



YS UP GOVERNANCE AND BOARDS PODCAST

Episode 4 – ASX Listing Rules and Regulatory changes with Scott Standen

Transcript

Intro:

Welcome to YS Up Governance and Boards podcast brought to you by 3YS Owls Governance Consultants. Covering hot topics in governance, risk, latest regulatory changes, and issues keeping directors and executives awake at night. Here are your hosts, Ainslie Cunningham, and Deb Anderson.

Deb:

Welcome to today's episode of YS Up Governance and Boards. Today, we are joined by Scott Standen. Scott is a founder and Director of GRT Lawyers and the GRT Foundation, and he is a corporate lawyer. He leads a team of specialist legal professionals, providing advice to organisations of all sizes, from middle-market, large corporates, and government-owned corporations. Scott's career spans more than 20 years as a corporate lawyer, and has encompassed an in-house general counsel role, Director of Statutory Authorities, and corporate legal advisor to Managing Directors, Chief Financial Officers, and Boards of Directors of ASX listed companies.

Scott is regularly called on by clients to provide strategic corporate advice to Boards of Directors and to project manage merger and acquisition transactions and public equity market transactions. He prides himself in providing technically accurate and commercially focused corporate advice for public, private, and listed companies, Boards of Directors and corporate advisors. Welcome Scott.

Scott:

Thanks, Deb. Thanks Ainsle.

Deb:

That's an impressive bio.

Scott:

Thank you. Well, thank you.

Scott:

So GRT Lawyers has been established now for about nine years. Very simply, GRT does the highest quality work for the highest quality clients in corporate and corporate litigation. So, where we can best assist companies, where we can add most value is those high growth, private companies and small to mid cap listed companies. That encompasses a range of corporate activities, equity capital markets, debt markets, M&A activity, private and public.

And then in parallel with GRT Lawyers, we've got the GRT Foundation, which is a charitable organisation that we've established. A registered charity with a deductible gift recipient status and it

was established to simply help children in our community. We do that through Child's Play, which is a psychology practice, and GiveAbility, which lends out equipment to children with special needs.

Ainslie:

That's very great. So tell us about some of the regulatory changes that have been happening recently, Scott.

Scott:

Well, they've been coming thick and fast since late March in the corporate space. It started out with the ASX and ASEC, with a whole bunch of regulatory changes around capital raising, to facilitate companies that needed to repair their balance sheets that were in trouble with the consequences of the COVID-19 pandemic, to allow them to go and raise capital more easily than perhaps the rules ordinarily allowed them to raise capital.

Scott:

So, there was as a raft of changes that came through, and then since they've come through, the authorities have been revisiting those to see, well, what are the unintended consequences? Is it working the way we want it to work? And they keep tweaking those changes. Fundamentally, they're still in place, but they've required more disclosure and public information.

So to give you some examples as to what's happened, ordinarily a listed company can only raise 15% of its capital in one year, subject to certain exceptions, without shareholder approval. That was increased to 25% at the end of March, And you may have seen if you've been following the press, there's been tens of billions of dollars of capital that's been raised in the last short little while since this outbreak occurred.

Scott:

Part of that requirement, if you're going to rely on this emergency relief, was that you also had to then follow it on with a rights issue or a share purchase plan for your existing shareholders, for the smaller shareholders, so that they didn't miss out, because if you've paid any attention, these have been done at generally steep discounts to the current trading prices, and naturally they're steep discounts to what they were six months ago, typically. So significant amounts of capital have been raised, which is also starting to raise questions in people that I'm talking to, the clients, about well, what does that mean for other aspects of the economy in terms of capital raising?

What if you're wanting to do an initial public offering? What if you're a smaller company that's listed on the ASX? When you can go and buy NAB shares in a \$3 billion capital raising at prices that haven't been seen for a decade or more, what does that mean for capital for some companies, perhaps don't have the same high profile.

Scott:

So, those changes have come in and then since they've come in the ASX and ASIC have required companies to now be much more fulsome in their disclosure about how they've gone about the capital raising, who they've placed the shares with, what policies they had in place in terms of their allocations, because there was some questions around some of the raisings that occurred that perhaps were seen to be favouring different groups of shareholders or new shareholders. So, a lot more transparency now is being brought into those listing rules.

Scott:

And you need to explain to ASX, if you wish to take advantage of this, what they called Emergency Additional Placement Capacity, why you're doing it, what the purpose of it is, and ASX has made it very clear if they don't think that you ought to take advantage of that because you're perhaps not

fitting the underlying rationale for its being in place in the first instance, ASX can withdraw it from any particular company at any particular time.

That was a very significant intervention by the regulators to change those rules for all listed companies. And that's in place for six months as it stands. There were some other changes around capital raising and rights issues.

So typically, there's been a rule if there's a non-renounceable rights issue, which means you can't sell your rights, you couldn't issue more than one share for every single share that you had on issue. So that was waived as well. So now you can do a greater capital raising, so maybe two for one or something like that, and so that that's been brought in place. Again, you have to explain to ASX that that's what you're intending to do.

So, there's been quite a coordinated effort with ASX and ASIC to facilitate these types of things. It will be interesting to see to what extent they continue. As we've seen, we've already seen some sort of paring back a little bit in terms of the disclosure and ASX more recently being more vocal about they may prevent companies taking advantage of this.

Ainslie:

Do you know if they have actually prevented any as yet, or-

Scott:

Not to my knowledge, but they've been bringing out a lot of the changes to the rules and they've been bringing out a lot of additional commentary. And so also some companies have gone to ASX, the night before they're doing the raising, and ASX has said, "Well, hold on. That's not really good enough."

One of the other changes that they brought in associated with this is, ASX listed companies always been able to request a trading halt for two business days while they go and undertake the capital raising. Because of the uncertain environment, ASX has brought in a rule that you can ask for two back to back trading halts, which you've never really been able to do before, except for very limited circumstances. So now you can have four trading days in order to get this done.

Ainslie:

And do you have to apply for those back to back upfront?

Scott:

You do the first time. If you don't ask for it, when you first request the trading halt, you won't get it. So, you have to ask for the two continuous trading halts at the one time. You can always come out of the trading halt earlier if you've completed your capital raising. You have to ask for it upfront, yes.

Deb:

Are there are many companies taking advantage of that two and two?

Scott:

There's been, I'm not so sure about the two and two, certainly lots of companies that additional placement capacity that's been very popular. Some of the companies were balance sheet repair. Some others have taken advantage where they're already a strong company. They already had a good cash position, but perhaps looking forward as to the M&A opportunity that's going to exist down the track, and taking advantage of the opportunity to raise capital right now-

Deb:

Saving up their cash balances for the right opportunity.

Scott:

Yeah, indeed, indeed. And so, we're talking to clients about that as well. Perhaps not the right time necessarily for the M&A activity, still with uncertain pricing and uncertain about what's going to happen in terms of people's revenues and the like, but certainly lots of companies are well and truly getting prepared for that when it comes around.

Ainslie:

And are you seeing many companies take advantage of the additional, instead of the one for one right, the additional placement.

Scott:

It's mostly been the additional placement capacity to go up to 25% of your capital, less so around increasing the ratio on the non-renounceable rights issue, because the thing with the placements is they can be done very quickly. And then you follow that on with a rights issue, or a share purchase plan, for your smaller retail shareholders as part of the larger capital raising. That's one of the core requirements to take advantage of that.

Ainslie:

And is this replacing ... If companies have already gone to shareholders previously to obtain that additional placement capacity, is this in place of that or in addition to that?

Scott:

So, it sits alongside it. You cannot now do more than 25% in a rolling 12 month period without shareholder approval, or without fitting in one of the other exceptions, but you can either take advantage of the ordinary placement capacity, which don't have some of the rules associated with the additional placement capacity. But those other placement capacities, there's a 15%, which every company is entitled to, which is relatively unrestricted. There's another 10% that smaller companies can get via shareholder approval at the AGM. And there are some restrictions around how you can use that additional 10%. So, they sit alongside one another, but they can't be used cumulatively.

Ainslie:

And how are you finding the changes in withdrawing earnings and guidance for companies?

Scott:

Yeah, that's been a really interesting thing to watch and to advise companies on, and ASIC and ASX have both come out again and given some guidance around some of these sorts of things, around continuous disclosure obligations. And a lot of this guidance, isn't new, I suppose it's just reminding companies of their obligations in the context of this very uncertain environment. And so, you would have seen a rash of companies come out and just withdrew earnings guidance altogether. And certainly, if a company hasn't made any comments about its earnings guidance to date, it really ought to be thinking about, "Well, what impact is this having on us? Do we need to go and tell the market something?"

Scott:

And then there's been other companies that have been changing their dividend policies, which again, is a requirement to go and notify the market that you are changing your dividend policy. And there's even been some that have announced a dividend and then come out and announced that they're not going to pay the dividend, because they're going to conserve their cash. And ASX has come out with some specific comments around that, because it has an impact on a lot of the way the market functions and the pricing of certain securities on the market.

And also if there's a legal basis to withdraw a dividend, once it's been declared, and so if you do do that, you have to go and explain the basis on which you're entitled to do so.

Deb:

I think the ASX are giving those announcements a bit of scrutiny, aren't they, at the moment?

Scott:

Yeah, absolutely, they are. And one of the other things they've made comment on is around companies that are making statements around COVID-19. So these can either be statements about the impact it's having on the business, whether it's negative, whether you've got a basis on which to make some forward looking statements, but also some companies that have been looking to somehow take advantage of this by associating themselves with some positive benefit that they may have in relation to the virus.

There was one company that went into suspension for a couple of weeks, because they had suggested they had a oral pill that somehow would inhibit the spread of the virus or something. And so, there's no basis for that, and so ASX came down on that and has reminded companies, the world's very uncertain. It might be appropriate for example, to withdraw guidance, but you can never make misleading, deceptive statements about any sort of forward-looking horizon. If you don't have a reasonable basis to make a statement, then you really can't make any statement at all.

So, no change to the rules around any of those things. Just a lot of fairly terse reminders, I suppose, about obligations.

Ainslie:

Yeah. Speaking of obligations with Directors and Officers, is that something that's worrying to some Boards at the moment?

Scott:

Yeah. I think one of the interesting things, one of the early interventions from ASIC in particular, or from the Government, was to change the insolvency laws for a period of time, for six months. So, the statutory demand process that has existed was changed. So, the minimum amount you could serve a statutory demand for went from \$2,000 to \$20,000. The period of time with which a company had to respond to that went from 21 days to six months, and Director's personal liability for insolvent trading was essentially put on ice for six months.

So, it doesn't take away all of the obligations of a director. They still have obligations to exercise their powers in the appropriate manner, reasonable care, and skill, etc, in best interests of the company. But we're starting to have conversations with people about, "Well, what does this mean for your business?"

So, companies may be getting past this point in time, they've benefited from tax deferrals and grants and all these other things, and if they're consuming that cash, what does it mean for you when some of these holiday periods, if you like, in terms of director liability, insolvent trading, what will that mean when they come off? How are you going to manage your credit risk associated with that sort of thing? And be aware of it, because there may be delayed response to a lot of this as well, I think.

Deb:

There's just been so much regulatory change, hasn't there? It's challenging just to keep up with it. The goal posts move almost daily.

Scott:

Yeah. Look, it's difficult to keep up with regulation at the best of times, but the Government's been working overtime, it's no question over the last couple of months. This is just the corporate regulation, then there's the tax regulation, all the other things associated with what's been occurring there.

So there's no question as Directors, you've been probably flooded with information and really what some of the things are. The information is out there now. Now it's really a case of what is it going to mean? What's it going to mean for the company? Think about these things deeply, and what's it going to mean, longer term, not just the immediacy of the response in the first sort of month or two, but what does it mean when some of these regulations change, and are there delayed consequences from things such as the insolvent trading laws.

Ainslie:

And with the Foreign Investment Review Board approvals, how have they changed in terms of trying to attract foreign investment for some of these companies?

Scott:

Well, it's made the whole process much more difficult that's for sure, because all of the monetary thresholds that used to exist anywhere from zero to \$1.2 billion approximately, they've been wiped out. So, the monetary threshold now for any foreign investment that hits the right quantum, now 20%, is zero dollars, and they've gone from a 30-day review period to a six month review period.

So, there's certainly been projects that we were looking at, people potentially coming to acquire assets in Australia, and they've just really dried up. That whole timeframe, the zero dollar threshold, but the six months in particular has made some of those transactions extremely difficult. The Foreign Investment Review Board has said they'll prioritize things that are in the national interest, but by reducing it to zero, they've just increased the number of transactions exponentially that will need Foreign Investment Review Board approval and therefore the six months.

But for those smaller transactions that perhaps don't justify the national interest test, it'll make some of those very difficult to get away. Really, they're just not going to happen in the near term.

Deb:

And how are you staff coping, working from home?

Scott:

It's been a very interesting experience. I actually think they all seem to be doing very well and probably like everybody we've looked at ways, well, how do we manage that? How do we be creative, innovative? And in many respects, I think we probably communicate more than we did in the office sometimes, in that we very deliberately do a video conference call every single morning now about where things are at. And they'll vary in length, but just having that face to face contact, even sometimes during the day, instead of just doing a telephone call, do a video conference call just to maintain that face to face contact.

And we've found we've actually been really quite productive. So it's opened our eyes if any of us thought that people couldn't work in this manner, that clearly they can, so it will be something that we take into account for our business indefinitely into the future.

Deb:

So when do you think you'll all be back in the office?

Scott:

I don't know. We already have people that are there, we let them go into the office and we're working through now, what are the requirements that we'll need to put in place? What are the protections we'll need to put in place in the office if we do go back en masse? But I think from our perspective at least, because it's working as well as it would be working in the office, there's actually no real rush to do it.

And probably, when it'll go back, people will still have the flexibility to work remotely and, as I say, that's been working really well for us, and I think that'll continue.

Deb:

Particularly if you've got to travel quite long distances, you're more efficient, because you're working rather than travelling.

Scott:

Yeah. Well certainly, we've got some of our staff that live in the city of Brisbane, but I live here on the Coast. And so, for me, it saves me plenty of time during the day. But even some of our staff that do live in Brisbane, they might live relatively close, but by the time they commute, it's still 45 minutes or something. So, I think the balance with your family life and your ability to be more productive in the period of time that you have available, yeah, I think it's worked well.

Ainslie:

So, tell us a little bit more about Child's Play and the Foundation.

Scott:

That's been very important to us. It's been very close to our heart. So, it was something that was at least conceived, and we started the establishment right at the beginning of establishing GRT, and we've financially supported the Foundation all the way through, as well as providing a lot of administrative support.

Scott:

The two arms or the two programs that we run through the Foundation are very personal to Glenn, my business partner, and his wife, on the Child's Play side, and then Giveability on my side, and my wife's side. So Child's Play, Eliza was a psychologist and counsellor to children suffering bereavement and other things in her earlier career. And so, she had a real affinity for that, and really wanted to establish a model that would provide support to children on a not-for-profit basis. And so, we run a childhood psychology practice out at Morningside through the Foundation, and that's been a real passion for Glenn and Eliza and they've driven that.

Scott:

And then the GiveAbility side has been driven by particularly my wife, Jane, from our own personal experiences. We have a daughter who's severely disabled. And so, we understand what families go through in accessing equipment and how difficult that is and how expensive that is and how often your needs change. And so that's been something that's been very close to our hearts. So, we've now got, I think, over a hundred pieces of equipment that we lend out to children with special needs, ranging from wheelchairs, walking frames, standing frames, special needs trikes, speech wheelchairs, et cetera. And so it's been very rewarding, but much harder than we ever thought it would be, when we first established it.

Ainslie:

Yeah, absolutely. There's a lot of red tape around running a not-for-profit and a Foundation that can accept donations and lots of loopholes, not loopholes but lots of hoops you have to jump through with the Tax Office, etc.

Scott:

Yeah, certainly around the establishment, was something that was took quite a lot of time. It was very difficult, and we had to bring in a Board that had more than just us as the initial founders and owners of GRT Lawyers. So, we have a Board that includes other people that have been able to add value to the operations of the Foundation.

I think one thing you learn is though, it's really been about the drive of individuals to make it happen because it's a constant thing to, one, start making it successful. And then when it's successful, it demands more of your time and more of your time. And so it's been, as I say, very challenging, but it's been very rewarding when you see the outcomes and the impact you can have on lives of the children.

Scott:

And that was one of the things when we established the Foundation was we didn't want to just make a contribution that just got mixed with everybody else's contribution, as much as it may have a real benefit, these larger charities, you don't see a direct contribution. So, we wanted to have an immediate and direct impact on the lives of the children that we supported, as opposed to something that was a bit more community based or a broader base. It was more individual oriented.

Ainslie:

Yeah, definitely. That's such wonderful work. And how would people go about donating to these charities?

Scott:

So through the website, the GRT Lawyers' website links to the Foundation and there's details on there as to how to contact both Child's Play and GiveAbility if someone wanted to support us, and we'd certainly be grateful for any support we get.

Ainslie:

Perfect, and what's the website?

Scott:

Grtlawyers.com.au and the Foundation website links off that. There's also a website for GiveAbility, giveability.com.au, and Child's Play, I think it's childplayqueensland.com.au.

Ainslie:

Okay, fantastic.

Ainslie:

Did you have anything else you want to cover Scott?

Scott:

Just trying to recall what other changes there may have been.

Deb:

The only other one is probably AGMs.

Scott:

Yeah, the AGM's been interesting, because of the distancing requirements and the limitations on gatherings and how companies can continue to hold their general meetings of shareholders, which are important functions of companies, to allow them to continue to operate whether they need special approvals or just the Annual General Meeting. And so, we've been working with a number of companies with some of the change ... Some changes in laws and some just guides that have been given via ASIC. But essentially now you can operate virtual AGMs completely online or a hybrid AGM, where there's a combination of online and in-person meeting, and we've been working with companies how to practically implement that. And so, we've got some companies now they're in the process of doing that.

Scott:

And hopefully it actually is a bit of a marker in the ground that these things will continue because I think that the old AGM has its place for some companies, but for many companies, it actually doesn't enable shareholder engagement. It's actually a bit of a barrier to shareholder engagement, and I think a virtual AGM, so long as you can ask questions, and there are processes put in place where everyone can ask a question, actually makes the whole process much more open to shareholders and much more inclusive of shareholders than perhaps the traditional AGM in my opinion. So hopefully that will continue, and the next six months will be perhaps a testing ground, to show that that can be done properly.

Deb:

Keeps the Boards on their toes, because they never know what questions are going to be asked, and they haven't got the audience in front of them.

Scott:

That's right. They can come from all angles.

Ainslie:

All right. Well, I think that's a wrap for today, Scott. Thank you so much for joining us on the show and we look out for some more regulatory changes coming our way, hopefully, and thank you for joining us.

Scott:

It's been my pleasure. Thank you for having me. There's certainly been a lot happening and I think there'll be some level of ... It'll abate a bit now in terms of the changes, but the important things are now, what are the longer term effects of some of these things and how are companies going to adapt in the longer term. So they're the sorts of things we're starting to turn our mind to as well.

Deb:

Thanks for your time, Scott.

Scott:

Thanks very much.

Ainslie:

Thankyou.

Outro:

That's all for today, until next time, happy podcasting. And remember if you're enjoying the show, check out our other episodes and all things governance at www.3ysowls.com.au.