

First Corporate Simplification Act 1995 – An Overview

The Corporations Law was recently amended by the First Corporate Law Simplification Act 1995.

The effect of the amendments is to substantially ease the regulatory burden applying to small businesses.

Most of the changes will take effect on 9 December 1995.

However, the reduced reporting obligations on annual returns will not occur until 3 February 1996 and so will only apply to annual returns due after that date.

The key changes made are as follows:

Single-Person Companies

Under the amended legislation, proprietary companies may have only one director and only one member, either from time of incorporation or by an existing company making the necessary changes.

The process of establishing a proprietary company has been simplified by removing rules that require articles of association to contain certain restrictions, and by making the reservation of a company name optional.

Financial Reporting by Small Proprietary Companies

For the purposes of financial reporting, the revised Corporations Law replaces the previous distinction between exempt and non-exempt proprietary companies with a distinction between small and large proprietary companies.

A small proprietary company will not have to prepare audited financial statements unless:

- required to do so by the ASC,
- required to do so by members holding 5% of the company's shares or,
- it is controlled by foreign companies and not covered by consolidated accounts lodged with the ASC

To be classed as a small proprietary company under the revised Corporations Law, a proprietary company must

satisfy at least two of the following criteria:

- gross operating revenue for the financial year of the company and the entities it controls (if any) is less than \$10 million
- the value of gross assets at the end of the financial year of the company and the entities it controls (if any) is less than \$5 million
- the company and the entities it controls (if any) have fewer than 50 employees at the end of the financial year.

Proprietary companies will no longer have to hold an Annual General Meeting.

Annual Returns for 1995 are still subject to the previous requirements for lodging Key Financial Data.

Annual Returns for subsequent years will not be required to contain Key Financial Data

Company Registers

All companies will no longer be required to maintain registers listing:

- personal details of directors and secretaries (although this information must still be lodged with the ASC)
- directors' shareholdings (although listed companies must still lodge the information with the Australian Stock Exchange)
- substantial shareholders (although substantial shareholders will still have to lodge notices with the company and with the company and with the Australian Stock Exchange)
- notices of beneficial ownership of shares
- buy-backs of shares.

The office of principal executive officer will no longer be recognised under the law.

Share Buy-Backs

The procedures to be used by companies that wish to buy back their own shares have been streamlined, with the

legislation incorporating a table to indicate the steps required for different types of share buy-back.

The amendments replace mandatory procedures involving auditors, experts, advertisements and declarations with new safeguards that focus on continuing company solvency, fairness among shareholders and disclosure of relevant information.

Responsibility for ensuring that a share buy-back does not make the company insolvent lies with the director(s). Under the legislation they may be made personally liable for the company's loss.

Further information can be provided by the Australian Securities Commission on phone 43 0900 or fax 43 0910.

Evidence Act: Appeals to the Family Court

An amendment to the Evidence Act 1995 to apply it to appeals to the Family Court of Australia from courts of summary jurisdiction exercising jurisdiction under the Family Law Act 1975 was included in the Family Law Reform (Consequential Amendments) Act 1995 which received Royal Assent on 12 December 1995.

The amendment to the Evidence Act commences 14 days after the day on which the Family Law Reform (Consequential Amendments) Act 1995 received Royal Assent (that is, on 26 December 1995).

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BALANCE

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