

EXPLANATORY MEMORANDUM

Minute No. _____ of 2012 – Parliamentary Secretary to the Treasurer

Subject - *Corporations Act 2001*

Corporations Amendment Regulation 2012 (No.)

Subsection 1364(1) of the *Corporations Act 2001* (the Corporations Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Corporations Act to be prescribed by regulations, or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Act.

The Corporations Legislation Amendment (Audit Enhancement) Bill 2012 (the Audit Enhancement Bill) proposes a number of amendments to Australia's audit regulation framework.

The Audit Enhancement Bill will insert Part 2M.4A into the Corporations Act. Part 2M.4A will provide that an auditor must publish an annual transparency report if, during a transparency reporting year, they conduct audits of 10 or more bodies of any of the following kinds: listed companies; listed registered schemes; authorised deposit-taking institutions; and insurance companies.

Part 2M.4A will include Section 332B, which will provide that an annual transparency report must contain information prescribed by the Regulations. The purpose of the proposed Regulation is to prescribe the information that must be included in an annual transparency report.

The proposed Regulation would specify that an annual transparency report must contain:

- information about the auditor's legal structure and ownership;
- where the auditor belongs to a network, information about the network and the legal and structural arrangements in the network;
- information about the auditor's governance structure;
- information about the internal quality control system of the auditor;
- details of when the last reviews of the auditor took place;
- the names of entities of audited;
- information about the auditor's independence practices;
- the auditor's continuing professional development policy;
- summary financial information for the auditor; and
- information regarding executive remuneration.

Details of the proposed Regulation are set out in Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

The proposed Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulation would commence on the commencement of Schedule 1 to the *Corporations Legislation Amendment (Audit Enhancement) Act 2012*, to coincide with the commencement of Part 2M.4A of the Corporations Act.

The proposed Regulation would apply in relation to annual transparency reports for the transparency reporting year in which Schedule 1 to the *Corporations Legislation Amendment (Audit Enhancement) Act 2012* commences and all later transparency reporting years.

The Minute recommends that the Regulation be made in the form proposed.

Authority: Section 332B of the *Corporations Act 2001*

ATTACHMENT A

Details of the proposed *Corporations Amendment Regulation 2012 (No.)*

Regulation 1 – Name of Regulation

This regulation provides that the title of the Regulation is the *Corporations Amendment Regulations 2012 (No.)*.

Regulation 2 – Commencement

This regulation provides for the Regulation to commence on the commencement of Schedule 1 to the *Corporations Legislation Amendment (Audit Enhancement) Act 2012*, to coincide with the commencement of Part 2M.4A of the *Corporations Act 2001* (the Corporations Act). Part 2M.4A will require certain firms to publish an annual transparency report and provide authority for the proposed Regulation to specify the information required in an annual transparency report.

Regulation 3 – Amendment of *Corporations Regulations 2001*

This regulation provides that the *Corporations Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Part 2M.4A

This item inserts Part 2M.4A after Part 2M.4.

Part 2M.4A.01 will specify that the amendments apply in relation to annual transparency reports for the transparency reporting year in which Schedule 1 to the *Corporations Legislation Amendment (Audit Enhancement) Act 2012* commences and all later transparency reporting years.

A transparency reporting year is a period of 12 months starting on 1 July. The definition of a transparency reporting year will be inserted in section 9 of the Corporations Act by the Corporations Legislation Amendment (Audit Enhancement) Bill (the Audit Enhancement Bill).

Part 2M.4A.02 will specify that the information that an annual transparency report must contain is set out in Schedule 7A. It will also specify that Part 2 of Schedule 7A relates to the requirements for an audit firm or authorised audit company, and that Part 3 relates to the requirements for an individual auditor.

Item [2] – Schedule 7A

This item inserts Schedule 7A after Schedule 7 to specify the information that must be contained in an annual transparency report.

The information required is broadly similar to that required in an annual transparency report in the European Union (EU), as set out in Article 40 of the EU's Statutory Audit Directive.

The EU was the first jurisdiction to require audit firms to publish annual transparency reports. The United States (US) now also requires audit firms to publish annual transparency reports, requiring similar information to that required in the EU. Basing the Australian requirements on the EU requirements will ensure that Australia's requirements are in line with international best practice and will minimise the compliance burden on multinational audit firms that are required to publish transparency reports in multiple jurisdictions.

When audit firms perform audits of significant entities, there are a number of parties that have an interest in the operations of the audit firm. However, because Australia's larger audit firms are usually structured as partnerships, minimal information about their ownership, governance, business structure and activities is publicly available. The type of information required in an annual transparency report is intended to provide existing and potential clients, and stakeholders that rely on the audit report of a significant entity with factual information about operation of the audit firm.

Part 1 of Schedule 7A will define key terms used in the schedule. The terms that are defined are:

- 'management body' – in the case of an authorised audit company, the Board of Directors; and
- 'relevant transparency reporting year' – the transparency reporting year to which an annual transparency report relates. 'Transparency reporting year' will be defined in subsection 332(2) of the Corporations Act, which will be inserted by the Audit Enhancement Bill.

Other terms and expressions have the same meaning given by the Corporations Act. These include:

- annual transparency report;
- audit;
- audit activity;
- authorised audit company;
- audit firm;
- director;
- engage in audit activity;
- financial year;
- individual auditor;
- non-audit services provider;
- professional accounting body;
- professional member of an audit team;
- remuneration;
- transparency reporting auditor; and
- transparency reporting year.

Part 2 of Schedule 7A will prescribe the information that a transparency reporting auditor must include in the annual transparency report if they are an audit firm or an authorised audit company. The transparency reporting auditor must provide:

- a description of their legal structure and ownership;
- if they belong to a network, a description of the network, the legal arrangements of the network and the structure arrangements of the network;
- a description of their governance structure;
- a description of their internal control system;
- a statement from their administrative or management body on the effectiveness of the functioning of the internal quality control system during the year to which the report relates;
- the name of each body that is authorised to review the auditor (for example, ASIC or a professional accounting body) and the date of the most recent review conducted by those bodies;
- the names of the listed companies, listed registered schemes, authorised deposit-taking institutions and insurance companies for which they have conducted an audit under Division 3 of Part 2M.3 of the Corporations Act during the year to which the transparency report relates (that is, bodies of the kinds that will be mentioned in subsection 332A(1) of the Corporations Act as qualifying an auditor for the transparency report requirements);
- a statement about their independence practices in the year to which the report relates, including the date they most recently conducted an internal review of their independence compliance and the outcome of that review;
- a statement about their policy regarding the minimum amount and nature of continuing and professional education that the professional members of the audit team must undertake during the year to which the transparency report relates;
- financial information for the year to which the report relates, including total revenue, and fees received for audits of financial statements and other services provided by the auditor; and
- information concerning the basis for remuneration of the partners or directors.

Part 3 of Schedule 7A will prescribe information that a transparency reporting auditor must include in the annual transparency report if they are an individual auditor. This information is broadly the same as that required for audit firms and authorised audit companies in Part 2 of Schedule 7A. The transparency reporting auditor must provide:

- if they belong to a network, a description of the network, the legal arrangements of the network and the structure arrangements of the network;
- a description of their internal control system;
- the name of each body that is authorised to review the auditor (for example, ASIC or a professional accounting body) and the date of the most recent review conducted by those bodies;
- the names of the listed companies, listed registered schemes, authorised deposit-taking institutions and insurance companies for which they have

conducted an audit under Division 3 of Part 2M.3 of the Corporations Act during the year to which the transparency report relates (that is, bodies of the kinds that will be mentioned in subsection 332A(1) of the Corporations Act as qualifying an auditor for the transparency report requirements);

- a statement that sets out their independence practices in the year to which the report relates; and
- financial information for the year to which the report relates, including total revenue, and fees received for audits of financial statements and other services provided by the auditor.

Some requirements that apply to audit firms and authorised audit companies are not able to be applied to individual auditors because they relate specifically to the structure or operations of a firm or company. For example, individual auditors are not required to provide information on the latest internal review of their auditor independence practices because it is not possible for an individual to conduct an internal review of themselves.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations Amendment Regulation 2012 (No.)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to specify the information that must be included in an annual transparency report, where an auditor or audit firm is required to publish an annual transparency report by Part 2M.4A of the *Corporations Act 2001*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.