EMPHASIS ON CORPORATE GOVERNANCE

The Federal Government's latest proposals on corporate governance rely on self-regulation, whereby the top 500 companies would establish audit committees.

One of the proposals in the Federal Government's discussion paper is that the ASX will now require companies to explain why they are not adopting best practice corporate governance policies. Previously, the ASX required companies to disclose only those corporate governance policies adopted. The new ruling will identify companies that fail to adopt best practice corporate governance policies and force companies to rethink their corporate governance practices (Buffini 2002).

An interesting commentator on corporate governance is Professor Andrew Rogers QC. He handed down the judgement in the AWA case that extended auditor's duties. The judgement required auditors to communicate internal control weaknesses to the Board of Directors when management has failed to act on weaknesses previously reported. His judgement also was thought to allow contributory negligence as a defence for auditors. Contributory negligence apportions blame between auditors and management, and damages are based on this apportionment.

He stated that audit committees are not the panacea for corporate collapses. He noted that FAI and Enron had audit committees, with Enron's audit committee being chaired by a former distinguished professor of accounting. He made the point that if auditors do not bring untoward practices to the audit committee, how will the audit committee gain knowledge of these matters? In making these statements, he is not questioning the competence or devotion of the audit committee (Gettler 2002a). Support for this statement lies in a survey conducted by Ernst & Young (2002), who found that about that 35 percent of Australia's top 200 companies did not have independent directors sitting on their audit committees. The date for Ernst & Young's survey was based on these companies' 2001 financial statements. The test used to decide whether the directors were independent was based upon the definition of director independence included in regulations introduced by the New York Stock Exchange this year. The more alarming conclusion of Ernst & Young's survey was that only 1 per cent of companies delegated auditor appointment/removal to the audit committee. Goldman and Barlev (1974) in their article on analysing the power between auditors and management argue that management has more power in this relationship because, among other things, it has the power to appoint and remove the auditors. The fact that only two companies delegated this power to audit committees suggests companies are only paying lip service to the use of audit committees as a means of improving audit independence.

A quotation from Professor Andrew Rogers QC is also included in an article written by Leon Gettler (2002b) that stated that the demise of the charismatic boss is a cause to celebrate. Professor Andrew Rogers QC is quoted as saying these companies were:

> ... established, or at least led, to a considerable success in the initial stages by courageous, imaginative risk-taking entrepreneurs. Usually they were men of considerable charisma and distinctly dominating characters… They resisted the dictates of good corporate governance or at best paid lip service to them... (p. 3)

Harris (2002) made an interesting comment on corporate governance when he discussed the Commonwealth Bank's corporate governance policies. He said its practices are an example of best practice. (Read the article 'Backing up best practice', *The Australian Financial Review*, 8 October 2002, p. 62 and note the features of the bank's corporate governance that are considered best practice.) However, he warned a weakness of corporate governance is that non-executive directors may align themselves with executive management and immediately reject the auditor's views. He noted non-executive directors are reliant on executive directors for information and this reliance may lead to close bonds whereby non-executive directors accept management's views, rather than the auditors. He also noted this a large problem with companies that have one or two dominant managers who may screen information given to the boards. He concluded by stating that where a dominant chief executive exists, this dominance has to be offset and 'non-executive directors have to be as skeptical as auditors when their executives give them information about their company's financial position and performance (p. 62).

Harris (2002) would prefer that standard setting and auditor discipline were the responsibilities of one oversight body. The Federal Government's discussion paper suggests that oversight, including the setting of auditing standards, comes under the control of the Financial Reporting Council. The Company Auditors & Liquidators Board presently undertakes discipline of auditors and acts on cases referred to it by the ASIC. He noted that the ASIC is short of funds to investigate corporate crime. He stated that partner rotation would favour big firms because small firms, who audit 20 per cent of Australia's top 100 companies, will lack sufficient partners to rotate.

References

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