Corporate Governance in Jersey's Accountancy Sector

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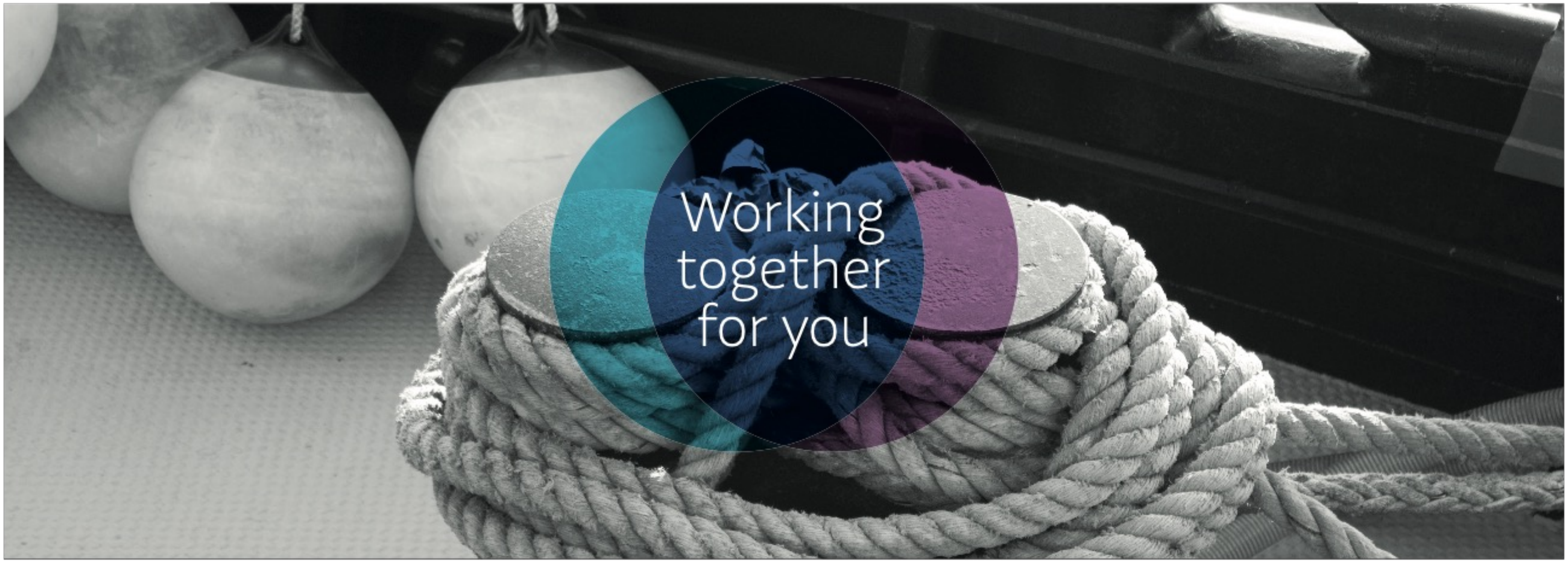
LAW + REGULATORY



Oben Law and Oben Regulatory Ltd

+44 (0) 1534 871212 . info@oben.je . oben.je

Presenter

Alexandra Ruddy
Director, Oben Regulatory

Chair, IoD

Prior to becoming a director of Oben, Alex spent most of her career in practice with two of the big four accountancy firms. Choosing to specialise in forensic accounting and regulatory consulting she held a senior position in Deloitte's Reorganisation, Forensic and Regulatory Services department. Throughout this period, she worked closely with financial services businesses and their legal advisers in relation to financial irregularities, controls and governance matters. The broad spectrum of engagements undertaken included the appointment as reporting professional and co-signatories on the instruction of the JFSC, in addition to assisting law firms in respect of complex investigations such as fraudulently altered and incomplete records, or indeed in relation to matrimonial matters.

At Oben, Alex assists financial services businesses to find bespoke solutions to regulatory issues working closely with board members and key persons. She is well versed in assisting businesses strengthen their governance framework and control environment and presents a pragmatic approach to corporate governance issues. Alex has considerable experience with AML/CFT/CPF and sanctions issues, policies and procedures, fraud and asset-tracing and providing litigation support, including assisting her colleagues in the law firm with accounting matters. She also delivers effective training for a range of audiences from board to more bespoke training and also to employees in relation to the embedding of new controls.

Alex is regularly appointed to the role of reporting professional, inspector and skilled person by regulatory authorities in relation to trust company businesses, fund services businesses and insurance businesses. This often comprises the review of complex structures and opining on compliance with the relevant legal and regulatory regime.

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Introduction & Contents

- Definition of Corporate Governance
- What about Jersey?
- When it goes wrong….
- UK Corporate Governance Code- detail
- In practice..

What is Corporate Governance?

The Financial Reporting Council (FRC) defines corporate governance as:

“The system of rules, practices and processes that are put in place to manage and control a company. It is underpinned by the UK Corporate Governance Code.”

Key principles include:

- Accountability, transparency, and integrity
- Promoting long-term performance, financial stability, and business integrity
- Balancing the interests of shareholders and stakeholders

The FRC’s “comply or explain” model encourages companies to apply governance principles flexibly, while disclosing how they meet or deviate from the Code.

What about Jersey?

No Corporate Governance code per se therefore look to Companies (Jersey) Law 1991:

1. Directors' Duties and Responsibilities

Articles 74 to 84 of the law outline the core duties

- Act in good faith and in the best interests of the company.
- Exercise powers for proper purposes.
- Avoid conflicts of interest.
- Maintain reasonable care, skill, and diligence
- Ensure compliance with the law and the company's constitutional documents.

Directors can be held personally liable for breaches of duty, especially where negligence or dishonesty is involved.

2. Board Structure and Decision-Making

- Companies must have at least one director (private companies) or two (public companies).
- Directors may be individuals or corporate entities.
- The law allows for delegation of powers, but directors retain ultimate responsibility.

What about Jersey?

3. Transparency and Accountability

- Companies must maintain proper accounting records and prepare annual financial statements.
- Public companies are subject to audit requirements.
- Shareholders have rights to inspect certain records and call meetings.

4. Regulatory Oversight

While the Companies Law provides the legal framework, the JFSC enforces governance standards for regulated entities, including:

- AML/CFT compliance
- Appointment of MLCO and MLRO
- Business risk assessments
- Systems and controls for ethical conduct and financial integrity

When it goes wrong….

Enron & Arthur Andersen (2001)

What happened: Enron used complex accounting loopholes to hide billions in debt. Arthur Andersen, its auditor, was complicit in shredding documents and failing to challenge the fraud.

Governance failures:

- Lack of auditor independence
- Weak internal controls
- Board failed to challenge executive decisions

Impact: Enron collapsed, shareholders lost $74 billion, and Arthur Andersen was dissolved

When it goes wrong….

China Evergrande & PwC (2024)

What happened: Evergrande inflated sales by $79 billion over two years. PwC's audits failed to detect or report irregularities.

Governance failures:

- Inadequate audit quality and internal controls
- Lack of transparency in financial disclosures
- Regulatory oversight gaps

Impact: PwC faced a six-month suspension and $62 million in fines. Over 50 firms severed ties with PwC

When it goes wrong….

Deloitte Australia (2024)

What happened: Senate inquiry revealed improper auditing practices and conflicts of interest.

Governance failures:

- Lack of transparency
- Ethical breaches in tax advice

Impact: Damaged reputation and calls for regulatory reform

Key lessons:

- Ensure auditor independence and rotation.
- Maintain robust internal controls and board oversight.
- Promote a culture of ethics and transparency.
- Align with JFSC and FRC governance codes to mitigate risks.

Why is the UK Corporate Governance Code relevant

- No Jersey equivalent
- Cross border services
- Key framework
- Comparable

What is the FRC Code?

The FRC Code sets out principles of good corporate governance for companies listed on the London Stock Exchange.

It operates on a "comply or explain" basis, meaning companies must either comply with the Code’s provisions or explain why they have not.

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FRC Corporate Governance Code Overview

Key sections:

- Board Leadership & Company Purpose
- Division of Responsibilities
- Audit, Risk & Internal Controls
- Composition, Succession and Evaluation
- Remuneration

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Why an update?

The main driver of the changes to the UK Corporate Governance Codes is the Government's 2021 White Paper, 'Restoring trust in audit and corporate governance', which set out proposals to strengthen the UK's framework for major companies and the way they are audited.

The revisions to the Code are an important component of these reforms, and primarily relate to internal control, internal and external assurance, ESG reporting, the role of the audit committee and executive pay arrangements.

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The White Paper

"It is vital that investors, financial markets and all those who depend on the largest companies in the UK can continue to rely on the information they publish. I am determined to reinforce the UK's position in the wake of large corporate failures that have led to job losses and uncertainty among small businesses and local communities. I want to ensure investors can get high-quality, focused and reliable information on UK companies so they can invest here with even greater confidence."

"Audit is key to assuring investors and others that company reports are both accurate and meaningful. This document outlines our proposals to increase choice and quality in the audit market, establish clearer responsibilities for the detection and prevention of fraud, and ensure the audit product and audit profession are fit for the future. We also set out plans to empower shareholders and improve company reporting on the key issues of risk, assurance and internal controls. Crucially, our proposals recognise the economic importance of the largest privately-owned companies by expecting them to meet the highest standards of reporting, as listed companies already do."

Key changes in the 2024 Code

- **Provision 29** (effective 2026): Boards must declare the effectiveness of their material internal controls
- **New Principle**: Encourages companies to report on outcomes and activities, not just processes.
- **Audit Committee Provisions**: Moved to a separate "Minimum Standard" for external audit oversight.
- **ESG Emphasis**: Stronger focus on environmental, social, and governance factors in board strategy.
- **Clawback and Malus**: Enhanced rules to reclaim executive bonuses in cases of misconduct or financial misstatements.
- **Succession Planning**: Boards must proactively manage leadership pipelines and diversity.

Why is it important?

The Code aims to:

- Build investor trust
- Improve risk management
- Ensure board accountability
- Promote long-term value creation

Implications for companies

Greater accountability: Boards must show not just that they have systems in place, but that those systems work.

More transparent reporting: Investors and stakeholders get clearer insights into governance effectiveness.

Stronger ESG alignment: Governance now supports broader sustainability and social goals.

Audit independence: Separating audit standards helps ensure more rigorous oversight.

Implications for auditors

Enhanced Board Accountability

The Code now places explicit responsibility on the entire board (not just the audit committee or executive directors) for the declaration of control effectiveness.

Implication for Auditors:

- engage more broadly with the board, not just the audit committee, to understand governance processes.
- could be greater scrutiny of how boards monitor and review controls, requiring auditors to assess governance documentation and board minutes more thoroughly.

Implications for auditors

Outcomes-Based Reporting

Boards must now report not just on processes but on the outcomes of their decisions and monitoring activities.

Implication for Auditors:

- Auditors will need to assess whether the narrative reporting aligns with actual outcomes and evidence.
- May require more qualitative judgment and deeper understanding of the company's strategic risks and control environment.

Sustainability v. ESG

Sustainability definition

Corporate sustainability encompasses a range of responsible business practices used to operate a business without harming and preferably improving, the environment, society or the economy (Do-No-Significant-Harm).

It goes beyond financial considerations and is a holistic concept that incorporates:

- **Environmental stewardship** – reducing negative impacts on the environment by minimising greenhouse gas emissions, waste, and pollution, and conserving natural resources.
- **Social responsibility** – promoting social equity, diversity, and inclusion through fair employment practices, health and safety, human rights, and community involvement.
- **Economic viability** – ensuring long-term prosperity.

Environmental Social and Governance (ESG) definition

Business success today is measured beyond traditional financial performance metrics. Driven by society's recognition of the value of company ethics, values and impact, businesses are seeking ways to effectively measure their impact on society and the environment.

ESG is a standardised management and analysis framework that enables organisations and other stakeholders such as investors to understand and measure their impact on these factors, as well as its corporate governance practices.

The goal of ESG is to capture the non-financial risks and opportunities inherent to a company's day-to-day activities. Understanding these concepts helps businesses operate responsibly and sustainably.

The criteria measure a business' impact across three key framework pillars using benchmarks and metrics:

- **Environmental** – how the business affects and safeguards the environment.
- **Social** – how the business interacts with its stakeholders (employees, customers, suppliers, communities, investors).
- **Governance** – how the business is managed and governed.

Good Practices

Strong Internal Controls

- Implementing robust systems to prevent fraud and errors.
- Regular audits and reconciliations.
- Segregation of duties to reduce risk.

Transparent Financial Reporting

- Timely and accurate disclosure of financial statements.
- Compliance with IFRS or other relevant accounting standards.
- Clear notes and explanations for complex transactions.

Independent Oversight

- Use of independent non-executive directors on audit committees.
- External auditors with no conflicts of interest.
- Regular rotation of audit firms to maintain objectivity.

Ethical Standards and Training

- Adherence to professional codes of ethics (e.g. ICAEW, ACCA).
- Ongoing ethics training for staff.
- Whistleblower protection policies.

Risk Management Integration

- Embedding risk assessment into financial planning.
- Scenario analysis and stress testing.
- Clear documentation of risk appetite and mitigation strategies.

Bad Practices

Overreliance on Group Policies

Firms that rely on group-level governance frameworks without tailoring them to Jersey's specific regulatory environment risk non-compliance. The JFSC expects local boards or senior management to assess and document the adequacy of such arrangements.

Lack of Transparency

- Delayed or misleading financial disclosures.
- Off-balance-sheet financing to hide liabilities.
- Inadequate explanation of accounting policies.

Conflict of Interest

- Auditors providing non-audit services to the same client.
- Directors with personal financial interests in company decisions.
- Failure to disclose related-party transactions.

Weak Oversight

- No independent audit committee or ineffective board governance.
- Overreliance on internal audits without external validation.
- Lack of accountability for financial misstatements.

Poor Ethical Culture

- Tolerating aggressive tax avoidance schemes.
- Pressuring accountants to manipulate earnings.
- Ignoring whistleblower reports or retaliating against them.

Inadequate Risk Management

- No formal risk register or mitigation plans.
- Ignoring financial controls in pursuit of growth.
- Failure to adapt to regulatory changes or market risks.

Further comments or questions?

Contact details

ALEXANDRA RUDDY
Director

+44 7700 718150
alexanddra.ruddy@oben.je

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