



Technical Accounting Alert

Corporations Act draft amendments on Executive Remuneration and Dividends

Introduction

The Government has released for public comment proposed amendments to the Corporations Act, with submissions due by 15 March 2013. The proposed amendments will what it terms will: “...continue improvements to the disclosure of executive remuneration and further clarify the test for payment of dividends”. These proposed amendments may apply as from July 2013.

Grant Thornton will be preparing submission on these various proposals and input from clients is as usual, welcome – email to keith.reilly@au.gt.com.

Background – Corporations Act proposals

The Corporations Legislation Amendment (Remuneration Disclosures and Other Measures) Bill 2012 (the Bill) contains the following measures on disclosure of executive remuneration

- 1 Requiring listed disclosing entities whose financial statements have been materially misstated to either disclose whether any overpaid remuneration to key management personnel (KMP) has been ‘clawed-back’, or if no reduction, repayment or alteration of overpaid remuneration has been made, an explanation of why not;
- 2 Improving disclosure requirements in the remuneration report by:
 - requiring listed disclosing entities to include a general description of their remuneration governance framework;
 - requiring listed disclosing entities to disclose the number of lapsed options and the year which the lapsed options were granted, rather than the value of lapsed options;
 - requiring the disclosure of all payments made to KMP in connection with their retirement from the entity; and
 - requiring listed disclosing entities to disclose details, for each KMP in three separate categories being: remuneration that was granted before the start of the year and paid during the year, the remuneration granted and paid during the year, and the amount of remuneration granted during the year but not paid during the year (present pay, future pay, and past pay).

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- 3 Relieving certain unlisted entities from the obligation to prepare a remuneration report (clarification that it was never intended to required non-listed entities to prepare a remuneration report).

Other measures in the Bill include:

- 4 Amending the Corporations Act test for the payment of dividends (the dividends test) to:
 - allow companies to either declare or pay a dividend;
 - link the dividends test to company solvency but maintain the requirement to have a net assets test; and
 - allow non-reporting entities to calculate assets and liabilities with reference to their financial records when applying the dividends test.
- 5 Removing the requirement for some small companies limited by guarantee to appoint auditors if they are not obliged to have their financial reports audited (in effect a clarification of the Law given the 2010 amendments for small proprietary companies).
- 6 Amending the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to transfer the remuneration setting responsibility for the offices of the Financial Reporting Council (FRC), Australian Accounting Standards Board (AASB), and the Auditing and Assurance Standards Board (AUASB) to the Remuneration Tribunal.

Subject to parliamentary approval by 30 June 2013, these provisions will apply immediately (Royal Assent) with directors' reports prepared for financial years starting on or after 1 July 2013. This means that 30 June 2013 balancers are not caught by these requirements.

Grant Thornton's initial thoughts

The executive remuneration proposals have the potential to further complicate what at present many see as excessive and confusing disclosure, and the dividends proposals do not overcome the challenge of having an accounting standards net assets test for most companies when the original intent of the dividends reform was to simply require a solvency test. Clearly there is a need for simplification reform.

Action required

Consider the various requirements and provide input into the Grant Thornton submissions.

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 nationalaudit.support@au.gt.com.