GOVERNANCE, RISK & COMPLIANCE CONSIDERATIONS IN BUSINESS RESTRUCTURES

A BRIEFING PAPER

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Market and economic conditions and the pace of regulatory change are increasingly prompting organisations to consider restructuring their business to sustain performance. Accordingly, many organisations are faced with the challenge of addressing governance, risk and compliance (GRC) issues in the midst of enterprise-wide change.

This Briefing Paper explores some of the practical GRC issues that organisations encounter when dealing with these challenges.

The current market and economic conditions have required organisations to be flexible and nimble in responding to an environment of uncertainty, increased competition and constant change.

In response to this, organisations are showing an increasing readiness to consider large-scale changes to their business structure and activities in order to sustain performance and maintain market share. In some instances, corporate change could also be prompted by regulatory developments.

One of the many issues that an organisation needs to address during an enterprise-wide change is the impact of those changes on the organisation’s GRC framework and the organisational GRC health generally.

This Briefing Paper will focus on GRC issues arising from an enterprise-wide change which takes place in the form of an acquisition of, or amalgamation with, another entity (referred to as a “restructure” for the purposes of this Briefing Paper), in particular:

► What are the GRC issues that the organisation needs to consider as part of the restructure?
► How can a restructure benefit from taking a proactive GRC approach?
► What are the GRC steps an organisation can take during and after a restructure?

That being said, the principles discussed in this Briefing Paper can apply more widely to all other forms of restructure, such as corporate and management restructures, divestiture of one or more parts of the organisation and/or its business lines, or establishing new entities or business lines, although in our view there is no one-size-fits-all solution.
GRC is a relatively new concept which emphasises the close inter-relationship between governance, risk and compliance and how they can be further integrated to increase their effectiveness within an organisation.

An integrated GRC approach is almost a reversal of the traditional silo approach found in many organisations.¹

A GRC framework does not seek to simply centralise the GRC functions; rather it seeks (over time) to integrate all relevant policies, processes, procedures and controls. Specifically, this approach identifies and standardises these common processes, procedures and controls and ensures that they are consistently implemented and actioned throughout the organisation.

The goal is a consistent approach to governance risk and compliance, particularly to organisational strategy and behavioural management initiatives.

For more information on GRC, please see our Briefing Paper on What is GRC and Where is it Heading?

 Unless there has been a significant legal or compliance breach, or regulatory investigation or enforcement action, it is easy for organisations to adopt a default position: they uncritically assume that their GRC frameworks are performing within expectations and are otherwise fit for their intended purposes.

In addition, organisations have reported difficulty in developing and implementing a strategic GRC vision, GRC goals or agreed approach to GRC development – in particular when determining the organisation’s purpose and performance expectations for its GRC framework and systems.

The lack of a strategic focus on GRC issues typically manifests itself in under-resourcing, waste, duplication of GRC resources and projects, a misdirection of effort and/or outdated organisational GRC goals and objectives.

In light of the above, an organisational restructure does provide a timely opportunity for an organisation to determine:

- what results it requires from its GRC framework (for example, level of performance and assurance, specific purpose, “conformance versus a performance” approach etc); and
- what steps it must take for its GRC framework to meet these requirements over time.

¹ In this Briefing Paper, a “silo” approach occurs when the governance, risk and compliance functions or frameworks in an organisation each have a separate operation and focus, and the employees who operate or have oversight of these functions often may be located in different departments or functional areas with different reporting lines.

² Please refer to the 2007 Paper produced by the Australasian Compliance Institute Working Party on Compliance Issues from Enforceable Undertakings (www.compliance.org.au)

³ In this Briefing Paper, a “conformance” GRC approach refers to a GRC approach which focuses solely on whether or not an organisation has met its legal and compliance obligations. In contrast, a “performance” GRC approach is an approach in which GRC requirements are integrated into and aligned with the organisation’s business and performance objectives. A “performance” GRC approach involves a deliberate focus on how an organisation can seek to meet its business objectives while at the same time ensuring that it is complying with its legal and compliance goals.
HOW CAN A RESTRUCTURE BENEFIT FROM A PROACTIVE GRC FOCUS?

In our view, a proactive attention to GRC issues at the early stages of planning for a restructure can have significant benefits. Amongst others, it allows an organisation to:

▸ consider upfront what (if any) changes are required to its GRC framework in light of the likely changes to the strategic goals, structure, activities and personnel of the organisation post-restructure;

▸ identify upfront any areas of commonality or divergence in GRC practice between the organisation and the organisation or business with which it is merging or amalgamating (in this Briefing Paper, called the “joining entity”);

▸ identify, report and escalate any unexpected issues so that these issues can be addressed before they create an adverse impact for the organisation and the restructure implementation plan;

▸ assess the GRC status and maturity of both the organisation and the joining entity. In turn, this would also allow the organisation to determine the existence of any current GRC issues faced by the joining entity and, importantly, any GRC issues which could materialise post-restructure;

▸ determine its own GRC exposure both as a result of the restructure transaction and post-restructure;

▸ obtain better quality information to assist in its strategic and tactical decision-making during the restructure. In turn, this will allow the organisation to factor in GRC-related action items and components into its restructure transaction program and post-restructure integration program; and

▸ be more resilient during any upheavals and the occurrence of any unexpected issues both during the restructure and post-restructure when the organisation is seeking to bed down the relevant changes.

GRC CONSIDERATIONS DURING A RESTRUCTURE

As with other types of enterprise-wide organisational change, a restructure can create particular GRC issues which an organisation ignores at its peril. We have observed in practice that the majority of restructure-related GRC issues relate to:

▸ a number of or or combination of different organisational cultures and culture climates⁴;

▸ impact of change on organisational strategy, goals, structure, functions or activities;

▸ general alignment of GRC culture and strategy with wider organisation strategy;

▸ ensuring integration of GRC and other organisational systems and business processes;

▸ reconciliation of critical risks and legal obligations and their operation in the context of the restructured entity;

▸ selection and implementation of appropriate “GRC friendly” change management methodologies; and

▸ maintenance of the organisation’s GRC competence at a time when resources and attention are diverted.

In our view, these issues must be considered and addressed proactively and in a timely manner. This is to ensure that, as far as possible during and after a restructure, the organisation’s GRC framework continues operating as intended and is able to provide the organisation’s Board and senior management with the required ongoing level of assurance during integration and transition.

Below are some of the common practical GRC issues which we suggest organisations should be considering at a time of restructure.

Proactive attention to GRC issues at the early stages of planning for a restructure can have significant benefits.

⁴ In this Briefing Paper, an organisation’s “culture” refers to the organisation’s actual body of learned behaviours which act as a template for shaping future behaviour, in other words it’s “the way we do things around here” (Australasian Compliance Institute, The 2 Minute Guide to Compliance, Ethics, Governance and Risk). An organisation’s “culture climate” refers to how the organisation’s personnel perceive its culture and their level of engagement and satisfaction with the organisation’s culture – in other words, “what we think of the way we do things around here.”
MAINTAINING GRC COMPETENCE

A key issue during a restructure is maintaining GRC competence and effectiveness at a time when GRC resources and attention are being diverted and stretched to cover a period of increased organisational activity and change, for example:

- key GRC staff are seconded to the restructure project;
- the GRC function’s attention is spread over an increasing range of activities and issues;
- GRC issues slip in priority in the minds of senior personnel who are occupied with other aspects of implementing the restructure; or
- important GRC initiatives or decisions are deferred pending the completion of the restructure.

Where this happens, it is easy for GRC competence to be lost.

In our view, GRC competence is comprised of:

- **effectiveness**: this is the organisation’s ability to achieve due diligence, i.e. its continued ability to operate within the boundaries mandated by legislation, voluntarily assumed codes of conduct and contracts. When the GRC framework effectiveness is compromised, the organisation would not be able to sustain any due diligence defence if there is a breach; and

- **efficiency**: how does the GRC framework operate within the organisation? We have observed that, to a large extent, efficiency is determined by the level of trust and transparency within the organisation, the degree of integration between the various components of the GRC framework and the organisation’s GRC strategy. In our experience, it is possible (but not desirable) that efficiency of a GRC framework can be compromised to a certain degree without compromising GRC competence.

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5 For further information on the interaction between trust and efficiency, please refer to The Speed of Trust by Stephen M.R. Covey, 2008, Free Press. For further information on how an organisation’s transparency can effect its efficiency, please refer to The Open Corporation: Effective Self-regulation and Democracy by Dr Christine Parker, 2002, Cambridge University Press.
The diagram below demonstrates how GRC competence can fluctuate in an organisation during a structure.

- Restructure commenced – potential or actual fall in GRC performance due to diversion of resource and attention and increased workload.
- Recognition of fall in performance. GRC booster shot needed to restore GRC performance and effectiveness.

Legend:
- **Actual GRC performance and competence**
- **Organisation mandated level of GRC effectiveness and competence**
- **Minimum GRC effectiveness and competence required by law**
CULTURE AND CULTURE CLIMATE

► What is the GRC culture in each entity? Why has this culture developed (for example, as a result of a significant organisational event, competitive environment, regulator prosecution)?

► What are the GRC and overall culture climates in each entity? How are they to be measured?

► How will the restructure impact on the resultant organisational and GRC culture and climate? How will this be managed?

► What goals should be the established for the restructured organisation’s culture and culture climate? What goals should then be set for the periods after integration (for example, will a minimum goal be set at integration and a more ambitious goal set for one year later)? How can this culture and climate be fostered and managed post-restructure? Will a specific culture integration process be required?

ORGANISATIONAL CHANGE ISSUES

Will the restructure involve changes to the restructured organisation’s:

► strategic goals and objectives;

► products and services offerings, activities, or business lines, customer demographic;

► management structure (including reporting lines);

► jurisdictions of operation (nationally and/or internationally);

► critical risks and obligations;

► personnel (in particular, personnel in a GRC-related role or function); and

► situation and reporting lines of the GRC function(s).

Since a GRC framework is often designed and tailored to the above matters, any change in these aspects of the organisation will in turn require a consequential change to the organisation’s GRC framework while maintaining the GRC competence of the organisation.

GRC ALIGNMENT ISSUES

What are the similarities and differences between the organisation’s and the joining entity’s:

► GRC values, goals and objectives;

► risk appetite and risk tolerance;

► policy on legal and regulatory compliance;

► GRC approach – conformance or performance;

► situation of their GRC functions and reporting lines (in terms of organisational and political clout); and

► stakeholder expectations (in particular, regulators).

In our view, organisations must proactively identify and consider these strengths and weaknesses (as well as similarities and differences). If they don’t, they will not be able to identify the potential synergies and obstacles to a successful integration of the respective GRC frameworks.

We suggest that a key outcome when addressing GRC alignment issues is to ensure, as a minimum, that the above factors are maintained in the restructured organisation during transition and integration (if not improved).

GRC FRAMEWORK ISSUES

What are the strengths and weaknesses (as well as similarities and differences) between the organisation’s and the joining entity’s GRC systems and components, in particular:

► the extent of embedding, maturity and integration of each entity’s GRC systems and components;

► the governance structure (for example, structure of the Board, types of Board Committees, Board and Board Committee charters and meeting schedules);

► allocation of GRC-related roles and accountabilities amongst the Board, Board Committees, senior executive, GRC personnel and line staff;

► the risk management program (in particular, risk definitions, risk likelihood and consequence assessment criteria, risk management policy, risk impact ratings, risk action decision matrices etc). The key issue here is the risk tolerance of each organisation and a key decision for the restructured organisation will be to set its new risk tolerance;

► the respective compliance program(s);

► incident and breach escalation, reporting, investigation and rectification procedures;

► the method of allocating governance, risk, legal and regulatory obligations to personnel (in particular, if both entities share a common legal obligation, is the legal obligation allocated to similar roles within the respective entities?);
CRITICAL RISKS AND OBLIGATIONS

What are the strengths and weaknesses (as well as similarities and differences) between the organisation’s and the joining entity’s:

► legal obligations;
► risk definitions and tolerance;
► determination of criticality; and
► method of documenting, reporting and managing critical risks and obligations.

These considerations are important as an organisation’s GRC framework can only operate effectively if these are consistent and aligned.

In assessing these matters, organisations could consider conducting a GRC “health check” to determine if the restructure will result in:

► new GRC risks;
► changes to the type, impact rating and priority of an existing, identified GRC risk; or
► changes to the effectiveness or adequacy of existing risk controls in the context of the restructured entity.

INTEGRATION AND IMPLEMENTATION

1. What systems and components of each entity’s GRC framework will be varied, retained and/or adopted post-restructure?

2. What will be the extent and timeframe for integration of the GRC systems and components? For example:

   (a) full and immediate integration post-restructure of the GRC systems and components from both GRC frameworks;

   (b) temporary concurrent operation of select systems and components from both GRC frameworks post restructure, with a view to full or part integration within a set timeframe. Must GRC activity be temporarily increased during the restructure, and then wound back as the restructured GRC framework is rolled out?

   (c) postponement of full integration of certain GRC systems and components (for example, governance and risk management systems), with the retention and concurrent operation of other systems and components (for example, specific compliance systems).

3. What is the integration and implementation timetable?

4. Which stakeholders will need to be consulted and when?

5. How will corporate GRC knowledge be captured and retained?

6. How will the decision making process and steps taken be documented for due diligence purposes?

7. What level of resourcing will be needed to carry out the integration and implementation tasks?

8. Are there any special culture change issues which need to be addressed? What cultural change management processes are to be adopted? Some organisations have reported benefits in using a formal culture change methodology and leadership process (see for example, the 2007 Paper by the Australasian Compliance Institute Working Party on Compliance Issues from Enforceable Undertakings).
Common Challenges during a Restructure

Before commencing a process to address GRC issues during a restructure, it is beneficial to identify the potential challenges the organisation will face, so it can proactively identify the steps it may need to take to mitigate them.

Organisations have reported that the challenges they have encountered during a restructure include:

► internal politics and power games: organisational restructures can often result in changes to the personnel roles, responsibilities and hierarchy within an organisation. Employees who believe that a restructure is likely to result in an erosion of their power, status and internal influence are more likely to resist the change;

► maintenance of GRC competence: restructures often take up a significant amount of organisational resources and senior personnel with recognised expertise in their respective roles are often diverted from their day to day roles to assist with the restructure. Where this occurs, the ability of the organisation to maintain its “business as usual” competence in critical parts of the organisation (such as GRC) can be affected;

► lack of linkages to business objectives: organisations often do not clearly enunciate the linkages between their business objectives, the restructure and the GRC framework. GRC aspects of a restructure with no articulated discernible business or corporate objectives or benefits are likely to be viewed by employees as valueless and therefore will be deprioritised. This reduces employee buy-in to the restructure and potentially makes post-restructure implementation more difficult and increases GRC risks;

► lack of consideration of GRC issues: GRC issues are often not considered by senior management “up front” when a restructure is being discussed and planned. This results in GRC issues being dealt with “on the fly” or after the event. In many instances, this has resulted in sub-optimal GCR outcomes, since GRC matters then may have to be “shoe-horned” after the event into an established post-restructure organisational framework.

Suggested Methodology for Addressing GRC Issues during a Restructure

Whilst there is no one approach for addressing the GRC issues during a restructure, we suggest organisations could consider the following principles of approach be taken and adapted to their circumstances:

► participative: it is important to ensure that any GRC steps to be taken in the context of the restructure are participative and engages key stakeholders throughout the whole organisation, so personnel can provide their feedback and concerns, and that wider organisational and stakeholder views are otherwise captured;

► structured: developing a structured approach establishes credibility in the process and ensures that maximum value can be derived. It also assists in achieving specified goals and synergies in accordance with stated milestones;

► realistic: it is important to set realistic objectives, resourcing needs, timeframes and deliverables. This ensures that the GRC restructuring steps are not set up to fail from the outset; and

► minimum due diligence and GRC competence: it is important to set a minimum level of due diligence that the organisation needs to maintain at all times during the restructure. This is to ensure that the GRC framework continues to detect, check and prevent breaches so that the organisation is continuously protected during the restructure, and can withstand potential regulatory or judicial scrutiny.

In summary then, we suggest a measured approach be adopted and organisations resist resorting to reactive decision-making. The measured approach provides the opportunity for organisations to adopt sound change management methodologies. This ensures that any changes that are made to “stick” and business “buy-in” and acceptance is maintained.
We have set out at a high level some steps organisations can take (during and post-restructure) to successfully restructure and where necessary integrate their GRC frameworks to their new organisational environment.

While there is no one correct restructuring and integration method, we note that GRC leaders who have reported sound results tended to have included at least the following steps in their restructure program.

**PRE-RESTRUCTURE**

**STEP 1:** Appoint a senior business sponsor who possesses sufficient clout and can invest in seeing the GRC aspects of the restructure program through to conclusion. It is important that the nominated senior business sponsor is also a member of the wider organisational restructure working party.

**STEP 2:** Identify key business representatives and other internal stakeholders who should be involved with the GRC restructure program and to act as champions within their business units for the GRC steps taken during the restructure.

**STEP 3:** Establish a GRC restructure working group – develop a small (say 4 or 5 person) Working Group to determine how the entities’ GRC frameworks can be integrated and to oversee the overall GRC framework restructuring program.

**STEP 4:** Formulate trial GRC goals – the Working Group formulates a set of proposed restructure goals from a GRC perspective. The goal outputs in this Step 4 can then be tested against the Step 5 health check and risk assessment described below.

**STEP 5:** Conduct a health check of both entities’ GRC frameworks and an impact assessment of key GRC restructure risks – the Working Group then conducts a health check review of both the organisation’s and joining entity’s GRC frameworks and identifies any key GRC restructure risks. The goals established by the Working Group in Step 4 above may assist the organisation in directing the focus of its health checks and risk assessments. If the findings from the health check and risk assessment warrant it, the Working Group may need to allocate additional resources to give the organisation’s GRC function a “booster shot” to enable it to maintain GRC competence during the restructure process.

**STEP 6:** Develop GRC restructure implementation program – the Working Group then prepares a GRC restructure implementation program (to fit into the wider restructure implementation program) which outlines its findings and any issues arising from its health check and risk assessment in Step 5, and more importantly, its recommendations and restructure action plan, milestones and timetable. After approval, the final GRC goals and any necessary risk mitigators to address the impacts of any GRC risks identified in Step 5 should also be developed and documented in the GRC restructure implementation plan. Finally, the GRC restructure implementation program should contain a communication plan to ensure that the organisation’s personnel are kept informed of relevant developments.

The outputs from Steps 1 to 6 should then be tabled before the wider organisational restructure working party for endorsement and ultimately for inclusion in the wider organisational restructure implementation program. This is vital to ensure that the GRC restructure steps form part of, and are not perceived to be separate from, the wider restructure and implementation program.
**DURING THE RESTRUCTURE**

**STEP 7:** Internal briefings – conduct internal briefings with key executives and other stakeholders upfront to appropriately position and raise awareness of the GRC framework restructure program’s objectives, drivers and progress.

**STEP 8:** Rollout of GRC restructure program – implement the GRC restructure implementation program developed in Step 6 with ongoing monitoring, reporting and adjustment against set milestones and timeframes as required and in conjunction with the wider organisational restructure rollout. Adjustments in accordance with sound culture change methodologies is vital here as is documentation.

**POST-RESTRUCTURE**

**STEP 9:** Post-restructure capstone review – set a date and plan for a post restructure capstone review to test the internal alignment and consistency, operation and effectiveness of the revised GRC framework.

Crucially, the capstone review should also capture the learnings identified by the Working Group and any adjustments made to ensure that all the decisions made by the organisation and the Working Group in Steps 1 to 8 (and their underlying reasons) were documented as those decisions were made. This is important from a due diligence perspective and is a key element for protecting the organisation if any legal or compliance breaches were to occur during the restructure.

The capstone review should also ensure that the revised GRC framework:

- reflects the GRC restructure goals identified in Steps 4 and 6;
- is effective in addressing the key GRC risks identified in Step 5;
- contains the GRC risk mitigators identified in Step 5; and
- meets the milestones identified in Step 6 as per Steps 7 and 8.

Following the post-restructure capstone review, the revised GRC framework may need to be further adjusted in the light of any outcomes of the review and feedback from the business or to give effect to the wider GRC approach (eg. to have more ambitious objectives after bedding down the restructure).
We have provided a high-level discussion of how we see organisations dealing with the GRC issues arising from a restructure.

We have had the privilege of assisting organisations in both the public and private sectors with the restructuring and integration of the GRC frameworks during and following an organisational restructure.

Some GRC professionals we spoke to commented that during a restructure, their organisation is faced with two choices – they either accept what they get post-restructure or they manage what they are to get pre-restructure rather than simply leaving to chance. A proactive focus on GRC issues at the time of a restructure enables an organisation to have a greater chance to determine its GRC framework post-restructure.

While as with any significant change management program there are always many challenges to be overcome, in our view GRC leaders have found that the investment in time and effort to be worthwhile to ensure that the restructured GRC framework, amongst other things:

► remains aligned to the organisation’s corporate goals and objectives, activities and business lines;
► continues to provide the organisation’s Board, senior executives and employees with the required degree of assurance and protection; and
► reflects the organisation’s risk profile and key legal and regulatory obligations.

Significantly they have formed this view, not only from a GRC perspective, but from their discovery that a measured, considered and well-implemented GRC restructure program can assist the organisation in cementing the wider corporate restructuring and also to realise the benefits from the restructure.

We trust that this briefing paper will be of practical assistance in assisting you to achieve the desired outcomes from your restructure.

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