Theme Paper

17th London Global Convention on Corporate Governance and Sustainability

The Board: Emerging Issues of Corporate Governance and Sustainability Challenges

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Is corporate governance maturing or moving in the wrong direction? Twenty five years ago the Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury, 1992) was published. The work of this group chaired by Sir Adrian Cadbury has had such a significant impact on the development of corporate governance in many jurisdictions that a history of the committee itself has been produced (Spira, 2013). The principles they set out in 1992 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? Has prescription replaced discretion and the thinking application of principles to particular circumstances?

Questionning Contemporary Governance

Is there now too much emphasis upon ticking boxes on checklists, compliance and the avoidance of risk (Coulson-Thomas, 2017a & b)? Is enough 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? How relevant to emerging markets is a UK or US approach to corporate governance, as compared with, say, a South African one (Mishra et al, 2013)?

Is more than asking a company secretary to check compliance with a governance code required? The duties of company secretaries were summarised and significant at the time the Cadbury Committee was at work (ICSA, 1992), but should boards themselves ask more fundamental questions about their role, how they operate and the value of ritualistic events such as monthly board meetings? What do many boards contribute? 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 behaviours of directors and boards? Has it forgotten the interests of key stakholder groups and the responsibility of directors to work for the future success of a company? Why has it taken them so long to recognise the importance of director, board and corporate behaviours? Do we need to revisit the basic purposes of a board and the legal duties and responsibilities of directors, or is the issue that they are too often forgotten?

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 about inclusion, sustainability, the environment and social responsibilities? What would foster the investment, responsible conduct and innovation needed to address business, economic, social and community challenges and seize opportunities? Could governance changes contribute to greater innovation in the public sector (Torfing and Triantafillou, 2016)? Must the process of Government remain largely a no go area?

Is corporate governance stuck in a groove? Are there too many vested interests in favour of ever more rules and costly compliance? 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 adaptation to occur? For example, how might regulation and governance be applied to the sharing economy and crowd-based capitalism and to activities, networks and institutions related to them (Sundarajan, 2016)?

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, the concentration of power and authority may also be required to ensure order, alignment and collaboration and to enable choices and collective decisions to be made (Durant and Durant, 1968). In the case of many boards, is there a danger that they might become overloaded to the extent that directors narrow their focus, consider fewer options and take less rational decisions (Allison, 1971, Allison and Zelikow, 1999)? For many companies, is this an actual or potential governance related risk?

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. Although 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, if they occur, how should recovery be achieved ? How can one ensure that risk based approaches to compliance and internal and external audit reflect the actual risks facing a company and do not frustrate creativity, innovation and entrepreneurship (Coulson-Thomas, 2017a & b)?

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

How many directors revisit past assumptions about the purpose of enterprise, or Charles Handy's (2002) question: “whats a business for”? How many boards voluntarily engage with the UN Global Compact (2000) initiative and report steps they take towards a more sustainable and socially responsible business? Unlike short-term and algorithm driven traders, are younger people more concerned with such issues? Do they hope that business leaders will show more commitment to a wider range of such interests? Are enough directors passionate about their companies and their contributions? Should directors and boards do more to show that they also care (Cardon, 2008)?

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 diversified investments 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? Some of them may be interested in environmental, social and governance matters. Others may be short-term traders rather than long-term investors. How can one achieve a value adding relationship without encouraging unwelcome interference by a motivated and unrepresentative minority of investors or other stakeholders? Might making special arrangements for shareholders result in their vested interests being pursued to the disadvantage of other stakeholders? How many shareholders have the competence, time, inclination and motivation to become more involved? Do they give their dividends priority over the long-term interests of companies? Might a vocal minority of responders become a distraction?

Shareholder and Stakeholder Responsibilities

Effective relationships can require commitment from all the parties involved. Prior to the Cadbury Report (1992) steps were taken by the Institutional Shareholders Committee (1991) and others to make shareholders aware of their responsibilities. The California Public Employees’Retirement System takes its stewardship responsibilities seriously and has set out its investment beliefs (CalPERS, 2015) and articulated what it considers to be global principles of corporate governance (CalPERS, 2011). Do more shareholders, especially institutional investors, need to emulate their example and/or step up to stewardship responsibilities such as those set out by the UK's Financial Reporting Council (2012) or Tomorrow's Company (2012)? Is there more that smaller shareholders could or should do? Would other stakeholder groups benefit from more guidance on how to engage with companies and their boards?

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

Would dialogue and greater mutual understanding help to address the issue of short-termism, or are a wider set of actions required along the lines of those suggested by the review undertaken by John Kay (2012) of UK equity markets? Is the required collaboration and combination of steps needed for a more joined up approach likely to occur when those involved are busy and have other priorities? Given the fragmentation of responsibilities for better governance and the vested interests involved, is it unrealistic to expect a more comprehensive and coordinated improvement strategy? Is short-termism less of an issue for family owned companies, where controlling family members or trustees may feel less constrained by any other owners and more able to take a longer-term view?

Widening Perspectives and Involvement

Concentration of power in the hands of a strong and hopefully wise leader is one traditional governance solution, but even the best of people can make mistakes (Durant and Durant, 1968). As Lord Acton (1985) observed power corrupts. Unless constrained and guided by influential hands, the best of CEOs can go off the rails. Do CEOs of US listed companies in particular have too much power? To avoid autocracy and dictatorship, in many contexts at different points in history authority has been given to a group, whether an oligarchy or, in the case of a company, a board. The issue in political contexts can then become one of whether this minority is representative of the majority, or represents the particular interests or an elite. Directors of a company should endeavour to be free of obligations that constrain their independence and prime duty to the company itself.

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 (Bowen, 1953)? When political power is in the hands of a minority, clique or small group, some means needs to be found of ensuring accountability to the majority (Durant and Durant, 1968). 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. If directors and boards are perceived to be acting against wider public interests, will there be more calls for Government intervention?

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 (Kaplan, 2015)? Will disaffection grow to the extent of triggering riots or a revolution? Some companies for various reasons have already faced shareholder revolts, employee resignations and defecting customers. How could 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 engage, collaborate and cope?

Building Better Boards

The consequences of inadequate governance are sometimes easier to identify than the benefits of better governance 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, contribution 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. Are too many boards defensive and perpetuating and protecting past practices rather than being proactive and creating new options and choices (Coulson-Thomas, 2001)?

How should 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 (Coulson-Thomas, 2017c & d)? How should directors be helped to exercise independent thought in place of groupthink (Janis, 1972)? How might they 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 activities be monitored and controled 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.

Legitimacy and Boards

Sometimes the advice received by boards is too narrow or even erroneous. Strong individuals are sometimes told what others believe they would like to hear. Inputs are selected to coincide with existing prejudices or confirm what a group would already like to do. Following the 2008 financial crisis, could further consequences of governance failures that impact on total populations lead to more questioning of governance practices and the legitimacy of power exercised by strong CEOs? What further checks and balances could and should boards and/or regulators introduce? Might such intervention lead to unintended consequences and are there some risks for which regulation and other forms of intervention might not be appropriate (Better Regulation Commission, 2006)?

Does the best hope of restoring public trust and ensuring perceived legitimacy lie in collective commitment to ensuring the competence of directors and the effectiveness of boards? Openness to ideas and possibilities and a willingness to listen and learn can lead to continual adaptation. This may be preferable to sudden and disruptive change that might threaten relationships and lead to further questioning of corporate conduct. On occasion, such as when a new business model has clear advantages, rapid adjustment may be needed to avoid being left behind.

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 other options or competing proposals considered? Is sufficient time allowed for the discussion of agenda items? 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? Are relevant interests and parties consulted? Would the legitimacy of decisions increase if an element of democracy were introduced into governance and management practices (Arneson, 2003)?

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 often apathetic. Many individuals hold diversified portfolios within which, as mentioned above, 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 may be a different one of 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. Are boards aware, sensitive, flexible, balanced and proportinate when determining whether or not and how to respond?

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 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 as suggested by the Tyson Report (2003), or to widen the gene pool from which directors are selected? Would greater diversity and freedom of thought in boards and across corporate organisations stimulate creativity, enable innovation and support entrepreneurship (Coulson-Thomas, 2017c & d)?

When civil servants compile a governance code for an area of the public sector the result can sometimes be flawed (e.g. Monitor, 2013). Should parts of 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?

For many years before the Cadbury Report (1992) stressed their importance, independent directors had their champions (e.g. Tricker, 1978). Are they the panacea that their high profile in governance codes might suggest? Has the contemporary focus upon independent directors been excessive? Has it divided boards? For many companies, what contribution have independendent directors made to better corporate governance (Kumar, 2013)? Have we lost sight of the individual and collective duties and responsibilities of all directors? Is the real issue that all directors should exercise independent judgement and be free of obligations and vested and special interests that might prevent them from being objective? Rather than one set of directors acting as a check upon another, shouldn't they all be working together for the future success of companies?

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? What are they contributing to the social responsibilities of business (Bowen, 1953)? 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?

“Culture” has become fashionable (FRC, 2016). Is it a fundamental issue or a fad? Are behaviours rather than culture the issue, what people from various cultures and 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? While achievement, intelligence and judgement may have been demonstrated in the past, are the qualities which led to appointments as directors still evident in today's boardrooms? Do directors have the information and support they need to make effective decisions? Do they take sufficient steps to remain current and competent?

Adressing Sustainability Challenges

Finally, is the current pattern and model of growth sustainable (Higgs, 2014)? A major challenge for many boards is balancing short-term requirements emanating from market, competitive and other pressures with longer-term challenges such as ensuring environmental sustainability and coping with the impact of climate change. In the process, are new business possibilities being overlooked? Entrepreneurial boards recognise that where trends and developments impact upon customers and other external parties this can create an opportunity to craft offerings that enable them to cope. Addressing sustainability challenges requires openness and transparency in acknowledging and confronting realities, resilience and flexibility when withstanding pressures, and innovation where more than incremental improvement is required.

Are boards doing enough to ensure the openness, transparency, resilience, flexibility and innovation required to develop more sustainable practices and business models? Are they aware of voluntary Paris Agreement (2015) obligations and focused upon UN (2015) sustainable development goals? Are directors engaging with management, those for whom they are responsible and other stakeholders to ensure they understand the issues, what needs to be done to ensure sustainable and inclusive growth and development, how their companies and others will be affected, and how they might contribute? Are goals, objectives, strategies, policies and priorities being reviewed and changed where appropriate? Have constraints and limiting factors been identified? Are more sustainable practices and green growth solutions being developed, scaled up or rolled out?

The questions of to whom a board is accountable and for what, and whether responsibilities and accountabilities need to be widened beyond the financial interests of shareholders, is particularly pressing in relation to the environment and sustainability. The creativity of companies in reducing renewable energy costs needs to be followed by other innovations. The nature and scale of the challenge has also broadened certain reporting requirements to encompass environmental issues. Are boards doing enough in environmental monitoring and their adoption of integrated performance reporting? Is the information that they do provide actually wanted, read and used? Could and should compliance and performance for sustainability be made more accountable?

Future Prospects

In relation to many of the issues to be considered at the 2017 London Global Convention is there a case for additional, better and more flexible Government action, or are we already over-regulated? In the case of the environment and sustainability, effective regulation in a country such as India is a significant challenge (Mejia, 2009). How cost effective are regulators and how should their performance be measured (Radaeli and Fritsch, 2012)? Is too much of the existing regulatory activity and Government intervention adding to the costs of doing business and counter-productive (Crews, 2017)? Do boards need to become more involved in the process of the formulation and implementation planning of interventions, not to protect their vested interests, but to help to ensure relevant, timely and proportionate responses, and to create better outcomes in terms of ease of implementation, enabling innovation and beneficial impacts?

Should we be optimistic or pessimistic about the future of corporate governance and/or more sustainable corporate aspirations, business practices and lifestyles? How many more reports, task forces and working parties will there need to be before the public notice governance improvements? Is it only when corporate failures and governance scandals occur that people reflect on directors and boards? Will enough entrepreneurs and directors explore new ways of operating and governing and deliver the innovations that will enable us to address our governance and sustainability issues?

Further Information

Details of the 17th London Global Convention on Corporate Governance and Sustainability can be found on: http://www.iodglobal.com/london-global-convention-2017.html

The convention is organised by the Institute of Directors: http://www.iodglobal.com/

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