



## Heads Up

# ASIC Regulatory Guide 247 *Effective disclosure in an operating and financial review*

Contents	"In summary"
Overview	<ul style="list-style-type: none"> <li>• On 27 March 2013, ASIC released Regulatory Guide 247 <i>Effective disclosure in an operating and financial review</i> (RG 247) to provide guidance on preparing an operating and financial review (OFR) in the directors' report of a listed entity under s.299A of the <i>Corporations Act 2001</i></li> <li>• RG 247 includes guidance on: <ul style="list-style-type: none"> <li>○ providing a narrative and an analysis of the entity's operations and financial position</li> <li>○ outlining the entity's key business strategies and providing a discussion of the entity's prospects for future financial years</li> <li>○ the application of the 'unreasonable prejudice' exemption from disclosing specific business strategies and prospects</li> </ul> </li> <li>• We expect this guidance may change current practice in some respects: <ul style="list-style-type: none"> <li>○ ASIC has reinforced the fact that OFR cannot link to external documents</li> <li>○ ASIC intention is to curb the possible overuse of the 'unreasonable prejudice' exemption</li> </ul> </li> </ul>
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### Overview

On 27 March 2013, the Australian Securities and Investments Commission (ASIC) released Regulatory Guide 247 *Effective disclosure in an operating and financial review* (RG 247) to provide guidance on preparing an operating and financial review (OFR) in the directors' report of a listed entity.

An 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 make an informed assessment of an entity's operations, financial position, and business strategies and prospects for future financial years.

How does RG 247 compare to the G100 Guide to review of operations and financial condition? Does it change current practice for an entity using the G100 guide as a benchmark?

- In terms of content the G100 guide and RG 247 are fairly consistent on most issues so we do not expect a significant change in practice for an entity that uses the G100 guide as a benchmark, other than the limitation to link to external documents for detailed information that RG 247 categorically disallows
- G100 guide provides broader principles and allows flexibility to directors to make judgements about the level and nature of disclosures relevant to shareholders; whilst RG 247 places relatively less emphasis on the requirements of the directors to make their own assessment of the information needs of shareholders

RG 247 follows the Consultation Paper 187 *Effective disclosure in an operating and financial review* (CP 187) issued by the ASIC in September 2012. Based on the respondents feedback on CP 187, ASIC amended some of the wording and illustrative examples in RG 247.

## Presenting the narrative & analysis

RG 247 recommends some good disclosure practices for presenting the narrative and analysis in an OFR:

- present information in a single self-contained section of the annual report
- present information in a manner that is:
  - complementary to and consistent with the information disclosed in financial report and other disclosure announcements of the entity
  - balanced and unambiguous - that is not misleading, and gives 'bad news' equal prominence as 'good news'
  - clear, concise and effective - that highlights key information, uses plain language, explains complex information, and is presented in a logical order.

### Incorporating documents outside the financial report by reference to meet OFR disclosure requirements

RG 247 holds that it is **not** appropriate to incorporate documents outside the financial report by reference to meet OFR disclosure requirements.

- All information required under s.299A 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 s.299A

*(It may be appropriate to cross-refer to more detail in the financial report to which the OFR is attached)*

RG 247 also provides illustrative examples of disclosure about an entity's operations and financial position, and its business strategies and prospects for future financial years with a level of detail more likely to be appropriate, that may be helpful as a reference.

## Operations and financial position

The *Corporations Act 2001* requires the OFR of a listed entity to contain information that shareholders and unit holders would reasonably require to make an informed assessment of the entity's:

- operations (s.299A(1)(a))
- financial position (s.299A(1)(b))

### ASIC Regulatory Guidance (RG 247)

Information about an entity's operations and financial position should be tailored to reflect the individual circumstances of the entity and the business environment in which it operates. In this regard, RG 247 outlines that the OFR should:

- describe and review the operations that the entity undertakes, including the results of those operations
- explain the underlying drivers and reasons for the entity's results, and key developments in the reporting period, including significant factors affecting the entity's results
- highlight any qualification by the entity's auditor, or 'emphasis of matter' paragraph and provide the circumstances and explain the concerns underlying the audit opinion
- explain the entity's business model, and its effect on the entity's operations, including the main features of the business model, any key dependencies and the significance of particular operating segments to the business as a whole
- discuss results for the key operating segments and major components of the overall result.

### Information reasonably required by shareholders

RG 247 holds that information that shareholders would 'reasonably require' needs to be determined by considering the specific circumstances of the entity.

Examples of considerations that may be relevant in determining the level of detail that shareholders 'reasonably require' include the size of the entity, the age of the entity, the industry in which the entity operates, the complexity of the business, and the performance, activities, strategies and prospects of the entity in the relevant reporting period.

Any 'non-IFRS financial information', if included in an OFR, must not be presented in a misleading manner (refer ASIC Regulatory Guide 230 *Disclosure of non-IFRS financial information*)

In our view, RG 247's focus on disclosure by operating segments may increase the length and complexity of the OFR

## Business strategies and prospects for future financial years

The *Corporations Act 2001* requires the OFR of a listed entity to contain information that shareholders and unit holders would reasonably require to make an informed assessment of the entity's business strategies and prospects for future financial years (s.299A(1)(c))

### [ASIC Regulatory Guidance \(RG 247\)](#)

Information on business strategies and prospects for future financial years should focus on what may affect the future financial performance and position of the entity. In this regard, RG 247 outlines that the OFR should:

- discuss the entity's key business strategies, including significant plans that are a part of those strategies
- explain the financial performance and financial outcomes the entity expects to achieve overall, and significant factors on which the achievement of these objectives depends
- discuss the material business risks that could adversely affect the achievement of the financial performance or financial outcomes described.

Inclusion of numerical financial forecasts is not expected in an OFR. However, if an entity chooses to present financial forecasts in its OFR, it should consider the guidance contained in Regulatory Guide 170 *Prospective financial information* (RG 170) on the presentation of prospective and hypothetical information.

### Future timeframe

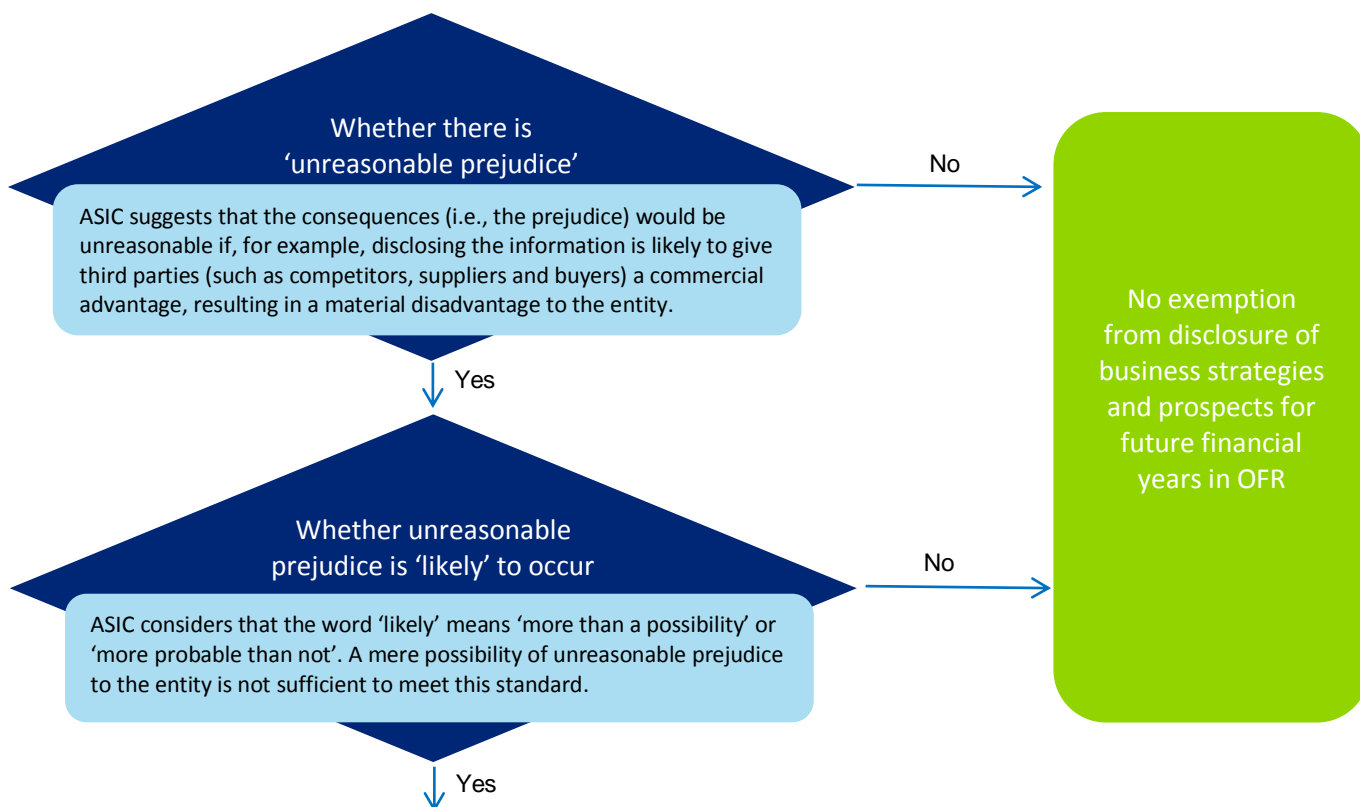
RG 247 notes that s.299A does not specify any particular time period for which business strategies and prospects should be described. However, the fact that s.299A requires strategies and prospects to be discussed for future financial 'years' indicates that something more than a discussion centred on the next financial reporting period is required.

- The relevant time period will depend on the individual circumstances of the entity, taking into account factors such as the age of the entity, the business in which it is engaged, the industry in which it operates and the types of commitments it enters into. For example, a shorter period may be appropriate for a start-up entity, while a longer period may be appropriate for a more established entity that has been engaged for many years in a business that primarily involves long-term contractual commitments.

## Use of the 'unreasonable prejudice' exemption

s.299A(3) of the *Corporations Act 2001* provides an exemption from disclosing information about business strategies and prospects for future financial years if disclosure of that information is likely to result in 'unreasonable prejudice' to the entity.

[ASIC Regulatory Guidance \(RG 247\)](#)



Discussion on business strategies and prospects for future financial years in OFR may be omitted\*

### \*Note (further ASIC guidance from RG 247)

1. The basis for relying on the exemption should be evaluated and established by the directors before any required information is omitted
2. It would be rare for an entity to disclose no information at all about its business strategies and prospects in reliance on the exemption
3. If information has been omitted under the exemption in s299A(3), the OFR must disclose this under the terms of that provision. To assist shareholders, entities may consider disclosing a short, high-level summary of the type of information that has been omitted, and the reasons for the omission, where possible
4. It would be rare to establish that unreasonable prejudice is likely to result from the disclosure of business strategies and prospects in the OFR if that information has already been disclosed, or can otherwise be inferred from documents or other material already in the public domain (e.g. the entity's announcements to the market).

### What is 'likely'?

RG 247 considers 'likely' to be 'more than a possibility' or 'more probable than not' – arguably these are two different thresholds in relation to the meaning of 'likely' for the purpose of applying the unreasonable prejudice exemption.

In our view, this may raise interpretative issues in practice, and an entity planning to rely on 'unreasonable prejudice' exemption need to form a position on the meaning of 'likely' and apply that interpretation in a consistent manner

## Disclose what is omitted!!

RG 247 recommends that to assist shareholders the entity may consider providing a high level summary of the type of information omitted, and reasons for omission, where possible

In our view this may present a challenge to apply in practice and entities should carefully consider how they disclose the nature and reasons for the omission of information.

## Next Steps

Directors of listed entities should consider reassessing their approach to disclosing information in the OFR in light of this new guidance, to ensure compliance with s.299A(1) of the *Corporations Act 2001*.

Although the adoption of regulatory guidance issued by ASIC is not mandatory, it reflects ASIC's interpretation of the requirements of s.299A(1) of the *Corporations Act 2001* and therefore the basis upon which ASIC will assess the disclosure of OFR information by listed entities.

A copy of the Regulatory guide can be obtained from the ASIC website by clicking [here](#)

## Appendix A – Frequently Asked Questions

Q	Is this guidance mandatory?
	Regulatory guidance issued by the ASIC is <b>not</b> mandatory under the Corporations Act. However, it reflects ASIC’s interpretation of the requirements of s.299A(1) of the <i>Corporations Act 2001</i> and therefore the basis upon which ASIC will assess the disclosure of OFR information by listed entities.
Q	Is an OFR prepared under s.299A required to be audited?
	An OFR prepared under s.299A is <b>not</b> required to be audited—however, auditing standards define an OFR (as part of the directors’ report) as ‘other information’ in a document that contains an audited financial report. Auditing Standard ASA 720 <i>Other information in documents containing audited financial reports</i> requires auditors to read the OFR to ensure there are no material inconsistencies with the audited financial report and that the OFR contains no material misstatements of fact.
Q	Is it appropriate to incorporate documents outside the financial report by reference to meet OFR disclosure requirements?
	No, it is <b>not</b> appropriate to incorporate documents outside the financial report by reference to meet OFR disclosure requirements. <ul style="list-style-type: none"> <li>• All information required under s.299A must be included in the body of the OFR itself</li> <li>• 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 s.299A</li> </ul> <p><i>(It may be appropriate to cross-refer to more detail in the financial report to which the OFR is attached)</i></p>
Q	Can non-IFRS financial information be presented in OFR?
	Yes, provided it’s not presented in a misleading manner. Refer Regulatory Guide 230 <i>Disclosing non-IFRS financial information</i> (RG 230) for guidance about how non-IFRS financial information may be presented in a way that minimises the risk of misleading users.
Q	What are the considerations to determine the level of detail for the ‘information reasonably required by shareholders’?
	Information that shareholders would ‘reasonably require’ needs to be determined by considering the specific circumstances of the entity. Examples of considerations that may be relevant in determining the level of detail that shareholders ‘reasonably require’ include the size of the entity, the age of the entity, the industry in which the entity operates, the complexity of the business, and the performance, activities, strategies and prospects of the entity in the relevant reporting period.
Q	Is there any other relevant guidance that may assist an entity in fulfilling the OFR requirements?
	Yes, there is other guidance on this issue. For example, a discussion about an entity’s operations and financial position may benefit from consideration of the <i>Guide to review of operations and financial condition</i> , issued by the Group of 100 Incorporated in 2003, and IASB’s <i>IFRS practice statement Management commentary</i> , available from the AASB’s website.
Q	Is an entity required to show numerical financial forecasts as part of its discussion on future prospects?
	It is not expected that a discussion of prospects for future financial years would contain numerical financial forecasts. If, in rare circumstances, an entity chooses to present financial forecasts in its OFR, then guidance in Regulatory Guide 170 <i>Prospective financial information</i> (RG 170) on the presentation of prospective and hypothetical information should be considered.
Q	Is there a particular time period for which business strategies and prospects should be described?
	Section 299A does not specify any particular time period for which business strategies and prospects should be described. However, the fact that s.299A requires strategies and prospects to be discussed for future financial ‘years’ indicates that something more than a discussion centred on the next

financial reporting period is required.

The relevant time period will depend on the individual circumstances of the entity, taking into account factors such as the age of the entity, the business in which it is engaged, the industry in which it operates and the types of commitments it enters into. For example, a shorter period may be appropriate for a start-up entity, while a longer period may be appropriate for a more established entity that has been engaged for many years in a business that primarily involves long-term contractual commitments.

**Q** Are there any practical considerations in determining whether the 'unreasonable prejudice' exemption would be available?

Practical considerations in determining whether the exemption is available include:

- a) rather than omitting all information on business strategies and prospects, entities should:
  - i. first identify the information that would reasonably be required by shareholders; and
  - ii. then identify (and remove if necessary) any specific parts of that information that would give rise to an unreasonable prejudice to the entity;
- b) the disclosure of information that is already contained in continuous disclosure notices, investor presentations, briefings to analysts or other publicly available documents is unlikely to give rise to unreasonable prejudice to the entity;
- c) in many cases, information can be presented at a level of detail that does not give rise to any likely material detriment to the entity;
- d) in assessing the usefulness of information to competitors, consideration should be given to whether competitors are already likely to have access to the information from public or non-public documents or other sources, as well as the ability of competitors to act on the information to cause significant detriment to the entity; and
- e) determining whether any prejudice is unreasonable requires balancing any detriment to the entity against the value of the information to shareholders.

**Q** Are directors required to keep internal records justifying the basis for use of 'unreasonable prejudice' exemption in OFR?

Internal record keeping on this matter is not a statutory requirement under RG 247. However, directors may find such a record to be helpful in demonstrating how an entity has complied with its obligations.

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