Corporate Governance – An International Perspective Revisited

On 26th February 2020, I stood on a podium in a London conference room and addressed a hundred people. I had heard of the new coronavirus but there had been no withdrawals by attendees at the event and I made no reference to it in the speech. I had been due to attend another event two weeks later which was cancelled a couple of days beforehand. Since then I have been up to London three times – to see my daughter and to attend two funerals.

Ten weeks later, in mid-May 2020, the paper that I had written was posted on the eCommunity and I had been asked whether I would have changed anything with the benefit of hindsight. To my initial surprise, but on reflection less so, I concluded that yes, of course, if giving the presentation then – virtually rather than to a roomful of people – I would have addressed the subject very differently but the high level themes would be broadly the same. Looking at the paper now, I have come to the same conclusion but there are some stark changes of emphasis.

My aim then had been to explain why I thought it was impossible to talk about corporate governance without looking at it from an international perspective. Breaking this down, it looks at five key reasons, namely how:

- Good corporate governance fundamentally rests on universal concepts;
- There is a *broadly* similar global framework, though not without many differences – though mostly now of what I would describe as a technical nature, rather than differences of principle;
- These two assertions are unsurprising as both address international or, strictly speaking, supranational issues;
- Again, there are similar examples of poor governance across the world, leading to comparable bad outcomes for one or more sets of stakeholders; and
- Finally, varying considerably from country to country in extent, but a characteristic of almost all, is international ownership of national assets, by international investors.

I would argue that all of these still apply. However, in relation to the third bullet, I said that such issues *need* to be addressed on a global level and I am less optimistic now than then, that this will happen in one significant respect. Whilst, the global investment community remains focused on holding businesses in which they invest to account on performance against environmental, social and governance (ESG) objectives – or exposing the lack of meaningful objectives – the international environment in which they operate is very different now, and I am fearful of the consequences of some of those changes. Fifteen months ago, there was one massive geopolitical fault line – between the US and China – but the then US President was also not aligned with many countries on a wide range of other issues. Although the tone is different, his successor has maintained many of the policies in relation to China, and the relationship between China and the rest of the world has been further fractured by COVID 19. However, the US is now more aligned with the rest of the democratic world on a wide range of other issues.

Unfortunately, there are many other international relationships which have become more strained during that period. One of those is between the UK and Europe. The rhetoric on both sides has been poisonous at times and the arguments used mendacious, and they have been gleefully publicised by sectors of the press, particularly in England. As well as the Irish Protocol – important but with no direct relevance to dealing with the impact of COVID 19 – vaccinations and travel are at the forefront, areas which are key to a more integrated world. It remains to be seen whether that will impede the cooperative efforts which will be needed to emerge from the shadow of the pandemic. I wrote a year ago: '*The impact on profitability… will intensify the scrutiny of quoted companies, and the remuneration of directors - comparing it to the impact of recession on the workforce - will be intense. The relationship with, and accountability to, other stakeholders will also be under the microscope'*. Nothing in the last year has changed my view but it will also be interesting to see the extent of the scrutiny of individual companies about their performance during this period in ESG terms – how will that be assessed and how widely will 'stakeholders' be defined?

There are two aspects of corporate governance which I didn't discuss in that speech but have come to the fore over the last year, one of which was very evident in May 2020, just two months in, but the other was more hidden. The first is general meetings and the ability of companies, and other organisations, to engage with shareholders and members. This has been a feature across the world, but different jurisdictions have dealt with the challenges differently. Most relaxed the requirement to hold in person meetings and enabled so-called hybrid or virtual meetings and also introduced a number of other measures to deal with limitations on physical attendance. They have tried to tie in the timings of those to the prevenative controls in place within that country, whilst at the same time considering a longer term view, given that many people expect some organisations to use a model going forward which is more flexible than the physical general meeting and proxies which was the pre-pandemic norm. In the UK, the Financial Reporting Council are very focused on the future but it is probably kindest to say that the government department responsible – the Department of Business, Energy and Industrial Strategy – has had other things on its plate. The relaxation of the regulations ended on 30 March, despite a number of restrictions still being in place, so companies have lacked clarity since then. This is an area that governance professionals will be monitoring closely going forward, from both a legal and a member (and in some cases, stakeholder) engagement perspective.

The other aspect of corporate governance, which I touched on 15 months ago but now demands greater emphasis, is diversity. Board diversity has been part the ESG focus for some time. Increasing the number of women on boards has been at the forefront, and there has been some progress across the world, albeit very uneven and, in many places, achieved at a very slow pace. In the last 12 months, there has also been the Black Lives Matter movement and increasing discussion of the LGBTQ+ voice, and I expect both to feature in the ESG debate. However, it is on the impact of COVID 19 on gender diversity that I wish to conclude.

The World Economic Forum (WEF) have quoted a report by executive search firm Heidrick & Struggles (www.heidrick.com/en/insights/chief-executive-officer/route_to_the_top_2020) containing an analysis of CEO appointments since the start of the pandemic which concluded that the world's biggest companies have been recruiting fewer women to chief executive roles since the start of the COVID-19 pandemic. As women make up only 5% of chief executives globally and remain significantly underrepresented this is exacerbating an already distorted picture. The report concluded that COVID-19 has caused companies to shift their focus to appointing chief executives with a proven track record and previous CEO experience – a strategy that favours men. Women CEO appointments decreased from 12% in the cohort appointed after October 2019 to only 6% after the pandemic announcement. "While a proven track record is extremely important during periods of uncertainty, we know that broader diversity of experience, sustainability and purpose will be viewed as critical to long-term survival and growth when the global business environment returns to some semblance of normal," said Jeff Sanders, vice chairman at Heidrick & Struggles. In some respects these findings are counter-intuitive. The challenges facing companies are new so recruiting those who have run organisations in the past and might be less open to new ways of doing things, and encouraging cognitive diversity, is of concern.

The WEF commentary (www.weforum.org/agenda/2020/12/fewer-women-ceos-covid-gender-gap/) puts this in the broader context of gender equality – the disproportionate impact that COVID-19 has had on women, both in the workplace and more broadly. It has already widened the gender pay gap and, in the medium term, is likely to impact both the executive pipeline and may impact the size of the pool of potential female non-executive directors. I expect this to form part of the wider governance debate going forward and it will be interesting to see how companies respond, and how international investors use their influence to redress the impact as part of their ESG strategies.