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Proposed Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014

Insurance Australia Group Limited (IAG) welcomes the opportunity to provide comment on the proposed changes to the *Corporations Act 2001* (Cth).

IAG is the parent company of a general insurance group with controlled operations in Australia, New Zealand, Thailand and Vietnam, employing over 13,500 people (8,759 are in Australia). IAG has more than 762,000 shareholders. IAG's share register is the fourth largest in Australia. IAG is a top 30 ASX-listed company.

IAG supports the changes proposed by the amending legislation. IAG believes the proposed amendments will facilitate improved standards of sustainable corporate governance, which meets the needs of shareholders, customers, as well as the wider community.

1. Removal of obligation on directors to call a general meeting at the request of only 100 shareholders

IAG supports the removal of the current "100 member rule" under section 249D of the *Corporations Act 2001*. IAG maintains the submissions it made on this amendment in 2012 to the Corporations and Market Advisory Committee (CAMAC) – The AGM and Shareholder Engagement (please see www.camac.gov.au for more details), and in 2005 to the Joint Parliamentary Committee. In those submissions it was stated that "*IAG is confident that the amending legislation will not have a deleterious effect upon the proper activities and involvement of shareholders and will militate against wasteful use of shareholders' funds that can result in the calling of unscheduled meetings of listed companies.*"

IAG believes general meetings provide a valuable forum for shareholder participation in the process of director accountability and engagement by shareholders towards scrutiny of company management. They provide a valuable forum to facilitate effective corporate governance in addition to IAG's robust corporate governance framework.

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Under the current section 249D, as few as 100 members may requisition general meetings at the cost of the company. For large companies such as IAG, such a low threshold can create a disproportionate and unbalanced outcome where a relatively small group may seek to requisition general meetings for purposes that may not be for the benefit of the company as a whole. It is IAG's view that the ease with which a minor number can require a company to incur significant cost and diversion of resources by holding an extraordinary general meeting is unbalanced and difficult to justify, particularly when there are other more appropriate means available. These include the Annual General Meeting and, in IAG's case, alternative forums such as regular analyst or shareholder briefing sessions, webcasts on IAG's website and the raising of issues or concerns directly with IAG's Investor Relations team (by post, email and/or telephone).

Under section 249N of the Corporations Act, groups of 100 members may still place items on the agenda of scheduled general meetings, or sign up individually to mechanisms voluntarily introduced by public companies like IAG, such as investor feedback emails, and thereby contribute meaningfully to the corporate governance of the company. IAG considers placing motions on notice at scheduled annual meetings or investor forums to be a more appropriate and efficient use of members' funds and time.

By continuing to provide for the requisitioning of a general meeting by shareholders with 5% of the voting power, the proposed amendment raises the threshold to a more appropriate level for companies with a large and diverse member register. This strikes an important balance between facilitating shareholder participation and corporate governance against the need to avoid inefficient use of company resources.

2. Reducing restrictions on circumstances in which companies can pay dividends

a. Single Solvency Test

IAG supports the replacement of the net assets test in the current section 254T with the simpler pure/single solvency test as the threshold test for allowing a company to pay a dividend. Under the current section 254T, a company must not pay a dividend unless:

- a) the company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend (balance sheet test);
- b) the payment of the dividend is fair and reasonable to the company's shareholders as a whole; and
- c) the payment of the dividend does not materially prejudice the company's ability to pay its creditors.

The current section 254T poses practical difficulties for IAG by requiring each subsidiary within the IAG Group to satisfy the balance sheet test. This requirement means subsidiaries, regardless of size, must bear the cost of preparing separate financial statements prior to issuing dividends to the parent company, IAG.

Depending on the chosen debt structure of a particular Group, subsidiaries may be solvent and experiencing high cash-flow but due to low value assets, the parent company may be prevented from paying a dividend under the balance sheet test.

b. Dividends as a permitted reduction of share capital

IAG supports the proposed section 254TA expressly providing for the reduction of share capital through the declaration of dividends. The proposal removes the doubt surrounding the current section 254T and the ability of companies to make a distribution that would otherwise constitute a reduction of capital, without complying with the reduction of capital requirements of Part 2J of the *Corporations Act 2001* (Cth). The proposal expands the circumstances in which a company can declare dividends and improves the clarity and certainty of the law.

If you have any questions or would like to discuss the submission further, please contact David Wellfare, Senior Manager, Government & Industry Affairs on (02) 9292 8593 or David.Welfare@iag.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Bertuch', is written over a light grey rectangular background.

Chris Bertuch
Group General Counsel & Company Secretary
Insurance Australia Group