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BUSINESS LAW REFORM PROPOSAL – MINORITY BUY-OUTS

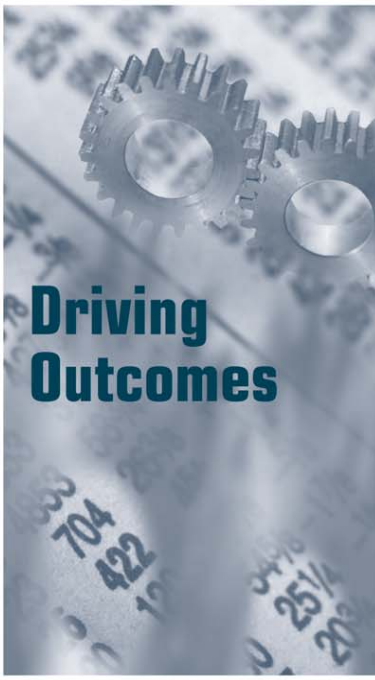
I am pleased to enclose the Listed Companies Association Inc.'s submission on aspects of the Business Law Reform Proposal - Minority Buy-outs.
By way of background, the Listed Companies Association Inc. is an independent, voluntary, non-profit organisation of New Zealand Exchange listed organisations. Its main purposes are:

- to help each listed company further the long term interests of its shareholders by working for a fair, adequate and efficient regulatory system;
- to assist those responsible for listed companies to maximise the benefits of listing and to make the requirements that come with that status appropriate and reasonable to comply with; and
- to promote confidence in and growth of business and capital markets in New Zealand.

If you would like to discuss any of the points raised in our submission or have any queries, please do not hesitate to contact me.

Yours faithfully

Linda Cox
Chairperson



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LISTED COMPANIES ASSOCIATION INC.
SUBMISSION TO THE MINISTRY OF ECONOMIC DEVELOPMENT
BUSINESS LAW REFORM PROPOSAL – MINORITY BUY-OUTS

1. Introduction

1.1 The Ministry of Economic Development (**MED**) has specifically requested comment on three matters relating to the minority buy-out section of the Companies Act 1993, which was the subject of a Law Commission Report in August 2001 (the **Report**):

(a) whether anything has changed since 2001 which might impact on the recommendations of the Law Commission (**Matter One**);

(b) any additional information we have on the magnitude of the problem that the Commission's proposals aim to address, and the benefits and costs of the specific reform options (**Matter Two**); and

(c) two specific matters relating to the test for valuing shares proposed in the Report (**Matter Three**):

- whether we feel that there may be a risk that the proposed test for valuing shares acquired under the minority buy-out provisions may not be suitable in some circumstances; and

- whether we consider that there may be any risk that the proposed test for valuing shares could inappropriately distort the decision making of companies or shareholders in relation to certain types of transactions.

1.2 We have views on a number of other aspects of the buy-out provisions, however, we note that views are only being sought at this stage on the matters outlined above. We have accordingly restricted our submissions to these three matters. We comment on each in turn.

1.3 This submission is made by the Executive of the Listed Company Association and does not necessarily represent the individual views of all of the Listed Companies Association's members.

2. Matter One

2.1 We have considered whether anything has changed, such as changes in the broader legal framework, which may need to be taken into account in considering the Report.

2.2 We are not aware of any relevant changes in the broader legal framework since 2001. What has changed, as you would expect, is that our members (and the market generally) have had greater experience with the buy-out provisions.

2.3 From this greater experience, although views differ from person to person regarding the detail, there is widespread support within our Association for reform of the buy-back provisions and general support for the recommendations contained in the Report.

2.4 As is recognised in the Report, we consider there is a need for greater certainty of process and for the process to be expeditious.

2.5 The only matter worth noting is that during the period members of the Association have had experience with the expert determination process under Rule 58 of the Takeovers Code. We understand that, generally, this process has been successfully used to determine values for the purposes of the compulsory acquisition provisions of the Code.

2.6 As noted below, we consider a similar expert determination process is preferable to an arbitration process.

3. Matter Two

3.1 MED asked for views on whether Justice Doogue's criticisms of the effectiveness of the existing minority buy-out provisions (page 4 of the Report) continue to be valid.

3.2 All our members who have experienced the buy-out provisions would share Justice Doogue's views. A common concern is the time it takes to resolve disputes and the costs involved in the process. One member noted that it took over 15 months and cost over $1m to resolve a dispute that member was involved in.

3.3 You have also sought confirmation that all material benefits and costs of the various reform options summarised in the Report have been identified.

3.4 The Report does not appear to contain such a summary or address the cost/benefits of various reform options as such. Nevertheless, we consider the Report does contain a useful discussion of the key issues and, as noted, we generally support its recommendations.

4. Matter Three

4.1 The proposed test for valuing shares in the Report can be summarised as:

(a) The company makes an offer to buy the shares at a price which is "an honest estimate of the value of the shares":

- excluding any element of value arising from the relevant event/transaction; and

- calculated by first assessing the value of the shares and allocating the value pro rata.

(b) A shareholder has 10 working days to object to the price, in which event the matter is referred to arbitration.

4.2 We agree that:

(a) the minority buy out price should be required to be determined on the basis of the value of the shares without taking account of the impact of the relevant transaction; and

(b) the price should also be required to be a per share pro rata fair and reasonable price, with no premium or discount.

4.3 We submit that, rather than arbitration, the price should be set by an independent expert who is experienced in company valuations. The expert would probably need to be appointed by an independent body (possibly the Takeovers Panel) upon request by either party failing agreement between them within the stipulated period. We do not think arbitration is the right process to determine value. A number of our members were dissatisfied with the arbitration process. The use of an independent expert would be more efficient than an arbitration process, both in terms of time and cost. It is a process which has proved effective in the context of Rule 58 of the Takeovers Code.

4.4 You asked for views on whether there is any significant risk that the proposed test for valuing the shares could inappropriately distort the decision making of companies or shareholders.

4.5 We submit that the test proposed in the Report should certainly improve the current situation and should not distort the decision making process.

We would be pleased to elaborate on any of the points raised in this submission.

Listed Companies Association Inc.
11 May 2007