What is a good company?

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Responsible corporate governance means more than following the legal minimum, writes Justine Nolan.

Yet another corporate scandal is looming. Allegations of fraudulent conduct on the part of James Hardie Industries to shield itself from liability for asbestos compensation claims are simply the latest in a long line of recent corporate scandals.

One.Tel, Enron, HIH, WorldCom - how long will the memories of this last? Long enough to deter other companies from making similarly questionable arrangements to limit liability for problems they have caused?

Initial reactions to such scandals are predictable - words from company directors, legal advisers, shareholders and politicians at the time of the scandal, then more outrage, denial and often surprise at what occurred when the subsequent court case or inquiry takes place.

But as time passes, memories fade and the victims are left to pick up the pieces. Ethics, morals, responsible decision-making are all concepts that seem out of place in the contemporary boardroom.

Beginning in the 1990s, decisions were made by the James Hardie group to reduce the assets of its subsidiary company that would be available to asbestos claimants. Hardie has long taken advantage of an outdated concept in company law that allows a "corporate veil" to be drawn between the activities of a parent company and its subsidiaries, effectively cushioning the former from liability - a legal manoeuvre that involves a triumph of form over substance.

Did not any of Hardie's executive officers, its board of directors, its legal advisers query the ethics of such decisions, or were they condoned or even encouraged as the most expedient course of action? Simply because elaborate corporate structures may be "legal" does not mean that they are always right.

Other companies commonly resort to similar defences, relying on the legality of corporate structures to shield them from responsibility. Coca-Cola's initial reaction to violence in its supplier's bottling factories in Colombia was to dissociate itself from that supplier. It also argued that its US headquarters had no responsibility or legal liability for the violence.

Responsible corporate governance means more than following the minimum required by law. It requires that a company consider the long-term impact of decisions on all their stakeholders, and that includes employees.

Recent international developments in the corporate legal regimes of Britain, France and South Africa are encouraging companies to adopt a broader definition of stakeholders that includes more than just a company's shareholders.

A greater degree of transparency and disclosure is being encouraged and, in these particular countries, actually required. In essence, it's about making decision-making ethical as well as legal.

The UN, too, is encouraging more vigorous debate. Its Norms on the Responsibilities of Transnational Companies and Other Business Enterprises (2003) was released a few months ago.

Though not yet with any legal standing, the UN norms would prevent any conglomerate from denying responsibility for questionable practices undertaken by one of its subsidiaries or distributors.

The growth of interest in corporate responsibility in recent years has stemmed largely from recurring examples of corporate irresponsibility.

While the primary relationship between business and the community continues to be an economic one, rising public concern and growing mistrust of business methods should sound a warning for companies to consider more seriously their ethical commitments.

Responsible decision-making requires assessment of issues that extend beyond the short-term bottom line.

Justine Nolan is a lecturer in law at the University of NSW.

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