Takeovers Code Threshold Increased

A definition change in the Takeovers Code may assist some companies to raise capital. Anderson Lloyd Lawyers Partner Anne McLeod explains.

A number of medium-sized companies are greeting with relief the recent change to the Takeovers Code which amended the definition of a code company.

Prior to the change the code applied to a non-listed company if it had 50 or more shareholders, counting each named shareholder on the share register and ignoring any jointly held shareholdings. Many medium-sized companies, with shareholdings which were principally held by trusts, fell into the code regime as a result.
The implications of being a code company are not well understood by a great portion of medium-sized companies.

Compliance can be onerous as no shareholder can increase their voting control above 20 per cent without complying with the code. This inevitably entails a time consuming, complex and costly process of a full or partial takeover offer or obtaining shareholder approval to an increase.

The situation can represent a substantial impediment to capital raising, particularly where a major shareholder is restricted from introducing further share capital.

The recently introduced Takeovers Amendment Act 2012 has ameliorated the position somewhat by altering the definition for non-listed companies so that they are only a code company if they have 50 or more shareholders and 50 or more share parcels.

This new definition means that where shares are jointly held, such as by a trust, that holding will be counted as only one share parcel.

Consequently, a company will now be able to accommodate more shareholders without becoming subject to the Takeovers Code.

While the change appears relatively insignificant, it is already having positive implications for many medium-sized companies as they are no longer spending significant amounts and incurring delays to comply with the code.

Nor are they putting in place structures to ensure they are not a code company (which the Takeovers Panel openly acknowledges they are not averse to).

The change simplifies the process for these companies to raise capital and allows large shareholders to increase their shareholdings above 20%.

The logic behind the change is that companies with fewer shareholders are more likely to put in place arrangements, such as shareholder agreements and pre-emptive rights, to protect shareholder's interests and they therefore do not need the same protection of the code.

Any company that could be a code company should seek legal advice on the application of the code, particularly in any capital raising situation.

Equally, significant shareholders of code companies need to be aware of their obligations.

The consequences of failing to recognise that the code applies could be more than just time consuming and expensive.

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