



## MEMO

To: Board of Directors

From: Company Secretary

Subject: **RELIEF FROM PREPARING FINANCIAL REPORTS**

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Section 340 of the Corporations Act allows company directors to apply to ASIC for relief from some financial reporting obligations. The relief may extend to the financial report, the directors' report, and the auditor's report, as well as the obligations to maintain financial records. Regulatory Guide 43 provides extensive guidance for making applications for relief.

One situation that might be relevant in this context is where, for example, a parent company has a subsidiary, or subsidiaries, which are themselves public or large proprietary companies that might otherwise separately have to prepare, get audited, and lodge financial statements with ASIC – ref section 292.

### **Deed of Cross Guarantee**

In such situation, Class Order 98/1418 provides complying wholly-owned subsidiaries with 'automatic' relief from the requirement to prepare and lodge audited financial statements provided they meet certain conditions and have entered into a Deed of Cross Guarantee with their parent company and its other subsidiaries (together a "group") in an approved format. Under the Deed each company in the group covenants to make up any shortfall of funds in a liquidation of any other company in the group. Such Deeds are required to be signed and lodged with ASIC before a wholly-owned entity will be eligible for relief.

The effect of this is also to make the group akin to a single legal entity in many respects. Creditors, suppliers and customers of the company and/or any subsidiary can then focus on the consolidated position of the group to ascertain its financial strength – or otherwise – rather than have to consider the accounts of each individual entity in the group.

A small proprietary company which is a party to a Deed may still claim relief if at a later date it does in fact become a large proprietary company.

If any wholly-owned subsidiary company leaves a group then a Notice of Disposal must be lodged with ASIC.

ASIC Info Sheet 24 also provides information in relation to Deeds.

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#### **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.*

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