Corporate Governance: A costly regulatory imposition or a tool for enhanced competitiveness?

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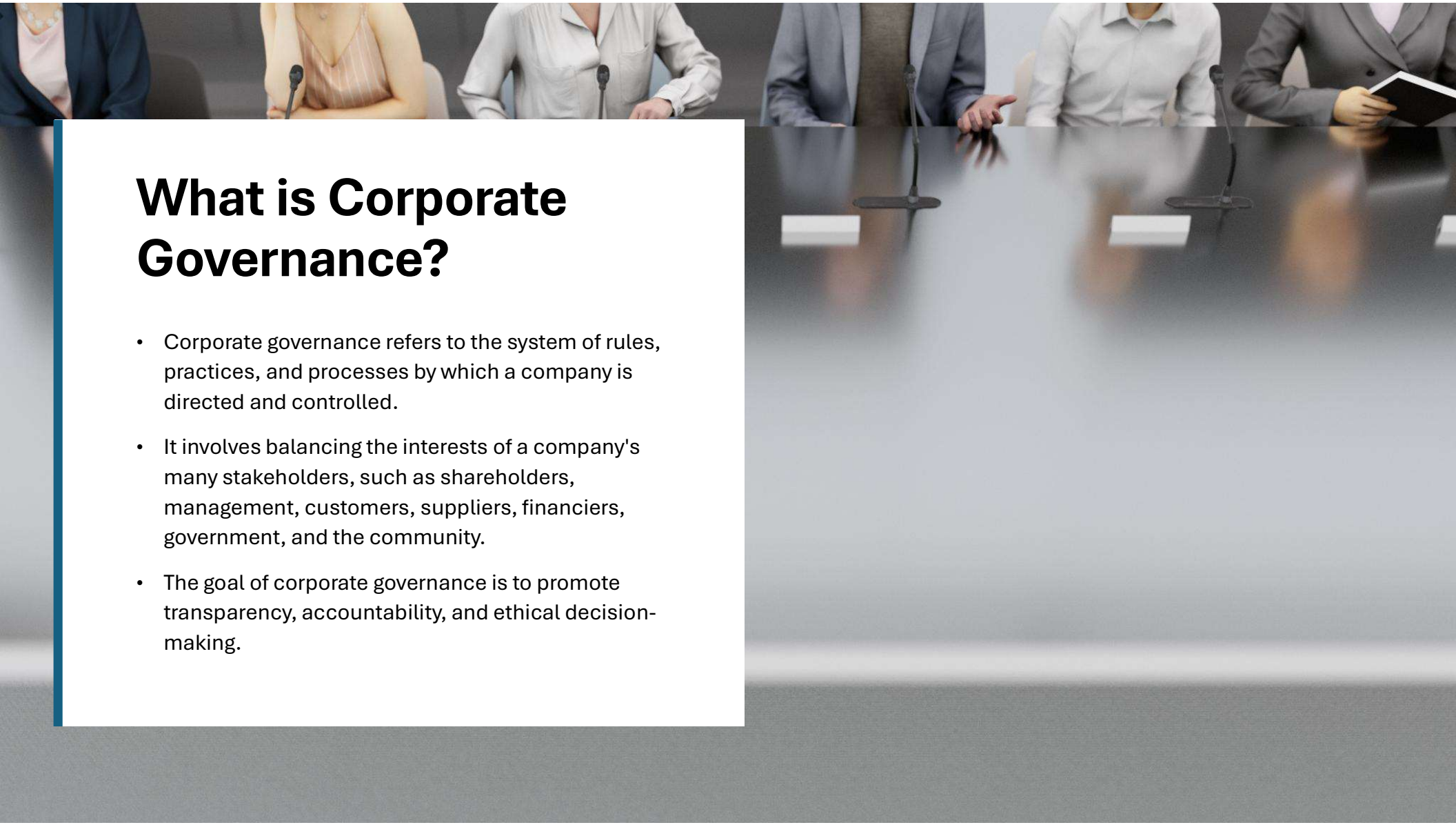
Ethics & Governance

- Ethical Responsibilities include Corporate Governance obligations but go beyond them
- Ethical decisions in Corporate Governance involve taking cognizance of societal, corporate and personal values
- Corporate Ethics and Shareholders' desire for profits are not always aligned
- "…The only entities who can have responsibilities are individuals… A business cannot have responsibilities (Milton Friedman)
- Cisco – Any success that is not achieved ethically is no success at all

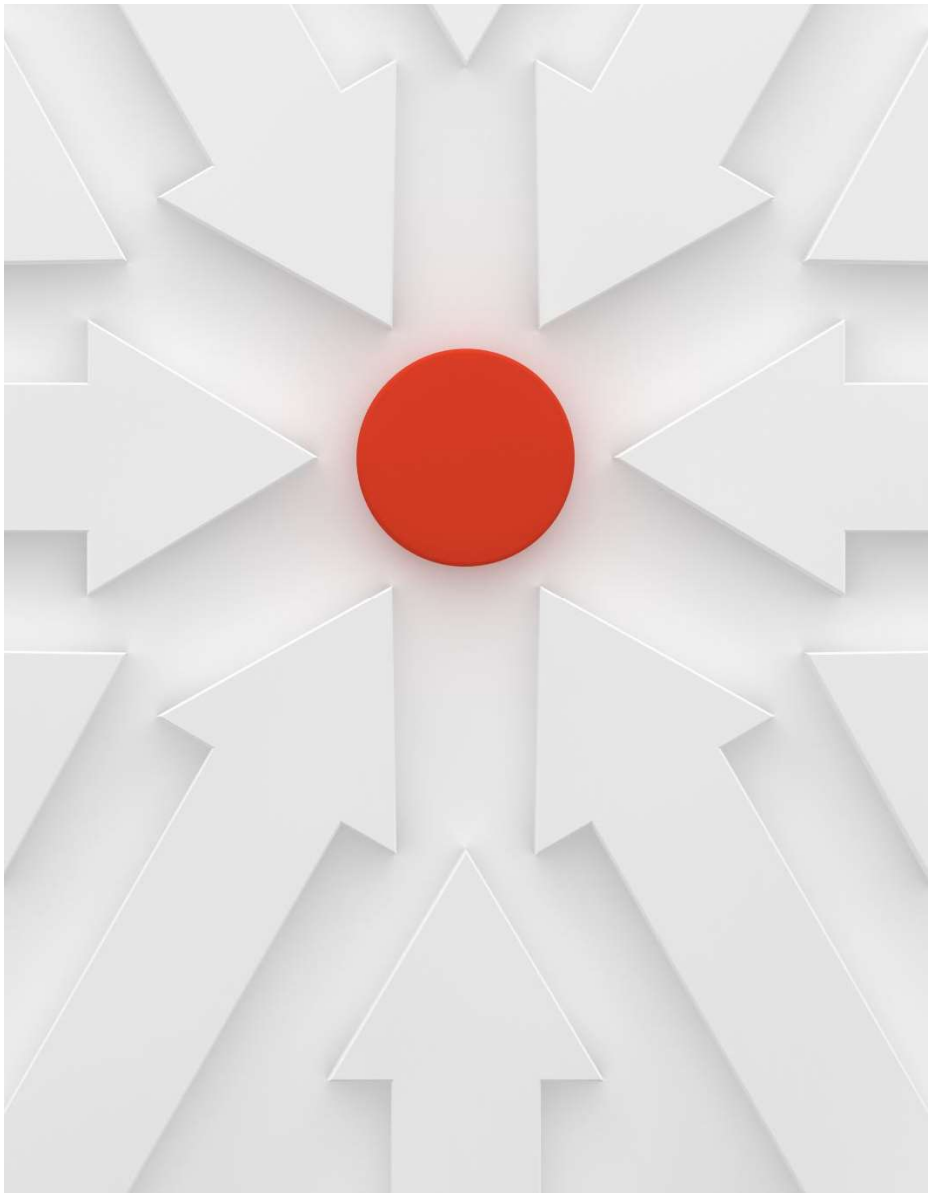


What is Corporate Governance?

- Corporate governance refers to the system of rules, practices, and processes by which a company is directed and controlled.
- It involves balancing the interests of a company's many stakeholders, such as shareholders, management, customers, suppliers, financiers, government, and the community.
- The goal of corporate governance is to promote transparency, accountability, and ethical decision-making.

Definitions of corporate governance?

- The **framework** for the direction and oversight of the enterprise
- The **process** that ensures the direction, control, oversight and evaluation of the enterprise, and its management.
- The **means** to enhance the decision making process



RELEVANT LAWS AND REGULATIONS

- The Cooperatives Society Act
- The Constitution and Bye-Laws of the Entity
- The Proceeds of Crime Act
- International Financial Reporting Standards
- Regional and International Corporate Governance Principles

Caribbean Corporate Governance Principles

- Encouragement of the Development of transparent and efficient markets
- Protection of shareholder rights and the equitable treatment of shareholders
- Recognition of the rights of stakeholders
- Timely and accurate disclosure
- Board to provide strategic guidance, monitor management and account to entity and stakeholders

The costs of corporate governance

- Compliance costs
- Administrative burdens
- Opportunity costs
- Resistance to change

Key Corporate Governance Attributes Affecting Financial Performance

- Board Composition
- Board Independence
- Board Duties and functions
- Board/Management Relations
- Minority Shareholder Rights
- Institutional Shareholders

Board Composition

SIZE

DIVERSITY

CREDENTIALS

REPRESENTATION

TENURE

INDEPENDENCE

Independence by Laws and Regulations

Not subject to control by others - neither fear nor favour

Independence from management

Independence from any group of shareholders

Independence of *Mind*

Think, speak and act independently with confidence and courage

Have confidence and the will to make tough decisions, including the strength to challenge the majority view

Be willing to risk rapport with Chair and other Directors and / or C.E.O. in taking a reasoned, independent position

The Duties of Directors

- The overriding duty to act in the best interest of the entity
- The Fiduciary Duty
- The Duty of Loyalty
- The Duty of Care
- The Duty of Supervision
- Other Duties and Responsibilities

Fiduciary Duty & Duty of Care

- Corporate law sets out the following duties:
  - **Fiduciary duty** (duty of loyalty)
    - Duty to act honestly, in good faith and with a view to the best interest of the entity
      - Avoid conflict of interest
      - Duty of confidentiality
      - Duty to disclose
    - Imposed on each director
  - **Duty of Care**
    - Duty to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

The Board and Management

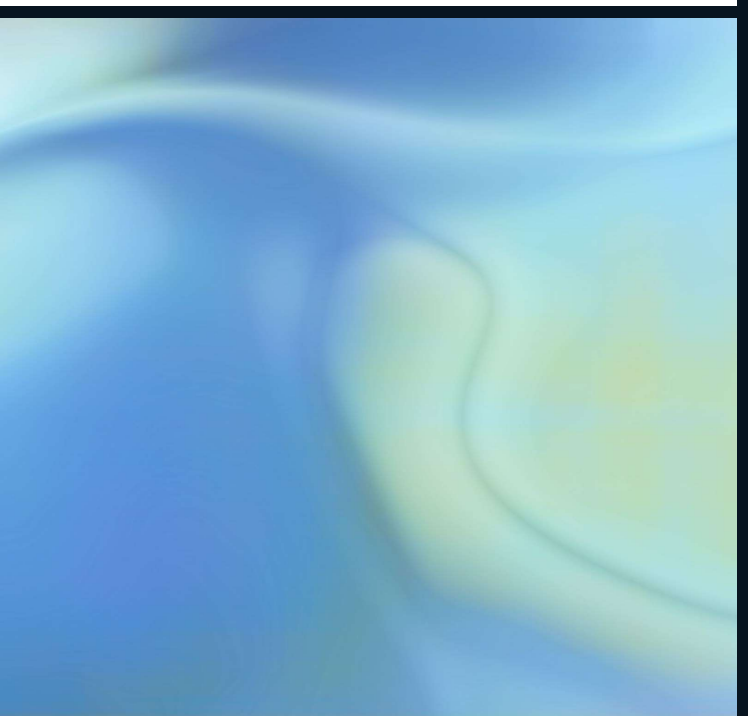
Management should provide adequate information to the Board, solicit Board's input on strategies and policies, and faithfully execute decisions of the Board

The Board should evaluate and approve key decisions of the management, evaluate the relevance of management information, provide their input in respect of policies and strategies, and act as watchdogs in respect of the Company's interest.

Key functions of the Board

- Overseeing governance of the entity and compliance with Laws, Regulations and Policies
- Approving the Strategy and policies of the Company
- Approving the budget and other financing and expenditure decisions
- Monitoring performance and the implementation of policies and strategies
- Board Training
- CEO Selection and Succession
- Hiring, monitoring, evaluating and compensating Executive Management
- Approving debts and liabilities over certain limits
- Approve general framework for staffing matters
- Risk Management

Key Management Functions



- Day-to-day leadership of the company
- Presenting strategic plans, risk management plans and budgets to the Board for Approval
- Implementation and driving strategic plan as well as the risk management
- Purchasing below a certain agreed limit within board approved budget
- Provide status reports on projects and on the implementation of policies and strategies
- Human Resources Management
- Operations Management

Corporate Governance and Financial Performance

- Numerous studies have found that there is a positive relationship between corporate governance indices and financial performance
- Wafdi Affes & Annis Jarboui (2023), based on a sample of 160 companies in the UK, concluded that there is a positive relationship between corporate governance and financial performance
- Gompers, Ishi and Metrick (2003) showed the firms listed on the NYSE that that are ranked higher in governance generally have higher market valuations
- Many explanations, including Agency Theory, have been given for the link between corporate governance and financial performance

Why Corporate Governance Positively impact financial performance

- Increased credibility
- Access to Capital
- Risk Management
- Operational Efficiency
- Agency Theory
- All of these factors can enhance the competitiveness of an entity relative to other entities

Corporate Governance as a tool for competitiveness

- In order to maximize the benefits received from the cost incurred in respect of Corporate Governance, the Board of Directors and Management must view corporate governance as a tool for competitiveness, and must include it among the strategies listed in the strategic plan
- The studies that link Corporate Governance to financial performance have identified a number of key Governance attributes that contribute to financial performance. These include minority shareholders' rights, board diversity, board independence, corporate social responsibility and stakeholder engagement.
- A Credit Union, by its very nature and by the principles to which it is bound by the Cooperative Societies Legislation, must be committed to many of these corporate governance attribute that enhance performance

Corporate Governance as a Tool for Competitiveness

- **Competitive Governance Attributes**
  - Minority Shareholder rights
  - Shareholder Engagement
  - Independence of board of directors
  - Diversity in membership of board of directors
  - Cooperative Shareholder Responsibility

- **Cooperative Principles**
  - Equality of voting rights
  - Personal Participation
  - Non-discrimination (open and voluntary membership)
  - Operate for the benefits of members
  - Contributes to social and economic development
  - Continuing Education and Training

Making Governance a Tool for Competitiveness

Public Relations

Shareholder Engagement

Member Education
Financial Counselling
Social Events

Stakeholder Engagement

Leveraging membership

Self Regulation

Environmental, Social & Governance

Conclusion

“If people are good because they fear punishment and hope for reward, then we are a sorry lot indeed” (Albert Einstein)

“You cannot legislate good behaviour”(Mervin King)

“The time is always right to do right” (Nelson Mandela)