



BENEFITS OF APPLYING THE NEW CODE

London, 19th June 2019

The background of the lower half of the slide is a photograph of a modern conference room. It features a long, curved glass table surrounded by several black office chairs with casters. The room is brightly lit, and the overall color palette is light blue and white.

Chris Pierce PhD.
CEO, Global Governance Services

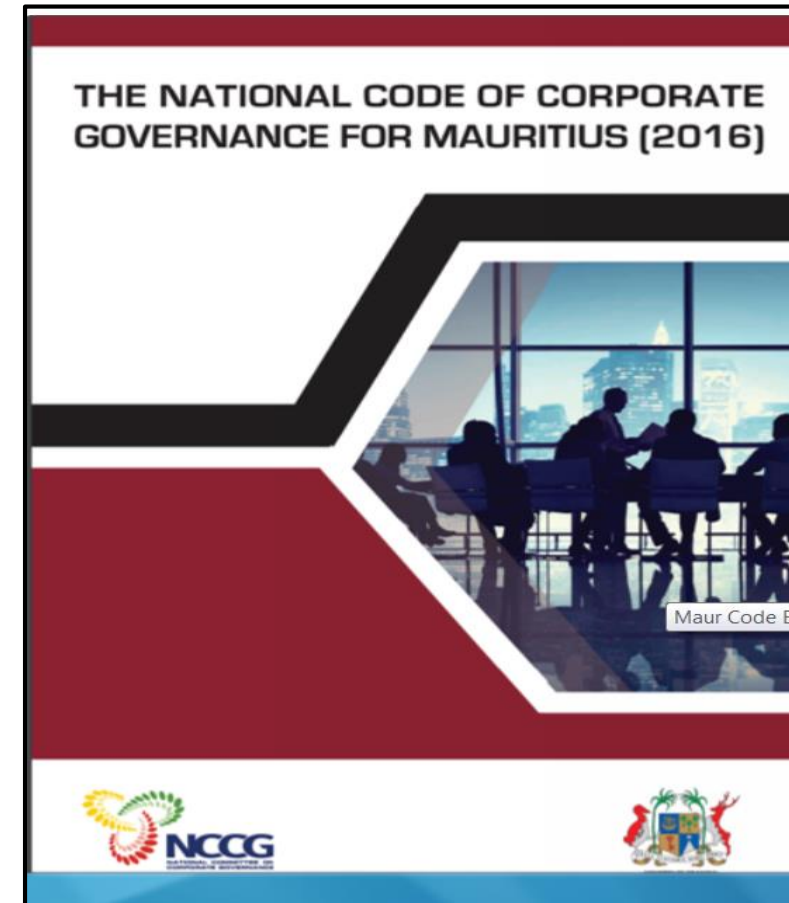
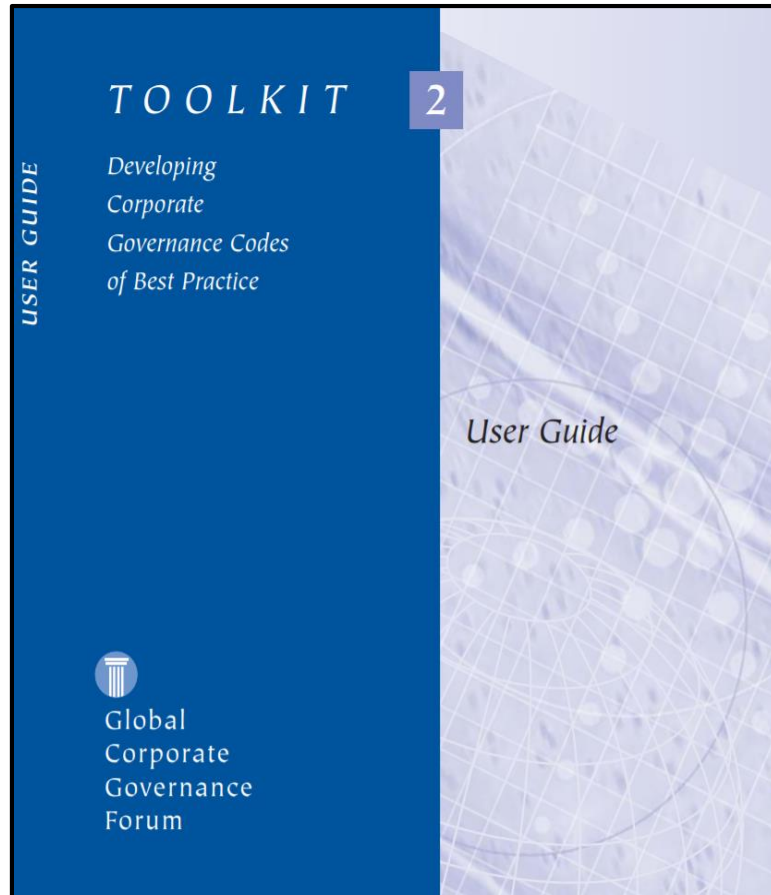
About the Presenter

- *CEO of Global Governance Services Ltd; an services consultancy specialising in international corporate governance, director development and board evaluation*
- *Senior Corporate Governance Consultant to the World Bank and International Finance Corporation (IFC)*
- *Principal author of the Mauritius Code of Corporate Governance (the first Code to use the “Apply and Explain” approach)*
- *Visiting Professor of International Corporate Governance at the University of Lincoln*
- *Author of governance publications*



Publications

IFC, World Bank



Topics

1. Corporate governance mindsets
2. The drivers of corporate governance
3. The new AFM Corporate Governance Code
4. Code implementation issues and lessons
5. AFM Governance Future Agenda

1. Corporate Governance Mindsets



Governance is different from Management

“If management is about running the business, governance is about seeing that it is run properly.

All companies need governing as well as managing.”

Bob Tricker, 1984

“Mandatory” or “Voluntary”

“Rules-based” or “Principles-based”

“Hard” Law versus “Soft” Law

“Stick” or “carrot”

Which do you prefer?

- Mandatory
- Voluntary
- A mix of Mandatory and Voluntary



“Mandatory” or “Voluntary”

Both have an important role to play in governance.

1. The UK requires rigorous & enforced legislation e.g. Friendly Societies Act (1992), Companies Act (2006) etc.
2. UK companies also require developmental and aspirational direction e.g. the AFM Corporate Governance Code.

The Role of Law

“The **Mauritian** Code recognises that scandals arising from poor governance that impact upon public interest entities should primarily be dealt with by legislation.”



Comply or else

Comply or explain

Apply or explain = Compliance

Apply and explain = Compliance

1. Comply or else

- All types of legislation

2. Comply or Explain

- UK Code of Corporate Governance (FRC) 2018

3. Apply or Explain = Compliance





- King II Code of Corporate Governance (IoD South Africa) 2002
- Tabaksblat Dutch Code of Corporate Governance (CGC) 2004

4. Apply and Explain = Compliance

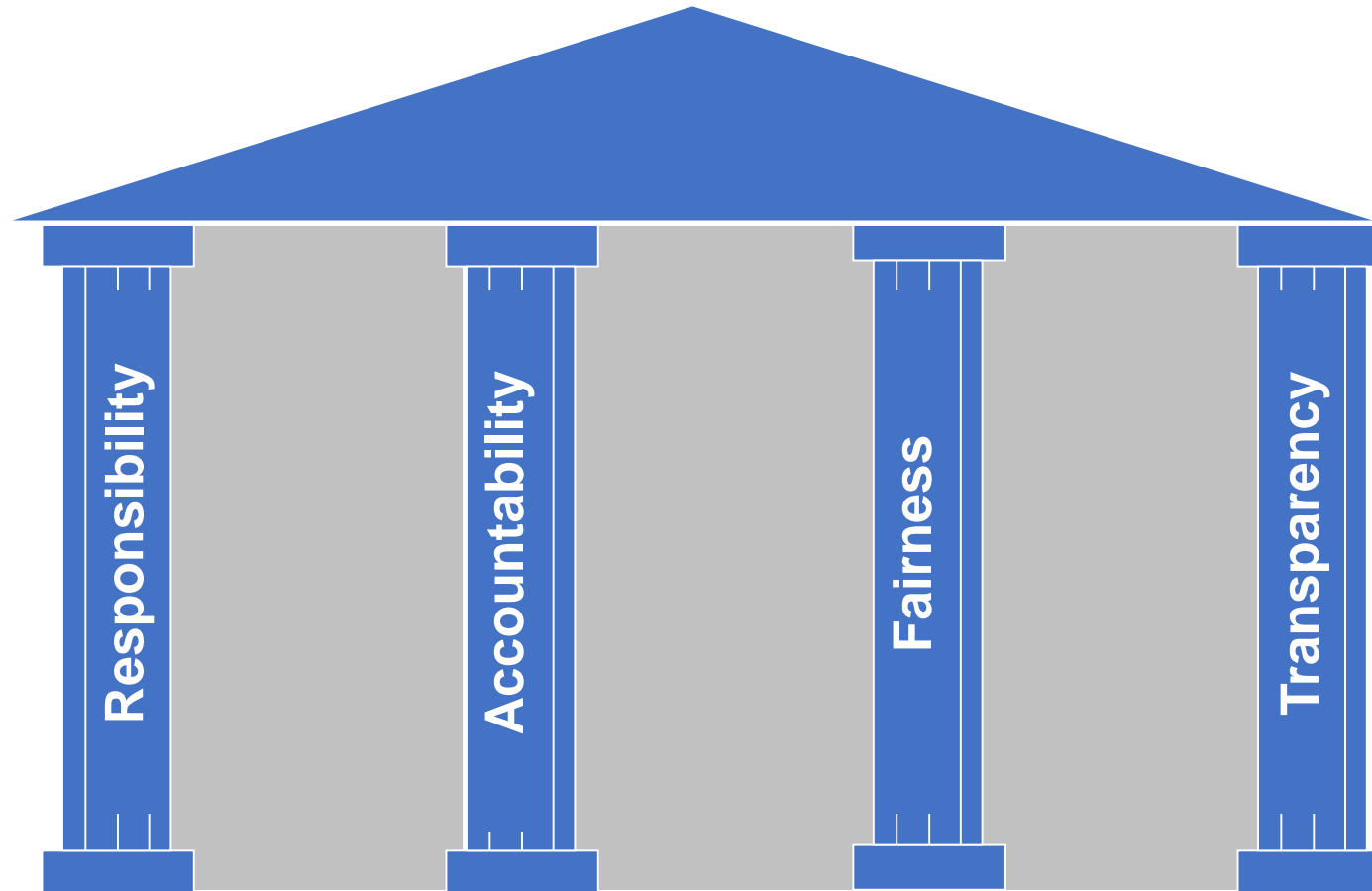
- Mauritian Code of Corporate Governance (NCCG) 2016
- King IV Code of Corporate Governance (IoD Southern Africa) 2017
- The Wates Corporate Governance Principles for Large Private Companies (FRC) 2018
- The Nigerian Code of Corporate Governance (FRC) 2018
- **The AFM Corporate Governance Code (AFM) 2019**
- Proposal in the new German Code of Corporate Governance (Government Commission) 2019

Corporate Governance

1. Is the system by which companies are directed and controlled.
2. Is about establishing an organisational framework of processes and attitudes that focuses on long-term continuity and success to add value to the business and build its reputation.
3. Involves the boards and management of regulated firms to run the business prudently, consistent with the firm's own safety and soundness and the continuing stability of the financial system.
4. Defines the way in which the organisation is constituted, directed and controlled by its governing body, the Board.

1. Corporate Governance is the system by which companies are directed and controlled. **Cadbury Committee, (1992) & the UK Code of Corporate Governance (2018)**  1992 & 2018
2. Corporate governance is about establishing an organisational framework of processes and attitudes that focuses on long-term continuity and success to add value to the business and build its reputation. **Mauritius Code of CG, (2016)**  2016
3. Corporate governance involves the boards and management of regulated firms to run the business prudently, consistent with the firm's own safety and soundness and the continuing stability of the financial system. **Prudential Regulation Authority (2018)**  2018
4. Corporate governance defines the way in which the organisation is constituted, directed and controlled by its governing body, the Board. **Financial Conduct Authority (2019)**  2019

Principles of Good Corporate Governance (RAFT)



2. The Drivers of Corporate Governance



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- The collage consists of several magazine covers:
- INSURANCE JOURNAL**: Top left, featuring a red banner and the text "D&O Liability".
 - CORPORATE GOVERNANCE 2ND EDITION**: Top center, yellow cover with a diagram of a triangle.
 - TIME THE BIG FREEZE**: Top right, featuring a blue cartoon character.
 - BusinessWeek**: Center, May 6, 2002 issue. Main headline: "THE CRISIS IN CORPORATE GOVERNANCE". Subheadline: "Excessive Pay. Weak Leadership. Corrupt Analysts. Complacent Boards. Questionable Accounting. How To Fix The System".
 - ANNUAL REPORT: THE BEST MUTUAL FUNDS**: Middle left, BusinessWeek special report.
 - ACCOUNTING IN CRISIS**: Middle left, below the mutual funds report. Headline: "WHAT NEEDS TO BE DONE". Subheadline: "THE ENRON WATCH".
 - CHEATING Bad and Getting Worse**: Bottom center, featuring a hand holding stacks of money.
 - ANATOMY OF GREED**: Bottom left, by Brian Kravet.
 - CORPORATE GOVERNANCE & RISK**: Bottom right, "A Systems Approach".
 - OECD Principles of Corporate Governance**: Bottom right, white cover with blue text.

The Business Case

- Good CG provides evidence of:
 - An effective organisation
 - An effective Board
 - Effective Management
 - A vision and good strategy
- Good key stakeholder relationships (e.g. members, customers, suppliers, providers of finance, shareholders, community)



Consequences Of Inadequate Corporate Governance

- Inappropriate board decisions
- Suspension / disqualification
- Restatement of financial information
- Difficulty in gaining funding
- Legal proceedings against directors
- Poor relationship with members / shareowners
- Risk of fraud



- The institutionalization of corporate governance practices
- Promoting public awareness of essential **corporate values** and **ethical practices** that enhance the **integrity** of the business environment.
- Rebuilding **trust** and **confidence**

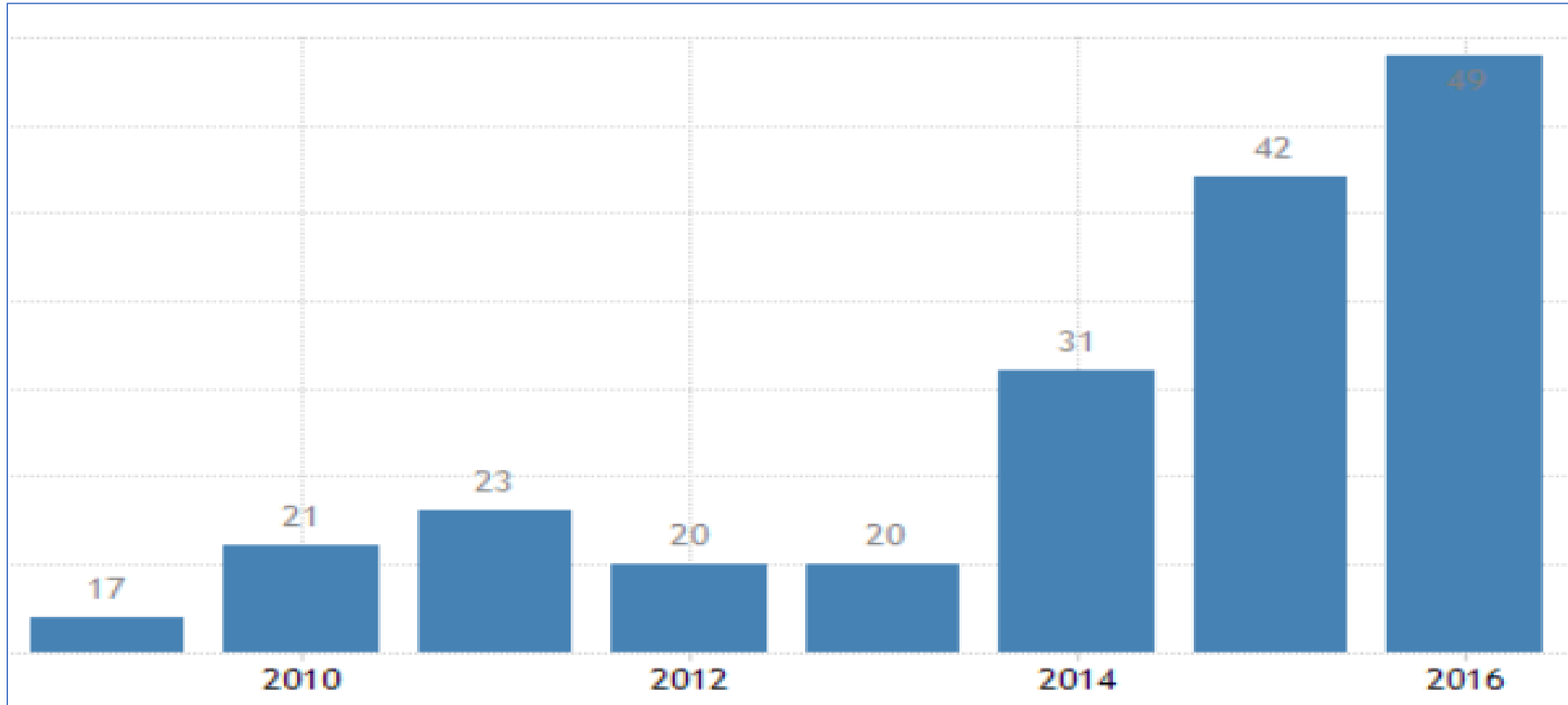
Nigerian Code of CG, 2018 – Introduction – using “apply and explain”



Mauritian Code experience

World Bank Doing Business Ranking Trend

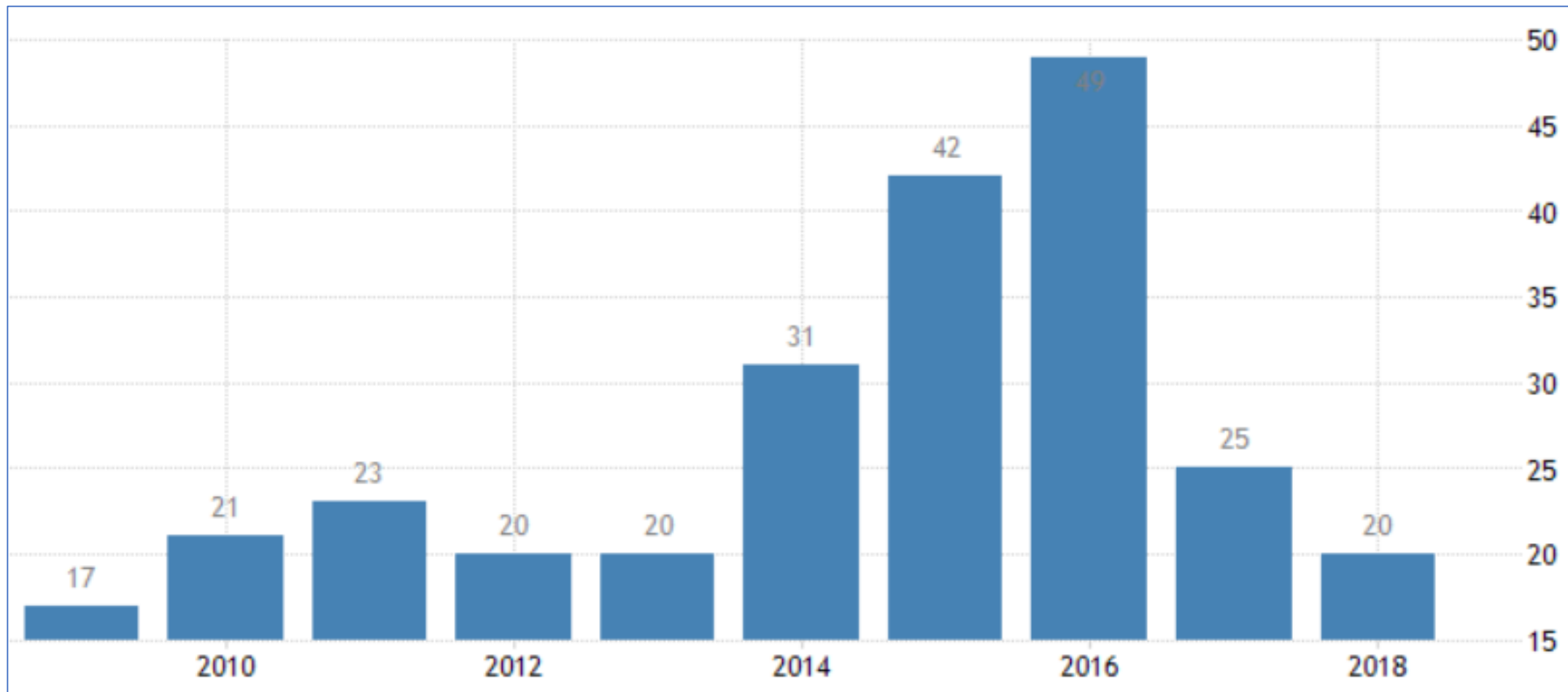
Ranking out
of 190
countries



Mauritian Code experience

World Bank Doing Business Ranking Trend

Ranking out
of 190
countries



“Our aim is to be in the top 50 nations in ease of business.”

Prime Minister Modi,

India, January 2015

2015 130th

2018 100th

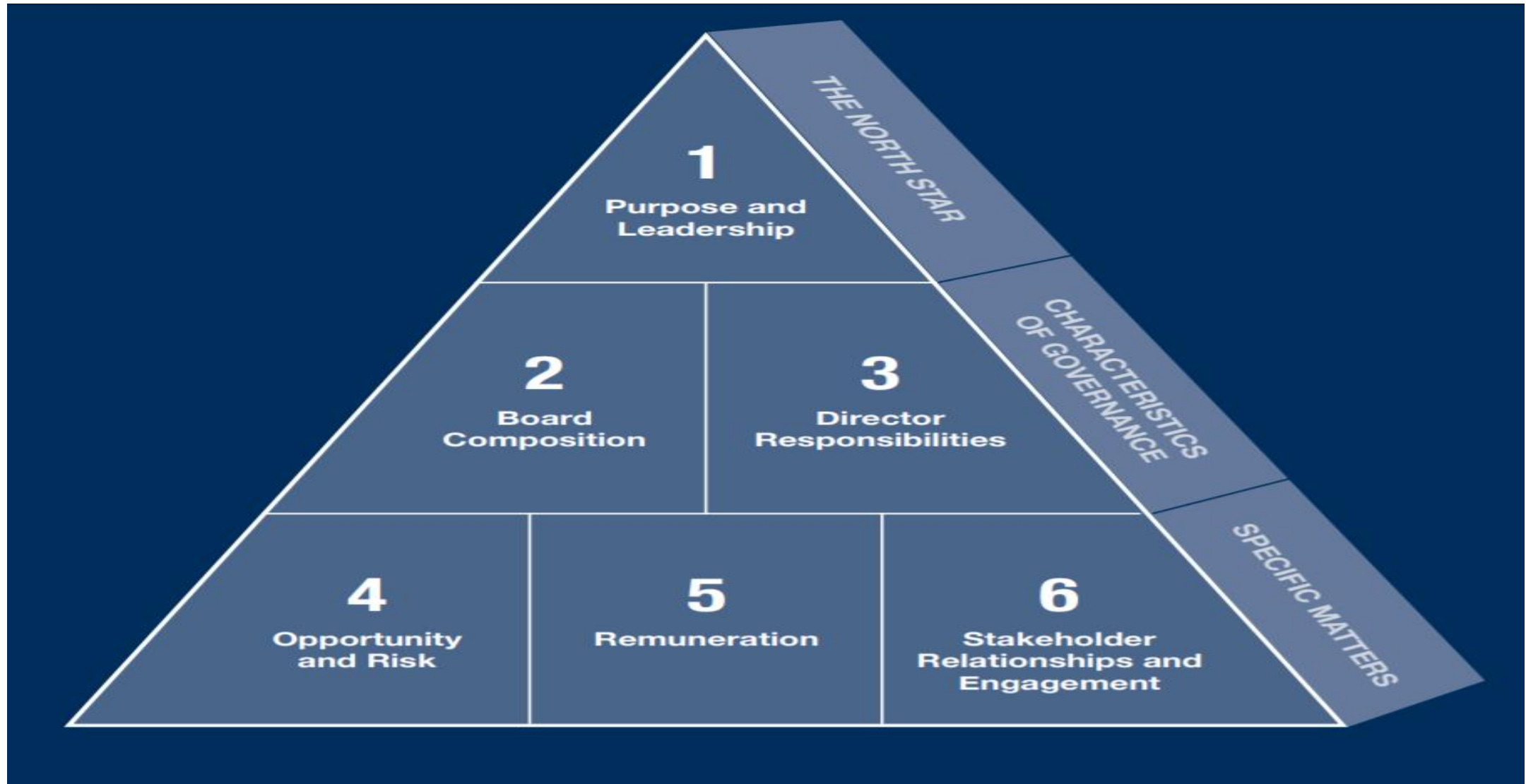
2019 77th



3. The new AFM Corporate Governance Code



AFM Corporate Governance Code “Apply and Explain”



Target groups

- Friendly Societies and Mutual Insurers with a wide membership base
- Friendly Societies and Mutual Insurers with a discrete and limited membership base
- Delegate based Friendly Societies
- Discretionary Mutuals
- Non-directive Mutuals – not a Solvency II mutual
- Not for profit companies

“One size fits all” is NOT appropriate

1. PURPOSE AND LEADERSHIP

An effective board promotes the **purpose** of an organisation, and ensures that its **values**, **strategy** and **culture** align with that purpose.

☒ **I Agree**

But How are you going to provide **evidence** that the board is applying this principle and doing this?

2. BOARD COMPOSITION

Effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board should be guided by the scale and complexity of the organisation.

☒ **I Agree**

But How are you going to provide **evidence** that the board is balanced?

3. DIRECTOR RESPONSIBILITIES

The board and individual directors should have a clear understanding of their accountability and responsibilities. The board's policies and procedures should support effective decision-making and independent challenge.

☒ **I Agree**

But How are you going to provide **evidence** that directors understand their accountability and responsibilities and provide sufficient independent challenge?

4. OPPORTUNITY AND RISK

A board should promote the long-term sustainable success of the organisation by identifying opportunities to create and preserve value, and establishing oversight for the identification and mitigation of risks.

☒ **I Agree**

But How are you going to provide **evidence** that the board is effectively managing risk?

5. REMUNERATION

A board should promote executive remuneration structures aligned to the long-term sustainable success of an organisation, taking into account pay and conditions elsewhere in the organisation.

☒ **I Agree**

This will be discussed this afternoon

6. STAKEHOLDER RELATIONSHIPS AND ENGAGEMENT

Directors should foster effective stakeholder relationships aligned to the organisation's purpose. The board is responsible for overseeing meaningful engagement with stakeholders, including the workforce, and having regard to their views when taking decisions.

☒ **I Agree**

This will be discussed this afternoon

The Code Principles need to be applied passionately and faithfully across the Financial Mutuals' Community.

They are not:

- A bureaucratic requirement
- A box ticking exercise
- Simply “Nice to have” – they make good business sense.

5. AFM's future Governance agenda?



5.1 Adequacy of explanation

5.2 Standardised statements of compliance

5.3 Defining board effectiveness and culture

5.3 Sustainability reporting & Integrated reporting

5.4 Presentation and layout of annual reports

5.1 Adequacy of Explanation

“Director Independence” example

The most important issue associated with in “an apply and explain regime” is:

Adequacy of Explanation.

How will the **“apply and explain”** methodology used within the Code be monitored?

5.1 Adequacy of Explanation

“Director Independence” example

The Board considers that a Director's independence cannot be determined solely and arbitrarily on the basis of the length of time. A Director's contribution in terms of experience, expertise, professionalism, integrity, objectivity and independent judgement in engaging and challenging Management in the interests of the Group, as well as the performance of their duties in good faith, are more critical measures in ascertaining a director's independence than the number of years on the Board.



Is this an adequate explanation ?

5.2 Standardised statements of compliance

- Standardised statement of compliance with the Code by **the Board**?
- Standardised statement of compliance with the Code by **the external auditor**?

5.3 Defining board effectiveness

UK FRC Developments

- The Companies (Misc' Reporting) Regulations 2018) (July 2018)
- UK Corporate Governance Code (July 2018)
- Guidance on Board Effectiveness (July 2018)
- Guidance on the Strategic Report (July 2018)
- The Wates Corporate Governance Principles for Large Private Companies (December 2018)
- Independent Review of the FRC (December 2018)
- Statutory Audit Services Market Study (December 2018)

Financial Reporting Lab 2018

- Blockchain and the future of corporate reporting (June 2018)
- Business model reporting (October 2018)
- Performance metrics (November 2018)

European Legislation

- European Single Electronic Format (deals with eXtensible Business Reporting Language - XBRL) expected in early 2019



5.4 Sustainability Reporting

Instrument	Sustainability standard / framework setter
Climate disclosure standards	Climate Disclosure Standards Board
Equator Principles	IFC
G4 Sustainability Reporting Standards	Global Reporting Initiative
Global Compact	United Nations
Guidance on Integrated Business Reporting	ICGN
Guiding Principles on Business and Human Rights	United Nations
Integrated Reporting Initiative	International Integrated Reporting Council
ISO 26000 International Standards (ISOs)	International Standards (ISOs)
Principles for Responsible Investment (PRI)	United Nations
Sustainable Development Goals (SDGs)	United Nations

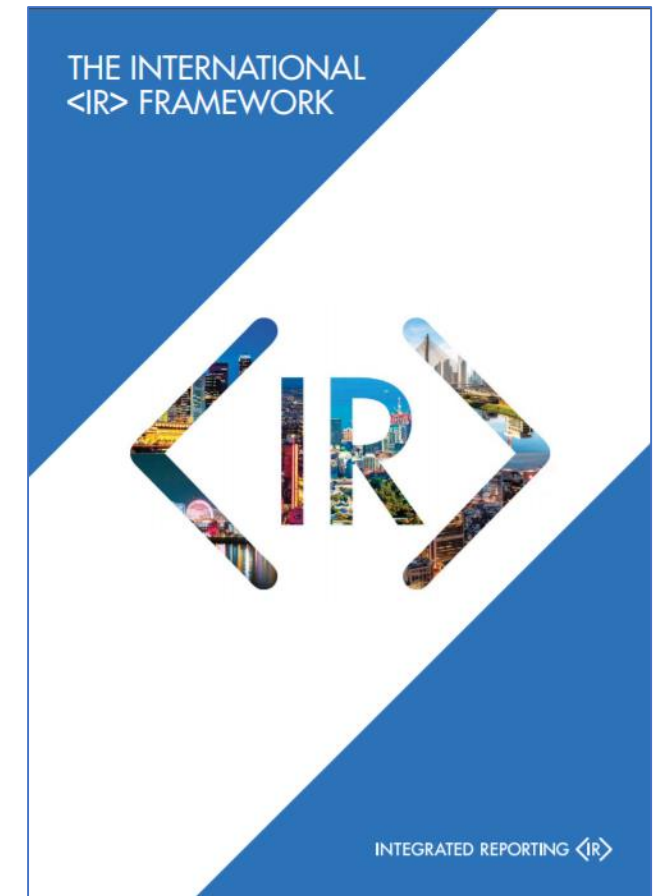
5.4 Sustainability Reporting



5.4 Integrated Reporting

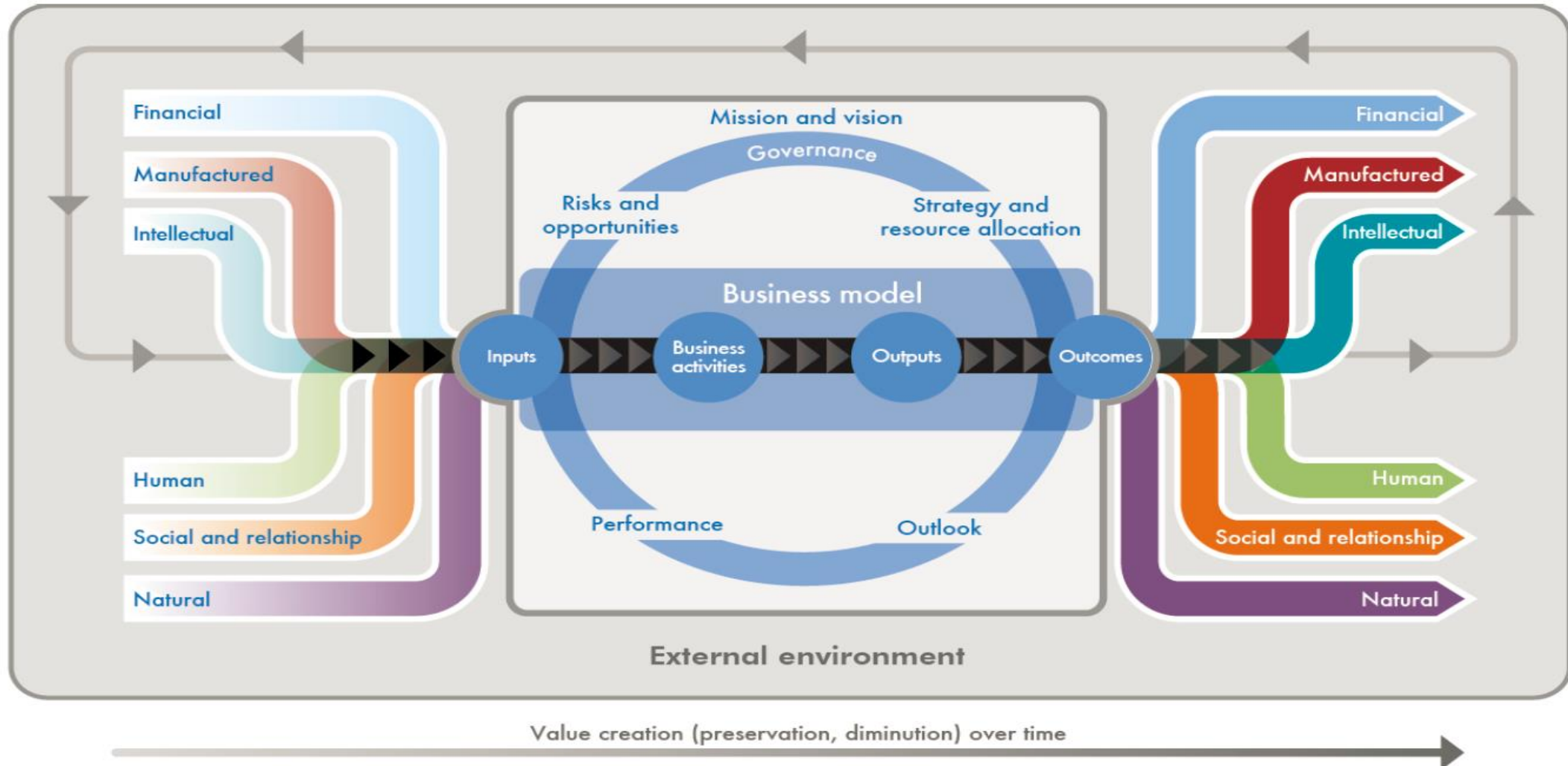
Integrated Reporting Framework – Guiding Principles (2013)

- A. Strategic focus & future orientation
- B. Connectivity of information
- C. Stakeholder relationships
- D. Materiality
- E. Conciseness
- F. Reliability and completeness
- G. Consistency and comparability



5.4 Integrated Reporting

Figure 2: The value creation process:



5.4 Integrated Reporting - GRI Standards

GRI-200::Economic·¶ ⌘	GRI-300::Environmental·¶ ⌘	GRI-400::Social·¶ ⌘
201::Economic·Performance·¶ 202::Market·Presence·¶ 203::Indirect·Economic· Impacts·¶ 204::Procurement·Practices·¶ 205::Anti-corruption·¶ 206::Anti-competitive· Behaviour·¶ ⌘	301::Materials·¶ 302::Energy·¶ 303::Water·¶ 304::Biodiversity·¶ 305::Emissions·¶ 306::Effluents·and·Waste·¶ 307::Environmental· Compliance·¶ 308::Supplier·Environmental· Assessment·¶ ⌘	401::Employment·¶ 402::Labour/Management· Relations·¶ 403::Occupational·Health·and· Safety·¶ 404::Training·and·Education·¶ 405::Diversity·and·Equal· Opportunity·¶ 406::Non-discrimination·¶ 407::Freedom·of·Association· and·Collective·Bargaining·¶ 408::Child·Labour·¶ 409::Forced·or·Compulsory· Labour·¶ 410::Security·Practices·¶ 411::Rights·of·Indigenous· Peoples·¶ 412::Human·Rights· Assessment·¶ 413::Local·Communities·¶ 414::Supplier·Social· Assessment·¶ 415::Public·Policy·¶ 416::Customer·Health·Safety·¶ 417::Marketing·and·Labelling·¶ 418::Customer·Privacy·¶ 419::Socioeconomic· Compliance·¶ ⌘

5.4 Presentation and layout of annual reports



<https://www.blacksunplc.com/en/our-work.html>



Thank you....

Chris Pierce PhD.
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