

## ASX Corporate Governance Council: Implementation Review Group Report (II)

The Implementation Review Group (IRG) recently provided its second report to the ASX Corporate Governance Council on its publication *Principles of good corporate governance and best practice recommendations* (the guidelines).

The IRG conducted a review of the industry's response to the guidelines following the first reporting season of required corporate governance disclosure under the ASX Listing Rules. The results of that review can be found on this website (click Back on screen menu to locate the PDF file) or at [http://www.sx.com.au/about/pdf/Second\\_IRG\\_report\\_final.pdf](http://www.sx.com.au/about/pdf/Second_IRG_report_final.pdf).

The IRG's key findings are:

- **Flexibility of regime:** the IRG supports the flexibility of the regime set out in the guidelines. It does not support the adoption of prescriptive corporate governance models for companies of a particular size, or operating within particular sectors. It acknowledges, however, that there is inadequate understanding (particularly among smaller listed companies) of the flexibility of the current regime.
- **Relationship between principles and recommendations:** the IRG notes that some confusion exists concerning the interaction of the principles and the best practice recommendations. The IRG reiterates that while the corporate governance structure adopted by a company must address each of the 10 principles, implementation of each of the recommendations is not compulsory (apart from for the ASX top 300 companies required under Listing Rule 12.7 to adopt the best practice recommendations in relation to the composition, operation and responsibility of the audit committee). Rather, a company must disclose in its annual report how its corporate governance practices differ from the best practice recommendations (known as the 'if not, why not' approach).
- **Reporting exceptions to best practice:** the IRG concludes that a number of small to medium-sized companies are not confident applying the principle of reporting exceptions (the 'if not, why not' approach). The IRG suggests that governance disclosure will be effective if it addresses three elements:
  - how the company's approach differs from the relevant best practice recommendation
  - how the company's approach is consistent with the 'spirit' of the relevant principle and
  - the company's understanding of the relevant issues and the impact of its alternative practices.

In other words, practices which are within the 'spirit' and intent of the principles, but which are outside the best practice recommendations, are acceptable provided that appropriate disclosure has been made.

Annexed to the IRG report are some examples that demonstrate how the 'if not, why not' approach can be applied.