Theme Paper

15th London Global Convention on
CORPORATE GOVERNANCE & SUSTAINABILITY
Global Business Meet
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Theme:

Effective Corporate Governance and Sustainability: MANDATE OF THE BOARD

Prof. Colin Coulson-Thomas*

The governance of enterprises of all types and sizes has an impact upon the daily experience of many people. The inventiveness of companies will determine our prospects for the future. Many people spend much time, including their most creative hours, either working for businesses, interacting with them or benefiting from what they do. These companies supply us with incomes and/or goods and services. Taxes on the value they produce fund our public services.

Business, political, professional and thought leaders, opinion formers, regulators and others will be shortly assembling in London to consider recent developments and emerging trends in both corporate governance and sustainability. This annual gathering represents an opportunity for updating, networking and identifying future priorities. It is a forum for discussing issues, celebrating successes and determining next steps.

Corporate governance is particularly associated with issues concerning listed or quoted companies, due to a clearer separation of ownership and control. In many countries effort has also been devoted to improving the governance of public bodies. The convention is an opportunity to also explore the applicability of its principles to small and medium sized enterprises (SMEs), family businesses, social enterprises, the voluntary sector and professional bodies. Are there other arenas such as the world of trade unions that would benefit from a review of prevailing governance arrangements?

The Governance Challenge

How should those with the power to influence governance arrangements best ensure that enterprises pursue appropriate aims, engage in relevant activities, and use capabilities and resources effectively and sustainably? How can they either prevent or reduce the risk of individuals and cliques in positions of power within companies taking advantage of their positions and pursuing their own interests, for example by paying themselves excessive remuneration?

In the case of family businesses, owners or trustees of their interests may be intimately involved, perhaps attending board meetings. Where ownership is widely spread, shareholders may need to wait for periodic communications such as an annual report and accounts in order to assess how directors have performed. They are dependent upon the judgements of others. The protection of their interests can partly depend upon governance arrangements and how they are implemented.

Appropriate governance structures can be accompanied by the inappropriate behaviours of directors. Given the nature of human beings and the extent of temptation, many investors do not entirely trust governance arrangements or the judgements of others. By investing in a diversified portfolio they endeavour to spread their risks and avoid excessive exposure to particular boards that may under perform, for example by taking mistaken decisions or missing opportunities.

General or Specific Responses

For many people corporate governance is associated with principles and/or best practices set out in codes of practice. Such documents can suggest standards and norms and result in assumptions that if deviations from them need to be explained, they may also result in adverse reactions from others. Might this inhibit innovation and diversity to address particular circumstances? In other walks of life a departure from standard could indicate a bespoke approach, and that one has gone beyond a norm and taken the time to address the requirements of interested parties in a specific situation. Customers often pay a premium for a response that meets their individual requirements.

Delegates to the forthcoming global convention will include a substantial contingent of business leaders from India, many of whom may be chairmen and managing directors. Should one immediately challenge these distinguished participants and condemn those who appointed them for flouting a key objective of UK corporate governance by giving too much influence to one person? Alternatively, should one recognise the distinct nature and Indian context of their organisations?

One can understand collective efforts to identify fundamental principles such as seeking to prevent an unhealthy concentration of power, but in relation to corporate governance the duties and responsibilities of directors are set out in legislation. In many countries Companies Acts are quite specific in terms of what directors should and/or should not do. Beyond this while some might benefit from guidance, to what extent should governance be standard as opposed to appropriate to the context? How can one best encourage people to both learn from others and adopt the best course of action in a particular situation and context?

Relating Governance to the Context

Is there too much prescription and too little guidance? Has corporate governance in practice become a bureaucratic and legalistic process of compliance with standard and external approaches, codes and models that seem detached from the process of business building and satisfying stakeholder interests? Some independent directors endeavour to justify their presence at the boardroom table by posing periodic questions relating to assurance, compliance, risks, standards and codes, but many boards delegate the observance of codes - or doing just enough to justify ticking a box - to a member of the corporate legal or company secretarial team. They are not necessarily thinking about better ways of operating, or how they as a board might add more value.

Why should one assume that even similar, let alone the same, approaches and models should apply to an entrepreneurial start up, a long established local family business, a diversified international conglomerate, a professional or charitable body, or a Governmental organisation? In all these areas boards have been encountered that have endeavoured to adopt a general and standard governance code. Why should anyone imagine that a particular governance model would be appropriate at all stages of an enterprise's development from start-up and through the introduction of new lines of business, international expansion, technological changes, mergers and acquisitions, competitive challenges and changing market, regulatory, economic and social contexts?

One frequently encounters directors who are frustrated at being offered basic principles and general solutions rather than advice on the best governance arrangements for the situation they are in at their company's particular stage of development. A Martian on being told of the basic principles of corporate governance, and aware of the extreme diversity of organisations, situations and contexts and the fundamental nature of changes and developments that occur, might wonder at the lack of variety in governance approaches, models and practices and the relative infrequency of change.

Customers and Vested Interests

Early pioneers of corporate governance gave their time voluntarily to prevent the recurrence of certain abuses, introduce checks and balances and establish potentially beneficial principles. Would a cynical

Martian surveying the scene today suspect that the main customers for corporate governance are those who comment on draft standards codes, influence their development, and derive income from advising on their implementation? Consultants, auditors and accountants are easier to train and the production of manuals and methodologies is more straightforward if there are standards and norms, and if most boards are persuaded to follow them rather than think for themselves. Would too much innovation and diversity lead to a loss of influence and control?

The more extensive and complex rules, regulations, codes and standards are, the greater the revenue opportunity for external providers of assurance, governance and reporting services, and the more likely it is that boards will delegate 'compliance' to a head office expert to 'sort' and 'report back' rather than themselves discuss the issues. Given that much of the governance infrastructure is designed to prevent a recurrence of past 'scandals', maybe boards should do just enough to comply in some areas, while focusing their attention on priority challenges and opportunities and remaining alert to new and emerging areas of risk that the governance community has yet to address.

Corporate governance is not an unfrequented backwater. Governance academics, advisers, consultants, committees, codes and publications abound. The cost of keeping such highly qualified people in the manner to which they have become accustomed in salaries and fees is not insignificant. Yet where is the return in terms of either fewer issues or innovation, relevance, proportionality, and bespoke responses that are easy to implement, and which build director competence and board effectiveness and contribute to sustainable business development and the achievement of key corporate and stakeholder objectives? Where is the creative exploration of better alternatives as opposed to occasional reviews of our inheritance from governance pioneers?

Governance and Innovation

Does governance deter risk taking? Some entrepreneurs whose businesses are growing rapidly approach governance with a sense of trepidation. They recognise that greater scale, international operation and new activities and technologies may require new perspectives and different ways of operating at board level. They may face particular problems such as succession when founder directors step back, or how to maintain family control as new people are brought in. However, they may also worry if a standard approach might be appropriate for their business and whether the relatively bureaucratic, more formal and complex approaches being suggested and a greater focus upon compliance might reduce healthy diversity, stifle creativity and inhibit innovation.

Will new procedures being suggested by advocates of more formal governance processes be so time consuming to implement that those with ideas for better ways of operating may lie low rather than suggest changes? Where various business units need to operate differently will subjecting them to common approaches and disciplines act as a straight-jacket? Should different companies within a diversified group have their own governance structures and practices according to what is most appropriate for their individual circumstances?

For many growing businesses and family companies around the globe, would adoption of the prevailing governance structure with its origins in the particular governance problems of listed companies in certain countries damage what is different and special about each of them? Would a better option be to address each case on its own merits, and build upon what already works and put in place governance arrangements that match the aspirations and requirements of each set of stakeholders for the next stage of development of each entity?

Assessing Corporate Governance

Given the profile of governance, should we expect more than just an association between the observance of codes and performance? Should we expect a direct cause and effect link and measurable benefits? Are there fewer business failures? Is there less favouritism, fraud and corruption? Has director remuneration moderated? Are boards taking smarter decisions and better informed, more vital and adding more value? Have entrepreneurs ascribed their success to boards and corporate governance arrangements? Are the later more relevant, flexible and conducive of innovation and value creation? Are governance danger signals still apparent in boards?

How should one measure governance success? Is it observance of principles, compliance with codes and laws, or the degree of challenge and/or the quality of thinking, debate and decisions in the boardroom? Should a board assess itself and/or commission an independent evaluation and/or seek the external views of investors and other stakeholders? Are there indications of external recognition such as awards? What criteria should be employed: vision, strategy, accountability, implementation, risk management, growth, profitability, innovation, sustainability or transparency?

Is corporate governance more relevant to some functions of the board and less relevant to others? Does it make certain dilemmas faced by directors and boards easier to handle? Does it favour the interests of some stakeholder groups over others? Are particular activities from visioning and delegating to implementing strategy and reporting noticeably better or worse? Could any changes be explained by factors other than corporate governance? Where does it rank in terms of impact, compared with say director and board development or bringing new blood into the boardroom and changing the composition of the board as a company grows and develops?

Continuing Requirements

Governance arrangements should reflect how people are rather than how we would like them to be. What about digital governance? What arrangements and policies should be in place to address risks such as hacking, money laundering, terrorism, the funding of banned and suspect organisations and the stealing of personal and corporate information and intellectual property? A proportion of people may be out to take advantage of any loophole or opportunity, but surveillance, monitoring and counter-fraud initiatives can raise legal, moral and practical issues and can also compromise trust.

Is corporate governance unduly defensive? Could we use the expertise of the governance community more pro-actively and creatively and to better effect? For example, what about the governance of criminal and/or terrorist organisations? If we better understood the governance of these networks, how leadership is exercised within and across them and how control is maintained, maybe we could find new ways of disrupting, disabling and/or neutralising them.

Are boards ticking boxes to get governance out of the way in order to focus on business building, or are they investing quality time and effort in reviewing governance arrangements and investing in re-shaping them to contribute to the next phase of business development? If directors are doing just enough to show willing, how do we move on from compliance with general codes, rules and regulations to getting governance arrangements right for particular enterprises?

Disaggregating Governance

One alternative to a standard code would be a series of codes and/or guidelines to address the distinct requirements of different types of entity and/or sectors, or organisations facing particular challenges and opportunities. Each would need to be periodically reviewed and updated to remain current, but who would do this and under what auspices? Would a family of codes, while it may have advantages, be a staging point en route to boards putting in place governance arrangements appropriate for the entities for which they are responsible? Should this be a statutory duty with the lazy adoption of a standard model a possible indicator that directors are not doing their jobs?

Is separate guidance required concerning governance in particular arenas, for example, innovation, knowledge, risk or talent management, IT or strategic planning? As in other areas, potential adopters would need to ensure that general guidance is not inappropriate for particular companies. In some sectors intelligent steering rather than annual corporate planning may be required. Guidance relating to education and training and human capital growth might not be a priority for a company with a strategy of replacing people with robots, drones and self-help systems.

Governance is preoccupied with preventing downsides. The need for vigilance is justified by reference to corporate scandals, with the same few names regularly trotted out in articles and speeches. However, what about upside potential? For every negative example, there may well be hundreds or thousands of boards that are missing opportunities, taking well meaning but less than optimum decisions, and not operating as effectively as they could for a variety of reasons. What is governance contributing to this wider problem of improving the competence of directors and boards that could not be accomplished by other means such as director and board development?

Challenging Assumptions

One might expect shareholders to be vigilant in looking after their best interests. This is particularly true of entrepreneurs and the worlds of SMEs and family companies, where shareholders often keep a close watch on their investments, or are intimately involved in 'building the business'. Many corporate governance approaches and codes have evolved to address a different situation, namely a separation of ownership and control and the reality that many investors have a diversified portfolio of investments and/or invest via institutions and their pensions. Hence they have less motivation to be actively involved in the affairs of any particular company.

There are quoted companies of national and international significance where few if any individual shareholders can exert much influence on their affairs. But the question of the relative advantage of standard and bespoke approaches still applies. The ideal governance requirements of an integrated utility considering a new generation of nuclear power stations may not be the same as that of a seasonal fashion business, or a restaurant chain or an e-business in terms of board composition, frequency of meetings, agendas or how the business of the board is conducted. Why do those whose governance experience derives from some arenas assume it is relevant in quite different contexts?

Certain assumptions and widespread practices need to be challenged. For example, why do so many boards put such a high priority upon recruiting a high powered CEO? Elevating one person far above executive colleagues in standing and powers can encourage an unhealthy concentration of power and the hierarchical forms of organisation that are associated with it. Does current corporate governance assume certain forms of organisation? Is it equally relevant to the internet age and the different models of operation that are emerging and which can quickly mutate and enable relatively small numbers of people to rapidly build valuable businesses.

Governance and Sustainability

What if anything is contemporary corporate governance contributing to sustainability? How have governance approaches changed to address sustainability considerations? Governance and sustainability ought to be natural complements as continuity, effective challenge, the efficient use of resources and the best long-term interests of organisations and their stakeholders are concerns of practitioners in both arenas. Are they engaged in a productive dialogue? Governance itself needs to be sustainable and it needs to embrace sustainability.

It is easy to become lost in generalisation and the rhetoric of governance. What do terms such as 'transparency', 'integrity' and 'ethical' mean in relation to sustainability? How open should one be in competitive markets about risks and future problems, while not being alarmist and while awaiting related developments? Apart from corporate governance responses, what else are boards doing to reflect greater public interest in sustainability considerations? Are people with sustainability credentials being brought onto boards? How does one assess whether or not individual directors and a board collectively are environmentally sensitive and aware and alert to sustainability issues?

The greater use of mobile devices and social media mean that the consequences of corporate failure in sustainability and other areas can be more evident and disseminated more quickly and to greater numbers of people than ever before. Some responses cannot wait until the next board meeting. Directors and boards face a host of new and emerging challenges and opportunities, a proportion of which may raise issues relating to direction, policy and/or strategy. In order to cope, directors may need to review governance arrangements and operate in new ways. Lets look now at some of the specific questions that speakers could address at the 2015 London Global Convention.

Global Perspectives on Governance

How are contemporary approaches to governance perceived in different parts of the world? Do views vary in respect of different types of entity at particular stages of growth and development? Are new dimensions and practices emerging in relation to the implementation of compliance and risk frameworks? How applicable are good governance principles to SMEs and family businesses?

Is consolidation or fragmentation occurring at an international level? Will the next generation of codes, regulations, approaches and guidelines contain more common elements, or will they be noticeably different in order to accommodate local issues and requirements? Will providers of finance and certain international institutions prefer some approaches over others? Will the corporate governance landscape favour or inhibit joint ventures, mergers and acquisitions?

Are distinct areas of national or regional focus emerging? Do we need different approaches in an Asian context or other regions of the world? Could or will China seek to exert influence and promote a particular approach to governance? Are competing models and approaches converging or moving further apart? Should we be thinking in terms of 'global' best practices, and if so what are they and how does one judge their applicability in a particular situation and context?

Building Tomorrow's Boards

How should boards renew and reshape themselves for tomorrow's pressures, priorities, concerns, challenges and opportunities? Is there an ideal board composition for driving business development and sustainable growth, or does it all depend upon the context? What constitutes a high performance board? How do directors and board chairs create a high performance board and best leverage and apply its contribution, and build high performance organisations?

What are the priorities in respect of diversity, whether of thinking or composition? How should one best improve diversity, relevance and quality? A collection of carefully chosen and excellent people does not necessarily constitute an effective board. How does one persuade a founder chairman and chief executive to separate a focus upon building the business from a focus upon the more effective operation of the board? What role should institutional investors and other owners and executive and independent directors play in building more effective boardroom teams?

How should one set about building tomorrow's boards in emerging markets? Are certain roles different from their equivalents in more developed contexts? Do control structures need to be different and contextual? How should independent directors be selected, used and supported? In respect of family companies, what parallel developments need to occur in relation to the governance of family interests? How should one handle the departure of first generation entrepreneurs?

Stakeholder and Shared Leadership Issues

How should roles and responsibilities for building mutually beneficial relationships with different groups of stakeholders be allocated within the boardroom team? Are there better ways of engaging stakeholders and involving them, whether to increase awareness and/or understanding or to stimulate supportive action and benefit from it?

What role should the company secretary play in the boardroom? How can chief financial, legal, risk, knowledge, talent and technology officers better support boards? How might these players with a professional interest in good governance share views, discuss issues and coordinate their responses? What can they contribute individually and collectively to ethical business practices and organisational integrity?

In some companies more attention could be paid to what members of the senior management team could do to better support the board. Whether by better understanding the function of the board and the distinct liabilities, duties and responsibilities of company directors or through better reporting mutual appreciation and support could also be increased.

Sustainable Development

How does one match the desire, intention and rhetoric of sustainability with practical initiatives that change behaviours in desired ways without putting a company at a cost and competitive disadvantage? What questions should directors be asking to embed sustainability in a competitive business strategy? What leadership should a board provide to develop a more sustainable business model or paradigm, and to help staff, customers and the users of goods and services make more sustainable decisions?

Where there are calls from politicians, commentators, social and traditional media, and others for growth and development that is inclusive as well as sustainable, how should boards respond? To what extent should they skew decisions to favour particular groups, or to achieve social objectives that may or might not be priorities for other stakeholders? Does being responsible extend to social engineering and becoming involved in areas that are properly the province of Government?

Boards have to make choices. In relation to sustainability, what are 'green credentials' and how should one assess their achievement? How is a company portrayed and perceived in social media, and how representative are the views that others are expressing? In relation to timing, should directors act now or later, for example when the cost of renewable energy has further reduced? In relation to CSR where should the priority be and at what point has one done enough?

Embedding CSR and Ethics in the Boardroom

Directors and boards are custodians of an organisations values. Many boards have to establish policies and principles to cover the activities of people from a wide range of nationalities, religions and political persuasions, some of whom may have very different values. Certain choices are multi-dimensional and more difficult than they may appear at first sight, and some directors find it easier to make ethical judgements than others. Should we be embedding CSR into corporate boardrooms or should we be sceptical? Where markets are free and regulation is effective, does irresponsible conduct simply lead to customers, investors and ones best employees going elsewhere?

Is there a danger that some directors may loose sight of the primary purpose of enterprise? Might certain boards contribute more to wider society, as well as immediate stakeholders, by avoiding distraction with additional and peripheral CSR initiatives, and focussing instead upon innovation and more effective and sustainable operation in their core business, where their comparative advantage is greatest and corporate capabilities are most relevant?

Are we in danger of imposing so many duties and expectations upon directors that some of them may loose the plot? In discussions of corporate values and ethics, what is the value of diverting attention and resources from a core activity where breakthroughs could be game changing to an initiative that may be inefficient in comparison but which is undertaken just to tick a CSR box and chalk up a 'responsibility' credential? In terms of their small scale, relative ineffectiveness and opportunity costs is the use of corporate resources for some 'social' initiatives ethical or unethical?

Measuring Board Effectiveness

Some boards are blessed with favourable conditions that are not of their own making, while others are hit by a succession of problems. Coping with recession presents different challenges from riding a boom, but in tough economic times there may still be opportunities to gain competitive advantage. The assessment of board effectiveness should reflect the situation and circumstances. Should it take account of professionalism as well as performance?

What are the emerging trends in relation to reporting, the accountability of directors and boards, how they are evaluated and how their individual and collective performance is measured? How should one assess performance and compliance? Are the approaches of internal and external auditors changing? How can boards best work with them to obtain the assurance that directors require? How might risk-based and risk-centric approaches help?

How many people actually read and understand annual reports and accounts? How could their value and cost-effectiveness be increased? Is integrated accounting a natural evolution or a paradigm shift? What are the implications of integrated accounting and/or applying international reporting standards for boards, stakeholders, governance and sustainability? What standards should family companies observe? Would confidence accounting clarify or complicate?

Evolution or Revolution in Governance

Do we need a revolution in governance, a new model, a family of different approaches for various situations, or is it just a question of a shift of emphasis and change of balance? For most of our history the effective use and re-use of scarce resources has been essential for survival from one spring to the next. Every day objects could be passed from generation to generation. Sustainability meant continued existence. After many millennium one might have expected the avoidance of inefficiency and waste to be in our genes and sustainability to be an integral element of governance.

Given extensive frameworks of laws, regulations, checks, assurance and compliance mechanisms and the number of people from auditors and independent directors to regulators, officials and those concerned with policing and fraud prevention who are paid to check up and monitor them should one assume that most members of the community of directors are greedy and self-interested mercenaries who will be up to no good from the moment they think they can get away with it?
Alternatively, if transgressors are few in number and inherently suspect should more effort be devoted to appointing honest and competent people to boards? Would this be more cost-effective than imposing constraints upon all companies that might inhibit innovation and diversity?

Wise backers of ventures and smart individuals looking to join them have always looked for honest, competent and fair-minded people who would look after their interests and do the right thing, in either favourable circumstances or adversity. They would weigh the risks involved. While welcoming windfalls and suffering occasional losses, only the naïve would normally expect other than reasonable returns over time. Since the creation of limited liability companies, their owners, whether holders of shares in a quoted company or in a family business, have hoped that directors will be competent and boards effective and adding value rather than just acting as rubber stamps.

We can contribute to better governance by encouraging people of integrity who can think for themselves and are able to put the interests of others before their own to consider a directorial career. We can also encourage them to view any directorial appointment as an opportunity to make a difference, and to commit to lifetime learning from their experiences and that of others in order to stay current and become a better director. Members of boards have our futures in their hands so their active participation in the forthcoming London Global Convention is to be welcomed.

*Author

Prof. Colin Coulson-Thomas, a member of the business school team at the University of Greenwich and Director-General of IOD India for UK and Europe Operations has helped companies in over 40 countries to improve director, board and corporate performance. In addition to being the chairman of company boards he is a member of the General Osteopathic Council and chair of its Education and Registration Standards Committee, chair of the audit and risk committee of United Learning, the UK's largest operator of academies and independent schools, and leads the International Governance Initiative of the Order of St Lazarus. An experienced chairman of award winning companies and vision holder of successful transformation programmes, he has held various public appointments at local and national level. Colin is the author of over 40 books and reports, including 'Transforming Knowledge Management', 'Talent Management 2', 'Transforming Public Services' , 'Winning Companies; Winning People' and 'Developing Directors'. Since being the world's first professor of corporate transformation he has held professorial

appointments in Europe, North and South America, the Middle East, India and China. He was educated at the London School of Economics, the London Business School and the Universities of Aston, Chicago, South Africa and Southern California. Colin is a fellow of seven chartered bodies and secured first place prizes in the final examinations of three professions.

Further Information

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The 15th London Global Convention on Corporate Governance and Sustainability of the Institute of Directors, India will be held in London from 7th to 9th October 2015. Following a Global Business Meet at the House of Lords and a special session on the changing role of finance professionals in the boardroom at Chartered Accountants Hall on the first day, the conference element of the convention and the presentation of Golden Peacock Awards will be held at the Millennium Hotel in Grosvenor Square. Further details of the convention and other activities of the Institute of Directors are available from www.iodonline.com.