

CORPORATE GOVERNANCE

Bridging the gap when cultures are oceans apart

Efforts are being made to resolve fundamental differences between the US and UK

It is a cliché to say that the US and the UK are divided by a common language. But the language of business on either side of the Atlantic increasingly leads to confusion rather than clarity.

In the post-Enron era it is extraordinary how the UK end of the corporate governance business has had to unpick the US model in a bid to use greater understanding as a driver for change.

A simple example is the corporate model, where there are deep historical reasons for differences. In the US businesses are called corporations because they are rooted in legislation and all authority flows from the state. They took their lead from the French model after the War of Independence.

In the UK businesses are called companies, and there is a very different reason for that. "In the UK a company of people got together and brought in shareholders," says Robert Hodgkinson, executive director, technical, at the Institute of Chartered Accountants in England & Wales. "They were a body of members." From such factors flow immense variations in corporate governance in the US and UK today.

Mr Hodgkinson and the institute are the prime movers behind efforts to bring change through the understanding of such cultural differences. Later this week a transatlantic roundtable will be held at the institute in London. Its aim is "to think beyond the myth of

Anglo-American corporate governance and consider the wider international capital market environment within which the US and the UK have much to contribute and learn".

Take the issue of investors and investment, for example. "The big overriding difference is in the profile of the investor," says Mr Hodgkinson. "UK and US institutional investors are totally different."

In part this has been driven by the regulatory environment. In the US the rules had to cope with a far-flung environment across different timezones and traditionally less direct face-to-face contact. "The regulatory assumption is that you are looking after the little guy," says Mr Hodgkinson. There is, indeed, a much higher level of individuals in the US directly holding stock. The end result is very different from that of the UK.

"It is hard, as a result, for institutional investors [in the US] to act in a collegiate way," he says. It is less likely, as a result, that institutional investors would talk directly to a company in the way that is commonplace in the UK.

Because the UK is much smaller, dialogue is easier. As *Emerging Issues*, a ICAEW publication timed to coincide with the roundtable, argues: "A higher concentration of shareholding among fewer institutions in the UK has led to unique engagement behaviour. Close geographic proximity of institutions facilitates an organised and generally

cohesive approach to engagement.

"In contrast, the sheer size of the US markets and the greater number of institutions means that mobilising shareholders to defend collective interests is more difficult.

"The UK regulatory environment also supports collegiality in three ways: it permits dialogue between boards and investors by not presuming that such dialogue represents privileged disclosure which is restricted by Regulation Fair Disclosure in the US; it allows dialogue among investors without triggering concert party issues; and it is free of the divisive threat of class action litigation."

Further differences flow from the cultural background. In the US it is the share price that is likely to trigger corporate change, whereas in the UK it is more likely to be general investor concerns.

"In the US," says Mr Hodgkinson, "managements think of shareholders as a rabble with different views, for example political lobbyists. There is a feeling of being under attack. Shareholders are not seen as a coherent body, whereas in the UK there is a joined-up view of who the shareholders are." All this creates different behaviours.

The same is true of the nature of the way that companies, or corporations, are run. As shareholders have less power in the US – not being able to remove a director from the board, for example – the culture of company boards has moved to one where they consist of independent directors. "They see



themselves as representing the shareholders," says Mr Hodgkinson.

In the UK the board of directors will mostly be executive directors with day-to-day responsibilities within the company.

This creates one defining difference between the two cultures. In the UK the role of the chairman and chief executive has tended to be separate. In the US, as *Emerging Issues* notes, there has tended to be "a single, imperial board leader". The board of independent directors is supposed to keep the chief

executive on track.

But a single "hero figure" may be hard to rein in. In the UK the separation of powers between the chairman and the chief executive is the dynamic that makes it work.

"It is the lynchpin," says Peter Wyman, head of professional affairs at PwC, the accounting firm. "By splitting the roles of the chairman and the CEO we put ourselves in the position that the single most important role of the chairman is to ensure an effective CEO."

This, it is argued, is the crucial difference between the UK and US.

"In the US and elsewhere the

key person is the CEO," says Mr Wyman.

"If he is a brilliant commercial operator but lacks the integrity then there is scope for it all to go wrong. It is hard to imagine a UK board thinking it was OK to backdate share options, for example."

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