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Corporate Governance

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Course Purpose

Corporate governance is critical to organizational success and failure. It underlies all organizational objectives and how they are achieved on behalf of owners and stakeholders. The purpose of this course is to equip you with the understanding of the frameworks and best practices how corporate governance is enacted, structured, actively changed and will evolve should you ever serve as (or interact with) someone that performs a governance role (e.g, director, governor, advisor, executive) in any organization.

Learning Goals

After completing the course, you will be able to:

- Understand the governance roles, stakeholder tensions and governance approaches across many countries and organizational types and predict how these shape organizational outcomes.
- Critically evaluate what is good corporate governance, including structural, incentivization and monitoring choices available to organizations, and how these choices lead to organizational successes or governance failure.

- Appraise alternative governance structures and actions for a board when presented with a strategic choice or when under attack, including activism campaigns and hostile takeover attempts and defenses.
- Appraise the current state of corporate governance practice and its recent developments and devise the skills and attributes current and future directors need to be successful.

Who Should Take This Course?

Anyone who intends to serve as an executive, or as a director or advisor on any board, be it a publicly listed firm, new venture, family firm, government enterprise, non-profit or charity. Further, anyone who intends to be an investor or an important stakeholder for any of these organizations. Finally, anyone who intends to provide services (e.g., consulting and expert consul) to C-suite executives or board of directors. Accelerating demand for director education programs at INSEAD proves that governance skills are both lacking and will continue to be highly valued by organizations.

Course Overview

Corporate governance is the set of control mechanisms to enable achievement of organizational objectives and dissuade potentially self-interested managers from activities detrimental to the welfare of owners and stakeholders. Good corporate governance is therefore a key element of corporations' desire to create value. Time and again corporate governance has been on the forefront of public and political debate. While many critics argue the ineffectiveness of current corporate governance practices, due to factors such as dispersed ownership, detrimental activism by active investors, management entrenchment and short termism, or narrowly focused corporate objectives; there is also an absence of fundamental frameworks in this discourse to understand effective corporate governance and evidence-based logics that can inform best practices. In this course, we introduce these frameworks and provide evidence-based best practices that can be implemented across all types of organizations, operating in all types of institutional settings.

Course Sessions, Readings, Assignments, Deliverables

Session 1: Organizational objectives and governance forces

In this session, we examine the role of firm owners and stakeholders in shaping organizational objectives and contrast them with the role of directors or governors, and finally with executives and management. We will consider potential tensions across different ownership groups, such as family-, institutional-, employee-, and government owners on organizational objective choices. Then we consider the external forces of regulation, cultural norms and institutional differences that influence corporate governance practices and evaluate the impact of different countries' laws and regulations on the influence of owners and various stakeholders and how boards formulate organizational objectives and ensure they are achieved.

LEARNING OBJECTIVES
- Understand the fundamental roles and responsibilities of the key actors of corporate governance.
- Analyze the influence of different stakeholders on organizations' objectives and predict the key governance tensions that will arise.
- Detail various alternative governance approaches across country regulatory setting, stakeholder/owner type, and organizational type, and predict how these effect organizational outcomes.

To submit before class:
Using the powerpoint template provided choose a country and submit a diagram of the typical corporate governance practices of your chosen country. Give specific consideration to the board structure, strength of actors (including various stakeholders) influence, typical ownership, and any other relevant factors. These student-submitted diagrams will be frequently used for class discussion throughout the module.

To prepare before class:

Spiegel-Verlag Rudolf Augstein GmbH & Co. KG HBS 9-208-096

Questions:

1. How did Spiegel's unique ownership structure come about? What problem(s) was it designed to solve? What problems did it create? How could these problems be solved?
2. How did Spiegel's corporate governance change after Rudolf Augstein's death?
3. Had you been in Jakob Augstein's shoes, what, if anything, would you have done differently? What would you advise him to do now?

Resources:

ECGI Corporate Governance Codes, Index of all codes

https://ecgi.global/content/codes

OECD Corporate Governance Factbook 2017. OECD (2017)

http://www.oecd.org/daf/ca/Corporate-Governance-Factbook.pdf

Readings:

Models of Corporate Governance: Who's the Fairest of Them All? Stanford GSB Rock Center CG-11

C. Mallin. Corporate Governance. 2015. 5th edition. Oxford. (Chapter 10)

Session 2: Organizational governance structure and operation

Directors and executive management undertake specific functions to perform their charge and are deployed in many various configurations by organizations. We detail directors' common roles and committees served and provide evidence-based best practice for how boards should be structured. Then we compare directors to executive management, such as CEOs, whom are hired, paid and fired by the board. In doing so, we provide frameworks to evaluate executive team incentivization and critiques of executive pay. We then outline the several mechanisms that owners and stakeholders use to monitor the board and executive team, such as audited financial reporting, and assess their effectiveness in detecting and preventing fraud. With regard to all the governance mechanisms discussed in this session, we evaluate these mechanisms with consideration to evidence-based best practice.

LEARNING OBJECTIVES

- Understand the implications of various structural, incentivization and monitoring corporate governance choices available to organizations.
- Critically evaluate what is good corporate governance.
- Identify the forces and early warning signals that lead to corporate misconduct and governance failure.
- Develop and apply a calculus to critically evaluate offers to join corporate boards.

To prepare before class:
Governance Failure at Satyam. Ivey W11095
Questions:
1. Discuss the circumstances under which Satyam's fraud was exposed. What do you think were the reasons for the fraud? Could this fraud have been prevented?
2. Critically evaluate the corporate governance mechanisms adopted by Satyam.
3. Assess the responsibility of audit committees as well as internal and statutory auditors in relation to Satyam's scandal. What are the lessons learned from this case?
4. What characteristics of the board of directors play a role in preventing financial statement fraud?
5. Do you think that making regulatory changes would help in preventing such fraud?

Resources:

Corporate Governance Ratings: Got the Grade… What was the Test? Stanford GSB Rock Center CG-08

Seven Myths of Boards of Directors. Stanford GSB Rock Center

https://www.gsb.stanford.edu/insights/seven-myths-boards-directors

Seven Myths of Executive Compensation. Stanford GSB Rock Center

https://www.gsb.stanford.edu/insights/7-myths-executive-compensation

Session 3: Activism and dynamic forces of influence

Owners, stakeholders, and external actors can actively change a firm's corporate governance, with the effectiveness of different approaches varying by corporate by-laws and country regulations. The success of activism is also significantly influenced by the actions and reputation of the activist and the firm's board and executive management. In this session, we evaluate the incentives for activism by different groups and the common tactics employed to enact and defend against corporate governance change. Then building on our framework from earlier sessions we consider the effectiveness of the market for corporate control and ability to actively change governance practice across various organizations.

LEARNING OBJECTIVES
- Assess the effectiveness of various approaches by which shareholders and stakeholders can actively influence firm corporate governance.
- Design governance structures to deter and defeat activism campaigns and hostile takeover attempts and the trade-offs in using each structure.
- Analyze the key success factors for activism campaigns and hostile takeover attempts and defenses.
- Appraise alternative potential actions for a board when presented with a strategic choice or when under attack.

To prepare before class:
The Allergan Board Under Fire (A) HBS 9-316-010
Questions:
1. What made Allergan an attractive acquisition target for Valeant?
2. What's your appraisal of how the Allergan board handled the Valeant/Pershing Square offer? What do you see as the most critical choices made by the board during the period from April through September?
3. As an Allergan board member, what would be your position on the Salix opportunity and other issues presented at the September board meeting?
4. What insights about corporate governance and board practices do you draw from Allergan's experience?

Resources:

Activist Investing. An annual review of trends in shareholder activism. Activist Insight in Association with Schulte, Roth & Zabel

https://www.srz.com/images/content/1/4/v2/147747/Activist-Insight-The-Activist-Investing-Annual-Review-2017.pdf

Activist Investing in Asia. Activist Insight

https://www.activistinsight.com/resources/reports/

Activist Investing in Europe: A Special Report. Activist Insight in Association with Skadden

https://www.skadden.com/insights/publications/2017/10/activist-investing-in-europe-a-special-report-2017

How to Outsmart Activist Investors. George, B. & Lorsch, J. W. *Harvard Business Review*

https://hbr.org/2014/05/how-to-outsmart-activist-investors

The Long-Term Effects of Hedge Fund Activism. Bebchuk, L., Brav, A., & Jiang, W. *Columbia Law Review*, 115, 1085

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2291577

The Real Reasons CEOs Don't Like Activist Investors. Frick, W. *Harvard Business Review*

https://hbr.org/2016/03/the-real-reason-ceos-dont-like-activist-investors

Session 4: Future trends in governance

Effective corporate governance requires highly functioning boards whom are current on regulatory changes and proactive on future trends. In this session, we consider the current trends in corporate governance practice and recently adopted and proposed regulation. In doing so, we assess the key challenges that boards and their current and future directors must meet to be highly performing.

LEARNING OBJECTIVES

- Appraise the current state of corporate governance practice and its recent developments.
- Formulate the skills and attributes current and future directors need to be successful.

Resources:

Board Chairs' Practices across Countries. Commonalities, Differences, and Future Trends. INSEAD Corporate Governance Initiative and Ward Howell Talent Equity Institute

https://centres.insead.edu/corporate-governance/meeting-reports/documents/BoardChairsPracticesacrossCountries_razv.pdf

Board Evaluations and Boardroom Dynamics. Stanford Closer Look Series

https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-closer-look-63-board-evaluations-boardroom-dynamics.pdf

Chair Survey 2015 report Chairs of the board of Directors: Findings from a Global Survey. INSEAD Corporate Governance Initiative and Ward Howell Talent Equity Institute

https://centres.insead.edu/corporate-governance/meeting-reports/documents/ChairSurvey2015.pdf

Global and Regional Trends in Corporate Governance for 2018. Russell Reynolds Associates http://www.russellreynolds.com/insights/thought-leadership/global-and-regional-trends-in-corporate-governance-for-2018

Gender Parity on Boards Around the World. Institutional Shareholder Services, Inc.

https://corpgov.law.harvard.edu/2017/01/05/gender-parity-on-boards-around-the-world/

What Can For-Profit and Nonprofit Boards Learn from Each Other About Improving Governance? Stanford Closer Look Series

https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-closer-look-49-profit-nonprofit-learn.pdf

Sustainability Practices: 2016 Edition. Martin Tonello, The Conference Board, Inc.

https://corpgov.law.harvard.edu/2017/01/08/sustainability-practices-2016-edition/

2015 Survey on Board of Directors of Nonprofit Organizations. Stanford GSB Rock Center

https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-survey-nonprofit-board-directors-2015.pdf

2016 Board of Directors Evaluation and Effectiveness. Stanford GSB Rock Center

https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-survey-board-directors-evaluation-effectiveness-2016.pdf
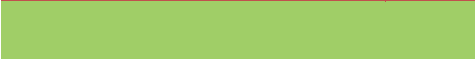
2016 Spencer Stuart Board Index. Spencer Stuart

https://corpgov.law.harvard.edu/2016/12/28/2016-spencer-stuart-board-index/

2017 Board Priorities Report. Steve Klemash and Ann Yerger, EY Center for Board Matters https://corpgov.law.harvard.edu/2016/12/31/2017-board-priorities-report/

Evaluation

Your final grade will be determined in some way that I have not determined yet, but my current thinking is something like the following way:

Class Participation	50 %
Group Project	30 %
Individual Project	20 %

Classroom Norms and Course Policies

In order to share and acquire knowledge and master skills together, please be prepared for class and arrive on time. In accordance with school policy if you arrive after class has started, please do not enter the classroom.

Please note that if you are absent for more than one session of this half credit course, you will automatically receive a failing grade. You cannot graduate with a failing record.

The general policies outlined in the MBA Code of Conduct (Academic norms) apply.

On top of these general policies, I am adding the following extra policies for my course:
- No auditing allowed.
- First session attendance is mandatory, i.e. I reserve the right to drop any student from my course who does not show up to my first session (whatever the reason).