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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (16/08/2006)

**Corporations Amendment (NZ Closer
Economic Relations) Bill 2006**

No. , 2006

(Treasury)

**A Bill for an Act to amend the *Corporations Act
2001*, and for related purposes**

EXPOSURE DRAFT (16/08/2006)

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1 **A Bill for an Act to amend the *Corporations Act***
2 ***2001*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Corporations Amendment (NZ Closer*
6 *Economic Relations) Act 2006*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2 **Schedule 1—Mutual recognition of securities**
3 **offers**
4

5 *Corporations Act 2001*

6 **1 Section 9**

7 Insert:

8 *recognised offer* has the meaning given by section 1200F.

9 **2 Section 111AF**

10 Before “Securities”, insert “(1)”.

11 Note: The heading to section 111AF is altered by omitting “to which lodged or deemed
12 prospectus relates” and substituting “held by 100 or more persons”.

13 **3 At the end of section 111AF**

14 Add:

- 15 (2) Securities (except debentures or managed investment products) in a
16 class of securities of a body are *ED securities* if securities in that
17 class have been issued under a recognised offer and the offeror’s
18 records indicate that 100 or more people who reside in this
19 jurisdiction have held securities in that class (whether or not as a
20 result of the recognised offer) at all times since the issue.

21 **4 Section 111AFA**

22 Before “Managed”, insert “(1)”.

23 **5 At the end of section 111AFA**

24 Add:

- 25 (2) Interests in a class of interests in a managed investment scheme
26 issued by a body are *ED securities* if interests in that class have
27 been issued under a recognised offer and the offeror’s records
28 indicate that 100 or more people who reside in this jurisdiction
29 have held interests in that class (whether or not as a result of the
30 recognised offer) at all times since the issue.

31 **6 Section 111AI**

1 Repeal the section, substitute:

2 **111AI Debentures**

3 Debentures of a borrower are *ED securities* if:

- 4 (a) section 283AA requires the borrower to appoint a trustee; or
5 (b) section 283AA does not apply to the borrower only because
6 the offer of the debentures to which section 283AA would
7 otherwise have applied is a recognised offer.

8 **7 After Chapter 7**

9 Insert:

10 **Chapter 8—Mutual recognition of securities**
11 **offers**

12 **Part 8.1—Preliminary**
13

14 **1200A Definitions**

15 (1) In this Chapter:

16 *foreign recognition scheme* means the provisions of a law of a
17 recognised jurisdiction that are prescribed by the regulations as
18 comprising a foreign recognition scheme for the purposes of this
19 Chapter.

20 *law of a recognised jurisdiction* includes law of part of a
21 recognised jurisdiction.

22 *offer* securities includes:

- 23 (a) invite applications for the issue of securities; and
24 (b) invite offers to purchase securities.

25 *offeror*, of securities, means:

- 26 (a) in relation to an offer of a kind prescribed by the
27 regulations—a person of a kind prescribed by the regulations;
28 and
29 (b) otherwise—the person who has the capacity, or who agrees,
30 to issue or transfer the securities if the offer is accepted.

1 **recognised jurisdiction** means a foreign country prescribed by the
2 regulations as a recognised jurisdiction.

3 **recognised offer** has the meaning given by section 1200F.

4 **securities** means:

- 5 (a) a share in a body; or
- 6 (b) a debenture of a body; or
- 7 (c) an interest in a managed investment scheme; or
- 8 (d) a legal or equitable right or interest in a security or interest
9 covered by paragraph (a), (b) or (c); or
- 10 (e) an option to acquire, by way of issue, an interest or right
11 covered by paragraph (a), (b), (c) or (d).

12 (2) For the purposes of this Chapter, paragraph (b) of the definition of
13 **debenture** and paragraph (i) of the definition of **managed**
14 **investment scheme** in section 9 are taken to include a reference to
15 an undertaking by an institution, authorised by or under the law of
16 a recognised jurisdiction as a deposit-taking institution (however
17 described), to repay money deposited with it, or lent to it, in the
18 ordinary course of its banking business.

19 (3) For the purposes of this Chapter, paragraph (c) of the definition of
20 **managed investment scheme** in section 9 is taken to include a
21 reference to a partnership that, if this Act applied to it, would not
22 need to be incorporated or formed under an Australian law because
23 of regulations made for the purposes of subsection 115(2).

24 **Part 8.2—Foreign offers that are recognised in this** 25 **jurisdiction**

26 **Division 1—Proposed offers that are eligible to be** 27 **recognised offers**

28 **1200B Proposed offers that are eligible to be recognised offers**

29 *When a proposed offer is eligible*

- 30 (1) An offer of securities that is proposed to be made in this
31 jurisdiction, from a recognised jurisdiction, becomes eligible to be
32 a recognised offer, on the day on which the documents mentioned

1 in subsection (6) are lodged with ASIC, if the conditions in this
2 section are met on that day.

3 (2) After that day, the proposed offer continues to be eligible to be a
4 recognised offer, even if a condition in this section ceases to be
5 met, until section 1200EA applies or the offer becomes a
6 recognised offer.

7 *Conditions that must be met*

- 8 (3) The person proposing to offer the securities must be:
9 (a) a person incorporated by or under the law of the recognised
10 jurisdiction; or
11 (b) a natural person resident in the recognised jurisdiction; or
12 (c) a legal person established by or under the law of the
13 recognised jurisdiction; or
14 (d) a person of a kind prescribed by regulations made in relation
15 to the recognised jurisdiction for the purposes of this
16 paragraph.
- 17 (4) The person proposing to offer the securities must not be banned
18 under section 1200N.
- 19 (5) The proposed offer must be an offer of a kind prescribed by the
20 regulations in relation to the recognised jurisdiction.
- 21 (6) At least 14 days before the day on which the offer is first made in
22 this jurisdiction, the person proposing to make the offer must lodge
23 with ASIC:
24 (a) a notice in the prescribed form of the person's intention to
25 make a recognised offer; and
26 (b) the documents and information required to be lodged by
27 section 1200C.

28 **1200C Required information and documents**

- 29 (1) For the purposes of paragraph 1200B(6)(b), the documents and
30 information required by this section to be lodged are:
31 (a) any offer document required by the law of the recognised
32 jurisdiction; and
33 (b) the warning statement that is to be included with an offer
34 document in this jurisdiction (which, if regulations are in

-
- 1 force for the purposes of section 1200D, must be the
2 prescribed statement or must give the prescribed details); and
- 3 (c) unless paragraph (d) applies—the constitution of the body
4 whose securities are to be the subject of the offer; and
- 5 (d) if the securities that are to be the subject of the offer are
6 interests in a managed investment scheme, rights or interests
7 in such interests, or options to acquire such interests by way
8 of issue—the constituent document of the scheme; and
- 9 (e) details of any exemption from the securities law of the
10 recognised jurisdiction that applies, but not exclusively, to
11 the offer or to the offeror; and
- 12 (f) if the offeror is relying on subsection (2)—notice of the
13 document or information that is not being lodged because of
14 the offeror’s reliance on the subsection; and
- 15 (g) an address for service in this jurisdiction; and
- 16 (h) a copy of any exemption from the securities law of the
17 recognised jurisdiction that applies exclusively to the offer or
18 to the offeror; and
- 19 (i) any other documents or information prescribed by the
20 regulations.
- 21 (2) A person proposing to make a recognised offer of securities is not
22 required to lodge information or a document under subsection (1)
23 if:
- 24 (a) the information or document has been lodged under
25 Division 2 or 3 of Part 5B.2; or
- 26 (b) the information or document is not required to be lodged
27 because of section 601CDA or 601CTA.

28 **1200D Warning statement**

- 29 The regulations may, in relation to offer documents used in this
30 jurisdiction for recognised offers:
- 31 (a) prescribe statements to be included with those documents
32 that relate to the status of an offer as a recognised offer and
33 the laws that regulate the offer; or
- 34 (b) prescribe details to be given in statements to be included with
35 those documents that relate to the status of an offer as a
36 recognised offer and the laws that regulate the offer.

1 **1200EA Withdrawal of notice of intention before making offer**

- 2 (1) If, before a proposed offer of securities is first made in this
3 jurisdiction, the person proposing to offer the securities lodges with
4 ASIC written notice in the prescribed form withdrawing the notice
5 the person lodged under paragraph 1200B(6)(a), the offer ceases to
6 be eligible to be a recognised offer on the day the withdrawal
7 notice is lodged.
- 8 (2) The conditions in sections 1200J and 1200JA cease to apply in
9 relation to the proposed offer on the day the withdrawal notice is
10 lodged.

11 **Division 2—Effect of a recognised offer**

12 **1200F When an offer is a *recognised offer***

- 13 (1) An offer of securities becomes a *recognised offer*, from a
14 recognised jurisdiction, on the day the offer is first made in this
15 jurisdiction, if the conditions in section 1200B are met in relation
16 to the offer on that day.
- 17 (2) The offer continues to be a recognised offer after that day, even if a
18 condition in section 1200B ceases to be met after that day.
- 19 (3) If, at the time an offer is first made in this jurisdiction:
- 20 (a) the offer would be a recognised offer but for a failure to meet
21 the condition in subsection 1200B(6); and
- 22 (b) ASIC is satisfied that the failure is minor or technical;
23 ASIC may declare in writing that the offer is a recognised offer
24 within the meaning of subsection (1).
- 25 (4) If ASIC makes a declaration under subsection (3) in relation to an
26 offer:
- 27 (a) the offer is taken to have been a recognised offer from the
28 time the offer was first made in this jurisdiction; and
- 29 (b) if the minor or technical failure related to a notice mentioned
30 in paragraph 1200B(6)(a)—the notice is taken to have been
31 lodged under that paragraph despite the failure; and
- 32 (c) if the minor or technical failure related to a document or
33 information mentioned in paragraph 1200B(6)(b)—the

1 document or information is taken to have been lodged under
2 section 1200C despite the failure.

3 (5) A provision in this Chapter that applies to an offer of securities that
4 is eligible to be a recognised offer is taken to have applied to an
5 offer declared to be a recognised offer under subsection (3) from
6 the time the person proposing to make the offer lodged a notice
7 under paragraph 1200B(6)(a).

8 (6) A declaration under subsection (3) is not a legislative instrument.

9 **1200H Effect of a recognised offer**

10 *Rules that apply*

11 (1) Division 3 regulates recognised offers and proposed offers that are
12 eligible to be recognised offers.

13 *Rules that do not apply*

14 (2) From the time a recognised offer is first made in this jurisdiction,
15 the provisions listed in the table do not apply, in relation to the
16 offer, to the things specified in the table for those provisions.

17

Provisions that do not apply in relation to a recognised offer

Item	These provisions...	Do not apply, in relation to the offer, to...
1	Chapter 2L	if the recognised offer is an offer of debentures—the offeror.
2	Chapter 5C	if the recognised offer is an offer of interests in a managed investment scheme—the operator of the managed investment scheme.
3	Chapter 6D, other than section 736	(a) the recognised offer; or (b) the offeror of the recognised offer; or (c) any offer document for the offer.

Schedule 1 Mutual recognition of securities offers

Provisions that do not apply in relation to a recognised offer		
Item	These provisions...	Do not apply, in relation to the offer, to...
4	Parts 7.6, 7.7 and 7.8, other than section 992AA	(a) the issue or disposal of a security under the recognised offer; or (b) general advice (within the meaning of Chapter 7) contained in any offer document for the offer; or (c) general advice contained in an advertisement for the recognised offer issued by, or on behalf of, the offeror; or (d) the provision of a custodial or depository service (within the meaning of Chapter 7) in relation to interests in a managed investment scheme that are the subject of the recognised offer.
5	Part 7.9, other than sections 1020B and 1020C	the offeror of the recognised offer.

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2 *Treasury: Regulations made under paragraph 1020G(1)(c) will*
 3 *modify the application of sections 1012A-C to regulated persons other*
 4 *than offerors so that offer documents required under the law of the*
 5 *recognised jurisdiction are required instead of product disclosure*
 6 *statements.*

7

(3) Despite subsection (2), the regulations may:

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(a) apply a provision listed in the table in subsection (2) to a person or class of persons; or

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(b) apply a provision listed in the table in subsection (2) to a security or class of securities; or

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(c) provide that a provision listed in the table in subsection (2) applies as if specified words were omitted, modified or varied as specified in the regulations.

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(4) Without limiting subsection (3), regulations made for the purposes of this section may:

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(a) modify a provision listed in the table in subsection (2) so that it applies in relation to persons, securities, financial products or situations to which it would not otherwise apply; or

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- 1 (b) modify a provision listed in the table in subsection (2) so that
 2 it applies in a way that changes the person by whom or to
 3 whom a document or information is required to be given by
 4 the provision.

5 **Division 3—Conditions applicable to proposed offers**
 6 **eligible to be recognised offers and to recognised**
 7 **offers**

8 **1200J Supplementary lodgement conditions**

9 *When the supplementary lodgement conditions apply*

- 10 (1) The supplementary lodgement conditions in this section apply in
 11 relation to a proposed offer of securities that is eligible to be a
 12 recognised offer, and in relation to a recognised offer:
 13 (a) from the time the proposed offer becomes eligible to be a
 14 recognised offer; and
 15 (b) until the recognised offer closes in this jurisdiction.

16 Note: Failure to comply with this section is an offence (see section 1200P).

17 *Supplementary lodgement conditions*

- 18 (2) If an event mentioned in an item of this table occurs in relation to
 19 the offer or offeror, the offeror must lodge with ASIC the
 20 document, statement or notice specified in the table for that event
 21 within the time specified for that event.
 22

Supplementary lodgement conditions

Item	If...	The offeror must lodge with ASIC...	Within this time...
1	a change is made to an offer document, or any other document, required by the law of the recognised jurisdiction in relation to the offer	a copy of the document as changed	as soon as practicable after the change is made and no later than the end of the seventh day after the day on which the offeror notified (or should have notified) the home regulator of the change.

Schedule 1 Mutual recognition of securities offers

Supplementary lodgement conditions			
Item	If...	The offeror must lodge with ASIC...	Within this time...
2	a change is made to the warning statement that is, or that is to be, included with an offer document in this jurisdiction	a copy of the warning statement as changed	as soon as practicable after the change is made and no later than the end of the seventh day after the day on which the offeror notified (or should have notified) the home regulator of the change.
3	a supplementary or replacement offer document is required by the law of the recognised jurisdiction	a copy of the supplementary or replacement offer document	as soon as practicable after the supplementary or replacement offer document is lodged with the home regulator and no later than the end of the seventh day after the day on which the document is (or should have been) lodged with the home regulator.
4	a change is made to the constitution or constituent document lodged under paragraph 1200C(1)(c) or (d) (or that would have been required to be lodged but for subsection 1200C(2))	a copy of the constitution or constituent document as changed	as soon as practicable after the change is made and no later than the end of the seventh day after the day on which the offeror notified (or should have notified) the home regulator of the change.
5	the home regulator makes, changes or revokes an exemption that applies, but not exclusively, to the offer or the offeror under the law of the recognised jurisdiction	written notice in the prescribed form of the details of exemption, change or revocation	as soon as practicable and no later than 7 days after the making, change or revocation occurs.

Supplementary lodgement conditions

Item	If...	The offeror must lodge with ASIC...	Within this time...
6	the home regulator makes, changes or revokes an exemption that applies exclusively to the offer or the offeror under the law of the recognised jurisdiction	a copy of the exemption, the exemption as changed or notice in the prescribed form of the details of the revocation	as soon as practicable and no later than 7 days after the making, change or revocation occurs.
7	the home regulator begins enforcement action, or exercises a power it has under law, in relation to the offeror or offer	written notice in the prescribed form of the details of the action taken or power exercised	as soon as practicable and no later than 7 days after the action is taken or the power is exercised.

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(3) An offerer is not required to lodge a document under items 1 to 4 of the table in subsection (2) if:

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(a) the document has been lodged under Division 2 or 3 of Part 5B.2; or

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(b) the document is not required to be lodged because of section 601CDA or 601CTA.

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Home regulator

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(4) For the purposes of this section, the *home regulator* for a recognised jurisdiction, is an authority in the recognised jurisdiction whose functions under the law of the recognised jurisdiction include functions equivalent to any of those of ASIC under this Act and that is prescribed by the regulations as the home regulator for that jurisdiction.

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(5) If there is more than one authority in a recognised jurisdiction whose functions include functions under the law of the recognised jurisdiction equivalent to any of those of ASIC under this Act and that is prescribed under subsection (4), the regulations may prescribe the matters in relation to which that authority is to be regarded as the home regulator.

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1 **1200JA Address for service condition**

2 *When the address for service condition applies*

3 (1) The address for service condition in this section applies in relation
4 to a proposed offer of securities that is eligible to be a recognised
5 offer, and in relation to a recognised offer:

- 6 (a) from the time the proposed offer becomes eligible to be a
7 recognised offer; and
8 (b) until the end of the last day on which a person who resides in
9 this jurisdiction could acquire securities under the offer; and
10 (c) if a person who resides in this jurisdiction acquires securities
11 under the offer—at all times when the offeror's records
12 indicate that someone who resides in this jurisdiction holds
13 securities in the class of securities that was the subject of the
14 recognised offer.

15 Note: Failure to comply with this section is an offence (see section 1200PA).

16 *Address for service condition*

17 (2) The offeror must lodge with ASIC written notice in the prescribed
18 form of any change in its address for service, no later than the end
19 of the seventh day after the day on which the address changed.

20 **1200K Offering conditions**

21 *When the offering conditions apply*

22 (1) The offering conditions in this section apply in relation to a
23 recognised offer:

- 24 (a) from the time the recognised offer is first made in this
25 jurisdiction; and
26 (b) until the recognised offer closes in this jurisdiction.

27 Note: An offeror's failure to comply with this section is an offence (see
28 section 1200Q).

29 *Offering conditions*

- 30 (2) The offer must be made in the recognised jurisdiction.
31 (3) The offeror must meet the conditions in 1200B(3) and (4).

-
- 1 (4) The offer must meet the condition in subsection 1200B(5).
2 (5) The offer must comply with the law of the recognised jurisdiction.
3 (6) There must be no person concerned in the management of the
4 offeror:
5 (a) who, if this Act applied, would be prohibited by this Act
6 from being concerned in the management of an offeror; or
7 (b) who is subject to a banning order under section 920A; or
8 (c) who is subject to a court order under paragraph 921A(2)(a).
9 (7) An offer document used in this jurisdiction must have included
10 with it:
11 (a) the warning statement lodged under paragraph 1200C(1)(b)
12 for that offer document; or
13 (b) if a changed warning statement is lodged with ASIC under
14 section 1200J—the changed warning statement.
15 (8) The offeror must, on request by a person in this jurisdiction,
16 provide a copy of the constitution or constituent document lodged
17 under paragraph 1200C(1)(c) or (d) (or that would have been
18 required to be lodged but for subsection 1200C(2)).
19 (9) The offer must meet any other conditions prescribed by the
20 regulations.

21 **1200L Long-term condition**

22 *When the long-term condition applies*

- 23 (1) The long-term condition in this section applies, to a person who is
24 or who has been the offeror of a recognised offer, at all times when
25 the person's records indicate that someone who resides in this
26 jurisdiction holds securities in the class of securities that was the
27 subject of the recognised offer.

28 Note: Failure to comply with this section is an offence (see section 1200R).

29 *Long-term condition*

- 30 (2) The person must have a dispute resolution process that complies
31 with subsection 1017G(2), if the recognised offer was an offer of:
32 (a) interests in a managed investment scheme; or

1 (b) rights or interests in such interests, or options to acquire such
2 interests by way of issue.

3 **Division 4—Modification of provisions of this Act**

4 **1200LA Additional operation of section 675 (continuous disclosure)**

5 In relation to a disclosing entity that has been the offeror of a
6 recognised offer, section 675 also has the operation it would have
7 if paragraph 675(2)(c) were replaced by the following paragraph:

8 (c) the information is not required, by the law of the recognised
9 jurisdiction from which the offeror made the offer, to be
10 included in a supplementary or replacement offer document;
11 and

12 **Division 5—ASIC’s powers in relation to proposed offers**
13 **eligible to be recognised offers and recognised**
14 **offers**

15 **1200M Stop orders**

16 (1) If, in relation to something mentioned in an item of this table,
17 ASIC is satisfied of the matters specified in the table item for that
18 thing, ASIC may make either or both of the orders specified in the
19 table item about that thing.
20

Stop orders			
Item	If, in relation to...	ASIC is satisfied that...	ASIC may order...
1	(a) an offer document lodged under paragraph 1200C(1)(a); or (b) a warning statement lodged under paragraph 1200C(1)(b); or (c) a document or information lodged under paragraph 1200C(1)(i) (or that would have been required to be lodged but for subsection 1200C(2))	there is a misleading or deceptive statement in, or a material omission from, the document, statement or information	(a) that no offers, issues, sales or transfers of the securities to which the document, statement or information relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document, statement or information, must not be engaged in while the order is in force.
2	a document, statement or notice lodged under section 1200J	the change results in there being a misleading or deceptive statement in, or a material omission from, the document, statement or notice	(a) that no offers, issues, sales or transfers of the securities to which the document or statement relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document or statement, must not be engaged in while the order is in force.

Schedule 1 Mutual recognition of securities offers

Stop orders			
Item	If, in relation to...	ASIC is satisfied that...	ASIC may order...
3	(a) an advertisement of securities the subject of a recognised offer; or (b) a published statement that is reasonably likely to induce people to acquire securities the subject of a recognised offer	there is a misleading or deceptive statement in, or a material omission from, the advertisement or statement	(a) that no offers, issues, sales or transfers of the securities to which the advertisement or statement relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the advertisement or statement, must not be engaged in while the order is in force.
4	an offer document lodged under paragraph 1200C(1)(a)	a new circumstance has arisen since lodgement and that circumstance would have been required by the law of the recognised jurisdiction to be included in the offer document, if the circumstance had arisen before the document was lodged with the home regulator (as defined in subsection 1200J(4))	(a) that no offers, issues, sales or transfers of the securities to which the document relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document, must not be engaged in while the order is in force.

Stop orders

Item	If, in relation to...	ASIC is satisfied that...	ASIC may order...
5	a notice of intention to make a recognised offer lodged under paragraph 1200B(6)(a)	one or more of the requirements in section 1200B is not met in relation to the proposed offer	(a) that no offers, issues, sales or transfers of the securities that are proposed to be offered be made while the order is in force; (b) that specified conduct in respect of those securities must not be engaged in while the order is in force.
7	(a) a proposed offer of securities that is eligible to be a recognised offer under section 1200B; or (b) a recognised offer that is being made	a supplementary lodgement condition in section 1200J, the address for service condition in section 1200JA, an offering condition in section 1200K or the long-term condition in section 1200L is not being met	(a) that no offers, issues, sales or transfers of the securities be made while the order is in force; (b) that specified conduct in respect of those securities must not be engaged in while the order is in force.

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(2) The order may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with a specified ongoing condition.

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(3) Before making an order under subsection (1), ASIC must:
 (a) hold a hearing; and
 (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

10

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(4) If ASIC considers that any delay in making an order under subsection (1) pending the holding of a hearing would be

-
- 1 prejudicial to the public interest, ASIC may make an interim order.
2 The interim order may be made without holding a hearing and lasts
3 for 21 days after the day on which it is made unless revoked before
4 then.
- 5 (5) At any time during the hearing, ASIC may make an interim order.
6 The interim order lasts until:
7 (a) ASIC makes an order under subsection (1) after the
8 conclusion of the hearing; or
9 (b) the interim order is revoked;
10 whichever happens first.
- 11 (6) An order under subsection (1), (4) or (5) must be in writing and
12 must be served on the person who is ordered not to offer, issue, sell
13 or transfer securities or not to engage in specified conduct.
- 14 (7) The person on whom the order is served must take reasonable steps
15 to ensure that other people who engage in conduct to which the
16 order applies are aware of the order.
- 17 Note: Failure to comply with this subsection is an offence (see subsection
18 1311(1)).
- 19 (8) The person on whom the order is served, or a person who is aware
20 of the order, must not engage in conduct contrary to the order.
- 21 Note: Failure to comply with this subsection is an offence (see subsection
22 1311(1)).
- 23 (9) A statement under subsection (2) has effect accordingly in relation
24 to a person on whom the order is served, or who is aware of it, who
25 engages in conduct contrary to the order. This applies in addition to
26 any other consequence that is provided for in this Act.

27 **1200N Ban on making subsequent recognised offers**

- 28 (1) ASIC may declare in writing that a person is, for the time specified
29 in the declaration (which must be no longer than 5 years from the
30 day the declaration takes effect), banned from making a recognised
31 offer if:
32 (a) the person, or an associate of the person, has been convicted
33 (whether or not in this jurisdiction) of an offence constituted
34 by conduct engaged in in relation to a recognised offer; or

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- 1 (b) a court in this jurisdiction has made a civil penalty order
2 against the person, or an associate of the person, for a
3 contravention in relation to a recognised offer; or
4 (c) a court in a recognised jurisdiction has made an order against
5 the person, or an associate of the person, for a contravention
6 of the law of the recognised jurisdiction (other than an
7 offence) in relation to an offer that is a recognised offer in
8 this jurisdiction.
- 9 (2) Before making the declaration, ASIC must give the person an
10 opportunity:
11 (a) to appear, or be represented, at a hearing before ASIC that
12 takes place in private; or
13 (b) to make submissions to ASIC on the matter.
- 14 (3) ASIC may, in writing, vary or cancel the declaration, on ASIC's
15 own initiative or on application lodged by the person in the
16 prescribed form together with the prescribed documents, if ASIC is
17 satisfied that a circumstance on which ASIC based the declaration
18 has changed.
- 19 (4) If ASIC proposes to reject an application by the person to vary or
20 cancel the declaration, ASIC must give the person an opportunity:
21 (a) to appear, or be represented, at a hearing before ASIC that
22 takes place in private; or
23 (b) to make submissions to ASIC on the matter.
- 24 (5) The declaration, and any variation or cancellation of the
25 declaration, takes effect when it is served on the person to whom
26 the declaration applies.
- 27 (6) The declaration served on the person must be accompanied by a
28 statement of ASIC's reasons for the declaration.
- 29 (7) ASIC must publish a notice in the *Gazette* as soon as practicable
30 after making, varying or cancelling the declaration. The notice
31 must state when the action took effect and:
32 (a) in the case of the making of a declaration—set out a copy of
33 the declaration; and
34 (b) in the case of the varying of a declaration—set out a copy of
35 the declaration as varied.
- 36 (8) A declaration under this section is not a legislative instrument.
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1 **1200P Offence of breaching supplementary lodgement condition**

- 2 A person commits an offence if:
- 3 (a) the person lodges a notice of intention to make a recognised
 - 4 offer under paragraph 1200B(6)(a); and
 - 5 (b) a supplementary lodgement condition in section 1200J
 - 6 applies in relation to the offer; and
 - 7 (c) the condition is not met.

8 **1200PA Offence of breaching address for service condition**

- 9 A person commits an offence if:
- 10 (a) the person lodges a notice of intention to make a recognised
 - 11 offer under paragraph 1200B(6)(a); and
 - 12 (b) the address for service condition in section 1200JA applies in
 - 13 relation to the offer; and
 - 14 (c) the condition is not met.

15 **1200Q Offence of breaching offering condition**

- 16 A person commits an offence if:
- 17 (a) the person is the offeror of a recognised offer; and
 - 18 (b) an offering condition in section 1200K applies in relation to
 - 19 the offer; and
 - 20 (c) the condition is not met.

21 **1200R Offence of breaching long-term condition**

- 22 A person commits an offence if:
- 23 (a) the person is or has been the offeror of a recognised offer;
 - 24 and
 - 25 (b) the long-term condition in section 1200L applies in relation
 - 26 to the offer; and
 - 27 (c) the condition is not met.

1 **Division 6—Miscellaneous**

2 **1200S Relationship between civil and criminal proceedings**

- 3 (1) Section 1317M applies in relation to a civil penalty provision in
4 this Chapter whether or not the criminal conviction mentioned in
5 that section occurred in this jurisdiction.
- 6 (2) Section 1317N applies in relation to a civil penalty provision in
7 this Chapter whether or not the criminal proceedings mentioned in
8 that section are started, or have already been started, in this
9 jurisdiction.

10 **1200T Service of documents**

- 11 (1) For the purposes of any law, a document may be served on a
12 person who is, or who has been, the offeror of a recognised offer
13 by leaving it at, or posting it to, the person's address for service in
14 this jurisdiction.
- 15 (2) The person's address for service in this jurisdiction is:
16 (a) the address lodged under paragraph 1200C(1)(g); or
17 (b) if a change to that address has been lodged with ASIC under
18 section 1200JA—the changed address, on and from the later
19 of:
20 (i) the day that is 7 days after the day on which the change
21 (or, if more than one change has been lodged, the latest
22 change) was lodged; or
23 (ii) the day specified in the notice of change as the day from
24 which the change is to take effect.
- 25 (3) This section does not affect:
26 (a) any other provision of this Act, or any provision of another
27 law, that permits a document to be served in a different way;
28 or
29 (b) the power of a court to authorise a document to be served in a
30 different way.

1 **Part 8.3—Offers made under foreign recognition**
2 **schemes**
3

4 **1200U Notice to ASIC**

5 If:

- 6 (a) a body proposes to make an offer of securities in a recognised
7 jurisdiction under a foreign recognition scheme; and
8 (b) under the foreign recognition scheme, the offer is to be
9 regulated by the law of this jurisdiction;

10 the body must lodge with ASIC written notice in the prescribed
11 form of its intention to make the offer under the foreign
12 recognition scheme, no later than the time it notifies the recognised
13 jurisdiction of that intention.

14 **1200V Extension of this Act to recognised jurisdictions**

15 (1) If:

- 16 (a) a body proposes to make, or is making, an offer of securities
17 in a recognised jurisdiction under a foreign recognition
18 scheme; and
19 (b) under the foreign recognition scheme, the offer is to be
20 regulated by the law of this jurisdiction;

21 the provisions listed in the table in subsection 1200H(2) apply in
22 relation to the proposed offer or offer as if it were an offer
23 proposed to be made or being made in this jurisdiction.

24 (2) Despite subsection (1), the regulations may:

- 25 (a) exempt a person or class of persons from all or specified
26 provisions of this Act as it applies by force of subsection (1);
27 or
28 (b) exempt a security or a class of securities from all or specified
29 provisions of this Act as it applies by force of subsection (1);
30 or
31 (c) provide that a provision of this Act as it applies by force of
32 subsection (1) applies as if specified words were omitted,
33 modified or varied as specified in the regulations.

34 (3) Without limiting subsection (2), regulations made for the purposes
35 of this section may:

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- 1 (a) modify a provision of this Act as it applies by force of
2 subsection (1) so that it applies in relation to persons,
3 securities, financial products or situations to which it would
4 not otherwise apply; or
5 (b) modify a provision of this Act as it applies by force of
6 subsection (1) so that it applies in a way that changes the
7 person by whom or to whom a document or information is
8 required to be given by the provision.

9 **1200W ASIC stop order for advertising in a recognised jurisdiction**

- 10 (1) If ASIC is satisfied that:
- 11 (a) an offer of securities is being made or has been made in a
12 recognised jurisdiction under a foreign recognition scheme;
13 and
14 (b) there is a contravention of section 734 or 1018A (as they
15 apply by force of section 1200V) constituted by conduct in
16 the recognised jurisdiction in relation to the offer;
- 17 ASIC may order that no offers, issues, sales or transfers of the
18 securities the subject of the offer be made in the recognised
19 jurisdiction while the order is in force.
- 20 (2) Before making an order under subsection (1), ASIC must:
- 21 (a) hold a hearing; and
22 (b) give a reasonable opportunity to any interested people to
23 make oral or written submissions to ASIC on whether an
24 order should be made.
- 25 (3) If ASIC considers that any delay in making an order under
26 subsection (1) pending the holding of a hearing would be
27 prejudicial to the public interest, ASIC may make an interim order
28 that no offers, issues, sales or transfers of the securities be made
29 while the interim order is in force. The interim order may be made
30 without holding a hearing and lasts for 21 days after the day on
31 which it is made unless revoked before then.
- 32 (4) At any time during the hearing, ASIC may make an interim order
33 that no offers, issues, sales or transfers of the securities be made
34 while the interim order is in force. The interim order lasts until:
- 35 (a) ASIC makes an order under subsection (1) after the
36 conclusion of the hearing; or
37 (b) the interim order is revoked;
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326	Section 1200Q	200 penalty units or imprisonment for 5 years, or both.
327	Section 1200R	200 penalty units or imprisonment for 5 years, or both.
328	Section 1200U	100 penalty units or imprisonment for 2 years, or both.
329	Subsection 1200W(6)	100 penalty units or imprisonment for 2 years, or both.
330	Subsection 1200W(7)	100 penalty units or imprisonment for 2 years, or both.

1

1 **Schedule 2—Recognition of companies**
2

3 *Corporations Act 2001*

4 **1 After section 601CD**

5 Insert:

6 **601CDA Limited disclosure if place of origin is a prescribed country**

7 A foreign company is not required to lodge information or a copy
8 of a document with ASIC under this Division if:

- 9 (a) the company's place of origin is a country prescribed by the
10 regulations; and
11 (b) the company has given the information or a copy of the
12 document to an authority in that country whose functions
13 under the law of the country include functions equivalent to
14 any of those of ASIC under this Act.

15 **2 Before section 601CT**

16 Insert:

17 **601CTA Limited disclosure if place of origin is a prescribed country**

18 A foreign company is not required to lodge information or a copy
19 of a document with ASIC under this Division if:

- 20 (a) the company's place of origin is a country prescribed by
21 regulations made for the purposes of section 601CDA; and
22 (b) the company has given the information or a copy of the
23 document to an authority in that country whose functions
24 under the law of the country include functions equivalent to
25 any of those of ASIC under this Act.

26 **3 After subsection 1274(2A)**

27 Insert:

- 28 (2B) For the purposes of subsections (2) and (5), information or a copy
29 of a document that is not required to be lodged with ASIC because
30 of section 601CDA or 601CTA is taken to be a document lodged

1 with ASIC if an authority mentioned in the section has given the
2 information or document to ASIC.