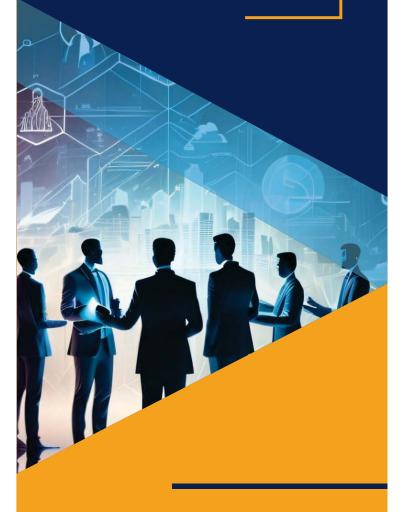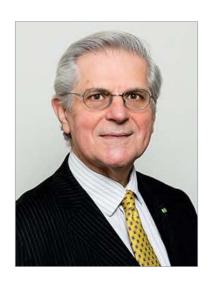# Revisiting the Boundaries and Burdens of Corporate Governance

Coping with contemporary directorial pressures, dilemmas and concerns

*Prof. Colin Coulson-Thomas
President, IMS and
Director-General, UK & Europe
Institute of Directors, India

The roots of corporate governance arrangements lay in efforts in certain jurisdictions to influence financial and other decisions and address practices of directors that had led to highly publicised cases of abuse and deception. Subsequently, their scope has widened and they and related company and other laws, regulatory provisions and reporting requirements have become more onerous for directors, boards and companies. The range of factors affecting companies, over which directors and boards may have little control, has also greatly increased. The timing and consequences of inter-related risks and existential threats are difficult to predict. Their impacts can vary greatly by sector, location, situation and circumstances. Many of them also affect infrastructure, public services and communities upon which companies depend. They are shared and require collective responses.

The context in which many boards operate has become not just complex, volatile and unpredictable. It is unsettling as more directors feel no longer in control and ready to cope with possible scenarios. Rituals of governance might continue, and in the short-term the numbers may look good, but beneath the surface in some boardrooms, more individual directors

experience a sense of foreboding, that current aspirations, operations and activities are not sustainable. They sense a disconnect between the allure of growth projections and myriad possibilities and the reality of finite planetary resources and looming existential threats. They feel they are on an accelerating runaway train, with some hyped up and excited travellers, but running out of track and unsure of how to slow down and stop. Is corporate governance overextended in some areas and largely missing in others?

As risks and threats multiply, reinforce each other and impact simultaneously, and when collective responses to them are too little and too late, they threaten to overwhelm corporate and collective efforts to mitigate and respond to them. More collaboration and cooperation is badly needed. What do trends, developments and changes in the fragmented and polarised global environment and regional, national and local contexts in which companies operate, mean for contemporary corporate governance arrangements? Are these still fit-for-purpose? Do they reflect global risks, existential threats, and a diversity of corporate situations, circumstances and local contexts? What changes are required to corporate governance codes, guidance, arrangements and practices, company law and other legislation, and regulatory, reporting and compliance frameworks? How might they better ensure sustainable outcomes?

> **❝**
> At what point do exciting, prestigious, and promising opportunities each, become another competing vested interest?

Impacts of accumulating pressures and requirements upon directors

Pressures upon individual directors, stakeholder expectations, and, in some jurisdictions, their exposure and potential liabilities have all increased. Whether or not it is yet widely recognised as an emerging trend in boardrooms, more directors now experience anxiety, uncertainty, and insecurity. They increasingly feel vulnerable, overloaded, and unable to influence and

impact external events over which they and their board colleagues may have little control. Could they be held accountable for outcomes resulting from corporate and colleague responses to the demands of their customers? When surrounded by fellow directors who wish to make hay while the sun shines and resist changing direction, they might feel isolated and unable to share their concerns. Facing groupthink and consensus in favour of an unsustainable status quo, they may not be sure of whom to trust and count on for support.

A director could worry that colleagues and an entity may not be able to cope. Discussions and responses to their questions could suggest a lack of resilience, expose dependency upon aging or vulnerable infrastructure and make more people aware of a lack of preparation. Colleagues may seem reluctant to recognise realities and take necessary but difficult decisions. Continuing as before, ignoring negative impacts of corporate operations and activities and leaving dilemmas for future board members to address might appeal to others as an avoidance strategy. Consequences for early movers elsewhere may encourage caution. For example, a company or country doing the right thing, such as making faster progress to net zero, could experience the competitive disadvantages of higher energy costs.

Wicked problems are sometimes ducked or appear on board agendas because they affect a total enterprise and most, if not all companies, and they cannot easily be delegated to a single department or team. Directors may realise that they hold a minority view on certain critical boardroom issues, such as the urgent need for collective responses to a growing existential threat, while these may still have a favourable impact. At the same time, evidence could emerge and grow of a director's marginalisation and exclusion from important conversations as more colleagues go with the flow and align with vested and special interests. Examples of the harsh and unfair

treatment of whistle-blowers and others who speak up, and the portrayal of differences of opinion as distracting, disruptive, and/or disloyal, might also arise. Avoiding confrontation and fitting in may appeal to those who are dependent upon their salaries or fees.

Consequences of increasing directorial workloads

Events, developments and global trends such as fragmentation and polarisation continue to expand the range of areas that directors should be concerned with. Regulators, government departments, reporting requirements and the need for additional compliance and other governance frameworks also add to the workloads of directors and those who support them. Associated costs increase corporate overheads. Dealing with regulators and changing and tightening legal requirements can take up the time of both directors and executives. Many stakeholders, CEOs, managers and members of the flexible workforce may also experience many of the pressures faced by directors. Issues may result for boards. Recognising their own insecurities and vulnerabilities can help directors to better empathise with and support others.

Many directorial burdens are difficult to share. It may not be possible for others to lighten the load. Realities can be unsettling for those who are much less able than directors to influence them. For example, finite natural capital and available supplies of required rare earths may either be being rapidly used up or controlled by certain countries. Making executives aware of competing demands for diminishing supplies may simply unsettle them. When aspirations, growth objectives and planned activities of various players in some sectors are aggregated, it often becomes clear that they are unrealistic, undesirable and unsustainable in relation to other possible uses of required resources. Board action may be needed before shortages, bottlenecks and vulnerabilities emerge, and further sourcing becomes unaffordable.

More engaged and caring directors and executives can run the risk of physical and emotional burnout. As the duties and responsibilities of being a director and totally immersed in myriad problems facing a particular company become ever more onerous, the relative attractiveness of resigning and instead adopting a portfolio of advisory roles in an area of special personal interest may increase. At a corporate level, a board may be tempted to delist to avoid the extra scrutiny and risks,

> ## "
> The range of factors affecting companies, over which directors and boards may have little control, has also greatly increased.

such as the threat of an unwelcome takeover, that may come with a listing. Given the multiplicity of trends, threats and possible future developments and scenarios, how might corporate governance, legal, regulatory, reporting and compliance provisions be simplified and made less onerous and distracting for those boards that increasingly struggle to cope with a variety of interrelated pressures and sometimes contradictory requirements?

Increasing complexity and unintended consequences

Workloads are not just increasing. Many issues are becoming more complex, and differences between alternative possible and uncertain outcomes are starker. Where what could appeal to some members of a stakeholder group might alienate others, self-esteem, which depends upon obvious external achievements and successes, could become more elusive. Reading the road ahead, some directors may want to bail out before issues develop into full-blown crises, or to avoid the ignominy of being overtaken and/or left behind by a former minnow or buy-out that was faster to operate online or adopt a new technology. Directors may vary in their internal sense of self-worth and ability to judge and confront if they are still able to fulfill directorial duties and/or when they have had enough. Might they be increased by lightening governance, legislative, regulatory, reporting, and related compliance burdens upon directors?

Imposed requirements do not always recognise the complexity of some choices, their possible unintended consequences, or that impacts might vary by situation, circumstance and location. For example, a governance priority and dilemma for many boards is balancing the enabling of access to beneficial applications of AI with

preventing their malevolent and criminal use by bad actors and protecting multiple parties and the public from the harm they might cause and existential threats they could pose. What obligations should be placed upon developers of what forms or types of AI application to avoid them causing harm, and what should their liabilities be if they do not follow appropriate safety and security protocols? How high should the bar be set if regulations that are too broad might inhibit AI development and adoption? What degree of harm would be considered unacceptable and what penalties should apply?

Many of the challenging issues facing directors are also dilemmas for legislators and regulators. If anything, officials are more likely to face highly motivated and vocal vested interests. A balance needs to be struck between public safety and protection and enabling advantageous innovation. While warning of the potential dangers of AI, will its proponents and suppliers instinctively oppose regulation and legislation that limits their wider market opportunity? Given potential uses by bad actors, some restrictions are likely to be required. Corporate governance arrangements may need to reflect applicable AI regulations and legislation, the sector a company is in and its plans for AI adoption. Given the diversity in the marketplace, opponents of controls may stress the limitations of general provisions in specific situations and circumstances and the challenge of updating them in a rapidly evolving field.

Preserving future options and finding common ground

Collective corporate and human activities are degrading ecosystems, reducing biodiversity and drawing down the planet's finite natural capital. Current operations and lifestyles are unsustainable. While there may be steps that could be taken to buy time before further areas become uninhabitable and an external threat such as climate change becomes unstoppable, few companies have the scale and reach to make a significant difference without cooperation with other entities and aligned, collective and sustainable responses. Corporate governance changes that best enable them should be prioritised. Negative impacts of past and current activities already in the pipeline, are likely to make current situations worse before they become better. While bigger and faster steps might be taken now to reduce harmful emissions and other negative externalities, any resulting recovery and regeneration may begin from a weaker starting point and

with fewer resources to deploy against more severe challenges.

With remaining arenas that might still support further human activity, the emphasis will increasingly need to be upon preserving any bandwidth that remains. Our collective history suggests that without focus and international collaboration, human ingenuity and the relentless search for business opportunities will result in it quickly being used up by whatever activities, however trivial or distracting, are perceived as the quickest way of making a profit from satisfying consumer demand. One especially precious arena upon which life depends and which is under threat is the thin band of atmosphere around our planet up to the height that can be exploited by commercial and military space activities. It is becoming increasingly crowded. If planned satellite launches from ever more countries with space programmes occur, debris created by collisions may render it unusable.

Currently, many individual companies develop their plans in isolation. Civilian and military programmes may not be aligned. While international collaboration exists at a regional level, and among some allies, global collaboration to preserve and prioritise the use of available bandwidth is lacking. The equivalent of a race to grab frontier land is occurring, with television often the largest use of what remains of a finite resource. Effective governance mechanisms for preserving bandwidth essential for our collective survival are needed. With limited public awareness of what is happening, there is little wider discussion of either the energy and resource demands of current activity, or the many possible commercial uses of space and where they should rank in relation to other priorities. At what point do exciting, prestigious, and promising opportunities each, become another competing vested interest?

Possible future scenarios of estrangement or reconciliation

Beyond a certain point, directors, corporate processes, infrastructures and eco-systems may lack the capacity to handle increased demand and might degrade and fail under the pressure of human activities, the inadequacy of collective responses, and inappropriate and excessive legal and regulatory burdens. Further eco-systems may experience the negative impacts of contemporary lifestyles and corporate operations. Pressures upon directors, boards and companies could increase as

businesses, cities, religions, authoritarian states, non-state actors, gangs, international criminal networks and other groupings and collaborations compete for power, influence and resources, against a background of inadequate collective responses to multiple existential threats. Many directors feel they are swimming against the tide.

While others wrestle with requirements to protect, maintain and support vulnerable communities, aging populations, fragile infrastructures, endangered ecosystems, overloaded services and public order, malevolent actors thrive on disorder, division and distraction. They exploit the inherent vulnerability of democracies and corporate systems and processes during transitions. There are many routes to living healthier, less stressful and more balanced and sustainable lives in harmony with the natural world. However, the momentum remains in the opposite direction. Unless more people, organisations and governments commit to sustainable lifestyles, operations and growth respectively further laws, regulations, intervention and controls may be needed. Action to address negative externalities and bring laggards in line may further increase pressures and add to burdens upon directors trying to do the right thing.

Luckily for many directors, boards and CEOs, other people, including stakeholders may no longer expect them to have all the answers as some might have done in the past. The humility to recognise limitations, acknowledge contradictions, share concerns, invite contributions, welcome alternative options, and listen to others and learn from them is becoming ever more important. The loneliness of leadership may be a choice and a consequence of one's approach to it. Casting a net more widely, accessing a greater diversity of thought, and being open to a wider variety of responses can increase individual, collective and corporate resilience. It can widen the pool of those who understand challenges and share a collective desire to respond, transition and survive. Governance arrangements should recognise the need for shared and collective leadership and be flexible and enabling of wider participation and contribution. ∎

*Prof. Colin Coulson-Thomas holds a portfolio of leadership roles and is IOD India's Director-General, UK and Europe. He has advised directors and boards in over 40 countries.