

Reaping the Rewards

*How Ireland can benefit from a culture
of good corporate governance*



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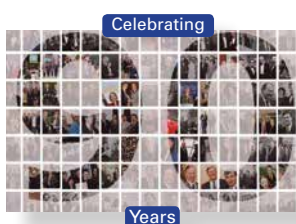
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Foreword

Nano Brennan, President, CPA Ireland



The OECD defines the purpose of corporate governance as: *“to help build an environment of trust, transparency and accountability necessary for fostering long-term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies”.*

Good corporate governance is also the most effective antidote to corruption we know of. This is vitally important in both a global and a local context. Globally, it is estimated that €2.4 trillion or 5% of global GDP is lost annually to fraud and corruption. That is a truly staggering figure.

Here at home, CPA Ireland has continued to address themes that are in the public interest and they include governance and corruption. Since 1926, our members – whether acting as auditors, accountants in business or government – have subscribed to a globally applicable code of ethics and global reporting standards which support the worldwide fight against fraud, bribery and corruption.

While Ireland currently ranks at 18th out of 168 countries in Transparency International’s Corruption Perceptions Index 2015, this country is sadly no stranger to corruption. In recent years tribunals and public enquiries have shed light on practises that erode the reputation of, and public confidence in, those very policy makers and business leaders that should be more worthy of our trust.

Corruption is more than just about money, it’s about people’s lives. There is no doubt that corruption corrodes the very fabric of society and is harmful to the democratic process.

A key weapon in the battle against corruption is corporate governance. At CPA Ireland we believe that an opportunity exists for Ireland to not only

address corruption in our own domain but to promote governance procedures that establish this country as a world leader in this regard.

A significant step towards this goal was taken earlier this year when Ireland was one of just 40 countries to attend the first ever global Anti-Corruption Summit in London. The summit sought to tackle some of the biggest corruption problems around the world, including secrecy in the movement of corrupt money around the financial system, public contracting, health and sport.

CPA members also have a role to play. They operate in 48 countries worldwide and have extensive experience of circumstances in which an accountant may, for ethical reasons, need to adopt a whistle-blower position.

This report is a further contribution to achieving that leadership position for Ireland. It examines the role corporate governance can play not only in stamping out corruption but in improving the performance of organisations in areas such as risk management, fundraising, and the achievement of long term goals. It also identifies the hallmarks of good governance and outlines the steps organisations can take to raise their standards.

Corporate governance will not solve all the ills of organisations nor will it guarantee immunity from fraud or corrupt acts but it can offer organisations a much better chance of doing the right things at the right time and for the right reasons. That in itself should be reason enough for organisations of all types and sizes to aspire to the very highest governance standards.

A handwritten signature in black ink that reads "Nano Brennan". The signature is written in a cursive, flowing style.

Nano Brennan
President, CPA Ireland

Introduction

Eamonn Siggins, Chief Executive, CPA Ireland



Over the past year we have seen some quite spectacular corporate governance failures across all walks of life at home and abroad – in sport, in public bodies, in the charity world, and in business. While individual wrongdoers were at the centre of all of those cases the commonality between them was the poor standard of governance in the organisations involved.

In the UK we heard testimony from the controlling shareholder of one of the country's leading companies that basic labour law and health and safety regulations were routinely breached. That company has since faced challenges to the re-election of non-executive directors from some leading institutional investors as well as an adverse report from one of the world's top proxy advisors.

The saga of the Russian state-backed doping programme cast a shadow over the Olympic Games in Rio de Janeiro.

Closer to home we have had criticism of the way some appointments were made to State boards while there are still questions being raised in relation to top level pay in taxpayer funded organisations.

Ireland's charity sector seems to be continually beset by controversy. The liquidation of Console has raised many questions in relation to the governance of that charity and these will have to be answered in the courts. But the State and society bears some responsibility as well. While the establishment of the Charities Regulator in 2014 was a very welcome development in the sector it has taken until now, almost two years later, for the Minister for Justice to give the regulator powers to impose sanctions if a charity breaches its obligations and to allow it to apply to the High Court to suspend or remove charity trustees or staff members where there has been misconduct or mismanagement of a charity's affairs.

It was not a belief that Ireland has particularly lax standards that motivated the compilation and publication of this report, however. In fact, when it comes to global indices on such matters Ireland scores very well. This country is ranked among the top 20 least corrupt countries in the world and, has achieved a stellar competitiveness ranking of seventh in the world from IMD, and has seen its ranking for ease of doing business climb with improvements in corporate governance including new provisions making directors liable for a breach of fiduciary responsibilities cited among the key reasons.

The CPA Ireland Corporate Governance report was prompted by the need to generate greater awareness of this vitally important topic across all areas of society. As a society we should demand the very highest levels of governance from all organisations operating within our jurisdiction and the aim of this report is to give some sense as to what those standards should be, how well governed organisations benefit from high standards, how corruption can be prevented by it, and what organisations can do to raise their standards.

I would like to take this opportunity on behalf of CPA Ireland to thank all of those contributors both from at home and abroad whose contributions and participation has made this report possible. Indeed, the participation of several members of the International Federation of Accountants (IFAC) board has brought a welcome international dimension to what has turned out to be a very interesting and thought-provoking report.

Eamonn Siggins.

Eamonn Siggins
Chief Executive, CPA Ireland

The Participants

Professor Niamh Brennan

A first class honours Science graduate of University College Dublin, Prof Niamh Brennan qualified as a Chartered Accountant with KPMG, holds a PhD from the University of Warwick and is a Chartered Director with the Institute of Directors (London). Prof Brennan is the Michael MacCormac Professor of Management at University College Dublin and Academic Director of the UCD Centre for Corporate Governance. She holds and has held a number of significant non-executive directorships and governance positions of state and private sector organisations. She has published widely on financial reporting, corporate governance, forensic accounting and clinical governance.

Maura Quinn

Maura Quinn was appointed as Chief Executive of the Institute of Directors in Ireland in 2008 and is a leading voice on the importance of director training and a keen advocate of the need to improve corporate governance standards and the quality of boards in Ireland. A former Executive Director of UNICEF Ireland for eleven years, Maura's career has included a range of senior appointments in both the private and not-for-profit sectors. In 2014, she was appointed as a non-executive director of the Coombe Women & Infants University Hospital and she also serves on the Player Development Board of the Irish Rugby Union Players' Association (IRUPA).

Fiona Ross

A qualified lawyer with expertise in the area of leadership and governance Fiona Ross combines extensive international experience with contemporary public and private sector knowledge. She is a highly experienced director and non-executive director. Following two terms as Director/CEO of the National Library of Ireland she became the founding Director of EPIC Ireland, Dublin's newest museum, has expanded her portfolio of non-executive directorships and co-founded MyndServ a digital healthcare company. She has served as Chair of the Council of National Cultural Institutions and on the board of the Association of Chief Executives of State Agencies in Ireland. She recently completed a governance fellowship at George Washington University in Washington DC.

Serena Mizzoni

Displaying entrepreneurial flair early in her career, Serena Mizzoni founded a talent consultancy and recruitment firm in 2009. She joined Ashoka Ireland in 2011 as a consultant and was subsequently appointed as Co-Director. In 2014 Serena assumed the position of Director and took a place on Ashoka's European Leadership Team. Serena regularly lectures on social entrepreneurship at University College Dublin and Champlain College Vermont's Dublin campus. She holds a BA in Human Resource Management and an MA in Strategic HR from Dublin City University.

Jason Crawford

Jason Crawford has 20 years' experience in providing audit, assurance and accounting advisory services to large listed corporates and indigenous private business alike. Having joined Grant Thornton in 2014 from a Big Four firm, Jason specialises in managing complex multi-jurisdiction audit engagements for multinational and listed groups, as well as advising those corporates on International Financial Reporting Standards (IFRS) and governance reporting matters. His experience spans many sectors including retail, food & beverage, property and construction, motor distribution, information technology and higher education.

Alan Johnson

Alan Johnson recently retired from the board of Jerónimo Martins where he was Group CFO and subsequently a non-executive director. He chairs Jerónimo Martins' Internal Control Committee. He previously held senior positions in Unilever, a global consumer goods company, where he was the Group Chief Audit Executive, CFO of the global Foods Division, and a Senior Vice President in the Global Ice Cream & Frozen Foods and European Home & Personal Care business groups. His volunteer roles include member of the board of the International Federation of Accountants (IFAC) and Chair of ACCA's Accountants for Business Global Forum.

Alex Malley

Alex Malley is the Chief Executive of CPA Australia, one of the world's largest accountancy bodies with 19 offices globally and more than 155,000 members worldwide. He also heads its financial services subsidiary, CPA Australia Advice. In addition, Alex is the host of the Nine Network Australia series "In Conversation with Alex Malley", author of the best-selling book "The Naked CEO", and provides career mentoring via thenakedceo.com. He has been included on The Accountant magazine's Global Accounting Power 50 List and serves on The Prince of Wales Accounting for Sustainability project.

Gail McEvoy

Gail McEvoy founded her practice McEvoy Craig Accountants in 1999 and since then the firm has grown from a small office with one accountant to now employing nine people including six qualified accountants. She served as President of CPA Ireland in 2011 and has represented Ireland on the SMP/SME committee of the International Federation of Accountants. In November 2013 she was appointed to the board of the International Federation of Accountants, (IFAC) the global organisation for the accountancy profession. She is a regular speaker for the LIA, CPA Ireland, Louth County Enterprise Board, Enterprise Ireland and Drogheda Chamber.

Geoff Meagher

A native of Co. Kilkenny, Geoff Meagher CPA, joined the Glanbia Group in 1975 and held a number of positions within the group including that of Group Financial Director and Deputy Group Managing Director. Since retiring from Glanbia he has operated his own consultancy business. Geoff is currently a non-executive Director of Enterprise Ireland, One 51 plc and Bon Secours Health Group. He served as President of CPA Ireland in 2010.

Muireann O'Neill

Muireann O'Neill is a consultant in audit, forensic investigation, corporate governance, risk, ethics and regulation and a nationally recognised senior lecturer in professional accountancy. An accomplished accountant and board director across a number of organisations including the Irish Auditing and Accounting Supervisory Authority and Inland Fisheries Ireland she has also chaired a number of audit committees. While with the Department of Finance she was appointed a member of the Advisory Forum on Financial legislation by the then Minister. She was also appointed as policy researcher and advisor to the government.

Mike Hathorn

Mike Hathorn is the Chief Operating Officer for Moore Stephens International Limited. He is also a non-executive director of a private construction company, having previously been a non-executive director and Chairman of a listed investment company and a number of UK government agencies. Mike was a public sector specialist partner with Moore Stephens LLP, London, for 10 years, prior to which he was Managing Partner of Moore Stephens Scotland for 15 years. Mike is a past President of the Institute of Chartered Accountants of Scotland (ICAS), where he has served on Council and various committees over the past 30 years. He joined the IFAC Board in November 2013, nominated by the Chartered Institute of Public Finance and Accountancy (CIPFA) and ICAS.

In-Ki Joo

In-Ki Joo is a Professor Emeritus of Accounting at the School of Business, Yonsei University and a member of IFAC Board. He was Dean of the University College and Dean of the Academic Affairs. He received his MBA and PhD in Accounting from New York University. He is a member of Korean Institute of Certified Public Accountants (KICPA) and was President of the Confederation of Asian and Pacific Accountants (CAPA) as well as serving as President of the Korean Accounting Association. He is a recipient of a Decoration of Excellent Achievement from the President of the Republic of Korea and an Honour from the Deputy Prime Minister and the Ministry of Finance and Economy.

Justin Moran

Justin Moran is a Director in the consulting practice in Mazars. He has over 14 years' experience in advising organisations in the specialist areas of corporate governance, risk management and internal audit. Justin has led a large number of governance reviews across a range of sectors to help organisations improve their governance structures, processes and performance. He has significant knowledge and experience of implementing governance frameworks within the private sector and also advises public sector, not for profit and regulated entities on governance, risk and compliance frameworks.

Pamela Monroe-Ellis

Pamela Monroe-Ellis was appointed Auditor General of Jamaica in 2008. She spent the early part of her career in accountancy at PricewaterhouseCoopers where she was a Staff Accountant. Mrs. Monroe-Ellis is a Fellow of the Institute of Chartered Accountants of Jamaica (ICAJ) and the Association of Certified Chartered Accountants (ACCA). She currently serves as Chairman of ICAJ's Investigations Committee and is currently a member of the ACCA Global forum for Ethics. In 2012, she was elected to the Board of the International Federation of Accountants (IFAC), making it the first time that a Caribbean national was elected to serve as a member of the Board of IFAC. She was re-elected in 2015 to serve another three-year term representing the Caribbean and Latin America.

Patrick Rozario

Patrick Rozario is a Managing Director of Moore Stephens and heads up the firm's Advisory Services Division to help clients manage risk and enhance their business operations. Patrick has over 25 years' experience working for large international accounting firms and in the commercial sector. He has substantial experience working in the area of governance and risk advisory. He has managed various internal audits, corporate governance, Sarbanes-Oxley, internal control and information technology advisory and assurance engagements for clients across different industries including banking, insurance, telecommunication and government in Hong Kong and China. Patrick is also the Chairman of the organising committee for the Hong Kong Institute of Certified Public Accountants (HKICPA) Best Corporate Governance Awards 2016.

Professor Ian Robertson

Ian Robertson is Professor of Psychology at Trinity College Dublin, Visiting Professor at University College London and was formerly a Fellow at Hughes Hall, Cambridge University and Visiting Professor at Columbia University, New York. A trained clinical psychologist as well as a neuroscientist, he is widely known internationally for his published research on the human brain. His popular writing has included regular features in the London Times and The Daily Telegraph and five books aimed at the general reader: *Mind Sculpture* (2000), *The Mind's Eye* (2003), *Stay Sharp* (2005), *The Winner Effect* (2012) and *The Stress Test* all of which have been widely translated. He writes a blog on human behaviour on www.ianrobertson.org.

Rachel Grimes

Rachel Grimes has 25 years commercial experience across the financial services sector working for both a Big Four bank and a Big Four accounting firm. She is Chief Financial Officer – Technology for Westpac – overseeing a \$1 billion budget and was previously Director of Mergers and Acquisitions at Westpac. She was the co-lead on the Westpac merger with St. George – the largest financial services transaction in Australia's history, the initial public offer of BT Investment Management and the acquisition of JO Hambro (UK). She is Deputy President of the International Federation of Accountants (IFAC). She served as President of the Institute of Chartered Accountants in Australia (ICAA) in 2011. Rachel's contributions to this report are strictly in her capacity as Deputy President of IFAC.

Corporate Governance – Why it Matters

Corporate governance matters. It matters because corporate failure as a result of poor governance standards diminishes us all. While it can be relatively straightforward to define the immediate victims of organisational failure – employees, shareholders, clients, customers; it can be argued that the whole of society is affected in one way or another.

The Flood and Mahon Tribunals of Inquiry into Certain Planning Matters and Payments and their revelations of the practices and governance shortcomings of certain local authorities served to undermine public confidence in both the planning system and the probity of local government. The expenses and expenditure scandal at FÁS which came to light just as the worst of the recession was beginning to bite in 2008 and 2009 further eroded faith in public bodies.

More than two years before the liquidation of suicide prevention charity Console over 60% of the charities operating in Ireland reported significant falls in donations as a result of some very public scandals involving the wider charity sector. Half of the charities which reported falls in donations said this had resulted in cuts in services.

The primary victims in that case were the service users of those charities including families living in poverty, people suffering from intellectual and physical disabilities, people with addiction issues, the elderly, crime victims, and other vulnerable groups who found supports cut or withdrawn completely as a result of the corporate governance failings of a few high profile charities.

Members of the public, whose donations funded the errant charities, also considered themselves victims as did taxpayers generally.



Alex Malley

“Governance is concerned with how entities are directed, controlled and held to account.”

The banking crisis is another case in point. Time and again, participants in this report express a belief that many of the excesses which led to the crash in this country could have been prevented if good standards of corporate governance had prevailed in the organisations concerned. In that instance the entire country was the victim and the reverberations will be felt for many years to come, in some cases by people who were not even born at the time but still find themselves shouldering the burden of a swollen national debt.

This report sets out to explore the nature of corporate governance, its impact on various aspects of organisational performance, and its role in preventing corruption. The report also examines ways in which organisations can improve their corporate governance so that failures can be avoided in future.

While the main theatre of interest for the report is Ireland, corporate governance is very much a global issue. It is for this reason that we sought the views of a number of International Federation of Accountants (IFAC) members from around the world. Their participation has been critically important to the compilation of this report as indeed has that of the Irish based participants.

Defining Corporate Governance

“The law is man’s feeble attempt to set down the principles of decency... and decency is not a deal. It isn’t an angle, or a contract, or a hustle! Decency... is what your grandmother taught you. It’s in your bones! Go home and be decent people.”

Tom Wolfe, *Bonfire of the Vanities*

Corporate governance is one of those terms that gets bandied about from time to time without much of an attempt to explore its full meaning. Indeed, many people, even at senior levels in business, confuse governance with management. But the two could hardly be more different.

Management is involved with the day to day running of an organisation while corporate governance sets the framework and parameters within which that activity takes place. Where adequate standards of corporate governance are not in place or are circumvented or ignored bad things are almost guaranteed to happen.

And this principle applies to organisations across all sectors – public and private sectors, charities, not for profits, NGOs, sporting authorities and so on.

While this may seem reasonably clear there were some quite divergent views among the contributors to this report as to what

it means precisely. Some leaned more towards a rigid rules based approach and framework while others believed the ethical and principles based elements were of greater importance in the mix.

Maura Quinn believes that corporate governance is about having the systems and processes in place to enable a business to develop in the long term. *“Corporate governance has got a bad rap in some ways, it has been seen to be about compliance and regulation and box ticking. When I am asked to speak about it I can see eyes almost visibly glaze over. But the very public failures we had in the past could have been avoided if it had been in place. In many cases those failures were about businesses getting their corporate governance wrong. If they had the rules in place we would be in a different place now.”*

It is about having the right rules, controls, checks and balances in place, she says. “In my organisation

those rules enable the board to have oversight and control over what I do but they also enable me as CEO to get on with the day to day work of running the business. I have autonomy and power to run the business but with accountability to the board.”

She explains that the key relationships in any business are between the chairperson and the CEO. *“If they work well together that is good but there needs to be a healthy tension between them as well as between the CEO and the board. The relationship shouldn’t be fractious and it shouldn’t be too cosy either. They have to work together to deliver on an agreed strategy. The CEO has to report to the board and be accountable to it but the chair and the CEO form the critical axis. If one of them gets too powerful then things can go pear-shaped.”*

The practice of having the same individual occupying both the chair



Maura Quinn

“Corporate governance has got a bad rap...but the very public failures we had in the past could have been avoided if it had been in place.”

and the CEO's office is one that is simply wrong, according to Quinn. Perhaps the most infamous dual officer was Kenneth Lay of Enron fame who was found guilty of several counts of securities fraud in 2006 as a result of that company's downfall.

"In the US the chair and CEO can sometimes be one and the same and this is wrong. Also, you can't have a situation where the CEO just moves upstairs to become chair. How can they objectively critique their own past decisions in that case? The same problem occurs if you appoint senior managers to a board – they tend to be overly loyal to the individuals who promoted them. It's about running a business and running it properly."

Niamh Brennan uses a metaphor to define corporate governance. *"It's like a house", she says. "If you go into a house and it's a complete shambles that is not good. Or if you are afraid to sit down because it is so neat and tidy that isn't good either. It's about good housekeeping but not about extreme perfectionism. At the end of the day an organisation has to be able to pursue its mission. It should be good enough to protect from excessive risk but should not be over the top. It should be appropriate for the organisation concerned."*

All organisations, including charities and not for profits, can benefit from good corporate governance according to Serena Mizzoni. *"Good corporate governance ensures that things are done right regardless of the nature of the organisation", she says. "At a very basic level it means operating within defined boundaries with strong administration and reporting. It means not stepping over limits and working within parameters and having good practices in place."*

Fiona Ross agrees. *"It's about how you run things, whether it is a charity, a household or a corporation", she says. "In very simple terms it's about running a company well. It's about following the rules. If you follow the rules you will have good corporate governance. It's a mix of hard rules such as company law and others which are principles. There is a moral code to follow. Where it falls down is where this is not followed. You see it over and over again that corporate governance falls down where the rules are not followed. If you use a sporting analogy, you can't run onto the pitch and do what you want. It's bad for the sport and everyone connected with it when the rules aren't followed."*

She believes there needs to be more focus on rules. *"A lot of people just don't bother and there is a lot of lip service paid to the rules but there has to be rules. Health and safety and food safety rules for example. There has to be accountability, like everything, someone has to be responsible."*

Ross notes that corporate governance is a relatively recent concept in a historical context. *"If you go back 200 years or so there was no real investment and no corporate finance", she points out. "People owned their own businesses and it was assumed they would have their own interests at heart. It comes back to agency theory – there was an assumption that you weren't going to cheat yourself. Then came debt and equity finance and that changed. People who give you money have an interest in the control of the organisation and frequently put in a board member to ensure management doesn't make off with the money. Oversight wasn't really needed before that. It all starts from that and the prevention of conflicts of interest."*

Having said that, she believes that good corporate governance standards should not be that difficult to achieve. *"There are basic rules and if they are followed you're half way home", she says. "You need to avoid conflicts of interest; prevent the appointment of dominant CEOs who can force through bad decisions. You also need to have transparency and openness during good times and bad. If you have a light shining on you in your annual report and your board minutes it will make you very careful about what you do."*

She points out that a balance has to be struck as well and that no one will ever be 100% compliant no matter how hard they strive and that a balance must always be struck with the objectives of the organisation. *"If corporate governance means you don't make profits for shareholders they will desert you."*

For Alex Malley governance is about performance. But performance is not about short-term profit maximisation, rather it's the creation of sustainable value; the creation of value for all stakeholders now and into the future.

"Governance is concerned with how entities are directed, controlled and held to account; it is concerned with who controls the entity, how and for whose benefit", he adds. "Boards are tasked with the responsibility of oversight. They have the responsibility of setting strategy, ensuring that it is followed and overseeing the management of risk, including misconduct risk."

Rachel Grimes believes corporate governance is a set of responsibilities, rules, procedures and processes mandated by the board and CEO of an organisation for all stakeholders to follow. *“This framework should provide structure, transparency and consistency for the organisation, enhancing corporate sustainability”, she says. “However, for corporate governance to be considered ‘good’, this framework must be supplemented and supported by a strong and ethical corporate culture. In my view, the aim of corporate governance is to align as nearly as possible the interests of all stakeholders – be they management, shareholders, customers and society as a whole.”*

Wider stakeholder interests are also highlighted by Patrick Rozario. *“Good governance of an organisation is about balancing the rights and relationships of the many stakeholders including shareholders, the board of directors, employees, customers, creditors, suppliers, and the community at large, with the goals for which the organisation is governed”, he says.*

Transparency is an important issue for Pamela Monroe-Ellis. *“Good corporate governance embodies a set of practices driven both by culture and policies engendering transparency and accountability aimed at furthering the objectives of an organisation.”*

That’s a view echoed by Gail McEvoy. *“There are three words I would use to sum up good corporate governance”, she says. “Those are accountability, fairness and transparency. You have to look after all stakeholders; staff, the community, customers, shareholders, pensioners, everyone. It can be different for micro enterprises and PLCs but the core principles are the same. It should be in the culture of the organisation. There is a lot of talk about it now because of what has gone on in the recent past but if we had a culture where that behaviour wasn’t tolerated the bad stuff wouldn’t have happened in first place.”*

Confidence is important to Muireann O’Neill. *“Good corporate governance means an organisation will be run properly and that you can depend on the people running the company to do the right thing.”*

For Geoff Meagher, the ability to deliver on strategy is of key importance. *“My definition would be the capability of an organisation to deliver on strategy in a safe and controlled environment. This environment covers all areas including finance, risk assessment, health and safety, environmental performance, and so on. It involves an assessment of all those things and of where the organisation will and will not be going. It is the umbrella under which organisations work; a set of principles to operate to which the organisation won’t veer outside irrespective of pressure.”*

Consistency is vitally important as loose arrangements or ambiguity can lead to poor practices. *“You need clear definitions otherwise you can cross a line and it will happen again and again and bad practice will spread”, he adds. “There is an absolute need for clarity in terms of governance across the board.”*

Mike Hathorn points to people as the vital cogs in the machine of corporate governance. *“Good corporate governance encompasses the usual references to the mechanisms, processes and relations by which entities are controlled and directed”, he notes. “More importantly, good corporate governance is only as good as the people who work within the entity. There must be clear,*



Patrick Rozario

“Good governance of an organisation is about balancing the rights and relationships of the many stakeholders with the goals for which the organisation is governed.”



Mike Hathorn

“Good corporate governance is only as good as the people who work within the entity.”

written governance structures and principles which identify the roles and responsibilities of senior personnel within the entity and clarity as to how decisions are made. Nowadays, the scope of good governance must include social, regulatory and market environments and there should be some alignment of competing interests of stakeholders. In my view, corporate governance is still too process driven with insufficient numbers of good non-executive directors in place.”

Justin Moran is inclined to agree pointing out that the OECD definition of corporate governance is the system of control and direction of companies. However, he sees it not so much about control or process. *“It’s about directing and monitoring decision making, risk management, sustainability and value.”* And that is crucially dependent on the people in the organisation.

In-Ki Joo puts forward four pillars of good corporate governance: establishing clear accountability for all members, especially for top management such as the CEO and board members involved in running the business; providing transparent and relevant information to key stakeholders in a timely manner; feeding back in time on the evaluation and the results to each responsible member; and doing whatever is necessary to improve the performance of the organisation continuously.

Alan Johnson adds trust to the mix. *“It is a strong set of practices and rules that guide the*

board of directors ensuring accountability, transparency and trust between all stakeholders and with members of the company’s management, with an appropriate separation of responsibilities between the board and management and effective oversight of the executive to ensure they act in the best interest of all stakeholders.”

That is probably as succinct an overall definition of corporate governance as you are going to get. Interestingly, it mirrors in many ways the separation of democratic powers set out by the founding fathers of the United States when drafting that country’s constitution almost two and a half centuries ago.

Shareholders, board members, and senior executives represent the three branches of government and in an ideal world those stakeholders should ensure that the right checks and balances are in place. But this is not an ideal world and the system is only as strong as its weakest link and that is very often the people involved.

It is for that reason that corporate governance must go beyond mere rules, structures and frameworks. It must also include morals and principles and, most importantly, people who are guided by them and will stick by them regardless of the pressures they may come under either from within the organisation or from external sources. In short, it comes down to the decency of the people involved.

The Hallmarks of Good Governance

There is a concept sometimes advanced in legal cases known as the “elephant test”. It refers to an idea or a thing which is hard to describe, but instantly recognisable when spotted. This may or may not apply to well-governed organisations. Some of the participants in this report believe that a well-run and governed organisation is readily identifiable while others believe it is not so easy to tell.

This naturally presents a problem for the public, for investors, and for the authorities and regulators. We cannot base a society on a default position of mistrust. That would be to run counter to the most basic principles of our system of jurisprudence and indeed would stall the wheels of commerce.

Instead, we have to begin from a position of trust, one in which we look for the hallmarks of well-run organisations when we are deciding where to place our business, give donations, or make investments.

Several contributors to this report believe, quite simply, that you know a well-run company or organisation when you see it. That may well be the case for them as they are relatively expert in such matters. However, the greatest business experts in the world were fooled by

Enron, Tyco and WorldCom for quite a while and Bernie Madoff’s clients were no slouches when it came to judging the businesses.

As Niamh Brennan points out: *“One of the problems is that from the outside looking in it can be very hard to see if the corporate governance standards are good. In the end it all comes down to people. If you are asked to join a board you have to ask who else is on it. Are they people who share your values or are they duck and dive merchants? You really don’t know what you are going to discover until you get inside the boardroom. Joining a board is always going to be an act of faith. I would put a lot of store in the quality of person inviting me to join a board.”*

If you want to assess the standards of corporate governance in an organisation you should carry out a form of due diligence, she adds. *“Ask to see the financial statements and do a search of the newspapers. I wouldn’t be totally reliant on financial statements. They do contain useful information if you go through them line by line but look at what other people are saying about the organisation.”*

The identity of the board members is also important to Jason Crawford. *“Good governance is prevalent in organisations that have a clear set of rules, along with an appropriate*

composition of board members, such that the board’s objectives are aligned with those of the shareholders.”

According to Alex Malley there are a number of indicators of good governance other than profit figures or policies and rules. These include organisational culture, transparency, employee and customer satisfaction and wellbeing, investor confidence, ethical leadership, organisational commitment and innovation. He believes these indicate a certain kind of entity.

“The surest sign of good governance is the alignment between rhetoric and reality”, he says. *“Most entities, if not all, say the right things but they are not reflected in what they do.”*

He explains that independent boards, risk management, remuneration and audit committees are not ends in themselves. *“They are the means that entities can use to achieve good governance and thus optimise value creation”,* he says. *“Regulation and legislation can motivate or compel entities to develop certain structures, systems, processes and policies but these will not guarantee performance, accountability and efficiency unless they are able to influence and direct people’s behaviours. Governance is the consequence of appropriate behaviours*

that result from suitable hard elements such as policies and regulations but also from soft elements such as values, norms, culture and role models.”

Rachel Grimes sees the proof of the pudding coming in the long term eating. *“The most notable difference is longevity – good corporate governance provides the framework for sustainable and repeatable financial success”,* she claims. *“This sustainability provides these organisations with stability through strong reputation, board continuity and limited management turnover.”*

In-Ki Joo tends to agree. *“Organisations with good corporate governance continue improving effectiveness and efficiency in achieving their goals and enhancing sustainability while organisations without good corporate governance do not have a systematic approach to improving the corporate’s performance.”*

Geoff Meagher is among those who believe governance standards become obvious quite rapidly. *“If you deal with organisations with good corporate governance it will become very apparent very quickly what standards they live up to and what standards of ethics they have and what their mission is. It will also become clear if the ethics and mission are embedded in the organisation.”*

One trait which comes up time and again and may well be the ultimate litmus test for good corporate governance in an organisation is transparency. *“Organisations with good governance always have transparent decision-making processes ensuring the accountability of key individuals to all stakeholders including the public.”*

Jason Crawford agrees. *“Overall, organisations applying good governance are typically more transparent with their stakeholders and post the economic downturn and the series of corporate failures that ensued, stakeholder expectations have become higher than ever.”*

For Alan Johnson this transparency is expressed through regular contact with all stakeholders to measure their perceptions and requirements. A further indicator of good corporate governance practice for him is the presence of strong and independent non-executive directors with a sufficient knowledge of the business and the industry within which the business operates as well as an understanding of the needs of all shareholders and effective oversight of operating management.

“For me the key is having independently-minded executives and board members willing to ask challenging questions with a sufficient degree of probity and having

access to executives below the CEO suite”, he adds.

Transparency is also essential as far as Pamela Monroe-Ellis is concerned. For her strong corporate governance environments are identifiable through timely reports to stakeholders which encompass both financial and key performance indicators. *“Importantly, such organisations generally have control environments that have clear channels of reporting accompanied by separation of authority. They generally place significance on the system of monitoring and feedback through the internal and external audit functions and in some cases a separate function for risk identification and management. What is usually common among organisations with good corporate governance practices is the establishment and faithful function of an audit committee; which bolsters the independence of the internal audit.”*

Transparency can, of course, present challenges for commercial organisations but these are by no means insurmountable. Commercially sensitive information need not be revealed in publicly available reports. It is the way decisions are made and the way people and stakeholders are treated which is important.

In the final analysis, the more an organisation is willing to reveal about itself and its inner workings the more likely it is to have high standards of corporate governance. And that brings us back to the elephant test. In this case the test is passed if you are actually able to see the elephant and not have to rely on someone else’s assurance that it exists.



Professor Niamh Brennan

“One of the problems is that from outside looking in it can be very hard to see if the corporate governance is good.”

Organisational Performance

One of the great difficulties when assessing the benefits of a concept like corporate governance lies in establishing cause and effect. There is always the risk of falling into the post hoc ergo propter hoc logical fallacy or the belief that just because one event followed another, the first event must have been the cause of the second.

There was near unanimous agreement among all contributors to this report that good corporate governance practice should lead to better organisational performance but no one could be definitive in how this superior performance could be measured. Indeed, when it comes to the private sector there is no correlation whatsoever between good corporate governance and profitability while there are actually some examples of companies with poor practices delivering higher rates of return for investors.

This apparent conundrum is possibly explained by the different frames of reference used. In the short term, at least, it is possible to get away with things. The infamous Bernie Madoff got away with having absolutely no governance beyond very high quality if completely fantastic shareholder communications for many years but eventually came to grief. It was just a matter of time.

The lesson appears to be that better governed organisations are more sustainable and possess the ability to withstand crises better than those with lower standards. A bit like the W. Edwards Deming approach to quality assured manufacturing which transformed Japanese industry in the post-war years – you may not produce as much but it will be profitable in the long term.

In short, the impact on organisational performance depends on the indicators used to assess it. And the very best standards of corporate governance will not offer a guarantee of superior performance according to Alan Johnson.

“Does good corporate governance necessarily lead to good business performance?” he asks. “I think it should but it is not a guarantee. You can have perfect governance but still make lousy choices and bankrupt a company. Well governed companies don’t necessarily outperform others. But good governance can help avoid the risk of underperformance. It improves the chances of making good decisions.”

He points to a recent high profile corporate failure in the UK which had massive implications for tens of thousands of staff and pensioners.

“That was an example of a company where there appears to have been no governance in place. That firm had responsibilities to more than 50,000 people in terms of employees and pensioners. It was a private company but there is a clear public interest in how it was run. There should be consequences for the people involved in running that company.”

He does believe that long term business success is closely associated with good governance, however. *“Normally, sustained performance is strongly correlated with sound governance. Good corporate governance means issues are openly discussed, risks understood, decisions are taken transparently and monitoring and reporting of performance to the governing body or bodies is regular and transparent.”*

The close relationship between poor governance and corporate failure is clear to Jason Crawford. *“One of the clear common denominators in the post-mortem of corporate failures during the recession was the failure to implement adequate governance standards”, he says. “It became widely accepted amongst commentators and regulators that these failures could perhaps have been avoided if governance had been stronger.”*

He breaks down the failings as follows: risk could have been better managed and safeguards could have been put in place to stop excessive risk taking; boards could have comprised more diverse members with different challenging views; boards and audit committees could have been more appropriately structured, conflicts of interest could have been properly managed; and executives could have been more appropriately incentivised for the long term and performance measurement better linked to the strategic objectives of the organisation.

“These failures forced regulators to quickly look at enhancing governance standards in order to bring confidence back into the capital markets and to help alleviate public unease about poor standards of governance, both in public office and in the corporate world”, he adds.

“I think that corporate failures through the recessionary times have forced organisations and their boards to reflect on their governance structures and risk management, to ensure in these post recessionary times that they are stronger and fit-for-purpose. In this context, the inadequacies identified are clear evidence that good governance practices are critical for an organisation to help manage risk and improve performance, and to keep an organisation on a safer growth trajectory.”



Rachel Grimes

“The key to good corporate governance is getting the buy-in of all employees so that it becomes a critical part of the culture of an organisation.”

Alex Malley believes that good governance leads to efficient use of resources and improves performance in areas such as value creation. *“Good governance should result in better outcomes for everyone who is affected by or affects the corporation.”*

He also believes that the measure of organisational performance needs to change noting that there is too much focus on profits and not enough on indicators like employee and customer satisfaction. *“Long term KPIs such as these need to be more significant”,* he contends pointing to the impact of high staff turnover to support his argument.

“The cost of turnover of staff is huge”, he points out. *“Each time you have to replace people their knowledge is lost. That has a cost to the business and to its stakeholders.”*

On a more positive note Rachel Grimes sees real benefits in terms of decision making. *“The key to good corporate governance is getting the buy-in of all employees so that it becomes a critical part of the culture of an organisation”,* she says. *“A strong corporate governance system results in better decision making, and a higher level of confidence in the organisation. This occurs because there is a greater degree of accountability and transparency in decision making, and employees are more conscious of the impact of their decision on the organisation, including assessing relevant risks.”*

On the negative side of the coin she points to the loss of good people by poorly governed organisations as a cost of low standards. *“Those companies are not good at attracting or retaining the best people. They don’t have the brand or the wow factor to do that. If organisations don’t have the right values and vision young people will not want to be associated with them. What I am seeing on more and more CVs these days is an interest in community. My generation wanted to pay off the mortgage. It’s very different today. Well governed organisations should naturally perform better as they will have the best people to choose from.”*

Gail McEvoy believes her clients do benefit in terms of performance but it depends on how that performance is measured. *“If you measure it just on profits, I don’t know; presumably it would make a difference in the long term.”*

Long term performance gains are obvious to Geoff Meagher. *“The positive aspects of good corporate governance include improvements to management and employee morale. Ultimately, the sustainable performance of the organisation is improved in the longer term. Without the proper checks and balances in place I have too often seen people inadvertently run into bother. They run into a stone wall and don’t even see that the wall is there.”*

He offers a simple example in the context of Brexit. *“Firms have to be aware of currency management”,* he says. *“If they don’t have a clear policy in place someone may get a rush of blood to the head. If a risk management policy is properly worked out it will govern the strategy for the mitigation of currency risks. Maybe the firm only needs to hedge for three months rather than 18 months of two years.”*

In-Ki Joo has a similar view. *“Better communication between all members as to their defined goals and objectives and their performance results and building trust and fairness in rewarding their performance will have positive impacts on organisational performance”,* he says.

Another exponent of the longer term view is Maura Quinn. *“I don’t think there has been any research which demonstrates bottom line benefits”,* she says. *“Some people claim it has an impact on the bottom line but I don’t know if that is the case. There are too many external factors at play. I don’t think you can say definitively that it has an impact on the bottom line.”*

But she does believe it gives a level of comfort to investors, staff and customers about the way the company is being run. *“It’s more about ensuring that there aren’t aberrant behaviours tolerated; it does make for a more effective and better run business.”*

She looks back to the financial crisis of 2008 in this context. *“If you look at what happened here in the financial sector it appeared that the strategy was all about going for short term growth without looking at the longer term implications. There was overly aggressive competition between the high profile banks. It was all about short-termism there wasn’t any attempt at proper risk analysis and what would happen if they put all the eggs in one basket.”*

And this could have been prevented by good corporate governance standards. *“There weren’t the checks and balances in place”,* Quinn adds. *“We saw instances where senior management just told employees to get the business regardless of the risk. And then the cost of the whole mess came to light – there wasn’t even proper title to many of the properties which had been*



Pamela Monroe-Ellis

“Good corporate governance provides fertile ground for performance at all levels which augurs well for the achievement of the organisation strategic goals.”

bought. It’s all about the checks and balances. If it’s just about getting the business there is not going to be proper due diligence.”

Niamh Brennan agrees that there is no proven connection between profits and corporate governance. *“The research on that is extremely ambiguous and hasn’t found any strong linkages between shareholder value and good corporate governance. There are all sorts of reasons for this but there is one exception and that is where organisational performance is measured in terms of survival. The link is very strong there – organisations have a better chance of surviving a crisis if they have good corporate governance. If performance is only measured on share price there is no linkage. But just measuring performance on the short term share price is very risky.”*

Less tangible benefits are also important according to Pamela Monroe-Ellis. *“Good corporate governance provides fertile ground for performance at all levels which augurs well for the achievement of the organisation strategic goals. Frankly, I am also of the view that an organisation with good corporate governance is generally an attractive employer and recognised as a good corporate citizen. Favourable opinions of stakeholders is bankable.”*

Patrick Rozario actually sees the absence of good governance standards

as a barrier to good performance while high standards certainly help. *“There has been a lot of research done that shows that corporate governance is an important system that helps to balance the rights, benefits and interests of stakeholders”* he says. *“If you can’t do that there will be conflict. If you are not able to do that you can’t drive towards long term sustainable growth. Good governance provides a system for an organisation to monitor its performance and allows the organisation to align its capability and capacity to manage risks as they arise and enhance its performance.”*

While agreeing that there is no research pointing to a relationship with profits Justin Moran points to the issue of how non-profit entities such as public bodies can measure their performance. *“There is a big challenge and debate around not-for-profits and the public sector trying to define the impact of their work”,* he explains. *“From a governance point of view what is strategy of the organisation? How clearly has it defined its objectives? How can it measure its impact? Without clarity of purpose in a strategic plan how can it measure its impact?”*

Clarity is essential and this is delivered by good corporate governance. *“In the public sector, if you look at a sample of strategic plans across organisations can you really decipher what the objectives might be? They are*

getting better. The best of them are using KPIs and setting specific outcomes. That has to be part of corporate leadership and has to be a responsibility of the board."

When it comes to not-for-profits it is a case of ensuring that the ends are not used to justify the means according to Serena Mizzoni. *"It's all about best practice on the part of the individuals and organisations supported by Asboka. We have to focus on the administrative side of what people are doing. They shouldn't be allowed any slippage in standards regardless of how well the organisation is performing in terms of profits or delivering social change. Good corporate governance ensures things are done right regardless of the nature of the organisation. If there is good corporate governance in place we don't have to second guess what they are doing"*

Mike Hathorn offers a slightly contrarian view to the consensus, however. *"I don't believe there is any evidence to suggest they are any better"*, he says referring to companies with good corporate governance standards. *"In the short term, I believe there could be under-performance in terms of current investor expectation of financial performance because they have a broader focus than just investor interests and they will take a longer term view. This suggests that following the [corporate governance] code can have a detrimental impact unless there is a shift in*

focus by investors and governments from a short term view to a longer term view."

He sees leadership and organisational performance as inextricably linked. *"I believe leadership performance should go hand-in-hand with organisational performance. Once the organisation understands how the board works with the leadership, I believe the organisation will follow."*

Fiona Ross is also less sure of a linkage with superior performance. *"Well governed organisations are sometimes successful, sometimes not. Good corporate governance is not proven to be effective in making a company successful. At any given moment on any given day bad decisions are being made. Organisations are treating employees badly and treating customers badly and getting away with it."*

The natural conclusion is that less tolerance for poor behaviours and standards is required.

Notwithstanding these reservations, the overwhelming consensus holds that while corporate governance won't necessarily deliver increased profits in the short term it will definitely improve long term survival prospects and over time lead to superior performance as a result of being able to attract the best people and having a better chance of making the right decisions. But there are not guarantees of course.

Even without such a guarantee, the improved prospects of long-term outperformance should be enough to convince even the most sceptical of the benefits of good corporate governance.



Serena Mizzoni

"Good corporate governance ensures things are done right regardless of the nature of the organisation."

The Investor Community

Almost everyone who has ever had occasion to visit a bank manager or other lender to seek a loan will know the importance of presentation. It's not just a question of the numbers. You have to be able to convince the individual or group on the other side of the table that you order your life and affairs in such a way that you not only have the capacity to repay the loan but can be relied upon to do so.

That is no less the case when it comes to corporate fundraising, regardless of whether it is bank debt, venture capital, seed capital, an angel investment, or even a full IPO. Organisations have to put their best feet forward.

The crazy days of the dotcom boom when it appeared that all a company needed was a way-out idea in order to attract investment have long since gone. No one talks about cash burn any more, the focus is firmly on investment returns.

At the same time, lenders and investors have become increasingly risk averse, or at least more prudent and cautious. They want some form of assurance that the organisation being funded and the people running it represent a good risk and there is only so much that the publicly available numbers can tell them about this.

One answer to this problem is corporate governance. It is well established that organisations with high standards of governance stand a better chance of long term survival than those without them. It therefore follows that those better run organisations offer a higher chance of delivering a return on an investment. It further follows that the organisations in the other camp present a higher risk.

There is also the question of confidence. Every investment or funding decision represents a leap of faith to a certain extent. The numbers may add up but are they to be trusted? Some of the greatest corporate collapses in history including that of Enron in the US and calamitous banking failures both on Wall Street and much closer to home were presaged by very healthy annual reports. No one reading those documents could have presumed that there was trouble brewing in the background.

You have to be able to trust the people and the processes behind the numbers. While external audit can give a certain level of assurance the fact remains that the auditors only see what is presented to them. Robust internal audit procedures and corporate governance processes which ensure reporting accuracy

offer the only real security to potential funders.

There is also the case of companies with established track records. They might be able to deliver returns to investors but their business and other practices may not be very desirable. For example, an institutional investor with strong ethical governing principles will wish to steer clear of corporations with a poor environmental or human rights record. Again, the only real way they can be sure that the companies actually live up to the claims made in their annual reports in relation to these issues is by having confidence that the correct corporate governance structures and processes are in place.

It is therefore of little surprise that investors are increasingly looking at corporate governance standards before making a final decision.

Fiona Ross believes that governance standards do affect investment decisions but also sees an inherent conflict when it comes to investor demands. *"It is a difficult balancing act", she says. "You need to be able to trust the data you are being given. All you have to go on is the publicly available statements and annual reports issued by the company. That's about the only information an*



In-Ki Joo

“Corporate governance is one of the most important factors that the investment community will consider in evaluating companies for their investments.”

investor will have and it's no good if is fraudulent. The only way you can be fairly sure it is not fraudulent is by having confidence that that company is well run to good standards of corporate governance.”

And then comes the conflict. *“At the point of entry they do care about corporate governance”, she says. “After that they just want the company to have supra natural profits and you could say that sometimes they don't really care about corporate governance any more. At the same time they don't want their investments to crash and burn. It can be quite difficult for companies as well. Do you pre-announce bad numbers? The market is very fickle.”*

Mike Hathorn shares Ross's opinion on the decidedly mixed views investors have with many of them still seeing corporate governance as an optional extra. *“In my experience, the investment community view varies according to their own objectives; particularly with regard to short and long term objectives. The [corporate governance] code provides a framework of guiding principles but the interests of investors varies with the result that their participation is inconsistent, fragmented and sometimes competing. Boards therefore focus on those investors which they see as more critical than others. Across the investor community, I consider their view is still in the lower half towards optional extra and therefore not good enough.”*

Rachel Grimes has seen a pronounced change in investor attitudes to corporate governance in recent years. *“Whilst ten years ago corporate governance may have been an optional extra, today it is a ‘ticket to the game’ for the majority of large pension funds and asset managers”, she says. “I am seeing an increasing trend for managers and asset owners to establish benchmarks around*

corporate governance. This is taking shape through inclusion of governance measures in Environmental Social and Corporate Governance (ESG) metrics and in the form of direct engagement with companies by asset managers and pension funds. This activity has increased significantly in the last five years.”

She has also noted an increase in activity by the large index providers such as BlackRock in engaging proxy advisers to guide them in their voting on governance related matters.

On a personal level she points to her own experience and how paying attention to governance has paid solid dividends. *“From my own point of view I invest in companies based on their boards and where I know there is very sound management. I sometimes follow people when they leave one company and join another. By doing that I have been a lot better off. If people I trust are there I am a lot more likely to invest.”*

She cites the example of one of Australia's better known non-executive directors. *“She went into a relatively unknown company but she was putting her own reputation on the line in doing that and that made that company a good investment bet to my mind.”*

Investors are more and more seeing good governance as a prerequisite according to Patrick Rozario. *“It helps to ensure the sustainable growth and performance of the company”, he says.*

He also notes the dichotomy in thinking pointed to by Fiona Ross. *“Investors demand corporate governance on entry but also demand short term profit gain. There are systems to ensure large shareholders have oversight on how a company is run and these should be utilised.”*

Niamh Brennan believes that there is no doubt that the investment community is taking more notice of corporate governance. *“At presentations to shareholders executives are bringing a chairman with them much more often”, she says. “Investors are increasingly interested in governance and it is not a box-ticking exercise. It is a genuine effort on the part of investors to find out what's really going on. Indeed, many US investment funds are employing proxy advisers to rate companies on basis of governance.”*

The economic downturn and its associated corporate failures has led to a clear realisation among the investment community of the link between such failures and poor corporate governance according to Jason Crawford. *“Increasingly, the ability to demonstrate good governance practices improves an organisation's access to capital and the cost of that capital”, he says. “Good governance is certainly rapidly moving from an ‘optional extra’ towards a ‘perquisite’ for investment, specifically for sophisticated investors and large private-equity organisations. We have increasingly seen this in recent times with our clients.”*



Gail McEvoy

“Angels and venture capital funds won’t lend their name to a firm without good corporate governance. It’s one of the traits they look for before parting with their money.”

While certainly growing in importance, In-Ki Joo does not see it as an absolute prerequisite, more a price determinant. *“Corporate governance is one of the most important factors that the investment community will consider in evaluating companies for their investments. Good corporate governance may not be a prerequisite. However, the investment community will discount the value of the investee companies if they do not have good corporate governance as their futures will be more uncertain.”*

The investment community certainly does want to see good corporate governance practices in place, according to Geoff Meagher. *“While they are looking for optimal share price and performance they assume it is in the context of good corporate governance. If good corporate governance is not there most investors won’t invest.”*

But the approach is far from uniform in the experience of Alan Johnson. *“The investor community like many other communities is not homogenous”,* he says. *“I think there are different groups of investors with different objectives. Across the board, we see an increasing focus on governance and leadership, a clearer understanding of the responsibilities of those charged with the governance of corporations and an increasing expectation that they will ensure ethical and legal conduct.”*

Gail McEvoy points to the importance of reputational issues. *“Angels and venture capital funds won’t lend their name to a firm without good corporate governance”,* she contends. *“It’s one of the traits they look for before parting with their money and they will often insist on putting someone on the board. Good corporate governance doesn’t mean that won’t get supra normal profits.”*

There is broad agreement that companies which can’t at least demonstrate a strong commitment to high standards of corporate governance should be given a wide berth. But a note of caution should be sounded here.

Niamh Brennan says *“PLCs include corporate governance statements in their annual reports but the problem is that companies are always going to say good things about their corporate governance. Companies are very good at making their corporate governance look good. One of the red flags in Enron was the rhetoric used. You have to be careful in relation to such organisations. You have to be very careful if the language used is over the top. Hyperbolic language is a red flag. It is important to look at the financial statements to see the language used. It’s as much a question of spotting what’s not in there as what’s there.”*

The conflict between long-term and short-term investment approaches has led some contributors to call for incentives for investors to remain in for the longer haul. These could take the form of diminishing capital gains tax rates on the sale of shares in accordance with the period of time they are held or a change in the tax treatment of dividends received over a long period of time.

Alex Malley believes there is no case for incentives for investors to employ long term strategies. *“If you have an ethical, culturally strong environment there is no need for them”,* he argues. *“If you offer incentives you are not encouraging investors to change. The best learnings come from finding out over time that the best long term returns come from well governed companies.”*

That argument may well sound purist and a little sterile but the current evidence points to time being on his side. Corporate governance was a notable absentee from investor agendas just a decade ago yet now it is a sine qua non for an investment or a significant lending decision. This has to be welcome news for all stakeholders.

Corruption Prevention

Everyone is against corruption, or so it would seem. The difficulty lies in defining corruption. One man's corrupt practice is another's perk of the job. And once moral equivalences enter the discussion it is hard to see where corruption begins or ends.

For example, what is the difference between a cash kickback and a Christmas present from a supplier? One is a direct bribe probably payable in advance of a contract being awarded and the other is a gift made in gratitude for a contract after it has been awarded. The key common factor is that neither of them would have been made if the contract was not awarded.

Yet Christmas gifts from suppliers were an accepted and indeed welcome feature of Irish corporate life for many years. In fact, when Irish public sector bodies first attempted to end the practice of staff accepting Christmas gifts from suppliers some years ago they were met with a mixture of incomprehension and downright opposition from employees.

But while actual physical gifts may be disappearing other blandishments still abound. Corporate outings to golf courses and entertainment events are still the norm in many sectors. The question is where marketing ends and rewards begin. The thin line

between advertising and corruption is increasingly blurred in these circumstances.

The question of scale also arises. Why should it be acceptable to bring customers to a concert by a major pop star when it is unacceptable to give them cruise holidays for them and their families? And when you tolerate one morally dubious practice it is extremely difficult to draw a line and prevent others which may be downright corrupt.

Once such practices take root it can be almost impossible to instil a moral code in an organisation. Why should it be wrong for a person working on a food counter to bring some product home with them if it is acceptable from the person managing the counter to receive gifts from the meat supplier? From there it's just a short step to theft, embezzlement and outright fraud.

It is not much more than 30 years ago that the Irish Labour Court made a recommendation which effectively allowed for an acceptable level of pilferage at a factory in West Dublin. The reasoning underpinning the recommendation was the long-standing practice of staff taking home stock with the knowledge and unspoken acquiescence of management along with the company's failure to even attempt to address morally dubious practices elsewhere in the workplace whilst cracking down on theft.

Put simply, the company had placed itself in an invidious position and could not seek the support of the industrial relations machinery of the state until it had put its own house in order.

Zero tolerance is therefore not only the best policy, it is the only policy.



Jason Crawford

“One of the key cornerstones of good governance is board integrity and ethical behaviour, which helps to shape the culture of an organisation along with the systems and rules to be applied by management.”

The question is whether high standards of corporate governance can help enforce such a policy and help prevent fraud and corruption in organisations.

Jason Crawford believes that it can. *“Good corporate governance is increasingly considered a very effective anti-corruption tool in the context of both private and public sector organisations”,* he says. *“One of the key cornerstones of good governance is board integrity and ethical behaviour, which helps to shape the culture of an organisation along with the systems and rules to be applied by management.*

Appropriate governance frameworks clearly define the roles, responsibilities and behaviours of the board and members of management”, he adds. *“They drive transparency and accountability, and as such key decisions are very traceable thereby acting as a deterrent to corruption. Typically in organisations where good governance practices have been implemented, the internal control framework is usually robust, thereby making it more difficult to conceal corruption.”*

He also believes that the role of board committees such as the audit committee is crucial in acting as a deterrent and also in a watchdog capacity in this context. An organisation’s commitment to a corporate social responsibility programme can also be important. *“This is usually part of an overarching effort by a board to promote the organisation’s values and ethical standards and can help build a level of business integrity needed to mitigate corruption risks.”*

Mike Hathorn also sees a central role for the board. *“Good governance principles include risk management, strong internal control and prevention of fraud and corruption”,* he says. *“Good governance should bring a zero*

tolerance culture to the organisation. However, the board must step down from its ‘ivory tower’ and engage with senior management to ensure that such principles are being applied in practice and a ‘zero tolerance’ culture is applied.”

It is as much about culture as it is about actual fraud prevention measures according to Niamh Brennan. *“Good corporate governance can prevent fraud and corruption through quality checks and balances and things like good internal audit functions, whistle blower and risk policies”,* she says. *Good governance makes fraud more difficult.”*

Corporate governance on its own cannot prevent fraud, however. Brennan uses an analogy with crime to illustrate this point. *“No matter how well you resource the Garda you wouldn’t prevent murders from happening. Good corporate governance will never stop all corruption but will make it harder to happen. But if you look at countries with a culture of low tolerance for crime like Singapore they have a very low crime rate. You can never get zero of course. If people are determined to commit crime they will.”*

Serena Mizzoni agrees. *“The chances of corruption are much higher in any organisation without good standards of corporate governance in place but it needs to be embedded in the culture”,* she says. *“People will be people and this doesn’t just apply to for-profit organisations. We have seen cases in Ireland and overseas where corruption can be traced back directly to poor corporate governance. A lack of governance has definitely been a factor in some of the scandals we have seen here in Ireland of late.”*

Doing the right things in the right way is critically important according to Alex Malley. He believes that corporate governance can help prevent fraud by *“ensuring the formal*

systems and controls, as well as the behavioural expectations and culture send very clear expectations of ethical behaviour, which is explicitly discussed, assessed and rewarded at all levels of the entity. In many instances corruption is a consequence of the characteristics of the context rather than unethical individuals. So good governance is about ensuring that the environment we create does not promote or motivate achievement of goals at any cost, but how we do things is just as important as what we do and for whom.”

Pride in the workplace is an important element of the culture required to prevent fraudulent behaviour, he adds. *“We possibly spend more time at work than we do at home and we should make it a pleasant and hospitable place for employees. The workplace is part of employees’ lives and if they have pride in it and pride of place they will protect it. In my own organisation we find people cleaning each other’s desks before they go home.”*

Rachel Grimes believes the transparency associated with good corporate governance is very valuable. *“Good corporate governance introduces a framework of internal controls that fosters accountability, transparency, responsibility and disclosure”,* she says. *“Therefore in practice, the processes, approvals and controls on day-to-day transactions or activities would make offers or receipts of corruption and bribery difficult to conceal from interested parties. At the decision-making level, corporate governance injects transparency and accountability, so that it is clear to all stakeholders how decisions are made, and most importantly, why decisions are made.”*

She agrees that even the highest standards will not prevent fraud, however. *“You can have all the rules in the world but you need the culture to do the right things as well. You normally need collusion for fraud. With a great*

culture the likelihood of that becomes less. People are stupid as well. I have come across instances where they put the proceeds of their crime into a bank account with same bank they worked for.”

Fiona Ross believes the culture of tolerance for certain behaviours in Ireland makes it more difficult to develop a great culture in an organisation. *“We have a culture of queue jumping, of lying to get out of jury service, of white lies to speed up passport applications, of lying on mortgage applications, of asking politicians to get medical cards and so on”,* she says. *“There is now a rule about top-ups in publicly funded organisations but the bodies concerned are still paying top-ups. It’s a question of rules versus principles. In America the punishment is much more severe if you break the rules. In this country we put the secretary in jail not the bosses.”*

“There is no accountability in any aspect of Irish life”, she adds. *“We have a high tolerance for crime. We are not really a law and order society and we have a particularly high tolerance for white collar crime. We don’t shun or ostracise white collar criminals.”*

Having said that she does believe that good corporate governance can be useful in preventing fraud. *“One side of it is the rules, and the other parts are the culture and the goodness and honesty of the people working in the organisation. In a well governed organisation if someone is constantly telling lies it is hard to keep up with that, they will be caught in the end.”*



Fiona Ross

“In a well governed organisation if someone is constantly telling lies it is hard to keep up with that, they will be caught in the end.”

Patrick Rozario is much stronger on this point. *“Corporate governance is an antidote to corruption”,* he claims. *“In Asia we see a lot more corruption than in some other parts of the world. It’s part of the culture here. In Asia kickbacks are the norm in many places. Corporate governance helps ensure fairness and openness and that everyone gets their fair share from the profits made. That helps everyone. But we need a change in culture with more openness and transparency. This will take years of education to change and corporate governance will help.”*

That point is echoed by Gail McEvoy. *“It can prevent it. But corruption has to be punished if it is to be prevented in future. In countries where corruption is rife you have to target people at a very early age to explain just how bad corruption is and how everyone suffers as a result of it. The culture of accepting Christmas gifts and kickbacks has to be tackled through education. An ethical culture will come through in the long run. Most people know what good corporate governance is but it is treated as something you learn about and forget. This has to change.”*

Of course, when people are determined to commit crime and ingenious enough to carry it out there is little that can be done to stop them. *“Does it stop people doing bad things?”* Maura Quinn asks. *“You can have all the regulation in the world but when someone is intent on doing bad things you can’t stop them.”*

The cultural tone in an organisation is vitally important in this respect. *“The fish rots from the head”,* she continues. *“The tone from the top is where it all goes wrong. The board provides the tone and context for decision making whether it’s public or private sector or a not-for-profit.”*

She is referring to the famous Bob Garratt book which highlights the importance of effective corporate governance and how the buck for much of the corruption in corporate life stops in the boardroom.

Justin Moran agrees in relation to the importance of tone at the top. *“That tone supports fraud prevention. It can influence culture, policy, and the risk control framework; that all helps prevent it.”*

He says that there is a need to understand the Association of Certified Fraud Examiners’ (ACFE) fraud triangle of motivation financial pressure, opportunity, and rationalisation. *“You need to understand this and that the motivation and rationalisation of the fraudster is difficult to control, particularly in the not-for-profit and public sectors. The inherent risk is always there.”*

Geoff Meagher believes that without corporate governance the risk of corruption is much higher. *“If an organisation has its ethics and culture defined in terms of what is expected of employees this works its way down to policies and practices at all levels. This minimises the potential for corruption. An important point about organisations is that they have to start out with culture and ethics and values. There is no point in the CEO writing down policies if his own actions don’t reflect them. The behaviour of an organisation and its values and ethics reflect the behaviour of those at the top.”*

Alan Johnson says that strong set of business ethics policies and effective whistle-blowing procedures coupled with decisive actions whenever they are breached at any level can help prevent corruption. *“The code of ethics should be well-understood at all levels in the business. A strong independent internal audit function reporting to the audit committee supports effective controls.”*

According to Pamela Monroe-Ellis good corporate governance encompasses a system of checks and balances which should reduce the opportunity to override controls and circumvent authority mechanisms. *“However, recognising that there are those who persistently pursue opportunities to benefit from, commit corrupt acts. Good corporate governance should detect, disclose and hold perpetrators accountable; certainly a system that operates effectively would serve as a deterrent. Such a system, of course, would provide for penal action.”*

Openness and transparency within organisations will also be of assistance, says In-Ki Joo. *“If all activities will be eventually known to all members of the organisation, then people will definitely hesitate in committing corrupt acts.”*

Whistle-blowing

While fraud prevention is important detection is critical if a belief is not to grow within an organisation that corruption can go unpunished. And when it comes to fraud detection whistle-blowing tops the list.

According to Justin Moran the ACFE recently published the results of a fraud detection survey and the top five were – whistle-blowers (42%), management review (16%), internal audit (14%), by accident (7%), account reconciliation (7%). External audit only accounted for 3% of cases.



Geoff Meagher

“If an organisation has its ethics and culture defined in terms of what is expected of employees this works its way down to policies and practices at all levels. This minimises the potential for corruption.”

“A lot depends on identifying crimes”, says Fiona Ross. “It’s about empowerment. We have seen that whistle blowing can be a waste of time in Ireland and elsewhere. The Russian athletes who blew the whistle on the state sponsored doping ended up being punished. It’s a brave woman or man who is a whistle blower. We punish whistle blowers and don’t reward them. If we are going to blame someone for telling the truth it means we don’t value the truth.”

Muireann O’Neill agrees. *“Our culture is wrong”, she says. “We need to achieve something we never had. Whistle-blowers are treated as informers and punished in this country. We need to break the cycle and reverse that attitude. The Protected Disclosures Act 2014 helps but does not address the culture. If people are mad enough to become whistle-blowers there are so many steps to go through in the public service everyone will know who they are. We need proper measures and structures in place to protect them. Whistle-blowing is a good thing and it needs to be viewed that way.”*

She notes that the wrongdoing at Enron would not have been exposed had it not been for a brave woman who decided to blow the whistle. She was protected and lauded by American society whereas the reverse may have been the case here.

Going back further in history Richard Nixon may have survived as president of the United States and succeeded in his ambition of amending the constitution to allow him to run for a third or even fourth term were it not

for the courageous whistle-blower who became known as “Deep Throat”.

Rachel Grimes believes that technology may hold at least part of the answer. *“There is a whole series of things that can be really supportive of whistle-blowing and among them is new technology”, she says. “Even for internal whistle-blowing you can use technology and secure portals to protect the anonymity of the whistle-blower. The whistle-blower is never identified but they can be asked and give answers to questions. Some organisations use accountancy firms to protect anonymity but there is no guarantee that it will work. Whistle-blowers would feel a lot better if they could have greater confidence and security that their anonymity will be protected. Even the fact that the board and the management show that they want to protect the identities of whistle-blowers is a good idea in itself.”*

The message is resoundingly clear. Good corporate governance and an ethical culture that runs through an organisation from top to bottom can offer effective protection against corruption. However, certain individuals will always be tempted to commit criminal acts and detection is vitally important. Organisations cannot rely on outside assistance to detect fraud, however. The most effective means of detection is whistle-blowing and a culture which both protects and rewards whistle-blowers must be fostered if a zero tolerance policy towards corruption is to be implemented.

Managing Risk More Effectively

Decisions are made at all levels of organisations every moment of every day. Some carry more risk than others and the greater the risk involved the higher the level the authority for the decision should rest.

This is not just a question of accepting responsibility for risk it is also a matter of good risk management practice. In the words of Alan Johnson, *“risk management should be reviewed and owned by the board and not delegated.”*

The recent banking and financial crises illustrated all too clearly what can happen when boards either delegate or abrogate responsibility for this key function. In many instances this was caused by the existence of overly dominant chief executives in organisations who effectively undermined the authority of their boards thereby sabotaging good corporate governance practice.

Cognitive neuroscientist Professor Ian Robertson has written about this phenomenon in his book *“The Winner Effect: How power affects the brain”*. In the book he looks at Enron and other governance scandals and explored the damage that can be done by over-powerful leaders.

“Being a leader or manager is quite stressful”, he explains. “You need people who are not rendered indecisive or weak by stress. Power acts on the same part of the brain as gambling or cocaine and results in increased dopamine levels. This has an anxiety reducing and mood altering effect.”

This can be useful in people with an appetite for power. *“The strong drug-like effects in moderate degree are beneficial – they can help people think more strategically, abstractly, be less anxious, bold, and make them good decision makers.”*

But this doesn't apply to everyone. *“Some people find their niche when put into positions of power or authority”, he says “For some it can be too great a burden or too stressful. They display symptoms of recklessness, lack of empathy, loss of self-awareness, lack of appreciation of risk. You can see these on display in certain political figures at present.”*

These are clearly not the traits you want in a chief executive who is taking risky decisions for an organisation every day and is seeking to dominate the board to prevent it from acting as a brake on that behaviour. According to Robertson the only real way to control them is by selecting people on boards with counter attributes.

He notes that society's usual way of controlling such rogue individuals is through governance and constraints – democracy. *“The artefacts of democracy, a free press, independent judiciary and elections, were invented to put constraints on power. In business there are fewer such constraints. There is no accountability to the people or the electorate, for example. You need a strong independent chairman. That's why having the same individual as chair and CEO is no longer tolerated. If you look back to the financial crash we had too many banks dominated by powerful CEOs.”*



Alan Johnson

“Risk management should be reviewed and owned by the board and not delegated.”

Of course, these problems could be avoided if the board did not appoint a CEO with that strong raw appetite for the drug-like effects of power. And there are ways to do this according to Robertson.

“There is P Power which is personal power”, he points out. “This is the essential fuel to be a boss – it’s like petrol for a car. S Power is social power and the two can co-exist. People with S Power and P Power want control not just for egotistical reasons but for the greater good as well. The presence of S Power acts as an antidote to P Power. People with S Power are less likely to become addicted to P Power.”

He says that the presence of S Power can be detected in a person’s free speech. *“The use of don’t, not, and shouldn’t reflect an ethical, legal, and moral core. The person using them is constrained by something greater than themselves. It is the opposite to l’etat c’est moi. You won’t hear someone like Donald Trump say don’t, not, and shouldn’t very often. You hear Obama say it a lot. You want to select people who use that language. They will be self-constrained.”*

He also points out that women are slightly more protected against the drug-like effects of power than men. *“And that’s despite the fact that of the two prime ministers who have succumbed to personality change over the past three decades half of them have been women.”*

Having avoided the risk of appointing an overly dominant or power-addicted CEO the next step is to ensure that the board does its job properly and this is where corporate governance comes in. *“Good corporate governance should make decision-making more effective for an organisation’s management and board by having clearly defined roles, responsibilities and expectations of the decision-makers”, says Rachel Grimes. “This framework will then*



Professor Ian Robertson

“You need a strong independent chairman. That’s why having the same individual as chair and CEO is no longer tolerated. If you look back to the financial crash we had too many banks dominated by powerful CEOs.”

provide stakeholders with the confidence that any decisions, particularly ones relating to risk, have been carefully and thoroughly considered, and the board has the required authority to make those decisions.”

Jason Crawford agrees on the need for a framework. *“The key aspects of a strong governance framework include structured risk management systems and formalised approval and decision making processes”, he says. “In organisations with strong governance frameworks, key business decisions are usually subject to more diligent consideration where commercial gain is weighed up against commercial risk in a more formalised context. This facilitates traceability and management accountability for key decisions.”*

According to Alex Malley governance affects but is also responsible for the actions of the entity, including those in relation to risk. *“Good governance is about setting the tone and values, the direction and the framework of acceptable and accepted conduct so it should impact decision making throughout the organisation. Risk management has increased in importance but risk taking is a fundamental aspect of good governance. I think many organisations suffer from risk phobia – maybe due to an extensive reliance on control and compliance – and others risk what we should never do: our integrity and reputation.”*

Niamh Brennan points out that risk is fundamental to capitalism and that decisions will go wrong no matter how good the planning or processes that surround them. She refers to the ill-fated Guinness Light, launched with a phenomenal fanfare and a record budget almost four decades ago.

“It was an awful flop but that was probably just a question of timing it could well be a success now”, she notes. “Business decisions involve taking risk; otherwise there would be no reason for capitalism. Risk is the reason we have limited liability companies. Good corporate governance doesn’t necessarily make for excellence in decision making. Good decision making is not necessarily slow decision making but there is a proper way to approach it. Good preparation and proper processes help boards make the right decisions.”

Taking the time to evaluate the different aspects of a decision is important to In-Ki Joo. *“Good corporate governance will help a company evaluate a project or a situation more comprehensively and analytically by enhancing communication and sharing relevant information between responsible organisation members.”*

Alan Johnson is another who agrees that good corporate governance enhances overall decision making capability. *“A good understanding of the business and the business context by the board, particularly by the audit and risk committees, should ensure the*

right dialogue takes place. The key is to understand the nature of the risks and their potential impact should they materialise. It is not about avoiding risks but managing them effectively. This improves the chance of making good decisions.”

He believes that chance can be further improved by greater diversity at board level. *“There has been a lot of talk about diversity and the need to have diverse leadership teams. Everyone brings different experiences, not necessarily better but different and this enhances the potential to make better decisions.”*

When he speaks of diversity he does so in the broadest sense – not just in terms of race or gender. *“It’s about having people around the table who are willing to speak up constructively; constructive challenge is important. Some people don’t like challenge and see it as negative. There are some people who see the boss as the boss, have a debate and then support the boss. This is a cultural issue. In Latin America and some European countries there is a reluctance to have proper discussions because it is seen as undermining the leader. People shouldn’t see debate and discussion as a threat.”*

Groupthink is also in Anglo-Saxon culture, of course. *“We see it in America as well. You would have thought America is an open society with the self-confidence to challenge norms but often in American corporations the CEO and the chairman are one and the same. At least now in financial markets there is strict regulation preventing that from happening. That’s one good thing to come out of the crisis. There is a feeling that this needs to be extended beyond the financial sector.”*

Constructive challenge is also close to Mike Hathorn’s heart. *“An effective board should bring constructive but firm challenge to all matters, but particularly matters which might bring increased risk to the business”,* he says. *“An effective board must take responsibility for*

determining the nature and extent of the key risks it is willing to take in achieving the strategic objectives. The board should maintain sound risk management and internal control systems. To do this, the non-executive board members themselves must maintain an independent mind-set at all times and must not allow themselves to be bullied or overly influenced by ‘strong’ executive individuals.”

Good boards like those described by Johnson and Hathorn help rein in excessive risk-taking according to Gail McEvoy. *“I am absolutely sure that if the banks had better boards in place a lot of the bad things wouldn’t have happened. Good risk management should be part of mind set when making decisions; it should be automatic.”*

Geoff Meagher says it’s not about trying to prevent people from making decisions. *“If you don’t have risk parameters set out there is always the danger of taking a chance. If you have the parameters to understand risk and have them defined well in advance they can prevent people doing something very stupid.”*

Pamela Monroe-Ellis says risk assessment is a critical element of good corporate governance. *“A good corporate governance arrangement must have a mechanism for risk identification and assessment. This is imperative for developing an appropriate risk response strategy to manage and mitigate risk and to achieve strategic goals.”*

This view is shared by Patrick Rozario. *“Good governance provides a system to identify risks as they arise and ensure a transparent decision making process in managing these risks at the same time as ensuring the interests of its stakeholders are being looked after when those risks arise.”*

And it’s not good enough to wait for board members or executives to raise the topic according to Justin Moran. *“Risk and opportunity management should be embedded within the board agenda to promote engagement and discussion on scenarios that impact upon organisational strategy and objectives.”*

Good corporate governance will not eliminate risk or ensure that every decision works out. But it can ensure that decisions are based on calculated risks and that chances of making good decisions are greatly increased. However, this happy state of affairs will not be achieved if the right people aren’t on the board.

But that alone isn’t enough. The board must appoint the right chief executive as well – one who does not succumb to personality change as a result of the power associated with their position and seek to dominate the board. Notwithstanding that, the board must also constantly challenge the chief executive and the rest of the executive team when it comes to risk and that challenge must be made constructively and in the context of an overall agreed risk assessment framework.



Justin Moran

“Risk and opportunity management should be embedded within the board agenda to promote engagement and discussion on scenarios that impact upon organisational strategy and objectives.”

The Public Sector Dimension

The publication of this report is timely in that it comes in the wake of the publication of a revised and updated Code of Practice for the Governance of State Bodies by the Minister for Public Expenditure & Reform, Paschal Donohue.

This revised and updated document is designed to ensure that both commercial and non-commercial state bodies meet the highest standards of corporate governance. It provides a framework for the application of best practice and is intended to take account of developments in respect of oversight, reporting requirements and the appointment of board members. The code is based on the underlying principles of good governance: accountability, transparency, probity and a focus on the sustainable success of the organisation over the longer term.

The new code is doubly welcome in light of Ireland's patchy history when it comes to the corporate governance of public bodies. *"Jobs for the boys (and girls)"* has long been a term of invective in Irish politics when accusations of cronyism are thrown about. Indeed, one political grouping which now finds itself in government made anti-cronyism a significant plank of its policy platform in the most recent general election.



Maura Quinn

"The quality of people on state boards has definitely improved and the appointment process is a lot better."

Unfortunately, corporate governance has been somewhat of a moving target in the Irish public sector over the years. For a very long time it was considered quite a normal practice for families to write to local TDs and councillors seeking employment for children and relatives while health boards and county councils routinely made decisions on Medical Card and Higher Education Grant Scheme applications at least partly on the basis of political contact.

State boards were appointed not on the basis of any particular expertise on the part of the nominees but were determined largely by party affiliation. Senior appointments to expert European bodies were usually the preserve of retired politicians again with no particular qualifications for the roles.

And nothing was seen as terribly wrong about any of this. Even among those who could see the problem the usual reaction was a shrug of the shoulders.

The planning tribunals, the exposure of the expenses scandal in FÁS, and the bringing to light of malpractices in a number of different state and semi-state bodies over the years has brought about a much welcome change, however. Appointments to state boards are now advertised, for example. Expressions of interest are sought from potential members when governments establish new quangos or expert groups. EU bodies are no longer seen as retirement homes for politicians.

Even more importantly, the public can have confidence that they will qualify for public services based purely on entitlement in a process untainted by political influence. This is one of the hallmarks of a mature developed world society. Quite simply, it boils down to rule of law.

There was near unanimity among contributors to this report that corporate governance standards should be no different for public and private sector organisations. There were some questions raised in

relation to the legislation establishing various Irish public bodies and the need for that to be examined to ensure that it was in line with corporate governance best practice.

There was also general agreement among Irish contributors that the situation has improved here.

Maura Quinn believes the quality of public body board members has improved over the years. *“In some cases you had people who fell into board roles just hoping that they would be good at them”,* she notes. *“In Ireland we had people who fell into these positions who were highly capable and qualified in their own spheres but were not prepared for a board appointment. The public appointments process has improved in that respect. There have been major steps forward in that regard. A lot of the not for profits are getting better as well. The quality of people on state boards has definitely improved and the appointment process is a lot better.”*

She highlights the issue of interlocking boards where the same people are members of public and private sector boards which are in commercial relationships with each other. Such unhealthily close relationships had ruinously expensive consequences for the taxpayer when it came to property in Dublin’s docklands.

“You see the phenomenon of interlocking boards and where that got us”, says Quinn. *“That is changing. It is a lot*

more onerous to sit on a board now than it was in the past. I recently heard about an individual who was asked to serve on the board of a regulated entity and when he asked how much time it would take he was told that it would require 100 days a year. That person just couldn’t accept the appointment.”

Muireann O’Neill also believes it is changing for the better, but not quickly enough. *“There is still a culture of cronyism, favouritism and nepotism in this country”,* she says. *“People want to be on boards but don’t necessarily want the responsibility that goes with that. A lot of organisations still spend time trying to get around corporate governance. That’s where cronyism comes in. Public and private sector organisations are still bringing in the same old people – they have just changed the signs over the doors in relation to their names in some cases. You need to have proper turnover of board members and term limits. And you need proper sanctions and public exposure for wrongdoing.”*

Rachel Grimes sums it up for those that believe the standards should be the same across all sectors. *“In my view there is no difference in the implementation of corporate governance frameworks in the public and private sectors. In fact, good corporate governance practices should be commonplace in all organisations, whether they be a listed company, a government agency, or a professional sporting association.”*

The new code

The updated Code of Practice for the Governance of State Bodies is based on four key pillars:

Values – Good governance supports a culture of behaviour with integrity and ethical values;

Purpose – Each body should be clear about its mandate with clearly defined roles and responsibilities;

Performance – Defined priorities and outcomes to achieve efficient use of resources resulting in the delivery of effective public services;

Developing capacity – Appropriate balance of skills and knowledge within the organisation, to be updated as required.

A balance has been struck in the updated code between the need for strong accountability and the requirement to support the appropriate autonomy of the state body under the legal framework and the environment within which it operates.

According to Minister Donohoe, the key benefit of the updated code is that it provides greater clarity regarding the roles and responsibilities of the board of a state body.

“There is a greater emphasis on accountability and transparency, which is underpinned by effective relationships between the Minister or parent department and the chairperson of the State body to ensure that the body is effective in achieving its objectives, uses its resources efficiently and operates in a manner which secures the longer-term sustainability of the State body. In light of the scale and diversity of roles carried out by State bodies, the code is not a ‘one size fits all’ document, but rather acts as a framework to ensure that both



Muireann O’Neill

“You need to have proper turnover of board members and term limits. And you need proper sanctions and public exposure for wrongdoing.”

commercial and non-commercial State bodies meet the highest standards of corporate governance commensurate with their significant public roles and responsibilities”, Minister Donohue said when launching the code.

The code came into effect on September 1st last and requires commercial and non-commercial state bodies to demonstrate their commitment to achieving the highest possible standards of corporate governance. State bodies and their subsidiaries are required to confirm to their relevant minister that they comply with the Code of Practice for the Governance of State Bodies in their governance practices and procedures.

The requirements are to be applied in all trading subsidiaries and, as appropriate, in joint ventures of the bodies in question. Appropriate confirmation must be provided to the relevant minister in relation to these.

The code concerns both the internal practices of the State bodies and their external relations with government, the relevant minister under whose aegis they fall, the Minister for Public Expenditure and Reform and their respective parent departments.

Reference is made to ethics in public office obligations that apply to all designated board members and designated office holders. It is recognised, however, that all aspects of this code may not necessarily be appropriate for some smaller State bodies. Accordingly, the code makes provision for certain requirements to be applied proportionately in certain circumstances subject to the written agreement of the relevant Minister or parent department.



Rachel Grimes

“Good corporate governance practices should be commonplace in all organisations, whether they be a listed company, a government agency, or a professional sporting association.”

The code’s provisions do not override existing statutory requirements and other obligations imposed by the Companies Act 2014, Ethics in Public Office legislation, the specific statutory provisions relating to the State body itself, or any other relevant legislation such as equality and employment.

Compliance Requirements

Under the code, all state bodies have a responsibility to implement good corporate governance standards. Some state bodies may consider that certain requirements of the code may have a disproportionate effect on them because of the nature and scale of their activities, their business model, the resources available to them, or their governing statutes.

Instead of a board structure, some state bodies may be constituted in the form of an individual office holder, tribunal, commission or regulatory body. Where appropriate, the body should reach agreement and formally document with the relevant minister or parent department the extent to which the compliance requirement might be suitably adapted in their case. The State body must then note the agreement reached in its annual report

and explain whether the requirements are to be phased-in over a longer period of time, or otherwise varied in some way.

Commercial State bodies or their subsidiaries that are involved in strategic alliances, joint ventures or other shareholding arrangements with shareholders other than the State may consider that certain aspects of the code are not easily enforceable in those ventures. In such circumstances, a commercial State body should take all reasonable steps to ensure that such ventures comply with the principles of corporate governance applicable to commercial State bodies or companies generally and confirm to the relevant Minister that this has been done.

This new code is a major step forward in terms of public sector corporate governance in Ireland. However, as with the private and not-for-profit sectors, its ultimate success will depend on the quality of the people appointed to public sector boards or to other oversight positions for the bodies in question and their ability to hold the executive to account.

Raising the Standard

“Lord make me pure but not yet!”

Saint Augustine of Hippo

The benefits of good corporate governance are clear: better run organisations make better decisions and are more attractive to funders. Organisations with high governance standards are more durable and sustainable. They are better protected against fraud and corruption and stand a higher chance of detecting it should it occur. They also attract the best people to come and work for them, both at board and executive level.

While there is no proven direct correlation with profitability the long term performance of well governed businesses points to enhanced returns over an extended period.

History shows that not every organisation aspires to high standards of corporate governance. As Niamh Brennan has pointed out, you can get *“duckers and divers”* in any business. There will always be individuals and organisations who prefer to take short cuts and the apparently easy option when it comes to getting results.

Fortunately, these are in the minority. The great majority wish to espouse the very highest standards

but in many cases simply don't know how to go about it or simply haven't found the time to get around to it. For many business owners and shareholders corporate governance is desirable but not top of mind when it comes to the performance of the business.

This attitude is akin to Saint Augustine who prayed daily for the Lord to make him pure *“but not yet!”*

But when the day does come what should such organisations do to raise their governance standards? What steps should they take to improve? For the majority of contributors to the report it comes down to the qualities of the people involved.

“It comes back to the same old story – the quality of the people around the table”, says Niamh Brennan. *“Good people make good boards and good boards make good decisions. You might say that's a bit vague but that's the way it is.”*

While accepting that even the best boards can make mistakes she points out that they are willing and able to rectify them when necessary. *“The board picks the CEO – the single most important person in the organisation, particularly relating to culture. If a board picks a ducker and diver that will influence the culture of the whole organisation. What happens if the board picks a bad CEO? At a certain point if they are not performing the board has to let the CEO go. But it's a bit like student exams, at what point do you fail them – 60%, 50%, 40%? You've got to be prepared to take the decision when it becomes necessary. But there is evidence of boards scapegoating CEOs as well and good boards will avoid that mistake.”*

That means being quite selective when it comes to choosing board members. *“You have to select board members for their values – they will bring a culture with them”,* says Prof Ian Robertson.



Professor Niamh Brennan

“Good people make good boards and good boards make good decisions.”

Brennan agrees. *“You have to work out what part is missing or has failed and if there have been governance failures in the past the buck stops at the board”,* she says. *“That means the replacement of the board has to be on the agenda. It’s a question of finding the right people. But who are the right people? They are people who understand what the job is. But knowledge of governance on its own is not enough. You need people who have that along with business experience and probably sectoral experience and knowledge as well.”*

For Alan Johnson the process of improvement should begin with putting the rules in place. *“First of all, organisations should adopt the appropriate governance codes in their geographies”,* he says. *“It is about complying with the spirit of all relevant codes and guidelines. Regular dialogue with stakeholders, particularly investors, will help identify areas that need to be improved. The board should encourage an independent review – say once every three to five years – of the way governance works in the company. It is sometimes difficult to define good governance but we all know when there is bad governance without needing to define it.”*

There is also an onus on investors. *“They need to understand how corporate governance works and get comfortable with it”,* he adds. *“They need to start getting interested in it and it needs to be part of their dialogue with boards and CEOs. There also needs to be a restriction on the number of directorships people can hold. Directors can’t just turn up and tick a box and get paid. Some CEOs like that because they see active boards as interfering with their role.”*

Rachel Grimes agrees about the need for greater stakeholder involvement. *“You need to build and embed corporate governance principals into every entity and stakeholder”,* she says. *“Values,*

culture and the corporate governance ecosystem are inherently linked to one another. You also have to manage performance within the corporate governance framework; by making it a gate opener it will be pivotal to everyone.

“You really have to develop a great culture but it’s so easy to destroy one”, she continues. *“It’s about having great leaders who lead by example and walk the walk. Leaders should be rated not just on operational performance but on good behaviours as well. They need to have the right vision and values.”*

Diversity is also important. *“The board and management have to be balanced. You need to ensure that you have a board and management with a diverse range of experience, skills and backgrounds so that any issue can be approached with confidence and authority.”*

She advises organisations to avoid being too rigid in their approach to the issue. *“Corporate governance is dynamic, so you must be prepared to review and refine your principals on a regular basis”,* she points out. *“While there is a base level of good corporate governance every organisation should implement, there will be different requirements for different organisations, and you need to be prepared to adapt to those requirements. I equate this to ethics – previously ethics was considered what was black and white or within a legal framework, however ethics is now so much broader and with social media, is redefined daily.”*

Culture is the key issue for Alex Malley. *“There is a lot of focus on compliance to improve governance but good governance cannot be achieved through compliance only”,* he argues. *“Regulation and legislation can play an important role in improving awareness about what matters. They allow enterprises to exhibit that they are good corporate citizens and improve*

the confidence of investors and other stakeholders.

“But a compliance based culture can be detrimental to good governance because it gives the illusion that the obligations of the entity and its key decision makers have been discharged. It is also true that relying on the law is inefficient because it increases compliance and enforcement costs. So we need to focus on the culture and values of the entity – what we are here to do today and into the future and how.”

These are sentiments echoed by Patrick Rozario. *“The spirit is more important than the means”,* he says. *“Good governance is a set of processes, customs, policies, laws, and institutions affecting the way an organisation is directed, administered or controlled. There are no universal practices. Organisations need to consider many aspects such as size, culture, legal systems, and so on. All stakeholders play a part, it is a combination and balance of education, law and regulations, as well as monitoring and enforcement.”*

Board culture is of central importance according to Justin Moran. He points to a recent report on board culture produced by Mazars which defined a number of different board types. The first, and healthy type, is the engaged board. The engaged board brings its collective intelligence to bear on key issues leading to better decision-making; makes the executive team feel supported; ensures that opportunities for the organisation are fully explored; strengthens risk management through early and rigorous discussion of challenging situations; and sets the right example for the rest of the business by maximising its own performance and cohesion.

The other, unhealthy boards are the cosy, the “us and them”, and the semi-detached types.



Alex Malley

“There is a lot of focus on compliance to improve governance but good governance cannot be achieved through compliance only.”

The cosy board is reluctant to engage with difficult issues and to challenge the executive and this is likely to lead to problems building before they are tackled.

The “*us and them*” board has a low level of support and is likely to result in a blame culture emerging and defensive behaviour by the executive team which limits board involvement on important issues.

The semi-detached board fails to provide either sufficient support or challenge and is in effect on autopilot with a resulting lack of checks and balances on the executive team and missed opportunities to help them develop the business successfully.

“Boards should aspire to be more engaged”, says Moran. He also sounds a specific note of caution for the not for profit sector and its efforts to improve governance. *“Non-profits and charities tend to be started by strong characters and this can lead to the dominant CEO effect. This needs to be guarded against.”*

The rules matter but so does culture for Fiona Ross. *“You need to understand the rules and do the best you can to follow them”,* she says. *“You also have to map your stakeholders and understand where and how they are impacted. Transparency matters as well. If you were to circulate unadulterated and unredacted board minutes think about how scary a world that would be – that won’t happen of course.”*

Gail McEvoy takes a very practical view and says training for board members and education for society as a whole is the answer. *“Training is the answer”,* she says *“You also need education; you have to get the children when they are five. You need to go into the schools and teach ethics and morality.”*

Muireann O’Neill is of a similar mind. *“You have to look at the skillsets of the board itself and training of board members is very valuable”,* she says. *“Companies need good audit and risk committees and they need the right skills. Board members have to understand the business they are dealing with. I was a board member of a particular organisation a few years ago and I made it my life’s mission to learn about the business they were in. That was part of my duty of care to the organisation and its employees. Board members need to add value to the board and understand the culture and nature of the organisation.”*

Monitoring and sanctions are also important. *“There should be an annual assessment of corporate governance performance and board members should be made responsible for breaches. You need a chair who is a flagship for good corporate governance. Overall, there is a need to improve boards. It’s also about the culture. If you have the right board and leaders they will convince others and bring in the right culture.”*

People, training and culture are therefore the essential ingredients for improved corporate governance. There are others of course, such as the need to take all stakeholders into account when making decisions. Diversity is another key attribute of well-governed organisations – diversity of background, gender, age, experience and viewpoints is critical to a well-functioning board.

One other essential ingredient that organisations seeking higher standards of governance need to acquire is courage. Almost every contributor to this report mentioned this in one way or another. Knowing the rules and having the right codes in place will be of little use if boards and senior managers don’t have the courage to enforce them. This means facing up to that most difficult of individuals – the dominant CEO – and ensuring they comply with board policy. It also requires a willingness to turn down quick profits or other results if they are not achieved in the right way.

Possibly the most encouraging aspect of the contributions to this section of the report is the fact that it should not really be all that difficult to achieve high standards of governance, regardless of the type or size of the organisation involved. For smaller organisations it’s about having an ethical code and applying it to all aspects of the organisation and the way it goes about its business. For larger organisations it involves having the right people on the board to ensure that the ethical code is followed at all levels and in all areas of the organisation.

Executive Summary

Importance

It is clear from the contributions to this report that the importance of good corporate governance is widely understood across the world. There is an appreciation for the necessity of having the correct framework in place to ensure that organisations of all types operate in an ethical fashion and make decisions based on sound principles.

There is also broad agreement that many of the mistakes of the past in relation to the financial crash and some of the excesses that preceded it could have been avoided if better corporate governance practices had been in place.

Unfortunately, as recent events have shown in both Ireland and internationally, the acceptance of the need for good corporate governance has yet to be translated into any real actions to ensure that it becomes a basic requirement for organisations to follow.

Defining Corporate Governance

Despite being a quite straightforward concept corporate governance resists tight definition to a certain extent. At its most basic it is the set of frameworks and parameters governing the management of an organisation.

It sets the boundaries within which management operates and is policed by a board. Where the board functions well and the rules are adhered to the organisation will usually be well run; when this is not the case bad things are almost guaranteed to happen.

Interestingly, there was a divergence between contributors as to whether corporate governance should be based on strict rules or if it should be more of a principles and ethics based concept, or indeed some blend of the two.

The overall consensus is that good corporate governance must lean in the last direction. There is an absolute necessity for clear, written governance structures, rules and principles which identify the roles and responsibilities of senior personnel within an organisation and give clarity as to how decisions are made. At the same time, it cannot be allowed become too process-driven lest it become a mere box-ticking exercise.

There was also agreement that for corporate governance to be considered good the framework and structures must be supplemented and supported by a strong and ethical corporate culture. In addition, the aim of corporate governance should be to align, as nearly as possible, the interests of all stakeholders; management, shareholders, customers, employees and society as a whole.

The Hallmarks

Most people want the organisations they deal with, work for, or invest in to have good corporate governance practices in place. The problem is that it can often be very difficult to tell if this is the case from the outside looking in.

It is perhaps for this reason that the two words used most frequently by contributors in relation to the hallmarks of good governance were accountability and transparency – and one is naturally contingent on the other. Organisations which are truly accountable to their stakeholders will almost automatically be transparent in their operations.

Where it is easy to see from the outside what is happening inside an organisation, within the confines of commercial realities of course, it is possible to know with some certainty whether it is well governed or not. And, more often than not, it will be the case that it does have good standards of governance. After all, few organisations would wish to expose poor standards to public view.

That transparency allows for a further test – that of matching rhetoric to reality. As was pointed out by more than one contributor, a hallmark of poor standards has often been high-flown rhetoric in relation to corporate governance in public documents such

as annual reports. However, if that rhetoric cannot be readily verified due to the opacity of the organisation in its day to day operations you can be fairly sure that it is just words on a page and worth no more than that.

The key hallmark of good corporate governance is therefore the degree to which it is willing to expose its workings and operations to stakeholders and the wider public.

The Benefits

• Organisational Performance

One of the great difficulties with corporate governance is the paucity of metrics when it comes to tangible benefits. There is no body of research to suggest improved profitability or enhanced performance in defined areas of operations. There is evidence to show that well governed organisations endure longer than their poorly governed counterparts but this area hasn't been explored sufficiently to demonstrate superior performance in any particular area.

The consensus among contributors was more positive than this might suggest, however. What good governance does for an organisation, regardless of sector, is give it a better chance of strong performance. It doesn't guarantee it, but nothing can.

Furthermore, clear links have been established between poor governance and corporate failure. In this light, good governance offers a better chance of long-term survival. There is also agreement that well governed organisations are more attractive to the best people and that will indirectly feed into improved performance over time.

• Investment

It wasn't always the case but lenders and investors are increasingly looking for high standards of corporate governance before advancing funds to an organisation, regardless of what the numbers might say. Too many cases of poorly governed organisations producing less than accurate or at best not entirely complete financial statements has led to increased caution among funders. Risk averseness has also increased naturally in response to the still recent global financial crisis.

This is possibly one of the single most important demonstrable benefits of good corporate governance to an organisation. Put simply, they stand a better chance of raising funds – be that from a bank, a venture capital firm, a seed capital fund, an angel investment, a government agency, an institutional investor, or even a full IPO – than a less well run counterpart.

As almost every contributor pointed out, this stands to reason. Investors and funders want to get their money back along with some form of return on it. Good standards of corporate governance will not necessarily guarantee that outcome but it will certainly lower the risk of it not happening.

On a slightly negative note, it was also noted by more than one contributor that while investors may be very interested in corporate governance at the point of entry they become less so once the investment is made and profits and the overall return on the investment become the primary focus. This is an issue which may well be addressed over time as evidence mounts in relation to the long-term return on investment offered by well governed companies.

• Corruption Prevention

Another clear and demonstrable benefit of high standards of governance is corruption prevention. The tone at the top and ethical culture which pervades well governed organisations act as an “antidote to corruption” in the words of one contributor. Corrupt practices of any kind are simply not tolerated in such organisations. This means that when fraud or other corrupt acts require collusion they are rendered almost impossible in practice.

Most contributors also noted that people will be people and that if someone is determined to commit a criminal or fraudulent act no culture or governance framework yet created will stop them. The implication being that even the best governed organisations still require a means to detect fraud when it does happen.

The Association of Certified Fraud Examiners' (ACFE) most recent fraud detection survey shows that the top five fraud detection methods were – whistle-blowers (42%), management review (16%), internal audit (14%), by accident (7%), and account reconciliation (7%). External audit only accounted for 3% of cases.

It is clear, therefore, that whistle blowing policies are central to good corporate governance. However, several contributors pointed to the existence of a negative culture around whistle blowing in this country and a need to tackle it if fraud and corruption are to be detected and punished. That means rewarding and protecting whistle-blowers and not punishing them. As mentioned numerous times by contributors, the opposite has sadly been the case too often and it is high time for a change.

• Risk Management

Among the more profound findings of this report are the benefits which good corporate governance offers organisations when it comes to risk management. The damage that can be done by overly dominant CEOs came up over and over again. Professor Ian Robertson, in his contribution, pointed to the drug-like effects of power on certain individuals and how this has the same effect on their brains as cocaine or gambling. This has obvious effects on the individual's capacity for reasoned decision making.

This places a great onus on boards to ensure that CEOs do not become

overly dominant. This happens in two ways; firstly by asserting themselves and their authority when the CEO oversteps the mark and secondly by hiring the right person for the job in the first place.

Various instances of corporate failure associated with poor risk management were mentioned by contributors as was the need to ensure that a healthy tension exists between the CEO and the chair of an organisation. In addition, a well-functioning board will have good audit and risk committees in place to ensure that proper processes are followed.

While this will not completely eliminate risk or guarantee that every decision is the right one, it can ensure that decisions are based on calculated risks and greatly increase the chances of making good decisions.

• Public Sector

Corporate governance in the Irish public sector has improved significantly over recent years and this trend is continuing with the recent publication of a revised and updated Code of Practice for the Governance of State Bodies by the Minister for Public Expenditure & Reform, Paschal Donohue.

This revised code is designed to ensure that both commercial and non-commercial state bodies meet the highest standards of corporate governance. It provides a framework for the application of best practice and is intended to take account of developments in respect of oversight, reporting requirements and the appointment of board members. The code is based on the underlying principles of good governance: accountability, transparency, probity and a focus on the sustainable success of the organisation over the longer term.

However, there is a question mark over the need for such a code in the first place with many contributors arguing that corporate governance standards should be the same for all organisations be they public or private sector or a non-profit. However, the progress represented by the publication of the new code is to be welcomed.

Raising the Standard

For organisations which aspire to the highest standards of corporate governance three essential ingredients were identified by contributors – people, training and culture. Having the right people around the boardroom table, training board members and senior executives in the principles of corporate governance, and developing the culture of transparency and accountability that underpins good governance.

Other elements were also identified. These included the development of an engaged board, stakeholder involvement and diversity in the boardroom and across senior management.

Courage is another essential – the courage to stand up against either a dominant CEO or executive or to swim against the tide of groupthink, or indeed the courage to reject quick profits if they are not come by ethically.

There was near unanimous agreement among shareholders that organisations wishing to raise their standards of governance should face little difficulty in doing so. Larger organisations need to have the right people on the board to ensure that the rules and the ethical code are followed at all levels while smaller entities need to develop an ethical code and culture and apply it to all aspects of the organisation.

Glossary of Terms

Console – Irish suicide prevention and counselling charity which was liquidated in 2016 following the discovery of financial irregularities.

The Flood and Mahon Tribunals of Inquiry into Certain Planning Matters and Payments – official tribunals of inquiry established by the Irish government to investigate allegations of development planning corruption in Irish local authorities.

FÁS – Irish state training agency which became embroiled in controversy due to extravagant expenditure at board level.

Protected Disclosures Act 2014 – Irish legislation to protect whistle-blowers.

Garda – Irish police service.

Guinness Light – ill-fated variant of the Guinness stout product withdrawn from the market within months of a highly expensive launch in the late 1970s.

TD – member of the lower house of the Irish parliament, Dail Eireann.

Medical Card – entitlement to free primary medical care in Ireland.

Higher Education Grant Scheme – university grant scheme for Irish students without the means to meet the costs.

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