

BENEFICIAL SHAREHOLDER NOTICE

1 What is a tracing notice?

Listed companies have the power under Pt 6C.2 of the Corporations Act to issue beneficial ownership tracing notices to require any of their members to disclose details about their relevant interests in shares in the company. ASIC may also issue tracing notices on its own initiative or if requested to do so by a member of a listed company.

The beneficial tracing provisions in Pt 6C.2 operate in tandem with the substantial holding provisions in Pt 6C.1 of the Act. The tracing provisions enable listed companies to ascertain relevant interests in their shares so as to protect against any breach of the substantial holding disclosure requirements. To this extent, the tracing provisions are anti-avoidance provisions.

If a tracing notice is given by a company, the information must be disclosed within two business days after the company gives the notice and pays the prescribed fee required under s 672D.

Information received in response to tracing notices must be kept by the company in a register under s 672DA of the Corporations Act.

2 Disclosure required

Under s 672B(1), a person who receives a tracing notice is required to disclose to the body which gave the direction the following information:

- (a) full details of the person's own relevant interest in shares and of the circumstances that gave rise to the relevant interest;
- (b) names and addresses of all other persons who have relevant interests in any of the shares with full details of the nature and extent of each interest and the circumstances that gave rise to it; and
- (c) the name and address of any person who has given the person instructions about acquiring or disposing of shares, exercising any voting or other rights attached to shares, or any other matter relating to shares. Full details of any such instructions are to be given, including the date or dates on which they were given.

Note however that details about other persons need only be disclosed to the extent to which the person knows about them.

3 Failure to disclose

The consequences of failing to comply with a tracing notice can be severe. Failure to disclose information as required by s 672B(1) is an offence of strict liability carrying a penalty of \$4,500 or



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imprisonment for six months, or both. Remedial orders, including divesting orders, can be made by the Court under s 1325A, and by the Takeovers Panel under s 657D following a declaration of unacceptable circumstances.

4 Instances where disclosure may be avoided

Disclosure may be avoided if it is proved that the request for the information is vexatious under s 672B(3). ASIC also may grant an exemption and modification in relation to Pt 6C.2. ASIC has indicated however that it will refuse requests for exemptions which are made for no other reason than to “buy time”. In ASIC’s view, a reason will only be “special” if the information or the cost or difficulty of supplying it is “extraordinary, unusual or atypical”.

The following are not special reasons:

- difficulty in complying with the notice in the time required
- the ordinary confidentiality requirements of nominees and their principals
- the ordinary cost and inconvenience of providing information.

We understand that ASIC does not envisage that exemptions will often be granted.