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Heads Up

Proposed amendments to the dividends test under section 254T of the *Corporations Act 2001*

Contents

"In summary"

The Parliamentary Secretary to the Treasurer recently released exposure draft legislation and explanatory material to amend the test for the payment of dividends under section 254T of the *Corporations Act 2001*.

The exposure draft proposes that the current dividends test be repealed and replaced with a dividends test that allows companies to:

- apply the dividends test immediately before declaration of the dividend or immediately before payment of the dividend, as appropriate, consistent with the *Corporations Act 2001* dividend provisions and company practice
- calculate assets and liabilities, for the purpose of the dividends test, in accordance with the accounting records of the company (that are required to be kept under section 286 of the *Corporations Act 2001*) in circumstances where the company is not required to prepare a financial report.

  For companies that are required to prepare a financial report, assets and liabilities must be calculated in accordance with Accounting Standards (consistent with the current dividends test).

If enacted, the amendments would commence on the day the Act receives Royal Assent.

The comment period for the exposure draft ends on 15 March 2013

Proposed new dividends test

254T Circumstances in which a dividend may be declared or paid

Declaration of dividends

(1) A company must not declare a dividend unless, immediately before the dividend is declared:

(a) the company's assets exceed its liabilities, and the excess is sufficient for the payment of the dividend; and

(b) the directors of the company reasonably believe that the company will, immediately after the dividend is declared, be solvent.

Note: For a director's duty to prevent insolvent trading on payment of dividends, see section 588G.

Proposed new dividends test (cont'd)

Payment of dividends without declaration

(2) A company must not pay a dividend unless, immediately before the dividend is paid:

(a) the company's assets exceed its liabilities, and the excess is sufficient for the payment of the dividend; and

(b) the directors of the company reasonably believe that the company will, immediately after the dividend is paid, be solvent.

Note: For a director's duty to prevent insolvent trading on payment of dividends, see section 588G.

(3) Subsection (2) does not apply to a dividend that is declared.

Calculation of assets and liabilities

(4) The assets and liabilities of a company at a particular time are to be calculated for the purposes of this section in accordance with:

(a) if the company is required to prepare a financial report, for the financial year during which the time occurs, that complies with one or more of the accounting standards — accounting standards in force at that time; or

(b) otherwise — the financial records of the company.

External links

- Treasury website