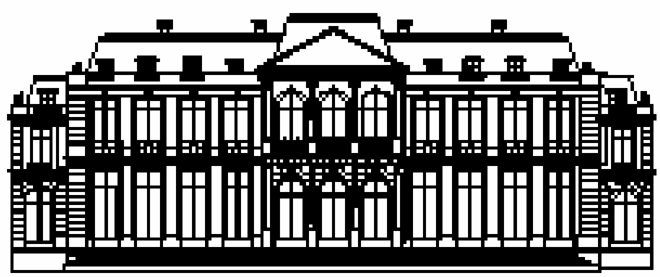
fachhochschule
coburg
university of applied sciences

The Impact of Corporate Governance from

'The Bottom-Up View Insight The Company'



The Impact Of Corporate Governance From 'The Bottom-Up View Insight The Company'

Prepared for,

Prof. Dr. Rainer Kalwait
Prof. Of International Controlling
School of Business
Coburg University of Applied Science
Coburg, Deutschland

Prepared By,

Khandaker Tareq Mahmud Sarod
School of Business
Coburg University of Applied Science
Coburg, Deutschland

June 26th, 2003

Coburg University of Ap plied Science, Coburg

Date: 26th, June 2003

Prof. Dr. Rainer Kalwait
International Controlling
School of Business
Coburg University of Applied Science
Coburg, Deutschland.

Subject: Revise version of working paper.

Dear Sir,

Here is my revise version of working paper, which you asked me to submit for the partial fulfillment of International controlling course for International MBA degree program.

As per our last meetings on Tuesday , 24th June in your office, the guideline you give to me to prepare the working paper, I feel proud to say that I followed your suggestion strictly in every aspect. Even I followed the guideline which you gave to me on the open discussion in the class .

I honestly believe and hope that, this report will fulfi l your requirements , and I truly appreciate this assignment as I learn a lot of terms and important information about my subject which will obviously help me to build a dynamic future.

Most Cordially,

Khandaker Tareq Mahmud Sarod
MBA (Stamford); BBA (Hon s)

Table of Contents

Corporate Governance:

Broadly speaking, the term corporate governance refers to the relationship between the investor/owners, directors and management of corporations. At a broader level, corporate governance is the starting point for a discussion about the responsibility of companies and executives toward a wider base of stakeholders - customers, employees, shareholders, business partners and in particular, the communities within which they operate.

Corporate governance is about structures and institutions by which the outside world facilitates value creation within the firm [1]. The governance system provides a balance between individual aspirations within the firm and those of the surrounding community. A proper governance framework is of fundamental importance in enhancing the economic performance not only in individual firms but also in promoting the level of welfare in society.

Corporate governance as a field of study is interdisciplinary by nature. All areas of business economics are at least to some extent involved. An essential feature of a successful corporate governance system is indeed that it successfully channels aspirations of different types of experts within th e organization to the benefit of the organization as a whole.

Definition by the Professionals:

"Corporate governance...is defined narrowly as the relationship of a company to its shareholders or, more broadly, as its relationship to society..." [5]

"*Corporate governance is about promoting corporate fairness, transparency and accountability*." [4]

OECD defined corporate governance as: " *Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance*."

"Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment ", *

"Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment ", [3]

- Financial Times, June 21, 1999
- The Journal of Finance, Shleifer and Vishny [1997, page 737]
- The Journal of Finance, Shleifer and Vishny [1997, page 737].
- J. Wolfensohn, president of the Word bank has been quoted as saying,
- According to a 1997 Financial Times article

Historical development:

In the eighteenth and nineteenth centuries, Americans and Britons looked askance at most forms of government regulation of business. In 1889, for instance, a railroad investor argued that while "governmental regulation sounds well" it was not a good idea to give power over private businesses to "a bare majority of un expert and unconscientiously politicians."

Nineteenth-century investment gurus regularly extolled the importance of good corporate governance. For example, Robert Ward, in his 1865 Notes on Joint-Stock Companies, described the characteristics of a good investment. The issuing company, he argued, should have "a good scheme brought before the public at a seasonable time...enough capital...and it must be managed well." Ward urged investors not to be lulled into complacence due to the size or previous success of a company. And managers and directors, shareholders and employees. Nonetheless legal, professional and social instruments pertaining to corporate governance can assist in reducing such conflicts, for example:

- · Legal and other regulatory duties for directors and corporate officers;
- · the structure of executive boards and committees;
- · internal and external auditors;
- · the composition of investors and particularly institutional investors;
- · the likelihood of takeovers;
- · financial and non-financial disclosure;
- · competitive market share;
- · the cost of capital;
- · executive remuneration; and
- · Financial policies.

For some time now there has been a concerted move in Australia and overseas toward regulating corporate governance responsibilities. Nonetheless evidence shows that governance related matters have existed since, at least, the incorporation of companies with limited liability in the nineteenth century. "corporate governance" took a long time to be included in annual report publications 'although incorporation with limited liability became available in the nineteenth centur[1] Primarily the 'basic principles of good corporate governance involve appropriate disclosures, the development of codes of conduct for company directors and the development of internal structures which provide for independent review of processes and decision-making within a company'[2] It is proffered that the issues relate to internal control systems and good management such that highlight possible conflicts of interest between internal and external parties to the organization. Moreover it would seem unlikely relationships of this sort, and all possible situations arising there from could be covered by interrelated contracts, such as explained by agency theory. For instance, during the 1980s as concerns grew

1 *(CIMA, executive summary, p.2).*
2 *CLERP, 1997, p.62*

Within the business and investment community related to the release of conceivably false statements about the financial state of certain business entities (especially following major Corporate collapses) internal management and external reporting systems were again in the public eye. The notion of corporate governance gained momentum. Initially perhaps this development was more evident in the United States with the Treadway Report (1987) but it was followed closely in the United Kingdom after a number of unexpected corporate collapses in that country. Later, following the advances of The Rutterman Report (1994) dealing with internal control procedures and reporting there was the Greenbury Committee (1995) that focused on issues of directors' remuneration and accountability. Later that year the Hampel Committee (1995) reviewed the Cadbury Code, the role of directors, the Greenbury recommendations as well as the role of shareholders and auditors. Finally a Combined Code on Corporate Governance was published in June 1998.

Then the Turnbull Committee, established by the Institute of Chartered Accountants in England and Wales, published a report in 1999 on the necessity to ensure that internal controls were inherent to a business entity and shaped to cater for the uniqueness of each business. The emphasis was on voluntary behavior rather than regulatory compliance with a Code of corporate governance but nonetheless with some tightening of legislation to ensure that voluntary Behavior was likely.

The situation in Australia developed from the lead taken by the United States and the United Kingdom. Although there is evidence to be found in annual reports that companies have included factors of corporate governance in their organizations prior to disclosure being demanded,[1]. This demand for disclosure of corporate governance matters in Australia *'took effect for annual reporting periods ending on or after 30 June 1996'*[2] Prior to this and following corporate collapses of the 1980s it again became evident that closer stakeholder scrutiny of corporate behavior was required. From a different perspective national and international communities have developed an increasing interest in the outcomes of business operations, particularly with regard to environmental concerns such as, pollution. To the extent that environmental interest groups have generated sufficient public awareness and political force to add to the issues considered under the banner of corporate governance. Such developments indicate that governance concerns extend beyond a short-term view of maximizing profits, a shareholder approach.

Main Topics:

My main topic in this assignment is *The impact of Corporate Governance from the bottom-up view insight the company .'*

In this work papers I will describe the impact of the corporate Governance from the Bottom up view, which will also include the top to bottom view of the corporate Governance.

1. such as by the *ASX Listing Rule 4.10.327* and in this regard the *Burns Philp* case is an example
2. CLERP, 1997, p.63.

Impacts On The Organisation:

Corporate governance as a term is relatively new to our every day business language for most of us. There is certainly much confusion as to what the term includes. This is because corporate governance is a very inclusive term, covering a wide range of activities that relate to the way your organisation is directed and governed. It deals with the policies and practices that directly impact on your organisation's performance, stewardship and its capacity to be accountable to its various stakeholders.

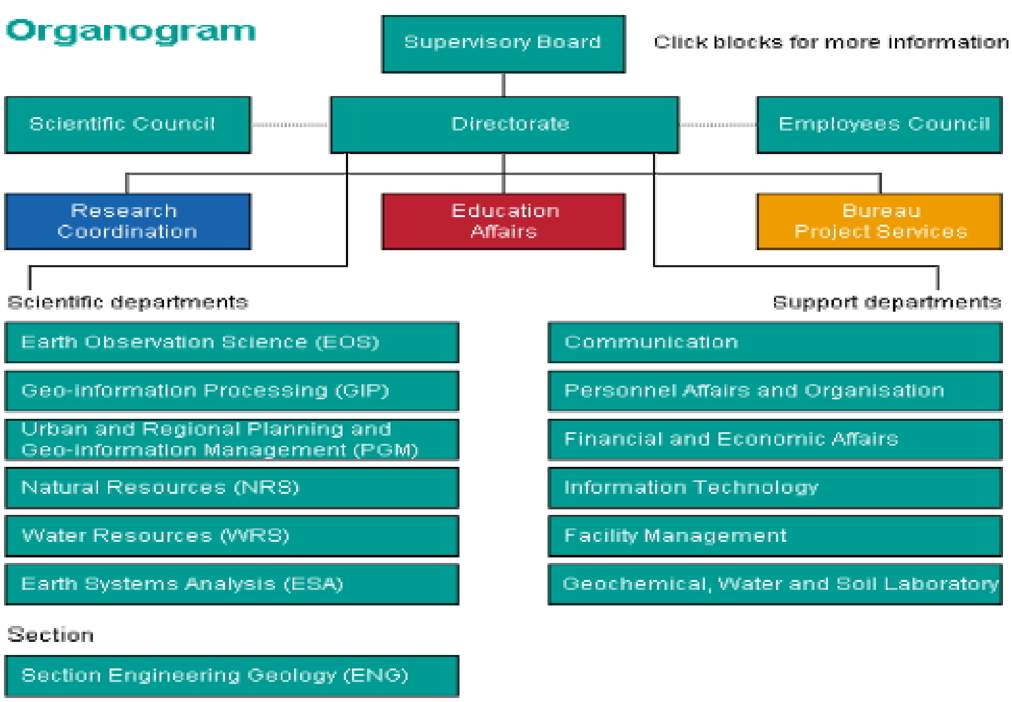
For example, corporate governance includes such activities as:

- Strategic and Business Planning
- Board Composition
- Risk Management
- Performance Assessment
- Reward and Benefit Distribution
- CEO/Management Succession and Appointment
- Disclosure and Stakeholder Reporting
- Corporate Values and Corporate Culture
- Independent Input
- Organisation Structure

Bottom Up View of Corporate Governance:

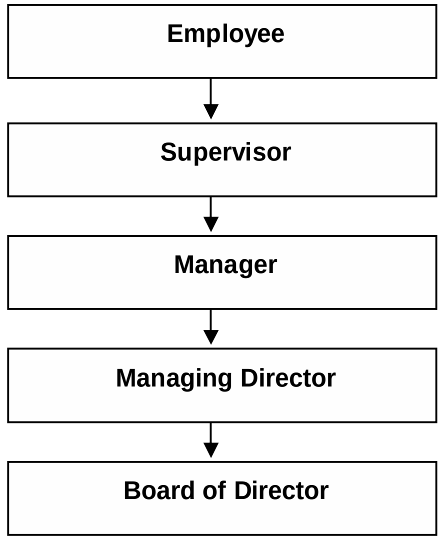
Top find the bottom up view of the corporate governance is very difficult. Normally the flow of the management is always the Up to bottom and to find the bottom to up view of corporate governance is more difficult.

Let's try to solve the problem in different way. As we know the flow chart (organogram) of the company is as follow.



Note: This is a general organogram of an organization, which generally followed.

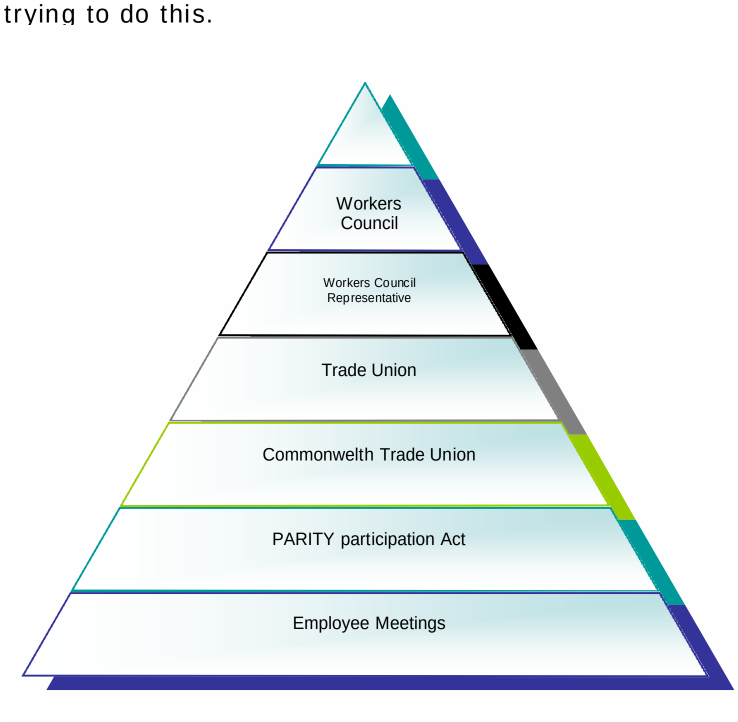
In this organogram the order pass Top to Bottom, but we will discuss about the Bottom to up view, so our chart will be as follows.



We will discuss this bottom up view inside the company in here, how and who are doing this.

WHO ARE DOING THIS (Bottom Up):

This is not really very easy to this in the Eastern world except little country there. But now western world is trying to do this.



But which are the organisation is doing this, we will discuss about this in here.There are several organisation is helping for Bottom up view. But we will name in here some few of this, because of limitation of the time and page. We could make a layer who is doing this in the following chart.

I. Workers Council:

This is an organisation that normally takes care of the right of the employee in the organisation. There is lots of workers council who are acting different country of the world for as a safeguard for the workers.

Except that the Workers council has a great impact on the Corporate Governance on the bottom up view. It helps the employee to do more participation in the management factor. Honestly specking, this Workers council helps the employee to reach there goal and this Council also give some Guideline to the Organisation to promote. This is the way the Workers Council helps the organisation for practicing the Corporate Governance from the bottom up view.

The following are the main responsibility of the worker council

- It means that employees have the legal right to help organize, join and to support a union of their own choosing. This includes such activities as signing a union card, getting others to sign cards, attending union meetings, wearing union buttons, passing out union literature and talking union to other employees.
- It states that employees have the legal right to join together and work as a team in order to help each other.
- It says that employees have the legal right to deal with their employer as a group, rather than individually.
- It gives employees the legal right to take such group action as they feel necessary in order to gain their desired goals, so long as these actions violate no other laws.
- It does not mean that employees have the right to carry on union activity during working hours or to allow their union activity to interfere with their jobs. (For this purpose, break time and lunch time are not considered as working hours.)

But now a day s workers council are doing more then that. In Germany nearly 50% of the supervisory board and member of the board of director are selected by the direct vote of the employee. The elected Board of Director always try to protect the right of the employee and they are also making sure the participation of the employee in the management level. Corporate governance is practice in here in this high level. So we could see that workers council plays a vital role in bottom up view of corporate governance.

ii. Workers Council Representative:

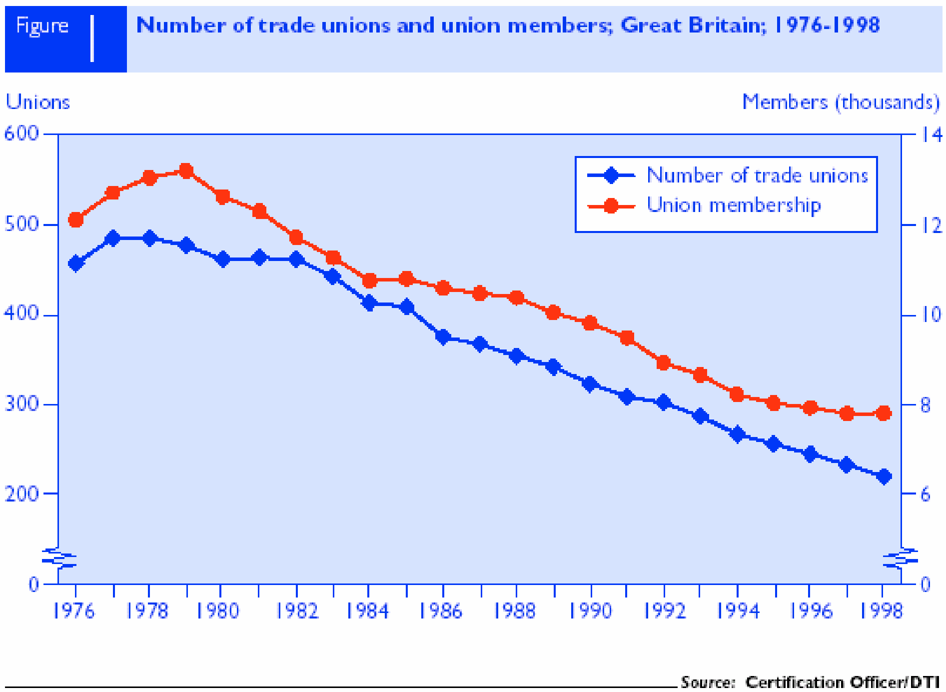
Workers council are the same as we discuss before. The council of the workers selected some representative who will deals with the rights of the workers to the management. This representative gives the chance to the workers to take the direct participation in the management of the organisation.

International Chemical Workers Union Council (ICWUC) is one of the Famous organisations to do this kind of Job.

iii. Trade Union:

Trade union is another type of organisation who helps the employee for better participation in management and deal with the right of the indicial employee and also help the organisation to better practice for management perspective.

The number of the Trade Union is quite high in UK and other European country. In the below figure we can see the number of the trade union in UK and member participants.



In the following we can see that the number of the trade union and there membership in UK. It might seems that the number is going down, because the small trade union is disappearing and some of the trade union are merging with the other small one and making a big trade union. That's why the trade union is going less. Big trade union is more effective and more concern about the corporation right and this able to work more effectively.

Source:
Table 1: DTI, Great Britain 1999 (Certification Officer Report)
Table 2: Labour force survey 2000, UK

Table 2	Union membership; Great Britain; 1989-1999			
Year	Number of members (000s)	Percentage change in membership since previous year	Union density for all in employment (per cent)	Union density for employees (per cent)
1989	8,939		34.6	39.0
1990	8,835	-1.2	33.9	38.1
1991	8,602	-2.6	33.6	37.5
1992	7,956	-7.5	32.2	35.8
1993	7,767	-2.4	31.5	35.1
1994	7,530	-3.0	30.1	33.6
1995	7,309	-2.9	28.8	32.1
1996	7,244	-0.9	28.2	31.2
1997	7,154	-1.2	27.3	30.2
1998	7,152	0.0	26.9	29.6
1999	7,257	1.5	27.0	29.5
Change since 1989	-1,682		-7.6	-9.5

Source: Labour Force Survey

Note:

Iv. Commonwealth Trade Union:

The Commonwealth Trade Union Council links trade union national centres, representing over 30 million trade union members, throughout the Commonwealth. It operates in close co-operation with other international trade union organisations and seeks to promote a democratic and prosperous Commonwealth in which international labour standards are observed.

CTUC activities within the Commonwealth are based on an increasingly popular acceptance that the trade union movement is a key player in the campaign to achieve and defend democracy. Trade unions in the Commonwealth are an essential element in civil society and in many countries the only democratically-organised, non-racial, mass membership organisations.

The CTUC and its member organisations are united by Common Aims and are actively involved in:

- Creating partnerships
- Challenging injustices
- Changing perceptions
- Campaigning for core labour standards

v. PARITY participation Act:

Senate: On April 14, Senators Paul Wellstone (D-MN) and Pete Domenici (R-NM) introduced the 1999 parity legislation, S. 796, "Mental Health Equitable Treatment Act. "The first parity law, passed in 1996, required equal lifetime and annual limits for group health plans in businesses with over 25 employees. **S. 796** goes further than the 1996 legislation by eliminating inpatient and outpatient limits for all mental illnesses, and addressing limits on co-pays, deductibles, out-of-network charges, and out-of-pocket contributions for a limited number of severe mental illnesses.

vi. Employee Meeting:

Employee meetings are one of the important parts of the employee participation of the Management and corporate governance. Some country there is a rule that in every month there should be an employee meeting. Like Germany the employee meeting is very common and employee meeting brings out various idea about the future.

Employee meeting also helps the employee to participate in the management decision and there opinion about the particular things,

The following is the main important points of employee meetings,

i. Bring out new idea
ii. Employee gat more chance to involve the management decision and close relation with the management
iii. Bottom-Up practice of Corporate Governance inside the company,
iv. More management practice in employee level,
v. Employee gets awareness about the right and act.

vii. Competition for new idea inside the company:

A large number of company make this sought of competition inside the company to bring out the innovative idea from the employee. Reason simple, employee knows about the organisation better then other. So they have a real view and knowledge about the adaptation of company.

This competition gives the company for finding the better parson and knows how to find the better ´parson for the better post. This also helps the employee to feel them selves and management and Bottom up view communication could be possible. This bottom up communication helps the employer to find the better parson for the better position.

This is one of the famous methods for controlling.

Legal and Board Structures

Corporate Governance employee Participation view:

All of the member states of the Union have comparable legal structures for limited liability companies. A limited liability company is a separate legal entity owned by an individual or an association of individuals who own the firm and share in its profits according to the proportion of the company's capital they own. Their liability for the company's debt is limited to the share they contributed. Limited liability companies can be subdivided into private and public limited companies, in which the former may not, but the latter may, offer their shares for sale to the general public. Corporate governance problems will thus most likely occur in public limited liability companies, since ownership can be transferred without restrictions and is divorced from management. Such companies are subject to additional administrative requirements. Public limited liability companies in the EU differ in minimum capital requirements, the structure and composition of their boards, and the responsibilities of the assembly of shareholders.

Most EU countries have a one-tier board structure, where responsibilities are shared between representatives of management (executive directors) and representatives of the shareholders (non-executive or outside directors). In principle, the latter are appointed because of their wisdom, experience and contacts. In a two-tier structure, the management board is subject to and nominated by a supervisory board, composed of non-executive directors. This type of structure is in place in Denmark, Germany, and the Netherlands, and is optional in France, Portugal and Spain. The former three countries also give employees, or their representatives, seats on the supervisory board, a practice that is best known in Germany, where employee representatives can occupy up to one-half of the seats on the board, in the case of corporations with more than 2,000 employees.

The practice of appointing employee representation on the board is also current in Sweden and optional in France. The board of directors, or the supervisory board in case of the two-tier board structure, is in most countries appointed or approved by the assembly of shareholders at the annual meeting (AGM). The notable exception is the Netherlands, where the supervisory board elects itself and can therefore be self-perpetuating.

The other principal tasks of the AGM include the approval of the accounts and dividends, the (re)appointment of auditors, the issue of shares and the agreement on by-laws. Regarding the composition of the supervisory boards in Germany, aggregate data of the 100 largest German enterprises indeed show that the single most important group comprises trade union and employee representatives, who possess close to one-half of the mandates. Representatives of industry are the second-most important group with 25% of the seats, whereas banks and other financial companies occupy only slightly more than 10%. The total number of bank representatives on the board is furthermore decreasing on a continuous basis. Data on the background of the non-executive directors of UK banks show that a great majority of them (80%) are company chairmen, chief executives or directors. In France, 25% of the board seats in the 100 largest enterprises are occupied by civil servants.

BUSH SIGNS CORPORATE GOVERNANCE ACT.
(New rules for corporate governance called Sarbanes-Oxley Act of 2002.)

On Tuesday, July 30, President Bush implemented sweeping changes affecting corporate governance and disclosure, the accounting industry, and penalties for securities law violations. The Sarbanes-Oxley Act of 2002 (the Act), as the new legislation is called, includes far-reaching changes in federal securities regulation that could represent the most significant overhaul since the Securities Exchange Act of 1934.

The new Act prescribes a system of federal oversight of public auditors through a public company accounting oversight board, a new set of auditor independence rules, new disclosure requirements applicable to public companies and insiders and harsh civil and criminal penalties for persons who are responsible for accounting or reporting violations. It also imposes new restrictions on loans and stock transactions involving corporate insiders.

For public companies, the Act's most noticeable effects relate to corporate governance, an area of regulation traditionally left to state corporation laws. The Act will force many companies to adopt significant changes to their internal controls and the roles played by their audit committees and senior management in the financial reporting process. Most significantly, the Act imposes new responsibilities on CEOs and CFOs and exposes them to much greater potential liability.

Future Development:

Failure in corporate governance is a real threat to the future of every corporation. Corporate governance as a business ethics issue is a hundred times more powerful than the internet or globalisation and can destroy your business in a week. To make matters worse, standards of corporate governance are changing rapidly in response to random events which capture public imagination. In business ethics, what was good is becoming bad and what was considered bad is now good. Standards for corporate governance that have worked for decades are looking old fashioned or immoral while other practices that raised questions are becoming totally acceptable.

So what is going to happen next in corporate governance? How can corporations use corporate governance to restore confidence and protect themselves against tomorrow's headlines? What will be the new "Gold Standard" for corporate governance and business ethics? How much further than legal minimum requirements for corporate governance should corporations go to ensure sustainable success?

Conclusion:

This is clear that corporate governance is a modern and dynamic method to distribute the share holders wealth and future. But the corporate governance should not only to look to the share holders of the company but also to the customers, workers, business partners, community, national and wider world. Those with effective corporate governance based on this core value will have an added competitive advantage: attracting and retaining talent and generating positive reactions in the marketplace.

Though from the discussion we can find that top to bottom up view of the corporate governance is not much clear for most of the country specially eastern and former USSR block, but the practice of corporate governance is fluent in western world and some far east countries e.g. Japan, Hong Kong, Malaysia etc.

Employee participation inside the organisation plays a vital role in the organisation and corporate governance is helping the company to achieve the business goal more effectively. Employee participation in the management practice makes the bottom up relation within the management and the company, with the help of this the organisation are really benefited.

Still the corporate governance is a new topic but we could say that participation level all over management with the help of corporate governance makes the management more effective and active.

Reference:

Definition of Corporate Governance

http://www.encycogov.com/WhatIsGorpGov.asp

PISTOR, K., M. RAISER AND S. GELFER (2000), "Law and Finance in Transition Economies", Working paper 48, European Bank for Reconstruction and Development, February.

OCDE Technical Papers – 180, Corporate Governance and National Development.
By Charles P. Oman*

http://www.rid.ru/uploads/db2file_en/Tp180.pdf

Impact of Corporate Governance

http://mailbox.univie.ac.at/~yurtogb5/DEVDEV.PDF

http://www.business.auc.dk/loc-nis/workshop1/wilkinson.pdf

US New Corporate Governance Policy what is the Impact

http://www.whitecase.com/article_us_adopts_new_corporate_governance_standards_international_impact.html

Corporate Governance in Asia

http://www.ifc.org/publications/pubs/corp_gov/frontmatter.pdf

Organization for Economic Co-operation and Development

www.oecdwash.org

General Other Reference

ADB (Asian Development Bank) (1999) Governance in Asia: From Crisis to Opportunity (ADB Annual Report; Manila: ADB).

ADB (Asian Development Bank) (2000a) 'A Consolidated Report on Corporate Governance and Financing in East Asia: Executive Summary', OECD Second Asian Roundtable on Corporate Governance, Hong Kong, China, 31 May–2 June 2000 (Manila: ADB).

ADB (Asian Development Bank) (2000b) Corporate Governance and Finance in East Asia: A Study of Indonesia, Republic of Korea, Malaysia, Philippines, and Thailand (Vol. I, a consolidated report; Manila: ADB).

Allen, F. (2000) Financial Structure and Financial Crisis (Asian Development Bank Institute Working Paper Series, 10; Manila: Asian Development Bank, June 2000).

Alston, P. (1999) 'Transplanting Foreign Norms: Human Rights and Other International Legal Norms in Japan', European Journal of International Law 10.3: 625-32.

Antons, C. (1995) 'Analysing Asian Law: The Need for a General Concept', Law in Context 13.1 (Annual): 106-23.