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# COVID-19, Corporate Governance and ESG

**John Horsley**
Principal Lecturer, School of Business
ORCID ID 0000-0003-1757-1670
John.Horsley@manukau.ac.nz

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**MANUKAU INSTITUTE OF TECHNOLOGY**
**TE WHARE TAKIURA O MANUKAU**
**Email: research@manukau.ac.nz**



## ABSTRACT

*Covid-19 has sent shock waves across all facets of life – personal, societal, business, economic, resetting business models and long-held theoretical assumptions. These global forces resonate with the birth of corporate governance 25 years ago which led to a paradigm shift in the organisational and functional operation of companies. The trigger was global market failure, high-profile corporate collapses, and outrage at corporate misdeeds. The pandemic is likely to have a similar impact on corporate governance and this paper assesses the ability of contemporary governance to respond proactively to Covid-19. A potential impediment is the theoretical basis of corporate governance, agency costs theory and its focus on shareholder primacy – an obligation to serve the interests of shareholders to the exclusion of all other stakeholders. The theory is being challenged by stakeholder primacy, a paradigm shift that recognises wider interests including employees, creditors, consumers, and the environment.*

*This stakeholder focus is evident in market initiatives requiring companies to report on environmental, social and governance (ESG) matters. An investor driven initiative, ESG has traditionally focused on the E and G pillars, to the exclusion of the S pillar. The arrival of Covid-19 has given primacy to the S pillar. The paper explores the influences that shape corporate governance and ESG, the changing priorities triggered by COVID-19 and assesses the ability of the current governance model to respond to change.*

## 1.0 INTRODUCTION

Corporate governance is a term which has universal currency today. Its primary focus is to create a framework for a successful and sustainable organisation; one that can achieve its purpose and goals, benefit its stakeholders, and align the interests of its key participants. In essence, its aim is to support value creation and accountable management and contribute to the long-term competitiveness of the companies.

It embraces important issues involving large companies, and listed companies in particular. The primary focus is the role of the Board and its relationship with management and shareholders, and the separation of ownership and control in the company where the interests of shareholders are potentially in conflict with the interests of managers who control the operation of the company. An emerging focus is the role of stakeholders and the responsibilities that companies owe to a broad range of interest groups. Traditionally, shareholders have been dominant but more recently, this has broadened to a wider body of stakeholder interests.

The focus of corporate governance is not constant; rather it shifts and responds to the changing market, societal and regulatory environment. Initially, it concentrated on the need for accurate financial reporting to ensure shareholders received expected returns on their investment. This required a board of directors to monitor and oversee the actions of management, a role that was largely missing in the decades prior to the emergence of corporate governance. The governance model also initiated a proactive role for shareholders – shareholder activism – to use their voting power to pressure boards and senior management to respond to their concerns. These two developments, the monitoring role of the board and shareholder activism became the foundations of modern governance.

This did not occur in a vacuum. Financial crises, corporate failure and high-profile collapses were the triggers for boards and shareholders to exercise a power that had been dormant for decades. In essence, governance began as a response to market failure, a recurring element in free market economies. The term 'Cycles of Creative Destruction,' first used by Schumpeter in his book 'Capitalism, Socialism and Democracy' (Schumpeter, 1942) neatly expresses the continuing crisis of capitalism that initiated the governance agenda in the late 20th century.

The governance model is built on a response to organisational, market or regulatory failure, and involves the establishment of best practice recommendations published by regulators, following wide consultation with market participants. These recommendations are published in Corporate Governance Principles or Corporate Governance Codes, issued in countries that list companies on Stock Exchanges. These documents are updated, albeit gradually, in response to new market failings and challenges.

The institutions responsible for the publication of Principles and Codes include, in New Zealand, the Financial Markets Authority (publisher of the FMA Principles of Corporate Governance), the NZX (publisher of the NZX Corporate Governance Code); in Australia, the ASX Corporate Governance Council (publisher of the ASX Principles of Corporate Governance), and in the UK, the Financial Reporting Council (publisher of the UK Corporate Governance Code).

Corporate governance offers a different regulatory approach to that of legislation which requires companies to do or refrain from doing something, punishable by prescribed sanctions. Principles and Codes are based on 'soft law', a self-regulatory environment which companies use to measure their systems, policies, and practices. No formal sanctions are imposed should a company decide to ignore the requirements of a governance framework. There is, however, a reporting mechanism requiring companies to identify in annual reporting compliance or non-compliance with the Principles – the 'comply or explain' model. There are market pressures for a failure to comply including compliance reports by regulators, financial media commentaries, and, importantly, a shareholder focus on the company's governance. This shareholder activist element can be triggered when there is evidence of a failure to comply with Corporate Governance Principles and increasingly this is becoming a dominant feature of governance. The arrival of investor led ESG demands on companies is scaling up this activist focus, resetting the traditional power balance of governance frameworks.

The soft law model has its benefits, offering companies the ability to adjust the governance principles to their operating environment. Nevertheless, it is constrained by its theoretical foundations and by the world views of regulators responsible for developing the Principles. Covid-19 challenges the architects of the current governance frameworks to revisit the soft law settings and respond to the urgent issues arising from the pandemic.

**2.0 METHODOLOGY**

An historic analysis methodology is used in this paper to review corporate governance, its competing theories, the emergence of ESG – environmental, social and governance impacts, and the future direction of corporate governance.

Primary and secondary research, both quantitative and qualitative, is accessed from journal and business articles, together with reports from market participants.

**3.0 OVERVIEW**

***3.1 Corporate governance and changing global perspectives***

While the origin and development of governance has focussed on corporate failure, there has been a parallel development of market and global innovation which influences corporate activity and the growth and focus of governance. The marketplace continually evolves, incorporating new perspectives based on shifts in global world views. The emergence of sustainability (Brundtland, 1983), Agenda 21 (UNCED, 1992), and the 2015 publication of the UN Sustainable Development Goals (www.sdgs.un.org n.d.) have led to market developments and a proactive response by companies.

Historically, there has been minimal reference to sustainability in the Principles and Codes. By contrast, the global focus on sustainability has had a far-reaching influence on market activity, on companies and on nation states. New Zealand examples include the Climate Leaders Coalition (CEO Steering Group, n.d.), a network of over 100 CEOs who are taking voluntary action on climate change; the Sustainable Business Council (Business, People and Nature Thriving Together, n.d.) and the establishment of the Climate Change Commission, created by the 2019 Zero Carbon legislation (He Pou a Rangi Climate Change Commission, 2021).

Globally, sustainability reporting is mainstream for large corporations. The US response is primarily market-driven, with 2019 data showing that 90% of the largest listed companies publish corporate responsibility, citizenship, or ESG reports (G & A, 2020).

The European model is compliance-based, with the European Union Non-Financial Reporting Directive requiring large companies and financial corporations operating in Europe to disclose information on environmental, social, human rights and anti-corruption matters, necessary for understanding the company's impacts. The goal is to reorient capital flows towards sustainable investments and manage risks stemming from climate change, environmental degradation, and social issues (EU Non-Financial Reporting Directive, n.d.).

These market and regulatory initiatives indicate a willingness to engage with a global challenge that impacts on the governance domain, on corporate strategy and performance.

***3.2 Agency Theory and Stakeholder Theory***

While these sustainability developments have created a momentum for corporate best practice, they have only recently been incorporated into Codes and Principles, and even then, with limited recognition. The reason for this initial failure and the slow response is largely the result of the Agency Costs theory which is the foundation for the corporate governance model. An agent-principal relationship exists between a company's management (agent) and its shareholders (principal). The agent is given powers to make decisions on behalf of the principal and this requires incentives, overseen by the board of directors. This mandates shareholder primacy – an obligation on boards to concentrate on the interests of investors and financial returns to the exclusion of all other stakeholders. The core of the definition gives shareholders the status of owners of a company and as such have ultimate authority requiring corporate activity to be conducted in line with their wishes (Bower & Paine, 2017).

Anglo-American governance is based on Agency Costs theory, unlike European governance which adopts the position that the company is an organisation or enterprise with a distinct set of interests beyond those of the stakeholder groups. This recognition of the company's organisational dimension places the emphasis on the human assets and resources of the company. Accordingly, human assets and resources are the overriding interest of the company, and its survival and prosperity are based on the alignment of the company's interests and stakeholder interests (Deakin, 2005).

This difference between these two models highlights a further theoretical tension. From its inception, corporate governance in the English-speaking world has aligned itself to shareholder primacy and excluded wider stakeholder recognition. This tension has not been static. A competing theory, stakeholder primacy, was formulated at the same time as agency costs and, until recently, has been asserting its doctrinal position with minimal impact on governance frameworks. Stakeholder theory places shareholders as one of several stakeholders and shifts the position that prioritises the needs of shareholders. Its recognition of other significant parties - financiers, suppliers, employees, trade unions, communities and customers, has implications for the future development of corporate governance, for the momentum behind ESG, and the corporate response to Covid-19.

### *3.3 Stakeholder Theory*

As a theory of organisations, stakeholder theory is based on a relational model of the organisation. While there are a number of theories, R Edward Freeman's formulation in his book *Strategic Management: A Stakeholder Approach* (Freeman, 1984) is relevant to this paper. This adopted a managerial focus, based on the relationship between the company and its social environment by recognising the strategic relevance of stakeholders in an increasingly complex business world. Stakeholders are identified as any group or individual who is affected by or can affect the achievement of a company's objectives and the theory asserts that the task of corporate managers is to balance the interests of various stakeholders whose interests intersect with those of the company (Freeman, 1984).

The concept of Freeman's stakeholder theory contends that managers have a moral obligation to consider and appropriately balance the interests of all stakeholders, given that the purpose of the company is to serve as a vehicle for coordinating stakeholder interests. Scherer and Patzer (2011, p.144) note that "the theory is aligned to policies which support practices of corporate citizenship, corporate social responsibility, and, increasingly, sustainability with its focus on development which integrates the three interrelated dimensions - economic, social and environmental development - in a balanced way".

There is considerable debate regarding many aspects of the theory. Wheeler and Sillanpaa (1997) in their book, *The Stakeholder Corporation* argue that the long-term value of a company rests primarily on the knowledge, abilities and commitment of its employees, and its relationships with investors, customers, and other stakeholders. This employee focus is significant, given that the central focus of Covid-19 is primarily social and employee-based.

Stakeholder theory is commonly linked to a related theory, Corporate Social Responsibility (CSR), and a number of stakeholder theory characteristics appear to overlap with CSR. A closer reading indicates otherwise. Freeman and Dmytriyev (2017) state that the main similarity between the two concepts is that both stakeholder theory and CSR stress the importance of incorporating societal interests into business operations. However, differences are apparent given the primary focus areas of stakeholder theory are the key responsibilities of the business overall, i.e. corporate responsibilities, whereas CSR prioritises the orientation of business toward society at large – a social orientation (Freeman & Dmytriyev, 2017). Accordingly, stakeholder theory asserts that the essence of business primarily lies in building relationships and creating value for all its stakeholders, while CSR has ethical and philanthropic components. In essence CSR focuses on one stream of business activity - responsibility to local communities and society at large to ensure business does deliver on this societal orientation (Freeman & Dmytriyev, 2017).

### *3.4 Corporate Social Responsibility*

The contemporary version of CSR emerged in the 1970s, driven by societal pressures that focussed on the environment, human and labour rights. The expectation on business was to assume a broader social responsibility in corporate activity, integrating economic and social objectives. In the 1980s and 1990s, this progressed to a responsive decision-making emphasis, reflecting the emergence of sustainable development, beginning with the 1987 Brundtland Commission (Latapí Agudelo et al., 2019). In the 21st century, CSR's model of balancing economic, legal and ethical elements has been impacted and absorbed by competing frameworks and concepts - the triple bottom line, citizenship and sustainability reporting models, together with changing social interests (Latapí Agudelo et al, 2019).

### *3.5 Socially Responsible Investment*

An offshoot of CSR has been the development of funds that focus on ethical investment. Socially Responsible Investment (SRI) emerged in the 1970s and 1980s with a moral and ethical focus that pressured shareholders to avoid investment in companies involved in anti-social business activity. This activist movement focused on divesting investments from US defence companies that supported the Vietnam War and companies investing in South Africa's apartheid regime. An initiative in the late 1990s and early 2000si introduced a governance element – financial risk and financial returns – into SRI funds. This created a assertion that SRI funds were both morally and financially superior to other funds, with lower risk and higher returns (Schanzenbach & Sitkoff, 2020).

The combination of Stakeholder theory, CSR and SRI has played a significant role in creating the conceptual framework for ESG.

**4.0 THE ESG GLOBAL PHENOMENON**

ESG has become a global phenomenon that is reshaping markets, financial institutions, companies, investors, regulators, and the public. ESG refers to the environmental (E), social (S) and governance(G) information about a public company that is used to inform investment decisions. It evaluates a company's performance from three perspectives, E, S and G and assesses the company's ability to effectively manage its environmental and social impacts by way of its governance mechanisms. The E pillar has focussed, for example, on carbon emission reductions and clean energy, while the G pillar has seen reforms to boards of directors. The S pillar has been largely ignored, up until the COVID-19 pandemic which has cast a spotlight on the social impacts of corporate activity, giving overdue focus to workplace standards, employee wellbeing, the living wage, institutional racism, retraining, workplace diversity (Neilan et al., 2020).

The FT Lexicon provides a helpful explanation of ESG:

> ESG (environmental, social and governance) is a generic term used in capital markets and used by investors to evaluate corporate behaviour and to determine the future financial performance of companies. ESG factors are a subset of non-financial performance indicators which include sustainable, ethical, and corporate governance issues such as managing the company's carbon footprint and ensuring there are systems in place to ensure accountability (FT Lexicon n.d.).

The challenge of developing reputable reporting models has become an urgent priority for the major reporting frameworks that assess a company's ESG commitment and performance. The standard corporate response is to publish non-financial reports, a practice that has grown exponentially over the past fifteen years. While a discussion of these reporting developments is outside the scope of this paper, it is noteworthy that the five major ESG reporting frameworks have agreed to work together to standardise the metrics for measuring ESG impacts (Clarkin & Levin, 2020, Bergman et al., 2020).

The linking of ESG to investor activity is significant from a corporate governance perspective. Shareholder activism is one of the foundations of governance, giving the owners of capital the right to be heard by boards and management, and increasingly to use shareholder voting power to pressure boards and management to respond to current challenges.

The origins of shareholder activism are relevant. It began as the United States contribution to corporate governance and focussed on invigorating shareholders to exercise voting power, rather than work through a governance Code. Activism remains a dominant feature of United States governance, and unsurprisingly, ESG is has its origins and current growth in shareholder activism. Codes and Principles acknowledge the right to be heard but give no explicit recognition of shareholder activism. Rather, they focus on a traditional legal model of shareholder recognition rather than the more radical market formulation developed in the United States.

The NZX Corporate Governance Code is an example. Principle 8 – Shareholder Rights & Relations states, "The board should respect the rights of shareholders and foster constructive relationships with shareholders that encourage them to engage with the issuer" (NZX, 2020).

This low-level recognition in Codes and Principles can be contrasted with the current high-level focus of institutional investors and the direct engagement they have with boards and management. The influence this is having on governance practice is considerable. Aside from changing the balance of power of traditional governance, which focuses primarily on the board-management relationship, the investor-led ESG momentum is a disruptor that is capable of redrawing the contemporary governance model. From an investor perspective, ESG pillars can influence long-term business performance and profitability. This has led to an expectation that ESG factors need to be integrated into a company's strategy and disclosed in public reports. There are also expectations that environmental and social risks are identified and managed, and sustainability strategies are disclosed.

ESG has become a phenomenon in investor circles in recent years and is now seen as a paradigm shift in the relationships between public companies and their investors. Its emphasis on looking beyond the traditional bottom line and evaluating how companies are performing in their stewardship of stakeholder resources is a mainstream focus, with no indications that is a passing fad (EY Canada, 2021).

In a 2020 OECD report, Boffo and Patalano (2020) note the growing investor interest in ESG factors reflects the view that environmental, social, and corporate governance issues including risks and opportunities, can affect the long-term performance of issuers and should therefore be given appropriate consideration in investment decisions. As an umbrella term, ESG is constantly evolving based on current events, although there is a consensus on the core ESG pillars; E and S pillars are societal, and stakeholder focussed, while the governance element focuses on the company itself and what is best for its optimal operations. Unhealthy products and poor labour practices are bad social factors. Strong compliance records on environmental and labour regulations are good environmental and social factors, while poorly incentivised and entrenched management are bad governance factors. A recent focus on ethnicity and gender diversity on boards of directors is a mix of social and governance factors (Roisman, n.d.).

***4.1 ESG and Investor Activism***

The defining pillars of ESG, namely a concern with the impact of corporate activity on urgent social and environmental issues are at odds with the emphasis of corporate governance on board and management best practice and high-quality financial performance. The investor activism limb began with a focus on the need for greater financial accountability and responsibility, and it is only with the mainstream recognition of sustainability in civil society, markets, economies, regulators, and governments in the last decade have investment funds shifted their focus. This has coincided with the 2015 publication of the United Nations 17 Sustainable Development Goals and their combination of environmental and social elements.

Meanwhile, Codes and Principles have largely ignored pressing environmental issues and the social issues identified in the Sustainable Development Goals. While the focus continues to be internal organisational challenges and the need for companies to build best practice processes, recent updates have given limited recognition to sustainability frameworks. The United Kingdom Corporate Governance Code broadened the scope of its principles in 2018 in somewhat oblique wording, stating in Principle A that a 'successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society' (Financial Reporting Council, n.d.).

The most explicit reference is found in the 2020 NZX Corporate Governance Principles which gives recognition to ESG (non-financial) reporting in Recommendation 4.3. This states '[a]n issuer should provide non-financial disclosure at least annually, including considering environmental, economic and social sustainability factors and practices. It should explain how operational or non-financial targets are measured. Non-financial reporting should be informative, include forward looking assessments, and align with key strategies and metrics monitored by the board.' An ESG Guidance Note assists listed companies with their non-financial reporting (NZX, 2020). This provides information about global frameworks and suggests that if an issuer chooses a formal framework to report on ESG factors, it should report against a recognised international reporting initiative such as the Global Reporting Initiative guidelines or IIRC Integrated Reporting. Also included is the requirement for a diversity policy that requires measurable objectives to be set regarding board and senior management representation.

The most complete alignment with sustainability principles is the 2016 King IV Report on Corporate Governance for South Africa with its focus on ethical leadership, the organisation in society, corporate citizenship, sustainable development, stakeholder inclusivity, integrated thinking, and integrated reporting (European Corporate Governance Institute, n.d.).

It could be argued that the minimal recognition of ESG in Codes and Principles is a consequence of the contexts adopted in the drafting of principles. These are dominated by corporate vocabulary focusing on the inner workings of companies. It can also be argued that the lack of recognition is a consequence of the restricting power of theoretical foundations – agency costs - and a conceptual model of governance that focuses on corporate failure as the trigger for best practice recommendations. The broadening of governance principles to include the external environment of business and stakeholder recognition does not readily fit within these narrow governance constructs.

***4.2 The S pillar in ESG***

A feature of ESG has been the focus of the E and G pillars, to the exclusion of the S pillar. There are a number of factors that have created this situation, including a lack of consensus as to what constitutes the S pillar, its range of issues, the qualitative nature of social metrics and a lack of social reporting. The social pillar lacks a consistent framework given its broad spectrum - consumer rights, product safety, worker rights to diversity and inclusion. (Neilan et al., 2020).

The E and G pillars have been the focus of attention for at least two decades and consequently have the benefit of well-developed metrics, reporting models and an active stakeholder focus. The S pillar overlaps with E and G in a number of contexts, and this creates demarcation problems. An example is pollution, both a workplace and a wider environmental issue. Similarly, if there is poor governance disclosure in an organisation, it is likely that social issues will not be identified.

Pressure for recognition of the S pillar has been building in recent years, with investors leading the way. A growing body of institutional investors have set up groups to focus on specific social issues, including the Corporate Human Rights Benchmark (CHRB), founded in 2013 and backed by investors managing USD 5 trillion; the Investor Alliance for Human Rights, founded in 2018, representing investors with over USD 2 trillion in assets under management, and the U.S. Human Capital Management Coalition, an organization comprising 25 institutional investors with USD 2.8 trillion in assets (Deutsch Bank, 2019).

The number of potential social factors that can be measured has been problematic, although progress has also been made in recent years. The NYU Stern Centre for Business and Human Rights researchers have identified three frameworks to measure the S pillar: company-focused frameworks; investor-focused frameworks and human rights-focused frameworks (NYU Stern, 2017). These are evident in prominent global reporting frameworks such as the Global Reporting Initiative, CDP, Climate Disclosure Standards Board, International Integrated Reporting Council, Sustainability Accounting Standards Board and Workforce Disclosure initiative, all of which have developed reporting models and metrics that measure a wide range of company activities including ESG impacts (global reporting.org. n.d.). Uptake on reporting frameworks is growing amongst the investment funds, but in essence, they are frameworks that have yet to become mainstream.

### *4.3 Covid-19 and the S element*

The focus on E and G pillars to the exclusion of the S pillar is based on a number of factors including the qualitative nature of social metrics, a lack of social reporting, challenges around the definition and the scope and measurement of "softer" considerations. This has led to social impact reporting that has been disjointed and lacking in comparability ( Lea, 2021). The potential breadth of social issues is another challenge, with the social pillar spanning a broad spectrum from consumer rights, product safety to worker rights and safety, child labour, inequality, diversity, and inclusion (Neilan et al., 2020). This breadth of categories creates a challenge for accurate metrics and frameworks for interpreting social data, and these challenges have led to a reluctance to focus on social pillar issues.

These challenges aside, there is growing awareness of the commercial significance and risks associated with social impacts. A 2017 report published by the United Nations Principles of Responsible Investment, a United Nations-supported international network of investors noted:

> Unlike environmental and governance issues, which are more easily defined, have an established track record of market data, and are often accompanied by robust regulation, social issues are less tangible, with less mature data to show how they can impact a company's performance. But issues such as human rights, labour standards and gender equality – and the risks and opportunities they present to investors – are starting to gain prominence. There is a growing awareness on the part of companies that good social performance can translate into a number of benefits, from improved business performance to better relationships with local communities (unpri.org, 2017).

Changes are evident in prominent global reporting frameworks such as the Global Reporting Initiative, International Integrated Reporting Council, Sustainability Accounting Standards Board and Workforce Disclosure initiative with well-established environmental and governance metrics that are developing detailed social reporting models (global reporting.org. n.d.). While Covid-19 has provided urgency for identifying and evaluating the social performance of companies, there is a view that more needs to be done. A Covid-19 - related report by the Principles of Responsible Investment has highlighted and prioritised specific concerns, including employee health and well-being, equipment and space needed to operate safely, improved healthcare options, mental health counselling, and childcare. Cybersecurity and privacy concerns were also identified, with increased risk levels for data and privacy breaches, requiring a high focus on digital safety (unpri.org. 2021).

The urgency with which the social pillar has become the core focus of ESG is the most visible outcome of the pandemic. This will result in the development of mechanisms to measure social data, with a flow-on benefits to investors and to the corporate sector.

## 5.0 THE NEW ZEALAND CONTEXT

The New Zealand corporate governance, ESG, Covid-19 story is one of mixed messages. From a governance perspective, the NZX adopted a traditional model in its initial 2003 Corporate Governance Code. This was dominated by a focus on board reform, consistent with agency costs theory. An updated Code, issued in 2017, and updated again in 2020 initiated changes, introducing guidelines for environmental and social governance reporting, outlined in 4.1 above. Also included was the requirement for a diversity policy that requires measurable objectives to be set regarding board and senior management representation. (NZX, 2020).

While these changes indicate a strong signal by NZX to respond to market developments, the uptake by companies to report on ESG has been slow. A 2020 KPMG survey of sustainability reporting has concluded there is room for improvement. The survey reveals that

> since 2017 there has been a slight increase in the number of New Zealand entities reporting on ESG matters (up to 74% from 69%). Of the New Zealand organisations who report on sustainability performance, 47% (an increase of 7%) include sustainability results in their annual reports. While the percentage of New Zealand organisations whose ESG information is independently assured has increased from 7% to 28%, it is significantly lower than global peers (around 50%). There has also been a significant increase in the number of organisations acknowledging climate risk in their financial or annual report – up from 10% to 39% (KPMG, 2020).

These figures place New Zealand behind international benchmarks and raise issues regarding the less-than-urgent response of New Zealand listed companies to the opportunity presented by the NZX. Nevertheless, it is informative to note how a regulator's ESG initiative leads to a market-based response, consistent with the standard comply or explain governance model.

Industry bodies such as the Sustainable Finance Forum Roadmap for Action have also focused on ESG issues. In a November 2020 report there is specific reference to the impacts of Covid-19 and the need to re-think New Zealand's ideas of value; the increased focus on the S of ESG given social inequalities, the inability to absorb financial shocks, and digital access or capability difficulties that exclude access to essential health and other services (Sustainable Finance Forum, 2020).

Unsurprisingly, the dominant contributor to Covid-19 has been the response of the New Zealand Government, with a wage subsidy available from 27 March 2020 to 1 September for businesses and employers who would otherwise have had to lay off staff or reduce their hours due to COVID-19. At a macro level, the current Government's wellbeing budgets of 2018 and 2021 have initiated a move away from the past, and over time will reposition the country into a responsive stakeholder-based economic model (The Treasury, 2021).

Learnings from a global pandemic are inevitable and will impact on corporate behaviour, local and international. Organisational changes to hybrid workplaces are an example. Pandemics are triggers for new voices to be heard and Covid-19 is likely to initiate a broader stakeholder world view for the business community. New Zealand has the benefit of a well-developed Māori business model, and it is noteworthy that iwi organisations have never been aligned to shareholder primacy. Their focus on multiple purposes that balance financial viability with cultural, social and environmental indicators and inter-generational accountability (Joseph, 2021) signals an enlightened form of stakeholder primacy and governance. With the growing economic power of iwi organisations, it is likely that this model will increasingly be relevant to governance best practice.

This may also extend to a rethink in reporting frameworks. Local iwi organisations have strong links with global indigenous networks, including the First Nations Major Project Coalition (Canada), a national collective of over 70 Indigenous tribal groups working towards the enhancement of the economic well-being of its members. A First Nations report released in January 2021 identified a gap within ESG for greater Indigenous inclusion in corporate governance, particularly in board and management structures. The report noted that in the major global reporting frameworks, all three pillars of ESG lacked Indigenous input, values, knowledge, and current realities, and are seeking to rectify this omission (First Nations Major Projects Coalition, 2021).

These developments suggest that for New Zealand, the drive to develop a fit-for-purpose 21st century governance framework will come from enlightened government, private sector and iwi voices, rather than current governance Codes and Principles.

**6.0 COVID-19 AND CORPORATE GOVERNANCE**

The above discussion of ESG highlights a significant issue for the future of corporate governance. In the formal context of Codes and Principles, there is a tension between the original theoretical model – agency costs - and the market model that is moving to another theory, stakeholder governance, which is reflected in ESG developments. To date there is limited recognition of this paradigm shift in the Codes and Principles.

The market failure model that underpins Codes and Principles is also facing pressure. Global initiatives to confront the urgent issues of today are not part of the formal governance vocabulary, and it is possible that the function of Codes and Principles will be increasingly marginalised, overtaken by market and social developments that are the real challenges of today. An OECD survey conducted in May 2020 surveying the responses of 37 jurisdictions initiatives during the Covid-19 crisis focused on narrow legal and regulatory requirements, such as the organisation of shareholder meetings and the filing of audited financial reports. The three elements commonly identified were the conduct of annual general meetings, frameworks for insolvency, and disclosure requirements. (OECD, 2020). It is to be noted that the survey was undertaken for the G20/OECD Principles of Corporate Governance which has an investor focus. Nevertheless, the absence of the larger challenges associated with the pandemic indicates the closed world of corporate governance frameworks.

An initiative in the UK, the Stewardship Code 2020 indicates a useful direction for the investment focus of corporate governance. The Code sets high stewardship standards for asset managers and pension funds that invest money on behalf of UK savers. Its aim is to encourage active monitoring by investors in the interests of beneficiaries. A voluntary Code developed by the UK corporate governance regulator, it requires signatories to consider ESG issues to fulfil their stewardship responsibilities (Financial Reporting Council, n.d.).

**7.0 CONCLUSION**

Three themes are central to this paper. The first identifies the human capacity to respond to crises. The ability to reflect and build a better way is central to the human experience. Corporate governance began with crises and has continued to build frameworks aimed at best practice. Covid-19 is a crisis of global proportions and requires an appropriate governance response.

The second theme is the dynamic nature of change, and the need to embrace it. The market – and the planet – today is significantly different from the time when governance began. Forward-looking institutions are negotiating change in proactive and innovative ways. The corporate response to Covid-19 is a classic instance. A previously underdeveloped element of ESG, the social pillar has been integrated into the ESG framework, adding valuable insights into the impact of Covid-19 on organisations and stakeholders. Governance Codes and Principles have, in general, yet to embrace this momentum.

The third theme is another human response – the inability to shift ground when the old way is confronted with the new way. Governance Codes and Principles are locked into an old ordering with a theory that is unable to respond to the new way. The challenge is to avoid increasing irrelevance by recognising that times have changed. Covid-19 may be the trigger that begins this process.

From its inception, corporate governance initiated significant reforms to the internal ordering of companies, leading to a global change in corporate processes and behaviours. Corporate Governance Codes and Principles introduces these reforms and have continued to assert the high ground in maintaining control over the governance agenda. The marketplace has recognised these reforms but has also responded to a range of influences and changes that lie beyond the governance agenda. This is particularly the case for the investor sector which has adopted a proactive stance, requiring companies to report on urgent environmental and social issues.

This role of shareholder activism has historically been given a lesser status in Codes and Principles than board reforms and other related organisational processes. And yet, it is the voice of shareholder activism that is currently synchronising business and global challenges.

Covid-19 is an opportunity for Codes and Principles to catch up with the changing world. There is little evidence that this is occurring and may lead to claims of increasing irrelevance. This is to be contrasted with the voice of investors under the umbrella of ESG. What was previously a series of ideologic strands and theories is increasingly a unified ESG mandate that expects responsible, stakeholder focussed business models.

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