



# THE FUTURE OF CORPORATE GOVERNANCE

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Sir Martin Sorrell the founder and former CEO of WPP, the world's largest advertising and PR group, has expressed the view that where founders and strong CEOs retain control, companies can take more risks and tend to outperform those that follow what many regard as "good" corporate governance practices. Are enterprises controlled by founders better able to provide continuity, take risks and cope with difficult market conditions? Do certain current corporate governance practices lead to risk aversion and stifle creativity, innovation and entrepreneurship?

## **Should more existing quoted companies de-list in order to free themselves of certain governance and reporting requirements?**

Should more ambitious entrepreneurs follow examples such as Facebook, Google and Snap and raise funds by issuing equity with restricted voting rights? Should they crowd-source the finance they require? Are new corporate governance provisions needed to protect crowd-funding investors, many of whom may lack the experience of seasoned analysts?

## **Corporate Governance at a Crossroads**

What should the future of corporate governance be? Should we continue along an evolutionary path or is a change of direction required? Should boards take different routes according to the nature and maturity of particular companies and the challenges and opportunities they face? Are we at a dead end? Are we bogged down in a morass of compliance, rules and standards and missing opportunities to be more creative in how boards operate and more ambitious in terms of the value they can add?

Who is corporate governance for? Who beyond the board and company secretary's department should be involved with it? Do an organisation's people and its supply chain need to be engaged with aspects of corporate governance, or should they just focus upon relationships with customers and prospects, innovation and the seizing of opportunities, and the building of a responsible and sustainable business?

## **Are current approaches to corporate governance a positive enabler of enterprise or another distraction and compliance cost?**

What do we need beyond ensuring that directors understand their roles, responsibilities, powers and duties in the relevant Companies

Acts?

Is contemporary corporate governance in a rut? Has it become stale and outlived its original purpose? Is adaptation required, or is a re-design needed, for example to cope with the challenge of sustainability and the requirement for greater innovation? If so, what changes are most needed and how can they best be introduced? Should we think more creatively rather than comply or explain?

Would greater convergence of different approaches to corporate governance be desirable, or would diversity be preferable, according to the size and stage of development of a company, its status, ownership structure and the sectors and/or jurisdictions within which it operates?

## **Corporate Governance as Guidance**

Why should boards feel obliged or be pressured to adopt an off the shelf model of governance that does not address a company's specific requirements and situation? Are standard corporate governance approaches, models and codes helpful, constraining or even on occasion irrelevant, given the diversity of situations, circumstances and contexts that directors find themselves in? Would directors and boards make better or worse decisions, or be more or less effective, if they felt free to adopt the governance arrangements that best enabled them to achieve corporate aspirations, and had greater flexibility to evolve them as circumstances changed and as an enterprise grew?

Might discussion of certain issues be less limited and outcomes more innovative if corporate governance codes did not exist? Could transparency, corporate culture, appropriate behaviour, ethical conduct and value creation be discussed in their absence? Can excessive prescription and detailed rules be counterproductive? Can they result in less boardroom discussion of related issues? How useful is much of the information provided in response to detailed reporting requirements? Does pressure for compliance result in people doing the bare minimum rather than debating what might be best in the circumstances? Do we want unthinking compliance or careful consideration of what would be most appropriate? Would a statement of governance principles be sufficient?

Has the corporate governance community become a force for conservatism rather than prudent restraint? Is it instinctively in favour of preservation of a status-quo of codes and regulations that it claims to have special understanding of? Are governance professionals opposed to simplification on grounds that this might make it easier for them to be replaced by an app on a mobile device or a software

package? Where problematic practices remain, is intervention required to achieve required changes? Would this be counter-productive and result in greater regulation and higher costs of doing business? Will desired changes be better achieved by innovation as particular boards take steps to address challenges or improve performance and others learn from their experience?

### Strategic Boards and Shared Leadership

Is the role of boards changing and are global trends emerging? Are many boards sufficiently strategic and providing the direction that contemporary companies require? Are they engaging with a wider range of stakeholders? How can they become more proactive and dynamic without encroaching upon the responsibilities of management? What are the implications of calls for greater diversity of board membership? What steps need to be taken to enhance board effectiveness? Are new forms of leadership required to move more quickly in relation to multiple challenges, new business models and more inclusive, principled and responsible development?

Is more shared leadership required? Are there particular stakeholder groups or generations with whom there should be greater engagement and involvement? Is this particularly important if short-termism is to give way to a longer-term view? Would the legitimacy of board and corporate decisions increase if an element of democracy were introduced into governance and management practices? If more effective relationships require greater commitment from all the parties concerned, do more shareholders need to step up to their stewardship responsibilities?

### Preventing a recurrence of scandals involving particular public listed companies has influenced corporate governance codes.

In certain jurisdictions there has been a fall in the number of listed companies and a growth in private equity markets. Should the focus now shift to private and family companies, public corporations or the governance of entities with network structures and new business models? Can current approaches to governance handle the requirements for rapid and radical change and embracing disruptive and/or enabling technologies? Do we need approaches that better suit the requirements of different forms of organisation and alternative means of financing?

### Ethical Perspectives and Risk Oversight

Do concerns over “rewards for failure” and questions of trust indicate a lack of ethical perspective in some boardrooms? Are integrity and ethical awareness given the importance they deserve when members of the board are selected and inducted? How can one best ensure ethical conduct across a supply chain? What represents ethical business practices in relation to transformational change or a radical shift to a new business model or different technology that can have significant implications for certain people? How effective are many boards at making ethical and responsible decisions?

Does corporate governance with its emphasis upon the rights of shareholders miss the bigger picture? At a succession of IOD India events, speakers have advocated a widening of directors' responsibilities beyond shareholders to embrace other stakeholder groups for whom a company's existence, activities and/or solvency are important. 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. Should companies have a social purpose? What role should boards play in economic and social transformation? Can they inspire the social innovation required for more inclusive and sustainable economic development?

How can boards better provide risk oversight and governance and prevent fraud? Are corporate policies and practices keeping pace with the changing threat landscape? How resilient are corporate operations? Are appropriate back-up and recovery arrangements in place? Are risk-based approaches to internal and external audit being adopted? Are people vigilant and adapting to emerging risks? Are risk management and compliance inhibiting or enabling responsible innovation and entrepreneurship? Are new possibilities and opportunities actively explored?

Is a greater focus of boards upon corporate culture the key to tackling fraud, greed and other issues that can and do arise within the current corporate governance framework, or is it a distraction? Should the focus instead be upon behaviour change and practical ways of encouraging certain forms of conduct and discouraging others, irrespective of culture and within the multi-cultural context of many contemporary corporations? Is ensuring desired conduct made easier when a board's relationships with stakeholders are underpinned by consistent behaviours and values?

### The Value of Independent Directors

What do independent directors contribute to corporate boards? Do they know enough to have an impact? Are they protecting stakeholder interests and concerns? Are they broadening board and committee diversity and inclusiveness, increasing performance, strengthening internal control and improving corporate governance? Has their role been changing? Do they favour particular interests? Given human nature and those who want to be independent directors, are we expecting too much?

Should understanding and reconciling the interests of stakeholders be a concern of every director?

Have we lost sight of basic principles underlying unitary boards and the individual and collective duties and responsibilities of all directors? Should all directors exercise independent judgement and be free of obligations and any interests that might prevent them from being objective? Do governance codes and practices encourage independent directors to act as a check upon executive directors, when all directors should work together for the future success of a company?

Are selection processes for directors resulting in sufficient diversity of thinking and independent judgement that prevents groupthink? Do

too many nomination committees produce shortlists that reflect the preoccupations of their members and perpetuate their particular views of the world? Do we need to widen the gene pool from which independent directors are sought? If certain groups, perspectives and viewpoints continue to be under-represented, what if any action should Governments, regulators and boards take to address this situation?

### Ensuring Independent Judgement

The value added by independent directors can depend upon the extent to which they and executive directors understand each other's roles, duties and distinct perspectives and contributions, and how these differ from those of executive management. Is there sometimes misunderstanding of what independent and executive directors can bring to the party, despite their common and shared legal duties and responsibilities? Is the distinction between direction and management also blurred?

Do some CEOs and board chairs actually prefer rubber stamp boards and compliant directors who nod business through, when effective governance requires independence of mind and the courage of directors to speak up when they disagree? How can the resolve of individual directors be bolstered? If differences and disputes do occur, how should they be handled? Independence can be a state of mind. Directors should be self-aware. They should disclose any factors that either inhibit or constrain their independence and objectivity, or might appear to others to be doing so.

Do directors always have the information they need to be informed and effective. How might more value be obtained from an annual activity such as the preparation and audit of annual accounts? Are movements and trends over recent years made explicit and discussed by the board? Could more use be made of key numbers to suggest "what if" questions and to better discuss possible implications?

### Deploying Enabling Technologies

Why are so many directors and boards so slow to adopt approaches and models whose advantages seem self-evident? Is the speed of innovation and pace of technological change outpacing the ability of organisations to cope with them? Why do many directors display a caution that goes beyond prudence? Why are they so determined to shun first mover advantage and suffocate creativity and prevent innovation and entrepreneurship? Technology that is considered threatening and disruptive by some boards may be grasped by more enterprising ones as enabling of novel possibilities and new approaches, business models and/or services.

Boards were established to address the problem of a separation of ownership and control. Has the desire of many boards to protect past investments and preserve the status-quo now become a barrier to progress? Is this a fault of the concept of boards, or is it due to their current memberships? Will managing relationships with technology partners become a higher priority of boards that seek to embrace new technologies? What role will people play in future organisations and business models, and how will this affect the responsibilities that boards feel towards them? What policies for inclusive innovation

would reduce the risks of new technologies and maximize their benefits?

How can automation and big data be used to secure competitive advantage? Can unthinking reliance upon standard models be an obstacle to creativity? Do programmed responses prevent chance discoveries? Being curious and exploring can be better than going automatic and travelling along a prescribed path. How many boards have strategies for robotics and artificial intelligence? Do they address consequences and take a balanced view? Will the internet of things increase liability for cybercrime and damages? What will the use of blockchain and crypto currencies mean for energy consumption? What are the governance implications? Will innovation address current concerns?

### Providing Leadership

There are many issues that future governance arrangements will need to discuss. Board discussions of new technologies need to balance hoped for advantages against the costs of disruption and other consequences. Should benefits to some people be balanced against the potential risks and costs to others? There may be a tension between the need for innovation and pressure to maintain continuity, social order, and stability. Will boards contribute to public debates on policy and how to manage technological changes from a societal as well as a corporate perspective?

Within all stakeholder groups, are most people to a degree self-motivated, self-interested and selfish? Do they watch each other and try to match or better their peers? Is it human nature to take advantage wherever possible and to the extent to which one can get away with it? As regulations, laws and tax codes become more complex to prevent abuse will people and their advisers become ever more imaginative at exploiting loopholes? Corporate governance arrangements alone may not provide all the answers. Other pieces of the jig-saw puzzle may contribute to building the vision of a more sustainable future. IOD's traditional concern with building better boards is as relevant as ever. Should more robust action be taken against directors who fail in their legal duties and who abuse their positions? Should competition policy be strengthened?

There are realities and opportunities that speakers and other delegates attending the forthcoming London Global Convention on Corporate Governance and Sustainability will need to address. There are pressing requirements and large potential payoffs from charting a more flexible way ahead that can unleash the responsible innovation needed to tackle challenges such as global warming and reap the benefits of new approaches and technologies.

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