



## Corporations (Sydney IVF Limited) Exemption Notice 2010

*Corporations Act 2001*

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I, CHRIS BOWEN, Minister for Financial Services, Superannuation and Corporate Law, make this Notice under section 791C of the *Corporations Act 2001*.

Dated 8 February 2010

A handwritten signature in black ink, appearing to read 'Chris Bowen', is written over the printed name.

Minister for Financial Services, Superannuation and Corporate Law

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**1 Name of Notice**

This Notice is the *Corporations (Sydney IVF Limited) Exemption Notice 2010*.

**2 Commencement**

This Notice commences on the date of its notification in the *Gazette*.

**3 Definitions**

In this Notice:

*Act* means the *Corporations Act 2001*.

*eligible participant* has the same meaning as it has in the definitions clause of the Sydney IVF constitution.

*relevant financial market* means the pre-emption rights sale by tender process set out in clause 8.2 (other than subclauses 8.2 (a) and 8.2 (r)) of the Sydney IVF constitution.

*Sydney IVF* means the corporation known as Sydney IVF Limited.

*Sydney IVF constitution* means the constitution of Sydney IVF Limited as at 6 November 2008.

*Note* The following expressions used in this Notice are defined in the Act:

- ASIC (section 9)
- associate (section 9)
- Australian market licence (section 761A)
- clearing and settlement facility (section 768A)
- constitution (section 9)
- corporation (section 57A)
- disclosing entity (section 111AC)
- ED securities (section 111AD)
- financial market (section 767A)
- financial services (section 761A)
- operating rules (section 761A)
- participant (section 761A).

**4 Exemption**

For section 791C of the Act, and subject to the conditions mentioned in sections 5 to 18, the relevant financial market operated by Sydney IVF is exempt from the operation of Part 7.2 of the Act.

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**5 Operation of relevant financial market**

- (1) Sydney IVF must operate the relevant financial market in all essential details in the way set out in:
  - (a) the application to ASIC for its exemption from the operation of Part 7.2 of the Act dated 2 June 2008; and
  - (b) any additional documents that it provided to ASIC in support of that application.
- (2) The relevant financial market must not have a mechanism for the automatic execution of orders or formation of contracts between market users that enter into a transaction through the market.
- (3) Nothing in the process set out in clause 8.2 of the Sydney IVF constitution is considered to constitute a mechanism for the automatic execution of orders or the formation of contracts between market users.

**6 Participants who may trade on relevant financial market**

Sydney IVF must not admit a participant to the relevant market, or allow a participant to enter a trade on the relevant financial market, unless the participant is an eligible participant.

**7 Financial products traded on relevant financial market**

Sydney IVF may facilitate trading in a financial product on the relevant financial market only if the financial product is:

- (a) an ordinary issued share in Sydney IVF; or
- (b) an option in an ordinary unissued share in Sydney IVF.

**8 Settlement of transactions through relevant financial market**

- (1) Sydney IVF must not:
  - (a) operate a clearing and settlement facility for the relevant financial market; or
  - (b) engage any other person to operate a clearing and settlement facility for the relevant financial market.
- (2) Sydney IVF must not handle the purchase money for the settlement of a transaction entered into through the relevant financial market.

**9 Sydney IVF must give prospective eligible participant statement about Sydney IVF**

If a person is a prospective eligible participant in the relevant financial market, Sydney IVF must give the person a statement in writing to the effect that:

- (a) Sydney IVF is not licensed under Part 7.2 of the Act; and

- (b) Sydney IVF is exempt from the requirement to hold a licence to operate the relevant financial market under section 791C of the Act; and
- (c) Sydney IVF is not subject to requirements of the Act applying to the holder of a licence to operate a financial market including the requirement, to the extent that it is reasonably practicable to do so, to ensure that the operation of the financial market is fair, orderly and transparent.

**10 Continuous disclosure under s 675 (2) of the Act — Sydney IVF must make document available to eligible participants**

- (1) This section applies if, under subsection 675 (2) of the Act, Sydney IVF must lodge a document with ASIC containing the information mentioned in that subsection.
- (2) As soon as practicable after lodging the document, Sydney IVF must make it available to Sydney IVF's eligible participants.

*Note* Subsection 675 (2) of the Act sets out requirements to lodge a document with ASIC if a disclosing entity becomes aware of information that is not generally available and that a reasonable person would expect, if the information were generally available, would have a material effect on the price or value of the ED securities of the entity.

**11 Arrangements to manage conflicts of interest**

- (1) Sydney IVF must establish and maintain adequate arrangements to manage any conflicts of interest that arise in relation to any activities undertaken by Sydney IVF in the operation of the relevant financial market.
- (2) The arrangements must be to the satisfaction of ASIC.

**12 Annual report**

Within 3 months of the end of each financial year, Sydney IVF must give an annual report to ASIC that sets out:

- (a) information about the extent to which Sydney IVF complied with the conditions of this Notice during the year; and
- (b) the total number and total value (measured by sale price) of transactions for each class of financial product traded on the relevant financial market during the financial year.

**13 Minister may require Sydney IVF to obtain audit about annual report**

- (1) The Minister may, by written notice, require Sydney IVF to obtain an audit report about:
  - (a) the annual report mentioned in section 12; and
  - (b) any information or statements accompanying the annual report.

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- (2) The Minister may nominate either of the following to undertake the audit:
- (a) ASIC;
  - (b) a specified person or body that is suitably qualified.

**14 Notice of certain events involving eligible participant**

- (1) If Sydney IVF takes any supervisory action against an eligible participant of the relevant financial market, Sydney IVF must, as soon as practicable after the action is taken, advise ASIC in writing of:
- (a) the participant's name; and
  - (b) the reason for, and the nature of, the action taken; and
  - (c) when the action was taken.
- (2) If Sydney IVF has reason to suspect that an eligible participant has committed, is committing, or is about to commit, a significant contravention of the Act or the relevant financial market's operating rules, Sydney IVF must, as soon as practicable, advise ASIC in writing of:
- (a) the participant's name; and
  - (b) details of the contravention or impending contravention; and
  - (c) Sydney IVF's reasons for that belief.

**15 Notice of certain events involving Sydney IVF, its director or secretary**

Sydney IVF must, within 7 days, advise ASIC in writing if Sydney IVF becomes aware that Sydney IVF, or a director or secretary of Sydney IVF:

- (a) is the subject of a declaration of contravention in relation to a provision of the Act; or
- (b) has been convicted of an offence under the Act; or
- (c) has been disqualified from managing a corporation; or
- (d) has been banned from providing financial services.

**16 Notice if Sydney IVF decides to suspend or cease to operate relevant financial market**

Sydney IVF must, within 7 days, advise ASIC in writing of a decision:

- (a) to suspend the operation of the relevant financial market; or
- (b) to cease to operate the relevant financial market.

**17 Requirement to assist ASIC**

If Sydney IVF receives a reasonable request from ASIC to give assistance to ASIC, or a person authorised by ASIC, about the performance of ASIC's functions in relation to the operation of the relevant financial market, Sydney IVF must:

- (a) provide that assistance; and

- (b) give ASIC access to any information, document or books held by or relating to Sydney IVF.

**18 Requirement to enter written arrangement with ASIC**

Sydney IVF must enter into a written arrangement with ASIC for cooperation with ASIC about matters in this Notice.