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Technical Accounting Alert

Amendments to Corporations Act 2001

Introduction

The *Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2015* ('the Act') passed both Houses of the Australian Parliament on 2 March 2015 and subsequently received Royal Assent on 19 March 2015.

The Act makes a number of notable amendments to *Corporations Act 2001*. Among other things, it amends aspects of remuneration reporting, auditor appointment for companies limited by guarantee and requesting of general meetings. It also provides clarification regarding changes to financial years.

The amendments contained in this Act had been included in the exposure draft of Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014 ('the Bill') which was released on 10 April 2014 for public comments by 16 May 2014.

It is worth noting that the exposure draft of the Bill released in April 2014 also proposed to change the way in which companies pay dividends, replacing the current 'net assets test' with a pure 'solvency test'. However, this particular proposal was omitted in the Bill passed by the Parliament. Our understanding is that this omission was to enable further consideration of alternative approaches and potential tax implications.

The Amendments

Below is a summary of the main amendments arising from this Act:

Remuneration Reporting

Unlisted disclosing entities

Currently, the Corporations Act requires all disclosing entities that are companies to prepare a remuneration report, regardless of whether they are listed or unlisted. Hence, unlisted disclosing entities are also required to produce a remuneration report.

Under the new law, unlisted disclosing entities are no longer required to prepare a remuneration report. The Explanatory Memorandum to the Bill explains that the preparation of a remuneration report is less relevant for unlisted disclosing entities as only listed entities are required to have their remuneration report adopted by shareholders through a non-binding resolution and are subject to the 'two-strikes' test.

Options

The Corporations Act currently requires disclosing entities that are companies to disclose the **value** of options that lapse during a financial year for each member of the key management personnel ('KMP'). It also requires disclosing entities that are companies to disclose the percentage value of remuneration that consists of options for each KMP.

Under the new amendments, listed disclosing entities that are companies must disclose the **number** of options that lapse during a financial year and the financial year in which those options were granted, for each KMP. There is no obligation to disclose the value of options that lapse. In addition, there is no longer an obligation to disclose the percentage value of remuneration that consists of options for each KMP.

The Explanatory Memorandum to the Bill justifies these changes, noting that the value of lapsed options is of limited use to users, and that the information on the percentage of a person's remuneration that consists of options can already be calculated from the information required under item 15, sub-regulation 2M.3.03(1) of the *Corporations Regulations 2001* ('Corporations Regulations').

While the wording in the legislation refers to options that 'lapse' during the financial year, we believe the word 'forfeit' better reflects the intention of the law.

Auditor appointment for companies limited by guarantee

In 2010, the *Corporations Amendment (Corporate Reporting Reform) Act 2010* removed the need for certain companies limited by guarantee to have their financial reports audited, in order to reflect their limited resources. Consequently:

- subsection 292(3) exempts small companies limited by guarantee (that is, those companies limited by guarantee with annual revenue of less than $250,000) from having to prepare a financial report and directors' report unless directed to do so by the Australian Securities and Investments Commission (ASIC) or by members with at least five per cent of the votes that may be cast at the general meeting; and
- subsection 301(3) allows a company limited by guarantee to elect to have its financial report for a financial year reviewed, rather than audited, if it has annual revenue of less than $1 million and certain other criteria are met

Despite these amendments, companies limited by guarantee that are not required to undertake an audit remained subject to provisions requiring that an auditor is appointed and retained. Section 327A requires public companies, including companies limited by guarantee, to appoint an auditor within one month of registration. Section 327B requires public companies to appoint an auditor at their first annual general meeting.

Under the new law, small companies limited by guarantee, and those companies limited by guarantee that have their financial reports reviewed, are not required to appoint or retain an auditor. All other public companies are required to appoint and retain an auditor.

Requesting of general meetings

Under the existing law, members with a total of five per cent of voting shares or 100 members entitled to vote at the annual general meeting of a company may request that directors hold a general meeting.

The amendments remove the right of 100 members entitled to vote to request directors of a company to hold a general meeting. Only members with a total of five per cent (5%) of voting shares who are entitled to vote at the annual general meeting of a company may request that directors hold a general meeting.

In justifying this change, the Explanatory Memorandum to the Bill states that, in large corporations, 100 members may hold a very small percentage of voting shares – often below one per cent (1%). Accordingly, a very small percentage of shareholders can require a company to hold a general meeting and to incur the subsequent costs. It also states that resolutions that have been proposed in the past at meetings held at the request of 100 members have generally received little support.

Clarifying the financial year

Currently, there is some level of confusion about the conditions under which directors may determine that a financial year is shorter than twelve (12) months.

The amendments seek to put beyond doubt that directors may determine that a financial year is shorter than twelve (12) months by more than seven (7) days irrespective of whether, during an entity's previous five (5) financial years, the directors have determined that the financial year is shorter than twelve (12) months:

- by up to seven (7) days; or
- to synchronise the financial year to prepare consolidated financial statements

The amendments merely clarify the operation of the existing provisions and do not change the current law.

Effective date and transition

Amendments relating to remuneration reporting are applicable to financial years ending on or after 19 March 2015. Other amendments became operative on 19 March 2015.

Further information

For further information on any of the information included in this Technical Accounting Alert, please get in touch with your local Grant Thornton Australia contact or a member of the National Audit Support Team at nationalaudit.support@au.gt.com.