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## **Frameworks in Regulating Company Directors: Rethinking the Concepts in Responsive Regulation<sup>1</sup>**

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### ***Abstract:***

This paper will critically analyse the conventional wisdom in the “pyramid of business rules” with regards to company directors (including hard and soft laws), arguing that the emphasis on amending or refining legal instruments might not be effective. Even though there are several factors as to why these rules do not appear to yield the desired results, the key is perhaps to align them with widely accepted non-legal broad base ethical guidelines that support the spirit of the law. The idea is that if company directors could internalise these ethical principles, there might be less corporate collapses and scandals driven by greed.

### ***1. Introduction:***

Corporate governance is a topical subject matter, like any fashionable concept it can be easily misconstrued. Governance tends to be in the headlines amidst economic crises, much of the discussions have centre upon corporate scandals or failures. Leaving aside the many claims of what corporate governance can do. In essence, governance has to do with control. Those who govern (directors) are bestowed with the power and ability to control the resource of the company should thus be held accountable for their actions/inactions as well as decisions/indecisions.

In the last two decades, the debate about how to improve corporate governance and director’s accountability have received much attention from governments, scholars, investors, accountants, lawyers, NGOs, business associations, just to name a few. A series of measures usually follows. They range from laws, listing rules, codes, guidelines, and best practises. Despite the myriad of measures, corporate scandals and failures do not appear to be abating.

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<sup>1</sup> I would like to express my thanks and gratitude to the CLTA general committee for the sponsorship to attend the conference, and the opportunity to present a paper. In addition, I would like to take this opportunity to thank my supervisor, Prof. Paul Redmond for his wisdom and guidance. I could not ask for a better mentor.

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This paper is not going to devise or create any new measures or make any groundbreaking statements. Rather the intent is to adopt a multi-tier approach using a regulatory pyramid combining legal and non-legal measures to regulate directors. The approach is socio-legal with the aim of fostering better compliance through social norms and value systems. In addition, this paper maintains two criteria are constants. The first is to ensure all regulatory measures<sup>3</sup> including ethical principles should reinforce the law and the objectives of the law. The law should always be the centre of corporate governance and director's duties regulation. Second is flexibility and diversity. Flexibility allows greater stakeholder participation and market expectations to be incorporated. In terms of diversity, the idea is to permit countries with different cultural and ethical value systems to be taken into account so as to strengthen individual commitment towards complying with the objectives of the law. In short, this is an attempt to conceptualise a broad and integrative framework to regulate company directors.

## ***2. Debate about Corporate Governance:***

### 2.1 Deconstructing the Elements of Corporate Governance

Corporate governance can be defined as how a company is directed and steered,<sup>4</sup> or broadly characterised as a system of checks and balances to ensure that decision makers are accountable to stakeholders.<sup>5</sup> There are many theories. Some of the more commonly referred to theories are: agency, stakeholders, stewardship, managerial hegemony, and resource dependency,<sup>6</sup> out of which the two most cited theories, are agency and stakeholders.

The agency theory presumes that ownership and control of the corporation is separate. This is rooted in that notion that a company is a separate entity.<sup>7</sup> The shareholders are investors providing capital and receive dividends, whilst the board of directors is left in charge of the

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<sup>3</sup> Here 'measures' include non-legal regulatory instruments

<sup>4</sup> John Farrar, *Corporate Governance in Australia and New Zealand*, (2001) 3

<sup>5</sup> Jill Solomon and Anis Solomon, *Corporate Governance and Accountability* (2004) 12-15

<sup>6</sup> See Thomas Clarke, *Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance* (2004) and Richard Ziolkowski, *A Re-Examination of Corporate Governance: Concepts, models, theories and Future Direction* (PhD Thesis, University of Canberra, 2005)

<sup>7</sup> S. Berns and P. Baron *Company Law And Governance; An Australian Perspective* (1998) 6

affairs of the company and overseeing the managers for a fee or remuneration. Therefore, there shareholders would incur cost in monitoring managers. Whereas the stakeholders argue apart from shareholders, managers and board of directors, others like creditors, debt financiers, analysts, auditors and corporate regulators should be incorporated into the governance structure. This approach tends to blur the 'lines' of accountability when executives do have a clear chain of command to answer to because of the balancing act they would have to carry out between various parties.<sup>8</sup> On the debate of which model is superior, Letza, Sun, and Kirkbride assert,

[B]oth shareholder and stakeholder perspectives claim superiority of their models respectively; however, in reality we have seen a dynamic shift with both models becoming mutually attractive all over the world in the last two decades... All this implies that the so-called superiority and priority of any model is not permanent and universal, but rather temporary contextual.<sup>9</sup>

Pettigrew claimed that corporate governance research lacks coherence from either empirically, methodologically or theoretically.<sup>10</sup> The theories merely attest to the complexities in governing a corporation, thus there is no definitive or 'one size fits all' model. Reality might well mean that there are intermix of theories integrating into a multifaceted paradigm. Consequently, corporate governance is a multi dimensional issue,<sup>11</sup> which could help explain why many governance measures have been articulated as principles. Furthermore, regardless which theories one subscribes to the accountability of the board of directors is a cornerstone of effective governance. Therefore, improving accountability of the board as a whole, as well as individual director is crucial.

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<sup>8</sup> Thomas Clarke, 'The Stakeholder Corporation: A Business Philosophy for the Information Age' in Thomas Clarke (ed), *Theories of Corporate Governance, The Philosophical Foundations of Corporate Governance*, , England, Routledge (2004) 189, 196.

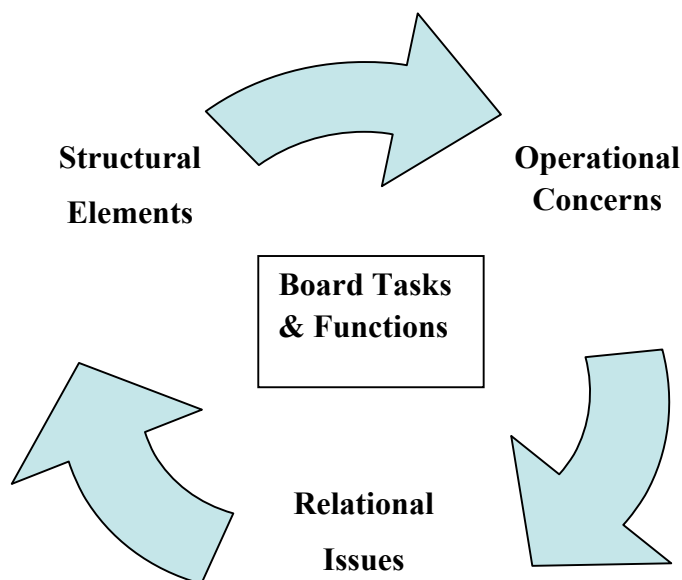
<sup>9</sup> Steve Letza, Xiuping Sun and James Kirkbride, 'Shareholding versus Stakeholding: A Critical Review of Corporate Governance' (2004) 12 (3) *Corporate Governance: An International Review* 242, 257

<sup>10</sup> Andrew Pettigrew, 'On studying managerial elites' (1992) 13 (1) *Strategic Management Journal*, 163-82

<sup>11</sup> Angus Corbett and Steven Bottomley, 'Regulating Corporate Governance', in Christine Parker, Colin Scott, Nicola Lacey, and John Braithwaite (ed), *Regulating Law* (2004) 60-81.

In view of the demands on modern boards, ranging from many foreseeable to unforeseeable challenges, carrying out daily tasks is made more complex. Although this does not constitute an excuse or limit board or fellow directors' scope of responsibilities, it meant that effective governance calls for greater vigilance, as well as need to be responsive to the global market shifts. Hence, to improve board accountability it is first important to identify what the board does. Given the array of board responsibilities, dividing their tasks along functional lines would permit greater clarity the allocation of duties, obligations and liabilities. One could broadly 'pigeonhole' the duties into three functions: "structural", "operational", and "relational" (see figure 1).<sup>12</sup>

Figure 1



*Source: A. Young (2008)*

The structural elements concerns board structure and processes, which are easily identifiable. Getting it 'right' will depend on a host of internal and external factors. Some are straightforward; others can be more problematic. In essence, the structural aspect of

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<sup>12</sup> Angus Young, 'Rethinking the Fundamental of Corporate Governance: The relevance of culture in the global age' (2008) 29 (8) *The Company Lawyer*, 168, 169 and Michael Adams and Angus Young, 'Regulating Corporate Governors: Rethinking Board Responsibilities and Liabilities' (2007) 59 (1) *Keeping Good Companies*, 11

governance is about due process and a system of checks and balances. For example, board committees, Carter and Lorsh write, '[t]he rationale for establishing board committees is to divide up the work among board members so that they can accomplish more in their limited time. Committees allow directors to develop specialized understanding and to delve more deeply into specific issues.'<sup>13</sup>

Operational considerations consist of strategy formulation, policymaking, monitoring, and supervising management, and risk assessment.<sup>14</sup> Since operational matters are made up objective processes as well as subjective value judgements and experiences of directors, as long as proper care in decision making and supervision is crucial. Decisions requires due diligence, as for supervision, vigilance is paramount. Whilst best practices guides could help with the development of better policies and protocols much are discretionary and reactive in nature.<sup>15</sup>

Relational issues are matters to do with people. Dealing with people is not straight forward, its interactive and dynamic, which includes matters like leadership, corporate social responsibility, stakeholder communications, and relationship management. Since human relations is by nature more complex and challenging, because human behaviour and traits changes constantly. Besides, ideological shifts or personal interest could tempt directors to adopt creative ways to bypass compliance safeguards. This suggests that the governing of relationships requires dexterity.<sup>16</sup> Therefore, values especially ethical values and social norms could influence how relational matters are dissimilar across companies and countries.

Consequently, to improve the accountability of director developing rules and best practices for addressing the three aspects of board functions would enhance corporate governance. Can the law regulate these board functions? In many countries, the law regulates director by

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<sup>13</sup> Colin Carter and Jay Lorsch, *Designing Corporate Boards for a Complex World: Back to the Drawing Board* (2004) 8

<sup>14</sup> Bob Tricker, *Corporate Governance: Principles, Policies, and Practices* (2009) 38-9

<sup>15</sup> Angus Young, 'Regulating Non-Executive Directors in Australia: A Socio-legal Approach,' (2008) 29 (11) *Company Lawyer*, 323, 324-5

<sup>16</sup> Young, above n 12, 169

imposing a series of duties. Even though, each jurisdiction differs in approach, in the United Kingdom the statutes, in Hong Kong general law, whereas in Australia both general law and statutes applies, the duties are quite similar. Austin, Ford, and Ramsay argue that, '[t]he main function of directors' duties is to ensure the loyalty of directors to their company. The existence of the duties is a recognition that the interests of directors may diverge from those shareholders.'<sup>17</sup> According to Farrar, '[t]he law only provides a basic framework of procedure and accountability.'<sup>18</sup> Thus, there is a need to supplement the law with 'hybrids' (co-regulation) and 'soft laws' (enforced self-regulation). These consist of rules, codes, and standards, which are regulatory in nature since there are statutory consequences if breached, or are voluntary in name because market credibility requires compliance.<sup>19</sup> Much of the contents these hybrid and soft laws focus on improving better processes and structures.<sup>20</sup> However, corporate collapses continues to mount. This suggest co-regulatory and market based regulatory mechanisms has its limitations too.

## 2.2 Regulating Corporate Governance

Recent spectacular corporate collapses and scandals in many parts of the world, the Asian financial crisis in 1997, as well as in the most recent global financial crisis in 2008 triggered market hysteria about misgivings in corporate governance regulations.<sup>21</sup> These events compelled governments across the world to enact new legislations or create quasi-legislative (soft laws) instruments. Stock exchanges and business associations also follow suit with a series of additional codes or best practices, some compulsory others are voluntary. These laws and codes tended to be reactive at best, and were hastily implemented, because these instruments did not seem to abate the number of corporate failures and scandals due to bad corporate governance.<sup>22</sup>

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<sup>17</sup> R Austin, H Ford, and I Ramsay, *Company Directors: Principles of Law and Corporate Governance* (2005) 212

<sup>18</sup> John Farrar, *Corporate Governance: Theories, Principles and Practice* (3<sup>rd</sup> ed., 2008) 345

<sup>19</sup> Jean du Plessis, James McConvill, and Mirko Bagaric, *Principles of Contemporary Corporate Governance* (2005) 117-122

<sup>20</sup> Thomas Clarke, *International Corporate Governance: A Comparative Approach* (2007) 129-266

<sup>21</sup> *Ibid.*, 14-22

<sup>22</sup> *Ibid.*

Whilst the reasons that cause corporate failures are varied, Sykes found some common ‘tell tale signs’ in over two Centuries of major corporate collapses in Australia. They were creative accounting, excessive risk and speculation, overzealous business expectations, diminishing margins, and adverse political/economic conditions (domestic and international).<sup>23</sup> What had changed overtime? Clearly, the context had altered. With the rapid pace of change in domestic and international business environment driven predominantly by technological progress, financial innovations, overzealous expectations, socio-economic transformation and political changes, all of which lured directors, executives and entrepreneurs to ‘push the envelope’ and ‘raise the stakes of the game’.<sup>24</sup> Leaving behind regulators and plaintiffs (victims) to pursue corporate executives through the courts in search of justice, hence achieving accountability through litigation is an ‘ex post’. This form of regulation might be ‘too late’ because it usually happens in the aftermath of corporate collapses.<sup>25</sup>

Even if new and tougher laws were enacted, in an ever more globalising market place where competition is intense, businesses have to innovate, increase their productivity, and take on new risk;<sup>26</sup> laws appears to only ‘catch up’ with problems after they have occurred. The deterrent effects are only as effective as the drafters’ ability to predict the future. Besides, Simpson found there is little support from various empirical studies that the deterrence actually made much impact.<sup>27</sup>

This highlights certain inherent weaknesses and limitations of prevailing regulatory mechanisms and approaches, whether those maybe rule or market based mechanisms. The

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<sup>23</sup> Trevor Sykes, *Two Centuries of Panic: A History of Corporate Collapses in Australia* (1988) 549-556

<sup>24</sup> Angus Young, ‘Taming the Shrew: Deconstruction of the Discourses in Corporate Regulations’ (Paper presented at the 6<sup>th</sup> Annual Postgraduate Conference, Sydney, 29-30<sup>th</sup> Oct. 2004) 8

<sup>25</sup> S. Breyer, ‘Typical Justifications for Regulation’, and L. Hancher, and M. Moran, ‘Organizing Regulatory Space’, in R. Baldwin, C. Scott, and C. Hood (ed.), *A Reader on Regulation*, (1998) 59-92 and 148-172

<sup>26</sup> Angus Young, ‘Corporate Governance and Compliance: Preventative Measure or Just a Fad?’ (Paper presented at the Annual Australian Institute of Criminology Conference, Sydney, 21-22<sup>nd</sup> Nov. 2005) 4

<sup>27</sup> Sally Simpson, *Corporate Crime, Law, and Social Control* (2002) 42-43

problem is perhaps our over reliance on rule or market based governance regime. After all, rules and market solutions assume individuals will be motivated to comply with a standard set by certain communities or governments, or that the market self correcting mechanisms would discourage people from going astray from market expectations.

Hamilton and Micklethwait found,

[A]s we have seen, anytime in the past when there has been a frantic scramble to be part of the new ‘get rich quick’ activity, there has eventually been grief...[T]here will be another stock market speculative bubble and there will continue to be corporate failures – most of them small, but a few spectacular. Greed, overweening ambition and a desire for power will continue to drive many, in and out of the corporate world.<sup>28</sup>

Therefore, greed is a key contributing factor in bad governance where self interest of decision makers at the expense of the shareholders and other stakeholders’ interest. This is consistent with Tricker’s observations,

[T]he original concept of the corporations was founded on trust. Trust was at the heart of capitalist system. Agreements were sealed with a hand shake. Directors were recognized as reliable stewards of the interests of others. Unfortunately, in recent years it has been corruption, crisis, and corporate collapse that have driven changes in corporate governance practice. Greed seems to have replaced trust as capitalism’s force. Indeed, the dominant paradigm of corporate governance, agency theory, is rooted in the belief that people are utility maximizers who need to be controlled because they cannot be trusted.

Why has ethics been neglected? According to Mescher and Howieson,

[I]t is noted that a tendency by directors to focus predominately on their legal duties encourages a tendency by directors to focus predominately on their legal duties encourages a form of unreflective “drowsy morality” in which directors fail to identify ethical problems until it is too late to correct them.<sup>29</sup>

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<sup>28</sup> Stewart Hamilton and Alicia Micklethwait, *Greed and Corporate Failure: The Lessons from Recent Disasters* (2006) 183

<sup>29</sup> Barbara Mescher and Brian Howieson, ‘Beyond Compliance: Promoting Ethical Conduct by Directors and Corporations’ (2005) 1 (1) *Corporate Governance Law Review* 93, at 94



Can ethics improve corporate governance? If ethical values can nurture prudence and diligent judgement, then decisions based on ethical criteria would, in theory be more conscientious and mindful of other peoples' interests. Francis argued that,

[C]orporate governance, as a term, has come to imply good, in the non-moral as well as moral sense. Its non-moral applications include efficient decision making, appropriate resource allocation, strategic planning, and so on. In its moral sense good corporate governance has come to be seen as promoting an ethical climate that is morally appropriate in itself, and consequently appropriate in that ethical behaviour in business is reflected in desirable commercial outcomes. Here the links are with due diligence, directors' duties, and the general tightening of corporate responsibility.<sup>30</sup>

In spite of the benefits, ethics might be a susceptible disciplining tool because interpretation of ethical principles is subjective, contextual and often self-serving.<sup>31</sup> Couple with the lack of the threat of sanctions, they are often perceived to be, at best an aspiration.

In sum, at the heart of regulating corporate governance is about restraining human frailty, delinquency, and hubris. In order to achieve good corporate governance the combination of regulatory tools like rules, standards, structures, best practises and ethical principle under an integrated framework might improve accountability and reduce any over dependency of any one particular regulatory tool. Nevertheless, how does one devise such an integrated regulatory framework?

### ***3. Pyramid of Corporate Governance Regulation:***

#### 3.1 Law, Ethics, and Governance

At the outset, it is important to note that the law plays a central role in regulation, because it obliges regulatees to comply under the threat of sanctions. From a sociological perspective, the law could be deemed as a means to bring about greater social solidarity,<sup>32</sup> especially in complex and differentiated societies.<sup>33</sup> Hence, law should be a product of social norms and

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<sup>30</sup> Ronald Francis, *Ethic and Corporate Governance: An Australian Handbook* (2000) 9-10

<sup>31</sup> Robert Jackall, *Moral Mazes: The World of Corporate Managers* (1988) 191-204

<sup>32</sup> Emile Durkheim, 'The Division of Labor in Society' in C. Calhoun, J. Gerteis, J. Moody, S. Pfaff, K. Schmidt, and I. Virk (ed) *Classical Sociological Theory* (2002) 129-32

<sup>33</sup> Talcott Parsons, 'An Outline of Social System' in C. Calhoun, J. Gerteis, J. Moody, S. Pfaff, K. Schmidt, and I. Virk (ed) *Classical Sociological Theory* (2002) 372, 376

perhaps vice versa. Social norms are often a product of values system shaped by many influences across time.

The law in its essence is a form of social control to bring about order, as well as an instrument to shape social/individual behaviour, and resolve disputes.<sup>34</sup> The law thus create duties to give account for one's decisions/indecisions and actions/inactions.<sup>35</sup> The role of law has both facilitative and expressive dimensions. The former refers to the law as an instrument to shape social behaviour, whereas the latter institutionalizes certain values.<sup>36</sup> These values are not entirely social or political.

The values in laws consist, '[n]ot only of statutes and commands but also of implicit moral principles of justice and integrity'.<sup>37</sup> For example, natural law theory makes the proposition that ethics or moral values are ingrained in the law, as, '[t]here are universal principles of justice intrinsic to human nature and human-made law must adhere to them...'<sup>38</sup> However, '[t]he mere fact that human beings are generally disposed to do certain things does not make it right...To say that we do good and avoid evil is a bit like saying that we ought to do what we ought not to do what ought not to do.'<sup>39</sup> Besides, accountability of individuals might be more obvious, in comparison to collective accountability. The added complexity like the abrogation of individual responsibility while acting as a group clouds the analysis.<sup>40</sup> Therefore, the debate about ethic and law is a complex one.

Then again, if corporations and directors deemed as agents, like all agents, individuals and entities have moral duties and responsibilities in society. This does not necessarily

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<sup>34</sup> David Ingram, *Law: Key Concepts in Philosophy* (2006) 2-7

<sup>35</sup> Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation: Text and Materials* (2007) 228-232

<sup>36</sup> *Ibid.*, 5-6

<sup>37</sup> Ingram, above n. 34, 3

<sup>38</sup> *Ibid.*, 10

<sup>39</sup> *Ibid.*, 21

<sup>40</sup> Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (2000) 66-165

suggestions corporate ethics or ethical leadership means corporate social responsibilities. Rejoinder the issue of director's legal obligations, they are predominately fiduciary in nature. Whilst the legal responsibilities could be found in many case laws and statutes, there appears to be a moral value underpinning this law. This legal doctrine took roots in moral values that were embedded in Western legal traditions from Judeo-Christian beliefs from relationship of trust and confidence or confidential relations. This is not to say that fiduciary duties are moral or ethical duties, rather to highlight the moral dimensions are present and inseparable from legally defined duties.

Similarly, ethical principles are brought into play to advance good governance in 'soft laws'. For example, the OECD Principles of Corporate Governance states,

[T]he board has a key role in setting the ethical tone of a company, not only by its own actions, but also in appointing and overseeing key executives and consequently the management in general. High ethical standards are in the long term interests of the company as a means to make it credible and trustworthy, not only in day-to-day operations but also with respect to longer term commitments.

In short, even if the relationship between the law and ethics is a complex one, since both shapes behaviour and influences decision-making, they can be interdependent and mutually supportive. Ethics could legitimise the commands of the law. The law could bolster ethical values by making them lawful. They are also complimentary as Francis notes that, '[t]he law commonly sets minimum standards and applies sanctions or restitution from breaches, ethics provides aspirational standards, which invite creative and flexible quality insights and solutions.'<sup>41</sup> The only qualification is that the above propositions vary across countries and context.

More important is the use of laws and ethics as regulatory tools. The law is an externally impose rules and standards of behaviour, whereas ethics suppose to be value driven. These values concern what is 'right' or 'wrong' in human affairs. They can be embedded as norms from psychological imprints and communicated through social interaction. The advantage of law is the threat of sanctions and the support of institutions to oversee the makings as well as applications of these rules. The advantages of ethics are the flexibility, the breadth and scope

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<sup>41</sup> Francis, above n. 30, 101

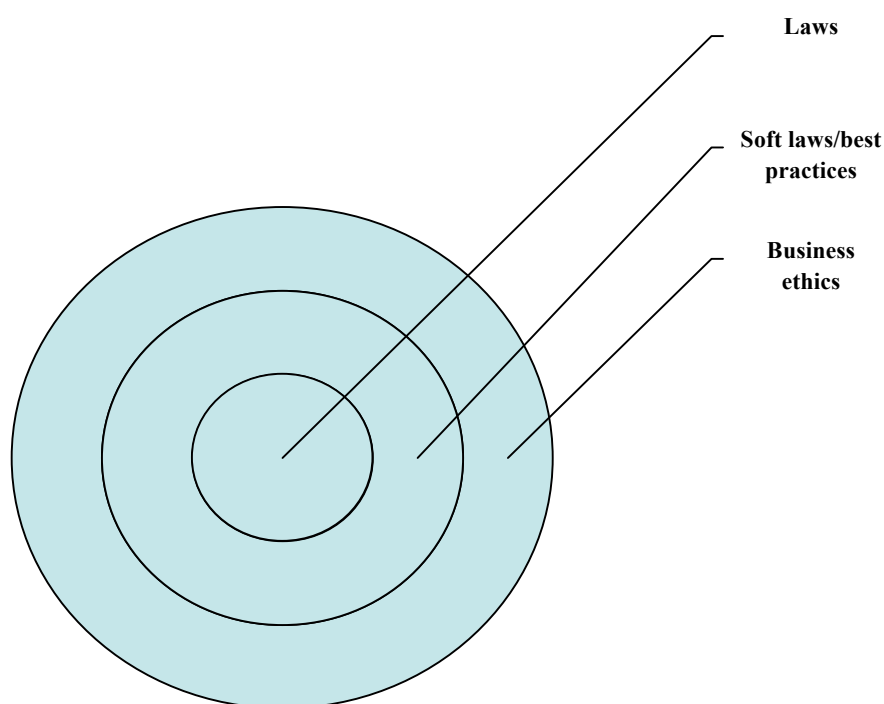
of instilling values, and the internalisation of values inducing individuals as well as group to do the 'right' thing. It would appear law and ethics can complement each other as regulatory tools since they both compel people to do the 'right' thing. However, as discussed both regulatory tools have limitations. So the issue is how does one go about organising both tools into a robust regulatory framework? In addition, can laws and ethics work hand in hand to regulate directors to promote good governance?

According to Farrar the structure of governance is multi-tier system (see figure 2), whilst it would appear intuitive as to the workings of the structure of governance from a regulatory perspective it lacks detail as to the enforceability of those ideas. Whereas responsive regulation framework developed by Ayres and Braithwaite<sup>42</sup> used in many business and non-business regulatory frameworks in Australia, could be adapted and integrated with Farrar's structure of governance to offer a robust regulatory regime to regulate of directors.

Figure 2

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<sup>42</sup> Ian Ayres and John Braithwaite , *Responsive Regulation: Transcending the Deregulation Debate* (1992)



Adapted from Farrar (2003)

### 3.2 Building Blocks of a Responsive Regulatory Framework

The idea of responsive regulation was that regulators should be responsive to the behaviour of the regulatees in deciding whether to intervene.<sup>43</sup> This is an actor centre approach to regulation. The most distinctive part is the use of regulatory pyramid as the centrepiece of this theory.<sup>44</sup> The design was intended to respond to restorative justice, deterrence and incapacitate. Each level theory of compliance is in itself is limited and flawed.<sup>45</sup> Braithwaite asserts that, '[w]hat the pyramid does is cover the weakness of one theory with the strengths of another.'<sup>46</sup>

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<sup>43</sup> Ibid., 23-45

<sup>44</sup> Ibid.

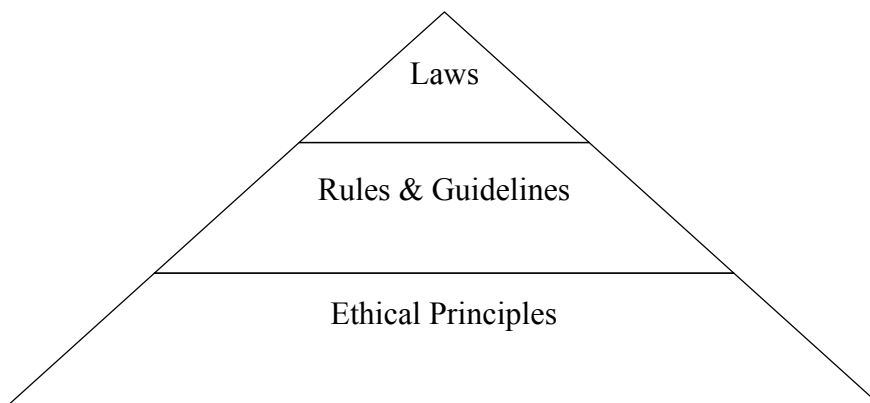
<sup>45</sup> John Braithwaite, *Restorative Justice and Responsive Regulation* (2002) 32-33

<sup>46</sup> Ibid.

Adapt this into the structure of governance; the bottom level of the pyramid should be built on moral values and norms because as mentioned, greed appears to be a widespread cause of corporate governance failure. Furthermore, ethical principle can incorporate diverse ethical principles of different cultures and countries. The next level is co-regulatory instruments; this is where key stakeholders like interest groups, business groups, associations, business leaders and others work out a set of rules and a third party is conferred with regulatory powers to punish those who do not comply with the agreed rules. This is a form of enforced self-regulation. To prevent corruption or capture, those rules should not only consistent with the law and provisions for governmental or regulatory body oversight should be incorporated. The formulation of those rules should also compliment market mechanisms to in the pursuit of shareholder value. However, these rules and regulatory oversight only applies to selective groups of businesses who voluntary subscribe to this co-regulatory arrangements. Nevertheless, they might offer a point of reference or exemplar for non-members. At the apex of the pyramid is the law. The aim of the law is to act as a deterrent against deviant behaviour and offers grievance mechanism to redress affected parties.

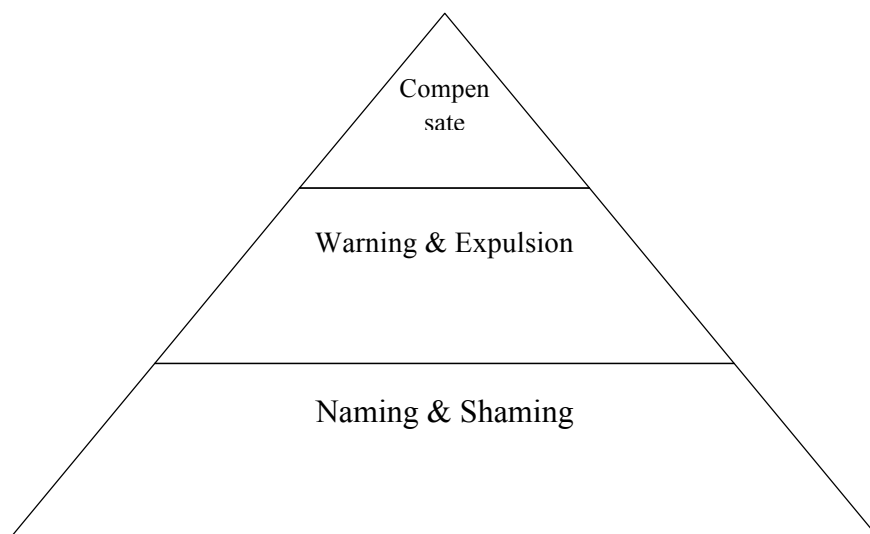
The idea of a 'three level' regulatory pyramid is to encourage regulatees to move down or de-escalate to the lowest level, where non-legal regulatory instruments are adopted. It is intended to have a persuasive effect. Only if they fail to comply, then escalation of regulatory instruments from the base, which is non-legal, then to the next, which is soft laws and the apex is black letter laws (see figure 3).

Figure 3



The effectiveness of the pyramid of regulation has to be match by corresponding pyramid of sanctions. At the base level, where there is failure to comply with ethical principles the sanction is the naming and shaming. Reputation is a valuable commodity, shaming will attract certain financial consequences. It is equally important that the ethical principles and standards reflect the business norms of the country. In the next level the co-regulatory body could issue warning letters giving the regulatees to rectify their behaviour, at the extreme is expulsion from membership of association or removal of creditation. Lastly, compensation is a litigatory remedy for breaches of the law (see figure 4).

Figure 4



In sum, the underlying goals of a regulatory pyramid with multi-tier regulatory instruments and sanctions are four fold:

1. To fill the gap and weaknesses of any single regulatory instrument.
2. To ensure better compliance of regulatory objectives.
3. To encourage regulatees to the base of the pyramid where the objective is to allow regulatees to self govern and be virtuous actor.
4. Allow for diversity in corporate governance practises between countries

Transpiring this framework of regulatory pyramid onto regulating company directors, the object is to enhance the accountability and compliance. At the heart of regulating company directors are general legal duties stipulated in the black letter law, followed by soft laws like listing codes and guidelines from influential organisations. The base level will consist of ethical principles. The idea is to only escalate or move up the enforcement of the regulatory pyramid if the directors failed to carry out their responsibilities. From the mildest form of sanction, naming and shaming to the harshest where litigation is employed to redress grievances of the company. The mid level will be co-regulatory with listing rules and directors' association guidelines. This is where the industry norms, market expectations are incorporated, a participatory and communicative regulatory framework. Often ethical principles are also articulated either directly or indirectly in the guidelines or rules. At the apex are general duties define by law. As mentioned fiduciary duties have ethical dimensions.

#### ***4. Conclusions:***

The conclusions in the paper are as follows. Corporate governance as a concept is multi-dimension and dynamic subject matter. Deconstructing the board functions and tasks with the objective of enhancing corporate governance offers three core facets. The first and second could be strengthen through the creation of universal standards or at least best practices guidelines. Whilst flexibility could be incorporated to cater for companies of different sizes and industries, despite some limitations like transplanting from one country to another with different local circumstances. Relational issues are far more complex like cultural dimensions. Therefore an effective system of regulatory framework must be able to offer clear standards where it can be adapted across countries on the one hand, on the other hand,



able to deal with diverse cultural practices and values. This is made more difficult in regulating directors because of both individual and collective responsibilities as well as country specific norms and values.

Another issue that is crucial in developing and maintaining good governance is the matter of ethics. Even though ethics is a broad concept and at times subjective, applying ethic onto the board and individual directors is easier said than done. On the other end of spectrum, law might be the most effective in terms of setting clear standards with the threat of sanctions for non-compliance, as well as administrated through various institutions, it might be both under and over inclusive in terms of scope of responsibilities. Besides, the deterrent effect also has limitations. Combining the strengths and the weaknesses of each regulatory tool through the use of a regulatory pyramid might be the solution. Furthermore, it possesses the virtues of setting clear standards and incorporating diverse value systems. The prove is in the pudding. The robustness of this idea remains to be tested.