Building the Legal and Regulatory Framework: Discussion

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Any uncertainty about the value of sound legal systems to the development of healthy and stable market economies was removed by the financial crisis that began in 1997 in East Asia. The impact of that crisis on transition and emerging market economies related in part to the strength in each nation of the legal system components that John Walker has so aptly described. The Asian crisis underscored the fact that stable economic growth depends on the private sector's ability to attract investment and innovate in the production of goods and services, and this requires a transparent, equitable, accountable, and enforceable system of law designed to support efficient asset allocation by relatively free markets. From a free-market standpoint, effective legal systems must encompass respect for property and creditor rights; an exit mechanism (rules for defaults and restructurings); contract enforcement; and a stable banking system. Market systems also require protections for equity investors; transparency as to corporate performance, ownership and governance (with related audit and accounting rules); and protections against corruption, collusion, and monopoly.

Law is a necessary but not sufficient condition, however. Healthy market economies also require the parallel development of a business culture that values arrangements based on economic efficiency and performance rather than on relationships, the evolution of related private

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sector business norms, and the creation of supporting capacities and institutions.

Corporate governance is one area in which the interplay of legal systems and private sector culture and institutions is especially apparent. Corporate governance is relevant to capital markets' ability to convert the value judgments of market participants into appropriate financial incentives. Its effectiveness is a function of the quality of the legal and regulatory system, the degree to which the private sector adopts sound governance practices, and the availability of a framework of supporting institutions. In the aftermath of the Asian crisis, efforts to improve the quality of corporate governance in transition and emerging market economies must contemplate not only reform of legal systems, but the evolution of voluntary private sector governance practices and the development of supporting institutions. Attention needs to be paid to prioritizing and sequencing all of these elements of reform efforts and to encouraging active involvement by the private sector in pushing for and supporting reform.

Corporate Governance, Financial Stability, and Economic Growth

It has been said that "[t]he governance of the corporation is now as important in the world economy as the government of countries."[1] This sentiment underscores the critical position corporations have come to play in both our economic and our social lives. It may also speak to the global reach and political power of corporations, which, in many cases, now transcend the reach and power of governments.

The current vogue for corporate governance reform, and related interest in reducing corruption and cronyism in business affairs, are primarily grounded in economics and belief in the allocative efficiency of free markets. As demand for investment funds increases and barriers to the free flow of capital fall, policymakers have come to recognize that corporate governance is relevant to the ability to attract capital. Weak corporate governance systems, together with corruption and cronyism, distort the efficient allocation of resources, undermine opportunities to compete on a level playing field, and ultimately hinder investment and economic development.

The recent financial crisis in Asia illustrated how insufficient financial disclosure and capital market regulation, lack of minority shareholder protections, failure of board and controlling shareholder accountability, and lending and investing practices based on relationships rather

[1] James D. Wolfensohn, "A Battle for Corporate Honesty," *The Economist: The World in 1999* at 38.

than on a prudent analysis of risk and reward, can lead to overinvestment in nonproductive and often speculative activities by corporations. Systematic failure of investor protection mechanisms, combined with weak capital market regulation in systems that rely heavily on "crony capitalism," can lead to failures of confidence that engulf entire nations.[2]

Providers of corporate finance—whether they are individuals or pension funds, mutual funds, banks or other financial institutions, or even governments—require assurances that their investments will be protected and will generate returns. These assurances are at the heart of what effective corporate governance is all about. Narrowly defined, "corporate governance" concerns the relationships between corporate managers, directors, and shareholders. It can also encompass the relationship of the corporation to stakeholders and society. More broadly defined, "corporate governance" refers to the combination of laws, regulations, listing rules, and voluntary private sector practices that enable the corporation to attract capital, perform efficiently, generate profit, and meet both legal obligations and general societal expectations.[3]

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[2] Ira M. Millstein, "The Basics of a Stable Global Economy," *The Journal of Commerce* (Nov. 30, 1998); Federal Reserve Board Chairman Alan Greenspan, 'Lessons from the Global Crisis,' Remarks to The World Bank Group and International Monetary Fund Program of Seminars, Washington, D.C. (Sept. 27, 1999). *See* Campbell R. Harvey and Andrew H. Roper, "The Asian Bet" *in* Financial Markets & Development: The Crisis in Emerging Markets at 29, 144, (Harwood, Litan & Pomerleano, editors 1999) (citing deficiencies in Asian managers' risk management practices—specifically their "bet the company" strategy of increasing leverage in the face of declining performance—as a factor in the crisis); Michael Pomerleano and Xin Zhang, "Corporate Fundamentals and the Behavior of Capital Markets in Asia" *in* Financial Markets & Development at 117, 147 (finding that "the evidence casts doubt on the economic allocative efficiency of emerging markets in Asia," the authors conclude that these markets failed to adequately price risk and exert effective financial discipline on corporations, in part because Asian markets lacked high standards of disclosure and transparency); Stijn Claessens, Simeon Djankov, and Larry H.P. Lang, "Corporate Ownership and Valuation: Evidence from East Asia" *in* Financial Markets & Development at 159, 175-176 (large insider control may have contributed to the weak performance and risky investment of East Asia companies; the heavy concentration of corporate ownership among a few families or interrelated corporate groups that is typical in East Asia has likely influenced the legal and regulatory institutions and resulted in weak protections for minority shareholders and less transparency).

[3] Ira M. Millstein, "The Evolution of Corporate Governance in the United States," Remarks to the World Economic Forum, Davos, Switzerland (February 2, 1998). ("The term 'corporate governance' has many definitions. It can broadly encompass all of the corporation's relationships: relationships among capital, product, service and human resource providers, customers and even society at large. It can encompass all the laws designed to hold the corporation accountable to shareholders and the public, as well as the workings of the market for corporate control. It can refer to audit practices and accounting principles, and it can refer to shareholder activism. Even more narrowly, the term can be used to describe just the role and practices of the board of directors. . . . [T]he common denominator for all these definitions is this: Corporate governance concerns the relationships between a corporation's managers and shareholders, based on the foundation that the board of directors is the shareholders' agent to ensure that the corporation is managed in the shareholders' best interests. The paradigm is simple: Managers accountable to boards and boards accountable to shareholders.")

This definitional range underscores the reality that corporate managers, directors, and investors all function within a larger business and legal environment that shapes behavior.[4]

No matter what the definition, at its heart corporate governance concerns the means by which a corporation assures investors that it has well-performing management in place and that corporate assets provided by investors are being put to appropriate and profitable use.[5] And this matters not only to investors but to all of society, for the following reasons:

(1) Effective corporate governance promotes the efficient use of resources both within the firm and within the larger economy. When corporate governance systems are effective, debt and equity capital should flow to those corporations capable of investing it in the most efficient manner for the production of goods and services most in demand, and with the highest rate of return. In this regard, effective governance helps protect and increase scarce resources and helps ensure that societal needs are met. In addition, effective governance should make it more likely that managers who do not put scarce resources to efficient use, or who are incompetent or—at the extreme—corrupt, are replaced.[6]

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[4] The broader environment is shaped by stock exchange listing rules as well as a host of laws and regulations concerning disclosure requirements and accounting standards; the issuance and sale of securities; company formation; shareholder rights and proxy voting; contests for corporate control; mergers and acquisitions; fiduciary duties of directors, officers, and controlling shareholders; contract enforcement; bankruptcy and creditors' rights; labor relations; financial sector practices; and tax and pension policy. The corporate governance environment is also defined by the quality and availability of judicial and regulatory enforcement of these laws and regulations; general understandings of corporate citizenship and societal expectations about the corporate objective; and competition in product, service, and capital markets, as well as in the markets for management and labor and the market for corporate control.

[5] Differences remain between nations concerning the issue of the corporate polestar: For whom is the corporation governed? Different national systems of corporate governance articulate the primary objective of the corporation in different ways. Some nations focus on the need to satisfy societal expectations and, in particular, the interests of employees and other 'stakeholders,' such as suppliers, creditors, tax authorities, and the communities in which corporations operate. This view predominates in continental Europe and in Asia. Other nations emphasize the primacy of ownership and property rights, and shareholders' claim to the residual after all contractual claimants have been paid. A bright-line standard—accountability to shareholders for returning profit over the long term—avoids the risk of diffusing the accountability of managers and directors. This view of corporate governance is associated with Australia, Canada, the United States, and the United Kingdom. Of course, stakeholder and shareholder interests are not mutually exclusive. Corporations do not succeed by consistently neglecting the expectations of employees, customers, suppliers, creditors, and local communities; neither do corporations attract needed capital from equity markets if they fail to meet shareholders' expectations of a competitive return.

[6] These efficiency effects—as to both scarce resources and the quality of managers—should apply whether a firm is a state-owned enterprise, a private, closely held firm owned by a family group, or a publicly traded corporation on a stock exchange.

(2) For related reasons, effective corporate governance assists firms (and economies) in attracting lower-cost investment capital by improving both domestic and international investor confidence that assets will be used as agreed (whether that investment is in the form of debt or equity).[7] For corporations to succeed in competitive markets, corporate managers must innovate relentlessly and efficiently, and constantly evolve new strategies to meet changing circumstances. This requires that managers have latitude for discretionary action. However, as Adam Smith recognized long ago, managers may have incentives to deviate from acting in the interests of capital providers.[8] Therefore, rules and procedures to protect capital providers are necessary.[9] These include independent monitoring of management; transparency as to corporate performance, ownership, and control; and participation in certain fundamental decisions by shareholders—in other words, corporate governance.

(3) To be successful in the long term, corporations must comply with the laws, regulations, and expectations of the societies in which they operate. Corporations have proved to be inherently neither good nor bad. Many corporations take their responsibilities as corporate citizens seriously and contribute greatly to civil society. Unfortunately, however, some corporations are opportunistic and seek to profit, for example, from the use of child labor or without regard to environmental impact. Such examples repre-

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[7] According to a 1996 McKinsey survey of institutional investors, two-thirds of those surveyed reported that they would willingly pay on average well over 10 percentage points more for a "well-governed" company, all other things being equal. A "well-governed" company was defined as a company that was responsive to investors and had a board that was sufficiently independent of management to hold management accountable to shareholders. Robert F. Felton et al., "Putting a Value on Board Governance," 4 *McKinsey Quarterly* 170, 170–71, 174 (1996).

[8] "[B]eing the managers of other people's money rather than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private co-partnery frequently watch over their own. . . . Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a [joint stock] company." Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations 264-65 (Edwin Cannan, Ed., University of Chicago Press 1976) (1776).

[9] Economic theory holds that when a sole proprietor manages a firm, profits and value will tend to be maximized because they are directly linked to the value of the owner-manager's investments and income. But when firm ownership is separated from control, the manager's self interest may lead to the misuse of corporate assets, for example through pursuit of overly risky or imprudent projects. *See* Michael Jensen and William Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics* (1976); Michael Jensen, "Agency Costs of Free Cash Flow, Corporate Finance and Takeovers," *American Economic Review* (1986); Andrei Shleifer and Robert Vishny, "Managerial Entrenchment: The Case of Manager-Specific Investment," *Journal of Financial Economics* (1989); Michael Jensen and Richard Ruback, "The Market for Corporate Control: The Scientific Evidence," *Journal of Financial Economics* (1983).

sent not only failures of corporate responsibility—and firm governance—but larger failures of government to provide the framework needed to hold corporations responsible on issues that are important to a given society. (All too frequently government corruption is implicated in the problem.)

(4) When corporate governance is effective, it provides managers with oversight and holds boards and managers accountable in their management of corporate assets. This oversight and accountability—combined with the efficient use of resources, improved access to lower-cost capital, and increased responsiveness to societal needs and expectations—should lead to improved corporate performance. This is not to say that effective corporate governance should guarantee corporate performance at the individual firm level; simply too many other factors affect firm performance. But it should make it more likely for the company to respond rapidly to changes in business environment, crisis, and the inevitable periods of decline. It should prevent managerial complacency and keep managers focused on improving firm performance, and it should ensure that managers who fail are replaced. The empirical evidence of a link between governance and performance is mixed (owing to the difficulty in factoring out governance from all the other influences on firm performance). Nonetheless, the connection between effective governance and firm performance makes considerable intuitive sense.[10]

(5) Effective corporate governance is closely related to efforts to reduce corruption in business dealings. Effective governance systems should make it difficult for corrupt practices to develop and take root in a company. Strong governance may not prevent corruption, but it should make it more likely that corrupt practices are discovered early and eliminated. And effective corporate governance is important as a check on the power of the relatively few individuals within a corporation who control large aggregates of other people's money.

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[10] *See* Ira M. Millstein and Paul W. MacAvoy, "The Active Board of Directors and Performance of the Large Publicly Traded Corporation," 98 *Columbia Law Review* 1283, 1291–1299 (June 1998) (data analysis from 1991–95 showing that U.S. corporations with active and independent boards of directors generated higher economic profit supports the "reasonable assumption" that corporate governance matters to corporate performance). *See also* Robert F. Felton et al., "Putting a Value on Board Governance," 4 *McKinsey Quarterly* 170, 170–71, 174 (1996) (in a survey of institutional investors in the U.S., two-thirds reported a willingness to pay well over 10 percent more for a "well-governed" company); "Good Corporate Governance Will Spur Investor Premiums, According to Survey," *Wall Street Journal*, B6 (June 19, 2000) (reporting new McKinsey survey finding similar responses—but a higher potential premium reported—from investors in Asian and Latin American countries).

Corporate governance practices vary across nations and firms, and this variety reflects not only distinct societal values, but also different ownership structures, business circumstances, and competitive conditions. It may also reflect differences in the strength and enforceability of contracts, the political standing of shareholders and debtholders, and the development—and enforcement capacity—of the legal system.

In developed countries, the discussion of corporate governance improvement tends to assume well-developed and well-regulated securities markets; laws that recognize shareholders as the legitimate owners of the corporation and require the equitable treatment of minority and foreign shareholders; enforcement mechanisms through which these shareholder rights can be protected; securities, corporate, and bankruptcy laws that enable corporations to transform—to merge, acquire, divest, and downsize—and even to fail; anticorruption laws to prevent bribery and protections against fraud on investors; sophisticated courts and regulators; an experienced accounting and auditing sector; and significant corporate disclosure requirements. Developed countries are also more likely to have well-developed private sector institutions, such as organizations of institutional investors, and professional associations of directors, corporate secretaries, and managers, as well as rating agencies, security analysts, and a sophisticated (and free) financial press.

Many transition and emerging-market nations have not yet fully developed the legal and regulatory systems and enforcement capacities—let alone the private sector culture, capacity, and institutions—required to support effective corporate governance in a free-market system. Reform needs vary but often include not just the enactment of basic shareholder protections, disclosure requirements, and prohibitions against insider trading and bribery, but also stock exchange development, creation of systems for registering share ownership, education and empowerment of a (free) financial press, improvement of audit and accounting capacity and standards, and a change in the culture of accepting cronyism and corruption as business as usual. Therefore, corporate governance reform efforts in these nations must focus not only on legal system requirements and the sequencing of reform efforts, but also on the business culture or receptivity to the reform, the related capacity needs implicated by reform, and the existence of supporting institutions—all of which require private sector participation.

For example, differences in culture may pose barriers to acceptance of certain legal concepts. Concern in some Asian cultures with personal integrity and reputation can pose barriers to the concept of bankruptcy. Likewise, the long history of communism may have impaired the Russian understanding of property rights, as well as acceptance of the obligation to abide by law (illustrated, for example, by their tax collection problem).[11] While common elements of effective governance can be identified to enable national systems to attract global capital and heighten investor confidence (and some market-driven convergence of systems may be inevitable), ultimately corporate governance and the institutional framework that supports it must have relevance to a nation's own unique legal environment and cultural values.

In April 1998 an influential report detailed the common principles of corporate governance from a private-sector viewpoint. The OECD Business Sector Advisory Group on Corporate Governance, chaired by governance expert Ira M. Millstein, focused on "what is necessary by way of governance to attract capital." According to the Millstein Report, government intervention in the area of corporate governance is likely to be most effective in attracting capital if focused on four essential areas:

- Ensuring the protection of shareholder rights, including the rights of minority and foreign shareholders, and ensuring the enforceability of contracts with resource providers (Fairness);
- Requiring timely disclosure of adequate, clear, and comparable information concerning corporate financial performance, corporate governance, and corporate ownership (Transparency);
- Clarifying governance roles and responsibilities and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by boards of directors (Accountability); and
- Ensuring corporate compliance with the other laws and regulations that reflect the respective society's values (Responsibility).[12]

Underlying the Millstein Report is the notion that corporate governance depends on the private sector for implementation. While government provides the *structure* for governance, corporate governance happens *inside* the corporation, and depends on investors, boards, and managements.

These "core standards" of corporate governance—fairness, transparency, accountability, and responsibility—have been expanded on in the nonbinding OECD Principles of Corporate Governance ratified in the Spring of 1999:

- Fairness: The OECD Principles expand on the concept of "fairness" with two separate principles. Principle I states that *"The corporate*

[11] *See* Greenspan, "Lessons from the Global Crisis," *supra* note 2, noting that the development of financial infrastructure and all the institutions that support it is "invariably molded by the culture of a society."

[12] Business Sector Advisory Group, "Report to the OECD on Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets" at 20 (April 1998) (the "Millstein Report").

governance framework should protect shareholders' rights."[13] Principle II holds that *"The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights."*[14]

- Transparency: Principle IV states that *"The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company."*[15]
- Accountability: Principle V states that *"The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders."*[16]

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[13] This Principle recognizes that shareholders are property owners, and as owners of a legally recognized and divisible share of a company, shareholders have the right to hold or convey their interest in the company. Effective corporate governance depends on laws, procedures, and common practices that protect this property right and ensure secure methods of ownership, registration, and free transferability of shares. Principle I also recognizes that shareholders generally have certain participatory rights on key corporate decisions, such as the election of directors and the approval of major mergers or acquisitions. Governance issues relevant to these participatory rights concern voting procedures in the selection of directors, use of proxies for voting, and shareholders' ability to make proposals at shareholder meetings and to call extraordinary shareholder meetings.

[14] This Principle recognizes that the legal framework should include laws that protect the rights of minority shareholders against misappropriation of assets or self-dealing by controlling shareholders, managers, or directors. Some examples are rules that regulate transactions by corporate insiders and impose fiduciary obligations on directors, managers, and controlling shareholders—and mechanisms to enforce those rules, such as shareholder derivative actions.

[15] This Principle recognizes that investors and shareholders need information about the performance of the company—its financial and operating results, as well as information about corporate objectives and material foreseeable risk factors—in order to monitor their investment. Financial information prepared in accordance with high-quality standards of accounting and audit should be subject to an annual audit by an independent auditor. This audit provides an important check on the quality of accounting and reporting. (Of course, accounting standards continue to vary widely around the world. Internationally prescribed accounting standards that promote uniform disclosure would enable comparability and assist investors and analysts in comparing corporate performance and making decisions based on the relative merits.) Information about the company's governance, such as share ownership and voting rights, identity of board members and key executives, and executive compensation, is also important to potential investors and shareholders and is a critical component of transparency.

[16] This Principle implicates a legal duty of directors to the company and its shareholders. As elected representatives of the shareholders, directors are generally held to be in a fiduciary relationship to shareholders and to the company, and have duties of loyalty and care which require that they avoid self-interest in their decisions and act diligently and on a fully informed basis. Generally, each director is a fiduciary for the entire body of shareholders and does not report to a particular constituency. This Principle recognizes that the board is charged with monitoring the professional managers to whom the discretionary operational role has been delegated and holding them accountable in the use of firm assets. (Directors are generally charged with the following responsibilities: hire, compensate, monitor, and when necessary replace senior management; advise management on corporate

- Responsibility: Principle III translates "responsibility" to mean that *"The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises."*[17]

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strategies, plans, and major decisions; provide strategic oversight; ensure compliance with law and regulation and the integrity of accounting and financial reporting; consider the relationships of the corporation with stakeholders and society at large; and organize board structure and process.) In this respect, the board provides a mechanism for reducing the agency problem—described by Adam Smith in 1776—that is inherent in the separation of ownership and control. Adam Smith, An Inquiry Into The Nature and Causes of The Wealth of Nations 264-65 (Edwin Cannan, Ed., University of Chicago Press 1976)(1776); Adolph Berle and Gardiner Means, The Modern Corporation & Private Property 123 (1932); Michael C. Jensen and William H. Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics* 305, 309 (1976). If the board is to serve as an effective monitor of managerial conduct, however, it must be sufficiently distinct from management to be capable of objectively evaluating management. (A board composed wholly or primarily of management cannot be expected to effectively minimize agency problems.) This generally requires that some directors are neither members of the management team nor closely related to them through family or business affairs.

Clearly, the quality of corporate governance also depends on the quality of directors. Objective oversight requires the inclusion of professionally competent non-executives and independent directors, who have the capability, fiduciary commitment, and objectivity to provide strategic guidance and monitor performance on behalf of shareholders.

Much has been written about the practices that boards should follow to encourage board effectiveness. In general, board "best practices" suggest that the board should meet often. For most boards, this is at least once per quarter, and usually more frequently. In addition, the effectiveness of directors—especially non-executives—depends upon the quality of information that is made available to them. To ensure that "independent oversight" has meaning, directors must have access to important information and such information should be provided in advance of board meetings.

Board committees have provided a useful structure for performing detailed board work. In the United States and the United Kingdom, it is common to rely on an audit committee, an executive compensation (or remuneration) committee, and a nomination committee (and staff them wholly or primarily with non-executives or independent directors). Typically an audit committee supervises a company's internal audit procedures and interacts with the external statutory auditor to ensure full financial compliance according to the law; an executive remuneration committee recommends the appropriate compensation package for the executive directors and senior managers of the company; and a nomination committee conducts a systematic search for appropriately qualified non-executive directors.

[17] This recognizes that corporations must abide by the laws and regulations of the countries in which they operate, but that every nation must decide for itself the values it wishes to express in law and the corporate citizenship requirements it wishes to impose. As with good citizenship generally, however, law and regulation impose only minimal expectations as to conduct. Outside of law and regulations, corporations should be encouraged to act responsibly and ethically, with special consideration of the interests of stakeholders, and in particular employees. Increasingly, corporations recognize that active cooperation between corporations and stakeholders assists corporate performance, and that socially responsible corporate conduct is consistent with the principle of shareholder maximization. *See* Melvin A. Eisenberg, "Corporate Conduct That Does Not Maximize Shareholder Gain," 28 *Stetson Law Review* 1 (1998). In many nations, corporations go well beyond legal requirements in providing health care and retirement benefits, encouraging diversity of race and gender in employment and promotion practices, financially supporting education, and formulating and adopting environmentally friendly technologies. Similarly,

The four principles of corporate governance articulated in the Millstein Report—fairness, transparency, accountability, and responsibility—as expanded into the five OECD Principles of Corporate Governance require both regulation and private sector initiative for implementation. Regulation ensures that minimum standards are met; private codes of conduct and voluntary behavior can and in many cases should go well beyond minimum legal requirements.[18]

Conclusion

Effective corporate governance—transparency, accountability, the fair and equitable treatment of shareholders, and corporate responsibility—is a function of both law and private sector activity, and therefore reform requires a combination of enactment of appropriate regulations and private sector support. In this regard, there is a need for a public-private partnership in many nations, both to raise awareness of the value of corporate governance improvement and to assist in implementing corporate governance reform. To provide a framework for this public-private partnership on an international scale and to encourage public-private sector dialogue and cooperation, the World Bank and the OECD have formed a Private Sector Advisory Group on Corporate Governance, which is designed to bring private-sector pressure to bear on issues of governance reform. A recent initiative involved a Latin American Corporate Governance Roundtable in which private sector participants, including foreign investors, discussed with regulators and local business managers their concerns about the quality of corporate governance in the region. This type of private sector input can be used to great effect, as evidenced by Transparency International's efforts to reduce corruption and bribery. Similarly, efforts to influence change through the transmission of private sector expertise by volunteers organized through not-for-profit entities such as the International Executive Service Corps and the Financial Services Volunteer Corps also offer great promise in promoting receptivity to change and in building necessary private sector capacity.

Ultimately, reform efforts must take into account the unique national personalities, social and economic priorities, and legal and institutional capacity of each nation. Likewise, every corporation has its own unique history, culture, and business goals. All of these factors influence the optimal governance structures and practices for nations and individual

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many companies strive to avoid activities perceived to be socially undesirable even where not prohibited.

[18] For a discussion and comparison of the largely voluntary codes of corporate governance that have recently been issued in developing and emerging market nations, see Holly J. Gregory, International Comparison of Board "Best Practices" in Developing and Emerging Markets (2000 ed.).

corporations. Therefore, international agreement on a single model of corporate governance or a single set of detailed governance rules is both unlikely and unnecessary. Of course, the influence of international capital markets will lead to some convergence of governance practices. This simply reflects the market reality that "[a]s regulatory barriers between national economies fall and global competition for capital increases, investment capital will follow the path to those corporations that have adopted efficient governance standards, which include acceptable accounting and disclosure standards, satisfactory investor protections and board practices designed to provide independent, accountable oversight of managers."[19]

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[19] Report to the OECD by the Business Sector Advisory Group on Corporate Governance.