



Heads Up

Amendments to the *Corporations Act 2001* – Deregulatory and Other Measures

Contents

**Remuneration report
application and disclosures**

**Removal of the 100 member
rule for AGMs**

**Auditor appointment
requirements of certain
companies limited by
guarantee**

**Determining a company's
financial year**

“In summary”

In March 2015, the *Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014* was passed by both Houses of the parliament, which amends the *Corporations Act 2001* to reduce compliance costs borne by businesses.

Key changes include:

- amending the remuneration report application and disclosures by:
 - limiting the requirement to prepare a remuneration report to only listed disclosing entities that are companies
 - removing the requirement to report the value of lapsed options and the percentage value of remuneration consisting of options, and replacing this with a requirement to disclose the number of lapsed options and the year in which the lapsed options were granted
- removing the obligation to hold a general meeting on the request of 100 shareholders
- exempting certain companies limited by guarantee from the need to appoint or maintain an auditor.

The Exposure Draft of this bill proposed also to amend the dividends test, however this proposal is yet to be finalised as the Government needs more time to consider alternative approaches which will balance the need for certainty and simplicity for business, protections for investors and the implications for the tax treatment of dividends.

The Bill received royal assent on 19 March 2015, at which point the law became effective.

Related Link

<http://www.comlaw.gov.au/Details/C2015A00019>
Amendment Act

Remuneration report application and disclosures

Unlisted disclosing entities that are companies will no longer be required to prepare a remuneration report. Listed disclosing entities that are companies will continue to be required to prepare a remuneration report, however, certain disclosures have been amended including:

- removing the requirement to report the value of lapsed options and the percentage value of remuneration consisting of options; and
- replacing this with a requirement where options that were granted to a person as part of their remuneration lapse during the financial year to disclose the number of those lapsed options and the year in which those lapsed options were granted.

These amendments apply in relation to directors' report for financial years ending on or after commencement, that is, 19 March 2015. Entities that voluntarily comply with section 300A, e.g. that are listed trusts or overseas entities, will also need to consider whether they comply with those new requirements.

Removal of the 100 member rule for AGMs

The law has previously required that directors of a company must arrange a general meeting, paid for by the company, at the request of members with a total of 5 per cent of voting shares, or 100 members entitled to vote at the annual general meeting (the 100 member rule). The Bill removes the 100 member rule from section 249D of the Corporations Act 2001. Note however, 100 shareholders will continue to be able to put a resolution on the agenda of general meetings and circulate material at the expense of the company. Also if a request was made before 19 March 2015, this must be actioned by the company and is not affected by these amendments.

Auditor appointment requirements of certain companies limited by guarantee

In 2010, the Corporations Act was amended removing the need for certain companies limited by guarantee to have their financial reports audited, in order to reflect their limited resources. The current change exempts small companies limited by guarantee, and companies limited by guarantee that elect to have their financial statements reviewed rather than audited, from the need to appoint or maintain an auditor. All other public companies are required to appoint and retain an auditor.

Determining a company's financial year

There is no change to the operation of the law, however, the amended Corporations Act 2001 seeks to put beyond doubt that directors may determine that a financial year is shorter than 12 months by more than 7 days irrespective whether, during an entity's previous 5 financial years, the directors have determined that the financial year is shorter than 12 months:

- by up to 7 days; or
- to synchronise the financial year to prepare consolidated financial statements.

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