SEVEN'S LESSON ON COSTS OF POOR GOVERNANCE

CRIKEY'S STEPHEN MAYNE LOOKS AT HOW KERRY STOKES AND HIS SHAREHOLDERS LEARNT AN EXPENSIVE LESSON

Shares in The Seven Network have halved over the past year and minority shareholders should look at this as an example of where better corporate governance could have saved them a pile of money.

Kerry Stokes first assumed the chair in 1994 when he raided the Seven share register and deposed incumbent chairman Ivan Deveson.

Independent directors such as Tabcorp chairman Michael Robinson later also quit as Stokes progressively moved to a position of board dominance whereby there is now only one genuinely independent director, former McDonalds Australia CEO Peter Ritchie.

Stokes used his dominant position over the past eight years to drive through related party transactions such as the sale of his privately owned Perth Entertainment Centre to Seven. This has not been a good deal for shareholders and the loss-making centre is now up for sale.

More recently, he committed Seven to a $130 million share buyback at $5 a share. This served to further strain the company's balance sheet which was already overloaded with debt after the purchases of Telstra Dome in Melbourne and Pacific Publications. Stokes did not participate in the buyback so his personal stake in Seven rose from 33.63 per cent to 37.19 per cent.

Now we have the spectre of Stokes being under personal financial pressure with the Seven share price wallowing below $4. Seven itself is also under pressure because of the increased gearing from the buyback and recent acquisitions.

This is where more genuinely independent directors could have helped protect minority shareholders. Maybe they are now paying for their lack of vigilance.

When the buyback proposal and accompanying changes to the Seven constitution were put to a vote last October, there were warnings from some observers but the institutions ignored these and the resolutions were passed with more than 99 per cent support.

Maple-Brown Abbott and the Commonwealth Bank remain substantial shareholders above the 5 per cent threshold and must be regretting not following Perpetual and Deutsche Bank to the exit late last year.

UPCOMING AGMS

The AGM season for the 100-plus listed Australian companies with December 31 balance dates is about to start and there will be plenty of interesting issues to raise from an ethical perspective.

AMP's gathering on May 15 in Sydney will probably be the most contentious due to its financial woes but expect a continuing green presence given AMP has just emerged as a substantial shareholder in Gunns and remains one of Australia's most prolific land clearers through its Stanbroke Pastoral division.

Aristocrat will also come under sustained pressure on April 15 in Sydney due to its plunging share price. Given the misery their poker machines pour down on gamblers, it is disappointing that they don't also face questioning from anti-gambling groups. I've just bought into the stock and plan to vigorously pursue this issue at the AGM.

The ethics of QBE posting record profits whilst jacking up premiums and refusing to insure some classes should become an issue at their AGM on April 10 in Sydney.

Rio Tinto and its uranium offshoot ERA will also expect plenty of attention from unions and green groups.

Other AGMs where we will endeavour to ask questions at over the coming weeks include: Alinta Gas, APN, Austar, Hutchison Telecommunications Australia, Australand, Capral Aluminium, Chiquita, Coal and Allied, Coca Cola Amatil, Consolidated Rutile, Corporate Express, Gasnet, GPT, Guiness Peat Group,

> 'Independent directors could have helped protect Seven's minority shareholders'

Iluka Resources, Joe White Malting, Looksmart, MYOB, Newmont, Oilsearch, Pacifica, Portman Mining, Reef Casino, SFE Corp, Sigma, SPC-Ardmona, STW, Ticor, United Energy, Uecomm, Westfield America Trust, WMC Resources and Woodside Petroleum.

WHO ELSE AFTER STAN SHOULD GIVE THE MONEY BACK

Stan Wallis has set an extraordinary precedent with his decision not to accept the $1.6 million retirement payout he was legally entitled to from AMP after 17 years of service.

The controversy served to highlight the terrible incentives the current system has whereby directors are only rewarded for length of service but are encouraged to jump ship before a collapse to ensure they get paid.

The collapse of Pasminco in 2001 highlights this point. Administrators were called in on September 19, 2001.

Those long-serving directors who sprinted to the exit before the collapse - notably Tony Daniels on June 6 and David Brydon on July 26 - presumably collected their lump sum payment although this is unknown because Pasminco did not release an annual report that year.

But those directors who remained - including David Macfarlane who had telegraphed his resignation for October 30, 2001 - simply joined the list of creditors, just like Ray Williams did at HIH.

The other fuzzy issue this raises is whether director retirement payouts should be lumped in with worker entitlements. Pasminco staff were promised their full entitlements but will the directors ever get paid the full amount owing on the retirement schemes? It all comes down to how generous the banking syndicate is feeling. If directors were paid upfront, this issue would never arise in future and thankfully retirement schemes for non-executive directors are now being phased out.

If those Pasminco directors did share in more than $1 million in payouts then they really should follow the Stan Wallis lead and pay it all back.

WHAT HAPPENS TO HIH DIRECTORS

Justin Gardiner was a former Arthur Andersen partner who went on to join the board of key client HIH and then rose to chair its audit committee, a position he held at the time of its collapse in March 2001.

You would expect that such baggage would have ended his career as a professional director. After all HIH chairman Geoffrey Cohen quit the Foster's board in 2001 due to the embarrassment of being associated with the HIH collapse.

But it seems that some international media and telco companies have no concerns about Mr Gardiner remaining on their boards as an independent director.

Hutchison Telecommunications Australia and pay-TV company Austar will both face their shareholders again in coming weeks and once again Justin Gardiner will be there as the senior independent director.

This has a familiar ring to it. Arthur Andersen was the auditor or adviser to both these companies as they floated during the tech boom in 1999. He then joined the board as a so-called independent director when he arguably was affiliated.

Whilst he might be a capable director, you would think that perceptions would require that he bow out of company boards in light of the culpability that the HIH board collectively has for Australia's biggest collapse.

Then again, Austar and HTA are both companies which floated at $5 and now trade below 30c, so maybe it is appropriate that poor corporate governance accompanies the poor financial performance. ✤