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The Manager
Corporate Governance and Reporting Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600
Corporations.Amendments@treasury.gov.au

Dear Sir/Madam

Response to Draft Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014

Ernst & Young is pleased to submit its comments on the proposed Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014.

We agree that certain provisions require reform and have set out our response to the draft amendments in this letter.

In summary:

- We support the proposals to move from a net assets test to a solvency test for dividends.
- We reiterate our previously expressed concerns related to the continued uncertainty regarding the tax treatment of dividends.
- We recommend that clarification is provided as to when a distribution may be a reduction of capital in the first place and therefore the tests in S254TA are to be applied. .
- We do not support the disclosure of the source of dividends paid otherwise than out of profits.
- We do not support an additional legislative disclosure requirement for the remuneration governance framework given current practice and the ASX Corporate Governance Principles and Recommendations.
- We support the relief for unlisted disclosing entity companies from the obligation to prepare a remuneration report, and urge the government to provide the relief for the current financial year.

Amendments to the Dividend Test

We support the proposals to move from a net assets test to a solvency test.

We reiterate our concerns expressed in our letter dated 13 March 2013 about the continued uncertainty relating to the tax treatment of dividends. The June 2012 Tax Ruling TR 2012/5 applies a profits test for tax purposes for both the classification of receipts by shareholder as an income or capital return, and for determining whether dividends carry franking credits. Resolution of the interaction between the Corporations Act and the tax requirements is still required to provide the desired flexibility and certainty around the payment of dividends.

Capital Maintenance Provisions

We note that the proposals attempt to resolve the uncertainty regarding whether a payment or distribution from a company is a dividend or a return of capital and consequently, which requirements of the Corporations Act must be followed.

However, there is current difference of views as to what is a 'reduction of share capital' and therefore consideration as to whether Chapter 2J is to be applied. We don't believe the proposals help with this distinction. That is, what is a 'reduction of share capital', and therefore when does S254TA have to be applied?

In applying the proposed S254TA, different views are emerging as to what (c) (i) means. Does this mean that each class of ordinary share must have an entitlement to dividends, but each individual entitlement could differ – for example Class A have a 3c entitlement while Class B have a 4c entitlement? Or does it mean that some classes of shares can have a dividend entitlement – for example Class A have an entitlement to dividends while Class B doesn't?

We note that the proposed S254TA, once it is determined that there is reduction of share capital, will generally mean that preference shares and other classes of shares with different entitlements will require shareholder approval. While we don't object to this, we do note that the existence of such items are not uncommon.

Disclosure of the source of dividends paid otherwise than out of profits (S300(1)(a) and S300(1)(b))

We do not support this change.

As noted above, we believe proposals linking dividends to "profits" is contrary to previous amendments and proposals.

Our main objection is related to the uncertainty as to what "profits" mean (as outlined in our previous submission to Treasury dated 15 March 2013). The concept is not always interpreted as accounting profits or retained earnings. Companies will be required to determine what amount is "out of profits", the outcome of which would vary depending on the interpretation of the term "profits". Inconsistent interpretations will reduce the value of any such additional disclosures.

We do not believe that the disclosures will be effective as most companies (more than 98%) do not prepare statutory financial reports.

For those companies that do report, we do not believe that the disclosures will provide additional relevant information to shareholders.

The amended disclosures require a description of the board policy for determining the amount and source of dividends paid otherwise than out of profits. We believe that most boards, if they have a policy, is that their policy is to source dividends from retained earnings when possible. We do not believe including statements like these will provide additional relevant information to shareholders.

We note that shareholders, of all companies paying such dividends, and not merely those that have statutory reporting obligations, will receive tax notices regarding the tax treatment (i.e. source) of the distributions.

For companies that do have statutory reporting requirements, the financial report will show how the dividend was recognised for accounting purposes. While this treatment may differ to the tax treatment, it would appear to meet the requirements of disclosing the "source" of the dividend and therefore an additional disclosure requirement in the Directors' Report is not required.

Including additional disclosure requirements also appears contrary to the "deregulatory" focus of the proposed Bill.

Amendments to Remuneration Reporting

Remuneration Governance Framework (Section 300A(1)(a))

Need for additional disclosure

In response to the increased activity in the regulatory and legislative environments over recent years, boards are now taking a more proactive role in relation to the governance of executive remuneration issues – this includes ensuring appropriate governance processes are in place. Remuneration governance is also of increased importance to shareholders given their increased interest and influence over executive remuneration.

While we support the requirement for companies to disclose a general description of their remuneration governance framework, we do not support an additional legislative requirement. The disclosure is an existing requirement for ASX 300 companies which are governed by the ASX Corporate Governance Principles and Recommendations (which, amongst other things, incorporates governance standards relating to "fair and responsible" remuneration structures).

In our experience, a vast majority of companies already disclose a description of their remuneration governance framework.

The comments below are only applicable should the Government proceed with the proposal to legislate this disclosure.

Clarification of proposals

We recommend that the proposals are clarified to explain what additional information is required. The current disclosure requirements already relate to a "discussion of board policy for determining, or in relation to, the nature and amount (or value, as appropriate) of remuneration of the key management personnel", and "discussion of the relationship between such policy and the company's performance". The proposals refer to "the Company's process for determining remuneration…". We suggest the decision-making framework would incorporate the authority and approvals required rather than other procedural aspects (i.e. process).

Location of disclosure

We object to the proposal to allow required information for the Remuneration Report to be cross-referenced to another location.

It is generally interpreted that the Remuneration Report is self-contained, as it is subject to a shareholder's resolution. We note that the provisions allowing certain information in the Directors' Report to be cross-referenced elsewhere do not apply to the Remuneration Report.

While we support the intention of the proposals to not avoid duplication of the information, we do not believe the proposals will be effective. Firstly, they do not allow cross-reference to the ASX Corporate Governance Statement, where the information is usually contained, and which is usually located outside the statutory Financial Report and Directors' Report.

Even if the cross-reference relief was extended to non-statutory information, such as the ASX Corporate Governance Statement, we highlight that following recent changes, the ASX Corporate Governance Statement may be located on a company's website rather than in the Annual Report. The impact for determining compliance with the statutory remuneration report, the auditing requirement for that report, and related shareholder voting is unclear.

We also believe that the wording as proposed may be interpreted by some people as allowing cross-referencing of other information out of the remuneration report, raising similar issues.

Removal of the requirement to disclose the value of options lapsed to KMP

We support the changes to S300A(1)(e)(iv). While we would prefer the amendments to be implemented as early as possible, we acknowledge that the amendments require the disclosure of different information and do not wish companies to inadvertently breach the amendment requirements if they are introduced on short notice.

We recommend that the requirement to disclose the 'year in which the options are granted' be altered to refer to the 'grant date' to allow better identification of which series of options has lapsed, and to be consistent with the disclosures for the Remuneration Report under Corporations Regulation 2M.3.03 subregulation (1) Item 12.

If the reference to 'year' is retained, we recommend that it be changed to the "financial year" in which the options were granted. This will minimise uncertainty as to whether "year" means calendar year or financial year. The use of financial year will allow users to reference information regarding the issue at grant date that was disclosed in the Remuneration Report for that company (if it was listed at that time) or Directors' Report.

We also recommend that the reference to options (lapsed) be expanded to options and rights, consistent with the wording in Corporations Regulation 2M.3.03.

Other Measures

We support other relief measures in relation to:

- the relief for certain disclosing entities from the obligation to prepare a remuneration report;
- the exemption of certain companies limited by guarantee from the need to appoint an auditor; and
- the amendment to vary the financial year by up to 7 days regardless of the length of previous years.

Application Date

We recommend that the provisions providing disclosure relief be implemented as soon as possible, consistent with the Government's intention of reducing the compliance costs for business.

The provisions for relief include the removal of the requirement for unlisted disclosing companies from having to prepare a remuneration report and the removal of the disclosure of "the percentage of the value of the person's remuneration for the financial year that consists of options".

As currently drafted, if the legislation is passed before 30 June 2014, unlisted disclosing companies will unnecessarily have to incur the compliance costs and prepare a remuneration report for the year ended 30 June 2014.

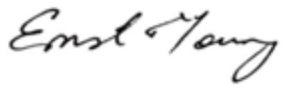
As currently drafted, if the legislation is passed after 30 June 2014, companies with a 30 June year end will also incur the additional costs for the 30 June 2015 financial year, and will not receive relief until 30 June 2016.

We recommend the application date for these relief provisions be altered to financial years ending on or after the commencement date of the legislation, whether it is passed before or after 30 June 2014.

For those provisions that change disclosures (details of lapsed options and remuneration governance framework), we agree with the proposed commencement date of financial years that commence on or after the commencement of the legislation.

Should you wish to discuss the contents of this letter with us, please contact David Hardidge – Executive Director, Financial Accounting Advisory Services on 07 3011 3104 / david.hardidge@au.ey.com or Lynda Tomkins – Partner, Australian IFRS Leader on 02 9276 9605 / lynda.tomkins@au.ey.com

Yours faithfully



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