

Corporate & Commercial Client Alert

7 July 2010

Important changes to obligations affecting companies limited by guarantee Corporations Amendment (Corporate Reporting Reform) Act 2010 No. 66

The Corporations Amendment (Corporate Reporting Reform) Act 2010 (Cth) ("**Act**") was assented to and for the most part comes into effect on 28 June 2010. The Act, among other things, reduces the reporting and auditing obligations of companies limited by guarantee and prohibits newly incorporated companies limited by guarantee from paying dividends to their members.

The company limited by guarantee structure is used predominantly by not-for-profit organisations, many of which are relatively small. Prior to the Act receiving assent, all companies limited by guarantee were required to prepare an audited financial report in accordance with the Australian accounting standards and a directors' report in accordance with the Corporations Act 2001 (Cth) ("**Corporations Act**"), regardless of their size.

Under the new law all companies limited by guarantee that are incorporated on or after 28 June 2010, are prohibited from paying dividends to their members. The prohibition does not apply to companies limited by guarantee that were incorporated before the relevant commencement date (although in practice, the payment of dividends by many of those companies would already be prohibited under the company constitution in order to qualify for applicable taxation exemptions or concessional tax status).

Under the new law a three tiered differential reporting framework has been introduced and applies in respect of financial years ending on or after 30 June 2010.

First tier companies are companies limited by guarantee that have annual revenue of less than \$250,000 and which do not have deductible gift recipient (DGR) status. Under the new law "first tier companies" are exempt from preparing the financial report and the directors' report unless required to do so under a member direction or ASIC direction.

Second tier companies are companies limited by guarantee which:

- i. have annual revenue of less than \$250,000 and which are a deductible gift recipient; or
- ii. have annual revenue of \$250,000 or more but less than \$1,000,000 irrespective of whether the company is a deductible gift recipient.

Under the new law "second tier companies" must:

- i. prepare a financial report, which they can elect to have reviewed rather than audited;
- ii. prepare a streamlined directors' report, rather than a full directors' report; and
- iii. be subject to a streamlined process for distributing the annual report to members.

Third tier companies are companies limited by guarantee which have annual revenue exceeding \$1 million, irrespective of whether the company is a deductible gift recipient. Under the new law "third tier companies" must:

- i. continue to prepare an audited financial report;
- ii. prepare a streamlined directors' report, rather than a full directors' report; and
- iii. be subject to a streamlined process for distributing the annual report to members.

These are summarised in the tables below:

Categories of companies limited by guarantee

Revenue Deductible gift recipient?	Less than \$250,000	\$250,000 to less than \$1 million	\$1 million or more
Non-DGR company	Tier 1	Tier 2	Tier 3
DGR company			

Summary of reporting framework

	Tier 1	Tier 2	Tier 3
Directors' report	Not required to prepare reports or have them audited or reviewed unless requested by: <ul style="list-style-type: none"> ASIC 5% of members 	Must prepare streamlined directors' report	
Financial report		Must prepare financial report	
Audit or review of financial report		Financial report must be either audited or reviewed	Financial report must be audited
Distribution of annual reports	Streamlined process for distributing report applies if a report was requested (see above)	Streamlined process for distributing report applies	

The Act implements a number of other important changes to the corporate regulatory framework. These include changes to requirements concerning the payment of dividends, changes to when entities must prepare separate financial statements where consolidated statements are required, and changes that permit (in limited circumstances) a variation to the length of an entity's financial year.

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