



ASIC

Australian Securities & Investments Commission

## INFORMATION SHEET 163

# Financial reporting compliance by administrators of insolvent public companies

We have reviewed external administrators' and registered liquidators' compliance with the obligation to prepare audited financial reports for public companies and certain large proprietary companies and lodge them with ASIC.

This information sheet explains:

- the relief granted by ASIC to companies in external administration from some of the financial reporting obligations in the *Corporations Act 2001* (Corporations Act);
- our review of lodgements of audited financial reports, which revealed an unacceptably high level of non-compliance with the financial reporting obligations by administrators of insolvent public companies;
- the reports required to be prepared by external administrators, most of which are publicly available; and
- the relief from the financial reporting requirements relating specifically to Ansett.

## Regulatory requirements and granting of relief

The obligation of a company to prepare and lodge audited financial reports is set out in the Corporations Act. We commonly grant companies in external administration relief from a number of the financial reporting obligations, in accordance with our guidance, issued in 2003, in Regulatory Guide 174 *Externally administered companies: Financial reporting and AGMs* ([RG 174](#)). This guidance was developed following extensive public consultation.

We will grant relief to a company from preparing, lodging and distributing audited financial reports on application to us, if we are satisfied that the conditions in RG 174 are met. One condition is that the external administrator declares to ASIC that in their opinion the members of the company have no ongoing economic interest in the company. In other words, they are satisfied that on conclusion of the administration there will be no return to members. Where that is the case, only the creditors have an economic interest in the course of the administration.

Before granting relief, we must form the view that compliance with the financial reporting obligations would impose unreasonable burdens for an externally administered company (or meet other requirements that are not material for this statement). Broadly, we consider whether the burdens of preparation (a combination of time, financial and human resource

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constraints) are disproportionate to the value of the resulting reports to the users of those reports.

In forming our view, we will consider the information that external administrators must otherwise provide to creditors and ASIC under other provisions of the Corporations Act (see [Public availability of external administrators' reports](#) below). For most large or complex entities, we are more likely to form the view that preparation of audited financial reports will be an unreasonable burden.

We will generally grant relief from the financial reporting obligations for most forms of administrations, for up to two years. We will consider further applications for relief if an administration is incomplete after that time. If a company is in liquidation, all reporting obligations cease. If a winding up terminates, and a company resumes operations, audited financial reports must be prepared, lodged and distributed.

We grant individual financial reporting relief under s340 of the Corporations Act. The legal instrument granting relief is not a public document, although we require administrators of a listed company to notify ASX. For a period, we did publish the grant of relief instrument on our website. When that error was identified in 2010 we withdrew the list from our website.

We are considering amending RG 174 to make it a condition of relief in the future that the external administrator publish the fact relief has been granted on its website. We think good practice would be to include a statement as to the fact of relief in all reports to creditors.

### **ASIC's review of lodgements of audited financial reports**

Our review of lodgements has led us to conclude that there has been an unacceptably high level of non-compliance with the financial reporting obligations by administrators of insolvent public companies. We identified 14 firms where registered liquidators had one or more public companies under administration and which had failed to prepare and lodge audited financial reports in accordance with the Corporations Act, and had failed to obtain relief from ASIC for those obligations. The failures related to 40 companies.

We have written to all the firms concerned, indicating that we regard non-compliance to be a serious failure that has the potential to affect the standing and reputation of the insolvency profession. We have asked the firms to provide a report to us on each of the companies, indicating whether members had any ongoing economic interest during the period the financial reports should have been prepared, lodged and distributed, and also outlining to us what they are doing in terms of internal systems and training to ensure that companies under the control of administrators from the firms comply with the financial reporting obligations, or obtain relief from ASIC.

All the firms contacted by us have been cooperative and have promptly undertaken a review and revision of their systems and training. In some cases our review of that work exposed a need for further revision, which has been undertaken. We are encouraging all firms to refocus their attention on compliance with the financial reporting provisions of the Corporations Act.

We are continuing our dialogue with the firms, but have concluded that on present information we would have been likely to grant relief from the financial reporting obligations had the relevant administrators applied for relief. In some instances, as administrations evolve, the relief will lapse because members' interests in the company acquire value. In that event it will become necessary to prepare, lodge and distribute audited financial reports for the intervening period. We will consider giving relief on a case-by-case basis in instances where the burden of preparing financial reports from the commencement of the administration is disproportionate to the benefits, and we are satisfied members have adequate information in the circumstances. We will consider amending our policy to that effect.

## Public availability of external administrators' reports

In forming a view that the preparation of audited financial reports will impose an unreasonable burden, we note that external administrators have detailed reporting obligations, including the following:

- For all administrations commencing after 31 December 2007, external administrators must lodge with ASIC a bi-annual account of receipts and payments, by administration. The report must state all fees paid to the administrator over the past six months and over the life of the administration.
- External administrators must prepare various reports on the administration to creditors, including a statement of affairs for the first meeting. A voluntary administrator must provide reports to creditors on the company's business, property and affairs, and a recommendation on the company's future for determination at creditors' meetings. This is likely to be liquidation or administration under a deed of company arrangement, the terms of which will set out future information requirements of creditors.
- External administrators must also provide creditors with a remuneration report before seeking creditor approval of fees. That report must set out fees paid, and fees estimated to be payable in the coming designated period, which will be the maximum payable in that period without further approval.
- External administrators must prepare minutes of creditors' committee meetings, which approve fees, among other things.

Most of these documents are lodged with ASIC and are available to the public for a fee, like all other company documents. They are located on the file of the relevant company.

We also have regard to the fact that administrators are supervised by creditors, through their appointed committee, and that the courts also have an oversight jurisdiction.

## Ansett: Relief from financial reporting requirements

Fourteen companies in the Ansett Group of 41 companies applied for and were granted relief from the financial reporting provisions of the Corporations Act for an initial period of the administration of the group companies. On the expiration of that relief no application was made for further relief, and those 14 companies did not prepare audited financial reports in the absence of further relief. We are satisfied that had KordaMentha applied for further relief for the 14 companies it would have been granted, in accordance with RG 174.

None of the 14 group companies, including the parent company Ansett Australia Limited, were listed companies with public shareholders. Partners at KordaMentha were appointed voluntary administrators of the Ansett Group companies in 2001 and deed administrators in 2002. KordaMentha is one of the 14 firms that have acknowledged that its systems required revision to ensure exemptions are always obtained. This revision and associated staff training have been completed to our satisfaction.

We note that there is significant information about the external administrations of the Ansett Group available to the public. KordaMentha has prepared ten detailed reports since 2001. These are, and have always been, available to the public on their website, although they were prepared for creditors. Those reports contained detailed information on the status of the administrations.

KordaMentha has made 102 reports to the committee of creditors, and the minutes of the committee meetings have been lodged with ASIC and are available to the public from our website for a fee. It has also made 61 reports to employees, who are the primary creditors. At no time have members had an ongoing economic interest in the companies in external administration.

In light of the above, we do not propose to take any enforcement action in respect of the failure by the 14 Ansett Group companies to prepare, lodge and distribute audited financial reports during periods of the administrations.

KordaMentha has applied for relief from the financial reporting requirements for the 30 June 2012 financial year and up to two further years for the 14 public companies in the Ansett Group. We have granted relief, on condition that KordaMentha provides information about the current status of the administration of Ansett Australia Limited in accordance with ASIC prescribed Form 524 *Presentation of accounts and statements*. This information is not otherwise required because the administration of Ansett Australia Limited commenced before 31 December 2007. KordaMentha has agreed to make a copy of ASIC's relief instrument available on its website.

### **Where can I get more information?**

- Download a copy of Regulatory Guide 174 *Externally administered companies: Financial reporting and AGMs* (RG 174) at [www.asic.gov.au](http://www.asic.gov.au).
- Contact ASIC on 1300 300 630.

### **Important notice**

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.