

CHAPTER 3

CARE, SKILL AND DILIGENCE

3.1 To put the notion of 'wider' duties in perspective, it is necessary to set out the so-called traditional duties which apply to company directors. Both courts and parliaments have laid down laws relevant to directors' duties. In relation to the traditional duties of company directors, the former have tended to be less venturesome than the latter. In some respects - for example, duties in relation to creditors - it is the courts which have extended the law.

Case law

3.2 The courts have tended to take a gentle view of some of the basic duties of directors. The cases which have developed the law were decided mainly in the late nineteenth and early twentieth centuries and the standards which were set then are not the standards which the community expects of modern business.

3.3 Turquand v Marshall¹ represents the low point. In that case, the board made a loan to a director who died insolvent without repaying the loan. The Lord Chancellor, Lord Hatherley, said:

It was within the powers of the deed to lend to a brother director, and however foolish the loan might have been, so long as it was within the powers of the directors, the Court could not interfere and make them liable ... Whatever may have been the amount lent to anybody, however ridiculous and absurd their conduct might seem, it was the misfortune of the company that they chose such unwise directors; but as long as they kept within the

1. (1869) LR 4 Ch App 376.

powers of their deed, the Court could not interfere with the discretion exercised by them.²

3.4 In 1884, in Re Denham and Co,³ the court described a director as a 'country gentleman and not a skilled accountant'.⁴ He had neither checked the accounts nor attended board meetings. Although the court found he had been guilty of 'considerable negligence',⁵ it did not expect him to realise the significance of certain information in the financial accounts. As a consequence, he was found not to have breached his duty of diligence and care (although he was refused costs because he had attended only a single board meeting in four years and, in this respect, had failed to discharge his duties).

3.5 Re City Equitable Fire Insurance Co Ltd⁶ is considered the leading case in the area. In that case, the company sustained heavy losses mainly because of fraud on the part of the managing director. Other directors were sued for negligence. Justice Romer summarised the duties into four propositions:

1. a director must exercise that degree of skill and diligence as would amount to the reasonable care that an ordinary man might be expected to take, in the circumstances, on his own behalf;
2. a director need show no greater degree of skill than may reasonably be expected from a person of his knowledge and experience;
3. a director is not bound to give continuous attention to the affairs of his company;

 2. (1869) LR 4 Ch App 376 at 386. For similar statements see, eg, Re New Mashonaland Exploration Co [1892] 3 Ch D 577 at 585 per Vaughan Williams J; Re Forest of Dean Coal Mining Co (1878) 10 Ch D 450 at 453 per Jessel MR; Re Faure Electric Accumulator Co (1888) 40 Ch D. 141 at 152 per Kay J.

3. (1883) 25 Ch D 752.

4. *Ibid* at 767.

5. *Ibid* at 766.

6. [1925] 1 Ch 407.

4. a director can rely on other officers or experts.⁷

3.6 A director need not show a greater degree of care and skill than would be reasonably expected of a person of the same knowledge and experience. The extent of the duty of care expected is, therefore, measured by reference to the particular director's knowledge and experience. A director is not required to bring any special knowledge or experience to the task,⁸ but, if he or she does, then a commensurate degree of skill will have to be shown.

3.7 Compared with the fiduciary duties of loyalty and good faith, the duties of skill, care and diligence which directors owe to a company have been characterised as 'remarkably low'.⁹

3.8 In Principles of Company Law, Professor HAJ Ford summarises:

Thus, there was no common law standard of the reasonably competent company director analogous to the reasonably competent member of a particular profession or trade, such as architect, solicitor, physician or builder, against whom the conduct of a defendant can be measured when determining whether reasonable care was used. A director was not required to bring any particular qualifications to the office. On the other hand if the director possessed special knowledge he or she was expected to use it in the affairs of the company.

Nor at common law was there a burdensome duty to be diligent in attending meetings of the board: failure to attend meetings seldom led to liability.¹⁰

7. See *Corkery, JF, Directors' Powers and Duties, Longman Cheshire Pty Ltd, Melbourne, 1987, pp 133-9.*

8. *Re Brazilian Rubber Plantations and Estates Ltd [1911] 1 Ch 425 at 437.*

9. *Corkery, JF, Directors' Powers and Duties, Longman Cheshire Pty Ltd, Melbourne, 1987, p 131.*

10. (4th ed) *Butterworths, Sydney, 1986, p 417.*

3.9 Professor Ford writes:

However, the community's expectations as to the qualities to be possessed by directors rose.¹¹

3.10 To an extent, the courts have moved to meet these rising expectations. Directors have been expected to make reasonable efforts to acquaint themselves with the company's affairs.¹² In complicated situations which require specialist or technical knowledge, directors may be required to seek and take expert or professional advice. Failure to do this could constitute a breach of the duty of care and skill.¹³

3.11 Nevertheless, the general standard is low. It seems to have stemmed largely from a reluctance on the part of courts to pass judgment on the merits of management decisions taken in good faith. Courts have taken the view that they should not be making companies' business decisions for them. Imprudence and errors of judgment will not constitute negligence of a sufficient degree to result in liability. Directors must be culpably or grossly negligent before a court will find them in breach of their duty of care:

Their negligence must be not the omission to take all possible care; it must be much more blameable than that: it must be in a business sense culpable or gross.¹⁴

11. *Principles of Company Law* (4th ed), Butterworths, Sydney, 1986, p 418.

12. *Re Australasian Venezolana Pty Ltd* (1962) 4 FLR 60 at 66.

13. *In Re Duomatic Ltd* [1969] 2 Ch 365.

14. *Lagunas Nitrate Co v Lagunas Syndicate* [1899] 2 Ch 392, per Lindley MR at 435. See also, eg, *Overend & Gurney Co v Gibb* (1872) LR 5 HL 480 at 487 per Lord Hatherley LC; *Re Brazilian Rubber Plantations & Estates Ltd* [1911] 1 Ch 425 at 436-7 per Neville J; *Re National Bank of Wales Ltd* [1899] 2 Ch 629 at 672 per Wright J; *Re Faure Electric Accumulator Co* (1888) 40 Ch D 141 at 152 per Kay J.

Legislation

3.12 Legislation imposes a variety of duties on directors over a wide range of issues. The Institute of Directors in Australia referred the Committee to a range of areas in which legislation imposed obligations on directors. At the Commonwealth level these included income tax, company tax, sales tax, trade practices and industrial arbitration. At the State level, legislation concerning, for example, the stock exchange, land tax, payroll tax, workers' compensation, stamp duty, industrial arbitration and conditions of employment applied further impositions.¹⁵

3.13 Several submissions to the Committee referred to the complexity of the companies legislation and the obligations flowing from it.¹⁶ It was submitted that the complexity meant that often people were unaware of the precise coverage of the law.¹⁷

3.14 The Company Directors' Association wrote:

This results from the legal complexities of a modern society. It appears that society must be regulated by increasingly detailed legislation, if it is to maintain the standards it requires for the conduct of its activities.¹⁸

Section 229

3.15 The principal statutory provision which governs the

15. *Submission from Institute of Directors in Australia, pp 3-5 (Evidence, pp 121-3).*

16. *See, eg, submissions from Company Directors' Association of Australia, p 3 (Evidence, p 82); Institute of Directors in Australia, pp 2-5 (Evidence, pp 120-3).*

17. *See, eg, submission from Company Directors' Association of Australia, pp 2-3 (Evidence, pp 81-2).*

18. *Submission from Company Directors' Association of Australia, p 3 (Evidence, p 82).*

duties and obligations of company 'officers', including directors, is section 229 of the Companies Code (Corporations Act, s232). The precursor of section 229 was introduced into Victorian company law in 1958, and Tasmanian law in 1959. It seems that, before these dates, no corresponding provision had been contained in the company legislation of any other English-speaking country.¹⁹

3.16 Section 229 says, in part:

(1) An officer [defined to include directors - s229(5)] of a corporation shall at all times act honestly in the exercise of his powers and the discharge of the duties of his office.

. . .

(2) An officer of a corporation shall at all times exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.

. . .

(3) An officer ... of a corporation ... shall not make improper use of information acquired by virtue of his position as such an officer ... to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the corporation.

. . .

(4) An officer ... of a corporation shall not make improper use of his position as such an officer ... to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the corporation.

3.17 Section 229 applies in addition to any other rule of law affecting directors' duties. It does not prevent civil proceedings being brought for breach of any other duties.²⁰ There

 19. *Brown, SR and Grogan PR, Company Directors (3rd ed), Law Book Co Ltd, Sydney, 1974, p 270.*

20. *Section 229(10) (Corporations Act, s232(11)).*

is no need for harm to be done to bring the section into operation.

3.18 Breaches of the provisions of section 229 involve penalties from \$5000 to \$20 000 or imprisonment for five years or both.²¹ Civil action may be taken to recover profits improperly made or an amount equal to any loss or damage to the corporation as a result of a contravention of the section.²²

3.19 The statute, on the face of it, seems to impose an objective standard. An objective standard is one that all individuals would be expected to meet, regardless of their particular capacities or circumstances. In Byrne v Baker,²³ however, the Full Court of the Victorian Supreme Court applied in its interpretation of the equivalent of section 229 the subjective standard of the common law. It looked to what could be expected of the particular director in the particular circumstances. The court noted that 'skill' was not referred to in the statute. Thus the equivalent of section 229 was seen to impose an even weaker standard than the common law. Now, section 229 requires that a 'reasonable degree of care and diligence' be exercised.²⁴ However, the test applied is still a subjective one.

Other specific provisions

3.20 Apart from this general provision, the legislature has seen fit to impose further specific duties on directors. Those included in the companies legislation operate mostly to protect the interests of shareholders, particularly in so far as the provision of information about the company and its activities is necessary to enable them to exercise their rights under the

 21. Where some form of dishonesty is involved (eg s229(1)(b), (3), (4)) the penalty is \$20 000 or imprisonment for five years, or both. Elsewhere (eg s229(1)(a), (2)) the penalty is \$5000. A similar regime operates under the Corporations Act: ss232, 1311(3), Schedule 3.

22. Section 229(7).

23. [1964] VR 443.

24. Section 229(2).

Companies Code and the company's articles. Some examples are:

- . a company is required to keep accounting records which can be audited and which allow proper accounts to be drawn up; a director who fails to take all reasonable steps to enable the company to comply with this requirement may be guilty of an offence (Companies Code, s267(11); Corporations Act, s289(11));
- . directors must ensure that profit and loss accounts and balance sheets which give a 'true and fair view' of the company's performance are prepared (Code, s269(1), (2); Act, ss292, 293);
- . directors must ensure that accounts are audited (Code, s269(4); Act, s296);
- . directors must present a report which sets out certain information about the company's activities (Code, s270; Act, Pt 3.6, Div 6);
- . various registers must be kept - eg of directors (Code, s238; Act, s242) and their shareholdings (Code, s231; Act, s235), of members (Code, s256; Act, s209), of debenture holders (Code, s147; Act, s1047), of charges over company property (Code, s209; Act, s271) - and directors, as officers of the company, may be guilty of an offence if they are not kept; and
- . directors are required to convene a general meeting within two months of a 'requisition' from the required number of members (Code, s241(1); Act, s246).²⁵

 25. See also list of liabilities attaching to directors under companies legislation in submission from *Mayne Nickless Ltd*, pp 10-36 (*Evidence*, pp 382-408); and *Brown, SR and Grogan, PR, Company Directors (3rd ed)*, Law Book Co Ltd, Sydney, 1974, pp 186-94.

3.21 The Institute of Directors referred to the 'bewildering' range of laws which govern directors' conduct in certain circumstances.²⁶ Mayne Nickless Limited submitted that

[t]here does not appear to be any group of people in commercial, professional or public life who have such heavy legal responsibilities imposed upon them.²⁷

3.22 Mr Kenneth MacPherson, a commissioner of the NCSC, said at a recent company directors' seminar:

[D]irectors today are on the front line. So far as exposure to liability is concerned, the 'exposures' are increasing in both the criminal and the civil areas.

. . . .

You [ie directors] are being faced with an ever increasing volume of legislation that is applicable to your activities, not merely with respect to company law but with respect to a wide range of matters such as taxation, occupational health and safety, industrial relations and the environment just to name a few.

In addition to these legislative requirements, there is an ever increasing volume in the rules that are being promulgated by statutory authorities and these also create their own difficulties and complexities.²⁸

The traditional duties summarised

3.23 In summary,

the fewer a director's qualifications for office, the less time and attention he devotes

26. *Submission, p 5 (Evidence, p 123).*

27. *Submission from Mayne Nickless Ltd, p 3 (Evidence, p 375).*

28. *'Directors' responsibilities - a regulator's perspective', address to a company directors' seminar, Adelaide, 1 June 1989.*

to his office, and the greater the reliance he places on others, legally the less responsible he is.²⁹

3.24 The case law has developed the company director's general duty of care in this way because it has recognised that his or her role involves a degree of risk taking and uncertainty. The courts have been concerned to allow for flexibility and not to hamper entrepreneurs unduly. The standards laid down, however, barely meet the requirements of contemporary business and fall far short of the standards required of other professions.

3.25 There is no objective common law standard of the reasonably competent company director, as there are objective standards for other professions. It is not an easy task to determine uniform minimum standards of behaviour for company directors. The activities of companies are diverse and consequently a range of skills and experience is useful on boards, but, if the modern company director wants professional status, then professional standards of care ought to apply.

3.26 It may be easy to require directors of large public companies to show higher standards in their duty of care than directors of the small proprietary company, but what is required will inevitably be affected by the particular circumstances - the size, structure and sphere of operation of the company, the composition of the board and the distribution of responsibility among board members, for example.

3.27 In 1901, Lord Macnaghten said:

I do not think it desirable for any tribunal to do that which Parliament has abstained from doing - that is, to formulate precise rules for the guidance or embarrassment of business men in the conduct of business affairs. There never has been, and I think there never will

29. *Trebilcock, MS, 'The Liability of Company Directors for Negligence' (1969) 32 Mod LR 499 at 508-9.*

be, much difficulty in dealing with any particular case on its own facts and circumstances; ... I rather doubt the wisdom of attempting to do more.³⁰

However, modern business practices seem to have developed to an extent unforeseen by Lord Macnaghten in 1901 and when the community looks to the law for guidance, often it is not there.

3.28 The traditional approach has developed because of the need to allow directors flexibility to carry out their proper role. Nevertheless, the present state of the law is not satisfactory and the Committee recommends that **an objective duty of care for directors be provided in the companies legislation.**

3.29 Some particular areas of possible reform which have been considered by the Committee are discussed below.

The business judgment rule

3.30 American courts have developed a 'business judgment rule' which provides special protection to directors' informed business decisions. The American Law Institute has devised a relatively precise formulation which is consistent with the rule developed by the courts but which avoids much of the confusion that has arisen from the various ways in which the courts have stated the rule. The main feature of the rule that the American Law Institute proposes is that a 'safe harbour' is created for a director (or officer) who makes a business judgment in good faith if:

- a) he or she has no personal interest in the subject of the business judgment;
- b) he or she is informed to an appropriate extent about the subject of the business judgment; and

30. *Dovey v Cory* [1901] AC 477 at 488.

c) he or she rationally believes that the business judgment is in the best interests of the company.³¹

3.31 The Companies and Securities Law Review Committee has suggested the following as factors which the law might adopt to absolve directors from liability for ill effects arising from the exercise of business judgment:

- a) the director acted in good faith and was not subject to a conflict of interest or duties;
- b) the director exercised an active discretion in the matter;
- c) the director took reasonable steps to inform him- or herself; and
- d) the director acted with a reasonable degree of care in the circumstances, including -
 - (i) any special skill, knowledge or acumen he or she possessed, and
 - (ii) the degree of risk involved.³²

3.32 The policy behind the business judgment rule is that informed business judgments should be encouraged in order to stimulate innovation and risk-taking. It seeks to limit judicial intrusiveness in private sector decision making.

3.33 In Australian law, there has been little attention paid to this issue. The Committee considers that, so long as directors

 31. *American Law Institute, Principles of Corporate Governance: Analysis and Recommendations, Tentative Draft No 4, April 1985, Part IV, pp 6-7, 58-76.*

32. *Company Directors and Officers: Indemnification, Relief and Insurance, Discussion Paper No 9, April 1989, para 112.*

stay within the bounds of the business judgment rule, they should not be liable for the consequences of their business decisions. In the expectation of profit, shareholders must accept the risk of the directors' business judgments, provided the business judgment is made on a competent basis.

3.34 Directors' business judgments tend to be judgments of the board rather than the individual. In these circumstances, the situations in which individual directors will be liable for matters of business judgment need to be specially considered. Individual liability will depend on a link being made between the individual's acts or omissions and the damage done to the corporation.

3.35 The Committee did not receive any submissions on this point. It has noted developments in the United States and discussion of the issue by the Companies and Securities Law Review Committee,³³ and recommends that a 'business judgment rule' be introduced into Australian company law. It should include an obligation on directors to inform themselves of matters relevant to the administration of the company. They should be required to exercise an active discretion in the relevant matter or, alternatively, to show a reasonable degree of care in the circumstances.

Attendance at meetings

3.36 There is little obligation on a director to attend meetings or to take responsibility for decisions made in his or her absence.³⁴ A classic example of non-attendance is the Marquis of Bute's case.³⁵ The Marquis became president of the Cardiff Savings Bank when six months old, inheriting the office from his

33. Company Directors and Officers: Indemnification Relief and Insurance, Discussion Paper No 9, April 1989, esp at paras 31-44, 112.

34. Eg Re City Equitable Fire Insurance Co Ltd [1925] 1 Ch 407 at 429 per Romer J.

35. Re Cardiff Savings Bank [1892] 2 Ch 100.

father. In 38 years, he attended only one board meeting, yet he was held not to be liable for irregularities in the bank's lending operations.

3.37 In Re City Equitable Fire Insurance Co Ltd,³⁶ one director had not attended a board meeting in five years due to ill health. Another had attended board meetings (in London) only rarely because he lived and worked in Aberdeen. the court considered both had taken as active a part in the business of the board as could be expected in the circumstances.

3.38 If a director does attend a meeting, he or she is required to give proper attention to the matters raised. Corkery comments: 'It is better to stay away from meetings than to attend and be inattentive'.³⁷ Lord Hatherley said in Land Credit Co of Ireland v Lord Fermoy:

it is their [ie directors'] duty to be awake and their being asleep would not exempt them from the consequences of not attending to the business of the company.³⁸

3.39 In the opinion of the Committee, a director who fails to attend board meetings without reasonable excuse is failing to meet an appropriate standard of conduct. Failure to attend board meetings without reasonable excuse should be considered prima facie evidence that a director is not exercising reasonable skill, care and diligence in the discharge of his or her duties as director. The Committee recommends that **directors be required to attend board meetings unless there is a reasonable excuse for non-attendance.**

36. [1925] 1 Ch 407.

37. Corkery, JF, Company Directors' Powers and Duties, Longman Cheshire, Melbourne, 1987, p 136. Liability will depend on a link being established between a decision in which a director was involved and a loss to the company.

38. (1870) LR 5 Ch App 763 at 770-1.

3.40 This provision should be incorporated in the body of the companies legislation. This would mean that a director would know exactly what was required of him or her in respect of attendance at board meetings when considering an appointment to a board. The provision would lessen the incidence of appointment of directors merely as window dressing, while those who act responsibly would not be affected.

Figurehead directors

3.41 It can be seen that the law does little to encourage conscientious directors and to dissuade the appointment of 'status' directors who might have little to contribute beyond a name, a title or a reputation. This position may be contrasted with US law which requires directors to supervise the conduct of the company's affairs rather than merely be a figurehead.³⁹

3.42 The recommendations made in paragraphs 3.28, 3.35, 3.39 and 3.53 will go some way towards eliminating the appointment of figurehead directors.

Delegation

3.43 The law says that '... a director is, in the absence of grounds for suspicion, justified in trusting [an] official to perform ... duties honestly'.⁴⁰ For example, delegation to auditors, accountants, committees of the board, key employees and managers is essential to the conduct of the large modern corporation. The case law gives some indication of the extent to which delegation is permissible.

3.44 The entitlement to rely on others is not set down in the

39. *Corkery, JF, Directors' Powers and Duties, Longman Cheshire, Melbourne, 1987, p 137.*

40. *Re City Equitable Fire Insurance Co Ltd [1925] 1 Ch 407 at 429 per Romer J. Also see Huckerby v Elliott [1970] 1 All ER 189 at 194 per Lord Parker CJ.*

companies legislation. The limits of reliance are not firm and are worked out on a case by case basis. There is no requirement that directors actively supervise delegates or positively believe an official, on whom reliance is placed, is trustworthy.⁴¹

3.45 Professor Baxt was critical of the state of the law relating to delegation.⁴² He referred to the recent decision of the NSW Court of Appeal in Metal Manufacturers Pty Ltd v Lewis.⁴³ In that case, an action was brought by a creditor of the company against Mrs Lewis, one of the directors, pursuant to section 556 of the Companies Code. The object of the exercise was to recover the debt from Mrs Lewis in her capacity as a director, on the basis that, when incurring the debt, there had been reasonable grounds to expect that it would not be paid.

3.46 Mrs Lewis said that she had had little to do with the management of the company. She defended the action on the basis that the debt had been incurred 'without [her] express or implied authority or consent'.⁴⁴ The majority of the Court of Appeal accepted Mrs Lewis's defence.

3.47 Justice Kirby, the President of the Court of Appeal, forcefully dissented from the decision of the majority of the court. He referred to the 'reformatory nature' of section 556, in the context of the history of company law.⁴⁵ By this, Justice Kirby meant that the section represented a deliberate departure from the protective mechanisms of limited liability.⁴⁶ He said that, beyond providing a means of redress to creditors,

[i]t is also aimed, by proper concern lest

41. See discussion in Corkery, JF, Directors' Powers and Duties, Longman Cheshire, Melbourne, 1987, pp 137-9.

42. Submission, p 3 (Evidence, p 192). Concern about delegation was also expressed by the Australian Shareholders' Association Ltd in its submission, pp 4-5.

43. (1988) 13 NSWLR 315.

44. Companies Code, s556(2)(a).

45. (1988) 13 NSWLR 315 at 317.

46. *Ibid* at 317-18.

such proceedings subsequently be brought against the directors personally, to instil in them, during times of insolvency or economic difficulty in the corporation, to take particular care in the incurring of debts by the corporation with third parties.⁴⁷

3.48 Justice Kirby continued:

The time has passed when directors and other officers can simply surrender their duties to the public and those with whom the corporation deals by washing their hands, with impunity, leaving it to one director or a cadre of directors or to a general manager to discharge their responsibilities for them.⁴⁸

3.49 Professor Baxt referred to Justice Kirby's dissent in his submission. In the light of the decision in Metal Manufacturers Pty Ltd v Lewis, Professor Baxt submitted that

the time has come, in my view, for this rule [ie regarding delegation] to be reviewed. ... It is not good enough ... for persons who wish to occupy the position of director in a company to simply rely on others to ensure that all obligations etc will be simply complied with in the day-to-day running of the company. ... It would be a sad day ... if we reached a stage where persons who were appointed to the boards of directors could simply escape liability by relying on this right to delegate.⁴⁹

3.50 Professor Baxt suggested that 'specific statutory provisions' should be considered as a means of addressing this problem. However, he thought that such an exercise should not be undertaken without careful consideration.⁵⁰

47. (1988) 13 NSWLR 315 at 318.

48. *Ibid* at 318-9.

49. *Submission from Professor Baxt*, pp 4-5 (*Evidence*, pp 193-4).

50. *Ibid*, p 5 (*Evidence*, p 194).

3.51 He referred the Committee to the work of the American Law Institute which has recommended that a director or officer 'who acts in good faith, and reasonably believes that ... reliance is warranted' be entitled to rely on information, opinions, reports, statements, etc from:

- a) (other) directors, officers or employees, under joint or common control, 'whom the director or officer reasonably believes merit confidence'; or
- b) 'legal counsel, public accountants, engineers, or other persons whom the director or officer reasonably believes merit confidence'.⁵¹

3.52 The significant features of the American Law Institute's formulation are the requirement that the director act in good faith, that he or she reasonably believe that reliance is warranted, and that he or she reasonably believe that the person(s) relied upon merit confidence.

3.53 A formulation such as this would assist in defining boundaries which currently are worked out on a case by case basis and which do not clearly specify limits on the delegation of responsibility. The Committee recommends that the companies legislation be amended to provide for, and specifically limit, the extent to which company officers may rely on others. The framing of the amendments needs to be considered by a body with sound technical knowledge of company law such as the Companies and Securities Law Review Committee or the Law Reform Commission.

 51. *The American Law Institute, Principles of Corporate Governance: Analysis and Recommendations, Tentative Draft No 4, April 1985, Part IV, pp 76-7.*