Treasury Submission-Approved Accountability Bill

I support most of the argument and recommended options contained in the explanatory memorandum(EM): they give effect to several much-needed and overdue improvements to Board and executive accountability at listed companies. The most serious problem amongst these issues is the excessive expansion in senior executive remuneration over recent years, as the PC paper and many others have pointed out. To a lesser extent, this has been mirrored by an inflation in NED fees to unwarranted levels (in some cases of the larger listed groups). It will be very hard to reverse these trends, largely because of the interdependency and self-reinforcing/approving tendencies of using Rem consultants, so-called market competitiveness, NED fees and KMP rem. As the EM notes, a binding vote on the Rem Report would not be practicable, as it has major legal and commercial drawbacks.
The "two strikes" proposal is a sensible and reasonable compromise: one hopes that it will indirectly put more pressure on Boards to pay much more serious attention to shareholder objections on the whole subject of Rem.

All the other proposals in the EM for no-hedging etc are unexceptionable, and necessary for good governance; they should be able to stand independently, irrespective of predictable objections to the two strikes proposal.

Finally, the EM recommends that the new legislation should be reviewed within 5 years to assess its effectiveness. In the case of the Rem Report proposals, I expect that a review sooner than 5 years may be needed, as opportunities for fine tuning come to light.

Rem Report

1.8 I agree with the first strike at >25%, and also with the requirement to put explanatory text in the next annual report. However, the problem is how to identify exactly what are the "shareholders concerns". Different shareholders will probably have different objections to the Rem Report, even though there may be large areas of overlap. What mechanism should be proposed to gather and summarise these opinions from shareholders, who should conduct it [Chairman, Co Secretary, auditor,others??], and how will they be conveyed to the company? A large No vote on the Rem Report clearly indicates that shareholders are dissatisfied with the RR, but not necessarily why.

Also, I suggest that the proposals in the EM shouldn't preclude the company from (additionally)reporting informally on these matters at an earlier date—perhaps at the next half yearly result. If the company is sincere in trying to remedy deficiencies, anything that can be done to speed up discussion between the company and its shareholders should be encouraged.

1.12 I agree with the proposal for two strikes and then a spill resolution for a spill egm. Representatives of large companies, law firms and others have expressed concern that this mechanism could be hijacked by minority groups (or hostile investors at a time of potential takeovers) so that change of the Board could be forced through by a very small number of protesting shareholders. In practice, I feel that such concern is exaggerated, because the mere fact of having a forthcoming spill egm would generate strong publicity, and the incumbent Board would be able to stress the importance of voting in the papers for the spill meeting. In any case, the problem could be solved by requiring a minimum number of votes for the spill resolution to take effect. I would suggest that the resolution should require at least 10% of the *total* voting capital of the company to be voted (excluding abstentions and open proxies) at the spill meeting to take effect; alternatively, the resolution to hold the spill meeting could be made subject to such a minimum. Of the two, it would probably be better to make the resolution at the spill egm subject to the minimum, as that is the meeting of greatest concern to both the incumbent board and the aggrieved shareholders.

1.15 How will the new law ensure that there at least 3 directors at all times? EM para1.13 says that all except the MD will cease to hold office immediately before the spill meeting [250V(1) and 250W(3); 1.15 deals with the number of directors immediately after the meeting [250(X)]- but I am unclear whether the co must have 3 directors ***throughout*** the spill meeting itself, and how that is to be achieved.

Finally, Rem Reports have become immensely complicated, especially given that they are discussing the remuneration of usually only the top 10 or so executives and the Board. This is obviously the minimum disclosure currently required by the Corporations Act, but it is usually very hard to place that information in context, as companies very rarely report more than the minimum. Companies should be encouraged to disclose more than this, for example to give a summary of the number of employees in the main segments of the business and the whole group, and how the Rem policies that affect the KMP flow down through the organisation to affect pay and incentives of other levels of staff. Often one sees a Rem Report of up to 40 pages, for a group with more than 10,000 staff, but containing no information beyond the minimum statutory requirements for the Board and KMP. From a shareholder standpoint, this lack of context is unhelpful, especially as employee pay is often the largest item of expense.

Rem Consultants

I support the proposals: they need to ensure that the drafting picks up the whole consolidated entity, not merely the single company that contracted the advice.

Prohibiting KMP from Voting on Rem Matters

For the purposes of (at least) para 3.6, the company will need to notify the KMP individuals formally that they are KMP, and likewise that they must notify their closely related parties, to ensure that they do not vote. I imagine that the Company will itself will need to keep a register of these persons to ensure that any votes inadvertently lodged would not be counted on a poll.

3.11.This should emphasise that it also applies to the chair of a general meeting, if he/she is a KMP.

Prohibition on hedging

4.9/10 Would the counterparty to the hedge also be committing an offence?

No Vacancy Rule

5.7 The 14 days period referred to in EM para 5.7 seems to be 14 days after a board meeting decides an intention to submit a "board limit resolution" to a general meeting [s. 201P1 (a)]. Yet s.210Q does not refer to a ***board meeting*** to pass such a resolution. Also, the reference to a notice within 14 days in s.210S appears to be to the resolution passed by the ***general*** meeting. The drafting doesn't appear to give correct effect to the intention expressed in EM para 5.7

5.9 Would that automatically mean that any acts of the person purporting to be a director would be invalid?

Cherry picking

I support the proposal

Persons to be named in Rem Report

I support the proposal

General

8.20 I agree with the point about "inertia", but the remuneration point here is only a secondary problem in this context; the major problem is the lack of openness to new candidates, and the self-selecting nature of almost all boards.

8.29 I agree: Option C is the best, on balance.

8.50 I agree with Option B: but see my suggestion in 1.12 above, re requiring a minimum number of votes, to ensure that the process is not abused by special interest groups or hostile parties.
8.69 I agree with option C
8.85 I agree with option B
8.112 I agree with option C
8.129 I agree with option B.

8.118 and 8.128 I strongly disagree with the comment about being only interested in the CEO pay. At a minimum, the current requirement to show all the KMP and Board Rem must stand; but as I noted above it would be desirable to broaden the Rem Report to give some context on the wider Rem practices of the group.

8.147 I support Option B

Implementation date

1 July 2011 is appropriate for most of the new law, but in the new "two strikes" Rem proposals will not take effect for over 2 years. There may be merit in considering an earlier effective start date for 1.17, especially for companies that do not have a 30 June financial year end. For example, the trigger could be the second strike occurring after 1 July 2011. In the case of 7.8, this could be changed to apply to financial years *ending* after 1 July 2011: since it is a simplification measure, not a toughening of the law, that change would be beneficial to companies as it would bring forward the simplification by a year.

Other

S 300A-1AA requires a 5 year performance table; and 1AB(d) says "any other relevant matter". I suggest that the law should require disclosure of earnings per share and Return on Equity, as well as the matters stated in a, b, and c.

Richard Wilkins

8 January 2011