LIC Governance Spotlight
4th edition of the Corporate Governance Principles and Recommendations (New) - Part 1

May 2018    |    by Tom Bloomfield and Tharun Kuppanda

In this update we examine the proposed new principles and recommendations to the ASX’s Corporate Governance Council’s 4th edition of the Corporate Governance Principles and Recommendations as they relate to a Listed Investment Company (LIC). The new principles and recommendations can significantly impact a LIC’s governance & operations framework.

Background

ASX Listing Rule 4.10.3 requires LICs to provide a Corporate Governance Statement which must disclose the extent to which the LIC has followed the principles and recommendations set by the ASX Corporate Governance Council (Council). In the event a LIC has not followed the recommendations detailed by the Council, it must detail ‘why not’.

On 2 May 2018 the Council released a consultation paper seeking input on proposals to update and issue a new edition of its Corporate Governance Principles and Recommendations (the “Principles and Recommendations”). It is proposed that the number of recommendations be expanded from 29 to 38.

The Council's complete consultation package is available here.

This paper is intended to complete a high-level review of the proposed new Principles and Recommendations and its impact on LICs. This paper does not discuss the changes to the existing principles which will be considered by Part 2 to this Part 1. The new principles and recommendations are expected to be effective in 2019.

New Principles and Recommendations

The proposed new Principles and Recommendations are as follows:

1. Recommendation 3.1: A listed entity should articulate and disclose its core values.

2. Recommendation 3.3: A listed entity should:
   a. have and disclose a whistleblower policy that encourages employees to come forward with concerns that the entity is not acting lawfully, ethically or in a socially responsible manner and provides suitable protections if they do; and
   b. ensure that the board is informed of any material concerns raised under that policy that call into question the culture of the organisation.

3. Recommendation 3.4: A listed entity should:
   a. have and disclose an anti-bribery and corruption policy; and
   b. ensure that the board is informed of any material breaches of that policy

Recommendation 3.1 to 3.4 are intended to set the tone ‘from the top’. A LIC should review its current policies and determine if changes are required to address its corporate culture. This may include its
relationship with its service providers and any formal oversight requirement.

4. **Recommendation 4.4**: A listed entity should have and disclose its process to validate that its annual directors' report and any other corporate reports it releases to the market are accurate, balanced and understandable and provide investors with appropriate information to make informed investment decisions.

This recommendation is intended to deal with corporate reporting where previous recommendations dealt broadly with financial reporting only. LICs should consider if their current committees and the roles of those committees as stated in their charters adequately deal with recommendation 4.4. Traditionally the remuneration committee of larger companies would be tasked with reviewing and ensuring the accuracy of the directors' report (including the remuneration report). LICs may need to update the scope of existing charters to be compliant with this recommendation.

5. **Recommendation 5.2**: A listed entity should ensure that its board receives copies of all announcements under Listing Rule 3.1 promptly after they have been made.

6. **Recommendation 5.3**: A listed entity that gives a new investor or analyst presentation should release a copy of the presentation materials on the ASX Market Announcement Platform ahead of the presentation.

Recommendation 5.2 & 5.3 is the Council's response to better improve continuous disclosure practices. LICs should consider whether their existing Continuous Disclosure Policy is appropriate.

7. **Recommendation 6.4**: A listed entity should ensure that all resolutions at a meeting of security holders are decided by a poll rather than by a show of hands.

Smaller LICs struggle to have significant shareholder attendance at meetings of security holders and it is uncommon for smaller LICs to have institutional representation in the final proxy count. Share registries can charge a fee to conduct a poll and it is often redundant when un-controversial resolutions are put to members.

LICs may consider a Meetings Policy to consider when a poll is to be called and expanding these rules in its constitution. Where the pre-meeting proxy results indicate a resounding view that cannot mathematically be reversed at the meeting, a show of hands may remain appropriate. In advance of the principle being adopted, LICs should consider their rationale and relative costs of conducting polls and the impact on their standard meeting format.

8. **Recommendation 8.4**: A listed entity should only enter into an agreement for the provision of consultancy or similar services by a director or senior executive or by a related party of a director or senior executive:

   a. if it has independent advice that:
      i. there services being provided are outside the ordinary scope of their duties as a director or senior executive (as applicable);
      ii. The agreement is on arm’s length terms; and
      iii. The remuneration payable under it is reasonable; and
   b. With full disclosure of the material terms to security holders.

LIC directors need to consider their dual roles where the Investment Manager sits on the board as an executive director. Appointment letters need to clearly articulate roles and responsibilities and changes to those roles will need to be documented and appropriate disclosures made.

Part 2

LIC Governance Spotlight: 4th edition of the Corporate Governance Principles and Recommendations (Part 2) will be available at the end of May detailing the proposed changes to the existing Principles & Recommendations.
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