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Important Amendments to the Corporation Act – Corporations Legislation Amendment (Simpler Regulatory System) Act 2007 Receives Royal Assent

On 28 June 2007, the Corporations Legislation Amendment (Simpler Regulatory System) Act 2007 (“**Amending Act**”) received royal assent bringing into effect a number of important provisions which amend the Corporations Act 2001 (Cth).

The Amending Act is intended to simply and streamline sections of the Corporations Act and reduce various regulatory burdens for companies and financial services providers. Below is a summary of a number of the key amendments made by the Amending Act.

1. Financial Services Regulation

Financial services licensees (“**FSLs**”) are no longer required to provide a statement of advice to their clients in respect of advice that:

- (a) does not recommend or state an opinion in respect of a financial product; and
- (b) in respect of which, the FSL does not receive any remuneration or other benefit in relation to the advice.

However, FSLs are still required to keep a record of the advice given.

Subject to certain conditions, a statement of advice is also no longer required where the total value of all financial investments in relation to which the advice is provided does not exceed the “threshold amount” prescribed by the regulations. It is expected that the threshold amount will initially be \$15,000.

The class of persons who may be considered “*wholesale clients*” for the purposes of Chapter 7 has been extended. Now a person will not be a “*retail client*” where the licensee is satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allows the client to assess, inter alia, the merits, value and risks of the financial product.

2. Company Reporting Obligations

The Amending Act has increased the threshold test for defining a “*large proprietary company*”. A proprietary company will now be considered a “*large proprietary company*” for a financial year if it satisfies **at least two** of the following tests:

- consolidated revenue of at least \$25 million;
- gross assets of at least \$12.5 million;

- at least 50 or more employees. In counting employees, part-time employees must be taken into account as an appropriate fraction of a full-time equivalent.

The previous thresholds for a large proprietary company were \$10 million in consolidated gross operating revenue and \$5 million in gross assets.

This amendment will result in a number of companies previously classified as large proprietary companies to be re-classified as *small proprietary companies* – with the effect that those companies will not be required to prepare annual directors’ and financial reports pursuant to section 292(1) of the Corporations Act.

Companies, registered schemes and disclosing entities may now distribute their financial report, directors’ report and auditor’s report to members by electronic means and on a website, unless a member elects to receive a hard copy of those reports. This amendment is expected to represent a significant time and cost savings for business.

3. Auditor Independence

The Amending Act has made various technical amendments to existing provisions in the Corporations Act dealing with auditor independence. A number of the amendments are intended to effect findings arising out of public consultations on the comparative review of Australia’s auditor independent requirements.

4. Corporate Governance

Section 213 of the Corporations Act previously provided that member approval was not needed for a transaction involving a benefit to a director or spouse where the benefit did not exceed \$2,000. The amended section 213 now:

- (a) applies to any related party (not just a director or spouse); and
- (b) provides that member approval is not required where the amount or value of the financial benefit is less than or equal to the amount prescribed by the regulations – currently \$5,000.

5. Fundraising

Various regulatory requirements and restrictions in the fundraising context have been relaxed by the Amending Act.

- (a) A listed entity is no longer required to issue a prospectus for a rights issue. Instead, listed companies are now required to provide a notice to the market within the 24 hour period before the offer is made which sets out, inter alia, information that investors would require for making an informed assessment of the financial position and prospects of the company and the rights and liabilities attaching to the relevant securities.
- (b) Reduced disclosure requirements now apply to offers of securities where such securities belong to a class of securities that have been quoted for a minimum of 3 months. This amendment has replaced the previous 12 month minimum requirement.

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- (c) The maximum amount that may be raised using an offer information sheet instead of a prospectus has been increased from \$5 million to \$10 million.
- (d) The licensing and hawking restrictions imposed on unlisted companies that offer shares to their employees through an employee share scheme have been reduced. For instance, a company will no longer fall foul of the prohibition of hawking of managed investment schemes under section 992AA of the Corporations Act if the offer is made under an eligible employee share scheme.

6. Takeovers

The Corporations Act previously imposed various telephone record keeping obligations on bidder and target companies in takeover situations. One of these obligations included a bidder and target to make sound recordings of all telephone calls made during the bid period to shareholders in the bid class and all telephone calls to discuss the takeover bid. These telephone monitoring requirements have been repealed by the Amending Act which will reduce some of the costs for bidders and targets in a takeover situation.

The initial and ongoing notice requirements for a person who becomes an 85% holder in relation to a class of securities of a company have also been abolished.

7. Compliance

The returns of company particulars have been simplified and allow ASIC to accept the electronic lodgment of documents of a particular kind or in a particular class. In line with this amendment, ASIC has recently implemented an online lodgment facility for company charges.

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