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By email: reportingthresholds@treasury.gov.au

Dear Kate

Exposure Draft – Corporations Amendment (Proprietary Company Thresholds) Regulations 2018

Thank you for the opportunity to comment on Exposure Draft – Corporations Amendment (Proprietary Company Thresholds) Regulations 2018 (the ED).

As a short-term step, I support updating the existing enterprise size financial reporting thresholds by doubling the three criteria.

By doubling the three criteria, the financial reporting obligations applying to proprietary companies are likely to continue to target economically significant proprietary companies only.

In the medium term it may be useful for Treasury to examine whether the criteria used to determine enterprise size (and their amounts) should:

- continue to be specific to the lodgement of reports with the Australian Securities and Investment Commission (ASIC); or
- be the same as the criteria used to determine other reporting requirements of proprietary companies, for example, the criteria used to determine which proprietary companies are included in the corporate tax transparency report published the Australian Taxation Office.

The ED proposal is for the doubling of the thresholds to commence on 1 July 2019 and apply in relation to the financial years beginning on or after 1 July 2019.

It is not clear why this date is specified and not an earlier date. An earlier application date would have the benefit of delivering an earlier reduction in the reporting burden for small and medium proprietary companies.

I have also prepared some other comments for your consideration regarding the operation of the *Corporations Act 2001*.

Unlisted public companies limited by shares, public companies limited by guarantee, and small foreign proprietary companies

In the medium term it may be useful for Treasury to examine:

- whether it continues to be appropriate that unlisted public companies limited by shares have reporting obligations to ASIC regardless of enterprise size;

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- the continuing relevance of the three-tier reporting framework applying to public companies limited by guarantee (that are not charities and therefore do not report to the Australian Charities and Not-for-Profit Commission); and
- whether small foreign proprietary companies should have reporting obligations to ASIC.

Grandfathering provisions

Under subsections 319(4) – (6) of the *Corporations Law* (as preserved in the *Corporations Act 2001* through the transition provision in the table in subsection 1408(6) of the *Corporations Act 2001* subject to subsection 1408(7)), certain large proprietary companies are not required to lodge financial reports with ASIC if they meet certain conditions (exempt proprietary companies, commonly referred to as 'grandfathered' large proprietary companies).

In broad terms, exempt proprietary companies were proprietary companies where there was no direct or indirect public ownership; that is, they were essentially owned by private individuals. The companies were not required to lodge financial reports where those financial reports were subject to audit and sent to members within four months of the end of each financial year.

As you would appreciate to preserve their status, the grandfathered large proprietary companies have continuing obligations to ensure their financial reports are audited before the deadline for reporting to members and their ownership structures remain private.

ASIC Class Order (CO) 05/637 *Additional month for first financial reports under AIFRS* allowed non-disclosing entities an additional month to distribute to members their financial report for a financial year commencing between 1 January 2005 and 31 December 2005 (inclusive) and to lodge it with ASIC.

In the absence of CO 2015/840 *Corporations (Exempt Proprietary Companies) Instrument*, grandfathered large proprietary companies would have lost their grandfathered status if they took advantage of the additional time to report provided by CO 05/637.

In addition, CO 2015/840 allows certain large proprietary companies to retain their grandfathered status despite not having met the grandfathering conditions in particular circumstances that do not detract from the conditions underlying their exempt status.

The Taxation Administration Amendment (Corporate Entity Information) Bill 2018 (The Bill) Schedule 2 Parts 1 and 2 propose to repeal CO 2015/840 and subsection 1408(6) (table item 7).

The Bill Part 3 Application (1) states this item applies to a company if, immediately before the commencement of this term, the company was exempted from complying with subsection 319(1) of the *Corporations Act 2001* by CO 2015/840.

It appears that the Bill Part 3 Application applies only to those grandfathered large proprietary companies whose grandfathered status is reliant on CO 2015/840. For example, a grandfathered large proprietary company that took advantage of CO 05/637.

Conversely, it appears that The Bill Part 3 Application would not apply to all other grandfathered large companies that preserved their grandfathered status without recourse to CO 2015/840.

I support the complete removal of grandfathering:

- as a means of simplifying the law; and
- ensuring procedural fairness in its administration. It is in the public interest to ensure that the law is equitable and that large proprietary companies are treated in the same manner.

Unfortunately, as drafted, it appears that the Bill will not deliver a level playing field (i.e., some large proprietary companies will continue to not report to ASIC on the public record).

This example illustrates that the current requirements of the *Corporations Act 2001*, including their interaction with COs are not easy to understand.

Possibly, the matters identified above could be examined as part of a more holistic review the *Corporations Act 2001* as it relates to financial reporting and audit and assurance.

If you have any queries on the provided comments, please contact me at mshying@swin.edu.au.

Yours sincerely

Dr Mark Shying CA

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