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12 May 2014

Manager
Corporations & Capital Markets Division
Markets Group
The Treasury
Langton Crescent
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Email: corporations.amendments@treasury.gov.au

Dear Sir / Madam,

Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014

The Australian Institute of Company Directors welcomes the opportunity to comment on the Exposure Draft of the Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014 (Exposure Draft). This Exposure Draft sets out proposed amendments to the '100 member rule', dividends test and disclosures in the remuneration report.

The Australian Institute of Company Directors (Company Directors) is one of the two largest member-based director associations worldwide, with individual members from a wide range of corporations; publicly-listed companies, private companies, not-for-profit organisations, charities and government and semi-government bodies. As the principal Australian professional body representing a diverse membership of directors, we offer world class education services and provide a broad-based director perspective to current director issues in the policy debate.

1. Summary

In summary, Company Directors comments on the Exposure Draft are as follows:

(a) we support the proposed removal of the '100 member' rule in section 249D(1)(b) of the Corporations Act 2001 (C'th) (the Act);

(b) we support the proposed amendments to the test for the payment of dividends to an express solvency test with the removal of the need for assets to exceed liabilities when declaring or determining dividends;

(c) we support the proposed amendments to the remuneration report; and

(d) without stalling the proposed amendments on the remuneration report in this Exposure Draft, we encourage Treasury to review all disclosures relating to this report as it is overly complex and of little value to shareholders.

2. Removal of the 100 member rule

Company Directors has long advocated for the removal of section 249D(1)(b) of the Corporations Act which allows 100 members of a company to requisition an extraordinary

general meeting of the company. We therefore support the removal of section 249D(1)(b) of the Act as proposed by the Exposure Draft.

The removal of the '100 member rule' would provide a good example of the type of deregulation that would allow business to operate more efficiently, without compromising the fundamental rights of shareholders.

We note that the removal of the 100 member rule would not in any way diminish the existing right of 100 members to raise concerns about the company by requesting that:

- a resolution be placed on the agenda for a company's general meeting (section 249N(1)((b) of the Act); and/or
- the company distribute statements to all of its members about a resolution or a matter that may be properly considered at a general meeting (sections 249P(2)(b) of the Act).

It would also not the diminish the right of 5% of members to requisition an extraordinary general meeting (section 249D of the Act), place resolutions on the agenda for the company's annual general meeting (section 249N(1)(a) of the Act) or request the company to distribute statements to all of its members (sections 249P(2)(a) of the Act).

We consider that these provisions protect the rights of small groups of members to express their concerns. In our view, the need to encourage shareholder participation must be balanced against the need to manage the associated costs to the company and, therefore, the body of shareholders as a whole. The right of 100 members to call an extraordinary general meeting does not represent an appropriate balance. This is particularly the case, when those who have called an extraordinary general meeting do not expect that the resolutions put forward at the extraordinary general meeting will carry.

The cost to the company of being required to call and convene an extraordinary general meeting can by some accounts range from $500,000 to over $1 million, excessive figures when the general meeting is unlikely to achieve any tangible outcome. These figures also do not include the unquantifiable and intangible costs to companies created by these requisitions, including the distraction to board and management and the time taken away from engaging with shareholders that have an economic stake in the company and that have legitimate corporate governance concerns.

We continue to be of the view that it is unreasonable to put corporations and their members to the expense of holding an extraordinary general meeting, especially when the majority of those members are not expected to support the resolutions put forward at the general meeting.

We support the removal of the '100 member rule' proposed by the Exposure Draft and congratulate the Government for putting forward a reform that preserves shareholder democracy while at the same time reduces the costs to companies, the wider body of shareholders and Australia's superannuants.

3. The test for payment of dividends (section 254T)

Company Directors has consistently advocated for the need to have an express solvency test for the payment of dividends, as such we support the proposed amendments to section 254T and associated sections within the Corporations Act as set out in the Exposure Draft.

In our view, the current test under section 254T of the Act, perpetuates the failings of the original profits test. By decoupling the dividends test from the accounting standards and creating a clear link to the consideration of solvency when paying dividends, these amendments will enable entities that have sufficient cash resources to pay dividends to their shareholders.

By removing the link to the accounting standards, those organisations that were not required to prepare financial statements will no longer be required to prepare a balance sheet in accordance with the accounting standards when considering declaring or determining a dividend, this is likely to reduce the regulatory burden on these entities.

Further, Company Directors encourages Treasury to work with the Australian Tax Office to remove the inconsistencies between the Corporations Act and the Income Tax Assessment Act with respect to how dividends are determined for tax purposes.

4. Improving disclosure requirements in Remuneration Reports for disclosing entities (section 300A)

Company Directors is supportive of the proposed amendments to the remuneration report set out in the Exposure Draft. We are of the view that these changes will assist in reducing the regulatory burden of those entities required to prepare remuneration reports.

In our previous submission to Treasury on 14 March 2013[1], we recommended that the reference to the remuneration governance framework be extended beyond the finance report and directors' report, as this information may not typically be included within these reports but may be included elsewhere within the broader annual report. As such we recommended that the proposed legislation be amended to allow for those instances where this information is in fact disclosed elsewhere within the annual report.

Finally, but as a separate exercise, we strongly encourage Treasury to consider revisiting all disclosures within a remuneration report, as the remuneration report continues to be unduly complex and place a significant burden on preparers resulting in information that is of very limited used to shareholders and other users. In doing so, Treasury may wish to consider the proposals put forward in Company Directors *Position Paper No.15 Remuneration Reports*[2] which makes a number of recommendations for change which will make remuneration reports easier to prepare and more useful to readers.

We would be happy to elaborate on any of the points made in this submission should this be required. If you would like to discuss any aspect of our views, please contact us on (02) 8248 6600.

Yours sincerely,

John H C Colvin
Chief Executive Officer &
Managing Director

[1] available at www.companydirectors.com.au

[2] Position Paper 15, Remuneration Reports, available at www.companydirectors.com.au