

Editorial

The Law and Governance in SMEs

This issue of the Journal presents a second eclectic mix of papers from the Governance and Law Conference ranging from a paper concerning the legal issues of piercing the corporate veil, to three papers studies of small business finance, to strategic decisions about the factors affecting investment. It concludes with a paper which addresses the governance issues in the not-for profit sector through the governance of superannuation funds.

The corporations law describes the legal identity of a company as being a "separate" entity, or having a separate personality from its owners or managers. In an historical development of the legal form of companies David Parker's describes three theories which assist in understanding the role of companies in society, and how and why piercing of the veil has developed. The author argues that contemporary law lacks an adequate definition of a company and the doctrine of piercing is becoming increasingly irrelevant. In this context he proposes a new definition of a company appropriate for today's society.

Geoff Fader, Chair of the Tasmanian Small Business Council and COSBOA board member has been a great supporter of the Small Business studies by the Governance Research Program in the College of Law & Justice. At the conference Geoff introduced the Small Business Section with an address that raised the issue of financial arrangements when the time came to sell or dispose of a small business. This fitted well with introduction of the following three papers on SME finance.

The extent of and continuing growth of government regulation has emerged as a major issue for government. The main problem appears to be compliance and reporting costs. Small business is believed to be the major casualty of this problem. Lewis, Richardson and Corliss's paper describes the results of a study of 391 small businesses NSW and Victoria. It includes estimates of compliance costs for ten types of regulation, their effect on different sized organisations and how the businesses seek assistance from government, industry lawyers and accountants to resolve the difficulties.

The second paper into small business complements the first paper. Li integrated the supply and demand sides of SME finance in a model that analysed access to finance and the different modes of financing available to SMEs. The review found that Australia lagged far behind efforts to promote SME finance in other OECD countries.

Family business is a major contributor to the economy especially in developing countries. Ediriweera et al's paper confirmed that this was the case in Sri Lanka. In a review of the governance of these types of businesses there is a complex interaction between a family and its business raises issues of ownership, control, succession, performance and governance. In particular, these types of business have a distinct governance structure in many cases unique to a specific family business, and involving both unstructured and structured components. A conclusion was that converting a company to a listed entity is dependent on the needs of the business and not essential for growth.

The issues addressed in this issue, from the corporations law to SME governance illustrate that the regulation of law and the principles of governance play complementary roles in all types and sizes of companies.

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