

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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