

NEW SHAREHOLDER APPROVAL REQUIREMENTS FOR REVERSE TAKEOVERS

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Legal Briefings - By **Rebecca Maslen-Stannage and Claire Koller-Smith**

For transactions announced on or after 1 December 2017, the issue of shares by a bidder under, or to fund, a reverse takeover will require bidder shareholder approval.

On 1 December 2017, the ASX Listing Rule amendments relating to reverse takeovers will come into effect. Under these amendments:

- shareholder approval will be required for bidders to issue shares under, or to fund, a reverse takeover; and
- the target will be excluded from voting on the relevant resolution while common shareholders of the bidder and target will be entitled to vote.

SHAREHOLDER APPROVAL FOR REVERSE TAKEOVERS

SHAREHOLDER APPROVAL REQUIREMENT

Currently, unless an exception applies, the ASX Listing Rules require shareholder approval if a company issues 15% or more of its share capital in a 12 month period. Issues of shares under, or to fund, a takeover bid or merger by scheme of arrangement are currently excluded from this requirement.

ASX's amendments to the Listing Rules mean that a "reverse takeover" – defined to be a transaction under which the shares issued by the bidder under, or to fund the cash consideration for, a takeover bid or scheme of arrangement represent 100% or more of the pre-bid share capital of the bidder – is no longer an exception to the requirement to obtain shareholder approval before shares can be issued.

Bidder shareholder approval will still not be required generally under most takeover bids and schemes of arrangement. However, reverse takeovers, including "mergers of equals" where the bidder starts as the smaller party, will need to be approved by a general resolution of bidder shareholders.

ASX has said that it will be on the lookout for attempts to structure transactions to avoid the operation of these provisions and it will aggregate issues if, in ASX's opinion, they form part of the same commercial transaction.

OTHER AMENDMENTS IN RELATION TO REVERSE TAKEOVERS

Time period to issue securities

ASX has recognised that the usual 3 month window to issue shares after shareholder approval has been obtained may not provide enough flexibility in the case of reverse takeovers. To address this, ASX has extended the period to 6 months. Where a transaction timetable is delayed (for example due to slippages in regulatory timetables) beyond this period, an ASX waiver may be required.

Notice of meeting

In the notice of meeting provided to bidder shareholders, bidders will need to provide their shareholders with a similar level of disclosure to that provided to target shareholders in the bidder statement or scheme booklet.

Voting exclusion

The target and any person who will obtain a material benefit (other than as an ordinary shareholder in the bidder or target) will not be entitled to vote in favour of the resolution to issue shares under a reverse takeover. Where the issue is to fund the cash consideration for a reverse takeover, any person who is expected to participate in the proposed issue is also excluded from voting.

While ASX specifically considered whether to exclude common shareholders from voting, it decided that these shareholders should be entitled to vote on the reverse takeover resolution unless they receive some material benefit other than as an ordinary shareholder of the bidder and/or the target.

OTHER CHANGES TO VOTING EXCLUSIONS

ASX has become aware of various attempts to game the voting exclusion rules to prevent shareholders who are against a resolution from voting on it. ASX has clarified that the voting exclusions only apply to votes in favour of a resolution and votes against a resolution by any person will be counted. This amendment will apply to all resolutions, not just in relation to reverse takeovers.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



REBECCA MASLEN-STANNAGE

CHAIR AND SENIOR
PARTNER, SYDNEY

+61 2 9225 5500
Rebecca.Maslen-
Stannage@hsf.com

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