



31 January 2012

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Dear Sir

Re: Discussion Paper: proposed amendments to the Corporations Act on dividends

We refer to the above paper and appreciate the opportunity to comment on its proposals.

We support option 2 (solvency test). Ultimately a company should be solvent, after paying a dividend or otherwise. Such a status is beneficial for creditors, employees, shareholders and the community at large.

NZ has a solvency test, which has worked in practice. This option would make the law on dividends like the law on financial assistance under section 260A(1)(a) of the Corporations Act, which has proven to be a successful reform.

As a consequence, section 254V(2) of the Act should be repealed. The crucial time in respect of solvency is immediately before a dividend is paid, not when it is declared. Section 254V should be in flexible terms like section 254U.

Similarly, section 254T should expressly state a dividend paid in accordance with the solvency test may involve a reduction of capital. This will give directors greater flexibility in capital management.

If you have any queries, please do not hesitate to contact either Peter Smiles on (02) 9375 4322 or me.

Yours faithfully

A handwritten signature in blue ink that reads 'D Ramsay'.

Duncan Ramsay
General Counsel and Company Secretary
Group Executive

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