From: Duncan Ramsay
Sent: Tuesday, 4 August 2009
To: Economics, Committee (SEN)
Subject: Inquiry into the Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009

I refer to our telephone conversation today.

Thankyou for the opportunity to lodge a late submission.

Around eighty per cent of QBE's business is outside Australia.

Other Australian coys eg BHP are similar.

We are concerned this Bill could apply to our overseas resident employees. As they are subject to local laws, Australian laws should not apply eg conflict between the laws.

The concern is section 12(1AA)(b) of the Bill relating to new section 200B(1) of the Corporations Act. This draft wording provides that the prohibition in section 200B(1) applies to "an associate of the company (other than a body corporate that is related to the company and is itself a company)" (my emphasis). The latter underlined words in effect include overseas companies because of the definitions in section 9 of the Corporations Act of "associate", "body corporate" and "company" when read with section 11 of the Corporations Act.

We believe the underlined words should be deleted from the Bill so that the Bill only appplies to Australian entities ie local directors, secretaries and companies.

It is true that the current legislation includes words like section 12(1AA)(b).

However, the liklihood of the proposed legislation is applying is much greater due to the lowering of the current cap.

We suggest that the Bill includes anti avoidance provisions to the effect that Australian directors, secretaries and companies cannot pay Australian residents overseas in an attempt to avoid the termination cap.

It is also true that the Bill maintains the existing exception in section 200H, which provides that shareholder approval is **not** required "if failure to give the benefit would constitute a contravention of a law in force in Australia **or elsewhere** (otherwise than because of breach of contract or breach of trust)" [emphasis added].

However, we are not aware of any relevant overseas statute eg in the UK or the US where we have substantial operations; it is more a contractual issue so not outside the existing section 200H exception per its brackets.

Nor can we think of any contrary Australian statute.

Accordingly we believe the existing section 200H exception is of little practical application.

If you have any questions or require further information, please contact either Peter or me.

Regards

Duncan Ramsay
General Counsel and Company Secretary
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Note: unless otherwise specified,
this email is sent in my capacity as General Counsel

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