



## Australian Securities and Investments Commission Amendment (Audit Inspection) Bill 2006

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## Australian Securities and Investments Commission Amendment (Audit Inspection) Bill 2006

**Date introduced:** 18 October 2006

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** Schedule 1 commences on the day after the Act receives Royal Assent and Schedule 2 commences on 1 July 2004

### Purpose

This Bill enables the Australian Securities and Investments Commission to enter into agreements with foreign regulators to assist with enforcement of audit requirements. The Bill also contains a minor amendment to the transitional provisions relating to auditing standards.

### Background

Australian public companies that are listed on the Australian Stock Exchange (ASX) but which also seek to raise capital within US capital markets by, for example, listing on the New York Stock Exchange, need to comply with both Australian and US audit laws. Audit laws place obligations on both the companies that are audited and the firms conducting the audit.

Australia's audit laws are contained within the *Corporations Act 2001*. These requirements were significantly enhanced with the enactment of the *Corporations Law Economic Reform Program (Audit Reform and Corporate Disclosures) Act 2004* (CLERP 9) on 1 July 2004.<sup>1</sup> Under the Corporations Act, ASIC has responsibility for the surveillance, investigation and enforcement of the audit laws under the Act including those that relate to auditor independence and audit quality requirements.

ASIC carries out an annual audit inspection program which involves investigating the conduct of auditors to ensure that there has been compliance with the Corporations Act. A summary of the steps taken as part of this audit inspection program can be found in ASIC's Report to the Financial Reporting Council.<sup>2</sup>

In relation to the inspection program ASIC has stated that:

To ensure ASIC's inspection methodology is as relevant as possible, it is aligned with that of other international regulators, such as the Public Company Accounting

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Oversight Board (PCAOB), the United Kingdom Financial Reporting Council (UK FRC) and the Canadian Public Accountability Board (CPAB)<sup>3</sup>

In the United States, audit laws are contained within the *Sarbanes-Oxley Act 2002* (SOX Act). The Public Company Accounting Oversight Board (PCAOB) is responsible for regulating the company auditing process and as such is required to investigate and assess auditor compliance with the provisions of the US law.

In 2005 the Federal Treasury released a consultation paper on the audit inspection powers of ASIC.<sup>4</sup> The paper noted that auditors for companies that are listed on the ASX and which also raise capital in the US have to meet two different sets of regulatory requirements (ie the Australian and American requirements). Therefore, auditors would be required to undergo two separate audit inspections and also meet the expense of these inspections.

The regulatory impact statement for the Bill notes that:

The concurrent but separate inspection programmes will lead to inefficiencies and increased regulatory complexity which will result in increased compliance burdens and costs for Australian companies that seek to raise capital within the US markets and their Australian auditors<sup>5</sup>

The consultation paper went on to suggest that ‘there is potential for coordination of the audit inspection processes associated with the two regulatory systems’<sup>6</sup> and that ‘eliminating duplicative inspection processes should result in cost savings for auditors. There will also be reduced complexity for both auditors and companies’.<sup>7</sup>

The consultation paper proposed that ASIC and the PCAOB should enter into a co-operation arrangement for audit inspection of auditors:

- whose audited companies are listed on the ASX and which also seek to raise capital in America, or
- whose audited Australian companies are subsidiaries of an American parent company and the PCAOB requires compliance with the SOX Act audit requirement by the US parent company and its subsidiaries.

The consultation paper proposed that ASIC’s powers would be augmented so that for the auditors who fall within the abovementioned categories, ASIC could investigate and make decisions about whether Australian auditors were complying with US audit requirements. Following the receipt of submissions on this consultation paper, the proposal has now been modified to give ASIC the more limited role of investigating and gathering information about auditors and passing this information onto the PCAOB who would then decide whether the audit laws have been complied with.<sup>8</sup>

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The Bill seeks to implement this proposal by putting in place the regulatory arrangements needed to give ASIC the power to enter into such an agreement and also increases ASIC's investigatory power so that it can meet its investigatory obligations under the agreement.

## Main provisions

### Schedule 1 – Enhancement of ASIC's audit supervision

**Item 1** of the Bill amends section 11 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to give ASIC the power to enter into an audit inspection agreement or arrangement with a regulatory body of a foreign country. ASIC may only enter into an agreement or arrangement if it has the written consent of the Minister (**proposed subsection 11(10)**). Where ASIC has entered into an arrangement or agreement, it must give notice in the Gazette (**proposed subsection 10(11)**). Whilst the Explanatory Memorandum makes primary reference to the agreement between Australia and the United States, it should be noted that the amendments are sufficiently broad to enable ASIC to enter into audit inspection agreements with other countries if the Minister consents.

**Proposed subsections 11(14) and (15)** state that ASIC's function under an arrangement or agreement is to 'examine the policies and working practices of an Australian auditor, so as to help the regulatory body to ascertain compliance with audit requirements' and to 'disclose to a regulatory body...the information that ASIC has obtained in assisting in such as examination'. These subsections make it clear that ASIC will not actually decide on whether there has been compliance with the foreign laws.

**Items 2 – 16** supplement ASIC's current investigatory powers so that it can meet its obligations under the proposed agreements. For example **item 4 proposed section 30A** gives ASIC the power to notify an auditor that they must give specified information or produce specified books for ASIC. It is noteworthy that ASIC will be able to use these new powers to meet its obligations under the new audit inspection agreements and also in carrying out its current domestic regulatory functions for auditing.

### Schedule 2 Technical amendments

Schedule 2 makes a technical amendment to the transitional provisions for the CLERP 9 amendments to the Corporations Act to deal with companies whose reporting periods end on dates other than 30 June.

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## Concluding comments

This Bill seeks to streamline the audit inspection process for auditors:

- whose audited companies are listed on the ASX and which seek to raise capital in America, or
- whose audited Australian companies are subsidiaries of an American parent company and the PCAOB requires compliance with the SOX Act audit requirement by the US parent company and its subsidiaries.

The Bill proposes to vest ASIC with the power to enter into arrangements with foreign audit enforcement agencies for a transfer of information, about auditors, from ASIC and the enforcement agencies for the purposes of determining compliance with legal obligations.

## Endnotes

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1. Australian Securities and Investments Commission, *Media and information releases*, 8 November 2006.
2. Australian Securities and Investments Commission, *Audit Inspection Program, Second Report to the FRC*, August 2006, p. 20–21.
3. Australian Securities and Investments Commission, *Media and information releases*, 8 November 2006.
4. The Treasury, *Audit Inspection Powers of the Australian Securities and Investments Commission, Consultation Paper*, September 2005.
5. Australian Securities and Investments Commission Amendment (Audit Inspection) Bill 2006 Explanatory Memorandum, p. 7.
6. The Treasury, *Audit Inspection Powers of the Australian Securities and Investments Commission, Consultation Paper*, September 2005, p. 4.
7. The Treasury, *Audit Inspection Powers of the Australian Securities and Investments Commission, Consultation Paper*, September 2005, p. 5.
8. Australian Securities and Investments Commission Amendment (Audit Inspection) Bill 2006 Explanatory Memorandum, p. 13.

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