

## Chapter 6

## Securities

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### Explanatory note

This chapter deals with the rights and obligations that must be attached to <sup>+</sup>securities of a listed entity. The requirements in this chapter apply to both <sup>+</sup>quoted and unquoted <sup>+</sup>securities unless otherwise stated.

Timetables relating to this chapter are in Appendix 6A.

### Appropriate and equitable requirement for all securities

6.1 The terms that apply to each <sup>+</sup>class of <sup>+</sup>equity securities must, in ASX's opinion, be appropriate and equitable.

Introduced 01/07/96 Origin: Listing Rules 2A(2), 3K(1)

Note: ASX has regard to the relationship between voting and other rights when it looks at whether the rights and obligations are appropriate and equitable.

### Ordinary securities

#### One class of ordinary securities

6.2 An entity may have only one <sup>+</sup>class of <sup>+</sup>ordinary securities unless either of the following applies.

- ASX approves the terms of an additional <sup>+</sup>class.
- The additional <sup>+</sup>class is of partly paid <sup>+</sup>securities which, if fully paid, would be in the same <sup>+</sup>class as the <sup>+</sup>ordinary securities.

Introduced 01/07/96 Origin Listing Rules 1A(1)(a), 3E(1), 3E(4)

Note: CDIs issued over an entity's ordinary securities are not an additional class of ordinary securities. An entity may have different classes of preference securities.

Cross reference: rule 2.15 which says that a no liability company may have only one class of partly paid shares which are quoted.

## Preference securities

### Voting rights of preference shares

- 6.3 The holder of a preference share must be entitled to a right to vote in each of the following circumstances and in no others.
- 6.3.1 During a period during which a dividend (or part of a dividend) in respect of the share is in arrears.
  - 6.3.2 On a proposal to reduce the entity's share capital.
  - 6.3.2A On a resolution to approve the terms of a buy-back agreement.
  - 6.3.3 On a proposal that affects rights attached to the share.
  - 6.3.4 On a proposal to wind up the entity.
  - 6.3.5 On a proposal for the disposal of the whole of the entity's property, business and undertaking.
  - 6.3.6 During the winding up of the entity.

However, this rule does not apply to preference shares of a listed entity issued (in accordance with the listing rules) before 1 July 1996. This rule also does not apply to preference shares of a listed entity issued (in accordance with the listing rules in force at 30 June 1996) between 1 July and 31 December 1996. This exception ceases to operate if the terms of the <sup>+</sup>securities change.

Introduced 01/07/96 Origin: Listing Rules 3E(29)(a) and 3K(5) Amended 01/07/97

Cross reference: rules 6.8, 6.9, 6.10.

### Voting rights of preference securities that are not shares

- 6.4 A preference <sup>+</sup>security that is not a share must entitle the holder to rights to vote as set out in rule 6.3, with any necessary adaptation.

Introduced 01/07/96

Example: A trust issuing preference units must comply with this rule.

Cross reference: rules 6.8, 6.9, 6.10.

- 6.4.1 This rule does not apply to <sup>+</sup>securities of a registered managed investment scheme.

Introduced 13/03/00

Note: Sections 253C and 253F of the Corporations Act deal with voting rights in registered managed investment schemes.

### Dividend or distribution rights

- 6.5 The holder of a preference <sup>+</sup>security must be entitled to a dividend (in the case of a trust, distribution) at a commercial rate in preference to holders of <sup>+</sup>ordinary securities.

Introduced 01/07/96 Origin: Listing Rule 3E(29)(c)

Note: The matters ASX may have regard to in deciding if this rule has been met include the rate of return relative to the return on the entity's ordinary securities, and the return available in the money market generally.

Cross reference: rule 6.11, dealing with the rights of partly paid securities to a proportional dividend.

## Return of capital

- 6.6 The holder of a preference <sup>+</sup>security must be entitled to return of capital (in the case of a trust, funds) in preference to holders of <sup>+</sup>ordinary securities when the company is wound up or the entity is ended.

Introduced 01/07/96 Origin: Listing Rule 3E(29)(b)

## Additional rights of preference securities

- 6.7 A holder of a preference <sup>+</sup>security must be entitled to the same rights as a holder of an <sup>+</sup>ordinary security in relation to receiving notices, reports and audited accounts, and attending meetings.

Introduced 01/07/96 Origin: Listing Rule 3J(17)

## Rules that apply to all equity securities

### Voting rights on a show of hands

- 6.8 On a resolution to be decided on a show of hands, each holder of an <sup>+</sup>ordinary security, and each holder of a preference <sup>+</sup>security who has a right to vote, must be entitled to one vote.

Introduced 01/07/96 Origin: Listing Rules 2F(37)(a), 3K(2)(a)

Note: An entity's constitution may provide that a proxy is entitled to vote on a show of hands. However, an entity whose constitution does not allow a proxy to vote on a show of hands is not in breach of this rule. The entity must allow a proxy to vote on a poll.

Cross reference: rule 6.10.

- 6.8.1 This rule does not apply to <sup>+</sup>securities of a registered managed investment scheme.

Introduced 13/03/00

Note: Sections 253C and 253F of the Corporations Act deal with voting rights in registered managed investment schemes.

### Voting rights on a poll

- 6.9 On a resolution to be decided on a poll, each holder of an <sup>+</sup>ordinary security, and each holder of a preference <sup>+</sup>security who has a right to vote, must be entitled to one vote for each fully paid <sup>+</sup>security and a fraction of a vote for each partly paid <sup>+</sup>security. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). In this rule, amounts paid in advance of a call are ignored when calculating the proportion.

Introduced 01/07/96 Origin: Listing Rules 2F(37), 3K(2)

Note: The exclusion of the amount credited as paid is relevant to shares, for example, issued by Australian companies before par value was abolished or by foreign companies with par value shares.

Example: A company issues shares of 20 cents each, paid to 1 cent and with a further 18 cents credited, leaving 1 cent to pay. The voting entitlement of the share is one-half of a vote because the 18 cents that is credited is ignored when calculating the amounts paid and payable for this purpose. If the amount actually paid is 19 cents, the voting entitlement is 19/20 of a vote.

A company issues shares of 20 cents each, at 25 cents each. They are paid to 1 cent with a further 18 cents credited, leaving 6 cents to pay. The voting entitlement of the share is one-seventh of a vote because the 18 cents that is credited is ignored when calculating the amounts paid and payable for this purpose. If the amount actually paid is 19 cents, the voting entitlement is 19/25 of a vote.

Cross reference: rule 6.10.

- 6.9.1 This rule does not apply to <sup>+</sup>securities of a listed entity issued (in accordance with the listing rules) before the first general meeting of the entity that was held after 1 July 1993. However, this exception ceases to operate if the terms of the <sup>+</sup>securities change.

Introduced 01/07/96 Origin: Listing Rule 3K(2A)

6.9.2 This rule does not apply to <sup>+</sup>securities of a registered managed investment scheme.

Introduced 01/07/98

Note: Sections 253C and 253F of the Corporations Act deal with voting rights for registered managed investment schemes.

### Removing or changing voting rights and dividend (distribution) rights

6.10 An entity must not remove or change a <sup>+</sup>security holder's right to vote, or receive dividends (in the case of a trust, distributions), in respect of particular <sup>+</sup>securities except in any of the following cases.

Introduced 01/07/96 Origin: Listing Rule 3K(3)

6.10.1 Calls due and payable on those <sup>+</sup>securities have not been paid.

Introduced 01/07/96 Origin: Listing Rule 3K(3)

6.10.2 In the case of the voting right, the instrument appointing a proxy in respect of those <sup>+</sup>securities has not been deposited in accordance with the entity's constitution.

Introduced 01/07/96

6.10.3 In the case of the voting right, the <sup>+</sup>person became the holder of those <sup>+</sup>securities after the time determined under the Corporations Regulations as the "specified time" for deciding who held <sup>+</sup>securities for the purposes of the meeting.

Introduced 01/07/96 Origin: Listing Rule 3K(3)(b) Amended 30/09/01, 11/03/02

Note: At 11 March 2002, Regulation 7.11.37(3) provides that the specified time must not be more than 48 hours before the meeting.

Cross reference: ASX Settlement Operating Rule 5.6.

6.10.4 The right is removed or changed under Australian legislation, or under a provision in the entity's constitution that must be included to comply with Australian legislation. Any provision must cease to operate once it is no longer necessary.

Introduced 01/07/96 Origin: Listing Rule 3D(3C)

6.10.5 The right is removed or changed under a provision in the entity's constitution that is permitted by the listing rules, or that ASX has approved as appropriate and equitable.

Introduced 01/07/96 Origin: Listing Rules 3D(3C) and 3K(3)(a)

Note: ASX requires provisions restricting the right to vote restricted securities in some circumstances. See chapters 9 and 15. ASX allows provisions in some cases for small holdings. See rules 15.13 and 15.13B.

Example: ASX may approve provisions needed by an entity to get or maintain a licence, or approval for its business, from a government in Australia. ASX will have regard to the mechanism the entity adopts for divesting the securities.

6.10.6 The right is removed or changed under a court order.

Introduced 01/07/96

### Dividends (and distribution rights) and issues of bonus securities

6.11 The holder of a partly paid <sup>+</sup>security must not be entitled to a greater proportion of either:

- a dividend (in the case of a trust, distribution); or
- an issue of bonus <sup>+</sup>securities,

than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). In this rule, amounts paid in advance of a call are ignored when calculating the proportion. This rule does not apply to the entitlement of a holder of a partly paid <sup>+</sup>security in a no liability company to a dividend.

Introduced 01/07/96 Origin: Listing Rule 3J(12) Amended 01/07/97, 01/07/98

Note: Section 254W(4) says that dividends are payable to shareholders in a no liability company in proportion to the number of shares held by them, irrespective of the amount paid up, or credited as paid up, on the shares. However, if the shares are not ordinary shares, the constitution may provide otherwise.

The prohibition on the issue of bonus securities covers bonus issues (defined in listing rule 19.12 by reference to a pro rata issue) and an issue of bonus securities which is not pro rata.

Example: Prior to 1/7/98, an Australian company issues shares of 20 cents each, paid to 1 cent and with a further 18 cents credited, leaving 1 cent to pay. The dividend entitlement of the share is one-half of that for a fully paid share because the 18 cents that is credited is ignored in calculating the amounts paid and payable for this purpose. If the amount actually paid is 19 cents, the dividend entitlement is 19/20 of a fully paid share.

Prior to 1/7/98, an Australian company issues shares of 20 cents each, at 25 cents each. They are paid to 1 cent with a further 18 cents credited, leaving 6 cents to pay. The dividend entitlement of the share is one-seventh of that of a fully paid share because the 18 cents that is credited is ignored when calculating the amounts paid and payable for this purpose. If the amount actually paid is 19 cents, the dividend entitlement is 19/25 of a fully paid share.

A foreign company which has par value shares issues bonus shares by the application of its share premium account. The issue must be in the proportion set out in the rule.

Cross reference: rule 7.27.2.

6.11.1 This rule does not apply to shares issued under a <sup>+</sup>pro rata issue before 1 July 1996 in accordance with the listing rules.

Introduced 01/07/96

## Divestment of equity securities

6.12 A <sup>+</sup>security holder must not be divested of any <sup>+</sup>equity security except in any of the following cases.

Introduced 01/07/96 Origin: Listing Rule 3D(3C)

Cross reference: SCH Business Rule 8.13.

6.12.1 The divestment is under Australian legislation, and the mechanism the entity adopts for divesting the <sup>+</sup>security is set out in the legislation, or is approved by ASX as appropriate and equitable. Any provision in the entity's constitution must cease to operate once it is no longer necessary.

Introduced 01/07/96 Origin: Listing Rule 3D(3C)

Example: Section 1343 of the Corporations Act provides for the transfer of securities to the ASIC if the holder has been uncontactable for 6 years.

6.12.2 The divestment is under a provision in the entity's constitution that must be included to comply with Australian legislation. Any provision must cease to operate once it is no longer necessary.

Introduced 01/07/96 Origin: Listing Rule 3D(3C)

6.12.3 The divestment is under a provision in the entity's constitution that is permitted by the listing rules, or that ASX has approved as appropriate and equitable.

Introduced 01/07/96 Origin: Listing Rule 3D(3C)

Example: ASX may approve provisions needed by an entity to get or maintain an Australian licence or approval for its business. ASX will have regard to the mechanism the entity adopts for divesting the securities.

Cross reference: rule 15.13.

6.12.4 The divestment is under a court order.

Introduced 01/07/96

6.12.5 The divestment is under a lien permitted by the listing rules.

Introduced 01/07/96

Cross reference: rule 6.13.

## Right to a lien on equity securities

- 6.13 An entity must not have a lien over particular +securities, or over dividends (in the case of a trust, distributions) it pays on them, except in any of the following cases.
- 6.13.1 An unpaid call or instalment is due but unpaid on those +securities.
- 6.13.2 If the +securities were +acquired under an +employee incentive scheme, an amount is owed to the entity for +acquiring them.
- 6.13.3 An amount that the entity is required by law to pay (and has paid) in respect of the +securities of a holder or deceased former holder.
- In each case, the lien extends to reasonable interest and expenses incurred because the amount is not paid.

Introduced 01/07/96 Origin: Listing Rule 3J(11)

## Rights and obligations that apply only to options

### General rules

- 6.14 Introduced 01/07/96 Origin: Listing Rule 3G(1)(b) Deleted 01/07/00
- 6.15 All quoted options issued by an entity with the same expiry date must have the same terms. All quoted options with no expiry date must have the same terms.  
Introduced 01/07/96 Origin: Listing Rule 3G(1)(e) Amended 01/07/98
- 6.16 An option's terms must allow the rights of an option holder to be changed to comply with the listing rules applying to a reorganisation of capital (in the case of a trust, interests) at the time of the reorganisation.  
Introduced 01/07/96 Origin: Listing Rules 3G(1)(d), 3N(4)(f) Amended 01/07/98  
Note: Just incorporating the provisions for reorganising options in listing rule 7.22 will not satisfy this rule, as listing rule 7.22 may change between issue of the options and the reorganisation. One acceptable approach is to include an option term that says that the rights of an option holder will be changed to the extent necessary to comply with the listing rules applying to a reorganisation of capital at the time of the reorganisation.  
Cross reference: rule 7.22.
- 6.17 Introduced 01/07/96 Origin: Listing Rule 3G(2)(b)(i) Deleted 01/07/98 Refer rule 6.23
- 6.18 An option must not be exercisable over a percentage of the entity's capital.  
Introduced 01/07/96 Origin: Listing Rule 3G(1)(f)

### Participation in new issues of underlying securities

- 6.19 An option's terms must contain a statement of the rights the option holder has to participate in new issues without exercising the option, or a statement that the option holder cannot participate in new issues without exercising the option.  
Introduced 01/07/96 Origin: Listing Rules 3G(1)(c)(i) and (ii) Amended 01/07/97  
Note: This rule does not prevent an option holder from exercising an option and participating in a new issue if the option is exercisable at the time of the new issue.  
Cross reference: Appendix 7A, paragraphs 2, 3 and 4.
- 6.20 An option must not confer the right to participate in a new issue without exercising the option except in either of the following cases.
- 6.20.1 Introduced 01/07/96 Origin: Listing Rules 3G(1)(c)(i)b and (ii)a Deleted 01/07/97 Refer Appendix 7A

6.20.2 If the option was issued under a <sup>+</sup>pro rata issue to the holders of <sup>+</sup>ordinary securities, the option holder can participate in a new issue to the holders of the <sup>+</sup>underlying securities.

Introduced 01/07/96 Origin: Listing Rule 3G(1)(c)(i)a Amended 01/07/97

6.20.3 If the option was issued with the approval of holders of <sup>+</sup>ordinary securities, and is not in a <sup>+</sup>class of quoted options, the option holder can participate in a new issue to the holders of the <sup>+</sup>underlying securities at the same time and price as the holders of the <sup>+</sup>underlying securities in accordance with the terms of the option.

The notice of meeting must have contained a report by an independent expert on the effect of the proposed right of participation, and a <sup>+</sup>voting exclusion statement.

Introduced 01/07/96 Amended 01/07/98

### Change of option's exercise price or the number of underlying securities

6.21 An option must not confer the right to a change in exercise price, or a change to the number of <sup>+</sup>underlying securities over which it can be exercised:

- (a) if the option confers a right to participate in new issues without exercising the option, and
- (b) unless the right is permitted under rule 6.22.

An option's terms must contain a statement of any rights the option holder has to a change in the exercise price of the option, or a change to the number of <sup>+</sup>underlying securities over which the option can be exercised.

Introduced 01/07/96 Origin: Listing Rules 3G(1)(c)(iii), 3G(2)(b)(ii) Amended 01/07/97

Note: If there are no rights to change, this rule requires that fact to be stated in the terms of the option.

6.22 An option may confer the right to a change in its exercise price, or a change to the number of <sup>+</sup>underlying securities over which it can be exercised, in any of the following cases.

Introduced 01/07/96 Origin: Listing Rule 3G(1)(c)(iii) Amended 01/07/97

6.22.1 Introduced 01/07/96 Origin: Appendix 29 Deleted 01/07/97 Refer rule 6.22.2A

6.22.2 If there is a <sup>+</sup>pro rata issue (except a <sup>+</sup>bonus issue) to the holders of the <sup>+</sup>underlying securities, the exercise price of an option may be reduced according to the following formula.

$$O' = O - \frac{E [P - (S + D)]}{N + 1}$$

O' = the new exercise price of the option.

O = the old exercise price of the option.

E = the number of <sup>+</sup>underlying securities into which one option is exercisable.

Note: E is one unless the number has changed because of a bonus issue.

P = the <sup>+</sup>volume weighted average market price per <sup>+</sup>security of the <sup>+</sup>underlying securities, calculated over the 5 trading days ending on the day before the ex rights date or ex entitlements date.

S = the subscription price for a <sup>+</sup>security under the <sup>+</sup>pro rata issue.

D = the dividend (in the case of a trust, Distribution) due but not yet paid on the existing <sup>+</sup>underlying securities (except those to be issued under the <sup>+</sup>pro rata issue).

N = the number of <sup>+</sup>securities with rights or entitlements that must be held to receive a right to one new <sup>+</sup>security.

Introduced 01/07/96 Origin: Appendix 29 Amended 01/07/97, 01/07/98, 01/07/14

Example: The capital of a company comprises ordinary shares and options over unissued ordinary shares exercisable at \$1.00 each. The company announces a 4:7 pro rata issue. There is no dividend payable. The issue price for the shares under the rights issue is \$2.00. The volume weighted average price that ordinary shares trade at over the 5 trading days ending on the day before the ex rights date or ex entitlement date is \$3.00 after the announcement. To receive one right a shareholder must hold 1.75 ordinary shares ( $7 \div 4 = 1.75$ , which is N). The amount by which the exercise price of an option is to be reduced is calculated as follows:

$O' = O - \frac{E [P - (S + D)]}{N + 1}$ $= 1 - \frac{1 [3.00 - (2.00 + 0)]}{1.75 + 1}$ $= 63.6364 \text{ cents}$
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The new exercise price of the option is 63.6364 cents and the option holder has gained the benefit of any bonus element in the pro rata issue. This benefit is the same as that conferred on shareholders. There is no change in the number of shares to which the option holder is entitled. At the time when the option is exercised, it may be necessary to round up or round down any fraction of a cent remaining after aggregating the exercise price of each of the options exercised by the holder.

6.22.2A As an alternative to using the formula in rule 6.22.2, if the option was issued with the approval of holders of <sup>+</sup>ordinary securities, and is not in a <sup>+</sup>class of <sup>+</sup>quoted options, the exercise price or number of <sup>+</sup>underlying securities may change if there is a <sup>+</sup>pro rata issue (except a <sup>+</sup>bonus issue) to the holders of the <sup>+</sup>underlying securities in accordance with the formula contained in the terms of the option. The notice of meeting must have contained a report by an independent expert on the effect of the proposed change, and a <sup>+</sup>voting exclusion statement.

Introduced 01/07/97 Origin: Listing Rule 6.22.1

6.22.3 If there is a <sup>+</sup>bonus issue to the holders of the <sup>+</sup>underlying securities, the number of <sup>+</sup>securities over which the option is exercisable may be increased by the number of <sup>+</sup>securities which the holder of the option would have received if the option had been exercised before the <sup>+</sup>record date for the <sup>+</sup>bonus issue.

Introduced 01/07/96 Origin: Appendix 29

Example: The capital of a company comprises ordinary shares and options over unissued ordinary shares exercisable at \$1.00 each. The entity makes a 1:1 bonus issue. An option holder with 1000 options with a total exercise price of \$1000 will have an entitlement to 2000 securities for a total exercise price of \$1000. Each option is exercisable for \$1.00 and entitles the holder to 2 shares. The exercise price per option stays the same (ie \$1.00). If the entity has a further 1:1 bonus issue, the option holder would become entitled to 4000 securities for a total exercise price of \$1000. Each option is exercisable for \$1.00 and entitles the holder to 4 shares. The exercise price per option stays the same (ie \$1.00).

Cross reference: rules 3.10.3, 3.11.2.

6.22.4 Introduced 01/07/96 Origin: Listing Rule 3G(1)(c)(iii) Deleted 14/04/14

6.22.5 This rule does not apply to options issued pro rata on the same terms as options already on issue.

Introduced 01/07/96 Origin: Listing Rule 3G(1A)

### Other changes in terms of options

6.23 The following rules apply to changes affecting options.

6.23.1 A change which has the effect of cancelling an option for no consideration can be made without obtaining the approval of holders of ordinary <sup>+</sup>securities.



6.23.2 A change which has the effect of cancelling an option for consideration can only be made if holders of ordinary <sup>+</sup>securities approve the change. The notice of meeting must include a <sup>+</sup>voting exclusion statement.

Note: A change which has the effect of cancelling an option in consideration of the issue of a new option may also be a change which is prohibited by rule 6.23.3 where it has the effect of reducing the exercise price, increasing the period for exercise or increasing the number of securities received on exercise.

6.23.3 A change which has the effect of reducing the exercise price, increasing the period for exercise or increasing the number of <sup>+</sup>securities received on exercise cannot be made.

Example: Entity A has on issue options exercisable at 20 cents each between 30 June 2005 and 30 June 2008. The following transactions would be prohibited by the rule.

- The payment of 10 cents to the holder for each option exercised, because it would have the effect of reducing the exercise price.
- The offer of one additional option for each option exercised, because it would increase the number of securities that would otherwise be received.
- A change to the first date for exercise to 30 June 2003, because it would increase the period for exercise.
- A proposal to cancel the options and to replace them with options exercisable at 15 cents each on or before 30 June 2010, because it would be an effective reduction in the exercise price *and* an increase in the period for exercise.

6.23.4 A change which is not prohibited under rule 6.23.3 can only be made if holders of <sup>+</sup>ordinary securities approve the change. The notice of meeting must include a <sup>+</sup>voting exclusion statement.

6.23.5 Separate transactions will be aggregated if, in ASX's opinion, they form part of the same commercial transaction, in determining whether the following applies.

- (a) A change has the effect of cancelling an option for consideration.
- (b) A change has the effect of reducing the exercise price, increasing the period for exercise or increasing the number of <sup>+</sup>securities received on exercise.

Introduced 01/07/96 Origin: Listing Rule 3G(2)(c) Amended 01/07/98, 30/09/01

6.23A Rule 6.23 does not apply to a change which is made to comply with the listing rules. Such a change can be made without obtaining the approval of holders of ordinary securities.

Introduced 30/09/01

Note: Before making a change affecting options, an entity can seek the written opinion of ASX on whether rule 6.23 applies to the change. The entity must give ASX complete details of the change. ASX will only be bound by its written opinion if the details given to it remain materially unchanged at the time of the change.

## Compliance with timetables

6.24 An entity must comply with Appendix 6A.

Introduced 01/07/96

**End of Section. Next page is no. 701.**