Opinion

FROM THE CAPITAL

How's the JORC code doing?

Core questions about vital reporting standard remain unanswered

John Robertson

Last year's Mines and Money Australia ran a lengthy workshop on JORC code best-practice reporting. In this year's conference, about to start in a few days, the code doesn't feature on the programme. Is everything running smoothly, or doesn't anyone care?

I am in two minds about industry reporting regimes such as the JORC code. A libertarian streak nudges me toward describing the code as counterproductive. If it raises undeliverable expectations about how much protection it gives investors, it could do more harm than good. On the other hand, sound regulation protects the vulnerable and restores power imbalances.

The JORC code does attempt to balance the tension between these two philosophical leanings. Implicit in its development and implementation is the understanding that some in the mining and mineral processing industry, left uncontrolled, will not be entirely honest or always forthcoming about the quality of their investment propositions.

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At the same time, the code's instigators have recognised that its requirements are a potential burden on the industry. They have sensibly eschewed a highly prescriptive approach with the potential to impact adversely the cost of doing business as well as the timeliness of disclosures and their comprehension by investors.

The code could change behaviour in unintended ways. Without a code, investors might be more inclined to treat company claims sceptically and, when in doubt, seek out expert advice. That would be no bad thing. The code may undermine this desirable tendency if investors assume the job is being done on their behalf.

Enforcement of the code makes poorly governed businesses look better than they are. Even the worst run company can pay someone to fill in the forms. Businesses that

would have displayed exemplary reporting and superior investor communication skills on their own initiative will be made to look ordinary. They will have lost credit for important attributes.

Last year's Mines and Money Australia – conducted jointly with the International Mining and Resources Conference in Melbourne – brought together some of the most eminent figures behind the code, as well as people with legal and regulatory roles to speak about its implementation and effectiveness. Four memories linger from those discussions.

First, everyone agreed about the vital importance of nipping bad habits in the bud before they become extensively adopted as industry practice. The workshop speakers anticipated individuals in the industry eying how others were reporting.

What went unchallenged as a minimum would quickly become the norm. This was their fear. Since the 2012 code had only become mandatory in December 2013, there might have been a chance to help cultivate desirable practices where alternative courses were tempting.

Second, presenters emphasised the central and pivotal role of the individual designated as the competent person. This is a role, akin to that of an independent expert in a valuation, who would sign off on a declaration that a mineral reserve, resource or exploration target was estimated in the way the code intended.

The way Kym Livesley, a partner at legal firm Gadens, described the role in his presentation, the competent person is no mere cipher. A competent person may be subject to liability where there has been a failure to apply appropriate care or diligence in preparing documentation disclosed by a company. Misleading or deceptive reports may also be the subject of civil or criminal legal actions, in Livesley's view.

Third, reporting within the code was to be in a "if not, why not" format. Companies, their directors and any appointed competent person were obliged to address all the topics advanced within the code for comment. It was not acceptable to simply say that something was "not applicable". If one of the matters on which comment is sought is considered inapplicable, the competent person is obliged to explicitly address why that is the case.

The fourth of the impressions with which I was left was the powerlessness of individuals to draw attention to failures to meet the requirements of the code. Complaints could be made to ASX or ASIC, but neither organisation was obliged to inform a complainant about whether any action had been taken or explain the result of a complaint. Indeed, secrecy was their firm policy.

The most severe and potentially effective sanction against bad practice is available through the professional association of the competent person. Organisations such as the Australasian Institute of Mining and Metallurgy and the Australian Institute of Geoscientists can suspend membership if they receive a sufficiently serious substantiated complaint about the actions of a member performing the role of a competent person. Sanctions could preclude an individual from acting in that role until membership was reinstated.

These considerations have stuck in my mind because there is regular evidence of sloppiness in the way competent persons are addressing the topics on which they are obliged to proffer opinions.

As a rule, they are more adept handlers of technical data than the financial or economic aspects of projects. The difference in aptitude may not be surprising, but is not more easily excusable for that. Their primary target is, after all, the investment market.

More than one competent person may be needed, in some cases, to properly fulfil the task, but that is not happening.

Mines and Money Australia deserved credit for broaching this central industry subject in 2014. How is the system travelling now? Have the bad habits feared by the code's promoters been avoided? Do the regulators think the code is doing the job they had expected? Is there anyone who wants to put the case for its abandonment? These are pertinent industry matters that would require interested parties to exchange some honest views about how individuals within the industry are behaving.

For that reason, the temptation to discover the truth may not be strong. ▼

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