

LIFE SCIENCES - UPDATE

Simon Davidson, DLA Piper, Michael Cunningham, Grant Thornton

LIFE SCIENCES BOARDROOM LUNCH SERIES - A SUMMARY

Over the past 10 months, Grant Thornton and DLA Piper have launched a successful life sciences boardroom lunch series. Events have been held in Melbourne and Perth, and Sydney is about to be added to the roster.

This update summarises the topics which have been discussed at those lunches.

CHANGES TO THE LISTING RULES

Simon Davidson, DLA Piper, spoke about the changes to the ASX Listing Rules affecting small cap companies, specifically new Listing Rule 7.1A.

He noted that market volatility and a lack of liquidity had prompted the ASX to explore ways of enhancing liquidity. The new rule allows companies outside the S&P ASX300 to issue an additional 10% of their share capital if they obtain shareholder approval in advance.

This greater capacity (with the consequent reduced number of funding cycles) and the ability to move quickly should allow many companies in the life sciences sector to overcome volatile markets and reduce transaction risk.

Associated changes to rights issue timetables which were flagged then are still working their way through the ASX.

THE R&D TAX REBATE

Daniel Kave, Grant Thornton, spoke about the R&D tax credit system.

Daniel explored the opportunities for life sciences companies with the introduction of Australia's new R&D Tax Incentive. This new scheme has made Australia one of the most attractive locations in the

EVENT SUMMARY

Three events have been held in Melbourne and one in Perth at Grant Thornton and DLA Piper, over the past year.

Topics covered include:

- **Recent changes to the ASX Listing Rules** to enhance capital raising and the implications for life sciences companies
- **R&D tax rebate**
- **Redomciliation of Australian companies into the US**
- **Backdoor listings**
- **Employee share schemes**

Presenters have included Daniel Kave, Patrick Warr and Thomas Isbell from **Grant Thornton** and Simon Davidson, David Morris and Rick Catanzariti from **DLA Piper**, along with Michael Atkins of **Patersons Securities**.

world for research and development and reaffirms the importance placed on investing in companies undertaking R&D.

Simple to operate and with wide eligibility for all life sciences companies, the new Tax Incentive provides eligible innovative companies with access to a substantial cash refund. Specifically, Daniel looked at what the scheme entails, how the refundable tax offset works and the specific criteria which must be satisfied for a taxpayer to be eligible to access the scheme.

Finally, Daniel explored various issues close to the heart of the life sciences organisations, including: what activities are eligible for the incentive, how can taxpayer's maximise their claims and whether entities performing R&D on behalf of foreign related parties can still access the incentive.

REDOMICILIATION TO THE US

David Morris, DLA Piper, introduced the topic of redomiciliation of Australian companies to the US.

Drawing on recent examples, he spoke of the reasons for looking at redomiciliation and the steps involved in the process, particularly the use of schemes of arrangement, and the re-listing process (for ASX-listed entities).

He noted a critical issue is understanding the requirements of the various regulators involved, both to complete the transaction and on an on-going basis (especially for dual-listed companies). He also noted that companies also forget the internal impact and fail to consider the issues under existing commercial contracts and financing arrangements arising out of a redomiciliation.

Daniel Kave, Grant Thornton followed David and spoke of the tax issues associated with redomiciliation. In particular, he focussed on what steps need to be taken to mitigate any unfunded tax exposure arising on a redomiciliation. By reviewing some recent examples, he highlighted various tips and traps to be aware of when moving abroad.

While reviewing the specific income tax and capital gains tax implications associated, he also considered what impact any move would have on existing employee share or employee share option schemes. Finally, various methods of seeking greater tax certainty on any redomiciliation were explored by considering the costs and benefits associated with the private ruling system.

BACKDOOR LISTINGS

In our inaugural Perth lunch, **Michael Atkins** of **Paterson Securities** set the scene, discussing current market issues and the reasons why backdoor listing or reverse takeovers were being considered.

He discussed the pros and cons of backdoor listings, noting that not all shell companies were equal and that advantages were usually found where there was alignment between the management and operations of the shell company and the incoming entity.

Simon Davidson, DLA Piper, then presented the legal issues associated with backdoor listings, noting that there was a natural increase in complexity, arising out of the involvement of, and the need to do due diligence on, two parties.

He discussed the legal steps involved in the process and then identified some of the traps which can arise, particularly around the involvement of related parties (such as incoming directors), the obligation to have an independent experts report as well as the potential impact of ASX escrow requirements. He noted that with these transactions, the many moving parts mean that early advice and preparation, including initial discussions with the ASX, are essential.

Patrick Warr, Grant Thornton, rounded off the presentation with suggestions on due diligence of a shell company and what it may be worth, board and shareholder control issues and life as a listed company.

He discussed the Investigating Accountant Report and Independent Expert Report that may be required as part of the backdoor listing process, and valuations that may be required.

EMPLOYEE SHARE SCHEMES

At our most recent lunch, **Thomas Isbell, Grant Thornton**, set the scene, describing different types of employee incentive schemes and why companies use them.

He then went on to discuss the potential disadvantages of such schemes and potential alternatives which companies can consider.

Simon Davidson, DLA Piper, then considered the securities law framework applicable to such schemes, noting in particular the restrictions on making offers for employee incentive schemes.

He also noted that while listed companies can take advantage of an ASIC Class Order to be exempted from the relevant laws, many companies fail to comply with all of the terms of the Class Order, potentially exposing themselves to breaches of the Corporations Act. Accordingly, he suggested that companies should keep it simple and avoid complicated schemes and that unlisted companies should be particularly wary.

Rick Catanzariti, DLA Piper, then finished the program looking at employment law aspects of such schemes. He noted that it was essential that employment incentive schemes were clear, and that any discretion be avoided by giving the relevant

board or committee some guidelines to consider in making awards or other relevant decisions.

Rick further commented that companies were particularly poor in matching up terms of employee incentive schemes and employment offers/contracts, as often the two documents were not drafted at the same time, and even if they were, they were often drafted by different people.

CONTACTS

For further information on any of the topics discussed, do not hesitate to contact Simon Davidson or Michael Cunningham:



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