

General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

27 January 2011

Dear Sir/Madam

Re: Exposure Draft – Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011

We appreciate the opportunity to respond to the Exposure Draft – Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011 (“the Bill”) as developed by The Treasury. Deloitte Touche Tohmatsu (“Deloitte” or “we”) provide remuneration consulting services to a number of entities in the market. Accordingly, our submission is focussed on sections

- 206K Engaging remuneration consultants to provide advice
- 206L Advice from remuneration consultants
- 300A(1)(h)

of the Bill as these are the sections we are most qualified to comment upon.

Section 206K Engaging remuneration consultants to provide advice and Section 206L Advice from remuneration consultants

We understand that the aim of these sections is to ensure that non-executive directors are responsible for commissioning remuneration advice in respect of Key Management Personnel (“KMP”). We do however have some concerns about the practical application of the sections as drafted in the Bill. In our opinion, it is important that the remuneration consultant be able to work efficiently with management in order to complete the tasks assigned by the board. Accordingly, we are concerned that without clearer definition, “advice” may be taken to mean any form of communication between the remuneration consultant and the client company. Preventing day to day contact with HR and other management would make completion of remuneration analyses impracticable and require non-executive board members to take an intermediary role in remuneration management which is unrealistic and many not be appropriate.

Remuneration consultants should be able to work with management in order to complete tasks assigned by the board. It would be helpful if the definition of advice is clarified so that all stakeholders understand what can be shared with whom and at what time. We understand that once advice is released to non-executive directors, nothing in the proposals prevents them from passing it to management and remuneration consultants are free to work with management as required.

Section 300A(1)(h)

We note that sections 300A(1)(h)(ii) and (iii), as drafted, require disclosure of the names of each director who executed a contract under which the remuneration consultant was engaged and the name of each person to whom the remuneration consultant directly gave the advice. Under existing legislation, the board of a company is responsible for remuneration governance in respect of KMP and this is appropriate in our view. The proposals could be seen by shareholders to move this responsibility to one or more individual directors which would be inconsistent with the collective accountability of the board and may make those individuals subject to inappropriate public scrutiny.

Section 300A(h)(iv) requires the disclosure of the nature of the advice and the principles on which it was prepared. We are concerned by this requirement for the following reason, disclosing the nature of advice provided carries the implication that advice has been followed, and that by association the named remuneration consultant carries some responsibility for the company's remuneration arrangements. Many companies commission advice from more than one consultant, and may blend advice from several sources, including management, before taking remuneration decisions.

We are unclear of the intended scope of disclosure of services required by sections 300A(h)(vi) and (vii). It would be helpful for the amendments to clarify, for example, whether disclosure is required of all remuneration services provided in respect of KMP, or all remuneration services provided by the consultant, or all services provided by the remuneration consultant's employer?

If you have any questions concerning our comments, please contact me on (02) 9322 3422.

Yours sincerely



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