



## Heads Up

# Proposed amendments to the *Corporations Act 2001* – Remuneration report disclosures, dividends test and other amendments

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### “In summary”

The Parliamentary Secretary to the Treasurer recently released exposure draft legislation and explanatory material to amend the remuneration report disclosures, the dividends test along with other amendments in the *Corporations Act 2001*.

The exposure draft proposes the following key changes:

- amending the dividends test and related disclosures by:
  - repealing the current dividends (net assets) test and replacing it with a dividends test based on pure solvency
  - exempting dividend payments from the capital maintenance provisions to the extent that they are ‘equal reductions’ in capital
  - requiring disclosure of details about the source of dividends paid and the company’s dividend policy in the Annual Director’s Report when paid out of sources other than profits
- amending the remuneration report application and disclosures by:
  - limiting the requirement to prepare a remuneration report to only listed disclosing entities that are companies
  - requiring companies to include a general description of their remuneration governance framework, to the extent that it is not included elsewhere in the annual report
  - 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
- minor technical amendment clarifying that directors may vary the financial year of the company by up to 7 days, regardless of the length of previous financial years.

The application date of the amendments has yet to be determined.

The comment period for the exposure draft ends on 16 May 2014.

### **Dividends test and related disclosures**

Section 254T of the *Corporations Act 2001* currently provides that dividends may not be paid unless certain conditions are met, including that a company has positive net assets following the payment of a dividend, that the payment is fair and reasonable, and that the payment does not materially prejudice the company's ability to pay its creditors (collectively, the net assets test).

The exposure draft proposes to replace the net assets test with a pure solvency test, and exempts dividend payments from the capital maintenance provisions to the extent that they are 'equal reductions' in capital. The exposure draft further proposes to require directors to include details about the source of dividends paid and the company's dividend policy in the Annual Director's Report when paid out of sources other than profits.

### **Remuneration report application and disclosures**

The exposure draft proposes that the requirement to prepare a remuneration report should be limited to only listed disclosing entities that are companies. Section 300A of the *Corporations Act 2001* currently applies to disclosing entities [listed and unlisted] that are companies.

The exposure draft also proposes the following disclosure amendments:

- requiring a general description of their remuneration framework, to the extent that it is not included elsewhere in the annual report.
- 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.

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

The current *Corporations Act 2001* requires 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 exposure draft proposes to remove the 100 member rule from section 249D of the *Corporations Act 2001*.

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

The exposure draft proposes to exempt 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.

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### **Determining a company's financial year**

The exposure draft does not change the operation of the current law. However, it seeks to put beyond doubt that directors may vary the financial year of the company by up to 7 days, regardless of the length of previous financial years.

### **External links**

- [Treasury website](#)

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