



Chartered
Governance
Institute of
Southern Africa

Designing the Next-Gen Company Secretary prototype

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Introduction and Background

Role of a company secretary

The next-Gen Design Prototype

What do we need for the new governance order?

Introduction and Background

Context and Background

- Corporate governance has been identified as a key factor in the success and / or failure of corporations globally.
- Examining the soft skills to position company secretaries to be efficient and relevant as chief governance experts.

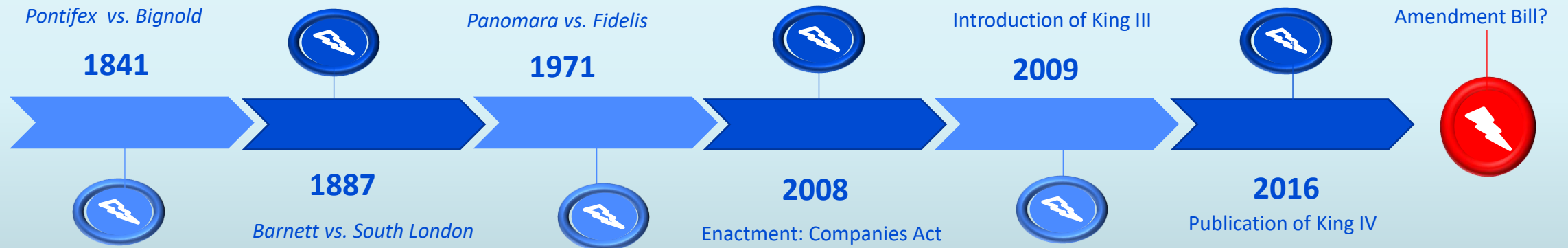
Purpose of this presentation

- Defining the soft characteristics of an ideal company secretary.

Expected Outcome

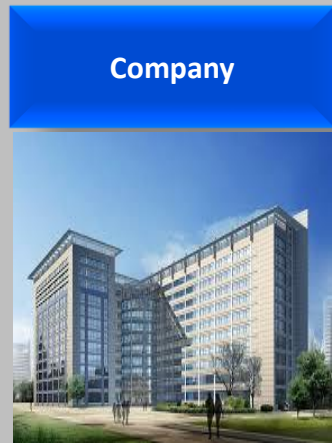
- Crystalizing the soft skills that company secretaries need to possess in order to be successful.

The Evolution of role timeline



Evolution of the Role

company secretariat “Ecosystem”



- Events of the past decade thrown the role to the centre stage.
- The corporate governance landscape has evolved.
- **No longer a glorified executive assistant.**
- *“As the Boards role proliferates and becomes more elaborate to meet the growing number of regulatory requirements, processes behind board meetings have become more sophisticated, and demand that someone be responsible for oiling the board machine.”*
(The Insider's View on Corporate Governance: The Role of the Company Secretary. G. Erismann-Peyer, U. Steger, O. Salzmann).
- Don't be misled by the title – SECRETARY.

**The inclusion of “secretary”
in the naming convention
belittling.**

company secretary?

Secretaries



Secretary of State –
Antony J. Blinken



UN Secretary General –
António Guterres



Secretary of Parliament
- Xolile George



Secretary of Defence –
Lloyd James Austin III



COSATU Secretary –
Bheki Ntshalintshali

Governance Landscape - Domestic Scandals



Stephen Sadie
CEO: CGISA

“If you have ever entertained notions that this was an unimportant position, you may need to re-evaluate your perspective. Company secretaries are where the action is. They serve on the board and board committees where most of these activities surface in some form or other.”

Governance Landscape - Domestic Scandals

Steinhoff

We still don't know exactly who did what at Steinhoff - the company refuses to release the full PricewaterhouseCoopers report into wrongdoing. But this much we do know: the company inflated its profits and assets by R250 billion.

Steinhoff did deals with companies that were secretly linked to former CEO Markus Jooste and his cronies. It also used many accounting tricks (and forged documents) to boost its value. Steinhoff cooked up fake income to boost some of its underperforming companies. Also - Jooste granted himself an undeclared bonus and a loan from Steinhoff and Steinhoff execs received 'golden visas' in a property transaction related to the company.

McKinsey & Company

The US consultancy McKinsey & Company worked alongside Gupta-linked firm Trillian Capital Partners on an Eskom contract.

McKinsey said last year [it had made "several errors of judgement"](#) while working for Eskom and [repaid almost R1 billion in fees to Eskom](#).

It, however, [said it stood by the work it did for Eskom](#), while the circumstances surrounding the awarding of the contract have been called into question.

KPMG

KPMG has been in a struggle for survival over the past three years amid an exodus of clients, including Absa, Sasfin and DRDGold. This was in reaction to the revelations about its association with Gupta companies, its involvement in a discredited report into a so-called rogue unit at the SA Revenue Service and the allegations of corruption at VBS, which it audited.

KPMG was allegedly aware of suspect flows from Gupta business accounts, and also restated cost related to a family wedding as an unspecified tax-deductible.

Also, KPMG was forced to withdraw a report it compiled in 2015 that found that SARS had a "rogue spy unit" - and that former finance minister Pravin Gordhan knew about it. This put immense pressure on Gordhan, who was eventually sacked.

The reports [detailed allegations that Sars was running an apparent illegal unit](#), which was accused of running a brothel and spying on President Jacob Zuma, among other things.

former president Jacob Zuma fired Gordhan, but [KPMG retracted the report in 2017](#) after KPMG International launched an investigation into its South African unit.

Tongaat Hulett

Earlier this year, South Africa's biggest sugar producer, the 127-year old Tongaat Hulett, admitted that "certain past practices" do not reflect the company's business performance accurately.

The company said equity (the value of the business after liabilities) in its 2018 financial results has been overstated by between R3.5 billion to R4.5 billion. Analysts believe its property portfolio, in particular, was inflated. An external report has blamed ten former executives, including ex-CEO Peter Staude, [who was paid more than R170m in a decade](#).

VBS Bank

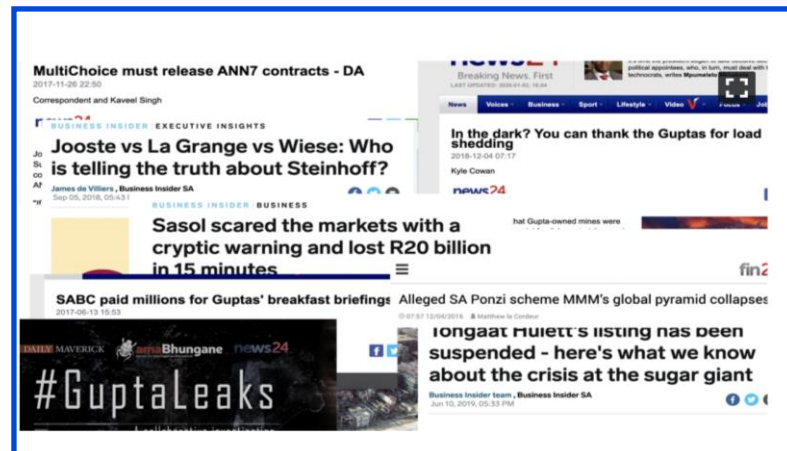
In 2018, advocate Terry Motau [released his report, titled The Great Bank Heist](#), into fraud and corruption at the bank, compiled with Werksmans Attorneys for the South African Reserve Bank which estimated that nearly R2 billion was looted from the bank.

More than 50 people are believed to have benefited, and Motau recommended that criminal proceedings be instituted.

Executives for many years looted the organisation by among others, creating fictional deposits and convincing municipalities to invest in the bank, Motau said.

Motau also found that KPMG audit partner Siphon Malaba, had committed fraud in signing off on the bank's 2017 financial statements and on its regulatory reports to SARB.

EFF leader [Julius Malema](#), and deputy leader [Floyd Shivambu](#) are believed to have benefited from the bank through fraudulent home loans and payments from the bank.



Governance Landscape - International Scandals

International Scandals over the past decade include but not limited to...

FIFA's football parallel universe

[Embed from Getty Images](#)

The indictments on 27 May 2015 of nine current and former Fédération Internationale de Football Association (FIFA) officials on charges of racketeering and money-laundering changed the sporting landscape overnight. Suddenly a system of “rampant, systemic and deep-rooted corruption” was brought starkly into global focus.

The surprising re-election of FIFA president, Sepp Blatter, who presided over a culture of impunity, exposed just how much football exists in a parallel universe without accountability. It is easy to understand why public trust in FIFA fell to an all-time low.

In 2017, Transparency International and Forza Football, a football fan opinion platform with more than 3 million subscribers, completed a survey of 25,000 fans from over 50 countries to find out what they thought. At the time, 53 per cent of fans had no confidence in FIFA and only a quarter of fans globally thought that newly reelected president, Gianni Infantino, restored trust in FIFA. [Read more...](#)

1. [Siemens: corruption made in Germany](#)
2. [Draining Nigeria of its assets](#)
3. [Fujimori's Peru: death squads, embezzlement and good public rela](#)
4. [Kadyrov's Chechnya: bikers, boxers, bribes](#)
5. [Shutting down competition in Tunisia](#)
6. [Ukraine's missing millions](#)
7. [Ricardo Martinelli's spy-game in Panama](#)
8. [The 1MDB fund: from Malaysia to Hollywood](#)
9. [The Russian Laundromat \(with a little help from Moldova\)](#)
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11. [Venezuela's currencies of corruption](#)
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14. [Teodorín Obiang's #LuxuryLiving in Equatorial Guinea](#)
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16. [Lebanon's garbage: the stench of corruption](#)
17. [FIFA's football parallel universe](#)
18. [Myanmar's dirty jade business](#)
19. [Fighting impunity in Guatemala](#)
20. [Turkey's "gas for gold" scheme](#)
21. [The Azerbaijani Laundromat](#)
22. [Paradise Papers: where the rich & powerful hide their money](#)

Agenda

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Role of a company secretary



The courts have recognised our role long before the King Codes and the 2008 Act

Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd

- "... *the Company Secretary is an officer of the company with extensive duties and responsibilities.*"
- Far from being a mere scribe, he makes representations and enters into contracts on behalf of the company.
- Company Secretaries are an integral part of an entity and play a pivotal role in the proper governance of the company."

Sources of Authority

Companies Act
No. 71 of 2008

- Codified and made it compulsory for public companies or SOCs to appoint a company secretary.
- "Suitably qualified – knowledgeable or experienced in the relevant laws."

King Code on
corporate
governance

- King III
 - recommended that a competent and qualified person be appointed as company secretary; and
 - specified an arms length relationship with the Board and Management.

- King IV
 - Broadened King III provisions.
 - Highlighted the importance of the role as the custodian of governance.



Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd [1971] 2 QB 711








- A UK company law case on the enforceability of obligations against a company.
- **Facts:** *Fidelis'* company secretary, Mr Bayne, hired cars from *Panorama*. He used the *Fidelis'* letterhead and signed off as the company secretary. He misrepresented the hire, and he used the cars for personal use. Mr Bayne was prosecuted and imprisoned, but there was an outstanding balance for the hired cars.
- **Company's defence:**
 - It was not bound for the liability, because Mr Bayne did not have authority to enter into the contracts.
 - The contracts for hire were made with Mr Bayne personally; and the company was not liable.
 - The company is not bound by the letters which were signed by Mr Bayne as "Company Secretary."
- **Judgment:**
 - A company secretary is an officer of the company with **extensive duties and responsibilities** - based on the role which he plays in the day-to-day business of companies.
 - Mr Bayne, as company secretary, had **implied authority** by virtue of his position to enter into such agreements.
 - May be regarded as having authority to enter into **administrative contracts** on behalf of the company.
 - *Fidelis* was bound on the contract to *Panorama*.

Apart from being “suitably qualified”, other required characteristics...



Duties of a company secretary

Duties of a company secretary include but are not restricted to...

-  Providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;
-  Making the directors aware of any law relevant to or affecting the company;
-  Reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or the Act;
-  Ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with the Act;
-  certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of the Act, and whether all such returns and notices appear to be true, correct and up to date;
-  Ensuring that a copy of the company's annual financial statements is sent, in accordance with the Act, to every person who is entitled to it; and
-  Carrying out the functions of a person designated in terms of section 33(3) (the section relates to annual returns).

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What do we need to achieve the next-gen prototype???

Technical Angle

- Academic qualifications preferably in Law and CIS.
- Experience.
- Skills and expertise.

Entity-specific

- Understanding the business:
 - Operating model.
 - Competition.
 - Culture.
 - Strategic focal areas.
 - KPIs and timeframes.

What else?

???

**You only need technical and
hardcore skills to be an
efficient and successful
company secretary...?**

Could it be.... ??

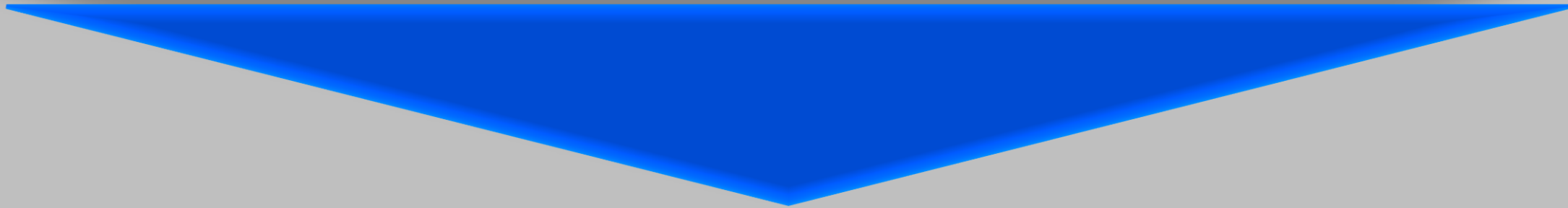
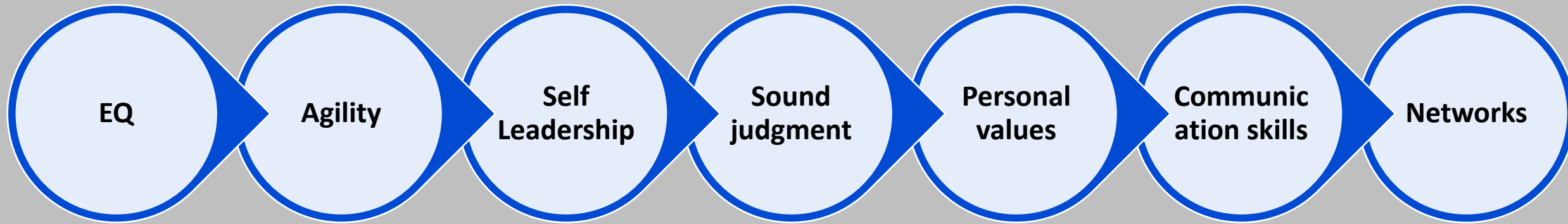
Technical Angle

Entity-specific

What else?

EQ	Agility	Self Leadership	Sound Judgment	Personal Values	Communication Skills	Networking
<ul style="list-style-type: none"> •Tact: ability to read the room. •Relationship nurturing. •Diplomacy and maturity. •Capability to be part of team. 	<ul style="list-style-type: none"> •Enabler of business. •Designing of rules. •Crisis Management; Covid. 	<ul style="list-style-type: none"> •Self-mastery. •Proper planning. •Multi-tasking. 	<ul style="list-style-type: none"> •Advisory services. •Strategic conduit. 	<ul style="list-style-type: none"> •Ethical conduct. •Accountability. •Responsibility. •Discretion. 	<ul style="list-style-type: none"> •Meeting management. •Stakeholder management. •Good negotiation skills. 	<ul style="list-style-type: none"> •Best practice. •Advisory from peers. •Time saver.

Next-Gen Design Prototype Elements



Why are Company Secretaries not at the centre of the governance revolution?

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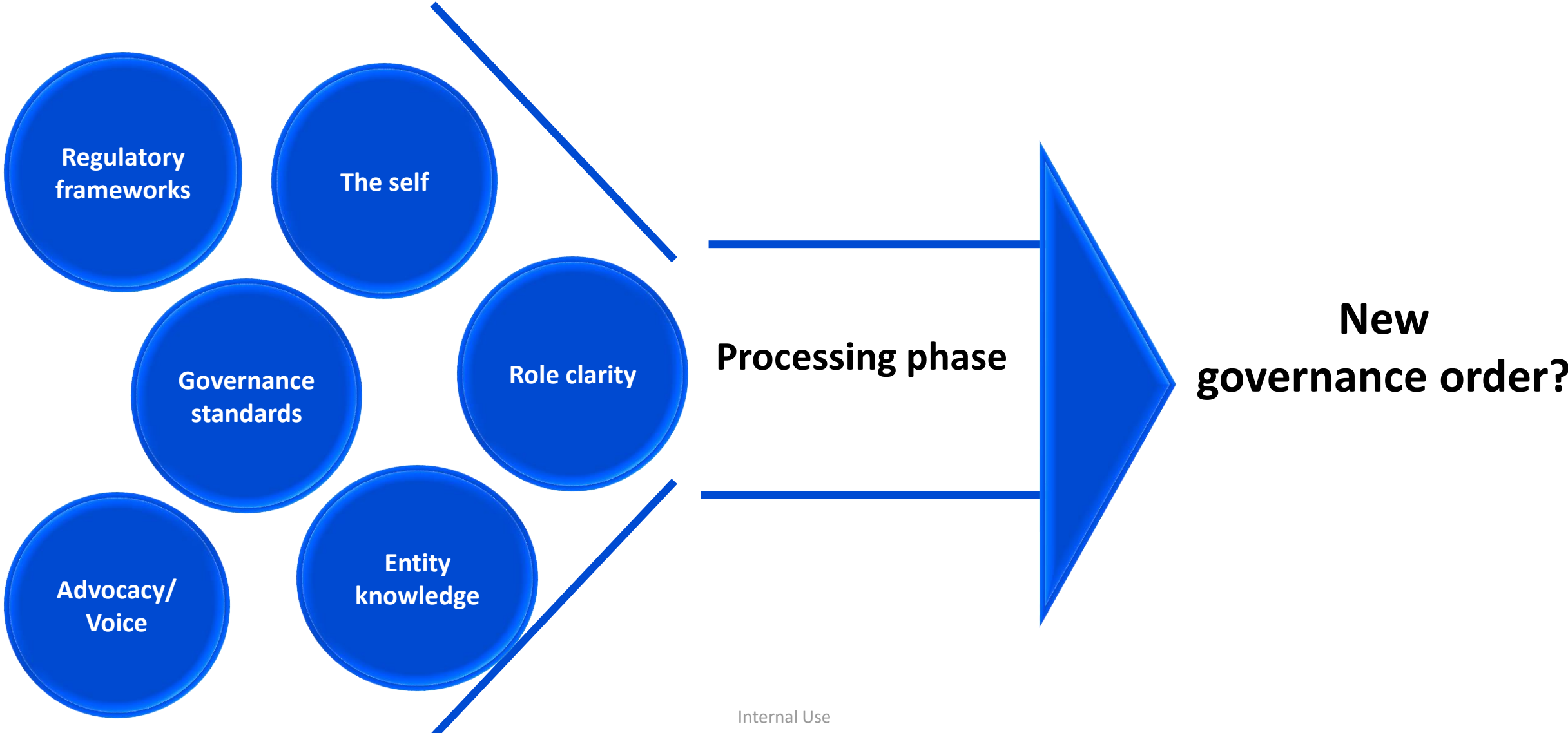
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Food for thought: What do we need for the new governance order?

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Thank you

Questions?