

“World Business and Corporate Governance: Decades of Evolution and the Way Forward”

STATE-OF-THE-ART TALK:

**The Hong Kong Institute of Directors (HKIoD): 20th Anniversary –
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SOME KEY WORLD TRENDS IN CORPORATE GOVERNANCE (CG)

1. Evolution of corporate law and corporate governance
2. Themes/issues that dominated corporate law and corporate governance (CG) since at least the 1930s
3. Dominant contemporary and future themes/issue
4. Hong Kong and its State-of-the-Art corporate governance and corporate law model
5. Some reflections on key world trends in CG

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1. EVOLUTION OF CORPORATE LAW AND CORPORATE GOVERNANCE

- Bursting of the bubble and the Bubble Act 1720
- Joint stock company came to a standstill till repeal of the Bubble Act in 1825
- Unincorporated associations, trusts and partnerships bloomed from 1720-1825
- UK Joint Stock Companies Act 1844
- Limited Liability Act 1855

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2. THEMES/ISSUES THAT DOMINATED CORPORATE LAW AND CG

- Separation between “ownership and control”
 - The purpose of for-profit corporations: What was meant by directors’ “duty to act in the best interests of the corporation”:
 - USA theory and practice dominated!
 - “Profit maximisation” for “the shareholders”!
- “A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end.”

Dodge v Ford Motor 170 N.W. 668 (Mich. 1919) at 684



- Voluntary Corporate Governance Codes (UK Cadbury Report 1992) with many, many offsprings worldwide :
 - “Comply or Explain” / “If not, why not” / “Comply and Explain” (King IV – 2016: South Africa)

- Shareholder concerns sparked several investigations on issues of concern:
 - Statutory power of shareholders to remove directors at will (introduced into the UK Companies Act in 1952)
 - Excessive director and executive remuneration:
 - Disclosure the initial “answer”
 - “Say on Pay” non-binding vote by shareholders
 - “Two-strikes-and-a-spill” approach in Australia

- Non-executive directors (NEDs)
- Independent non-executive directors (I-NEDs)
- Board diversity, with emphasis on gender diversity (Norway: Mandatory 40% Quota of Women – deregistration if not achieved!)

- Tougher corporate regulation because of:
 - 1997 Asia (East Asia) Financial Crisis
 - Collapses of Enron, World.Com (USA) and HIH Insurance (Australia)
 - Collapse of Lehman Brothers and Global Financial Crisis (GFC) that followed

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3. DOMINANT CONTEMPORARY AND FUTURE THEMES/ISSUES

1. Eminent law reform in Australia:

- To rectify the failure of the Statutory Business Judgment Rule (SBJR)
- To extend protection for “whistleblowers”

2. Reporting on and disclosure of non-financial information

–GRI: Global Reporting Initiative

–ESG: Environmental, Social and Governance – Policies and Reporting

–<IR>: Integrated Reporting, Sustainability and Responsibility Reporting

BEYOND FINANCIAL CAPITAL: 6 TYPES OF CAPITAL

1. Financial
2. Manufactured
3. Intellectual
4. Natural
5. Human
6. Social

International <IR> Framework, pp. 11-12:
<https://integratedreporting.org/resource/international-ir-framework/>



VALUE CREATION PROCESS

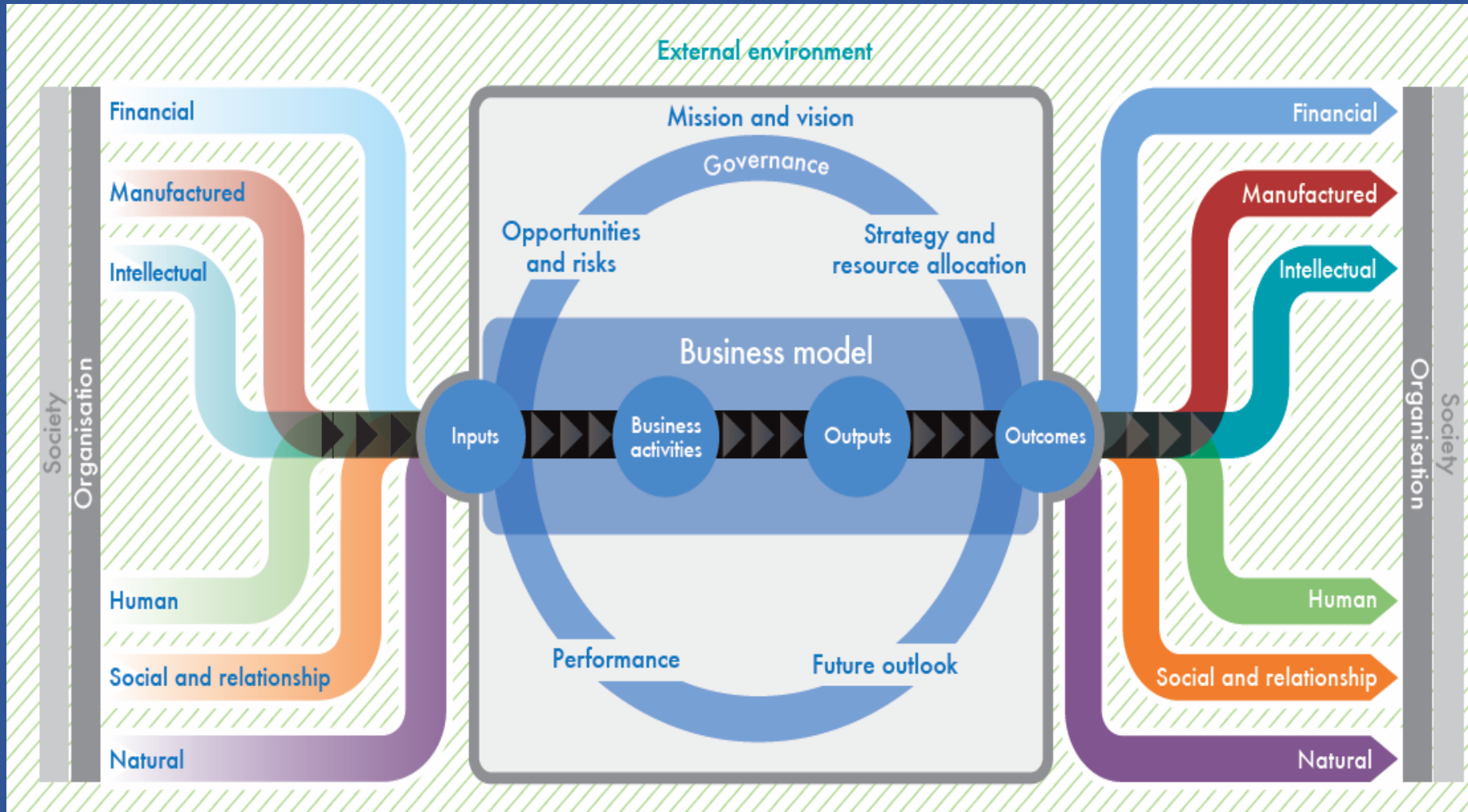


Figure 2: Value Creation Process: *International <IR> Framework*, p. 13:
<https://integratedreporting.org/resource/international-ir-framework/>

3. DOMINANT CONTEMPORARY AND FUTURE THEMES/ISSUES (CONTN ...)

3. Current shareholder primacy model and where are we heading regarding the recognising of the interest of all stakeholders?

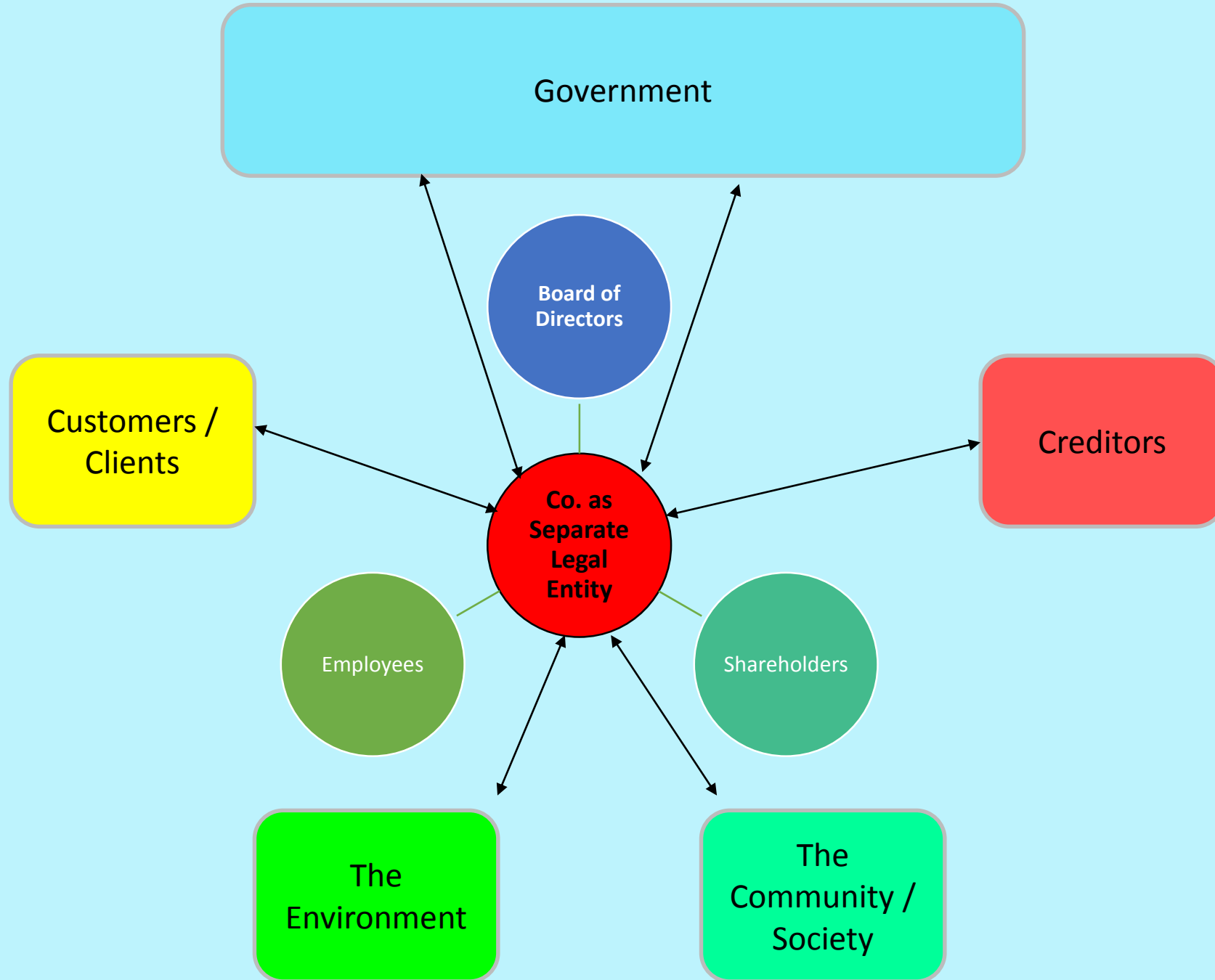
–Corporations' Corporate Social Responsibility (CSR)!

–Is this a responsibility of the board of directors?

–What is the role of directors as part of contemporary corporate governance?

17TH AND 18TH CENTURY-BASED SHAREHOLDER PRIMACY MODEL: LEGALLY STILL UNDERPINS MOST 21ST COMPANY LAW MODELS





4. HONG KONG AND ITS STATE-OF-THE-ART CORPORATE GOVERNANCE AND CORPORATE LAW MODEL

- In the past HK Company Law based on UK Companies Law
- Company Law Reform Commenced in 1994 ('clean sheet approach')
- Standing Committee on Company Law Reform (SCCLR): Fourteenth Annual report 1997/1998

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- Companies (Amendment) Ordinance 2003 (Hong Kong) came into operation on 13 February 2004, enacting many of the recommendations made in the Consultancy Report/Review
- Hong Kong CG Code introduced in 2005
- A new era - Companies Ordinance, Chapter 622 of the Laws of Hong: Commenced on 3 March 2014

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- Significant HK reforms:
 - Law Reform Commission of Hong Kong (Sub-committee on Insolvency), ‘The Winding-up Provisions of the Companies Ordinance’ (1998)
 - Updated Corporate Governance Code and associated Listing Rules implemented by the HKEX in 2012 and 2014/2015:
 - Came into effect on 1 January 2016

–The board of directors and risk management in particular:

“[N]ew risk management obligations should not be treated as another set of procedures and processes for the board. The code provisions oblige the board to manage and monitor the company’s risks. This code also expects risk management to be embedded in the issuer’s organisation. Failure to comply not only attracts sanctions from the exchange, but has legal implications for directors under statutory duty of care. Therefore, any omissions by directors in the managing and monitoring of the company’s risk will find themselves exposed to legal risks.”

Young and Huo, ‘New risk management requirements in Hong Kong’s Corporate Governance Code.’ (2016)

Finance, Rule of Law and Development in Asia: Perspective from Singapore, Hong Kong and

Mainland China 261.

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5. SOME REFLECTIONS ON KEY WORLD TRENDS IN CG

1. Corporate law and corporate governance has a long history, but changing times require changing approaches: 21st Century, not 17th principles!
2. There is little doubt that more than just profit maximisation for shareholders will be expected of boards of directors in future
3. The challenges of looking at the interest of all stakeholders, in the best interests of the company as separate legal entity, will have to be considered by all boards of directors

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4. Long-term and sustainable growth for companies will have to become the focus of boards of directors
5. There is little doubt that HK has been pro-active in reforming its company law and corporate governance model
6. However, there are more challenges that will have to be faced to ensure responsible behaviour by companies

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ULTIMATE RESPONSIBILITY OF THE BOARD

“To promote and practise good corporate governance (CG), it requires many parties working in synchronisation. Among them, directors have the ultimate responsibility for CG.

As the premier body representing directors in Hong Kong and a member institute of the Global Network of Director Institutes, The Hong Kong Institute of Directors (HKIoD) has been playing a pivotal role in director and public education that makes a difference. No doubt, HKIoD’s significant work in contributing to the global promotion of good CG will continue.”



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