The Guide to Global Corporate Governance Developments
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THE ACG REPORT

SPECIAL EDITION

ACG Watch | Corporate Governance | Sustainability | Press Review

In This Issue:

Introduction

2017 marks 25 years since our first book on corporate governance and the consolidation of our work in this field. We have therefore decided to celebrate this milestone with a special edition of The ACG Report, starting with a re-stating of our mission to change the way organisations around the world are run, a bit of background to the ACG brand and exploring some key concepts driving that mission.

Along the way we also look at the state of the corporate governance debate and key developments therein, such as Sustainability, often vaguely or narrowly defined, Environmental and Social Governance (ESG), a measure increasingly serving as a rating mechanism for investment, and Impact Investing and Conscious Capitalism, ways of interpreting investment and enterprise which are going mainstream.

Golden Rules

The Key to Good Corporate Governance

Just ask...

Performing a Stakeholder Analysis and Survey will give you a good idea of how your organisation is performing:

- **Ethics**: independent research will tell you how both internal and external stakeholders view your ethical performance.
- **Clear, congruent goals**: do your stakeholders agree with or even know about your goals? Do you know what *they* want?
- **Sound strategy**: this will be reflected in responses to other questions (especially goal), but internal stakeholders will clearly have a view on strategy.
- **Organisation**: views on good organisation are easy to gauge through measures such as customer satisfaction and supplier payment times.
- **Accountability-Transparency**: how much information do stakeholders receive and how good is it? **Don't assume - ask!**

Our unique applied corporate governance approach provides a research framework to obtain detailed information you can act upon. It remains unique almost 20 years after its creation for its use of research, not box-ticking to ensure good governance.

For training and implementation, contact us at info@applied-corporate-governance.com.

One World. One Mission.

A quarter of a century in the making

Our mission is to change the perception and implementation of corporate governance. Well, actually, it is to change the way organisations of all sizes, sectors and types are run, from startups to multinationals, from community charities to global NGOs and from local councils to governments and supranational bodies (from the EU to the UN).

This is clearly a broad and bold mission yet one we undertake humbly by practising what we preach - listening and communicating with as many as possible to develop the best solutions which benefit everyone. There is already a strong undercurrent of change in the world and we wish to lend it the tools to spread through all of society.

With roots in the 1980s, our corporate governance work first gained visibility with our first book on the subject, published in 1992 around the time of the publication of the Cadbury Code, the first corporate governance code and a key driver of global acceptance and development of corporate governance. It was written with a long-standing colleague and friend, the late Thomas Sheridan, a master of financial management, strategy and international culture (speaking numerous languages to boot). The international experience working together, especially during the 1980s especially, greatly influenced our thinking and training and consultancy work.

We began to specialise in corporate governance as part of our board training work, choosing a practical approach to the subject over the compliance route favoured by fellow accountants - Nigel Kendall, our co-founder, is a Fellow of the Institute of Chartered Accountants in England and Wales. As an Accountant in Business (as apposed to a practising accountant), he has always maintained an awareness of the need to take the efficient and effective operation of an organisation into account when designing corporate governance systems.

This led, in 1997-8, while advising a £1.5bn retail organisation, to the development of our unique methodology, first described in the second book, *Real-World Corporate Governance: A programme for profit-enhancing stewardship* (FT Pitman, 1998). It ultimately lead to the creation of the Applied Corporate Governance brand - ACG - in 2009, which after a 10 year foray into internet software development, we created to update and bring our methodology and approach to a newly accessible global audience.

Through the experience gained in internet technologies and marketing, we were able to build traffic to the website and by 2015 we began to regularly hit 1,000 visits per day. This has brought new opportunities to work with like-minded people from around the world and we now have two main thrusts to our mission - online and offline - within which we have a number of specific objectives, chief of which are:

- Online:
  - to develop our online publication business, including launching a **membership website** and converting the site into a **.org social enterprise**
  - to launch **online learning** with courses and certification
- Offline:
  - Solidify our emerging partnerships in Africa and Asia to launch new **corporate governance, leadership and entrepreneurship courses** with our local partners.

We believe working with local partners is essential to develop the skills needed in each area based on an existing deep knowledge of local conditions and culture to produce solutions which resonate with people while learning the lessons of others around the world (key to our One World mission). To this end we put our own brand second and empower our local partners to deliver solutions in each location, conceived together but always guided by local knowledge.

We are proud to announce, therefore, our partnership with Trueline Leadership Consulting, based in Johannesburg, South Africa (where we first had the privilege of being invited to speak back in 1998 following the launch of our book). We are helping with the development of their new website, featuring ACG, which will be launched soon, along with new training services.

This will be followed by the launches of two new websites of our own, our .org membership site and a dedicated training website. The membership site consolidates 8 years of content into a database for easy reference and searching, and, more importantly, creates a professional social network, the first of its kind, for sharing views, experiences and opportunities related to corporate governance and related fields, whether working or studying.

With our commitment to answering questions and otherwise engaging with our community, this new membership website represents a major step forward in our goal to bring the world together in a collective mission to ensure sustainable, responsible development and growth for all. One world, one mission!

Personal Governance & Profound Service

This article is modified slightly from the preface to a new book we are writing, which places personal governance at the heart of our work.

A fundamental precept to what we are calling The ACG Way is to recognise and understand that any organisation is simply a group of people and therefore no "corporate" (in the widest sense of "relating to a large body of people") practice will ever be successful if it does not start and finish with people. As individuals and as a group, there needs to be alignment - congruence - between the values and morals of the individual, that of the organisation and the Public Interest as a core stakeholder, since every organisation has an impact beyond itself and will enjoy long-term success only if serving the greater good is at its heart.

First a stark warning

This, fundamentally, dictates the culture of the company, non-profit or governmental body. Poor alignment results in dysfunction and no corporate governance systems will prevent failure. An organisation which is not genuinely open to critical thinking and change will eventually fail as questionable behaviours are either encouraged or ignored - yet with the blame placed solely on the individual for not following procedures. CEOs continue to issue such hollow statements - for how much longer?

Likewise, a lack of individual responsibility for every single action taken, blaming the culture and not one's own hands for manipulating machinery or numbers, will ultimately take its toll. It is the hardest reality to face that where we are is the result of our thinking (and so action - or lack thereof) until now. By acting or allowing action to continue, we are the cause or the accomplice in creating our current reality. We can blame others (the boss, the culture, the economy - even the weather), but if our actions lead to negative consequences, passing on the buck is immaterial.

This is the single most important reason why scandals, ecological disasters and corporate failures happen. An organisation can have all the governance systems in the world, a stock market can have tightest listing requirements that comply with the latest thinking, and a country can issue more and more laws and legislation to prevent disaster. But without personal governance, a personal commitment to taking responsibility and living and working congruently with the spirit therein, it all amounts to the emperor's fine new clothes. So fine they are but an illusion, made to fulfil the demands of our conscience in the same way as one buys a stairway to heaven.

There is a better way

At the heart of every intention, every action, is a duality that exists at one or more levels of our nature, the attempt at resolution of which drives our behaviour. This duality can be summarised, simplistically, as follows: concerns about what we want and fear of not getting it. Simply by being aware of this is extremely powerful as it causes us to question the motivation behind our actions and thoughts and those of others.

In doing so we can find the underlying need that is trying to be fulfilled and look for solutions which benefit everyone, not only the individual involved. In this way we find balance and congruence, both internally as individuals and between each other. This allows an interdependence between people which ensures that everyone's needs are met in a sustainable way.

We explore the duality in detail, including the Six levels of human needs and wants and the concept of interdependence in the forthcoming book. We will also explore the idea of financial and emotional independence, not topics featured regularly (if at all) in books on corporate governance yet of vital importance given our premise that corporate governance starts with personal governance. Fully realising the role that individual motivations and ego play allows us to design systems which directly cater to all levels of human need and motivation, from physical survival, through contribution, to self-actualisation, thus guaranteeing congruence and survival of the group and the advancement of society as a whole.

This, dear reader, is at the core of what we call *The ACG Way* (a nod to Bill Hewlett and Dave Packard and The HP Way, which guided the organisation for so long). Our mission in taking this radical approach is to educate (in the true sense of drawing out the best in people) the world in how to apply the natural law which states that if you strive to help others fulfil their needs, your own needs will be catered for. We may therefore summarise our mission as follows:

The ACG Way: combining profound service with sound organisational practices and systems to ensure the long-term benefit of all.

Conscious Capitalism

This article is our take on the concept of conscious capitalism, a term made famous by John Mackey, co-founder and CEO of Whole Foods, as we have arrived at the very similar conclusions independently and have at least as much to say as the good folk at Conscious Capitalism Inc.

In fact the reason we started in the field of corporate governance was because we saw both the enormous potential and the enormous problems of capitalism.

On the one hand, we have the free exchange between willing participants of goods and services, which has the potential to allow anyone to use their skills and experience to earn a living and generate enough surpluses to employ others and contribute to the community. In the connected 21st century, the use of this word "anyone" is particularly true here, even for those without a formal education.

And on the other, we have the misuse of the wealth generated, especially in the context of so-called Agency Theory, the term summarising the issues arising from the separation of ownership from control. When managers are not also owners, spending their own money, their attitude to risk will clearly be different. This begs the question of so-called Independent Directors and whether all directors and senior managers should be investors, but that's another story.

Bold claims made by Capitalism from its earliest days is that it is the best way of lifting people out of poverty and has the capacity to solve society's problems. Maybe the beginning and end of its problems and anti-capitalist sentiment is, precisely, in its name. Unfortunately it all too easily makes for a very narrow interpretation and exclusive focus on the financial return of enterprise (and hence "shareholder value") at the cost of the very purpose it claims to support - the improvement of society. Combined with individual greed (see the article on Personal Governance), it is easy to see how the model can be perverted. It becomes all about the creation of wealth and not about the improvement of society.

Yet all enterprise is, in some shape or form, motivated to improve our lives in some way. The wealth of the Phoenicians was mainly due to trade, not war, and Phoenician culture gained considerable influence more as a way of life than as a unified people (their cities were independent and it is not even clear if they would have identified themselves as "Phoenicians"). During the industrial revolution in Europe, advances were made that completely changed how people lived, mostly for the better, though clearly it was far from perfect.

The trouble is, there has been a disconnection with nature and each other, of which the separation between ownership and control is a facet or a consequence, depending on how you look at it. Children in industrialised countries usually do not know or care where their food comes from, for example (though this is starting to change again as the pendulum swings). The incessant "need" for growth and financial return at all cost, has such diverse consequences as under-capitalisation and deforestation, one which causes companies the size of small towns to fail and the other which displaces people and wildlife and has disastrous effects on the terrain and climate, often causing flooding or new deserts to form.

Fortunately it is reversible and a few remarkable cases of small, consistent acts by individuals can make a huge difference, for example Majuli islander Jadav Payeng, who has singlehandedly planted a forest larger than Central Park in New York City on the Indian river island. Evidently in itself this is not a commercial venture but the benefits to him and the whole island are evident.

This is the fundamental premise behind conscious capitalism, that if we seek opportunities to serve a higher purpose than our own needs, these will be met in the purpose. And in fact, Payeng has plenty of ideas, as you can see in the film, for economically viable projects to widen the positive effects, including coconut plantations which would sure up and protect the soil from flood-causing erosion while providing income for the local population.

Beyond what has become a niche sector, social enterprise, we believe that ALL enterprise is, or should be, social. This requires all stakeholders to be taken into account, not only shareholders, as we have said across our quarter of a century of corporate governance work. It also requires strong and conscious leadership to ensure that organisational culture is aligned with this higher purpose.

Those familiar with ACG will see how this ties in with our Golden Rules of Corporate Governance, which through efficient systems help translate good intentions into a sustainable model in which both leadership and grass roots share the same commitment and accountability to the mission and where an open culture allows for early warning and discussion of problems. That way, a long-term view can be taken of how to really solve society's problems through a commercially viable and sustainable approach.

All this is summed up in our tagline, such is our commitment to it, borrowed from the triple bottom line in which everyone and all things benefit: People - Planet - Profit.

Sustainability

As is our custom, we start where many fail to look, at what the word *sustainability* actually means. Language is so often imprecise and daily use of words and expressions is not given a second thought. Much as "corporate amnesia" means many outdated and obsolete procedures and practices are maintained simply because no-one ever questions them or if they do, the standard response is "we've always done it like that!".

The Oxford English Dictionary has the following entries for "sustainability":

1. The ability to be maintained at a certain rate or level.

   'the sustainability of economic growth'

   'schemes to ensure the long-term sustainability of the project'

1.1 Avoidance of the depletion of natural resources in order to maintain an ecological balance.

   'the pursuit of global environmental sustainability'

   'the ecological sustainability of the planet'

There is clearly semantic confusion here in much of the debate on sustainability, with much of it focussing on the narrower subset defined in the 1.1 entry. This means that conventional wisdom, backed by divergent results from research, is that there is no clear evidence of the relationship between sustainability and (financial) performance.

A recent article by Yale University, recognising the lack of clear evidence, aims to challenge this by seeking a clear framework and an improved Environmental, Social and Governance (ESG) metrics methodology to allow mainstream investors to connect scores to performance. More on the article itself in a moment, but we would first point out that clearly the "evidence" referred to here is purely related to the ES or even just the E in ESG. Given that this "evidence" will include many companies whose primary objective is not "beating the [stock] market" this will distort the picture and help explain the divergent results.

What we are talking about at ACG is a much more *holistic* definition of sustainability which focusses on the ethics and governance of the organisation to ensure its long-term existence (sustainability), which, logically will include, as a minimum, taking into account the impact on communities and the environment, not least because all resources are finite but also because of increasing market (consumer) demand.

In other words "conventional wisdom" is about shareholder value and Milton Friedman. So sustainability would appear to have fallen into the same hole as corporate governance did. *

The Yale article, by Daniel Etsy and Todd Cort, entitled Corporate Sustainability Metrics: What Investors Need and Don't Get", also points to a "lack of controls" in existing studies that "would allow identification of the causal factors underlying the correlation". They give two interesting examples of the impact of this, the first being the existence of dependent variables, such as governance structures, make it difficult to find causal factors linking sustainability and performance.

The second impact that the authors describe of the lack of control and clarity is that the studies "leave doubt as to whether more sustainable companies create financial value - or whether more financially valuable companies invest more in sustainability"; they cite two studies expressing uncertainty as to the direction of such causality. The obvious corollary is that more financially sound organisations have more resources to be environmentally responsible.

Incidentally, the article also points to the wide scope for confusion and interpretation just in this subset, for example nuclear power is OK for some but blacklisted for others, so it is not surprising that there are different conclusions and that the same data can be used to prove apparently opposite results. As the famous line attributed to British prime minister Benjamin Disraeli goes, "There are three kinds of lies: lies, damned lies, and statistics."

Our quibble with all of this is very simple: by focussing on an increasingly narrow definition, often to show the organisation (or even nation) in a better light, we are missing the bigger picture - that on a planet with limited resources and an expanding population, we need to put our time and energy into increasing, to paraphrase the Oxford definition, our ability to maintain ourselves, and so our use of those resources, at a minimum rate or level that allows us all to survive and thrive.

This keeps us fired up to help shift conventional wisdom, towards the logic that more sustainability must be in everyone's best interests, and contribute to the objective of demonstrating a clearer relationship between sustainability and financial performance. This, per se, is not the answer, of course, but, like the early, self-interested, quality management initiatives designed to save money from returned goods, hopefully it can lead to a wider improvement in attitudes and quality of management and governance.

This, in turn, must lead to greater sustainability in the widest sense of the word: well run organisations with the financial strength to sustain themselves, people and the planet.

ACG Watch

Uber

Uber's board has been seeking a CEO to replace ousted founder, Travis Kalanick, currently being sued for fraud by an investor, but who still wants to stay involved. It has chosen Dara Khosrowshahi, turnround king at Expedia under tycoon Barry Diller. So investors in Uber can relax. Or can they? Is he really the right choice? Can he deliver the cultural change needed for the IPO he has already promised within 18-36 months?

Uber is still in an entrepreneurial expansion stage in a rapidly evolving market with very strong regional competitors and questionable barriers to entry. It is still dependent on charismatic leadership to raise significant new funding, and entrepreneurial expansion requires an entrepreneurial leader. Mr Khosrowshahi comes with a huge $160m price tag, but is he the right horse for this course and can he handle major shareholder Mr Kalanick?

Toshiba

Toshiba's woes go on. Desperate to stay listed and to stay solvent, it needed to get its auditor to sign off its accounts by mid-August and to raise some $18bn by end March 2018 from the sale of its chip business. In the event, PwC approved the accounts subject to criticism of its internal controls and the delayed recognition of its losses relating to its Westinghouse nuclear business. Meanwhile, it couldn't confirm the sale to its preferred bidder and has now re-opened negotiations with at least two other bidders. And the authorities are reported as being concerned about governance and a lack of leadership, to the extent that they are believed to be intervening to push the decision-making process forward. Where does poor Toshiba go from here?

Lloyds

The scandal at Lloyds regarding the loan scam at their Reading branch, a legacy from their HBOS acquisition, has gone quiet but hasn't gone away. In fact, it has got worse. After criticism of Lloyds for appointing their own claims adjudicator, by a member of the Parliamentary Treasury Select Committee, former television presenter Noel Edmonds has quadrupled his own claim against the bank to £300m. This apparently exceeds the total the bank has set for all claims, but Mr Edmonds, whose own business was destroyed by the fraud, alludes to accusations that Lloyds has been deliberately blocking police enquiries. How much better if Lloyds had done proper due diligence before acquiring HBOS, and if it had taken this scam more seriously when it first became aware of it instead of fending off victims of the fraud.

Samsung

Samsung has been criticised for not separating management and ownership. Well that may be resolved soon, after a South Korean court sentenced the acting chairman Lee Jae-yong this month to five years in prison for bribery, embezzlement and other offences. He has been linked to the deposed president Park and seen as an exemplar of the notoriously close relations between the chaebol and the state. Mr Lee has been in jail since the Spring, but Samsung's commercial performance has been exceptional in his absence. The suggestion is that Mr Lee should now play the part of an influential shareholder and stay away from the management process. Maybe Samsung is moving out of the chaebol age and close links between its founding family and the state.

Philip Green

Sir Philip Green is in the news again as his retail group Arcadia relinquishes its claim on £30m of assets of the bankrupt department store BHS, leaving the funds to be allocated to unsecured creditors. This follows the billionaire eventually paying £363m towards pension liabilities.

He is also in the news indirectly, as the Pensions Regulator prosecutes Dominic Chappell for not responding to requests for information before his company (which had bought BHS for £1) was wound up. Mr Chappell could face fines of thousands of pounds, but Sir Philip, after agreeing a settlement with the Regulator earlier this year, has never been charged with any offence. No doubt this is technically correct, despite all the criticism which has been levelled at Sir Philip.

But one has to agree with the remarks of Frank Field, MP, chair of the Commons Work and Pensions Select Committee, when he asks "Why was Sir Philip allowed to get away with an inadequate settlement in which pensions have been cut, yet Dominic Chappell is going to be sued?"

The last word...

After eight years of running the ACG website and over 25 years writing, training and consulting on corporate governance, we are excited about the future, both our immediate plans and the longer term, which promises an ever increasing awareness of the need to move away from purely box-ticking compliance exercises towards deep change. We are thus adapting our approach to continue to support the transition (to what we have always advocated) to include more and better bridges from the "conventional" approach to our holistic one. Our new, emerging model demonstrates how compliance is a subset of corporate governance - not the reverse - and will provide detailed help and hooks to link current compliance procedures with the holistic approach to ensure real change is delivered.

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Help us deliver what you want

We hope you have found this ACG Report useful. Please share with anyone you think might benefit and encourage them to sign up to receive future editions. We would also like to hear from you to find out what you would most like to see included, so if you would like to participate in our reader survey, please click on the link below - it should take you less than 2 minutes to complete:

https://survey.zohopublic.com/zs/y8B03L

As a thank you for for taking part, we would like to offer you **50% off the first year's subscription** when we launch the enhanced, paid version of this newsletter, following your feedback. If you are on our mailing list, we will send you details and your coupon codes by email.