

# The Rules Of The Game or Playing Games With The Rules?

Master Class Corporate Governance

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# DE OVERHEID ALS AANDEELHOUDER



Instructiemacht

Instructiebevoegdheid

Benoeming bestuurders en commissarissen

Aan goedkeuring onderworpen besluiten

Aandeelhouderschap is privaatrechtelijk

# HET ‘NORMAALTYPE’

Voorgenomen benoeming bestuurder overheids-NV

Advies SBTNO

Positief advies → Besluit benoeming

Negatief advies → Afwijzen advies, gevolgd door benoeming

## **Rules-Based Approach**

(Sarbanes-Oxley Act)

vs

## **Principles-Based Approach**

(The UK Corporate Governance Code / OECD Guidelines on  
Corporate Governance of State-Owned Enterprises)

# Rules-Based Approach

- \* (+) Puts people into action when introduced
- (+) Could ensure a minimum new standard of practice
- (+) Can rapidly increase trust
- (-) Encourages to play games with/find loopholes in the rules
- (-) Rules (from abroad) and cultural differences
- (-) Risk of “ticking-the-box” behavior
- (?) Too complex / detailed
- (?) Sanctions

# Principles-Based Approach

- (+) Work to influence the mind-set
- (+) Easier to adapt to / flexibility
- (+) Can rise over time
- (-) Do not explicitly require certain practices
- (?) Sanctions

# Hybrid Approach

Mandatory Rules + Non-Mandatory Rules

# Mandatory Rules

(+) Enforceable (sanctions)

(-) Not flexible

# Non-Mandatory Rules

Desirable

Transparency / Public Reporting / Disclosure  
(Apply or Explain)

‘Police’ the practices (parliament, media)

(-) Risk of uneducated commentary

# Code Corporate Governance Curaçao

(-) Geen sancties

(-) Geen informatieplicht aandeelhouder

(-) SBTNO mag rol aandeelhouder niet controleren/onderzoeken

(?) Invloed Code op rechterlijke toetsing

# OECD ‘Guidelines on Corporate Governance of State owned Enterprises’

“The State should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that the governance of the state owned enterprises is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness”.

I add: it cannot be simply assumed that States/Governments around the world will interpret and apply the OECD standards consistently. The local interpretation and application of these standards is significantly affected by the national culture of the State/Government applying those standards.

# Toekomstmuziek?

\* Duidelijke keuze voor politiek op afstand

\*

Meer autonomie voor het bestuur

Onafhankelijke Raad van Commissarissen

Scherpere criteria voor onafhankelijkheid

Openbaarmaking jaarrekeningen

Snellere/betere verantwoording aan Staten

Professionalisering controle/toezicht door de Staten

Input bestuur/RvC bij adviesaanvraag SBTNO

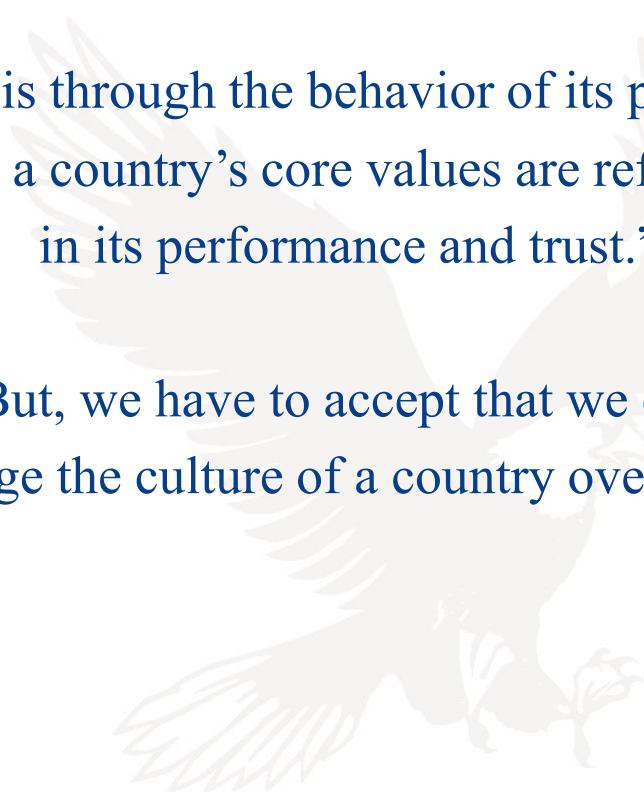
Bevoegdheid SBTNO inzake enquêteverzoek

# It's All About Restoring Trust



“It is through the behavior of its people  
that a country’s core values are reflected  
in its performance and trust.”

“But, we have to accept that we can’t  
change the culture of a country overnight.”





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