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28 October 2011

The Manager
Corporate Reporting and Accountability Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
Parkes ACT 2600

Email: auditquality@treasury.gov.au

Dear Sir/ Madam,

Corporations Legislation Amendment (Audit Enhancement) Bill 2011

The Australian Institute of Company Directors welcomes the opportunity to comment on the exposure draft of the *Corporations Legislation Amendment (Audit Enhancement) Bill 2011* relating to auditor rotation requirements, annual transparency reports and amendments to the *Australian Securities and Investments Commission Act 2001* with regards to auditor independence, audit deficiency reports and communications with corporations, registered schemes and disclosing entities.

The Australian Institute of Company Directors is the second largest member-based director association worldwide, with over 30,000 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.

As directors are responsible for the company's financial reports and for the audit process, the Australian Institute of Company Directors is interested to ensure that audit quality in Australia continues to be of a high standard and that the audit regulation framework strikes the appropriate balance between business efficiency and regulatory compliance.

1. Summary

In summary, the Australian Institute of Company Directors is of the view that:

a) the board of directors should be responsible for the approval of the extension of the auditors' rotation period, up to a maximum of 7 years, and that the audit committee should merely provide a recommendation to the board thereon;
b) there should be a restriction on the amount of time that the Australian Securities and Investments Commission (ASIC) have to prepare an audit deficiency report; and

c) the audited body must receive the audit deficiency report, which is prepared by ASIC to enable them to review it prior to the report being published on ASIC's website.

2. Auditor rotation requirements

In section 324DAA of the proposed legislation sub-paragraphs (2) and (3) appear to limit the ability of a company to approve the extension of the auditors' rotation period prior to the end of the 5th successive financial year, by either 1 or 2 years. The Australian Institute of Company Directors, is of the view that the legislation should give the board of directors the ability to extend the auditors' rotation period, prior to the end of the 5th successive year by either 1 or 2 years. If the company had elected to extend by 1 year, they again should have the ability, prior to the end of the 6th successive year, to extend the period for a final additional year, thus reaching the maximum threshold of 7 years.

The proposed legislation states that in instances where a listed company or a registered listed scheme has an audit committee, the board of directors can only extend the rotation period if the "the approval is consistent with the audit committee's recommendation"[1]. In other words, if the audit committee makes a positive recommendation the board is free to accept or reject it. However, if the audit committee makes a negative recommendation (i.e. not to extend the rotation period) the board is not free to accept or reject it. The board *must* accept the recommendation and not extend the period. The Australian Institute of Company Directors believes that this limits the ability of the directors if they disagree with the recommendation of the audit committee, to act in the best interests of the company.

To ensure that there is no conflict between these provisions and the directors' ability to make decisions in the best interests of the company; we propose that the legislation be amended. The amendments should give the board of directors the responsibility for approving the extension of the auditor rotation period and provide the audit committee with the ability to merely provide a recommendation to the board, which if provided, must be considered by the board. The board, not the audit committee, must be the entity that makes the decision on whether to extend the rotation period or not.

3. Transparency Reports for Auditors

Section 332A(2) of the proposed legislation makes reference to "year", however section 332A(1) makes reference to "calendar year", this could result in confusion as to over which period the annual transparency report should be prepared. The Australian Institute of Company Directors is of the view that the legislation should be amended to ensure consistency of the period over which the transparency report is required to be prepared. This will ensure that there is no confusion as to which period the annual transparency report relates to especially given the fact that failure to comply with this section is a strict liability offence on the auditor. Consideration should also be given to whether the preparation of the annual transparency report should be aligned with the financial year end of the individual audit firm.

4. Audit Deficiency Report

The Australian Institute of Company Directors is concerned about the definition of an "identified audit deficiency" in section 50A(1)(a) of the proposed legislation. As ASIC is

[1] Subsection 324DAB(2)(a)

not a court or tribunal, even if ASIC asserts there has been an audit deficiency, a court or tribunal may make a different finding. That is, the identified audit deficiency referred to in this part, is only an audit deficiency in ASIC's view. We therefore propose that the legislation be amended to ensure that the audit deficiency definition clearly states that the deficiency is merely the opinion of ASIC.

Section 50B(2)(b) of the proposed legislation gives the auditors 6 months to make written submissions and representations to ASIC in response to the alleged audit deficiency. The Australian Institute of Company Directors feel that 6 months is too protracted a period, and would recommend that the legislation be amended to a 3 month period.

The proposed legislation in section 50C(1) does not provide a time limit for ASIC in the preparation of their audit deficiency report. We believe that ASIC should also be required to prepare this report within 3 months after the expiry of the auditors' response period to the alleged audit deficiency.

Although the proposed legislation in section 50D(2)(c) states that an audit deficiency report must not disclose identifying particulars of the audited body. Currently under the proposed legislation there is no requirement that the audited body be provided with a copy of the report prior to publication on ASIC's website. The Australian Institute of Company Directors, is of the view that the legislation should be amended to ensure that a copy of the audit deficiency report must be provided to the audited body, to enable them to review it prior to publication of the report on ASIC's website.

5. Communications with Corporations, Registered Schemes and Disclosing Entities

The Australian Institute of Company Directors believe that ASIC must be required to communicate with the audited body that is subject to an audit deficiency review. Section 127(2D) appears to leave this communication to the discretion of ASIC.

In the event that ASIC does communicate with an audited body under section 127(2D), the exposure draft and the explanatory memorandum should make clear whether it is intended that the information provided is subject to any confidentiality restrictions once in the hands of the company. The extent to which the information, is or is not confidential, may impact upon the directors' assessment of whether any continuous disclosure obligations are triggered when the information is given to the company.

We hope that our comments will be of assistance to you. If you would like to discuss any of our views please contact me or Nicola Steele on (02) 8248 6600.

Yours sincerely

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John H C Colvin

CEO & Managing Director