



ASIC

Australian Securities & Investments Commission

[PF 71] Pro Forma 71 Foreign collective investment schemes — Chapter 5C

Policy Statement 65, Policy Statement 136

Reissued 2/6/1999

Updated 1/9/1999, 26/6/2000

Pro Forma 71 [PF 71] sets out the form of relief from the provisions of Chapter 5C of the Corporations Law available for a foreign collective investment scheme wishing to gain ASIC registration on the basis of a constitution registered in its home jurisdiction. See Policy Statement 65 [PS 65] and Policy Statement 136 [PS 136].

Editor's note: [PF 71] was amended 1/9/1999 by inserting an additional point, 5, in the list of modifications to Chapter 5C of the Law and 26/6/2000 by changing the date in Schedule C from 1 July 2000 to 1 July 2002.

Australian Securities and Investments Commission
Corporations Law — Subsections 601QA(1) and 340(1) —
Exemption
and Declaration

Pursuant to paragraph 601QA(1)(a) of the Corporations Law (“Law”) the Australian Securities and Investments Commission (“Commission”) hereby exempts the person mentioned in Schedule A (“the Corporation”) in relation to the operation of the scheme specified in Schedule B (“the Scheme”) on or before the date specified in Schedule C from compliance with section 601FA of the Law and on condition that:

1. the Corporation is at all times registered as a foreign company pursuant to Division 2 of Part 5B.2 of the Law;
2. the memorandum of appointment or power of attorney lodged by the Corporation for the purposes of appointing a local agent

pursuant to section 601CG of the Law authorises and instructs the local agent to:

- (a) ensure immediate transmission to the person appointed to hold the scheme property of the Scheme of all properly executed applications for interests in the Scheme provided such applications are made on application forms that were attached to a current prospectus;
 - (b) receive notices relating to the buy-back or redemption of interests and forward them to the Corporation without delay;
 - (c) accept notices, correspondence and service of process on behalf of the Corporation;
 - (d) notify the Commission if the buy-back arrangements or redemption facilities of the Scheme are suspended or terminated or if quotation of the interests on any foreign securities exchange is suspended;
 - (e) make available for public inspection and provide to members of the Scheme copies of the constituent documents of the Scheme and meet all reasonable requests for information relating to the affairs of the Scheme;
 - (f) maintain in Australia and make available to the Commission, upon request, records relating to the issue or sale of and the buy-back or the redemption of interests in the Scheme to or from Australian residents; and
 - (g) cause to have published the information referred to in condition 8 of this instrument;
3. the Corporation lodges with the Commission an irrevocable deed poll by which it undertakes for the benefit of all Australian residents who are holders of interests in the Scheme:
- (a) to maintain its registration as a foreign company for so long as the Scheme is registered;
 - (b) to do all things necessary to maintain registration of the Scheme until such time as:
 - (i) the number of Australian residents holding interests in the Scheme falls below a number specified in the deed poll;

- (ii) the Scheme is terminated or wound-up in accordance with the Applicable Law; or
 - (iii) the Commission otherwise approves;
- (c) to publish prices with respect to the redemption or repurchase of interests in Australia at least once a week for so long as the Scheme is registered in accordance with the terms of this instrument and interests in the Scheme are not quoted on an approved foreign exchange as defined in subregulation 1.2A.02(2) of the Corporations Regulations (“approved foreign exchange”);
- (d) to ensure that the constitution of the Scheme provides:
 - (i) the Corporation is bound that it will, if asked by a member who is an Australian resident, buy the interest or cause it to be bought or redeemed at a price provided for in the constitution within a reasonable time period for the exercise of such a facility except during any period in which interests in the Scheme are quoted on an approved foreign exchange; and
 - (ii) that such facility cannot be varied except by amendment of constitution;
- 4. the Corporation or the local agent fulfils the functions referred to in condition 2(a) to (g) in an efficient manner;
- 5. the Scheme is at all times approved or authorised or registered by the Relevant Agency;
- 6. there is at all times a trustee or custodian or depository appointed for the purpose of holding title to the scheme property of the Scheme;
- 7. buy-back or redemption, as the case may be, of interests in the Scheme is not suspended or terminated for any reason without the approval of the Commission except during any period in which interests in the Scheme are quoted on an approved foreign exchange;
- 8. there is published in a newspaper or newspapers published and circulating throughout Australia at least once in every week a notice stating with respect to the Scheme:
 - (a) the current price at which an interest in the Scheme will be issued by the Corporation; and

- (b) the current price at which an interest in the Scheme will be bought back or redeemed;

“current” means within two business days before the date of publication;

“price” means the price in the currency of the foreign jurisdiction;
- 9. no relief is granted by the Relevant Agency relieving the Corporation from the requirements of the Applicable Law relating to the issue, buy-back or redemption of interests in the Scheme without the approval of the Commission;
- 10. any prospectus issued with respect to the Scheme states prominently that the Scheme is a foreign scheme subject to the regulation of the Relevant Agency and to the Applicable Law and describes the legal and practical effect (if any) this may have on the rights and ability of an Australian resident to make any claim or enforce any right arising out of or in connection with the Scheme;
- 11. interests issued as a result of applications made in Australia represent a minority of interests in the Scheme, calculated both by value and by the number of holders of interests in the Scheme;
- 12. the Corporation shall upon written request by the Commission:
 - (a) respond to all requests for information which the Corporation can obtain by reasonable enquiry, or verification of information, in relation to the Scheme within any time period that the Commission reasonably requires for the response;
 - (b) permit the Commission to inspect the books and records of the Corporation in relation to the Scheme; and
 - (c) produce to the Commission the books and records of the Corporation in relation to the Scheme at a specified place that is reasonable in the circumstances, and
- 13. if at any time the buy-back arrangements or arrangements for redemption of interests as the case may be are suspended for any reason except during any period in which interests in the Scheme are quoted on an approved foreign exchange, then (unless the Commission otherwise approves) in such case the Corporation shall:

- (a) immediately withdraw from circulation any current prospectus that relates to the Scheme;
- (b) advertise forthwith in newspapers circulating throughout Australia particulars of the changed buy-back or redemption arrangements;
- (c) refuse to accept any application moneys received after the date of suspension; and
- (d) refund to the applicants all other application moneys then held in Australia.

And pursuant to paragraph 601QA(1)(b) of the Law, the Commission hereby declares that the provisions of Chapter 5C of the Law apply to the Corporation in relation to the Scheme until the date specified in Schedule C as if:

1. The following provisions were omitted:
 - (a) paragraph 601EA(2)(b);
 - (b) subsection 601EA(3);
 - (c) paragraphs 601EA(4)(b) and (c);
 - (d) paragraphs 601EB(1)(d), (e), (f), (g) and (h);
 - (e) subsections 601FB(2), (3) and (4);
 - (f) section 601FC except paragraph 601FC(1)(m);
 - (g) section 601FD;
 - (h) section 601FE;
 - (i) section 601FG;
 - (j) section 601FH;
 - (k) Division 2 of Part 5C.2 except section 601FJ;
 - (l) Division 3 of Part 5C.2;
 - (m) Parts 5C.3, 5C.4, 5C.5, 5C.6, 5C.7 and 5C.9; and
 - (n) paragraphs 601PB(1)(b), (c) and (d);
2. in subsection 601FF(1) the words, “and compliance plan” were omitted;
3. in subsection 601PA(2) paragraphs (a), (b) and (c) were replaced with the following, “the responsible entity is not

required by the conditions of an exemption under paragraph 601QA(1)(a) to do all things necessary to maintain registration”; and

4. the definition of “registered scheme” in section 9 were modified or varied by adding at the end the following:

“where:

- (a) a trustee or custodian has been appointed for the purposes of the scheme and approved by the Relevant Agency and that approval has not been revoked and the trustee or custodian has not ceased to hold office without being replaced in accordance with the Applicable Law;
- (b) there has been lodged with the Commission:
 - (i) the deed or other document or documents comprising the constitution of the Scheme from time to time, or a certified copy thereof;
 - (ii) a certified copy of any current Certificate of Incorporation or Registration or approval issued by the Relevant Agency in relation to the Scheme;
 - (iii) the current memorandum of appointment or power of attorney lodged by the responsible entity for the purpose of appointing a local agent pursuant to section 601CG and any deed poll executed by the responsible entity for the benefit of Australian residents who are holders of interests in the Scheme;
 - (iv) if the Commission has asked in writing, a certified consolidated copy of the documents referred to in subparagraphs (b)(i), (ii) and (iii); and
 - (v) if any document is not in English, a certified translation of that document into English; and
- (c) the Commission has not notified the responsible entity in writing that it disapproves any of the documents referred to in subparagraphs (b)(i), (ii) and (iii) that were lodged after the date of registration.”

5. the definition of “responsible entity” in section 9 were modified or varied by replacing the word “company” with the word “person”.

And pursuant to subsection 340(1) of the Law, the Commission hereby orders that the Scheme, the Corporation, the directors of the Corporation and the auditors of the Scheme are relieved from the requirements of Parts 2M.2 and 2M.3 in relation to a financial year ending before the date specified in Schedule C for as long as and on condition that:

1. the Corporation lodges:
 - (a) within one month of the date on which such documents are lodged with the Relevant Agency:
 - (i) a copy of any financial statements relating to the Scheme in such form and containing such particulars and including copies of such documents as the Corporation is required to prepare by the Applicable Law;
 - (ii) a copy of any regular return or report which the Corporation is required to send or make available to the members by the Applicable Law;
 - (b) within seven days of the event:
 - (i) particulars of any amendment, variation or modification of the documents relating to the Scheme referred to at subparagraphs (b)(i), (ii) and (iii) of the definition of registered scheme whether effected by means of amendment of a deed, administrative action of the Relevant Agency, a change to the Applicable Law or otherwise;
 - (ii) particulars of any change to the Applicable Law which materially changes the Key Regulatory Requirements from those in force at the date on which the scheme was registered;
 - (iii) where proceedings are commenced in its place of origin for the winding up or termination of the Scheme or the dismissal of the Corporation for any reason, notice of that fact and, when a liquidator or other external administrator is appointed or the Corporation ceases to be the responsible entity under the deed, notice of that fact;
 - (iv) where buy-back or redemption of interests in the Scheme is suspended or terminated except during any period in which interests in the

Scheme are quoted on an approved foreign exchange, notice of that fact;

- (v) particulars of any change to the trustee or custodian appointed for the purposes of the Scheme;
 - (vi) particulars of any change to the local agent appointed for the purposes of section 601CG or the terms of its appointment; and
 - (vii) particulars of any change to the authorised investment policy and borrowing limitations previously disclosed in any prospectus circulated in Australia;
2. the Corporation ensures that any document required to be lodged under condition 1 must be signed by the directors of the Corporation or verified by the local agent of the Corporation in the form prescribed for the purposes of subsection 601CK(1), with such modifications as are necessary; and
 3. the Corporation promptly sends any of the documents lodged under condition 1 to any member of the Scheme that asks for them.

Interpretation

In this instrument and in provisions applying as modified by this instrument:

“Relevant Agency” means [insert the name of the relevant foreign regulatory body, for example: the Securities Exchange Commission].

“Applicable Law” means [describe the relevant foreign law, for example: the law of the United States of America from time to time].

“Key Regulatory Requirements” means those provisions of the Applicable Law which relate to matters which the Commission has specified in its published policy are Key Regulatory Requirements of a foreign regulatory regime for adequate regulation of foreign collective investment schemes.

SCHEDULE A

[name of responsible entity]

SCHEDULE B

[insert particulars of the Scheme by reference to the deed and name of the Scheme].

SCHEDULE C

1 July 2002

Dated this day of

Signed by [name of delegate]
as a delegate of the Australian Securities and Investments
Commission