

24 October 2014

Manager
Corporations and Schemes Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Corporations and Markets Advisory Committee

The Australian Institute of Company Directors (Company Directors) is dismayed that the Federal Government has expressed an intention to continue with the abolition of the Corporations and Markets Advisory Committee (CAMAC) by releasing an exposure draft of the Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 (the Draft Bill).

Company Directors is one of the two largest member-based director associations worldwide, with over 35,000 individual members from a wide range of corporations: publicly-listed companies, private companies, not-for-profit organisations, charities, and government and semi-government bodies. As the principal professional body representing a diverse membership of directors, we offer world class education services and provide a broad-based director perspective to current issues in the policy debate.

1. Summary

Company Directors has firmly supported the Government's deregulatory agenda to date. We have long advocated for a reduction in red tape, given that creating a system of efficient regulation is a key element for boosting national productivity. Despite this, we were very disappointed to hear, as a part of budget measures, that the Government had decided to discontinue CAMAC. In June, we wrote directly to the Acting Assistant Treasurer to express our concern regarding this proposal.

Company Directors *strongly opposes* the abolition of CAMAC and we recommend that the proposed abolition not proceed.

2. Structure and cost of CAMAC

CAMAC has played an important role in the development of corporate law since it was created in 1989. CAMAC's members are part-time and appointed in their personal capacity by the Minister following consultation with the States and Territories. The members of CAMAC are appointed on the basis of their "knowledge of, or experience in, business, the administration of companies, the financial markets, financial products and financial services, law, economics or accounting."¹ The Chairperson of the Australian Securities & Investments Commission is also a member of CAMAC.

¹ CAMAC Annual Report 2012-2013 at 17.

Each State and Territory is entitled to nominate a panel of persons for potential appointment to CAMAC.² The Commonwealth must ensure so far as practicable that at any time there is at least one member of the Advisory Committee from the Northern Territory and each referring State.³

The members of CAMAC are supported by a full-time executive which comprises three staff members, two highly experienced corporate lawyers and an administrator. The executive is assisted in its work by sub-committees of experts (each sub-committee being comprised of members that have expertise in the particular topic being considered). The CAMAC executive has also been housed within ASIC's Sydney office, preventing the duplication of overheads. The annual cost of CAMAC is less than \$1 million.⁴

3. The need to retain CAMAC

We understand that in the short term the abolition of CAMAC and streamlining its functions into Treasury may appear to be an effective cost saving measure. While we commend the Government for seeking savings in general, we are of the view that dismantling CAMAC is contrary to the Government's own objectives as set out in the *Smaller and More Rational Government Reforms*.⁵ Those reforms seek to remove inefficient and complex structures, seek a leaner and more business-like way for the Government to operate and prevent the proliferation of wasteful structures. CAMAC epitomizes the high quality, effective and cost conscious approach the Government is trying to achieve.

As the Government tries to reduce red tape, we are of the view that the Government's decision to dismantle CAMAC is likely to increase red tape in the long term. This is because there will no longer be a cost effective, highly experienced and independent body considering improvements to the corporate law in Australia.

In our view, the hallmark of any solid deregulatory agenda is not just removing regulation, but ensuring that the regulation which remains is working as effectively as possible. One of our concerns with previous state and federal governments was the practice of moving straight to regulation, without first identifying and adequately defining the problem to be solved. We have consistently articulated that problem definition and making policy decisions based on an accurate understanding of the factual, legal or governance background to a particular issue are critical factors in achieving effective regulatory outcomes. Only after first determining whether a problem exists, and defining that problem, can analysis be undertaken as to whether new regulation, the removal or amendment of existing regulation or another option (such as education or guidance) will provide a more appropriate and targeted solution.

Regardless of one's views as to the recommendations proposed by CAMAC on particular issues, it has played a critical role in identifying, explaining and analysing corporate law and market related problems. CAMAC has also played an important educational role by preparing high quality and well researched reports which effectively set out technical issues in a clear and highly readable manner.

² Clause 605 (2) *Corporations Agreement 2002* as amended.

³ Clause 605 (3) *Corporations Agreement 2002* as amended.

⁴ In 2013 CAMAC's net cost of services was \$911,636, *CAMAC Annual Report 2012-13* at 37.

⁵ *Smaller and More Rational Government 2014-2015*, Senator the Honourable Mathias Cormann, Minister for Finance May 2014.

The level of consultation conducted by CAMAC with stakeholders is also noteworthy. CAMAC's expertise in the corporations and markets area has ensured a deep understanding within CAMAC of the issues and laws being canvassed by stakeholders when consultation occurs. This has ensured excellent communication and sophisticated debate on matters being considered by CAMAC. We are of the view that, at present, this expertise is not able to be matched by other government bodies or departments providing advice to the Government.

Corporations are key drivers of Australia's growth and prosperity. On this basis, Australia's corporate and market regulatory settings should be considered a priority so that our framework operates as effectively as possible. The abolition of CAMAC will significantly undermine Australia's ability to review how our regulatory regime advantages or disadvantages the operation of corporations and markets today and into the future.

The abolition of CAMAC will also have negative implications for the States and Territories as their governments strive to support small business, encourage entrepreneurialism and create jobs. Effective and workable corporations legislation at a federal level is critical to underpinning these objectives. As the States have currently referred their corporations power to the Commonwealth, the abolition of CAMAC will further lessen the ability of States to participate in and influence corporate law matters.


We note that the Explanatory materials for the Draft Bill do not state whether approval for the abolition of CAMAC has been received by at least three State or Territory Ministers⁶, as required by the Corporations Agreement 2002. We are hopeful that such approval has not been forthcoming. Company Directors will continue to strongly advocate for the states and territories not to agree to the abolition of this important independent body.

4. Conclusion

Given the valuable role it has played in the corporations and markets arena over the past 25 years, we strongly recommend that the Government re-consider its decision to abolish CAMAC.

From the time the proposed abolition was first announced, we have clearly expressed our concerns and our willingness to discuss the options available to the Government to re-instate CAMAC or to deploy CAMAC's assets and expertise to another independent body. We are keen to further discuss our views on this issue with both the Acting Assistant Treasurer and Federal Treasury. You are welcome to contact me on (02) 8248 6600 to arrange a time to discuss this important issue for the business community.

Yours faithfully,



John H C Colvin
Chief Executive Officer &
Managing Director

⁶ Clause 507(2) of the Corporations Agreement 2002 as amended, provides that of the three, at least two, must be State Ministers.

AUSTRALIAN INSTITUTE
of **COMPANY DIRECTORS**

cc: The Hon. Senator Mathias Cormann, Acting Assistant Treasurer
The Hon. Dr Vanessa Goodwin, Attorney General, Tasmania
The Hon. Robert Clark, Attorney General, Victoria
The Hon. Brad Hazzard, Attorney General, New South Wales
The Hon. Jarrod Blejje, Attorney General, Queensland
The Hon. John Rau, Attorney General, South Australia
The Hon. Michael Mischin, Attorney General, Western Australia
The Hon. Johan (John) Elferink, Attorney General, Northern Territory
The Hon. Simon Corbell, Attorney General, Australian Capital Territory