

BLAKE DAWSON WALDRON

L A W Y E R S

INTERNATIONAL CORPORATE GOVERNANCE STANDARDS – A COMPARISON

IMPORTANT NOTE

This document is based on information available at 13 November 2003, and provides a summary only of the relevant principles (that is, it is not a "word for word" comparison).

KEY AND STATUS

SOURCE		STATUS
ASX CGC =	ASX Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations	Released 31 March 2003. Listed entities are required to include a corporate governance report in the annual report for the first financial year commencing after 1 January 2003. Entities included in S&P/ASX All Ordinaries Index are required by Listing Rule 12.7 to comply with the recommendations on audit committee composition, operation and responsibility at the start of their first financial year after 1 January 2003.
Sarbanes-Oxley =	Amendments to the <i>Securities Act 1934</i> made by the <i>Sarbanes-Oxley Act</i>	Enacted on 30 July 2002. A number of provisions require SEC rules to implement the provisions. The SEC has released a number of final or proposed SEC rules.
NYSE Listing Rules =	NYSE Listing Rule 303A – corporate governance	The NYSE Listing Rules were approved on 4 November 2003.
UK Combined Code =	Amendments to the UK Combined Code initially recommended by the Higgs Report (Review of the Role and Effectiveness of Non-Executive Directors) and Smith Reports (Audit Committees Combined Code Guidance)	The Higgs and the Smith Reports were published on 20 January 2003. Following public comment the revised UK Combined Code was released in July 2003, and applies to all reporting periods beginning after 1 November 2003.

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A GENERAL CORPORATE GOVERNANCE STANDARDS (EXCLUDING AUDIT COMMITTEES)

Financial reporting and audit committee requirements are discussed in Part B.

1. Boards

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Chairman	<p>Should be an independent director (2.2)¹</p> <p>Chairman and the CEO roles should not be held by the same individual (2.3) Division of responsibilities between Chairman and CEO should be clearly stated (1.1 commentary)</p> <p>Past CEOs should not have role as Chairman (2.3 commentary)</p> <p>Must be able to commit the time to discharge the role effectively. Consider number of other positions and time commitments when appointing.</p>	N/A	N/A	<p>Chairman should be separate from CEO (A.2.1)²</p> <p>At the time of appointment, the Chairman should be independent (A.2.2)</p> <p>CEO should not go on to become Chairman of the same company (A.2.2)</p> <p>Chairman should not be chairman of another FTSE 100 company (A.4.3). An executive director should not take on more than one non-executive directorship in a FTSE 100 company nor the chairmanship of a FTSE 100 company (A.4.5)</p> <p>Ensure balance of power and authority, so no one individual has unfettered powers (A.2)</p>

¹ Number references are to recommendations as set out in the ASX Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations. Where appropriate, reference has been made to the relevant commentary which accompanies the Best Practice Recommendations.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Lead independent director	A lead independent director may be appointed if Chairman is not an independent director (2.2 commentary)	N/A	N/A	Senior independent director should be identified in the annual report, to act as a point of contact where contact through the normal channels of chairman, chief executive or finance director has not resolved an issue or would be inappropriate (A.3.6) Lead independent director should attend sufficient meetings with major shareholders in order to develop a balanced understanding of the issues and concerns of major shareholders (D.2.1)
Composition	A majority of Board should be independent ³ directors (2.1) Ensure Board has the benefit of directors with a variety of perspectives and skills (2.4 commentary)	N/A	Must have a majority of independent directors (303A.1) ⁴	Board should include a balance of non-executive (including independent) directors and executive directors to avoid small groups or individuals dominating Board decision taking (A.3)

² References are to provisions of the UK Combined Code.

³ See Appendix 1 for discussion of applicable "independence" standards.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Independent directors	<p>A majority of the Board should be independent (2.1)</p> <p>Independence should be regularly assessed. Where independence is lost, it should be immediately disclosed to the market (2.1 commentary)</p> <p>Independent directors should be identified in the corporate governance section of the annual report. The Board should also disclose the tenure of each director in this section of the report (2.1 commentary)</p>	N/A	Must have a majority of independent directors (303A.1)	<p>At least half the members of the Board (excluding the chairman) should be independent non-executive directors. (This does not apply to company outside the FTSE 350 – which should have at least two independent directors) (A.3.2)</p> <p>The Board should identify in the annual report each non-executive director it considers to be independent (A.3.1)⁶</p>

⁴ Number of references are to section 303A (the Corporate Governance Rule) of the NYSE Listing Rule.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Definition of independence⁷	Recommended test for independence Board should adopt materiality criterion based on ASX guidelines (2.1 commentary) Independent directors should be identified in the corporate governance report along with the company's materiality thresholds (2.1)	N/A	No director qualifies as "independent" unless the Board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organisation that has a relationship with the company). Companies must disclose these determinations (303A.2(a))	A non-executive director is considered independent when the Board determines that the director is independent (A.3.1)
Non-executive director meetings	Consider regular non-executive director meetings without management (2.1 commentary)	N/A	Non-management (ie non-executive) directors of a company must meet at regularly scheduled executive sessions without management (303A.3) (If not all non-management directors are independent, recommended that at least one additional meeting be scheduled for independent directors only)	Regular non-executive director meetings without management, and at least once a year, with holding of meetings disclosed in annual report (A.1.3)
Board meetings	(Corporations Act requirement for disclosure of meetings)	N/A	N/A	Board should meet regularly (with individual attendance disclosed in the annual report) (A.1.2)

⁷ See Appendix 1 for discussion of applicable "independence" standards.

2. Nomination of new directors

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Nominations committee	There should be a nominations committee (or similar structure) with a formal charter (2.4)	N/A	There should be a nominating/corporate governance committee (303A.4(a)) ⁹	There should be a nomination committee (A.4.1)
Composition of nominations committee	Minimum 3 members, with the majority independent and chaired by the Chairman or an independent director (2.4 commentary)	N/A	Composed entirely of independent directors (303A.4(a))	Composed of a majority of a majority of independent non-executive directors, and chaired by an independent director or the chairman (A.4.1)
Nominations procedure	Should be formal and clear. Publish on website, and explain in corporate governance report how it was applied to current directors (2.4 commentary)	N/A	Director qualification standards should be disclosed on company's website (and include substantive qualification requirements, including policies limiting the number of Boards on which a director may sit, director tenure, retirement and succession (303A.9)	Nomination committee should make publicly available its terms of reference, role and authority delegated by the Board (A.4.1) Committee should evaluate the balance of skills, knowledge and experience of the Board and prepare a description of the role and capabilities required for a particular appointment (A.4.2)
Disclosure in corporate governance report	Should identify the existing skills, knowledge and experience and term of office of all directors, members of the nominations	N/A	N/A	Nomination committee members should be disclosed in the annual report (A.4.1)

⁹ Nominating/Corporate Governance committee must (1) have a written charter that sets out the committee's purpose and responsibilities, which, at a minimum, must be to identify individuals qualified to become board members, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; develop and recommend to the board a set of corporate governance principles applicable to the corporation; and oversee the evaluation of the board and management, and (2) conduct an annual performance evaluation of the committee (303A.4(b)).

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
	committee and their attendance at meetings, which directors are independent and the materiality thresholds of the company (2.4 commentary)			Statement should be included in annual report detailing the activities of the nomination committee and the process it has used to make appointments. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or non-executive director. (A.4.6)
Director's commitments	<p>Directors should commit sufficient time to meet their mandate. Consideration should be given to the number and nature of directorships and other calls upon the time of proposed appointees (2.4 commentary)</p> <p>Non-executive directors should provide the nomination committee with details of other commitments and should specifically acknowledge prior to selection or appointment that they have sufficient time to meet what is expected of them</p> <p>Non-executive directors should inform Chairman before accepting new appointments</p>	N/A	Director qualification standards should be disclosed on company's website (and include substantive qualification requirements, including policies limited the number of Boards on which a director may sit, director tenure, retirement and succession (303A.9)	<p>Non-executive directors should undertake that they will have sufficient time to meet what is expected of them.(A.4.4)</p> <p>Other significant commitments should be disclosed to the Board before appointment, and subsequently notified of any changes (A.4.4)</p> <p>For the appointment of a chairman, the nomination committee should prepare a job specification. A chairman's other significant commitments should be disclosed to the Board and included in the annual report (A.4.3)</p>

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Terms of appointment	Each director should have a letter of appointment describing duties, rights and responsibilities (1.1 commentary)	N/A	Company should disclose on its website what is expected of directors, including based duties and responsibilities (303A.9)	Letter of appointment should set out time and responsibilities of appointment as non-executive director (A.4.4) Terms and conditions of appointment of non-executive directors should be published (A.4.4)
Induction process	Company should have induction procedures that enable directors and managers to gain an understanding of the company, and their duties and responsibilities (8.1 commentary) Induction process should be responsibility of nomination committee and should be reviewed annually (8.1 commentary)	N/A	Company should disclose on its website director orientation and continuing education policies (303A.9)	It is the responsibility of the Chairman to ensure that new directors receive comprehensive, formal and tailored induction on joining the Board (A.5.1)

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Election of directors	Notice of meeting for director's election should contain sufficient biographical details, and details of the relationships of the candidate and the company and other directors, along with other directorships (2.4 commentary)	N/A	N/A	The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and other relevant information to enable shareholders to take an informed decision on their election (A.7.1) Before proposing re-election, the Chairman should confirm as a result of performance evaluation that they are satisfied that the non-executive director continues to contribute effectively and demonstrate commitment to the role (A.7.2)
Duration of appointment	Re-appointment of directors should not be automatic (2.4 commentary) Non-executive directors should be appointed for specific terms subject to re-election and to the ASX Listing Rules and Corporations Act provisions re removal of a director (2.4 commentary)	N/A	Director qualification standards should be disclosed on company's website (and include substantive qualification requirements, including policies limited the number of Boards on which a director may sit, director tenure, retirement and succession) (303A.9)	Non-executive directors would normally be expected to serve 2 terms of 3 years (but may serve longer subject to "particular rigorous review" (A.7.2) Non-executive directors serving 9 years or more should be subject to annual re-election (A.7.2)
Succession planning	Committee should put succession plans in place to maintain appropriate balance of skills, experience and expertise on Board (2.4 commentary)	N/A	Company should disclose on its website management succession planning policies and principles (303A.9)	

3. Management and Oversight

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Roles of CEO/Chairman/Lead independent director	Board should clarify the roles of Chairman, lead independent director and CEO and explain the balance of responsibility between them. This balance should be regularly reviewed (1.1 commentary) CEO and Chairman should have formal job description (1.1 commentary)	N/A	N/A	Roles of Chairman and CEO should be set out in writing (A.2)
Board charter	Should have a Board charter which sets out the functions and responsibilities of the Board and matters reserved to it and those delegated to management (1.1). A summary of charter should be on website (1.1 commentary)	N/A	N/A	There should be a formal schedule of matters specifically reserved to the Board (A.1.1)
Board Responsibilities	Board should be responsible for appointing and removing CEO and senior management, approving management strategy, reviewing risk management and compliance controls, supervision, monitoring senior management, financial and other reporting and major transactions (1.1 commentary)	N/A	N/A	Role of Board is to provide entrepreneurial leadership of company with a framework of prudent and effective controls which enable risk to be assessed and managed (A.1) Board should set company's strategic aims, ensure necessary financial and human resources are in place for company to meet

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
				its objectives and review management performance (A.1)
Delegation	Formal policies should be in place concerning delegation of authority (1.1 commentary)	N/A	N/A	The annual report should include a high level statement of which decisions are to be taken by the Board and which are to be delegated to management (A.1.1)

4. Enhanced Performance

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Board reviews	<p>Nominations committee should regularly assess performance of Board, collectively and each director individually, against measurable and qualitative indicators (8.1 commentary)</p> <p>Description of performance evaluation of Board, its committees and individual directors must be made available on company website</p>	N/A	Company should conduct an annual self-evaluation to determine whether it and its committees are functioning effectively (303A.9)	The Board should state in the annual report how performance evaluation of the Board, its committees and directors has been conducted (A.6.1)
Induction of New Board Appointees	<p>Nominations committee should implement induction procedures to allow new directors to participate fully in Board decision making as soon as possible¹⁰ (8.1 commentary)</p> <p>Nomination committee should review the effectiveness of the program regularly (8.1 commentary)</p>	N/A	N/A	Chairman should ensure that new directors receive comprehensive, formal and tailored induction on joining the Board. This should include meeting major investors (A.5.1)

¹⁰ Induction should cover: (1) the company's financial, strategic, operational and risk management position; (2) director rights, duties and responsibilities; and (3) the role of the board committees. Such induction may also be appropriate for key executives.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Board training	<p>Directors and key executives should have access to continuing education to update their skills and knowledge, including matters of key development in the company and its operating industry (8.1 commentary)</p> <p>Nominations committee should develop and implement a plan for identifying, assessing and enhancing director competencies (2.4 commentary)</p>	N/A	Company should disclose on its website director orientation and continuing education policies (303A.9)	Chairman should ensure that directors continually update their skills and knowledge (A.5)
Director/key executive training	Directors and key executives should have access to continuing education to update and enhance their skills and knowledge (8.1 commentary) including education concerning key developments in the company and within the industry it operates.	N/A	Company should disclose on its website director orientation and continuing education policies (303A.9)	Chairman should ensure that directors continually update their skills and knowledge (A.5)
Supply of information	Board should be supplied with appropriate quality information in a timely manner (8.1 commentary)	N/A	N/A	The Chairman is responsible for ensuring that directors receive accurate, timely and clear information (A.5)
Independent advice	Board should have a procedure to enable directors to take independent professional advice (8.1 commentary)	N/A	Company should have guidelines which are published on its website concerning director access to management and, as necessary and appropriate, independent advisers (303A.9)	Board should ensure that directors have access to independent professional advice at the company's expense (A.5.2)

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Company secretary	All directors should have access to the company secretary, who is responsible for ensuring that Board procedures are followed and regulations complied with (8.1 commentary)	N/A	N/A	The company secretary should be responsible for advising the Board through the Chairman on all governance matters (A.5) All directors should have access to the company secretary, who is responsible for ensuring that Board procedures are followed and regulations complied with (A.5.3)

5. Ethics and responsible decision making

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Code of conduct	<p>Establish code of conduct to guide directors, CEO, CFO and key executives in maintaining confidence in the company's integrity and accountability and responsibility for reporting and investigating unethical practices (3.1)</p> <p>Code should also be a guide to compliance with legal and other obligations to legitimate stakeholders (10.1)</p> <p>Code and a statement of values should be published on website (3.1 commentary, 10.1 commentary)</p>	<p>A company must disclose whether it has adopted a code of ethics¹¹ for its senior financial officers and principal executive officer (406(a))</p>	<p>Companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers¹² (303A.10)</p> <p>(Code should address conflicts of interest, corporate opportunities, confidentiality, fair dealing, protection and proper use of company assets, compliance with laws, rules and regulations (including insider trading) and encouraging reporting of any illegal or unethical behaviour)</p>	

¹¹ For the purposes of the *Sarbanes-Oxley Act* the code of ethics must contain standards to promote honest and ethical conduct including handling of conflicts; full, fair, accurate, timely and understandable disclosure in the reports of the company; compliance with applicable government rules and regulations. The SEC have issued rules further expanded the obligations in respect of codes of conduct, including prompt disclosure of amendments to, or waivers from, the code of ethics.

¹² The code of business conduct and ethics should deal with the following matters: conflicts of interest; corporate opportunities; confidentiality; fair dealing; protection and proper use of company assets; compliance with laws, rules and regulations (including insider trading laws); and encouraging reporting of any illegal or unethical behaviour.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Compliance with Code of conduct	Compliance procedures should be in place to implement the code and to assess compliance (10.1 commentary)		CEO must certify to NYSE each year that he or she is not aware of any violation of the NYSE corporate governance listing standards (303A.12(a)) Each CEO must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of section 303A (303A.12(b))	
Share trading policy	Disclose policy concerning share trading in company securities by officers of the company. Identify who is restricted from trading, what is prohibited by law and under the policy (3.2) Publish on website	N/A	Must be addressed in company's code of ethics (303A.10)	Executive share options should not be offered at a discount save as permitted by the Listing Rules (B.1.2)
Ethical standards	Publish description of policy on establishment and maintenance of appropriate ethical standards on website	N/A	Must be addressed in company's code of ethics (303A.10)	

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Whistleblowers	Code of conduct should enable employees to alert management and Board in good faith of potential misconduct, without fear of retribution (10.1 commentary)	<p>Audit committee is required to have procedures for receipt and treatment of complaints concerning accounting or audit matters (301)</p> <p>A company cannot discriminate against an employee who provides information to a regulator in respect of a investigation of shareholder fraud (806)</p>	Must be addressed in company's code of ethics (303A.10)	Audit committee must review arrangements by which staff may raise in confidence concerns about possible improprieties in financial reporting and other matters, and ensure that there are in place arrangements for the proportionate and independent investigation of such matters (C.3.4)

6. Remuneration

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Remuneration committees	Should have a remuneration committee, with a formal charter made available on its website (9.2, Guide to reporting on Principle 9) Members of the committee and their attendance at meetings should be listed in the corporate governance report (Guide to reporting on Principle 9)	N/A	Companies must have a compensation committee (303A.5(a))	Company should have a remuneration committee (B.1)
Composition of remuneration committee	Comprise a majority of independent directors, have at least 3 members, and be chaired by an independent director (9.2 commentary)	N/A	Committee must be composed entirely of independent directors (303A.5(a))	Exclusively comprised of independent non-executive directors, with at least 3 members, or 2 members for companies outside the FTSE 350 (B.2.1)
Remuneration committees responsibilities	Developing policies on executive remuneration as well as reviewing compensation arrangements at least annually of CEO and CFO and other executives and non-executive members of the Board (9.2 Commentary)	N/A	Committee's responsibilities must be to review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and set the CEO's compensation level based on this evaluation; make recommendations to the Board with respect of incentive-compensation plans and equity based plans; produce a committee report on executive compensation as required by the	Remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and compensation arrangements. The committee should also recommend and monitor the level and structure of remuneration for senior management (B.2.2) The Board, or where required, shareholders, should determine the remuneration of non-

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
			SEC to be included in the company's annual proxy statement or annual report on Form 10-K; and conduct an annual performance evaluation of the committee (303A.5(b)(ii))	executive directors within the limits set in the Articles of Association (B.2.3)
Remuneration policies	Remuneration policies should be designed in a manner that motivates executives and directors to pursue long term growth and success and evinces a clear relationship between performance and remuneration (9.2) ¹³ Clearly distinguish the structure of non-executive directors' remuneration from that of executives (9.3)	N/A	Director compensation guidelines should be disclose on its website (303A.9)	Performance related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels (B.1.1)
Remuneration disclosure	Corporate governance report should disclose sufficient information in relation to the framework and the remuneration paid to directors and key executives to enable investors to assess the costs and benefits of the remuneration framework	N/A	Committee must produce a compensation committee report on executive compensation as required by the SEC to be included in the company's annual proxy statement or annual report on Form 10-K filed with the SEC (303.5(b)(i)(c))	Members of remuneration committee should be listed in the Board's remuneration report to shareholders (B.2.3) Board should report to shareholders each year on remuneration (included with the annual report) and set out the

¹³ Executive remuneration packages should consist of a balance between fixed and incentive pay, reflecting short and long term performance objectives appropriate to the company's circumstances and goals.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
	(Guide to reporting on Principle 9) ¹⁴			policy of executive directors' and non-executive directors' remuneration (B.3.2) Board may consider submitting the remuneration policy to shareholders for approval (B.3.5)
Executive (director) employment agreements	Companies should consider need to disclose material executive service agreements under LR 3.1, including a summary of the main terms of the agreement including termination entitlements (9.1 Commentary)	N/A	N/A	Directors' notice or contract periods should be one year or less (B.1.5) Operation of contract terms in event of early termination should be considered by remuneration committee (B.1.5) For early termination, need to avoid rewarding poor performance through termination payouts (B.1.5)
Retirement benefits	Retirement benefit schemes for non-executive directors should be clearly disclosed in the corporate governance report, with relevant accruals listed in respect of each director (9.3 commentary)	N/A	N/A	

¹⁴ Listed companies are required under the Corporations Act to disclose details of the amount and nature of the fee or salary of each director and each of the five highest paid officers of the company.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Equity plans	Equity based executive remuneration should be made through shareholder approved plans (9.4)	N/A	Shareholders must be given the opportunity to vote on all equity-compensation plans, except inducement options, plans relating to mergers or acquisitions, and tax qualified and excess benefit plans (303A.8)	Executive share options should not be offered at a discount save as permitted by the Listing Rules (B.1.2) Share option remuneration should not be available for non-executive directors (B.1.3) Shareholders should approval all long term incentive schemes (B.2.4)

7. Disclosure

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Market disclosure policy	<p>Company should have written policies and procedures to comply with ASX Listing Rule disclosure requirements and to ensure accountability by senior management for that compliance (5.1)</p> <p>Establish vetting process to ensure Company announcements are made timeously, are factual, do not omit material information and are expressed in a clear and objective manner (5.1 commentary)</p>	<p>Company must maintain disclosure controls and procedures and within the 90 day period before filing the annual report, carry out an evaluation of the effectiveness of the design and operation of the issuer's disclosure controls and procedures (SEC rule 13a-15)</p>	N/A	N/A

8. Relationship with shareholders

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Communications strategy	<p>Take advantage of new technologies, where practicable, to communicate more effectively with shareholders and increase shareholder participation (6.1)¹⁵</p> <p>Detailed ASX CGC guidelines on the design and content of general meeting notices (6.1 and attachment A to ASX CGC)</p> <p>All substantial companies should have a website (6.1 commentary)</p>	N/A	N/A.	<p>Board should use AGM to communicate with investors and encourage their participation (D.2)</p> <p>Separate resolutions for each substantively separate issue (D.2.2)</p> <p>Chairman should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions (D.2.3)</p>
External auditor	Should attend AGM and be available to answer shareholder questions about the audit and the auditor's report ¹⁶	N/A	N/A	

¹⁵ As a guide, companies may wish to give beneficial owners the choice of receiving shareholder materials electronically.

¹⁶ Section 249K Corporations Act requires the company to provide the auditor with notice of a general meeting and the related communications. Section 249V entitles the auditor to be heard at the meeting on matters concerning him or her as an auditor. Section 250T requires the chairperson to allow a reasonable opportunity for member questions to the auditor regarding the audit and subsequent report, should the auditor attend.

B. FINANCIAL REPORTING REQUIREMENTS AND AUDIT COMMITTEES**1. Accounts**

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Directors' certification	Directors and auditors should certify company accounts (4.1)	N/A	N/A	Directors should report that the business is a going concern, with supporting assumptions or qualification as necessary (C.1.2) Directors should report in the annual report their responsibility for preparing the accounts and there should be a statement by the auditors about their reporting responsibilities (C.1.1)
Management discussion and analysis (MDA)	(Listing Rule requirement)	MDA should extend to discussion of the company's ¹⁷ off-balance sheet arrangements (401(a) ¹⁸)		(Listing Rule requirement)

¹⁷ This requirement applies to "non-US issuers".

¹⁸ SEC rule require disclosure of off-balance sheet arrangements of a company. Disclosures must extend to the nature and business purpose of the off-balance sheet arrangements; the importance of the off-balance sheet arrangements in respect of the company's liquidity, capital resources, market risk support, credit risk support or other benefits; the amounts of revenue, expenses and cash flows of the company arising from such arrangements, the nature and amounts of any interests retained, securities issued or indebtedness incurred; or any event that is reasonably likely to result in the termination of the off-balance sheet arrangement.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
CEO and CFO certification	CEO and CFO should certify to the Board that the Company's financial reports present a true and fair view, in all material respects, of the financial condition of the company and are in accordance with relevant accounting standards.(4.1) ¹⁹	<p>CEO and CFO are required to certify that the company's periodic reports do not contain any material untrue statement or omit to state a material fact, and the financial statements fairly present in all material facts the financial condition and results of the company²⁰ (302, SEC rule 13a-14)</p> <p>Certifications must also be accompanied by a written statement by the CEO and CFO that the financial reports comply with the Securities Exchange Act and that information contained in the report fairly presents, in all material respects, the financial condition and results of the operations of the company (906)</p>	N/A	N/A

¹⁹ This statement is complemented by the recommendation in 7.2 regarding underlying risk management.

²⁰ The certification requirement as set out in section 302 of the *Sarbanes-Oxley Act* and as implemented by SEC rules 13a-14 and 13a-15, extends to certification by the CEO and CFO that the officers are responsible for establishing and maintaining disclosure controls and procedures; have designed such controls and procedures to ensure that material information relating to the company is made known to the officers; have evaluated the effectiveness of the company's disclosure controls as of a date within 90 days before the date of the report; have set out conclusions about the effectiveness of the disclosure controls and procedures.

2. Audit committees

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Audit committees	The Board should establish an audit committee (4.2) ²¹ Transitional arrangements are in place until 1 July 2005		Company required to have an audit committee that meets the requirements of the Exchange Act (303A.6)	Board should establish an audit committee (C.3.1)
Audit committee charter	Audit committee should have a charter which should be available on the Company's website (4.4, Guide to Reporting on Principle 4) Charter should set out committee's role, responsibilities, composition, structure and membership requirements (4.4)		Must have a written charter which sets out committee's purpose, duties and responsibilities and an annual performance review (s303A.7(c)) ²²	Audit committee should have written terms of reference (C.3.2) The audit committee terms of reference should be publicly available (C.3.3)
Audit committee composition	Details of audit committee members should be disclosed and included in the corporate governance report (Guide to Reporting on Principle 4)		Must have a minimum of 3 members (303A.7(a))	Annual report should contain a separate section on the role and responsibilities of committee and the actions taken by the committee (D.3.4)

²¹ Smaller companies for whom it is recognised a separate audit committee will not add efficiency, must disclose how they ensure the integrity of the Company's financial reports and the independence of the external auditor and why an audit committee is not appropriate (4.2 Guidance)

²² See Appendix 2 for a description of the content of the audit committee charter.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Audit committee members	<p>At least 3 members, comprising only NEDs, majority of whom are independent²³ and an independent Chairman (4.3)</p> <p>All members should be financially literate, at least one member should have financial expertise²⁴, and some members should have an understanding of the industry in which the entity operates (4.3 commentary)</p>	<p>Each audit committee member must be an independent director²⁵ (s10A(m)(2))</p> <p>Must have at least one member who is an "audit committee financial expert"²⁶ (407(a) and (b))</p>	<p>At least 3 members, who all meet the independence requirements contained in the Sarbanes-Oxley and section 303A.2 (303A.7(b))</p> <p>(Minimum of 3 independent directors. All members should be financially literate with at least one member who has financial management expertise)</p>	<p>At least 3 members who should all be independent non-executive directors. At least one member of the audit committee should have significant, recent and relevant financial experience (D.3.1, Smith 2.3)</p> <p>Chairman of company should not be an audit committee member (Smith 2.4)</p>
Audit committee powers	<p>Audit committee should have the powers and resources to access management, auditors and seek information (4.4 commentary)</p>	<p>Audit committee shall have the authority to engage independent counsel and advisers as it determines necessary (301)</p> <p>Audit committee must be provided with appropriate funding to pay the auditor and any advisers (301)</p>		<p>The audit committee should be provide with sufficient resources to undertake its duties (Smith 2.12)</p>

²³ Companies must ensure that they meet this independence requirement after the 2 financial years of the Company commencing immediately after 1 January 2003. Entities are encouraged to move to appoint audit committees with solely independent directors within the next three years.

²⁴ That is, is a qualified accountant or other financial professional with experience in financial and accounting matters

²⁵ To be independent a person must not: receive any consulting, advisory or compensatory fee other than in their capacity as director or committee member; or be an "affiliated person" of the company or its subsidiaries. Definition of "affiliated person" is set out in the Investment Company Act of 1940 and generally includes a person who holds at least 5% of the voting shares of the company or a person who controls the company.

²⁶ SEC rules have been adopted explaining what an "audit committee financial expert" is, and the relevant experience and qualifications of such an expert.

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Audit committee meetings	<p>The audit committee should meet often enough to undertake its role effectively (4.4 commentary)</p> <p>Minutes should be taken at the meetings and included in the papers for the next full Board meeting after each audit committee meeting (4.4 commentary)</p>			<p>Audit committee should meet as often as needed to fulfil its role and responsibilities but no fewer than 3 times a year (Smith 2.7)</p> <p>Meetings should coincide with key dates in the financial reporting and audit cycle (Smith 2.7)</p> <p>No one other than the audit committee's chairman and members is entitled to be present at a meeting of the audit committee, but non-members may be invited by the committee (Smith 2.8)</p>
Reporting	<p>Audit committee should report to the Board (4.4 commentary)</p>		<p>Committee must prepare an audit committee report as required by the SEC to be included in the company's annual proxy statement (303A.7(c)(B))</p> <p>Committee must regularly report to the Board (303A.7(c)(iii)(11))</p>	<p>A separate section of the annual report should describe the work of the committee in discharging those responsibilities (C.3.3)</p>

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Audit committee responsibilities	To make recommendations to the Board for auditor appointment or removal, to consider independence of auditor, to approve non-audit services, to engage and dismiss chief internal audit executive, to ensure independence of internal auditor from external auditor, to assess auditor performance, review external reporting, monitor related party transactions (4.4 commentary)	Audit committee directly responsible for appointment, compensation and oversight of work of auditor (s10A(m)(2))	Duties and responsibilities include; retain and terminate auditor's appointment; at least annually, obtain and review a report by the independent auditor on the company's internal controls; discuss the annual audited financial statements and quarterly financial statements with management and the independent auditor; discuss earnings press releases; obtain advice and assistance from outside advisers; discuss risk assessment and risk management policies; meet separately with management and with auditors; review difficulties between independent auditor and management; set clear hiring policies for employees or former employees of auditors; report regularly to the Board (303A.7(c))	Audit committee functions include, monitoring integrity of financial statements, internal financial control system and risk management systems, monitor internal audit function, make recommendations for the appointment of external auditors and their terms of engagement, monitor external auditor's independence, and policy on the engagement of non-audit services (C.3.2) Make recommendations to Board where monitoring reveals scope for improvement.
Appointment of auditor	Audit committee should make policy on appointing auditor and rotation of auditor available on website (Guide to Reporting on Principle 4)			Audit committee should have primary responsibility for making a recommendation on the appointment, reappointment and removal of external auditors. (Any disagreement with the Board on this issue should be explained in the annual report) (C.3.6)

3. **Recognise and manage risk**

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Risk management policies	<p>Board (or committee) should establish risk oversight and management and internal control systems policies, which are made available on website (7.1, Guide to reporting on Principle 7)</p> <p>Management should establish policy for identifying, assessing and managing risk and implement it throughout organisation²⁷ (7.1 commentary)</p> <p>The risk profile should be a description of the material risks facing the company (financial and non-financial matters). Management should formulate and regularly update this (7.1 Commentary)</p>	<p>Annual report to the SEC must contain an internal report which states the responsibility of management for establishing and maintaining an adequate internal control structure for financial reporting and contains an assessment of the effectiveness of the internal control structure for financial reporting (404(a))</p>	<p>Audit committee, under its charter is required to discuss risk assessment and risk management policies (303A(c)(iii)(D))</p>	
Disclosure and review of risk management policies	<p>Statement to Board containing summary of risk management policies and an opinion as to its effectiveness and CEO and CFO</p>		<p>Audit committee should obtain at least annually a report by the independent auditor describing the companies internal quality-</p>	<p>The Board should, at least annually, review the effectiveness of the group's systems of internal controls and</p>

²⁷ These policies should clearly describe the roles and respective accountabilities of the board, audit committee, management and any internal audit function. The policies should include components on oversight, risk profile, risk management, compliance and control and assessment of effectiveness (7.1 commentary)

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
	certification (see below)(7.2)		control procedures, material issues raised by the review or arising otherwise, and any steps taken to deal with any such issues (303A.7(c)(iii)(A))	should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls and risk management systems (C.2.1)
Certification	CEO and CFO should certify to the Board in writing that certification of financial reports (see above) is founded on internal control system and risk policies adopted by Board and management and that the company's risk management system is operating efficiently and effectively in all material respects (7.2)	CEO and CFO (as part of their certifications on the financial reports (see above) have evaluated the effectiveness of the company's disclosure controls and procedures, and have disclosed to the auditor/audit committee any significant deficiencies in the design/operation of internal controls which could adversely affect the company's ability to record and process financial data and weaknesses in internal control (320, SEC rule 13a-14, 13a-15)	N/A	
Audit of risk management function	Analysis of effectiveness of risk policy and framework and internal control procedure to be undertaken by internal audit function (7.1 commentary)		Audit committee should obtain at least annually a report by the independent auditor describing the companies internal quality-control procedures, material issues raised by the review or arising otherwise, and any steps taken to deal with any such issues (303A.7(c)(iii)(A))	

Requirement	ASX CGC	Sarbanes-Oxley	NYSE Listing Rules	UK Combined Code
Overseeing of internal audit	Audit committee should oversee scope of internal audit and have access to the function without presence of management (7.1 commentary)		Responsibility of the audit committee to oversee performance of internal audit function (303A.7(c))	Audit committee should monitor and review internal audit (C.3.5)
Internal audit function	Chief internal audit executive should be engaged and dismissed by audit committee and independent of external auditor (7.1 commentary)		Each listed company must have an internal audit function (303A.7(d))	Companies without an internal audit function should each year review the need for one (D.2.2)
Internal audit reporting	Internal auditor should report to both management and the Board (or committee) (7.1 commentary)			If not adopted, the annual report should explain the absence of an internal audit function in the annual report (C.3.5)

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L A W Y E R S

Appendix 1 – Definitions of independence

ASX Corporate Governance Council Best Practice Recommendations

An independent director is a non-executive director (ie is not a member of management) and:

1. is not a substantial shareholder²⁸ of the company or an officer of, or otherwise associated directly with, a substantial shareholder of the company
2. within the last three years has not been employed in an executive capacity by the company or another group member, or been a director after ceasing to hold any such employment
3. within the last three years has not been a principal of a material professional adviser or a material consultant to the company or another group member, or an employee materially associated with the service provided
4. is not a material supplier or customer of the company or other group member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer
5. has no material contractual relationship with the company or another group member other than as a director of the company
6. has not served on the board for a period which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the company
7. is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the company.

UK Combined Code

A non-executive director is considered independent when the board determines that the director is independent in character and judgement, and there are no relationships or circumstances which could affect, or appear to affect, the director's judgement.

Such relationships or circumstances would include where the director:

- is a former employee of the company or group until five years after the employment, or any other material connection, has ended;

²⁸ For this purpose a "substantial shareholder" is a person with a substantial holding as defined in section 9 of the Corporations Act.

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- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than ten years.

The board should identify in its annual report the non-executive directors it determines to be independent. The board should state its reasons if a director is considered independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination.

NYSE Listing Rule 303A and Sarbanes-Oxley Act

NYSE Listing Rule

No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organisation that has a relationship with the company). Companies must disclose these determination.

In addition:

- a director who is an employee, or whose immediate family member is an executive officer, or the company is not independent until 3 years after the end of such employment relationship.
- a director who receives, or whose immediate family receives, more than \$100,000 per year in direct compensation from the listed company, other than director or committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until 3 years after he or she ceases to receive more than \$100,000 per year in such compensation.
- a director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not independent until 3 years after the end of the affiliation or the employment or the auditing relationship.

International Corporate Governance Standards – A Comparison

- a director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee, is not independent until 3 years after the end of such service or the employment relationship.
- a director who is an executive officer or an employee, or whose immediate family member is of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which in any single financial year, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues, is not independent until 3 years after falling below such threshold.

Sarbanes-Oxley Act section 301

To be independent (for the purposes of the audit committee) the person must not:

- receive any consulting, advisory or compensatory fee other than in their capacity as director or committee member; or
- be an affiliated person of the company or its subsidiaries other than due to their capacity as a director or committee member.

Appendix 2 – Audit Committee Charters

UK Combined Code

The audit committee charter should include role and responsibilities:

- to monitor the integrity of the financial statements of the company, and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them;
- to review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems;
- to monitor and review the effectiveness of the company's internal audit function;
- to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, re-appointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;
- to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;
- to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

NYSE Listing Rule

The audit committee charter must address:

- the committee's purpose which, at a minimum, must be to:
 - assist oversight of the integrity of the company's financial statements, the company's compliance with legal and regulatory requirements, the independent auditor's qualifications and independence, and the performance of the company's internal audit function and independent auditors; and
 - prepare an audit committee report as required by the SEC;
- an annual performance evaluation of the audit committee;
- the duties and responsibility of the audit committee – which, at a minimum, must include those set out in the Exchange Act (as amended by the Sarbanes-Oxley Act) , as well as to:

International Corporate Governance Standards – A Comparison

- to at least annually, obtain and review a report by the independent auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review; or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding 5 years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company;
- discuss the company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations";
- discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;
- discuss policies with respect to risk assessment and risk management;
- meet separately, periodically with management, with internal auditors and with independent auditors;
- review with the independent auditor any audit problems or difficulties and management's response;
- set hiring policies for employees or former employees of the independent auditors; and
- report regularly to the board (303A.7(c)).