

Contents

About the Editors *xiii*

Foreword *xv*

Part 1: Models and Codes **1**

- 1.1 Global Corporate Governance Challenges for Public Companies and Their Shareholders in the 21st Century: Beyond Berle and Means 3

Stilpon Nestor, Nestor Advisors (and formerly Head of Corporate Affairs, OECD)

- 1.2 The Governance Premium: New Evidence from Recent Academic Research 11

Alex Berg and Inessa Love, World Bank

1.2.1 Does Corporate Governance Affect Company Performance? 12; 1.2.2 Which Specific Provisions Are Most Important? 14; 1.2.3 What Is the Interplay between the Country-level Corporate Governance Framework and Specific Company Factors? 16; 1.2.4 Some Important Caveats 18

1.3	Models of Governance	23
	<i>Jaap Winter, Debrauw Blackstone Westbroek/University of Amsterdam</i>	
	1.3.1 Conflict of Interest 23; 1.3.2 The Rediscovery of Governance 24; 1.3.3 Actions and Voting 25; 1.3.4 Controlling Shareholders 25; 1.3.5 Code Masters 26; 1.3.6 Scope for Convergence 27; 1.3.7 Trends Elsewhere 27; 1.3.8 Pluses and Minuses 28	
1.4	Managing Governance	30
	<i>David Jackson, BP</i>	
	1.4.1 The Principles 30; 1.4.2 The Mechanics 31; 1.4.3 Shareholder Engagement 32	
	Part 2: Shareholder Rights	35
2.1	Active Shareholders	37
	<i>Colin Melvin, Hermes Equity Ownership Services</i>	
	2.1.1 Universal Investors 38; 2.1.2 Governance in Practice 38; 2.1.3 The Vote 39; 2.1.4 Dialogue 39; 2.1.5 Going Forward 40	
2.2	Shareholders, Blockholders and Stakeholders	42
	<i>Roger Barker, Institute of Directors</i>	
2.3	Shareholder Voting	48
	<i>Alan MacDougall, PIRC</i>	
	2.3.1 European Developments 48; 2.3.2 France 49; 2.3.3 Switzerland 49; 2.3.4 The Netherlands 50; 2.3.5 Italy 50; 2.3.6 The United Kingdom 51; 2.3.7 Across the Atlantic 52; 2.3.8 Japan 52; 2.3.9 Conclusion 53	
2.4	US Shareholder Litigation and European Investors	55
	<i>Darren J Check and Naumon Amjed, Barroway Topaz Kessler Meltzer & Check LLP</i>	
	2.4.1 Class Action Lawsuits 56; 2.4.2 Individual / 'Opt-out' Actions 59; Derivative Actions 60	

Part 3: Board Effectiveness	63
3.1 The Role of Boards	65
<i>Patrick Dunne, 3i</i>	
3.2 Board Composition	71
<i>Neville Bain, Chairman, Institute of Directors</i>	
3.2.1 Board Composition 72; 3.2.2 The Role of Chairman 76; 3.2.3 The Context for the Non-executive Director 78; 3.2.4 Matters Reserved to the Board 78; 3.2.5 Committees of the Board 81; 3.2.6 Improving the Board's Performance 83; 3.2.7 Final Message 84; 3.2.8 International Board Structures 85	
3.3 Board Evaluations	89
<i>Anthony Carey, Mazars</i>	
3.3.1 Methodology 90; 3.3.2 A Strategic Orientation 91; 3.3.3 How the Board Conducts Its Business 91; 3.3.4 Critical Success Factors 92; 3.3.5 Pitfalls to Avoid 93; 3.3.6 Conclusion 93	
Part 4: Control and Disclosure	95
4.1 Business Risk Reporting	97
<i>Jaap van Manen and Jos de Groot, PricewaterhouseCoopers</i>	
4.1.1 Directors Responsible for Transparent Risk Disclosures 98; 4.1.2 Criticism concerning Risk Disclosures 99; 4.1.3 Guidance on Risk Disclosures 100; 4.1.4 Twelve Practical Tips for Making Transparent Risk Disclosures 102; 4.1.5 Conclusion 103	
4.2 Corporate Governance and Its Relevance to Audit Quality	105
<i>Gerald Russell, Institute of Chartered Accountants in England and Wales (ICAEW)</i>	

4.3	Unlocking Value through Sustainability Reporting	109
	<i>Ernst Ligteringen, Global Reporting Initiative</i>	
4.3.1	Developing a Common Language	110; 4.3.2
	Eager Listeners	110; 4.3.3
	Saying the Right Thing	111;
4.3.4	Measure to Manage, Manage to Change	112;
4.3.5	Steps to Take in Issuing a Sustainability Report	113
Part 5:	Directors	115
5.1	Selection and Nomination of Directors	117
	<i>Jennifer Stafford, Australian Institute of Company Directors</i>	
5.2	Non-executive Directors	123
	<i>Peter Waine, Hanson Green</i>	
5.2.1	Prepare Early	124; 5.2.2
	The Pitfalls	125;
5.2.3	Getting It Right	126; 5.2.4
	Diversity	128
5.3	Rising Liabilities Worldwide for Directors	129
	<i>Andre Basile, AIG</i>	
5.3.1	Investigations Increase	129; 5.3.2
	Lowering Costs of Litigation	130; 5.3.3
	Calls to Action	131; 5.3.4
	Accountability Abroad	132; 5.3.5
	Looking Ahead	133
5.4	Criminalization of the Business World	134
	<i>Nick Benwell, Simmons & Simmons</i>	
5.4.1	The International Angle	136; 5.4.2
	The Outsourcing of Policing	137; 5.4.3
	Is It All Too Risky?	137
5.5	Director Development	139
	<i>George Bartlett, Institute of Directors</i>	
5.5.1	Board Development	140

Part 6: Profiles of Corporate Governance in Leading Countries 143

6.1 The United States of America 145

Roger W Raber and Alexandra R Lajoux, National Association of Corporate Directors

6.1.1 Legal Framework: Laws, Models and Codes 145;
6.1.2 Board Structure and Roles 154; 6.1.3 Shareholder Rights 156; 6.1.4 Disclosure and Transparency 160;
6.1.5 Responsibility 161; 6.1.6 Directors 161;
6.1.7 Executive Pay and Performance 162

6.2 China 167

Neng Liang, China Europe International Business School, and Michael Useem, Wharton School, University of Pennsylvania

6.2.1 Distinctive Features of Chinese Corporate Governance 169; 6.2.2 The Chinese Governing Board 171; 6.2.3 Chinese Governance 174

6.3 Japan 176

Yasunobu Yokota, Japan Management Association

6.3.1 Background 176; 6.3.2 The Development of Laws, Models and Codes 178; 6.3.3 Board Structures 178; 6.3.4 Shareholder Rights 179; 6.3.5 Disclosure and Transparency 179; 6.3.6 Responsibility 180; 6.3.7 Directors 180; 6.3.8 Executive Pay and Performance 180; 6.3.9 Conclusion 181; 6.3.10 Useful Contacts 181

6.4 India 182

David Gardner, KPMG, and Graham Ward, PricewaterhouseCoopers

6.4.1 Legal Framework and Codes 182; 6.4.2 Board Structure and Roles 183; 6.4.3 Shareholder Rights 186; 6.4.4 Disclosure and Transparency 187; 6.4.5 Responsibility 188; 6.4.6 Directors 189; 6.4.7 Executive Pay and Performance 189

- 6.5 Overview and Current Issues in Germany 191
Christian Strenger, DWS Investment
6.5.1 Framework of the German Corporate Governance Code 191; 6.5.2 Board Structures and Roles 193; 6.5.3 Issues Relating to Shareholder Rights 196; 6.5.4 Disclosure and Transparency 198; 6.5.5 Responsibility 199; 6.5.6 Current Governance Issues Relating to Non-executive Directors 199; 6.5.7 Executive Pay and Performance 201; 6.5.8 Further Information 201
- 6.6 The United Kingdom 203
Anna Burmajster, Institute of Directors
6.6.1 Corporate Structure and Ownership 204; 6.6.2 Legal Framework 206; 6.6.3 Codes, Standards and Good Practice Guidelines 213; 6.6.4 Legal, Regulatory and Institutional Bodies 222; 6.6.5 The Role and Structure of a Board of Directors 227; 6.6.6. Disclosure and Transparency 241; 6.6.7 Shareholder Rights and Stakeholder Relations 252; 6.6.8 Corporate Social Responsibility 253; 6.6.9 Director Development in the United Kingdom 254; 6.6.10 Useful Contacts 256
- 6.7 France 257
Pierre-Yves Gomez, E M Lyon/French Corporate Governance Institute, and Caroline Weber, MiddleNext
6.7.1 Corporate Governance in France: Beyond Commonplaces 257; 6.7.2 Key Corporate Governance Trends 259; 6.7.3 Sources of Information 265
- 6.8 Italy 267
Massimiliano Barbi, Marco Bigelli, and Stefano Mengoli, University of Bologna
6.8.1 Regulatory Framework 267; 6.8.2 Shareholders' Meetings 271; 6.8.3 The Board of Directors 271; 6.8.4 The Ownership Structure of Listed Companies and Its Evolution 272; 6.8.5 Pyramiding, Dual-class Shares and the Value of Voting Rights 273

6.9	Trends in Russia	276
	<i>Alexander Filatov, Institute of Independent Directors</i>	
6.9.1	Concentrated Ownership, State Control and Rapid Expansion of Mergers and Acquisitions	276;
6.9.2	Concentration of Ownership	278;
6.9.3	Governing Bodies: Managing versus Governing	280;
6.9.4	Shareholder Rights	282;
6.9.5	Information Disclosure and Transparency	283;
6.9.6	Ownership Disclosure	284;
6.9.7	Specific Areas of Disclosure	284;
6.9.8	Boards of Directors	286
6.10	Spain	289
	<i>Juan Alvarez-Vijande, Fernando Igartua, Instituto de Consejeros-Administradores, and Vanesa Sañudo, Gomez-Acebo & Pombo Abogados</i>	
6.10.1	Legal Framework, Laws and Codes	289;
6.10.2	Main Regulators and Supervisors	295;
6.10.3	Board Structure and Roles	299;
6.10.4	The Roles of Chairman and Chief Executive	303;
6.10.5	The Role of Independent Directors	303;
6.10.6	The Role of Advisers	304;
6.10.7	Directors' Conflicts of Interest	305;
6.10.8	Required Committees	306;
6.10.9	Shareholder Rights	309;
6.10.10	Disclosure and Transparency	312;
6.10.11	Context of the Company's Social Responsibility	314;
6.10.12	Directors' Duties and Liabilities	314;
6.10.13	Remuneration: Executive Pay and Performance	315
6.11	Canada	320
	<i>Aaron Emes, Torys, with Introduction by Beverly Topping, Institute of Corporate Directors</i>	
6.11.1	Introduction	320;
6.11.2	Legal Framework: Laws, Models and Codes	322;
6.11.3	Board Structure and Roles	324;
6.11.4	Shareholder Rights	326;
6.11.5	Disclosure and Transparency	327;
6.11.6	Responsibility	327;
6.11.7	Directors	328;
6.11.8	Executive Pay and Performance	329;
	Appendix: ICD Key Competencies for Director Effectiveness and Their Relationship to Specific Tasks	330

6.12	The Development of Corporate Governance in Australia	334
	<i>Thomas Clarke and Alice Klettner, University of Technology, Sydney</i>	
6.12.1	Development of Laws, Models and Codes	335;
6.12.2	Board Structure and Roles	339;
6.12.3	Shareholder Rights	340;
6.12.4	Disclosure and Transparency	340;
6.12.5	Corporate Social Responsibility	341;
6.12.6	Directors	342;
6.12.7	Executive Pay and Performance	342;
6.12.8	The 2008 Financial Crisis	343;
6.12.9	Conclusions	343
6.13	South Africa	346
	<i>Lindie Engelbrecht and Ansie Ramalho, Institute of Directors in Southern Africa</i>	
6.13.1	Corporate Governance Codes	346;
6.13.2	Relationship between the Codes and Regulation	348;
6.13.3	Legislative Framework for Corporate Governance: Recent Developments	350;
6.13.4	Regulators in the Corporate Governance Environment	354;
6.13.5	Board Structure and Roles	357;
6.13.6	Shareholder Rights	358;
6.13.7	Disclosure and Transparency	360;
6.13.8	Corporate Responsibility	361;
6.13.9	Director Development and Training	362;
6.13.10	Directors	364;
6.13.11	Executive Pay and Performance	365
6.14	The Swedish Corporate Governance Model	368
	<i>Per Lekvall, Swedish Corporate Governance Board</i>	
6.14.1	Regulatory Framework	368;
6.14.2	A Different Corporate Governance Structure	370;
6.14.3	Concentrated Ownership	371;
6.14.4	Strong Ownership Powers	371;
6.14.5	Protection of Minority Rights	373;
6.14.6	Far-reaching Transparency Standards	374;
6.14.7	Future Challenges	375
6.15	New Zealand	377
	<i>Richard Croad, Ian Niven and William Whittaker, Institute of Directors in New Zealand</i>	
6.15.1	Legal Framework: Laws, Models and Codes	377;
6.15.2	Patterns of Ownership (eg Family Control,	

State Influence, Cross-shareholding) 378; 6.15.3 Regulators and Supervisors 379; 6.15.4 Board Structure and Roles 382; 6.15.5 Shareholder Rights 385; 6.15.6 Disclosure and Transparency 389; 6.15.7 Responsibility 392; 6.15.8 Directors 394; 6.15.9 Executive Pay and Performance 397; 6.15.10 Further Details 397

6.16 Finland 398

Olli V Virtanen, Finnish Association of Professional Board Members

6.16.1 The Board 400; 6.16.2 Shareholder Rights 400; 6.16.3 Responsibility 402; 6.16.4 Directors 402; 6.16.5 Board Remuneration 402

6.17 Republic of Ireland 405

Bob Semple, PricewaterhouseCoopers

6.17.1 General Principles 405; 6.17.2 Operation of Boards 406; 6.17.3 The Role of Director – and ‘Acting Responsibly’ 406; 6.17.4 Board Committees 407; 6.17.5 Key Roles 408; 6.17.6 Executive Pay and Performance 408; 6.17.7 Shareholder Rights 408; 6.17.8 Corporate Responsibility 409; 6.17.9 Codes, Standards and Best-practice Guidelines 410; 6.17.10 Legal, Regulatory and Institutional Bodies 410; 6.17.11 Reform of the Legal Framework 411; 6.17.12 Useful Website Links and Publications 414

6.18 Hong Kong Special Administrative Region of the People’s Republic of China 416

Carlye Tsui, Hong Kong Institute of Directors

6.18.1 Background 416; 6.18.2 The Legal and Regulatory Framework 418; 6.18.3 Rating 419; 6.18.4 Landscape of Listed Companies 422; 6.18.5 Culture Building in the Community 427; 6.18.6 Resources 428

Part 7: Regions	431
7.1 Corporate Governance in Asia: Looking to the Future	433
<i>Sharmila Gopinath, Asian Corporate Governance Association</i>	
7.1.1 'CG Watch 2007' Country Rankings 434; 7.1.2 Quality Counts 434; 7.1.3 Moving Up and Down 435; 7.1.4 Issues Remain 435; 7.1.5 Above the Law? 436; 7.1.6 Shareholder Activism versus Engagement 437; 7.1.7 Tomorrow's Issues 439; 7.1.8 Conclusion 439	
7.2 Corporate Governance in Europe	440
<i>Roger Barker, Institute of Directors</i>	
7.2.1 Looking into the Future: The Rise of Politics 447	
7.3 The Middle East and North Africa: The Corporate Governance Journey Is Just Beginning – The International Finance Corporation/Hawkamah Survey on Corporate Governance in the MENA Region	451
<i>The Hawkamah Institute</i>	
7.3.1 Demonstrating Commitment to Corporate Governance 453; 7.3.2 Implementing Good Board Practices 455; 7.3.3 Building a Robust Control Environment and Processes 458; 7.3.4 Strengthening Transparency and Disclosure 460; 7.3.5 Protecting Shareholder Rights 462	
7.4 Corporate Governance in Latin America	465
<i>Daniel Blume, OECD, and Felipe Alonso, Curtis, Mallet-Prevost, Colt and Mosle</i>	
7.4.1 The Economic Background 466; 7.4.2 Differing Code Objectives 467; 7.4.3 Code Developments 469; 7.4.4 Main Actors 470	
7.5 Corporate Governance in the Commonwealth	472
<i>Arif Zaman, Commonwealth Business Council</i>	
7.5.1 Benefits of Good Corporate Governance 473; 7.5.2 Commonwealth Business Council Business Principles (2007) 474	
<i>Appendix: Useful Organizations</i>	484
<i>Contributors' Contact Details</i>	497
<i>Index</i>	502