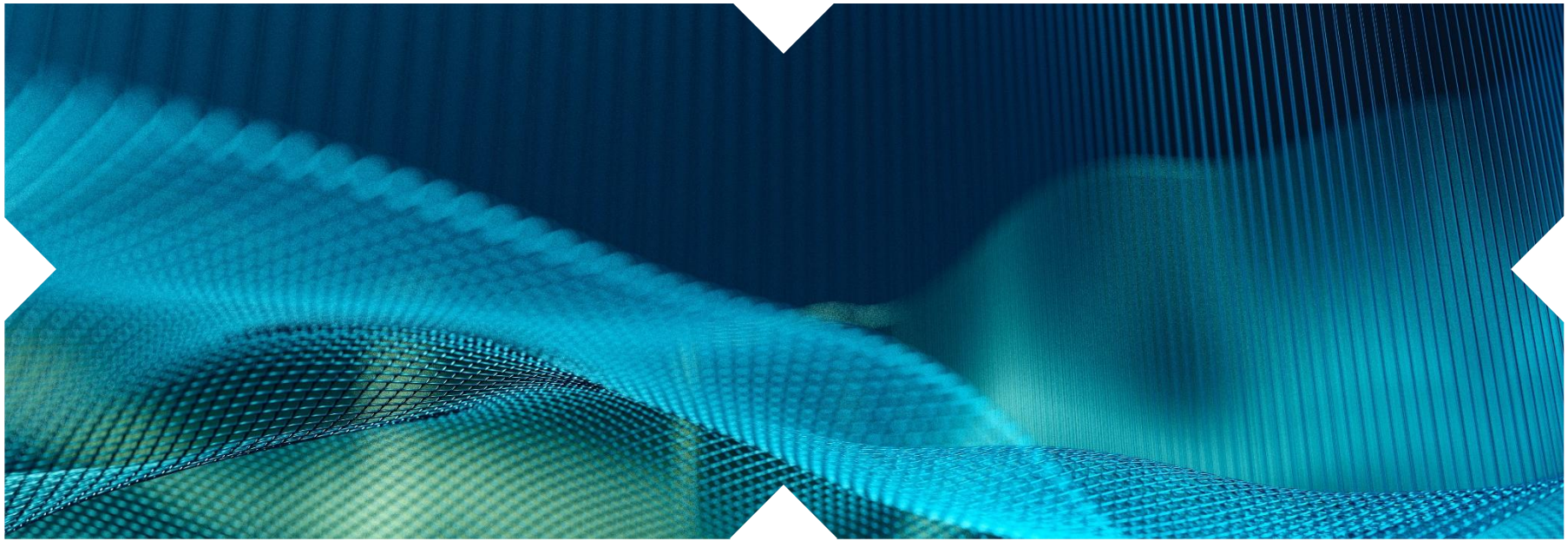
ASX Listing Rules Compliance Course

Module 6: Corporate governance disclosures



Before we begin

An important legal notice

The information provided in this course module is for educational purposes only.

This module does not purport to cover all aspects of the Listing Rules relevant to the subject matter in its title. There may also have been changes to a Listing Rule, or to ASX's policy or guidance on the application of a Listing Rule, mentioned in this module since the module was last updated.

Accordingly, readers should not rely on the contents of this module in determining their obligations under the Listing Rules but instead should refer to the Listing Rules and relevant ASX Guidance Notes and, if in doubt, obtain advice from a qualified professional person in respect of the matter.

Nothing in this module binds ASX in the application of the Listing Rules in a particular case.

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ASX Listing Rules Compliance Course

Module 6 – Corporate governance disclosures

- Welcome to module 6 of the ASX Listing Rules Compliance Course.
- This module covers corporate governance disclosures. It should take you around 20 minutes to complete.



Module	Name of module
Module 1	Continuous disclosure
Module 2	Periodic reporting
Module 3	Issue of equity securities
Module 4	Transactions with persons in a position of influence
Module 5	Significant transactions
Module 6	Corporate governance disclosures
Module 7	General meetings
Module 8	Lodging documents with ASX
Module 9	Trading halts and suspensions
Module 10	Waivers and in-principle advice
Module 11	Directors' interest notifications

Corporate governance disclosures

Introduction



- In this module, we cover:
  - the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*
  - the requirement to give ASX a Corporate Governance Statement and an Appendix 4G
  - guidance on particular ASX Corporate Governance Council recommendations, and
  - the requirements in rules 12.7 and 12.8 for entities of a certain size to have an audit committee and a remuneration committee.
- For further information on these matters, please refer to GN 9 *Disclosure of corporate governance practices* ('GN 9').

The ASX Corporate Governance Council

The CGC and the CGPR

- The ASX Corporate Governance Council ('CGC') was established in August 2002.
- The CGC is an independent body that brings together a wide range of business, shareholder and industry groups, each offering their individual insights and perspectives on governance issues. A list of the members of the CGC is available here and the charter under which it operates is available here.
- The primary role of the CGC is to develop and issue principles-based recommendations on the corporate governance practices to be adopted by ASX listed entities. The recommendations are intended to promote investor confidence and to assist entities to meet stakeholder expectations in relation to their governance.
- The CGC's *Corporate Governance Principles and Recommendations* ('CGPR') were originally introduced in 2003. A second edition was issued in 2007, a third in 2014 and a fourth in 2019.
- The current version (the fourth edition) of the CGPR is available here. It was released in 2019 and took effect for an entity's first full financial year commencing on or after 1 January 2020.

The CGPR principles, recommendations and commentary

CGPR

- The CGPR are structured around, and seek to promote, eight central governance principles ('CGPR principles'):

1. *A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.*

2. *The board of a listed entity should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.*

3. *A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.*

4. *A listed entity should have appropriate processes to verify the integrity of its corporate reports.*

5. *A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.*

The CGPR principles, recommendations and commentary

CGPR (cont.)

6. *A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.*

7. *A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.*

8. *A listed entity should pay director remuneration sufficient to attract and retain high-quality directors and design its executive remuneration to attract, retain and motivate high-quality senior executives and to align their interests with the creation of value for security holders and with the entity's values and risk appetite.*

- The CGPR set out 35 recommendations of general application on how an entity should implement the CGPR principles, as well as 3 additional recommendations that apply in certain limited cases (together, 'CGPR recommendations').
- A list of the 38 CGPR recommendations is available in Annexure A to GN 9.
- The CGPR include explanatory material for many of the CGPR principles and CGPR recommendations under the heading 'commentary'.

The requirement to give ASX a Corporate Governance Statement

Rule 4.10.3

- Rule 4.10.3 requires an entity to include in its annual report either:
  - a corporate governance statement ('CGS') that meets the requirements of that rule, or
  - the URL of the page on its website where a CGS that meets the requirements of that rule is located.

  The CGS must disclose the extent to which the entity has followed the CGPR recommendations during the reporting period. If the entity has not followed a recommendation for any part of the reporting period, its CGS must separately identify that recommendation and the period during which it was not followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it adopted in lieu of the recommendation during that period. The CGS must also:
  - specify the date at which it is current, which must be the entity's balance date or a later date specified by the entity, and
  - state that it has been approved by the board.

The requirement to give ASX a CGS

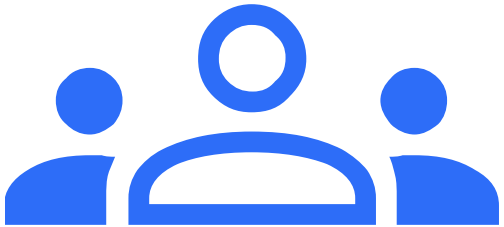
Rule 4.10.3 (cont.)

- The underlying policy objective of rule 4.10.3 is to ensure that the market receives a reasonable level of information about the corporate governance practices an entity has adopted so that:
  - security holders and other stakeholders in the investment community can have a meaningful dialogue with the board and management on corporate governance matters
  - security holders can factor that information into their decision on how to vote on particular resolutions, and
  - investors can factor that information into their decision on whether or not to invest in the entity's securities.
- Rule 4.10.3 seeks to achieve this objective by requiring entities to compare their corporate governance practices to the CGPR recommendations and, where they do not conform, to disclose that fact and the reasons why.
- For this reason, rule 4.10.3 is usually referred to as the 'if not, why not' reporting requirement and the CGPR are said to operate on an 'if not, why not' basis.

The requirement to give ASX a CGS

Rule 4.10.3 (cont.)

- Rule 4.10.3 effectively acts to encourage entities to adopt the corporate governance practices suggested in the CGPR recommendations but does not force them to do so.
- It leaves an entity with the flexibility to adopt alternative corporate governance practices, if its board considers those to be more suitable to its particular circumstances, subject to the requirement for the board to explain its reasons for adopting those alternative practices instead of the CGPR recommendations.
- Note that an entity is only required to report in its CGS on the extent to which it complies with the 38 CGPR recommendations. It is not required to report against the 8 CGPR principles, or the commentary on the principles and recommendations, in the CGPR.



Where an entity should make its corporate governance disclosures

Rule 4.10.3, the CGPR and GN 9

- Rule 4.10.3 effectively requires an entity's CGS to be published in its annual report or on its website.
- The CGPR likewise recommends that information about an entity's corporate governance practices should be disclosed either in its annual report or on its website.
- Where an entity publishes its governance disclosures in its annual report, those disclosures should appear in a clearly delineated 'corporate governance' section of the annual report.
- Where an entity publishes its governance disclosures on its website:
    - those disclosures should be clearly presented and centrally located on, or accessible from, a 'corporate governance' landing page on its website, and
    - there should be an intuitive and easily located link to this landing page in the navigation menu for the entity's website (for example, under an 'About Us', 'Investor Centre' or 'Information for Shareholders/Unitholders' menu item).

What to disclose in a CGS

GN 9 and CGPR

If CGPR recommendation is followed

To comply with the spirit, intention and purpose of rule 4.10.3, the statement an entity includes in its CGS about the recommendations it follows should:

- rather than simply state that the entity follows those recommendations, give a holistic and informative explanation of its corporate governance framework relevant to those recommendations, and
- explain what policies and practices it has in place giving effect to those recommendations and, where applicable, point readers to where they can find further information about those policies and practices.

If CGPR recommendation is not followed

To comply with the spirit, intention and purpose of rule 4.10.3, the statement an entity includes in its CGS explaining its reasons for not following a recommendation should:

- be reasonably detailed and informative so that the market understands why the entity has chosen not to follow that recommendation, and
- disclose what, if any, alternative corporate governance practices the entity may have adopted in lieu of those in the recommendation and explain why those practices are considered more appropriate for the entity than the ones in the recommendation.

The requirement to give ASX an Appendix 4G

Rule 4.7.3

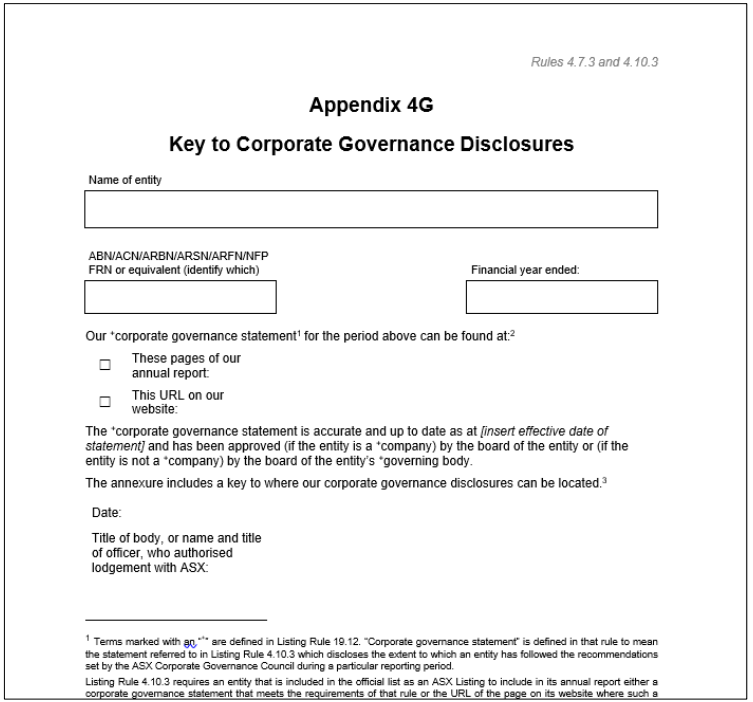
- Rule 4.7.3 requires an entity to give ASX a completed Appendix 4G at the same time as it gives ASX its annual report.
- The Appendix 4G serves a dual purpose:
  - it acts as a key designed to assist readers to locate the governance disclosures made by an entity under rule 4.10.3 and/or the CGPR recommendations, and
  - it acts as a verification tool for entities to confirm that they have met the 'if not, why not' disclosure requirements of rule 4.10.3.
- The Appendix 4G is not a substitute for, and is not to be confused with, the entity's CGS. They serve different purposes and an entity must produce each of them separately.
- An editable version of Appendix 4G is available on ASX Online and on the ASX website at:

https://www.asx.com.au/about/regulation/asx-compliance/asx-compliance-downloads

The requirement to give ASX an Appendix 4G

Rule 4.7.3 (cont.)

- The front page of the Appendix 4G asks an entity to indicate where its CGS for the reporting period can be found (i.e. on what pages of its annual report or at what URL on its website) and to insert the effective date of its CGS.
- It includes an attestation that the CGS is accurate and up to date as at the effective date and has been approved by the board.
- The Appendix 4G must be dated and include the title of the body, or the name and title of the officer, who authorised its lodgement with ASX.
- The Annexure to the Appendix 4G must be completed (see next slide)



Rules 4.7.3 and 4.10.3

Appendix 4G

Key to Corporate Governance Disclosures

Name of entity

ABN/ACN/ARBN/ARSN/ARFN/NFP FRN or equivalent (identify which)

Financial year ended:

Our *corporate governance statement[1] for the period above can be found at:[2]

☐ These pages of our annual report:

☐ This URL on our website:

The *corporate governance statement is accurate and up to date as at *[insert effective date of statement]* and has been approved (if the entity is a *company) by the board of the entity or (if the entity is not a *company) by the board of the entity's *governing body.

The annexure includes a key to where our corporate governance disclosures can be located.[3]

Date:

Title of body, or name and title of officer, who authorised lodgement with ASX:

[1] Terms marked with an "*" are defined in Listing Rule 19.12. "Corporate governance statement" is defined in that rule to mean the statement referred to in Listing Rule 4.10.3 which discloses the extent to which an entity has followed the recommendations set by the ASX Corporate Governance Council during a particular reporting period.

Listing Rule 4.10.3 requires an entity that is included in the official list as an ASX Listing to include in its annual report either a corporate governance statement that meets the requirements of that rule or the URL of the page on its website where such a

The Appendix 4G has 3 columns. Column 1 sets out the number and text of each CGPR recommendation.

Column 2 has check boxes to indicate that the entity has followed the recommendation in full for the whole of the reporting period and that this has been disclosed in the entity's CGS. It also has spaces to insert the location where any disclosures required under the recommendation are located.

Column 3 has check boxes to indicate that the entity has not followed the recommendation in full for the whole of the reporting period and that its reasons for doing so are either that the recommendation is not applicable (for the reasons identified in that column) or are set out in the entity's CGS.

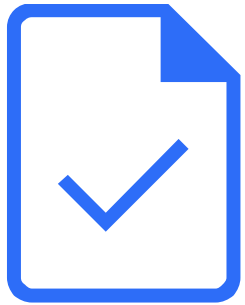
ANNEXURE – KEY TO CORPORATE GOVERNANCE DISCLOSURES

Corporate Governance Council recommendation		Where a box below is ticked,[4] we have followed the recommendation in full for the whole of the period above. We have disclosed this in our Corporate Governance Statement:	Where a box below is ticked, we have NOT followed the recommendation in full for the whole of the period above. Our reasons for not doing so are:[5]
PRINCIPLE 1 – LAY SOLID FOUNDATIONS FOR MANAGEMENT AND OVERSIGHT			
1.1	A listed entity should have and disclose a board charter setting out: (a) the respective roles and responsibilities of its board and management; and (b) those matters expressly reserved to the board and those delegated to management.	☐ and we have disclosed a copy of our board charter at: ..... [*insert location*]	☐ set out in our Corporate Governance Statement **OR** ☐ we are an externally managed entity and this recommendation is therefore not applicable
1.2	A listed entity should: (a) undertake appropriate checks before appointing a director or senior executive or putting someone forward for election as a director; and (b) provide security holders with all material information in its	☐	☐ set out in our Corporate Governance Statement **OR** ☐ we are an externally managed entity and this recommendation is therefore not applicable

Copy of CGS to be given to ASX

Rule 4.7.4

- Rule 4.7.4 provides that if an entity's CGS is not included in its annual report, the entity must also give ASX a copy of its CGS at the same time as it gives its annual report to ASX.
- Taken together with rule 4.7.3, this means:
  - if an entity includes its CGC in its annual report, it must provide to ASX an Appendix 4G at the same time as it lodges its annual report with ASX (with lodgement of the annual report effectively being taken to be lodgement of the CGS), or
  - if an entity does not include its CGS in its annual report, it must provide to ASX both an Appendix 4G and a copy of its CGS, at the same time as it lodges its annual report with ASX.



Guidance on particular CGPR recommendations

GN 9

- CGPR recommendations 1.5, 3.2, 3.3, 3.4 and 5.1 respectively call for an entity to have and disclose a diversity policy, code of conduct, whistle-blower policy, anti-bribery and corruption policy, and continuous disclosure policy.
- Each policy must be disclosed in full – it is not sufficient to disclose a summary of the policy.
- Disclosure of these policies can be made by including:
  - a link to the full policy, or
  - a copy of the full policy,

  in the entity's annual report or in the governance section of its website.
- Keeping a physical copy of the policies at the entity's registered office and making them available for inspection by security holders upon request does not meet the requirement in the CGPR recommendations that the policy should be 'disclosed'.

Guidance on particular CGPR recommendations

GN 9 (cont.)

- GN 9 has guidance on CGPR recommendation 1.5, which provides:

  A listed entity should:

  (a) have and disclose a diversity policy

  (b) through its board or a committee of the board set measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally, and

  (c) disclose in relation to each reporting period:

  (1) the measurable objectives set for that period to achieve gender diversity

  (2) the entity's progress towards achieving those objectives, and

  (3) either:

  (A) the respective proportions of men and women on the board, in senior executive positions and across the whole workforce (including how the entity has defined "senior executive" for these purposes), or

  (B) if the entity is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act. …

Guidance on particular CGPR recommendations

GN 9 (cont.)

If the entity was in the S&P/ASX 300 Index at the commencement of the reporting period, the measurable objective for achieving gender diversity in the composition of its board should be to have not less than 30% of its directors of each gender within a specified period.

- GN 9 guides that the 30% figure in this last paragraph is a minimum. An entity in the S&P/ASX 300 Index may set a higher percentage if it wishes to do so.
- GN 9 also guides that if an entity wishes to represent in its CGS and in its Appendix 4G that it follows recommendation 1.5, it must comply with each of paragraphs (a), (b) and (c) on the previous slide and, if it was in the S&P/ASX 300 Index at the commencement of the reporting period, with the concluding paragraph above.
- Among other things, this means that if an entity wishes to disclose that it complies with CGPR recommendation 1.5, the board or a committee of the board must have set measurable objectives for achieving gender diversity not only in the composition of the entity's board but also in the composition of its senior executives and workforce generally. It must also disclose for each reporting period what its measurable objectives were for that period and the entity's progress towards achieving them.

Guidance on particular CGPR recommendations

GN 9 (cont.)

- GN 9 has guidance on CGPR recommendation 4.2 which provides that:

  The board of a listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.

- GN 9 notes that, on its face, recommendation 4.2 applies to all financial statements that the board of an entity may approve. This includes not only annual and half-year financial statements, but also Appendix 4C and 5B quarterly cash flow statements.

- Hence, if an entity is required to give Appendix 4C and 5B quarterly cash flow statements to ASX and it wishes to comply with recommendation 4.2, before the board approves those quarterly statements, it should be receiving a declaration from its CEO and CFO in the terms set out in that recommendation.

Guidance on particular CGPR recommendations

GN 9 (cont.)

- GN 9 has guidance on CGPR recommendation 7.4, which provides that:

  A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks.

- The commentary to recommendation 7.4 encourages entities with a material exposure to climate change risk to make the disclosures recommended by The Financial Stability Board's Task Force on Climate-related Financial Disclosures ('TCFD'). The TCFD is considered by many to be the globally accepted standard for such disclosures.

- GN 9 notes instances of an entity purporting to comply with recommendation 7.4 by simply cross-referring to its operating and financial review ('OFR') in its annual report. This is fine if the OFR specifically addresses whether the entity has a material exposure to environmental and social risks and, if it does, how it manages or intends to manage those risks. If the OFR only has general disclosures about risks, this does not comply with recommendation 7.4.

- GN 9 also has guidance on CGPR recommendations 2.2 (board skill matrices), 4.3 (process to verify periodic corporate reports not audited or reviewed by an external auditor), 5.3 (investor and analyst presentations) and 8.3 (equity-based remuneration schemes).

Audit and remuneration committees

Rules 12.7 and 12.8 and GN 9

- Rule12.7 requires entities of a certain size to have an audit committee. It provides that 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 included in the S&P/ASX300 Index at the beginning of its financial year it must also comply with the recommendations set by the ASX Corporate Governance Council in relation to composition and operation of the audit committee for the whole of that financial year, unless it had been included in that index for the first time less than 3months before the beginning of that financial year.
- Rule12.8 requires entities of a certain size to have a remuneration committee. It provides that an entity which was included in the S&P/ASX300 Index at the beginning of its financial year must have a remuneration committee, comprised solely of non executive directors, for the entire duration of that financial year.
- An entity in the indices mentioned in rules 12.7 and 12.8 should have appropriate succession arrangements in place to ensure it can continue to comply with those rules if there are changes to the composition of its board.
- Refer to GN 9 for further guidance on rules 12.7 and 12.8.

Corporate governance disclosure

End of module 6

- Congratulations, you have reached the end of module 6. In it we covered:
  - the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations
  - the requirement to give ASX a Corporate Governance Statement and an Appendix 4G
  - guidance on particular Corporate Governance Council recommendations, and
  - the requirements in rules 12.7 and 12.8 for entities of a certain size to have an audit committee and a remuneration committee.
- For further information on these matters, please refer to GN 9 *Disclosure of corporate governance practices*.
- If you wish, you can now move on to module 7 of the course, which covers general meetings. Alternatively, click here to return to the home page for the course.



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