



MEMO

To: Board of Directors
From: Company Secretary
Subject: **CORPORATIONS ACT RELIEF**

The Corporations Act & Regulations, supported by Regulatory Guides and other ASIC pronouncements, provide the statutory basis for corporate law and practice in Australia.

ASIC is empowered, however, to grant exemptions from or modifications to the law in certain situations. These discretionary powers in provisions of the Act are most frequently exercised in relation to areas that involve accounting, takeovers, fundraising, managed investment schemes, licensing, and disclosure.

ASIC's general policy on applying for relief is set out in Regulatory Guide 51, and other published ASIC policies include details of how to apply for particular kinds of relief.

Types of Applications

Applications for relief fall into 3 categories:

- 'Standard' applications which seek relief precisely in line with the terms of published ASIC policy and pro forma instruments.
- 'Minor and technical' applications are those which are not completely standard but are clearly within the policy of the Act or existing ASIC policy. While such applications may involve applying existing policy to new situations, the issues are not so significant as to require extensive consideration by ASIC.
- 'Novel' applications require ASIC to formulate substantive new policy. This may be because they raise new policy considerations, involve more than minor or technical variations to existing policy, or involve a significant change to (or reversal of) existing policy.

Content of Applications

There is no set format for an application for relief. However, all applications for relief should clearly identify and address all relevant issues, including the following:

1. Type of relief (standard, minor/technical or novel).



2. Legal basis of application, referencing relevant sections of the Act, noting any particular discretionary power(s) in the Act that ASIC should exercise.

3. A summary of the regulatory issue or problem ASIC should address/consider and a description of any legal, policy, commercial or regulatory aspects of the application.

4. Describe how the application extends, relaxes or varies:

- the Act or ASIC published policy; or
- any precedent relief, class orders, proforma instruments; or
- any previous ASIC policy decisions.

If any aspects of the application differ from ASIC's normal policy or relief instruments, explain:

- exactly what that difference is; and
- why the normal procedure of simply changing commercial arrangements cannot be followed.

5. Provide a cost/benefit analysis of the proposed relief and/or legal, commercial, or policy reasons/arguments for the application.

If applying for relief from financial reporting and audit requirements, give reasons why compliance with the Act would:

- make the financial reports misleading;
- be inappropriate; or
- impose an unreasonable burden.

There is no prescribed application form. Applications should be on company letterhead and lodged with ASIC at the nearest capital city office. For longer or more complex applications, an executive summary should be included covering the key legal, commercial and regulatory issues requiring consideration.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.