

# Technical Accounting Alert

## Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011

### Introduction

The purpose of this alert is to provide an overview of changes to directors and executive remuneration that generally apply from 1 July 2011.

### Overview

The Government argues that a range of amendments have been made to the Corporations Act so as to strengthen Australia's remuneration framework. The key measures include:

#### Strengthening the non-binding vote — the 'two-strikes' test

This provision strengthens the non-binding vote on the remuneration report, by requiring a vote for directors to stand for re-election if they do not adequately address shareholder concerns on remuneration issues over two consecutive years.

A 'two-strikes and re-election' process will apply in relation to the non-binding shareholder vote on the remuneration report. The 'first strike' will occur where a company's remuneration report receives a 'no' vote of 25 per cent or more. Where this occurs, the company's subsequent remuneration report must include an explanation of the board's proposed action in response to the 'no' vote or an explanation of why no action has been taken.

The 'second strike' occurs where a company's subsequent remuneration report receives a 'no' vote of 25 per cent or more. Where this occurs, shareholders will vote at the same AGM to determine whether the directors will need to stand for re-election. If this spill resolution passes with 50 per cent or more of eligible votes cast, then the 'spill meeting' will take place within 90 days. A company will still need to provide the minimum notice period for holding a meeting, as required by the Corporations Act. A company will also need to comply with any minimum notice period set out in its constitution for the nomination of candidates for the board. This will ensure that shareholder nominated candidates can seek endorsement at the spill meeting.

The two strikes rules apply to any resolutions on the remuneration report held after 1 July 2011, however as the second spill resolution can only apply in the following year, the first time any AGM on directors' re-election will apply is after 1 July 2012.

All TA alerts can be found on the National Extranet ([www.gtassist.com.au/extranet](http://www.gtassist.com.au/extranet)) under Professional Services/Assurance/Forms and Precedents/Technical Assistance for Grant Thornton staff only and the Grant Thornton website ([www.grantthornton.com.au](http://www.grantthornton.com.au)) under Publications/IFRS and technical resources. This alert is not a comprehensive analysis of the subject matter covered and is not intended to provide accounting or auditing advice. All relevant facts and circumstances, including the pertinent authoritative literature, need to be considered to arrive at accounting and audit decisions that comply with matters addressed in this alert. Grant Thornton is a trademark owned by Grant Thornton International Ltd (UK) and used under licence by independent firms and entities throughout the world. Grant Thornton Australia Limited is a member firm within Grant Thornton International Ltd. Grant Thornton International Ltd and the member firms are not a worldwide partnership. Grant Thornton Australia Limited, together with its subsidiaries and related entities, delivers its services independently in Australia.

Liability limited by a scheme approved under Professional Standards Legislation.



#### Improving accountability on the use of remuneration consultants

The engagement of a remuneration consultant must be approved by the board or remuneration committee.

The remuneration consultant must report to non-executive directors or the remuneration committee, rather than company executives.

The remuneration consultant and the board must make separate declarations that the recommendation on remuneration is free from undue influence by the key management persons to which the recommendation relates.

Companies that are a disclosing entity will be required to disclose details relating to the use of remuneration consultants.

The proposed disclosures concerning the use of remuneration consultants apply in relation to remuneration reports for financial years starting on or after 1 July 2011, and apply to the engagement of remuneration consultants on or after 1 July 2011 and advice given from 1 July 2011.

#### Prohibiting Key Management Personnel (KMP) from voting on remuneration matters

KMP and their closely related parties that hold shares will be prohibited from voting their shares in the non-binding vote and the spill resolution.

KMP and their closely related parties will only be able to vote undirected proxies on remuneration related resolutions when they are the chair of the meeting and the shareholder has expressly given their informed consent for the chair to exercise the proxy.

The proposed prohibition on KMP (and their closely related parties) voting in the non-binding vote and voting undirected proxies in remuneration related resolutions applies in relation to voting on or after 1 August 2011, irrespective of whether the remuneration report concerned relates to a financial year starting before, on or after 1 August 2011.

#### Prohibiting hedging of incentive remuneration

Prohibit KMP and their closely related parties from hedging remuneration that depends on the satisfaction of a performance condition so ensuring that remuneration remains linked to performance by prohibiting hedging of incentive remuneration. As a result of the prohibition, the current disclosure requirement is redundant and is no longer required.

The prohibition on hedging applies to entry into arrangements on or after 1 July 2011, irrespective of whether the remuneration was for services rendered before, on, or after 1 July 2011.

#### No vacancy rule so requiring shareholder approval for declarations of 'no vacancy' at an annual general meeting (AGM);

Public companies will be required to obtain the approval of shareholders for a declaration that there are no vacant board positions, should the number of board positions filled be less than the maximum number specified in the company's constitution.

The provisions apply in relation to the setting of board limits on or after 1 July 2011.



#### Prohibiting proxy holders from 'cherry picking' the proxies they exercise

Any directed proxies that are not voted default to the Chair, who is required to vote the proxies as directed. Non-chair proxy holders will be required to cast all of their directed proxies on all resolutions as directed if they vote. If a nominated proxy does not vote, the proxy will automatically default to the chair, who has a duty to vote all directed proxies.

The new provision will apply to proxies appointed on or after 1 August 2011.

#### Reducing the number of persons required to be named in the remuneration report

Remuneration disclosures will be confined to the KMP of the consolidated entity which is a reduction from the former three tiers of the consolidated entity, the parent entity and the 5 highest paid employees.

This applies to remuneration reports for financial years commencing as from 1 July 2011

#### Source reference

Parliamentary Secretary to the Treasurer Media Release 20/6/11 No 027

<http://parlsec.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/027.htm&pageID=003&min=djb&Year=&DocType=>

#### Further information

For further information on any of the information included in this TA alert, please contact your local Grant Thornton Australia contact or a member of the National Audit Support team at

[NAS@grantthornton.com.au](mailto:NAS@grantthornton.com.au)