

# CONSENSUS ON GLOBAL GOVERNANCE PRINCIPLES?

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## ABSTRACT

Is there a consensus on governance principles beyond national borders? There seems to be a converging trend towards widely accepted *Global Governance Principles* as expressed in the OECD Principles for example. This paper argues that *formal* and *informal* governance mechanisms should be integrated. The latter focuses on relationship-based enabling access to scarce resources – so typical in Asia - whereas the former emphasizes the control and monitoring function of boards as interpreted in the West. The Western legal interpretation of corporate governance merely implies *fiduciary duties* towards the shareholders. However, when this perception is expanded to acting with *care* in order to *steer* the corporation towards organizational value that embraces *sustainability*, governance will likely positively affect both shareholders and relevant stakeholders. Those global unifying governance principles may ultimately evolve into *Global Corporate Citizenship*, underpinned by *spirited* leadership and *social* entrepreneurship that induce *trust* in its leaders and confidence in functioning institutions. The notions of global governance and corporate citizenship are pointing in the direction of *engaging, innovative and integrated* business solutions that can start taking on and hopefully *transforming* our daunting global challenges.

**KEY WORDS:** *global governance principles, best governance practices, sustainable common good, corporate citizenship, engaged spirited leadership*

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*“I have learnt that if you want to have a global impact you can’t ignore business. I don’t mean corporate responsibility programs, but business models that provoke social change”.*

*Pierre Omidyar, Co-Founder of eBay (in Elkington et al, 2008: Preface)*

*“In the middle of every difficulty lies an opportunity”*  
*Albert Einstein*

This paper<sup>1</sup> aims to explore the possibility of finding a consensus across borders and cultures pertaining to certain “universal” corporate governance principles of what is considered as “good” for corporations to pursue. These *Global Corporate Governance Principles* – as expressed in the OECD good corporate governance principles<sup>2</sup> and promoted by the ICGN<sup>3</sup> - may possibly evolve into *Global Corporate Citizenship*, underpinned by *spirited* leadership and *social* entrepreneurship. These notions of governance and citizenship are pointing in the direction of *engaging, innovative and integrated* business solutions that can start taking on and hopefully *transforming* our daunting global challenges.

## **GOVERNANCE PRINCIPLES, BEST PRACTICES AND FIDUCIARY DUTIES**

Governance is about power: who gets to exercise it and how it is exercised, and for what precise purpose. Global competition and recent corporate disasters have brought pressure for improved corporate governance to the forefront in the West as well as in the East. Global Governance refers to the creation and operation of rules at interstate relations, between multinational organizations and to the involvement of sub national and transnational participants (Stokke, 1997; Kahler & Lake, 2003) and it involves decision-making procedures and programmatic activities that serve to define social practices and to guide the interactions of those participating in these practices (Young, 1997). Institutions that govern economic relations cannot be confined to legal and formal institutions only (Stiglitz, 2001; Fuchs, 2007).

More specifically, the traditional agency theory of *corporate* governance sees the firm as a nexus of contracts between free and rational individuals optimizing their own

interests (Friedman, 1970; Fama & Jensen, 1983; Jensen & Meckling 1976, Jensen, 1986; Lorsch, 2004). Corporate governance principles are justifiably considered as a needed check and balance system of top management of the firm who run the firm on behalf of the owners.

An alternative interpretation, however, indicates that a firm is a legal entity with rights and responsibilities just like a natural, civilized and compassionate, person emphasizing the overall reputation of a firm and responsibility to a number of stakeholders. Instead of a naïve belief in the single principal-agent theory and its exuberant laissez-faire model based on individual self-interest only, a multiple-principal-agent theory - quite often referred to as the stakeholder theorem (Jensen, 2002; Freeman, 1984; Donaldson, 1995 & 1996; Mintzberg, 2002; Clarke, 2007; Charan, 2005) - will have more chance to embrace necessary changes to address the global challenges. Hence, we will opt for a broader definition of good corporate governance, which takes into account the relationships between shareholders, their board members and top management on the one hand and the different stakeholders who could significantly affect the value of the corporation on the other hand. The fiduciary duty of acting with due care by the boards of directors to the shareholders and by corporate managers to the corporation is here broadened and embraces prudential considerations of how the relationship with other stakeholders could be affected by corporate decision-making. Hence, corporate governance can be defined as the interactions between coalitions of internal and external actors and the board members in directing and *steering* a corporation for value creation (Huse, 2007; Solomon & Solomon, 2004). A corporation can be seen as a bundle of resources and relationships that produce an output in the form of wanted or needed goods and services (Hillman & Dalziel, 2004; Hillman & Camella, 2000). The authors are compelled to underwrite the argument that the interests of stakeholders other than just shareholders could and should be taken into account provided that, as the Delaware high court phrased it rather delicately in a well-known case, there is “some reasonable relationship to general shareholder interests” (Dimma, 2002: 166) which nowadays is seen as mainstream corporate governance practices. The enhancement of stakeholder interests from a board perspective is defensible and necessary, especially if such an argument protects the best interests of the firm, even though such interests may

appear incongruent with non-financial goals<sup>4</sup>. The subsequent debate is now raging as to what extent corporations should be indeed aspired to be fully fledged corporate citizens in a global village (Mirvin & Googins, 2006, Wallace & Zinkin, 2005).

Organizations, especially with an Asian background, have become more network responsive and have adapted and responded to complex and uncertain competitive environments with amazing ingenuity. Many Asian, often family-owned, firms are concerned with long term growth and increasing market share, thus guaranteeing continuity and family prestige rather than the highest quarterly profit possible. In Asia therefore, governance mechanisms emphasize relationships giving access to a variety of different of resources. Such relationship-based or resource-based governance focuses on (a) the importance of agreements that are largely implicit, personal and enforced outside of courtrooms, and (b) characterized by close relationships between government, banks and businesses (Li, 2003; Low, 2004; Backman, 1999, 2003, 2004, 2008, Whu, 2005; Zhao, 2003). Whereas *rules-based governance* largely relies on publicly verifiable information and most transactions are based on impersonal and explicit agreement, enforced by impartial (state) institutions, *relations-based governance* largely relies on local information, i.e. mutually observable information by the two transaction parties monitored by informal power structures or community members, and is usually non-transparent, non verifiable and relation-specific (Li, 2003). The cultural and organizational characteristics to elevate the importance of certain socially acceptable behavior such as loyalty and close personal relationships in Asia may turn into cronyism which selects and favors some “in-group members” or even lead to outright corruption (Khatri, Johnson, Ahmed 2003; Tay & Seda, 2003). It seems that quite a number of Asian companies are implicitly concerned with community development though hardly in any formal or procedural manner since they underwrite and acknowledge the good relationships with external stakeholders and community members as a necessity to survive (Kidd & Fichter, 2003; Mahbubani, 2008; Roche, 2005; Verhezen, 2008b).

Most CEOs and directors in the West, however, are rightfully concerned with the changing expectations and increasingly critical demands of stakeholders and the associated risk that are affecting their corporate reputation. They are also aware that they, and not just the regulators, need to lead the way forward to address the increasingly

complex global challenges. We can safely assume that good corporate governance principles as we understand them refer to and are concretely translated into an obligation of *care* – emphasizing ethical values and ecological soundness - and formal *fiduciary duty* of officers and directors – focusing on the economic value and profitability of the firm - that accommodate the shareholder value. Engaged businesses usually go beyond mere quarterly shareholder profitability expectations and aim at a longer-term sustainable value of an organization (Emerson, 2003; Mintzberg, 2002; Mobius, 2003).

Governance will not completely prevent misconduct or misdeeds, but it can actually improve the way a corporation is run. Ultimately, a company with good governance structures in place will attract talent, skilled management and investors who are willing to pay a premium for stockholding in a well-managed and transparent corporation. Meritocracy will likely lead to higher performances independent of its cultural origin, whether we are referring to companies such as Lenovo, Haier, Wipro, ICBC<sup>5</sup>, Tata or Reliance<sup>6</sup> in emerging countries or to Cummins, Nokia, Ikea or Singapore Airlines in developed countries. Despite the growing importance of corporate governance practices, information in the areas of corporate ownership, structures, compositions, board practices, and compensation is still scarce (Mobius, 2003; Green, 2005). Furthermore, attempting to take a longer-term perspective is more often than not hindered by the financial community's adamant and sometimes irrational overemphasis on the next quarterly financial results. Moreover, the lack of transparency and accountability not just in emerging markets but even up to Wall Street Institutions has become a major issue of public debate.

Since the corporate fiascos of Enron, WorldCom and Parmalat among others, some efforts have been made to implement stricter codes by individual organizations, backed up by stricter oversight control on transparent disclosure and accountability by the Sarbanes-Oxley Act (2002). Moreover, a number of corporate governance scholars and institutional fund managers seem to be convinced about a [Board of] “director primacy” (Bainbridge, 2008; Clarke, 2007; Lorsch & Clark, 2008; Neoh, 2003; Mobius, 2003; Rezaee, 2007). This post-Enron trend within governance practices tend to confirm that corporate power is slowly ebbing away from management towards the sometimes competing claims of shareholders and directors (Bainbridge, 2008). In addition, the

current Sub-Prime Mortgage Crisis in the U.S.A. shows that the price to be paid for lacking transparency and accountability on the securitization process of mortgage loans has proven to be very costly in terms of loss of credibility, reputation, market share and value. It is unnecessary to mention that it is not the overzealous risk-taker but the taxpayer who will pick up this expensive bill. Similarly, the Asian Crisis of 1997<sup>7</sup> highlighted the inadequacy of systems of governance at the state level as well as at the corporate level.

A McKinsey survey (2001) has proven that foreign investors are willing to pay considerable premiums (between 20% up to 30% above the market stock value depending on the country of origin of investment) for companies in emerging countries which implement international recognized ‘minimum’ governance standards (Crist, 2003). However, there are *no* “*best*” or optimal systems of governance, but there are *better* practices. Indeed, it is acknowledged that a ‘one size fits all’ approach is unrealistic and often perceived as alien because experience has demonstrated that the Anglo-American capitalistic structures cannot be automatically transplanted or imposed globally. Nonetheless, investors can only be attracted to buy foreign shares if *basic standards of corporate governance principles*<sup>8</sup> at an international level are being adhered to.

Is it realistic to expect some global ‘standardized’ practices of an internationally accepted system of finance, investment and management? Many countries in South East Asia and China with insider-dominated systems have focused on improving the legal protection of minority shareholders, concentrating on improving corporate accountability by forcing companies to produce consolidated accounts and appropriate international accounting standards<sup>9</sup> and to encourage greater dispersion of equity ownership<sup>10</sup>. There is definitely a pressure towards global corporate governance compromises, implying that reforms in systems of corporate governance both in the West and in the East may focus on long-termism and accountability<sup>11</sup>. The increasing “transnational” – across and beyond national borders – demand for more accountability and transparency unquestionably highlights the need for a virtual merger or compromises between the competitive market forces of the traditional Anglo-American systems of finance and control with the more long-term styles of relationship management and investment prevalent in the traditional insider systems of corporate governance in Asia and to a lesser

extent in Europe (Bradley *et al*, 2000). The authors therefore suggest to *integrate* the *outsider-* and *insider-*dominated corporate governance approaches – or *formal* and *informal* governance mechanisms (Hu, Verhezen & Tan, 2009) - into a more unified framework of global corporate governance principles.

Figure 1  
Guidelines for Global Corporate Governance Principles

The continuing global ecological degradation, increasing income inequality and poverty gap and the insensible and often greedy and materialistic trend of irrational consumerism promoted and advertised by global corporations indicate that finding possible global solutions will remain a fallible process in continuous and piecemeal progress.

The emerging giants of China and India are demonstrating that rapid growth may create massive costs in the process, such as large-scale environmental degradation and huge disparities between those who benefit from economic growth and those who are left behind. Not addressing these societal hazards and “externalities” will escalate the global discrepancies and cause dangerous friction and conflicts. It seems obvious that a surging triad of China, Russia and India – though their respective longer-term outlook may be just as highly uncertain as is the case of the developed world - will start playing a much more important role in determining the issues of global governance than before. It should be recognized that sovereign wealth funds – especially from China, the Middle East and Singapore along with considerable private investments from the emerging countries such as Russia, India and Mexico - have become important players in the international financial system.

Good governance principles are not characterized only by a set of Western-inspired rules and procedures. One reason that corporate challengers from emerging countries are particularly adept at creating and operating in such fluid organizations is

their emphasis on *trust*, instead of mere procedures only, that functions as the glue for any business transaction. Although we may face a period of political and financial instability as a result of the changed world conditions in the near future, we can only hope for the emergence of a new and more responsible world order that is willing and able to address the global challenges in a caring and dutiful manner. The need for greater world governance, especially to manage “public goods” such as financial stability to contain dangerous systemic financial risks or environmental protection, has become obvious after the recent crises.

At the same time, one should avoid the current tendency to rely too much on government regulation that would certainly stifle any innovative and creative economic progress. There is a strong argumentation for self-enforcement of global agreements, although without strong institutional mechanisms to enforce rules global policies or effective implementation of international agreements will falter (Stiglitz, 2001<sup>12</sup> & 2008). Responsible corporate behavior across national boundaries may be more easily instigated by voluntary - based on some consensus building and thus common sense among experts - and prerogative actions rather than coercion and mandatory or necessary laws. This consensus-building also implies a dialectical process between firms (which increasingly are taking the lead) and governments or regulators offering a prospect of convergence for a better well-being and well-fare of their respective citizens, based on common norms of governance. Standardized governance rules – to be distinguished from the more generic governance principles - are unlikely to be effective in countries where complementary laws exist only in part or not at all (Schneider, 2008; Young, 1997). Since there is a growing *consensus* on voluntary commitment to and adoption of Global Governance Principles into “best” practices, some pressure can be exerted by the market on countries to translate those into legally binding contextualized national rules and regulations.

At this point, implementing and translating *governance principles* into best practices supported and guided by an *inspiring leadership* (both at the private and public level) constitute the best bet to assist in creating a civil corporation that may evolve to a more *spirited* organization.

## **INSPIRING LEADERSHIP, COMMON GOOD AND CORPORATE CITIZENSHIP BEYOND COMPLIANT BEHAVIOR**

Corporations have amassed enormous power by their mere global reach and size. Global corporations play an increasingly important role in the economic and also socio-psychological life of citizens. Their financial, human, organizational and technological resources in combination with their ability to promote innovation and efficiency and to support decentralized governance with a global reach make these corporations important partners of global civility in the pursuit of public objectives (Fuchs 2007) while it should be acknowledged that, at the same time, private economic interests and public interests frequently diverge.

The entrance of multinational or transnational corporations into international diplomacy will require top management to assess their relative bargaining power with governments, multilateral parties and NGOs, as well as to negotiate with foresight to retain their global and national credibility among their stakeholders (Henisz & Story, 2003; Wapner, 1997; Young, 1997). Corporations both in the West and in the East will have to take more and more responsibility in cooperation with governmental institutions in acknowledging the importance of a public and embracing some *global common good* beyond national borders as in a civic global corporation while pursuing their private interests.

When accountability practices fail, individual rights quickly erode in the face of those in power pursuing personal agendas and enrichment over the common good which corrodes the trust of citizens, employees and consumers (Zadek, 2001). The absence of effective accountability mechanisms sometimes triggers societies and corporations to fail. The challenge is how to entrench accountability in principle *and* in practice as part of the *common* sense in a civilized society that embraces a well-functioning economic market system constrained and aligned by ethical, social and ecological objectives that create “shared value [that] will lead to self-sustaining solutions that do not depend on private or government subsidies. When a well-run business applies its vast resources, expertise and management talent to problems that it understands and in which it has a stake, it can have a greater impact on social good than any other institution or philanthropic organization”

(Porter *et al*, 2006: 14). Such a social good seen in a global context where diverse activities of a complex multifarious world are coordinated and institutionalized through governance mechanisms that limit (moral) hazards<sup>13</sup> and unwanted (ecological) externalities on a global interlinked scale can become a common good<sup>14</sup>. Although the current crisis and financial meltdown may have temporarily undermined some of these lofty goals, one, nevertheless, will have to work out how to bridge the gap between public, private and civil society sectors and align these diverse objectives one way or another. Given the relatively short-term cycles of politicians in democracies but equally quarterly-result driven businesses, it will remain difficult and often conflicting to further the consensus building discussion on the social and ecological effect of particular (detrimental) behavior that would only be felt in the distant future.

A *Global Civil Society* can exert considerable pressure on governments to enforce particular governance principles and related conventions and equally put enormous pressure on firms to adhere to global governance principles as they are stipulated and ratified for instance in the ILO Labor Right convention, international investment protection and anti-corruption measures, complying with some basic environment, health and safety rules as they are expressed in the WTO regulations subscribed by its member states, and the establishment of patent protection and intellectual property rights. A Civil and hopefully more Open Society – beyond the interaction from and between states – usually results in a sense of allegiance and societal norms that define and generate our social life.

Sustainable purpose-driven organizations have acknowledged that a strategy of enlightened self-interest such as investing in “greening” products for instance would serve stakeholders and ultimately the shareholders (Esty & Winston, 2008; Porris, 2005; Porter & Van Der Linde, 1998; Hart 2003 & 2007). The potential success of those ‘spirited’ and sustainable strategies would enhance the *legitimacy* and even *legacy* of global corporations in our global village. The question of legitimacy will continue to pop up and keep corporations and also governments on their toes. Moreover, the political power of corporations has become contested in the context of the pros and cons of the globalization discourse (Fuchs 2007, Stiglitz, 2007, 2008). Global surveys currently reveal high levels of suspicion of and aversion to corporations. In other words, the

possible failure to implement appropriate governance systems and procedures may not only undermine the pragmatic legitimacy of corporations in the eyes of the public and thus negatively affecting its self-imposed regulatory governance efforts, but it may also have a destructive effect on the moral legitimacy of corporations as civic players. The stakes are enormous and the chances to succeed may not easily come back in case of failure.

Ideally corporations should be engaged in a discourse that could result in some form of “*spirited sustainability*” (Frances, 2008; Emerson, 2003) beyond national borders. Indeed, the next logical step to excel and gain sustainable competitive advantage in this fierce global environment may, paradoxically, be by integrating aspects of corporate citizenship (Mirvin, 2006; Zadek, 2001 & 2004; Porter & Kramer, 2006) and spiritually enlightening values into a strategy that goes beyond what is commonly labeled gaining a license to operate in the community. In other words, a ‘spirited’ business goal encompasses a strategy that would stand the scrutiny of a “spiritual” or enlightened common good that has become aligned and engrained into the core values of the organization, integrating sustainable profitability and ethically and ecologically sound management decisions.

The principle of responsibility and accountability will need to be contextualized, institutionalized and translated into ‘local’ duties and rules. However, it is an *attitude*, based on and inspired by the notion of *integrity*, that brings a sense of responsibility into the realm of the corporate and political world. Integrity is a virtue of balance that allows management of self-conflicts in a normative manner while taking into account that the self is dynamic and interdependent. Integrity justifiably integrates an intelligible and defensible moral vision of one’s character within a certain context, enabling a wise person to know how and when to adapt his moral principles and commitments when understanding a different reality asks him to do so (Verhezen, 2008 & Carter, 1996<sup>15</sup>). Aligning a firm’s commitment to moral values with a competitive strategy is “a calling and an art, not [just] an engineering problem” (Eisenstat, 2008). Having a passionate purpose that aligns financial and non-financial objectives and unleashes energies will allow businesses to take sensible risks (Elkington & Hartigan, 2008; Porris, 2005; Esty & Winston, 2009). To build in best practices may have unexpected positive effects on our

environments and even on our psyche. Visionary, purposeful and compassionate leaders function like alchemists who bring to the physical realm dreams and hopes that become attainable in a sensible business proposition.

Unfortunately, in the recent corporate debacles directors stood aside while management misled shareholders by fabricating the accounts, conducting shady deals and disregarding corporate governance standards. The law is rarely the best guide for appropriate ethically and ecologically sound corporate behavior: it is often too little and invariably too late for many of the victims of corporate scandals or disasters. For example, new regulations such as the Sarbanes-Oxley Act in the USA (2002) or the implementation of a Code of Corporate Governance for Listed Companies in China (2003) can help to restore some much-needed trust through imposing *transparency* (Schneider, 2008), but legislation alone cannot make corporations responsible, open and healthy. These governance principles and mechanisms and regulating bodies function like traffic lights, guiding the flow in a reasonable manner, but will not be able to guarantee complete safety for its users.

In our networked global world, *trust* is everything. However fragile, trust along deeply shared cultural assumptions is one of the strongest glues binding people together in groups and organizations (O'Toole & Bennis, 2008). In a competitive global environment where it takes substantial time to gain a good reputation, it can be shattered by the click of a mouse. Hence, there is an enormous need for transparency, responsibility and accountability, underpinned by a sense of fairness by the leaders designing and implementing strategies. Ultimately, the trust in leadership and confidence in corporations depend on the implementation and enforcement of global good (corporate) governance principles and on the (moral) character and attitude of those who run the corporations and influence the newly emerging world order. However, it should not surprise us that voices emerge telling us that heads of governments or director generals of international institutions and captains of industry – those who are in the position to improve the society – seldom bring about significant changes. Merely securing (minority shareholder) rights, verifying duties and performing authority check and balances are necessary actions to steer corporations away from disasters or may get them some corporate credibility or public relations kudos but are not sufficient steps to

take on the daunting global challenges we are facing. Captains of governance need to embrace scalable entrepreneurial solutions that align and integrate profitability motives with societal and ecological goals, that encourage the transition to sustainable renewable resources and to stimulate investments in evolving and disseminating the necessary innovative technologies. It is not an exaggeration to say that the quality of management and leadership correlates with the quality of governance. Any business that attempts to pursue its corporate objectives at the expense of the society in which it operates will find its possible financial success to be “spiritually” illusory and most often very temporary. Hence, the overall importance of global governance principles that are translated in best global governance practices may transform the corporation into a genuine global corporate citizen which, nevertheless, remains a fallible work in process.

## CONCLUSION

Global attention of the crisis has increasingly turned towards the question of good corporate governance in both developed and emerging markets. The focus will increasingly be on transparent reporting, triple bottom line disclosure, appropriate and integrated risk management, responsible executive remuneration, minority shareholders’ rights secured and enabled by a visionary board and by an increased policing of these rights by courts and regulators. It should not be ignored that good corporate governance lays the foundations for economic development as it allows greater access to capital, improved economic growth and a culture of ethics and good business practices. The real challenge will be to align the relationships of powerful participants on the global stage with global societal objectives and ecological needs within the private and public realms.

A *value-centered market economy* implies that a market will only *implement societal values* if it is less risky (and less costly), profitable or if governments give it a ‘purpose’ and a framework. If the shareholder prospers through accountable and visionary leadership and implementation of good governance practices, the odds are greater that so too will other stakeholders.

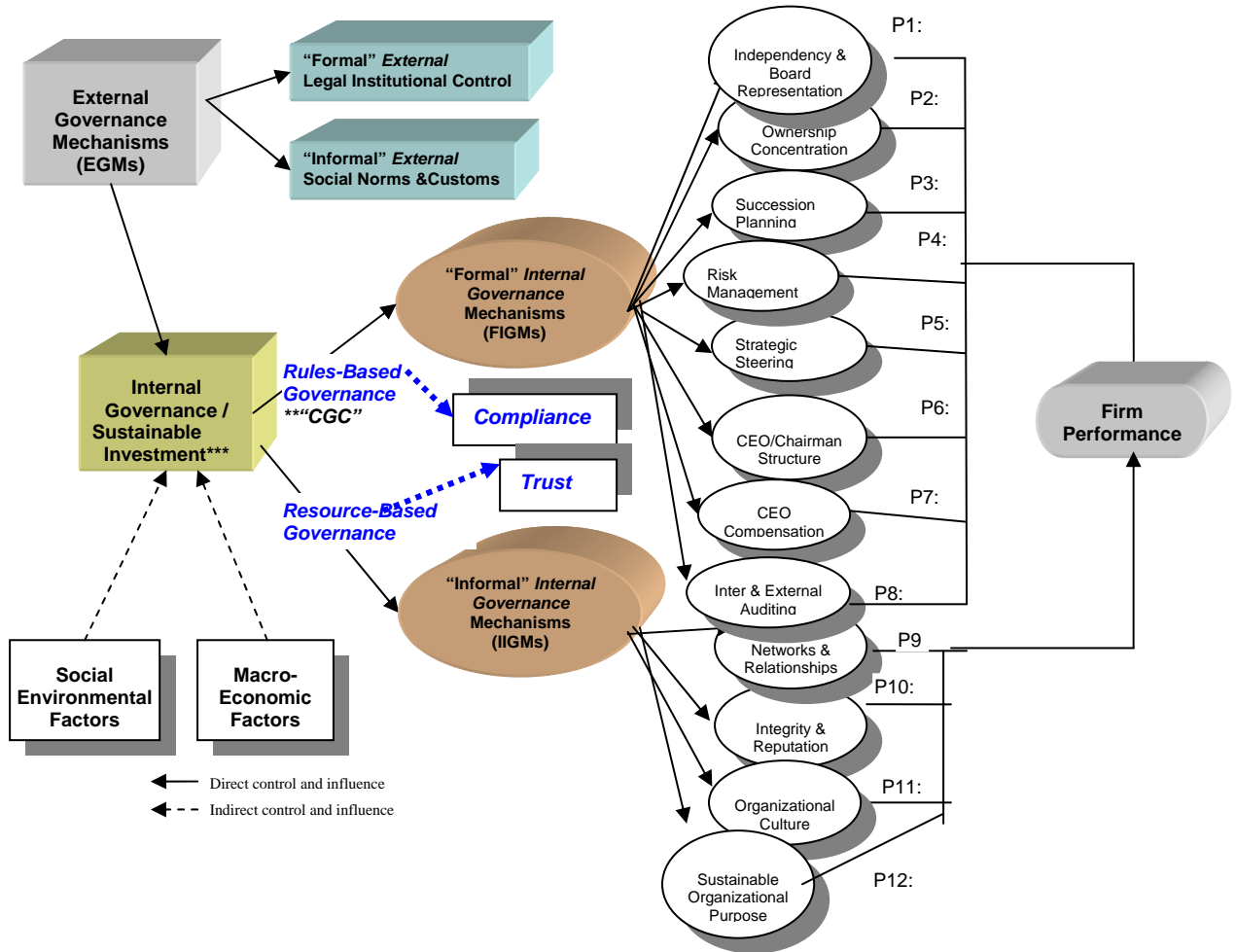
Despite the continuing and crucial role and importance of government and civil society, commerce has become the dominant wide reaching institution with enormous powers in the world. *Responsive* organizations identify, embrace and implement best practices, based on *transparency, accountability, fairness, ethically* responsible behavior and *governance* mechanisms in a strict legal sense. *Strategic* savvy organizations, however, go beyond best practices and pursue some form of “spirited” sustainability or common good incorporated into their strategy and risk management. Those firms both in the Western as well as in the Eastern hemispheres, often lead by inspired entrepreneurs, engaged leaders and same-minded managers are galvanized by the prospects of global climate change or other human-induced insults to humankind and its neglect of a common good. What motivates many successful inspirational entrepreneurs and engaging leaders is not just making “deals” but achieving a creative “ideal”. If somehow those ideals can *leverage* some form of spirited sustainability, the world may become a better place, beyond mere compliance-oriented behavior. Moreover those executives, board members and advisors, politicians or other decision-makers who have experienced multinational and plural cultures in their lives may be blessed to show the leadership style of empathic sensitivity embracing global governance principles and acknowledging the global human interaction in relationships while respecting cultural diversity and identities that generate trust.

Future research may need to focus on verifying, falsifying and fine-tuning the definition of workable emerging global standards for governance principles aiming at sustainable successful strategies and how they are translated into rules and regulations in local regulatory contexts. It would be interesting to find out to what extent some specific rules – e.g. the appointment of independent directors to the board – tend to diverge or converge across cultural and national borders. The most difficult task of all is to design a legal framework and governance structure that prepares corporations to become corporate citizens which potentially could make them excel in such a risky and challenging future ahead.

The future will likely not be a straight-line extension of current reality. We can only hope that a sustainable and innovative creativity embracing a more spirited business reality supported by enlightened leadership can avert a catastrophic inequality and

environmental degradation and foster human development instead. Corporations need to recognize that they are embedded within a larger global perspective that has some spiritual and sustainability goals beyond pure commerce. Good Governance somehow incurs the proposition that the overall good of the organization, institution or even state takes moral precedence over the personal needs of its leaders in contrast to the recent corporate or political debacles where sheer hubris and greed were prevailing - not exactly what Aristotle and Confucius had in mind when they referred to virtuous leaders.

Figure 1: Guidelines for Global Corporate Governance Principles\*



\* The distinction between formal and informal internal governance mechanisms is based on an unpublished paper by Verhezen, P.; Hu, H. & M.G. Tan, (2008), "Foreign Strategic Investments and Governance in China"

\*\* CGC: Corporate Governance Control.

\*\*\* We believe that there are 5 main fields of steering the organization and provide check and balances within CGC: (1) Development of Sustainable and Spirited Strategies; (2) Engaged Risk Management; (3) Management Performance & Compensation of Top Management; (4) Succession Planning & Leadership Pool; (5) Monitor and React to Expectations Stakeholders

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## NOTES

<sup>1</sup> *The authors gratefully thank Professor Dr. Joe Isaac from the University of Melbourne, Department of Economics and Commerce, for his detailed critical comments on our draft version.*

<sup>2</sup> The OECD Principles:

- (1) Rights of shareholders refer to the basic rights of ownership and information.
- (2) Equitable treatment of shareholders implies equality per shareholding of minority and foreign shareholders.
- (3) The role of stakeholders which recognizes their rights and encourage cooperation and information-sharing.
- (4) Disclosure and Transparency rules provide timely, accurate and cost-efficient information on all matters regarding the corporation, including financial and operating results, change of ownership, voting rights, key executives / board members and their remuneration, governance structures, and policies and issues regarding employees.
- (5) Responsibilities of the Board detail their accountability to the company and shareholders and their role in ensuring compliance with laws and regulations and the integrity of the financial reporting process.

<sup>3</sup> See Wallace *et al* (2005). The ICGN's Corporate Governance criteria include the following: (1) corporate objectives that optimize shareholder return over time; (2) communication and reporting imply disclosure of accurate, timely and adequate information, and meeting regulating guidelines where they exist; (3) voting rights in the form of 'one share one vote'; (4) corporate boards should guarantee the fiduciary duty to the shareholders and as result being accountable to the shareholders; (5) corporate remuneration should align the interests of shareholders with those of the Board members; (6) Strategic focus implies that major changes to the core business should not be made without prior approval by the shareholders; (7) Corporate Governance Practices concerning operating performance should ensure that the Board spends its time focused on optimizing the company's long term operating performance; (8) Shareholder return over a longer period with an emphasis on outperforming companies in relevant equity peer group; (9) Corporate Citizenship refers to the fact that companies should abide by the laws of the jurisdictions in which they operate, looking at the wider *stakeholder issues* that are more likely to create wealth and employment on a sustainable basis; (10) Corporate Governance implementation will require to develop practical *codes of conduct* and stress the importance of *dialogue* between shareholders and the company to address and solve issues.

<sup>4</sup> Even though the Delaware jurisdiction – which rules over a great number of Fortune 500 Multinational Corporations - has historically speaking always strongly favoured shareholder rights in its strict legal interpretation, the state Supreme Court has also recognized two important principles in the classic Time-Warner case: “(a) the fiduciary duty to manage a corporate enterprise includes the selection of a time-frame for meeting corporate goals; (b) Directors must chart a course for a corporation which is in its best interests without regard to a fixed investment horizon” (Dimma, 2002: 166). In other words, these two principles now considered as the contemporary mainstream view in the Anglo-American governance framework, it may be appropriate to deviate from short-term shareholder interests in favour of longer-term corporate interests if the interest is fully compatible with longer-term shareholder interests.

<sup>5</sup> ICBC (Industrial and Commercial Bank Corporation) is the most outstanding company in China for its governance which is the largest single bank in China. They are listed on the Stock Exchange in Shanghai and Hong Kong. Since the bank is listed on more than one stock exchange, it seems that they have found a common denominator to *comply* with the specific contextual rules and regulations while at the same time adhering to generic *common principles*.

<sup>6</sup> See Sirkin *et al*, 2008. It is telling that a number of exemplars are coming from the emerging challenging countries (and not just from the developed incumbent countries). The Tata Group's expounded values for instance – trust, integrity and social commitment – underpin the company's globalization efforts whereby top management performers are engaged to keep the top talent is considered to be a positive side-effect. Another inspiring example – not mentioned by Sirkin though - is the Reliance Industries Ltd group and its

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respected CEO from emerging India which has been voted as one of the most respected business conglomerates in the world in terms of governance and leadership, despite the ongoing dispute between the two brothers which has been food for the press.

<sup>7</sup> See Cornelius, 2003. Indonesia, South Korea, Thailand, Malaysia and the Philippines lost more than USD 600 billion in market capitalization or around 60% of their combined pre-crisis gross domestic product. Total private capital flows to emerging markets are estimated to have fallen in 2002 to levels last seen in early 1990s

<sup>8</sup> We here refer to the very useful and well-organized criteria used by CalPERS who manages more than USD 160 billion to invest in a variety of international firms. The first main factor investing in a firm is related to the **country risk** in which that firm is operational: 1. *Political Stability* (a. Civil liberties; b. Independent judiciary and legal protection; c. Political risk); 2. *Transparency* (a. Freedom of press; b. Accounting standards; c. Monetary and fiscal transparency; d. Stock exchange listing requirements); 3. *Productive Labor Practices* (a. ILO ratification; b. The quality of enabling legislation to explicitly protect or prohibit the rights described in the ILO Convention; c. The institutional capacity of governmental administrative bodies to enforce labor law at the national, regional and local level; d. Effectiveness of monitoring and enforcement of laws in the ILO Convention areas. A second criteria to establish an investment will require an in-debt analysis of the **market risk**: 1. *Market Liquidity and Volatility* (a. Market capitalization, the overall size of the country's stock market; b. Change in market capitalization, the growth of the country's stock market over the last five years; c. Average monthly trading volume relative to the size of the market; d. Growth in listed companies over the last five years; e. Market volatility as measured by standard deviation over the last five years attributable to both currency volatility and local market volatility; d. Return/risk ratio in each market); 2. *Market Regulation / Legal system / Investor Protection* (a. Adequacy of financial regulation; b. Bankruptcy and creditors' rights; c. Shareholders' rights); 3. *Capital Market Openness* (a. Trade policy, measuring the degree to which there is oppressive government interference to free trade; b. Foreign investment, measuring governmental barriers to the free flow of capital from foreign sources including unequal treatment of foreigners and locals under the law; c. Banking and finance, measuring government control of banks and financial institutions and allocation of credit and the degree of freedom that financial institutions have to offer all types of financial services, securities, and insurance policies; d. Stock market foreign ownership restrictions; e. Settlement Proficiency refers to the country's trading and settlement practices to determine the degree of automation and the success of the market settling transactions in a timely, efficient manner; f. Transaction Costs are the costs associated with trading in a particular market and includes stamp taxes and duties, amount of dividend and income taxed, and capital gains taxes). Finally, one will need to analyze the **specific risk factors of a firm** which are often related to their specific organizational corporate governance principles or lack of them and the quality of the top management who is supposedly developing strategies and economic fundamentals which are sensible for the creation of long-term value of the firm.

<sup>9</sup> Globalization is creating a socio-economic environment for global corporate governance that determines opportunities and constraints. The need for a global convergence in corporate governance derives from the existence of forces leading to international harmonization in financial markets (Solomon and Solomon 2004). We observe a certain trend towards international harmonization in the areas of accounting and financial reporting with the 'principles-based' International Accounting Standards Board (IASB) driving towards a comprehensive set of internationally acceptable standards for accounting aimed at a "globalized standardization" with the 'rules-based' GAAP. An obvious example is the fact that stock options within reasonable constraints granted to top management as a performance dependent remuneration are off balance and thus not considered as a real expense until materialized at the maturity date according to the GAAP, whereas the IAS 39 clearly stipulates such a security as a real cost that needs to be immediately cushioned against its fair value through capital for possible future risk. Although compensation through stock options is rarely practiced in East Asia or China - unless with explicit professional partnerships - we believe that, with the growing internationalization of companies and the increasing pressure to find or to retain talented management expertise, these Western ingrained practices may gain some prominence in Asia as long as appropriate capital reserves are recommended and foreseen as a cushion for the risks taken.

<sup>10</sup> See Green (2005) and Neoh (2003). The present state of the Chinese capital markets is the result of "short-termism" in managerial attitudes that has led to short-term speculative investment horizons which in fact is contradictory to the Confucian values of harmonious continuity in family-owned businesses. Nevertheless, most listed companies in China are still state-owned which implies that political rather than

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economic objectives play an important role. The Code of Corporate Governance for Listed Companies in China, which was implemented by the China Securities Regulatory Commission, is a good step in the right direction that seeks to make listed companies in China more attractive to investors. Appropriate good governance mechanisms would be highly recommendable to improve the financial performances of those listed Chinese companies.

<sup>11</sup> See Cornelius (2003) and CalPERS criteria *among others*. From the different sources, we can summarize that most global investors believe that good corporate governance standards imply:

- A significant percentage of outside or independent directors on the board
- These independent directors are truly independent of the management
- The board members and directors have significant shareholdings when representing fund managers and institutional investors
- A material proportion of the directors' compensation is related to these stockholders
- Mechanisms for formal evaluation of directors and board members
- The board is very responsive to investors' questions on governance issues

<sup>12</sup> See Stiglitz (2001) who refers to the paradox of global governance in environmental policy making. In arriving at agreements with respect to the environment, cooperative strategies between countries tend to prevail against free-rider strategies which somehow are contrary to the result anticipated in economic theory. However, when there is absence of (legal) sticks and carrots for countries, it can be very difficult to implement the agreement.

<sup>13</sup> See Shiller, 2008. Controlling and monitoring moral hazards may reduce certain degrees of high leveraged profitability in particular industries - especially in derivatives and hedging markets - but such regulations may be in the interest of the public and common good.

<sup>14</sup> Non-priced negative externalities in the form of pollution, for example, should be properly taxed or internalized through the market price mechanism such as is expected in Carbon Trading for instance. Expectation management will need to be governed in a global interdependent world stifling off over-speculation where necessary.

<sup>15</sup> The Yale law professor Carter (1996) distinguishes three steps for the exercise of integrity: a) discerning what is right and what is wrong; b) acting on what you have discerned, even at personal cost; and c) saying openly that you are acting on your understanding of right and wrong.

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