

Matching Authority and Responsibility

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Many law firms remain acutely political organizations with much of the firm's decision-making having to run the gamut of opinion-seeking, back-scratching and adroit manoeuvring before the management team can make significant progress. It has long been recognised that the extreme consensus model (whereby every major decision gets delayed until the achievement of positive ratification) is a highly inefficient way of running a business. There are many stories of how sensible and timely decisions have been delayed by several months because of the need to get the reluctant partnership in line. In some cases I have observed that the firm's partners had forgotten that the governance structure of the firm in fact granted some fairly explicit powers and authorities for the leadership team to manage the firm and were resisting all attempts to implement decisions by demanding endless discussion on every issue – the way things have always been done. There are clearly still firms where the unwritten rules of the organization seem to be trumping the well documented governance arrangements – firms where the monkeys appear to be running the zoo.

In contrast, I can think of several other firms where the managing partners and the management boards or committees have tried to manage the firm by force of personality and the goodwill of the partnership, but without any explicit rules, provisions or authorities.

A balance is needed, and in achieving the right checks and balances between the two extremes of management anarchy and despotic rule, I suggest three checks.

1. The first check is to ensure that the firm's constitutional documents reflect the actuality. It has often been said that every firm has two organisational structures – the formal codified one and the unwritten version in practice. The governance framework of many firms often starts with some initial provisions in the partnership deed or members agreement, and then develops through working practices, resolutions and protocols agreed or simply emerging over the years. Sometimes, the provisions in force vary greatly from actual working practices, and at times the written provisions contradict each other. Regular updating and consolidation reduces muddle and helps to identify gaps and outmoded provisions.
2. The second check is to diagnose if the governance framework is 'fit for purpose,' both to ensure effective and efficient operations and to enable the management team to lead the firm through the difficult decisions which may be necessary during both good and bad times. Does the governance framework operate well in promoting performance, building value and protecting against risk? Does it allow an appropriate amount of decision-making authority? Does it give the

management team the power to make merger approaches, for instance? More contentiously, is the management team empowered to make partner redundancies as well as staff redundancies and, if not, should it be able to achieve this? Firms should also make some attempt to ensure that their management structures accord with best practice principles. As part of this check, it is sensible to examine how the firm's governance compares with 'best practice' models or with peers.

3. The third check is to make sure that everyone in the firm understands and accepts the various management roles and responsibilities. All partners need to know where they stand, what is expected of them, and what they might expect from the management structure. It is difficult to hold partners and managers to account at the best of times and well nigh impossible if the rules of engagement are vague or wishy-washy.

Reliance on the goodwill and compliant nature of partners is not enough to guarantee a high performing firm. Firms with no enforceable rules or discipline and no system of accountability will not fare well in difficult times. To paraphrase Eric Fromm (*Escape from Freedom* Rinehart 1941), true freedom is not the absence of structure but rather a clear structure which enables partners to work within established parameters in an autonomous and creative way. Conversely, decision-making can become a worse nightmare if there is no clear governance structure, or where there is a mismatch between authority and responsibility.