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REGULATORY GUIDE 247

Effective disclosure in an operating and financial review

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About this guide

This guide is for listed entities and their directors.

It sets out our guidance for directors on providing useful and meaningful information to shareholders or unit holders when preparing an operating and financial review (OFR) in a directors' report.



About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This regulatory guide was issued in August 2019 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 247, issued March 2013

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

An operating and financial review (OFR) is a key part of annual reporting by listed entities. It must set out information that shareholders or unit holders would reasonably require to assess an entity's operations, financial position, and business strategies and prospects for future financial years. This information complements and supports the financial report.

A high-quality OFR is important in meeting the information needs of shareholders and unit holders.

This regulatory guide is designed to assist the directors of listed entities to provide a useful and meaningful OFR.

What is an operating and financial review?

Annual reporting disclosure requirements for listed entities

- RG 247.1 Division 1 of Pt 2M.3 of the *Corporations Act 2001* (Corporations Act) sets out the requirements for annual financial reports and directors' reports. Under s292(1), all companies, registered managed investment schemes and disclosing entities that are listed (listed entities) must prepare an annual financial report and a directors' report.

Note: In this guide, references to sections (s), chapters (Chs) or parts (Pts) are references to the Corporations Act.

- RG 247.2 The financial report provides information about an entity's financial position and performance.

The operating and financial review

- RG 247.3 For listed entities, the Corporations Act sets out additional requirements for a directors' report. Under s299A(1), a listed entity's directors' report must contain information that shareholders would reasonably require to make an informed assessment of the entity's:
- (a) operations (see s299A(1)(a));
 - (b) financial position (see s299A(1)(b)); and *≡ Mgt Account*
 - (c) business strategies, and prospects for future financial years (see s299A(1)(c)).

Note 1: Information must be provided for the consolidated entity if consolidated financial statements are required: see s299A(2). For convenience, in this guide, the term 'entity' is used to refer to the entity or the consolidated entity, as applicable.

Note 2: In this guide, the term 'shareholders' is used to refer to shareholders or unit holders, as applicable.

RG 247.4 The part of the directors' report containing this information is referred to in this guide as an 'operating and financial review' (OFR). The requirements in s299A(1)(a)–(c) are collectively referred to in this guide as the 'OFR requirements'.

RG 247.5 The objectives of the OFR requirements are to provide shareholders with a narrative and analysis to supplement the financial report and assist shareholders in understanding the operations, financial position, business strategies and prospects of an entity.

The importance of an OFR

RG 247.6 An OFR is an important document in meeting the information needs of shareholders. While an entity's financial report provides useful information about the entity's financial position and performance, it will rarely provide all of the information needed to readily assess the entity's financial position and to appreciate the underlying reasons for the entity's results. It will also provide little, if any, information about business strategies and prospects relevant to future financial performance.

RG 247.7 Australia's regulatory regime often allows listed entities to access capital from investors without requiring the entity to issue a prospectus. Effective periodic disclosure is part of the framework on which this capital-raising regime is built. The OFR requirements are a significant part of that regime.

RG 247.8 The OFR performs a different role to market announcements and other periodic disclosures made by listed entities for the following reasons:

- (a) the OFR supplements and complements the financial report in the manner described in RG 247.6;
- (b) together with the financial report, the OFR allows shareholders to find relevant information on the entity in a single location, rather than having to piece together information from various past continuous disclosure announcements that shareholders may not have necessarily read;
- (c) depending on the specific circumstances of an entity, the OFR may contain a more or less detailed explanation and analysis of information provided in other formats, such as investor presentations and briefings to analysts, which may, for example, be presented in the form of a slide show without a supporting narrative; and
- (d) the OFR promotes consistency of disclosure because the legislation requires all listed entities to address particular matters in the OFR. In contrast, while larger listed entities often prepare and publish investor presentations and briefings, these are generally directed at sophisticated investors and, in many cases, are not prepared at all by smaller entities.

RG 247.9 The OFR forms part of the annual report, which is one of the key sources of information about entities and therefore plays an important role in promoting

the accountability of boards. It provides the information required for shareholders to determine whether to continue to invest in the entity.

- RG 247.10 The importance of the OFR (also known as 'management commentary' or 'management discussion and analysis') in helping shareholders to understand information about an entity's business and results is globally recognised. In the United States, for example, a management discussion and analysis must accompany the financial report and, in the United Kingdom, a business review must be included in the directors' report. These requirements promote similar aims of ensuring the availability of management commentary about an entity's business and results.

Note: In February 2003, the International Organization of Securities Commissions (IOSCO) issued the *General principles regarding disclosure of management's discussion of financial condition and results of operations*. In December 2010, the International Accounting Standards Board (IASB) issued the International Financial Reporting Standards (IFRS) practice statement *Management commentary*, which is available on the Australian Accounting Standards Board (AASB) website. These documents discuss the importance of management commentary.

- RG 247.11 For Australia to maintain its reputation of having an internationally competitive financial market, it is important that the disclosure in an OFR by Australian entities effectively meets the needs of shareholders. High-quality OFR disclosure is important to ensure both confident and informed investors, and fair and efficient markets.

Presenting an OFR

- RG 247.12 The OFR requirements should be applied so that an OFR appropriately reflects the entity's individual circumstances and the business environment in which it operates.
- RG 247.13 Despite the similarity in wording used in parts of s299A and the prospectus disclosure requirements, we do not expect an OFR to contain the same level of disclosure as a prospectus (or Product Disclosure Statement (PDS) in the case of a managed investment scheme).
- RG 247.14 The scope and depth of information that needs to be provided under s299A is considerably less than the information required in a prospectus or PDS, given that an OFR:
- (a) is provided to shareholders (who may already have some level of familiarity with the entity);
 - (b) is designed to be read in conjunction with the financial report; and
 - (c) provides information about an entity that is subject to an observable market price and continuous and periodic disclosure obligations (although the fact that these disclosures have been made cannot be regarded as a substitute for complying with s299A: see RG 247.15).

- RG 247.15 All information required under s299A must be included in the body of the OFR itself. An OFR cannot incorporate by reference other documents (outside of the financial report) or rely on the fact that relevant information may have previously been disclosed to the market (e.g. in continuous disclosure announcements) to satisfy the requirements of s299A. Depending on the circumstances, an entity's OFR may need to include more or less detail about an event than has been previously disclosed in a continuous disclosure notice. It may be appropriate to cross-refer to more detail in the financial report to which the OFR is attached.
- RG 247.16 We recommend that the OFR is presented in a clear, concise and effective manner, with a focus on the quality rather than quantity of information: see Section E. In many cases, providing the level of information and analysis that an OFR requires to satisfy s299A need not increase the length or complexity of the annual report. In particular, entities should focus on the key information required by the Corporations Act and ensure that this information is not lost among less important detail, such as unnecessary repetition or the overuse of photographs.
- RG 247.17 While the requirements for an OFR are additional to the requirements for a directors' report in s299(1)—which include, for example, a review of the entity's operations—we envisage that, in practice, the requirements in s299(1) will be addressed as part of the OFR rather than being presented as a separate report.

Note: See paragraph 5.309 of the Explanatory Memorandum to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 (2003 Explanatory Memorandum) and paragraph 5.2 of the Explanatory Memorandum to the Corporations Amendment (Corporate Reporting Reform) Bill 2010 (2010 Explanatory Memorandum).

Purpose of this guide

- RG 247.18 This regulatory guide is for listed entities, their directors and preparers of OFRs. It is designed to assist them in ensuring that an OFR satisfies the requirements of s299A. It emphasises the need for directors to take into account the circumstances of the entity in ensuring that the OFR provides useful and meaningful information for shareholders: see RG 247.12.
- Note: References in this guide to 'directors' include directors of the responsible entity of a listed managed investment scheme, because s285(3)(b) treats directors of a responsible entity as directors of the listed managed investment scheme for the purposes of Ch 2M.
- RG 247.19 There may be instances where the OFR should include relevant matters concerning a related entity. In particular, it may be necessary to consider including in the OFR of a listed managed investment scheme information on significant matters relating to the responsible entity or its operations that scheme members may 'reasonably require'.

- RG 247.20 The purpose of our guidance is to:
- (a) promote better communication of useful and meaningful information to shareholders; and
 - (b) assist in understanding the existing OFR requirements.

Structure of this guide

- RG 247.21 This regulatory guide contains the following guidance:
- (a) Section B discusses the overall principles that should guide the preparer of an OFR;
 - (b) Sections C and D give guidance on each of the requirements contained in s299A, including the information that must be disclosed in an OFR on the entity's:
 - (i) operations (see s299A(1)(a) and Section C);
 - (ii) financial position (see s299A(1)(b) and Section C); and
 - (iii) business strategies, and prospects for future financial years (see s299A(1)(c) and Section D);
 - (c) Section D also sets out our guidance on the use of the statutory exemption in s299A(3) from the requirement to disclose information about an entity's business strategies and prospects; and
 - (d) Section E sets out a number of good disclosure practices that may assist in producing an OFR that aligns with the overall objectives of the OFR requirements (see Table 3).

Other matters

- RG 247.22 Our guidance is focused on the preparation of an OFR. As for all continuous, ongoing, periodic or transaction-specific disclosure documents, whether an entity needs to prepare disclosure on a particular matter will depend on its circumstances.
- RG 247.23 Examples given in this guide are not exhaustive and are intended to provide an illustration of the main principles outlined in this guide. They are not intended to cover all principles or all disclosures to be included in an OFR, and are not intended to be used as a template for OFR disclosure. There are many other ways to present an OFR that may be equally valid to those shown in the examples. The OFR should be tailored and presented in a manner that conveys the information required by s299A, taking into account the circumstances of an entity.
- RG 247.24 The responsibility of assessing whether the OFR requirements are satisfied lies ultimately with the directors.

B Preparing an operating and financial review

Key points

An operating and financial review is designed to enhance the periodic financial reporting regime so that other useful and meaningful information can be made available regularly for the benefit of shareholders.

An OFR should:

- contain key information about an entity's operations and financial position, discuss the impact of relevant events throughout the reporting period and provide an overview of business strategies and prospects (see RG 247.25–RG 247.27);
- present a narrative and analysis about the entity's results and financial position (see RG 247.28–RG 247.30); and
- contain information that shareholders would reasonably require to make an informed assessment of the entity's operations, financial position, and business strategies and prospects for future financial years (see RG 247.31–RG 247.33).

Information about an entity's business

- RG 247.25 Section 299A was introduced to address a lack of contextual information explaining the results set out in an entity's annual financial report. An OFR provides an overview that enables shareholders to understand an entity's business performance and the factors underlying its results and financial position. The purpose of the OFR requirements is to help ensure that the financial report and directors' report are presented in a manner that maximises their usefulness, with a particular focus on the needs of people who are unaccustomed to reading financial reports.

Note: See paragraph 4.380 of the 2003 Explanatory Memorandum and paragraph 5.2 of the 2010 Explanatory Memorandum.

- RG 247.26 The annual financial report and directors' report together form a key element of the periodic disclosure framework for the listed market. The focus of periodic disclosure differs from continuous disclosure. While continuous disclosure ensures the timely release of price-sensitive information, periodic disclosure ensures that the entity provides a regular summary of its present financial position, an analysis of the key developments throughout the relevant reporting period and an overview of the entity's future prospects.

- RG 247.27 An OFR should:
- (a) concisely present key information about an entity's operations and financial position for the relevant reporting period, including

highlighting and summarising particular aspects of any key information disclosed through past continuous disclosure, as needed;

Note: See RG 247.15 for further discussion of the level of detail to be included about matters that have been previously disclosed in continuous disclosure notices.

- (b) analyse and discuss the impact of transactions and events that have taken place during the reporting period that are relevant to the entity's operations and financial position; and
- (c) provide an overview of the entity's business strategies, and prospects for future financial years.

Narrative and analysis

RG 247.28 An OFR, prepared under s299A, should:

- (a) contain disclosures tailored to the information needs of shareholders, adapting over time to ensure that the OFR evolves along with the changing needs of shareholders; and
- (b) provide a narrative overview that enables shareholders to understand an entity's business performance and the factors underlying its results and financial position.

Note: See paragraphs 5.305–5.306 of the 2003 Explanatory Memorandum and paragraph 5.2 of the 2010 Explanatory Memorandum.

RG 247.29 The wording of the OFR requirements demonstrates a legislative intention that a mere recounting of the key findings set out in the financial report will not satisfy the requirements of s299A.

RG 247.30 An OFR should present:

- (a) *a narrative*—providing tailored information about an entity's results and financial position. Information in the OFR should be consistent with and complement the financial report; and
- (b) *an analysis*—providing a reasoned and meaningful description of the underlying drivers of, and the reasons for, an entity's performance, rather than simply restating information that may be readily determined from the financial statements.

Information reasonably required by shareholders

RG 247.31 Under s299A(1), the OFR in a directors' report must contain information that shareholders in the entity would 'reasonably require to make an informed assessment' of the matters set out in s299A(1)(a)–(c).

RG 247.32 Information that shareholders would 'reasonably require' needs to be determined by considering the specific circumstances of the entity.