



Corporations Act amended — three-tiered test now applies for dividend payments

The *Corporations Amendment (Corporate Reporting Reform) Act 2010* has received assent, and introduces a three-stage test that a company will need to satisfy before paying a dividend. It also introduces a three-tiered reporting framework for companies limited by guarantee, as well as streamlining parent-entity reporting. Companies are also now better able to alter their year-end reporting dates.

Dividend payments

Previously, companies could only pay dividends out of profits. This test has been replaced with a solvency test. Section 245T of the *Corporations Act 2001* has been amended to require that a company only pay dividends if:

- the company's assets exceed its liabilities immediately before the dividend is declared and the excess will cover the dividend payments
- it is fair and reasonable to the company's shareholders as a whole and
- it does not materially prejudice its ability to pay its creditors.

The new rules apply to dividends declared after 28 June 2010.

However, a late amendment was introduced prior to passage of the legislation, inserting a provision into the change to the circumstances in which a dividend can be paid that ties the calculation of assets and liabilities to International Financial Reporting Standards (IFRS) requirements. As a consequence, companies that are not required to prepare their financial statements in accordance with IFRS will need to consider and apply IFRS before paying a dividend. This in turn will defeat the policy purpose of the bill, which is to reduce the regulatory burden on companies. CSA has written to the government to note that the amendment increases the compliance burden, and it is to be hoped that the new provision will be removed.

Companies should consider their constitutions and whether their dividend provisions should be amended at the next annual general meeting.

Other amendments

In addition, the amendments:

- reduce the regulatory burden on companies limited by guarantee, typically not-for-profit organisations, by introducing a three-tiered reporting framework
- streamline parent-entity reporting
- allow companies to more easily amend their year-end dates to minimise the burden on both companies and auditors during peak periods
- improve disclosure of non-financial information in the directors' report
- refine the statement of compliance with IFRS contained in the directors' declaration and
- clarify the circumstances in which a company may cancel its share capital.