

AMENDMENTS TO THE CORPORATIONS ACT 2001

MARCH 2010

The *Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009*, (the Bill) amending various sections of the *Corporations Act 2001* (the Act), received assent on 23 November 2009. These changes relate mainly to termination payments of company officers and voting rights of shareholders. The definitions of 'benefits' and 'managerial or executive office' have also been clarified. These changes do not, however, affect any employment contracts that were entered into prior to 24 November 2009.

TERMINATION PAYMENTS FOR COMPANY OFFICERS

Prior to the Bill receiving assent, company officers could receive termination payments of up to seven times their annual salary without shareholder assent. Now, the Bill requires shareholder approval to be given for any termination payment that is greater than company officer's average annual salary. Furthermore, it is no longer solely directors' termination payments that are subject to this approval. All termination payments to 'managerial or executive officers', including senior executives and people whose names appear in the directors' report, are dependent upon this assent.

TERMINATION BENEFITS

The term 'benefit' is taken to have a broad interpretation in the Bill. While there was previously some ambiguity regarding whether certain termination payments ought to be classified as 'benefits', the amended Act includes more specific details of this term. Real and personal property, payment in lieu of notice and large superannuation contributions are now included as benefits. While termination benefits have always needed shareholder approval, the new definition means there are more benefits that require approval.

SHAREHOLDER VOTING

A retiree, who is also a shareholder, is expressly prevented from voting on their own termination benefits. Under the old Act, any shareholder was able to participate in a shareholder vote, however this led to conflict as directors were able to influence their own benefits. The new regulation ensures the outcome of a shareholder vote on termination benefits is balanced.

UNAUTHORISED TERMINATION BENEFITS

The Bill states that termination benefits that have not been authorised by a shareholder vote must be repaid immediately. Once repaid, this amount is to be held on the company's trust account. There are increased penalties for individuals and body corporate for unauthorised termination benefits. Fines for individuals have increased from \$2,750 to \$19,800 and fines for a body corporate are now \$99,000 as opposed to \$16,500. These increased penalties are to prevent the payment of termination benefits without authorisation.

Company directors need to ensure they comply with these regulations in order to avoid heavy penalties. Most of all, it is important to obtain shareholder approval for any large termination benefits.

If you have any questions in relation to this bulletin please do not hesitate to contact any of the members of CG Law's workplace relations team

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