

Test for payment of dividends

The paper presents four options to deal with the dividend test in s254T:

- Option 1: Retain net assets test as is. We don't think we would have a big issue with this. The concerns relating to companies that don't have to comply with accounting standards should be less applicable for us.
- Option 2: Adopting a solvency test, in addition to the net assets test. We see this option as less desirable. There are already obligations on directors to prevent insolvent trading (s588G), including through payment of dividends, and I think this option has the potential to reduce clarity about exactly what duties apply.
- Option 3: Reinstating the profits test. Again, we don't think we would have a big issue with this.
- Option 4: Retaining the net asset test and reinstating the profits test, as alternatives. We think this would probably be the best option from an internal perspective. It provides the greatest flexibility and somewhat reduces the potential for dividend traps in the group. The potential downside is that the greater flexibility could lead to profits being paid out in borderline situations, which might concern us more as a lender, although you would expect that appropriately structured covenants should give us some protection.

Other Corporations Act issues

- Use of "declared" in s254T. We'd support Treasury's view that there is merit in incorporating language reflecting the fact that dividends can either be "declared" or "determined".
- Capital maintenance. We think Treasury is right that the provisions work as they are, but it wouldn't hurt to add a note to the legislation, as they suggest.
- Application of test to group companies. Treasury has asked whether there is merit to clarifying the manner in which the net assets test applies to group companies. We think that this is already clear.

Parent entity reporting requirements

- We support Treasury's view that s295(2) should be amended, so that a company that is required to present consolidated financial statements is also able to include single parent entity financial statements as part of its financial report. We don't think there need be any restrictions on the circumstances in which an entity may decide to prepare parent entity financial statements.

Changing financial year

- We support Treasury's proposal to fix up the inconsistency in the legislation

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