

## ANSELL LIMITED

# LEGAL OBLIGATIONS IN RELATION TO DISCLOSING CHANGES IN SUBSTANTIAL HOLDINGS

(Revised 10 October 2002)

## 1 Introduction

The *Corporations Act* 2001 (Cth) requires that persons who acquires a substantial holding in a company must provide certain information to the company and to the relevant exchange at that time and following any change of at least 1% in the holding.

The provisions are particularly relevant in the context of takeovers, as otherwise it would be possible for a bidder to accumulate a substantial interest in the shares of the target without disclosing its identity to the target. They also assist the company to monitor its share register.

## 2 Requirement to give information – section 671B

If a person:

- begins to have a substantial holding in the company;
- has a substantial holding in the company and there is a movement of at least 1% in their holding<sup>1</sup>; or
- ceases to have a substantial holding in the company;

in general the following information must be provided to both the company and the Australian Stock Exchange (**ASX**):

- (a) the person's name and address; and
- (b) details of their relevant interest in the voting shares of the company; and
- (c) details of any agreement through which they have such a relevant interest; and
- (d) the name of each associate who has a relevant interest in voting shares in the company, together with details of:
  - (1) the nature of their association with the associate; and
  - (2) the relevant interest of the associate; and
  - (3) any agreement through which the associate has the relevant interest; and

if the information is given because of a movement in their holding – the size and date of that movement. (section 671B(3)).

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<sup>1</sup> The formula to work out whether there has been a movement of 1 percent or more is given in the Act. It is determined by dividing a person's and associates votes by the total votes in the company multiplied by 100 (section 671B(2)). There is a change of at least 1 percent if the figure derived from the formula increases or decreases 1 or more percentage points from the percentage last disclosed in relation to the company.

This information must be provided within two days of the person becoming aware of the information in the form of ASIC form 604. (section 671B(6)) The information must be provided even if the situation changes by the time the information is to be given.

### **3 Substantial holding**

For the purposes of the Corporations Act, a person is deemed to have a substantial holding in a company if the total votes attached to voting shares in the company in which they or their associates have a relevant interest, or would have a relevant interest but for market traded options or conditional agreements, is 5% or more of the total number of votes attached to voting shares in the company (section 9).

### **4 Relevant Interest**

The basic rule is that a person has a relevant interest if they hold the securities or:

- (a) have the power to exercise, or control the exercise of, a right to vote attached to the securities; or
- (b) have power to dispose of, or control the exercise of a power to dispose of, the securities. (section 608(1))

For the purposes of the Corporations Act, it does not matter how remote the relevant interest is, nor how it arises.

In addition, there are a number of other more detailed tests for determining whether a person is deemed to have a relevant interest. For example, power or control includes a power or control that is indirect or which can be exercised as a result of a trust, agreement and/or practice (whether enforceable or not). It does not matter whether the power or control is express or implied, formal or informal, or exercisable alone or jointly with someone else.

### **5 Associate**

In respect of a body corporate, "associate" includes a director or secretary of the body corporate, a related body corporate and a director or secretary of the related body corporate.

### **6 Liability for contravention**

A person who contravenes section 671B is liable to compensate a person for any loss or damage the person suffers because of the contravention. (section 671C). The court also has power to make a wide range of orders, including cancellation of contracts and divestment of shares.