ASIC
Australian Securities & Investments Commission

REGULATORY GUIDE 43

Financial reports and audit relief

May 2011

About this guide

This is a guide for companies, registered schemes or disclosing entities; their directors; and auditors.

It explains how ASIC may exercise its powers to grant relief from the financial reporting and audit requirements of Pt 2M.2, 2M.3 and 2M.4 (other than Div 4) of the *Corporations Act 2001* (Corporations Act).

Note: From 27 July 2020, applications for relief should be submitted through the ASIC Regulatory Portal. For more information, see how you apply for relief.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This regulatory guide was issued in May 2011 and is based on legislation and regulations as at the issue date. The note on the front page was inserted on 27 July 2020.

Previous versions:

- Superseded Regulatory Guide 43, issued 9 October 1998
- Superseded Policy Statement 43, issued 18 January 1993, updated 17 June 1996, rebadged as Regulatory Guide 43 on 5 July 2007
- Superseded Policy Statement 1, issued 8 March 1991.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A Overview

Key points

Chapter 2M of the Corporations Act contains the financial reporting and audit requirements for companies, disclosing entities and registered schemes. These requirements are directed at maintaining investor confidence, enhancing market efficiency and ensuring the accountability of management.

ASIC has discretion to grant relief from the financial reporting provisions in the Corporations Act.

This relief can only be granted if certain statutory preconditions are satisfied. Even if they are satisfied, ASIC has an overriding discretion to decline the relief.

The relief can be granted subject to conditions and for a particular duration.

The objectives of financial reporting

RG 43.1 Chapter 2M of the *Corporations Act 2001* (Corporations Act) contains the financial reporting and audit requirements for companies, disclosing entities and registered schemes:

(a) The financial reporting provisions impose requirements about keeping financial records, annual financial reporting, half-yearly reporting and disclosure obligations.

(b) The audit provisions provide users with an independent opinion on the information in the financial report.

These provisions are directed at maintaining investor confidence, enhancing market efficiency and ensuring the accountability of management through the provision of timely and reliable financial information.

RG 43.2 The purpose behind requiring entities to prepare and lodge with ASIC financial reports that comply with the requirements of Ch 2M is to make information available that is useful to a wide range of users, to help them make economic decisions. The legislative policy underlying these requirements indicates an expectation that there are 'users' of the financial reports.

RG 43.3 In *Re Incat Australia Pty Ltd and Another and ASIC* (1999) 33 ACSR 132 (*Incat* (1999)) the Administrative Appeals Tribunal (AAT) stated that 'users' should be given a wide interpretation, with the result that not only present and prospective shareholders, present and prospective creditors and customers were users, but that the term should also include employees of the company.

Note: A wide interpretation of users of financial statements is also adopted in the Australian Accounting Standards Board's (AASB) *Framework for the preparation and presentation of*

financial statements (Framework) at paragraphs 9–11. The Framework defines the users of financial reports at paragraph 9 to include present and potential investors, employees, lenders, suppliers and other trade creditors, customers, governments and their agencies and the public.

RG 43.4 Each of the different types of users may have varying information requirements.

Eligibility for relief

RG 43.5 We can grant relief from the requirements of Pts 2M.2, 2M.3 and 2M.4 (other than Div 4) to:

(a) a company, registered scheme or disclosing entity;

(b) its directors; and/or

(c) its auditor.

RG 43.6 This relief can be granted by class order (s341(1)) or on a case-by-case basis (s340(1)).

Statutory pre-conditions for relief

RG 43.7 We can only grant relief if we are satisfied that complying with the Corporations Act would:

(a) render the financial report or other reports misleading (see RG 43.13–RG 43.14);

(b) be inappropriate in the circumstances (see RG 43.15–RG 43.21); or

(c) impose unreasonable burdens (see RG 43.22–RG 43.53): s342(1).

Our discretion to grant relief or not

RG 43.8 We can still decline to grant relief even if we are satisfied that one or more of the statutory preconditions are met: see RG 43.54.

Applying for relief

RG 43.9 If you are not able to take advantage of class order relief (see RG 43.59 and Table 1) from financial reporting and audit requirements, you may make an individual application to ASIC for relief: see RG 43.60–RG 43.73.

Nature of relief

RG 43.10 Both class order relief and relief granted to an individual entity can be granted subject to conditions (see s340(2), 341(2), and RG 43.74–RG 43.75) and can be indefinite or for a limited period (see RG 43.76–RG 43.78).

B Eligibility for relief

Key points

Before we can grant relief under Ch 2M of the Corporations Act we must be satisfied that compliance with the Act would:

- render the financial report or other reports misleading (see RG 43.13–RG 43.14);
- be inappropriate in the circumstances (see RG 43.15–RG 43.21); or
- impose unreasonable burdens (see RG 43.22–RG 43.53): s342(1).

However, we are not obliged to grant relief merely because one or more of the pre-conditions in s342(1) have been met: see RG 43.54.

Statutory pre-conditions

RG 43.11 We can grant relief from all or some of the requirements of Pt 2M.2 'Financial records', Pt 2M.3 'Financial reporting' or Pt 2M.4 'Appointment and removal of auditors' (other than Div 4) to:

(a) a company, registered scheme or disclosing entity;

(b) its directors; and/or

(c) its auditor.

RG 43.12 We can only grant relief if we are satisfied that the applying entity meets at least one of three statutory preconditions in s342(1) for relief. That is, that requiring the entity to comply with the Corporations Act would:

(a) render the financial report or other reports misleading (s342(1)(a));

(b) be inappropriate in the circumstances (s342(1)(b)); or

(c) impose unreasonable burdens (s342(1)(c)).

Compliance would make the financial report or other reports misleading

RG 43.13 To satisfy the criterion in s342(1)(a), you must show that:

(a) strict compliance would make the financial report or other reports misleading. For example, that it would lead readers to an incorrect conclusion about the entity's financial position. The fact that the disclosure is uninformative or irrelevant is not of itself sufficient; and

(b) the problem could not reasonably be remedied through explanations in the notes to the financial statements necessary to give a true and fair view in accordance with s295(3)(c) of the Corporations Act.

RG 43.14 We envisage that this criterion will rarely be satisfied.

Compliance would be inappropriate in the circumstances

RG 43.15 Section 342(1)(b) will normally only apply where there is an anomaly in the law or when compliance with the law gives rise to consequences not intended by the legislature: see *Re Mazda Australia Pty Ltd and ASC* (1992) 8 ACSR 613. For example, s342(1)(b) would apply if a requirement of Ch 2M is in conflict with other legislative financial reporting requirements, and there is a clear legislative intent that the latter should take precedence.

No purpose to disclosure

RG 43.16 It is not sufficient for you to show that the requirement is irrelevant or of no benefit to some users of the financial report or auditor's report, or that those who need particular information already have access to it, so that there is no need for it to be publicly disclosed. For example:

(a) The fact that shareholders of a subsidiary company already have access to the information required to be disclosed, through their board of directors, is not sufficient if the shareholders of the ultimate holding company do not also have access to the information: *Re Australian Newsprint Mills Ltd* (1988) 6 ACLC 1205 (*Australian Newsprint*) at 1207.

(b) The needs of other users of the accounts—for example, creditors and prospective shareholders—must also be taken into account.

(c) In *Incat* (1999) the AAT held (at 143) that the practice of providing special purpose financial information, which was not available to other smaller creditors or potential investors of the company, on a discretionary basis to 'selected groups' such as financiers, major creditors and credit agencies was 'inconsistent with the intent of the legislation'. On appeal, the Federal Court in *Incat Australia Pty Ltd v ASIC* (2000) 33 ACSR 462 (*Incat* (2000)) confirmed that reasoning.

(d) In *Re SRKKK and Another and ASIC* (2002) 42 ACSR 551 (*SRKKK*), the AAT confirmed ASIC's decision not to grant relief from the various financial reporting requirements even though the applicant had no employees, customers or unsecured creditors. It was determined that this was not sufficient reason to undermine the overall public policy objective that large proprietary companies have reached a level of economic significance and therefore must report in accordance with statutory financial reporting requirements.

Large proprietary companies

RG 43.17 The fact that a company must prepare financial reports only because of its classification as a large proprietary company under the Corporations Act is not of itself sufficient to satisfy the 'inappropriate in the circumstances' criterion.

RG 43.18 Companies that meet the criteria in the Corporations Act to be classified as large proprietary companies (even though they may be privately owned) are considered by legislation to be economically significant, and therefore are required to comply with statutory financial reporting requirements.

RG 43.19 The policy objective underlying the requirement that large proprietary companies lodge financial reports was described by the AAT in *SRKKK* at 559 as:

> intended to ensure that once companies reach a certain level of turnover, presumably considered to be of economic significance, then those companies should provide fuller financial accounts. Obviously, the provision of fuller accounts facilitates oversight by regulatory bodies as well as providing useful information for those conducting business or in a contractual relationship with such companies.

RG 43.20 In *Incat* (1999), Incat sought relief in part under the 'inappropriate to the circumstances' criterion on the basis that it was not a 'reporting entity' under accounting standards and that the reporting entity test should be applied rather than the large proprietary company test. The AAT said at 136:

> At the end of the day it is not a question of whether a company is a reporting entity but whether or not it is a large proprietary company … The obligation to lodge accounts flows from its status as a large proprietary company following the legislative distinction made between small and large proprietary companies not whether it is a reporting entity … Furthermore the legislative policy underlying the requirement to lodge accounts is indicative of the expectation that there are users of the accounts.
>
> Note: On appeal from the AAT, the Federal Court (Heerey J) in *Incat* (2000) concluded that the status of a company as a reporting entity was not definitive as to its obligations to lodge accounts. Heerey J held at 471 that 'the ultimate question is whether a company is a 'large proprietary company''.

Grandfathered large proprietary companies

RG 43.21 As a result of s1408(6) of the Corporations Act, some large proprietary companies are not required to lodge financial reports regardless of their economic significance. These companies are commonly referred to as 'grandfathered' large proprietary companies. This is a limited exemption provided by Parliament to companies that meet specific criteria. This should not be taken as a basis for granting relief to companies that do not meet the criteria.

Compliance would impose unreasonable burdens

RG 43.22 Compliance with the Corporations Act may be burdensome in one of two ways:

(a) there may be a burden associated with complying with a particular requirement; or

(b) a burden may result from having complied with the requirement.

RG 43.23 The burden may be imposed on the entity, an officer of the entity or the auditor of the entity.

RG 43.24 Before we will grant relief it must be demonstrated not only that compliance with the relevant requirement of Pts 2M.2, 2M.3 and 2M.4 would impose a burden, but also that the burden is unreasonable.

RG 43.25 Section 342(1)(c) requires that a causal connection be established between compliance with the relevant requirement and the 'detriment' that might constitute an unreasonable burden. The mere potential for a detriment to occur is not an unreasonable burden—there must be some reasonable prospect or likelihood of the detriment occurring: see *Brightstar Logistics Pty Ltd v Australian Securities and Investments Commission* (No 2) [2010] FCA 435 (7 May 2010) at paragraphs 59–67.

What is an 'unreasonable' burden?

RG 43.26 *Incat* (1999) gives the following interpretation of an 'unreasonable' burden at paragraph 20:

> while a burden that is overwhelming is an unreasonable one the converse is not necessarily true. Whether a burden may fairly be described as 'unreasonable' is essentially one of fact requiring an evaluation of the evidence, having regard to the nature of the requirements to be performed, keeping in mind the policy objective of the legislation that companies of economic significance lodge accounts and the extent of economic detriment (if any) likely to flow to the applicants as a result of compliance.

This interpretation was approved by Heerey J in *Incat* (2000) at 465.

RG 43.27 Factors that are relevant in determining whether the requirements of Pts 2M.2, 2M.3 and 2M.4 would impose an unreasonable burden include the:

(a) information needs of users and potential users of the financial report;

(b) objectives of the financial reporting and audit provisions; and

(c) intentions of the AASB and the Auditing and Assurance Standards Board (AUASB).

Users and their information needs

RG 43.28 A burden would be unreasonable if complying with the requirement will cause the entity serious economic detriment with little or no compensating benefit to

users of the financial reports: see *Directors of Liquid Air (WA) Pty Ltd v Commissioner for Corporate Affairs* (1989) 15 ACLR 29 (*Liquid Air*).

RG 43.29 We will consider who the users of the financial report are likely to be, what their information needs are, and how those users are likely to be impacted if relief is granted.

RG 43.30 Before granting relief, we will take into account the fact that financial reports provide information about the financial position, financial performance and cash flows of an entity that is useful to a wide range of users in making economic decisions. They also provide information for those users who wish to assess the accountability of management in order that they make economic decisions.

RG 43.31 The administrative cost of preparing and lodging financial reports or complying with a particular requirement (including paying for expert assistance) would rarely of itself be an unreasonable burden. It is a cost of doing business using a corporate structure. You must demonstrate that the administrative burden is out of all proportion to the value of the resultant disclosure to users of the financial report.

The objectives of financial reporting

RG 43.32 We will consider the impact that granting relief would have on the objectives of the financial reporting and audit provisions. These objectives are discussed at RG 43.1–RG 43.4.

RG 43.33 For example, we would refuse to grant relief to dormant companies, on the basis that it would be inconsistent with the intention of the legislature. Amendments to the Corporations Act arising under the *Corporate Law Reform Act 1988* specifically removed the distinction between dormant companies and other companies. Dormant companies are now expected to comply with the same financial reporting requirements as other companies and therefore we will not generally grant relief to dormant companies from complying with the reporting and audit requirements of the Corporations Act.

The intentions of the AASB and the AUASB

RG 43.34 Our general policy is that we will not grant relief that is inconsistent with any standards made by the AASB or the AUASB. Where either of these bodies have considered, but expressly declined to adopt a particular approach, we will generally not grant relief allowing an entity to adopt that approach.

RG 43.35 We are unlikely provide relief from compliance with Australian accounting standards based on International Financial Reporting Standards (IFRS), for example. For periods beginning on or after 1 January 2005, Australia has adopted Australian equivalents to IFRS. The adoption of IFRS is aimed at

ensuring consistency and comparability of financial reporting across global financial markets; providing relief from compliance with these standards would be inconsistent with the intentions of the AASB.

When relief will not be granted

RG 43.36 We will not grant relief solely because:

(a) there are difficulties arising from the way in which a company has structured its operations (particularly its group structure) or as a result of a policy determined by the directors; or

(b) the ultimate holding company, incorporated outside Australia, is not required to provide similar disclosure.

Examples of an unreasonable burden

RG 43.37 The following are examples of when relief from the financial reporting and audit requirements of Pts 2M.2, 2M.3 and 2M.4 may or may not be appropriate on the basis that compliance would impose an unreasonable burden.

Competitive advantage or disadvantage

RG 43.38 Only in rare circumstances will we grant relief because a particular disclosure requirement might impose an unreasonable burden by allowing customers, competitors or suppliers to use the information disclosed to the applicant's competitive disadvantage.

RG 43.39 An application for relief would need to demonstrate that if the disclosure requirement is complied with, competitors, suppliers or customers will be able to extract precise information of a specific nature—for example, profit per unit sold—from the financial statements, and that this information can then be used to gain an advantage over the applicant company, giving rise to detrimental consequences. Based on the decision in *Liquid Air*, this might happen where, for example, the company has only one customer, or the company provides a single service or product and information about the physical level of the applicant's output is available to competitors.

RG 43.40 In considering whether to grant relief, the ability to calculate information such as profit per unit sold is only one consideration. We will consider all relevant circumstances, including the likelihood of the information being used to the company's disadvantage and the factors outlined in RG 43.27–RG 43.35. For example, since *Liquid Air* there have been changes to the reporting requirements, which reflect the intention of the AASB that all reporting entities preparing financial reports under Ch 2M of the Corporations Act are specifically required to report information that enables the calculation of expenses and operating margins.

RG 43.41 We will generally not grant relief from a requirement to disclose information in the financial report because the information will enable competitors to derive unit costs of production (thus giving rise to competitive disadvantage), unless you can demonstrate that you meet the following requirements:

(a) you are a one-product or one-service entity. The product or service must be homogenous. A product sold in both small and large quantities will not be homogenous for this purpose;

(b) there is no significant means of product differentiation compared to competitors' products (including reputation of the company, use of brand names, differences in quality and differences in styles);

(c) a very large majority of business is with one economically powerful customer supplier, or you are a very small participant in an industry dominated by one or two major and large competitors, who it is reasonable to conclude would be willing and able to wage a price war. You must consider factors such as:

(i) protection provided by other legislation;

(ii) price setting in the market;

(iii) the willingness and ability of competitors to suffer losses in a price war;

(iv) the company's margin relative to that of its competitors;

(v) possible support for the company from a parent or other source; and

(vi) whether customers would be willing to put sources of supply at risk or risk the quality of their purchases;

(d) the only source of reliable information that competitors, suppliers and other interested parties can use to estimate your production costs is your financial reports. For example, competitors' production or engineering staff or consultants may be able to make estimates from:

(i) knowledge of production techniques;

(ii) size of operations;

(iii) production volumes;

(iv) grade or quality of inputs;

(v) number of employees required for a given production level;

(vi) costs of employees, machinery and goods or services needed for the production process;

(vii) location; and

(viii) assessment of product characteristics and quality;

(e) you will suffer serious economic detriment as a consequence of the competitors or customers being able to make the calculations and that detriment is unlikely to occur if the financial report information is not

available. We will consider whether the information can be ascertained from sources other than the financial report;

(f) no small competitors, customers, suppliers or possible new market entrants may be disadvantaged by the relief sought, or are required to comply with the disclosure requirement in question; and

(g) the economic detriment to the entity far outweighs the value to users of the financial reports and the legislature's policy objective that certain companies lodge financial reports.

RG 43.42 Even if the above circumstances can be demonstrated, relief may not be appropriate for other reasons, such as the following:

(a) ASIC is not the competition regulator. Our relief power will not be used as a substitute for protections provided by other legislation intended to deal with unfair competition. We will not give relief as a substitute for, or supplement to, protection intended under the *Trade Practices Act 1974*.

(b) If the company has previously complied with the disclosure requirement that is the subject of an application for relief, it would need to provide clear evidence that it suffered severe economic detriment.

RG 43.43 We will also consider whether relief is likely to undermine the purpose of the statutory requirement that financial reports of economically significant proprietary companies be prepared in accordance with the financial reporting requirements of Ch 2M and be lodged with us.

Disclosure of director and executive remuneration

RG 43.44 We will not grant relief from the disclosure of directors' and executive remuneration, option details and loans based on the argument that compliance imposes an unreasonable burden on directors because the disclosure invades their privacy. This proposition has been considered in a number of cases and it has been held that the disclosure should be regarded as 'an incident of commercial life' and a cost of using a corporate structure to conduct business: see *Australian Newsprint* and *SRKKK*.

RG 43.45 We will also take into account the factors listed at RG 43.27–RG 43.35. Granting relief would be contrary to the purpose of the legislation and the accounting standards, given that Parliament and the AASB would have been aware of the arguments about privacy when the legislation was enacted and the standards were made.

RG 43.46 Similarly, arguments that disclosure would be prejudicial to the remuneration policies of the particular company or its holding company by enabling other entities to make offers to officers do not provide a sufficient basis for satisfying the unreasonable burdens criteria.

Adverse market conditions or poor financial condition

RG 43.47 We are unlikely to grant relief because an entity faces uncertainties in adverse market conditions or because the cost of complying with a financial reporting requirement would impose an unreasonable burden by reducing returns to members due to an entity's poor financial condition. In these circumstances, it is important that the users of financial reports are fully informed of the circumstances through the information included in the report, which will assist them in making economic decisions and assessing the accountability of management.

Relief from audit requirements for charitable and other not-for-profit organisations

RG 43.48 We are unlikely to grant relief to charitable or other not-for-profit organisations that argue that the requirement to have their financial report audited is an unreasonable burden because:

(a) they are not-for-profit and cannot afford to pay the audit fee; or

(b) their funds could be better used elsewhere.

RG 43.49 The cost of preparing and lodging audited financial reports with ASIC is a cost of doing business using a corporate structure, and while it may be a burden, such costs would rarely be considered to be an unreasonable one. Audited financial reports from these types of entities provide users, such as donors or potential donors, with a source of reliable information about the entities' operations and are an important part of the accountability of the directors of those entities.

Extension of time to lodge a statutory financial report

RG 43.50 The Corporations Act sets out specific deadlines in which a statutory financial report must be lodged with ASIC. Only in rare circumstances will we grant an extension of this time on the basis that it is an unreasonable burden. We expect that entities will plan their financial reporting processes in a manner that allows the external auditor sufficient time to complete the audit and to meet the company's reporting deadlines under the Corporations Act. In the case of a disclosing entity any relief is unlikely to be for more than four weeks: see RG 95.40(h).

RG 43.51 The following are examples where an extension of time is unlikely to be granted:

(a) if directors are absent from Australia. Suitable alternative arrangements should be made to enable the financial report to be authorised by a resolution of directors and signed by a director. In any event, any application would need to be signed by a director (see s340(3)(a) and (b) of the Corporations Act);

(b) if an auditor states it cannot complete the audit work within the timeframe set down in the Corporations Act; and

(c) if an entity wishes to await the outcome of future transactions or agreements before lodging its financial report. If information about future events is material, additional disclosure may be included in the financial report, in accordance with Australian Accounting Standard AASB 110 *Events after the balance sheet date*.

RG 43.52 If a financial services licensee is required to lodge financial reports under s989B and Ch 2M of the Corporations Act, a separate extension of time may need to be sought under s989D(3).

RG 43.53 Where necessary, a separate application for extension of time to hold an annual general meeting must also be sought in accordance with s250P(2) of the Corporations Act: see also Regulatory Guide 44 *Annual general meeting—extension of time* (RG 44).

Our discretion to grant relief or not

RG 43.54 We are not obliged to grant relief even if one or more of the pre-conditions in s342(1) have been met. We will take into account all of the relevant circumstances of the application when considering whether to exercise our discretion to grant relief under s340.

C Applying for relief

Key points

Some entities may be entitled to rely on existing class order relief from financial reporting and audit requirements. However, entities not covered by class orders may still apply for individual relief. These applications are considered on a case-by-case basis.

An application for relief must include all of the information set out in RG 43.62 and be accompanied by the appropriate fee.

This section also sets out the minimum information we would require for an application for relief:

- for a change in financial year (see RG 43.64–RG 43.68);
- by group companies (see RG 43.70–RG 43.71); and
- by disclosing entities (see RG 43.72–RG 43.73).

Basic considerations with applying for relief

RG 43.55 Relief from the reporting requirements in Ch 2M can be granted by class order (s341(1)) or on a case-by-case basis (s340(1)). We consider individual applications for relief on a case-by-case basis.

RG 43.56 You should first check whether you can claim relief under an existing class order. If not, you will need to make an individual application asking ASIC to grant you relief.

Sufficient time

RG 43.57 You should ensure that there will be sufficient time for us to consider the application and serve notice of any order on the company, registered scheme or disclosing entity before any statutory timeframe for which the relief is required has expired. Section 340 applications should normally be lodged no later than one month before the end of the financial period for which the relief is being sought.

RG 43.58 Additional time should be allowed for applications that are novel or outside the scope of existing policy.

Class order relief

RG 43.59 Table 1 lists some of the entities that may be eligible for class order relief and where further information may be found. This is not an exhaustive list.

Table 1: Entities that may be eligible for class order relief

Disclosing entities	Class Order [CO 08/15] *Disclosing entities—half-year financial reporting relief* relieves a disclosing entity from the requirement to prepare and lodge a half-year financial report and directors' report during the first financial year of the entity, where that first financial year lasts for eight months or less. Regulatory Guide 95 *Disclosing entity provision relief* (RG 95) discusses relief from the disclosing entity provisions as defined in s111AR of the Corporations Act.
Externally administered companies	Class Order [CO 03/392] *Externally administered companies: Financial reporting relief* grants relief from the financial reporting obligations for companies subject to certain forms of external administration. Regulatory Guide 174 *Externally administered companies: Financial reporting and AGM* (RG 174) outlines what relief is available under the Corporations Act for externally administered companies from the financial reporting obligations in Pt 2M.3.
Foreign companies	Regulatory Guide 58 *Reporting requirements—registered foreign companies and Australian companies with foreign shareholders* (RG 58) describes the relief from reporting obligations in the Corporations Act that may be granted to registered foreign companies and Australian companies with foreign shareholders. In particular, lodgement relief is available to certain registered foreign companies: see Class Order [CO 02/1432] *Registered foreign companies—financial reporting requirements*. Class Order [CO 98/96] *Synchronisation of financial year with foreign parent company* permits a company, registered scheme or disclosing entity to synchronise its financial year with that of its ultimate foreign parent entity in certain instances.
Proprietary companies	Proprietary companies may seek relief from the requirement in the Corporations Act to have their financial report audited under Class Order [CO 98/1417] *Audit relief for proprietary companies*. They should consult Regulatory Guide 115 *Audit relief for proprietary companies* (RG 115). Lodgement relief is also available to certain small proprietary companies that are controlled by foreign companies: see Class Order [CO 98/98] *Small proprietary companies which are controlled by a foreign company but which are not part of a large group*.
Wholly owned entities	Wholly owned companies seeking relief from the requirement in the Corporations Act to prepare and lodge a financial report should refer to Class Order [CO 98/1418] *Wholly-owned entities*.

Individual relief

Form and fees

RG 43.60 There is no prescribed application form for s340 applications.

RG 43.61 Each application must be accompanied by the appropriate fee, which is set out in Item 24 of the Schedule to the Corporations (Fees) Regulations 2001.

Application requirements

RG 43.62 An application for relief under s340 must:

(a) be in writing and signed by at least one director (s340(3)(b));

(b) state that it is made in accordance with the authorisation of directors (s340(3)(a));

(c) provide the reasons for seeking the relief and sufficient relevant information to enable assessment of the merits of the application;

(d) state the legislative provision(s) from which relief is sought;

(e) state which of the three criteria in s342(1) has been met; and

(f) candidly address how any relief granted may affect the needs of users of financial reports.

RG 43.63 Applicants and their advisers are responsible for:

(a) applying to ASIC for all appropriate relief; and

(b) including all the relevant information to support their application (see Regulatory Guide 51 *Applications for relief* (RG 51) at RG 51.12–RG 51.15).

Specific considerations for some applications

Change of financial year end

RG 43.64 Section 323D(2A) allows a financial year of an entity to be less than 12 months if there has not been a financial year of less than 12 months in the last five years and the change is made in good faith in the best interests of the entity.

RG 43.65 Since s323D(2A) provides entities with flexibility to change their financial years, we will rarely grant relief in connection with changes of financial year. However, we may consider granting relief where, for example:

(a) an entity wishes to change its financial year by way of a transitional period of 14 months or less; or

(b) an entity wishes to synchronise its financial year with that of a foreign parent but cannot rely on [CO 98/96] or s323D(2A) to do so (addressed in RG 58).

RG 43.66 In some circumstances, s323D(2A) may impose unreasonable burdens on an entity by requiring it to change its financial year by way of a short transitional period of two months or less. We may grant case-by-case relief so an entity can change its financial year by way of a transitional period of 14 months or less. We will usually not grant relief so an entity can change its financial year by way of a transitional period longer than 14 months. We are also very unlikely to grant relief so that a change of financial year to end on 30 June rather than 31 December (or vice versa) can be made by way of an 18 month transitional period. This is because s323D(2A) expresses a legislative preference for transitional periods to be less than 12 months.

RG 43.67 All applications for a change in financial year (except those by registered foreign companies and Australian companies with foreign shareholders, which are specifically addressed in RG 58) must address the following:

(a) why complying with the requirement for the entity's financial year to be a period of 12 months would impose unreasonable burdens;

(b) if a financial year of greater than 12 months is requested, the reasons why the entity's directors believe users of the financial report—such as present and prospective shareholders, present and prospective creditors, customers and employees—will not be disadvantaged;

(c) if a financial year of greater than 12 months is requested, whether that entity has been, or is expected to be, affected by any material unusual transactions or events, extraordinary items, significant operating losses, acquisitions or sales of major assets (including businesses and controlled entities), and any factors which significantly affect the financial condition of the entity;

(d) whether, in the director's opinion, there are reasonable grounds to believe that the entity will be able to pay its debts as and when they become due and payable;

(e) if the entity is a proprietary company, whether the change in financial year will result in the company being treated as a small proprietary company when it would otherwise be a large proprietary company (we will not grant unconditional relief in these circumstances because then the company would not be required to prepare and lodge an audited financial report or a director's report);

(f) whether the new financial year end would differ from that of a controlling entity or an entity that has significant influence over the entity. The terms 'control' and 'significant influence' are defined in Australian Accounting Standard AASB 127 *Consolidated and separate financial statements* and Australian Accounting Standard AASB 128 *Investments in associates*; and

(g) any other information that may be relevant to our decision to grant relief.

RG 43.68 It may be a condition of relief that a proprietary company that is considered 'small' under s45A(2) of the Corporations Act, because it has a financial year of

less than 12 months, must prepare a financial report as if it were a large proprietary company for that financial year.

RG 43.69 We will not generally grant relief that allows an entity to have a financial year in excess of 18 months.

Group companies

RG 43.70 Each company in a group seeking relief must make individual applications, although these applications may be in the same letter. The appropriate fee must accompany each application.

RG 43.71 The directors of a holding company cannot apply on behalf of the directors of its subsidiary companies. However, if the grounds for seeking relief are identical, the directors of a subsidiary company may adopt the reasons stated by the directors of the holding company.

Disclosing entities

RG 43.72 Where relief from the financial reporting and audit provisions in Pts 2M.2, 2M.3 and 2M.4 can be provided to disclosing entities under s340(1) or s111AT(1), it will be granted under s340(1) and not s111AT(1). Relief under s111AT(1) will only be given if we are satisfied that one of the criteria under s342(1) is satisfied. We will grant relief under s340(1) rather than s111AT(1) even if you originally made such an application under s111AT(1).

RG 43.73 For further examples of when relief under s340(1) will be granted to disclosing entities, refer to RG 95; in particular, see RG 95.40–RG 95.43.

D Nature of relief

Key points

ASIC has the discretion to impose conditions on relief and relief may be granted for a limited period.

Conditions of relief

RG 43.74 Any conditions imposed will depend on the circumstances of the application and the nature of the relief granted. It is likely that we will impose a condition that the directors' report include a statement that explains the relief that has been granted by ASIC. This alerts users of the report that information has been omitted from the financial report.

RG 43.75 We may decide to grant relief with the condition that there is no change in the circumstances or facts on which the relief is based. We will impose this condition if we are of the view that a change in these circumstances or facts would significantly affect the need for relief or would have an adverse effect on the interests of users of the financial reports.

Duration of relief

RG 43.76 Relief is not usually granted for an indefinite period. This is because changes in your circumstances or external factors (such as financial reporting requirements or legislation) could render the relief inappropriate in the circumstances or one of the criteria in s342(1) inapplicable.

RG 43.77 If relief has been granted for a limited period and further relief is required, you must submit a fresh application. An application that merely refers to the existence of the present order and the application that gave rise to that order will be insufficient to enable us to make a decision.

RG 43.78 We may, on application or of our own volition, revoke or suspend the operation of an order made under s340(1) or s341(1).

Relief cannot be retrospective

RG 43.79 ASIC's powers under s340 of the Corporations Act are prospective. ASIC has no power to grant retrospective relief. Relief will not remedy any past breach of the Corporations Act: see RG 51.54–RG51.62 for further details. In very limited circumstances, we may grant a no-action letter in relation to past breaches of the Corporations Act: see Regulatory Guide 108 *No-action letters* (RG 108).

Key terms

Term	Meaning in this document
AASB	Australian Accounting Standards Board
AASB 110 (for example)	An Australian accounting standard made for the purposes of the Corporations Act (in this example number 110)
AAT	Administrative Appeals Tribunal
ASIC	Australian Securities and Investments Commission
AUASB	Auditing and Assurance Standards Board
Ch 2M (for example)	A chapter of the Corporations Act (in this example numbered 2M)
[CO 98/55] (for example)	An ASIC class order (in this example numbered 98/55)
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
Framework	*Framework for the preparation and presentation of financial statements*
Pt 2M.2 (for example)	A part of the Corporations Act (in this example numbered 2M.2)
RG 95 (for example)	An ASIC regulatory guide (in this example numbered 95)
s340 (for example)	A section of the Corporations Act (in this example numbered 340)

Related information

Headnotes

application procedure; conditions, revocation or suspension of order; criteria to be satisfied; s340, 341 and 342; where relief may be given

Class orders

[CO 98/96] *Synchronisation of financial year with foreign parent company*

[CO 98/98] *Small proprietary companies which are controlled by a foreign company but which are not part of a large group*

[CO 98/1417] *Audit relief for proprietary companies*

[CO 98/1418] *Wholly-owned entities*

[CO 02/1432] *Registered foreign companies—financial reporting requirements*

[CO 03/392] *Externally administered companies: Financial reporting relief*

[CO 08/15] *Disclosing entities—half-year financial reporting relief*

Regulatory guides

RG 51 *Applications for relief*

RG 44 *Annual general meeting: Extension of time*

RG 58 *Reporting requirements: Registered foreign companies and Australian companies with foreign company shareholders*

RG 95 *Disclosing entity provisions relief*

RG 108 *No-action letters*

RG 115 *Audit relief for proprietary companies*

RG 174 *Externally administered companies: Financial reporting and AGMs*

Legislation

Corporations Act 2001, Ch 2M, Pts 2M.2, 2M.3, 2M.4 and 2M.6, s111AT; *Corporate Law Reform Act 1988*; Corporations (Fees) Regulations 2001

Trade Practices Act 1974

Cases

Australian Newsprint Mills Ltd, Re (1988) 14 ACLR 355

Incat Australia Pty Ltd and Another and ASIC, Re (1999) 33 ACSR 132

Incat Australia Pty Ltd v ASIC (2000) 33 ACSR 462

Liquid Air (WA) Pty Ltd, Directors of v Commissioner for Corporate Affairs (1989) 15 ACLR 29

Mazda Australia Pty Ltd and ASC, Re (1992) 29 ALD 57; (1992) 8 ACSR 613;

SRKKK and Another and ASIC , Re (2002) 68 ALD 671; (2002) 42 ACSR 551

Standards

AASB 110 *Events after the balance sheet date*

AASB 127 *Consolidated and separate financial statements*

AASB 128 *Investments in associates*