CORPORATE GOVERNANCE

Review | 2018

The elixir of life for boards is a potent mixture of independence, diversity and inclusion

Without this, organisations will stagnate or perish

The Governance Company

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Research by Samujjal Guha

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About The Governance Company

We are a global provider of corporate governance services that includes, advisory, research and learning programmes for potential and existing board members to develop and assess their competencies to ensure they add value to a board.

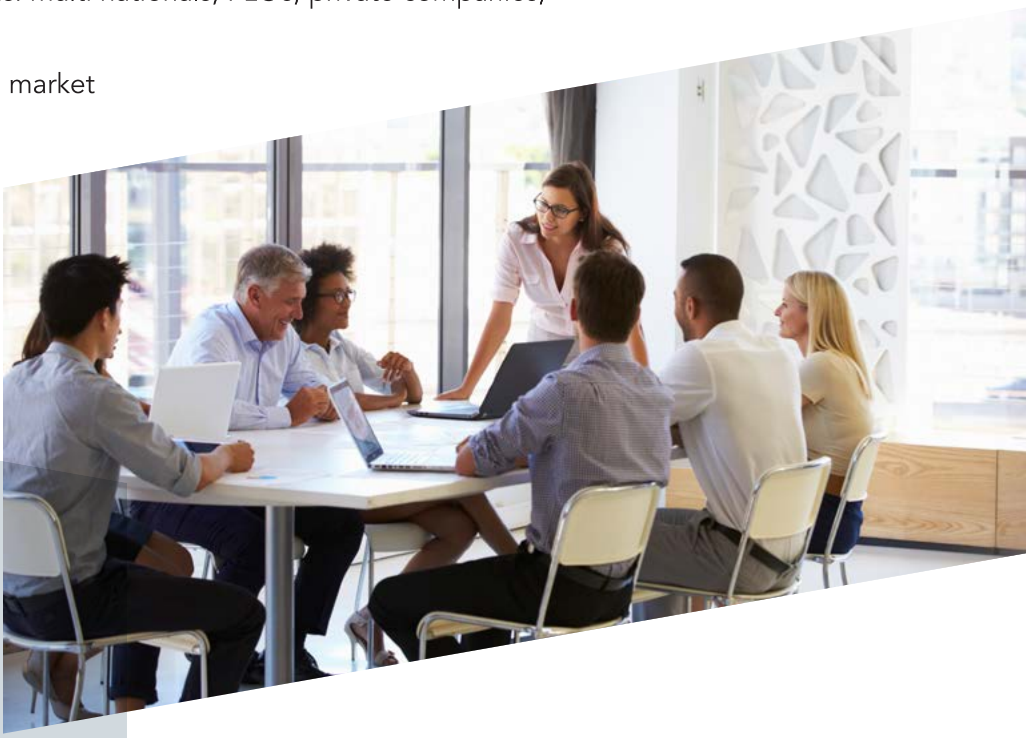
We place an emphasis on building the capacity and capability of the boards of organisations, as we believe that this is where ongoing organisational development is best served.

We are setting the standard in providing accessible high quality, accredited governance education using the blended learning model. Our platform has been designed to be agile, scalable and customised to meet individual organisational needs anywhere.

We provide a rich and comprehensive suite of corporate governance programmes for organisations that seek better board performance, that provides a learner experience that is unique, stimulating, engaging and fun.

We understand the corporate governance challenges that boards have in regulated and unregulated industries. We have direct and practical experience in working with organisations such as: multi nationals, PLC's, private companies, non-profits, public bodies etc.

We are an Irish firm serving a global market headquartered in Dublin, Ireland.



1 INTRODUCTION

Welcome to the second edition of our Corporate Governance Review 2018.

The objectives of this publication are to:

- Present some of the major corporate governance developments that are taking place globally.
- Identify some of the major emerging corporate governance trends around the world.
- Highlight some of the major corporate governance issues that have arisen in a number of organisations nationally and internationally and what we can learn from them.
- Draw some conclusions which we hope will be a valuable input into the evolution of corporate governance practice.

Our findings are based on a literature review of the views and opinions on corporate governance by leading international for profit and non-profit organisations, recognised media sources, together with our own insight, researched based publications and practical experience of corporate governance.

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2 EXECUTIVE SUMMARY

Developments in Corporate Governance

Ireland

- **The Irish Charities Governance Code** – It sets out the minimum standards everyone on the board of a registered charity should adhere to in order to effectively manage and control their organisations. The new code is based on six principles and charities should comply or explain why if they can't comply.
- **New Corporate Enforcement Authority proposed by the Irish Government** – The Minister for Business asked the Irish Cabinet to approve the publication of draft legislation to establish the Corporate Enforcement Authority as an independent agency. The Cabinet approved the proposed changes that would see the Office of the Director of Corporate Enforcement established as an independent agency. It will be one of the government's key measures to tackle white collar crime.

International

- **The New UK Corporate Governance Code** – The new UK Corporate Governance Code which puts the relationships between companies, shareholders and stakeholders at the heart of long-term sustainable growth in the UK economy was released in 2018.
- **Independent Review of the Financial Reporting Council (FRC) in the UK** – Britain's Department for Business, Energy and Industrial Strategy launched an independent review of the UK's account watchdog Financial Reporting Council (FRC) to review the regulator's competence.
- **The Wates Corporate Governance Principles for Large Private Companies** – Large private companies in the UK will be encouraged to follow six principles to develop their corporate governance principles and adopt them on an 'apply and explain' basis.
- **USA** – US investors remain focused on improving boardroom quality and want greater understanding of the composition of the board.

- **India** – The Security Exchange Board of India accepted most of the recommendations suggested by the Kotak Committee. The committee was formed given the ineffectiveness and inefficiency of the corporate governance norms in the country, to provide recommendations on standard governance practice to be adopted by listed companies.
- **Japan** – The Tokyo Stock Exchange urged Japanese companies to bring their governance practices more in line with global norms.

Trends in Corporate Governance

- Boardroom quality and composition is a pressing issue in most markets across the globe.
- Technology is not just a business enabler anymore, but at heart of organisational capacity and capability.
- Sustainability and the board need to go hand in hand.
- Compensation should be based on performance against strategy.
- Greater board and chair independence will be critical for board effectiveness.
- Shareholder rights should allow them to exercise power in certain matters for good of the company.

Case Studies

- **Health Service Executive (HSE)** – The HSE needs to examine how it governs all aspects of its operations. Establishing a fit for purpose HSE board is a critical first step.
- **Independent News and Media** – Directors appointed to a board are collectively responsible to all shareholders rather than any one particular group.
- **Animal Heaven Animal Rescue** – Individuals should carry out due diligence before accepting a role as a trustee in any organisation.
- **Tesla** – Corporate governance at Tesla is not fit for purpose.
- **Carillion** – Profit at any cost is not the basis for a sustainable business.
- **Facebook** – Corporate dictatorship is unacceptable today.

Final Thoughts

- Diversity and inclusion in the boardroom is a key trend in almost all markets.
- There should be a governance code for large private companies in Ireland.
- Technology insight is now a key skill required on most boards.
- Sustainability is a now a key boardroom agenda item.
- Increasing the quality and performance of directors is a key challenge for all boards.
- Greater female representation on boards will enable better decisions to be made.
- Director independence is fundamental to the effective operation of boards.

3 DEVELOPMENTS IN CORPORATE GOVERNANCE

The objective of this chapter is to highlight some of the main developments in corporate governance that may be of interest to directors. This review does not intend to be a comprehensive review of all global developments, but merely a selected overview of what might be of interest to directors in Ireland.

Ireland

The Irish Charities Governance Code

On 7 November 2018, the Charities Regulator launched the Charities Governance Code. It sets out the minimum standards everyone on the board of a registered charity should adhere to in order to effectively manage and control their organisations. The new code is based on six principles and charities should comply or explain why it does not comply.

An Rialálaí Carthanas
Charities Regulator

Key points

- The six principles of the Charities Governance Code are advancing its charitable purpose, behaving with integrity, leading people, exercising control, working effectively, and being accountable and transparent. All charities are expected to comply with these.
- The code exhibited 32 Core standards that all charities should meet when putting the principles into action.
- It also laid out 17 additional standards that reflect best practice for charities with high levels of income and/or complex organisational and funding structures and/or significant numbers of employees.
- The Regulator will provide documents to guide and help charities and their trustees to meet all the core standards of the new code.
- The charities are expected to comply with the code from 2020 and expected to report on the compliance from 2021.

New Corporate Enforcement Authority proposed by the Irish Government

On 4 Dec 2018, the Minister for Business asked the Irish Cabinet to approve the publication of draft legislation to establish the Corporate Enforcement Authority as an independent agency. The Cabinet approved the proposed changes that would see the Office of the Director of Corporate Enforcement established as an independent agency. It will be one of government's key measures to tackle white collar crime.

The ability of the Office of the Director of Corporate Enforcement (ODCE) to carry out its function came to focus in May last year, in the acquittal of the former Anglo Irish Bank's Chairman. The Chairman was acquitted of all charges after the trial judge withdrew the case from the jury having recognised serious inadequacies in the investigation of the case, which created a significant risk that the processes were unfair and the trial was unsafe.

The government asked ODCE to prepare a report on the investigative failings after the court decision was made.

Key points

- The new proposed law aims at creating a new organisation called the Corporate Enforcement Authority – which will have new powers and will strengthen the regulatory framework on how business may be conducted.
- The new organisation will get new investigative tools, including new search and entry powers including accessing electronically held information.
- The organisation will have a free hand in recruiting its own specialised staff.
- An additional €1m was allocated in Budget 2019 to support its establishment as an independent agency.

United Kingdom

The New UK Corporate Governance Code

On 16 July 2018, the Financial Reporting Council (FRC) released the 2018 UK Corporate Governance Code which puts the relationships between companies, shareholders and stakeholders at the heart of long-term sustainable growth in the UK economy. The new code will apply from the period on or after 1 January 2019.

Key points

- The new code places an emphasis on businesses building trust by forging strong relationships with key stakeholders.
- It encourages greater board engagement with workforce to understand their views.
- It urges companies to establish a corporate culture that is aligned with the company's purpose, business strategy, promotes integrity and values diversity.
- Reporting should be clear and meaningful. Investors and proxy advisors should evaluate the explanations carefully and not resort to a tick-box approach.
- The workforce remuneration and related policies should be considered by the remuneration committees while setting up director remuneration. Remuneration committees should apply discretion when the result is not justified.

Independent Review of the Financial Reporting Council (FRC) in the UK

In March 2018, Britain's Department for Business, Energy and Industrial Strategy launched an independent review of the UK's account watchdog Financial Reporting Council (FRC) to review the regulator's competence.

The review was led by Legal & General's chairman, Sir John Kingman. The independent review will help government to assess the FRC's governance, impact and powers, to ensure they are fit for the future. The review aims to make the FRC the best in class for corporate governance and transparency, while helping it fulfil its role of safeguarding the UK's leading business environment. On 6 June 2018, the FRC launched a call for evidence. The review will assess whether the regulator needs to be disbanded or folded into another authority.

Key points

- The review will ensure that the Financial Reporting Council (FRC) structures, culture and processes; oversight, accountability, and powers; and its impact, resources and capacity are as good as they could be.
- The review will seek to understand the FRC's standing as a beacon for the best in governance, transparency, and independence.
- The independent review has called for evidence and information on the effectiveness of FRC.

The Wates Corporate Governance Principles for Large Private Companies

In January 2018, the Financial Reporting Council (FRC) and the Department for Business, Energy and Industrial Strategy (BEIS) both announced that James Wates CBE, Chairman of the Wates Group, will chair the Coalition Group to develop the new corporate governance principles for large privately-owned companies.

The Coalition Group, of which the FRC is the secretariat, has been established as the Government's response to its Green Paper consultation on corporate governance reform published in August 2017, which considered the need for improved transparency and accountability in this area.

In June 2018, FRC released the consultation paper on corporate governance principles for large private companies known as The Wates Corporate Governance Principles for Large Private Companies.

Key points

Large private companies in the UK will be encouraged to follow six principles to develop their corporate governance principles and adopt them on an 'apply and explain' basis. These principles are about fundamental aspects of business leadership and performance.

The six principles

- **Purpose** – an effective board promotes the purpose of a company, and ensures that its values, strategy and culture align with that purpose.
- **Composition** – effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board should be guided by the scale and complexity of the company.
- **Responsibilities** – a board should have a clear understanding of its accountability and terms of reference. Its policies and procedures should support effective decision-making and independent challenge.
- **Opportunity and risk** – a board should promote the long-term success of the company by identifying opportunities to create and preserve value and establish oversight for the identification and mitigation of risk.
- **Remuneration** – a board should promote executive remuneration structures aligned to sustainable long-term success of a company, taking into account pay and conditions elsewhere in the company.
- **Stakeholders** – a board has a responsibility to oversee meaningful engagement with material stakeholders, including the workforce, and have regard to that discussion when taking decisions. The board has a responsibility to foster good relationships based on the company's purpose.

The final version of the report is expected to be published in December 2018.

USA

Boardroom Accountability Project 2.0

Investors in USA remain focused on improving boardroom quality and want greater understanding of the composition of the board. The New York City Pension Funds' Boardroom Accountability Project 2.0 will continue to focus on enhanced disclosure of board composition through the request of disclosure of a formal board matrix.

Boardroom Diversity Legislation

Boardroom diversity has been a pressing topic for a while now. In September 2018, the California Governor approved the Senate Bill 826.

Key points

- It requires California based registered companies to have at least one female director on their board by end of 2019.
- By the end of 2021, the bill would increase that required minimum number to 2 female directors if the corporation has 5 directors or to 3 female directors if the corporation has 6 or more directors.

India

The Security Exchange Board of India (SEBI), the capital market regulator constituted a committee on corporate governance under chairmanship of Mr Uday Kotak in June 2017.

The committee was formed given the ineffectiveness and inefficiency of the corporate governance norms in the country to provide recommendations on standard governance practice to be adopted by listed companies.

In March 2018, SEBI accepted most of the recommendations suggested by the Kotak Committee with modifications.

Key points

- The top 1,000 listed firms by market capitalisation will have to have a minimum of 6 directors by 1 April 2019. For the ones in the top 2,000 the deadline is 1 April 2020.
- The top 500 listed firms will need to have at least one female independent director by April 2019. The deadline for firms in the top 1,000 is April 2020.

- For listed firms, at least one-third of the board or three members, whichever is higher, will be required to conduct board meetings, it should include at least one independent director. For the top 1,000 firms the deadline is April 2019, while for the top 2,000 firms it is April 2020.
- The top 100 entities will also have to conduct annual general meetings within five months after the end of 2018–2019.
- Annual general meetings will have to be webcast by the top 100 listed firms from April 2019.
- Shareholder approval will be required for making royalty payments to related parties that exceeds 2 percent of the consolidated turnover.

Japan

In June 2018, the Tokyo Stock Exchange urged Japanese companies to bring their governance practices more in line with global norms. Tokyo Stock Exchange incorporated the fundamental principles for corporate governance established in 'Japan's Corporate Governance Code' into its listing rules to contribute to effective corporate governance in Japan.

Key points

- **Cross-shareholdings** – companies should establish and disclose specific standards with respect to the voting rights as to their cross-shareholdings, and vote in accordance with the standards. The new code urges companies to disclose plans for reducing such arrangements with banks and business partners.
- **Boardroom diversity** – companies should be recruiting more women and international talent for directors.
- **Corporate leadership** – the code calls for transparent and fair procedures on the appointment and dismissal of senior management, including CEOs.

4 TRENDS IN CORPORATE GOVERNANCE

This chapter highlights some of the major trends from the world of corporate governance. This does not include all the trends from corporate governance, it only focuses on a select few which might be interesting to directors.

Boardroom quality and composition is a pressing issue in most markets across the globe

Institutional investors will continue to prioritise gender diversity, director skills and experiences, and the appointment of directors who can dedicate enough time to the company as key indicators of board quality.

Boards should expect increased votes against directors where there are fewer than two women on the board in certain markets. Some institutional investors will pay close attention to the number of directors with direct industry experience while evaluating composition and quality.

While evaluating a board's quality and competencies, investors will consider director age, tenure and diversity – which include gender, race and ethnicity, as well as diversity of perspectives, experience and skills in their assessment.

Technology is not just a business enabler anymore, but at heart of organisational capacity and capability

Technology has made cybersecurity and business continuity, critical risk management issues. Boards are doing a better job of planning for cybersecurity, business continuity and resiliency. However, prevention and response plans are just plans as its almost practically impossible to predict the consequences of a cyber incident. But boards must focus and monitor cyber threats. Cyber risk continues to be a growing concern for global investors considering the multiple security breaches worldwide in 2018.

Investor focus on sustainability and the role of the board need to go hand in hand

Shareholders are increasingly investing in environmental, social and governance opportunities (ESG). Sustainability includes environmental, social and governance issues and the same is increasingly becoming a top agenda for boards. Investors need decision useful data on key material issues that are strategic

to the company, all with a clear link between ESG issues and corporate strategy, risk management and operational context. Investors globally are integrating ESG ratings into their investment making decisions to help identify risks or opportunities that may not be apparent in traditional financial analysis. Many companies are increasingly using the 2015 Paris Climate Agreement and UN Sustainable Development Goals (SDGs) to guide their sustainability work.

Compensation should be based on performance against strategy

Executive pay continues to be an area of interest for investors, with many investors wanting to understand how companies long-term strategic priorities as well as its culture of integrity and accountability are aligned with its approach to pay. Some investors focus on possible gender, race or ethnicity related pay disparities between various groups of employees, keeping in view the new pay gap disclosures in the United Kingdom.

Greater board and chair independence will be critical for board effectiveness

Independence is considered to be the foundation stone for board effectiveness. In Belgium and Germany, management committees are separate from the board, since employee and/or union representation on the board is considered to harm independence. In Australia, Canada and the US, best practice is for the CEO to be the only insider on the board. In Switzerland, banks have only independent members and no executives on their boards; while non-financial Swiss companies allow no recent employees on the board.

The trend in separating the roles of the CEO and Chair is a statutory requirement in many countries like – Canada, China, Germany, Hong Kong, India, Ireland, Norway, Saudi Arabia, South Africa, Sweden and the United Kingdom. In founder dominated companies like Facebook and Tesla, the role of the board is jeopardised, where the CEO and Chair role is held by the founder. The thrust for separation of CEO and Chair roles is greatest in the UK and the USA, where more than half of board members must be independent and the audit, compensation, and nominating committees must be chaired by and composed of entirely independent directors.

Shareholder rights should allow them to exercise power in certain matters for the good of the company

Shareholder rights through proxy access for shareholders, declassified boards, abolition of poison pills, single-class shares, and majority voting standards are becoming the norm, (except in countries where concentrated ownership is still prevalent) either by statute or through corporate bylaws. There is an overall move in the US in the last decade or so to increase the shareholder rights, while companies in other countries are also converging on the US practices.

5 CASE STUDIES

This chapter showcases a selection of case studies based on organisations that came into the public domain in 2018 and examines the corporate governance issues arising and the key takeaways.

The case studies are drawn from Ireland, UK and USA. They include a statutory authority, public companies and a charity.

Ireland

Health Service Executive (HSE)

Context

The Health Service Executive (HSE) is a large organisation with more than 100,000 people, whose job is to run all of the public health services in Ireland.

One of its services CervicalCheck provides free cervical screening to women in Ireland aged 25 to 60. The CervicalCheck programme is managed by the National Screening Service (NSS), a part of the Health Service Executive (HSE), with funding provided by the Department of Health through the HSE vote allocation.

On 25 April 2018, the HSE Cervical Smear Scandal unfolded when a terminally ill woman, won a High Court case against the HSE and was awarded €2.5 million. She underwent a routine smear test in 2011 and she was told that the result was normal. She was diagnosed with cancer in 2014, the same year the audit of her 2011 smear test showed it was inaccurate. But the woman was not informed until the end of September 2017 about the inaccurate smear test result as a result of a row between the clinical director of CervicalCheck, and the woman's gynaecologist over a difference of opinion on who should formally communicate the news to the woman.

Since 2014 it has emerged that more than 200 women with cervical cancer should have received treatment earlier than they did.

In 2014, the audits of the smear test were only used for education and training purposes by CervicalCheck. Only in 2015 did the HSE decide to pass on the information of incorrect smear test results to the women and their treating doctors.

In July 2016, the doctors were told by the screening program in a circular to attach the result of the revised test in the woman's file.

Governance issues

- The Minister of Health was not made aware of the lapses in the 2011 test results which surfaced in the audit in 2014.
- The risk management system of the HSE had flaws which clearly failed to understand how risks are identified, managed and communicated in the CervicalCheck and the National Screening Service.
- There was no governance group within National Screening Service/ CervicalCheck.
- In 2013, legislation replaced the HSE board structure with a Directorate consisting of a Director General and no fewer than two, and no more than eight Directors, all of whom were HSE staff.

Key takeaways – the HSE needs to examine how it governs all aspects of its operations. Establishing a fit for purpose HSE board is a critical first step.

- A critical division like CervicalCheck should have had clear reporting lines between NSS and the HSE, and the HSE should have been monitoring the same. Communication is at the heart of everything and any lapses can cause massive reputational damage to the organisation.
- The organisational approach to risk management and its identification, management, and communication plays a major role in overall smooth functioning of the governance of all organisations which appears to have been absent in this case.
- There appears to have been a lack of clear governance and adequate reporting lines between CervicalCheck, the NSS, and the HSE management structures, including clear risk escalation procedures.
- Any future HSE board should have an independent chair and board members to act in the interest of the public and patients.
- If the HSE had a board in place it may have helped to identify the governance failings around CervicalCheck.

Independent News and Media

Context

Independent News and Media (INM) is the leading newspaper and online publisher on the island of Ireland and is the largest wholesale distributor of newspapers and magazines. The Company is headquartered in Dublin and it's shares are quoted on the Irish and London Stock Exchanges.

In March 2018, the board of INM became aware about a potential data breach, as the group's IT system back-up tapes may have been removed from its premises. It is alleged that data, including the names of a number of journalists who worked for the company, was interrogated by a third party company called Trusted Data Solutions.

The board may have been misled by former chairman about a suspected massive data breach in 2014. The then Chairman told the board that the work was carried out as part of a cost-cutting exercise. The payment for the data search was made by a company owned by the largest shareholder in INM who had nominated the former chair to the INM board.

Later in 2018, the ODCE got permission from the High Court to appoint inspectors to probe the data breach and other corporate governance issues at INM.

Governance issues

- The former chairman was nominated by and was a close associate of the largest shareholder of the company.
- The board did not have a member or members who understood the implication of the data breach and who should have questioned the Chairman's decisions. This puts a significant question mark over the independence and objectivity of the board.

Key takeaways – the board appeared to be run for the benefit of its largest shareholder

- The chairman of the board should set the tone for efficient running of the board based on the organisation's ethics and values. He/she should be independent on appointment and if he/she ceases to be independent, they should step down from the role.
- To be credible, any board should demonstrate its capability to investigate any wrongdoings in the organisation, so that shareholders and the regulator – ODCE can have confidence in the board and don't have to appoint inspectors to probe governance issues.
- Involvement of the ODCE and the appointment of inspectors to probe corporate governance issues will jeopardise any organisation's reputation and value.

Animal Heaven Animal Rescue

Context

Animal Heaven Animal Rescue (AHAR) is one of Ireland's largest animal welfare charities that operates a rescue centre for animals in Castleisland, Co Kerry, Ireland.

In October 2018, concerns about poor governance at AHAR prompted the Charities Regulator to nominate two new trustees to the board of AHAR. The Regulator warned AHAR in an email seen by RTÉ Investigates – it will 'continue to monitor the operation and activities of the charity and may nominate additional persons' to the AHAR board.

AHAR resisted the regulator's move sending private message to its followers on Facebook page citing the regulators move as 'take-over'. The regulator responded by doubling the number of nominees to four on the AHAR board.

The Charities Regulator has continued to monitor the operations of the charity since January 2017, when it imposed an intermediate sanction on the charity, for its failure to keep proper books of account.

Governance issues

- Financial governance continues to be an issue at AHAR.
- Failure to keep proper books of accounts and submit its annual report by the relevant deadline.
- Governance of animal welfare issues. For example – six written Animal Health and Welfare notices were issued by the Department of Agriculture to AHAR from January 2016 to 1 Sept 2018, two of which were amendments to previous notices.
- The Charities regulator has raised concerns over general management and control of AHAR.

Key takeaways – individuals should carry out due diligence before accepting a role as a trustee in any organisation

- Trustees in organisations such as the AHAR would need to consider their position as trustees if the organistion cannot meet its statutory obligations.
- Trustees should also get legal advice before considering their position, as resigning that may not absolve them of their statutory responsibilities.
- Boards should have trustees with adequate financial skills to manage a charity of AHAR's size.

International

Tesla

Context

On 7 August 2018, Elon Musk, the Chair and CEO of Telsa tweeted that he was considering taking Tesla private at $420 a share and had funding secured. The stock price soared almost immediately after the tweet.

In September 2018, the US Securities and Exchange Commission (SEC) charged Elon Musk for misleading investors over a privatisation plan. It claims the tweets were baseless and created chaos in the market impacting investor value.

Tesla and Musk had to pay a fine of $20m each to the financial regulators, and under a settlement agreement he will step down from the position of Chairman but will continue to be the Chief Executive. Tesla also had to appoint an independent chair as per the settlement agreement.

Elon Musk subsequently tweeted – $40m fine was 'worth it' in October 2018.

Governance issues

- SEC charged Tesla with failing to have required disclosure controls and procedures for Musk's tweets.
- Many board members have personal ties with Musk.
- Tesla had overpaid to acquire Solar City, a troubled company founded by Musk's cousin.
- The board has failed to take action against the company's Chair despite a string of inappropriate behaviors that damaged the company's reputation.
- The board is not independent, the board members appear to act as rubber stamp to Elon Musk's decision.

Key takeaways – corporate governance at Tesla is not fit for purpose

- The chair and the chief executive should not be the same person.
- There should be social media policies so that it is clear who can tweet about what and the accompanying sign off procedures.
- The Chair should be independent.
- There should be a majority of independent directors on a board to ensure objectivity and independence.

Carillion

Context

Carillion plc is an integrated support services company in the United Kingdom, the Middle East and North Africa, Canada, and the rest of the world. Carillion plc was incorporated in 1999 and is headquartered in Wolverhampton, the United Kingdom. Carillion was Britain's second largest construction and outsourcing operation, a FTSE 250 company with annual revenues of £4.4bn.

The accounts had been unqualified and were signed off on a going-concern basis on 1 March 2017. Carillion's finances then quickly unraveled: the company issued the first of three profit warnings on 10 July, announcing £845m of write-downs on four contracts and the resignation of the CEO; the share price plunged 39% as a result.

After suffering massive losses on contracts and under the weight of debts of around £1.5bn, including a £590m pension deficit, its market capitalisation fell from £2bn in 2016 to just £61m on 12 January 2018.

On 15 January 2018, the company was forced into compulsory liquidation, with debts of £1.5bn and only £29m cash in the bank. The banks refused to lend it any more money, throwing hundreds of major projects in doubt and bringing down one of the government's most important suppliers.

The liquidation had repercussions for all stakeholders: the shareholders who have lost their investment; the 43,000 employees whose jobs are threatened; the 28,000 pension scheme members whose retirement income will be reduced; the thousands of suppliers, sub-contractors and creditors whose invoices are unlikely to be paid; and the many local communities and customers, including the government, who face non-delivery.

In its 2016 annual report, Carillion noted the evaluation had 'confirmed that the board, each of its committees and the directors continue to be highly effective'.

Governance issues

Carillion's collapse exposes deep corporate governance failings:

- **Poor strategic risk management** – The board's inability to manage Carillion's principal risks was a significant failure. Carillion had high debts and traded on low margins. Despite juggling its obligations to suppliers, the company ran out of cash.
- **Inappropriate accounting policies** – In addition to the Finance Director, two of the former non-executives of Carillion are qualified accountants. Their conduct in preparing the financial statements is under investigation by the Financial Reporting Council (FRC). Its likely areas of focus include: revenue recognition on significant contracts; the carrying value of goodwill (£1.5bn); the alternative performance measures used; and the going-concern basis of accounting.
- **High risk business model** – Did the non-executives really understand Carillion's risk-reward equation – managers pricing bids aggressively low to win contracts and then struggling with project delivery and late payment? What questions did the non-accountants on the board (including the CEO) ask to satisfy themselves that the accounts gave a true and fair view?
- **Questionable market messaging** – The board's communication and messaging to the market remained upbeat right up to the first profit warning. It was hard to detect any hint of the troubles to come from a reading the 2016 report and accounts. The AGM was held on 3 May 2017, less than 10 weeks before the profit warning, without adverse comment.

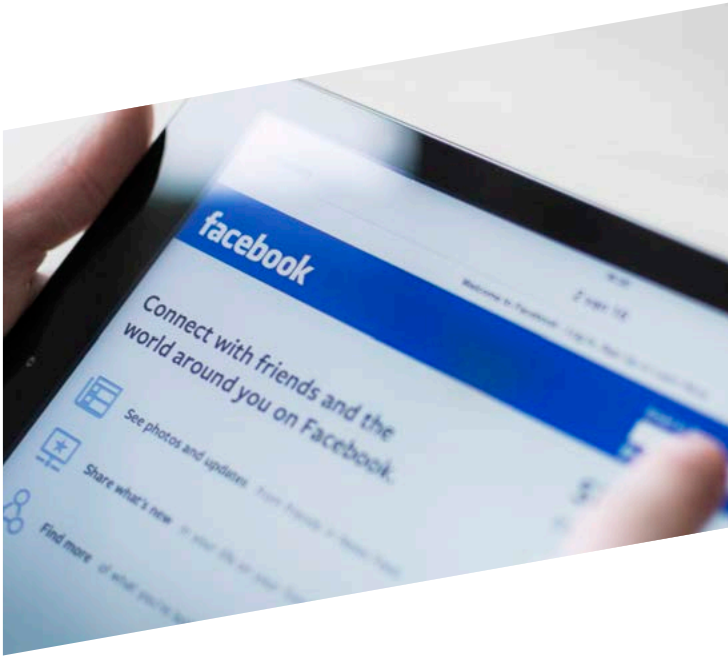
Key takeaway – profit at any cost is not the basis for a sustainable business

- The culture of winning projects at all costs does not appear to have been challenged by the board.
- The board should have had a contingency plan, as it was not prepared for the January 2018 debt rescheduling package being rejected by its bankers.
- The board should have reviewed the effectiveness of the Audit Committee and the Internal Audit Function in a more forensic manner on a regular basis.
- The same firm audited Carillion for 19 years which has to be questioned. For example, two of the three of Carillion's finance directors were alumni of that firm. Board members past relationship/association with the audit firm should be reviewed on a regular basis.
- The appointed of Auditors should be reviewed on a regular basis at least every 5 years.

Facebook

Context

Facebook is the world's largest social media company and Cambridge Analytica is a political analysis firm that claims to build psychological profiles of voters to help its clients win elections.



In early 2018, a major data hijacking scandal came to light involving Facebook and Cambridge Analytica. It was initially reported that 50 million Facebook profiles were harvested for Cambridge Analytica in a major data scandal. This number was later revised to as many as 87 million Facebook profiles.

Cambridge Analytica company is accused of buying millions of Americans' data from a researcher by the name of Aleksandr Kogan who told Facebook he was collecting it strictly for academic purposes.

Facebook's reputation took a major hit with the breach of trust and was fined of £500,000 by the UK privacy watchdog in the latter half of 2018.

Governance issues

- Facebook has a dual-class share structure, which gives Zuckerberg, the Founder, controlling power as he has almost 60% of the voting power.
- The board failed to plan for the governance issues given the rapid growth which Facebook witnessed and in particular protecting the user data, which is core to Facebook's business model.
- In terms of risk management, the board failed to have a plan to deal with an incident such as the disputed Cambridge Analytica data scraping.

Key takeaway – corporate dictatorship is unacceptable today

- The Chair and CEO should not be the same person.
- The board should be more independent in decision making.
- The voting rights of an individual should be reduced to bring in collaborative decision making to the board. Zuckerberg currently holds a lot of power due to Facebook's dual-class share structure.
- Having learnt of the data-leak in 2015 the board did not take any action, this shows the weak state the board is in.

6 FINAL THOUGHTS

Diversity and inclusion in the boardroom is a key trend in almost all markets

The Central Bank of Ireland has introduced a corporate governance code for all Irish credit institutions demanding a written policy on diversity relating to board appointments. The USA and India have also rolled out new governance policies to enhance female representation on boards. Shareholders and stakeholders, in general, are pressuring companies to diversify their boards. Regulations matter and will play a major role in changing the numbers and breaking the glass ceiling.

There should be a governance code for large private companies in Ireland

Ireland should take the lead from the UK and develop a governance code for large SMEs. Currently there are compulsory governance codes for PLC's, insurance and credit institutions, state organisations, and a voluntary code for charities but none for private companies.

Technology insight is now a key skill required on most boards

Companies need to ensure they have the technology insight at board level to understand the technologies used to engage and serve their customer base.

Sustainability is now a key boardroom agenda

Companies should ensure sustainability is a key boardroom agenda item. There should be a board member with specialisation in sustainability who can help integrate sustainability with business strategy. Sustainability is attracting attention of the investors and companies need to adhere to it.

Increasing the quality and performance of directors is a key challenge for all boards

Increasing the quality and performance of directors needs to be improved by regular individual performance assessment and a customised approach to Continuing Professional Development (CPD). Improving the quality of the performance of the directors around the boardroom table should increase the performance of the organisation. This can be facilitated by regular performance assessment, coaching and ensuring they have professional CPD support in areas they need to be kept up-to-date. This could include, regulation and compliance, updates on governance, diversity and inclusion and sector specific updates.

Greater female representation on boards will enable better decisions to be made

Greater efforts need to be made by investors to ensure that there is a greater percentage of quality female independent directors on boards. Most of the European countries have passed hard laws and hard gender quotas.

Director independence is fundamental to the effective operation of boards

All boards should review annually the independence of the independent directors including the chair and identify them in annual reports.

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