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Corporate governance: the heart of international finance

By Simon Osborne, chief executive of ICSA: The Governance Institute

SINCE the financial crisis, corporate governance has become something of an international phenomenon. Comparing corporate governance in different jurisdictions, however, is a bit like comparing apples and oranges. The legal framework and regulations are different, company structures vary and stakeholders are not necessarily the same.

In the UK and the US, corporate governance is primarily aimed at the rights of shareholders. In Germany, Japan and much of continental Europe, banks play a prominent role, often holding shares and having board members. Governance models there are more inclusive and ensure that the rights of workers, customers and suppliers are represented at board level.

In France, the state has a wide degree of control, but in many Asian countries, South America, Italy and Spain, family-controlled interests influence shareholding patterns and board composition. In Australia and the UK, listed companies generally have a unitary board structure while Germany has a binary structure with a supervisory board and a separate management board.

Moreover, some countries prefer to standardise best practice on a statutory basis whereby companies comply or face legal sanctions, as in the US with its Sarbanes-Oxley Act and a multitude of rules made under it by the Securities and Exchange Commission. Other countries prefer a voluntary code of principles and recommended practices where companies are asked to comply or explain their reasons for deviating from them, as is the case with the UK Corporate Governance Code.

ICSA: The Governance Institute has members stretching across the globe from Guernsey to Ghana, Jersey to Jamaica and Dublin to Dubai. The balance of what is enshrined in law and what is in a code varies from country to country. In Uganda, corporate governance requirements are promulgated in a schedule to its companies' legislation. In Barbados corporate governance is based on both legislation and self-regulation. Guernsey has the Finance Sector Code of Corporate Governance.

There are common themes such as board evaluation, but there is not necessarily uniformity to practices around the globe. Codes, and laws, are often borne out of specific events which are particular to individual countries. The UK Combined Code of Best Practice began life in 1992 as the Cadbury Code, which was a response to a series of high profile corporate collapses in the late 1980s and early 1990s. The 1995 Greenbury Report tapped into concerns at the time about excessive director pay. The Higgs and Smith reports, which looked into improving the effectiveness of directors and the role of audit committees respectively, grew out of the Enron collapse.

Nevertheless countries do look to others for inspiration and those looking to implement corporate governance structures for the first time often look to more established codes for guidance. The Trinidad and Tobago Corporate Governance Code 2013 – a private sector initiative and the first of its kind for the Republic – 'follows globally accepted best practices with specific consideration and much customisation for the local economy and dynamics of the business society of Trinidad and Tobago'. The Private Sector Organisation of Jamaica (PSOJ) Code on Corporate Governance draws heavily on codes published by other jurisdictions, including the UK, Australia, South Africa, Trinidad and Tobago and Barbados.

Many codes work on a 'comply or explain' basis, although the Trinidadian code works on an 'apply or explain' model, which recognises the importance of how the principles and recommendations can be applied rather than a question of whether or not to comply with a rigid set of rules. Neither approach is the same as saying that a code is voluntary. The expectation is that non-compliance will be rare.

Codes are the golden standards against which companies can measure themselves. Companies use them to determine how best to implement practices to suit their particular company dependent on its size, stage of development, industry, complexity of business, etc. All codes tend to promote transparency, accountability, fairness and corporate responsibility. Guernsey's Finance Sector Code of Corporate Governance offers principles and guidance around the board; directors; business conduct and ethics; accountability; risk management; disclosure and reporting; remuneration; and shareholder relations. The aim is to provide boards and individual directors with a framework for sound systems of company governance and to help them discharge their duties efficiently and effectively.

Additional measures and directives offer extra support such as anti-money laundering regulation, the Alternative Investment Fund Managers Directive, MiFID II, the OECD's Beps project to better align taxation with the location of economic activities and the Common Reporting Standard. Increased tax transparency is particularly pertinent in the light of increased scrutiny following the Panama Papers leak. Fortunately Guernsey has an excellent track record in transparency and a strict regulatory regime which inspires confidence and has made it the number one jurisdiction globally for non-UK entities listed on the London Stock Exchange.

Globally, much emphasis is placed on the fact that investors like to see clearly defined corporate governance policies, procedure and practices that are consistent with international best practices. As the Guernsey Financial Services Commission quite rightly states, 'Ultimately, corporate governance is about the behaviour of boards and their directors'. This is why it is so important that boards and directors fully understand the entire spectrum of their duties and responsibilities; and why governance professionals need to be closely involved to advise boards on the development of governance frameworks and their proportionate and insightful application. ICSA has an internationally-recognised qualification that promotes good governance and its members are the people implementing and promoting governance frameworks worldwide, including 400 right here in the Bailiwick helping to cement Guernsey's reputation as a jurisdiction with strong governance credentials.

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