Ensuring Relevant and Responsive Corporate and Collaborative Governance

Prof. Colin Coulson-Thomas

Corporate governance should be more than an attractive but thin veneer, or icing on a cake, designed to suggest that what lies beneath may be more substantial and closer to external expectations than might actually be the case. For directors, it should be about the relevance, sustainability and value of what is behind and whether it remains so as conditions and priorities change. In particular, it should be about board conduct and what directors do.

Adopting a governance framework, structure or set of arrangements which satisfy the requirements of imposed or voluntarily adopted codes, requirements or standards will not of itself ensure relevant and responsive corporate governance. This is the result of how direction setting and other governance processes are used, the decisions that boards take, the purpose, policies and priorities they set and what and how they delegate and monitor.

How relevant are the governance arrangements and practices of many companies in relation to sustainability and shared existential threats facing them, their stakeholders, and people, organisations, communities and societies around the world? What role could and should companies and their boards, and capitalism and markets play in addressing them? Are changes required to achieve more effective collective adaptation, mitigation, transition and transformation?

Criticisms of Capitalism and Corporate Conduct

Companies, capitalism and markets have faced criticism from successive generations of detractors and opponents for both political or ideological reasons and practical concerns relating to consequences and the results of their operation. Examples of the latter have included unsafe offerings, exploitation, environmental pollution, exclusion and unfairness, inequality and more recently global warming and other impacts on the natural world.

In response to particular incidents, perceived failings and general concerns, a succession of laws, regulations, rules and codes have been introduced around the world to tackle what Governments and wider societies have perceived as excesses and/or irresponsible conduct. Directors are now subject to a variety of legal duties and responsibilities. Some, including many academics, argue that capitalism has failed. They call for more Government intervention.

Others favour reform. Calls have been made for more responsible, inclusive, equitable and sustainable activities and capitalism. Proponents of stakeholder capitalism advocate board acceptance of responsibility to a wider range of interests. Many parties directly impacted and/or indirectly affected by existential threats have similar concerns, face common challenges and have a shared interest in addressing them. How

can boards ensure effective collaboration and support transition to a more cooperative form of capitalism?

Responsibilities and Root Causes

As well as creating the potential for shared purpose, and a requirement for collaboration and collective responses, existential threats also lead people to explore their root causes. Some seek scapegoats. They look for someone or something to blame for negative consequences of collective human activity such as environmental degradation, a reduction of biodiversity, the running down of natural capital and climate change. Are companies and capitalism at fault for creating possibilities, or the people whose lifestyle requirements businesses try to meet, or wider communities and societies whose leaders push for higher but unsustainable growth?

Views may vary on the relative importance of various root causes of existential challenges currently facing humankind and other life forms on our planet. Their drivers could include, human population growth and needs, such as for food and shelter, and individual and collective human behaviours that result from competitiveness, restlessness and greed. Aspiration and desire could be the consequence of many factors, including social influences and the impact of corporate advertising and sales and marketing activities.

Companies have been portrayed as catalysts of consumerism, as instigators engaged in 'want creation', as advocates of the affluent society, and as responders who look for profitable ways of meeting the needs of those who pay for their services and satisfying their aspirations. The harmful outcomes and 'collateral damage' suffered by the natural world are 'negative externalities' of a proportion of these market relationships between buyers and sellers. Ways of dealing with some of them range from market pricing to Government regulation.

Widening Corporate Purpose

Going forward, one option could be to impose further constraints and regulatory burdens upon companies, limit the role of capitalism and markets, and extend that of the public sector. Alternatively, one could seek market solutions and the evolution of capitalism to embrace new relationships between entities, whether in the private or public sector, based upon collaboration and comparative advantage. This might involve a greater role in some arenas for companies that pursue social and environmental as well as financial objectives.

Increasingly boards, corporate stakeholders and wider communities and societies are broadening their views of what companies and capitalism should be for. Negative externalities could also be addressed by accounting and enforcement changes and the use of pricing and other means that might result in a more justifiable allocation of activities than the use of general laws and regulations that would not discriminate

between them and might inhibit the creativity and innovation at which enterprise and entrepreneurship can excel.

Might a review of corporate purpose and widening the role of capitalism represent a viable and desirable way forward? If purpose and priorities embraced sustainable and inclusive development, and mitigation and adaptation to cope with and survive existential threats, could companies and capitalism play a vital role in enabling and supporting transition and transformation to more sustainable and inclusive activities, operations and lifestyles?

Disadvantages of Public Bodies compared with Companies and Markets

Governments and certain public bodies such as the military and emergency services may be able to move quickly in crisis situations. However, they can be at a disadvantage when mitigation, adaptation, transition and transformation are required over a longer period of time. The purpose of many public sector bodies is tightly defined by their enabling legislation. In democracies there is often limited parliamentary time for changing existing laws and remits and for introducing new measures, which may face political opposition.

The discretion of senior people across the public sector is often limited by Government policy and/or Ministerial intervention and their decision making can be similarly constrained. An annual competition between Government departments and other public bodies for a budget allocation and funding for particular projects, relatively bureaucratic planning processes and centralised decision making and approval may not allow a fluid re-allocation of resources to match developments and changing requirements.

Across much of the public sector there is also a requirement that all citizens receive similar treatment or standard services, while communication is often through common circulars and framework, rule or guideline changes. Such requirements and practices can limit flexibility and the tailoring of responses. Staff may operate in functional silos and bureaucratic structures that are sometimes heavily unionised. They can also have relatively narrow departmental, organisational and national perspectives.

Advantages of Companies and Markets Compared with Public Bodies

In many jurisdictions, when companies are formed the 'objects clauses' in their constitutions are often broad rather than specific and allow operation in a wide range of business activities. Compared with their public body equivalents, company boards often have greater discretion to review and change purpose, priorities and strategic direction, and allow executives, business units and local operations to do what they feel is best in the situation and circumstances.

In the private sector there may be greater budget flexibility and resource fluidity when requirements and priorities change. Each board may decide for itself what is in the best interests of a company and its stakeholders. Intelligent steering can replace annual or other periodic planning if required. Responses and diverse and alternative offerings can be tailored to individual customer requirements. Company boards may also be more tolerant of variety and different ways of working, operating and organising.

Private sector teams may be given greater freedom to question, challenge, explore, create and innovate. Decision making, initiation and response responsibilities can often be delegated closer to front line. Communication can occur 24/7 through price and relative price movements which can be continually changing. Greater use may be made of multi-functional and inter-organisational teams. Company boards may have a value-chain, inter-organisational and international perspective, and more freedom to form relationships and collaborate.

Requirements for Effective Collaboration and Collective Action

While addressing existential challenges may require both short-term flexibility and longer-term commitment, neither private sector companies nor public bodies can be sure of continuity. Businesses in competitive markets should not take customer loyalty for granted. There may be few barriers to new entrants and offerings. Continuity and consistency of policy can be an issue in the public sector when Governments or Ministers change. Fundamental upheavals and institutional changes sometimes follow periodic elections.

Effective collaboration and collective action can require trust, legitimacy and consistent values, and shared or like-minded interests, purpose and priorities. Compatible systems can be advantageous, while incompatible technology can be a barrier to participation. Connectedness can aid collaboration, but it may also give rise to a variety of cyber risks and so increase vulnerability. While incompatible cultures can frustrate collaboration, compatible cultures and cultural unity should not be sought at the expense of the healthy diversity that can be conducive of creativity, innovation and enterprise.

Some entities may lack the motivation, perspectives, qualities and governance arrangements required to negotiate, manage and monitor joint ventures, partnering and collective responses. Their success can depend upon shared purpose, mutual respect and mutually beneficial relationships. Their continuation can benefit from openness and information sharing, multiple points of contact, low level dispute resolution processes and arrangements for the governance of collective activities, including value chain and public-private collaboration.

Obstacles to Effective Collaboration and Collective Responses

A variety of factors can hinder what is required for effective collective action. There may be vested interests in the status-quo, as well as laggards and resisters who are opposed to the nature and extent of changes sought by others. Incompatible interests, motivations and priorities can slow or prevent progress, as can a lack of unity, understanding and commit-ment. Insufficient action, shared purpose and/or trust can lead to fragmentation.

Fear of differences emerging can lead to a lack of confidence and reluctance to suggest changes in case this triggers adverse reactions. However, the views of the leaders of collaborating organisations and the people within them should not be so aligned as to result in a lack of diversity, dull uniformity and groupthink. As with corporate boards, challenge, discussion and debate and the weighing of options might lead to better outcomes.

On occasion, bureaucratic and legal impediments may emerge that test the resolve of certain participants. The commitment, enthusiasm and energy of cooperating parties may also vary. Collaborative arrangements sometimes resemble a convoy whose speed is limited by the slowest ship. When reverses occur, some collaborators may blame others. Over time, mutual suspicions and jealousies can arise, while limited progress over a protracted period can lead to disappointment or boredom and certain parties dropping out.

Requirements for Effective Adaptation, Mitigation, Transition and Transformation

For collective action to succeed in addressing existential threats and enable progress towards a more sustainable and inclusive future, shared purpose, trust, creativity, innovation and energetic, imaginative and responsible entrepreneurship, along with activities and lifestyles in harmony with the natural world, might be required. Cost-effective and appropriate use of disruptive or enabling technologies, available natural capital such as 'rare earths', and new business, operating, organisa-tional and/or governance models may also be needed.

Business and other leaders should be open to different ways of working, learning, buying, operating and organising, according to situations and circumstances at each stage of transition and transformation journeys. New forms of public-private-voluntary sector collaboration may be necessary. Leaders in these arenas and at national and local level should invite questioning and challenge, especially during the reviews and rethinking that might be called for.

People in management and governance roles should also invite, encourage and support the investigation, evaluation,

exploration, experimentation, invention and innovation that will be necessary to achieve the outcomes sought by different collaborations. The agility, flexibility, fluidity, openness, creativity, imagination and enterprise of entrepreneurs and pioneers will be in demand. Those with the requisite qualities will have an unprecedented opportunity to make a difference and operate on a larger canvas.

Collaborative Governance Requirements

For some companies, boards may need to encourage simultaneous participation in multiple collaborations and ensure their required support. Depending upon their number and importance, there may be a requirement for a policy and guidelines relating to their negotiation, approval, management, governance and monitoring. Individual directors might agree to keep an eye on the more important ones, and a board as a whole might wish to ensure initial and continuing participation is justified, appropriate and does not represent a distraction.

Strategically significant collaborations may benefit from bespoke treatment. Those which are important for a number of participants might justify their own governance arrangements. Putting these in place may require consultation and negotiation, for example to agree the governance model to adopt and whether key governance and management roles should be elected, appointed and/or rotated. In some cases certain parties may exert more influence than others on account of their greater financial, technological or other contributions.

Key players within a collective arrangement may expect a seat at the 'top table'. More democratic governance arrangements may be appropriate and acceptable in the case of collaborations of some value to many companies. Certain participants, for example a public body providing significant finance might be expected or required to request particular safeguards and provisions. Some boards may request clauses in agreements and arrangements to limit liability and ensure certain matters will need to be approved by all the parties.

Implications of Collaboration and Cooperative Capitalism

Moving from a predominantly competitive form of capitalism in which companies compete for attention and the support of customers, talented staff, investors and other stakeholders to one in which cooperation and collaborations play a more important role may have implications for some directors and boards. There might be consequences in terms of what they do and how they should prepare for their roles, as negotiating collaborations and public-private partnerships and holding them together become more important.

Because of the greater freedoms and other advantages that companies may have in comparison with public sector bodies during transition and transformation journeys, certain enterprises may become sought after participants in collective responses to existential challenges. Care will need to be taken to ensure that public sector requirements for accountability for the use of public funds do not negate the advantages and limit the innovation that private sector companies can bring to public-private collaborations.

Cooperation is essential for addressing existential challenges and unlocking related opportunities. Collaboration involving multiple stakeholders and public-private partnerships emerged as prerequisites of progress in multiple sessions of the World Economic Forum's 2022 meeting The Forum's President stated that the world needs to "collaboratively deliver global responses" to urgent common issues. Given corporate know-how and capabilities, more boards should give a lead in initiating and supporting effective and wider cooperation.

***Prof. Colin Coulson-Thomas** holds a portfolio of leadership roles and is IOD India's Director-General, UK and Europe. He has advised directors and boards in over 40 countries.* ∎