



Corporations Amendment Regulation 2012 (No. 2)

Select Legislative Instrument 2012 No. 43

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Corporations Act 2001*.

Dated 5 April 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BILL SHORTEN
Minister for Financial Services and Superannuation

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1 Name of regulation

This regulation is the *Corporations Amendment Regulation 2012 (No. 2)*.

2 Commencement

This regulation commences, or is taken to have commenced, as follows:

- (a) on 13 April 2011 — sections 1 to 3 and Schedule 1;
- (b) on the day after it is registered — Schedule 2.

3 Amendment of *Corporations Regulations 2001*

Schedules 1 and 2 amend the *Corporations Regulations 2001*.

Schedule 1 Amendments taken to have commenced on 13 April 2011

(section 3)

[1] Regulation 7.11.01, definition of *beneficial owner*

omit

an authorised trustee corporation

insert

a licensed trustee company, within the meaning of Chapter 5D of the Act, a Public Trustee of a State or Territory, or a company listed in Schedule 9

[2] Regulation 7.11.02

omit

[3] Regulations 7.11.12 and 7.11.13

substitute

7.11.12 Sufficient transfer of Division 3 assets: licensed trustee company or Public Trustee of a State or Territory

- (1) This regulation applies to the transfer of Division 3 assets, otherwise than by way of sale, gift or exchange, by:
 - (a) a licensed trustee company, within the meaning of Chapter 5D of the Act; or
 - (b) a Public Trustee of a State or Territory; or
 - (c) a company mentioned in Schedule 9;whether alone or together with any other person or persons, to the beneficial owner of the Division 3 assets.
- (2) A document is a sufficient transfer of the Division 3 assets if it:
 - (a) relates to those assets; and

(b) is completed in accordance with Form 9.

7.11.13 Sufficient transfer of Division 3 rights: licensed trustee company or Public Trustee of a State or Territory

- (1) This regulation applies to the transfer of Division 3 rights, otherwise than by way of sale, gift or exchange, by:
- (a) a licensed trustee company, within the meaning of Chapter 5D of the Act; or
 - (b) a Public Trustee of a State or Territory; or
 - (c) a company mentioned in Schedule 9;
- whether alone or together with any other person or persons, in favour of the beneficial owner of those rights.
- (2) A document is a sufficient transfer of the Division 3 rights if it:
- (a) relates to those rights; and
 - (b) is completed in accordance with Form 10.

[4] Paragraph 7.11.21 (3) (a)

omit

the authorised trustee corporation

insert

the licensed trustee company, within the meaning of Chapter 5D of the Act, a Public Trustee of a State or Territory, or a company listed in Schedule 9

[5] Subregulation 7.11.40 (5)

omit

an authorised trustee corporation

insert

a licensed trustee company, within the meaning of Chapter 5D of the Act, a Public Trustee of a State or Territory, or a company listed in Schedule 9

[6] Schedule 9*substitute***Schedule 9 Companies authorised to
effect transfers under
Part 7.11 of the Act**(regulation 7.11.01, definition of *beneficial owner*)**Item Companies**

- 1 ANZ Nominees Limited
 - 2 CHESSE Depository Nominees Pty Limited
 - 3 Equity Nominees Limited
 - 4 National Nominees Limited
 - 5 Perpetual Nominees Limited
 - 6 Sepon (Australia) Pty Limited
 - 7 State Street Australia Ltd
 - 8 The Trust Company (Nominees) Limited
 - 9 The Trust Company (PTAL) Limited
-

Schedule 2 Amendments commencing on day after registration

(section 3)

[1] Regulation 5D.1.01

substitute

5D.1.01 Prescribed requirements for publication

For the definition of *publish* in section 601RAA of the Act:

- (a) a notice mentioned in paragraph 601WBH (b) of the Act is to be published in the *Gazette* and on the ASIC website; and
- (b) a notice mentioned in paragraph 601WDA (1) (b) or subsection 601WDA (3) of the Act is to be published in a national newspaper and on the transferring company's website.

5D.1.01A Meaning of *trustee company*

- (1) For subsection 601RAB (1) of the Act, a company that is listed in Schedule 8AA is a trustee company for the purpose of the Act.
- (2) A company that performs the function of the Public Trustee of a State or Territory may only be listed in Schedule 8AA if:
 - (a) the State or Territory requests the Minister to prescribe the company as a trustee company; and
 - (b) the Minister agrees to the request.

[2] Subregulation 5D.2.06 (6)

substitute

- (6) For paragraph (5) (b), the allocation must be made at intervals not exceeding 6 months.

[3] Subregulation 5D.2.06 (11), including the penalty

substitute

- (11) A licensed trustee company that has realised an investment in a common fund commits an offence if it does not credit or debit a profit or loss from the investment to the unit holders of the common fund:
- (a) in proportion to the amount invested in the common fund by the unit holders at the time of the realisation; and
 - (b) within 14 days of the realisation.

Penalty: 50 penalty units.

[4] Regulation 5D.2.09

omit

[5] Chapter 5D, after Part 5D.3

insert

Part 5D.4 Obligations of receiving company after transfer

5D.4.01 Preserving rights under dispute resolution systems and compensation arrangements

- (1) This regulation applies if ASIC makes a determination under subsection 601WBA (1) of the Act that there is to be a transfer of estate assets and liabilities from a transferring company to a receiving company.
- (2) For section 601SAB of the Act, the obligations of the receiving company include the provision to retail clients of access to the receiving company's compensation arrangements, and dispute resolution system, in relation to a complaint arising from the provision of traditional trustee services by the transferring company.

(3) In this regulation:

compensation arrangements, for a receiving company, means the arrangements the receiving company is required to have under subsection 912B (1) of the Act.

dispute resolution system, for a receiving company, means the dispute resolution system the receiving company is required to have under paragraph 912A (1) (g) of the Act.

[6] Schedule 8AA, item 11

substitute

11 Mutual Trust Pty Ltd

[7] Schedule 8AA, item 13

omit

[8] Schedule 8AA, items 25 to 28

substitute

25 The Myer Family Company Ltd

26 The Trust Company Limited

27 The Trust Company (Australia) Limited

27A The Trust Company (PTCCL) Limited

28 The Trust Company (UTCCL) Limited

[9] Schedule 8AD, before item 1

insert

1A *Legal Profession Act 2004* and any regulations made under that Act

[10] Schedule 8AD, after item 7

insert

7A **Legal Profession Act 2004** and any regulations made under that Act

[11] Schedule 8AD, after item 18*insert*18A *Legal Profession Act 2008* and any regulations made under that Act18B *Public Trustee Act 1941* and any regulations made under that Act**[12] Schedule 8AD, item 21***substitute*21 *Aged and Infirm Persons' Property Act 1940* and any regulations made under that Act**[13] Schedule 8AD, item 23***substitute*23 *Legal Practitioners Act 1981* and any regulations made under that Act**[14] Schedule 8AD, after item 25***insert*25A *Trustee Companies Act 1988* and any regulations made under that Act**[15] Schedule 8AD, after item 26***insert*26A *Legal Profession Act 2007* and any regulations made under that Act26B *Public Trustee Act 1930* and any regulations made under that Act