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## Course Description

Debates regarding corporate governance are not new. There has been a debate on the distribution and exercise of corporate control since the rise of the corporate enterprise as a prominent force in modern business life, that is, since the late 19<sup>th</sup> and early 20<sup>th</sup> centuries in the advanced industrial economies.

Contemporary debates on corporate governance really began in the early 1980s in the United States and in Britain. From the early 1990s, however, the subject commanded increased attention on the European Continent and in Japan. The collapse of the Soviet bloc, the Asian crisis, as well as growing concerns about economic instability in South America have also generated a great interest in the role of corporate governance in the developing world. In short, the topic has become a global concern.

There are a variety of perspectives from which questions of corporate governance can be formulated and addressed but it has been economic analysis that has largely dominated contemporary discussions of the subject. Most of the theories of corporate governance that we will look at in the course, therefore, will be preoccupied with the relationship between institutions of corporate governance and the economic performance of corporate enterprises.

Once we have a good grip on the alternative ways of thinking about the subject, we will be ready to turn to the characteristics and behaviour of types of corporate governance, the variety of forms (i.e. public firm, the partnership, the family business). We will also devote three sessions to corporate social responsibility, social entrepreneurship, and privatization of prisons.

There are also discussions about systems of corporate governance that cut across countries. When we think about different systems of corporate governance, how they differ from each other and how they have evolved to be what they are today, it is clear that the challenge of understanding variety and change in governance is an intriguing one. What is the future of employee representation in Germany? Why is cross-shareholding so prominent in continental Europe while it is uncommon in Britain? Why are stock markets well-developed in some countries but much less prominent in the corporate sector in others?

At the close of the course, we will have achieved an understanding of systems of corporate governance that have been shaped in the past by economic, political, social and cultural forces. We will also reflect on the implications of contemporary forces that affect corporate control for the future of corporate governance. In particular, we shall address the question of whether the leading industrial economies of the world are converging on a single "best-practice" model of corporate governance. Does the experience of the "Anglo-American model" over the past two decades provide a mirror on the future of the continental EU nations, Japan and other countries?

The course is designed to provide a deep insight into how corporations and enterprises are governed. At the end of the course, you should have a good understanding of what boards do, why stock options do not always work, how business groups work, why workers may be good members of boards, and how governance can help social enterprises.

### **Instructor**

Bruce Kogut is Eli Lilly Professor of Innovation, Business, and Society at INSEAD since 2003. Previously, he was the Dr. Felix Zandman Professor at the Wharton School of the University of Pennsylvania, where he also co-directed the Reginald H. Jones Center and the Emerging Economies Program. Currently, he is the director of research for EIASM in Bruxelles and is a member of the board of an Indian software company school and two research institutes and has served on the board of a non-profit school. In 2003, Peter Cornelius and he edited the book *Corporate Governance and International Capital Flows in a Global Economy* (Oxford University), which was presented at the World Economic Forum of that year. He also has been involved in two World Bank projects on privatization and has chaired the conference on corporate governance in Geneva for the United Nations in 2005. He has been a visiting scholar at several institutions, such as the Ecole Polytechnique, Stockholm School of Economics (from where he has an honorary doctorate), Santa Fe Institute, and Humboldt University.

### **Course Evaluation**

Your overall grade will be determined as follows:

Individual class participation	30%
Final group project	50%
Assignment class #5	10%
Assignment class #12	

The final group project is a paper less than 20 pages long, with a maximum of 3 authors (there are never any exceptions to this rule). The paper should focus on a question in corporate governance which entails analysis and originality. Samples of past papers are available from Stephanie Paille.

For those who want the chance --and especially for those who are reticent to talk, I will provide opportunities to help in class discussions.

### **Materials:**

*Course Pack*

*Recommended Book: Peter Cornelius and Bruce Kogut, Corporate Governance and International Capital Flows, Oxford University Press, 2003.*

### **Session 1: Tuesday May 9**

#### *Overview - What is Corporate Governance?*

P. K. Cornelius and B. Kogut, "Introduction", *Corporate Governance and Capital Flows in a Global Economy*, Oxford University Press, 2003.

Bryan Burrough and John Helyar, 2003 (1991), *Barbarians at the Gate*, prologue + chapter 1: 1-39.

This class session introduces the governance problem, especially for firms with dispersed shareholders. The distinction between corporate governance as a system and as a practice is made.

### **Session 2: Thursday May 11**

#### *Corporate Scandals: Let's Get this Out of the Way*

Case: Accounting Fraud at Worldcom

John Coffee, "What caused Enron?", chap. 2 in *Corporate Governance and Capital Flows in a Global Economy*, P. K. Cornelius and B. Kogut, Oxford University Press, 2003.

"The Sarbanes-Oxley Act of 2002," *The Cooley Alert!*, August 2002.

Cynthia Glassman (SEC), "Sarbanes-Oxley and the Idea of 'Good' Governance," September 27, <http://www.sec.gov/news/speech/spch586.htm>

Geraldine Fabrikant, 1<sup>st</sup> September 2004, "Hollinger Files Stinging Report on Ex-Officials", *The New York Times*, A1

The Worldcom case portrays an accounting scandal and thereby raises the issue of how to principals (shareholders) control agents (managers). The case is useful to understanding the strengths and weaknesses of the American governance system. Class discussion will be focused on whether Worldcom represents a broader problem for American public corporations. The concept of principal and agent is introduced.

### **Session 3: Friday May 12**

#### *American Governance and France*

Case: Vivendi (A) and (B): Revitalizing a French Conglomerate

Raghuram G. Rajan and Luigi Zingales, 2003. "When Does Finance Develop," chap. 8 in Raghuram G. Rajan and Luigi Zingales, *Saving Capitalism from the Capitalists: Unleashing the Power of Financial Markets to Create Wealth and Spread Opportunity*, Crown Business, New York.

François Morin, 2000. "A Transformation in the French Model of Shareholding and Management", *Economy and Society*, vol. 29, n° 1, February, pp. 36-53.

Under Messier, Vivendi represented the new wave of American type of governance in France. By the end of his term in office, Messier had steered Vivendi towards perilous levels of debt. Did American governance fail? What is the French system of governance? The reading 'Saving Capitalism' is by two authors, including one who is now the chief

economist for the IMF. The article by Morin tells you how France is controlled by graduates of the top schools. Has France saved capitalism from the capitalists? The case illustrates how the system of corporate governance provides an important backdrop to understanding the practice of governance.

#### **Session 4: Tuesday May 23**

*The CEO, Incentives and options, the Board and the Family*

Insead Case: The HP-Compaq Merger: A Battle for the Heart and Soul of a Company

Alan Bird, Robin Buchanan and Paul Rogers, "Reclaiming the Board's Agenda," *Global Agenda* 2004.

Hall, Brian and Kevin Murphy, "The Trouble With Stock Options", *Journal of Economic Perspectives*, Summer 2003.

Carly Fiorina became one of the highest paid CEOs in the US and was responsible for a premier innovative firm. She was heavily incentivized by stock options and was the board. Why didn't these options work? Or was the problem the conflict of good governance with the vestiges of the family firm? The case illustrates the conflict between family and boards, as well as the difficulty of aligning incentives.

#### **Session 5: Thursday May 25**

*The Market and Best Practices (?)*

Assignment: Choose a company outside the United States and determine whether it complies with the practices of the good companies listed in Gompers et al. You should hand in a one page summary of your findings the day of the class.

Case: Circon

Paul Gompers, Joy Ishii, and Andrew Metrick, "Corporate Governance and Equity Prices," *Quarterly Journal of Economics*, February 2003.

Here is a three-page summary of the results of a paid study for Calpers: <http://www.calpers-governance.org/alert/selection/WilshireRpt.pdf>

See

[http://www.10e20webdesign.com/news\\_center\\_latest\\_technology\\_internet\\_news\\_may\\_3\\_2004\\_buffett\\_praises\\_google\\_corporate\\_governance.htm](http://www.10e20webdesign.com/news_center_latest_technology_internet_news_may_3_2004_buffett_praises_google_corporate_governance.htm)

One of the most well-cited studies showing governance matters is the article by Gompers, Ishii, and Metrick. We review this article by looking at the evidence for other countries that you will provide. The issue of best board practices is then addressed by looking at a dramatic case of golden handcuffs, poison pills, and Santa Barbara surf.

#### **Session 6: Tuesday May 30**

*Venture Capitalists and the Governance of Entrepreneurial Firms*

Case: Digitas

Gompers, Paul and Josh Lerner, "The Financing solution: Venture Capital", Boston: Harvard Business School Press, 2001.

Venture capital is the provision of money to entrepreneurial firms who have not yet raised money from equity markets. Private equity is an investment that re-structures the disposition of assets and control of an on-going company. Both of these forms of investment pose unusually high risks and therefore are implemented through contracts that impose changes in governance and control contingent upon the successful completion of critical milestones, or upon the failure to complete these milestones. Digitas is a case of a happy team of venture capitalists and managers and our job is to figure out what's going on. The discussion will identify the covenants in a venture capital contract that influence governance.

### **Session 7: Thursday June 1**

*Governance in Employee Owned Professional Service Firms*

Guest: Frank Brown, future Dean, INSEAD; previously Global Leader Advisory, Price Waterhouse Coopers

Roger Martin and Mihnea Moldoveanu, 2003, "Capital versus Talent", *Harvard Business Review*, July.

PricewaterhouseCoopers Consulting - The Road to Divestiture, Jacob Cohen, Insead case. To be distributed later

How does a company that consists of human capital govern itself when knowledge and power are held by non-owners? Does a partnership lead to paradise? What happens when the partnership goes public? This discussion is centered to give you insight to

### **Session 8: Friday June 2**

*Germany, Business Groups, Stakeholders and Institutional Investors: Restructuring the Social Market Economy, or are Private Equity Firms Locusts?*

Topic: Volkswagen, Deutsche Bank, and Mannesmann

"German Capitalism. Locust, Pocus", *The Economist*, May 7, 2005.

"Descriptive note on the German Governance System", Bruce Kogut  
To be distributed later

Germany remains the dominant economic power in Europe and its economy has been flagging for a decade. Many say the problem is that its governance is bad: labor should not be on the board, banks are too powerful, the dual board structure does not work. We will discuss how the system works and ask: do you think Germany has to get rid of its institutions that give labor a voice in the system? Would financial institutions provide the governance that Germany needs? Germany and France are compared and we discuss which country is advancing fastest in its reforms.

### **Session 9: Monday June 5**

#### *Corporate Governance and Corporate Social Responsibility*

Case: Anglo-American (A) and (B), Stanford Graduate School of Business, Cases IB-30A and IB-30B

HIV/ AIDS in South Africa 2001: Background Note Anglo-American (A), Stanford Graduate School of Business, Case#: IB-31

S. Rosen, J. Simon, J. Vincent, W. MacLeod, M. Fox and D. Thea, "AIDS Is Your Business," *Harvard Business Review*, February 2003, pp. 5-11.

Two worlds again on collision course, *Financial Times*, January 29, 2002

Charles Handy, 1998. "A Better Capitalism". *Across The Board*. April, pp 16-22

CSR is on the agenda of many public authorities. NGOs are organized to cooperate with, or to coerce, corporations to do 'the right thing'. Firms publicize their efforts to help communities. But how far should CSR go? Should a firm be willing to risk substantial shareholder value in order to address heartbreaking diseases that plague its own workers? What is the responsibility of the board in this event?

### **Session 10: Tuesday June 6**

#### *Privatization*

Guest : Hans Wahl

Case: Governance, Human Rights and the Question of Prison Privatisation, 2006, INSEAD Case.

Privatization has been a monumental sale of assets to the private sector and the primary justification is that private business has better governance than the public sector. Is this true? Is privatization always a better governance system or is there a limit to its reach? This case presents the question of whether the Kenyan government should turn its prisons, troubled by terrible conditions, over to private contractors, and if so, how should they be governed.

### **Session 11: Thursday June 8**

#### *Non-profits and Social Entrepreneurs*

Case : Envie actif A & B, Anne-Claire Pache and Morten Hansen case. To be distributed later.

David Borenstein, 2004, *How to Change the World. Social Entrepreneurs and the Power of New Ideas*, Oxford: Oxford University Press.

Bruce Kogut, "Why good causes need Governance Reform", *Financial Times* UK, June 10, 2005.

Social entrepreneurship is a confused hybrid of private incentives and social good that has gripped the attention of the press and many charities. Is it a good system of governance? Are there good and bad models? What are the governance challenges?

### **Session 12: Friday June 9**

*China: Do markets really care about corporate governance?*

Assignment: Choose a developing country, review the rankings by La Porta regarding its rule of law and corporate governance, or create your own scoring. Are there firms in the country which have high corporate governance rankings? You should hand in a one page summary of your findings the day of the class.

Case: PetroChina: International Corporate Governance with Chinese Characteristics, Centre for Asian Business Cases, School of Business, University of Hong Kong, HKU183.

Peter Cornelius, "Corporate Practices and national Governance Systems: What do Country Rankings Tell Us?", Deutsche Bank Research, *Research Notes*, November 2004, No. 16.

Rafael La Porta, Florencio Lopez-De-Silanes, Andrei Shleifer, Robert W. Vishny, "Legal Determinants of External Finance," *Journal of Finance*, vol. 52, 3, 1131-1150.

China has received massive foreign direct and portfolio investment, and yet is highly criticized for corruption and lack of transparency regarding who owns and who controls. One important school of thought says governance can be no better than the rule of law and the legal protection of minority shareholders. Read the article by La Porta, et al and especially their list of good legal practices. Does China conform? If not, then here is the question raised by Cornelius and many credit agencies, e.g. Standard and Poors: Can a firm in China receive a high ranking for good governance if the country ranks low on good legal protection of shareholders?

### **Session 13: Tuesday June 13**

The New India

Guest: Mr.V. Srinivasan, 3i Infotech

India was the country of business groups and families who dominated the economy. Close to the 'license raj', protected from foreign competition, these groups often had very weak governance. With the sudden rise of the IT sector, India now boasts a new generation of entrepreneurs and companies that are quickly becoming global players in markets. Has India changed? Do these firms have good governance? Our guest Mr. Srinivasan is the CEO of 3i Infotech, a spin-off the ICICI Bank, that went public in April 2005.

### **Session 14: Wednesday June 14**

Volunteer presentations

### **Session 15: Tuesday June 20**

Volunteer presentations

***Session 16: Wednesday June 21***

Conclusions: Who Should be On the Board

Margaret Blair, "Shareholder Value, Corporate Governance and Corporate Performance" chap. 3 in "Corporate Governance and Capital Flows in a Global Economy", P.K. Cornelius and B.Kogut, Oxford University Press, 2003.