

76ATI. Meaning of “listed land-holder corporation”

- (1) In this Division a corporation is a **“listed land-holder corporation”** if —
 - (a) it is —
 - (i) a body corporate that is taken to be registered outside Western Australia (for the purposes of the Corporations Act) or that is otherwise formed or incorporated outside Western Australia, not being a body corporate that is —
 - (I) within paragraphs (a) to (d) of section 66A(4) of the Corporations Law; or
 - (II) a subsidiary, within the meaning in section 76ATB(6), of a WA company to which Division 3a applies;
 - or
 - (ii) a WA company that would be a subsidiary, within the meaning in section 76ATB(6), of a body corporate referred to in subparagraph (i) if that body corporate were a WA company;
 - and
 - (b) it is a land-holder within the meaning in subsection (2) and is listed on a recognised financial market.
- (2) A corporation is a land-holder for the purposes of this Division if at the time of an acquisition of a controlling interest —
 - (a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and
 - (b) the value of all land to which the corporation is entitled, whether situated in Western Australia or elsewhere, is 60% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (4),or if the Commissioner determines that paragraphs (a) and (b) would have applied to the corporation at the time of the acquisition of the controlling interest but for a transaction, or series of transactions, which in the Commissioner’s opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.
- (3) If the Commissioner makes a determination under subsection (2) —
 - (a) the Commissioner is to give notice of it to the corporation;
 - (b) the notice is to contain reasons for the determination;
 - (c) for the purposes of section 76ATG(1) the acquisition of the controlling interest is taken to have occurred when the notice is given; and
 - (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the corporation is entitled includes a reference to property so situated to which it would have

been entitled but for the transaction, or series of transactions, to which the determination relates.

- (4) The following property of a corporation, or of a trustee or another corporation referred to in subsection (6), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
- (a) cash or money in an account at call;
 - (b) negotiable instruments, and money on deposit with any person;
 - (c) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
 - (ca) an amount paid or payable to the corporation or the trustee or other corporation referred to in subsection (6) under a contract or agreement referred to in subsection (7)(b);
 - (d) money lent by the corporation or a trustee or a related corporation referred to in subsection (6) to —
 - (i) any person who in relation to the corporation is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the corporation within 12 months after the money is lent;
 - (e) in the case of the corporation, property consisting of a shareholding in another corporation referred to in subsection (6) or of a share or interest or entitlement under a trust referred to in that subsection;
 - (f) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
 - (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
 - (g) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the corporation or a related person;
 - (h) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
 - (i) any property prescribed for the purposes of this subsection; and
 - (j) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the corporation or the trustee or other corporation referred to in subsection (6) is not for the purpose of defeating the object of this Division.
- (5) In forming an opinion for the purposes of subsection (4)(j) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;

- (b) its nature and its relevance to any business carried on by the corporation or the trustee or other corporation;
 - (c) the period for which it has been and is likely to remain the property of the corporation or the trustee or other corporation; and
 - (d) any other matter that the Commissioner considers relevant.
- (6) Without limiting the meaning of “entitled”, a corporation is deemed to be entitled to land or property where —
- (a) the trustee of a trust is entitled to that land or property and the corporation —
 - (i) has a share or interest in the trust whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,but an entitlement under subparagraph (i) is limited to the extent of that share or interest;
 - (b) in a case where the entitlement to participate referred to in section 76ATK(2) relates to the corporation itself, any of the following corporations is entitled to that land or property —
 - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the corporation, or that would be a subsidiary (as so defined) of the corporation if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead;
 - (ii) any other corporation where the corporation would be entitled if the other corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the other corporation to an extent not less than 50% of the value of the distributable property;or
 - (c) in a case where the entitlement to participate referred to in section 76ATK(2) relates to a holding corporation (as defined in section 76ATK(4)(a)) of the corporation, any of the following corporations is entitled to that land or property —
 - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the holding corporation, or that would be a subsidiary (as so defined) of the holding corporation if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead;
 - (ii) any other corporation where the holding corporation would be entitled if the other corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the other corporation to an extent not less than 50% of the value of the distributable property.
- (7) In determining the entitlement of an entity to land for the purposes of this section or section 76ATL —

- (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
- (8) In determining the entitlement of an entity to property other than land for the purposes of this section —
- (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

[Section 76ATI inserted by No. 11 of 2004 s. 29; amended by No. 11 of 2005 s. 18, 20 and 25.]