

ASX Corporate Governance Council

Principles of Good Corporate Governance and Best Practice Recommendations

Frequently Asked Questions

INTERPRETIVE QUERIES

Item	Query	Commentary / Solution
Box 2.1	<p>Queries include:</p> <ol style="list-style-type: none"> 1. 'Independence' - is this a definition? 2. Is the determination of independence at the discretion of the Board? 3. The guidelines state that when independence is lost an announcement must be made immediately. How is the Board supposed to know immediately when this may be dependent on information to the Board and Boards meet monthly etc? 4. The nature of 'relationships'. 5. The definition of 'material'. 6. The definition of 'principal'. 7. How do the three year periods in the definition of independence in Box 2.1 operate? 	<ol style="list-style-type: none"> 1. 'Independence': Footnote 3 (p.19) states "Independence is defined in Box 2.1". Therefore, where a majority of the company's directors do not meet the independence related recommendations by reference to that definition, a disclosure requirement is triggered. 2. The Guidelines state that if the Board decides that a director is independent notwithstanding he/she does not meet the definition in Box 2.1, the directors must explain the variation from the definition and why this does not compromise the director's "independence". Each component of the definition should be addressed. 3. It is the responsibility of the Board, when setting materiality thresholds, to take this situation into account. Procedures need to be established so that the market is kept informed. 4. 'Relationships': The focus is on any relationships which may interfere with dispassionate objectivity in the Boardroom. Under the heading <i>Independent decision-making</i> (p.20) reference is made to family ties and cross-directorships as relevant consideration in this context additional to those relationships identified in Box 2.1. 5. 'Materiality': Under the heading <i>Disclosure of independence</i> (p.19) it states that "it is important for the Board to consider materiality thresholds...". Under <i>Guide to reporting on Principle 2</i>, the Board must set and disclose what its materiality thresholds are for the company and its directors in this context ie. from the perspective of both the company and the director. A

		<p>determination of materiality requires consideration of both quantitative and qualitative elements. AASB 1031 provides guidance in relation to a quantitative assessment of materiality. An item is presumed to be immaterial if it is equal or less than 5% of the base amount. It is presumed to be material (unless there is evidence to the contrary) if it is equal to or greater than 10% of the appropriate base amount. This would seem a reasonable starting position for consideration by the Board in determining thresholds for the company and its directors. The Board's assessment should also factor in qualitative factors which may influence whether a relationship is considered material such as its strategic importance, the competitive landscape, the nature of the relationship and the contractual or other arrangements governing it and other factors which point to the actual ability of the director in question to shape the direction of the company's loyalty.</p> <p>6. 'Principal': in the relevant context embraces a partner, director or substantial shareholder of the professional advisor.</p> <p>7. The three year bar in relation to executive employment / consultant relationship, is intended to break the connection between the individual and the company when that individual has held a position enabling him to influence the commercial operations of the business. This break implies 'time on the bench'. It is however open for companies to determine that certain directors are independent, notwithstanding the existence of these or other relationships set out in Box 2.1.</p>
Rec 4.3	Audit committee member 'independence' - Where an entity's Board has determined that a director is independent and explained the reasons for this, is that determination of independence by the Board sufficient for the purpose of satisfying the 'independent' director test with respect to Recommendation 4.3 (Audit Committee)?	The Board's determination regarding 'independence' (including reasons stated as to why any parts of the definition are not met) would carry across to Audit committees for the purpose of satisfying LR 12.7.
Rec 4.3	How will <i>financial expertise</i> for the purposes of recommendation 4.3 be determined?	The structural recommendation at 4.3 does not itself embrace a technical expertise criterion. However, under <i>Commentary and Guidance</i> to this recommendation, it is suggested that the audit committee include at least one member who has financial expertise. This is then described as being "a qualified accountant or other financial professional with experience of

		financial and accounting matters". The lack of a member with financial expertise does not itself trigger an 'if not, why not' reporting requirement. However, the absence of such a member will be transparent. <i>Guide to reporting on Principle 4</i> triggers the disclosure of "details of the names and qualifications of those appointed to the audit committee.....". If financial expertise is not apparent from such disclosure, it may be prudent to indicate why such a person has the appropriate skills.
Rec 6.1	For some companies it may be excessively costly keeping up-to-date email records.	Recommendation 6.1 merely requires the company to design and disclose a communication strategy to promote effective communication with shareholders. The suggestions in Box 6.1, on using electronic communications "effectively", target broad access to information via the company's website. It is up to the company to make a decision upon the extent to which it can create value for shareholders via the use of email broadcasts.
Rec 7.3	On the issue of 'risk', some companies felt it was unclear how much disclosure is needed.	Companies are required to provide a description of the risk management policy and internal compliance and control system (page 45, <i>Guide to reporting on Principle 7</i>). It is a matter for the company to determine the appropriate level of disclosure needed, in the context of the company's operations and risk profile in order to effectively communicate with their shareholders. It is stated (page 43) that the company's policies, "...should clearly describe the roles and respective accountabilities of the Board, audit committee (or other appropriate Board committee), management and any internal audit function. They should include the following components: oversight; risk profile; risk management; compliance and control; and assessment of effectiveness." It is also stated (page 43) that, "It is part of the Board's oversight role to oversee the establishment and implementation of the risk management system, and to review at least annually the effectiveness of the company's implementation of that system."
Rec 9.4	While Principle 9 recognises that a listed entity must adopt appropriate levels of remuneration in order to attract the right type of directors and employees, recommendation 9.4 (which may be inconsistent with Listing Rule 10.14) requires that equity-based executive remuneration is made in accordance with plans "approved by shareholders". Approval to share plan rules was removed from the	The guidelines are disclosure-based. No obligation attaches to Recommendation 9.4 other than to 'if not, why not' report. There is nothing in the Listing Rules that prevents an entity from complying with recommendation 9.4. Conversely, neither compliance nor non-compliance with the recommendation would result in a breach or non-compliance with the Listing Rules. It is up to the company to determine as part of its remuneration structure, where it is appropriate to gain approval by shareholders, and where it is not. The recommendation operates

	Listing Rules some years ago. This appears to leave a listed entity in a quandry with respect to executives remunerated in this manner but who are not directors when considered in light of recommendation 9.4.	independently of any listing rule requirements. Therefore, to that extent, there is no conflict. In ASX's experience, the majority of companies continue to seek shareholder approval of equity-based remuneration plans in order to preserve capital raising flexibility under Listing Rule 7.1 (see Listing Rule 7.2 Exception 9). Listing Rule 10.14 continues to require shareholder approval for <i>any</i> issue of securities to a director under a plan.
Rec 9.4	What is the definition of 'thresholds'?	The primary focus in this context is on the dilutive aspect. How much in percentage terms of the company's share capital is to be utilised for executive remuneration. In seeking approval however, bearing in mind Recommendations 6.1 and 9.1, it would be appropriate for the company to outline the structure and objectives of the relevant plan.
Box 10.1	Is there any more specific information as to what is meant by responsibilities to the individual?	For further information on point 7 in Box 10.1, <i>Responsibilities to the individual</i> , refer to the "Further guidance" section at the end of Principle 10. For example, Standards Australia's <i>Draft DR03028 - Organisational Codes of Conduct</i> - Appendix A of the draft is <i>Suggested Outline for Organisational Code of Conduct</i> and suggests further areas that one might include as responsibilities to the individual.
Stapled entities	How does the application of guidelines work in relation to stapled entities? Does ASX expect to see reporting against the Trust and the Company(s)? There is certain information about the responsible entity of the trust which needs to be included for statutory reporting, but in terms of reporting on the guidelines, does ASX want to see reporting on the entity as a whole - which effectively means reporting on the identical company structures - and wouldn't necessarily include information about the Trust.	It is a matter for the company to disclose what corporate governance reporting it will be providing and why that is appropriate in the context of the guidelines. The guidelines refer to trust structures also and how reporting will need to be amended to deal with this. Clearly reporting which duplicates information in relation to trusts and companies will not be valuable to investors; they would be more concerned about any divergences from the recommended governance structure, which were not explicable solely by reference to legal structures. It would be open for a stapled entity to provide corporate governance reporting in respect of the structure as a whole but complement this with additional information regarding the separate components of the stapled entity where statutory obligation or differences in governance structure should be explained.

GENERAL ISSUES

Issue	Query	Commentary / Solution
Auditor independence	If an auditor is independent now and is required to be independent by law and by the ethical rules of his or her institute, why can't a former auditor be considered an independent director?	He or she can, provided they meet all requirements of Box 2.1 – in this particular instance, the person would require 3 years 'break' from his or her relationship with the company. It would be difficult for the relevant auditor to be dispassionately objective about matters he or she has recently audited. However, there is the opportunity for the company to determine that such a person is independent notwithstanding the existence of that relationship (page 19, <i>Disclosure of Independence</i>).
Transitional arrangements for Audit Committees	<p>ASX has stated that Audit Committee (LR 12.7) composition prior to 1 July 2005 is as follows:</p> <ul style="list-style-type: none"> - majority non-executive directors; - at least one independent member; and - it is preferable that the chairman be independent. <p>Are entities expected to apply exception reporting (LR 4.10.3) to Audit Committee composition prior to 1/7/05?</p>	ASX has written to all companies included in the All Ords as at 1/4/03 with reporting periods ending 30/6/03 clarifying that LR 12.7 mandates the existence of an audit committee for the financial year commencing after 30/6/03. Transitional provisions apply to the composition of the audit committee. If an entity complies with the transitional provisions but not the best practice recommendations, they will be required to provide exception reporting as from the date upon which Listing Rule 4.10.3 requires this.
ASX/S&P All Ords	Would ASX advise all companies in writing whether they are in the S&P/ASX All Ordinaries or not?	Yes. ASX Companies have agreed to send out a letter of notification of inclusion in ASX/All Ords index of companies as at 1 April. ASX will check the list at the start of each quarter to make sure that additions to the index are also notified. The constituent list is available on the S&P website via a link from www.asx.com.au/corporategovernance . Changes are tracked and provided on a list by S&P also.
Auditor selection	There was general concern about disclosing the "auditor selection procedure" when selecting an audit firm is often a once in a 10 year event. Why do investors need to know this type of trivia in each annual report?	There is no requirement to include this information in the annual report. Rec 4.5 requires that information on procedures for the selection and appointment of the external auditor and for the rotation of external audit engagement partners be made publicly available – ideally by posting it to the website in a clearly marked corporate governance section. This requirement has emanated from community concerns about the integrity of the audit process and desire for enhanced understanding about the

		process of review and appointment of the auditor.
Remunerate fairly & responsibly	<ol style="list-style-type: none"> 1. Too many rules/guidelines governing disclosure of remuneration and executive pay. 2. Is ASX requiring announcement of CEO remuneration? 3. What about any variations of the contract; would they need to be announced? 	<ol style="list-style-type: none"> 1. There are 5 best practice recommendations. Two are disclosure based and support the spirit and intent of legal requirements. Feedback to the Council indicated that disclosure was inadequate and is of political and community concern. 2. Yes, ASX set out its policy in a Companies Update, dated 1 May 2003. Companies should aim to give investors information about the components of a CEO remuneration package which might govern actions and drive performance. 3. The purpose of the rule is to enable shareholders to understand the motivation of the CEO and to eliminate surprise – it is consistent with this that any significant variation be announced when agreed.
Early adoption	The Corporate Governance Guidelines are effective for reporting periods commencing after 1/1/03 but ASX encourages early adoption.	Companies with a year end of 30 June 2003 reporting in Annual Report for that period are not expected to follow exception reporting. Early adoption is intended to encourage companies to articulate the extent of their commitment and practice with respect to the ASX Corporate Governance Council recommendations dated March 2003 and if possible to highlight areas of compliance and indicate steps which the company will be taking to ensure compliance by the following year.
Compliance with the recommendations	In order for a company to assert that it has been compliant with certain recommendations for the “full financial year”, is there any leeway granted for companies that were still putting best practice in place at the beginning of the year, and have then had the processes in place for the majority of that year?	In keeping with the spirit of the guidance, it would be reasonable to allow companies this transitional leeway. For example, where it is recommended that a specific Board committee charter be placed on the company’s website, if this was completed and put in place a little after the beginning of the company’s financial year, it would be reasonable that the company could assert that it has complied with best practice for this recommendation. It would be sensible for any such disclosed material to be dated, indicating to stakeholders how up-to-date the material is.
Half yearly reports	My company has previously submitted its corporate governance statements with our half yearly report, do I still do this even though we will report against the corporate governance guidelines in our annual report?	Companies are required under LR 4.10 to report against the new corporate governance guidelines in their annual reports. Notwithstanding obligations associated with the half yearly report, it is up to the company to decide if it wishes to also include a corporate governance statement at the end of the half yearly reporting period.

<p>Exception reporting</p>	<p>LR 4.10.3 says that the company must state the extent to which it met the guidelines during the reporting period and where it did not meet the guidelines, the reasons why it did not. Does this mean that I can say “XX Company did not meet the guidelines because it thinks Corporate Governance is not a basis for advancing shareholder wealth and avoiding corporate failures”?</p>	<p>The Corporate Governance Guidelines are based on the objectives of restoring investor confidence and promoting transparency to enable shareholders to make comparative investment decisions. The guidelines are not intended to be prescriptive. LR 4.10.3 requires the company to articulate a reason for not complying. It is expected that the company will make a statement in respect of each recommendation where it may have deviated from this, explaining why a particular recommendation has not been adopted in the context of that company.</p>
<p>Enforcement</p>	<ol style="list-style-type: none"> 1. Would ASX consider ‘waivers’ for those companies that are gearing up to meet certain requirements, but won’t be able to within the timeframe required in guidelines (eg with LR 12.7 – Audit Committees)? 2. In the latest tranche of Listing Rule Amendments ASX included LR 18.7 which enabled ASX to release correspondence with the company regarding compliance to the market. Will ASX be using this power in respect of monitoring and enforcing Corporate Governance Guidelines? 	<ol style="list-style-type: none"> 1. No. ASX will issue a Companies Update to confirm that there will be no waivers considered for LR12.7. The appropriate response in this circumstance is to state the reason why the company did not meet the guidelines. 2. Yes, ASX has indicated with respect to director remuneration that it will query companies for release to the market. ASX is considering appropriate action in relation to LR 12.7 breaches and companies will be informed of the process by which ASX will highlight non-compliance to the market.
<p>Encourage enhanced performance</p>	<ol style="list-style-type: none"> 1. The Guidelines make reference to CCH product, am I required to use this product? Does ASX endorse this product? 2. My Board does not have external Board performance evaluation. The Chairman performs this function – will ASX accept this as meet the recommendation. 	<ol style="list-style-type: none"> 1. ASX does not require the use of this product nor does ASX endorse the product. Reference was made to it by Corporate Governance Council to provide an example of a Board evaluation process. 2. The recommendation is that companies <u>disclose the process for performance</u> evaluation of the Board, Board committees, directors and key executives. If there is no formal process for evaluation then a statement to this effect is sufficient. No qualitative assessment of the process is required.

Alternative corporate governance guidelines	The ASX Corporate Governance Council Guidelines are not the same as the ratings agency Corporate Governance International and I am concerned that my organisation may meet the ASX Guidelines but fall short on the Corporate Governance International Guidelines.	The ASX Corporate Governance Council Guidelines seek to provide one set of guidelines. We believe that responsible disclosure in relation to the recommendation and guidelines will provide additional valuable information to investors, analysts and ratings agencies.
Snapshot V whole of reporting period	Do I just need to state at the end of the financial year I am fully compliant. Will this satisfy your requirements?	The reporting requirement is for the whole of the reporting period. If a policy was put into place during the 4Q of the reporting period that needs to be made clear together with a statement as to why the guidelines were not met for the 1Q, 2Q & 3Q.
Implementation Review	When will the guidelines be amended?	The ASX Corporate Governance Council has committed to periodic review of the guidelines and to the establishment of an Implementation Review Group to facilitate this. The purpose of the IRG will be to provide an independent perspective on the experiences of companies and investors in implementing and managing the guidelines. The initial review process will take into consideration the early adoption of the guidelines in the 2003 reporting season, as well as the first year of obligatory adoption in 2004.

USABILITY

Issue	Query	Commentary / Solution
CG section of annual report	Why does the Corporate Governance statement have to be in the annual report? Annual reports are so big and complicated, why add more? Why not put the statement on ASX company announcements and the company website?	Currently, the annual report is the most widely accessible source of company information for all shareholders. Many shareholders do not have access to website – a hard copy would need to be produced anyway. It is not practical to use ASX company announcements – they are too bulky and again, they are put on website and not everyone has access. A number of corporate governance issues are material, thus should be in annual report.
Concise annual report	Can the Corporate Governance statement be excluded from the Concise Annual Report?	Yes it can, remembering that the concise annual report must contain all material matters – whether they be corporate governance related or not.

Hard copy of the guidelines	Where can I get more hard copies of guidelines?	Copies of the guidelines can be downloaded from the ASX website free of charge.
Assistance	<ol style="list-style-type: none"> 1. Where can I get further assistance? 2. How can I feed my comments through to the Council? 	<ol style="list-style-type: none"> 1. Please telephone ASX Customer Service: 1300 300 279, or visit our website www.asx.com.au/corporategovernance 2. Please contact us via the telephone number above, or please email us at corporate.governance@asx.com.au, or contact us via the ASX faxline: (02) 9227 0885.