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Our ref Corporations Regulations 2013
Submission Final
Contact Sarah J Inglis (+61 2 9455 9773)

14 May 2013

Dear Sir/Madam

Submission - Exposure Draft - Corporations Legislation Amendment Regulation 2013

We are pleased to have the opportunity to comment on the Exposure Draft on the proposed *Corporations Legislation Amendment Regulation 2013* as released by the Parliamentary Secretary to the Treasurer.

Executive summary

We understand the introduction of the proposed Regulation amendments is an interim measure to prevent a disclosure gap. However, we are disappointed that the opportunity to really reconsider whether all these disclosures are required has not been taken, as we are not certain there is a disclosure gap that needs to be addressed if the current AASB 124 Aus29 disclosures are not transferred to the Remuneration Report. In connection with related party transactions with key management personnel any discount to market will generally be reflected in remuneration of the KMP and AASB 124 will require disclosure of the entire transaction at the aggregate of KMP level in the notes to the financial statements. In our view unless investors/users are clearly asking for the additional information by individual KMP then removal of these individual disclosures would result in a reduction of the regulatory burden.

Our main concerns with the proposed amendments include:

- The inconsistency in the definition of related party in AASB 124 with the disclosures in the proposed Regulation amendment.
- The apparent expansion of the level of disclosure required, compared to the current requirements of AASB 124, when the intent of Treasury is to only prevent a disclosure gap.
- Duplication and overlap of the proposed amendments to the Regulation with existing disclosures in the Remuneration report.



*Corporate Governance and Reporting Unit
Submission - Exposure Draft - Corporations
Legislation Amendment Regulation 2013
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We also call to your attention certain drafting comments.

We would be pleased to discuss our comments with staff of Treasury. If you wish to do so, please contact Sarah Inglis on (02) 9455 9773 or me on (03) 9288 5297.

Yours sincerely

A handwritten signature in black ink that reads 'K. E. Peach'.

Kris Peach
Partner

Appendix

Given the current Remuneration report disclosures required by S300A of the *Corporations Act 2001* and Corporations Regulation 2M.3.03, and the disclosures about transactions with key management personnel (KMP) as a group that are required in the notes to the financial statements by AASB 124, we do not believe that all of the disclosures proposed by the Regulation amendments are necessary. If, however, the decision is to include all of the disclosures as proposed, the following issues need to be addressed:

Disclosures that are not related party transactions

With effect from 1 January 2011, AASB 124 was amended to change the definition of related party to clarify that entities significantly influenced by one person and entities significantly influenced by that person or a close member of the family of that person are no longer related parties of each other. The AASB 124 amendment aligned to an amendment in the international equivalent standard. The change meant that if two entities are both subject to significant influence by the same entity (or person), the two entities are not related to each other. The amendment also meant that an entity over which a person is a KMP is not a related party of an entity over which that KMP, or a close family member of the KMP, has significant influence.

However, this change in definition did not flow through to the Australian specific paragraphs dealing with KMP and their related party transactions, (which are the paragraphs that are proposed in Items 17, 18, 19 and 21, Subregulation 3A, and either Item 24 or Subregulation 3C). This led to an inconsistency between the scope of transactions captured by the AASB 124 Aus29 paragraphs and the international version of the standard. We believe this inconsistency was unintentional. If the AASB had not withdrawn the Australian-specific paragraphs, we would have proposed they be amended to be consistent with the international version.

KPMG recommendation

This inconsistency in the definition of related party should be removed. This can be achieved in the proposed amendments to the Regulation by removing the words '*or significant influence*' from each of the lead-in paragraphs on the left side of the table for Items 17, 18, 19 and 21, Subregulation 3A and either Item 24 or Subregulation 3C (refer comment on Item 24 and Subregulation 3C below), i.e. leave the relationship to be one of control or joint control only.

Expanding the level of detail disclosure in respect of loans and other transactions

As drafted, the proposed Regulation amendments appear to increase the level of disclosure required for loans and other transactions with KMP. In addition, the requirements of Item 20 do not appear logical when read in the context in which the items of Regulation 2M.3.03 are required to be disclosed.

Disclosing loans to KMP

The context is: 'For paragraph 300A(1)(c) of the Act, the details set out in the table *relating to a person* are prescribed' (emphasis added). The requirement of Item 20, however, leads in by requiring 'For each aggregate of loans made ... in relation to *any of the persons...*'. It then goes

on to require in Item 20(g) 'the number of persons included in the group aggregate at the end of the reporting period'. The requirements of AASB 124 paragraph Aus 29.8.1 appear to have been moved into the Regulation without proper regard for the individual disclosure context required by the Regulation.

As the drafting currently stands, it would appear that more disclosure would be required by Item 20 than is currently required by AASB 124. Item 20 appears to require the disclosures for every loan to every person regardless of the size of the loan. Under the original AASB 124 Aus 29.8-29.8.1, the disclosures are provided in aggregate for all key management personnel, supplemented with individual disclosure only if an individual's aggregate loan(s) exceeded \$100,000 at any time of the year.

KPMG recommendation

The lead in for Item 20 and Subregulation 3A need to be clarified so that preparers understand whether the disclosures are meant to be in respect of every loan for each individual person, or at an aggregated level for all KMP as a group. If the intention is to continue with the level of disclosure required under AASB 124, then the drafting needs to be revised to make this clear. Without a clear information gap having been identified by investors about the current level of disclosure, we do not agree with an increase in the level of disclosure.

In addition we note that if loans have been issued to KMP at a discount then this will be reflected as remuneration for each individual KMP and we therefore question whether having detailed information of loans by each KMP is actually wanted by investors/users. We note that details of the loans in aggregate must be presented in the notes to the financial statement in accordance with AASB 124.18.

Disclosing other transactions with KMP

The current drafting of Items 21-23 increases the level of detailed disclosure that will be required, compared to that required by AASB 124.

For example:

- In the original AASB 124 Aus 29.9, the paragraph begins "In respect of transactions" – referring to transactions in the plural. Its equivalent in the proposed Regulation, Item 21, begins "For a transaction" – referring to each singular transaction.
- Under AASB 124 Aus 29.9.1, an entity was able to aggregate disclosures by type of transaction. However, Item 22 refers to 'each aggregate amount' disclosed under Item 21. Because the header to Item 21 refers to single transactions, it is unclear what aggregation is actually available under Items 21 and 22.
- In addition, as drafted, Item 23 seems to require disclosure of the total assets and liabilities 'for each transaction'. However, the original AASB 124 Aus 29.9.2 allowed entities to disclose these totals in respect of all transactions being disclosed, rather than each individual transaction.

KPMG recommendation

Without a clear information gap having been identified by investors about the current level of disclosure, we do not agree with an increase in the level of disclosure for other transactions. Items 21-23, and Subregulation 3C should be redrafted to more closely align to the current requirements of AASB 124 Aus29.9-29.9.3 – without an increase in the level of detail.

As noted with loans to KMP, in other related party transactions with KMP that are at a discount to market, at a minimum the discount will generally be reflected as part of their remuneration. Accordingly we question whether detailed disclosures of the entire transaction by individual are warranted when AASB 124.18 requires such disclosures in the notes to the financial statements in aggregate. We strongly recommend that specific research is done with investors/users around this point.

Duplication of disclosure requirements

In the space of equity-related disclosures, we consider that there is scope for deleting duplicative Items within the Regulation.

We question whether all of Items 17(a) to (h) are necessary:

- Item 17 (b) is already required under Item 15(a)(i)
- Item 17(c) is already required by Items 15(a)(ii) (for rights) or 16(a) f(for options) of Regulation 2M.3.03
- The number of lapsed options, which would be included in the number required by Item 17(d), is already proposed to be required in the earlier proposed changes to S300A(1)(e)(iv).

Relevant disclosure would be to require Items 17(e) (options and rights held), (f) (options and rights vested) and (g) (options and rights held and exercisable) or (h) (options and rights vested and unexercisable) – by disclosing (f) and (g), (h) can be deduced; or disclosing (f) and (h), (g) can be deduced.

Similarly, we question whether of Items 18 (a) to (f) are necessary:

- Item 18(b) is already required by Item 15(a)
- Item 18(c) is already required under Item 16(a).

Relevant disclosure would be to require Items 18(e) (other equity instruments held) and (f) (other equity instruments held nominally).

Item 17(a) and 18(a) may also be relevant for disclosure if, as is currently drafted, comparative information is not required under Subregulation 2M.3.03(2).

Item 19 requires disclosures for ‘a transaction involving an equity instrument other than share-based payment compensation... if the terms or conditions of the transaction were more favourable than ... if dealing at arms-length’. The focus is on transactions with ‘more favourable terms’, which implies a share-based payment has been given through the favourable terms, which would therefore be a transaction captured by Item 15, 17 or 18. The terms and conditions are required under Item 12. We believe the disclosures required by Item 19 would therefore be disclosed under the aforementioned Items of the Regulation, and therefore Item 19 is unnecessary.

Drafting comments

In the space of equity-related disclosures, we consider that there is scope for deleting duplicative Items within the Regulation.

There appear to be a number of oversights in the drafting of the amendments to the Regulation as set out below:

- Item 18 right hand column needs to be amended to remove references to ‘Options and rights’. There appears to be a drafting error as options and rights are specifically dealt with in Item 17 and the left hand column of Item 18 refers to “any equity instrument (other than an option or a right)”.
- The exception carve-out for Items 21 to 23 appears to be duplicated. It appears once in Item 24 and again in Subregulation 2M.3.03(3C). We recommend that Item 24 be deleted and that Subregulation 2M.3.03(3C) deal with the exception carve out.
- Subregulation 2M.3.03(3) currently applies only to Items 15 and 16. The equivalent paragraph in AASB 124 Aus29.7 also applies to the amendments covered by Items 17, 18, and 19. We recommend that Subregulation 2M.3.03(3) be amended to replace “15 and 16” with “15, 16, 17, 18 and 19”.

Heading of disclosure

The heading above Item 17 is ‘*Remuneration disclosure*’. We question whether this is the appropriate heading as many of the disclosures required by the items that follow are not remuneration. We believe these disclosures are more in the nature of related party transactions with key management personnel. Remuneration disclosures have already been included in Items 6 to 16 of Regulation 2M.3.03(1). The Regulation should acknowledge this rather than continue under the current proposed heading.

KPMG recommendation

We recommend the heading above Item 17 be changed to “Related party transactions disclosures”, in order to distinguish Items 17-23 from those that are actually remuneration related.