

# ASX Corporate Governance Council: Corporate Governance Principles and Recommendations

## Background

ASX convened the ASX Corporate Governance Council ("Council") in August 2002. It was prompted by suggestions from ASIC and Government that ASX take a leadership role in formulating a non-legislative response to the corporate governance issues arising following corporate collapses in 2000. The Council consists of 21 industry and other stakeholder groups. A number of members of the Council were members of a precursor to the Council, the ASIC Corporate Governance Roundtable. Council released the first edition, *Principles of Good Corporate Governance and Best Practice Recommendations* in March 2003. In 2006/2007 Council undertook a review and public consultation which led to the release of the revised *Corporate Governance Principles and Recommendations* in August 2007. These principles are summarised below.

## ASX Role

ASX chairs the Council, provides the secretariat function and is also represented on the Council. In its role as market supervisor, ASX monitors and enforces corporate governance disclosure under its listing rules.

Since the Principles and Recommendations were first released in March 2003, ASX has also conducted an annual review of the corporate governance disclosures of listed entities in their annual reports. The results of this review are released each year.

## ASX Listing Rules – "if not, why not"

The ASX Listing Rules contain two mandatory requirements relating to corporate governance and the Principles:

- ASX LR 4.10.3 requires listed entities to disclose in each annual report the extent to which they have followed the Principles and Recommendations during the reporting period. If a listed entity considers that particular recommendations are not appropriate to its circumstances, it has the flexibility not to adopt them, as long as it explains why ("if not, why not").
- ASX LR 12.7 requires the top 500 listed entities to have an audit committee, and the top 300 to have an audit committee that is constituted in accordance with Recommendation 4.3.

## Effective date

The effective date for the revised Principles is the first full financial year starting on or after 1 January 2008. December 31 balancing companies are required to use the revised Principles first, although the Council has encouraged early adoption and anticipates that a number of companies reporting at 30 June 2008 will use the revised Principles.

## Further information

The ASX website (see link below) contains further information on the Principles including the full Principles with commentary, supplementary guidance on Principle 7 and the submissions and response to the review of the Principles, and the analysis of 2007 corporate governance reporting, released in June 2008.

<http://www.asx.com.au/supervision/governance/index.htm>

## The Corporate Governance Principles and Recommendations

### Principle 1 – *Lay solid foundations for management and oversight*

Companies should establish and disclose the respective roles and responsibilities of board and management.

**Recommendation 1.1:** Companies should establish the functions reserved to the board and those delegated to senior executives and disclose those functions.

#### Box 1.1 Content of a director's letter upon appointment

**Recommendation 1.2:** Companies should disclose the process for evaluating the performance of senior executives.

**Recommendation 1.3:** Companies should provide the information indicated in the Guide to reporting on Principle 1.

### Principle 2 – *Structure the board to add value*

Companies should have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.

**Recommendation 2.1:** A majority of the board should be independent directors.

#### Box 2.1: Relationships affecting independent status

**Recommendation 2.2:** The chair should be an independent director.

**Recommendation 2.3:** The roles of chair and chief executive officer should not be exercised by the same individual.

**Recommendation 2.4:** The board should establish a nomination committee.

**Recommendation 2.5:** Companies should disclose the process for evaluating the performance of the board, its committees and individual directors.

**Recommendation 2.6:** Companies should provide the information indicated in the Guide to reporting on Principle 2.

### Principle 3 – *Promote ethical and responsible decision-making*

Companies should actively promote ethical and responsible decision-making.

**Recommendation 3.1:** Companies should establish a code of conduct and disclose the code or a summary of the code as to:

- the practices necessary to maintain confidence in the company's integrity
- the practices necessary to take into account their legal obligations and the expectations of their stakeholders
- the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.

**Box 3.1: Suggestions for the content of a code of conduct**

**Recommendation 3.2:** Companies should establish a policy concerning trading in company securities by directors, senior executives and employees, and disclose the policy or a summary of that policy.

**Box 3.2: Suggestions for the content of a trading policy**

**Recommendation 3.3:** Companies should provide the information indicated in the Guide to reporting on Principle 3.

**Principle 4 - *Safeguard integrity in financial reporting***

Companies should have a structure to independently verify and safeguard the integrity of their financial reporting.

**Recommendation 4.1:** The board should establish an audit committee.

**Recommendation 4.2:** The audit committee should be structured so that it: consists only of non-executive directors

- consists of a majority of independent directors
- is chaired by an independent chair, who is not chair of the board
- has at least three members.

**Recommendation 4.3:** The audit committee should have a formal charter.

**Recommendation 4.4:** Companies should provide the information indicated in the Guide to reporting on Principle 4.

**Principle 5 - *Make timely and balanced disclosure***

Companies should promote timely and balanced disclosure of all material matters concerning the company.

**Recommendation 5.1:** Companies should establish written policies designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior executive level for that compliance and disclose those policies or a summary of those policies.

**Box 5.1: Continuous disclosure policies**

**Recommendation 5.2:** Companies should provide the information indicated in the Guide to reporting on Principle 5.

**Principle 6 - *Respect the rights of shareholders***

Companies should respect the rights of shareholders and facilitate the effective exercise of those rights.

**Recommendation 6.1:** Companies should design a communications policy for promoting effective communication with shareholders and encouraging their participation at general meetings and disclose their policy or a summary of that policy.

**Box 6.1: Using electronic communications effectively**

**Recommendation 6.2:** Companies should provide the information indicated in the Guide to reporting on Principle 6.

**Principle 7- *Recognise and manage risk***

Companies should establish a sound system of risk oversight and management and internal control.

**Recommendation 7.1:** Companies should establish policies for the oversight and management of material business risks and disclose a summary of those policies.

**Recommendation 7.2:** The board should require management to design and implement the risk management and internal control system to manage the company's material business risks and report to it on whether those risks are being managed effectively. The board should disclose that management has reported to it as to the effectiveness of the company's management of its material business risks.

**Recommendation 7.3:** The board should disclose whether it has received assurance from the chief executive officer (or equivalent) and the chief financial officer (or equivalent) that the declaration provided in accordance with section 295A of the Corporations Act is founded on a sound system of risk management and internal control and that the system is operating effectively in all material respects in relation to financial reporting risks.

**Recommendation 7.4:** Companies should provide the information indicated in the Guide to reporting on Principle 7.

**Principle 8 - *Remunerate fairly and responsibly***

Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.

**Recommendation 8.1:** The board should establish a remuneration committee.

**Recommendation 8.2:** Companies should clearly distinguish the structure of non-executive directors' remuneration from that of executive directors and senior executives.

**Box 8.1: Guidelines for executive remuneration packages**

**Box 8.2: Guidelines for non-executive director remuneration**

**Recommendation 8.3:** Companies should provide the information indicated in the Guide to reporting on Principle 8.

**Comparative Table**

A comparative table sourced from the *Corporate Governance Principles and Recommendations*, August 2007, is attached.

## Comparative table of changes to the Principles and Recommendations

EXISTING PRINCIPLE/RECOMMENDATION	REVISED PRINCIPLE/RECOMMENDATION
<b>Principle 1</b> – Lay solid foundations for management and oversight	No change
1.1 Formalise and disclose the functions reserved to the board and those delegated to management.	1.1 Companies should establish the functions reserved to the board and those delegated to senior executives and disclose those functions.
Box 1.1 Content of a director's letter of appointment	Box 1.1 Content of a director's letter upon appointment
	1.2 Companies should disclose the process for evaluating the performance of senior executives.
	1.3 Companies should provide the information indicated in the Guide to reporting on Principle 1.
<b>Principle 2</b> – Structure the board to add value	No change
2.1 A majority of the board should be independent directors.	No change
Box 2.1 Assessing the independence of directors	Box 2.1 Relationships affecting independent status
2.2 The chairperson should be an independent director.	2.2 The chair should be an independent director.
2.3 The roles of chairperson and chief executive officer should not be exercised by the same individual.	2.3 The roles of chair and chief executive officer should not be exercised by the same individual.
2.4 The board should establish a nomination committee.	No change
2.5 Provide the information indicated in Guide to reporting on Principle 2.	2.5 Companies should disclose the process for evaluating the performance of the board, its committees and individual directors.
	2.6 Companies should provide the information indicated in the Guide to reporting on Principle 2.
<b>Principle 3</b> – Promote ethical and responsible decision making	No change
3.1 Establish a code of conduct to guide the directors, the chief executive officer (or equivalent), the chief financial officer (or equivalent) and any other key executives as to:	3.1 Companies should establish a code of conduct and disclose the code or a summary of the code as to:
3.1.1 the practices necessary to maintain confidence in the company's integrity	<ul style="list-style-type: none"> <li>• No change</li> </ul>
3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.	<ul style="list-style-type: none"> <li>• the practices necessary to take into account their legal obligations and the reasonable expectations of their stakeholders</li> <li>• the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.</li> </ul>
Box 3.1 Suggestions for the content of a code of conduct	No change
3.2 Disclose the policy concerning trading in company securities by directors, officers and employees.	3.2 Companies should establish a policy concerning trading in company securities by directors, senior executives and employees and disclose the policy or a summary of that policy.
Box 3.2 Suggestions for the content of a trading policy	No change
3.3 Provide the information indicated in Guide to reporting on Principle 3.	3.3 Companies should provide the information indicated in the Guide to reporting on Principle 3.
<b>Principle 4</b> – Safeguard integrity in financial reporting	No change
4.1 Require the chief executive officer (or equivalent) and the chief financial officer (or equivalent) to state in writing to the board that the company's financial reports present a true and fair view, in all material respects, of the company's financial condition and operational results and are in accordance with relevant accounting standards.	4.1 The board should establish an audit committee.

**EXISTING PRINCIPLE/RECOMMENDATION**

**REVISED PRINCIPLE/RECOMMENDATION**

<p>4.2 The board should establish an audit committee.</p>	<p>4.2 The audit committee should be structured so that it:</p> <ul style="list-style-type: none"> <li>• consists only of non-executive directors</li> <li>• consists of a majority of independent directors</li> <li>• is chaired by an independent chair, who is not chair of the board</li> <li>• has at least three members.</li> </ul>
<p>4.3 Structure the audit committee so that it consists of:</p> <ul style="list-style-type: none"> <li>• only non-executive directors</li> <li>• a majority of independent directors</li> <li>• an independent chairperson, who is not chairperson of the board</li> <li>• at least three members.</li> </ul>	<p>4.3 The audit committee should have a formal charter.</p>
<p>4.4 The audit committee should have a formal charter.</p>	<p>4.4 Companies should provide the information indicated in the Guide to reporting on Principle 4.</p>
<p>4.5 Provide the information indicated in Guide to reporting on Principle 4.</p>	<p>See Recommendation 4.4</p>
<p><b>Principle 5 – Make timely and balanced disclosure</b></p>	<p>No change</p>
<p>5.1 Establish written policies and procedures designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior management level for that compliance.</p>	<p>5.1 Companies should establish written policies designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at senior executive level for that compliance and disclose those policies or a summary of those policies.</p>
<p>Box 5.1 Continuous disclosure policies and procedures</p>	<p>Box 5.1 Continuous disclosure policies</p>
<p>5.2 Provide the information indicated in Guide to reporting on Principle 5.</p>	<p>5.2 Companies should provide the information indicated in the Guide to reporting on Principle 5.</p>
<p><b>Principle 6 – Respect the rights of shareholders</b></p>	<p>No change</p>
<p>6.1 Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings.</p>	<p>6.1 Companies should design a communications policy for promoting effective communication with shareholders and encouraging their participation at general meetings and disclose their policy or a summary of that policy.</p>
<p>Box 6.1 Using electronic communications effectively</p>	<p>No change</p>
<p>6.2 Request the external auditor to attend the annual general meeting and be available to answer shareholder questions about the conduct of the audit and the preparation and content of the auditor's report.</p>	<p>6.2 Companies should provide the information indicated in the Guide to reporting on Principle 6.</p>
<p><b>Principle 7 – Recognise and manage risk</b></p>	<p>No change</p>
<p>7.1 The board or appropriate board committee should establish policies on risk oversight and management.</p>	<p>7.1 Companies should establish policies for the oversight and management of material business risks and disclose a summary of those policies.</p>
<p>7.2 The chief executive officer (or equivalent) and the chief financial officer (or equivalent) should state to the board in writing that:</p> <ul style="list-style-type: none"> <li>– 7.2.1 the statement given in accordance with best practice Recommendation 4.1 (the integrity of financial statements) is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the board</li> <li>– 7.2.2 the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.</li> </ul>	<p>7.2 The board should require management to design and implement the risk management and internal control system to manage the company's material business risks and report to it on whether those risks are being managed effectively. The board should disclose that management has reported to it as to the effectiveness of the company's management of its material business risks</p>

EXISTING PRINCIPLE/RECOMMENDATION	REVISED PRINCIPLE/RECOMMENDATION
7.3 Provide the information indicated in Guide to reporting on Principle 7.	7.3 The board should disclose whether it has received assurance from the chief executive officer (or equivalent) and the chief financial officer (or equivalent) that the declaration provided in accordance with section 295A of the Corporations Act is founded on a sound system of risk management and internal control and that the system is operating effectively in all material respects in relation to financial reporting risks.
	7.4 Companies should provide the information indicated in the Guide to reporting on Principle 7.
<b>Principle 8</b> – Encourage enhanced performance	See Principle 1 – Lay solid foundations for management and oversight See Principle 2 – Structure the board to add value
8.1 Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.	For senior executives see Recommendation 1.2 For directors see Recommendation 2.5
<b>Principle 9</b> – Remunerate fairly and responsibly	Now Principle 8
9.1 Provide disclosure in relation to the company's remuneration policies to enable investors to understand (i) the costs and benefits of those policies and (ii) the link between remuneration paid to directors and key executives and corporate performance.	8.1 The board should establish a remuneration committee.
Box 9.1 Disclosure of remuneration policies and procedures	See Section 300A of the Corporations Act and AASB 124 <i>Related party Disclosures</i> .
9.2 The board should establish a remuneration committee.	8.2 Companies should clearly distinguish the structure of non-executive directors' remuneration from that of executive directors and senior executives.
Box 9.2 Content of executive remuneration packages	Box 8.1 Guidelines for executive remuneration packages Box 8.2 Guidelines for non-executive director remuneration
9.3 Clearly distinguish the structure of non-executive directors' remuneration from that of executives.	See Recommendation 8.2
Box 9.3 Guidelines for non-executive director remuneration	See Box 8.2
9.4 Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders.	8.3 Companies should provide the information indicated in the Guide to reporting on Principle 8.
9.5 Provide the information indicated in Guide to reporting on Principle 9.	See Recommendation 8.3
Principle 10 – Recognise the legitimate interests of stakeholders.	See Principle 3 – Promote ethical and responsible decision making See Principle 7 – Recognise and manage risk
10.1 Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.	See Recommendation 3.1