

Corporate Strategy + Insolvency

Corporate Governance

Corporate Governance is presently a very topical issue. The ASX has released its best practice recommendations on the 31st March 2003. Although this only applies to listed companies, what are the implications to private companies and not for profit organisations?

Firstly what is Corporate Governance?

In essence, Corporate Governance is mainly concerned with transparency and accountability of decision making. This is to ensure that the stakeholders in a company (being the shareholders, creditors, employees, suppliers, customers etc) are not unduly disadvantaged by the decisions made within a company which may result in a detrimental outcome (other than in the course of business) to their claims.

To ensure good Corporate Governance, processes need to be in place that demonstrate, to varying degrees, independence, review & evaluation of decisions & risk. Good Corporate Governance procedures are guidelines designed to produce an outcome that has demonstrable integrity, efficiency and quality with the risk being minimised. How then does this apply to private companies and not for profit organisations?

The community and legal expectations for Corporate Governance have risen dramatically recently. This has been especially heightened by the high profile corporate collapses such as One Tel and HIH.

As has been highlighted in our previous newsletters, ASIC have been more proactive in prosecuting directors (see: 112 Company Officers Prosecuted) and moving to address insolvent trading issues (see: ASIC Acts to Prevent Insolvent Trading). ASIC is keen to ensure directors are aware of their duty especially in relation to chapter 2D of the Corporations Act and more specifically section 180.

Further the courts are imposing greater responsibilities on directors and especially chairmen of boards (Australian Securities and Investments Commission v Rich & Ors [2003] NSWSC 85).

The best way to protect a board and senior management is to institute good Corporate Governance Procedures. Should a company be faced with insolvency where the corporate culture did not take due regard of all the stakeholders, then there would be increased risk of prosecution of directors and officers of the company.

A board should be able to demonstrate that decisions made were done so with due regard to risk, efficiency and quality and with the consideration of the position of stakeholders.

Good Corporate Governance is basically the transparency and documentation of decision making process.

If good Corporate Governance is adhered to, the prospects of insolvent trading and uncommercial transaction actions would be less likely to succeed. Such practice by its very nature means that the board has made their decisions based on a logic bearing in mind the information at hand. That does not mean that such practice will avoid the risk of failure. However, it does mean that such risks are analysed and determined on a risk/reward basis and with due consideration the company's stakeholders.

Good Corporate Governance, depending on the size, culture and nature of business of a company, should not be overly onerous to implement. The biggest hurdle for most family run companies is the transparency of the decision making process that many may not wish to adhere to. However, such procedures may ultimately result in less risk to directors and officers of a company, group or not for profit organisation.

de Vries Tayeh can help you to review and implement Corporate Governance procedures to your comfort level and help you transition your corporate culture over time to a higher level of Corporate Governance at a pace that suits your timetable.

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