

Chapter 9

Restricted securities

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Explanatory note

+Restricted securities may not be dealt with for a specified time (the escrow period). The restriction is enforced by a requirement that the holder of certificates give them to a bank or +recognised trustee to hold in escrow.

Restricted securities may not participate in a return of capital - refer listing rule 7.24A.

ASX has issued Guidance Note 11 Restricted Securities and Voluntary Escrow.

Requirements for all restricted securities

Application of restrictions and entry into restriction agreements

9.1 An entity which issues +restricted securities, or has them on issue, must do each of the following.

9.1.1 Introduced 01/07/96 Origin: Listing Rule 3T(1)(b) Deleted 01/07/98

9.1.2 Introduced 01/07/96 Origin: Listing Rule 3T(1)(b) Deleted 01/07/98

+ See chapter 19 for defined terms.

9.1.3 Apply the restrictions in Appendix 9B or other restrictions as ASX, in its discretion, decides. However, unless ASX decides otherwise, the restrictions in clauses 1, 2, 3, 4, 7, 8 and 9 of Appendix 9B do not apply in relation to any of the following entities.

- An entity that is admitted under the profit test in rule 1.2.
- An entity that has a track record of profitability or revenue acceptable to ASX.
- An entity that, in the opinion of ASX, has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value.

Introduced 01/07/98

Note: The definition of restricted securities includes securities ASX decides are restricted securities.

Cross reference: rule 19.12.

9.1.4 Enter into a restriction agreement with the holder and each +controller. However, a +controller need not be a party to the agreement if any of the following applies.

(a) The value of the +restricted securities is less than 10% of the total assets of any of the following.

- The holder of the +restricted securities.
- An intermediate entity through which the +controller has its interest.

(b) The holder or an intermediate entity through which the +controller has its interest, is one of the following.

- An entity listed on ASX or any other Australian stock exchange or a foreign stock exchange.
- A pooled development fund which is required to comply with the Pooled Development Fund Act 1992 (Cth).
- A trustee or nominee.

(c) The holder is a +person whose +securities are +restricted securities because of the application of clauses 2, 4 or 6 of Appendix 9B.

Introduced 01/07/98 Origin: listing rules 9.1.1 and 9.1.2

Note: The definition of restricted securities includes securities ASX decides are restricted securities. The holder of restricted securities cannot participate in a return of capital.

Cross reference: rule 7.24A and 19.12, Appendix 9B.

+ See chapter 19 for defined terms.

- 9.2 A restriction agreement must be in accordance with Appendix 9A, or as ASX requires in a particular case.

Introduced 01/07/96 Origin: Listing Rule 3T(1)(c)

When restriction agreements must be entered

- 9.3 An entity must make sure that all completed restriction agreements are given to ASX before any +person gets the +restricted securities or any rights in relation to them. This rule does not prevent the +person getting the right to receive +restricted securities on condition that restriction agreements are entered into.

Introduced 01/07/96 Origin: Listing Rule 3T(1)(f)

Example: A company may agree to issue restricted securities in exchange for a mining tenement on condition that restriction agreements are entered into. If the agreements are not entered into, the restricted securities must not be issued.

Cross reference: Appendix 9A.

Enforcement of restrictions

- 9.4 An entity must comply with, and enforce, a restriction agreement, and enforce its constitution, to ensure compliance with the requirements for +restricted securities.

Introduced 01/07/96

Note: Requirements are in this chapter, Appendix 9A and rule 15.12.

Escrow of restricted securities

- 9.5 An entity must get one of the following undertakings. The entity must give the undertaking to ASX within 2 +business days after the issue of the +restricted securities.

- (a) A bank's or +recognised trustee's undertaking to hold the certificate of a +restricted security held on the +certificated subregister for the escrow period, and not release the certificate without ASX's written consent.
- (b) An undertaking from the provider of registry services to the entity to impose a +holding lock to a +restricted security held on the +issuer sponsored subregister and not remove the +holding lock without ASX's written consent.

Introduced 01/07/96 Origin Listing Rules 3T(1)(e)(ii), 3T(1)(f) Amended 30/09/01, 11/03/02, 04/03/13

- 9.6 Introduced 01/07/96 Origin Listing Rules 3T(1)(d)(iii), 3T(1)(e)(ii), 3T(1)(f) Deleted 01/07/98

+ See chapter 19 for defined terms.

Changes of restrictions during escrow

- 9.7 During the escrow period, an entity must not do either of the following.
- (a) Change an executed restriction agreement.
 - (b) Ask for, or agree to, the following. This restriction does not apply if ASX has given written consent to the release of the certificate or removal of the +holding lock under rule 9.5 or rule 9.17.
 - Release of a certificate held on the +certificated subregister by a bank or +recognised trustee.
 - Removal of a +holding lock on +restricted securities held on the +issuer sponsored subregister.

Introduced 01/07/96 Origin: Listing Rules 3T(1)(g), 3T(1)(h) Amended 01/07/98, 30/09/01, 04/03/13

- 9.8 Introduced 01/07/96 Origin: Listing Rule 3T(1)(c) Deleted 01/07/98 Refer Appendix 9B
- 9.9 Introduced 01/07/96 Origin: Listing Rule 3T(1)(c) Deleted 01/07/98 Refer Appendix 9B
- 9.10 Introduced 01/07/96 Origin: Listing Rule 3T(1)(c) Deleted 01/07/98 Refer Appendix 9B
- 9.11 Introduced 01/07/96 Origin: Listing Rule 3T(1)(i)(i) Deleted 01/07/98 Refer Appendix 9B
- 9.12 Introduced 01/07/96 Origin: Listing Rule 3T(2)(e)(i) Deleted 01/07/98 Refer Appendix 9B
- 9.13 Introduced 01/07/96 Origin: Listing Rules 3T(2)(c) Deleted 01/07/98

Holdings of restricted securities

- 9.14 An entity must do one of the following.
- (a) Issue certificates for +restricted securities. The certificate must state that the +securities are +restricted securities, are not +quoted on ASX and the date on which they will cease to be +restricted securities.
 - (b) Enter +restricted securities on the +issuer sponsored subregister.

Introduced 01/07/96 Origin: Listing Rules 3T(1)(d)(ii), 3T(1)(i)(iii), 3T(2)(e)(iii) Amended 30/09/01

- 9.14.1 Introduced 01/07/96 Origin: Listing Rules 3T(1)(d)(ii), 3T(1)(i)(iii), 3T(2)(e)(iii) Deleted 01/07/98

Additional restricted securities

- 9.15 If an entity issues additional +restricted securities the entity must give ASX a further undertaking from the bank, +recognised trustee or provider of registry services to the entity in respect of those +securities within 2 +business days after they are issued and do one of the following.
- (a) If the +restricted securities are to be held on the +certificated subregister, deposit any new certificates for additional +restricted securities with the bank or +recognised trustee which holds the certificates for the initial +restricted securities.

+ See chapter 19 for defined terms.

- (b) If the +restricted securities are to be held on the +issuer sponsored subregister, enter additional +restricted securities on the +issuer sponsored subregister.

Introduced 01/07/96 Origin: Listing Rules 3T(1)(d)(ii), 3T(1)(i)(iii), 3T(2)(e)(iii) Amended 30/09/01, 04/03/13

Noting restricted securities in securities register

- 9.16 An entity must identify in its +securities register any +securities that are +restricted securities.

Introduced 01/07/96

Treatment of restricted securities in a takeover bid or merger

ASX consent to sale of restricted securities

- 9.17 To enable the holder of +restricted securities to accept an offer under a takeover bid or to enable +restricted securities to be transferred or cancelled as part of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, ASX may consent to the bank or +recognised trustee releasing the certificates or the removal of a +holding lock on the +restricted securities.

Introduced 01/07/96 Origin: Listing Rule 3T(1)(j) Amended 01/07/97, 01/07/98, 13/03/00, 30/09/01

Conditions for ASX's consent

- 9.18 ASX will not consent under rule 9.17 unless, to the extent to which they are applicable, all of the following conditions are met.

- 9.18.1 In the case of a takeover bid, the offers are for all of the ordinary +securities and, if the +restricted securities are not ordinary +securities, all the +securities in the same +class as the +restricted securities.

Introduced 01/07/96 Origin: Listing Rule 3T(1)(j) Amended 01/07/97, 01/07/98, 13/03/00, 30/09/01

- 9.18.2 In the case of a takeover bid, holders of at least half of the +securities in the bid class that are not +restricted securities to which the offers relate have accepted.

Introduced 01/07/96 Origin: Listing Rule 3T(1)(j)(ii) Amended 01/07/97, 13/03/00

Note: At 13/03/00, section 9 of the Corporations Act says that the bid class of securities for a takeover bid is the class of securities to which the securities being bid for belong.

- 9.18.3 In the case of an off-market bid, if the offer is conditional, the bidder and the holder agree in writing that the certificates will be returned to the bank or +recognised trustee or a +holding lock will

+ See chapter 19 for defined terms.

be applied, for each +restricted security that is not bought by the bidder under the off-market bid.

Introduced 01/07/96 Origin: Listing Rule 3T(1)(j)(iii) Amended 01/07/97, 01/07/98, 13/03/00, 30/09/01

9.18.4 In the case of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, the holder and the entity in which the +restricted securities are held agree in writing that the certificates will be returned to the bank or +recognised trustee or a holding lock will be applied, if the merger does not take effect.

Introduced 01/07/97 Amended 01/07/98, 30/09/01

Note: If the takeover does not proceed or the merger does not take effect, a new undertaking must be given by the bank or recognised trustee under rule 9.5.

- 9.19 Introduced 01/07/96 Origin: Listing Rule 3T(1)(i)(ii) Deleted 01/07/98
- 9.20 Introduced 01/07/96 Origin: Listing Rule 3T(2)(e)(ii) Deleted 01/07/98
- 9.21 Introduced 01/07/96 Origin: Listing Rule 3T(2)(e)(ii) Deleted 01/07/98
- 9.22 Introduced 01/07/96 Origin: Listing Rules 3T(1)(d)(i) Deleted 01/07/98
- 9.23 Introduced 01/07/96 Origin: Listing Rules 3T(1)(d)(i), 3T(1)(i)(ii), 3T(2)(e)(ii) Deleted 01/07/98

+ See chapter 19 for defined terms.