54. Subsections 1209(11) and (13)

Omit "accounting" (wherever occurring), substitute "financial".

55. Heading to Part 8.5

Omit "ACCOUNTS", substitute "FINANCIAL STATEMENTS".

56. Subsection 1212(2)

Omit "Parts 3.6 and 3.7", substitute "Chapter 2W".

57. Subsection 1213(1)

(a) Omit "accounting" (wherever occurring), substitute "financial".

(b) Omit "accounts" (wherever occurring), substitute "statements".

58. Subsection 1213(8)

(a) Omit "accounting", substitute "financial records".

(b) Omit "accounts", substitute "statements".

59. Subsection 1213(9)

Omit "accounting", substitute "financial".

60. Subsection 1215(1)

Omit "accounts", substitute "financial statements".

61. Subsection 1218(2)

Omit "account", substitute "statement".

62. **Subsections** 1219(1) and (2)

Omit "accounting", substitute "financial".

63. Paragraph 1223(a)

Omit "accounts" (wherever occurring), substitute "financial statements".

64. Paragraph 1289(1)(b)

Omit "report of the directors under section 304", substitute "directors' under section 300".

65. Paragraph 1289(1)

(c) Omit, substitute (c) notifying the ASC of a matter under section 314.

66. Paragraphs 1309(I)(b) and (2)(b)

Omit "Parts 3.6 and 3.7", substitute "Chapter 2M".

67. Section 1317DA

Will be amended to include a reference to section 344.

68. Paragraph 1364(1)(b)

Add at the end "(other than a financial year to which Chapter 2M applies)".

69. Paragraph 1381(d)

Omit "within the meaning of Parts 3.6 and 3.7".

70. After subsection 1393(2)

Insert:

(2A) Subsections (1) and (2) do not apply to a period to which Chapter 2M applies.

71. Subsection 1394(1)

Add at the end ", other than a financial year to which Chapter 2M applies".

72. Section 1408

Add at the end ", other than a financial year to which Chapter 2M applies".

73. Schedule 3

Omit the items in the Schedule that relate to the following provisions:

- section 289
- section 315
- section 317
- section 333
- section 408
- section 591

### **Consequential amendment of the Corporations Act 1989**

74. Section 32

Omit "Parts 3.6 and 3.7" (wherever occurring), substitute "Chapter 2M".

Note about section headings

On the commencement of Chapter 2M, headings to sections of the Corporations Law are altered as follows:

- headings to sections 421 and 856 - omit "accounting", substitute "financial";
- heading to section 1213 - omit "Accounts", substitute "Accounting records";
- heading to section 1218 - omit "accounts", substitute "financial statements".

### **Transitional provisions**

75 Application of Chapter 2M to periods that end after commencement, and continued application of repealed provisions to past periods

(1) Chapter 2M of this Law as in force after commencement, and the amendments made by Schedule 4 of the Second Corporate Law Simplification Act 1995, apply to financial years and half-years ending after commencement.

(2) In relation to financial years and half-years that end on or before commencement, the provisions of Parts 3.6, 3.7, 4.4 and 4.5, and the provisions amended by Schedule 4 of the Second Corporate Law Simplification Act 1995, continue to apply as if they had not been repealed, relocated or amended.

76. Continued operation of accounting standards

(1) An accounting standard that was in force immediately before commencement (including under section 288):

(a) continues to have effect after commencement for the purposes of Parts 3.6 and 3.7 as they continue to apply under subsection 75(2); and

(b) also has effect after commencement, with any necessary modifications, as if it were an accounting standard made for the purposes of Chapter 2M.

(2) This section does not apply an accounting standard to a period to which it would not otherwise apply.

77 Continued operation of exemption orders

(1) An order in force immediately before commencement under section 290, 291, 313 or 314 continues to have effect after commencement, with any necessary modifications, in relation to financial years and half-years ending after commencement as if it were an order under:

(a) section 340 of this Law as in force after commencement; or

(b) if it relates to a class of companies - section 341 of this Law as in force after commencement.

(2) An application made, but not decided, before the commencement under section 290 or 313 has effect, after commencement, with any necessary modifications, so far as it relates to financial years and half years ending after commencement, as if it were an application for an order under section 340 of this Law as in force after commencement.

## **SCHEDULE 5 - ANNUAL RETURNS AND LODGMENTS WITH THE ASC (CHAPTER 2N)**

### **Consequential amendments**

1. Section 9 (definition of "annual return ")

Omit, substitute:

annual return:

(a) of a company - means the return that subsection 345(1) requires the company to lodge with the ASC; and

(b) of a registered collective investment scheme - means the return that subsection 345(2) requires the responsible entity of the scheme to lodge with the ASC;

2. Paragraph 83(2)(b)

Omit "335", substitute "345".

3. Subsections 242(1), (2), (8), (9)

Omit "1 month", substitute "14 days".

4. Section 1071

Repeal.

5. Paragraph 1353(1)(a)

Omit "section 338", substitute "subsection 345(4)".

6. Subsection 1353(2)

Omit "section 338", substitute "subsection 345(4)".

### **Transitional provisions**

7. Solvency resolution

The directors of a company are not required to make a resolution under subsection 346(1) as in force after commencement in relation to the company's first annual return lodged under subsection 345(1) as in force after commencement if the company has lodged accounts with the ASC under Chapter 3 as in force before commencement within 12 months before the annual return is lodged.

## **SCHEDULE 6 - DEREGISTRATION AND REINSTATEMENT OF COMPANIES (CHAPTER 5A)**

### **Consequential amendments**

1. Section 9 (definition of "body corporate")

After "dissolved", insert "or deregistered".

2. Section 9 (definition of "outstanding property ")

After "dissolved" (wherever occurring), insert "or deregistered".

3. Section 9

Insert:

deregistered means:

- (a) in relation to a company - deregistered under Chapter 5A; and
- (b) in relation to any other body corporate - deregistered in a way that results in the body corporate ceasing to exist;

national database means so much of the national companies database kept by the ASC as consists of:

- (a) some or all of a register kept by the ASC under this Law; or
- (b) information set out in a document lodged under this Law; but does not include the ASC's document imaging system;

4. Section 9 (subparagraph (a)(iii) of the definition of "relevant body")

After "dissolved", insert "or deregistered".

5. Subsections 342 (13), 350(2) and 350(14)

After "dissolved", insert "or deregistered".

6. Paragraph 413(1)(d)

Omit "the dissolution", substitute "the deregistration by the ASC".

7. Paragraph 480(d)

Omit "the company be dissolved", substitute "the ASC deregister the company".

8. Subsection 481(5)

- (a) Omit "the company be dissolved", substitute "the ASC deregister the company".
- (b) Omit "office".

9. Subsection 481(6)

Omit.

10. Subsection 493(1)

Omit "dissolved", substitute "deregistered".

11. Section 504

Omit "dissolution", substitute "deregistration".

12. Subsection 507(5)

Omit "dissolved", substitute "deregistered".

13. Subsections 509(5) and (6)

Omit, substitute:

ASC must deregister at the end of 3 month period.

(5) The ASC must deregister the company at the end of the 3 month period after the return was lodged.

ASC must deregister on a day specified by the Court.

(6) On application by the liquidator or any other interested party, the Court may make an order that the ASC deregister the company on a specified day. The Court must make the order before the end of the month period after the return was lodged.

14. Subsection 542(2) and (3)

Omit "dissolution", substitute "deregistration".

15. Subsection 582(3)

After "dissolved", insert ", deregistered".

16. Subparagraph 583(c)(i)

After "dissolved", insert "or deregistered".

17. Paragraph 586 (1)(b)

(a) After "dissolved", insert "or deregistered".

(b) After "dissolution", insert "or deregistration".

18. Division 8 of Part 5.6

Repeal.

19. Subsection 588(1)

Omit "dissolution", substitute "deregistration".

20. Subsections 588(4) and (5)

Omit, substitute:

(4) Section 601AE applies to property that vests in the ASC under this section as if the property were vested in the ASC under subsection 601AD(2).

21. Section 588C

After "dissolution" (wherever occurring), insert "or deregistration".

22. Subsection 589(3)

Omit, substitute:

(3) For the purposes of this Part a company is taken to have ceased to carry on business only if:

(a) the ASC has published in the Gazette a notice of the proposed deregistration of the company under subsection 601AA(4) or 601AB(3); and

(b) if the notice was published because the ASC had no reason to believe that the company was carrying on business - 2 months have passed since the notice was published and the ASC has not been informed that the company is carrying on business.

23. Subsection 589(5) (paragraph (f) of the definition of "relevant day")

Omit, substitute:

(f) in relation to a company that has ceased to carry on business - a notice was first published in relation to the company under subsection 601AA(4) or 601AB(3);

24. Paragraphs 744 (9) (b) and (c) substitute:

Omit, substitute:

and

(b) section 601AE (other than paragraph 601AE(2)(a)) applies in relation to the share or interest as if:

(i) the share or interest were vested in the ASC under subsection 601AD(2); and

(ii) a sale, disposal or dealing with the share or interest under paragraph (a) of this subsection were a disposal or dealing under paragraph 601AE(2)(a).

25. Subparagraph 1062(2)(b)(ii)

After "dissolution", insert "or deregistration".

26. Paragraph 1274(10)(b)

Omit, substitute:

(b) in relation to a body corporate that has been dissolved or deregistered for 15 years or more - any document lodged or registered; or

27. Paragraph 1282(9)(c)

Omit, substitute:

(c) the body corporate is dissolved or deregistered.

28. Subsection 1274B(1) (definition of "national database ")

Omit.

29. Paragraphs 1317C(d) and (e)

Omit "Division 8 of Part 5.6", substitute "Chapter 5A".

Note about section headings

On the commencement of Chapter 5A, headings to sections of the Corporations Law are altered as follows:

- (a) headings to sections 480, 481 and 509 - omit "dissolution", substitute "deregistration";
- (b) heading to sections 588 and 588C - omit "defunct", substitute "deregistered".

### **Transitional provisions**

30. Previous Law continues to apply to deregistrations initiated before commencement

(1) If, before commencement, a person has started a procedure under Division 8 of Part 5.6 (including section 574A) to have a company deregistered, this Law as in force immediately before commencement continues to apply in relation to the procedure and to the deregistration of the company, if that is the result of the procedure.

(2) If a company was deregistered before commencement, this Law as in force immediately before commencement continues to apply to that deregistration.

31. Reinstatement of registration where application under section 571 or subsection 574(3) made before commencement

An application made under section 571 or subsection 574(3) as in force before commencement that has not been determined by commencement has effect after commencement as if it were an application for an order for reinstatement of the registration of the company under subsection 601AH as in force after commencement.

32. Deregistration of companies dissolved under the State Bank (Corporatisation) Act 1994 of South Australia

(1) ASC to deregister company on notice from South Australian Minister

The ASC must deregister a company if the Minister of the Crown of South Australia responsible for the administration of the State Bank (Corporatisation) Act 1994 of South Australia notifies the ASC in writing that a company has been dissolved under section 23 of that Act.

(2) ASC to give notice of deregistration

The ASC must give notice of the deregistration on the national database and in the Gazette.

(3) Liabilities of officers and members continue

The liabilities (if any) of the officers and members of the company continue and may be enforced as if the company had not been deregistered.

(4) Law applies as if deregistration were under section 601AB

Subject to subsection (5), this Law (other than section 601AB) applies to the deregistration of the company as if the deregistration were under section 601AB.

(5) Subsection 601AD(2) only applies to property of the company to the extent (if any) that the property is not vested in the State Bank of South Australia under subsection 23(2) of the State Bank (Corporatisation) Act 1994 of South Australia.

33. Continued operation of subsections 577(6) to (9)

Subsections 577(6) to (9) of this Law as in force immediately before commencement continue to apply as if they, and any provisions they refer to (including the rest of section 577), had not been repealed.

## FROM NEW BILL TO CURRENT LAW

section number		section number		section number	
new	current	new	current	new	current
112	114,115	143	-	226C	A79-A81
113	116	144	219	226D	A62
114	115	145	218	236A	A63
115	112	146	368-370,372	246A	197-199
116	1347	147	367	246B	197-199
117	118	148	371	246C	197-199
118	120-122	149	383	246D	197-199
119	123	150	383	246E	256
120	124	151	373-375, 378-381	246F	256
121	-	152	219	246G	196
122	A66	153	383B	247A	319, 320
123	-	154	383C	247B	A85
124	123, 161	155	368-370	248A	A77
125	162	156	256, 382, 382A*	248B	255A*
126	182	157	382	248C	A69
127	182	158	382-383	248D	A75
128	183	159	382	248E	A73
129	183	160	382	248F	A70
130	183	161	167, 168	248G	A76
131	164,166	162	167, 168	249A	255
132	164	163	167,168	249B	249, 255A*
133	165	164	170	249C	A40
134	-	165	170	249D	246
135	-	213	256	249E	246
136	176	224B	A60, A66, A68	249F	247
137	176	224C	A60	249G	251
138	180	224D	A61	249H	247, 253, 254
139	181	225A	A72	249J	247, A95, A96
140	217,218	225B	A72	249K	332,A96
141	220	226A	A66	249L	250, 253, A41
142	-	226B	A68	249M	A45

Note:

\* Provisions marked with an asterisk are inserted by the First Corporate Law Simplification Bill.

° indicates an existing provision in the Law.

`A' before a section number indicates a Table A regulation.

`Reg' indicates a provision in the Corporation Regulations.

section number		section number		section number	
new	current	new	current	new	current
249N	252	252J	-	256A	195
249P	252	252K	1069, 1069C, 1076S	256B	195, 256
249Q	252	252L	-	256C	195
249R	-	252M	1069B,1076R	256D	195
249S	249, A42, A43	252N	1069B, 1076R	256E	195
249T	249, A44, A45	252P	-	256F	203,204
249U	332	252Q	-	256G	193
249V	257, A45	252R	-	256H	195
249W	250,A49	252S	-	257A	206b*
249X	250	252T	-	257B	206c*
249Y	250	252U	-	257C	-
249Z	A54	252V	-	257D	206D*
250A	248,A55	252W	-	257E	206E*
250B	A56	252X	1069A	257F	206F*
250C	249	252Y	-	257G	206G*
250D	249, A48, A49	252Z	-	257H	206H*
250E	A50	253A	-	257J	206I*
250F	A53	253B	-	257K	206J*
250G	253, A46	253C	-	257L	206K*
250H	248,A46	254A	A2	258A	185,205
250J	248, 253, A46, A54	254B	192, 200, A3	258B	205
250K	A47	254C	188	258C	185,206
250L	245	254D	A38	258D	185
250M	245	254E	194	258E	46
250N	245	254F	189	259A	205
250P	A41	254G	192	259B	205,256
250Q	-	254H	192	259C	205
250R	-	254J	192	259D	205,206
251A	249, 255A*, 258, 259	254K	188	285	283*, 323A, 323B
251B	256,259	254L	188	286	289
252A	-	254M	201, A86	287	289
252B	1069,1076P	254N	A91, A92, A94	288	289
252C	-	254P	-	289	289
252D	-	254Q	A90	290	289
252E	-	254R	193,A37	291	289,332
252F	-	254S	187	292	58C, 283D*
252G	-	254T	-	293	310,317B*
252H	-	255A	206A*	294	283*, 283A*-283C*
295	283C*	316	334	350	Reg 1.08
296	317*	317	315	351	-
297	292-293, 295A, 295B, 298, 299, 301, 302, 323C,323D	318	-	601AA	573,574
		319	316	601AB	572,574
		320	315	601AC	571
298	283C*, 283D*, 297-299, 323E, 323F	321	317A, 317B*, 323K, 329	601AD	576
		322	317*	601AE	576-579
299	303	323		601AF	575
300	304-306,323J	324	312	601AG	-
301	304, 305, 307, 308, 309A			601AH	574

section number		section number		section number	
new	current	new	current	new	current
302	310	325	332	601BA	358,376-381
303	53AAA, 283C*, 296, 323H	326	333	601BB	362, 376, 377
304	58C, 111A0, 283*, 310, 317A	327	70A,290	601BC	358, 367, 376, 377
305	292, 293, 295A, 295B, 297, 301, 323C, 323D, 323G	334	284-285	601BD	358
306	297, 298, 323E, 323F	335	-	601BE	362
307	303	336	300	601BF	362,383B
308	304, 305, 323J	337	286	601BG	362,383C
309	53AAA, 323H, 331AA	338	286A	601BH	358, 360, 361, 382
310	331AA, 331E	339	286B	601BJ	382-382A
311	331A,331B,331D, 331E	340	313	1091AA	A23-A25
312	331A,331B,331D, 331E	341	313,315	1091AB	A24, A25
313	332	342	313,315	1091B	-
314	332, 332A	343	323, 323A, 323L	1091C	213, A6
315	333	344	318	1091D	A19-A22
50A	-	345	335, 338, 1071	1091E	A21
53AAA	303,309	346	Reg 3.8.01	1096A	208
58C	292,304	347	335, Reg 1.08		
62	-	348	Reg 3.8.01		
70A	327	349	1071		
76	-	166A	1500	196	246G
95	-	167	161-163	197	246A-246D
99A	-	168	161-163	198	246A-246D
111A0	304	169	-	199	246A-246D
112	115	170	164,165	200	254B
114	112	171	-	201	254M
115	112-115	172	-	202	-
116	113	173	-	203	256F
117	-	174	-	204	256F
118	117	175	-		
119	-	176	136	205	258A,258B, 259A-259D
120	118	179	-	206	259D
121	118	180	138	206A*	255A
122	118	181	139	206B*	257A
123	119	182	126,127	206C*	257B
124	120	183	128-130	206D*	257D
		184	-	206E*	257E
		185	258A,258C,258D	206F*	257F
		186	-	206G*	257G
		187	254S		
		188	254C, 254K, 254L		

section number		section number		section number	
new	current	new	current	new	current
159	-	189	254F	206H*	257H
160	-	190	-	206I*	257J
161	124	191	-	206J*	257K
162	125	192	254B, 254G, 254H,	206K*	257L
164	131		254J	208	1096A
165	133	193	254R, 256G	209D*	257D
166	131	194	254E	213	1091C
		195	256A-256E, 256H		

Note:

\* Provisions marked with an asterisk are inserted by the First Corporate Law Simplification Bill.

° indicates an existing provision in the Law.

218	140	290	327	323A	285,343
219	152	292	297,305	323B	285
220	141	293	297,305	323C	297,305
222	-	293A	-	323D	297,305
223	-	294	-	323E	298,306
244	-	294A	-	323F	298,306
245	250L-250N	294B	-	323G	297,305
246	249D, 249E	295	-	323H	303,309
247	249F, 249H, 249J	295A	297,305	323J	300,308
248	250A, 250H, 250J	295B	297,305	323K	321
249	249B,249S,249T, 250C, 250D, 251A	296	303	323L	343
		297	298,306	324-331	328-333
250	249L, 249W-249Y	298	298,306	329	321
251	249G	299	297,305	331A	311-312
252	249N-249Q	300	336	331AA	309-310,312
253	9, 249H, 249L, 250G, 250J	301	297,305	331B	311-312
254	227, 249H, 329	302	297,305	331C	-
255	249A	303	299,307	331D	311-312
255A*	248B, 249B, 251A	304	300, 301, 308	331E	310-312
256	156,213,238,246E, 246F 251B, 256B, 259B	305	300, 301, 308	331F	-
		306	300	332	291,313-314,325, 326
		307	301		
257	249V	308	301	332A	314
258	251A	309	-	333	315,326
259	251A,251B	309A	301	334	316
260	244A	310	302	335	345
283*	285, 294, 304	311	-	335A	-
283A*	294	312	324	337	348
283B*	294	313	340-342	338	345
283C*	294, 295, 298, 303	315	317,320	339	-
283D*	292	316	319	358	601BA,601BC, 601BD,601BH
284	334				
285	334	317*	296,322	360	159, 601BH
285A	-	317A	304,321	361	601BH
286	337	317B*	293,321	362	601BB, 601BE, 601BF, 601BG
286A	338	318	344		

section number		section number		section number	
new	current	new	current	new	current
286B	339	319	247A	367	147, 601BC
287	-	320	247A	368	146,155
289	286-291	323	343	369	146,155
369	146,155	382	156-160, 601BH,	518	-
370	146,155		601BJ	524	524
371	148	382A	156, 601BJ	571	601AC
372	9,146	383	149, 150, 158	572	601AB
373	151	383A	-	573	601AA
374	151, 601BA	383B	153, 601BF	574	601AA, 601AB,
375	151,156	383C	154, 601BG		601AH
376	601BA-601BC	399-408	-	575	601AF
377	601BA-601BC	408A	-	576	601 AD, 601AE
		408B	-	577	601AE
378	151, 601BA				
		408C	-	578	601AE
379	151, 601BA				
380	151, 601BA	409	-	579	601AE
381	601BA	409A	-	591	-
				1038	-
				1071	345
				1347	116

## WHERE IS TABLE A IN THE NEW BILL?

Table A regulation	section in Bill
1. <b>Interpretation</b>	9 °
2. <b>Share Capital and Variation of Rights</b>	
3. Directors may issue shares of different classes	254A
4. Redemption of preference shares	254B *
5. Shareholder approval of variation of class rights	246A-246C
6. Payment of brokerage	256F
7. Company to disregard beneficial interests in shares	1091C
8. Company to issue share certificate	1096 °
9. <b>Lien</b>	
10. Company has lien over shares	-
11. Company may sell shares subject to lien	-
12. Transfer of shares sold under lien	-
13. Application of proceeds of sale under lien	-
14. <b>Calls on Shares</b>	
15. Directors may make calls on shares	-
16. Calls deemed to be made at time of resolution	-
17. Joint shareholders jointly and severally liable	-
18. Interest on unpaid calls	-
19. Sum payable on allotment deemed to be a call	-
20. Directors may differentiate between shareholders	-
21. Directors may accept payments where no call	-
22. <b>Transfer of Shares</b>	
23. Instrument and registration of transfer	1091D *
24. Transfer procedure	1091D *
25. Directors may decline to register transfer	1091D, 1091E
26. Suspension of registration of transfers	1091D
27. <b>Transmission of Shares</b>	
28. Title to shares upon death of shareholder	1091AA
29. Person entitled on death or bankruptcy may nominate holder	1091AA, 1091AB
30. Personal representative or trustee entitled to dividend	1091AA, 1091AB
31. <b>Forfeiture of Shares</b>	
32. Notice to pay unpaid call	-
33. Directors may forfeit shares	-
34. Forfeited share may be sold	-
35. Holder of forfeited share to remain liable	-
36. Statement relating to forfeiture prima facie evidence	-
37. Transfer of forfeited shares, title of transferee	-
38. Forfeiture provisions apply to sums payable on issue	-
39. <b>Conversion of Shares into Stock</b>	
40. Company may convert shares into stock	-
41. Transfer of stock	-
42. Stock holders have the same rights as shareholders	-
43. References to shares include stock	-
44. <b>Alteration of Capital</b>	
45. Power of company to alter capital by resolution	254R
46. Unissued shares to be offered to existing members	254D
47. Company may reduce capital	-

<b>Table A regulation</b>	<b>section in Bill</b>
<b>General Meetings</b>	
40. Any director may convene general meeting	249C
41. Notice of meeting to specify particulars	249L 250P *
42. No business conducted unless quorum	2495 *
43. No quorum	2495 *
44. Chairperson of meeting	249T *
45. Adjournment of meetings	249M, 249T, 249V
46. Resolution by show of hands unless poll demanded	250G, 250H, 250J*
47. Manner of taking poll	250K*
48. If equality of votes	9A, 250D
49. Member may vote in person or by proxy	249W*, 250D
50. Votes of joint holders	250E
51. Rights of holder of unsound mind may be exercised	-
52. Member not entitled to vote unless calls paid	-
<b>Proceedings at General Meetings</b>	
53. Objections to votes may be raised	250F
54. Instrument appointing proxy	249Z*, 250J
55. Proxy invalid unless lodged 48 hours before meeting	<u>250A</u> *
56. Proxy vote valid notwithstanding death or revocation	<u>250B</u> *
<b>Appointment, removal and remuneration of Directors</b>	
57. No. of directors set by subscribers to memorandum	-
58. Retiring director eligible for re-election	-
59. Which directors to retire	-
60. If office not filled, retiring director deemed elected	224B, 224C
61. Directors may appoint directors	224D
62. Company may remove directors by resolution	227A 226D
63. Director's remuneration	236A
64. Share qualifications of directors	-
65. Vacation of office by directors	224 A
<b>Powers and Duties of Directors</b>	
66. Business will be managed by directors	224B, 226A
67. Directors may appoint attorneys	-
68. Negotiable instruments to be signed by 2 directors	224B 226B
<b>Proceedings of Directors</b>	
69. Directors may meet	248C *
70. Chairman has casting vote	248F
71. Director not to vote on certain contracts	231 *
72. Director may appoint alternate director	225A, 225B
73. Quorum at directors' meetings	248E
74. Directors' <u>m</u> meetings where vacancy	-
75. Chairman of directors' meeting	248D
76. Directors may delegate to committees	248G *
77. Certain documents deemed resolutions	248A
78. Acts done by meeting valid	226 <sup>4</sup>
<b>Managing Director</b>	
79. Directors may appoint managing director	226C
80. Remuneration of managing director	226C
81. Directors may delegate to managing director	226C

<b>Table A regulation</b>	<b>section in Bill</b>
<b>Associate Directors</b>	
82. Directors may appoint associate directors	–
<b>Secretary</b>	
83. Terms and conditions of secretary	240 A
<b>Seal</b>	
84. Safekeeping of seal	–
<b>Inspection of Records</b>	
85. Directors to determine inspection of records	247B
<b>Dividends and Reserves</b>	
86. Company may declare dividend	254M *
87. Directors may authorise interim dividends	254N
88. Interest on dividend not payable	254N
89. Directors may carry profits forward	–
90. Dividends proportional to paid up value	254Q *
91. Directors may deduct unpaid calls from dividends	254N
92. Where difficulty with resolution	254N
93. How payments are to be made	–
<b>Capitalisation of Profits</b>	
94. Company may resolve to capitalise any sum	254M
<b>Notices</b>	
95. Ways in which notices may be given by company	249J
96. General meeting notice given as per article 95	249J, 249K
<b>Winding up</b>	
97. On winding up, liquidator may divide property	–
<b>Indemnity</b>	
98. Company officials to be indemnified	–
Note:	
° indicates an existing provision in the Law	
* indicates the effect of the relevant Table A regulation has been changed	