
CORPORATE GOVERNANCE FRAMEWORK

The Organisation for Economic Co-operation and Development (OECD) is well advanced in the development of a set of draft *Principles of Corporate Governance*. The proposed OECD Principles are intended to be a non-binding statement of the key elements which underlie good corporate governance. Australia is involved in the development of the Principles at both the public and private sector level.

This section and Attachment D discuss, in terms of the OECD draft Principles, those aspects of Australia's corporate governance regime which relate to transparency and the efficient and effective dissemination of information to the market.

Institutional framework

Australia's corporate governance framework essentially consists of a 'matrix' of legislation, accounting standards which have the force of law, Australian Stock Exchange (ASX) Listing Rules, and voluntary self-regulatory codes of practice.

- For example, the basic rights of shareholders and duties of directors are contained both in legislation (the Corporations Law) and in the common law. Financial reporting requirements are contained in the Corporations Law, in accounting standards, and in the ASX Listing Rules. Non-financial reporting requirements are contained in the Corporations Law and in the ASX Listing Rules. Self-regulatory codes of practice also cover aspects of the internal management of companies (for example, the structure and make up of boards).

Overseeing this matrix of regulation is an independent statutory authority, the Australian Securities and Investments Commission (ASIC) which has wide-ranging enforcement powers. Enforcement of the Corporations Law may also be undertaken by private action.

ASIC undertakes a range of activities in order to facilitate improved corporate governance. In addition to enforcing relevant provisions of the Corporations Law, ASIC sets standards, issues best practice guides,

and (together with the ASX) has a key role in disseminating information to the market. For example, ASIC:

- sets and enforces standards for investment advice and managed investments, prospectuses, takeover documents and financial reporting;
- sets standards and applies the law to business problems, explaining how the law works and contributing to law reform;
- provides policy guidance on the interface between legal requirements and corporate practice; and
- where possible, publishes reports on specific instances where there has been a failure to meet best practice, so that lessons can be learnt.

The ASX imposes a wide range of disclosure requirements on listed companies. Disciplinary action may be taken by the ASX against companies in breach of its Listing Rules, including suspension of an entity's securities from quotation or, ultimately, de-listing. The ASX also requires each listed company to disclose the main corporate governance practices it has had in place during the year. Under this rule, the ASX does not require that particular practices be adopted or that companies report against prescribed checklists. Rather, it aims to promote disclosure of the corporate governance practices a particular company already has in place.

Various private sector organisations have produced documents providing guidance on corporate governance (for example, the Australian Investment Managers' Association's *Guide for Investment Managers and Corporations* and best practice guidelines produced by the Australian Institute of Company Directors). Such guidelines are generally provided as samples of 'best practice' having regard to the globalisation of capital markets and the emergence of international best practice. They are available to assist companies in determining the best corporate governance model for their own circumstances.

The Government's Corporate Law Economic Reform Program seeks to ensure that Australia's business regulation is consistent with international best practice and provides an appropriately secure environment for investment in Australia. The program aims to enhance the transparency of financial information and the accountability of market participants by modernising the regulation of fundraising, takeovers, directors' duties, corporate governance, financial reporting and financial markets and investment products.

In the area of corporate governance three major issues have been examined by the Program:

- whether the current rules regulating company directors' conduct inhibit sound business judgements;
- whether shareholders have sufficient opportunity for redress against a corporation; and
- whether the private sector is adequately addressing the issue of corporate governance in light of the importance of international and domestic confidence in Australia's securities markets.

In light of this examination, the Government is proceeding with the introduction of a statutory business judgement rule providing directors with a safe harbour in relation to honest, informed and rational business judgements, and a statutory derivative action enabling shareholders or directors of a company to bring an action on behalf of the company in certain circumstances. However, apart from those reforms in the corporate governance area, the Government has taken a policy position that it will not impose additional mandatory legislative requirements unless there is a clear failure of the current requirements or the existing regulatory mechanisms. In this regard, the Government considers that corporate governance practices should be continuously monitored by ASIC, the ASX, relevant industry and professional bodies who promote best practice, investors and government.

Transparency

There has been some academic questioning whether mandatory disclosure requirements are necessary for the fair and efficient operation of capital markets on the basis that market forces will induce competing firms to disclose, in order to attract investment. However, the Australian philosophy is that full market information prescribed by law and enforced through an independent regulator is an essential prerequisite of competitive, efficient markets.

Full public disclosure of information about a corporation's business and affairs is necessary to both attract investors and maintain the confidence of investors in the integrity of the market. The disclosure philosophy is consistent with the OECD draft corporate governance principle that the corporate governance framework should ensure timely and accurate disclosure of information on all material matters

regarding the financial situation, performance, ownership and governance of companies.

Accordingly, a theme of amendments to the Corporations Law over the last five to seven years has been to improve disclosure of relevant matters, rather than to directly adjust the substantive rights of the various stakeholders. A few examples of the wide range of matters covered in the Corporations Law are the requirement to provide annual and half-yearly reports to shareholders, mandatory prompt and continuous disclosure to the market of events which might influence the price of a company's shares, notification to investors of specific information in relation to obtaining shareholder approval for related party transactions, and a range of matters involving the exposure of directors' remuneration and the disclosure of the number of board meetings attended by directors.

Disclosure Standard: The corporate governance framework should ensure that timely and accurate information is disclosed on all material matters regarding the financial situation, performance, ownership and governance of companies (OECD Draft Corporate Governance Principles).

Australia substantially adheres to the OECD draft Principles, although their general nature does not lend itself to a clear-cut 'checklist' assessment. Australia meets, and in some cases exceeds, international accounting and auditing standards. Disclosure of matters not covered by accounting and auditing standards are met through legislative requirements or Stock Exchange Listing Rules backed by enforcement mechanisms, or in some cases through the encouragement of best practice.

Attachment D discusses the disclosure aspects of Australia's corporate governance framework in the context of the relevant OECD draft Principles.