

# Private Company Reporting Obligations

This publication discusses some of the key matters to consider when determining whether a proprietary company is required to prepare, audit and lodge annual financial statements under Part 2M.3 of the *Corporations Act 2001*.

## What is a proprietary company?

To be registered, or remain registered, as a 'proprietary company' under the *Corporations Act 2001*, the company must:

- (a) be limited by shares or unlimited with share capital;
- (b) have no more than 50 non-employee shareholders; and
- (c) not engage in any activity that would require disclosure to investors under Part 6D of the *Corporations Act 2001*, except in limited circumstances.

## Are all proprietary companies required to report under Part 2M.3 of the *Corporations Act 2001*?

The *Corporations Act 2001* differentiates between classes of proprietary companies, based primarily on the size of company (i.e., 'large' or 'small' under a prescribed criteria). In this regard, large proprietary companies and certain foreign controlled small proprietary companies are required to prepare, audit and lodge annual financial statements under Part 2M.3 of the *Corporations Act 2001*.

## What is a large proprietary company?

A 'large proprietary company' is a proprietary company that satisfies at least 2 of the following 3 criteria:

- (a) the consolidated revenue for the financial year of the proprietary company and the entities it controls (if any) is \$25 million or more;

## Part 2M.3 of the *Corporations Act 2001*

- (b) the value of the consolidated gross assets at the end of the financial year of the proprietary company and the entities it controls (if any) is \$12.5 million or more;
- (c) the proprietary company and the entities it controls (if any) have 50 or more employees at the end of the financial year.

## What is a foreign controlled small proprietary company?

A 'foreign controlled small proprietary company' is a small proprietary company (i.e., a proprietary company that does not satisfy the 'large' criteria outlined above) that is controlled by a foreign company for all or part of the financial year.

A foreign controlled small proprietary company is required to prepare, audit and lodge annual financial statements under Part 2M.3 of the *Corporations Act 2001* unless the company is consolidated, for all or part of the financial year during which the company is controlled by a foreign company, in financial statements that are lodged with the Australian Securities and Investments Commission (ASIC) for the financial year by a registered foreign company, company, registered scheme or disclosing entity.

## Is there any relief available to proprietary companies?

Yes, in limited circumstances, proprietary companies may be granted relief from the requirement to prepare, audit and lodge annual financial statements.

For example, 'grandfathered' large proprietary companies are not required to lodge annual financial statements. This relief was granted to those former 'exempt proprietary companies' (as at 30 June 1994) that continue to satisfy the conditions of the former section 319(4) of the Corporations Law.

In addition, ASIC has issued a number Instruments that provide financial reporting relieve to eligible companies, subject to specified conditions being satisfied. The most relevant of these Instruments are:

- **ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204** – provides relief to eligible foreign controlled small proprietary companies that are not part of a 'large group' from the requirement to prepare, audit and lodge annual financial statements, subject to specified
- **ASIC Corporations (Wholly-owned Companies) Instrument 2016/785** – provides relief to eligible wholly-owned companies from the requirement to prepare, audit and lodge annual financial statements, subject to specified conditions being satisfied. Further information about this Instrument may be obtained from our Financial Reporting and Accounting Guide: *Financial Reporting Relief for Foreign Controlled Small Proprietary Companies*.
- **ASIC Corporations (Audit Relief) Instrument 2016/784** – provides audit relief to eligible large proprietary companies and eligible foreign controlled small proprietary companies, subject to specified conditions being satisfied. Further information about this Instrument may be obtained from our Financial Reporting and Accounting Guide: *Audit Relief for Proprietary Companies*.

## Further information and assistance

Contact Pitcher Partners for further information and assistance on the financial reporting obligations of proprietary companies under Part 2M.3 of the *Corporations Act 2001*.



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