



## BUSINESS | Issue No. 6 | Corporations Act Update

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On 19 March 2015, the *Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2015 (Act)* became law and introduced several changes to the *Corporations Act 2001 (Corporations Act)*. In particular, the ability for members to request a general meeting has changed as has the requirement for certain public companies limited by guarantee to appoint and retain an Auditor.

### Request for a General Meeting

Under the previous section 249D(1) of the Corporations Act, the directors of a company are compelled to call and arrange to hold a general meeting (at the Company's cost) at the written request of:

- members holding a total of 5% of the votes that may be cast at a general meeting; or
- 100 members entitled to vote at the general meeting.

The Act removes the second limb so that a company will now only be compelled to call and hold a general meeting upon the request of members who, in total, hold 5% of the votes that may be cast at the meeting. This amendment recognises that the wishes of 100 members regardless of the size of their holding (particularly in listed companies) should not necessarily justify the expense of calling and holding a general meeting.

It is important to note that this change only relates to the ability to compel the directors to call the general meeting and does not affect any other rights attributed to a block of 100 members under the Corporations Act.

### Requirement to appoint an Auditor

Pursuant to section 327A of the Corporations Act, all public companies, including companies limited by guarantee, are required to appoint and retain an Auditor within one month of registration as a company. This requirement stood notwithstanding that a small company limited by guarantee (as defined by section 45B of the Corporations Act) is not required to prepare an audited annual financial report unless directed by its members and most other companies limited by guarantee with

annual revenue of less than \$1 million can elect to have their annual financial statements reviewed rather than audited as set out in subsection 301(3) of the Corporations Act.

The Parliament has recognised that the requirement to appoint an Auditor in these circumstances is not needed given these companies are not necessarily required to have their accounts audited. Accordingly, a new section 327A(1) has been inserted into the Corporations Act so that the requirement to appoint an Auditor is not compulsory where:

- the company is a small company limited by guarantee; or
- the directors reasonably believe that subsection 301(3) of the Corporations Act will apply to the company's financial reports.

For all other public companies, an Auditor must be appointed within one month of registration as a company and such appointment is to be maintained.



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