

Notice of Annual General Meeting and explanatory notes



DWS Limited
ACN 085 656 088

Date: Tuesday 10th November 2015

Time: 11.00am AEDT

Place: Grant Thornton Australia
The Rialto
Level 30, 525 Collins Street
Melbourne, Vic, 3000



Notice of Annual General Meeting

Notice is given that the 2015 Annual General Meeting of the Shareholders of **DWS Limited (Company)** will be held at the offices of **Grant Thornton Australia, The Rialto, Level 30, 525 Collins Street, Melbourne, Vic, 3000 at 11.00am AEDT on Tuesday 10th November 2015.**

Ordinary Business

Annual Report

To receive and consider the Financial Report, the Directors' Report and the Auditors' Report for the year ended 30 June 2015.

Resolution 1: Remuneration Report

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

'That the Remuneration Report forming part of the Directors' Report for the year ended 30 June 2015 be adopted.'

Resolution 2: Re-election of Mr Ken Barry

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

'That Mr Ken Barry, pursuant to clause 15.3 of the Company's Constitution, be re-elected as a Director of the Company.'

Special Business

Resolution 3: Approval of financial assistance by certain of the Company's subsidiaries in connection with the Symplicit and Phoenix Acquisitions*

To consider and, if thought fit, pass the following resolution as a special resolution:

'That, for the purposes of sections 260A and 260B(2) of the Corporations Act 2001 (Cth) and for all other purposes, shareholder approval is given for the financial assistance to be provided, from time to time, by the following subsidiaries of the Company:

- (a) Symplicit Pty Ltd ACN 103 134 087 in connection with the Symplicit Acquisition**
- (b) Phoenix IT & T Consulting Pty Ltd ACN 090 249 255 in connection with the Phoenix Acquisition**

Each as described in the Explanatory Notes the Notice of Meeting.

** Defined in the Explanatory Notes to the Notice of Meeting.'*



Notice of Annual General Meeting

DATED: 7 October 2015

BY ORDER OF THE BOARD

A handwritten signature in black ink, appearing to read "Hatherley".

.....
James Hatherley
Company Secretary

Explanatory Notes

Voting, proxies and company representatives

1. How to vote and voting entitlements

You may vote by attending the meeting in person, by proxy or by appointing an authorised representative.

The Directors have determined that, in accordance with regulation 7.11.37 and 7.11.38 of the Corporations Regulations 2001 (Cth), the holders of the Company's shares for the purposes of the meeting, will be those registered holders of shares as at 7.00pm Australian Eastern Daylight Time on Friday 6 November 2015.

2. Voting in person or by Corporate Representative

If a corporate Shareholder wishes to appoint a person to act as its representative at the meeting that person should complete a "Certificate of Appointment of Representative" available from Boardroom Pty Ltd at Level 12, 225 George Street, Sydney, NSW, 2000 (telephone 1300 737 760) and present that certificate at the Annual General Meeting, as well as any authority under which the certificate is signed.

3. Voting by Proxy

A Shareholder entitled to attend and vote at the Annual General Meeting is entitled to appoint a proxy. The Proxy need not be a Shareholder of the Company. A Shareholder who is entitled to cast two or more votes may appoint not more than two proxies and may specify the proportion or number of votes each proxy is appointed to exercise. If the Shareholder appoints two proxies and the appointment does not specify the proportion or number of the Shareholder's votes that each proxy may exercise, each proxy may exercise one half of the Shareholder's votes.

A Shareholder may direct their proxy how to vote by placing a mark in one of the boxes opposite each resolution on the Proxy Form. All the Shareholder's shares will be voted in accordance with that direction. If a Shareholder marks more than one box on a resolution, their vote on that resolution will be invalid.

Proxy Forms must be lodged in accordance with the instructions set out in the Proxy Form accompanying this Notice of Meeting.

- 1)  Online www.votingonline.com.au/dwsagm2015
- 2)  By Fax + 61 2 9290 9655
- 3)  By Mail Boardroom Pty Limited
GPO Box 3993,
Sydney NSW 2001 Australia
- 4)  In Person Level 12, 225 George Street,
Sydney NSW 2000 Australia

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Proxy Forms must be lodged **no later than** 11.00am AEDT Sunday 8th November 2015. Any revocations of proxies must be received prior to the commencement of the meeting.

The Company's Chairman will be chairing the meeting and will not vote undirected proxies in favour of Resolution 1, the Remuneration Report. The Chairman intends to vote all undirected proxies in favour of Resolution 2.

4. Voting Exclusion

The Company will disregard any votes cast on Resolution 1, the Remuneration Report, by Key Management Personnel ("KMP") whose remuneration is included in the Remuneration Report and Closely Related Parties of such KMP, unless the vote is cast:

- (a) by a person as proxy for a person who is entitled to vote on that resolution, in accordance with the direction on the Proxy Form; or
- (b) by the Chairman of the Annual General Meeting as proxy for a person who is entitled to vote on that resolution, in accordance with a direction on the Proxy Form to vote as the proxy decides even though that resolution is connected with the remuneration of the Chairman, a member of the Company's KMP.

For the purposes of this voting exclusion statement:

- KMP includes employees and officers of the Company who have authority and responsibility for planning, directing and controlling the activities of the Company either directly or indirectly, including the Company's Directors; and
- Closely Related Parties of KMP include the spouse, children, dependents and other family of a member of the Company's KMP and a company controlled by a member of the Company's KMP.

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Ordinary Business

Financial Statements and Reports

Section 317 of the *Corporations Act 2001* (Cth) (**Corporations Act**) requires that the Financial Report, the Directors' Report and Auditors' Report for the last financial year be laid before the Company's Annual General Meeting. There is no requirement either in the Corporations Act or the Company's Constitution for the Shareholders to approve the Financial Report, the Directors' Report or the Auditors' Report. Shareholders will be given a reasonable opportunity at the meeting to ask questions and make comments on these Reports and on the Company's business operations.

Resolution 1: Remuneration Report (Non-binding Resolution)

Under the Corporations Act 2001, the Company is required to include in the Directors' Report, a detailed Remuneration Report setting out certain prescribed information in relation to the remuneration of Key Management Personnel ("**KMP**"), including Directors, and submit this for adoption by resolution of shareholders at the Annual General Meeting.

The Directors' Report for the year ended 30 June 2015 contains that Remuneration Report. A copy of the report is set out on pages 22 to 26 of the 2015 Annual Report and can also be found on the DWS website at www.dws.com.au.

The Remuneration Report covers various matters including (but not limited to):

- Board policies in relation to the nature and amount of the remuneration of the Company's KMP;
- The relationship between such policies and DWS' performance;
- If part of the remuneration of a KMP is performance based, details relating to these performance conditions; and
- Certain 'prescribed details' in relation to the remuneration of the KMP of DWS.

The vote on this Resolution is advisory only and is not binding on the Board or the Company.

Under the Corporations Act, if the resolution to adopt the Remuneration Report receives a "no" vote of at least 25% of the votes cast at two consecutive Annual General Meetings, a resolution must then be put to shareholders at the second Annual General Meeting as to whether another general meeting of the Company should be held within 90 days at which all Directors (other than the Managing Director) who were in office at the time the Board approved the second Remuneration Report, would need to stand for re-election.

At last year's Annual General Meeting, the vote on the Remuneration Report did not receive a "no" vote in excess of the first 25% trigger.

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As referred to in the Voting Exclusion Statement in note 4 above, the Company's KMP, including the Company's Directors, and Closely Related Parties of the Company's KMP, are not eligible to vote on this Resolution, except as stated in note 4 above.

Resolution 2: Re-election of Mr Ken Barry

Clause 15.3 of the Company's Constitution provides that at each Annual General Meeting of the Company one third of the Directors (or if their number is not a multiple of three, then the number nearest to but not exceeding one-third) must retire from office. As the Managing Director is not subject to re-election under the Constitution, the number of Directors that must retire from office at the 2015 Annual General Meeting is one.

Mr Barry, being the Director who has been in office the longest since being re-elected, retires by rotation and is eligible for re-election.

Mr Barry has over 40 years of corporate, commercial, legal and compliance experience with listed and unlisted companies and provides valuable insight to the DWS Board. Mr Barry previously held positions as Chairman of national law firm Deacons (now called Norton Rose Fulbright), Director of the National Electricity Market Management Company Limited, Yallourn Energy Limited and Chairman of Ausdoc Group Limited and Freightways Express Limited (NZ).

In addition to being a Non-Executive Director of DWS, Ken is currently a Director of Next Generation Australia Pty Ltd and Thoroughbred Breeders Australia Ltd.

Recommendation

The Directors of the Company unanimously recommend that shareholders vote in favour of the re-election of Mr Barry.

Special Business Business

Resolution 3: Approval of financial assistance by certain of the Company's subsidiaries in connection with the Symplicit and Phoenix Acquisitions

Background

On 31 August 2015, the Company entered into a three-year debt agreement ('the Facility Agreement') with National Australia Bank Limited ABN 12 004 044 937 ('the Lender') incorporating the following facilities:

- (a) a \$10,000,000 revolving loan facility for the purpose of refinancing existing financial indebtedness, general corporate purposes (excluding the funding of dividends) and funding further acquisitions;
- (b) a \$19,500,000 term loan facility for the purpose of funding the acquisition of 75% of the issued shares of Phoenix IT & T Consulting Pty Ltd ACN 090 249 255 ('Phoenix'); and

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- (c) a \$6,500,000 term loan facility for the purpose of funding the future acquisition of the remaining 25% of the issued shares in Phoenix.

The borrowers and guarantors under the Facility Agreement are the Company and the subsidiaries of the Company other than Phoenix and Symplicit Pty Ltd ACN 103 134 087 ('Symplicit') (collectively 'the Initial DWS Borrowers'). The Facility Agreement charges interest and includes events of default and undertakings (including negative pledges and undertakings not to dispose of assets), representations and warranties from the Initial DWS Borrowers consistent with facilities of the nature granted or as required by the Lender in the particular circumstances.

The Facility Agreement also requires the Initial DWS Borrowers to ensure that certain subsidiaries of the Company (determined by an 'obligor test') are guarantors in respect of the facilities ('Guarantor Undertaking').

DWS has made the following acquisitions ('Acquisitions') in the past twelve months:

- Purchase of the entire issued capital of Symplicit under an agreement dated 1 June 2015; and
- Purchase of 75% of the issued share capital of Phoenix under an agreement dated 4 August 2015. Under the agreement DWS and the founders of Phoenix have irrevocable rights to buy and sell respectively the 25% balance of shares in Phoenix at any time between 31 January 2016 and 31 January 2017.

On completion of each of the Acquisitions, each of Symplicit and Phoenix (each a 'Target') became subsidiaries of the Company. Funds drawn under the Facility Agreement were used to fund part or all of the purchase price for both Acquisitions. In accordance with the 'guarantor test' in the Facility Agreement, the Company is now required to ensure the Targets referred to in paragraphs (a) and (b) of the proposed resolution ('Target Guarantors') become guarantors under the Facility Agreement.

Restrictions on companies giving financial assistance

Section 260A(1) of the Corporations Act provides that a company may financially assist a person to acquire shares in the company or a holding company of the company if the assistance is approved by shareholders under section 260B of the Corporations Act.

A company may be regarded as giving financial assistance if it gives something needed in order that a transaction be carried out or something in the nature of aid or help. Common examples of financial assistance include issuing a debenture, giving security over the company's assets, and giving a guarantee or indemnity in respect of another person's liability. The giving of guarantees (and the undertaking of the other obligations described below) by the Target Guarantors in respect of the Facility Agreement would constitute financial assistance to the Company and hence to the purchaser referred to above in connection with the relevant acquisitions.

Approval by the shareholders of the Target Guarantors to the financial assistance to be given by the Target Guarantors has already been provided. However, under section 260B(2) of the Corporations Act, if immediately after the acquisition, the company will be a subsidiary of another corporation which is listed in Australia ('Listed Australian Holding Company'), the financial assistance must be

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approved by a special resolution of the Listed Australian Holding Company. Because the Company is a Listed Australian Holding Company of the Target Guarantors, shareholders of the Company are also required to approve the giving of financial assistance.

Accession to the Guarantees

It is proposed that, in order for the Initial DWS Borrowers to comply with the Guarantor Undertakings under the Facility Agreement, the Target Guarantors accede as guarantors pursuant to an accession letter under the Facility Agreement ('Subsidiary Deed of Accession').

Upon execution of each of the Subsidiary Deeds of Accession, the Target Guarantors would (among other things) become bound by the guarantees, indemnities and undertakings and give the representations and warranties currently provided by the Initial DWS Borrowers.

Reasons for giving financial assistance

The reason for the giving of financial assistance described above is to enable the Company to comply with certain of its obligations under the Facility Agreement, namely the Guarantor Undertaking.

If such obligations are not complied with, a 'Review Event' will occur and the funding provided under the Facility Agreement may be required to be repaid.

Effect of financial assistance

As the Initial DWS Borrowers are already liable for the amounts payable under the Facility Agreement, the giving of financial assistance described in these explanatory notes by each of the Target Guarantors is unlikely to have any adverse effect on the Initial DWS Borrowers.

The substantial effect of the financial assistance on the Target Guarantors is that each Target Guarantor will have guaranteed all amounts payable under the Facility Agreement.

The Directors of the Company do not believe that the Company, any of the other Initial DWS Borrowers or any of the Target Guarantors are likely to default in their obligations under the Finance Documents.

Advantages of the proposed resolution

The advantage to the Company of the proposed resolution is that the Target Guarantors will allow the Company to meet the guarantor tests under the Facility Agreement mentioned above and avoid the occurrence of a Review Event. If a Review Event occurs and no alternative security, pricing and/or other arrangements are negotiated with the Lender, then the Lender may require all amounts outstanding to be repaid within 30 days.

The principal advantage of the proposed resolution to the Target Guarantors is that the Company will be able to maintain its ownership of the Targets. The Directors of the Company believe that this is in the interests of the Target Guarantors because:

- the Target Guarantors will have greater access to funding as a result of ownership by DWS;

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- the Target Guarantors will benefit from synergies and greater growth potential through that ownership by DWS; and
- the Target Guarantors will be able to retain existing management expertise and will have access to new management expertise provided by the Company and its affiliates.

The Directors of the Company believe that approving the financial assistance described above is in the interests of the Company.

Disadvantages of the proposed resolution

As the Initial DWS Borrowers are already liable for the amounts due under the Facility Agreement, the Directors of the Company do not believe there are any disadvantages to the Company of the proposed resolution.

The disadvantage of the proposed resolution for the Target Guarantors is that they will become liable for the amounts under the Facility Agreement. As such, and although the Directors consider this unlikely, if the Initial DWS Borrowers were default under the Facility Agreement, the Lender may then make a demand under the guarantees provided by the Target Guarantors requiring immediate repayment of the amounts due under the Facility Agreement.

Passing the Financial Assistance Resolution

The resolution proposed is proposed as a special resolution and will be passed if 75% of the votes cast by shareholders are in favour of the resolution.

Prior notice to Australian Securities & Investments Commission

As required by section 260B(5) of the Act, copies of the Notice including these Explanatory Notes, as sent to the shareholders, were lodged with the Australian Securities & Investments Commission prior to their dispatch to shareholders.

Disclosure

The Directors consider that these Explanatory Notes contain all the information known to the Company that would be material to shareholders in deciding how to vote on the proposed resolution other than information which it would be unreasonable to require the Company to include because it has been previously disclosed to the shareholders of the Company.

Recommendation

The Directors unanimously recommend that the shareholders vote in favour of Resolution 3 to approve the giving of financial assistance.