

News: Simpler Regulatory System Act Passed

On 28 June 2007 the Australian Government's Simpler Regulatory System Act ("the SRS Act") received Royal Assent. This legislation contained numerous reforms aimed at simplifying and improving several aspects of corporate and financial services regulation. The reforms were also designed to help reduce some of the "red tape" burden for corporate Australia.



Change One: Definition of Small Proprietary Company

One of the key components of this legislation is the increase in monetary thresholds for defining a large proprietary company. This amendment to s45A(2) of the Corporations Act 2001 ("the Act") applies from the date of royal assent, meaning that the new thresholds apply for the financial year ended 30 June 2007.

Background

Under s292 of the Act, a small proprietary company is not required to prepare a financial report unless it is:

- a controlled foreign company not consolidated in financial statements lodged with ASIC; or
- directed to do so by either 5% or more of shareholders or ASIC.

"Small proprietary company" is defined in s45A(2) of the Act on the basis of monetary and employee thresholds. The size of the monetary thresholds have been increased by the SRS Act,

so that a proprietary company is now defined as small if it satisfies at least 2 of the following:

- consolidated revenue for the financial year of the company and the entities it controls (if any) is less than \$25m;
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than \$12.5m;
- the company and the entities it controls (if any) have fewer than 50 employees (full time equivalents) at the end of the financial year.

Application

Because the determination of whether a proprietary company is small or large is made at the reporting date, the new thresholds will be applied as at 30 June 2007. This means that if a previously large proprietary company would now be classified as small, that company will not be required to prepare and have audited a financial

report for the year ended 30 June 2007, unless it is required to by s292 of the Act, as discussed above.

Voluntary Preparation

Small proprietary companies may choose to continue to prepare, and have audited or reviewed, a financial report despite not being required to do so. This may be the case where, for instance:

- the company expects to “become large” again in the near future and wishes to continue with the process in the interim;
- the company believes that the audit process has a positive impact on corporate governance;
- audited financial reports are required to meet loan covenants; or
- the company is anticipating that it will become a public company and list in the future and will require a history of audited financial reports for this purpose.

Your RSM contact would be happy to discuss your particular situation and options with you at your convenience.

Resignation of Auditor

If your company is now a small proprietary company and you choose not to have the financial report audited then you should request that your auditor resign from their appointment. The letter of resignation from your auditor must be forwarded to ASIC within 14 days of receipt. As ASIC approval is not required for proprietary company auditor resignations, the resignation will essentially take effect when you receive the letter of resignation from your auditor.

Change Two: Distribution of Annual Reports



Another important component of the SRS Act is that companies will be able to elect to publish their annual reports online for the financial year ended 30 June 2007. If a company makes such an election they must advise shareholders that they have a right to choose to receive a hard copy free of charge. They must also advise shareholders of the direct website address where the annual report will be available.

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