

## Marked-Up Amendments dated 30 June 2010 to the Second Edition August 2007 of the Corporate Governance Principles and Recommendations

### Principle 2: Structure the board to add value

Companies should have a board of an effective composition, size and commitment to adequately discharge their 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 directors<sup>1</sup>.

#### Commentary

##### *Independent decision-making*

All directors – whether independent or not - should bring an independent judgement to bear on board decisions.

To facilitate this, there should be a procedure agreed by the board for directors to have access in appropriate circumstances to independent professional advice at the company's expense.

Non-executive directors should consider the benefits of conferring regularly without management present, including at scheduled sessions.<sup>2</sup> Their discussions can be facilitated by the chair or lead independent director, if any.

##### *Independent directors*

An independent director is a non-executive director who is not a member of management, and who is free of any business or other relationship that could materially interfere with - or could reasonably be perceived to materially interfere with - the independent exercise of their judgement.

Relationships which may affect independent status are set out in Box 2.1.

Directors considered by the board to be independent should be identified as such in the corporate governance statement in the annual report. The board should state its reasons if it considers a director to be independent notwithstanding the existence of relationships listed in Box 2.1 and the corporate governance statement should disclose the existence of any such relationships. In this context, it is important for the board to consider materiality thresholds from the perspective of both the company and its directors, and to disclose these.<sup>3</sup>

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<sup>1</sup> A series of relationships affecting independent status are set out in Box 2.1.

<sup>2</sup> At times it may be appropriate for the independent directors to meet without other directors present.

<sup>3</sup> For example, a board may decide that affiliation with a business which accounts for, say, less than X% of the company's revenue is, as a category, immaterial for the purpose of determining independence. If the company discloses the standard it follows and makes a general statement that the relevant director meets that standard, investors are better informed about the board's reasoning.

**Box 2.1: Relationships affecting independent status<sup>4</sup>**

When determining the independent status of a director the board should consider whether the director:

1. is a substantial shareholder of the company or an officer of, or otherwise associated directly with, a substantial shareholder of the company<sup>5</sup>
2. is employed, or has previously been employed in an executive capacity by the company or another group member, and there has not been a period of at least three years between ceasing such employment and serving on the board
3. has within the last three years been a principal of a material professional adviser or a material consultant to the company or another group member, or an employee materially associated with the service provided
4. is a material supplier or customer of the company or other group member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer
5. has a material contractual relationship with the company or another group member other than as a director of the company.

Family ties and cross-directorships may be relevant in considering interests and relationships which may compromise independence, and should be disclosed by directors to the board.

*Regular assessments*

The board should regularly assess whether each non-executive director is independent. Each non-executive director should provide to the board all information that may be relevant to this assessment.

If a director's independent status changes, this should be disclosed and explained to the market in a timely fashion.

**Recommendation 2.2:**

The chair should be an independent director.

**Commentary***Role of Chair*

The chair is responsible for leadership of the board and for the efficient organisation and conduct of the board's functioning.

The chair should facilitate the effective contribution of all directors and promote constructive and respectful relations between directors and between board and management.

Where the chair is not an independent director, it may be beneficial to consider the appointment of a lead independent director.

The role of chair is demanding, requiring a significant time commitment. The chair's other positions should not be such that they are likely to hinder effective performance in the role.

**Recommendation 2.3:**

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

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<sup>4</sup> The relationships affecting independent status in Box 2.1 are adapted from the definition of independence given by Corporate Governance, A Guide for Fund Managers and Corporations – Blue Book, Investment and Financial Services Association, 2004 at [www.ifsa.com.au](http://www.ifsa.com.au).

<sup>5</sup> For this purpose a "substantial shareholder" is a person with a substantial holding as defined in section 9 of the Corporations Act.

## Commentary

There should be a clear division of responsibility at the head of the company.

The division of responsibilities between the chair and the chief executive officer should be agreed by the board and set out in a statement of position or authority.

The chief executive officer should not go on to become chair of the same company. A former chief executive officer will not qualify as an "independent" director unless there has been a period of at least three years between ceasing such employment and serving on the board.

### Recommendation 2.4:

The board should establish a nomination committee.

## Commentary

### *Purpose of the nomination committee*

A board nomination committee is an efficient mechanism for examination of the selection and appointment practices of the company.

Ultimate responsibility for these practices, however, rests with the full board, whether or not a separate nomination committee exists.

For smaller boards, the same efficiencies may not be derived from a formal committee structure. Companies without a nomination committee should have board processes in place which raise the issues that would otherwise be considered by the nomination committee.

### *Charter*

The nomination committee should have a charter that clearly sets out its roles and responsibilities, composition, structure, membership requirements and the procedures for inviting non-committee members to attend meetings.

The terms of reference of the nomination committee should allow it to have access to adequate internal and external resources, including access to advice from external consultants or specialists.

### *Composition of nomination committee*

The nomination committee should be structured so that it:

- consists of a majority of independent directors
- is chaired by an independent director
- has at least three members.

### *Responsibilities*

Responsibilities of the committee should include recommendations to the board about:

- the necessary and desirable competencies of directors
- review of board succession plans
- the development of a process for the evaluation of the performance of the board, its committees and directors
- the appointment and re-election of directors

### *Selection and appointment process and re-election of directors*

A formal and transparent procedure for the selection, appointment and re-appointment of directors to the board helps promote investor understanding and confidence in that process.

Important issues to be considered as part of the process include:

- Disclosure of board selection processes:

Companies are encouraged to provide greater transparency of the processes which the board adopts in searching for and selecting new directors to the board and to report to shareholders on the processes. Such reporting could include the following:

- details as to whether the company develops a board skills matrix and uses this matrix to identify any 'gaps' in the skills and experience of the directors on the board;
- the process by which candidates are identified and selected including whether professional intermediaries are used to identify and/or assess candidates;
- the steps taken to ensure that a diverse range of candidates is considered; and
- the factors taken into account in the selection process.

- Director competencies

In order to be able to discharge its mandate effectively the board should comprise directors possessing an appropriate range of skills and expertise. The nomination committee should consider implementing a plan for identifying, assessing and enhancing director competencies.

An evaluation of the range of skills, experience and expertise on the board is important when considering new candidates for nomination or appointment. Such an evaluation enables identification of the particular skills that will best increase board effectiveness.

- Board renewal

Board renewal is critical to performance, and directors should be conscious of the duration of each director's tenure in succession planning.

The nomination committee should consider whether succession plans are in place to maintain an appropriate mix of skills, experience, expertise and diversity on the board.

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- Composition and commitment of the board

The board should be of a size and composition that is conducive to making appropriate decisions. The board should be large enough to incorporate a variety of perspectives and skills, and to represent the best interests of the company as a whole rather than of individual shareholders or interest groups. It should not, however, be so large that effective decision-making is hindered.

Individual board members should devote the necessary time to the tasks entrusted to them. All directors should consider the number and nature of their directorships and calls on their time from other commitments.

In support of their candidature for directorship or re-election, non-executive directors should provide the nomination committee with details of other commitments and an indication of time involved. Prior to appointment or being submitted for re-election non-executive directors should specifically acknowledge to the company that they will have sufficient time to meet what is expected of them.

The nomination committee should regularly review the time required from a non-executive director, and whether directors are meeting that requirement. Non-executive directors should inform the chair and the chair of the nomination committee before accepting any new appointments as directors.

- *Election of directors* - The names of candidates submitted for election as directors should be accompanied by the following information to enable shareholders to make an informed decision on their election:
  - biographical details, including competencies and qualifications and information sufficient to enable an assessment of the independence of the candidate
  - a statement by the board as to whether it supports the nomination of the proposed candidate(s)
  - details of relationships between:
    - the candidate and the company, and
    - the candidate and directors of the company
  - directorships held <sup>6</sup>
  - particulars of other positions which involve significant time commitments
  - the term of office currently served by any directors subject to re-election
  - any other particulars required by law.<sup>7</sup>

Non-executive directors should be appointed for specific terms subject to re-election and to the ASX Listing Rules and Corporations Act provisions concerning removal of a director.

Re-appointment of directors should not be automatic.

#### Recommendation 2.5:

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

#### Commentary

The performance of the board should be reviewed regularly against appropriate measures.

#### *Induction and education*

Induction procedures should be in place to allow new directors to participate fully and actively in board decision-making at the earliest opportunity.

To be effective, new directors need to have a good deal of knowledge about the company and the industry within which it operates. An induction program should be available to enable new directors to gain an understanding of:

- the company's financial, strategic, operational and risk management position
- the culture and values of the company
- the rights, duties and responsibilities of the directors
- the roles and responsibilities of senior executives
- the role of board committees
- meeting arrangements
- director interaction with each other, senior executives and other stakeholders

Directors should have access to continuing education to update and enhance their skills and knowledge. This could include education concerning key developments in the company and in the industry and environment within which it operates.

#### *Access to information*

The board should be provided with the information it needs to discharge its responsibilities effectively.

<sup>6</sup> These are directorships required to be disclosed by law, and any other directorships relevant to an assessment of independence.

<sup>7</sup> The *Guidelines for notices of meeting* at [www.asx.com.au](http://www.asx.com.au) are designed to assist communication with shareholders and contain guidance on framing resolutions for the election of directors.

Senior executives should supply the board with information in a form and timeframe, and of a quality that enables the board to discharge its duties effectively. Directors are entitled to request additional information where they consider such information necessary to make informed decisions.

#### *The board and the company secretary*

The company secretary plays an important role in supporting the effectiveness of the board by monitoring that board policy and procedures are followed, and coordinating the timely completion and despatch of board agenda and briefing material.

It is important that all directors have access to the company secretary.

The appointment and removal of the company secretary should be a matter for decision by the board as a whole.

The company secretary should be accountable to the board, through the chair, on all governance matters.

#### **Recommendation 2.6:**

Companies should provide the information indicated in the Guide to reporting on Principle 2.

#### **Guide to reporting on Principle 2**

The following material should be included in the corporate governance statement in the annual report:

- the skills, experience and expertise relevant to the position of director held by each director in office at the date of the annual report
- the names of the directors considered by the board to constitute independent directors and the company's materiality thresholds
- the existence of any of the relationships listed in Box 2.1 and an explanation of why the board considers a director to be independent, notwithstanding the existence of these relationships
- a statement as to the mix of skills and diversity for which the board of directors is looking to achieve in membership of the board
- a statement as to whether there is a procedure agreed by the board for directors to take independent professional advice at the expense of the company
- the period of office held by each director in office at the date of the annual report
- the names of members of the nomination committee and their attendance at meetings of the committee, or where a company does not have a nomination committee, how the functions of a nomination committee are carried out
- whether a performance evaluation for the board, its committees and directors has taken place in the reporting period and whether it was in accordance with the process disclosed
- an explanation of any departures from Recommendations 2.1, 2.2, 2.3, 2.4, 2.5 or 2.6.

The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- a description of the procedure for the selection and appointment of new directors and the re-election of incumbent directors
- the charter of the nomination committee or a summary of the role, rights, responsibilities and membership requirements for that committee
- the board's policy for the nomination and appointment of directors

#### **Application of Principle 2 in relation to trusts and externally managed entities**

References to "board" and "directors" should be applied as references to the board and directors of the responsible entity of the trust and to equivalent roles in respect of other externally managed entities.

There may be technical conflict in implementing the Recommendations that a director be independent and that the chair be an independent director or a lead independent director, where the manager or responsible entity is a wholly-owned subsidiary of a parent company such as a fund manager and all the directors are employees of the parent. This should be discussed and clarified in any explanation of departure from the Recommendations included in the corporate governance statement in the annual report.

### 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.

#### Commentary

##### *Purpose of a code of conduct*

Good corporate governance ultimately requires people of integrity. Personal integrity cannot be regulated. However, investor confidence can be enhanced if the company clearly articulates acceptable practices for directors, senior executives and employees.

The board has a responsibility to set the ethical tone and standards of the company. Senior executives have a responsibility to implement practices consistent with those standards. Company codes of conduct which state the values and policies of the company can assist the board and senior executives in this task and complement the company's risk management practices.

##### *Application of a code of conduct*

Companies should formulate policies on the appropriate behaviour of directors, senior executives and employees. Companies should also encourage the integration of these policies into company-wide management practices. A code of conduct, supported by appropriate training and monitoring of compliance with the code are effective ways to guide the behaviour of directors, senior executives and employees and demonstrate the commitment of the company to ethical practices. Companies should ensure that training on the code of conduct is updated on a regular basis.

Companies should consider making advisers, consultants and contractors aware of the company's expectations as set out in the code of conduct.

It is not necessary for companies to establish a separate code for directors and senior executives. Depending on the nature and size of the company's operations, the code of conduct for directors and senior executives may stand alone or be part of the corporate code of conduct.



Suggestions for the content of a code of conduct are set out in Box 3.1.

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

Companies may find it useful to consider the following matters when formulating a code of conduct:

1. Give a clear commitment by the board and senior executives to the code of conduct. This is often linked to statements about the aspirations or objectives of the company, its core values, and its views about the expectations of shareholders, employees, customers, suppliers, creditors, consumers and the broader community.
2. Detail the company's responsibilities to shareholders and the financial community generally. This might include reference to the company's commitment to delivering shareholder value and how it will do this, and the company's approach to accounting policies and practices, and disclosure.
3. Specify the company's responsibilities to shareholders, employees, customers, suppliers, creditors, consumers and the broader community. This might include reference to standards of product quality or service, commitments to fair value, fair dealing and fair trading and the safety of goods produced.
4. Describe the company's approach to the community. This might include environmental protection policies, support for community activities, and donation or sponsorship policies
5. Articulate the company's responsibilities to the individual. This might include the company's privacy policy, and its policy on the use of privileged or confidential information.
6. Outline the company's employment practices. This might include reference to occupational health and safety, employment opportunity practices, special entitlements above the statutory minimum, employee security trading policies, training and further education support policy, practices on drug and alcohol usage and policies on outside employment.
7. Describe the company's approach to business courtesies, bribes, facilitation payments, inducements and commissions. This might include how the company regulates the giving and accepting of business courtesies and facilitation payments and prevents the offering and acceptance of bribes, inducements and commissions and the misuse of company assets and resources.
8. State the measures the company follows to promote active compliance with legislation affecting its operations wherever it operates. This might include stating whether the company's policy is to comply with Australian or local legal requirements regarding employment practices, responsibilities to the community and responsibilities to the individual, particularly if the host country follows materially different standards than those prescribed by Australian law or international protocols.
9. Specify how the company handles actual or potential conflicts of interest. This might include reference to how the company manages situations where the interest of a private individual interferes or appears to interfere with the interests of the company as a whole and how the company prevents directors, senior executives and employees from taking improper advantage of property, information or position, or opportunities arising from these, for personal gain or to compete with the company.
10. Identify measures the company follows to encourage the reporting of unlawful or unethical behaviour and to actively promote ethical behaviour. This might include reference to how the company protects those, such as whistleblowers who report violations in good faith, and its processes for dealing with such reports.<sup>8</sup>
11. Describe the means by which the company monitors and ensures compliance with its code.

**Recommendation 3.2:**

Companies should establish a policy concerning diversity and disclose the policy or a summary of that policy. The policy should include requirements for the board to establish measurable objectives for achieving gender diversity and for the board to assess annually both the objectives and progress in achieving them.

<sup>8</sup> For guidance on the provision of a whistleblowing service, see Australian Standards on *Whistleblowing Programs for Entities* (AS 8004).

**Deleted: 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.¶

**¶ Commentary and guidance¶**

¶ Public confidence in the company can be eroded if there is insufficient understanding about the company's policies governing trading by "potential insiders". The law prohibits insider trading, and the Corporations Act and the ASX Listing Rules require disclosure of any trading undertaken by directors or their related entities in the company's securities.<sup>9</sup>¶

¶ For the purpose of this policy a "potential insider" is a person likely to possess inside information and includes the directors, the chief executive officer, or equivalent, the chief financial officer, or equivalent, staff members who are involved in material transactions concerning the company, and any other member of staff who is likely to be in the possession of inside information.¶

¶ "Inside information" means information concerning a company's financial position, strategy or operations and any other information which a reasonable person might consider, if it were made public, would be likely to have a material impact on a decision to buy or sell a company's securities.<sup>10</sup>¶

¶ Where companies establish a code of conduct and trading policy, they should also introduce appropriate compliance standards and procedures to ensure that the policy is properly implemented. There should also be an internal review mechanism to assess compliance and effectiveness. This review may involve an internal audit function.¶

¶ Suggestions for the content of a trading policy are set out in Box 3.2.¶

<b>Box 3.2: Suggestions for the content of a trading policy¶</b>
Companies may find it useful to consider the following matters when formulating a trading policy:¶
¶
1. . . Clearly identify the directors, officers, employees or group of employees who are restricted from trading ("designated officers"). <sup>11</sup> ¶
2. . . Identify and raise awareness about the prohibitions under the law and the requirements of the policy. This should include an awareness that it is inappropriate for the designated officer to procure others to trade when the designated officer is precluded from trading, and an awareness of the need to enforce confidentiality against external... [1]

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## Commentary

Diversity includes, but is not limited to, gender, age, ethnicity and cultural background.

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The measurable objectives should identify ways in which the achievement of gender diversity is measured, for example, the proportion of women employed by (or consultants to) the company, in senior executive positions and on the board.

Where companies establish a diversity policy, they should also introduce appropriate procedures to ensure that the policy is implemented properly, which may include additional measurable objectives in relation to other aspects of diversity as identified in the policy. There also should be an internal review mechanism to assess the effectiveness of the policy.

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Suggestions for the content of a diversity policy are set out in Box 3.2

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### Box 3.2 Suggestions for the content of a diversity policy

Companies may find it useful to consider the following matters when formulating a diversity policy:

1. Commitment to diversity and articulation of the corporate benefits arising from employee and board diversity and the importance of benefiting from all available talent. This should promote an environment conducive to the appointment of well qualified employee, senior management and board candidates so that there is appropriate diversity to maximise the achievement of corporate goals.
2. Commitment to and identification of ways to promote a corporate culture which embraces diversity when determining the composition of employees, senior management and the board, including recruitment of employees and directors from a diverse pool of qualified candidates.
3. Identification of factors that should be taken into account in the selection processes and whether professional intermediaries should be used to identify or assess candidates.
4. Identification of programs that assist in the development of a broader pool of skilled and experienced board candidates including initiatives focused on skills development such as executive mentoring programs or more targeted practices relating to career advancement such as those that develop skills and experience that prepare employees for senior management and board positions.
5. Articulation of a corporate culture which not only supports workplace diversity but also recognises that employees at all levels of the company may have domestic responsibilities.
6. Transparency of board processes, review and appointments.
7. The extent to which the achievement of measurable objectives should be tied to Key Performance Indicators for the board, the CEO and senior executives.

### Recommendation 3.3:

Companies should disclose in each annual report the measurable objectives for achieving gender diversity set by the board in accordance with the diversity policy and progress towards achieving them.

## Commentary

The ASX Corporate Governance Council encourages companies in Australia to foster a governance culture that embraces diversity in the composition of corporate boards, with a focus on the participation of women. The shareholder role is enhanced if shareholders are fully informed of the policy and the measurable objectives which facilitate tracking and monitoring of the company's performance against those objectives.

Recommendation 3.4: Companies should disclose in each annual report the proportion of women employees in the whole organisation, women in senior executive positions and women on the board.

## Commentary

Diversity is an economic driver of competitiveness for companies. Research<sup>13</sup> has shown that increased gender diversity on boards is associated with better financial performance, and that improved workforce participation at all levels positively impacts on the economy. The promotion of gender diversity broadens the pool for recruitment of high quality employees, enhances employee retention, encourages greater innovation, and improves corporate image and reputation. Reporting on the diversity profile of the company facilitates greater transparency and accountability in relation to the policy that has been put in place, together with the objectives to be achieved by the company.

Companies should consider, in the context of the economic group controlled by the company, how best to report to achieve an accurate and not misleading impression of the relative participation of women and men in the workplace and the roles in which they are employed: for instance, whether a full-time equivalent measure is appropriate in all or some circumstances as opposed to clear categorisation of full-time, part-time and contracted services, and whether the participation is in a leadership, management, professional speciality or supporting role, or by relative participation of men and women at different remuneration bands.

The board, or an appropriate board committee, for instance the nomination or remuneration committee, should be charged with the duty, at least annually, to review and report on the relative proportion of women and men in the workforce at all levels of the economic group controlled by the company. This obligation should be included in the charter of the board or the relevant board committee.

**Recommendation 3.5:** Companies should provide the information indicated in the Guide to reporting on Principle 3.

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### Guide to reporting on Principle 3

An explanation of any departure from Recommendations 3.1, 3.2, 3.3, 3.4 or 3.5 should be included in the corporate governance statement in the annual report.

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The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

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- any applicable code of conduct or summary
- any diversity policy or a summary.
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### Application of Principle 3 in relation to trusts and externally managed entities

References to "directors" and "employees" of a company should be applied as references to directors and employees of the responsible entity, and the relevant trading is in securities of the trust and to equivalent roles in respect of other externally managed entities. The trading policy should refer to the securities or units of the listed entity.

<sup>13</sup> Goldman Sachs JBWere Australia's Hidden Resource "The economic case for Increasing Female Participation" November 2009, Catalyst The Bottom Line: Corporate Performance and Women's Representation on Boards, October 2007

## 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.

### Commentary

Publishing the company's policy on shareholder communication will help investors understand how to obtain access to relevant information about the company and its corporate proposals.

#### *Electronic communication*

Companies should consider how best to take advantage wherever practicable of new technologies that provide:

- opportunities for more effective communications with shareholders
- improved access for shareholders unable to be physically present at meetings.

See Box 6.1 for suggestions on how to improve shareholder participation and enhance market awareness through electronic means.

#### *Meetings*

Companies should consider how to use general meetings effectively to communicate with shareholders and allow reasonable opportunity for informed shareholder participation.

The ASX Corporate Governance Council has developed guidelines for improving shareholder participation through the design and content of notices and through the conduct of the meeting itself.<sup>14</sup>

#### *Communication with beneficial owners*

Companies may wish to consider allowing beneficial owners to choose to receive shareholder materials directly; for example, by electronic means.

#### *Website*

All companies should have a website and are encouraged to communicate with shareholders via electronic methods. If a company does not have a website it must make relevant information available to shareholders by other means; for example, a company may provide the information on request by email, facsimile or post.

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<sup>14</sup> Guidelines for improving shareholder participation through the design and content of notices and the conduct of the meeting itself are at [www.asx.com.au](http://www.asx.com.au). They are guidelines only and not reporting requirements.

## Briefings

Where possible, companies should arrange for advance notification of significant group briefings (including, but not limited to, results announcements) and make them widely accessible, including through the use of webcasting or any other mass communication mechanisms as may be practical

Companies should also keep a summary record for internal use of the issues discussed at group or one-on-one briefings with investors and analysts, including a record of those present (names or numbers where appropriate), and the time and place of the meeting

### Box 6.1

#### Using electronic communications effectively

Companies should use their websites to complement the official release of material information to the market. This will enable broader access to company information by investors and stakeholders. Measures companies may consider include:

- placing all relevant announcements made to the market, and related information (for example, information provided to analysts or media during briefings), on the company website after they have been released to ASX
- webcasting or teleconferencing analyst or media briefings and general meetings, or posting a transcript or summary to the website
- placing the full text of notices of meeting and explanatory material on the website - see Guideline 12 in the *Guidelines for notices of meeting* at [www.asx.com.au](http://www.asx.com.au)
- providing information about the last three years' press releases or announcements plus at least three years of financial data on the website
- providing information updates to investors by email

#### Recommendation 6.2:

Companies should provide the information indicated in the Guide to reporting on Principle 6.

#### Guide to reporting on Principle 6

An explanation of any departure from Recommendations 6.1 or 6.2 should be included in the corporate governance statement in the annual report.

The company should describe how it will communicate with its shareholders publicly, ideally by posting the information on the company's website in a clearly marked corporate governance section.

#### Application of Principle 6 in relation to trusts and externally managed entities

The annual general meeting is the central forum by which companies can effectively communicate with shareholders, provide them with access to information about the company and corporate proposals, and enable their participation in decision-making. The Corporations Act does not, however, require trusts to hold annual general meetings, although they may do so. Trusts should consider the range of means by which they may achieve the same ends, including the possibility of convening general meetings.

Listed entities that are not required to comply with section 250RA of the Corporations Act should consider the range of means by which they may achieve the same ends.<sup>15</sup> This applies not only to trusts and externally managed entities but also to entities such as foreign incorporated entities. Any such entity should include in its annual report a statement

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<sup>15</sup> 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.

disclosing the extent to which it has achieved the aims of the provisions of section 250RA during the reporting period and give reasons for not doing so.

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## 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.<sup>16</sup>

### Recommendation 8.1:

The board should establish a remuneration committee.

### Commentary

#### *Purpose of the remuneration committee*

A board remuneration committee is an efficient mechanism for focusing the company on appropriate remuneration policies.

Ultimate responsibility for a company's remuneration policy rests with the full board, whether or not a separate remuneration committee exists.

For smaller boards, the same efficiencies may not be derived from a formal committee structure. Companies without a remuneration committee should have board processes in place which raise the issues that would otherwise be considered by the remuneration committee.

#### *Charter*

The remuneration committee should have a charter that clearly sets out its role and responsibilities, composition, structure and membership requirements and the procedures for inviting non-committee members to attend meetings.

The terms of reference of the remuneration committee should allow it to have access to adequate internal and external resources, including access to advice from external consultants or specialists.

#### Responsibilities of the remuneration committee

The responsibilities of the remuneration committee should include a review of and recommendation to the board on:

- the company's remuneration, recruitment, retention and termination policies and procedures for senior executives
- senior executives' remuneration and incentives
- superannuation arrangements
- the remuneration framework for directors<sup>17</sup>
- remuneration by gender.

#### *Remuneration policy*

The company should design its remuneration policy in such a way that it:

- motivates senior executives to pursue the long-term growth and success of the company

Deleted: *Composition of remuneration committee*

Deleted: The remuneration committee should be structured so that it:

Deleted: ¶

Deleted: <#>consists of a majority of independent directors

Deleted: <#>¶

Deleted: <#>is chaired by an independent director

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Deleted: <#>has at least three members.¶

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<sup>16</sup> Note the requirements relating to disclosure of remuneration policy and details in Section 300A of the Corporations Act.

<sup>17</sup> The remuneration framework for directors is often addressed by the nomination committee rather than the remuneration committee.

- demonstrates a clear relationship between senior executives' performance and remuneration.

The remuneration committee should ensure that the board is provided with sufficient information to ensure informed decision-making.

**Deleted:** The remuneration committee may seek input from individuals on remuneration policies, but no individual should be directly involved in deciding their own remuneration.<sup>¶</sup>

### Recommendation 8.2:

The remuneration committee should be structured so that it:

- consists of a majority of independent directors
- is chaired by an independent director
- has at least three members.

### Commentary

The remuneration committee should be of sufficient size and independence to discharge its mandate effectively.

Companies should, where possible, limit the use of executive directors serving on a remuneration committee in order to address the potential for, or perception of, conflict of interest of executive director involvement in board decisions on their remuneration packages.

The remuneration committee may seek input from senior executives on remuneration policies, but no senior executive should be directly involved in deciding their own remuneration.

### Recommendation 8.3:

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

### **Commentary**

Executive directors' and senior executives' remuneration packages should involve a balance between fixed and incentive pay, reflecting short and long-term performance objectives appropriate to the company's circumstances and goals.

The Corporations Act requires companies to make detailed disclosure of executive remuneration policies in their remuneration reports which are subject to an advisory vote by shareholders. Under the Listing Rules and the Corporations Act companies are not generally required to obtain shareholder approval for equity-based incentive plans for senior executives who are not directors.

However, companies may find it useful to submit to shareholders proposed equity-based incentive plans which will involve the issue of new shares to senior executives prior to implementing them. This communication is directed at providing the board with a timely assurance that a plan is reasonable.<sup>18</sup> Companies may also consider reporting to shareholders on whether equity-based remuneration payments involving the issue of new shares to senior executives are made pursuant to plans approved by shareholders.

Guidelines on an appropriate framework for determining executive directors' and senior executives' remuneration packages are contained in Box 8.1.

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

<sup>18</sup> Under Section 211 of the Corporations Act benefits that are "reasonable remuneration" are an exception to the requirement for member approval for financial benefits to related parties under Section 208 of the Act.



Most executive remuneration packages will involve a balance between fixed and incentive pay.<sup>19</sup> Companies may find it useful to consider the following components in formulating packages:

#### 1. Fixed remuneration

This should be reasonable and fair, taking into account the company's legal and industrial obligations and labour market conditions, and should be relative to the scale of business. It should reflect core performance requirements and expectations.

#### 2. Performance-based remuneration

Performance-based remuneration linked to clearly specified performance targets can be an effective tool in promoting the interests of the company and shareholders.

Incentive schemes should be designed around appropriate performance benchmarks that measure relative performance and provide rewards for materially improved company performance.

#### 3. Equity-based remuneration

Appropriately designed equity-based remuneration, including stock options, can be an effective form of remuneration when linked to performance objectives or hurdles.

Equity-based remuneration has limitations and can contribute to 'short-termism' on the part of senior executives. Accordingly, it is important to design appropriate schemes. The terms of such schemes should clearly prohibit entering into transactions or arrangements which limit the economic risk of participating in unvested entitlements under these schemes.<sup>20</sup> The exercise of any entitlements under these schemes should be timed to coincide with any trading windows under any trading policy established by the company.

#### 4. Termination payments

Termination payments, if any, for chief executive officers should be agreed in advance, including detailed provisions in case of early termination. There should be no payment for removal for misconduct.

Agreements should clearly articulate performance expectations. Companies should consider the consequences of an appointment not working out, and the costs and other impacts of early termination.

Box 8.2 contains guidelines for appropriate practice in non-executive director remuneration.

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

Companies may find it useful to consider the following when considering non-executive director remuneration:

1. Non-executive directors should normally be remunerated by way of fees, in the form of cash, non-cash benefits, superannuation contributions or equity; they should not normally participate in schemes designed for the remuneration of executives.
2. Non-executive directors should not receive options or bonus payments.
3. Non-executive directors should not be provided with retirement benefits other than superannuation.

**Recommendation 8.4:** Companies should provide the information indicated in the Guide to reporting on Principle 8.

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#### Guide to reporting on Principle 8

<sup>19</sup> Companies should note that entering into employment agreements with senior executives, or obligations under those agreements falling due may trigger a continuous disclosure obligation under Listing Rule 3.1. See Companies Update 1 May 2003 *Continuous Disclosure and Chief Executive Officer Remuneration* at [www.asx.com.au](http://www.asx.com.au).

<sup>20</sup> Where a company makes any representations about the alignment of a senior executive's interests, the company should take into account the extent of that senior executive's alignment of interest based on any disclosure under the company trading policy.

The following material or a clear cross-reference to the location of the material should be included in the corporate governance statement in the annual report:

- the names of the members of the remuneration committee and their attendance at meetings of the committee, or where a company does not have a remuneration committee, how the functions of a remuneration committee are carried out
- the existence and terms of any schemes for retirement benefits, other than superannuation, for non-executive directors
- an explanation of any departures from Recommendations 8.1, 8.2, ~~8.3~~ or 8.4.

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The following material should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section:

- the charter of the remuneration committee or a summary of the role, rights, responsibilities and membership requirements for that committee
- a summary of the company's policy on prohibiting entering into transactions in associated products which limit the economic risk of participating in unvested entitlements under any equity-based remuneration schemes.

### Application of Principle 8 in relation to trusts and externally managed entities

Under the Corporations Act, remuneration and indemnity for costs and expenses of the responsible entity is required to be disclosed in a trust's constitution. This may overlap to an extent with the Recommendations and should be taken into account by trusts.

Externally managed entities should disclose a summary of any management agreement terms relating to management fees or the equivalent, including performance fees, including a clear cross reference to the location of this material.

Listed entities that are not required to comply with section 300A of the Corporations Act or AASB 124 *Related Party Disclosures* should consider the range of means by which they may achieve the same ends and should provide a clear cross-reference to the location of this material.<sup>21</sup>

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<sup>21</sup> 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*.

**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.

### Commentary and guidance

Public confidence in the company can be eroded if there is insufficient understanding about the company's policies governing trading by "potential insiders". The law prohibits insider trading, and the Corporations Act and the ASX Listing Rules require disclosure of any trading undertaken by directors or their related entities in the company's securities.<sup>1</sup>

For the purpose of this policy a "potential insider" is a person likely to possess inside information and includes the directors, the chief executive officer, or equivalent, the chief financial officer, or equivalent, staff members who are involved in material transactions concerning the company, and any other member of staff who is likely to be in the possession of inside information.

"Inside information" means information concerning a company's financial position, strategy or operations and any other information which a reasonable person might consider, if it were made public, would be likely to have a material impact on a decision to buy or sell a company's securities.<sup>2</sup>

Where companies establish a code of conduct and trading policy, they should also introduce appropriate compliance standards and procedures to ensure that the policy is properly implemented. There should also be an internal review mechanism to assess compliance and effectiveness. This review may involve an internal audit function.

Suggestions for the content of a trading policy are set out in Box 3.2.

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

Companies may find it useful to consider the following matters when formulating a trading policy:

1. Clearly identify the directors, officers, employees or group of employees who are restricted from trading ("designated officers").<sup>3</sup>
2. Identify and raise awareness about the prohibitions under the law and the requirements of the policy. This should include an awareness that it is inappropriate for the designated officer to procure others to trade when the designated officer is precluded from trading, and an awareness of the need to enforce confidentiality against external advisers.
3. Require designated officers to provide notification to an appropriate senior member of the company, for example, in the case of directors, to the chair, of intended trading, including entering into transactions or arrangements which operate to limit the economic risk of their security holdings in the company. No prior notification is needed for dividend reinvestment plans and other corporate actions open to all shareholders.<sup>4</sup>
4. Require subsequent confirmation of the trading that has occurred.
5. Identify whether trading windows or black-outs are used and if so, details of their application.

<sup>1</sup> ASX Listing Rule 3.19A regarding disclosure by the company of directors' notifiable interests within five business days. Companies should note that as at July 2007 the Government proposes amending Section 205G of the Corporations Act regarding disclosure by directors of their notifiable interests. The proposed amendment would reduce the timeframe for disclosure from 14 days to two days. There is also a proposal to remove the Listing Rule.

<sup>2</sup> Companies should be aware of the relevant provisions of the Corporations Act.

<sup>3</sup> Anyone coming into possession of inside information has obligations under to comply with the law relating to insider trading.

<sup>4</sup> The recommended disclosure is of the designated officer's effective exposure under their security holdings as a result of these transactions or arrangements.

6. Specify whether there is any discretion to permit trading by designated officers in specific circumstances, for example, financial hardship, details of such circumstances, and the basis upon which discretion is applied.
7. Specify whether the company prohibits designated officers from trading in financial products issued or created over the company's securities by third parties, or trading in associated products.
8. Specify that the company prohibits designated officers from entering into transactions in associated products which operate to limit the economic risk of security holdings in the company over unvested entitlements.
9. Specify whether the policy applies to the securities of other companies of which the designated officer has inside knowledge because of their position with the company.

Where a company makes any representations about the alignment of a director's or senior executive's interests, the company should take into account the extent to which that director or senior executive has an economic interest in the