

The Shanghai consensus iCGC review

Imagine for a moment the difficulty of finding independent directors in Mongolia. If you are not from Mongolia this is not likely to be a corporate governance question you are familiar with, but the recently concluded international Corporate Governance Conference, jointly organised by the Corporate Secretaries International Association (CSIA) and the Shanghai Stock Exchange (SSE), highlighted a number of reasons why such corporate governance issues will need to be given a lot more consideration in the years ahead.

Is the quest for the 'holy grail' of corporate governance – a set of global governance standards which have the support of, and can be applied to, jurisdictions around the world – a fool's errand? The CSIA/ SSE international Corporate Governance Conference (iCGC) held in Shanghai on 22-23 September this year, reached the conclusion that a consensus on the fundamental principles underlying good governance is both a necessity and a very real possibility, but getting there will require us to take a genuinely global and inclusive look at the governance challenges facing countries around the world.

The CSIA is perfectly placed to do just that. Representing as it does approximately 100,000 governance professionals worldwide, the CSIA was able to gather delegates for the iCGC from many jurisdictions rarely heard in the global governance debate. The conference heard, for example, about the difficulty of

finding independent directors in Mongolia. Erendoo Oyunbileg, Director Legal and Compliance, Khan Bank (Mongolia's central bank), pointed out that this task is complicated by the fact that Mongolia is a highly 'communal' culture which has a total population of only 2.7 million people.

This dilemma struck a chord with a number of other delegates. Hakeem Ogunniran, Managing Director of UACN Property Development Company Plc (Nigeria), pointed out that 'African societies are communal in nature, so the corporate governance problems we face tend to be the problems of related party transactions, dominant shareholders, etc.'

Dr Yaga Ramesh Konda Reddy, Founder, Trustee & Head, Academy of Corporate Governance (India), highlighted the fact that India's traditional 'loyalty-based' culture emphasises relationships based on trust. 'Companies are not going to adopt wholesale the contract-based

approach common in the West,' he said. 'The trust-based system will continue.'

In this context, Dr Grant Kirkpatrick, Deputy Head, Corporate Affairs Division, OECD, pointed out in his presentation that it is ironic that the US and the UK are held up as global role models. Their systems are primarily concerned with ensuring that managers act in the owners' interest in listed companies where share ownership is widely dispersed and shareholders' influence on management is weak. These conditions are in the minority worldwide, much more common is the closely-held firm where a single shareholder dominates.

Moreover, the culture and history of the US and UK has enabled the development of an elaborate capital market 'infrastructure' (effective regulatory and legislative bodies; commercially literate courts; qualified professional practitioners; a free and active media; etc) which ensures the

right environment within which the 'Anglo-American' governance model can work. Hakeem Ogunniran pointed out that corporate governance reform in Africa depends also on *public* governance reform – where you have a corrupt and inefficient government, you are unlikely to have the right conditions for companies to improve their governance.

If the search for global governance standards is to be successful, therefore, it will have to be based on a much more inclusive look at the governance challenges facing countries around the world. Dr Kirkpatrick pointed out that this was precisely the lesson that the OECD learned when devising its *Principles of Corporate Governance*, which have become an international benchmark for both OECD and non-OECD countries.

'The first set of OECD principles came out in 1999 and, with hindsight, I am glad we got rid of them – they really were very Anglo-Saxon. In Asia the reaction was to say, "they don't talk about the things we are interested in, such as state-owned enterprises (SOEs), the banks and related party transactions". We took all that to heart and went back and redid the principles. That led to the 2004 revised principles, and those principles really did capture the issues relevant to Asia.'

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Zhou Qinye, Chief Accountant, Shanghai Stock Exchange

Day one: good questions precede good answers

Day one of the iCGC set itself a series of questions revolving around the conference's central theme – 'Sustainable corporate governance – towards a global model?'

1. Will sustainability be the catalyst that drives corporate governance towards a single, international model?

Predictions that corporate governance practices around the world will converge have been around for some time. Dr RI Tricker, author, governance expert and a speaker and panel chair at the iCGC, points

out in this month's second cover story (see pages 14–19) that there are many powerful forces driving jurisdictions towards convergence, and yet even a cursory look at the world's corporate governance systems reveals that there is still a remarkable diversity worldwide. If a force as powerful as globalisation has been unable to forge convergence of global governance practices will the current shift to sustainable business practices be any different? The general view of the iCGC was that this factor alone is unlikely to be able to forge convergence.

2. Is the 'Western' governance model a suitable prototype upon which a global model can be built?

The presumption that global governance standards will converge has tended to imagine that such convergence would

be towards the 'Western' model, and certain aspects of that model have been widely copied around the world. Ben Mathews, Company Secretary and Global Head of Secretarial Services, Rio Tinto plc, pointed out in his presentation that increasing numbers of jurisdictions now have codes of corporate governance roughly modelled on the UK's Combined Code. The UK pioneered the 'comply or explain' formula for the regulation of its corporate governance code, and Mathews said this formula was 'highly regarded and widely copied'.

Nevertheless, Katherine Combs, Chairman, Society of Corporate Secretaries and Governance Professionals in the US, emphasised that the elaborate capital market infrastructure which the US has built up gradually over many decades is essential to the operation of the US corporate governance model. This is clearly not something that can be copied as quickly and easily as a piece of corporate legislation or regulation.

'The US system relies on sophisticated capital markets to work,' she said. This was a recurring theme of the conference. Tim Sheehy, Chief Executive, Chartered Secretaries Australia, pointed out that governance principles cannot be effective in a vacuum. 'Certain conditions must be present in order for them to be effective, such as effective shareholder engagement, effective capital markets and a certain degree of investor sophistication. It's almost like conditions precedent – if these are present then the principles can be effective,' he said.

Yao Jun, Company Secretary & General Counsel, Ping An Insurance (Group), believes this is why many of the corporate laws and regulations borrowed from the West by Asian countries have proved ineffective. 'You cannot simply transplant a rule and hope that it will be effective in a jurisdiction that has a completely different environment,' he said.

While the speakers generally took a sceptical view of the suitability of Western governance as a role model, conference delegates showed a surprising degree of confidence in it in the first poll vote of the conference. The vote asked delegates: 'Do you still have confidence in the Western corporate governance model post the 2008 financial crisis?' A sizeable majority (69%) opted for the answer 'Yes, in some aspects, but not in all'.

3. Is there an emerging (non-Western) model for corporate governance convergence?

If we are not going to get global convergence of governance based on the Western model, can such a convergence be based on a non-Western model? Session two of the conference looked at this issue, and the main theme to emerge was the need to recognise the diversity of cultures and approaches.

'Corporate governance development is deeply rooted in history,' pointed out Deng Ge, Director, Listed Company Supervision Department, China Securities Regulatory Commission. Huang Qing, Board Secretary, China Shenhua Energy Company Ltd, said that reaching a consensus on corporate governance

principles may be possible, but governance *practices* will always be based on different cultures. Peter Turnbull, Treasurer, Corporate Secretaries International Association, and panel chair of the second session, said that while we can agree on a common destination in corporate governance, different jurisdictions will take different paths to get there.

4. Do we need a universal model of corporate governance?

Given the iCGC's general scepticism about governance convergence globally, the conference asked whether there is actually a need for such convergence? Some delegates emphasised that every jurisdiction needs its own 'tailor-made' model of governance. Yao Jun of Ping An, for example, pointed out that talking about the 'Western' or the 'Asian' model is deceptive since there isn't even a single, consistent model within these groups. 'Do you think the US, the UK and Europe have one model of corporate governance? I don't think so,' he said.

The general view, however, was that there is a need for some definition of good governance applicable to the many different corporate structures and cultures around the world. 'We need a global governance model,' said Huang Qing of China Shenhua Energy, 'but it should be an open and tolerant model applicable to the emerging market economies as well as the more established markets.'

Day two: in search of solutions

The first day of the iCGC came to a broad consensus that any search for a single set of global governance *practices* will be doomed to fail. Instead the focus should



April Chan, CSIA President, summarising the first day's discussions of the conference

be on establishing a set of *principles* which have the support of, and can be applied to, jurisdictions around the world. The follow-up task, which was taken up in the CSIA Roundtable on day two of the conference, was to identify those principles and to give some guidance on their implementation.

April Chan, CSIA President, Company Secretary, CLP Holdings Ltd, and chair of the Roundtable discussion, emphasised that delegates would need to take into account the existing work that has been done in this area. The OECD Principles of Corporate Governance have become an international benchmark and Ms Chan emphasised that the CSIA does not want to double up on its work. South Africa's King Report also featured in the Roundtable as a useful guide on corporate governance principles such as accountability to stakeholders and corporate sustainability. With this in mind, the discussion focused on six 'candidate' principles.

1. Integrity

Though not discussed first, delegates proposed that integrity should top the list. 'I believe integrity should be number one in our list since all the other principles follow from this one. If you have integrity would you not be transparent, accountable and so on?' said Alice Mathew, the South African National Roads Agency.

Dr Reddy agreed that integrity is a universal virtue, but he pointed out that the challenge would be to write up this corporate governance principle in such a way that it will be a meaningful guide. 'Many companies have codes of ethics and conduct and these cover some aspects of integrity, but do they actually make any difference to behaviour? People can

find ways to circumvent the code, but integrity is about going beyond the law and exercising one's own conscience,' he said.

2. Transparency

This principle has certainly attracted a lot of attention globally and there are already substantial guidelines available. Peter Turnbull said that the concept of transparency – in terms of disclosing timely, practical and relevant information – is well understood around the world. 'I think this principle can be applied globally, but implementation at the individual country level will be more difficult,' he said. 'I think we need to take a principle-based approach and decision-makers and regulators in individual jurisdictions need to account for the needs of their own jurisdictions.'

Another issue raised here was the need for plain-language disclosure. 'For disclosure to be useful the information has to be understandable to the man in the street – if we leave it to the lawyers they will ensure the opposite,' quipped John Zinkin, Managing Director, Corporate Governance, Iclif Leadership and Governance Centre, Malaysia. This point was backed up by Susie Cheung, General Counsel and Company Secretary, Hong Kong Mortgage Corporation Ltd. She cited the Australian experience where banking regulators ordained that if there was any ambiguity in bank disclosures they would be construed against the bank. 'This was the magic bullet, subsequently the Australian law firms wrote in plain language for the banks,' she said.

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John Hatton, Commonwealth Bank of Australia, also raised the importance of internal transparency. 'Transparency is not only a question of external transparency to stakeholders, it should also include internal transparency between management and the board. A key test is how long it takes for bad news to reach the board,' he said.

3. Accountability to stakeholders

As Grant Kirkpatrick mentioned above, this principle can be divisive. Some view this as an unwarranted extension of the responsibility of directors. 'There is no doubt that the primary accountability of the board is to shareholders,' said Tim Sheehy, Chief Executive, Chartered Secretaries Australia, though he followed this up by pointing out that companies 'ignore stakeholders at their peril'. 'So the idea of stewardship has to do with the sustainable profitability of your organisation without offending the communities in which you operate. For most visible brand organisations it's a no brainer,' he added.

4. Stewardship

As the previous comment by Tim Sheehy demonstrates, there is a close connection between 'accountability to stakeholders' and 'stewardship'. Professor Roger King, Director, Center for Asia Family Business and Entrepreneurship Studies, the Hong Kong University of Science and Technology believes the concept of 'stewardship' is key, however, since it is an important antidote to the culture of 'instant gratification'.

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'Stewardship itself is a long-term concept. The average term for a CEO in the US is now down to six years and the trend is still downward. With so short a term, does he/she therefore maximise his own return at the expense of other stakeholders? So the notion of stewardship has to come back to the value system of the company itself. Remuneration committees have to think on a longer-term basis. Also, short-term shareholders – are they only in it to make a quick buck? How can we encourage a longer-term perspective? Should we consider only giving voting rights to long-term shareholders?'

5. Separation of governance and management

This issue was the most problematic in the list. Dr Tricker spoke in favour of a clear differentiation between governance and management – otherwise, he noted, you end up with 'dim sum' board meetings, where family members take decisions over breakfast before the formal board meeting.

However, many delegates questioned whether this principle should be included. John Zinkin pointed out that there may be situations which require the board to get involved in the management of the business, for example to rescue it from insolvency. Katherine Combs said that many boards in the US believe they should have a choice on issues such as whether to have a combined CEO/ chair. Some



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argue, for example, that there are efficiency gains from this arrangement.

A delegate from Kenya pointed out that, while many assent to this principle, they don't always consider the challenges involved in its implementation. 'You need to consider the relationship between the governors and the managers, otherwise you get paralysis when they are pulling in opposite directions,' she said.

6. Corporate responsibility to society

Along with accountability to stakeholders, this principle can be contentious. Several

So what?

Launching the CSIA Roundtable discussion on the second day of the iCGC, April Chan, CSIA President, pointed out that conferences are not only about generating interesting discussions – to be genuinely useful they need to come up with some useful conclusions. The iCGC's 'useful conclusion' will be a set of corporate governance principles, they are currently still a work in progress, which aim to be widely applicable globally. To be applicable to the very diverse group of jurisdictions represented by the CSIA, however, these principles need to be set at a high level of abstraction. Will they be too abstract to be useful as guides to corporate behaviour?

Dr Grant Kirkpatrick, Deputy Head, Corporate Affairs Division, OECD, pointed out in the Roundtable that when negotiating at an international level, agreeing on high-level principles is about as far as you can go. 'Once you try to go further you are in trouble,' he said. 'When negotiating principles, language becomes extremely important. For

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example, "accountability to stakeholders" is often vetoed straight away, "Corporate responsibility to society", now that one really gets some countries up in arms. But that is why you have to focus on principles and general outcomes. What outcomes do you want to see? How you do it is a different question!

This view received support from Zhou Qinye, Chief Accountant, Shanghai Stock Exchange, and the iCGC's keynote speaker. While regulators on the mainland generally follow a rules-based approach, Mr Zhou said in his keynote speech that the SSE had come to the realisation that focusing on rules and the SSE's supervisory role would not be enough to really improve the corporate governance standards of PRC issuers.

'We gradually realised that we needed to shift from a focus on control to

leading thinking. Of course we need to supervise, but we cannot motivate listed companies by that alone so our focus now is to create incentive mechanisms for issuers to improve their corporate governance and internal controls. We now pay more attention to creating demonstration models of how governance works best.'

By this assessment, the set of voluntary, high-level principles drafted at the iCGC in Shanghai can hope to influence corporate behaviour. A statement of governance 'aspirations' they may be, but as we move into a multipolar world where the dominance of Anglo-centric approaches to corporate governance is on the wane, they represent an important statement of shared values among a global grouping of jurisdictions brought together by the common goal of improving governance.



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delegates emphasised that corporate responsibility to society is a two-way thing. ‘There is a tendency to focus on corporate responsibility to the local community, but the local community also has a responsibility to companies, for example honouring contracts’, said Erendoo Oyunbileg.

April Chan pointed out that in most jurisdictions there are not yet any mandatory requirements here, so standards vary. ‘CSIA has the opportunity therefore to set some standards relevant to our member jurisdictions’, she said.

Hakeem Ogunniran pointed out that South Africa’s King Code has useful guidance on this. ‘The King Code says companies need to set targets on these issues, disclosing what they have done to enhance the environment and the society in which they operate, and what they intend to do.

That is important, to disclose how you intend to ameliorate your performance. I think it is important for companies to integrate sustainability into their overall strategy.’

The international Corporate Governance Conference, jointly organised by the Corporate Secretaries International Association and the Shanghai Stock Exchange was held on 22–23 September in Shanghai. The Institute would like to thank CLP as the Platinum sponsor of this event. More information is available on the CSIA website: www.csi.org.com. The photos and poll voting results of the conference are now available at the conference website www.icgc2011.com.

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