



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SUBSTANTIAL SHAREHOLDERS**

Part 6C.1 of the Corporations Act (primarily sections 671B ~ 671C) covers the requirements and obligations on Substantial Shareholders of companies listed on stock exchanges in Australia, including those incorporated in foreign countries. But the requirements do not extend to any other company, even if an Australian company listed on a foreign stock exchange or unlisted disclosing entities, although some may consider that similar information should be lodged with ASIC under the 'continuous disclosure' obligations of unlisted disclosing entities so that 'the market' is adequately informed.

In summary, section 9 of the Act defines a 'substantial holding' in shares as being a 'relevant interest' of 5% or more (of the voting power of those shares) under the control of a shareholder and/or his associates.

'Relevant interest' is defined in section 608 as, in summary, "holding or controlling voting or disposal of securities no matter how remote the relevant interest is or how it arises". For example – a relevant interest might be through a trust, agreement or established practice, or through a body corporate in which the Substantial Shareholder holds greater than 20% of the voting shares or otherwise controls through his "capacity to determine the outcome of decisions about [its] financial and operating policies".

A full explanation of the meaning of 'associates' is given in sections 10 ~ 17. For a corporate shareholder, 'associates' may include a director or Company Secretary of that entity, or a related body corporate and a director or secretary of that related body corporate.

The objective of the law is so that market participants, shareholders and directors of a listed company are able to identify the controllers (including the associates of those shareholders who also hold such shares) of substantial blocks of voting shares or interests in that company.

Notification Obligations

Therefore, under sec. 671B, any shareholder who acquires (alone or with associates) a relevant interest in 5% or more of a company's shares must disclose that fact by lodging an ASIC Form 603 "Notice of Initial Substantial Shareholder" with the Company and the stock exchange. This lodgement requirement also extends to a shareholder making a takeover bid even if the initial holding is below 5%.



Furthermore, for each 1% (or more) change in holding a Form 604 "Notice of Change of Interests of Substantial Shareholder" must be lodged. And, if the holding falls below 5% a Form 605 "Notice of Ceasing to be a Substantial Shareholder" must be lodged.

These Forms must be lodged within 2 business days after they become aware of the transaction or change in % holding and by 9:30am next stock exchange trading day in a takeover situation.

If there are a number of Substantial Shareholders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names can be included in an annexure to the Form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the Form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in the Form.

Information Required

The Substantial Shareholder must provide certain details on the Form including their name and address, details of relevant interest, associates' details and relationship, relevant agreements.

In addition, section 671B(4) requires that, unless that shares are acquired 'on market', a copy of any document relating to the situation that caused the substantial holding to arise must be affixed to the Form and also lodged.

Failure to Lodge Forms

Under section 671C a person who contravenes the Substantial Shareholder obligations and/or notice requirements may be liable for any loss or damage caused to another party, but they may have a defence if the contravention was due to:

- inadvertence or mistake
- being unaware of a relevant fact or occurrence.

NOTE: these obligations lie with the Substantial Shareholder – there is no obligation on the Company to ensure a Form is lodged nor any ramifications for the Company if it is not lodged. However, a Company may offer to 'assist' the Substantial Shareholder's stock exchange lodgement requirement by offering to lodge on his behalf through the Company's on-line lodgement facility.

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.
