

New Australian Corporate Governance Guidelines

A number of large recent corporate collapses in the US and Australia caused by questionable management practices of company executives and boards has cost investors millions of dollars in shareholder funds and added to investor uncertainty. Such uncertainty in the current economic climate will exacerbate any downturn in the economy. As has happened in the US, the Australian corporate landscape recently critically analysed the issue of corporate governance in the wake of these recent corporate collapses.

What is corporate governance? Corporate Governance has been described as, “the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed and how performance is optimized.”¹

On 15 August 2002, the Australian Stock Exchange Limited (**ASX**) Corporate Governance Council was formed, with the mission “to develop and delivery an industry-wide, supportable and supported framework for corporate governance which could provide a practical guide for listed companies, their investors, the wider market and the Australian community”². The ASX Corporate Governance Council is comprised of various business groups.

In March this year, the ASX Corporate Governance Council issued its “Principles of Good Corporate Governance and Best Practice Recommendations” (**Guidelines**). The 10 essential corporate governance principles promulgated are:

1. Lay solid foundations for management and oversight.
2. Structure the board to add value.
3. Promote ethical and responsible decision-making.
4. Safeguard integrity in financial reporting.
5. Make timely and balanced disclosure.
6. Respect the rights of shareholders.
7. Recognise and manage risk.
8. Encourage enhanced performance.
9. Remunerate fairly and responsibly.
10. Recognise the legitimate interest of stakeholders.

In addition to the principles, the Guidelines contain 28 recommendations.

The approach taken in Australia to corporate governance is less prescriptive than the approach taken in the US and more along the lines of the approach taken in the UK. Generally under the Australian approach, companies listed on the ASX may choose not to

¹ ASX Corporate Governance Council, Principles of Good Corporate Governance and Best Practice Recommendations, March 2003

² Karen Leslie Hamilton, Chairperson, ASX Corporate Governance Council, Foreword to “ASX Corporate Governance Council, Principles of Good Corporate Governance and Best Practice Recommendations, March 2003”

comply with the recommendations, but if they do not comply with them, they must explain why not³.

The flexible approach taken in Australian has a number of benefits including recognizing that not all companies are the same size, have the same requirements or are faced with the same circumstances. These benefits can come with the cost of some degree of uncertainty. From an investors' perspective, the Guidelines attempt to deal with the issue of uncertainty by imposing numerous disclosure requirements.

Makinson & d'Apice can assist you with complying with the new Guidelines, which will require an assessment of current compliance and the disclosure of any areas of non-compliance, together with the reasons for the non-compliance. In addition, we can assist in the preparation or review of a number of company charter documents that will be needed. For example, under principle 2 – "Structure the Board to add value":

- (a) recommendation 2.3 requires that, "The division of responsibilities between the chairperson and the chief executive officer should be agreed by the board and set out in a statement of position authority"; and
- (b) recommendation 2.4 requires that, "The nomination committee should have a charter that clearly sets out its role and responsibilities, composition, structure and membership requirements."

If you are an investor, director or shareholder and have any questions concerning the new Guidelines please contact Norman Donato on + 61 2 9233 9031 or send an email to ndonato@makdap.com.au.

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This is a brief and general outline of the law on the subject matter as at 14 July 2003. No action should be taken in reliance on this note without first obtaining detailed and specific advice.

³ An exception regarding audit committees applies to companies comprising the S&P/ASX All Ordinaries Index. The ASX Listing Rules mandate the establishment of audit committees by those companies and require that the composition, operation and responsibility of the audit committee comply with the Council's best practice recommendations.