



Global
Corporate
Governance
Forum



The 2010 Meeting of the Latin American Corporate Governance Roundtable

Parallel discussion groups – Group 2

Corporate Governance: Achieving a Balanced Approach to Corporate Responsibility

Carlos Eduardo Lessa Brandão

celb@iname.com

+ 55 (11) 9221-7444

Rio de Janeiro, 21st - 22nd October 2010

Summary

- Questions raised by the crisis
- The business context
- The role of the company
- Corporate Governance and Corporate Responsibility

Questions raised by the crisis

Financial crisis raised deep questions

- **“What kind of shareholders do we have?”**
 - How do you give rights to shareholders if they are **high frequency traders** who have been trading in the morning at a zero position and end up in the evening with a zero position but ... during the day they have built up positions of hundreds of millions if not more?
 - What do you do with the **empty holders** and **undisclosed owners**?”
- **“We are very much wondering what is the economic function of ownership of shares:**
 - **Is it just the function to make money?**
 - **Is profit maximisation still on the table?** ... I’m not sure that it is fully on the table in today’s situation.
 - ... probably it is also to **create wealth for the future generations.**”

Shareholder primacy?

- “The traditional theory is that shareholders have the right to vote because they are the residual claimants...
 - ... unfortunately, we saw in the crisis that **the real residual claimant is the taxpayer and society at large**”.

Eddy Wymeersch

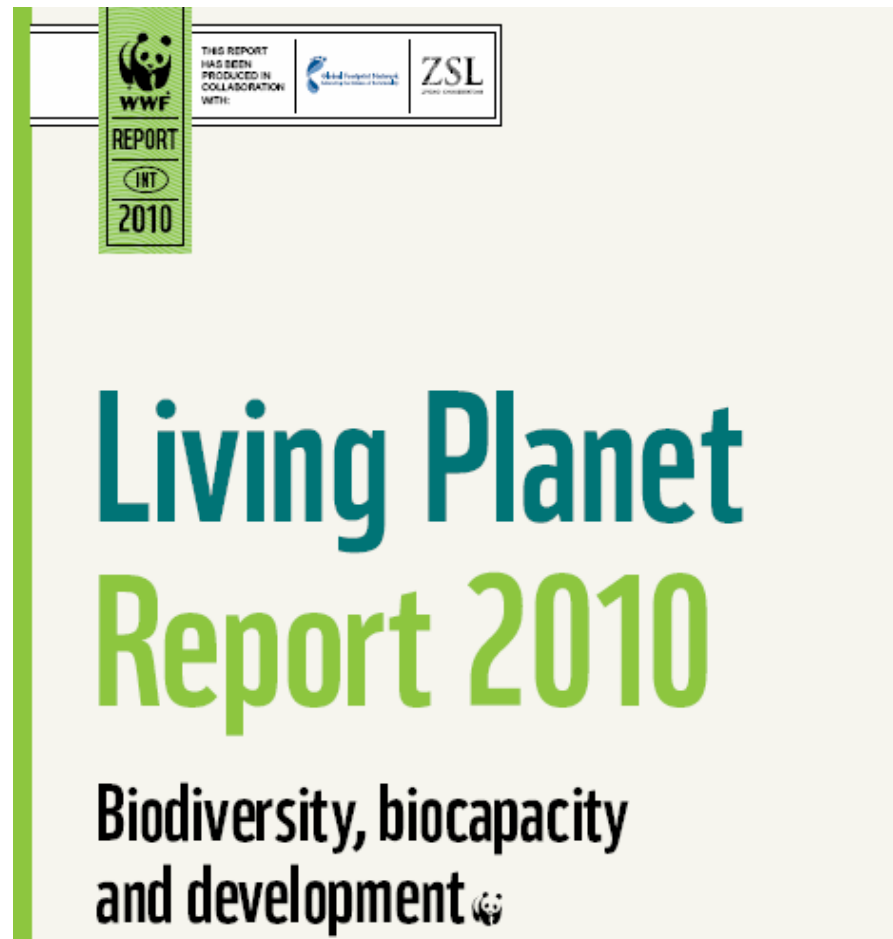
Chairman, CESR (Committee of European Securities Regulators)



Eddy Wymeersch (2010) “Regulation trends”, OECD - Paris, May 4th

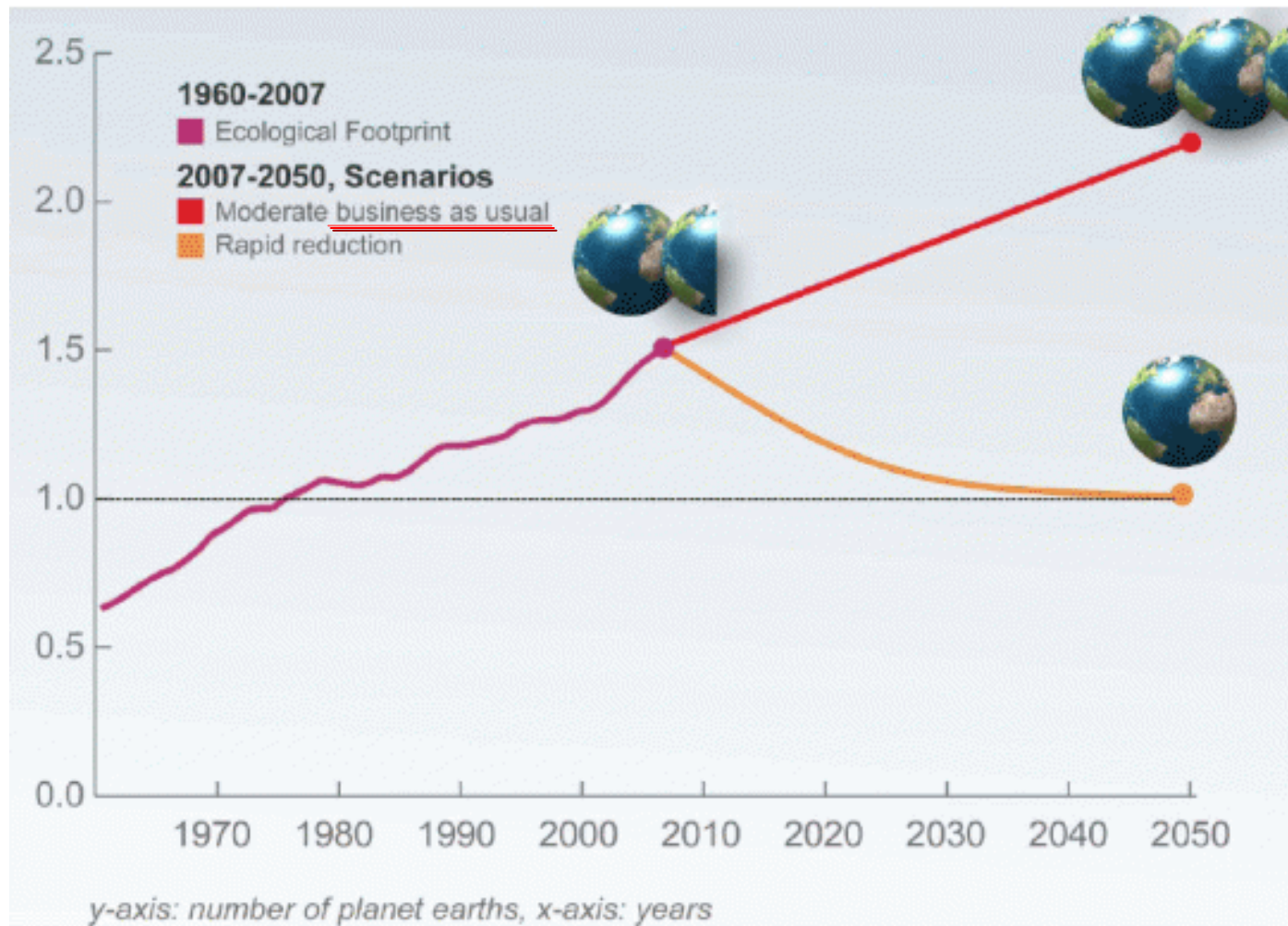
The business context: society and the environment

Business context: the environment



http://www.footprintnetwork.org/en/index.php/GFN/page/living_planet_report_2010

Humanity now needs 1.5 Earths



“Unsustainable pressures on our planet”

- The unprecedented **drive for wealth and well-being** of the past 40 years is putting **unsustainable pressures on our planet**.
- **Rich nations** must find ways to **live much more lightly** on the Earth - the **rapidly-growing** emerging economies must also **find a new model** for growth [**development**].
- The economic **crisis** of the past two years has provided an **opportunity to reassess** fundamental **attitudes** to the use of the world's **natural resources**.
- Continuing to consume the Earth's resources more quickly than they can be replenished is **destroying the very systems on which we depend**.

James P. Leape (2010) Director General, WWF International - Living Planet Report

“Fundamental changes to the structure of our economies are required”

- The **recent financial and economic crisis** should serve as a reminder of the **urgency** of developing **greener economies**.
- Pressures on the biosphere: “**business as usual**” is not an option.
- Identifying sources of growth [**development**] which make much **lighter claims on the biosphere** ... will require **fundamental changes to the structure of our economies**.
- An important element will be educating and motivating people to **adjust** their **lifestyles**, so we can leave a healthier planet to future generations.

“Business as usual is not an option”



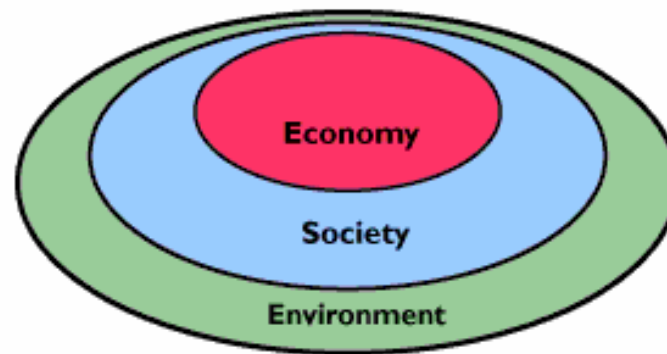
Angel Gurría
Secretary General - OECD

Angel Gurría (2010) Foreword – Living Planet Report

The role of the company

The role of the company

- If the company's purpose is **to maximize the return of its shareholders**, especially in the short term, the other stakeholders become costs to be minimized, **generating negative externalities on society and the environment**.
- It is about understanding that **business** is a wholly owned subsidiary of **society**, which is itself a wholly owned subsidiary of the **environment**, not the other way around.



Accountability and responsibility of business

- Shareholder primacy
 - Short termism
 - Externalities

- Pluralist approach
 - Difficult translation into enforceable duty
 - Loss of accountability (broad scope to justify decisions)

- Enlightened shareholder value approach
 - Longer term considerations and interests of various stakeholders in advancing shareholder value

Thomas Clarke (2007) International Corporate Governance, chapter 8

Companies Act 2006 (UK)

Chapter 2 - General Duties of Directors

172 Duty to promote the success of the company

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to **promote the success of the company** for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to
- (a) the likely consequences of any decision in the **long term**
 - (b) the interests of the company's **employees**
 - (c) the need to foster the company's business relationships with **suppliers, customers and others**
 - (d) the impact of the company's operations on the **community and the environment**
 - (e) the desirability of the company maintaining a **reputation** for high standards of **business conduct**
 - (f) the need to **act fairly as between members** of the company

Corporations Act 2001 (Australia)

Chapter 2D — Officers and employees

Part 2D.1 - Duties and powers

181 Good faith - civil obligations (*directors and other officers*)

(1) **A director or other officer** of a corporation must exercise their powers and discharge their duties:

- (a) in good faith **in the best interests of the corporation**; and
- (b) for a proper purpose.

182 Use of position - civil obligations (*directors, other officers and employees*)

(1) **A director**, secretary, **other officer** or employee of a corporation must not improperly use their position to:

- (a) gain an advantage for themselves or someone else; or
- (b) **cause detriment to the corporation.**

Law nr. 6.404 – 1976 (Brazil)

Duties

Officers [meaning directors and other officers]

Art. 154 - Duties and the Misuse of Power

- An officer shall use the powers conferred upon him by law and by the bylaws **to achieve the corporation corporate purposes** and to **support its best interests**, including **the requirements of the public at large** and of **the social role of the corporation**
 - Paragraph 1. **An officer elected by a group or class of shareholders shall have the same duties toward the corporation as the other officers and shall not fail to fulfill such duties, even at the expense of the interests of those who elected him.**

Art. 155 - Duty of Loyalty

- An officer shall **serve the corporation with loyalty**, shall treat its affairs with confidence (...).

Law nr. 6.404 – 1976 (Brazil)

Duties (cont.)

Controlling Shareholder

Art. 116 – Duties

- Sole Paragraph. A controlling shareholder **shall use its controlling power in order to make the corporation accomplish its purpose and perform its social role**, and shall have **duties and responsibilities** towards the **other shareholders** of the corporation, **those who work** for the corporation and **the community** in which it operates, the rights and interests of which the controlling shareholder must loyally respect and heed.

Fiscal Council Members

Art. 165 - Duties and Responsibilities

- Paragraph 1. The members of the Fiscal Council shall **perform their duties in accordance with the company's interests...**

Corporate Governance and Corporate Responsibility

ESG issues at Board level

- When directors and senior executives **incorporate ESG (Environmental, Social and Governance) concerns** in defining their **businesses and operations**, they take into account a wider range of corporate relationships, implying **a broader vision of the corporate strategy**.
- **Governance, strategy and sustainability** become **inseparable**: one can no longer plan strategically without having regard to sustainability issues.

Corporate Governance and Corporate Responsibility

- When a company improves its governance practices it develops a more **respectful** and **responsible** business environment for the various parties involved.
- The level of **trust** among the parties improve, increasing its odds of being seen as more "sustainable", ethical, or **responsible**.
- It is important to **communicate realistic expectations** of what business can and cannot achieve, and what is considered to be the responsibilities of others.

Back to the questions raised by the crisis

- The economic function of ownership of shares
 - Just to make money?
 - Is profit maximisation still on the table?
- The answer includes
 - Creating wealth for the future generations...
 - ... while nurturing the world's natural resources and living within their regenerative capacity and appreciating the true value of the goods and services they provide.
- **Business as unusual**
 - To promote the success of the company considering the interests of various stakeholders in the long term.

Thank you!

Carlos Eduardo Lessa Brandão

- Carlos Eduardo Lessa Brandão serves on the Board of Directors of the Brazilian Institute of Corporate Governance (IBGC), where he chairs the Sustainability Commission and the Editorial Committee.
- Mr. Brandão is also a member of the Stakeholder Council (vice chair) and of the Nominating Committee of the Global Reporting Initiative (GRI).