纽约时报袖珍MBA英语学习手册系列

POCKET MBA SERIES

董事会——建立公司治理结构的25个诀窍

THE BOARD OF DIRECTORS 25 KEYS TO CORPORATE GOVERNANCE

马丽安·简宁斯博士著

北京大学出版社

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前 言

《纽约时报袖珍MBA英语学习手册》具有很强的实用性，适合各层次商业人士学习，无论是一线经理还是企业决策人士。本系列书的作者均为美国最好的商学院教授MBA课程的博士们，并由麦克·勒维塔斯等一组资深编辑运用其商业出版的专业知识为此系列配备了极有价值的参考资料。

本系列书的特点在于提供了快速学习顶尖MBA课程的参考要点，每本书以25个诀窍的形式对在企业管理专业领域中应用的关键性原理提供了无可比拟的综合表述。本系列书的独特方法是将学术著作变成易学易懂的读物，既可做英语培训教材，又是商业人士理想的MBA英语自学用书。为完成您的MBA学习，请一定买齐全套12本书。

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约瑟夫·米尔斯

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- ●董事会—建立公司治理结构的25个诀窍

作者简介

马丽安·M. 简宁斯法学博士：亚利桑那州大学商学院MBA项目的法学和道德研究教授。是包括《企业：法律、道德、全球环境》、《商业道德案例研究及阅读材料》在内的五本教材的作者，《华尔街日报》、《芝加哥号角》和《读者文摘》上时有文章发表，还是全美国不少报纸每周专栏的撰稿人。此外，还担任四个董事会的董事和全国公共电台“思虑周全”节目的评论员。

内容简介

本书介绍建立公司治理结构的25个诀窍，帮你理解董事会的作用和董事会政策和策略产生的关键点。

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KEY 1

The corporation: a beast with unlimited potential and limited liability

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When first introduced to the novel concept of corporations as a means for financing and operating a business, Adam Smith concluded that they would prove to be dysfunctional beasts. Smith, the 18th century expounder of the virtues of capitalism, thought such a business venture, with so many owners, could not possibly succeed.

Adam Smith may have been right about capitalism, but the great economist was wrong about corporations. They are the heart of American business.

Corporations first existed in the Middle Ages for the operation of towns, universities and ecclesiastical orders—for the good of the whole, those with common interests joined together to operate their enterprises. In municipal, educational and religious corporations, individual members pooled resources and reaped the rewards. The publicly-supported monks tilled the garden, the parishioners ate. The city collected taxes to build the roads and the residents benefited from fewer wheel replacements. The universities operated the libraries and the citizens had access to books. With the development of commerce, the corporate operation migrated to the business world. Those with ideas produced and sold goods using investor funds and those investors (shareholders) split the profits.

Suddenly with this new corporate beast which allowed easy investment by multiple owners, economic growth knew no bounds.

Moreover, the birth of this new commercial creature brought with it the bonus of limited liability. If a corporation is created properly and operated well, the only liability its owners, the shareholders, face is the loss of their investment in the firm. In a well-run corporation, none of the personal assets of any shareholder is subject to the claims of the corporation's creditors. Without such protection, there would be much less investment. With it, this combination of many investors furnishing capital collectively without the risk of losing their own personal shirts has been sufficient motivation to finance everything from a voyage to a new world to the Model-T.

First seen in the United States with the Pilgrims and their Mayflower Company, corporations have continued their dominance of American business. They have created jobs, wealth, culture and a financial market that is now a depository for the funds of most working and retired adults. Americans in particular find corporations to be quite an efficient way to run a business and certainly a welcome entrée into the world of capital gains and dividends.

A corporation is a statutory creature. It requires the proper public filing of a document, called articles of incorporation, that identifies its creators (called incorporators) and provides information on its structure and purpose. Articles of incorporation list the name of the corporation, its classes and types of shares and includes the name of a contact person for communication with the company. Once the articles of incorporation are filed properly and any additional steps, such as public notice of incorporation are complete, the newly formed entity is recognized by the state as a corporation.

Those who have invested in the corporation and own an interest—the shareholders—enjoy the limited liability afforded this creature of the state dating back to 15th century England.

Shareholders' limited liability, however, is in jeopardy if they fail to treat the property and funds of the corporation as separate. The operation of a corporation requires formalities in everything from approval of transactions to filing annual reports. It would be impossible for a corporation if 50, let alone 10,000, shareholders were left to manage operations and fulfill the formality requirements. The duty of compliance and management of the corporation is delegated by the shareholders to the board of directors, who in turn can delegate responsibility to officers and employees.

The following keys examine the role of the shareholders, directors and officers in running a successful corporation. Corporations are magnificent beasts, which, if governed properly, provide maximum return on investment with little personal risk.

KEY 2

What is a board of directors and why do you need one?

Adam Smith was not only wrong about corporations, he was wrong about the ability of corporate boards to watch with anxious vigilance. His fear may have sprung from the idea that those minding the store might be tempted to slack off, or, even worse, dip into the till while on guard duty. Adam Smith underestimated the creativity and motivation of armies of business and legal minds who, over the years, have developed a variety of ways to curb dipping and slacking among managers.

When a corporation is created by its shareholder owners, it becomes what the law falteringly refers to as a "fictitious person." By law, fictitious persons have nearly all the same rights that a natural, even shallow, person might have. Corporations can own property and enter into contracts, but they must pay taxes, too. Corporations cannot take the Fifth Amendment as a defense against releasing corporate documents, but they are entitled to all other rights and responsibilities under the law.

The truly tricky part of being a fictitious person with many rights is the inability to speak up. When a real person is being robbed, he tends to speak, rather loudly, about the theft of his property. A fictitious person is at the mercy of natural persons when it comes to being robbed. And real people gathered around the funds of a corporation might be tempted to divert them or use its resources to their own benefit at the expense of the shareholders. People in corporations who have not been adequately supervised can get away with murder. They have done everything from the illegal—Michael Monus, for example, embezzled funds by keeping two sets of books at Phar-Mor, Inc.—to the outlandish, like purchasing a Boeing 737 jetliner for personal use—witness the creative expense accounts of Bill Agee and Mary Cunningham at the Knudsen Corporation.

A corporation exists to increase the wealth of its shareholders, who need designated speakers to protect them by voicing concerns should the actual people running the corporation abuse the rights of their fictitious charge. That's where directors come in.

Shareholders elect directors to be their voice and the voice of the corporation. Directors are accountable to them, monitor the corporation's officers and employees, and speak for the corporation in everything from annual reports to securities filings to strategic initiatives. Directors elect the officers of the corporation to manage it on a day-to-day basis. Those officers handle everything from employee compensation to the cafeteria contracts.

All corporations—profit and non-profit, private and public—must have a board to act as designated speaker on the corporation's legal, financial

Many of the good things that happen to companies and almost all of the bad things really emanate from the boardroom.

Henry Wendt

and management issues. All states require a board of directors. But the number of directors required in each state varies. Under the Model Business Corporation Act, adopted in about one-third of the states, a corporation must have at least one board member. The structure and composition of the board are covered in Key 4.

In exchange for its legal existence and rights, a corporation has full liability for all of its contracts and actions. *All* corporate assets are on the line. But as long as the corporation operates properly with full regard for its rights as a fictitious person, its shareholders do not have to worry about personal liability for any of the corporation's unpaid obligations.

This limited liability is in jeopardy if the shareholders fail to treat the property and funds of a corporation as separate and subject to formalities including everything from approval of transactions to the annual filing of reports. The duty of formality belongs to the board of directors and those to whom they delegate responsibility. In effect, the board holds the responsibility to speak for the corporate person on behalf of the shareholders who elected its members.

The success and efficiency of corporations comes from a simple structure: shareholders vote for a board of directors, which delegates authority for day-to-day operations to a group of managers called officers (see Key 17). The board sets the course for the company and guides the officers as they carry out the board-charted course. The owners of a corporation may be widely dispersed but they retain their power through the ballot box. At the annual meeting where directors are elected, shareholders have the ultimate power to control both their investment and their designated agents, the directors of the board.

Should the board and its hired officers veer off the shareholders' desired course or continue along an ill-advised route, the shareholders have the power to replace the directors at the helm. Those new directors can then take the necessary steps to re-chart the course and, if necessary, use their power over officers to replace them. In short, shareholders—the ones with the money at risk—are supposed to rule.

How a board works and how well it speaks for its shareholders is a key component of a company's performance and financial success. Good fences make good neighbors and good boards make good returns on investments.

KEY 3

The board does a lot more than just collect a fee

In 1600, 218 English merchants formed the East India Company for the purpose of engaging in trade in the Far East. The first thing they did was set up a Court of Committees, 24 merchants who would serve to direct the affairs and investments of the world's first multinational corporation. By doing so, these merchants established the first board of directors. Boards are no different today. A board is the supervisor for the shareholders, a strategist, a protector and often, a rebel.

As a supervisor, the board is responsible for the recruiting, hiring, compensating and firing of officers. Those officers are then assigned the responsibility of managing the company with direction and input from the board. If the chief executive officer is not doing his job, or the chief financial officer is embezzling, it is the board's job to hand out the pink slips. General Motors' board stepped in when Robert Stempel was in charge and that Dustbuster-looking van was just one of many vehicles that was not selling. With losses