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THE LABYRINTH OF INTERNATIONAL GOVERNANCE CODES: THE QUEST FOR HARMONIZATION

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ABSTRACT

The background to this research is based on the considerable debate as to whether there will ever be ***one*** international currency, ***one*** “business” language spoken or ***one*** set of accounting standards applicable to all businesses listed in various countries stock exchanges. Governance principles are no different! Is it possible to create ***one*** set of rules or principles to guide all businesses across borders? This research compares the governance standards and regimes across the globe, from China, to the Nordic region (Sweden, Norway, Denmark, Iceland & Finland), Europe, Asia-Pacific (New Zealand, Australia) and the United States of America. Using archival data, governance codes from around the world are compared and contrasted. The findings show that across borders governance codes are very similar, with the opportunity to create a Global Governance Standard (GGS), applicable to any business in any country. The Global Governance Standard (GGS) is a one-size-fits-all regime applicable to businesses listing on stock exchanges. The GGS is not unlike the harmonisation of accounting standards. The “one-size-fits-all” GGS could potentially apply to any large business, listed on any stock exchange, creating efficiencies and ease of comparison for potential stakeholders interested in businesses. The “BOARDSS” model can be used by listed companies, in order to satisfy corporate governance codes from across the globe. **B**oard: to ensure the board are selected carefully. **O**pen: The make sure that the board is transparent and accountable. **A**uditor Independence: ensure accounts are audited by an independent auditor. **R**emuneration: the CEO and executive staff are reviewed, and supported by a smaller remuneration committee. **D**irectors are selected for their ability to “add-value” to the strategic direction of the company, and the support of the CEO. Directors’ performance should be reviewed annually. Reducing the labyrinth of governance codes to just one GGS would create a uniform approach to governance, supported by government and stock exchanges around the world. A GGS would be the final evolution in the notion of governance since the codes of conduct of Hammurabi of 1800 BC. Let the borders be gone, and the Global Governance Standard (GGS) left standing as the final chapter in governance evolution.

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CORPORATE GOVERNANCE EVOLUTION IN LITERATURE

The World Bank defines corporate governance as the set of mechanisms available to shareholders for influencing managers to maximize the value of shareholder’s stock and to fixed claimants for controlling the agency costs of equity. Likewise, the Organisation for Economic Co-operation and Development (OECD) defines corporate governance as ‘a set of relationships among management, company board, its shareholders and other stakeholders’. Both definitions imply the principal-agent model of the corporation, and emphasise the importance of shareholder interest and company value. Shleifer, and Vishny (1997) define corporate governance as ‘a set of mechanisms to assure financiers that they will get a return on their investment'. But can there be a governance regime that stands up to a borderless application in this borderless business operating system?

DEVELOPMENT OF CORPORATE GOVERNANCE

Gubernare and *gubernator*, the roots of 'governance' refer to the steering of a ship (Farrar, 2001). By analogy, this *steersmanship* is aligned to the methods of ethically controlling and directing the affairs of corporate entities. In the contemporary corporate setting the Latin steersmanship notion of an entity is akin to the idea of matters being *shipshape*.

The issue of business governance dates as far back as 1800BC to the Code of Hammurabi, (Werhane, 2000) that controlled the ethics of traders and merchants. Such fathers of modern economic doctrine as Smith (1776) and Spencer (1862) contributed to the current understanding of corporate governance by defining the links between ethics and economics which encourage management to become accountable for their actions, through the use of standardised preparation of accounts, audited to satisfy users (especially shareholders) of the absence of fraud.

Williston (1908) describes the modern corporation evolving from a relationship of government and industry surviving through a combination of capital and mutual co-operation. The advent of the 1800s corporation and its increase in size and importance is crucial to infrastructure development, and as such is a societal good. This reasoning is extended by Carlos and Nicholas (1988) to include the advent of the multinational through the nineteenth century developing from the experience and use of domestic and cross-border level production facilities. The UK Companies Act of 1844 was a mechanism of that facilitated the separation of ownership and control and yet intended to make managers accountable to the shareholders and investment in joint stock companies an acceptable risk.

Anglo-American corporate governance is almost completely focused on the means of enhancing and protecting shareholders' value (Siebens, 2002), derived from an increase in transactions within a framework in which owner-managers are replaced by salaried managers (Carlos & Nicholas, 1988). Classical economists such as Smith (1776) and corporate observers such as Berle & Means (1932) perceived the dangers inherent in the separation of ownership (*principal*) and control (*agent*) regarding managers' actions. Drawing upon their analysis of the behaviour of US corporations in the World War 1 period following the trust movement engineered by the *robber-barons*, Berle & Means (1932) realised the growing power of the organisation, and the inevitable separation of managerial power between executive management and their diverse range of shareholders – a theme pursued in the modern setting by Jenson & Meckling (1976) in their discussion of the concept of the *agency costs* of monitoring the behaviour of potentially errant *opportunistic* managers (Clarke, Dean & Oliver, 2003) not always acting in the best interests of their owner principles.

Although Adam Smith did not use the term 'corporate governance' directly, he was aware of the implications. "The directors of companies, being managers of other people's money than their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own" (Adam Smith, Wealth of Nations 1776).

Governance steersmanship then, is necessary for corporate entities, nation states, associations, clubs, and societies to function legitimately and efficiently for the benefit of those for whose wellbeing they are argued to have been created. Management is concerned with organising, planning, controlling, and leading organisations with limited resources to achieve goals (Robbins, Bergman, Stagg & Coulter, 2000). But governance also involves the limitation of powers to control and direct, and regulate organisations (Tricker, 1984).

The interest in corporate governance for corporations seems to have peeked over the last twenty years (Oman 2001, Lin 2001, Goswani, 2001, Malherbe & Segal 2001, Arun & Turner, 2004). Large corporations appear to have recognised the wisdom of complying with the governance regimes currently in fashion. "The logic is simple: poor corporate governance is viewed as risky, whereas creditors and investors view good governance as a sign of strength in a company" (Lee, 2001, p.24). It is thus no surprise that the Horwarth 2004 Report (Psaros & Seamer, 2004, p.1) showed that since 2003 the top 250 listed corporations in Australia had ticked more boxes annually to imply "improved disclosures in relation to code of conduct, & risk management". Following this, "a good governance structure is then one that selects the most able managers and makes them accountable to investors" (Tirole, 2001 p.2).

MODERN CORPORATE GOVERNANCE REGIMES

Corporate governance is the system that controls and directs organisations (Cowan, 2004). 'Good', effective corporate governance ensures organisations set appropriate objectives, have in place systems and structures to meet these objectives, and the means to control and monitor their activities and managers (OECD, 2015). According to the OECD corporate governance is explained as follows:

The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation … and lays down the rules and procedures for decision-making. By doing this, it also provides the structure through which the company objectives are set, and means of attaining those objectives and monitoring performance.

Corporate governance rules are required because of the nature in which organisations are structured. With the exception of small family operated businesses, the people that contribute the resources to the business (capital investors, shareholders or lenders) do not directly manage the business (the separation of ownership from operational control). The corporate governance framework is primarily concerned with managing this relationship (Rankin, Stanton, McGowan, Ferlauto & Tilling, 2012).

In 1999 (later revised in 2004), the OECD developed a Corporate Governance Framework, consisting of six principles (see Table 1 below). These "principles are intended to help policy makers evaluate and improve the legal, regulatory, and institutional framework for corporate governance, with a view to support economic efficiency, sustainable growth and financial stability" (OECD, 2015, p.9). These principles "represent a common basis that OECD member countries consider essential for the development of good governance practices" (OECD, 2004). Both member and non-member countries of the OECD were explicitly invited to use these corporate governance principles to improve their regulatory, legal and institutional frameworks (Tsui, 2010).

TABLE 1: OECD'S SIX CORPORATE GOVERNANCE PRINCIPLES

I	Ensuring the basis for an effective corporate governance framework
II	The rights and equitable treatment of shareholders and key ownership functions
III	Institutional investors, stock markets, and other intermediaries

IV	The role of stakeholders in corporate governance
V	Disclosure and transparency
VI	The responsibilities of the board

Source: OECD, 2015

Countries have established rules or descriptions of practices "that should be included in corporate governance systems" that form either recommendations or legal requirements. In Australia the ASX (Australian Stock Exchange) has set out corporate governance principles and recommendations for listed entities. However, the ASX recognises that there are a number of factors that differ between these entities including their: history, size, culture and complexity; and thus "[they] may legitimately adopt different governance practices" (ASX Corporate Governance Council, 2014). Therefore, these principles and recommendations are not mandatory.

TABLE 2: ASX'S EIGHT CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS

	Governance Principles
1	Lay solid foundations for management and oversight.
2	Structure and board to add value
3	Promote ethical and responsible decision making
4	Safeguard integrity in financial reporting
5	Make timely disclosure
6	Respect the rights of shareholders
7	Recognise and manage risk
8	Remunerate fairly and responsibly

Source: ASX Corporate Governance Council, 2014

Code of Corporate Governance for listed companies in China sets 'the basic principles for corporate governance of listed companies …, the means for the protection of investors' interests and rights, the basic behaviour rules and moral standards for directors, supervisors, managers and other senior management members of listed companies" (CSRC, 2003).

TABLE 3: CODE OF CORPORATE GOVERNANCE FOR LISTED COMPANIES IN CHINA

1	Chapter 1. Shareholders and Shareholder's Meetings
2	Chapter 2. Listed Company and its controlling shareholders
3	Chapter 3. Directors and Board of Directors
4	Chapter 4. The supervisors and the supervisory board
5	Chapter 5. Performance assessments and incentive and disciplinary systems
6	Chapter 6. Stakeholders
7	Chapter 7. Information disclosure and Transparency

Source: CSRC, 2003

UK Corporate Governance Code (formally known as the combined code) "sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders" (Financial Reporting

Council, 2014). It comprises broad principles and specific provisions, which listed companies, are required to report on in their annual report.

TABLE 4: UK CORPORATE GOVERNANCE CODE

A	Section A: Leadership
B	Section B: Effectiveness
C	Section C: Accountability
D	Section D: Remuneration
E	Section E: Relations with shareholders

Source: Financial Reporting Council, 2014

The Sarbanes-Oxley United States of America Act of 2002 is mandatory for all organisations. This Act "introduced major changes to the regulation of financial practice and corporate governance" (The Sarbanes-Oxley Act 2002, 2006).

TABLE 5: THE SARBANES-OXLEY ACT

1. Public Company Accounting Oversight Board
2. Auditor Independence
3. Corporate Responsibility
4. Enhanced Financial Disclosures
5. Conflicts of Interest
6. Commission Resources and Authority
7. Studies and Reports
8. Corporate and Criminal Fraud Accountability
9. White-collar crime penalty enhancements
10. Corporate tax returns
11. Corporate Fraud and Accountability

Source: The Sarbanes-Oxley Act 2002, 2002

In New Zealand the Securities Commission released the Corporate Governance in New Zealand Principles and Guidelines (CGNZ, 2004) which are to be applied by entities which have an economic impact and are accountable to the public – clearly including listed and other issuers, state owned enterprises, community trusts and public sector entities. The guidelines recognise that "different types of entities can take different approaches to achieving consistently high standards of corporate governance" (CGNZ, 2004, p.3).

TABLE 6: NEW ZEALAND CORPORATE GOVERNANCE PRINCIPLES

Governance Principle	***Recommendation***
Principle 1	Ethical Standards
Principle 2	Board composition and performance
Principle 3	Board Committees
Principle 4	Reporting and disclosure
Principle 5	Remuneration
Principle 6	Risk Management

Principle 7	Auditors
Principle 8	Shareholder Relations
Principle 9	Stakeholder interests

Source: CGNZ, 2004

The Nordic region too was also inventing their own governance regimes with each country initiating their own regimes as shown in table 7.

TABLE 7 GOVERNANCE REGIMES OF THE NORDIC REGION

Swedish CG (2005)	**Denmark CG (2005)**	**Norway CG (2006)**	**Iceland CG (2005)**	**Finland CG (2003)**
Shareholders Meeting	Shareholders	CG Reporting	Board of Directors	General Meetings
Board Appointment	Stakeholders	Business	Audit committee	Supervisory Board
Board of Directors	Transparency	Equity and Dividends	Remuneration Committee	Board
Company Management	Supervisory Board x2	Shareholders		Board Committees
CG Information	Remuneration	Shares		Managing Director
	Risk Manage	General Meetings		Other Management
	Audit	Nomination Com Directors		Compensation Risk Management
		Directors Work		Administration
		Risk Management		Audit
		Remuneration x2		Communication
		Communication		
		Take-overs		
		Audit		

However, these have since been updated with Sweden issuing new codes in 2015 and a combined “Nordic Code” in 2009 as shown in table 8.

TABLE 8: NORDIC AND SWEDISH GOVERNANCE CODES

Nordic Corporate Governance (2009)	**Swedish Corporate Governance (2010)**
Strong general meeting powers	Shareholders Meeting
Shares with multiple voting rights	Appointment and remuneration of Board, auditor
Strong minority protection	The tasks of the board of directors
Effective individual shareholder rights	Size and composition of the Board
Non-executive Boards	The tasks of directors
Use of Board Committees	The chair of the Board
Auditors appointed by and accountable to shareholders	Board Procedures
Active governance role of major shareholders	Evaluation of the board and CEO
Transparency	Remuneration of the Board and executive management
	Information of corporate governance

Source: The working group of the self-regulatory corporate governance bodies of the 5 Nordic countries, 2009; Swedish Corporate Governance Board, 2010

By now comparing each of the regimes we can combine them to see the differences and similarities as shown in table 10. The Table shows that each of the regimes is a set of *protective principles* designed to protect the interests of absentee (non -management participating) shareholders. It shows a variety of combinations and that in itself shows the lack of consistency when designing and applying corporate governance initiatives.

Also outlined are the principles in terms of their comparison of use in the seven different governance mechanisms. These comparisons show a variation in what is considered the applicable corporate governance mechanisms in different countries and regions, for different organisations. It is interesting to note that SOX appears to be centred on penalties to prevent fraud, whereas the ASXGCG is the only organisation to mention risk and ethics. This is more likely a reflection of the current differences in the huge amount of litigation occurring in the US, and the Australian attempt to prevent litigation by introducing risk management and ethics.

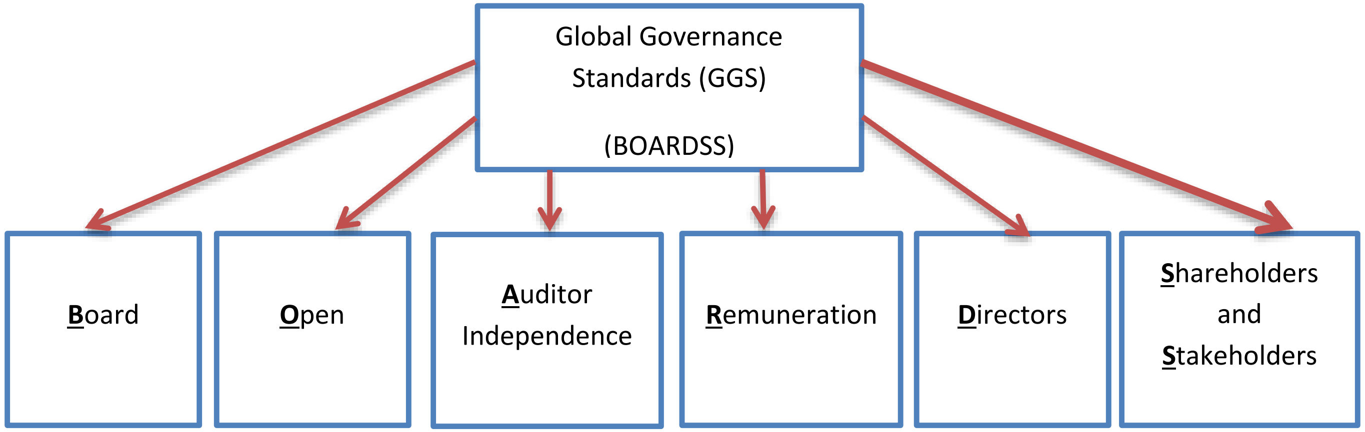
TABLE 9: COMPARISONS OF CORPORATE GOVERNANCE MECHANISMS

Regimes of 'protective' Principles	China	Nordic Regions	New Zealand	OECD	US	UK	AUS
Governance Framework	✗	✗	✗	✓	✗	✗	✓
Shareholder Importance	✓x3	✓x3	✓	✓ x 2	✗	✓	✓
Disclosure & Transparency	✓	✓	✓	✓	✓	✓	✓ x 2
Board's Responsibilities	✓	✓	✓	✓	✓	✓	✓

Directors' Performance	✓	✓	✓	×	×	×	✓
Remuneration	✓	✓	✓	×	×	✓	✓
Auditor Independence	×	✓	✓	✓	✓	✓	✓
Conflicts of Interest	×	✓	×	×	✓	×	×
Company Oversight Board	×	×	×	×	✓	×	×
Corporate Fraud	×	×	×	×	✓	×	×
Penalties & Sentencing	×	×	×	×	✓	×	×
Ethical Decisions	×	×	✓	×	×	×	✓
Risk Management	×	×	✓	×	×	×	✓
Stakeholders	✓	×	✓	✓	×	×	✓

Arguably, the analysis in Table 9 suggests that a case can be mounted to the effect that of the regimes listed, 7 prove to be the most popular and useful being: Shareholder Importance, Disclosure and transparency, Board Responsibilities, Directors performance, Remuneration, Auditor Independence & Stakeholders. We can then convert these into 7 global standards and use the acronym "BOARDSS", creating the governance standard shown in figure 1:

FIGURE 1: GLOBAL GOVERNANCE STANDARDS (GGS)



Board: to ensure the board are selected carefully (nomination committee), that they possess the right skills, education, experience, be cultural and diverse.
Open: The make sure that the board is transparent, accountable and disclosure accurately and in a timely manner.
Auditor Independence: that accounts are audited by an independent auditor.
Remuneration of directors, the CEO and executive staff are reviewed, and supported by a smaller remuneration committee to the satisfaction of shareholders.
Directors are selected for their ability to "add-value" to the strategic direction of the company, and the support of the CEO. Directors performance should be reviewed annually and training and support provided to up-skill directors and assist them to guide the company to success.
Shareholders: to be given importance (both majority and minority), that shareholders have a voice (vote) and are provided timely and accurate information on the company whereas the other '**S**takeholders' should be managed in line with company policy, in an ethical manner as part of risk minimization for the company.

CONCLUSIONS

There is much debate as to whether there will ever be ***one*** set of governance standards applicable to all businesses listed in various countries stock exchanges. This research compares the governance standards across the globe, from China, to the Nordic region, Europe, Asia-Pacific and the United States of America. The findings show that across borders governance codes are very similar, but they have differences. This does not diminish the need, indeed the ability, to capture the most common features of each to create a Global Governance Standard (GGS), applicable to any business in all countries. It could be known by the acronym *BOARDSS (Board, Open, Auditor, Remuneration, Directors, Shareholders and Stakeholder)*. Such a "one-size-fits-all" GGS could potentially apply to any company listed on any stock exchange.

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