Background: Corporate governance

Australian Corporation Practice
Current to: September 2017
A Lumsden and K McPherson

Chapter 31 Corporate Governance

written by
ANDREW LUMSDEN
Corrs Chambers Westgarth, Sydney

and
KYLIE McPHERSON
Diageo Australia

CURRENCY: September 2017

Background: Corporate governance

[31.005] What is good corporate governance?

Corporate governance is the system by which corporations are directed and controlled:

> The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs.[5]

The subject of corporate governance is wide and varied. Even though good corporate governance can mean different things to different people, essentially it is an extended partnership between a company and a range of other groups including its shareholders, its management, its employees, the regulators, the markets and the wider community. It also regulates the relationship between a company's members.[10]

Good corporate governance is at least:

- a system of checks and balances to promote fairness, accountability and transparency;
- part of an overall risk management programme;
- founded on the premise that the board is charged with the role of agent for the shareholders to ensure the organisation is managed in the shareholder's best interests;
- about protecting the organisation's reputation; and
- capable of responding to the tension between ensuring managerial accountability and enhancing performance.[15]

Good corporate governance is applicable to public, private, government and not-for profit organisations alike.

Good governance and good risk management have many similar features. Both identify and determine the amount of acceptable risk; establish a regime to measure and monitor risk, separate risk management from management; and develop a strong corporate risk culture so that the rewards, as well as the risks, are always considered.[20]

Responsibility for corporate governance commonly falls on the board. Any governance standard adopted by a board is likely to be used as a benchmark in assessing whether a board or individual directors have applied a reasonable degree of care and diligence in exercising their powers and discharging their duties, as is required by law. One key element of the governance of a corporation is its constitution, the relationship between the governance matters and the constitution is discussed further in *[31.190]*.

There are many sources of corporate governance rules, including the Corporations Act 2001 (Cth) (Corporations Act), common law and the company's constitution. The Australian Standards, "Good Governance Principles", and the ASX Corporate Governance Council's Principles and Recommendations also provide a sound approach to corporate governance for many different types of entities.

The area of corporate governance on the whole is premised on self-regulation. Self-regulation is flexible, able to evolve to meet specific and changing circumstances, utilises the expertise of those it regulates and has the ability to enlist the support and input of stakeholders within the industry to create an effective culture of performance.

5. Organisation for Economic Co-Operation and Development (OECD), April 1999.

10. R P Austin and I M Ramsay, *Ford's Principles of Corporations Law*, 16th ed, LexisNexis Butterworths, Sydney, 2014, p 208, *[6.050]*.

15. Discussed in some detail in L S Sealy, "Corporate Governance and Directors Duties", (1995) 1 *NZBLQ* 92, p 93.

20. R Felton and M Watson, "Change across the board" (2002) *The McKinsey Quarterly* No 4.

End of Document