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Corporate Governance Charters with Competitive Advantages

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Abstract

Corporate charters, which vest power in a network of control centres, can offer advantages for directors, shareholders, and other stakeholders. The author describes how he reduced the cost of capital through the establishment of a "Senate" as a watchdog board to improve investor and director protection. A cybernetic analysis is used to indicate how the involvement of customers, employees, and suppliers in corporate governance, as found in U.S., Europe, and Japan, can provide competitive advantages and improve self-regulation. A theory of firms, and organizations, based on economizing information processing by individuals are introduced to provide a common foundation for other theories. Cybernetic laws of requisite variety are presented as a basis for designing self-governing social institutions with operating advantages to minimize the role and cost of government while improving the quality of democracy.

Keywords: Competitive Advantages, Corporate Charters, Cybernetic Laws, International Laws, Corporate Governance, Stakeholders, Shareholders.

INTRODUCTION :

The genius of American company law is the competition among states for the business of & corporate charters. Corporate law, which governs the relationship between a company's shareholders and management, is essentially a state responsibility in the United States. The legislative approach is mostly enabling: code provisions provide baseline terms for corporate governance, which corporations can customise more precisely to their needs through charter modifications [1]. Furthermore, businesses select their state of incorporation, which serves as a statutory domicile independent of physical presence and can be altered with shareholder approval. Firms can thus tailor their charters to a state's code, as well as seek to incorporate in the state with the code that best suits their needs. i.e., the state whose code reduces their operating costs.

The separation of ownership and control in the modern public corporation [2] is the key dilemma underlying corporation codes. Large corporations often have a large number of minor shareholders who are unable to actively exercise influence over the company or supervise management. Furthermore, the managers who run such businesses frequently have minuscule shareholdings. This poses an agency problem since, in order to maximise firm value, management may diverge from shareholders' wishes. One of the main goals of corporation laws is to develop corporate governance tools that address the agency problem by better aligning managers' incentives with shareholder interests [3]. Shareholder-elected boards of directors, shareholder voting on major corporate changes, and fiduciary duties imposing liability on managers who act negligently or with divided loyalty are just a few examples.

Under federal securities laws, shareholder-manager relationships in public businesses are also subject to a variety of national controls. The federal securities laws govern the issuance and trading of securities, as well as public companies' ongoing disclosure obligations to investors and the ground rules for takeover corporate acquisitions, which, unlike mergers, are accomplished through tender offers to shareholders and thus bypass incumbent management's approval.' Federal regulations, unlike state corporation laws, are obligatory [4]. Federal courts have broadened and contracted the federal securities laws' reach into traditional domains of state jurisdiction, such as fiduciary duties, throughout time. However, even in this case, the national legislation is not prescriptive; it explicitly recognises the role of states in securities regulation.

Federalism allows states to have power over business law. A federal government provides a variety of advantages to its citizens. First, because the states act as a check on the federal government, a federal system safeguards individuals from the central government's vast authority. Second, in comparison to a centralised governmental structure, a federal system allocates public goods and services more efficiently and increases individual utility by matching specific government policies to different citizen preferences. States and municipalities compete for inhabitants in a federal system, with citizens choosing to live in the jurisdiction that offers their preferred package of public goods and services [5]. Finally, the gradual experimentation allowed by having a laboratory of fifty states competing for inhabitants and businesses stimulates innovation in public policy. Other states quickly adopt a policy improvement found by one state.

While the benefits of a federal system are well understood in American politics, it is also well understood that federalism can obstruct government administration and hence reduce individual welfare. The ideal quality and quantity of public goods and services will not be created if the costs and benefits of a public policy do not fall within a jurisdiction's bounds. For example, a state may refuse to pay for a service enjoyed by non-residents, such as an agricultural spraying programme that helps neighbouring jurisdictions or interstate roadways, and therefore will under-provide the product. Similarly, a state may export the cost of delivering goods and services to non-residents.

CORPORATE AND GOOD GOVERNANCE :

A company's direction and control are guided by a set of rules, procedures, and processes known as corporate governance. The way firms are governed and for what purpose is referred to as corporate governance. It establishes who has authority and responsibility, as well as who makes decisions. It's a toolkit that helps management and the board of directors cope more effectively with the issues of running a business [6]. See Figure 1 [7] for how corporate governance ensures that organisations have adequate decision-making processes and controls in place to balance the interests of all stakeholders (shareholders, employees, suppliers, customers, and the community).

Figure 1: Stakeholders Classification

The methods by which a company's objectives are determined and pursued in the context of the social, regulatory, and market environment are referred to as corporate governance. It is concerned with policies and procedures for attempting to ensure that a company is administered in such a way that it achieves its objectives while also guaranteeing that stakeholders can have confidence in the firm [8].

The system of rules, regulations, policies, and resolutions put in place to determine company behaviour is referred to as governance. Shareholders and proxy advisors are essential stakeholders who have an indirect impact on governance, but they are not instances of governance [9]. The board of directors plays a critical role in governance, and its decisions can have a significant impact on share valuation.

Investors value corporate governance because it demonstrates a company's direction and business integrity. Corporate governance aids in the development of trust among investors and the general public. As a result, corporate governance contributes to financial viability by providing market players with a long-term investment opportunity.

The Institute, as the birthplace of good governance, believes that good governance is crucial because it offers the foundation to improve the quality of business decisions. Good decision-making that is ethical and of high quality helps firms to be more sustainable and to create long-term value more effectively. Take a look at Figure 2 [10].

Figure 2: Corporate Governance Framework

The fundamental reasons why organisations should adopt good governance practises include [11], [12]:

- To maintain and strengthen stakeholder confidence: nothing is more distracting to an organisation than dealing with an unhappy stakeholder group as a result of a lack of trust in the governing body. On the plus side, a supportive stakeholder base can provide benefits for the organisation through social and emotional support, both of which are intangible but extremely valuable traits that all organisations should strive for and maintain.
- To provide the groundwork for a high-performing organisation: achieving goals and long-term success necessitates involvement and support from all levels of a company. The Board offers the framework for performance planning, implementation, and monitoring through sound governance practises, and without a basis on which to construct high performance, achieving this aim becomes difficult. An organization's

long-term goal should be to achieve the highest performance and results feasible within its current capacity and competence. Management and workers should be able to be "the best they can be" because to good governance.

- To ensure that the organisation is well-positioned to respond to a changing external environment: today's business world is always evolving. Technology has ushered in an information era that has revolutionised our world, and for a business to both thrive and remain profitable in order to fulfil its mission and vision, a system must be in place to help it spot changes in the external environment as well as developing trends. This process of understanding our changing reality does not happen by accident; it takes the governing body's leadership, commitment, and resources to build and maintain such a system within the organisation. Change does not happen "overnight," but it is there for all to observe if they have a mechanism in place to look for it. As the ultimate leaders of an organisation, governing bodies should have primary responsibility for this activity.

The mechanisms by which organisations are directed, controlled, and held accountable are referred to as governance. It encompasses an organization's authority, accountability, leadership, direction, and control. Although good governance does not ensure long-term success, the "highway of company failure" is filled with the wreckage left behind by bad governance. It is entirely up to you to decide which course to take.

CORPORATE CHARTER AND SENATE :

A corporate charter, often known as a "charter" or "articles of incorporation," is a written instrument filed by the corporation's founders with the Secretary of State (or registrar in Canada). It describes a company's essential components, such as its goals, structure, and planned activities [13]. The company becomes a legal corporation if the state approves it.

The process of forming a new corporation begins with the creation of corporate charters. The creation of a new corporation is signalled by a corporate charter. A corporation becomes genuine and legal once it has been filed and approved. Before the company can conduct business as a corporation, the document must be drafted and filed [14]. If the corporate charter is not created before the business begins, the owners put themselves at risk, including being personally accountable for all damages and obligations incurred by the company during the period when it operated without a valid corporate charter.

The corporate charter contains the following information: the corporation's name, purpose, whether it is a for-profit or non-profit organisation, the corporation's location, the number of shares authorised to be issued, and the names of the parties engaged in the formation. Corporate charters are registered with the secretary of state in the state where the company is based [15]. The state where the business is located usually charges a filing fee to process the corporate charter.

Corporate charter templates are available on some government websites. For example, the United States, Japan, and a few European countries [16]. When developing and filing corporation charters, however, some businesses choose to counsel and hire business lawyers in order to produce more legitimate and favourable legal business documents and settings.

The elements of the corporate charter must meet certain standards in the state where the corporation is headquartered. The authorised agent's name is also included in the charter. A corporation must have a designated registered agent who serves as the authorised receiver of crucial legal documents for the corporation, regardless of its location. Corporations are required to declare the reasons for its formation [17]. This statement includes information about the company's mission, industry, and the products and services it offers.

The corporate charter must also include the names and addresses of the founders, corporate executives, and initial directors, in addition to a chosen registered agent. Corporations designated as stock corporations must also state the number of stock shares they have the authority to issue, as well as the par value per share [18].

The Senate's operations are overseen by three members who are elected each year by postal balloting soon before the annual assembly of members. Any investor might nominate himself or herself and have a 100-word bio circulated with the voting papers. A contested election has never occurred. Senators do not get a fee and, with the exception of the first U.S. Senator, who was also a director, have been main investors in the initiative without being represented by a director [19]. When he took fee-paying work for the corporation, he resigned from the Senate.

In any given year, the Senate was bound to consider no more than a dozen resolutions. Because one of the Senate's members has always been a US resident, there has never been a face-to-face meeting. All resolutions are voted on by faxing a "flying" minute to each Senator for signature. Senators in the United States based their vote judgments on phone conversations with other company officers and shareholders [20]. Each subject handled by the Senate is listed in the annual report distributed to shareholders, along with how each Senator voted. Between the statutory financial accounts and the auditor's report is a written report from the Senate.

The ASC mandates that a shareholder meeting accept a resolution to change the auditors of a public company in Japan. JTL had been using one of the big multinational firms as its auditor until 1991, when it decided to switch to a local firm to save money. Because the Senate provided a foundation for the ASC to exercise its discretion on this topic, the cost of calling a special meeting of shareholders to change auditors was avoided. This demonstrates how firms and regulators may save time and money while also simplifying the law by requiring Senates for all public companies and collective investment funds.

COMPETITIVE ADVANTAGES :

Factors that enable a corporation to produce goods or services better or more cheaply than its competitors are referred to as competitive advantage. These elements enable the producing unit to earn higher sales or higher margins than its competitors. Cost structure, branding, the quality of product offers, the distribution network, intellectual property, and customer service are all elements that contribute to competitive advantages [21].

Because of particular strengths or situations, competitive advantages provide greater value for a company and its shareholders. The more long-lasting a competitive advantage is, the more difficult it is for competitors to counteract it. Comparative advantage and differentiated advantage are the two basic types of competitive advantages [22].

Company assets, traits, or talents that are difficult to imitate or exceed, and create a better or favourable long-term position over competitors, are known as sustainable competitive advantages. Take a look at Figure 3 [23].

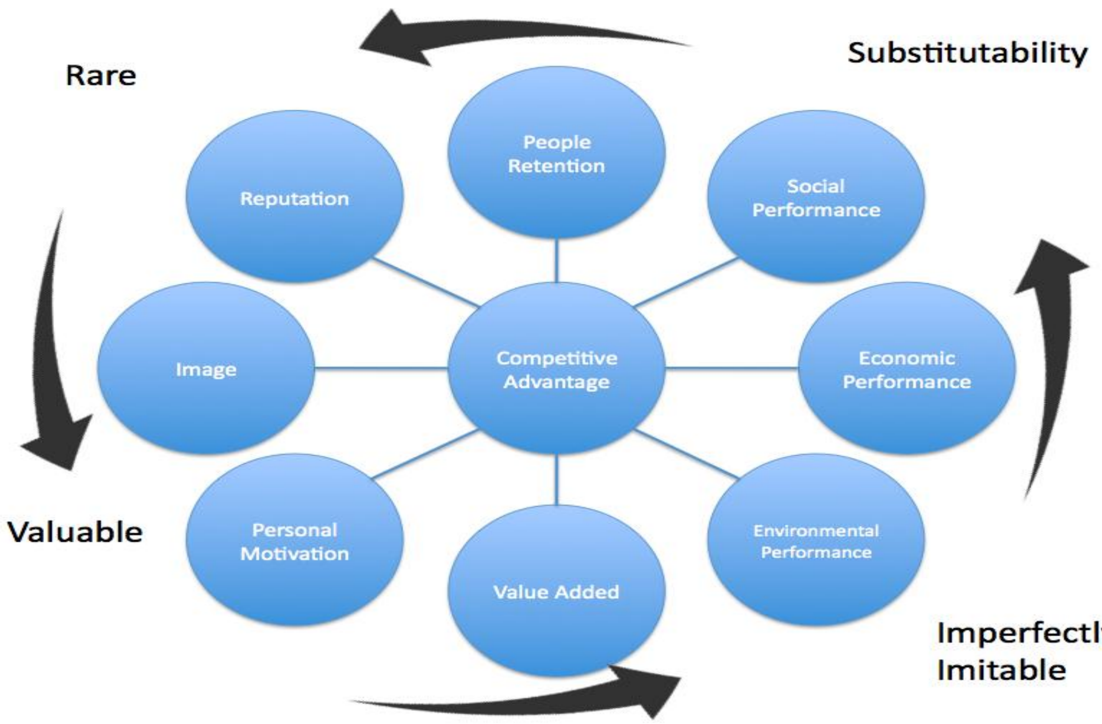

Figure 3: Sustainable Competitive Advantages

Corporate Governance Charters with Competitive Advantages

Companies that have a single, long-term competitive edge may be successful. Finding companies with several sustainable competitive advantages will considerably increase your chances of finding a real value stock; see examples of sustainable competitive advantages below [24], [25].

i. Low-cost supplier/low pricing: Economies of scale and efficient operations can help a corporation keep competitors at bay by positioning itself as the low-cost provider. Being the cheapest option might be a substantial impediment to admission. Furthermore, constant cheap pricing can generate brand loyalty and be a big competitive advantage (think Wal-Mart).
ii. Market or Pricing Power: Pricing power refers to a company's capacity to increase prices without losing market share. Companies with pricing power typically benefit from strong entry barriers or have established a dominant position in their market.
iii. Building a powerful brand takes a significant amount of effort and money. It only takes a small amount of energy to destroy it. A strong brand is priceless because it encourages customers to choose it over competitors. Being the market leader and having a good corporate reputation can help you build a strong brand and gain a competitive advantage (for example, Coca-Cola) (KO).
iv. Assets of strategic importance: Strategic assets like as patents, trademarks, copy rights, domain names, and long-term contracts are examples of long-term competitive advantages. Companies that excel at research and development (such as International Business Machines (IBM)) may have strong strategic assets.
v. Barriers to Entrance: The most prevalent barrier to entry is the cost advantage of an established company over a new company. High investment expenses (e.g., AT&T (T)) and government regulations are significant roadblocks for businesses looking to expand into new markets. High entry barriers can lead to monopolies or near-monopolies (i.e. utility companies).
vi. Product Line Adaptation: A product that does not alter is ripe for competition. Customers will return for the "new" and improved version (i.e. Apple iPhone) and potentially some accessories if the product line can evolve.
vii. Product Differentiation: A one-of-a-kind product or service fosters customer loyalty and is less likely to lose market share to a competitor than a cost-cutting strategy. Quality, quantity of models, ordering flexibility (i.e. bespoke orders), and customer service are all factors that can help a product or service stand out.
viii. Strong Balance Sheet / Cash: Companies with low debt and/or large amounts of cash are able to make timely investments and never have an issue with working capital, liquidity, or solvency (i.e. Johnson & Johnson) (JNJ). The balance sheet is the company's basis.
ix. Outstanding Management / People: The intangible of outstanding management is always present. Although it is difficult to quantify, there are winners and losers. Winners appear to make the appropriate decisions at the appropriate times. Winners know how to motivate and elicit the best performance from their people, especially when faced with adversity. A competitive advantage is management that has been successful for a long time.

Businesses frequently lose sight of balancing the interests of corporate bottom lines against the needs of other stakeholders such as employees, customers, suppliers, society, and the communities in which they conduct business in the constant pursuit of higher profits and better returns to shareholders [26].

This, however, could be counterproductive, as excellent company governance is critical to achieving competitive advantage and profitability through long-term thinking. The research shows that pursuing purpose – the clearly expressed and self-aware belief shared by managers and owners alike that a firm exists first and foremost to promote social and human progress – leads to increased earnings and performance.

The Securities and Exchange Commission of the United States issued a new Code on Corporate Governance, which defines corporate governance as "the process and structure used to direct and manage the company's business and affairs toward promoting business prosperity and corporate accountability with the ultimate goal of realising long-term shareholder value while taking other stakeholders' interests into account." [27].

CORPORATE GOVERNANCE AND COMPETITIVE ADVANTAGES :

Strong and effective corporate governance contributes to the development of an ethical corporate culture, which leads to improved performance and a long-term business. Essentially, it exists to strengthen the accountability of all employees and teams within your firm, with the goal of preventing mistakes from occurring in the first place [28].

When a firm has good corporate governance, it shows the market that it is well run and that management's interests are aligned with those of external stakeholders. As a result, it can give your business a significant competitive advantage.

All rules, regulations, procedures, and practises that control how a company is run are referred to as corporate governance. Figure 4 [29] shows the Economic growth framework using competitive advantage in applying governance concept incorporate. It determines the rights and responsibilities of all active agents within an organisation, attracting talent and financial capital, boosting internal efficiency, and providing economic value to stakeholders over time.

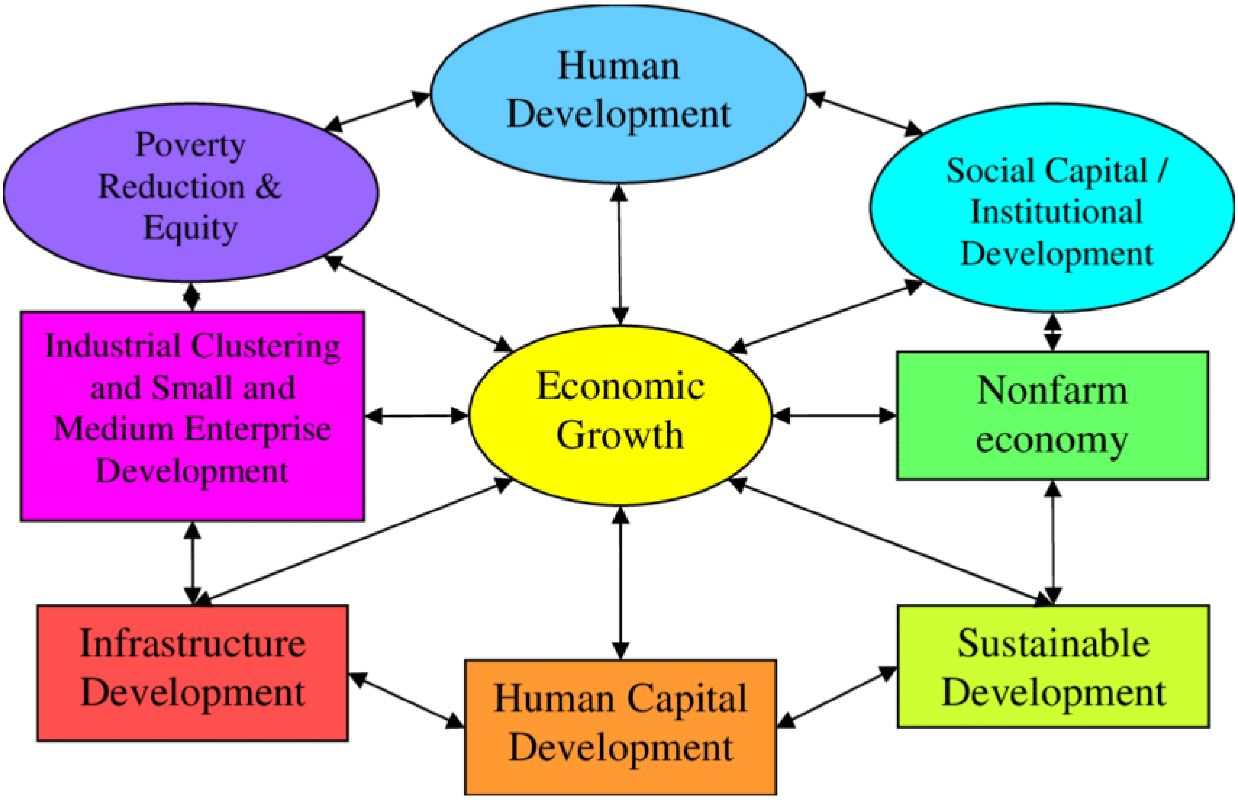

Figure 4: Economic Growth in Governance Era

The beneficial effects that emerge when risks are controlled and organisational procedures are streamlined and consistent demonstrate the relevance of corporate governance. Many immediate benefits of effective corporate governance can be seen by organisations, including [30]:

- Efficient Processes – due to the repeatability and consistency of tasks performed.
- Visibility of Errors – this repeatability and consistently helps to quickly identify the nonconformities in processes.
- Reduced Costs – when tasks are streamlined, companies can eliminate the waste from scrap, rework, and any other costly inefficiencies.
- Smoother–Running Operations – regular disruptions from inconsistent processes are eliminated, as operation specifics become either ‘conform’ or ‘non-conform’.
- Compliance – a culture that supports corporate governance allows for its product to reach the market while meeting its intended specifications and working correctly.

Corporate Governance Charters with Competitive Advantages

Effective corporate governance for competitive advantage can be difficult to adopt in its whole right away, however there are 10 key things to consider when implementing corporate governance in your firm [31], [32]:

i. If you want to succeed at corporate governance, make sure your board is balanced, knowledgeable, and diverse. Aim for qualified directors who can provide both a fresh viewpoint and a solid understanding of the firm.
ii. Regularly review the Board of Directors' composition: The makeup of your organization's Board of Directors is crucial and can make or break the performance of its corporate governance. Regularly evaluating your Board will help you rapidly spot any potential flaws, allowing you to make timely modifications and stay on target.
iii. Build Solid Foundations for Oversight: It's vital to keep an eye on both the Board and management's activity. Create a systematic framework for establishing, monitoring, and evaluating their roles and responsibilities. The Board must be aware of management actions and be available at all times when major decisions are being made.
iv. Aim for Long-Term Value Creation: Orienting key performance indicators toward long-term value creation rather than short-term value creation helps secure your company's long-term success.
v. Establish a risk management strategy and internal control framework that are both successful and accommodating to your business needs, and seek to review their efficacy on a regular basis. Any business endeavour relies on disaster recovery plans, so keeping yours up to date is always a good idea.
vi. Ensure Reporting Integrity: While corporate reporting is important, ensuring its overall integrity is much more so. Aim to implement protections throughout the reporting process, such as performing company-wide external audits.
vii. Deliver Balanced and Timely Information: Transparency with important stakeholders is critical, and you can only do this by aiming to provide information on a frequent basis, in both good and bad times. This increases stakeholder trust in the company and reduces the danger of them losing faith in the process and withdrawing.
viii. Emphasize Integrity as a Whole: Integrity practises do not end with reporting. When it comes to your company's integrity, be consistent in your support of ethical behaviour and consult shareholders on their interests and concerns.
ix. Treat Stakeholders Fairly: Respect your shareholders' rights and be willing to change your plans to accommodate them if necessary.
x. Ensure Adequate Disclosures: This pertains to the disclosure of all transactions involving related parties as well as the other interests of all directors concerned. A director's decision-making may be influenced if they have financial interests outside of the organisation.

Corporate governance is a system that seeks to instil principles and procedures that enable an organisation retain its coherence. Its purpose is to hold a firm accountable while also assisting them in avoiding financial, legal, and ethical issues. The tangible benefits seen when a competent corporate governance structure is in place demonstrate the relevance of corporate governance.

CONCLUSION :

Corporate governance is evolving from a legal need and compliance with listing standards to an economic imperative for many companies. Corporate governance has a substantial impact on a company's performance. Corporate governance is a word that refers to responsible business management that aims to create long-term benefit. Corporate governance is a fundamental driver of long-term competitive advantage and sustainable corporate growth. Corporate governance is a fundamental driver of long-term wealth generation and sustainable corporate growth. Corporate governance has become a differentiator among companies, as excellent governance processes result in a higher market valuation and a long-term competitive advantage. The corporate governance structure is a critical component of a competitive framework that works. Corporate mismanagement raises agency costs and creates an information imbalance, lowering the companies' value. One of the key reasons why investors are hesitant or unwilling to invest in specific companies or marketplaces is because of poor corporate governance. Investors put their money into companies with solid governance histories in order to protect the value of their portfolios.

The idea of amplification of regulation states that self-governance must be embedded into even the smallest institutions in order to build a self-governing society. A divide of power is one of the requirements for social institutions to become self-governing. To put it another way, compound boards have become a prerequisite for implementing self-governance into businesses and other organisations, whether private or public.

Another requirement for social groups to become self-governing is that control is shared among those who may or may not be influenced by their activities. i.e. the company's stakeholders Stakeholder governance is then made a prerequisite for self-government.

The analysis shows that corporate Senates would minimise the need for audit, remuneration, and nominating committees to convene. Attendance at such gatherings is frequently rewarded with extra costs. The more directors are paid, the more they stand to lose if they become whistle-blowers and risk losing their jobs. The less money people make, the more motivated they are to protect the interests of other stakeholders. If a director has too much to lose, he or she may lose the desire to act.

A corporate Senate's economic and viability for a small, even unlisted firm has been established. The company's survival would not have been possible without the Senate's efforts to attract and lower the cost of funding. Stock exchanges that require the formation of audit, remuneration, and nominating committees as a listing requirement are choosing a more costly and ineffective method of investor protection. Senates provide stronger protection and competitive advantages.

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