



Guidance Note 9A

Corporate Governance – ASX Corporate Governance Council – Revised *Corporate Governance Principles and Recommendations*

Issued: December 2007

Key topics

1. ASX Corporate Governance Council – *Principles of good corporate governance & Best practice recommendations* – 1st edition 2003
2. ASX Corporate Governance Council – *Corporate Governance Principles and Recommendations* – 2nd edition 2007

Listing Rules

1. Listing rule 4.10.3
2. Listing rule 12.7

Cross-references

1. ASX Corporate Governance Council – *Principles of good corporate governance & Best practice recommendations* – 1st edition 2003.
2. ASX Corporate Governance Council – *Corporate Governance Principles and Recommendations* – 2nd edition 2007.

Guidance Note History

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Revised: December 2007

Introduction

1. This Guidance Note is published to assist entities in the preparation of reports on their main corporate governance practices, which must be included in an annual report under listing rule 4.10.3.
2. The ASX Corporate Governance Council (the Council) was convened in August 2002 as a collaborative, industry-based body set up to develop corporate governance recommendations for listed entities which reflect international best practice.
3. On 1 January 2003 ASX introduced listing rule amendments to enhance compliance with corporate governance best practice and to mandate audit committees for the top 500 companies included in the All Ordinaries Index.
4. The rules reflect ASX policy that it is appropriate to focus on disclosure of corporate governance practices rather than prescribe adoption of a particular practice or practices. This allows listed entities a degree of flexibility to consider a range of means to address specific governance issues and take account of corporate governance principles as they evolve over time.
5. The disclosure based approach, requiring that an entity highlight any areas of departure from the Council's Recommendations and explain that departure, is referred to as "if not, why not" reporting.

6. Listing rule 4.10.3 states:

4.10 *An entity must include the following information in its +annual report. The information must be current at a date specified by the entity which is no more than 6 weeks before the report is sent to +security holders.*

Introduced 1/7/96. Origin: Listing Rule 3C(3)(e), 3B(2C). Amended 1/7/97, 1/7/98, 1/9/99, 30/9/2001.

Cross reference: Listing rules 5.6 and 19.11A.

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4.10.3 *A statement disclosing the extent to which the entity has followed the best practice recommendations set by the +ASX Corporate Governance Council during the reporting period. If the entity has not followed all of the recommendations the entity must identify those recommendations that have not been followed and give reasons for not following them. If a recommendation had been followed for only part of the period, the entity must state the period during which it had been followed.*

Introduced 1/7/96. Origin: Listing Rule 3C(3)(f). Amended 1/1/2003.

Note: The corporate governance statement may be given to ASX as a separate report but must be given to ASX at the same time as the annual report and be clearly identified as the corporate governance report.

7. Listing rule 12.7 states:

12.7 *An entity which was included in the +S & P All Ordinaries Index at the beginning of its financial year must have an audit committee during that year. If the entity was in the top 300 of that Index at the beginning of its financial year it must also comply with the best practice recommendations set by ASX Corporate Governance Council in relation to composition, operation and responsibility of the audit committee.*

Introduced 1/1/2003. Amended 3/5/2004. Origin: Listing rule 4.10.2.

Note: If the entity is a trust, its audit committee may also be the responsible entity's audit committee.

The S & P All Ordinaries Index is reviewed annually. If an entity was included in the index on the first day of its financial year but is subsequently not included in the index following a quarterly review, it must comply with this rule for the whole of the financial year. If an entity was not included in the index on the first day of its financial year but is subsequently included in the index following a quarterly review, it need not comply with this rule for that financial year.

Note: ASX publishes on a regular basis a list of those entities in the top 300 of the S & P All Ordinaries Index. The list is calculated on the basis of market capitalisation.

Cross reference: Listing rule 4.10A.2¹

8. The Council released the *Principles of Good Corporate Governance and Best Practice Recommendations* (First Edition) on 31 March 2003. A condensed version of the document, outlining the essential corporate governance principles and best practice recommendations set out in the First Edition is at Annexure 1. The full

¹ In an Exposure Draft released in June 2007, ASX has released a proposal to amend Listing Rule 12.7 to refer to listed entities in the "S&P/ASX 300 Index" the intention of the amendment is to allow entities to find out more easily whether they are required to comply with the Council's Recommendations as to the composition, operation and responsibility of the audit committee. See the Exposure Draft of changes at http://www.asx.com.au/about/regulatory_policy_unit/index.htm. The proposed amendment is likely to come into effect in early 2008.

version, including commentary and guidance on each principle and recommendation has been distributed to all listed entities and is available at the ASX Corporate Governance website: <http://www.asx.com.au/corporategovernance>.

9. Following an extensive review and public consultation the Council has updated the First Edition and has released a second edition of the Corporate Governance Principles and Recommendations (Revised Principles) on 2 August 2007. A condensed version of the document, outlining the essential corporate governance Principles and Recommendations set out in the Revised Principles is at Annexure 2. The full version, including commentary on each Principle and Recommendation has been distributed to all listed entities and is available at the ASX Corporate Governance website: <http://www.asx.com.au/corporategovernance>.
10. Listed entities will be required to report against the Revised Principles in the first financial year commencing on or after 1 January 2008. Where a listed entity's financial year begins on 1 January, disclosure will be required in relation to the financial year 1 January 2008 – 31 December 2008 and will be made in the annual report published in 2009. Where a listed entity's financial year begins on 1 July, disclosure will be required in relation to the financial year 1 July 2008 – 30 June 2009 and will be made in the annual report published in 2009. Listed entities are encouraged to make an early transition to the Revised Principles and are requested to consider reporting by reference to the Revised Principles in their corporate reporting for the 2007 – 2008 year.
11. It is important that listed entities refer to the complete documents when preparing their reports as they provide comprehensive and invaluable guidance in relation to implementation of the Principles and Recommendations.
12. The Council includes representatives of the following:

Association of Superannuation Funds of Australia Ltd	Chartered Secretaries Australia
Australasian Investor Relations Association	CPA Australia Ltd
Australian Council of Superannuation Investors	Financial Services Institute of Australasia Group of 100
Australian Financial Markets Association	Institute of Actuaries of Australia
Australian Institute of Company Directors	The Institute of Chartered Accountants in Australia
Australian Institute of Superannuation Trustees	Institute of Internal Auditors – Australia
Australian Shareholders' Association	Investment and Financial Services Association
Australian Securities Exchange	Law Council of Australia
Business Council of Australia	National Institute of Accountants
	Property Council of Australia
	Securities and Derivatives Industry Association

ANNEXURE 1

ASX Corporate Governance Council

Principles of Good Corporate Governance and Best Practice Recommendations

March 2003

Listed entities will be required to report against the Revised Principles in the first financial year commencing on or after 1 January 2008. This version may continue to be used by a listed entity whose financial year is 1 July 2007 to 30 June 2008. However, listed entities are encouraged to make an early transition to the Revised Principles and are requested to consider reporting by reference to the Revised Principles in their corporate reporting for the 2007 - 2008 year.

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Disclosure of corporate governance practices (applying the “if not, why not?” approach)

How to approach adoption of the best practice recommendations

The best practice recommendations are not prescriptions. They are guidelines, designed to produce an efficiency, quality or integrity outcome. This document does not require a “one size fits all” approach to corporate governance. Instead, it states aspirations of best practice for optimising corporate performance and accountability in the interests of shareholders and the broader economy. If a company considers that a recommendation is inappropriate to its particular circumstances, it has the flexibility not to adopt it – a flexibility tempered by the requirement to explain whyⁱⁱ.

Companies are encouraged to use the guidance provided by this document as a focus for re-examining their corporate governance practices and to determine whether and to what extent the company may benefit from a change in approach, having regard to the company’s particular circumstances. There is little value in a checklist approach to corporate governance that does not focus on the particular needs, strengths and weaknesses of the company.

The Council recognises that the range in size and diversity of companies is significant and that smaller companies may face particular issues in attaining all recommendations from the outset. Performance and effectiveness can be compromised by material change that is not managed sensibly. Where a company is considering widespread structural changes in order to meet best practice, the company is encouraged to prioritise its needs and to set and disclose best practice goals against an indicative timeframe for meeting them.

Disclosure requirements

Under ASX Listing Rule 4.10, companies are required to provide a statement in their annual report disclosing the extent to which they have followed these best practice recommendations in the reporting period. Where companies have not followed all the recommendations, they must identify the recommendations that have not been followed and give reasons for not following them.

Annual reporting does not diminish the company’s obligation to provide disclosure under ASX Listing Rule 3.1.

ⁱⁱ An exception regarding audit committees applies to companies comprising the ASX/S&P 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.

What disclosures are necessary?

It is only where a recommendation is not met or where a disclosure requirement is specifically identified that a disclosure obligation is triggered. Each recommendation is clearly identified as such.

The commentary and guidance that follows each recommendation does not form part of the recommendation. It is provided to assist companies to understand the reasoning for the recommendation, highlight factors which may be relevant for consideration, and make suggestions as to how implementation might be achieved.

Where should disclosure be made?

Specific guidance is given at the end of each principle as to what disclosure the company is required or encouraged to make and where.

In some cases the company is required to set out the relevant disclosure in a separate corporate governance section of the annual report. Where the Corporations Act requires particular information to be included in the directors' report, the company has the discretion to include a cross-reference to the relevant information in the corporate governance section of the annual report rather than replicating that information.

For more general information, there are requirements to make information publicly available, ideally by provision on the company's website. This information should be clearly presented in a dedicated corporate governance information section within the website. The corporate governance section of the annual report should contain appropriate website references, links or instructions to enable shareholders to readily access this information.

Where a company does not have a website, this information must be made publicly available by other means. For example, a company may provide the information on request by email, facsimile or post.

What is the disclosure period?

The change in reporting requirement applies to the company's first financial year commencing after 1 January 2003. Accordingly, where a company's financial year begins on 1 July, disclosure will be required in relation to the financial year 1 July 2003 – 30 June 2004 and will be made in the annual report published in 2004.

Companies are encouraged to make an early transition to the best practice recommendations and are requested to consider reporting by reference to the recommendations in their corporate reporting this year.

ASX Corporate Governance Council website

The ASX Corporate Governance Council has established a website to assist companies with regard to these principles and best practice recommendations. The site contains links to useful reference material and websites of Council members. It is located at www.asx.com.au/corporategovernance.

Audit committees

Specific requirements apply in relation to audit committees for companies within the S&P/ASX All Ordinaries Index.

Those companies are subject to ASX Listing Rule 12.7, which requires that an entity that was included in the S&P/ASX All Ordinaries Index at the beginning of its financial year have an audit committee during that year. The composition, operation and responsibility of the audit committee must comply with the best practice recommendations of the ASX Corporate Governance Council. These are set out in Principle 4.

This rule applies for the first financial year of an entity commencing after 1 January 2003ⁱⁱⁱ.

What entities are affected?

The best practice recommendations have been articulated to apply to companies and other types of listed entities. Where appropriate, the term “company” is used in the best practice recommendations to encompass any listed entity, including listed managed investment schemes (trusts), listed stapled entities, and listed foreign entities. Also where appropriate, references to “shareholders” and “investors” will include references to unitholders of unit trusts.

Specific application of the recommendations for trusts has been highlighted.

Monitoring implementation and change

This document represents the first iteration of the ASX Corporate Governance Council’s views about best practice. Corporate governance practices must be evolutionary and responsive to the information needs of local and international investors. The ASX Corporate Governance Council is committed to a continuing review of these principles and best practice recommendations to ensure that they remain relevant, take account of local and international developments, and continue to reflect international best practice.

ⁱⁱⁱ For all entities included in the S&P/ASX All Ordinaries Index as at 1 April 2003, the following applies:

Financial year:	The entity must have a complying audit committee during FY commencing:
1 April – 31 March	1 April 2003
1 July – 30 June	1 July 2003
1 January – 31 December	1 January 2004

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Companies and investors are encouraged to provide feedback about the implementation and impact of these recommendations to their ASX Corporate Governance Council representative.

The ASX Corporate Governance Council will also establish a separate Implementation Review Group to report back to the Council on the experience of companies and investors.

The ASX Corporate Governance Council will formally review the impact of these principles and best practice recommendations following collation and examination of disclosures made in annual reports and consideration of feedback received, including the reports from the Implementation Review Group.

The essential corporate governance principles

A company should:

1. Lay solid foundations for management and oversight

Recognise and publish the respective roles and responsibilities of board and management.

2. Structure the board to add value

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

3. Promote ethical and responsible decision-making

Actively promote ethical and responsible decision-making.

4. Safeguard integrity in financial reporting

Have a structure to independently verify and safeguard the integrity of the company's financial reporting.

5. Make timely and balanced disclosure

Promote timely and balanced disclosure of all material matters concerning the company.

6. Respect the rights of shareholders

Respect the rights of shareholders and facilitate the effective exercise of those rights.

7. Recognise and manage risk

Establish a sound system of risk oversight and management and internal control.

8. Encourage enhanced performance

Fairly review and actively encourage enhanced board and management effectiveness.

9. Remunerate fairly and responsibly

Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined.

10. Recognise the legitimate interests of stakeholders

Recognise legal and other obligations to all legitimate stakeholders.

Best practice recommendations

Principle 1: Lay solid foundations for management and oversight

Recognise and publish the respective roles and responsibilities of board and management.

The company's framework should be designed to:

- enable the board to provide strategic guidance for the company and effective oversight of management
- clarify the respective roles and responsibilities of board members and senior executives in order to facilitate board and management accountability to both the company and its shareholders
- ensure a balance of authority so that no single individual has unfettered powers.

How to achieve best practice

Recommendation 1.1: Formalise and disclose the functions reserved to the board and those delegated to management.

Principle 2: Structure the board to add value

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

An effective board is one that facilitates the efficient discharge of the duties imposed by law on the directors and adds value in the context of the particular company's circumstances. This requires that the board be structured in such a way that it:

- has a proper understanding of, and competence to deal with, the current and emerging issues of the business
- can effectively review and challenge the performance of management and exercise independent judgement.

Ultimately the directors are elected by the shareholders. However the board and its delegates play an important role in the selection of candidates for shareholder vote.

How to achieve best practice

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

Recommendation 2.2: The chairperson should be an independent director.

Recommendation 2.3: The roles of chairperson 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: Provide the information indicated in *Guide to reporting on Principle 2*.

Principle 3: Promote ethical and responsible decision-making

Actively promote ethical and responsible decision-making.

The company should:

- clarify the standards of ethical behaviour required of company directors and key executives (that is, officers and employees who have the opportunity to materially influence the integrity, strategy and operation of the business and its financial performance) and encourage the observance of those standards
- publish its position concerning the issue of board and employee trading in company securities and in associated products which operate to limit the economic risk of those securities.

How to achieve best practice

Recommendation 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:

- 3.1.1 the practices necessary to maintain confidence in the company's integrity
- 3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.

Recommendation 3.2: Disclose the policy concerning trading in company securities by directors, officers and employees.

Recommendation 3.3: Provide the information indicated in *Guide to reporting on Principle 3*.

Principle 4: Safeguard integrity in financial reporting

Have a structure to independently verify and safeguard the integrity of the company's financial reporting.

This requires the company to put in place a structure of review and authorisation designed to ensure the truthful and factual presentation of the company's financial position. The structure would include, for example:

- review and consideration of the accounts by the audit committee
- a process to ensure the independence and competence of the company's external auditors.

Such a structure does not diminish the ultimate responsibility of the board to ensure the integrity of the company's financial reporting.

How to achieve best practice

Recommendation 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.

Recommendation 4.2: The board should establish an audit committee.

Recommendation 4.3: Structure the audit committee so that it consists of:

- only non-executive directors
- a majority of independent directors
- an independent chairperson, who is not chairperson of the board
- at least three members.

Recommendation 4.4: The audit committee should have a formal charter.

Recommendation 4.5: Provide the information indicated in *Guide to reporting on Principle 4*.

Principle 5: Make timely and balanced disclosure

Promote timely and balanced disclosure of all material matters concerning the company.

This means that the company must put in place mechanisms designed to ensure compliance with the ASX Listing Rule requirements such that:

- all investors have equal and timely access to material information concerning the company – including its financial situation, performance, ownership and governance
- company announcements are factual and presented in a clear and balanced way. “Balance” requires disclosure of both positive and negative information.

How to achieve best practice

Recommendation 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.

Recommendation 5.2: Provide the information indicated in *Guide to reporting on Principle 5*.

Principle 6: Respect the rights of shareholders

Respect the rights of shareholders and facilitate the effective exercise of those rights.

This means that a company should empower its shareholders by:

- communicating effectively with them
- giving them ready access to balanced and understandable information about the company and corporate proposals
- making it easy for them to participate in general meetings.

How to achieve best practice

Recommendation 6.1: Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings.

Recommendation 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.

Principle 7: Recognise and manage risk

Establish a sound system of risk oversight and management and internal control.

This system should be designed to:

- identify, assess, monitor and manage risk
- inform investors of material changes to the company's risk profile.

This structure can enhance the environment for identifying and capitalising on opportunities to create value.

How to achieve best practice

Recommendation 7.1: The board or appropriate board committee should establish policies on risk oversight and management.

Recommendation 7.2: The chief executive officer (or equivalent) and the chief financial officer (or equivalent) should state to the board in writing that:

- 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
- 7.2.2 the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.

Recommendation 7.3: Provide the information indicated in *Guide to reporting on Principle 7*.

Principle 8: Encourage enhanced performance

Fairly review and actively encourage enhanced board and management effectiveness.

This means that directors and key executives should be equipped with the knowledge and information they need to discharge their responsibilities effectively, and that individual and collective performance is regularly and fairly reviewed.

How to achieve best practice

Recommendation 8.1: Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.

Principle 9: Remunerate fairly and responsibly

Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined.

This means that companies need to adopt remuneration policies that attract and maintain talented and motivated directors and employees so as to encourage enhanced performance of the company. It is important that there be a clear relationship between performance and remuneration, and that the policy underlying executive remuneration be understood by investors.

How to achieve best practice

Recommendation 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.

Recommendation 9.2: The board should establish a remuneration committee.

Recommendation 9.3: Clearly distinguish the structure of non-executive directors' remuneration from that of executives.

Recommendation 9.4: Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders.

Recommendation 9.5: Provide the information indicated in *Guide to reporting on Principle 9*.

Principle 10: Recognise the legitimate interests of stakeholders

Recognise legal and other obligations to all legitimate stakeholders.

Companies have a number of legal and other obligations to non-shareholder stakeholders such as employees, clients/customers and the community as a whole. There is growing acceptance of the view that organisations can create value by better managing natural, human, social and other forms of capital. Increasingly, the performance of companies is being scrutinised from a perspective that recognises these other forms of capital. That being the case, it is important for companies to demonstrate their commitment to appropriate corporate practices.

How to achieve best practice

Recommendation 10.1: Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.

Attachment A to Annexure 1

Guidelines for notices of meeting

1. Notices of meeting must be honest, accurate and not misleading. Relevant information should not be withheld or presented in a manner designed to mislead shareholders or the market as a whole.
2. Notices must clearly state and, where necessary, explain, the nature of the business of the meeting. They should be prepared in accordance with the following:
 - 2.1 If the resolutions are mandated by the Corporations Act, the company's constitution or the ASX Listing Rules, explanatory notes on each resolution should be provided to shareholders.
 - 2.2 A notice of meeting must comply with the relevant principles of the Corporations Act, including the requirements of sections 249L and 249Q, the common law and the ASX Listing Rules. Section 249L requires a notice of meeting to state the general nature of the meeting's business and section 249Q requires that a meeting of a company's shareholders must be held for a "proper purpose".
3. Notices must set a reasonable time and place for the meeting. Accordingly:
 - 3.1 Reasonable notice must be given. Section 249HA of the Corporations Act requires that at least 28 days notice be given of a meeting.
 - 3.2 Meetings should be held during normal business hours and at a place convenient for the greatest possible number of shareholders to attend. Usually this place would be in the city where the head office of the company is situated or where the majority of individual shareholders reside. Companies may also periodically hold meetings in other places where a significant number of shareholders reside.
 - 3.3 Companies should use their best endeavours to use relevant technology to enable a maximum number of shareholders to attend and participate (as far as technology effectively allows) at meetings.
4. Notices should encourage shareholders' participation through the appointment of proxies. Accordingly:
 - 4.1 The notice of meeting should include a clear reference to the shareholders' rights to appoint a proxy.
 - 4.2 Companies should consider allowing shareholders to lodge proxies electronically, subject to the adoption of satisfactory authentication procedures.
 - 4.3 Companies should encourage shareholders appointing a proxy to consider how they wish to direct the proxy to vote. That is, whether the shareholder wishes the proxy to vote "for" or "against", or abstain from voting on, each

resolution, or whether to leave the decision to the appointed proxy after discussion at the meeting.

- 4.4 Proxy forms should be drafted in such a way as to ensure the shareholder clearly understands how the chairperson of the meeting intends to vote undirected proxies.
- 4.5 Companies are encouraged to take guidance from the Chartered Secretaries Australia best practice proxy form available on that organisation's website www.csaust.com.
5. Companies should adopt best practice drafting methods for notices of meeting. These include:
 - using plain English to clearly and simply communicate relevant information
 - avoiding legal archaisms such as “aforesaid”, “abovementioned”, “hereafter”, “hereinafter”, “hereunder”, “herewith”, “thereby” and “pursuant”
 - avoiding unnecessary repetition
 - employing a structure and format that ensures readability and ease of understanding by shareholders; this would include making use of layout elements such as:
 - appropriate spacing, indenting, highlighting, headings and numbering
 - a uniform and easily legible font
 - correspondingly sequential treatment of resolutions in any explanatory statements.
6. Companies should combine or “bundle” resolutions in a notice of meeting only in limited circumstances and in accordance with the following guidelines:
 - 6.1 Companies should avoid “bundling” resolutions unless the resolutions are interdependent and linked so as to form one significant proposal. An example of an appropriately bundled resolution is one that incorporates a number of uncontroversial changes to a company's constitution.
 - 6.2 Where resolutions are “bundled”, the company should ensure the notice clearly explains the primary purpose of the bundled resolution and the material implications of each of its components.
 - 6.3 The following categories of resolution should not be bundled, but always be dealt with as separate items of business, each with a distinct explanation provided.
 - (a) To issue options with participation rights, under listing rule 6.20.3.
 - (b) To issue unquoted options with exercise price variation terms not in accordance with listing rule 6.22.2, under listing rule 6.22.3.
 - (c) To change options under Listing Rules 6.23.2 or 6.23.4.
 - (d) To approve an issue under an employee incentive scheme, under listing rule 7.2 Exception 9(b).

- (e) To approve a transaction with, or issue of securities to, a person in a position of influence under Listing Rules 10.1 (acquisition and disposal of substantial assets), 10.11 (issues of securities to related parties), 10.14 (issues of securities to related parties under an employee incentive scheme), 10.17 (non-executive directors' remuneration) or 10.19 (termination benefits).
- (f) To approve the terms of issue of preference shares not provided for in the company's constitution (section 254A(2) Corporations Act), or a change to the company's constitution that has the same effect.
- (g) To issue a new class of shares not already provided for in the company's constitution (section 246C(5) Corporations Act), or a change to the company's constitution that has the same effect.
- (h) To approve a buy-back (sections 257C or 257D Corporations Act).
- (i) To approve the giving of financial assistance (section 260B Corporations Act).
- (j) To appoint or remove directors – each candidate for appointment or removal will require a separate resolution (see guidelines 7 and 8 below).
- (k) Other resolutions in relation to which a director or senior executive has an interest.

This list is not exhaustive; bundling of resolutions should always be considered by reference to the general guidelines set out above.

- 7. Companies should give clear guidance in notices of meeting containing resolutions for the election of directors, as follows:
 - 7.1 Companies should ensure that each candidate for election be considered separately in a distinct resolution, except as contemplated by 7.2.
 - 7.2 Where the number of candidates for election exceeds the number of available positions on the board, the notice should provide clear guidance on the voting method by which the successful candidates will be selected at the meeting as well as the method to be used for the counting of votes.
 - 7.3 Notices of meeting for election or removal of directors should fairly and equitably represent the views of candidates.
- 8. Companies should give clear guidance in notices of meeting containing resolutions for the removal of directors.
 - 8.1 Companies should ensure that each candidate for removal be considered separately in a distinct resolution.

- 8.2 Companies should be aware that they are required to circulate to all shareholders any written statement provided by a director named in a removal resolution under section 203D(4) of the Corporations Act representing his or her views on the proposal.
9. Companies should ensure notices give clear guidance on directors' recommendations on resolutions.
- 9.1 Where recommendations are specifically required, notices should contain adequate representation of the views of all assenting and dissenting directors on specific resolutions. Notices should make it clear whether represented views are those of an executive director, a non-executive director or an independent director. The notice should present a balanced view on the merits of the proposal.
- 9.2 Companies would not be expected to present the contrary view in a notice of meeting where directors unanimously support a resolution, but the notice of meeting should, nevertheless, present a balanced view and be forthcoming about any significant disadvantages.
- 9.3 Guidance on directors' recommendations should be placed at the end of the explanatory note on each resolution.
10. Companies should give particular attention to notices containing complex resolutions.
- 10.1 Examples of complex resolutions include those requiring an independent expert's report under the Corporations Act takeover provisions or ASX Listing Rule 10.1, those seeking to amend companies' constitutions in respect of proportional takeovers, and resolutions seeking to alter companies' capital structures.
- 10.2 Notices containing such resolutions should always include a "short form" explanatory statement setting out concisely and clearly the nature of the meeting business and its ramifications for the company
- 10.3 Companies should encourage independent experts to preface their reports with a concise executive summary of their findings. Companies should not provide their own summaries of independent experts' findings in explanatory statements.
11. Companies should ensure notices give clear guidance on shareholders' conflicts of interest to the extent that they are known to the company and clearly state which shareholders will be excluded from voting or have their votes disregarded.
- 11.1 Any conflicts of interest of directors and their associates and senior management should be clearly outlined. The Corporations Act and ASX Listing Rules contain specific provisions outlining those parties who may be excluded from voting on a resolution in which they may have an interest or receive a benefit disproportionate to other shareholders.

- 11.2 The question of who may be excluded from voting or whose votes will be disregarded can be an important factor in a shareholder's determination whether to attend a meeting or appoint a proxy. Best practice would require voting exclusion statements to be contained in the notice itself and be located immediately adjacent to the relevant resolution.
- 11.3 It is quite acceptable, but not essential, for voting exclusion information to be also contained in any explanatory statement.
12. Companies should endeavour to send notices of meeting to shareholders by electronic means if requested, and should place the full text of notices and accompanying explanatory material on the company website. Companies should also consider distributing explanatory material by other means, so that shareholders who do not have access to the Internet and other forms of electronic communication are not disadvantaged.
- 12.1 Companies should encourage shareholders to request that notices of meeting be sent to them by electronic means on an "opt-in" basis. Shareholders must be able to change that election at any time, and have the right to request a paper version of a document that has been sent electronically.
- 12.2 Companies are required by the ASX Listing Rules to release full notice documentation to the ASX Companies Announcements Office.
- 12.3 In addition, companies should place this material on their website in a prominent and accessible position for shareholders and other market participants who may be considering an investment in the company, or should refer to the ability to download the notice from ASX's website www.asx.com.au.
- 12.4 Material should be kept by the company in such a way that it can be reproduced in written form at any time. The material should also be presented in a way that will allow recipients to keep a copy of it so that they have ready access to it in the future.

Attachment B to Annexure 1

Disclosure

Best practice recommendations	
1.1	Formalise and disclose the functions reserved to the board and those delegated to management.
2.1	A majority of the board should be independent directors.
2.2	The chairperson should be an independent director.
2.3	The roles of chairperson and chief executive officer should not be exercised by the same individual.
2.4	The board should establish a nomination committee.
2.5	Provide the information indicated in <i>Guide to reporting on Principle 2</i> .
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: <ul style="list-style-type: none"> 3.1.1 the practices necessary to maintain confidence in the company's integrity 3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.
3.2	Disclose the policy concerning trading in company securities by directors, officers and employees.
3.3	Provide the information indicated in <i>Guide to reporting on Principle 3</i> .
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.
4.2	The board should establish an audit committee.
4.3	Structure the audit committee so that it consists of: <ul style="list-style-type: none"> • only non-executive directors • a majority of independent directors • an independent chairperson, who is not chairperson of the board • at least three members.
4.4	The audit committee should have a formal charter.
4.5	Provide the information indicated in <i>Guide to reporting on Principle 4</i> .

Best practice recommendations	
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.
5.2	Provide the information indicated in <i>Guide to reporting on Principle 5</i> .
6.1	Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings.
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 content of the auditor's report.
7.1	The board or appropriate board committee should establish policies on risk oversight and management.
7.2	The chief executive officer (or equivalent) and the chief financial officer (or equivalent) should state to the board in writing that: <ul style="list-style-type: none"> 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 7.2.2 the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.
7.3	Provide the information indicated in <i>Guide to reporting on Principle 7</i> .
8.1	Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.
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.
9.2	The board should establish a remuneration committee.
9.3	Clearly distinguish the structure of non-executive directors' remuneration from that of executives.
9.4	Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders.
9.5	Provide the information indicated in <i>Guide to reporting on Principle 9</i> .
10.1	Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.

ANNEXURE 2

ASX Corporate Governance Council

Corporate Governance Principles and Recommendations

December 2007

Listed entities will be required to report against the Revised Principles in the first financial year commencing on or after 1 January 2008. Where a listed entity's financial year begins on 1 January, disclosure will be required in relation to the financial year 1 January 2008 – 31 December 2008 and will be made in the annual report published in 2009. Where a listed entity's financial year begins on 1 July, disclosure will be required in relation to the financial year 1 July 2008 – 30 June 2009 and will be made in the annual report published in 2009. Listed entities are encouraged to make an early transition to the Revised Principles and are requested to consider reporting by reference to the Revised Principles in their corporate reporting for the 2007 – 2008 year.

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Disclosure of corporate governance practices (following the “if not, why not?” approach)

How to approach the Recommendations

The Recommendations are not prescriptions, they are guidelines, designed to produce an outcome that is effective and of high quality and integrity. This document does not require a “one size fits all” approach to corporate governance. Instead, it states suggestions for practices designed to optimise corporate performance and accountability in the interests of shareholders and the broader economy. If a company considers that a Recommendation is inappropriate to its particular circumstances, it has the flexibility not to adopt it – a flexibility tempered by the requirement to explain why – the “if not, why not” approach.¹

The ASX Corporate Governance Council encourages companies to use the guidance provided by this document as a focus for re-examining their corporate governance practices and to determine whether and to what extent the company may benefit from a change in approach, having regard to the company’s particular circumstances.

There is little value in a checklist approach to corporate governance that does not focus on the particular needs, strengths and weaknesses of the company. The ASX Corporate Governance Council recognises that the range in size and diversity of companies is significant and that smaller companies from the outset may face particular issues in following all Recommendations. Performance and effectiveness can be compromised by material change that is not managed sensibly. Where a company is considering widespread structural changes in order to follow the Principles and Recommendations, the company is encouraged to prioritise its needs and to set and disclose practical goals against an indicative timeframe for meeting them.

Disclosure requirements

Under ASX Listing Rule 4.10.3, companies are required to provide a statement in their annual report disclosing the extent to which they have followed the Recommendations in the reporting period. Where companies have not followed all the Recommendations, they must identify the Recommendations that have not been followed and give reasons for not following them. Annual reporting does not diminish the company’s obligation to provide disclosure under ASX Listing Rule 3.1.

It is only where a Recommendation is not followed or where a disclosure requirement is specifically identified that a disclosure obligation is triggered. Each Recommendation is

¹ 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 of companies in the top 300 of that Index comply with the Council’s Recommendations. Top 300 companies is a reference made in Listing Rule 12.7 to the Top 300 companies listed in the S&P/ASX 300 at the beginning of the company’s financial year. In an Exposure Draft released in June 2007, ASX has released a proposal to amend Listing Rule 12.7 to refer to companies in the “S&P/ASX 300 Index”. See the Exposure Draft of changes at http://www.asx.com.au/about/regulatory_policy_unit/index.htm. The proposed amendments are likely to come into effect in early 2008.

clearly identified as a disclosure obligation and the disclosure obligation is contained in the Guide to reporting at the end of each Principle. The Commentary that follows each Recommendation does not form part of the Recommendation and does not trigger a disclosure obligation. It is provided to assist companies to understand the reasoning for the Recommendation, highlight factors which may be relevant to consider, and make suggestions as to how implement the Recommendation.

The Guide to reporting which follows each Principle sets out what and where disclosure is required. In some cases the company is required to set out the relevant disclosure in a separate corporate governance statement in its annual report. Where the Corporations Act requires particular information to be included in the directors' report, the company has the discretion to include a cross-reference to the relevant information in the corporate governance section of the annual report rather than duplicating the information.

For more general information, there are requirements to make information publicly available, ideally on the company website. This information should be clearly presented in a separate corporate governance information section of the website. The corporate governance statement in the annual report should contain references or links or instructions to navigate to the website to enable shareholders to gain access to this information readily.

The “If not, why not” approach

Respondents to the ASX Corporate Governance Council's consultation on the changes to the Principles expressed strong support for the “if not, why not” approach but also expressed a desire for the ASX Corporate Governance Council to provide more explanation about this approach to reporting.

The ASX Corporate Governance Council considers that the Principles and Recommendations represent a distillation of practices that can assist companies to implement a robust corporate governance framework. However, the ASX Corporate Governance Council also acknowledges and endorses the finding of the first Implementation Review Group's Report that:

“...there is no typical organisation and no single readily identifiable model for corporate governance... At different times and stages in a company's life, some governance structures may be better for the generation of wealth for investors than others...”

It [is] important to distinguish between the purpose of the ...Principles and the purpose of the Recommendations. The Principles embody the broad concepts which underpin effective corporate governance. They encapsulate ‘common sense’ ideas with broad relevance. By contrast, the Recommendations given for each Principle suggest one framework for implementing the Principles within an organisation.

Disclosure of a company's corporate governance practice, rather than conformity with a particular model is central to the ASX Corporate Governance Council's approach.”²

². Implementation Review Group Report, released 31 March 2004 page 1ff.

The ASX Corporate Governance Council supports companies seeking to meet the ‘spirit’ of the Principles through whatever means they believe are most appropriate to their business.

Nothing in the Principles and Recommendations precludes a company from following an alternative practice to that set out in a particular Recommendation, provided it explains its approach. This explanation of the alternative approach is the essence of “if not, why not” reporting. The ASX Corporate Governance Council considers that a well-reasoned “if not, why not” explanation from a company is a valid response to a particular Recommendation.

Effective “if not, why not” reporting practices involve:

- identifying the Recommendations the company has not followed
- explaining why the company has not followed the relevant Recommendation
- explaining how its practices accord with the ‘spirit of the relevant Principle, that the company understands the relevant issues and has considered the impact of its alternative approach.

The ASX Corporate Governance Council considers the “if not, why not” reporting platform offers Australian companies a robust and flexible structure for governance disclosure and balances the genuine governance interests of public capital markets. The ASX Corporate Governance Council encourages companies to make use of the “if not, why not” approach, and other market participants to support this approach.

What is the disclosure period?

The change in the reporting requirement applies to the company’s first financial year commencing on or after 1 January 2008. Accordingly, where a company’s financial year begins on 1 January, disclosure will be required in relation to the financial year 1 January 2008 – 31 December 2008 and will be made in the annual report published in 2009. Where a company’s financial year begins on 1 July, disclosure will be required in relation to the financial year 1 July 2008 – 30 June 2009 and will be made in the annual report published in 2009.

The ASX Corporate Governance Council encourages companies to make an early transition to the revised Principles and Recommendations and companies are requested to consider reporting by reference to the Principles and Recommendations in their corporate reporting for the 2007 – 2008 year.

ASX Corporate Governance Council website

ASX has dedicated a section of its website to assist companies with regard to these Principles and Recommendations. The site contains links to useful reference material and websites of ASX Corporate Governance Council members. It is located at www.asx.com.au/corporategovernance.

Audit committees

There are specific requirements for companies within the S&P/ASX All Ordinaries Index in relation to audit committees.

Listing Rule 12.7 requires a company in the S&P All Ordinaries Index at the beginning of its financial year to have an audit committee during that year. If the company was in the top 300 of that index at the beginning of its financial year, it must follow the Recommendations of the ASX Corporate Governance Council on the composition, operation and responsibility of the audit committee.³ These are set out in Principle 4.

What entities are affected?

The Recommendations are directed at companies and other types of listed entities. Where appropriate, the term “company” is used in the Principles and Recommendations to encompass any listed entity, including listed managed investment schemes (trusts), listed stapled entities, and listed foreign entities. Also where appropriate, references to “shareholders” and “investors” will include references to unitholders of unit trusts. Specific application of the Principles and Recommendations for trusts and externally managed entities has been highlighted.

The ASX Corporate Governance Council acknowledges that there are historical and legal reasons for the current governance practices of these listed collective investment entities. They are, however, an increasingly popular investment choice for retail investors. The ASX Corporate Governance Council considers it important that listed collective investment vehicles follow the spirit of the Principles, particularly in relation to the issues of independence and remuneration, and provide explanations in relation to their governance structures. This policy ensures that investors receive sufficient information to understand the governance processes of these vehicles and to form their own opinion as to their suitability.

Companies not subject to the Corporations Act and the Accounting standards

As a result of the ASX Corporate Governance Council’s review of the first edition of the Principles and Recommendations, three Recommendations have been removed from the revised Principles because their content is largely reflected in the Corporations Act and the Accounting Standards.⁴ The ASX Corporate Governance Council considers that the vast majority of listed companies will benefit from removing duplications and overlap between the Principles and Recommendations and the Corporations Act and the Accounting Standards.

³ See Note 2.

⁴ The relevant sections of the Corporations Act are Section 295A, 250RA and 300A and AASB 124 *Related Party Disclosures*. Section 250RA [Auditor required to attend listed company’ AGM] of the Corporations Act makes it an offence for the lead auditor not to attend a listed company’s AGM, or arrange to be represented by a suitably qualified member of the audit team who is in a position to answer questions about the audit. Section 295A [Declaration in relation to listed entity’s financial statements by chief executive officer and chief financial officer] into *Part 2M – Financial Reporting* of the *Corporations Act*. The directors’ declaration under s295(4) can now only be made once the directors have received a declaration from the Chief Executive Officer (CEO) and Chief Financial Officer (CFO), or equivalents that: (a) the financial records have been properly maintained, (b) the financial statements comply with accounting standards and (c) the financial statements and notes give a true and fair view. Section 300A [Annual Directors’ Report – Specific information to be provided by listed companies – particularly Disclosure of remuneration policy and details] and AASB 124 *Related Party Disclosures*.

The ASX Corporate Governance Council has therefore amended Principles 6 and 8 to make it clear that where a listed company is not required to comply with sections 250RA and 300A of the Corporations Act or Australian Accounting Standard 124 Related Party Disclosures it should consider the range of means by which it might achieve the same ends. The company should include a statement in its annual report disclosing the extent to which it has achieved the aims of the relevant provisions during the reporting period and give reasons for not doing so.

Principle 7 also makes it clear that where a listed company is not subject to section 295A of the Corporations Act it should consider the range of means by which it can achieve the same ends and include in its annual report a statement disclosing the extent to which it has achieved the aims of section and provide reasons for not doing so.

The ASX Corporate Governance Council encourages these entities to follow the ‘spirit’ of the Principles and Recommendations and provide these disclosures.

Improving corporate governance disclosures

As part of the review of the first edition of the Principles and Recommendations, the ASX Corporate Governance Council considered whether there were ways in which companies could improve their disclosures of corporate governance information. The ASX Corporate Governance Council commissioned a User Survey of professional and private investors conducted by the ASX Corporate Governance Council in late 2005 which was released in March 2006. The need for greater clarity when providing corporate governance information was one of the key findings of that Survey. Other suggestions in the User Survey for improving corporate governance information included:

- existing information could be clearer and more concise
- existing information could be more accessible
- more details about boards – board experience; independence and affiliations; commitments; share trading; committees including composition; policies and review processes
- clarity of information concerning remuneration of directors and senior executives
- a summary statement of whether companies are following the ASX Corporate Governance Council’s Principles and Recommendations or providing “if not, why not” reporting.⁵

As part of its responsibilities for monitoring compliance with Listing Rule 4.10.3 ASX has undertaken three annual reviews of companies’ corporate governance disclosures. The ASX review of corporate governance disclosures in 2006 annual reports made the following suggestions for ways in which companies could improve their corporate governance disclosures:

- companies should be encouraged to improve their compliance with Listing Rule 4.10.3 by simplifying their corporate governance statements. This could be achieved by dealing with the Recommendations consecutively on a Recommendation-by-Recommendation basis. Some of the better reports provided information in this format either in narrative or tabular form

⁵ See the Survey at www.asx.com.au/supervision/pdf/asx_corporate_governance_summary_march06.

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- clear cross-references to the location of information not included in the corporate governance statement but located elsewhere in the annual report or websites were also useful.⁶

The ASX Corporate Governance Council encourages companies to consider these suggestions when reporting.

Monitoring implementation and change

The ASX Corporate Governance Council is committed to a continuing review of these Principles and Recommendations to ensure that they remain relevant, take account of local and international developments, and continue to reflect international best practice.

Companies and investors are encouraged to provide feedback about the implementation and impact of these Recommendations to the ASX Corporate Governance Council directly or to one of its member bodies.

As with the first edition of the Principles, the ASX Corporate Governance Council will formally continue to review the impact of these Principles and Recommendations following collation and examination of disclosures made in annual reports and consideration of feedback received.

⁶ See *Analysis of Corporate Governance Practice Disclosure in 2006 Annual Reports* at http://www.asx.com.au/supervision/governance/monitoring_compliance.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 reasonable expectations of their stakeholders

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- 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

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

Principle 1:
Lay solid foundations for management and oversight

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

The company's framework should be designed to:

- enable the board to provide strategic guidance for the company and effective oversight of management
- clarify the respective roles and responsibilities of board members and senior executives in order to facilitate board and senior executives' accountability to both the company and its shareholders⁷
- ensure a balance of authority so that no single individual has unfettered powers.

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

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.

⁷ Senior executives refers to the senior management team as distinct from the board, being those who have the opportunity to materially influence the integrity, strategy and operation of the company and its financial performance.

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.

An effective board is one that facilitates the effective discharge of the duties imposed by law on the directors and adds value in a way that is appropriate to the particular company's circumstances. The board should be structured in such a way that it:

- has a proper understanding of, and competence to deal with, the current and emerging issues of the business
- exercises independent judgement
- encourages enhanced performance of the company
- can effectively review and challenge the performance of management.

Ultimately the directors are elected by the shareholders. However the board and its delegates play an important role in the selection of candidates for shareholder vote.

Recommendation 2.1: A majority of the board should be independent directors⁸.

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.

⁸ A series of relationships affecting independent status are set out in Box 2.1.

Principle 3:
Promote ethical and responsible decision-making

Companies should actively promote ethical and responsible decision-making.

To make ethical and responsible decisions companies should not only comply with their legal obligations, but should also consider the reasonable expectations of their stakeholders including; shareholders, employees, customers, suppliers, creditors, consumers and the broader community in which they operate. It is a matter for the board to consider and assess what is appropriate in each company's circumstances. It is important for companies to demonstrate their commitment to appropriate corporate practices and decision making.

Companies should:

- clarify the standards of ethical behaviour required of the board, senior executives and all employees and encourage the observance of those standards
- comply with their legal obligations and have regard to the reasonable expectations of their stakeholders
- publish the policy concerning the issue of board and employee trading in company securities and in associated products, including products which operate to limit the economic risk of those securities.

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 reasonable expectations of their stakeholders
- the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.

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.

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.

This requires companies to put in place a structure of review and authorisation designed to ensure the truthful and factual presentation of the company's financial position. The structure would include, for example:

- review and consideration of the financial statements by the audit committee
- a process to ensure the independence and competence of the company's external auditors.

Such a structure does not diminish the ultimate responsibility of the board to ensure the integrity of the company's 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 directors⁹
- 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.

⁹ For further guidance on the concept of an independent director, refer to Box 2.1 and to Recommendation 2.1.

Principle 5:
Make timely and balanced disclosure

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

Companies should put in place mechanisms designed to ensure compliance with the ASX Listing Rule requirements such that:

- all investors have equal and timely access to material information concerning the company – including its financial position, performance, ownership and governance
- company announcements are factual and presented in a clear and balanced way. “Balance” requires disclosure of both positive and negative information.

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.

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.

Companies should empower their shareholders by:

- communicating effectively with them
- giving them ready access to balanced and understandable information about the company and corporate proposals
- making it easy for them to participate in general meetings.

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.

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.¹⁰

Risk management is the culture, processes and structures that are directed towards taking advantage of potential opportunities while managing potential adverse effects.¹¹

Risk management should be designed to:

- identify, assess, monitor and manage risk
- identify material changes to the company's risk profile.¹²

Risk management can enhance the environment for identifying and capitalising on opportunities to create value and protect established value.

The company should address risks that could have a material impact on its business (material business risks) as identified by the company's risk management system. The board should regularly review and approve the risk management and oversight policies.

Recommendation 7.1: Companies should establish policies for the oversight and management and management of material business risks and disclose a summary of those policies.¹³

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.

¹⁰ For the purposes of Principle 7 a reference to a "company" will also include references to a "subsidiary" and an "associate" as defined in AASB 128 *Investments in Associates*.

¹¹ There is a range of guidance available on risk management. Frameworks for risk management include the Australian/New Zealand *Standard for Risk Management – ANZ 4360* at www.standards.org.au and COSO *Enterprise Risk Management – Integrated Framework*, published by the Committee of Sponsoring Organisations of the Treadway Commission at www.coso.org.

¹² Companies should be aware of their obligations under section 299A of the Corporations Act [Annual directors' report – Additional requirement for listed public companies].

¹³ The ASX Corporate Governance Council has issued *Supplementary Guidance to Principle 7* which is at www.asx.com.au.

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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.

The awarding of remuneration is a key area of focus for investors. When setting the level and structure of remuneration, a company needs to balance its desire to attract and retain senior executives and directors against its interest in not paying excessive remuneration. It is important that there be a clear relationship between performance and remuneration, and that the policy underlying executive remuneration be understood by investors.¹⁴

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.

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

¹⁴ Note the requirements relating to disclosure of remuneration policy and details in Section 300A of the Corporations Act.

Glossary

board

Means the directors of a company acting as a board and, in the case of listed trusts and externally managed entities, references to “boards” and “directors” are references to the boards and directors of the responsible entity of the trust and to equivalent roles in respect of other externally managed entities

Commentary

Means the discussion following each Recommendation which is provided for assistance, but does not give rise to a reporting obligation

Company

Means any listed entity and includes listed managed investment schemes (trusts), externally managed entities, listed stapled entities and listed foreign entities. For the purposes of Principle 7, a reference to a “company” will also include references to a “subsidiary” and an “associate” as defined in AASB 128 *Investments in Associates*

corporate governance statement

The separate section of a company’s annual report containing the disclosures required under LR 4.10.3 in relation to the extent to which a company has followed the Recommendations. Where the Corporations Act requires particular information to be included in the directors’ report a company has the discretion to include a cross-reference to the relevant information in the corporate governance statement in the annual report rather than duplicating the information

executive director

Means a director who is an executive of the company

financially literate

Able to read and understand financial statements

Guide to reporting

Occurs at the end of each Principle and sets out the disclosure obligations of companies against Recommendations contained in the Principle

“if not, why not”

Means the approach to disclosure against Recommendations required for compliance with LR 4.10.3 comprising an explanation of the extent to which an entity has followed Recommendations or its reasons for adopting an alternative corporate governance practice to one contained in a Recommendation. Both following a Recommendation and a statement of reasons why a Recommendation is not followed constitute valid compliance with the Listing Rule

independent director

Has the meaning under the Commentary in Recommendation 2.1

material business risks

Means risks that could have a material impact on a company’s business. They can include but are not limited to: operational, environmental, sustainability, compliance, strategic, ethical conduct, reputation or brand, technological, product or service quality, human capital, financial reporting and market-related risks

non-executive director

Means a director who is not an executive of the company

Principles

Means the eight core Principles of corporate governance

Recommendations

Are a reference point for the implementation of the Principles, and form the basis for “if not, why not” reporting under the Guide to Reporting for each Principle

senior executives

Means the senior management team, as distinct from the board, being those who have the opportunity to materially influence the integrity, strategy and operation of the company and its financial performance

shareholders

Includes unitholders of unit trusts

substantial shareholder

For the purposes of Box 2.1, a substantial shareholder is a person with a substantial holding as defined in section 9 of the Corporations Act

summary

Means, in relation to any document, a description of its main provisions in sufficient detail to understand the purpose of the document.

Guidance Note 9A
Corporate Governance – Principles & Recommendations

List of references to further Guidance

Principle 1

A Guide to Directors' and Officers' Liability Insurance, 1st edition, June 2001, C Smith, N Milne, F Morris. Australian Institute of Company Directors.

Principle 2

Corporate Practices and Conduct, 3rd edition, 1995, Australian Institute of Company Directors, Australian Society of Certified Practising Accountants, Business Council of Australia, Law Council of Australia, Institute of Chartered Accountants in Australia and The Securities Institute of Australia also known as the *Bosch Committee* guidelines, after the chair of the working group, Henry Bosch AO.

Corporate Governance, A Guide for Fund Managers and Corporations – Blue Book, 5th edition, October 2004, Investment and Financial Services Association.

Chairman of the Board: A Role in the Spotlight, 2006, Australian Institute of Company Directors.

Evaluating Board Performance, 2007, Australian Institute of Company Directors.

How to Implement a Board Performance Management System, 2004, Geoff De Lacy and Anne De Lacy.

How to Review and Assess the Value of Board Subcommittees, 2005, Geoff De Lacy.

The Greaves Case and the Responsibilities and Liabilities of a Chairman, 2006, Australian Institute of Company Directors.

Corporate Governance and the Role of the Company Secretary, 3rd edition, 2003, Chartered Secretaries Australia at www.csaust.com.

Enhancing Board Performance, 2005, Chartered Secretaries Australia at www.csaust.com.

Principle 3

AS 8004 *Whistleblowing Protection Programs for Entities*, Standards Australia at www.standards.com.au.

AS 3806-2006: *Compliance programs*, Standards Australia at www.standards.com.au.

Code of Conduct for Chief Financial Officers, December 2002, Group of 100 at www.group100.com.au.

Code of Conduct, 2005, Australian Institute of Company Directors at www.companydirectors.com.au.

ASX Listing Rule 3.19A: regarding disclosure by the company of directors' notifiable interests within five business days.

Principle 4

Audit Committees: Best Practice Guide, 2nd edition, August 2001, Australian Accounting Research Foundation, Institute of Internal Auditors and Australian Institute of Company Directors.

The independence and objectivity of the auditor is considered in Section 290, *APES 110 Code of Ethics for Professional Accountants*, Accounting, Professional and Ethical Standards Board, June 2006 at

www.apesb.org.au.

Principle 5

Principles of Good Communications with Shareholders, 2007, Australian Institute of Company Directors at www.companydirectors.com.au.

Company Shareholder Dialogue: Fresh Approaches to Communications between Companies and their Shareholders, 2004, Discussion Paper, Business Council of Australia, Australian Institute of Company Directors and Chartered Secretaries Australia at www.bca.com.au.

Better Disclosure for Investors - Guidance Rules, 2000, Australian Securities and Investments Commission.

Guide to Review of Operations and Financial Condition, 2003, Group of 100 at www.group100.com.au.

Best Practice Guidelines for Communication between Listed Entities and the Investment Community, 2nd edition, May 2006, Australasian Investor Relations Association.

Principles for Building Better Relations between Listed Entities and Analysts, March 2006, Australasian Investor Relations Association and Financial Services Institute of Australasia.

Guidance Note 8 - Continuous Disclosure: Listing Rule 3.1, June 2005, Australian Securities Exchange.

Continuous Disclosure: Listed Public Companies and other Disclosing Entities, 2005, Chartered Secretaries Australia at www.csaust.com.

Principle 6

Principles of Good communications with Shareholders, 2007, Australian Institute of Company Directors at www.companydirectors.com.au.

Company Shareholder Dialogue: Fresh Approaches to Communications between Companies and their Shareholders, 2004, Discussion Paper, Business Council of Australia, Australian Institute of Company Directors and Chartered Secretaries Australia at www.bca.com.au.

Principle 7

Supplementary Guidance to Principle 7, The ASX Corporate Governance Council, 2007 at www.asx.com.au.

Frameworks for risk management include the Australian/New Zealand *Standard for Risk Management* – ANZ 4360 at www.standards.org.au and COSO Enterprise Risk Management – Integrated Framework, published by the Committee of Sponsoring Organisations of the Treadway Commission at www.coso.org.

There is a range of guidance available on internal control. Frameworks for internal control include the COSO Internal Control Integrated Framework at www.coso.org. Additional guidance is available through the Institute of Chartered Accountants in England and Wales – *Internal Control, Guidance for Directors on the Combined Code* at www.icaew.co.uk and Australian/New Zealand Standard for Compliance – ANZ 3806 at www.standards.org.au.

Guidance on the internal audit function is found in the Technical Information and Guidance section at www.iaa.org.au.

Guidance Note 9A
Corporate Governance – Principles & Recommendations

Principle 7 – Guide to Compliance with ASX Principle 7 – Recognise and Manage Risk, 2003, Group of 100 at www.group100.com.au.

Principle 8

Corporate Governance, A Guide for Fund Managers and Corporations – Blue Book, 5th edition, October 2004, Investment and Financial Services Association.

Executive Equity Plan Guidelines, 2007, Australian Institute of Company Directors, Australian Employee Ownership Association and Australian Shareholders' Association at www.companydirectors.com.au.

Employee Share Ownership Plan Guidelines, 2007, Australian Institute of Company Directors, Australian Employee Ownership Association and Australian Shareholders' Association at www.companydirectors.com.au.

Comparative table of changes to the Principles and Recommendations

Existing Principle/Recommendation	Revised Principle/Recommendation
Principle 1 – 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.	Recommendation 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.
Principle 2 – 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
	2.4 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.
Principle 3 – 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:

Guidance Note 9A**Corporate Governance – Principles & Recommendations**

Existing Principle/Recommendation	Revised Principle/Recommendation
3.1.1 the practices necessary to maintain confidence in the company's integrity	<ul style="list-style-type: none"> No change
3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.	<ul style="list-style-type: none"> the practices necessary to take into account their legal obligations and the reasonable expectations of their stakeholders
	<ul style="list-style-type: none"> 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	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.
Principle 4 – 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.
4.2 The board should establish an audit committee.	<p>4.2 The audit committee should be structured so that it:</p> <ul style="list-style-type: none"> 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.
4.3 Structure the audit committee so that it consists of: <ul style="list-style-type: none"> only non-executive directors 	4.3 The audit committee should have a formal charter.

Existing Principle/Recommendation	Revised Principle/Recommendation
<ul style="list-style-type: none"> • a majority of independent directors • an independent chairperson, who is not chairperson of the board • at least three members. 	
4.4 The audit committee should have a formal charter.	4.4 Companies should provide the information indicated in the Guide to reporting on Principle 4.
4.5 Provide the information indicated in Guide to reporting on Principle 4.	See Recommendation 4.4
Principle 5 – Make timely and balanced disclosure	No change
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.	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.
Box 5.1 Continuous disclosure policies and procedures	Box 5.1 Continuous disclosure policies
5.2 Provide the information indicated in Guide to reporting on Principle 5.	5.2 Companies should provide the information indicated in the Guide to reporting on Principle 5.
Principle 6 – Respect the rights of shareholders	No change
6.1 Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings.	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	No change
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.	6.2 Companies should provide the information indicated in the Guide to reporting on Principle 6.
Principle 7 – Recognise and manage risk	No change
7.1 The board or appropriate board committee should establish policies on risk oversight and management.	7.1 Companies should establish policies for oversight and management of material business risks and disclose a summary of those policies.
7.2 The chief executive officer (or	7.2 The board should require

Guidance Note 9A
Corporate Governance – Principles & Recommendations

Existing Principle/Recommendation	Revised Principle/Recommendation
<p>equivalent) and the chief financial officer (or equivalent) should state to the board in writing that:</p> <p>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</p> <p>7.2.2 the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.</p>	<p>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>
<p>7.3 Provide the information indicated in Guide to reporting on Principle 7.</p>	<p>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.</p>
	<p>7.4 Companies should provide the information indicated in the Guide to reporting on Principle 7.</p>
<p>Principle 8 – Encourage enhanced performance</p>	<p>See Principle 1 – Lay solid foundations for management and oversight See Principle 2 – Structure the board to add value</p>
<p>8.1 Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.</p>	<p>For senior executives see Recommendation 1.2 For directors see Recommendation 2.5</p>
<p>Principle 9 – Remunerate fairly and responsibly</p>	<p>Now Principle 8</p>
<p>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.</p>	<p>8.1 The board should establish a remuneration committee.</p>

Existing Principle/Recommendation	Revised Principle/Recommendation
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.