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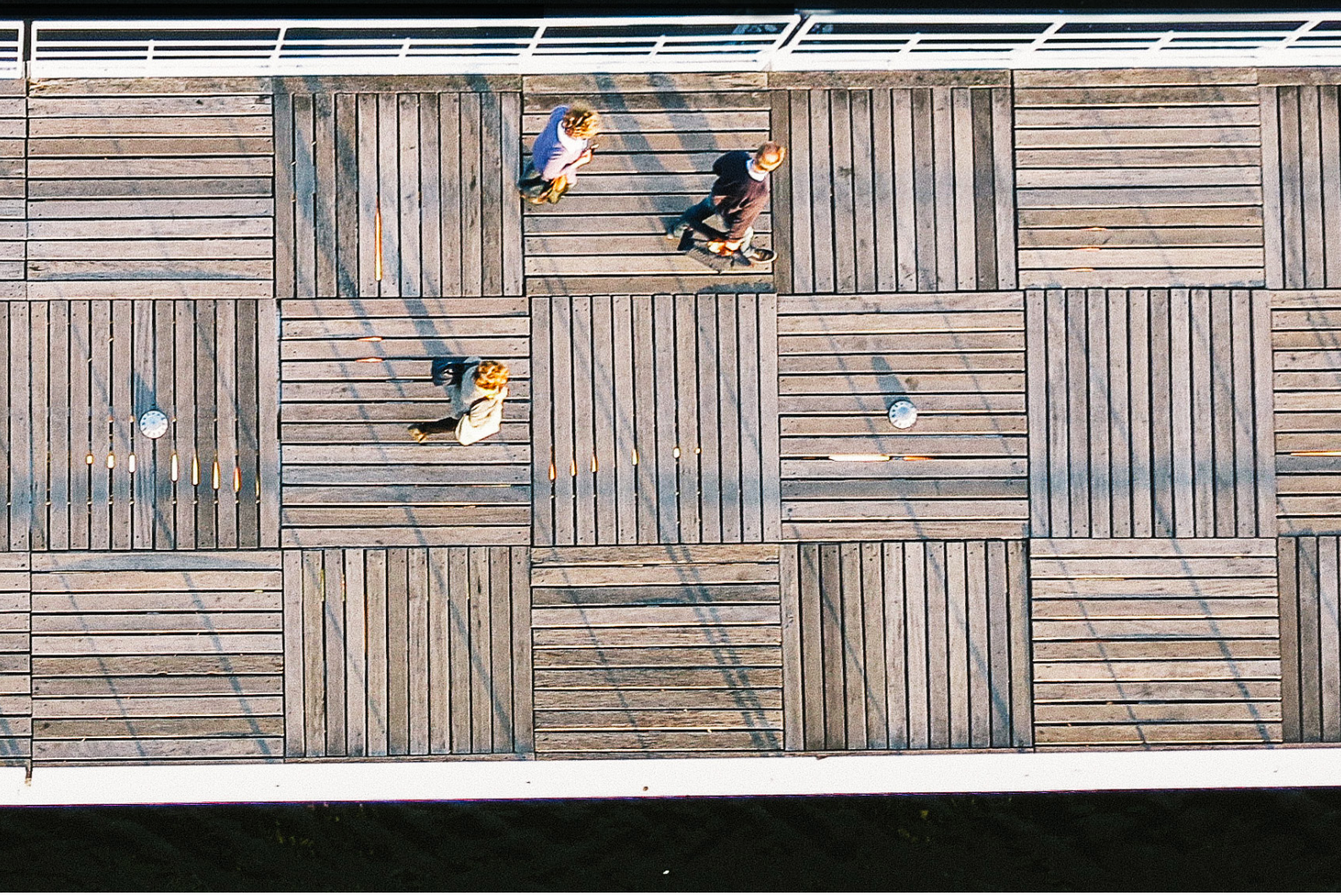
Corporate Governance for a Changing World

Report of a Global Roundtable Series



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About Frank Bold

Frank Bold is a purpose-driven law firm established in 1995 with four offices in the Czech Republic as well as offices in Brussels, Belgium and Krakow, Poland. The firm uses both business and non-profit approaches to solve social and environmental problems. Frank Bold provides legal expertise in corporate accountability and corporate governance to the European institutions as well as to civil society, municipalities, and businesses.

About the Purpose of the Corporation Project

After the Global Financial Crisis, the contemporary model of corporate governance became increasingly criticised for forcing corporations to focus on short-term profit maximisation for shareholders only at the expense of long-term strategising, innovation and sustainability. Continued reliance on this model limits the scope and impact of efforts by policy-makers to mitigate these effects.

A consensus has begun to emerge that corporations should focus on creating long-term sustainable value but that we lack clear vision on how to achieve this outcome. In order to produce more clarity on appropriate structures and practices for publicly listed corporations, Frank Bold initiated the Purpose of the Corporation Project[1] ("Project") to provide a strategic, open-source platform for leading experts and organisations interested in promoting the long-term health and sustainability of publicly listed corporations in the areas of policy-making and business management. The academic basis for the Project is provided by Dr. Jeroen Veldman and Prof. Hugh Willmott, who run the Modern Corporation Project[2] at Cass Business School, London. Between 2014 and 2016, the Project organised the Corporate Governance for a Changing World Roundtable Series to identify the outcomes that corporate governance should deliver and working back from there, design corporate governance which is fit for the challenges of the 21st century.

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Executive Summary

After the financial crisis, there has been considerable debate about the role of corporations in society. It has become broadly accepted that corporations - particularly the world's largest publicly traded corporations – need to be governed with respect for the society and the environment. This is because corporations are dependent on the broader institutional and systemic framing for their long-term survival and because the most pressing of society's problems cannot be solved without a contribution from corporations or by regulation alone.

However, this consensus has not yet been reflected in mainstream corporate governance models that have been narrowing since the 1970s in order to put the maximisation of shareholder value at the centre of corporate attention. As a result, the normative and theoretical framework of corporate governance theory and practice continue to encourage excessive risk taking at the expense of corporate resilience and the ability to create long-term sustainable value. This framework takes away a focus on investment in R&D and innovation, and in human and social capital. It also diminishes the capacity of corporations to anticipate and mitigate systemic risks. Beyond corporations, this model for corporate governance damages the interests of long-term shareholders and their end beneficiaries as well as States. In a broader sense, it contributes to rising inequality within firms and in society at large, and to a range of negative environmental and social impacts.

With this context in mind, the Purpose of the Corporation Project, an initiative of Frank Bold with the support of the Modern Corporation Project at Cass Business School, launched the Corporate Governance for a Changing World Roundtable Series on corporate governance. Events were held in Breukelen, Brussels, London, New York, Oslo, Paris, and Zurich. This brought together more than 260 leaders in business management, investment, regulation and academic and civil society communities with the aim of identifying desired outcomes and principles of corporate governance fit for the challenges of the 21st century.

The roundtables sought to answer a number of central questions, the results of which have been synthesised into this report:

- → How can corporate governance contribute to robust long-term value creation for companies?
- → What is the role of stakeholders, including shareholders, in fostering a long-term focus on sustainable behaviour?
- → What incentives for short-termism exist in law, corporate governance codes and business practice?

Building on the expertise of leading practitioners and academics in both the U.S. and Europe, the roundtables identified desired outcomes and key principles for a new model of corporate governance capable of achieving these objectives. The roundtable participants provided examples of leading corporations that are already guided by these principles, demonstrating that this approach is not only possible but can also give corporations a competitive edge leading to better economic performance as well as to better long-term results in capital markets. The principal conclusion of this process was that the goal of the corporation should be to create long-term sustainable value for customers and shareholders, while still contributing to societal well-being and environmental sustainability. These objectives can be mutually reinforcing.

The roundtables confirmed that corporate law across all jurisdictions offers considerable scope in terms of the purpose of a corporation. The fiduciary duties of directors are typically not owed to the shareholders but rather toward the corporation itself, whereas the interests of shareholders are satisfied as a by-product of the success of the corporation. Even in jurisdictions where directors owe duties of loyalty and care to the shareholders as well as to the corporation, the business judgment rule entitles directors to take account of a broad range of issues which they consider will further the interests of the corporation.

However, the permissive character of corporate law does not translate easily into practice. The dominant corporate governance model persistently directs the focus of executives and boards on short-term increases of market value. Within this framing, the roundtables recognised that culture and leadership remain the driving forces and key elements for the corporation to successfully achieve change. However,

this process is restricted by the institutional setting in which corporations operate.

Taking this framing as the point of departure, the roundtables discussed a comprehensive set of options available to corporations, investors and policy-makers to create an institutional framework for corporate governance that supports a broad understanding of corporate purpose and fosters a focus of corporate strategy on long-term sustainable value.

These options are presented in this report in seven sections:

- → Embedding purpose in the governance structure of the corporation.
- → Clarifying fiduciary duties to restore the focus to long-term value creation.
- → Strengthening the role of the board to pursue a broad and long-term view of corporate purpose.
- → Revising incentive structures for directors and executives.
- → Engaging stakeholders in corporate governance.
- → Improving shareholder engagement to foster patient capital.
- → Integrating intangibles, non-financial capitals and ESG matters into corporate accounting and reporting models.

In these interconnected areas, the roundtables offered six sets of recommendations.

Firstly, corporations may choose to reflect their purpose and long-term focus in their governance structure, for instance by embedding these into their articles of association, choosing to register as a benefit corporation or seek B Corp status. Other options to reflect their purpose are to set up a dual class share system, vest voting shares in a foundation established to oversee a company's purpose or engage stakeholder interests in the board. Policy-makers can facilitate these changes by amending corporate law to reflect best practices in other jurisdictions.

Secondly, the content of fiduciary duties, in particular with respect to the long-term success of the company, the focus on long-term sustainable value creation, stakeholder interests, ESG matters and systemic risks can be clarified by corporations, and, where appropriate, policy-makers. A clarified stipulation of duties - connected to an articulated corporate purpose - can be reflected in a corporation's governance documents, strategic objectives, KPIs, reporting and executive incentive systems.

Thirdly, the interests of corporate stakeholders, in particular those that are essential to a corporation's long-term success can be reflected in a more comprehensive way in corporate governance arrangements. The roundtables considered that corporations could engage employee representatives and long-term investors with a proven track record of responsible engagement in their board or provide them with consultation rights. Corporations may also choose to reflect the interests of the stakeholders who cannot be directly engaged, such as the environment or people affected in global supply chains. This could be achieved by assigning responsibility to particular board members and establishing appropriate monitoring mechanisms.

Fourthly, shareholders do not form a homogenous group with the same interests, agendas and capacities to engage in corporate governance. A corporate governance system that focuses on shareholder rights without further qualification amplifies the ability of parties with a short-term interest to engage. In response, boards could formulate a strategy of encouraging or discouraging specific types of investors. Similarly, policy-makers could adopt regulations that allow corporations to differentiate in their engagement with types of shareholders.

Fifthly, corporate accounting and reporting could reflect a corporation's long-term value creation strategy by taking into account non-financial capitals, intangible assets and ESG matters and by addressing the systemic risks related to a corporation's business. KPIs and incentive systems could be aligned with such a reporting system. Institutional investors can monitor corporate performance in terms of their capacity for long-term value creation and use the

KPIs as benchmarks for their voting strategies, taking into account the interests of their end beneficiaries.

Finally, the academic curricula of corporate law, management, accounting and economics could be developed in such a way that they reflect a broad understanding of corporate purpose.

By organising the roundtables within multiple European jurisdictions and the U.S., and by involving main corporate governance actors and stakeholders, the report provides an empirical basis for comparative corporate governance, which assesses the strengths of best practices in their own jurisdictional setting. However, the cross-jurisdictional empirical basis for this report also indicates that it cannot present the final word on which corporate governance arrangements are the most effective. Different options and practices will be more appropriate in specific jurisdictions and for specific corporations. Further investigation and debate is necessary to elaborate further on how to reconfigure and integrate the key elements identified in this report into actual practice and policy-making.

Nevertheless, the report presents an emerging comprehensive approach to corporate governance that can assist corporations to focus on a broad understanding of their purpose, long-term sustainable value, building resilience, and sustaining a strong social license. This approach can be beneficial to a wide set of stakeholders who take part in or are affected by corporate governance, because it allows for the alignment between corporate strategies and the broader interests of society by taking account of systemic risks such as climate change and growing inequality.

Section I
Introduction

Introduction

Perhaps the most important question for the economy is thinking through how corporations[3] should be managed and for what ends.[4] Today we face complex challenges that cannot be addressed by governments or civil society alone, such as growing inequality, climate change, doing business within the limits of the planet's resource boundaries and negotiating the complicated relationship between economic globalisation, development, and human rights. As corporations form the fabric of contemporary economies, corporate governance systems are central to the way economies function and their governance is of critical importance for engaging with these issues.

As concepts that would serve the public good, the stock exchange and notably the publicly traded corporation originated in the 17th century.[5] The global financial crisis showed to what extent the originally public purpose of these concepts has been lost. In the post-financial crisis period, there has been considerable debate about how to create an opportunity to discuss the idea of public corporations and to find ways to align stakeholders in this debate towards a beneficial and forward-looking model.

The current phenomenon whereby corporations often fail to consider the long-term, as well as systemic risks and social and environmental challenges, can be traced to the fact that mainstream corporate governance models have narrowed since the 1970s. Today, they typically identify the purpose of the corporation as the maximisation of shareholder value, as measured by share price.[6] The growing tendency of capital markets to focus on the short-term then puts the realisation of immediate market value at the centre of corporate attention. As a result, the normative and theoretical framework of corporate governance theory and practice now encourage excessive risk taking at the expense of long-term wealth creation, society and sustainability.[7]

In the last decade it has become broadly accepted that corporations - particularly the world's largest publicly traded corporations[8] – need to be governed with respect for the society and the environment. This is partly because corporations are dependent on the broader institutional and systemic framing for their long-term survival and partly because the most pressing of society's problems cannot be solved by regulation alone without a contribution from corporations. There is a growing recognition that the goal of the corporation should be to create real value for customers and wealth for shareholders, while contributing to societal well-being and environmental sustainability. These objectives should be mutually reinforcing.[9] The challenge of finding a manageable and acceptable solution to attain these often contradictory goals forms the basis for this report, which reflects a trans-continental debate on the future of corporate governance.

With this context in mind, the Purpose of the Corporation Project ("project"), launched a Corporate Governance for a Changing World Roundtable Series ("roundtables" or "roundtable series") on corporate governance with events in Breukelen (the Netherlands), Brussels, London, New York, Oslo, Paris, and Zurich.[10] All of the roundtables were hosted by institutions with the joint aim to reflect on the role of corporations in society. The full list of institutions is provided in the acknowledgments. The objective of the roundtables was to identify the principles of corporate governance fit for the challenges of the 21st century through a unique discussion that was global in scope but tailored to the particular characteristics of each region.

The roundtable series brought together more than 260 thought leaders in business management, investment, regulation and academic and civil society communities ("roundtable participants"). This, in order to identify the key outcomes of corporate governance towards which we should be moving, any potential barriers and the best practices for how to reach such desired outcomes.

The roundtables sought to answer a number of central questions, the results of which are synthesised in this report:

- How can corporate governance contribute to robust long-term value creation for corporations?
- What is the role of stakeholders, including shareholders, in fostering a long-term focus on sustainable behavior?
- What incentives for short-termism exist in law, corporate governance codes and business practice?

The project's first step was the publication of five succinct statements, developed and endorsed by leading experts. These statements related to company law, management, accounting, economics, and politics. Each statement detailed how the contemporary corporate governance framework, and specifically its exclusive focus on shareholder value, affected the interests of other constituencies, the corporations itself and paradoxically, of the shareholders. These statements provided the roundtables with the problematisation of the current practice.

The roundtables were held under the Chatham House Rule.[11] Prominent speakers introduced the subject, followed by an open discussion and a backcasting exercise.[12] After each roundtable a draft report with the main outcomes was sent out for further input by academics, leading to a final report for each jurisdiction where a roundtable was held. Finally, each jurisdictional report was sent out to roundtable participants for approval. This final report presents a summary of reflections and best practices from all the roundtables, structured according to the main issues of the debate.

By organising the roundtables within multiple European jurisdictions and the US and by involving main corporate governance actors and stakeholders, the report provides an empirical basis for comparative corporate governance. It assesses the strengths of best practices on their own merits and in their own institutional setting. Taking into account the unique characteristics and contributions of each individual jurisdiction, these best practices provide the basis for a comprehensive set of interrelated proposals that can be used to improve corporate governance theory and practice.

This emerging approach to corporate governance can be beneficial to corporations, investors and other practitioners, as well as to a wider set of stakeholders who take part or are affected by corporate governance. It could help corporations to focus on a broad and long-term oriented understanding of their purpose, on creating long-term sustainable value, building resilience, and sustaining a strong social license, by aligning their strategies with the interests of society and taking into account systemic risks such as climate change and growing inequality.

However, the cross-jurisdictional empirical basis for this report also indicates that it cannot present the final word on what corporate governance arrangements are most effective for implementing a broad understanding of corporate purpose and for fostering long-term sustainable value creation. Different options and practices will be more appropriate in specific jurisdictions and for specific corporations. Further investigation and debate is necessary to elaborate how to reconfigure and integrate the key elements identified in this report into practice and in policy-making.

The report presents the outcomes of the debate from the roundtable series in several sections.

- Section II gives an overview and framing of the main issues in contemporary corporate governance and practice.
- Section III describes the role of leadership, culture, and soft law including how corporate purpose is actually defined in law. The section continues with a description of the options for embedding purpose in the governance structure of the corporation through governance documents and share structure.
- Section IV focuses on the fiduciary duties of corporate directors and institutional investors with respect to purpose, systemic risks and sustainability.

- → Section V addresses the role of the board in the relation to corporate purpose.
- → Section VI outlines options for improving incentive structures for directors and executives by reflecting corporation's long-term interests.
- → Section VII looks at the ways in which other stakeholders and interests may be reflected in corporate governance. Section VIII discusses how to harness the potential positive impact of shareholder engagement while containing the risks of short-termism associated with shareholder activism. Additionally, it addresses how to encourage long-term and sustainable investment.
- → Finally, section IX presents the debate on corporate reporting and accounting models, addressing integration of financial and ESG information in corporate strategy. Governance and implementation advice is included in this final section.

Each section includes a summary with recommendations. In addition, all recommendations are presented together in a dedicated section after the conclusion.

Section II
Framing of current debates on corporate governance

Framing of current debates on corporate governance

To start the debate on the revision of corporate governance, this section provides a short overview of current debates in corporate governance with a focus on the effects of shareholder primacy. Broadly, corporate governance may be understood as:

- **How** corporations are administered and structured
- **By whom**: the issue of corporate control
- **By what**: institutions, laws, regulations & markets
- **For whom**: for what purpose

The answers to these basic questions provide a structure for procedures and processes that direct and control business.[13] Accordingly, the corporate governance model in use is crucial for a broad range of issues, both inside and outside the corporation. Over time, different corporate governance models have been developed that answer these questions in different ways.[14] From the 1970s onwards, mainstream corporate governance models have gradually narrowed toward identifying the purpose of the corporation to the maximisation of shareholder value.[15]

The shareholder primacy model's limited understanding of corporate purpose brought with it a restricted interpretation of the legitimate scope of managerial discretion.[16] American economist Milton Friedman argued that shareholder primacy requires boards to consider that any goal but shareholder value creation is outside the valid scope of its strategy.[17] This notion couples shareholder primacy to a normative model for corporate strategy, which creates pressure on executive managers to ignore ESG factors and systemic risks and to pass the unaccounted costs of such a short-term approach onto broader society - what economists call negative externalities.[18]

Shareholder primacy rapidly became the normative focus for corporate governance theory and practice by being adopted into the curricula of many law and management schools, accounting theory, corporate governance codes and incentive structures.[19] This approach to corporate governance has materialized in a focus facilitating and encouraging the monitoring of corporate performance by markets, the rise of investor activism in relation to corporate strategy, increasingly short shareholding periods,[20] growing pressure on fund managers to provide financial returns in the short run,[21] pressure for quarterly reporting,[22] an increasing focus on the use of stock options for executive compensation[23] and a decrease in CEO tenure. This broad institutional change has caused boards and executives to adopt short-term strategies[24] that increase the payout ratio to shareholders, mostly by raising the proportion of corporate profits spent on dividends and share buybacks, and by engaging in M&A transactions.[25]

Shareholder value as a model for corporate governance helps to focus managerial activity on lifting the immediate market valuation of the firm. However, it can induce excessive risk-taking at the expense of long-term value creation[26] and to the detriment of other stakeholders.[27]

The significant risks of this model have become visible in their effects on corporations and on broader society:

- **Resilience** - The increasing focus on the role of investors in corporate governance and the development of a market for corporate control makes public corporations increasingly susceptible to financial cycles and the volatility of financial markets,[28] while also strongly influencing the strategic orientation of boards. Shareholder primacy focuses investors and CEOs on market perceptions, turning "the corporation itself as a unique, economically productive entity, as an actor in the real economy" into

"a significantly unimportant factor in the typical investor's buy and sell decisions".[29] Academic studies show how this focus leads boards and managerial executives to engage in allocating an increasing percentage of profits to dividends and share buybacks.[30] In turn, this hollows out the capacity of corporations to re-invest and secure their long-term existence.[31]

- **R&D and innovation** – Shareholder value as an exclusive strategic focus limits funds available for research and development. This impacts negatively on productive investment, dampens innovation and in the long run reduces competitive advantage.[32]
- **Human and Social Capital** – Shifting profits to CEO remuneration and shareholder value can come at the expense of investment in employees,[33] whose skills and motivations play a crucial role in corporation success. Such shifting of priorities also undermines the social license of corporations and potentially adversely affects access to resources, cooperation with public authorities, ability to attract talent, and, not least, the quality of relations with customers and other affected groups.[34]
- **Recognising and mitigating systemic risks** – The short-term focus endemic to shareholder primacy prevents corporations from anticipating the materialisation of systemic risks and building a long-term strategy that would mitigate the impact of such risks.

According to Larry Fink, CEO at Blackrock, short-term perspectives are taken at the expense of "innovation, skilled work forces or essential capital expenditures necessary to sustain long-term growth."[35] In the wake of the financial crisis, it became widely recognised that the constant pressure for short-term market-oriented results created an environment that presented risks to those corporations.[36] In practice, such pressures are driving increasing numbers of publicly traded corporations to leave the open market and become private corporations.[37]

In the roundtables, there was broad recognition[38] that shareholder primacy presented a problematic theory of the corporation and of corporate governance. It was aptly termed "one of the fundamental fault lines of our economic model" by Roger Barker in the London roundtable.[39] In addition to the range of impacts on corporations outlined above, there has been further impact on innovation[40] and economic growth[41] and an increase of systemic risks hampering the potential for corporations to play a beneficial role in society.[42]

More specifically, shareholder primacy is associated with the following implications for society:

- **Long-term shareholders and end beneficiaries** – Because a strategic focus on the short term comes at the expense of a focus on long-term development of the corporation[43] investors with a long-term perspective are typically not served by shareholder primacy. Damaging the long-term interests of corporations also hurts end beneficiaries with a long-term horizon for their investment, mostly people who are saving to fund retirement or support their children's education.[44]
- **Tax** - Shareholder primacy has led some boards of directors to believe that they have an obligation to reduce their corporations' tax liabilities by engaging in tax avoidance. The most notable recent examples are provided by the Luxleaks and Panama Papers scandals. These practices externalise risk by reducing the corporate tax quote and thereby indirectly increasing the tax bill paid by citizens and local corporations.[45] Reducing the tax income of states reduces the capacity of states to invest in infrastructure, education, and R&D.[46]
- **Inequality** - Shareholder primacy produces pressure to increase the share of corporate revenue going to profits. This is often done by creating precarious contract conditions for employees and by avoiding or reneging on implicit and long-term aspects of contracts, such as health care coverage, career ladders and progression, and pension liabilities. In combination with tax avoidance, shareholder primacy is connected to growing income inequality, both within corporations[47] and in the broader economy. [48]
- **Sustainability** - The systemic risks connected to environmental sustainability can be expressed by the concept of planetary boundaries,[49] which, in a business context, gives rise to the risks of stranded assets, climate change, and scarcity of resources. These issues are being increasingly recognised by the insurance and investor communities.[50]

Building a stronger corporate governance model

At the Zurich roundtable, it was suggested that "the role of corporate governance is not only to protect the corporation but to ensure that a corporation is able to create value for society at large."[51] Paul Polman, CEO of Unilever, has similarly argued that sustainability is not only compatible with profitability, but indispensable for a corporation's success in the long-term.[52] The roundtable participants further considered that a desirable corporate governance model would see the creation of real value for customers[53] and shareholder wealth creation as joint and mutually reinforcing objectives.[54] This model embraces environmental sustainability and societal well-being,[55] takes into account systemic risks and opportunities[56] and adopts both financial and ESG benchmarks[57] to measure corporate performance over the long-term.[58]

Summary

Over time, different corporate governance models have been created to answer the questions how, by whom, by what and for whom corporate governance should organise the procedures and processes that direct and control business. From the 1970s onwards, mainstream corporate governance models have narrowed so that the purpose of the corporation has been reduced to the maximisation of shareholder value. The narrowing in perception of the legitimate scope of corporate purpose and managerial discretion have focused boards and executives to adopt short-term strategies that increase the payout ratio to shareholders. This is mostly done by raising the proportion of corporate profits spent on dividends and share buybacks, by engaging in M&A transaction and by increasing externalities. This focus on excessive risk-taking is at the expense of other stakeholders and of long-term value creation.

This shift towards shareholder value and short-term strategies has had a number of adverse effects on corporations and on broader society, and has, amongst others, contributed to the following:

- **Reallocation of risks and rewards to a small set of corporate constituencies, contributing to growing inequality.**
- **Undermined corporate resilience and diminished their ability to create value in the long-term and invest in R&D and human and social capital.**
- **Slower innovation and economic growth.**
- **Diminished capacity to anticipate and mitigate systemic risks that threaten the whole of society, such as climate change and financial crises.**
- **Reduced the potential for corporations to play a beneficial role in society.**

Recommendations

The different roundtables recognised that shareholder primacy is a problematic model for corporate governance. It induces short-termism and leads to a disconnection between short and long term goals in business strategy. The roundtables concluded that the role of corporate governance is not only to protect the corporation but also to ensure that a corporation is able to create long-term sustainable value for society at large. Moreover, the roundtables clearly expressed that there is a need to build a stronger corporate governance model, which should aim to:

- → **Create real value for customers and wealth for shareholders as joint and mutually reinforcing objectives.**
- → **Take account of environmental sustainability and societal well-being.**
- → **Take into account systemic risks and opportunities.**
- → **Adopt both financial and ESG benchmarks to measure corporate performance over the long-term.**

Section III
Engaging with corporate governance

Engaging with corporate governance

To begin the process of developing a new model for corporate governance, the participants in all roundtables discussed culture and leadership as important elements of a broader concept of corporate governance and in order to achieve change. Broad sections of the literature on corporate governance confirm the centrality of culture,[59] while the draft Dutch Corporate Governance Code and the new South African[60] code see culture as the 'driving force' of the corporation and argue that it is impossible to run a successful business without considering its values.

Important features of culture, such as accountability and openness, are seen as essential to the success of the corporation because they help to gather information internally as well as on the constantly evolving external business environment.[61] In this spirit, New York roundtable participants argued that the 'tone from the top' was key for taking long-term oriented decisions and addressing sustainability challenges, while participants at the Zurich roundtable argued that corporations should improve corporate culture and values, and use them proactively.[62]

The roundtables also recognised that a healthy culture requires a strong ethos, usually inspired by respected leaders. Although such a culture cannot be mandated from outside, it does rely on support from the institutional setting in which leaders and corporations operate. In this framing, systemic change is hard to achieve by only encouraging leadership and a change of culture if the prevailing perspective in corporate governance practice and regulation remains geared towards shareholder primacy. This is also the case if the focus on short-term share price increase has become embedded in the institutions that direct corporate governance theory and practice.[63]

What is needed, therefore, is a broader conceptualisation of the implicit assumptions that govern the direction of corporate governance and the scope for corporate strategy. This conceptualisation starts with the purpose of the corporation.

Corporate purpose in law

Since the 1970s, the idea that corporations exist solely for the benefit of their shareholders has become dominant.[64] The idea was developed first in U.S. academia and, in the 1980s and 1990s, was increasingly adopted in business and policy-making.[65] In continental Europe, this notion has been less successful in altering the common perception that corporations generally exist to serve society. Nevertheless, it was gradually adopted in academic curricula and in the regulation of corporate governance and accounting.

The problem with the idea of shareholder primacy is that it does not match the legal foundation of the corporation. Shareholders have certain unique rights relating to organisation and control of the corporation,[66] but the notion that shareholders own corporations outright is not consistent with corporate law in any jurisdiction worldwide.[67] Similarly, the idea that shareholders are prioritised claimants to corporate value, either through residual claims or through claims of efficiency, are contentious.[68]

For various historical reasons, shareholders in public corporations have rather limited and restricted claims to control.[69] Claims to shareholder primacy - and associated claims to corporate control and to corporate value for shareholders - are unfounded in terms of their theoretical underpinning in law. Further, they are problematic in relation to the possibilities and protections that the public corporation offers to various constituencies.[70]

Corporate law across all jurisdictions offers considerable scope in terms of the purpose of a corporation.[71] A corporate purpose may be whatever its founders wish to embed in the corporation's constitution and culture, as long as it is legal. A corporation may decide to maximise quarterly profits and short-term share price or may choose to make innovative products, develop cutting edge technology, build a spaceship, create the next antibiotic, foster a great working environment for employees, drive the shift to renewable energy or one of many other objectives.[72] The key is that the purpose is permissive to a broad range of subjects and is not required by law.

The defining attribute of a corporation is that it is a legal entity,[73] separate from its key stakeholders, including its shareholders and which benefits from specific privileges and protections.[74] The (fiduciary) duties[75] of executives are not owed to the shareholders but rather to the corporation itself.[76] The interests of shareholders are satisfied as a by-product of the success of the corporation. For example, Swiss law states that the responsibility of management and directors is towards the success of the company.[77] Under UK law, which since 2006 has explicitly mandated directors to promote the success of the company for the benefit of its members (shareholders) whilst having regard to various wider concerns, the duty is owed to the company rather than the shareholders directly. In the EU context, the EU Takeover Directive stipulates a duty for directors to act in the interests of "the company as a whole".[78]

The principle that directors' duties are owed to the corporation, rather than (exclusively) to shareholders, has important implications for enforcement[79] and for corporate governance. Even in US corporate law, including in states like Delaware, where the directors owe duties of loyalty and care to the corporation as well as directly to its shareholders, directors are entitled to take account of any stakeholder interest they consider will further the interests of the corporation and in doing so they are protected by the business judgment rule.[80]

Taking the fiduciary duties toward 'the corporation' as the point of departure, the roundtable participants argued that the generic purpose of the public corporation from a practical point of view is to be successful over a long-term period and in doing this, ought to satisfy the interests of all its stakeholding constituencies.[81] This was reflected in the discussion on the Dutch Corporate Governance Code, which states:

"The Code is based on the principle generally applied in the Netherlands that a company is a long-term alliance between the various stakeholders of the company. Stakeholders are groups and individuals who, directly or indirectly, influence – or are influenced by – the attainment of the company's objectives: employees, shareholders and other lenders, suppliers, customers, the public sector and civil society. The management board and the supervisory board have overall responsibility for weighing up these interests, generally with a view to ensuring the continuity of the company and its affiliated enterprise, as the company seeks to create long-term value for all stakeholders."[82]

Therefore, in holding fiduciary duties toward 'the corporation' a board is required to maintain a healthy balance between the interests of the corporation's stakeholders and to society at large. What is more, this requirement should follow from and be embedded in corporate governance institutions, rather than voluntary CSR.[83]

Embedding purpose in the governance structure of a corporation

Corporations that wish to operate in a responsible and sustainable manner can help to safeguard their strategy and ensure that their governance respects the best interests of all corporate constituencies by clarifying their purpose in key governance documents, including – if possible – constitutional documents such as articles of association. To give effect to such provisions, the documents should also clarify the rights and responsibilities of corporate governance actors, in particular directors and shareholders, and possibly other stakeholders.

A clear statement of purpose may:

- → Introduce legal clarity in relation to pursuing specific goals, including those related to the social and environmental issues connected to the corporation's business,
- → Frame directors' fiduciary duties and liabilities,
- → Clarify which audiences and matters the corporation directors consider material for the corporation,[84]
- → Introduce clarity about the investment and payout horizon to investors; and
- → Allow corporations to pursue long-term strategies (especially those involving R&D which entail a high degree of uncertainty, or reacting to systemic risks).[85]

The statement of purpose could be supported by a new director/board duty to develop long-term plans specifying how this purpose will be fulfilled. In this respect, statements of purpose might cover environmental, social or scientific goals. Statements could also refer to planetary boundaries, international law or other external standards.

In the Dutch roundtable, it was suggested that the corporate statement of purpose could be revisited at annual stakeholder meetings, which resemble annual general meetings with additional stakeholders. This would allow corporation and stakeholders to arrive at a shared understanding of corporate purpose.[86]

Policymakers can foster this practice through supportive changes to corporate law. In this respect, corporate law may:

- → Allow corporations to implement changes to their purpose and governance to reflect a broader purpose and use a 'mission-lock' to secure those changes.[87] This could be achieved by requiring a supermajority of shareholder votes to change relevant provisions.[88]
- → Allow corporations to specify their long-term social purposes in constitutional documents to ensure the accountability of directors to shareholders for implementing plans to meet these purposes and to provide protection against shareholder proposals that contravene the corporate purpose.[89]
- → Recognise a director duty to develop long-term plans to meet specific societal objectives relevant for their corporation e.g. to take into account the planetary boundaries and annually report to shareholders on how these plans are being implemented.

The first steps in this direction may be found in recent developments of corporate law and corporate governance codes around the world. For example, the latest drafts of corporate governance codes in the Netherlands[90] and South Africa[91] have explicitly moved to adopt a broad purpose for the corporation. Another important element is the broadening of reporting standards to include ESG matters. The EU Non-Financial Reporting Directive[92] stipulates that large public corporations should include the following in their annual reports: information on their position, development, performance, and the potential impact on environmental, social, human rights and corruption issues.

One way for corporations to embed a broader purpose into their mission is by making use of the Benefit Corporation legal form, when available, or other legal forms that make it easier for corporations to pursue societal objectives, such as cooperatives.[93] Thirty U.S. states and Italy have authorised the new voluntary for-profit corporate form of Benefit Corporations, which incorporates the following elements: a requirement to create general public benefit, for which directors are accountable to shareholders; a duty of directors to consider the interests of other stakeholders; and an obligation to report on their social and environmental performance against their commitment to create public benefit. The Benefit Corporation legal form allows protections for other constituencies, for example against derivative suits and other types of pressure from activist investors, as well as commitments to responsible, sustainable conduct, both of which can be enforced by shareholders.[94]

These examples demonstrate the potential of corporate law, which could be developed further to clarify what is expected of corporations and their directors with respect to their relationship with society.

Dual-class share structure and industrial foundations

The roundtable participants recognised that demands for the maximisation of short-term performance are of particular concern for boards in markets that do not permit protection against takeovers[95] and for boards of corporations that do not have a major controlling shareholder.[96] Two options were identified for corporations to use share ownership and voting rights to protect their purpose: adopting a dual-class share structure with differentiated voting rights and vesting voting shares in a foundation set up to oversee corporate purpose.

A dual-class share structure allows the designation of one class of shares as having voting rights while the second class of common shares typically has no or limited voting rights. The benefits of a dual-class share structure include that it allows corporations to retain control over long-term business strategy and vision, and to resist takeover bids by allotting these shares to the founders, employees or other limited groups of patient and informed stakeholders, who understand the corporation's strategy and are prepared to take the longer term view in the face of uncertainty under potentially difficult financial circumstances.

Dual class share structures are particularly common in Scandinavia but also within Silicon Valley technology firms, representing approximately 7% of all public corporations, including Google, Facebook and Amazon, as well as media conglomerates such as the New York Times.[97] In the London roundtable, Roger Barker of the UK Institute of Directors argued that "multiple voting structures should be permitted on the London Stock Exchange to allow UK-listed companies to compete with their rivals in the US and Asian technology industries, provided the process is transparent and appropriate to the company."[98]

Another way to engage with dual class share structures in relation to corporate purpose is to use an industrial foundation structure.[99] The Danish pharmaceutical corporation Novo Nordisk, for example, has listed publicly traded common shares without significant voting rights, while a foundation retains control over approximately 25% of its share base, representing 75% of voting shares.[100] This setup has allowed the corporation to retain its main purpose to cure diabetes and adopt a triple bottom line strategy. Novo Nordisk is one of the largest corporations by market capitalisation across the Nordic region and globally in the pharmaceutical sector.[101] Other examples of globally competitive industrial and financial corporations with nonprofit foundations holding controlling interests include Carlsberg, Heineken, Ikea, and Triodos Bank.

B corporations and performance standards

Another way to embed purpose is through B Corp certification. This requires that the corporation integrate a commitment (i.e. broader societal purpose) to stakeholders in its governing documents, similar to the Benefit Corporation legal form described above. In addition, B Corp certification provides a comprehensive model for embedding a broader, socially aligned purpose in the governance of a for-profit corporation.[102]

Summary

The purpose of the corporation is central to the way a corporation operates. The breadth of corporate purpose determines a corporation's ability to recognise, respect, and balance stakeholder needs, which are key to its long-term success, to operate in line with societal interests, and to maintain public trust and its social license to operate. However, corporate governance practice and regulation have been increasingly built on a narrow conception that the purpose of the corporation is to prioritise shareholders' interests. This conception contributes to a short-termism that is harmful to the corporation as well as to society at large. It is not supported by corporate law, which makes the corporate entity the beneficiary of fiduciary duties, and allows (but in many jurisdictions does not require) a much broader perspective on the purpose of the corporation.

Recommendations

The roundtables identified several options for corporations on how to protect their purpose:

- **Embed a clear statement of purpose and corresponding rights and responsibilities of directors, shareholders, and other stakeholders in a corporation's governance documents and articles of incorporation.**
- **Use dual-class share structures with differentiated voting rights, where available.**
- **Vest voting shares in a foundation set up to oversee a corporation's purpose.**
- **Register as a Benefit Corporation or other alternative legal form established to protect social purpose or obtain B corporation certification.**

The roundtables also identified how corporate law and corporate governance regulation can foster purpose driven corporations. Accordingly, this framework could:

- **Clarify in law and in corporate governance codes the societal purpose of corporations and their duties toward internal and external constituencies.**
- **Allow corporations to protect their purpose in governance documents and arrangements.**
- **Require corporations to specify their long-term social purposes in their constitutional documents.**
- **Recognise a director duty to develop long-term plans in order to meet specific societal objectives relevant for their corporation, and annually report to shareholders on how these plans are being fulfilled.**
- **Allow for the use of dual class share structures and industrial foundations.**

Section IV
Fiduciary duties of directors and institutional investors

Fiduciary duties of directors and institutional investors

The term fiduciary duty is used primarily in UK and US law but the basic concept of an obligation based on trust to act in the best interest of another person is widely held across both common law and civil law jurisdictions. There are two separate forms of fiduciary duties that are relevant to improving corporate governance: those of institutional investors (such as pension fund trustees) and those of corporate directors.[103] These are explored separately below.

Corporate directors owe fiduciary obligations to the corporation.[104] In this context, roundtable participants explored the reasons and the extent to which the content of fiduciary duty has become confused with serving the perceived interests of the corporation's present shareholders and has been simplified to mean managing short-term market value increases. Roundtable participants also discussed how fiduciary duties toward the corporation could be used to restore the focus on long-term value creation.[105] In the case of institutional investors, the key issue addressed in the roundtables was the challenge for institutional investors to identify and reflect the end beneficiaries' interests in their strategy.[106]

The roundtables confirmed that corporate directors as well as institutional investors are legally permitted to take into account environmental, social and governance (ESG) factors as long as they are a part of legitimate business strategy.[107] In this regard, systemic risk is the main issue that connects notions of corporate director fiduciary duties with the fiduciary duties of investors. A strong focus on short-term performance can destroy shareholder value in the long run because it hollows out the corporation and turns directors away from strategic considerations that mitigate corporation specific as well as systemic risk.

The roundtables explored options that corporations and investors can use to clarify fiduciary duties toward the long-term and how policymakers can support this shift.

Fiduciary duties of corporate directors

Although there is significant difference in the ways that various countries approach corporate governance more broadly,[108] the fundamental principles of directors' duties and liabilities across Europe and in the U.S. are similar. In brief, corporate directors have a duty to act in the best interests of 'the corporation'.[109] Similarly, the specific content of what a fiduciary duty is and to and by whom duties are owed, is a matter of legal debate, which has arrived at different conclusions in different jurisdictions.[110] Nevertheless, the common cross-jurisdictional point surveyed in this project is that directors are permitted to focus on long-term value creation for the corporation to the benefit of its members, meaning all present as well as future shareholders.[111]

A recent study funded by the European Commission concluded: "Directors' duties are owed primarily to the corporation, i.e. to the legal entity and not to the shareholders owning that entity. This basic principle is universally accepted and undisputed."[112] The same view has been voiced by leading corporate governance commentators in the US[113] and elsewhere.[114] Furthermore, the fiduciary duties of directors cannot be disentangled from a long-term perspective on the corporation as an 'entity', and the collection of interests from a number of corporate constituencies that this idea represents.[115]

Corporate law and corporate governance codes in various jurisdictions differ in how concretely they describe how directors should observe the interests of stakeholders other than shareholders. Nevertheless to some extent they all recognise[116] the duty to take their interests in account.[117] To cite a prime example,

the Dutch Corporate Governance Code - Proposal for revision[118] states: "The management board is expected to adopt a view on long-term value creation for the company" and "the value created should be for the long-term benefit of all stakeholders, including but not limited to shareholders and employees."[119]

In accordance with this model, the roundtables recommended that corporations clearly acknowledge and publicly affirm that the duty of their directors is:

- Toward the corporation as a whole;
- To protect the long-term development of the corporation;
- To avoid contributing to systemic risks that cause negative impacts on corporate stakeholders and society at large; and
- To specify how stakeholders' interests will be taken into account.

The roundtables also discussed the necessary tools to embed this approach in a corporation's governance documents, strategic objectives, key performance indicators (KPIs), reporting and executive incentive systems.[120] These tools are presented in dedicated sections of this report.

Consideration of systemic risks and ESG factors

In all jurisdictions, directors are under obligation to proactively and critically evaluate the material financial risks and opportunities to their corporation. As it is undisputed that directors are legally permitted to take account of ESG factors,[121] the roundtable participants discussed what the scope of this duty could be. In particular, this discussion pertained to environments where systemic issues are present i.e. climate change,[122] growing inequality, stagnating economic growth and instability of the global financial system,[123] but where it is difficult to ascertain the impact of individual actors and where coordinated action is needed to mitigate these systemic risks.[124]

In addition to direct business risks, such as the risk of stranded assets or changing market conditions, and physical risks, such as scarcity of resources,[125] the failure to consider environmental and social factors carries a number of other risks, including:

- **Regulatory risk:** corporations that fail to act proactively with regard to changing legislation may face penalties or diminished value, e.g. as carbon emissions legislation is introduced and subsequently enforced.
- **Shareholder activism risk:** a growing number of shareholders (institutional investors, civil society groups, or trade unions) are using shareholder litigation to pursue corporations and their directors for material failures. Additionally, shareholders frequently use shareholder proposals and/or divestment campaigns to target corporations.[126]
- **Litigation risk:** affected stakeholders, including workers and local communities, use either local or transnational litigation against corporations who lose their social license to operate and may have violated relevant national or international norms, particularly in high risk industries such as mining.
- **Reputational risk:** rapidly evolving societal expectations regarding corporate behavior mean that corporations must react quickly and proactively to issues as they arise, e.g. allegations of modern slavery in supply chains.

The roundtables identified several strategies that directors can employ to be able to effectively react to these issues:

- Evaluate salient environmental and social risks connected to the business of their corporation and articulate a business strategy that takes account of negative externalities produced by corporations.

→ Assess and address systemic risks associated with the corporation (e.g. climate change and its impact on a corporation's viability) and develop policy on how to avoid or mitigate associated risks at corporation level.[127]

→ Develop a business strategy that connects the mitigation of systemic risks to the long-term development of the corporation and its strategy.

Policymakers may encourage this focus by clarifying the content of fiduciary duties with respect to the concrete outcome in terms of systemic risks and the environmental and social issues relevant for particular industries, e.g. the production of financial stability for banks and other financial intermediaries;[128] the mitigation of environmental impacts for extractive corporations; and the development of fair and sustainable supply chain models for apparel corporations. They could take into account issues like environmental concerns, health and safety, human rights and corruption.[129] Policymakers could also clarify director liability for any serious impact caused or contributed to by the corporation.[130]

Another way to embed systemic risks into corporate strategy is by linking them to 'in control' statements.[131] As directors must make business decisions that are in the best interests of the corporation as an ongoing entity, the notion of 'in control' could be coupled to disclosure of the risks associated with ESG issues (see also Section IX).

Fiduciary duties of institutional investors

Institutional investors play a crucial role in modern economy by permitting citizens to save for their futures and by generally contributing to the stability and long-term prosperity of our productive system. Through the active and passive investment policies they choose to adopt, institutional investors influence the extent to which corporate directors are able to adopt a broader concept of corporate purpose. At the same time, institutional investors also have a fiduciary duty to act in the interest of their beneficiaries.[132] Because they invest on behalf of a large number of small investors, in principle, their duty is long-term oriented and should take account of the long-term viability of the systemic setting in which the investment is made.[133] Nevertheless, institutional investors are under pressure to generate short-term returns and cannot automatically be relied upon to provide monitoring and engagement that will support long-term value creation for corporations (see Section VIII).

To provide support for aligning institutional investment with a long-term strategic horizon, the roundtable participants provided several suggestions:

1. In order to support long-term value creation and manage both their investee corporations' and their own risk exposure, institutional investors should engage with boards and request that they address systemic risks.[134]
2. Public (dis-) engagement campaigns[135] by investors can play an important role in convincing corporations to adopt ESG goals.[136] In the Zurich roundtable,[137] it was suggested that to incentivise corporations, investors can support their engagement strategies by positive publicity campaigns. Divestment can be used as a last resort option, should engagement fail.
3. ESG performance and attention to systemic risks correlate with superior long-term financial performance.[138] Institutional investors should therefore request that corporations integrate ESG factors in their reporting.[139]
4. The strategy of agents down the investment chain should be aligned with the specific investment strategy set by the institutional investor or by the beneficiaries.[140]
5. Policymakers can encourage institutional investors to pay greater attention to ESG matters and systemic risks by requiring investors to adopt greater transparency in these matters with respect to their engagement strategy.[141]

6. In several roundtables it was suggested that the role and responsibilities of fund managers and proxy advisers as well as analysts could be clarified.[142]

Summary

There are two distinct forms of fiduciary duties that are relevant to improving corporate governance: (1) those of corporate directors to promote the success of the corporation, owed to the corporation itself and (2) those of institutional investors (such as pension fund trustees) to act in the interest of their beneficiaries, owed to those beneficiaries.

The roundtables confirmed that corporate directors, as well as institutional investors, are legally permitted to take environmental, social and governance (ESG) factors into account. Furthermore, in all jurisdictions, directors are under obligation to proactively and critically evaluate the material financial risks and opportunities to their corporation.

Similarly, institutional investors like pension funds invest mostly on behalf of broad sets of small investors with a long-term horizon. As the duty of institutional investors is, in principle, long-term oriented, they should take account of the long-term viability of the systemic setting in which this investment is made and should be expected to provide monitoring and engagement that will support long-term value creation for corporations and their own beneficiaries.

In practice, the expectation of boards and institutional investors to adopt a broader concept of fiduciary duties is undermined by the prevailing corporate governance model. This model puts pressure on all parties involved in corporate governance, including boards and institutional investors, to focus on the short term.[143] The failure to adopt a broader concept of fiduciary duties carries a number of risks. These may undermine the long-term viability of corporations and beneficiary expectations, including direct business and physical risks, regulatory risk, shareholder and stakeholder litigation, as well as a potential risk to reputation.

Recommendations

In this context, the roundtable participants identified several recommendations for how fiduciary duties can be used to restore the focus on long-term value creation:

Recommendations for corporations and their directors

- → **Clearly acknowledge and publicly affirm that it is the duty of directors to:**
  - **Protect the long-term development of the corporation;**
  - **Evaluate salient environmental and social risks connected to the business of their corporation;**
  - **Mitigate negative impact on corporate stakeholders and society at large and to specify how stakeholders' interests should be taken into account;**
  - **Assess and address systemic risks associated with the corporation.**
- → **Reflect these duties and set objectives in a corporation's governance documents, strategic objectives, KPIs, corporate reporting and executive incentive systems.**

→ **Include systemic risks, sustainability and other relevant ESG factors in 'in control' statements.**

Recommendations regarding the fiduciary duties of institutional investors

→ **Develop a strategy taking account of ESG matters, systemic risks, and engage with the boards of investee corporations, reflecting end-beneficiaries' long-term interest and time horizons for the investment strategy. Integrate this strategy in internal incentive schemes.**

→ **Support engagement and/or disengagement strategies, as well as positive publicity campaigns.**

→ **Request the investee corporations to integrate ESG factors in their reporting.**

→ **Align the strategy of agents down the investment chain with the specific investment strategy set by the institutional investor.**

Recommendations for policy-makers

→ **Clarify the liability of directors for serious impacts caused or contributed to by the corporation.**

→ **Clarify the content of fiduciary duties with respect to specific environmental and social issues relevant for particular industries, e.g. systemic financial stability in the case of banks, the mitigation of environmental impacts for extractive corporations, and the development of fair and sustainable supply chain models for apparel corporations.**

→ **Require greater transparency by investors regarding their engagement strategy with respect to ESG risks.**

→ **Clarify the role and responsibilities of fund managers and proxy advisers.**

Section V
Broader purpose and the board

Broader purpose and the board

The importance of boards for corporate governance theory and practice cannot be overestimated. Over the past decades, significant attention has been paid to formal and structural issues in corporate governance e.g. board composition and the separation of the role of Chair from the CEO and the role of non-executive directors ("NEDs"). Boards, together with top executives, are understood as being responsible for displaying leadership and setting the tone of the corporate culture.[144] Finally, many recommendations regarding organisational structure and the scope for operation of boards tend to be related to the structure and engagement of the shareholder constituency and the relationship between the board and the shareholders.

As the structure of boards, culture, role and composition of shareholders, and the types of institutional constraints that govern shareholder interactions with boards tend to differ significantly across the universe of listed corporations,[145] the rules present in corporate governance codes often differ from the reality experienced by individual corporations.[146]

With this in mind, the roundtable participants identified several good practices that may help boards to put in place and operate with a broader and long-term framing of corporate purpose. The debate in the roundtables addressed the role of non-executive directors, board diversity, procedural aspects like term-limits of board nomination and recall triggers. Issues of appointment, training, and certification were also discussed. In addition, roundtable participants discussed what collective responsibilities the board should have. Among these, the participants suggested that boards should be responsible for setting and overseeing a corporation's mission, its long-term value creation strategy, stakeholder consultations, assessing systemic risk and investigating complaints of major wrongdoing by the corporation.[147]

Non-executive directors

In the corporate governance debate, the importance of 'independent directors' or 'non-executive directors' ("NEDs") is routinely highlighted.[148] However, it remains habitually unclear what this 'independence' means and what purpose it might serve.[149] Both 'non-executive' and 'independent' can refer to multiple ideas, including:

1. the provision of expertise and networks;[150]
2. bringing a view from outside the boardroom, focusing on the corporation as a whole and its long-term interests;
3. independence from the corporation itself[152] and thus the provision of effective counterweight to (internal) executives with a director role; and
4. the idea that "NEDs" can stand in for or represent the interests of specific constituencies and stakeholders.

Whether "NEDs" can and will provide any or all of these roles is constrained by four main factors.[153] First, there are recurring concerns about the skill base, knowledge set and limited range of backgrounds of non-executive directors. Second, the assumption that "NEDs" are in a strategic position to provide sufficient counterweight to executives is constrained by time, low remuneration, and, specifically in the US, a strong position for executives to select board members. Third, as the description of boards' fiduciary duties has shown, "NEDs" are required to, first and foremost, serve the corporation's interest.[154] In serving sectional interests, it could result in "NEDs" impinging on their legal mandate as directors. Fourth and more generally, as long as corporate governance theory and practice cling to the idea of shareholder primacy, the easiest and least risky way to serve the notion of 'the corporation's interest' will be understood by "NEDs" as falling in line behind executives who choose to interpret the goal of serving 'the corporation' as serving

the goal of the short-term shareholders' interest. For these reasons, it seems unlikely that "NEDs" will be a panacea for turning corporate strategy around to the issues identified in this report.[155]

Boards and strategic investors

In the roundtables, it was argued that boards could be mandated to create a better alignment between the expectations of boards and investors to guard against short-term pressures. This could be achieved by providing a clear narrative about what the board wishes to achieve and what types of investors the board would like to attract and possibly engage with.[156] In the Zurich and New York roundtables, it was suggested that boards could use such a narrative to actively identify strategic investors with a consistent track record of responsible and long-term engagement with corporate strategy in other corporations. Boards could choose to give investors who are sympathetic to the long-term objectives pursued by the corporations more possibilities to engage.[157] Conversely, Paul Polman from Unilever,[158] Larry Fink from Blackrock and Tim Cook from Apple[160] have argued that boards could can actively discourage specific investors from becoming involved in a corporation.

Board diversity

Academic research has confirmed a number of positive effects of increased board diversity[161] including: improved access to relevant expertise and specialised knowledge, more effective problem-solving, reduced group think, better understanding of (global) markets, suppliers and customers, improved reputation by conforming to public expectations and better employee relations (by indicating that the corporation prioritises diversity and offers opportunities for advancement to all employees).[162] The roundtable participants observed trends towards increasingly globalised trade and corporate operations, toward fast technological development and to new social and environmental risks and opportunities. These trends were associated with changing business practices and with changing societal expectations and values. The roundtables broadly supported the necessity for a variety of backgrounds, knowledge and skills on boards to ensure they actively respond to these trends.[163] In addition to gender,[164] aspects such as age, nationality, expertise, work and educational background, professional qualifications and experience can improve discussions within the management board and supervisory board.[165]

Term limits and staggered boards

The use of term limits was considered in several roundtables. It was argued that terms for directors should not be too short. This would limit the scope for a long-term strategic focus and would lead to a constant campaign mentality that distracts directors from prioritising long-term value creation.[166] Research also indicates that longer serving directors may be more independent in terms of the business judgment and analysis as they develop firm-specific knowledge and the confidence to assert their opinions in board meetings without fear of social isolation.[167] However, some roundtables considered that excessively long terms, or too many consecutive terms, would result in directors losing their independent view. Overall, it was argued that term limits should be raised to enable a long-term perspective, but should not be overly long. In addition, renewals of terms should not extend indefinitely into the future.[168] To summarise, finding the right balance depends on the specific situation of the corporation in question and the way in which it relates to shareholders.

At the New York roundtable, it was argued that staggered boards can ensure board continuity and improve protection against hostile takeovers[169] and that therefore, board terms should be staggered.[170] Additionally, the length of term for each director should be extended from annual elections to a three-to-five year term with a reasonable recall trigger.[171]

Director appointment, training and certification

To strengthen board appointment procedures, it was suggested in the roundtables that board members' qualifications and remuneration could be made public. Consideration could also be given to the establishment of an institution[172] to oversee the board members' adherence to requirements and to provide induction, training and certification with regard to financial, social and legal affairs, financial reporting, due diligence and compliance systems to safeguard corporate culture and the responsibilities of a supervisory board member in relation to the corporation and its affiliated enterprise.[173] Such an institution could also maintain a public register of prospective board members - facilitating recruitment along lines of diversity - and a register of training compliance, providing certification and accreditation.[174]

Summary

Boards play a key role in setting and steering corporate strategy.[175] They influence crucial factors like corporate values, corporate culture, and risk appetite, and determine the attentiveness of the corporation to the interests of its stakeholders and its purpose. In order to effectively fulfill their role, boards must consider the corporate mission and long-term value creation strategy, have a good overview of the interests of the corporation's stakeholders, understand and assess relevant risks, and decide on the objectives of the compliance and due diligence systems.

There are a number of options for how boards may be organised in order to encourage them to pursue a broader and longer-term view of corporate purpose but it is important to recognise that each corporation is different. Some corporations and their business may require more stability, while others must innovate rapidly in order to remain competitive. Their shareholder base may be fragmented or they may have a controlling shareholder, who may or may not be very actively involved in the corporation's management.

Recommendations

In this context, the roundtable participants identified several good practices that corporations may consider to improve the ability of their boards to operate with a view to a broader purpose of the corporation:

- **Boards should be explicitly responsible for setting the corporation's mission and its long-term value creation strategy; overseeing a stakeholder consultation; providing a statement on the assessment of systemic risks; and investigating complaints of major wrongdoing by the corporation.**
- **Non-executive directors could serve to ensure regard to the interests of specific stakeholders and to bring competencies to the board that relate to those stakeholders. To discharge this role effectively, the role and mandate of the non-executive director must be clearly specified and has to be framed with respect to the overall responsibility to the corporation.**
- **Boards can develop an active policy of encouraging investment by strategic investors with a consistent track record of responsible and long-term engagement with corporate strategy. Boards could choose to give investors, sympathetic to company long-term objectives, more possibilities to engage or to be directly involved in the board.**

- → **The diversity of the board could reflect company operational environment and its plans, taking into account factors such as age, experience, expertise, gender, nationality and qualifications.**

- → **Board terms can be staggered with a reasonable recall provision for incoming directors, which the board, shareholders or other specified actors[176] could trigger in the event of wrongdoing.**

- → **To strengthen board appointment procedures, board members' qualifications and remuneration could be made public.**

Section VI
Revise incentive structures

Revise incentive structures

It is often argued that performance-related pay is a powerful tool to motivate managers to meet the objectives of corporate strategy. Proponents of shareholder primacy have successfully argued that a significant part of corporate executive remuneration should be in the form of share options or be based on share price. Indeed, today, incentive plans linked to share price dominate executive compensation.[177] The rationale was that this strategy would align shareholder and management interests, which in turn, would improve shareholder value.[178]

The use of share options and incentive plans linked to share price, in combination with a significant decrease in the average tenure for executives, has led to pressure on executives to increase the value of shares and share options. In turn, this has led to pressure to employ strategic means to increase share price in the short term, such as the strategic use of dividend increases, share buyback programmes, M&As and mass layoffs.[179]

Although these methods tend to impress the markets by increasing quarterly earnings per share,[180] they can have a number of adverse impacts:

- An increasing pressure to degrade contract conditions for employees.[181]
- An increasing pressure to announce layoffs to provide a signal to markets rather than out of actual economic necessity.[182]
- The sky rocketing of CEO and top executives' compensation,[183] even though there is no clear positive link[184] between increased CEO remuneration and improved performance in terms of creating shareholder value.[185]
- The transfer of corporate funds to executive compensation[186] at the cost of investment in productive capacity.[187]
- The diversion of resources for investment in innovation and productive capabilities to shareholders.[188]
- An increasing focus of the strategy of corporate boards on short-term value extraction and share price management[189] and not on long-term value creation, e.g. through investment in R&D and employee training.[190]

As there is no evidence of a positive correlation between the use of such strategies and long-term value creation,[191] it has been broadly argued that the use of share options does not provide utility for corporations,[192] for long-term oriented shareholders[193] or for broader society.[194] The roundtable participants discussed the possibilities to develop an incentive structure that would support a corporation's long-term success and strategy.

Linking incentive structures to a long-term value creation strategy

It was suggested at the Paris roundtable that existing executive remuneration, and specifically stock-based remuneration, could be made conditional on the sustained achievement of long-term goals. The variable aspect of salary could be conditionally paid, withheld or, in specific instances, clawed back a posteriori depending on a number of criteria, e.g.:

- Instances of fraud, tax evasion, publication of false or misleading accounts and profit forecasts;
- Successful R&D investment;
- The achievement of ESG goals;[195]

- → Effective employment policy; and
- → Employee satisfaction sustained over the long-term (defined as between 5 to 10 years); and
- → Long-term economic performance.[196]

To support a longer-term perspective, it was also suggested that executives could be remunerated with ordinary shares that can only be sold in five years' time or with share options that vest in the very long-term, such as upon retirement.

Corporations can also translate their key performance indicators into a matrix to identify and measure the net positive impact value (NPIV) of strategic business decisions to shareholders, stakeholders and society-at-large, reflecting both financial and non-financial performance. This practical tool can provide assistance to those taking decisions and also help the corporation to refine its strategy, identify practical problems and evaluate its ability to make its decisions in accordance with its purpose.[197]

Transparency of executive remuneration

It was argued in the roundtables that transparency of executive pay could help to improve corporate reputation. A survey of the members of the UK Institute of Directors (IoD) carried out on behalf of the High Pay Centre think tank found that a majority of respondents perceive public "anger over senior levels of executive pay" as the biggest threat to the reputation of business.[198] The same survey found that 54 per cent of IoD members thought that building a successful corporation was the most important motivation for a business executive, compared to just 13 per cent who said they were motivated by financial reward.[199]

In response to this threat, participants in several roundtables[200] proposed full public disclosure of executive remuneration and of the ratio of executive pay and median pay for other employees.[201] Setting such a ratio would allow a comparison of executive pay with the median pay and the returns received by the corporation's stockholders."[202] Linking top executive pay to average, median or minimum salary in the organisation could help limit inequality within the corporation. It would also contribute to building trust and loyalty among employees and the general public.

Another practice recommended by roundtable participants was to limit remuneration for executives to salary. Alternatively, restrictions may be applied on variable pay (including share options) by providing an upper limit on the number and types of shares that can be owned by executives, or by following the EU Capital Requirements Directive[203] and capping bonuses relative to fixed pay in all listed corporations.[204]

It was also suggested in the debate that employees should be allowed to formally express their view on executive compensation schemes.[205] For example, they may be engaged in remuneration committees.[206] This issue is further explored in Section VII.

Summary

Incentive structures effectively determine objectives for corporate directors and managers. A significant part of top executive remuneration consists of variable pay, typically in the form of share options or incentive plans linked to share price. This practice has a number of undesired consequences. In particular, it motivates executives to divert corporate resources from investment to short-term strategies seeking to influence share price and thus from long-term value creation to short-term value extraction. This hurts the long-term prospects of corporations and the interests of their stakeholders, including long-term oriented shareholders. Exorbitant CEO and director[207] pay, disconnected from real performance, is one indication of this.

Recommendations

The roundtables identified several strategies that corporations can use in their incentive structures to support long-term sustainable value creation. These options may be supported by appropriate public policy:

- **Ensure that incentive structure metrics are associated with a firm-specific long-term value creation strategy that integrates financial and non-financial objectives.**
- **Make executive remuneration, and specifically share-based remuneration, conditional on the achievement and sustainment of long-term goals, including long-term economic performance, fraud prevention and detection, ESG goals, R&D investment and employee satisfaction.**
- **Publicly disclose executive remuneration and its ratio to minimum and median salaries.**
- **Allow employees to express their view on executive compensation schemes.**
- **Cap executive pay by reference to average, median or minimum salary within the corporation.**

Section VII
Stakeholders

Stakeholders

Over the past decades, corporate governance theory and its prevailing practice have come to focus exclusively on the relationship between the board, executives and shareholders in order to safeguard the financial interests of the latter. This development is not aligned with the historical concepts of corporate governance and empirical observations that other types of stakeholders are equally important for the corporation.[208] Those stakeholders comprise internal stakeholders, like employees, as well as external ones like creditors, suppliers and customers.

The success of a corporation also depends on the existence of a beneficial operational environment, including public confidence, relations with governments and trade blocs, maintaining long-term access to natural capital and guarding against systemic risks that arise with environmental degradation.[209] It was argued in the Zurich and London roundtables[210] that maintaining good relations with society at large and passive stakeholders such as the environment are necessary for maintaining the long-term social license of corporations.[211]

The roundtable participants discussed various mechanisms that allow for the reflection of stakeholder interests in corporate governance, ranging from strategy making to consultation to formal governance arrangements that allocate specific rights to certain stakeholders or interests. Each of these mechanisms is separately analysed in this report but reviewed again in this section for greater clarity and ease of reference.

Governance arrangements

The previous sections outlined how a corporation's governance documents and arrangements may be used to protect a corporate purpose, vision, mission and values. The same mechanisms can serve to ensure respect for the interests of stakeholders and society at large. These mechanisms can be broadly classified into two groups.

Firstly, corporate governance documents may clarify what audiences and matters are material for the corporation. By extension, they can also specify what the corporation needs to report upon and how fiduciary duties and liabilities for directors relate to such material interests for the corporation.[212] This would introduce greater clarity for directors and provide a framework for shareholder engagement on such matters.

Secondly, a corporation may be established or transformed – for example through B Corp certification, employee participation in the board, employee share ownership programmes or specific share structures – into a form which gives controlling or monitoring rights to stakeholder groups. Examples include worker and consumer cooperatives and credit unions, as well as foundations established to safeguard a corporation's multi-stakeholder philosophy.[213]

Board representation for stakeholders

In many European countries,[214] employees have a right to be represented on the board. In Germany, for example, the system of co-determination guarantees worker representation on the supervisory board and one seat on the management board and traditionally banks - as lenders, shareholders and financial advisers of corporations - are also present on boards.[215] In some jurisdictions, stakeholder interest groups are granted standing to sue to obtain an oppression remedy or statutory derivative action - Canada is an

example. In South Africa, the Companies Act 61 of 2008 gives trade unions and employees a right, like shareholders, to bring a statutory derivative action on behalf of the company.[216]

Bringing employees onto boards has been linked to better dialogue and closer alignment between management and employees.[217] It has also been connected to a better safeguarding of the long-term interests of corporations.[218] As employees make illiquid, non-diversifiable investments in the corporations for which they work and as employment contracts may be regarded as incomplete,[219] employees tend to have a long-term perspective. As the interests of employees are aligned with those of the corporation as an on-going enterprise and with the creation of economic prosperity in the long-term,[220] endeavouring to include employees in corporate governance can therefore help corporations to counterbalance pressure from capital markets and short-term investors, in particular against opportunistic hostile takeovers and buyouts.[221]

Stakeholders can also be directly involved in corporate governance on unitary boards,[222] for instance through the nomination of non-executive directors representing interests of stakeholders other than shareholders.[223] Recently, UK Prime Minister Theresa May called for the inclusion of both employees and customers[224] on boards in the UK.[225] Similar to employee representation, other stakeholders like creditors, suppliers, customers, or passive interests, such as the environment can be represented[226] on the board by the nomination of non-executive or executive directors.[227]

Both in unitary and in two-tier boards, directors that represent stakeholder interests should have:

- A mandate to consider particular interests as part of clearly defined roles, functions and liabilities, which must be framed as part of their overall (fiduciary) obligations to the corporation (see Section V);
- This mandate reflected in other parts of corporation's governance system, such as in the expression of its purpose, mission, commitments to particular stakeholders, strategy, and reporting; and
- The necessary expertise and skills.

Consultation

Employees, and potentially other stakeholders, could be provided with an opportunity to express their opinion on issues concerning the strategic development of the corporation. On a general level, roundtable participants recommended to engage employees in discussing corporation strategy as a means to reinforce corporate culture.[228] In the Dutch Roundtable, participants suggested that the Board should be specifically responsible for stakeholder consultation to identify matters material to a corporation's future as well as addressing them.[229]

A more specific proposal raised by the roundtable participants was that employees should be allowed to express a view on the remuneration scheme for top executives.[230] The European Parliament's Committee on Legal Affairs included a similar proposal in the draft text of the revised Shareholder Rights Directive in 2014 but this was not eventually included in the compromise text adopted during the Parliament's plenary vote of July 2015.[231] The underlying idea is that such a consultation would lead to narrowing the gap between top executive pay and median pay in the corporation and to a better alignment of executive compensation schemes with the long-term success of the corporation.

Employees can also be given broader information and consultation rights in bankruptcy or M&A situations.[232]

The right to consultation and the right to express an opinion by stakeholders can be built in the corporation's governance documents or could be required by policy-makers.

Stakeholder and materiality analysis

Participants in all roundtables agreed on the importance of environmental, social and governance (ESG) reporting by corporations. The basis of an efficient reporting system (see also Section IX) is a stakeholder and materiality analysis that strengthens a corporation's ability to consider the interests of its stakeholders, assess the relevance of those interests, and develop and communicate corporation strategy. The Integrated Reporting, Global Reporting Initiative G4 Guidelines and the United Nations Guiding Principles on Business and Human Rights Reporting Framework recommend the establishment of such a system that should allow a corporation's directors to assess:

- Who are the corporation's key stakeholders;
- What issues are material for them;
- How these issues relate to the priorities of the corporation;
- The risks of adverse impacts on external stakeholders; and
- The evaluation of the sustainability of its value creation model.

Overall, the effectiveness and usefulness of such a system depends on how well it is connected to the corporation's governance and management.

Summary

Current corporate governance theory and prevailing practice largely ignore the interests of stakeholders other than shareholders, despite the critical importance of stakeholders to a corporation's long-term success. These stakeholders comprise internal stakeholders, like employees, but also external ones like creditors, suppliers, customers and the society at large as well as the environment.

A business strategy that profits at their expense may quickly undermine a corporation's social license. Moreover, as was mentioned in all the roundtables, the scale and complexity of social, environmental and economic challenges facing our societies requires that businesses actively contribute to solving rather than causing them.

Recommendations

The roundtables identified the following options to facilitate corporations to engage stakeholders and/or reflect their interests in their governance:

- **Specify fiduciary duties and liabilities for directors in corporation governance documents with respect to stakeholders' interests and clarify which audiences and matters are relevant for the corporation.**
- **Use a corporate form or governance arrangements that provide control or monitoring rights to stakeholders to safeguard a corporation's multi-stakeholder philosophy.**
- **Employ non-executive or executive directors who can represent the stakeholders or interests affected by the corporation and provide them with clear mandates, rights, and responsibilities, within the framework of their overall responsibility to the corporation.**
- **Provide employees with a right to express an opinion on the remuneration scheme for the executive directors.**
- **Use stakeholder and materiality analysis as the basis for a corporation's reporting and embed it in the corporation's strategy-making processes.**

Section VIII
Long-term and sustainable investment

Long-term and sustainable investment

Shareholders have a key role in corporate governance. They have unique organisational and control rights in relation to the corporation, such as the right to elect directors or vote on mergers and substantial asset sales.[233] Shareholders also influence corporations by trading or not trading their shares.

The dominant corporate governance model assumes that shareholders will exhibit stewardship by actively engaging with corporations and holding management to account for their performance.[234] In reality, most shareholders are minority shareholders with limited capacity to voice their views, and many of them focus only on the market value of their shares, rather than on engagement with management and corporate strategy as a means to improve corporate performance. Therefore, the stewardship concept implicitly expects institutional investors to fulfil this role, that is, to provide effective oversight, engagement and a long-term vision of corporate strategy.

However, the rise of institutional investors since the 1980s has come together with a steady increase in the turnover rate of their positions[235] and with a shift in focus of their engagement with corporations toward the creation of short-term shareholder value.[236] These developments, combined with the engagement by explicitly short-term oriented institutional investors, such as activist hedge funds, has lead to an overall dynamic in which institutional investors put pressure[237] on boards to increase shareholder value in the short-term.[238] In this situation, rather than improving corporate governance, the focus on reinforcing shareholder rights per se can reinforce pressure on boards to focus on strategies that will maximise the share price in the short term.[239]

In response to this framing, the roundtable participants discussed how to harness and maximise the potential positive impact of shareholder engagement while containing the risks of exacerbating short-termism that shareholder engagement can also bring. The roundtable debates focused on issues of stewardship, shareholders' voting rights, transparency of shareholders' involvement in investee corporations and takeover situations.

Enlightened shareholder value and stewardship

In several European countries, the public debate has focused on fostering long-term oriented and active shareholder engagement[240] by promoting the concepts of 'enlightened shareholder value' and 'stewardship'. For example, in order to facilitate a move away from the naked pursuit of shareholder value and toward 'enlightened shareholder value,'[241] the UK Financial Reporting Council encouraged institutional investors to exhibit 'stewardship' in order to promote the long term success of companies "in such a way that the ultimate providers of capital also prosper" and, thereby, to benefit "companies, investors and the economy as a whole."[242]

Academic research shows that the 'stewardship' concept is based on several problematic premises. Firstly, to make 'stewardship' work, institutional investors need to be able to operate as a relatively tight and coordinated front, with clear and coordinated goals. However, institutional investment has become increasingly dispersed between different types of investors with very different interests, time horizons and nationalities.[243] Secondly, stewardship implies a link between institutional investment and the end beneficiaries' goals.[244] However, end beneficiaries have a wide variety of goals and these interests can shift over time. In this respect, institutional investors revert to relative financial performance as the presumed common denominator.[245] Thirdly, rating agencies, insurers and proxy advisers provide a constraining institutional setting that prioritises short-term shareholder value. This is further exacerbated by the fact that for institutional investors with large number of corporations in their portfolio, it may prove difficult in

practice to actively engage in governance beyond following the advice of proxy advisers. Fourthly, inside institutional investors, investment and engagement strategies may diverge between professional investors and the staff who vote the stock.[246] Fifthly, the funds of institutional investors are often distributed through longer investment chains. This further complicates the link to achieving the end beneficiaries' imputed broader goals.[247]

For these reasons, the expectation that institutional shareholders will provide effective oversight and control for the benefit of the long-term interests of corporations and their constituencies is problematic.[248] The underlying view is one of empowered shareholders, analogous to traditional quasi-owners or to families in family control businesses.[249] In modern public corporations, however, most shareholders – including institutional investors - who have the power to engage with or provide signals to corporations' boards, will for various reasons gravitate toward the use of the lowest common denominator, i.e. market value, as their object to engage. This dynamic may explain why 'long-term' investor 'firewalls' break down easily[250] and why institutional investors seem unwilling to engage on central issues such as 'say on pay.'[251]

With both retail and institutional investors increasingly adopting a view on corporate governance that reflects the interests of disengaged investors focused on short-term market value increases, the idea of empowering shareholders per se by using notions like 'stewardship' and 'enlightened shareholder value' may paradoxically end up providing greater support for the current model of corporate governance.[252] Therefore, the strengthening of shareholders' rights without further qualification threatens to reinforce the broader dynamic of a short-term oriented corporate governance system, instead of providing systemic changes.[253]

To foster 'patient capital' that works with corporations to create sustainable wealth for both retail and institutional shareholders,[254] the roundtables proposed several different strategies and practices:

Shareholder voting rights

The role of voting rights has changed over the past decades as a result of a steady increase in market capitalisation for public corporations; the increase of High Frequency Trading systems; the use of shareholder votes by banks and other intermediaries who exercise the beneficial rights of voting, even though they do not factually own the shares; the rise of (anonymous) proxy voting by such parties and the influence of a limited number of proxy advisers on the exercise of votes.[255] These changes have pushed the capacity for the factual exercise of voting rights connected to shares increasingly into the hands of a limited number of market parties.[256] In sum, while small retail investors tend to have little or no influence on the strategy of public corporations through the 'one share one vote' system,[257] the market parties that do get influence through such a system are typically not committed and involved investor-partners but mostly short-term market value-oriented investors.[258] Considering that a corporation's shareholder constituency is typically composed of different types of shareholders with different interests, agendas, and capacities to engage with boards[259] the roundtables explored several ways to support and empower long-term investment by rearranging the connection between shares and voting rights.

To prioritise committed shareholders[260] the roundtable participants generally supported[261] the adoption of multiple classes of shares with different rights as described in section III. The roundtables also suggested that corporations or policy-makers could allocate rights and incentives to investors on the basis of the length of shareholding or the contribution to a corporation's capital. These options include:

1. **Setting voting rights proportional to the time of presence in a firm's capital.** Italy and France have introduced laws relating to double voting rights for shares held longer than two years.[262] Moreover, increased voting rights would need to be accrued again if the shares were traded. In the US, it is common for corporations to list with dual class (A and B) share structures whereby the B shares may lose their voting privileges if traded to another party.[263] Leo Strine, Chief Justice of the Delaware Supreme Court, has suggested that the length of a shareholding may also determine the type of a proposal that a shareholder can make.[264] Proposals of long-term shareholders may be allowed to take the form of a bylaw with real effect.

2. **Making returns on shares conditional upon the basis of the time the shares are held.** Investors could be encouraged to remain with the corporation for the long-term by introducing time-weighted dividends that do not pay out in full unless the shareholder has held the shares for a pre-determined length of time, e.g. two years. Alternatively, time-weighted dividends could give the right to increasing payments over time.[265] It has also been suggested that loyalty shares could give the right to buy additional shares at an advantageous price or that those shares could carry special bonuses.[266]
3. **Making votes conditional on the status of shares at purchase.** Voting rights could be increased in proportion to the acquisition of newly issued shares. Only the issuance of new shares takes part in the financing of firms.[267]
4. **Decreasing or exempting capital gains tax on the basis of long-term shareholdings.** This strategy, requiring policymaker intervention, has been proposed by Larry Fink, CEO of BlackRock.[268]

Policy consistency, notification of substantial holdings, strategic direction disclosure and registration

Outside the roundtables Leo Strine has recently argued that institutional investors should be mandated to provide fuller and timely information about their ownership of derivatives, short positions and about their voting and share lending policies.[269] In addition, he has argued that the voting strategies of institutional investors need to be consistent with the declared policy of the funds that they are voting for. In Finland, meanwhile, the issue of 'hidden control' is addressed by a mandatory notification of beneficial owners of a nominee-registered share in the shareholder register for the before they can vote.[270]

Several roundtables reflected on these issues. The participants in the Dutch roundtable suggested that there should be more transparency about the engagement of (institutional) investors in individual corporations in order to allow understanding of their role and influence. In response to the experience of the engagement of an investment fund that initiated the ABN AMRO split, disclosure requirements for major shareholders have recently been increased in Dutch corporate governance.[271] Shareholders who take a considerable or controlling interest (3% or more in a public corporation, down from 5% in an earlier draft of the Dutch Corporate Governance Code[272]) should declare this interest[273] and notification is required to state whether they object to the strategy of the corporation.

Takeovers

The mainstream corporate governance literature in recent decades has presented takeover practices as a key instrument of the market for corporate control that ensures the disciplining of management and the efficient reallocation of corporate resources. Hostile takeovers, in which a bidder bypasses the board and offers to purchase shares directly from the target corporation's shareholders, are a phenomenon that emerged during the second half of the twentieth century, occurring first in the UK and spreading around the common law world.[274]

The main critique of (hostile) takeovers is that they can be understood as a means to cash in on the vested interests of other stakeholders in the corporation.[275] Well-known examples include loading a takeover corporation with a debt that subsequently finances the takeover against an inflated price;[276] and cashing in on unprotected interests that are connected to the corporation, e.g. by plundering a corporation's cash reserves or pension fund.[277] In such cases, long-term corporate entity investment by other stakeholders is expropriated in order to create shareholder value.[278] For these reasons, it has been argued that as a matter of principle "in responding to an offer, the target board should ultimately be guided by the interests of the (long-term) continuity of the corporation and its various stakeholders, and thus not only by the interests of the shareholders."[279]

To support the understanding of the role and duties of the board in a takeover situation, the roundtables suggested that policy-makers should allow corporations to set up defensive structures against takeovers,

particularly when these may be beneficial to protect "the (long-term) continuity of the corporation and its various stakeholders."[280] Policy-makers can also allow for regulatory intervention in takeover situations by allowing a designated authority to take provisional measures in case of serious failure by the board to meet its duty to protect the long-term interests of the corporation and its various stakeholders,[281] as is the case in the Netherlands where the Enterprise Chamber is vested with such authority.[282]

Summary

Shareholders, in particular institutional investors, can substantially influence corporate strategies. Their engagement in corporate governance thus represents an opportunity to contribute to the corporation's sustainability and long-term value creation. The current corporate governance model expects institutional investors to fulfil this role, i.e., to provide effective oversight, engagement and the provision of a long-term vision on corporate governance. However, the increasing directedness of both retail and institutional shareholders toward market value combined with the engagement by explicitly short-term oriented institutional investors, such as activist hedge funds, pressure corporate boards to focus on short-term shareholder value. This dynamic is supported by the threat of a market for corporate control and the use of incentive structures that reward both boards and executives who adopt short-term market value oriented strategies. For this reason, strengthening shareholders' rights without further qualification can reinforce the broader dynamic of a short-term oriented corporate governance system, instead of fostering systemic change.

Recommendations

To address these structural aspects and in order to foster 'patient capital' that works with corporations to create sustainable wealth for both retail and institutional shareholders, the roundtables identified several possible strategies that can be followed both by corporations and policy-makers:

- **Allow and use multiple classes of shares to vest voting rights with committed shareholders.**
- **Allocate rights and incentives to investors on the basis of the length of shareholding or contribution to the corporation's capital, for example, by:**
  - **Setting voting rights in proportion to the time of presence in a firm's capital.**
  - **Providing the rewards of shares, e.g. dividends, on the basis of the time that the shares have been held.**
  - **Making votes conditional on the status of shares at purchase.**
  - **Decreasing or exempting capital gains tax on the basis of long-term shareholdings.**

The roundtables also identified a possibility for policy-makers to ensure greater transparency of investor involvement in investee corporations by requiring:

- **Stricter notification of substantial holdings of investors and strategic direction of their engagement in investee corporations.**

In the case of takeovers, the roundtable recommended to support the (fiduciary) duty of the board to protect the interest of (long-term) continuity of the corporation and its various stakeholders by the allowing and setting up of defensive structures to enable sufficient protection against takeovers.

Section IX
Corporate reporting

Corporate reporting

The way in which corporate activity is accounted for is tremendously important for shaping the way investors and other stakeholders see and assess a corporation.[283] An understanding of the purpose of financial accounting as well as accounting methods creates powerful incentives for corporate managers to adjust their actions accordingly[284] and to perform well according to those dimensions that are accounted for and therefore, observed.[285]

Corporate reporting's objective is rapidly evolving from the narrower focus on financial information, relevant for short-term shareholder value to a focus adopting a perspective that looks into the future and outside of the mere confines of the corporation.[286] The content of reporting requirements is also expanding to include expectations to report on environmental and social performance as a result of changes to social expectations regarding acceptable corporate behaviour.[287] At the same time, the public increasingly expects businesses to contribute to solving diverse societal needs and problems.[288]

However, the corporate reporting legal framework is not yet fit for this purpose. The US has adopted Generally Accepted Accounting Principles (GAAP)[289] and in the European Union, all listed corporations must publish their financial statements on the basis of International Financial Reporting Standards (IFRS).[290] Both reporting frameworks focus narrowly on financial reporting as a mechanism to provide information to absentee investors and creditors in order to support their decisions. The practice of quarterly financial reporting, still required in the U.S. and by some European stock exchanges, further limits the focus in terms of relevant audiences, interests and time-frames relevant for corporate reporting.

Roundtable participants agreed that the accounting models currently in use omit to address several issues that are essential for a corporation's ability to create sustainable value, in particular information about social and environmental risks and benefits, as well as intangible assets. The lack of availability of such information also hinders socially responsible investing, presenting a major barrier to the engagement with and empowerment of the end beneficiaries. The legislative instruments that have been adopted so far with the aim to support extra financial reporting have limited provision for monitoring and enforcement.[291]

At the same time, research shows that investors are increasingly interested in the value creation process[292] and that there is an evident trend among successful corporations towards reporting on long-term value creation in relation to the interests of all key stakeholders, including shareholders, employees, creditors, suppliers, customers, communities, civil society organisations and the environment.[293] This is supported by research that demonstrates that corporations with a good environmental, social and governance ("ESG") performance and reporting outperform their peers on the stock market and benefit from the lower cost of capital.[294]

The roundtable participants discussed models that enable corporations to account for and consider externalities and intangible assets provided by the Integrated Reporting Framework ("<IR>"),[295] and by ESG reporting standards. The roundtables also provided governance and implementation advice, and policy recommendations.

Integrated reporting

The International Integrated Reporting Council[296] ("IIRC") developed the <IR> Framework with the aim of facilitating the transmission of information about how a corporation uses and affects all resources and relationships that are important for its ability to create value.[297]

Reporting on long-term value creation strategy implies that corporations should explain how they understand and integrate economic, social, and environmental objectives. In this respect, achieving economic

success by meeting social and environmental demands[298] requires corporations to consider, monitor and integrate information in three areas:

1. The accommodation of long-term value creation, taking into account systemic risks, corporation's long-term viability and social license.
2. The needs and interests of internal stakeholders, e.g. intangible assets, including both human and intellectual capital.
3. Risks and impacts externalised outside the corporation, e.g. relations with the corporation's stakeholders, societal interests, the environment and human rights.

Integrating this information can significantly improve corporate governance because it provides a comprehensive view on value, on the performance of the enterprise and on risk beyond its short-term financial position. The <IR> Framework guides corporations to account for a range of intangible assets, structured in six "capitals" that are key to their value creation strategy and that could otherwise be perceived as a waste of shareholder assets. As emphasized by roundtable participants, communicating this integrated view to the corporation's shareholders and other stakeholders is key to sound long-term strategy and for building trust.[299] It can also help institutional investors to improve their engagement with the governance of investee corporations[300] and to communicate their strategy to the end beneficiaries.[301]

However, the <IR> Framework focuses primarily on the information that is material to the corporation's ability to create value for its own and its shareholders' benefit. The reason for this is that the <IR> Framework is principally aimed at the providers of financial capital allocation decisions and therefore does not account well for situations where a corporation contributes to harms that are 'socialised' or 'externalised' outside the firm or for positive social benefits that accrue to society as a whole.

ESG reporting

To expand reporting beyond the interests of economic value creation for shareholders and to take into account the impact of corporations on the broader economic, social and ecological systems a number of voluntary - and increasingly also regulatory - standards for social and environmental reporting have been developed to guide corporations on how to select and report relevant data in terms of environmental, social and corporate governance (ESG) impact. The most comprehensive standards are the Global Reporting Initiative (GRI)[302] G4 Sustainability Reporting Guidelines. The advantage of the GRI approach is that it provides detailed metrics against which to report. Nevertheless, scholars have argued that the GRI approach could be improved by focusing more on problems with regard to hiding unsustainable practices, with regard to its essentially retrospective reporting,[303] and with regard to providing guidance on the level of ambition they should be setting to reduce their impacts.[304]

The roundtable participants suggested that to build a forward-looking reporting model, while avoiding potential pitfalls, corporations could do the following in their social and environmental reporting:

- → Focus on the salient risks of adverse social and environmental impacts connected to the corporation's business, such as the relation between corporate strategy and the planetary boundaries;
- → Describe a corporation's due diligence systems and their application to the management of significant risks;[305]
- → Specify unambiguous objectives for eliminating or mitigating these risks and impacts, and track progress. The Future-Fit Business Benchmark,[306] for example, outlines 21 environmental and social goals for a corporation to be sustainable;[307]
- → Carry out and disclose an assessment of systemic risks and explain how a corporation's strategy helps it to manage these risks, while focusing on long-term value creation; and
- → Describe the results of the materiality analysis reflecting the interests and needs of a corporation's key stakeholders, as well as their relevance to the corporation's strategy.

The roundtable participants also recommended that policy-makers could help to integrate social and environmental aspects in corporate reporting by:

- Requesting ESG information be included in annual reports;
- Providing clear indicators and methodology for specific matters;[308]
- Mandating reporting on long-term value creation strategy, taking into account non-financial capitals in the sense of the <IR> Framework;[309] and
- Encouraging or requiring independent verification (in the form of monitoring and assurance) to help management substantiate that its internal processes and the information it reports are credible and of investment-grade quality.[310]

Governance and oversight

The effectiveness of the implementation of systems that account for externalities depends on how well such a system is integrated into the governance of the corporation. In this respect, the roundtable participants proposed several recommendations and examples of good practice:

- The (supervisory) board, as part of its responsibility to develop and monitor the long-term value strategy, could discuss principal ESG and systemic risks associated with the corporation's business model and strategy;[311]
- The board could provide a bi-annual statement on how the corporation meets its purpose and addresses the interests and needs of its key stakeholders;
- The board could be responsible for developing and overseeing a strategy to fit the corporation's business within the planetary boundaries;[312]
- The CFO could take ownership of ESG reporting and a director could be responsible for its oversight;[313]
- The incentive scheme for executive managers could be clearly linked to the achievement of the corporation's long-term sustainable value goals;[314] and
- Both financial and non-financial performance could be monitored and measured. To enable this, a materiality matrix could be created to identify and measure the net positive impact value (NPIV) of strategic business decisions to shareholders, stakeholders and society-at-large, including their alignment with corporation purpose.[315]

Summary

The way corporate activity is accounted for is crucial to shape the way investors and other stakeholders see and assess a corporation. The form of corporate reporting used creates powerful incentives for corporate boards to establish their targets and to decide the means to achieve those targets. The current accounting models and legislative framework focus primarily on short-term financial information and do not address several issues that are essential for a corporation's ability to create sustainable value. The legislative instruments that have been adopted so far to support extra-financial reporting have limited provision for monitoring or enforcement.

At the same time, investors are increasingly interested in the value creation process and there is an evident trend among successful corporations towards reporting on long-term value creation in relation to the interests of all key stakeholders. This is supported by research that shows that corporations with good ESG performance and reporting outperform their peers on the stock market in the long-term and benefit from lower cost of capital.

Recommendations

In this respect, the roundtables recommended corporations to consider the following best practices:

- Adopt the integrated reporting <IR> framework, allowing corporations to meaningfully report on value creation strategy, taking into account intangible assets and non-financial capitals.
- Identify and report on salient risks of adverse social and environmental impacts connected to the corporation's business, as well as due diligence systems set up to prevent, mitigate and remediate such risks and impacts, including their application.
- Specify unambiguous objectives for eliminating or mitigating these risks and impacts, and track their progress.
- Carry out and disclose assessment of systemic risks and explain how the corporation's strategy reflects these risks, while focusing on long-term value creation.
- Describe the results of the materiality analysis reflecting the interests and needs of corporation's key stakeholders, as well as their relevance to the corporation strategy.
- Allocate responsibility for reporting on ESG matters to the CFO and mandate the oversight to a director.
- Reflect the corporation's long-term sustainable value goals in the management incentive scheme.
- Develop a materiality matrix to identify and measure the net positive impact value (NPIV) of strategic business decisions to shareholders, stakeholders and society-at-large and their alignment with the corporation's purpose and strategy for the creation of long-term sustainable value.
- Include within the board's responsibilities an assessment of principal ESG and systemic risks, the development of a strategy to fit within planetary boundaries and a statement on how the corporation meets its purpose, addresses both interests and meets the needs of key stakeholders.

Policy-makers can help to integrate social and environmental aspects in corporate reporting by implementing the following:

- Request that ESG information be included in annual reports;
- Provide clear indicators and methodology for specific matters, e.g use of materials, greenhouse gas emissions, land use, and water use;
- Mandate reporting on long-term value creation strategy, taking into account non-financial capitals in the sense of the <IR> Framework; and
- Encourage or require independent verification (in the form of monitoring and assurance) to help management substantiate that its internal processes and its reported information are credible and of investment-grade quality.[316]

Conclusion

Conclusion

After the financial crisis, there has been considerable debate about the role of corporations in society. It has become broadly accepted that corporations - particularly the world's largest publicly traded corporations – should be governed according to a broad purpose, and notably with respect for the society and the environment. This is due to corporations' dependency on the broader institutional framework within which they operate for their social license and their own long-term survival. It is also because corporate governance is connected to some of the most pressing problems societies face and can, therefore, only be solved with a dedicated contribution from corporations. Accordingly, there is growing recognition that the goal of the corporation should be to create long-term sustainable value for customers and shareholders, while at the same time contributing to societal well-being and environmental sustainability.

Building on the expertise of leading practitioners and academics in both the U.S. and Europe, the roundtables identified desired outcomes and key principles for a new model of corporate governance capable of achieving these objectives. Roundtable participants pointed to a diverse range of options for corporations, investors, and policy-makers as they looked for the most effective way to ensure that corporate governance contributes to a broad and long-term understanding of corporate purpose.

Many leading companies are already guided by these principles, thereby demonstrating that the approach is not only possible but that it can also give corporations a competitive edge leading to better economic performance as well as to better long-term results in capital markets. If implemented across all listed companies, this emerging approach to corporate governance could help corporations to align their strategies with the interests of society and take into account systemic risks such as climate change and growing inequality. The effect would be a renewed focus on creating long-term sustainable value, improved corporate resilience and a stronger social license.

While different options will be more appropriate in specific jurisdictions and for certain corporations, several issues stood out as generally accepted and of equal importance everywhere. In particular, the roundtables identified the need to broaden the purpose of the corporation, extend the scope of corporate strategy to include long-term goals, clarify the duties of directors, revise incentives and improve the way corporate performance and value creation are measured and accounted for.

The roundtables confirmed that corporate law across all jurisdictions offers considerable scope in terms of the purpose of a corporation. The fiduciary duties of directors are typically not owed to the shareholders but rather to the corporation itself, whereas the interests of shareholders are satisfied as a by-product of the success of the corporation. Even in jurisdictions where directors owe a duty of care towards shareholders as well as to the corporation, the business judgment rule entitles directors to take account of a broad range of issues, which they consider will further the interests of the corporation.

However, the permissive character of corporate law does not translate easily into practice. The dominant corporate governance model persistently directs the focus of executives and boards on short-term increases of market value, undermining the capacity for long-term sustainable value creation and diminishing the potential for corporations to play a beneficial role in society. In this context, culture and leadership remain the driving force of the corporation and the key elements to achieve this change but they are restricted by the institutional setting in which corporations operate. The roundtables suggested a number of ways to improve this institutional setting and to support a broader purpose for the corporation and an emphasis on long-term sustainable value creation.

→ Firstly, corporations may choose to reflect their purpose and long-term focus in their governance structure, for instance by embedding these into their articles of association, choosing to register as a benefit corporation or seek B Corp status. Other options to reflect their purpose are to set up a dual

class share system, vest voting shares in a foundation established to oversee a company's purpose or engage stakeholder interests in the board. Policy-makers can facilitate these changes by amending corporate law to reflect best practices in other jurisdictions.

- Secondly, the content of fiduciary duties, in particular with respect to the long-term success of the company, the focus on long-term sustainable value creation, stakeholder interests, ESG matters and systemic risks can be clarified by corporations, and, where appropriate, policy-makers. A clarified stipulation of duties - connected to an articulated corporate purpose - can be reflected in a corporation's governance documents, strategic objectives, KPIs, reporting and executive incentive systems.
- Thirdly, the interests of corporate stakeholders, in particular those that are essential to a corporation's long-term success, can be reflected in a more comprehensive way in corporate governance arrangements. The roundtables considered that corporations could engage employee representatives and long-term investors with a proven track record of responsible engagement in their board or provide them with consultation rights. Corporations may also choose to reflect the interests of the stakeholders who cannot be directly engaged, such as the environment or people affected in global supply chains. This could be achieved by assigning responsibility to particular board members and establishing appropriate monitoring mechanisms.
- Fourthly, shareholders do not form a homogenous group with the same interests, agendas and capacities to engage in corporate governance. A corporate governance system that focuses on shareholder rights without further qualification amplifies the ability of parties with a short-term interest to engage. In response, boards could formulate a strategy of encouraging or discouraging specific types of investors. Similarly, policy-makers could adopt regulations that allow corporations to differentiate in their engagement with types of shareholders.
- Fifthly, corporate accounting and reporting could reflect a corporation's long-term value creation strategy by taking into account non-financial capitals, intangible assets, ESG matters and by addressing the systemic risks related to a corporation's business. KPIs and incentive systems could be aligned with such a reporting system. Institutional investors can monitor corporate performance in terms of their capacity for long-term value creation and use the KPIs as benchmarks for their voting strategies, taking into account the interests of their end beneficiaries.
- Finally, the curricula of corporate law, management, accounting and economics could be developed in such a way that they reflect a broad understanding of corporate purpose.

The principal conclusions of this report are that there is an emerging consensus that the goal of the corporation should be to create long-term sustainable value for customers and shareholders, while contributing to societal well-being and environmental sustainability; that these objectives can be mutually reinforcing; and that corporate governance should be developed to a standard where it may contribute to these objectives. This report identifies a number of possibilities to achieve this change.

Recommendations

Framing of current debates on corporate governance

The different roundtables recognised that shareholder primacy is a problematic model for corporate governance. It induces short-termism and leads to a disconnection between short and long term goals in business strategy. The roundtables concluded that the role of corporate governance is not only to protect the corporation but also to ensure that a corporation is able to create long-term sustainable value for society at large. Moreover, the roundtables clearly expressed that there is a need to build a stronger corporate governance model, which should aim to:

- → Create real value for customers and wealth for shareholders as joint and mutually reinforcing objectives.
- → Take account of environmental sustainability and societal well-being.
- → Take into account systemic risks and opportunities.
- → Adopt both financial and ESG benchmarks to measure corporate performance over the long-term.

Engaging with corporate governance

The roundtables identified several options for corporations on how to protect their purpose:

- → Embed a clear statement of purpose and corresponding rights and responsibilities of directors, shareholders, and other stakeholders in a corporation's governance documents and articles of incorporation.
- → Use dual-class share structures with differentiated voting rights, where available.
- → Vest voting shares in a foundation set up to oversee a corporation's purpose.
- → Register as a Benefit Corporation or other alternative legal form established to protect social purpose or obtain B corporation certification.

The roundtables also identified how corporate law and corporate governance regulation can foster purpose driven corporations. Accordingly, this framework could:

- → Clarify in law and in corporate governance codes the societal purpose of corporations and their duties toward internal and external constituencies.
- → Allow corporations to protect their purpose in governance documents and arrangements.
- → Require corporations to specify their long-term social purposes in their constitutional documents.
- → Recognise a director duty to develop long-term plans in order to meet specific societal objectives relevant for their corporation, and annually report to shareholders on how these plans are being fulfilled.
- → Allow for the use of dual class share structures and industrial foundations.

Fiduciary duties of directors and institutional investors

The roundtable participants identified several recommendations for how fiduciary duties can be used to restore the focus on long-term value creation:

Recommendations for corporations and their directors

- → Clearly acknowledge and publicly affirm that it is the duty of directors to:
  - Protect the long-term development of the corporation;
  - Evaluate salient environmental and social risks connected to the business of their corporation;
  - Mitigate negative impact on corporate stakeholders and society at large and to specify how stakeholders' interests should be taken into account;
  - Assess and address systemic risks associated with the corporation.
- → Reflect these duties and set objectives in a corporation's governance documents, strategic objectives, KPIs, corporate reporting and executive incentive systems.
- → Include systemic risks, sustainability and other relevant ESG factors in 'in control' statements.

Recommendations regarding the fiduciary duties of institutional investors

- → Develop a strategy taking account of ESG matters, systemic risks, and engage with the boards of investee corporations, reflecting end-beneficiaries' long-term interest and time horizons for the investment strategy. Integrate this strategy in internal incentive schemes.
- → Support engagement and/or disengagement strategies, as well as positive publicity campaigns.
- → Request the investee corporations to integrate ESG factors in their reporting.
- → Align the strategy of agents down the investment chain with the specific investment strategy set by the institutional investor.

Recommendations for policy-makers

- → Clarify the liability of directors for serious impacts caused or contributed to by the corporation.
- → Clarify the content of fiduciary duties with respect to specific environmental and social issues relevant for particular industries, e.g. systemic financial stability in the case of banks, the mitigation of environmental impacts for extractive corporations, and the development of fair and sustainable supply chain models for apparel corporations.
- → Require greater transparency by investors regarding their engagement strategy with respect to ESG risks.
- → Clarify the role and responsibilities of fund managers and proxy advisers.

Broader purpose and the board

The roundtable participants identified several good practices that corporations may consider to improve the ability of their boards to operate with a view to a broader purpose of the corporation:

- → Boards should be explicitly responsible for setting the corporation's mission and its long-term value creation strategy; overseeing a stakeholder consultation; providing a statement on the assessment of systemic risks; and investigating complaints of major wrongdoing by the corporation.
- → Non-executive directors could serve to ensure regard to the interests of specific stakeholders and to bring competencies to the board that relate to those stakeholders. To discharge this role effectively, the role and mandate of the non-executive director must be clearly specified and has to be framed with respect to the overall responsibility to the corporation.
- → Boards can develop an active policy of encouraging investment by strategic investors with a consistent track record of responsible and long-term engagement with corporate strategy. Boards could

choose to give investors, sympathetic to company long-term objectives, more possibilities to engage or to be directly involved in the board.

- → The diversity of the board could reflect company operational environment and its plans, taking into account factors such as age, experience, expertise, gender, nationality and qualifications.
- → Board terms can be staggered with a reasonable recall provision for incoming directors, which the board, shareholders or other specified actors could trigger in the event of wrongdoing.
- → To strengthen board appointment procedures, board members' qualifications and remuneration could be made public.

Revise incentive structures

The roundtables identified several strategies that corporations can use in their incentive structures to support long-term sustainable value creation. These options may be supported by appropriate public policy:

- → Ensure that incentive structure metrics are associated with a firm-specific long-term value creation strategy that integrates financial and non-financial objectives.
- → Make executive remuneration, and specifically share-based remuneration, conditional on the achievement and sustainment of long-term goals, including long-term economic performance, fraud prevention and detection, ESG goals, R&D investment and employee satisfaction.
- → Publicly disclose executive remuneration and its ratio to minimum and median salaries.
- → Allow employees to express their view on executive compensation schemes.
- → Cap executive pay by reference to average, median or minimum salary within the corporation.

Stakeholders

The roundtables identified the following options to facilitate corporations to engage stakeholders and/or reflect their interests in their governance:

- → Specify fiduciary duties and liabilities for directors in corporation governance documents with respect to stakeholders' interests and clarify which audiences and matters are relevant for the corporation.
- → Use a corporate form or governance arrangements that provide control or monitoring rights to stakeholders to safeguard a corporation's multi-stakeholder philosophy.
- → Employ non-executive or executive directors who can represent the stakeholders or interests affected by the corporation and provide them with clear mandates, rights, and responsibilities, within the framework of their overall responsibility to the corporation.
- → Provide employees with a right to express an opinion on the remuneration scheme for the executive directors.
- → Use stakeholder and materiality analysis as the basis for a corporation's reporting and embed it in the corporation's strategy-making processes.

Long-term and sustainable investment

To foster 'patient capital' that works with corporations to create sustainable wealth for both retail and institutional shareholders, the roundtables identified several possible strategies that can be followed both by corporations and policy-makers:

- → Allow and use multiple classes of shares to vest voting rights with committed shareholders.
- → Allocate rights and incentives to investors on the basis of the length of shareholding or contribution to the corporation's capital, for example, by:
  - Setting voting rights in proportion to the time of presence in a firm's capital.
  - Providing the rewards of shares, e.g. dividends, on the basis of the time that the shares have been held.
  - Making votes conditional on the status of shares at purchase.
  - Decreasing or exempting capital gains tax on the basis of long-term shareholdings

The roundtables also identified a possibility for policy-makers to ensure greater transparency of investor involvement in investee corporations by requiring:

- → Stricter notification of substantial holdings of investors and strategic direction of their engagement in investee corporations.

In the case of takeovers, the roundtable recommended to support the (fiduciary) duty of the board to protect the interest of (long-term) continuity of the corporation and its various stakeholders by the allowing and setting up of defensive structures to enable sufficient protection against takeovers.

Corporate Reporting

The roundtables recommended corporations to consider the following best practices:

- → Adopt the integrated reporting <IR> framework, allowing corporations to meaningfully report on value creation strategy, taking into account intangible assets and non-financial capitals.
- → Identify and report on salient risks of adverse social and environmental impacts connected to the corporation's business, as well as due diligence systems set up to prevent, mitigate and remediate such risks and impacts, including their application.
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Policy-makers can help to integrate social and environmental aspects in corporate reporting by implementing the following:

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- → Encourage or require independent verification (in the form of monitoring and assurance) to help management substantiate that its internal processes and its reported information are credible and of investment-grade quality.

References

1. See the Purpose of the Corporation Project at http://purposeofcorporation.org/
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Section I : Introduction

3. By default, the term corporation is used in this report, because it refers to company forms that are recognised by law. However, the report occasionally uses the term company when referring to statements, resources, and laws that use this more general term.
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5. Johnston, A. (2010). Varieties of Corporate Governance and Reflexive Takeover Regulation. In U. Bernitz and W-G Ringe (Eds.), ***Company Law and Economic Protectionism***. Oxford: Oxford University Press.
6. Aglietta, M., & Rebérioux, A. (2005). ***Corporate governance adrift: a critique of shareholder value***. Cheltenham: Edward Elgar.
7. The main difference among the jurisdictions is the prevailing shareholder structure in corporations. In the UK and the US, publicly listed corporations typically have a fragmented shareholder basis, whereas in continental Europe most corporations have a dominant or controlling shareholder. The controlling shareholder may be a founder family, industrial foundation, parent company, bank, pension fund, or State. This setup affects the role and influence of individual shareholders, as well as the influence of capital markets on the corporation. However, the harmonisation of corporate governance regulation, the rules for protection of minority shareholders, the globalisation of capital markets, and the challenge of identifying end beneficiaries interests has resulted in certain similarities between the practices in every jurisdiction. The pressure to focus on - often immediate - market value is noticeable in every jurisdiction, even if the mechanisms that create the pressure may differ.
8. The roundtables considered primarily the situation of publicly listed corporations. However, many best practices discussed by the participants are analogously applicable to the governance and management of private corporations and state-owned enterprises.
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10. This was an initiative of Frank Bold, with the support of the Modern Corporation Project at Cass Business School.
11. Chatham House Rule: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed". Retrieved from https://www.chathamhouse.org/about/chatham-house-rule/translations#sthash.5VCafRL1.dpuf.
12. A scenario exercise developed by the Drucker Institute and used with its permission. Participants would be asked to assume different positions (CEO, board of trustees/directors, institutional investor) to prompt reflections on how to stimulate positive changes through corporate governance in the next five years (See The Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: New York Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School. Retrieved from http://www.purposeofcorporation.org/executive-summary---ny-roundtable-.pdf. For a general explanation of backcasting, see Quist, J., & Vergragt, P. (2006). Past and future of backcasting: The shift to stakeholder participation and a proposal for a methodological framework. ***Futures, 38***(9), 1027–1045.

Section II : Framing of current debates on corporate governance

13. See European Central Bank, 2004, Annual Report: 2004, ECB, Frankfurt, Glossary; OECD, 2009, ***Principles of Corporate Governance***, Paris: Organisation for Economic Co-operation and Development.
14. Aglietta, M., & Rebérioux, A. (2005). ***Corporate governance adrift : a critique of shareholder value***. Cheltenham: Edward Elgar; Fligstein, N. (1993) ***The transformation of corporate control.*** Cambridge: Harvard University Press; Ireland, P. (2010). Limited liability, shareholder rights and the problem of corporate irresponsibility. ***Cambridge Journal of Economics, 34***(5), 837-856. doi:10.1093/cje/ben040;Veldman, J., & Willmott, H. C. (2016). The cultural grammar of governance: The UK Code of Corporate Governance, reflexivity, and the limits of "soft" regulation. ***Human Relations, 69***(3), 581–603.
15. Aglietta, M., & Rebérioux, A. (2005). ***Corporate governance adrift : a critique of shareholder value***. Cheltenham: Edward Elgar; Ireland, P. (2009). Financialization and corporate governance. ***Northern Ireland Legal Quarterly, 60***(1), 1–34.
16. Segrestin, B., & Hatchuel, A. (2011). Beyond agency theory, a post-crisis view of corporate law. ***British Journal of Management, 22***(3), 484–499.
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18. Environmental degradation and pollution are typical examples of negative externalities. Unaccounted costs and risks may also be pushed down the global value chain to other countries, for instance through a failure to provide adequate systems to guarantee the health, safety and equitable pay of workers. The externalization of costs sometimes leads to disasters, as was the case for the BP Deepwater Horizon oil spill and the collapse of Rana Plaza in Bangladesh, which cost the lives of 1,130 people manufacturing garment products for European and American brands.
19. See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School; Khurana, R. (2007). ***From Higher Aims to Hired Hands: The Social***

Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession. Princeton and Oxford: Princeton University Press; Fourcade, M., & Khurana, R. (2013). From social control to financial economics: the linked ecologies of economics and business in twentieth century America. ***Theory and Society, 42***(2), 121–159; Veldman, J., & Willmott, H. C. (2016). The cultural grammar of governance: The UK Code of Corporate Governance, reflexivity, and the limits of "soft" regulation. ***Human Relations, 69***(3), 581–603.

20. In publicly listed corporations, the average holding period for British and American equities has declined from over six years in 1950 to less than six months today (see Department for Business, Innovation and Skills. (2010). ***A long-term focus for corporate Britain: a call for evidence.*** London: BIS Publications Orderline, p.21). The average portfolio turnover at actively managed mutual funds is approximately 100 percent a year (Strine, 2010: 10). More than half the daily turnover is undertaken by short-term trading by high frequency traders and hedge funds. "This compares to … 36% as recently as 1980. Indeed one has to go back to 1928 and '29 … in order to observe turnover ratios as high or higher than have been seen in recent years" (Strine, 2010: 16). Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term? ***The Business Lawyer, 66***, 1-27.

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26. "By short-termism, we mean the focus of investors and managers on short-term returns at the expense of those over the longer-term." (Department for Business, Innovation and Skills. (2010). ***A long-term focus for corporate Britain: a call for evidence***. London: BIS Publications Orderline, p.21). In this context, it is important to state that profit making and risk-taking to some degree are necessities for a commercial corporation. We distinguish between profit making which results from a successful forward oriented corporation strategy achieved in the market for products and services versus a strategic focus, which focuses on excessive risk-taking in the interests of shareholders, as this leads to short-termism and the risks outlined in this section. For more on this subject, see Drucker, P. F. (1946). ***Concept of the corporation***. New Brunswick: Transaction Publishers; Kilroy, D., & Schneider, M. (2014). ***The Legacy of Good Leadership. A Wealth Creation Paradigm for the Third Millennium***. Read Along Publishing; Tunjic, P. (2016). The 10 Most Important Principles of Directorship.

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[33] See Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36***, 857–909; Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books.

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[35] Sorkin, A. R. (April 4, 2015). BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors. ***The New York Times.***

[36] Kay, J. (2015). ***Other people's money: The real business of finance***. New York: PublicAffairs.

[37] Stout, L. (2012). ***The shareholder value myth***. San Francisco, CA: Berrett-Koehler Publishers; Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, 1–27; Other reasons for becoming private include avoidance of listing rules and assistance rules.

[38] Clarke (2016) argues "There is a growing realisation within the broader business community that the unrelenting focus on maximizing shareholder value is undermining corporations with an oversimplification of complex business reality, weakening managers, corporations and economies, and ignoring the diversity of investment institutions and interests." (See Clarke, T. (2016). The continuing diversity of corporate governance : Theories of convergence and variety. ***Ephemera, 16***(1), 19–52). Even high profile advocates of shareholder primacy such as Michael Jensen (one of the economists who developed the theory) and Jack Welch (ex-CEO of General Electric) have backed away from the idea that maximizing share value always and everywhere has the effect of maximizing the total social utility of the firm. They have started to recognise that specific types of shareholders may dominate the process and that executive managers may become incentivised in a simplistic version of shareholder value to take on too much risk.

[39] See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[40] Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36,*** 857–909.

[41] Williamson, J. (2015). Andy Haldane: Shareholder primacy is bad for economic growth. ***ToUChstone***.

[42] Kay, J. (2015). ***Other people's money: The real business of finance.*** New York: PublicAffairs; Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.3.

[43] Sorkin, A. R. (April 4, 2015). BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors, ***The New York Times***; Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, 1–27.

[44] Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66,*** 1–27.

[45] Palan, R., Murphy, R., & Chavagneux, C. (2010). ***Tax havens: How globalization really works***. Ithaca, New York: Cornell University Press; Reich, R. B. (2016). ***Saving capitalism: For the many, not the few.*** London: Icon Books.

[46] Chang, H. (2011). ***23 things they don't tell you about capitalism***. London: Penguin; Mazzucato, M. (2015). ***The entrepreneurial state: Debunking public vs. private sector myths***. London: Anthem Press; Johnston, A. (2010). Varieties of Corporate Governance and Reflexive Takeover Regulation. In U. Bernitz and W-G Ringe (Eds.), ***Company Law and Economic Protectionism***. Oxford: Oxford University Press; Mayer, C. (2013). ***Firm Commitment: Why the corporation is failing us and how to restore trust in it***. Oxford: Oxford University Press.

[47] Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 3***6, 857–909.; Mishel, L., & Davis, A. (2015). Top CEOs Make 300 Times More than Typical Workers.

[48] Jacoby, S. M. (2008). Finance and labor: Perspectives on risk, inequality and democracy. ***Comparative Labor Law and Policy Journal, 30***, 17-61; Jacoby, S. M. (2011). Labor and finance in the United States. In C. A. Williams, & P. Zumbansen (Eds.), ***The embedded firm: Corporate governance, labor, and finance capitalism*** (pp. 277-317). Cambridge: Cambridge University Press; Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36***, 857–909; Orhangazi, Ö. (2008). Financialisation and capital accumulation in the non-financial corporate sector: 1973-2003. ***Cambridge Journal of Economics, 32***(6), 863–886; Piketty, T., & Saez, E. (2014). Inequality in the long run. ***Science (New York, N.Y.), 344***(6186), 838–43.

[49] Planetary boundaries is the central concept that defines safe operating space for humanity on planet Earth by nine boundaries. Transgressing one or more planetary boundaries may be highly damaging or even catastrophic. The boundaries include ozone depletion, loss of biosphere integrity, chemical pollution, and the release of novel entitities, climate change, ocean acidification, freshwater consumption and global hydrological cycle, land system change, nitrogen and phosphorus flows to the biosphere and oceans, and atmospheric aerosol loading. The concept was proposed by scientists led by Johan Rockström from the Stockholm Resilience Centre and Will Steffen from the Australian National University. For more information see: http://www.stockholmresilience.org/research/planetary-boundaries/planetary-boundaries/about-the-research/the-nine-planetary-boundaries.html. For an explanation of how the concept of planetary boundaries could be integrated into corporate law, see also Sjafjell, B., & Richardson, J.-B. (2015). ***Company Law and Sustainability Legal Barriers and Opportunities***. Cambridge: Cambridge University Press; Häyhä, T., Lucas, P. L., Vuuren, D. P., Cornell, S. E., & Hoff, H. (2016). From Planetary Boundaries to national fair shares of the global safe operating space — How can the scales be bridged? ***Global Environmental Change, 40***, 60-72.

[50] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3.

[51] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3.

52. Paul Polman, CEO of Unilever, articulated that sustainability is not only compatible with profitability, but also indispensable for a corporation's success in the long-term (Confino, J. (April 24, 2012). Unilever's Paul Polman: challenging the corporate status quo. ***The Guardian***). It is also an element of NovoNordisk's business philosophy (Morsing, M., & Oswald, D. (2009). Sustainable leadership: management control systems and organizational culture in Novo Nordisk A/S. ***Corporate Governance, 9***(1), 83-99). Surveys of global executives confirm that this understanding is widely shared in the business community. According to a Harvard Business Review and Ernst & Young report, 87% of 500 global executives declared that purpose is key to success. However, less than half of the executives integrated purpose into strategy making. The report shows that in organisations where purpose had become a driver of strategy and decision-making, executives reported a greater ability to deliver revenue growth and drive successful innovation and ongoing transformation. The latest UN Global Compact–Accenture CEO study also found that 93% of the 1,000 CEOs interviewed across 103 countries and 27 industries see sustainability as important to the future success of their business. Moreover, 78% see sustainability as an opportunity for growth and innovation.

53. As Mayer (2013) states "...the generation of durable wealth for its stockholders through fundamentally sound economic activity, such as the sale of useful products and services, is the primary goal of the for-profit corporation." Mayer, C. (2013). F***irm Commitment: Why the corporation is failing us and how to restore trust in it***. Oxford University Press; See also Kay, J. (2015). ***Other people's money: The real business of finance***. New York: PublicAffairs; Deakin, S. (2012). The corporation as Commons: Rethinking property rights, governance and sustainability in the business enterprise. ***The Queen's LJ,*** (September), 339–381; Biondi, Y. et al. (2007). ***The Firm as an Entity: Implications for Economics, Accounting, and the Law***. London & New York: Routledge; Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, p.2.

54. Research shows that adopting a more inclusive and long-term vision on strategy allows companies to perform better in the long-term (See Eccles, R. G. et al. (2014). The impact of corporate sustainability on organizational processes and performance. ***Management Science, 60***(11), 2835–2857), particularly in the market for employees, products and services as well as on capital markets. See also The Conference Board. (2015). Is Short-Term Behavior Jeopardizing the Prosperity of Business?. The Conference Board Inc, p.3.

55. Kilroy, D., & Schneider, M. (2014). ***The Legacy of Good Leadership. A Wealth Creation Paradigm for the Third Millennium***. HistoUltimo (NSW): Read Along Publishing.

56. Mayer, C. (2013). ***Firm Commitment: Why the corporation is failing us and how to restore trust in it***. Oxford: Oxford University Press.

57. Researchers at the University of Hamburg and Deutsche Asset & Wealth Management analysed 2,250 studies over the last 40 years concluding a positive correlation between ESG criteria and strong corporate financial performance: https://institutional.deutscheam.com/content/_media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_%282%29.pdf

58. Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: New York Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.4.

Section lll : Engaging with corporate governance

59. Garratt, B. (1996). ***The fish rots from the head: The Crisis in Our Boardrooms: Developing the Crucial Skills of the Competent Director***. London: HarperCollinsBusiness; Tricker, B. (2012). Corporate Governance: Principles, Policies and Practices. Oxford: Oxford University Press.

60. The Draft King IV Report on Corporate Governance for South Africa 2016, which opened for public consultation on 14 March 2016, also addresses culture. The Draft King IV Report is available at http://www.adamsadamsip.com/wp-content/uploads/2016/05/King_IV_Report_draft.pdf. (See Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p. 16.

61. Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.6.

62. Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.6.

63. The embedded status of shareholder primacy in the institutions that direct corporate governance theory and practice also speaks against the idea of self-regulation. The use of voluntary regulation like the 'comply or explain' mechanism that has come to dominate corporate governance codes worldwide does not leave boards free to do what is best for the corporation, but rather to follow the implicit and explicit norms that are embedded in corporate governance institutions. See Veldman, J., & Willmott, H. C. (2016). The cultural grammar of governance: The UK Code of Corporate Governance, reflexivity, and the limits of "soft" regulation. ***Human Relations, 69***(3), 581–603.

64. Aglietta, M., & Rebérioux, A. (2005). ***Corporate governance adrift : a critique of shareholder value.*** Cheltenham: Edward Elgar; Segrestin, B., & Hatchuel, A. (2011). Beyond agency theory, a post-crisis view of corporate law. ***British Journal of Management, 22***(3), 484–499.

65. Khurana, R. (2007). ***From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession***. Princeton and Oxford: Princeton University Press.

66. Shareholders have the rights to elect directors, to vote on mergers and substantial asset sales, to inspect the books and records, and the right to sue directors on behalf of the corporation. Strine, L. E. J. (2014). Making It Easier for Directors to Do the Right Thing. ***Harv. Bus. L. Rev., 4,*** p. 238.

67. Many incorrectly believe that shareholders own corporations. This is not true under the law of any known country. Shareholders only own shares of stock, which give shareholders certain rights in the corporation. In law, corporations are legal persons or entities, which means they have an independent personality and cannot be owned by anyone. Treating a corporation as a legal person means that the corporation has certain rights and obligations, including especially the rights to own property, enter contracts, and be held accountable in its own name. It is important to be clear that the idea of shareholders as 'owners' is fundamentally incompatible with the corporation as we know it today. Right now, the financial risk to investors when they buy shares is limited to the amount of money that they have invested in the corporation or paid for their shares. If a corporation was owned by its shareholders, they could be held financially responsible for any wrongdoing or money owned by the corporation (as is true for other forms of companies,

such as sole proprietorships and partnerships). See Modern Corporation Project, ***Statement on Company Law***. Available at https://themoderncorporation.wordpress.com/company-law-memo; See also Eccles, R. G., & Youmans, T. (2016). Materiality in Corporate Governance : The Statement of Significant Audiences and Materiality. ***Journal of Applied Corporate Finance, 28***(2), 39–46.

68. The idea of shareholders as prioritized claimants, either through a direct claim to 'ownership', or through derived claims to 'residual ownership', or derived claims to 'efficiency' or an enhanced basis for 'risk taking', have all been rejected by leading legal and corporate governance scholars. See Aglietta, M., & Rebérioux, A. (2005). ***Corporate governance adrift : a critique of shareholder value***. Cheltenham: Edward Elgar; Berle, A. a, & Means, G. C. (1932). ***The Modern Corporation and Private Property***. New Brunswick & London: Transaction Publishers; Bratton, W. W. (1989). The New Economic Theory of the Firm: Critical Perspectives from History. ***Faculty Scholarship, 7;*** Ireland, P. (1999). Company Law and the Myth of Shareholder Ownership. ***Modern Law Review, 62***(1), 32–57; Moore, M., & Reberioux, A. (2007). The corporate governance of the firm as an entity. ***Economics of Legal Relationships Implications for Economics, Accounting and the Law The Firm as an Entity***, 348–374; Robé, J.-P. (2011). The Legal Structure of the Firm. ***Accounting, Economics, and Law, 1***(1), 1–86.

69. In the UK, since 1906 the law refused to allow the shareholders to interfere with decisions of the directors. In the US, "corporate law clearly vests the power to manage the corporation in its directors, and not in the stockholders". See Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, p.4; "It is indisputable that officers are agents for the corporate enterprise, not the stockholders. Their responsibility to any particular corporate constituency is only indirect, and any benefits (or costs) to such groups are incidental effects that flow from decisions made in the interest of the corporation as a single, undifferentiated entity" (Johnson, L. P. Q., & Millon, D. (2005). Recalling Why Corporate Officers are Fiduciaries. Wm.& Mary L.Rev., (04), p.1644).

70. Aglietta, M., & Rebérioux, A. (2005). ***Corporate governance adrift : a critique of shareholder value.*** Cheltenham: Edward Elgar; Veldman, J., & Willmott, H. C. (2016). The cultural grammar of governance: The UK Code of Corporate Governance, reflexivity, and the limits of "soft" regulation. ***Human Relations, 69***(3), 581–603.

71. Berle, A. a, & Means, G. C. (1932). ***The Modern Corporation and Private Property.*** New Brunswick & London: Transaction Publishers; Biondi, Y. and al. (2007). ***The Firm as an Entity: Implications for Economics, Accounting, and the Law.*** London & New York: Routledge; Johnson, L. P. Q., & Millon, D. (2005). Recalling Why Corporate Officers are Fiduciaries. ***Wm.& Mary L.Rev.,*** (04), 1597–1654; The Modern Corporation Project, 2014b

72. Very few conventional companies were founded or operate explicitly with the narrow objective to maximise shareholder value McCall (2011: 41-42). Rather, these companies became profitable and generated shareholder value as the result of delivering a product or service that addressed a specific societal need. See Kay, J. (2015). ***Other people's money: The real business of finance.*** New York: PublicAffairs.

73. This is still the case, even in shareholder-centric jurisdictions. Historically in the UK directors owed duties to act in good faith in the interests of the company (understood as the interests of the shareholders), but this duty was owed to the corporate entity, and was enforceable by the directors in its name. Since 2006 (s172) they have to promote the success of the company for the benefit of the members, i.e. the shareholders (effectively a codification of the old law), but the 'duty' is still owed to the company as a separate entity.

74. Ireland, P. (1999). Company Law and the Myth of Shareholder Ownership. ***Modern Law Review, 62***(1), 32–57; Johnson, P. (2010). Making the market: Victorian origins of corporate capitalism. Cambridge: Cambridge University Press.

75. See also section IV.

76. See Biondi, Y. et al. (2007). ***The Firm as an Entity: Implications for Economics, Accounting, and the Law***. London & New York: Routledge; Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, 1–27; Tunjic, P. (2016). ***The 10 Most Important Principles of Directorship***. Blog post; Robé, J.-P. (2011). The Legal Structure of the Firm. ***Accounting, Economics, and Law, 1***(1), 1–86; see also Segrestin, B., & Hatchuel, A. (2011). Beyond agency theory, a post-crisis view of corporate law. ***British Journal of Management, 22***(3), 484–499.

77. See Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.4.

78. European Parliament and Council Directive (EC) of 21 April 2004 on takeover bids OJ L 142/12

79. Companies Act, 2006, Chapter 46, Section 172

80. Corporations and fiduciary duties of their directors in the United States are regulated by state law. The root of the discretion to take account of stakeholder interests is the business judgment rule. More than 50% of all public companies in the United States are incorporated in Delaware, where the business judgment is used in a way that leaves corporate boards with a wide discretion to take into account stakeholder interests. See Meyer, A., Wehrmann, P., Park, D., & Dunlap, T. (2016). Information For the United States Concerning Legal Perspectives on an Annual Board "Statement of Significant Audiences and Materiality". ***Bar Association Sustainable Development Task Force***; Special Representative of the Secretary on the Issue of Human Rights and Transnational Corporations and other Business Enterprises' Corporate Law Project, Response to the Survey, Jurisdiction: United States, Firm: Weil, Gotshal & Manges (2010), available at: https://business-humanrights.org/en/reports-on-corporate-law-tools-0; Stout, L. (2012). ***The shareholder value myth***. San Francisco, CA: Berrett-Koehler Publishers; Modern Corporation Project, ***Statement on Company Law.*** Available at https://themoderncorporation.wordpress.com/company-law-memo.

81. The provision of the separate legal entity provides an institutional framework that directs the duties of the board, both normatively and legally, toward serving the long-term investments and claims of many constituencies. Biondi, Y. and al. (2007). ***The Firm as an Entity: Implications for Economics, Accounting, and the Law***. London & New York: Routledge;

82. Corporate Governance Code Monitoring Committee. (2008). Dutch corporate governance code: Principles of good corporate governance and best practice provisions. §7, p.5.

83. In a framing in which the board's fiduciary duties are toward the company, which intrinsically represents the long-term objectives of multiple constituencies, we can argue that "...corporate social responsibility is not a goal to be pursued in itself but, rather, an integral

part of the day-to-day operations of a company that focuses on long-term value creation." (Corporate Governance Code Monitoring Committee. (2016). Dutch corporate governance code: Proposal for revision, p.9)

84. Johnston, A., & Morrow, P. (2014). Towards long-termism in corporate governance : the Shareholder Rights Directive and beyond. In S. Vitols (Ed.), ***Long-term investment and the Sustainable Company: a stakeholder perspective*** (Vol. 3).

85. Johnston, A., & Morrow, P. (2014). Towards long-termism in corporate governance : the Shareholder Rights Directive and beyond. In S. Vitols (Ed.), ***Long-term investment and the Sustainable Company: a stakeholder perspective*** (Vol. 3).

86. Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.4.

87. In UK Company Law, S31(1) CA 2006 allows companies to have an objects clause. Making the object explicit has its effect that directors are then under a duty to comply – s171 and the objects clause can be entrenched s22(1) CA 2006

88. Ridley-Duff, R., & Bull, M. (2011). ***Understanding Social Enterprise: Theory And Practice.*** London: SAGE Publications Ltd.

89. See ***Profit-with- purpose businesses (2014)***. Social Impact Investment Taskforce. ***Subject paper of the Mission Alignment Working Group***.

90. Corporate Governance Code Monitoring Committee. (2008). Dutch corporate governance code: Principles of good corporate governance and best practice provisions.

91. The Draft King IV Report on Corporate Governance for South Africa 2016, which opened for public consultation on 14 March 2016.

92. EU Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, ***OJ L 330/1,*** 15 November 2014.

93. For example, in the UK corporations may be established as community interest companies, which is a legal form designed for corporations that want to use their profits and assets for the public good. Cooperatives represent another, more widespread alternative legal form that facilitates organised entrepreneurship with specific societal objectives. Ridley-Duff, R., & Bull, M. (2011). ***Understanding Social Enterprise: Theory And Practice***. London: SAGE Publications Ltd.

94. Strine, L. E. J. (2014). Making It Easier for Directors to Do the Right Thing, ***op. cit.,*** p. 248.

95. Mayer,C. (2013). Firm Commitment: Why the corporation is failing us and how to restore trust in it. ***Oxford University Press.***

96. See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School; See also Purpose of the Corporation Project. (2016). Corporate Governance for a changing world: Oslo Roundtable Executive Summary. Brussels and London: Frank Bold and Cass Business School.

97. See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3.

98. See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.2.

99. Mayer, C. (2013). ***Firm Commitment: Why the corporation is failing us and how to restore trust in it.*** Oxford University Press; Morgan, G. (2006). Transnational actors, transnational institutions, transnational spaces: the role of law firms in the internationalization of competition regulation. ***CSGR Working Paper, 167***(167), 1–28.

100. See Novo Nordisk. (2015). ***Why do so many people in cities get diabetes?*** Novo Nordisk.

101. See Novo Nordisk. (2015). ***Why do so many people in cities get diabetes?*** Novo Nordisk.

102. B Corporation certification is provided by B Lab, which has developed standards and performance metrics for multinational and publicly listed corporations including Unilever, Danone, and Natura. To become certified, a corporation must receive a minimum score on assessment of its impact in areas of governance, workers, community, the environment, and products and services. Unlike Benefit Corporations, described above, corporations may obtain B Corp status without adopting a specific legal form. For more information, see: https://www.bcorporation.net.

Section IV: Fiduciary duties of directors and institutional investors

103. See also Department for Business, Innovation and skills. (2012). ***The Kay review of UK equity market and long-term decision making (Final Report)***. London: BIS Publications Orderline.

104. Robé, J.-P. (2011). The Legal Structure of the Firm. ***Accounting, Economics, and Law,*** *1*(1), 1–86.

105. See Biondi, Y. et al. (2007). ***The Firm as an Entity: Implications for Economics, Accounting, and the Law***. London & New York: Routledge.

106. See Kay, J. (2015). ***Other people's money: The real business of finance***. New York: PublicAffairs.

107. Legal memoranda on fiduciary duty and corporate obligations with regard to non-financial reporting and related topics in 35 countries collected by American Bar Association Sustainable Development Task Force, available at: http://www.americanbar.org/groups/leadership/office_of_the_president/sustainable_development_task_force.html

108. There are significant variations in terms of board structures across EU Member States, including with respect to the distinction between one tier and two tier boards, and whether there is employee representation. In a typical one-tier board system, one corporate body undertakes both the management and monitoring functions. In a typical two-tier board system, the board of directors undertakes management functions while the supervisory board provides oversight. The nature of directors' duties and liabilities and the ways in which they may be enforced can differ significantly depending on the board structure in question. Additionally, while under English law, shareholders are entitled to intervene in the management of the company, in continental jurisdictions that follow the French and German legal traditions, the board of directors is conceived of as an independent corporate entity and it is granted significant insulation from the influence of shareholders. Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: French Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School. Retrieved from http://www.purposeofcorporation.org/executive-summary-french-roundtable-on-corporate-governance.pdf; Tricker, B. (2012). ***Corporate Governance: Principles, Policies and Practices.*** Oxford: Oxford University Press.

[109] Legal memoranda on fiduciary duty and corporate obligations with regard to non-financial reporting and related topics in 35 countries collected by American Bar Association Sustainable Development Task Force, available at: http://www.americanbar.org/groups/leadership/office_of_the_president/sustainable_development_task_force.html http://www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/resources/usa_legal_memo.authcheckdam.pdf

[110] For the US, see Johnson, L. P. Q., & Millon, D. (2005). Recalling Why Corporate Officers are Fiduciaries. ***Wm.& Mary L.Rev.***, (04), 1597–1654; For the UK, see Collison, D., Cross, S., Ferguson, J., Power, D., & Stevenson, L. (2014). Financialization and company law: A study of the UK company law review. ***Critical Perspectives on Accounting, 25***(1), 5–16; Keay, A. (2014). Comply or explain in corporate governance codes: In need of greater regulatory oversight? ***Legal Studies, 34***(2), 279–304.

[111] Legal memoranda on fiduciary duty and corporate obligations with regard to non-financial reporting and related topics collected by American Bar Association Sustainable Development Task Force, available at: http://www.americanbar.org/groups/leadership/office_of_the_president/sustainable_development_task_force.html

[112] Gerner-Beuerle, C., Paech, P., and Schuster, E.P. (2013). Study on Directors' Duties and Liability prepared for the European Commission DG Markt. London: Department of Law, London School of Economics, LSE Enterprise.

[113] Johnson and Millon (2005: 1644) "It is indisputable that officers are agents for the corporate enterprise, not the stockholders. Their responsibility to any particular corporate constituency is only indirect, and any benefits (or costs) to such groups are incidental effects that flow from decisions made in the interest of the corporation as a single, undifferentiated entity". Johnson, L. P. Q., & Millon, D. (2005). Recalling Why Corporate Officers are Fiduciaries. ***Wm.& Mary L.Rev.***, (04), 1597–1654.; Stout, L. (2013). The shareholder value myth. ***European Financial Review, April-May***; Eccles, R. G., & Youmans, T. (2016). Materiality in Corporate Governance : The Statement of Significant Audiences and Materiality. ***Journal of Applied Corporate Finance, 28***(2), 39–46.

[114] The Modern Corporation Statement on Company Law https://themoderncorporation.wordpress.com/company-law-memo/; see also Biondi, Y. et al. (2007). ***The Firm as an Entity: Implications for Economics, Accounting, and the Law***. London & New York: Routledge.; Gerner-Beuerle, C., Paech, P., & Schuster, E. P. (2013). ***Studies on Directors' Duties and Liability***.

[115] The Modern Corporation Statement on Company Law https://themoderncorporation.wordpress.com/company-law-memo/; Gerner-Beuerle, C. et al. (2013). ***Studies on Directors' Duties and Liability***; Biondi, Y. et al. (2007). ***The Firm as an Entity: Implications for Economics, Accounting, and the Law***. London & New York: Routledge.

[116] OECD Guidelines for Multinational Enterprises, which acknowledge the importance of creating value for all stakeholders, including but not limited to shareholders (OECD (2011), ***OECD Guidelines for Multinational Enterprises***, OECD Publishing); Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3.

[117] Aglietta, M., & Rebérioux, A. (2005). ***Corporate governance adrift : a critique of shareholder value***. Cheltenham: Edward Elgar; Biondi, Y. et al. (2007). ***The Firm as an Entity: Implications for Economics, Accounting, and the Law***. London & New York: Routledge; Tricker, B. (2012). ***Corporate Governance: Principles, Policies and Practices***. Oxford: Oxford University Press.

[118] Corporate Governance Code Monitoring Committee. (2016). Dutch corporate governance code: Proposal for revision, 10.

[119] See Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.5.

[120] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: New York Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3; An overview of practices used by corporations to tie Executive Compensation Tied to ESG Performance are provided in Ceres (2010). ***Gaining Ground: Corporate Progress on the Ceres Roadmap for Sustainability***, Ceres publishing. For example, in materials corporation Alcoa 20 percent of executive cash compensation is tied to safety, environmental stewardship, including voluntary GHG reductions, energy efficiency and diversity goals. Corporations may choose to use a single set of metrics for reporting and incentive schemes. The Global Reporting Initiative, Future Fit Business Benchmark, and B corporation assessment also provide useful approaches.

[121] Legal memoranda on fiduciary duty and corporate obligations with regard to non-financial reporting and related topics collected by American Bar Association Sustainable Development Task Force, available at: http://www.americanbar.org/groups/leadership/office_of_the_president/sustainable_development_task_force.html; Special Representative of the Secretary on the Issue of Human Rights and Transnational Corporations and other Business Enterprises' Corporate Law Project, See LLP, Clifford Chance (2009). ***Mandate of the Special Representative of the Secretary- General (SRSG) on the Issue of Human Rights and Transnational Corporations and other Business Enterprises***.

[122] See Blackrock (2016). ***Adapting portfolios to climate change Implications and strategies for all investors*** (Global Insights). Retrieved from Blackrock Investment Institute: https://www.blackrock.com/investing/literature/whitepaper/bii-climate-change-2016-us.pdf

[123] Kay, J. (2015). ***Other people's money: The real business of finance.*** New York: PublicAffairs; Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books.

[124] The Sustainability Accounting Standards Board concluded that 72 of 79 sectors they analyzed are materially affected by climate risks: Jan 2016 briefing (see the sustainability accounting standards board (2016). ***Climate Risk***, SASB technical bulletin. San Francisco CA: Sustainability Accounting Standards Board.

[125] Blackrock (2016). ***Adapting portfolios to climate change Implications and strategies for all investors*** (Global Insights). Retrieved from Blackrock Investment Institute: https://www.blackrock.com/investing/literature/whitepaper/bii-climate-change-2016-us.pdf

[126] For example, both BP and Shell were eventually forced to agree to shareholder proposals on climate risk reporting after a coalition of investors engaged with these corporations regarding their climate change strategies and their eventual transition to low carbon alternatives.

[127] Eccles, R. G., & Youmans, T. (2015). Materiality in Corporate Governance : The Statement of Significant Audiences and Materiality. ***Harvard Business School General Management Unit Working Paper No. 16-023***., 14.

[128] Kay, J. (2015). ***Other people's money: The real business of finance.*** New York: PublicAffairs.

[129] For example, a corporation that sources garments from a high-risk region could institute a health and safety compliance programme and train divisions of the corporation that are best placed to detect violations, such as sourcing and sales teams.

[130] Bourdon, W., & Queinnec, Y. (2010). *Regulating Transnational Companies 46 proposals*.

[131] An in control statement is a statement by the board concerning its responsibilities for designing and maintaining an adequate system for internal control over financial reporting and relevant risk management and control systems.

[132] Johnston, A., & Morrow, P. (2015). Towards long-termism in corporate governance : the Shareholder Rights Directive and beyond. In S. Vitols (Ed.), *Long-term investment and the Sustainable Company: a stakeholder perspective* (Vol. 3). Brussels: European Trade Union Institute (ETUI); Johnston, A., & Morrow, P. (2016). Fiduciary Duties of European Institutional Investors: Legal Analysis and Policy Recommendations. *Research Paper Series, No. 2016-04*; Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? *The Business Lawyer,* 66, 1–27.

[133] Sorkin, A.R. (April 14, 2015). *BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors. The New York Times*.

[134] This argument has been made by insurers like Aviva and Swiss Re, who have argued that systemic risks have to become an integral part of corporations' and investors' strategizing (report from 5 May 2015 London Tomorrow's Company event).

[135] Concrete examples are the Carbon Disclosure Project and the Cambridge University Endowment Fund and Norway's sovereign wealth funds' campaigns.

[136] Auvray T., Dallery T., and Rigot S. (2016). *L'entreprise Liquidée. La Finance Contre l'Investissement.* Paris: Michalon.

[137] Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: Zurich Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School.

[138] Tonello, M., & Singer, T. (2015). *The Business Case for Corporate Investment in ESG Practices. The Conference Board.* New York; Eccles, R. G., Ioannou, I., & Serafeim, G. (2014). The impact of corporate sustainability on organizational processes and performance. *Management Science, 60*(11), 2835–2857.

[139] Despite the material relevance of ESG matters to investment decisions, there is a lack of guidance for institutional investors on how to implement their obligation to consider these matters. Many trustees are therefore reluctant to factor the risks and opportunities into their portfolio decisions. This is particularly true for pension funds that rely on passive investment strategies that take a short-term, quantitative approach to manage risks across their portfolios. Purpose of the Corporation Project. (2016). *Purpose of the Corporation Project*. (2016). *Corporate Governance for a changing world: French Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School; Johnston, A., & Morrow, P. (2016). Fiduciary Duties of European Institutional Investors: Legal Analysis and Policy Recommendations. *Research Paper Series, No. 2016-04*.

[140] Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: London Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School; Strine has suggested that voting strategies for funds (including index funds) should become more transparent and that voting strategies should be consistent with overall policies. Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? *The Business Lawyer, 66*, 1–27.

[141] Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: London Roundtable Executive Summary.* Brussels and London: Frank Bold and Cass Business School.

[142] Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: New York Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, p.5; Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: London Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, p.6; See Purpose of the Corporation Project. (2016). *Corporate Governance for a changing world: Oslo Roundtable Executive Summary.* Brussels and London: Frank Bold and Cass Business School; Strine (2007:32) has suggested that the entities that provide proxy voting advice and corporate governance ratings should be subjected to the same disclosure requirements as major shareholders, that they should make clear how their ratings actually work, and that they should disclose how they get paid for the provision of those ratings. Strine, L. E. J. (2007). Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance. *Journal of Corporation Law, 33*(1), 41–46.

[143] Purpose of the Corporation Project. (2015). Corporate Governance for a changing world: *New York Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School.

Section V: Broader purpose and the board

[144] See Purpose of the Corporation Project. (2015*). Corporate Governance for a changing world: New York Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, pp.1-2; Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: Zurich Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, pp.3-4.

[145] Purpose of the Corporation Project. (2016). *Corporate Governance for a changing world: Oslo Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School; Sjöstrand, S.-E., Berglund, T., Grönberg, L., Poulfelt, M. K. F. S. P., & Sigurjonsson, O. (2016). *Nordisk bolagsstyrning. En närstudie av ägarstyrning och styrelseprocesser i 36 storföretag*. Stockholm: SSE Institute for Research (SIR).; Van Bekkum, J., Hijink, J. B. S., Schouten, M. C., & Winter, J. W. (2010). Corporate Governance in the Netherlands. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), *Netherlands Reports to the Eighteenth International Congress of Comparative Law* (pp. 239–282). Intersentia, International Law Series.

[146] Purpose of the Corporation Project. (2016). *Corporate Governance for a changing world: Dutch Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, p.2.

[147] Purpose of the Corporation Project. (2016). *Corporate Governance for a changing world: Dutch Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School.

[148] *A Review of Corporate Governance in UK Banks and Other Financial Industry Entities (Walker Report)*. 2009.

[149] Herman, E. S. (1981). ***Corporate control, corporate power.*** Cambridge: Cambridge University Press; Tricker, B. (2012). ***Corporate Governance: Principles, Policies and Practices***. Oxford: Oxford University Press.

[150] Strine, L. E. J. (2007). Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance. ***Journal of Corporation Law, 33***(1), 41–46.

[151] Tricker, B. (2012). ***Corporate Governance: Principles, Policies and Practices***. Oxford: Oxford University Press.

[152] Strine, L. E. J. (2014). Making It Easier for Directors to Do the Right Thing. ***Harv. Bus. L. Rev., 253.***

[153] Joseph, J., Ocasio, W., & Mcdonnell, M. H. (2014). The structural elaboration of board independence: Executive power, institutional logics, and the adoption of CEO-only board structures in U.S. corporate governance. ***Academy of Management Journal, 57***(6), 1834–1858; Kaufman, A., & Englander, E. (2005). A team production model of corporate governance. ***Academy of Management Executive, 19***(3), 9–22; Tricker, B. (2012). ***Corporate Governance: Principles, Policies and Practices***. Oxford: Oxford University Press; Pye, A. (2002). The changing power of "explanations": Directors, academics and their sensemaking from 1989 to 2000. ***Journal of Management Studies, 39***(7), 906–925.

[154] If NEDs are considered to represent specific constituencies and interests, they must have clearly defined roles, functions and subsequently, potential liabilities. Additionally, their mandate to represent particular interests must be framed and clearly explained in their overall responsibility to the corporation and reflected in other parts of corporation's governance system. In particular, this should apply to the expression of its purpose and commitments. Further details are provided in section VII that deals with the engagement of stakeholders in corporate governance.

[155] Veldman, J., & Willmott, H. C. (2016). The cultural grammar of governance: The UK Code of Corporate Governance, reflexivity, and the limits of "soft" regulation. ***Human Relations, 69***(3), 581–603.

[156] "Stockholders who make substantive proposals with long-term effects, such as bylaws, precatory proposals relating to substantive corporate governance, or proposals for a slate of directors to be elected, should have a substantial, positive economic interest in the corporation; and the corporate electorate should receive full disclosure of the economic interests of proponents of such action, and that disclosure should be updated regularly until stockholder action is finally taken." Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, pp.9-10.

[157] As long-term investors with large holdings are often not in a position to quickly exit their holdings, having influence on the board would benefit institutional investors with a long-term view on their investment. See Gospel, H., & Pendleton, A. (2003). Finance, Corporate Governance, and the Management of Labour: A Conceptual and Comparative Analysis. ***British Journal of Industrial Relations, 41***(3), 557–582; See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School; Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: New York Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[158] Confino, J. (April 24, 2012). Unilever's Paul Polman: challenging the corporate status quo. ***The Guardian***. Retrieved from https://www.theguardian.com/sustainable-business/paul-polman-unilever-sustainable-living-plan. See also a description of Unilever's strategy at: http://www.unilever.com/sustainable-living/the-sustainable-living-plan/our-strategy/.

[159] Sorkin, A. R. (April 14, 2015). BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors. ***The New York Times***.

[160] Geuss, M. (March 1, 2014). At Apple shareholder's meeting, Tim Cook tells off climate change deniers. ***Arstechniqua***.

[161] Hambrick, D. C., Misangyi, V. F., & Park, C. A. (2015). the Quad Model for Identifying a Corporate Director's Potential for Effective Monitoring: Toward a New Theory of Board Sufficiency. ***Academy of Management Review, 40***(3), 323–344.

[162] Broome, L., Conley, J., & Krawiec, K. (2010). Dangerous Categories: Narratives of Corporate Board Diversity. ***North Carolina Law Review, 89,*** 759–808; Langevoort, D. (2011). Commentary: Puzzles about Corporate Boards and Board Diversity. In H. K. Baker & R. Anderson (Eds.), ***Corporate Governance: A Synthesis of Theory, Research, and Practice.*** Hoboken, NJ: Wiley.

[163] "...Diversity within the management board and the supervisory board is beneficial for proper decision-making within the corporate bodies. It contributes to a constructive debate about views and decisions and, in addition, creates a more sympathetic attitude to innovative ideas of other members of the management board or supervisory board. Consequently, a mixed composition of the management board and supervisory board may lead to decisions that are more thoroughly considered and weighed" (Corporate Governance Code Monitoring Committee. (2016). Dutch corporate governance code: Proposal for revision).

[164] In Europe, gender representation on boards is becoming regulated. Several European countries have passed laws requiring or encouraging representation of women on corporation boards, including Belgium, France, the Netherlands, Norway and Spain. In the UK, the Corporate Governance Code recommends that board members be appointed "on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender" (The UK Corporate Governance Code, 2014, principle B.2.). The European Commission has proposed a directive that would set a minimum threshold of 40% for the under-represented sex in non-executive board level positions in listed companies and self-imposed targets for executive directors. "The German code prescribes minimum targets of 30% women and 30% men for the supervisory board. The French code has adopted an indirect approach, making a distinction between the short and the medium terms. The share of women serving on the management board should be 20% within three years of the shareholders' meeting of 2010. During the subsequent three years, this share should be increased to 40%." (Corporate Governance Code Monitoring Committee. (2016). Dutch corporate governance code: Proposal for revision, p.28). In the Dutch context, a 30% target for female representation, subject to a comply or explain principle is proposed for the new corporate governance code (Corporate Governance Code Monitoring Committee. (2016). Dutch corporate governance code: Proposal for revision, p.15). The Swiss are aiming for the same target, also under a comply or explain regime (Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.7).

[165] Corporate Governance Code Monitoring Committee. (2016). Dutch corporate governance code: Proposal for revision, p.28; Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[166] Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, 1–27; Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: New York Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[167] Katz, D. A., & McIntosh, L. A. (2014). Renewed Focus on Corporate Director Tenure. ***New York Law Journal.***

[168] In the Netherlands, the bar for renewal is set at 12 years. In the Paris Roundtable, it was suggested that 12 years for renewals was too long. In the UK, nine years is considered too long (UK corporate governance Code); Pozen, R., & Hamacher, T. (May 31, 2015). The trend towards board term limits is based on faulty logic. ***Financial Times.***

[169] In the US, the use of staggered boards together with the use of poison pills, which is considered to afford the maximum available protection against takeovers, has declined from 61 percent in 1999 to 34 percent at the end of 2008. Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, p.15.

[170] Cremers, M., & Sepe, S. M. (2016). The Shareholder Value of Empowered Boards. ***Stanford Law Review***.

[171] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: New York Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3.

[172] Raelin and Bondy (2013) propose an oversight board, at the industry level or outside the company. Several jurisdictions have already established an authority with powers to enforce legal requirements and directly engage in corporate governance and decision-making in case of breaking of law. For example, Australia has instituted a strong regulator for markets and corporations (Raelin, J. D., & Bondy, K. (2013). Putting the good back in good corporate governance: The presence and problems of double-layered agency theory. ***Corporate Governance (Oxford), 21***(5), 420–435). In the Netherlands, the Enterprise Chamber can provide remedies in case of mismanagement, and "... intervene in, for example, takeover situations, by taking provisional measures." Van Bekkum, J., Hijink, J. B. S., Schouten, M. C., & Winter, J. W. (2010). Corporate Governance in the Netherlands. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), Netherlands Reports to the Eighteenth International Congress of Comparative Law, p.14.

In an analogous manner, the courts in the Netherlands have the ability to scrutinize the actions of shareholders who hold at least ten percent of the shares. Van Bekkum, J., Hijink, J. B. S., Schouten, M. C., & Winter, J. W. (2010). Corporate Governance in the Netherlands. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), Netherlands Reports to the Eighteenth International Congress of Comparative Law (pp. 239–282); Du Plessis, J. J. (2012). Company law developments in South Africa : modernisation and some salient features of the Companies Act 71 of 2008. Australian Journal of Corporate Law, 27(1), 46–72.

[173] See Cadbury, A. (2002). ***Corporate governance and chairmanship: A personal view***. Oxford: Oxford University Press; Garratt, B. (1996). ***The fish rots from the head: The Crisis in Our Boardrooms: Developing the Crucial Skills of the Competent Director.*** London: HarperCollinsBusiness; Dutch Corporate Governance Code - Proposal for revision 2016: 36-37l; Tricker, B. (2012). ***Corporate Governance: Principles, Policies and Practices, Oxford: Oxford University Press***.

[174] Several jurisdictions have introduced rules that empower state authorities to remove unsuitable directors and prevent them from acting as company directors for specified periods of time if they break the law. For example in the UK (Company Directors Disqualification Act 1986) or Germany "a director can be recalled at any time from his position by the shareholders or a supervisory board of a stock corporation if the corporate body is of the opinion that a director has violated the law and caused a material damage for the company." See World Finance. (2009).Clamping down on directors. ***Special Report Series***. However it is relatively rare and difficult to trigger a disqualification order for an external authority that does not have access to internal information enabling attribution of responsibility. (see http://www.accaglobal.com/in/en/student/exam-support-resources/fundamentals-exams-study-resources/f4/technical-articles/Company-directors.html). As argued in the New York Roundtable this issue may also be addressed in board regulations by introducing a reasonable recall provision for incoming directors, which the board, shareholders or other specified actors could trigger in the event of wrongdoing.

[175] "Corporate law clearly vests the power to manage the corporation in its directors, and not in the stockholders." Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, p.4.

[176] In France and in the Netherlands, workers' councils have the possibility, in specific cases, to convoke an extraordinary session of the board. In section VII, we address stakeholder consultation in more detail.

Section VI : Revise incentive structures

[177] Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36***, 857–909; Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books.

[178] See also Department for Business, Innovation and skills. (2012). ***The Kay review of UK equity market and long-term decision making (Final Report***). London: BIS Publications Orderline.

[179] Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36,*** 857–909; Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books.

[180] Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained; Kilroy, D., & Schneider, M. (2014). ***The Legacy of Good Leadership. A Wealth Creation Paradigm for the Third Millennium.*** HistoUltimo (NSW): Read Along Publishing.

[181] Davis, G. F. (2009). ***Managed by the markets: How finance re-shaped america.*** Oxford: Oxford University Press; Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36***, 857–909; Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books.

[182] Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books.

[183] US figures: "The soaring compensation of CEOs in America's large corporations over the last three decades, relative to the pay of average workers—from a ratio of 20 to 1 in 1965, to 30 to 1 in 1978, 123 to 1 in 1995, 296 to 1 in 2013, and over 300 to 1 today. Overall, CEO pay climbed 937 percent between 1978 and 2013, while the pay of the typical worker rose just 10.2 percent." (Reich, R. B. (2016). ***Saving capitalism: For the many, not the few. London:*** Icon Books, p.97).

[184] See Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books, pp. 102-103; Goodway, N., & English, S. (March 14, 2013). UBS pays £17m "golden hello" to the man who broke RBS. ***Independent;*** The Telegraph (February 22, 2013). Novartis chairman apologises for "golden handshake". Retrieved from http://www.telegraph.co.uk/finance/newsbysector/pharmaceuticalsandchemicals/9888351/Novartis-chairman-apologises-for-golden-handshake.html

[185] Bebchuk, L. a., & Fried, J. M. (2005). Pay Without Performance: Overview of the Issues. ***SSRN Electronic Journal, 17***(507), 16; Mishel, L., & Davis, A. (2015). Top CEOs Make 300 Times More than Typical Workers.

[186] "The share of corporate income devoted to compensating the five highest-paid executives of large public firms went from an average of 5 percent in 1993 to more than 15 percent in 2013. " (Reich quoting US figures in Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books, p.98).

[187] In the US, as late as 1981, corporations directed a little less than half their profits to shareholders, while between 2003 and 2012, listed corporations in the S&P 500 index spent a reported 91% of their earnings on share buybacks and dividends (Lazonick, W. (2014). Profits without prosperity. ***Harvard Business Review***; Meyerson, H. (August 26, 2014). In corporations, it's owner-take-all. ***The Washington Post***. Retrieved from https://www.washingtonpost.com/opinions/harold-meyerson-in-corporations-its-owner-take-all/2014/08/26/0c1a002a-2ca7-11e4-bb9b-997ae96fad33_story.html. In the UK, the figure is reported to be 89% in the period 2001-2010 (Lazonick, W. (August 27, 2012). Big payouts to shareholders are holding back prosperity. ***The Guardian***; See also Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36***, 857–909; Lazonick, W. (2014). Profits without prosperity. ***Harvard Business Review***).

[188] Lazonick, W. (2014). Profits without prosperity. ***Harvard Business Review.***

[189] Kilroy, D., & Schneider, M. (2014). ***The Legacy of Good Leadership. A Wealth Creation Paradigm for the Third Millennium***. HistoUltimo (NSW): Read Along Publishing.

[190] Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36***, 857–909.

[191] Department for Business, Innovation and Skills. (2010). ***A long-term focus for corporate Britain: a call for evidence.*** London: BIS Publications Orderline, p.26; Enayati, H., Hallock, K., & Barrington, L. (2015). TSR, ***Executive Compensation, and Firm Performance***; da Costa, P. N. (June 22, 2015). Top-CEO Pay Isn't Driven By Talent, New Study Says.

[192] Department for Business, Innovation and Skills. (2010). ***A long-term focus for corporate Britain: a call for evidence.*** London: BIS Publications Orderline, pp. 31-32; Kay, J. (2015). ***Other people's money: The real business of finance.*** New York: PublicAffairs; See The Telegraph (February 22, 2013). Novartis chairman apologises for 'golden handshake'. Retrieved from http://www.telegraph.co.uk/finance/newsbysector/pharmaceuticalsandchemicals/9888351/Novartis-chairman-apologises-for-golden-handshake.html

[193] Sorkin, A. R. (April 14, 2015). BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors. ***The New York Times.***

[194] Reich, R. B. (2016). ***Saving capitalism: For the many, not the few.*** London: Icon Books.

[195] To account for long-term results, financial and non-financial; to prevent reward for investments but not for their success and to avoid a conflict and a risk that they would incentivise pursuing objectives in one area at the expense of another the reward system and performance indicators must be closely connected to the strategy and performance indicators used in corporate reporting and must be based on the idea of integrating sustainability and financial reporting. This is described in detail in Section IX.

[196] Corporate Governance Code Monitoring Committee. (2008). Dutch corporate governance code: Principles of good corporate governance and best practice provisions.

[197] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3. The participants in the Dutch Roundtable suggested that to provide guidance about taking strategic decisions in accordance with corporate strategy, culture, and values, balancing sometimes contradictory objectives, corporations could create a matrix measuring the net positive impact value (NPIV) of strategic business decisions to shareholders, stakeholders and society-at-large, and their alignment with the corporation's purpose. Besides improving the decision-making processes, such a matrix would allow corporation to develop better understanding what does it mean to act purposefully in practical situations, identify gaps in its strategy, and evaluate its ability to make decisions in accordance with its purpose.

[198] Following a referendum (See Willsher, K., & Inman, P. (March 3, 2013). Voters in a Swiss referendum back curbs on executives' pay and bonuses. ***The Guardian***), Switzerland proposed a law (See Reutter, Y., & Raun, D. (2014). Prohibited Compensation Payments under the Minder Ordinance (VegüV). ***CapLaw, 3*** for further details) which would have prohibited the payment of golden handshakes and severance to directors of listed corporations; See also Thannisch, R. (2011). Reorienting management remuneration towards sustainability: lessons from Germany. In S. Vitols & N. Kluge (Eds.), ***The Sustainable Company: a new approach to corporate governance***. Brussels: European Trade Union Institute (ETUI).

[199] Hildyard, L. (March 1, 2015). Excessive executive pay a threat to business, say Institute of Directors members. High Pay Centre. Retrieved from http://highpaycentre.org/blog/excessive-executive-pay-a-threat-to-business-say-institute-of-directors-mem

[200] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p. 15; Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: French Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3.

[201] See Wartzman, R. (September 12, 2008). Put a Cap on CEO Pay: Peter Drucker thought the top exec shouldn't get more than 25 times the average salary in the company. Here's why. ***Bloomberg***. Retrieved from http://www.bloomberg.com/news/articles/2008-09-12/put-a-cap-on-ceo-paybusinessweek-business-news-stock-market-and-financial-advice

[202] Hildyard, L. (March 1, 2015). Excessive executive pay a threat to business, say Institute of Directors member, ***High Pay Centre***. Retrieved from http://highpaycentre.org/blog/excessive-executive-pay-a-threat-to-business-say-institute-of-directors-mem; Strine, L. E. J. (2007). Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance. ***Journal of Corporation Law, 33***(1), 41–46; Tricker, B. (2012). ***Corporate Governance: Principles, Policies and Practices***. Oxford: Oxford University Press.

[203] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L ***176, 27.6.2013, p. 338–436***.

[204] Johnston, A. (2014). Preventing the next financial crisis? Regulating bankers' pay in Europe. Journal of Law and Society, 41(1), 6–27.

[205] Morrow, P., & Brachotte, S. (2016). ***Shareholder Rights Directive*** (Policy Brief). Retrieved from Frank Bold at http://www.purposeof-corporation.org/documents/briefing-shareholder-rights-directive.pdf

[206] MacLellan, K. (2016). Shareholder committees could curb UK bosses' pay bonanza – report. ***Reuters***.

[207] The Netherlands, after having banned the use of stock-based compensation for directors for many years, has moved to reintroduce stock options in its latest revision of the Dutch Corporate Governance Code (van Bekkum, J., et al. (2010). Corporate Governance in the Netherlands. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), ***Netherlands Reports to the Eighteenth International Congress of Comparative Law*** (pp. 239–282). Intersentia, International Law Series).

Section VII : Stakeholders

[208] Ciepley, D. (2013). Beyond public and private: Toward a political theory of the corporation. ***American Political Science Review,*** 1-20; Djelic, M., & Bothello, J. (2013). Limited liability and its moral hazard implications: The systemic inscription of instability in contemporary capitalism. ***Theory and Society, 42***(6), 589-615; Gleeson-White, J. (2014). ***Six Capitals: The revolution capitalism has to have - or can accountants save the planet?*** Sydney: Allen & Unwin; Parkinson, J. E., Gamble, A., & Kelly, G. (2000). ***The Political Economy of the Company***. Oxford: Hart Publishing; Johnson, L. P. Q., & Millon, D. (2005). Recalling Why Corporate Officers are Fiduciaries. ***William & Mary Law Review, 46***(5), p.1644; Segrestin, B., & Hatchuel, A. (2011). Beyond agency theory, a post-crisis view of corporate law. ***British Journal of Management, 22***(3), 484–499; Zumbansen, P., & Williams, C. A. (2011). ***The Embedded Firm Corporate Governance, Labor, and Finance Capitalism***. Cambridge.

[209] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[210] ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School; Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School.

[211] Morrison, J. (2014). ***The Social License: How to Keep Your Organization Legitimate***. Basingstoke: Palgrave Macmillan.; Tricker, B. (2012). ***Corporate Governance: Principles, Policies and Practices***. Oxford: Oxford University Press.; Zumbansen, P., & Williams, C. A. (2011). ***The Embedded Firm Corporate Governance, Labor, and Finance Capitalism.*** Cambridge: Cambridge University Press. See also Purpose of the Corporation Project. (2015).

[212] Johnston, A., & Morrow, P. (2015). Towards long-termism in corporate governance : the Shareholder Rights Directive and beyond. In S. Vitols (Ed.), ***Long-term investment and the Sustainable Company: a stakeholder perspective*** (Vol. 3). Brussels: European Trade Union Institute (ETUI).

[213] Novo Nordisk. (2015). ***Why do so many people in cities get diabetes?*** (Annual Report).

[214] Employee representation in different forms is part of corporate governance arrangements in 19 jurisdictions in the EU (Williamson, J. (2013). ***Workers on board: The case for workers' voice in corporate governance***. London).

[215] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.7.

[216] Du Plessis, J. J. (2012). Company law developments in South Africa : modernisation and some salient features of the Companies Act 71 of 2008. ***Australian Journal of Corporate Law, 27***(1), 46–72.

[217] Cremers, J. (2013). From harmonisation to regulatory competition. In S. Vitols & J. Heuschmid (Eds.), ***European company law and the Sustainable Company: a stakeholder approach.*** (pp. 89–113). European Trade Union Institute (ETUI).

[218] Williamson, J. (2013). ***Workers on board: The case for workers' voice in corporate governance***. London.

[219] Deakin, S. (2012). The corporation as Commons: Rethinking property rights, governance and sustainability in the business enterprise. ***The. Queen's LJ,*** (September), 339–381; Williamson, O. E., & Winter, S. G. (1993). The Nature of the Firm: Origins, Evolution, and Development. ***Administrative Science Quarterly, 38***(3); Johnston, A. (2009). ***EC Regulation of Corporate Governance***. Cambridge: Cambridge University Press.

[220] Johnston, A. (2009). ***EC Regulation of Corporate Governance.*** Cambridge: Cambridge University Press.

[221] See Blair, M. M. (1994). ***Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century***; Deakin, S. (2012). The corporation as Commons: Rethinking property rights, governance and sustainability in the business enterprise. ***The. Queen's LJ***, (September), 339–381; Cremers, J. (2015). Workplace rights and sustainability reporting – is the workforce a well-informed stakeholder ? In S. Vitols (Ed.), ***Long-term investment and the Sustainable Company: a stakeholder perspective***. Brussels: European Trade Union Institute (ETUI); Schömann, I. (2012). The current state of information and consultation rights in the European Union, in Vitols, S., Heuschmid, J. (Eds.), ***European Company Law and the Sustainable Company, a Stakeholder Approach***. European Trade Union Institute (ETUI); Talbot, L. (2014). Operationalizing Sustainability in Company Law Reform Through a Labour-Centred Approach: A

UK Perspective. ***European Company Law, 11***(2), 94–97; Villiers, C. (2014). Post-crisis corporate governance and labour relations in the EU (and beyond). ***Journal of Law and Society, 41***(1), 73–94; Williamson, J. (2013). ***Workers on board: The case for workers' voice in corporate governance***. London; Conchon, A. (2013). Regulating company law : the need for a holistic approach. In S. Vitols & J. Heuschmid (Eds.), ***European company law and the Sustainable Company: a stakeholder approach.*** (pp. 71–87). European Trade Union Institute (ETUI)).

[222.] Williamson, J. (2013). ***Workers on board: The case for workers' voice in corporate governance***. London.

[223.] See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.5.

[224.] Fostering customer influence was also mentioned in the Roundtables, for instance by strengthening institutions like a national ombudsman. See Craig Smith, N. (2009). Consumers as Drivers of Corporate Social Responsibility. In A. Crane, A. McWilliams, D. Matten, J. Moon, & D. Siegel (Eds.), ***The Oxford Handbook of Corporate Social Responsibility. Oxford***: Oxford University Press.

[225.] Pickard, J. (July 11, 2016). Theresa May vows corporate crackdown on 'privileged few'. ***Financial Times***. Retrieved from https://www.ft.com/content/d80f606e-46b1-11e6-8d68-72e9211e86ab.

[226.] The difference between active representation and passive representation in terms of a distinction between interests and rights is discussed in Vasudev, P.M. (2012). The Stakeholder Principle, Corporate Governance, and Theory: Evidence from the Field and the Path Onward. ***Hofstra Law Review, 41***(2), Article 6.

[227.] There is a discussion in the legal and corporate governance literature whether such representation increases decision-making costs and interferes with the consideration of the interests of the company as a whole by directors (Pistor, K. (1999). Codetermination: A Sociopolitical Model with Governance Externalities. In M. Blair & M. J. Roe (Eds.), ***Employees and Corporate Governance*** (pp. 178–181). Brookings Institution Press; Summers, C. W. (1982). Codetermination in the United States: A Projection of Problems and Potentials. Summers, C. W. (1982). Codetermination in the United States: A Projection of Problems and Potentials. ***Journal of Comparative Corporate Law and Securities Regulation,*** *4*(2), 169–171). There is also a discussion about the willingness of employees to sit on boards if there is a possibility of making redundancies (See also ***Corporate Governance and Directors' Liabilities*** Wedderburn, K. W. (1985). The Legal Development of Corporate Social Responsibility. In in K. Hopt & G. Teubner (Eds.), ***Corporate Governance and Directors' Liabilities*** (p. 40). De Gruyter). It was suggested as long ago as 1968 that a clearly defined mandate to represent a particular stakeholder interest in board level discussions of policy, but otherwise focusing on the interest of the company as a whole as the primary interest, would provide a legitimate broadening of the scope of directors' duties.

[See the reservation of Messrs Shonfield and Wigham to the Donovan Report (Wedderburn, K. W. (1968). Report of the Royal Commission on Trade Unions and Employers' Associations. ***The Modern Law Review, 31***(6), 674–682), para 1005, calling for legislation to require the appointment of not less than two workers' directors, to act as 'guardians of the workers' interest at the stage when company policy is being formulated… and should in all other respects exercise the rights and responsibilities of non-executive directors of companies to which they are appointed.'"] In recent debates in the UK following the Brexit vote, the Institute of Directors suggested that companies could appoint a non-executive director to represent employee interests, but that this should be voluntary (See O'Connor, S., & Pickard, J. (September 8, 2016). TUC keen to co-operate over putting workers on boards. ***Financial Times,*** Retrieved from https://www.ft.com/content/9b945746-7507-11e6-b60a-de4532d5ea35).

[228.] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[229.] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[230.] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: French Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School; It should be noted that non-binding "say on pay" proposals for shareholders, which were introduced by the Companies Act 2006 in the UK, and by the Dodd–Frank Wall Street Reform and Consumer Protection Act §951 in the US, have not led to significant change.

[231.] See Morrow, P., & Brachotte, S. (2016). ***Shareholder Rights Directive*** (Policy Brief). Retrieved from Frank Bold at http://www.purposeofcorporation.org/documents/briefing-shareholder-rights-directive.pdf

[232.] Cremers, J. (2012). From harmonisation to regulatory competition. In S. Vitols & J. Heuschmid (Eds.), ***European Company Law and the Sustainable Company, a Stakeholder Approach***. Brussels: European Trade Union Institute (ETUI).

Kamer stemt voor inspraak werknemers bij faillissement (June, 21, 2016). NU.

Section VIII : Long-term and sustainable investment

[233.] Department for Business, Innovation and Skills. (2010). A long-term focus for corporate Britain: a call for evidence. London: BIS Publications Orderline; Strine, L. E. J. (2014). Making It Easier for Directors to Do the Right Thing. ***Harv. Bus. L. Rev., 253.***

[234.] Kay, J. (2015). ***Other people's money: The real business of finance.*** New York: PublicAffairs.

[235.] Over the past two decades, investment horizons have shortened considerably. Turnover on the major equity exchanges is now running at 150% per year of aggregate market capitalisation, which implies the average holding period is eight months (See European Commission, Green Paper on The EU corporate governance framework, COM(2011) 164 final. Available at http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf; European Commission, Green Paper on Corporate governance in financial institutions and remuneration policies, COM(2010) 284 final. Available at http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf); For UK figures, see Department for Business, Innovation and Skills. (2010).A long-term focus for corporate Britain: a call for evidence. London: BIS Publications Orderline.

[236.] See Department for Business, Innovation and Skills. (2010). A long-term focus for corporate Britain: a call for evidence. London: BIS Publications Orderline.

[237.] Pye, A. (2001). Corporate boards, investors and their relationships: Accounts of accountability and corporate governing in action. ***Corporate Governance: An International Review, 9***(3), 186–195; Pye, A. (2002). The changing power of "explanations": Directors,

academics and their sensemaking from 1989 to 2000. ***Journal of Management Studies, 39***(7), 906–925; Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, 1–27.

The capacity to put pressure is enhanced by the threat of a market for corporate control and the use of incentive structures that reward boards and executives that adopt short-term share price-oriented strategies. Aglietta, M., & Rebérioux, A. (2005). ***Corporate governance adrift : a critique of shareholder value***. Cheltenham: Edward Elgar; Davis, G. F. (2009). ***Managed by the markets: How finance re-shaped america.*** Oxford: Oxford University Press. See also Section VI.

[238] Archer, S. (2011). Pension funds as owners and as financial intermediaries: A review of recent Canadian experience. In ***The embedded firm: Corporate governance, labor, and finance capitalism*** (pp. 177–204). Cambridge: Cambridge University Press.

[239] Lazonick, W. (2013). The Financialization of the U.S. Corporation : What Has Been Lost, and How It Can Be Regained. ***Seattle University Law Review, 36***, 857–909.

[240] See Cheffins, B. R. (2012). The History of Corporate Governance. ECGI - ***Law Working Paper No. 184/2012***; de Graaf, F., & Williams, C. A. (2011). The intellectual foundations of the global financial crisis: Analysis and proposals for reform. ***UNSW Law Journal, 32(***September), 383–412.

[241] Keay, A. (2014). Comply or explain in corporate governance codes: In need of greater regulatory oversight? ***Legal Studies, 34***(2), 279–304.

[242] Financial Reporting Council. (2012). ***The UK Stewardship Code***. London, p.1.

[243] In 2012 in the UK institutional investors held only 41% of shares while foreign investors also held 41% of shares. UK Office for National Statistics, 2012: 3; see also Department for Business, Innovation and Skills. (2010). A long-term focus for corporate Britain: a call for evidence. London: BIS Publications Orderline; Williamson, J. (2013). ***Workers on board: The case for workers' voice in corporate governance***. London, pp. 11-12.; for the US, see Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66,*** 1–27.

[244] See e.g. Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, 1–27.

[245] Archer, S. (2011). Pension funds as owners and as financial intermediaries: A review of recent Canadian experience. In ***The embedded firm: Corporate governance, labor, and finance capitalism*** (pp. 177–204). Cambridge: Cambridge University Press; Mayer, C. (2013). ***Firm Commitment: Why the corporation is failing us and how to restore trust in it***. Oxford: Oxford University Press; Melis, D. A. M. (2015). The Institutional Investor Stewardship Myth: A theoretical, legal and empirical analysis of prescribed institutional investor stewardship in a Dutch context, 1, 1–25; Strine, L. E. J. (2014). Making It Easier for Directors to Do the Right Thing. ***Harv. Bus. L. Rev., 253.***

[246] Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66, 1–27.***

[247] Strine, L. E. J. (2007). Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance. ***Journal of Corporation Law, 33***(1), 41–46.

[248] Millon, D. (2013). Shareholder Social Responsibility. ***Seattle University Law Review,*** 911–940; Keay, A. (2014). Comply or explain in corporate governance codes: In need of greater regulatory oversight? ***Legal Studies, 34(***2), 279–304.

[249] Johnston, A., & Morrow, P. (2015). Towards long-termism in corporate governance : the Shareholder Rights Directive and beyond. In S. Vitols (Ed.), ***Long-term investment and the Sustainable Company: a stakeholder perspective*** (Vol. 3). Brussels: European Trade Union Institute (ETUI); see Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? ***The Business Lawyer, 66***, 1–27.

[250] Tsagas, G. (2014). A long-term vision for UK firms? revisiting the target director's advisory role since the takeover of cadbury'S PLC. ***Journal of Corporate Law Studies, 14***(1), 241-275; Mayer, C. (2013). ***Firm Commitment: Why the corporation is failing us and how to restore trust in it.*** Oxford: Oxford University Press; Strine, L. E. J. (2014). Making It Easier for Directors to Do the Right Thing. ***Harv. Bus. L. Rev., 253.***

[251] The problems with institutional shareholder engagement on such issues has recently been reiterated by major investment firms, such as Berkshire Hathaway and Blackrock. See Sorkin, A. R. (April 14, 2015). BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors. ***The New York Times.***

[252] Williamson, J. (2012). The emperor's new clothes - enlightened shareholder value and the UK stewardship code. In S. Vitols & J. H. (Eds.), ***European company law and the sustainable company, a stakeholder approach***. Brussels: ETUI.

[253] Johnston, A., & Morrow, P. (2015). Towards long-termism in corporate governance : the Shareholder Rights Directive and beyond. In S. Vitols (Ed.), ***Long-term investment and the Sustainable Company: a stakeholder perspective*** (Vol. 3). Brussels: European Trade Union Institute (ETUI); Mayer, C. (2013). ***Firm Commitment: Why the corporation is failing us and how to restore trust in it.*** Oxford University Press; Strine, L. E. J. (2007). Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance. ***Journal of Corporation Law, 33***(1), 41–46.

[254] Garel, A., & Rérolle, J.-F. (2016). When fundamental investors relieve market pressures on management : Evidence from France, 1–29; Mintzberg, H. (2016). Do we really need stock markets? Retrieved from www.mintzberg.org/blog/stock-market; Zumbansen, P., & Williams, C. A. (2011). ***The Embedded Firm Corporate Governance, Labor, and Finance Capitalism***. Cambridge: Cambridge University Press.

[255] Keay, A. (2014). Comply or explain in corporate governance codes: In need of greater regulatory oversight? ***Legal Studies, 34***(2), 279–304; Strine, L. E. J. (2014). Making It Easier for Directors to Do the Right Thing. ***Harv. Bus. L. Rev., 253.***

[256] As Strine has argued, institutional investors represent a class of investor with the power to engage both directly and indirectly in corporate affairs that is not ordinarily recognized in corporate law, in securities, and in listing rules (Strine, L. E. J. (2007). Toward

Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance. *Journal of Corporation Law, 33*(1), p.32).

[257.] In the Netherlands, the threshold for shareholders who are entitled to put an item on the agenda of the AGM has recently been increased from 1% to 3%. van Bekkum, J., Hijink, J. B. S., Schouten, M. C., & Winter, J. W. (2010). Corporate Governance in the Netherlands. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), *Netherlands Reports to the Eighteenth International Congress of Comparative Law* (pp. 239–282). Intersentia, International Law Series.

[258.] Brossard, O., Lavigne, S., & Sakinç, M. E. (2013). Ownership structures and R&D in Europe: The good institutional investors, the bad and ugly impatient shareholders. *Industrial and Corporate Change, 22*(4), 1031–1068.

[259.] Department for Business, Innovation and Skills. (2010). *A long-term focus for corporate Britain: a call for evidence.* London: BIS Publications Orderline, p.18; Department for Business, Innovation and skills. (2012). *The Kay review of UK equity market and long-term decision making (Final Report)*. London: BIS Publications Orderline.

[260.] See Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: London Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, p.3.

[261.] In the Oslo roundtable it was argued that providing more rights to shareholders with a long-term holding may have negative or unintended effects, e.g. when shareholders who have a long-term share position do not actively support the transition to a sustainable business, whereas (potential) new shareholders may do so. This situation may effectively insulate boards from the adoption of a broader purpose of the corporation (Purpose of the Corporation Project. (2016). *Corporate Governance for a changing world: Oslo Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School). Nevertheless, given the dominance of the current short-term oriented model, the discussions in most roundtables reflected a consensus that a degree of protection is necessary for boards in order to adopt a broader purpose for the corporation and to protect its capacity for long term value creation. The proposals should be considered with this framing and this specific goal in mind. See also Bebchuk, L. A. (2013). The Myth that Insulating Boards Serves Long-Term Value. *Columbia Law Review, 113*(6), 1637-1694.

[262.] Mayer, C. (2013). *Firm Commitment: Why the corporation is failing us and how to restore trust in it.* Oxford: Oxford University Press.

[263.] See Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: New York Roundtable Executive Summary.* Brussels and London: Frank Bold and Cass Business School.

[264.] Strine, L. E. J. (2007). Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance. *Journal of Corporation Law, 33*(1), 41–46.

[265.] See Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: New York Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, p.3; Introducing time-weighted dividends would be easiest for private corporations at the moment of listing as their decision would be protected by the business judgment rule as well as state law, federal law and stock exchange listing rules (see Belinfanti, T. C. (2014). Shareholder cultivation and new governance. *Delaware Journal of Corporate Law, 38*(3), pp. 850-852).

[266.] See Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: New York Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School, p.3; see also Peterson, Kristina. (May 10, 2011). Loyalty shares – it's a long story. *The Wall Street Journal.*

[267.] See Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: New York Roundtable Executive Summary*. Brussels and London: Frank Bold and Cass Business School; Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: London Roundtable Executive Summary.* Brussels and London: Frank Bold and Cass Business School.

[268.] See Purpose of the Corporation Project. (2015). *Corporate Governance for a changing world: New York Roundtable Executive Summary.* Brussels and London: Frank Bold and Cass Business School, p.2; Larry Fink, the CEO of asset manager BlackRock, has suggested that capital gains taxes be reduced over time for long-term shareholders (see Sorkin, 2015). Currently, the US taxes short-term capital gains at 35 percent, while long-term gains are taxed at either 5 percent or 15 percent, depending upon the individual's taxbracket (Strine, 2010: 18). Fink recommended that gains on investments held for less than three years be taxed as ordinary income, not at the usually lower long-term capital gains rate, which now applies after one year and then to decrease the tax rate for each year of ownership beyond that, potentially dropping to zero after 10 years (Sorkin, 2015). A reduction in capital gains tax payable on shares held for a certain period of time would potentially limit wealth extraction by merger and acquisition by increasing the time any investment must be held before exemption from capital gains tax, while it does not entrench powerful shareholders at the expense of minority shareholders (Strine, 2007: 34). Sorkin, A. R. (2015). BlackRock's Chief, Laurence Fink, Urges Other C.E.O.s to Stop Being So Nice to Investors; Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? *The Business Lawyer, 66,* 1–27.

[269.] Strine, L. E. J. (2010). One Fundamental Corporate Governance Question We Face : Can Corporations Be Managed for the Long Term Unless Their Powerful Electorates Also Act and Think Long Term ? *The Business Lawyer, 66,* p.18.

[270.] This would be consistent with the notion in UK Company Law that companies may require investors to disclose information about their identity Department for Business, Innovation and Skills. (2010). *A long-term focus for corporate Britain: a call for evidence.* London: BIS Publications Orderline, p.16, point 3.10. However, this approach does not automatically address the issue of splitting the rights to share, share lending, and empty voting. Anker-Sørensen, L. (2016). Financial Engineering as an Additional Veil for the Corporate Group. Oslo: University of Oslo Faculty of Law Legal Studies Research Paper Series.

[271.] Van Bekkum, J., Hijink, J. B. S., Schouten, M. C., & Winter, J. W. (2010). Corporate Governance in the Netherlands, p.14. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), *Netherlands Reports to the Eighteenth International Congress of Comparative Law* (pp. 239–282). Intersentia, International Law Series.

[272.] Van Bekkum, J., Hijink, J. B. S., Schouten, M. C., & Winter, J. W. (2010). Corporate Governance in the Netherlands, p.3. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), *Netherlands Reports to the Eighteenth International Congress of Comparative Law* (pp. 239–282). Intersentia, International Law Series.

[273] The EU Transparency Directive also requires disclosure of acquisitions of shares above particular thresholds (See Council Directive 89/105/EEC relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems, 1988 O.J. L 40/8. Available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31989L0105&from=EN

[274] In the UK, the emergence of a market for corporate control called into question the system of consensual mergers which had prevailed until then. In many continental European countries hostile takeovers remained unheard of for decades to follow. The European Commission sought for a long time to introduce a takeover directive modelled on the UK's approach. However, its proposals met with very strong political opposition, and the directive which was eventually introduced allowed Member States to opt out of the prohibition on defensive measures, which a number of Member States, including Germany, did. Johnston, A. (2010). Varieties of Corporate Governance and Reflexive Takeover Regulation. In U. Bernitz and W-G Ringe (eds), ***Company Law and Economic Protectionism***, OUP.

[275] Strine notes: "Mergers and acquisitions are a regular part of business in today's dynamic markets, and corporate sales are therefore not aberrational but are an expected part of a corporate life cycle. If, in the important context of a change of control transaction, the only constituency whose best interests must be considered is stockholders, other constituencies' interests are decidedly not equal, because how these constituencies will be treated by the new owner is a matter of real-world importance." Strine, L. E. J. (2014). Making It Easier for Directors to Do the Right Thing. ***Harv. Bus. L. Rev***., p.238; See Deakin, S. (2012). The corporation as Commons: Rethinking property rights, governance and sustainability in the business enterprise. ***The. Queen's LJ,*** (September), 339–381.

[276] Davis, G. F. (2009). ***Managed by the markets: How finance re-shaped america.*** Oxford: Oxford University Press; Strine, L. E. J. (2007). Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance. ***Journal of Corporation Law, 33***(1), 41–46.

[277] Reich, R. B. (2016). ***Saving capitalism: For the many, not the few***. London: Icon Books.

[278] Deakin, S. (2012). The corporation as Commons: Rethinking property rights, governance and sustainability in the business enterprise. ***The. Queen's LJ***, (September), 339–381; Shleifer, A., & Summers, L. H. (1988). ***Breach of Trust in Hostile Takeovers. Corporate Takeovers: Causes and Consequences*** (Vol. I).

[279] The Dutch Corporate Governance Code, Proposal for revision (2016) states that "Takeover situations In the event of an actual or proposed takeover bid for the shares in the company, both the management board and the supervisory board should ensure that all stakeholder interests concerned are carefully weighed and any conflict of interest for supervisory board members is avoided. The management board and the supervisory board should be guided in their actions by the interests of the company and its affiliated enterprise." (Dutch Corporate Governance Code, Proposal for revision (2016: 38)). See also Van Bekkum, J., Hijink, J. B. S., Schouten, M. C., & Winter, J. W. (2010). Corporate Governance in the Netherlands, p.23. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), ***Netherlands Reports to the Eighteenth International Congress of Comparative Law*** (pp. 239–282). Intersentia, International Law Series; Sjafjell, B. (2010). The Core of Corporate Governance: Implications of the Takeover Directive for Corporate Governance in Europe. ***European Business Law Review, 22***(5).

[280] One option for policymakers and corporations, if they are permitted to do so by law, is to limit investors in their exercise of voting rights in a bankruptcy or M&A situation, as provided for in the German Generally Accepted Management Principles. Another strategy proposed by trade unions is that employees should be given broader information and consultation rights in a bankruptcy or M&A situation. See Cremers, J. (2013). From harmonisation to regulatory competition. In S. Vitols & J. Heuschmid (Eds.), ***European company law and the Sustainable Company: a stakeholder approach.*** (pp. 89–113). European Trade Union Institute (ETUI); see also Van Bekkum, J., et al. (2010). Corporate Governance in the Netherlands, p.22. In L. P. W. van Erp, J. H. M. & van Vliet (Ed.), ***Netherlands Reports to the Eighteenth International Congress of Comparative Law*** (pp. 239–282). Intersentia, International Law Series.

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[282] See Section IX.

Section IX : Corporate Reporting

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[286] See Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School; See also The International Integrated Reporting Council. (2013). ***Integrated Reporting***. London; Eccles, R. G., & Youmans, T. (2016). Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality. ***Journal of Applied Corporate Finance, 28***(2), 39–46.

[287] See Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Draft report of a global roundtable series.*** Brussels and London: Frank Bold and Cass Business School. Retrieved from http://www.purposeofcorporation.org/report-global-roundtable-series.pdf; UN Guiding Principles: Reporting Framework. (2015). Global Reporting Initiative and the UN Guiding Principles for Business and Human Rights Reporting Framework. New York.

[288] See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: New York Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School; Gleeson-White, J. (2014). ***Six Capitals: The revolution capitalism has to have - or can accountants save the planet?*** Sydney: Allen & Unwin.

[289] The 2017 GAAP Financial Reporting Taxonomy. Available at http://www.fasb.org/cs/ContentServer?c=Page&pagename=FASB%2FPage%2FSectionPage&cid=1176168400322

[290] Commission Regulation (EC) of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (Text with EEA relevance) ***OJ L 320, 29.11.2008.***

[291] See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: New York Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.3.

[292] In PwC's survey of 85 investors, 93% said that understanding management's view of potential risks and their mitigation strategies is important; 80% said that an explanation of a company's business model needs to link to its overall strategy to be meaningful; and 87% said that clear links between a company's strategic goals, risks, key performance indicators and financial statements is helpful for their analysis (2014).

[293] See Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School.

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[295] The International Integrated Reporting Council. (2013). ***Integrated Reporting***. London. Available at https://institutional.deutscheam.com/content/_media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_%282%29.pdf

[296] The International Integrated Reporting Council. (2013). ***Integrated Reporting***. London.

[297] The <IR> Framework categorises these resources into six "capitals": financial, manufactured, intellectual, human, social and relationship, and natural. Corporations use the framework to consider and report on the relationships between these capitals and how the firm creates and consumes value. The Johannesburg Stock Exchange (JSE) already requires the use of the integrated reporting model or mandates the provision of an explanation as to why this model is not used.

[298] Porter, M. E., & Kramer, M. R. (2011). Creating Shared Value. Harvard Business Review. Retrieved from https://hbr.org/2011/01/the-big-idea-creating-shared-value

[299] See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.6; Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.5; see also Deloitte: A Directors' Guide to Integrated Reporting. http://www2.deloitte.com/au/en/pages/risk/articles/directors-guide-integrated-reporting.html

[300] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.4.

[301] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.5; Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.6.

[302] GRI is a multi-stakeholder organisation based in Amsterdam that issues global standards in sustainability reporting. The first framework was launched in the 1990s and is now in its fourth version, known as G4. (https://www.globalreporting.org/)

[303] Fonseca, A., McAllister, M. L., & Fitzpatrick, P. (2012). Sustainability reporting among mining corporations: A constructive critique of the GRI approach. Journal of Cleaner Production.

[304] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: French Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School.

[305] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Oslo Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[306] Kendall, G., Rich, M., Fellingham, A., & Willard, B. (2016). ***Concepts, Principles and Goals.*** Future Fit Business Benchmark. Available at http://futurefitbusiness.org/resources/downloads/

[307] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School.

[308] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School; With specific regard to the EU, the EU has adopted the Directive 2014/95/EU, which establishes the basic parameters for reporting on non- or extra-financial information, but stops short of providing such indicators and methodology. The Directive requires EU Member States to apply new requirements to large listed and financial companies with more than 500 employees and require them to disclose information in their annual report on issues relating to the environment, social and employee matters, respect for human rights, and anti-corruption and bribery matters. The information should allow for an understanding of the company's development, performance, position and impact of its activity. The Directive further requires the European Commission to publish guidance for reporting non-financial information, including non-financial key performance indicators by the end of 2016.

[309] See Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School.

[310] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Draft report of a global roundtable series.*** Brussels and London: Frank Bold and Cass Business School.

[311] Corporate Governance Code Monitoring Committee. (2016). Dutch corporate governance code: Proposal for revision, II, 1.

[312] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Oslo Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School.

[313] See Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: London Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.5.

[314] Purpose of the Corporation Project. (2015). ***Corporate Governance for a changing world: Zurich Roundtable Executive Summary***. Brussels and London: Frank Bold and Cass Business School, p.6; Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.5.

[315] Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Dutch Roundtable Executive Summary.*** Brussels and London: Frank Bold and Cass Business School, p.3.

[316] See Purpose of the Corporation Project. (2016). ***Corporate Governance for a changing world: Draft report of a global roundtable series.*** Brussels and London: Frank Bold and Cass Business School.

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