

FEATURE

David Williams outlines amendments to the Corporations Law in relation to prescribed interest schemes and prospectuses and how they'll affect, amongst other things, Division 10BA qualifying films.

Financial reporting obligations and prescribed interest schemes

The September 1994 changes to financial reporting obligations in relation to prescribed interest schemes.

The *Corporate Law Reform Act 1994* ("Act") has made significant changes to the Corporations Law particularly relating to continuous disclosure, including financial reporting. These provisions commenced on 5 September 1994. In addition, the *Corporations Regulations Amendment 1994* implement certain aspects of the continuous disclosure regime.

This article looks at the changes in the financial reporting requirements in relation to unlisted prescribed interests, such as investments in Division 10BA qualifying films, unit trusts and agricultural investments such as fruit production and marketing schemes.

financial reporting requirements

New financial reporting requirements will apply to prescribed interest schemes which are Disclosing Entities under the new Division 11 of Part 3.6 of the Corporations Law.

The new requirements include half-yearly accounts, provision for a limited audit each half year, compliance with accounting standards, a report by the trustee or representative (together referred to as the "trustee") and lodgement of accounts with the ASC.

accounts to be prepared

Under the new provisions, accounts are required to be prepared each "accounting period", which basically means each half-year and each financial year. The requirement for half-year accounts is new.

Each "accounting period", the trustee of a disclosing entity must prepare, or cause to be prepared:

- a profit and loss account; and
- a balance-sheet,

in accordance with applicable accounting standards.

Trustee's report

In addition to the trustee's responsibilities to prepare, or cause to be prepared, the accounts described above for each accounting period, the trustee must also prepare, or cause to be prepared, a report by the trustee.

The trustee's report is required to:

- review the operations of the prescribed interest scheme during the accounting period;
- review the results of those operations; and
- give particulars of any significant change in the state of affairs of the scheme during the accounting period.

limited audit

The half yearly accounts must either be audited or subject to a limited scope review by the auditor. If the latter course is chosen, the auditor must report, after reviewing the accounts:

- whether any matter has come to the auditor's attention which causes the auditor to believe that they are not drawn up so as to give a true and fair view of the profit or loss and state of affairs of the scheme, or in accordance with the Corporations Law and applicable accounting standards; and
- if such a matter has come to the auditor's attention, a description of the matter and a statement of the auditor's reasons for that belief.

lodgement of accounts

The accounts, trustee's report and auditor's report must be prepared and

lodged with the ASC before the end of:

- 90 days after the end of each financial year; and
- 75 days after the end of each half year.

The manager is responsible for lodgement of the accounts, trustee's report and auditor's report.

The Regulations also provide that the manager's annual return under section 1071 will be required to be lodged within 90 days, which is the same period as is required for lodgement of the accounts and trustee's report and auditor's report.

Consequential amendments have been made to the covenant binding the trustee in section 1069(1)(f) requiring accounts to be sent to prescribed interest holders.

The previous period of 2 months is now 90 days.

A further covenant is inserted in section 1069(1)(ea) requiring the trustee and manager to comply with the provisions described above governing accounts of Disclosing Entities in the new Division 11 of Part 3.6 of the Corporations Law.

exemptions and modifications

The ASC has the power to exempt specified persons from all or specified disclosing entity provisions.

In addition, regulations may be made to exempt specified persons from all or specified disclosing entity provisions, to modify all or specified disclosing entity provisions or to declare specified securities of bodies not to be Enhanced Disclosure ("ED") Securities.

It is not clear in what circumstances exemptions or modifications will be made.

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