Academic Roundup

Manifest-I presents a summary of recently released academic papers on international corporate governance and corporate social responsibility issues.

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Executive Pensions, by Lucian A Bebchuk, Harvard Law School; and Robert J Jackson, Jr, Program on Corporate Governance. NBER Working Paper No. 11907.

The authors examine executive pensions in the US and suggest the omission of such figures by the majority of financial economists has led to a sizeable underestimation of executive remuneration.
The paper examined pension arrangements of S&P 500 chief executives and found they had a median actuarial value of $15m and that including pension values increased the median total compensation of salary-like payments – that is not performance related – from 15% to 39%.

Furthermore, the authors say they may have underestimated the extent of these inaccuracies by only including defined-benefit pension plans in their figures, whereas executives receive other forms of retirement benefits. These include post-retirement perks, such as consultation fees, and deferred compensation arrangements, the value invested in which companies do not have to disclose. The paper concludes by calling for further research.

Confronting Divergent Interests in Cross-Country Regulatory Arrangements, by Edward J Kane, Department of Finance, Boston College. NBER Working Paper No. 11865.

This paper uses attempts to harmonise the Australian and New Zealand regulatory systems to examine differences which make regulatory standardisation difficult to achieve.

The paper finds the inherited regulatory cultures of both countries show differences in the structure of legal authority, reliance on position limits, and technology used to monitor bank risk-taking and net worth.

It is suggested that replacing New Zealand's financial regulatory structure with that of Australia would remove from New Zealand citizens the benefit of its evolutionary process and make it difficult to hold regulatory officials in Australia accountable for the costs their decisions might impose on their neighbour's economy.

The paper argues that the minimum requirements for convergence to take place are bilateral obligations to promptly disclose concerns to fellow regulators and authorise partner regulators to sue in a neutral court if it appears these rights have been overrode.

The Impact of Boards with Financial Expertise on Corporate Policies, by A Burak Güner, Barclays Global Investors; Ulrike Malmendier, Stanford University; and Geoffrey Tate, University of Pennsylvania. NBER Working Paper No. 11914.

This paper argues the presence of a financial expert on US boards has a significant impact on corporate decisions, but not necessarily to the advantage of shareholders. The authors take data from 1988 to 2001 and use it to argue that the effect of a commercial banker joining a board is to increase loan size and decrease investment-cash flow sensitivity.

Furthermore, the authors take the figures to suggest investment bankers are associated with higher public debt and worse acquisitions, and finance professors with increasing the size of chief executive option grants and reducing the link between remuneration and performance.

The authors conclude that the presence of financial expertise on a board goes beyond monitoring in its effects, and calls for the appointment of such members should be acted upon with caution.

Privilege in Peril: Corporate Disclosure in the New Era of Government Investigations, by George J Terwilliger III and Darryl S Lew, partners at White & Case, the global law firm.

The authors suggest three developments are eroding confidentiality between lawyers and their clients in the US:

The continued vigorous investigation and prosecution of companies and obligations such as the Sarbanes-Oxley legislation.

Government bodies like the Securities and Exchange Commission encouraging, and arguably practically requiring, companies interested in cooperation over investigations to waive client-attorney privilege.

Courts not recognising a limited waiver of privilege, meaning any sharing of limited information with the government can risk all such rights being regarded as waived.

The paper addresses the challenge of encouraging companies, to investigate questionable corporate practices and share the results with the government without sacrificing the core protections of attorney-client confidentiality. It concludes that legislation will probably be necessary to encourage companies to police themselves and disclose their own wrongdoing without any loss of confidential communication between clients and lawyers.

Private Companies and the Public Interest: Why Corporations Should Welcome Global Human Rights Rules, by Lisa Misol, researcher with Human Rights Watch.

Lisa Misol argues that the long-standing opposition from multinational companies to compulsory human rights standards is beginning to change as executives realise it is the only way to achieve a level playing field. Indeed, Misol takes the viewpoint that enforceable global human rights standards would be good for business.

It is suggested that companies are becoming increasingly aware that human rights abuses are bad for business, and public expectations are already constraining the behaviour of some large corporations. However, it is argued this only applies to companies under the regulatory or public eye, leaving others to break voluntary codes with impunity.

Companies which do follow voluntary codes are therefore placed at a competitive disadvantage for doing the right thing, and if signed up to a number of divergent CSR codes will spend a considerably longer time complying than if operating under one compulsory standard, argues the paper.

The paper argues that Organization for Economic Cooperation and Development member countries should move to make its CSR standards binding and enforce them with penalties such as fines or, in extreme cases, imprisonment. It is further suggested that the United Nations be used as a forum to negotiate a universally applicable treaty.