

Corporate Governance

Principles and Recommendations

The Australian Securities Exchange (ASX) recently released its fourth edition of Corporate Governance Principles and Recommendations. The revised edition is applicable for years commencing on or after 1 January 2020.

While the eight core principles remain largely intact, in total the number of recommendations has grown to 35. The most significant changes are those made to Principle 3 – now expressed as “Instil a culture of acting lawfully, ethically and responsibly” – and its constituent recommendations.

Key new points:

- 3.1** Entity’s should disclose their values which is broader than the code of conduct.
- 3.3** Entity’s should have a whistle-blower policy and report material incidents to the Board or its nominees
- 3.4** Entity’s should have an anti-bribery and corruption policy and report material incidents to the Board or its nominees
- 4.3** Entity’s should disclose the process for verifying unaudited/reviewed reports released to the market
- 5.2** Entity’s should provide all market materials to the Board promptly after release
- 5.3** Entity’s should release substantive investor or analyst presentations to the ASX market platform prior to presentation
- 6.4** Entity’s should conduct a poll for all substantive resolutions at security holder meetings i.e. raising of hands is not appropriate
- 9.1** Entity’s should disclose the processes for directors who do not speak the language of the meetings to contribute and fulfil their duties.
- 9.2** Entity’s should hold meetings at a reasonable time and place

Key amendments:

- 1.5** Entity’s in the SP/ASX 300 must have a target of at least 30% of each gender as directors within a specific time frame
- 2.6** Program for inducting new directors
- 3.2** Entity’s should have a code of conduct and report material incidents to the Board or its nominees
- 5.1** Entity’s should disclose their full continuous disclosure policy rather than a summary

Note

There is additional guidance on the application of the recommendations for externally managed listed entities, which is included in the ASX document linked [here](#).

The tables in the Appendix detail the new recommendations and substantial amendments to extant recommendations. As the principles and recommendations continue to be applied on an “if not, why not?” basis, entities should read the recommendations themselves to determine their obligations.

The eight principles



Lay solid foundations for management and oversight

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



Structure the board to be effective and add value

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.



Instil a culture of acting lawfully, ethically and responsibly

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



Safeguard the integrity of corporate reports

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



Make timely and balanced disclosure

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.



Respect the rights of security holders

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



Recognise and manage risk

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



Remunerate fairly and responsibly

A listed entity should pay director remuneration 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 the value for security holders and with the entity's values and risk appetite.

Source: ASX, 2019.



Adelaide Brisbane Melbourne Newcastle Perth Sydney

Pitcher Partners is an association of independent firms. Liability limited by a scheme approved under Professional Standards Legislation. Pitcher Partners is a member of the global network of Baker Tilly International Limited, the members of which are separate and independent legal entities.



pitcher.com.au

Appendix

| New recommendation | Summary of change |
|---|--|
| 3. Instill a culture of acting lawfully, ethically and responsibly | |
| 3.1 A listed entity should articulate and disclose its values. | Investors and the broader community expect a listed entity to act lawfully, ethically and responsibly and that expectation should be reflected in its statement of values. |
| 3.3 A listed entity should: a. have and disclose a whistle-blower policy; and b. ensure that the board or a committee of the board is informed of any material incidents reported under that policy. | Board should be informed of any material incidents reported under the entity's whistle-blower policy, as they may be indicative of issues with the culture of the organisation. There has also been a revision to the suggestions for the content of a whistle-blower policy. |
| 3.4 A listed entity should: c. have and disclose an anti-bribery and corruption policy; and d. ensure that the board or a committee of the board is informed of any material breaches of that policy. | Board should be informed of any material incidents of bribery or corruption, as they may be indicative of issues with the culture of the organisation. There has also been a revision to the suggestions for the content of an anti-bribery and corruption policy. |
| 4. Safeguard the integrity of corporate reports | |
| 4.3 A listed entity should disclose its process to verify the integrity of any periodic corporate report it released to the market that is not audited or reviewed by an external auditor. | Where a corporate report is not subject to audit or review by an external auditor, it is important that investors understand the process by which the entity has satisfied itself that the report is materially accurate, balanced and provides investors with appropriate information to make informed investment decisions. This can be disclosed in the report itself or more generally in the entity's governance disclosures in its annual report or on its website. |
| 5. Make timely and balances disclosure | |
| 5.2 A listed entity should ensure that its board receives copies of all material market announcements promptly after they have been made. | Timely provision of announcements to the board. |
| 5.3 A listed entity that gives a new and substantive investor or analyst presentation should release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation. | Substantive investor and analyst presentations should be on the ASX platform prior to presentation. |
| 6. Respect the rights of security holders | |
| 6.4 A listed entity should ensure that all substantive resolutions at a meeting of security holders are decided by a poll rather than by a show of hands. | Security holder meetings will need poll facilities. |
| 9. Additional recommendations that apply only in certain cases | |
| 9.1 A listed entity with a director who does not speak the language in which board or security holder meetings are held or key corporate documents are written should disclose the processes it has in place to ensure the director understands and can contribute to the discussions at those meetings and understands and can discharge their obligation in relation to those documents. | In these circumstances disclose how the director can effectively contribute. |
| 9.2 A listed entity established outside Australia should ensure that meetings of security holders are held at a reasonable place and time. | |

| Amended recommendation | Summary of change |
|---|--|
| 1. Lay solid foundations for management and oversight | |
| 1.5 3b) "Of the entity was in the S&P/ASX300 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 specific period." | Specific target and time frame to have at least 30% of directors both executive and non-executive of each gender. |
| 2. Structure the board to be effective and add value | |
| 2.6 A listed entity should have a program for inducting new directors and for periodically reviewing whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their role as directors effectively. | An induction program is needed for new directors and a periodic review of director's skills and knowledge. |
| 3. Instill a culture of acting lawfully, ethically and responsibly | |
| 3.2 b) ensure that the board or a committee of the board is informed of any material breaches of that code. | The board or a committee of the board should be informed of any material breaches of the entity's code of conduct as they may be indicative of issues with the culture of the organisation. There has also been a revision to the suggestions for the content of a code of conduct. |
| 5. Make timely and balances disclosure | |
| 5.1 A listed entity should have and disclose a written policy for complying with its continuous disclosure obligations under listing rule 3.1. | The recommendation has removed the option to disclose a summary of the policy. |
| 7. Recognise and manage risk | |
| 7.4 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. | While the recommendation remains largely consistent, the commentary emphasises exposure to climate change, and encourages entities to consider whether in fact they do have a material exposure to climate risk. |
| 9. Additional recommendations that apply only in certain cases | |
| 9.3 A listed entity established outside Australia, and an externally managed listed entity that has an AGM, should ensure that its external auditor attends its AGM and is available to answer questions from security holders relevant to the audit. | This guidance replaces the extant guidance in recommendation 4.3 of version 3 of the principles and recommendations. |

Note

There is additional guidance on the application of the recommendations for externally managed listed entities, which is included in the ASX document linked [here](#).



Adelaide Brisbane Melbourne Newcastle Perth Sydney

Pitcher Partners is an association of independent firms. Liability limited by a scheme approved under Professional Standards Legislation. Pitcher Partners is a member of the global network of Baker Tilly International Limited, the members of which are separate and independent legal entities.



pitcher.com.au