CONTEMPORARY CORPORATE GOVERNANCE: An Enabler or a Distraction?

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2017 is the 25th anniversary of the publication of the Report of the Committee on the Financial Aspects of Corporate Governance. This year's London Global Convention on Corporate Governance and Sustainability provides an opportunity for attending business leaders to reflect on the legacy of the group chaired by Sir Adrian Cadbury. The principles they set out may still resonate today, but have the elaboration, review and application of the resulting code and the work of subsequent committees added value or resulted in a loss of focus and too many detailed rules?

Questionning Contemporary Governance

Is there now too much emphasis upon compliance and the avoidance of risk? Is insufficient attention given to innovation and entrepreneurship? Have there been fewer corporate governance failures? Are today's directors noticeably more competent? Are boards evidently more effective? Are they taking better decisions? How applicable and helpful are today's corporate governance codes to non-listed companies, public bodies, professional practices, voluntary organisations, SMEs and family businesses? What about the non-financial aspects of corporate governance?

Is asking a company secretary to check compliance with a governance code enough? Should boards be asking fundamental questions about their role, how they operate and the value of ritualistic events such as monthly board meetings? Given the variety of listed companies, should we worry about the lack of diversity and innovation in governance arrangements? Should we be concerned rather than pleased that companies in such differing circumstances are so compliant with a particular model? Why don't more boards justify doing something different that is right for them?

Has corporate governance reached a cross roads or has it already lost its way? Does it need to change direction? Compliance with goverance codes may have had an impact upon board structures. However, what impact if any has the contemporary corporate governance community had upon the conduct of directors and boards? Have they lost the plot? Have they largely ignored the interests of key stakholder groups? Why has it taken them so long to recognise the importance of director, board and corporate behaviours? What value do many directors and boards add? Do we need to revisit the purpose of boards and the legal duties and responsibilities of directors?

Issues, Trends and Perspectives

The London Global Convention provides an opportunity to reassess the relevance and effectiveness of current governance arrangements. Some intending delegates might already be thinking about how they and the boards upon which they sit might add more value. What would they like to see more of and/or less of? What principles and practices of corporate governance and reporting are conducive of remaining relevant, current and competitive? What would foster the investment, responsible conduct and innovation needed to address challenges and create or seize opportunities?

Is corporate governance stuck in a groove? If convergence of standards and practices is occuring, is this because similar lessons are being learned in different places, or because local circumstances and different requirements are not being addressed? Should directors look beyond standard models and current codes and establish an approach that is right for a particular company and board in relation to the situation they are in, the company's activities and stage of development, the board's aims and the challenges and opportunities it faces? Are there other sources of advice or guidance?

Boards face a range of issues, such as disruptive technologies and new business models at a time of uncertainty and unpredictability. Trends and developments need to be monitored and their possible impacts assessed. Changes to governance arrangements may be required where appropriate. Too often governance is a structure set in concrete rather than a flexible, living and learning system that is continually adapting to change. Will Governments and regulators engage and be alert to rapidly evolving requirements? Can their processes move quickly enough to enable adpatation to occur?

Managing Risk and Preventing Fraud

A board has to balance the creativity and entrepreneurial risk involved in making progress and building a business with the prudence and control needed to comply with rules, policies, laws and regulations. Business development needs to be legal, responsible and sustainable. When significant numbers of people cooperate, freedom is often

conducive of innovation. However, some concentration of power and authority is usually required to ensure a degree of order, alignment and collaboration and to enable choices and collective decisions to be made.

Directors need to ensure that companies do not incur levels of risk that are disproportionate or excessive in relation to likely returns and what is acceptable to investors and other stakeholders. Boards should establish a risk appetite for various corporate activities. What is thought to be desirable in one area might be inappropriate in another. While profitable, some behaviours and forms of conduct might be socially unacceptable and/or give rise to legal and/or financial penalties. Risks need to be managed and, where necessary, compliance assured without inhibiting innovation.

Situations, circumstances and business models can change. To remain relevant and competitive, one may need both resilience and flexibility. Nettles may have to be grasped. If risks must be incurred and/or emanate from outside a company, how might they be best mitigated and reduced? Some areas of risk such as fraud and a range of cyber threats are ever present. How might they be prevented and recovery achieved should they occur? How does one ensure that risk based approaches to compliance and internal and external audit reflect the actual risks facing a company?

Fraud, cyber security lapses and corruption harm many people. Addressing such risks can require vigilance, appropriate conduct and collaboration across a company's operations and network of relationships. Are some boards too concerned with the financial priorities of certain investors at the expense of the wider interests of other stakeholders? How might an element of democracy and greater stakeholder involvement be introduced into the running of a company? Would this be desirable? Is it inevitable where there are alternatives to a company and stakeholders have a choice?

Stakeholder Engagement and Relationships

For many companies members of other stakeholder groups have more “skin in the game” than most shareholders. The income of employees and the welfare of their families may be totally dependent upon their jobs, whereas a small shareholding may be just one of many held by an investor. The loss of any one of these might not be significant. Does corporate governance with its emphasis upon the rights of shareholders miss the bigger picture? The challenge for many boards is to maintain mutually beneficial relationships with a range of stakeholder groups and to avoid any one of them gaining disproportionately at the expense of the others.

What are the do's and don't of shareholder engagement? How can one achieve a value adding relationship without encouraging unwelcome interference by a motivated and unrepresentative minority of investors? Might making special arrangements for shareholders result in their vested interests being pursued to the disadvantage of other stakeholders? How many shareholders have the time, inclination and motivation to become more involved? Do their dividends take priority over the long term interests of companies? Might a vocal minority of responders become a distraction?

Transparency and trust can build and sustain relationships. Would wider buy-in to a vision, a mission, an ethical or performance culture, or to corporate goals, values, policies, strategies and objectives, make their achievement more likely? Where stakeholder involvement and community engagement is thought to be beneficial, how should one set priorities and best monitor, manage and resource the process? Do governance requirements help or hinder wider engagement?

Widening Perspectives and Involvement

Directors should have regard to the interests of various stakeholders when board decisions are taken. Might widening involvement and devoting more attention to sustainability and the social responsibilities of business help to restore public trust in companies, governance arrangements and capitalism? When power is in the hands of a minority, clique or small group, some means needs to be found of ensuring accountability to the majority. Where the latter are unable to exert influence on those in governance roles they may become disgruntled. Excluded individuals and groups may plot and scheme as they look for ways of exerting greater influence and bringing about change.

Will boards be blamed as automation, internet businesses, self-service, e-government, robotics, drones, artificial intelligence, self-driving vehicles and the shared economy destroy and/or replace current jobs? Will disaffection grow to the extent of triggering riots or a revolution? Some companies have already faced strikes, employee resignations and defecting customers. How should digital technologies and social networking be used to engage stakeholders and build better relationships with them and with business and supply chain partners? Would different business, organisational and governance models better enable companies and communities to cope?

Those who feel they have a significant stake in an enterprise are more likely to be engaged. In the case of many listed companies, ultimate ownership is widely dispersed and apathetic. Individuals hold diversified portfolios within which an individual investment might not justify a significant allocation of time. In any event, when such investments have been acquired via a pension fund or collective investment vehicle, voting rights may be in the hands of fund managers. For certain companies however the challenge is dealing with engaged and motivated investors, some of whom may not be shy of expressing their views on social media and elsewhere and seeking wider support. As founders seek to maintain control, will we see more issues of non-voting shares?

Building Better Boards

The consequences of inadequate governance are sometimes easier to identify than the benefits of better arrangements. Assessing impact upon performance is complicated by unrelated variables and the risk of identifying an association rather than a cause and effect relationship. The boards one encounters vary greatly in relevance and effectiveness. Some are rubber stamps managed by a strong CEO, CMD, chair and/or inner group. Others, preoccupied with internal, executive and operational matters, are not thinking longer-term and/or providing strategic direction.

How can boards provide strategic leadership and release latent capability, potential and talent across a company and its value chain? What steps can they take to encourage challenge, creativity, innovation and entrepreneurship? How should directors be helped to exercise independent thought in place of groupthink and become more engaged in formulating strategy? What should be done to increase awareness of cyber threats, or the possible implications of disruptive technologies and new business models? How might directors break away from a traditional board and committee structure to create one that best

enables them to transact business as and when required? Can one monitor and control activities without stifling them or constraining the search for better alternatives?

Whether to better hold onto power and/or to improve their performance, confident boards enlist help and support. They are willing to learn from others and good practice elsewhere. They are also prepared to pioneer and go out in front. Control of resources allows them to hire relevant sources of advice. Could more and better use be made of a company secretary, a chief legal or risk officer, or an internal auditor? How might these professionals become less invisible and more indispensible? They may share a board's interest in good governance. With the right advisors they may be able to help a board and its members to evaluate their performance and identify areas for improvement.

Even if they do not necessarily agree with them, people are often more comfortable with decisions if they believe that due process has been followed and the exercise of power has been legitimate. Hence the importance of effective board processes and procedures. Were a range of options or competing proposals considered? Was sufficient time allowed for discussion? Has a board exercised moral and ethical leadership? Is the right tone being set from the top? Is a board earning respect as a result of its own conduct? Is it behaving in a responsible and sustainable way?

Boardroom Issues and Challenges

Boards and their activities, errors of judgement and omissions continue to be under the spotlight. Despite the attention given to various codes and guidelines there have been some catastrophic failures of corporate governance. Some directors have missed golden opportunities while others have seized them. Companies have been driven into the ground. Many boards are narrow and lacking in diversity. Should more be done to increase the proportion of women directors, or to widen the gene pool from which directors are selected?

Should the public, voluntary and professional sectors rejoice or be concerned that they have been no-go areas for much of contemporary corporate governance? Do some of its cornerstones miss the point? Shouldn't boards play a more positive role in innovation, responsible risk taking and building a better tomorrow? Why are so many boards excessively cautious and risk averse wet blankets, smothering initiative, preocupied with compliance and either oblivious to opportunities or perceiving them as problems or threats? Has a focus upon independent directors divided boards? Have we lost sight of the individual and collective duties and responsibilities of all directors?

Should directors and boards do more to ensure that corporate governance codes, standards and regulations are current, relevant and reflect contemporary realities and concerns and a wider range of interests? Should more attention be given to ethical and other codes and best practice guidance for investors and other stakeholders? Given what has happened to corporate governance, might this be counter productive? Are new and revised rules, regulations and codes required in areas such as insolvency and corporate rescue and recovery from potential insolvency? What else would benefit from a review? How can boards work with regulators without compromising their independence?

The Fashionable and the Fundamental

"Culture" is fashionable, but is it fad? Are behaviours the issue, what people from various cultures and with differing beliefs actually do? What about the characters, personalities, motivations and conduct of directors? Are the right attributes being sought in new appointees to boards? Achievement, intelligence and judgement may have been demonstrated in the past, but are the qualities which led to board appointments still evident today? Do directors have the information and support they need to make effective decisions? Do they take steps to remain current and competent? London attendees will have opportunities to question, reflect and reassess development priorities.

In addition to discussing corporate governance issues, London Global Convention conference participants will also consider the sustainability challenges facing boards. Sometimes apparent harmony within boards papers over cracks and is evidence of a lack of challenge and diversity of thought. IOD India's conventions are designed to encourage networking and the presentation and discussion of a range of viewpoints. There will also be opportunities to recognise and learn from the achievements of winners of the Golden Peacock Awards for Corporate Governance and Sustainability and participate in a Global Business Meet at the UK Parliament's House of Lords. ■

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