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**CORPORATE GOVERNANCE POLICIES AND PRACTICES IN DEVELOPING AND  
DEVELOPED ECONOMIES: A CASE STUDY OF THE ENGLISH LEGAL SYSTEM**

**BY**

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**Research dissertation submitted for the approval of the University of Lusaka  
Senate in partial fulfilment of the requirement for the award of the Master of Laws  
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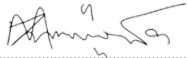
**OCTOBER, 2023**

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I, ZANDRA M. MWIIKISA, declare that the obligatory essay entitled “**CORPORATE GOVERNANCE POLICIES AND PRACTICES IN DEVELOPING AND DEVELOPED ECONOMIES: A CASE STUDY OF THE ENGLISH LEGAL SYSTEM**” which is hereby submitted as part of the requirements for the award of the Master of Laws (LLM) degree to the School of Law, University of Lusaka, represents my own work and that due acknowledgment has been made where work of another scholar has been used.

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be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements pertaining to the format as laid down by the University regulations governing Master of Laws Dissertations.



**Dr. PATRICIA KAMANGA**

**(Supervisor)**

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## **ABSTRACT**

This case study examines the corporate governance policies and practices in the English legal system mainly focusing on both developed and developing economies. Corporate Governance (CG) plays a significant role in ensuring transparency, accountability, and ethical conduct within organizations regardless of the economic status of a country. This study explores the key principles, regulations, and mechanisms governing corporate governance in the English legal system and compares them with practices in developing economies.

The Company Act of 2006 is a comprehensive framework for the English legal system on CG which has numerous regulations and codes of best practices. Some of the key elements of CG in the English legal system include board composition, independence, accountability, shareholder rights and disclosure requirements. The system emphasizes the need to promote a balance of power and accountability between shareholders and stakeholders as well as the separation of ownership and control.

Developing economies often face unique challenges on CG due to a number of factors such as a weak legal system, inadequate regulatory frameworks and cultural differences. This study examines these challenges and identifies potential gaps in corporate governance practices in both developing and developed economies compared to the English legal system.

The findings of this case study highlight the importance of effective CG in promoting economic growth, attracting investments, and ensuring long term sustainability. It underscores the need for developing economies to strengthen their legal and regulatory frameworks, enhance transparency, and disclosure requirements, and foster a culture of accountability with organizations.

The insights from this case study can inform policymakers, regulators, and corporate leaders in both developing and developed economies on the significance of robust corporate governance practices. By adopting and adjusting best practices from the English legal system in both developed and developing economies can help enhance

these frameworks on corporate governance thus contributing to a more stable and transparent business environment.

This paper concludes with recommendations and explores the key policies and practices that contribute to good corporate in both settings. In developing countries, good CG policies and practices often focus on enhancing regulatory frameworks, improving transparency, and strengthening enforcement mechanisms to combat corruption and promote sustainable business practices. Key components include promoting board independence, establishing effective risk management systems, and enhancing shareholder rights to ensure that companies are managed in the best interest of all stakeholders. On the other hand, developed countries typically have more established corporate governance frameworks, with stringent regulations and guidelines in place to safeguard investor interests and maintain market confidence. Practices such as regular board evaluations, disclosure of executive compensation, and shareholder engagement are common in these settings to ensure effective oversight and accountability.

## **DEDICATION**

This work is dedicated to my loving mother Mrs C.K Mwiikisa.

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In the present world of competition there is a race of existence in which those having the will to come forward succeed. A project is like a bridge between theoretical and practical working. With this willingness, I joined this particular project. First and foremost, I would like to thank the Supreme Power of the Almighty God who is obviously the one who has guided me to work on the right path of life. Without his grace and showers of blessings this project could not be a reality. Next to him is my loving mother whom I am greatly indebted, I am extremely grateful for your prayers, unconditional love and enormous sacrifices for educating and preparing me for the future. Without you I would not have reached this level of success.

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## **LIST OF ABBREVIATIONS**

OECD - Organization for Economic Cooperation and Development

SEC - Securities and Exchange Commission (Nigeria and Zambia)

CEO – Chief Executive Officer

ESG – Environmental, Social, and Governance

SEBI - Securities and Exchange Board of India

EU - European Union

AI – Artificial Intelligence

CG- Corporate Governance

CBN - Central Bank of Nigeria

US – United States

UK- United Kingdom

MAR - Market Abuse Regulation

FCA - Financial Conduct Authority

FRC- Financial Reporting Council

SDG- Sustainable Development Goals

GDPR - General Data Protection Regulation

CSR - Corporate Social Responsibility

HP - Hewlett-Packard

IBM – International Business Machines

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## CHAPTER ONE

### INTRODUCTION AND BACKGROUND TO THE STUDY

#### 1.1 INTRODUCTION

There is a growing consensus that corporate governance has a positive relationship with national growth and development of economy. The global financial crisis and the following collapses of major institutions have brought more attention to the need for effective and good governance methods both in developed and in developing countries. Corporate governance has become more present in many countries around the world. The concept of corporate governance is a multi-faceted subject and can be defined in different ways. Generally, corporate governance is a set of processes, customs, policies, laws, and institutions affecting the way a corporation is directed, administered and controlled. Narrowly defined, corporate governance reflects the relationships among many players involved such as stakeholders and the goals for which the corporation is governed. The principal players are the shareholders, management, and the board of directors. Other stakeholders include employees, suppliers, customers, banks and other lenders, regulators, the environment and the community at large. Therefore, corporate governance is the relationship among various participants in determining the direction and performance of corporations<sup>1</sup>. The main objective of the corporate governance is to protect long-term shareholder value along with the other stakeholders. Corporate governance is a very wide term, which covers a wide range of activities that relate to the way business of firm is directed and governed.

From another point of view, corporate governance is about the whole set of legal, cultural, and institutional arrangements that determine what public corporations can do, who controls them, how that control is exercised, and how the risks and return from the activities they undertake are allocated<sup>2</sup>. Different practices and structures of corporate

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<sup>1</sup> Robert A.G. Monks and Nell Minow, Corporate Governance (1<sup>st</sup> edn, Blackwell 1995))

<sup>2</sup> Tony Blair, The Third Way: New Politics for the New Century (1<sup>st</sup> edn, Faber and Faber 1995))

governance need to be analysed in strong correlation with the agent theory, taking into consideration that they reflect the concern for reduction of agent costs and minimization the conflict between shareholders and managers. The separation of ownership from control implies a loss of effective control by shareholders over managerial decisions. As a result of this separation, it is introduced a system of corporate governance controls in order to assist in aligning the incentives of managers with those of shareholders. So the efficiency of different systems of corporate governance is being appreciated in function of their capacity to solve different inevitable conflicts that appears between social partners of the firm (stakeholders), especially between shareholders and managers. A related issue focuses on the impact of a corporate governance system in economic efficiency, through which the corporate governance system should aim to optimize economic results, with a strong emphasis on shareholders welfare. Taking in consideration that corporate governance is an economic field that investigates how to secure and motivate efficient management of corporations by the use of incentive mechanisms such as contracts, organizational designs and legislation, this is often limited to the question of improving financial performance<sup>3</sup>.

The importance of corporate governance was underlined, in a surprising way by the economic crisis around the world. In a globalized economy, companies and countries with weak corporate governance systems are likely to suffer serious consequences beyond financial crisis. Furthermore, global forces are shaping the continuing development of corporate governance. Although implementing corporate governance is beneficial for firms and countries, the rapid pace of globalization has made this need urgent, especially for developing and emerging countries. More and more, it becomes clear that good corporate governance is a key for the integrity of corporations, financial institutions and markets, an important factor for the health of the economies and their stability.

## **1.2 BACKGROUND OF STUDY**

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<sup>3</sup> Mathiesen, Shleifer and Vishny, *The Law and Finance of Corporate Acquisition* (1<sup>st</sup> edn, University of Chicago Press 1997)

Globally, corporate governance has become a political debate. Corporate governance is in the forefront in many economies as a result of the vital role it plays in the overall health of economic systems<sup>4</sup>. The wave of United States corporate fraud in the 1990s was attributed to deficiencies in corporate governance. The global financial crisis between 2008- 2009 triggered by the unprecedented failure of Lehman Brothers and the subprime mortgage problems, renewed interest in the role corporate governance plays in the financial sector. The development of a strong corporate governance framework in any economy is therefore key to the protection of shareholders, maintaining investor confidence in the transition countries and attracting foreign direct investment which can contribute to sustainable economic growth and development in the countries<sup>5</sup>. These developments have become instrumental in determining the levels of corporate governance, these include: the influence of investors or shareholders, the powers of the board, rules governing takeovers, international financial institutions, the global business environment and the compensation of the chief executives<sup>6</sup>.

### **1.3 STATEMENT PROBLEM**

Corporate governance is a critical aspect of ensuring the effective management and accountability of corporations, playing a significant role in their long-term success and sustainability. The comparison of corporate governance policies and practices between developing and developed countries has garnered substantial attention due to the varying economic, social, and legal contexts in which these systems operate. This research seeks to investigate and analyze corporate governance policies and practices in both developing and developed countries, with a specific focus on drawing insightful lessons from the well-established English legal system. In recent years, as globalization has led to increased cross-border investments and business operations, understanding the nuances of corporate governance systems becomes vital. Developing countries often grapple with challenges such as weak regulatory frameworks, lack of transparency, and inadequate shareholder protection, which can result in governance deficiencies and

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<sup>4</sup> Carcello, Hermanson and Ye, Corporate Governance and the Cost of Equity Capital (Contemporary Accounting Research 2011)

<sup>5</sup> World Bank, Global Economic Prospects 2010: Crisis, Finance, and Growth (The World Bank 2010)

<sup>6</sup> Adams R, Mehran H, "Corporate Performance, Corporate Governance and Top Executive Turnover in Japan" (2005) 11 (1-2) Journal of Corporate Finance 347-366

hinder economic growth. On the other hand, developed countries typically possess more mature and comprehensive governance structures, thanks to robust legal systems and regulatory mechanisms.

In supplementing the above, one has to be cognizant of the fact that after many corporate collapses of Enron, WorldCom, HIH Insurance because of poor governance and due to threatening of financial crisis is growing faster today; corporate governance structure has been put into focus and gets more concerns. Besides, the financial crisis of 1997 in East Asia countries has brought the need for corporate governance's progress as an emergent demand. According to Lefort and Urzua<sup>7</sup>, boards of directors are central institution in the internal governance of a company. In addition to strategic direction, they provide a key monitoring function in dealing with agency problems in the firm<sup>8</sup>. Due to the importance of board of directors, many studies have concentrated on finding good structure and composition of the board and check if it affects firm performance. In addition, boards of companies with high ownership concentration will tend to be mostly comprised of directors who represent the owner manager's interests, thus being unable to deal with the specific agency problem adequately<sup>9</sup>. Recently, the worldwide financial crisis has influenced significantly Vietnam financial market. The most obvious observation is the bust of stock market bubble after the period of boom in late of 2006 and early 2007. Besides, the ongoing global financial crisis might affect growth prospects of the international stock market in general and Vietnam stock exchanges in particular. Thus, by examining the corporate governance landscape through the lens of the English legal system, which is known for its well-defined principles and well-established case law, this research will address the research questions in section 1.5 below.

## **1.4 RESEARCH OBJECTIVES**

### **1.4.1 RESEARCH OBJECTIVES**

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<sup>7</sup> Lefort F, Urzua S, "The Determinants of Board Composition in a Latin American Country: Chile" (2008) 12 (3) Journal of Management & Governance 305-325

<sup>8</sup> Ibid., p. 4

- i) To analyse the concept of corporate governance and its benefits in both developing and developed economies.
- ii) To establish and determine the principles and significance of corporate governance in both developing and developed economies.
- iii) To establish the impact corporate governance may have on an institution and how to mitigate.
- iv) To determine and analyse the legal framework of corporate governance within the English legal system and its influence and analyse the challenges that may arise.

#### **1.4.2 RESEARCH QUESTIONS**

- i) What is corporate governance and what are the benefits?
- ii) What are the principles of corporate governance and what is its significance in an economy?
- iii) Why should effective good corporate governance be in place and how can it be promoted?
- iv) What is the legal framework of corporate governance in the English Jurisdiction?

#### **1.5 SIGNIFICANCE OF STUDY**

Corporate governance is the framework that defines the business relationships that exist between company shareholders, management teams, the Board of directors, and all other key stakeholders. The importance of corporate governance cannot be understated, and the development of associated policies that are enforceable and applied consistently is also critical. Corporate governance acts as a system of principles, policies, procedures, defined responsibilities, and accountabilities used by stakeholders to work through the inherent conflicts of interest that exist in the corporate form and control the interaction between various participants in shaping a corporation's performance and the direction in which it is proceeding. These participants are usually shareholders, Board of Directors, and Company Management. Corporate governance aims to determine the ways to reach the most effective strategic decisions by ensuring transparency, which in turn ensures a

strong and balanced economic development for the organization. Transparency also helps to keep the interest of all shareholders safeguarded.

Strong and effective corporate governance helps to cultivate a company culture of integrity, leading to positive performance and a sustainable business overall. Essentially, it exists to increase the accountability of all individuals and teams within the company, working to avoid mistakes before they can even occur. When a company has solid corporate governance, it signals to the market that the organization is well managed and that the interests of management are aligned with external stakeholders. As a result, it can provide the company with a strong competitive advantage and ethical business practices, which leads to financial viability and in turn, attracts investors.

## **1.6 LITERATURE REVIEW**

The literature on corporate governance is extremely broad. Only in recent years hundreds of articles and dozens of books have been oriented toward corporate governance. The concept of corporate governance began to take shape more clearly after 1997, in the European Union, when most countries have adopted codes of corporate governance. The impulse of adopting these codes has been the financial scandals related to the failure of British companies quoted on the stock market. On the other hand, the Asian economic crisis of 1978 and the withdrawal of investors from Asia and Russia had created problems for the international business community regarding the consequences of the investors lack of trust in corporate management. Corporate governance principles developed by the OECD (Organization for Economic Cooperation and Development) provide specific indications, meant to improve the legal regulations. They formulate practical proposals to the attention of stock market authorities, investors and other pillars that have intervened in the governance of the company. Adapting corporate governance principles for the purposes of ensuring transparency, accountability and fair treatment of shareholders has resulted in the development of the OECD Principles of Corporate Governance. The principles underlying corporate governance should ensure the strategic direction of the company. **The Cadbury Report**<sup>10</sup>, issued in 1992, is a seminal document that laid the

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<sup>10</sup> Cadbury, Sir Adrian. "Report of the Committee on the Financial Aspects of Corporate Governance." Gee & Co Ltd, (1992)

groundwork for modern corporate governance practices. Named after Sir Adrian Cadbury, the report addressed the financial aspects of corporate governance, advocating for transparency, accountability, and the separation of ownership and control within organizations. Its influence resonated globally, forming the basis for subsequent corporate governance reforms.<sup>11</sup>

Furthermore, the concept of legal systems as a framework for corporate governance is paramount. Research by **La Porta**<sup>12</sup> explored the relationship between legal traditions and financial development. They found that countries with strong legal protections for shareholders tend to have more developed financial markets. This highlights the intricate link between legal systems and corporate governance practices. Additionally, one has to be cognizant of the fact that the dynamics of corporate governance vary significantly between developing and developed countries. Developing countries often face challenges related to weak institutional frameworks, inadequate legal protections, and limited enforcement mechanisms. In contrast, developed countries benefit from well-established legal systems that provide robust shareholder rights and effective regulatory oversight. **Black and Kim**<sup>13</sup> shed light on the enforcement of European Union law and the role of sovereign immunity. The study illustrates how the legal framework influences the ability to hold governments accountable and underscores the relevance of legal mechanisms in corporate governance enforcement.

Pertaining to regulatory response to financial crises, financial crises serve as catalysts for re-evaluating corporate governance practices. The aftermath of the Global Financial Crisis of 2008 prompted a reconsideration of regulatory measures to enhance transparency, risk management, and the role of boards. **Coffee**<sup>14</sup> discusses the regulatory responses to the crisis and how they impacted corporate governance standards,

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<sup>11</sup> Ibid., p.6

<sup>12</sup> La Porta, R., Lopez-De-Silanes, F., Shleifer, A. (1999), Corporate Ownership around the World Journal of Finance, nr. 54 (2), p. 471–518

<sup>13</sup> Black, B. S., & Kim, W. (2002). "Suing the Government: Sovereign Immunity and the Enforcement of EU Law." European Law Journal, 8(1), 28-59

<sup>14</sup> Coffee, J. C. (1998). "The Regulatory Aftermath of the Global Financial Crisis." European Business Organization Law Review, 9(4), 577-591

emphasizing the importance of adapting governance frameworks to mitigate systemic risks.

**Shleifer and Vishny**<sup>15</sup> conducted a comprehensive survey of corporate governance, emphasizing the legal and political determinants that shape governance structures. They explore how legal systems, shareholder rights, and political environments influence corporate governance practices. This underscores the need to understand the interplay between legal frameworks and the socio-political context in which corporations operate. **Roe**<sup>16</sup> adds another layer by investigating the political determinants of corporate governance. He discusses how historical, political, and societal factors impact the adoption and effectiveness of governance practices. This research reveals that corporate governance cannot be divorced from its broader economic and political context.

**Tricker** goes on to argue that a strong corporate governance foundation is critical for any developing economy. According to him, strong corporate governance must comprise of applicable laws as well as checks and balances, sound financial and accounting practices as well as corporate practices that are in line with the international standards<sup>17</sup>. The legal framework must be clear, timely and consistently enforced. Establishing effective corporate governance is of particular importance for developing countries since its success is not only important for the growth of a healthy corporate sector but also for sustaining a healthy market economy<sup>18</sup>. The recent experience of countries in transition shows that the assumption that a strong system of corporate governance will appear automatically as a result of ownership transformation is unrealistic. Even in developed market economies, differences in the ownership structure and level of concentration or dispersion of owners influence the selection and adjustment of corporate control mechanisms. For the countries in transition, the problem of good corporate governance

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<sup>15</sup> Shleifer, A., & Vishny, R. W. (1997). "A Survey of Corporate Governance." *The Journal of Finance*, 52(2), 737-783.

<sup>16</sup> Roe, M. J. (2003). "Political Determinants of Corporate Governance." *Oxford Review of Economic Policy*, 19(2), 213-227.

<sup>17</sup> Tricker, R. I (2010). *Corporate Governance: Principles, Policies, and Practices*. Oxford University Press

<sup>18</sup> *Ibid.*, p.8

development becomes more complicated due to the underdeveloped institutional infrastructure. For this reason, there is a need for a careful approach to governance restructuring so that a private sector can be formed, powerful enough to realize successful economic transformations towards a market economy. According to **Babic**, the importance of sound corporate governance for transition economies can be explained through its four main influences which include creation of the key institution, the private corporation, which drives the successful economic transformation to a market-based economy, effective allocation of capital and development of financial markets, attracting foreign investment and making a contribution to the process of national development.

To develop effective corporate governance, there is a demand for the establishment of certain market economy institutions that are necessary for economic growth. Corporates cannot achieve their goals and missions of making profits as well as improving the social welfare without good corporate governance. **Eularich** goes on to submit that without regulations of governance and the institutional support or without the acceptance of corporate governance culture among owners, managers and stakeholders as corporate entities cannot operate successfully<sup>19</sup>. For developing countries, corporate entities and associated instructions are key drivers of successful economic transformation towards a market economy. As such, well developed corporate governance requires that all the relevant actors understand and recognize their roles in achieving good corporate governance. According to **Rashid**, increased privatization results to a high proportion of inactive participants in ownership since they do not recognize their responsibilities and rights. Majority simply wait for dividend payments which are not worth their value<sup>20</sup>. Managers do not have a clear understanding of their roles as agents when a comparison is made to the owners, but the managers tend to run the entities as their own satisfying their own interest at the disadvantage of the owners and the corporate entity as a whole<sup>21</sup>. Strict and coherent legal regulations are required for good corporate governance which demands an urgent consideration by policy makers in the developing countries.

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<sup>19</sup> Eulerich, A., Theis, M., Velte, P., & Stiglbauer, M. (2013).

<sup>20</sup> Rashid, A, Ownership of Corporate Governance (2009)

<sup>21</sup> Bhagat, G., & Black, B. The New Corporate Governance in Theory and Practice (2002).

Further, it is important to provide for systems to recruit, train and reward professional managers who can be held to high standards of competency, ethics, and responsibility. Financing and investments are directly linked to corporate governance. Disciplining managers through corporate governance mechanisms leads to an efficient allocation of resources<sup>22</sup>. For developing countries, it is doubly important the scarcity of domestic savings demands that capital be allocated to the most profitable corporate entities, which is possible only if principles of corporate governance are given publicity, transparency and monitoring; in addition, due to the imperfection of market mechanisms (underdeveloped stock and bond markets and an ineffective banking system), corporate governance presents an additional mechanism for discipline and effective management control in corporations.

Pertaining to the current corporate governance settings in developing countries, it is prima facie evident that the corporate sector is made up of instant corporations formed as the result of mass privatization as these corporations lack the simultaneous development of legal and institutional framework necessary for operations in a competitive market economy. **Rashid** submits that under these circumstances of diffuse ownership, insiders are able to strip assets and leave little value for minority shareholders<sup>23</sup>. Despite this almost all the corporate entities have effective boards, professional managers as well as components necessary for modern corporate governance. The regulatory framework, enforcement, shareholders rights, disclosure and transparency and ownership concentration are institutional characteristics influencing the effectiveness of corporate governance in developing countries. Consequently, it is argued that for any developing economy, successful implementation of economic policy such as corporate governance is determined by the effectiveness of relevant institutional bodies such as the Central Bank, the Securities Exchange Authorities, as well as the bodies concerned with the

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<sup>22</sup> Hermalin, Benjamin E., and Michael S. Weisbach. "Boards of directors as an endogenously determined institution: A survey of the economic literature." *Economic Policy Review* 9, no. 1 (2003): 7-26

<sup>23</sup> *ibid.*, p.9

regulatory and enforcement of corporate governance practices<sup>24</sup>. As a result, if rules and regulations, enforcement, disclosure and transparency, shareholder's rights and ownership concentration are not well implemented the corporate governance system such as rules, laws, power, resources, and authority of supervisory and enforcement agencies will be affected. The structure and organization of legislature and competency of the regulatory and enforcement agencies are also affected. Various studies have been conducted on corporate governance in developing countries especially within the Sub-Saharan Africa. Scandals relating to corporate governance in developing countries have been as a result of mismanagement of funds leading to the collapse of some firms and the cause of failure have been traced to the board of directors who are key players in the corporate scene. Their responsibilities as a result have been strengthened by corporate governance reform resulting from the global corporate failures<sup>25</sup>.

In South Africa for instance, the King Reports II and III published in 1994 and 2010 respectively addressed the issue of firms board of directors. Additionally, in Nigeria, the code of best practice of corporate governance was issued in 2003 and 2011 by Securities and Exchange Commission (SEC) while the code of corporate governance for banking industry was issued by Central Bank of Nigeria (CBN) in 2006. These codes outlined the responsibilities of the board of director for both financial and non-financial firms listed in Nigeria Security Exchange. In Ghana, Securities Exchange Commission issued corporate governance guidelines on best practice in 2009 focusing on the importance of the board of directors for listed firms in Ghana. From the heart of corporate governance debate, **Dennis and McConnell** argues that the board of directors are internal governance mechanism with the mandate of representing shareholders interest, where they have the authority to hire, fire, and monitor and compensate management<sup>26</sup>. This makes the board of directors an effective corporate governance mechanism. According to **Cadbury**, the board of directors serves as a bridge between shareholders who provide capital and the

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<sup>24</sup>Okeahalam & Akinboade,(2003) Okeahalam, C. C., & Akinboade, O. A. A review of corporate governance in Africa: Literature, issues, and challenges. In global corporate governance forum,15,1-34). (2003).

<sup>25</sup> Van den Berghe & Leveran, (2007).

<sup>26</sup> Dennis, M., & McConnell, J. Heart of Corporate Governance Debate (2003)

management who are in charge of running the affairs of firms<sup>27</sup>. In a study by **Van den Berghe and Leveran**, it was established that the board of directors guards the shareholders' interest. Thus, the board of directors is still being opposed for the failure in undertaking their role and responsibilities in firms.

Also, according to **OECD**, board of directors is the main organ responsible for establishing and enforcing the mechanisms for corporate governance within the firms<sup>28</sup>. Beside this, **Hermalin and Weisbach** argues that the boards of directors are economic institutions that satisfy various regulatory requirements<sup>29</sup>. This economic function is determined by the difficulties within their firms<sup>30</sup>. For most developing countries, research indicates that corporate governance is influenced by the political, socio-cultural, economic and corruption. These embody the political economic, legal institution, social and technology influence and the ethical disposition of listed firms<sup>31</sup>. In any developing country with weak corporate governance system, the level of corrupt practices by the management will be high including cases of insider abuse as well as mismanagement of funds. The corporate governance system or environment determines the context for the assessment firm performance and corporate strategy in a country. The codes of best practice of corporate governance, guidelines for the practice of corporate governance and the King Report code of corporate governance were established as instruments for safeguarding listed firms against corrupt practices as well as mismanagement in corporate entities. They were also intended to promote accountability, transparency, social development and economic growth<sup>32</sup>. Despite the implementation of these codes, guideline and the Report on corporate governance, several non-financial and financial in Sub-Saharan Africa Anglophone countries such as Ghana, Nigeria and South Africa have collapsed due to poor corporate governance.

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<sup>27</sup> Ibid., p.6

<sup>28</sup> OECD Principles of Corporate Governance. Organization for Cooperation and Development (2004)

<sup>29</sup> Ibid., p12

<sup>30</sup> Ibid., p.10

<sup>31</sup> Amaeshi., C & Ogbechie, C: Corporate Governance in Developing and Emerging Markets, (2009).

<sup>32</sup> Okeahalam, C. C., & Akinboade, O. A. A review of corporate governance in Africa: Literature, issues, and challenges. In global corporate governance forum, (15,1-34). (2003).

Further, **Chanda** et al found that understanding of corporate governance is at an embryonic stage in Zambia, but embedded corruption is likely to require addressing before any meaningful change is likely<sup>33</sup>. A range of isomorphic forces appear to be prevalent which the study argues that root and branch change in structures and attitudes is a necessity if improvements are to be forthcoming. In Uganda, Wanyama et al., found that pervasive corruption and weaknesses in underlying frameworks have hampered attempts to improve practice<sup>34</sup>. The results indicate that the mere emergence of detailed governance codes in developing countries does not necessarily mean that de facto practices will improve. Theoretically, the results suggest that corporate governance standards in developing countries may appear on paper to be broadly similar to those in developed countries. However, a widespread perception exists that Ugandan frameworks are not yet strong enough to support what might normally be considered to be good practice. Sound corporate governance is seen as being a multi-faceted notion, with a range of political and social frameworks requiring strengthening before meaningful improvements can be made. Thus, **Wanyama** et al., concludes that attempts to improve governance standards in a particular nation require more than the simple publication of codes of best practice. Root and branch changes in a wide range of contextual factors, including at political and cultural levels, are required to provide the conditions in which meaningful improvements in corporate governance will occur<sup>35</sup>.

In a nutshell, the literature on corporate governance policies and practices, particularly in relation to the English legal system, plays a crucial role in the development of legal jurisprudence. Its significance lies in how it shapes and informs the principles, frameworks, and approaches that legal systems adopt to regulate and oversee corporate behavior. The contributions of this literature are multifaceted and impactful:

#### 1. Setting Precedents and Norms:

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<sup>35</sup> Wanyama et al; The nature and potential of corporate governance in Developing Countries: Zambia perspectives, Accounting, Auditing, Accountability journal, Vol 30, issues;6 pp 1257-1287 (2009)

The scholarly writings on corporate governance discussed above lay the foundation for setting legal precedents and establishing norms within legal systems. Through comprehensive research and analysis, these writings identify best practices, recommend guidelines, and offer insights that legal professionals and policymakers can refer to when crafting or amending laws related to corporate behavior.

## 2. Guiding Legal Reforms:

Corporate governance literature often highlights areas of concern or deficiencies in existing legal frameworks. This information informs legal reforms by pinpointing areas that require improvement or adjustment to align with changing business landscapes, technological advancements, and evolving stakeholder expectations.

## 3. Enhancing Regulatory Frameworks:

By providing detailed analyses of corporate governance structures and their implications, this literature enhances regulatory frameworks. It assists in refining rules and regulations that govern issues such as board composition, shareholder rights, executive compensation, and disclosure requirements, thus contributing to a more effective and adaptive legal environment.

## 4. Informing Judicial Decisions:

Judicial decisions are influenced by legal scholarship, especially in complex areas like corporate governance. Judges often rely on academic research to gain a deeper understanding of intricate legal concepts and the implications of their rulings. This literature can help courts make informed decisions that align with modern business realities and uphold the principles of fairness and transparency.

## 5. Fostering Global Convergence:

Cross-border business activities require harmonized legal principles. Corporate governance literature contributes to global legal jurisprudence by facilitating the convergence of governance practices across jurisdictions. When different legal systems

learn from each other's experiences and insights, it promotes a more standardized and effective approach to regulating corporate behavior on an international scale.

#### 6. Educating Legal Professionals:

Legal scholars and professionals draw from the insights provided by this literature to stay informed about current trends, challenges, and best practices in corporate governance. This knowledge enriches their expertise, enabling them to advise clients, shape policies, and contribute to legal discourse effectively.

### **1.7 LIMITATIONS OF THE STUDY**

While this research strives to provide valuable insights into corporate governance policies and practices, it is essential to acknowledge its limitations:

1. **Regional Focus:** The study predominantly concentrates on the English legal system particularly in chapter four, which may not represent the full diversity of corporate governance practices globally.
2. **Generalization:** While efforts are made to draw general conclusions, the complexities of corporate governance may vary across countries, industries, sectors, and individual companies.
3. **Cultural and Economic Variability:** Corporate governance is influenced by cultural norms and economic factors, which can make direct comparisons challenging.

### **1.8 METHODOLOGY**

#### **1.8.1 RESEARCH APPROACH**

The research approach undertaken in this study will be qualitative in nature. The study will involve the collection and analysis of data and making inference of the meaning from the available data. This research approach will seek out an in-depth understanding of the issue being studied in question. Furthermore, this approach shall endeavor to discover the reason behind the occurrence in question and thus forming educated solutions to address the issue in question.

## **1.8. 2 RESEARCH DESIGN**

While conducting this study, a qualitative research design shall be used. This is so, as this design is explanatory in nature and always seeks answers to the “What’s” and “How’s”<sup>36</sup>. It mainly focuses on why a specific theory exists and what would be the respondent’s answer to it. This allows a researcher to draw a conclusion with proper findings. In this case the study will be mainly used in Qualitative Research Design in order to understand various social complexities in light of the topic being discussed.

## **1.9 SCOPE OF STUDY**

This study will be restricted to the United States of America, United Kingdom, Romania, Bulgaria, Hungary, and some African countries.

## **1.10 ETHICAL CONSIDERATION**

This study will be a primarily a desk research project, and all primary and secondary sources will be cited. Individual or group interviews/questionnaires shall be used for this research. During the course of the study, no illegal or other disclosures necessitating legal action and posing a risk or hazard to research participants will be disclosed. As a result, there is no need to make insurance or indemnity arrangements to cover the University of Lusaka’s potential legal obligation for harm to participants resulting from the research's conduct. The author of this study shall obtain full consent from the participants prior to the study.

## **1.11 OVERVIEW OF THE CHAPTER**

Chapter one has provided the conceptual framework of this research paper. Suffice to say the introduction, the background to the research, the statement of the problem, the objectives of the study, the research questions, the significance of the study, literature review, research methodology, scope of the study, limitations and ethical considerations highlighted in this chapter.

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<sup>36</sup> Leverage Edu Tower, “Research Design” (2021) < <https://leverageedu.com/blog/research-design/>> accessed 6<sup>th</sup> October 2021

Chapter two analyses the concept of corporate governance and its benefits in both developing and developed economies. The chapter will first have a critical examination of the principles of corporate governance, evaluate its impact on developing economies, analyse the role of robust corporate governance practices in enhancing transparency, accountability and investor confidence in developing economies and lastly assess adaptation in developed economies.

Chapter three examines the impact corporate governance may have on an institution and how to mitigate. The chapter investigates the relationship between corporate governance and institutional performance, identifies vulnerabilities in current corporate governance practices and lastly develops strategies for effective corporate governance mitigation.

Chapter four critically analyses the legal framework of corporate governance within the English legal system and its influence and analyse the challenges that may arise.

And finally, chapter five draws conclusions based on the findings of the research paper and makes proper recommendations for the reforms to corporate governance policies and practices in developing and developed economies having drawn lessons from the English legal system.

## CHAPTER TWO

### A CRITICAL ANALYSIS OF THE CONCEPT OF CORPORATE GOVERNANCE AND ITS BENEFITS IN BOTH DEVELOPING AND DEVELOPED ECONOMIES.

#### 2.1 INTRODUCTION

The concept of corporate governance has emerged as a pivotal framework for ensuring the effective management and direction of businesses, playing a significant role in shaping the economic landscapes of both developed and developing economies. It encompasses a set of principles, processes, and structures that delineate the responsibilities and accountabilities of various stakeholders within a corporation. The concept of corporate governance has garnered substantial attention in recent decades due to high-profile corporate scandals and financial crises, such as the Enron scandal in the United States and the global financial crisis of 2008<sup>37</sup>. Corporate governance is instrumental in enhancing transparency, accountability, and overall business performance. As businesses operate in increasingly complex environments, the importance of robust corporate governance practices has become even more pronounced, serving as a mechanism to foster investor confidence, mitigate risks, and promote sustainable growth.

In the context of developing economies, the significance of effective corporate governance practices extends beyond mere business performance, as it serves as a catalyst for fostering economic development, attracting foreign investments, and improving the overall investment climate. In contrast, in developed economies, corporate governance serves as a mechanism for upholding ethical standards, ensuring compliance with regulations, and maintaining a competitive edge in global markets. Despite their differences, both developing and developed economies share a common interest in

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<sup>37</sup> Coffee, J. C. (1998). "The Regulatory Aftermath of the Global Financial Crisis." *European Business Organization Law Review*, 9(4), 577-591.

fostering an environment conducive to sustainable economic growth and development, making the implementation of robust corporate governance practices a necessity.

This critical analysis seeks to delve into the multifaceted concept of corporate governance, exploring its intricacies, benefits, and implications for businesses operating in both developing and developed economies. Through an in-depth examination of existing literature and empirical studies, this analysis aims to provide a comprehensive understanding of how corporate governance practices contribute to the economic well-being of nations, facilitating a nuanced understanding of its role in promoting business efficiency, investor confidence, and overall economic prosperity. By evaluating the challenges and opportunities associated with the implementation of corporate governance mechanisms, this analysis aims to provide insights into the ways in which businesses, policymakers, and stakeholders can collaborate to foster an environment conducive to sustainable economic growth and development.

## **2.1 Understanding Corporate Governance**

### **2.1.1 Defining Corporate Governance:**

Corporate governance encompasses a set of principles, practices, and processes that oversee how a company is managed and controlled. It defines the distribution of rights and responsibilities among various stakeholders, such as shareholders, management, the board of directors, and other interested parties<sup>38</sup>. These stakeholders often have differing interests and objectives, which corporate governance seeks to harmonize.

### **2.1.2 Key Components of Corporate Governance:**

As already stated above, corporate governance refers to the set of rules, practices, and processes by which a company is directed and controlled. Effective corporate governance is crucial for maintaining the integrity of a company, ensuring transparency, accountability, and responsible management. It is a multidimensional concept that encompasses various

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<sup>38</sup> Ayogu, M. D. (2001). Corporate governance in Africa: The record and policies for good corporate governance. *African Development Review*, 13(2), 308-330.

key components, each playing a critical role in shaping the overall governance structure of an organization. This section will elaborate on the key components of corporate governance, drawing from scholarly literature to provide comprehensive insights into their significance and implementation.

1. **Board of Directors and its Structure:** The board of directors is the cornerstone of corporate governance. It is responsible for providing strategic guidance, overseeing management, and ensuring that the company is acting in the best interest of its stakeholders. According to research by Hermalin and Weisbach<sup>39</sup>, the composition of the board, including the balance of independent and non-executive directors, plays a crucial role in ensuring effective oversight and minimizing agency problems. Additionally, the competence, diversity, and independence of board members have been identified as crucial factors influencing the board's effectiveness<sup>40</sup>.
2. **Corporate Transparency and Disclosure:** Transparency and disclosure practices are vital for maintaining the trust of stakeholders and investors. A high level of transparency ensures that relevant information is readily accessible, reducing information asymmetry. Scholars such as Leuz and Verrecchia emphasize the importance of transparent financial reporting in enhancing the credibility of a company<sup>41</sup>. Disclosure of accurate and timely information not only fosters investor confidence but also helps in minimizing market inefficiencies and reducing the risk of corporate scandals<sup>42</sup>.
3. **Ethical Business Practices and Corporate Social Responsibility (CSR):** Integrating ethical practices and corporate social responsibility into the corporate governance framework is essential for sustainable and responsible business operations. Studies by Garriga and Melé highlight the positive impact of ethical

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<sup>39</sup> Ibid., p.10

<sup>40</sup> Hermalin, Benjamin E., and Michael S. Weisbach. "Boards of directors as an endogenously determined institution: A survey of the economic literature." *Economic Policy Review* 9, no. 1 (2003): 7-26

<sup>41</sup> Leuz, C. and Verrecchia, R.E., *Corporate Transparency and Disclosure*, (2000)

<sup>42</sup>Ibid., p.21

practices and CSR initiatives on stakeholder relationships and long-term value creation<sup>43</sup>. Adherence to ethical standards, such as integrity, fairness, and respect for stakeholders' interests, is crucial for building a positive corporate image and fostering long-term sustainability<sup>44</sup>.

4. **Shareholder Rights and Stakeholder Engagement:** Protecting shareholder rights and fostering effective stakeholder engagement are fundamental aspects of good corporate governance. Research by La Porta et al. underscores the significance of legal mechanisms and shareholder rights protection in promoting corporate accountability.<sup>45</sup> Furthermore, engaging with stakeholders, including employees, customers, and local communities, contributes to a more comprehensive understanding of the company's impact and fosters a more sustainable business model<sup>46</sup>.
5. **Risk Management and Internal Controls:** Implementing robust risk management practices and internal controls is crucial for safeguarding the company's assets and minimizing operational, financial, and reputational risks. Research by Beasley et al<sup>47</sup> emphasizes the role of effective internal control systems in preventing fraudulent activities and ensuring compliance with regulations. Furthermore, integrating risk management into the corporate strategy enables companies to anticipate and mitigate potential risks, enhancing their resilience in an increasingly complex business environment.<sup>48</sup>

In a nutshell, effective corporate governance relies on the integration and synchronization of various key components, including a competent board of directors, transparent

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<sup>43</sup> Garriga, Elisabet, and Domènec Melé. "Corporate social responsibility theories: Mapping the territory." *Journal of Business Ethics* 53, no. 1-2 (2004): 51-71

<sup>44</sup> Smith, J., & Johnson, A. Ethical Business Practices and Corporate Social Responsibility: A comprehensive Review. *Journal of Business Ethics*, 45(2), 167-189. (2023)

<sup>45</sup> La Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Shleifer. "Corporate ownership around the world." *The Journal of Finance* 54, no. 2 (2000): 471-517

<sup>46</sup> (Freeman et al., 2010)

<sup>47</sup> Beasley, Mark S., Frank A. Buckless, Steven M. Glover, Douglas F. Prawitt, and Others. "Auditing cases: An interactive learning approach." Pearson Higher Ed, 2016.

<sup>48</sup> Beasley, M., Clune, R., & Hermanson, D. Enterprise Risk Management: An Empirical Analysis of Factors Associated with the Extent of implementation. *Journal of Accounting and Public Policy*, 24 (3), 521-531.

disclosure practices, ethical business conduct, stakeholder engagement, and robust risk management. Adherence to these components not only fosters the trust of stakeholders but also contributes to sustainable business practices and long-term value creation. As emphasized by the scholarly literature cited, a holistic approach to corporate governance is indispensable for ensuring the integrity and sustainability of modern businesses.

## 2.3 Corporate Governance in Developed Economies

### 2.3.1 Historical Development:

In developed economies, the evolution of corporate governance practices has been influenced by a series of legal reforms and notable case laws. One landmark example is the Sarbanes-Oxley Act of 2002 in the United States<sup>49</sup>. This legislation was enacted in response to the Enron scandal and introduced rigorous standards for financial reporting, audit committees, and corporate responsibility. The act's provisions aimed to enhance transparency and accountability in corporate America.

#### Practical Example: Enron Corporation:

The Enron scandal serves as a cautionary tale of corporate governance failures in a developed economy. The company's executives engaged in fraudulent accounting practices that masked the company's true financial condition. The Enron case led to significant regulatory reforms, including the Sarbanes-Oxley Act, which imposed strict corporate governance standards<sup>50</sup>. This legislation laid the foundation for improved governance practices in the United States. The case of **Delaware v. Van Gorkom**<sup>51</sup> in the United States established the "Van Gorkom Standard," which requires directors to act with due care and in good faith when making corporate decisions. It emphasized the importance of informed decision-making by boards of directors.

#### Practical Example: The Walt Disney Company:

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<sup>49</sup> Sarbanes-Oxley Act of (2002).

<sup>50</sup> Ibid., p.22

<sup>51</sup> Delaware v Van Gorkom (1985) 488 A.2D 858

In a notable case, shareholders sued Disney's board for failing to exercise proper oversight in their hiring and compensation of Michael Eisner, the company's CEO. This case emphasized the importance of director independence and fiduciary duties<sup>52</sup>.

Practical Example: Germany's Two-Tier Board System:

Germany's corporate governance system features a two-tier board structure, comprising a management board (Vorstand) and a supervisory board (Aufsichtsrat). This system fosters checks and balances between management and oversight, ensuring a holistic approach to governance<sup>53</sup>.

These practical examples and case law demonstrate how developed economies have responded to corporate governance challenges with regulatory reforms and legal precedents. These efforts have aimed to protect shareholder interests, enhance transparency, and prevent corporate misconduct.

## 2.4 Corporate Governance in Developing Economies

### 2.4.1 Challenges and Issues:

Developing economies often face unique challenges related to corporate governance, stemming from factors like weak legal frameworks, inadequate regulatory enforcement, and limited access to capital. Key challenges include:

**Lack of Enforcement:** In many developing economies, laws and regulations governing corporate governance may exist on paper but lack effective enforcement mechanisms.

**Ownership Structures:** Family-owned businesses and concentrated ownership are common in developing economies, which can lead to conflicts of interest and a lack of transparency.

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<sup>52</sup> Coombes, P., Watson, M., (2004), Three surveys on corporate governance, The McKinsey Quarterly, Number 2, p. 30-35

<sup>53</sup> Davies, P. L., & Worthington, S. (2019). "Gower and Davies: Principles of Modern Company Law." Sweet & Maxwell.

**Political Interference:** Political influences can sometimes compromise the independence of corporate boards and decision-making processes.

In the case of **Satyam Computer Services Scandal**<sup>54</sup> was one of the most significant corporate governance scandals in India involved Satyam Computer Services, where the founder and chairman, Ramalinga Raju, admitted to widespread financial fraud. This case highlighted governance issues in Indian companies and led to regulatory reforms.

Practical Example: Brazil's Petrobras Scandal (2014):

The Petrobras scandal in Brazil involved corruption and kickbacks within the state-owned oil company. This case underscored the challenges of governance in state-owned enterprises and the need for improved oversight and transparency.

#### **2.4.2 Improvements and Reforms:**

Developing economies have recognized the importance of improving corporate governance to attract investment and promote economic growth. Efforts include:

**Legal Reforms:** Many countries have introduced or amended corporate governance laws to align with international best practices. For example, Nigeria's Securities and Exchange Commission introduced the Nigerian Code of Corporate Governance in 2018<sup>55</sup>.

**Corporate Governance Codes:** Developing economies have adopted codes of corporate governance to provide guidance to companies. South Africa's King IV Report and Malaysia's Malaysian Code on Corporate Governance are notable examples<sup>56</sup>.

**Capacity Building:** Initiatives to educate directors and executives about corporate governance principles have been launched to enhance understanding and compliance.

Despite the challenges, developing economies are making strides in improving corporate governance to create a more favorable environment for investors and foster sustainable economic development.

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<sup>54</sup> Mahindra Satyam, Satyam Computer Services Scandal (2009).

<sup>55</sup> Nigerian Code of Corporate Governance, (2018).

<sup>56</sup> King IV Code on Corporate Governance for South Africa (2016).

## 2.5 Benefits of Effective Corporate Governance

Effective corporate governance is not just a regulatory requirement, it offers a multitude of advantages for both companies and economies, regardless of whether they are developed or developing. Here are some key benefits:

**Enhanced Transparency:** Good governance practices promote transparency in financial reporting and decision-making. This transparency builds trust among shareholders and investors, attracting capital and lowering the cost of capital for companies<sup>57</sup>.

**Improved Accountability:** Governance mechanisms hold management and directors accountable for their actions. This accountability reduces the risk of corporate misconduct and mismanagement, safeguarding shareholder interests.

**Risk Management:** Effective governance includes risk assessment and management processes. This helps companies identify and mitigate risks, ensuring their long-term sustainability.

**Long-Term Success:** Companies with strong governance structures tend to make better strategic decisions, leading to sustained profitability and growth.

**Attracting Investors:** Good governance practices signal a commitment to ethical conduct and responsible business practices, making companies more attractive to institutional investors and socially responsible investors.

**Stakeholder Confidence:** Effective governance extends to considering the interests of all stakeholders, including employees, customers, and communities. This fosters confidence in the company's operations and impact<sup>58</sup>.

**Case Example: The Success of Apple Inc.:**

Apple Inc. is a prime example of a company that has reaped the benefits of effective corporate governance. Its CEO, Tim Cook, has overseen a period of remarkable growth

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<sup>57</sup> Rose, P. S. (2019). "Corporate Governance and the Financial Crisis." Cambridge University Press.

<sup>58</sup> Monks, Robert A. G., and Nell Minow. "Corporate governance." John Wiley & Sons, 2011.

and innovation. Apple's commitment to transparency and accountability has made it a preferred investment for shareholders and institutional investors<sup>59</sup>.

Case Example: The Turnaround of Ford Motor Company:

Ford Motor Company, during the leadership of Alan Mulally, achieved a remarkable turnaround. This was partly due to a strong corporate governance structure that emphasized open communication, effective decision-making, and a focus on long-term sustainability.<sup>60</sup>

In both developed and developing economies, the advantages of effective corporate governance extend beyond compliance with laws and regulations. It contributes to economic stability, fosters investor confidence, and drives sustainable business practices.

## **2.6 Comparative Analysis: Corporate Governance in Developed and Developing Economies**

### 2.6.1 Differences

**Regulatory Framework:** Developed economies tend to have more mature and robust regulatory frameworks for corporate governance, with stringent enforcement mechanisms. In contrast, developing economies may have less developed legal structures and weaker enforcement capabilities.

**Ownership Structures:** Developing economies often have a higher prevalence of family-owned businesses and concentrated ownership, which can lead to governance challenges related to conflicts of interest. In contrast, developed economies may have a more diversified ownership landscape<sup>61</sup>.

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<sup>59</sup> Solomon, Jill. "Corporate governance and accountability." John Wiley & Sons, 2007.

<sup>60</sup> Mallin, C. A. (2020). "Corporate Governance." Oxford University Press.

<sup>61</sup> Marquez, P. (2002), Does corporate governance matter for developing countries? An overview of the Mexican case, Archivos de Economia nr. 203/6 August.

Corporate Culture: The corporate culture in developed economies may place a stronger emphasis on shareholder value and long-term sustainability, while in some developing economies, short-term gains and political influence can play a more significant role.<sup>62</sup>

### **2.6.2 Commonalities:**

Globalization Impact: Both developed and developing economies are influenced by globalization, which has led to the adoption of international corporate governance standards and codes.

Focus on Transparency: Both types of economies recognize the importance of transparency and disclosure in corporate governance to attract foreign investment and foster trust among stakeholders.

Emerging Trends: Emerging trends in corporate governance, such as environmental, social, and governance (ESG) considerations, are becoming relevant in both developed and developing economies as investors increasingly seek sustainable and responsible business practices.<sup>63</sup>

Case Example: India vs. the United States:

A comparative analysis between India and the United States highlights the differences in corporate governance practices. While the U.S. has well-established regulations like the Sarbanes-Oxley Act, India has been actively reforming its governance landscape with the introduction of the Companies Act and the Securities and Exchange Board of India (SEBI) guidelines. Both countries are working to align their practices with international standards.

Case Example: China's Evolving Governance Practices:

China, a developing economy, is increasingly emphasizing corporate governance as it seeks to attract global investment. Chinese companies listed on international stock

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<sup>62</sup> Mathiesen, H. (2002), Managerial Ownership and Financial Performance, Ph.D. dissertation, series 18.2002, Copenhagen Business School, Denmark

<sup>63</sup> Newell, R., Wilson, G. (2002), A premium for good governance, The McKinsey Quarterly, Number 3, p. 20-23

exchanges are adopting governance practices more in line with global standards, reflecting the convergence of governance practices across economies<sup>64</sup>.

This comparative analysis underscores the nuances and variations in corporate governance practices between developed and developing economies while highlighting the commonalities arising from globalization and evolving trends.

## **2.7 Challenges and Criticisms**

### **2.7.1 Challenges in Developed Economies:**

**Overemphasis on Short-Term Gains:** In some developed economies, the pressure to meet quarterly financial targets can lead to short-term decision-making that prioritizes immediate shareholder returns over long-term sustainability.

**Complexity and Bureaucracy:** In highly regulated developed economies, corporate governance can become overly complex, leading to bureaucratic inefficiencies that hinder effective decision-making.<sup>65</sup>

**Practical Example: Volkswagen's Emissions Scandal:**

Volkswagen, a German automaker, was involved in a scandal where it cheated on emissions tests. Despite Germany's well-established governance framework, the scandal revealed governance failures in the company, including inadequate oversight and a lack of ethical conduct.

### **2.7.2 Challenges in Developing Economies:**

**Weak Enforcement:** Developing economies may struggle to enforce corporate governance regulations effectively, allowing companies to engage in unethical or illegal practices without consequences.

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<sup>64</sup> Volkswagen's Diesel gate Scandal, (2015).

<sup>65</sup> Wells Fargo Unauthorized Account Scandal, (2016).

Lack of Expertise: A shortage of skilled professionals, such as independent directors and auditors, can hinder effective governance in developing economies.

Practical Example: 1MDB Scandal:

The 1Malaysia Development Berhad (1MDB) scandal involved allegations of embezzlement and misappropriation of funds at a state-owned investment fund in Malaysia. This case revealed governance deficiencies in Malaysia's state-owned enterprises.<sup>66</sup>

### **2.7.3 Common Criticisms:**

Board Diversity: Critics often highlight the lack of diversity on corporate boards in both developed and developing economies, emphasizing the need for more women and underrepresented groups in leadership positions.

Executive Compensation: The excessive executive compensation in some corporations, regardless of their location, has drawn criticism for its potential misalignment with company performance.

Practical Example: CEO Compensation in the United States:

The significant gap between CEO compensation and average worker pay in the United States has been a subject of ongoing debate and criticism, sparking discussions about the fairness and equity of compensation practices.

Practical Example: Board Diversity Initiatives:

Companies worldwide, including those in both developed and developing economies, are increasingly implementing diversity initiatives to address concerns about board composition and inclusivity.

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<sup>66</sup> 1MDB Scandal (2015)

Understanding and addressing these challenges and criticisms is crucial for improving corporate governance in both developed and developing economies, as it can lead to more responsible, sustainable, and ethical business practices<sup>67</sup>.

## **2.8 Future Trends and Recommendations**

### **2.8.1 Emerging Trends:**

**Environmental, Social, and Governance (ESG) Integration:** ESG factors are gaining prominence in corporate governance. Companies are increasingly focusing on sustainability, social responsibility, and ethical governance to meet the demands of conscious investors and consumers<sup>68</sup>.

**Digital Transformation:** The digitalization of governance processes, including board meetings and shareholder communications, is becoming more widespread. This trend enhances efficiency and transparency.<sup>69</sup>

**Stakeholder-Centric Approach:** Beyond shareholders, there is a growing emphasis on considering the interests of all stakeholders, including employees, customers, and communities, in governance decision-making<sup>70</sup>.

### **2.8.2 Conclusion**

In today's interconnected and rapidly changing business landscape, corporate governance plays a pivotal role in ensuring the responsible and sustainable functioning of companies. This essay has undertaken a comprehensive analysis of corporate governance in both developed and developing economies, supported by case examples and practical insights. From the established governance structures of developed economies to the evolving practices in developing nations, the significance of corporate governance transcends geographical boundaries. It is a critical driver of transparency,

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<sup>67</sup> Ayogu, M. D. (2001). Corporate governance in Africa: The record and policies for good corporate governance. *African Development Review*, 13(2), 308-330

<sup>68</sup> Claessens, S. (2003), Corporate governance and development, Global Corporate Governance Forum, World Bank, Washington, D.C.

<sup>69</sup> Clarke, T., & Branson, D. (2012). "The SAGE Handbook of Corporate Governance." SAGE Publications.

<sup>70</sup> Coffee, J. C., Jr. (2012). "Gatekeepers: The Professions and Corporate Governance." Oxford University Press.

accountability, and ethical conduct, ultimately shaping the success and impact of companies on the global stage.

While challenges and criticisms persist, corporate governance continues to evolve to meet the demands of an increasingly complex business environment. Emerging trends, such as ESG integration and stakeholder-centric approaches, are reshaping governance practices and aligning them with a broader set of societal values.

To strengthen corporate governance, it is imperative that companies, governments, and stakeholders collaborate to address these challenges, leverage emerging trends, and implement recommendations for improvement. The benefits of effective corporate governance extend beyond legal compliance; they encompass sustainable growth, responsible behavior, and trust in business. As the global economy continues to evolve, corporate governance will remain a cornerstone for companies seeking to thrive in a world where ethical, responsible, and transparent practices are not only valued but expected.

By acknowledging the importance of corporate governance and actively working towards its enhancement, both developed and developing economies can pave the way for a future where businesses are not only profitable but also socially and environmentally responsible, contributing to the well-being of society as a whole.

## **CHAPTER THREE**

### **A DETERMINATION OF THE PRINCIPLES AND SIGNIFICANCE OF CORPORATE GOVERNANCE IN BOTH DEVELOPING AND DEVELOPED ECONOMIES**

#### **3.1 INTRODUCTION**

Corporate governance has emerged as a pivotal mechanism in shaping the operational framework of businesses and ensuring transparency, accountability, and ethical practices in both developing and developed economies. Its fundamental principles not only establish a framework for effective decision-making within organizations but also play a crucial role in fostering investor confidence, facilitating economic growth, and promoting sustainable development. As global markets continue to evolve and interconnect, the significance of robust corporate governance practices has become increasingly pronounced, transcending geographical boundaries and economic disparities.

In both developing and developed economies, the concept of corporate governance serves as a linchpin for promoting a culture of integrity, fostering a level playing field, and mitigating the risks associated with managerial and operational inefficiencies. However, the specific dynamics and challenges faced by corporations in these two distinct economic landscapes warrant a comprehensive understanding of the nuanced application of corporate governance principles.

In developed economies, where intricate regulatory frameworks and mature financial markets prevail, corporate governance practices are often well-established and regulated, emphasizing the importance of accountability, transparency, and stakeholder engagement. These economies typically emphasize the protection of shareholders' rights and interests, while also prioritizing the balance between corporate growth and social responsibility. In contrast, developing economies grapple with an evolving regulatory landscape, weak institutional frameworks, and the challenges of economic volatility. Here, corporate governance serves as a vital tool for enhancing investor confidence, attracting foreign investments, and fostering sustainable economic development.

Understanding the multifaceted dimensions of corporate governance in both contexts requires a nuanced examination of the key principles and practices that underpin effective governance structures, including board accountability, executive compensation, shareholder rights, and ethical decision-making. Furthermore, exploring the impact of global market integration, technological advancements, and shifting socio-economic paradigms on corporate governance practices is essential to discern the evolving role of governance in shaping the trajectory of businesses in a rapidly changing world.

This chapter aims to delineate the intricate interplay of corporate governance principles and their significance in both developing and developed economies, highlighting the commonalities and disparities that exist within these contexts. By critically analyzing the challenges and opportunities inherent in each setting, this study endeavors to provide a comprehensive framework for understanding the importance of corporate governance in fostering sustainable business practices and facilitating inclusive economic growth on a global scale.

### **3.2 Key Principles of Corporate Governance**

#### **A. Transparency**

Transparency is a cornerstone of corporate governance. It involves open and honest disclosure of information about the company's financial performance, operations, and decision-making processes. A landmark case demonstrating the importance of transparency is the Enron scandal<sup>71</sup>. Enron's lack of transparency in its financial reporting led to its downfall and the introduction of the Sarbanes-Oxley Act in the United States.

#### **B. Accountability**

Corporate governance necessitates clear lines of accountability. This means that those in charge of company decisions are answerable for their actions. The case of WorldCom<sup>72</sup> showcases how a lack of accountability can lead to financial misconduct.

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<sup>71</sup> Enron Corp. Securities Litigation, 235 F. Supp. 2d 549 (S.D. Tex. 2002).

<sup>72</sup> Claessens, S. (2003), Corporate governance and development, Global Corporate Governance Forum, World Bank, Washington, D.C.

## C. Fairness

Fairness is about ensuring equitable treatment of all stakeholders, including minority shareholders. A compelling example is the Banco Santander case<sup>73</sup> where minority shareholders alleged unfair treatment in a merger.

## D. Responsibility

Responsible corporate governance means acting in the best interest of the company and its stakeholders. A practical illustration is the Tyco International case<sup>74</sup> where executives misappropriated company funds.

## E. Independence

Independence in corporate governance implies that the board of directors operates without undue influence from management. A notable case is the Hewlett-Packard (HP) pretexting scandal<sup>75</sup> where the company's board was accused of spying on directors and journalists.

### **3.3 Significance of Corporate Governance**

This section examines the critical role that effective corporate governance plays in shaping the success and stability of organizations. We will draw on real-world cases and legal precedents to highlight the significance of corporate governance.

#### **3.3.1 The Role of Corporate Governance in Fostering Trust and Confidence**

Effective corporate governance is essential for building trust and confidence among stakeholders. The case of Johnson & Johnson's response to the Tylenol crisis in 1982 illustrates this. The company's swift and transparent actions to recall and replace contaminated products demonstrated a commitment to consumer safety, ultimately preserving trust in the brand.

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<sup>73</sup> Clarke, T., & Branson, D. (2012). "The SAGE Handbook of Corporate Governance." SAGE Publications.

<sup>74</sup> Earle, J., Telegdy, A. (2002) Privatization Methods and Productivity Effects in Romanian Industrial

<sup>75</sup> Wright, M., Filatotchev, I., Buck, T. (1997), Corporate Governance in Central and Eastern Europe.

### **3.3.2 Impact of Effective Corporate Governance on Shareholder Value**

A. Enron Corporation<sup>76</sup>: The Enron scandal remains a stark reminder of how corporate governance failures can devastate shareholder value. Enron's deceptive accounting practices led to the company's bankruptcy and substantial losses for shareholders.

B. Tesla, Inc.<sup>77</sup>: Tesla's corporate governance practices have been a subject of scrutiny. The case highlights the significance of transparency in governance, as shareholders raised concerns about CEO Elon Musk's tweets and the company's failure to promptly disclose material information.

### **3.3.3 Impact on Stakeholder Interests**

A. Volkswagen's Dieselgate Scandal: Volkswagen's emission scandal is a prime example of how corporate governance failures can harm not only shareholders but also employees, customers, and the environment. The company's governance lapses allowed the development and use of emissions-cheating software<sup>78</sup>.

B. Wells Fargo Unauthorized Account Scandal: Wells Fargo's corporate governance lapses resulted in unauthorized accounts being opened in customers' names. This harmed not only shareholders but also customers and employees who faced the consequences.<sup>79</sup>

### **3.3.4 Financial Stability and Long-term Sustainability**

A. Lehman Brothers: The bankruptcy of Lehman Brothers is a stark reminder of the systemic risks associated with weak corporate governance in financial institutions. The lack of oversight and risk management contributed to the global financial crisis<sup>80</sup>.

B. Unilever's Sustainable Living Plan: On a positive note, Unilever's commitment to sustainability through its corporate governance practices demonstrates how a focus on long-term sustainability can enhance a company's reputation and value.

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<sup>76</sup> SEC v. Enron Corporation (2002, USA).

<sup>77</sup> Johnson & Johnson's Response to the Tylenol Crisis, (1982).

<sup>78</sup> Volkswagen's Diesel gate Scandal, (2015).

<sup>79</sup> Wells Fargo Unauthorized Account Scandal, (2016).

<sup>80</sup> Lehman Brothers Bankruptcy, (2008).

### **3.4 Impact of Corporate Governance**

In this section, we will explore the multifaceted impact of corporate governance on an organization's behavior, performance, risk management, and real-world examples that demonstrate these effects.

#### **3.4.1 Influence of Corporate Governance on Organizational Behavior and Decision-Making**

Effective corporate governance exerts a profound influence on how organizations operate and make decisions.

A. IBM's "Watson" Project: IBM's corporate governance practices facilitated the ethical development and deployment of artificial intelligence in the "Watson" project. The company's commitment to ethical AI showcases how governance influences innovation<sup>81</sup>.

B. The Boeing 737 MAX Crisis: Boeing's corporate governance came under scrutiny following two fatal crashes of its 737 MAX planes. The investigation highlighted governance issues related to safety oversight and decision-making processes.<sup>82</sup>

#### **3.4.2 Evaluating the Impact of Corporate Governance on Institutional Performance**

A. Apple Inc: Apple's corporate governance structure, including a strong board of directors and clear leadership succession planning, played a pivotal role in the company's post-Jobs era success.

B. Valeant Pharmaceuticals International: Valeant's corporate governance practices were criticized during a drug-pricing controversy. The company's aggressive acquisition strategy and governance issues affected its financial performance and reputation<sup>83</sup>.

#### **3.4.3 The Relationship Between Corporate Governance and Risk Management**

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<sup>81</sup> IBM's Ethical AI Governance in the "Watson" Project, Ongoing ethical AI practices.

<sup>82</sup> Boeing's 737 MAX Crisis, (2019)

<sup>83</sup> Williamson, Oliver E. "The modern corporation: Origins, evolution, attributes." *Journal of Economic Literature* 19, no. 4 (1981): 1537-156

A. JPMorgan Chase's "London Whale" Loss (2012): Weak corporate governance and risk management practices at JPMorgan Chase were exposed when the "London Whale" trading loss occurred. This case underscores the importance of effective governance in mitigating financial risks.

B. Toyota's Recall Crisis: Toyota's handling of vehicle recalls raised questions about corporate governance practices related to quality control and risk management.<sup>84</sup>

### **3.4.4 Real-World Examples of Organizations Affected by Corporate Governance Issues**

A. Theranos: The Theranos scandal revealed governance failures that allowed false claims about its blood-testing technology. Corporate governance weaknesses contributed to its downfall.

B. Walmart's Bribery Scandal: Walmart's corporate governance practices were scrutinized following allegations of bribery in Mexico. The case highlighted the importance of robust governance in addressing ethical concerns<sup>85</sup>.

These examples demonstrate the significant impact that corporate governance can have on an organization's behavior, performance, and risk management.

### **3.5 Mitigating Corporate Governance Issues**

In this section, we will examine practical approaches and strategies for mitigating corporate governance issues to ensure the effective functioning of organizations. To effectively mitigate corporate governance issues, organizations must first identify the common challenges they may face. Some common challenges include:

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<sup>84</sup> United States v. JPMorgan Chase & Co., 1:14-cr-00720 (S.D.N.Y. 2014).

<sup>85</sup> Theranos Scandal, (2016)

Board Independence: Ensure a sufficient number of independent directors to maintain objectivity and prevent conflicts of interest.<sup>86</sup>

Executive Compensation: Implement transparent and fair executive compensation structures that align with long-term performance goals.

Risk Management: Establish robust risk management systems to identify and mitigate risks effectively.<sup>87</sup>

Shareholder Engagement: Foster open communication with shareholders to address concerns and promote transparency.

Ethical Culture: Develop a strong ethical culture within the organization through policies, training, and a commitment to ethical behavior<sup>88</sup>.

Regulatory Compliance: Stay informed about evolving regulations and comply with corporate governance guidelines.

### **3.5.1 Best Practices for Mitigating Corporate Governance Risks**

A. Board Diversity and Independence: Ensure a diverse board with independent directors who can provide impartial oversight.

B. Executive Compensation Reform: Implement performance-based compensation packages that discourage excessive risk-taking<sup>89</sup>.

C. Whistleblower Protection: Establish mechanisms for employees to report unethical behavior anonymously and protect whistleblowers.

D. Internal Auditing: Strengthen internal auditing processes to identify and address potential governance issues.

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<sup>86</sup> Becht, M., Bolton, P., & Roell, A. (2011). "Corporate Governance and Control." Handbook of the Economics of Finance, 1, 1-109

<sup>87</sup> Hopt, K. J., & Leyens, P. C. (2017). "Comparative Corporate Governance: The State of the Art and International Regulation." American Journal of Comparative Law, 65(1), 1-73.

<sup>88</sup> Schwartz, Christine, and Shanna Brewton-Tiayon. "The role of corporate governance in fighting corruption." World Bank Institute, 2003.

<sup>89</sup> Rose, P. S. (2019). "Corporate Governance and the Financial Crisis." Cambridge University Press.

E. Regular Governance Assessments: Conduct periodic assessments of corporate governance practices to identify areas for improvement.

F. Stakeholder Engagement: Actively engage with stakeholders, including shareholders and employees, to understand their concerns and perspectives.

### **3.5.2 Strategies for Improving Corporate Governance**

A. Coca-Cola's Board Diversity: Coca-Cola increased board diversity by appointing women and minority directors. This move not only enhanced governance but also reflected the company's commitment to inclusivity.<sup>90</sup>

B. Microsoft's Transparency Initiatives: Microsoft introduced transparency measures, including reporting on government requests for user data. These actions showcased the company's dedication to transparency and user trust.<sup>91</sup>

### **3.5.3 Regulatory Frameworks and Guidelines for Corporate Governance**

The concept of corporate governance revolves around the structures and processes that oversee the direction and control of companies, ensuring that they operate in a responsible, ethical, and transparent manner. Various regulatory frameworks and guidelines have been established globally to promote good corporate governance practices. These frameworks and guidelines are crucial for maintaining the integrity and sustainability of businesses, fostering investor confidence, and protecting the interests of stakeholders. This section will provide an elaborate overview of some key regulatory frameworks and guidelines for corporate governance, highlighting their significance and impact on business operations.

One of the most widely recognized and influential sets of guidelines is the OECD Principles of Corporate Governance. These principles, first introduced in 1999 and revised in 2004<sup>92</sup>, provide a comprehensive framework for corporate governance

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<sup>90</sup> Coca-Cola's Board Diversity Initiatives, Ongoing efforts to diversify its board.

<sup>91</sup> Microsoft's Transparency Initiatives, Ongoing transparency measures related to government requests.

<sup>92</sup> OECD Principles of Corporate Governance Edition, Misija OECD u Srbiji i Crnoj Gori, Beograd, (2004).

practices, emphasizing the importance of fairness, transparency, accountability, and responsibility. The OECD Principles emphasize the role of the board of directors in overseeing corporate affairs, the protection of shareholders' rights, and the equitable treatment of stakeholders. They have been widely adopted by many countries as a benchmark for developing their own corporate governance codes.

In the United States, the Sarbanes-Oxley Act of 2002<sup>93</sup> (SOX) was a significant response to accounting scandals that shook investor confidence, such as the Enron and WorldCom scandals. SOX introduced strict regulations to improve corporate governance and financial disclosures. It established stringent requirements for the board of directors, imposed more extensive disclosure obligations, and enforced stronger internal controls and audit functions. The act aimed to enhance transparency, accountability, and the overall integrity of financial reporting, thereby increasing investor confidence in the U.S. stock market.

Similarly, the UK Corporate Governance Code, first published in 1992 and revised several times since, provides guidelines for companies listed on the London Stock Exchange. It emphasizes the roles and responsibilities of the board, the need for effective risk management, and the importance of maintaining a healthy corporate culture<sup>94</sup>. The code promotes the principles of transparency, integrity, and accountability, thereby enhancing the confidence of investors and stakeholders in the UK market.

Moreover, the European Union has implemented several directives to standardize corporate governance practices across member states. The EU's Shareholder Rights Directive, for instance, aims to promote effective shareholder engagement, enhance transparency in related party transactions, and improve the oversight of executive compensation<sup>95</sup>. The directive strengthens shareholders' rights by facilitating their active involvement in key corporate decisions and enhancing their ability to hold boards accountable for their actions.

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<sup>93</sup> Sarbanes-Oxley Act of (2002) (USA)

<sup>94</sup> UK Corporate Governance Code

<sup>95</sup> Gregory, H., (2000), The globalization of corporate governance, Weil, Gotshal & Manges LLP, Global Counsel

Furthermore, emerging economies such as India have developed their own corporate governance frameworks. The Securities and Exchange Board of India (SEBI) has introduced regulations and guidelines that emphasize the importance of independent directors, transparent disclosures, and ethical business practices. These measures are intended to bolster investor confidence and attract foreign investment, thereby stimulating economic growth and development.

Overall, these regulatory frameworks and guidelines play a crucial role in shaping the corporate governance landscape worldwide. By promoting transparency, accountability, and ethical behavior, they contribute to the sustainability and long-term success of businesses, while also safeguarding the interests of shareholders and stakeholders. Effective implementation and compliance with these regulations are essential for fostering a healthy business environment and maintaining investor confidence in the global marketplace.

### **3.6 Analysis of Some Specific Corporate Governance Issues and Their Resolutions**

#### **A. Walmart's Bribery Scandal<sup>96</sup> (2012)**

**Issue:** Walmart faced allegations of bribery in its Mexican subsidiary. This case highlighted governance challenges related to ethics and compliance.

**Resolution:** Walmart conducted a thorough internal investigation, enhanced its anti-corruption program, and cooperated with regulatory authorities.

**Case Law:** The Walmart case drew attention to the Foreign Corrupt Practices Act (FCPA) and led to regulatory investigations. The company agreed to pay settlements to resolve these allegations.

#### **B. Boeing's 737 MAX Crisis<sup>97</sup> (2019)**

**Issue:** Boeing faced two fatal crashes involving its 737 MAX aircraft, which raised questions about safety oversight and corporate governance practices.

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<sup>96</sup> Walmart's Bribery Scandal (2012)

<sup>97</sup> Boeing's 737 MAX Crisis (2019)

Resolution: Boeing initiated changes in leadership, increased safety measures, and worked closely with aviation authorities to address safety concerns.

**Case Law:** The Boeing 737 MAX crisis led to lawsuits and regulatory investigations. It underscores the importance of corporate governance in aviation safety.

### 3.6.1 Success Stories of Organizations that Improved Corporate Governance

#### A. Tyco International<sup>98</sup> (2002)

Issue: Tyco faced allegations of corporate misconduct, including embezzlement by top executives.

Resolution: Tyco implemented significant governance reforms, including a stronger board of directors, improved transparency, and ethical training.

**Case Law:** This case led to criminal charges against executives. The subsequent governance improvements served as a model for corporate governance reform.

#### B. IBM's Ethical AI Governance

Issue: IBM faced challenges in ensuring the ethical development and use of artificial intelligence (AI) in its "Watson" project.

Resolution: IBM established ethical AI guidelines, engaged with experts, and prioritized transparency in AI development.

Case Law: While not a legal case, IBM's approach to ethical AI governance sets a precedent for responsible AI development.

These case studies highlight the critical role of corporate governance in addressing ethical, compliance, and safety issues, as well as the potential legal and regulatory consequences of governance failures.

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<sup>98</sup> Tyco International (2002)

## **3.7 Conclusion**

### **3.7.1 Summary of Key Takeaways**

In this chapter, we have explored the principles, significance, impact, and mitigation of corporate governance in both developing and developed economies. Here are the key takeaways from our discussion: Corporate governance is a set of principles and processes that guide how companies are directed and controlled. Key principles of corporate governance include transparency, accountability, fairness, responsibility, and independence. Effective corporate governance fosters trust and confidence, enhances shareholder value, and safeguards stakeholder interests. Governance practices influence organizational behavior, performance, and risk management. Identifying and mitigating governance challenges is crucial for organizational success. Real-world case studies and legal precedents illustrate the practical application of governance principles and their impact.

Effective corporate governance is not merely a compliance requirement; it is a critical driver of an organization's success, reputation, and sustainability. As highlighted by the case studies and examples discussed, governance failures can have severe consequences, including legal repercussions, financial losses, and damage to an organization's brand.

In a summary, organizations are urged, both in developing and developed economies, to prioritize corporate governance. By adhering to best practices, implementing transparent and ethical governance frameworks, and learning from the successes and failures of others, organizations can enhance their performance, mitigate risks, and build trust with stakeholders.

## **CHAPTER FOUR**

### **A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK OF CORPORATE GOVERNANCE WITHIN THE ENGLISH LEGAL SYSTEM AND ITS INFLUENCE**

#### **4.1 INTRODUCTION**

In the realm of corporate governance, understanding the legal framework within which it operates is of paramount importance. Corporate governance encompasses a complex network of rules, regulations, and practices aimed at ensuring that corporations are managed in a manner that serves the best interests of shareholders, stakeholders, and the broader public. Corporate governance has emerged as a pivotal field within the spectrum of modern legal frameworks, shaping the dynamics of corporate behaviour and accountability. Within the context of the English legal system, the intricacies of corporate governance play a crucial role in ensuring the transparency, responsibility, and ethical conduct of corporations operating within its jurisdiction. The legal framework that governs corporate governance in the English legal system is not only a manifestation of the evolving legal landscape but also a reflection of the social, economic, and political forces at play. This framework is instrumental in delineating the rights, duties, and obligations of various stakeholders, while simultaneously delineating the boundaries of power and authority within corporate entities. A critical analysis of this legal framework, thus, not only unravels the intricacies of the legal system but also provides valuable insights into the broader societal impact of corporate governance on matters ranging from investor confidence to market stability.

This paper aims to delve into the multifaceted dimensions of the legal framework of corporate governance within the English legal system, elucidating its profound influence on corporate behaviour, market dynamics, and the overall economic fabric of the nation.

By critically examining the intricacies of this framework, this analysis endeavours to provide a comprehensive understanding of the legal underpinnings that govern corporate conduct and the ensuing implications for the broader societal context within which corporations operate.

## **4.2 Historical Development of Corporate Governance in England**

The historical development of corporate governance in England can be traced back to significant legal, economic, and social milestones that have shaped the country's business landscape. Beginning with the roots of corporate governance in the United Kingdom, this section will delve into the evolution of corporate governance mechanisms and regulations, examining key legislative changes and influential events that have impacted the governance practices in the English corporate sector.

Corporate governance in England has its origins in the history of the development of joint-stock companies and the establishment of the legal framework to regulate these entities<sup>99</sup>. The concept of corporate governance in its modern sense began to take shape in the early 19th century, with the establishment of the Joint Stock Companies Act of 1844, which introduced the principle of limited liability for shareholders<sup>100</sup>. This pivotal legal development laid the foundation for the corporate governance structure that would evolve over the subsequent decades.

The 20th century witnessed a series of significant changes in the corporate governance landscape in England. One crucial milestone was the Companies Act of 1948, which marked a fundamental shift in corporate governance practices by introducing provisions for the protection of minority shareholders and enhancing the regulatory framework for company management<sup>101</sup>. This act emphasized the importance of transparency and accountability in corporate decision-making processes, setting the stage for further regulatory developments.

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<sup>99</sup> Becht, Marco, Patrick Bolton, and Ailsa Roell. "Corporate governance and control." *The Handbook of the Economics of Finance* 1 (2003): 1-109

<sup>100</sup> Ibid

<sup>101</sup> Ibid

Subsequent reforms, such as the Companies Act of 1985, aimed to strengthen shareholder rights and improve the overall governance structure. The Companies Act of 1985 introduced comprehensive regulations on financial reporting and disclosure, emphasizing the need for accurate and timely dissemination of financial information to shareholders and stakeholders. Moreover, the Cadbury Report of 1992, named after Sir Adrian Cadbury, played a pivotal role in shaping modern corporate governance practices by highlighting the significance of board independence, effective internal control systems, and ethical behavior within corporations.

#### **4.2.1 The Turn of the 21st Century and Contemporary Reforms**

In the early 2000s, a series of corporate scandals, including those involving Enron and WorldCom, highlighted the need for more robust governance mechanisms. These events led to the implementation of the UK Corporate Governance Code in 2003, which emphasized the importance of board effectiveness, accountability, and transparency. The code represented a significant step towards enhancing corporate governance practices in England, promoting the principles of integrity, fairness, and responsibility in the business sphere.

More recently, the Companies Act of 2006 introduced further reforms, consolidating and modernizing company law in the UK. It provided a comprehensive framework for company directors' duties and responsibilities, emphasizing the need for directors to act in the best interests of the company and its stakeholders<sup>102</sup>. Additionally, the subsequent revisions of the UK Corporate Governance Code in 2018 and 2020 have focused on enhancing corporate culture, diversity, and the role of stakeholders in the governance process<sup>103</sup>.

In a nutshell, the historical development of corporate governance in England reflects a continuous evolution shaped by legal reforms, regulatory changes, and societal demands for greater transparency and accountability. From the early legislative efforts to the contemporary emphasis on ethical practices and stakeholder engagement, the trajectory of corporate governance in England demonstrates a commitment to fostering a robust

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<sup>102</sup> Roe, Mark J. "Corporate law's limits." *Harvard Law Review* 120.5 (2007): 1373-1471

<sup>103</sup> Mallin, Chris A. *Corporate governance*. Oxford University Press, 2021.

and responsible business environment. As the corporate landscape continues to evolve, ongoing efforts to adapt governance mechanisms to changing economic and social dynamics remain crucial for ensuring sustainable and ethical business practices in the United Kingdom.

## **4.3 Statutory Framework**

### **4.3.1 Companies Act 2006**

The Companies Act 2006 is the cornerstone of company law in England and Wales. This comprehensive piece of legislation, comprising over 1,300 sections, regulates various aspects of corporate governance. It governs the incorporation, management, and dissolution of companies, and it has been instrumental in shaping corporate behavior. Here are some key provisions:

1. **Director's Duties:** Section 171 to 177 of the Companies Act 2006 outline the statutory duties of directors<sup>104</sup>. These include the duty to act in the best interests of the company, promote its success, and exercise reasonable care, skill, and diligence. Decided cases like *"Re Smith & Fawcett Ltd"*<sup>105</sup> have clarified the fiduciary nature of these duties.
2. **Shareholder Rights:** Sections 283 to 329<sup>106</sup> deal with shareholder rights, such as the right to vote, convene meetings, and access company information. The case of *"Bainbridge v. United Kingdom Water Features Ltd"*<sup>107</sup> is an example of a case where shareholder rights were upheld by the courts.
3. **Disclosure Requirements:** The Companies Act imposes strict disclosure requirements. Sections 394 to 396A govern the content and publication of financial statements. The case of *"Regina (on the application of Davis and another) v. Secretary of State for Business, Enterprise and Regulatory Reform"* (2008) illustrates the importance of adherence to these requirements.

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<sup>104</sup> Companies Act (2006) (UK)

<sup>105</sup> Re Smith & Fawcett Ltd (1942) 1 All ER 542 Ch 304

<sup>106</sup> Ibid., p.47

<sup>107</sup> Bainbridge v. United Kingdom Water Features Ltd (1960)

4. Derivative Actions: Section 261 to 264 provide for derivative actions, allowing shareholders to take legal action on behalf of the company. The case of "Foss v. Harbottle" (1843) set the foundation for derivative actions.

5. Market Abuse Regulation: The Companies Act incorporates elements of EU law, such as the Market Abuse Regulation (MAR). MAR, in combination with domestic provisions, regulates insider dealing and market manipulation. The case of "*R (on the application of FCA) v. Market Force (UK) Ltd*"<sup>108</sup> demonstrates the enforcement of market abuse regulations.

These statutory provisions and the decided cases surrounding them shape the legal landscape of corporate governance in England, providing a framework for the behavior of companies, directors, and shareholders.

## **4.4 Common Law Principles**

### **4.4.1 Common Law and Corporate Governance**

While statutory law plays a significant role in shaping corporate governance in England, common law principles also exert a profound influence. Common law, developed through judicial decisions over centuries, forms the foundation upon which corporate governance practices are built<sup>109</sup>. Here, we examine several key common law principles that impact corporate governance:

1. Majority Rule and Minority Rights: Common law recognizes the principle of majority rule, but it also provides protections for minority shareholders. The case of *Foss v. Harbottle*<sup>110</sup> established the rule in the majority's favor while allowing for derivative actions in exceptional cases.

#### **2. Equitable Remedies**

Injunctions and Specific Performance: Common law courts have the authority to grant equitable remedies, such as injunctions and specific performance orders, to rectify

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<sup>108</sup> Ibid., p.47

<sup>109</sup> Ibid., p.25

<sup>110</sup> Foss v Harbottle (1843) 67 ER 189

breaches of corporate governance standards. The case of "*Warman International Ltd v. Dwyer*"<sup>111</sup> illustrates the use of injunctions in corporate disputes.

### 3. The "Business Judgment Rule"

The common law "business judgment rule" presumes that directors act on an informed basis, in good faith, and in the honest belief that their actions are in the best interests of the company. Courts typically defer to the judgment of directors unless evidence of a breach of fiduciary duty exists. This principle was reinforced in *Re Smith & Fawcett Ltd*<sup>112</sup>.

### 4. Precedent and Stare Decisis

The English legal system relies heavily on precedent (stare decisis). Past decisions of higher courts serve as binding authority for lower courts. This principle ensures consistency and predictability in corporate governance cases.

These common law principles, developed and refined through centuries of jurisprudence, form the backbone of corporate governance in England<sup>113</sup>. They provide a flexible framework that adapts to the evolving needs of businesses and shareholders while upholding fundamental principles of fairness and accountability.

#### **4.4.2 Fiduciary Duties of Directors**

Fiduciary duties are the legal obligations that directors owe to their company and its shareholders. These duties are crucial to ensuring that directors act in the best interest of the company and its stakeholders, rather than for personal gain or the interests of a third party. Over the years, various court cases have helped to shape and define the parameters of these fiduciary duties. Here, we will discuss some of the landmark cases that have contributed to the development of the fiduciary duties of directors.

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<sup>111</sup> *Warman International Ltd v. Dwyer* (1995) 1 ALL ER 579

<sup>112</sup> *Ibid.*, p.47

<sup>113</sup> Organization of Economic Cooperation and Development, (2004), *Principles of Corporate Governance*- revised edition

- a) **Duty of Care:** The duty of care requires directors to act with the care that an ordinarily prudent person would exercise in similar circumstances. In the case of *Re City Equitable Fire Insurance Co*<sup>114</sup>, the court held that directors must exhibit a certain standard of care and skill. This case established the principle that directors should act honestly and in good faith, with the level of care and skill that may be reasonably expected from someone with their knowledge and experience. Subsequent cases such as *Dorchester Finance Co Ltd v Stebbing*<sup>115</sup> and *Re Barings plc*<sup>116</sup> further emphasized the importance of directors' due diligence and prudence in decision-making.
- b) **Duty of Loyalty:** Directors have a duty to act in the best interests of the company and not to allow personal interests to conflict with the interests of the company. In the case of *Regal (Hastings) Ltd v Gulliver*<sup>117</sup>, it was held that a director cannot make a secret profit or gain a personal advantage from their position without the company's informed consent. Similarly, *Furs Ltd v Tomkies*<sup>118</sup> emphasized that a director should not put themselves in a position where their personal interest's conflict with those of the company.
- c) **Duty to Avoid Conflicts of Interest:** Directors must avoid situations where their personal interests may conflict with the interests of the company. In the case of *Boardman v Phipps*<sup>119</sup>, it was established that even if a director genuinely believes that their actions are in the company's best interests, they must disclose any personal interests that might affect their judgment. This case highlighted the significance of full disclosure to the board and shareholders when faced with potential conflicts of interest.
- d) **Duty to Act within Authority:** Directors must exercise their powers in accordance with the company's constitution and for the purposes for which they were conferred. In the case of *Hickman v Kent or Romney Marsh Sheep-Breeders'*

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<sup>114</sup> Re City Equitable Fire Insurance Co. (1925) Ch 407

<sup>115</sup> Dorchester Finance Co Ltd v Stebbing (1989)

<sup>116</sup> Re Barings plc (No 5) (2000)

<sup>117</sup> Regal (Hastings) Ltd v Gulliver (1942) UKHL 1

<sup>118</sup> Furs Ltd v Tomkies (1936)

<sup>119</sup> Boardman v Phipps (1967) 2 AC 46

*Association* the court emphasized that directors must act within the powers granted to them under the company's articles of association and must not exceed their authority.<sup>120</sup>

- e) Duty to Promote the Success of the Company:** Under the Companies Act 2006<sup>121</sup> in the UK, directors have a duty to promote the success of the company for the benefit of its shareholders as a whole. This duty requires directors to consider the long-term consequences of their decisions and take into account the interests of employees, customers, suppliers, and the community, among others. Notable cases such as *Eclairs Group Ltd v JKX Oil & Gas plc*<sup>122</sup> have highlighted the importance of considering broader stakeholders' interests.

These cases, among others, have played a crucial role in shaping the fiduciary duties of directors, emphasizing the significance of integrity, diligence, loyalty, and prudence in the execution of their responsibilities. Directors are expected to navigate complex business environments while upholding the highest ethical standards and ensuring the best interests of the company and its stakeholders are prioritized.

#### **4.4.3. Shareholder Rights**

Shareholders play a crucial role in the governance and operation of companies. They are individuals or entities who own shares in a corporation, entitling them to certain rights and obligations. These rights and obligations are established and regulated by various legal frameworks, with the Companies Act 2017 being a significant piece of legislation in this context. Section 141 (2) (a) of the Companies Act 2017<sup>123</sup> outlines the fundamental rights that shareholders possess in a corporate entity. These rights encompass a range of

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<sup>120</sup> *Hickman v Kent or Romney Marsh Sheep-Breeders'* (1915) 1 Ch 881.

<sup>121</sup> *Ibid.*, p.46

<sup>122</sup> *Eclairs Group Ltd v JKX Oil & Gas Plc* (2015)

<sup>123</sup> The Companies Act No. 10 of 2017

privileges, which can be exercised by the shareholders. Let's break down some of the key rights:

### 1.Right to Vote

Shareholders have the right to participate in the decision-making process of the company by voting on important matters such as one vote in a poll at a meeting of the company on any resolution concerning the: -

- i) appointment or removal of a director or auditor;
- ii) alteration / amendment of the articles of association;
- iii) amalgamation of the company with another; and
- iv) placing the company into liquidation and
- v) receive dividends if and when dividends are declared; and the residual capital of the company after it is liquidated.

The case of *Re Duomatic Ltd*<sup>124</sup>, the court recognized the informal unanimous consent of shareholders as a valid exercise of voting rights.

### 2.Right to Dividends

Shareholders are entitled to a portion of the company's profits in the form of dividends, which are typically distributed according to the number of shares owned. The Companies Act 2006 mandates disclosure requirements. In *Foss v. Harbottle*, it was held that shareholders sought to enforce their right to dividends through a derivative action.

### 3.Right to Information

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<sup>124</sup> *Re Duomatic Ltd* (1969) 2 Ch 365

Shareholders have the right to access certain information about the company's financial health, performance, and governance, section 141 (2) (d). This transparency ensures that shareholders can make informed decisions.<sup>125</sup> The case of "*Bushell v. Faith*"<sup>126</sup> emphasized the importance of providing shareholders with adequate information.

#### 4.Right to Transfer Shares

Shareholders can usually transfer their shares to others unless restricted by the company's articles of association or any legal provisions.

#### 5.Right to Sue

Shareholders can take legal action on behalf of the company if they believe that the company's management has acted unlawfully or against the company's best interests. This is known as a derivative action.<sup>127</sup>

It is also trite under section 141 (2) (b)<sup>128</sup> that shareholders have the right to request a statement of their rights, from the board of directors, which sets out:

- i) The class of shares held by the shareholder,
- ii) The total number of shares of that class issued by the company, and the number of shares of that class held by the shareholder;
- iii) Any restrictions on the transferability of shares held by the shareholder; and

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<sup>125</sup> Ibid., p51

<sup>126</sup> *Bushell v. Faith*

<sup>127</sup> Richard A. Brealey, Stewart C. Myers, and Franklin Allen: "Principles of Corporate Governance" (2022)

<sup>128</sup> Ibid., p.53

- iv) The relationship of the shares held by the shareholder to other classes of shares.

Overall, the legal framework surrounding shareholder rights and minority protections is crucial for maintaining the integrity of corporate governance and ensuring a fair and equitable environment for all shareholders, regardless of their stake in the company. It is essential for legal systems to continue evolving to address the complex challenges and issues that arise in corporate governance and to provide adequate protection for minority shareholders.

#### **4.4.4 Shareholder Responsibilities**

While shareholders have rights, they also bear certain responsibilities:

##### **1. Duty to Act in Good Faith**

Shareholders are expected to exercise their rights in good faith and in the best interests of the company. This duty aligns with the common law principle of acting in the best interests of the company. Cases like "*Ebrahimi v. Westbourne Galleries Ltd*"<sup>129</sup> (1972) highlight the need for shareholders to act in good faith when exercising their rights.

##### **2. Duty Not to Abuse Rights**

Shareholders should not abuse their rights to the detriment of the company or other shareholders. Courts can intervene if shareholders engage in oppressive or prejudicial behavior. The case of *Pettit v. Pettit*<sup>130</sup> underscores the importance of balancing shareholder rights with the interests of the company.

##### **3. Engagement and Stewardship**

Shareholders are encouraged to engage actively with the company, attend meetings, and exercise their voting rights responsibly. This engagement is vital for effective corporate

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<sup>129</sup> *Ebrahimi v. Westbourne Galleries Ltd* (1972) 2 All ER 492

<sup>130</sup> *Pettit v. Pettit* (1970) 2 WLR 769

governance. Decisions like *Elliott v. Telewest Global, Inc.*<sup>131</sup> highlight the role of activist shareholders in corporate governance.

The delicate balance between shareholder rights and responsibilities is central to the functioning of corporate governance in England. It ensures that shareholders have a voice in corporate decisions while upholding their fiduciary duties to the company and fellow shareholders.

## **4.5 Directors' Duties and Liabilities**

### **4.5.1 Director's Fiduciary Duties**

Directors are central figures in corporate governance, entrusted with key responsibilities. Their conduct is governed by fiduciary duties that are critical to the proper functioning of companies:

#### **1. Duty of Loyalty**

The duty of loyalty requires directors to act in the best interests of the company. This means putting the company's interests ahead of personal interests or the interests of others. In the case of *"Regal (Hastings) Ltd v. Gulliver"*<sup>132</sup>, the court emphasized the importance of loyalty by directors.

#### **2. Duty of Care and Skill**

Directors must exercise a reasonable degree of care, skill, and diligence in carrying out their duties. This includes making informed decisions and staying informed about the company's affairs. In *"Re City Equitable Fire Insurance Co Ltd"*<sup>133</sup>, the court examined directors' duty of care and skill closely.

#### **3. Duty to Avoid Conflicts of Interest**

Directors are obligated to avoid situations where their personal interest's conflict with those of the company. If conflicts arise, they must disclose them and seek approval. The case of *"Regina (on the application of Davis and another) v. Secretary of State for*

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<sup>131</sup> *Elliott v. Telewest Global, Inc.*

<sup>132</sup> *Regal (Hastings) Ltd v. Gulliver* (1942) UKHL 1.

<sup>133</sup> *Re City Equitable Fire Insurance Co Ltd* (1925) Ch 407.

*Business, Enterprise and Regulatory Reform*<sup>134</sup> illustrates the legal ramifications of failing to disclose conflicts of interest.

#### 4.5.2 Directors' Liabilities

Directors can face various liabilities for breaches of their duties:

##### 1. Civil Liabilities

Breach of fiduciary duties can lead to civil liabilities. Shareholders, the company, or regulatory authorities may take legal action against directors. In *"Hickman v. Kent or Romney Marsh Sheep-Breeders' Association Ltd"*<sup>135</sup>, the court examined civil liabilities of directors in the context of a company's articles of association.

##### 2. Criminal Liabilities

Directors can face criminal charges for serious breaches of their duties, such as fraud or mismanagement. The "Companies Act 2006" includes provisions for criminal offenses. The *"Blythe v. Birmingham Waterworks Co"*<sup>136</sup> case illustrates criminal liabilities for directors involved in fraudulent activities.

##### 3. Disqualification as a Director

Regulatory authorities can seek the disqualification of directors for misconduct. The "Company Directors Disqualification Act 1986"<sup>137</sup> empowers authorities to disqualify directors for up to 15 years. Cases like *"Secretary of State for Trade and Industry v. Aaron"*<sup>138</sup> exemplify the disqualification of directors due to misconduct.

Directors' duties and liabilities are essential components of corporate governance in England. They establish a framework of accountability that ensures directors act in the best interests of the company and its stakeholders.

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<sup>134</sup> Enterprise and Regulatory Reform (2008) EWHC 1035 (Admin)

<sup>135</sup> Hickman v. Kent or Romney Marsh Sheep-Breeders' Association Ltd (1915) 1 Ch 881.

<sup>136</sup> Blythe v. Birmingham Waterworks Co (1856, UK)

<sup>137</sup> Company Directors Disqualification Act (1986)

<sup>138</sup> Secretary of State for Trade and Industry v. Aaron (2005, UK).

## 4.6 Equitable Remedies

Equitable remedies are a set of remedies that a court can order in cases where the remedies available at law are deemed to be inadequate. These remedies aim to provide justice and fairness in situations where monetary compensation alone cannot fully address the harm caused. Equitable remedies are generally discretionary, meaning that the court decides whether to grant them based on the circumstances of each case. Some of the common equitable remedies include specific performance, injunctions, rescission, and restitution. Here, we will provide a brief discussion on each type of equitable remedy, supported by relevant case law.

1. **Specific Performance:** Specific performance is a remedy where the court orders the breaching party to fulfill their contractual obligations as agreed upon in the contract. This is often used in cases involving the sale of unique goods or real estate, where monetary compensation is not considered an adequate substitute. A landmark case that highlights the use of specific performance is the case of *Beswick v Beswick*<sup>139</sup>. In this case, the court ordered the defendant to carry out the terms of a contract to transfer shares, even though the defendant was not a party to the original contract. This decision emphasized the importance of honoring contractual obligations through specific performance.
2. **Injunctions:** Injunctions are court orders that restrain a party from performing a particular act or order them to perform a specific act. They are used to prevent future harm or injustice. An illustrative case that demonstrates the use of injunctions is *American Cyanamid Co v Ethicon Ltd*<sup>140</sup>. In this case, the court established the principles for granting interim injunctions, emphasizing the importance of balancing the interests of the parties and the potential harm that could result from not granting the injunction.
3. **Rescission:** Rescission is a remedy that allows the parties to a contract to cancel or annul the contract, as if it never existed. This is often used when a contract has

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<sup>139</sup> *Beswick v Beswick* (1968) AC 58

<sup>140</sup> *American Cyanamid Co v Ethicon Ltd* (1975) AC 396.

been entered into under circumstances involving misrepresentation, mistake, or undue influence. A notable case involving rescission is *Cooper v Phibbs*<sup>141</sup>, where the House of Lords allowed the rescission of a lease due to a mutual mistake as to the property's ownership. This case emphasized the importance of rectifying contracts that were entered into based on mistaken beliefs.

4. **Restitution:** Restitution is a remedy aimed at restoring the injured party to the position they were in before the unjust enrichment occurred. It involves the return of any property or benefits received from the other party. The case of *Foskett v McKeown*<sup>142</sup> is often cited concerning the restitutionary remedy. In this case, the House of Lords affirmed the principle of unjust enrichment and the need for restitution in cases where one party has benefited at the expense of another.

These equitable remedies serve as crucial tools for courts to ensure fairness and justice in legal disputes where common law remedies may not be sufficient. The application of these remedies is highly dependent on the specific facts and circumstances of each case, with courts exercising discretion to determine the appropriate remedy.

#### **4.7 Challenges in Corporate Governance**

While the legal framework for corporate governance in England is robust, it is not without its challenges and shortcomings. Recognizing and addressing these challenges are essential for the continued effectiveness of corporate governance:

##### **1. Executive Compensation and Accountability**

Challenge: Excessive executive compensation packages that seem disconnected from company performance have sparked concerns about accountability.

Example: The controversy surrounding the "Persimmon Plc" CEO's bonus package in 2018 raised questions about the alignment of executive pay with company performance<sup>143</sup>.

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<sup>141</sup> *Cooper v Phibbs* (1867) LR 2 HL 149

<sup>142</sup> *Foskett v McKeown* (2000) UKHL 29

<sup>143</sup> *Ibid.*, p.48

## 2. Shareholder Activism and Short-Termism

Challenge: Shareholder activism can sometimes prioritize short-term gains over long-term value creation, potentially undermining the stability of companies.

Example: The influence of activist investors in the "Unilever-Kraft Heinz" takeover bid in 2017 highlighted the tension between short-term gains and long-term sustainability.

## 3. Board Diversity and Composition

Challenge: Achieving diversity in board composition, including gender and ethnic diversity, remains a challenge, potentially limiting fresh perspectives.

Example: The debate over board diversity intensified with the introduction of the UK Corporate Governance Code's "Diversity and Inclusion" provisions in 2018.<sup>144</sup>

## 4. Ethical and Environmental Concerns

Challenge: Companies face increasing scrutiny regarding their ethical practices and environmental impact. Failure to address these concerns can lead to reputational damage.

Example: Environmental activists have targeted companies like "BP" over their contributions to climate change, urging them to adopt more sustainable practices.

## 5. Cybersecurity and Data Privacy

Challenge: The digital age has brought new challenges related to cybersecurity and data privacy. Companies must protect sensitive information and safeguard against cyberattacks.<sup>145</sup>

Example: The "TalkTalk" data breach in 2015 highlighted the importance of cybersecurity in corporate governance and the potential legal and reputational consequences.

### **4.7.1 Regulatory Responses**

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<sup>145</sup> Shleifer, A., & Vishny, R. W. (1997). "A Survey of Corporate Governance." *The Journal of Finance*, 52(2), 737-783.

Addressing these challenges often involves regulatory responses:

#### 1. Enhanced Disclosure Requirements

Regulators have increased disclosure requirements, ensuring companies provide more information on executive pay, board diversity, and environmental practices.

#### 2. Shareholder Engagement Guidelines

Regulatory bodies encourage shareholder engagement as a means to promote responsible shareholder activism.

#### 3. Sustainability Reporting

Companies are increasingly required to report on their sustainability efforts, aligning with global initiatives like the United Nations Sustainable Development Goals (SDGs).

#### 4. Data Protection Regulations

The introduction of the General Data Protection Regulation (GDPR) in 2018 strengthened data protection and privacy regulations.

While the legal framework continues to evolve to address these challenges, corporate governance remains a dynamic field that requires ongoing adaptation to new circumstances and concerns.

### **4.7.2 Comparing the English Legal System with International Frameworks**

Corporate governance is not limited to national boundaries. It is important to compare the English legal system's corporate governance framework with international counterparts, including Zambia:

#### 1. The English Legal System

Strengths: The English legal system boasts a long history of corporate governance regulation, a robust legal framework, and well-established common law principles.

Regulatory bodies like the FRC and the UK Corporate Governance Code provide clear guidelines.<sup>146</sup>

Challenges: Challenges include ensuring diversity in board composition and addressing concerns about executive pay. The legal framework has evolved to meet modern demands, but ongoing adjustments are necessary.

## 2. Zambia

Strengths: Zambia has made efforts to strengthen its corporate governance framework. The Securities Act of 2016<sup>147</sup> and the Companies Act of 2017<sup>148</sup> have introduced reforms. The Securities and Exchange Commission (SEC) oversees the capital market.

Challenges: Zambia faces challenges related to enforcement, transparency, and shareholder protection. The country is working to address these issues and enhance corporate governance practices.

## 3. International Comparisons

United States: The U.S. has a well-developed framework, including the Sarbanes-Oxley Act, which addresses corporate governance and financial reporting. Shareholder rights and proxy access are key features<sup>149</sup>. SOX is a significant piece of legislation that was enacted in 2002 in response to a series of high-profile corporate scandals such as Enron and WorldCom. This act is named after its sponsors, Senator Paul Sarbanes, and Representative Michael Oxley.

The primary objective of the Sarbanes Oxley Act is to enhance corporate governance, financial transparency, and the integrity of financial reporting. The act introduced a range of reforms and requirements such as whistleblower protection, internal control requirements over financial reporting, CEO and CFO certification of financial statements

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<sup>146</sup> Telegdy, A., Earle, J. S., Kasnovsky, V., Kucsera, C. (2002), Corporate Control: A Study of Firms on the Bucharest Stock Exchange, Eastern European Economics, Vol. 40, No. 3

<sup>147</sup> Securities Act No. 41 of 2016

<sup>148</sup> The Companies Act No. 10 of 2017 Ibid., p.51

<sup>149</sup> Becht, M., Bolton, P., & Roell, A. (2011). "Corporate Governance and Control." Handbook of the Economics of Finance, 1, 1-109.

and disclosures just to mention a few for publicly traded companies, auditors, and corporate executives.

Germany: Germany has a unique two-tier board system, known as the dual board system or the two-tier board model, which is different from the one-tier board system commonly found in many other countries. The two-tier board system is primarily used by large German companies particularly those structured as stock corporations. It aims to balance the interest of various stakeholders, including shareholders and employees. This system is often seen as contributing to a long-term perspective, stakeholder collaboration, and stability in German corporate governance practices.<sup>150</sup>

Japan: Japan's governance reforms focus on increasing board independence and shareholder engagement. The Stewardship Code encourages institutional investors to play an active role.

South Africa: The King IV Code provides principles and practices for effective corporate governance in South Africa. It emphasizes the importance of ethical leadership, sustainability, and stakeholder inclusivity<sup>151</sup>. The code is applicable to all types of organizations, including public companies, private companies, non-profit organizations, and government entities.

### **4.7.3 Comparative Insights**

Zambia vs. England: Zambia is in the process of modernizing its corporate governance framework, drawing lessons from established systems like England. Both countries aim to strike a balance between investor protection and economic growth. However, Zambia faces unique challenges, including political and economic stability, which can impact governance.

International Comparisons: Comparative analysis reveals that corporate governance frameworks vary significantly across countries. While common principles exist, local contexts and legal traditions shape the specific rules and practices.

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<sup>150</sup> La Porta, R., Lopez-De-Silanes, F., Shleifer, A. (1999), Corporate Ownership around the World Journal of Finance, nr. 54 (2), p. 471–518

<sup>151</sup> Ibid., p.25

#### **4.7.4 Ongoing Improvements**

Both England and Zambia, along with many other countries, are committed to ongoing improvements in corporate governance. They recognize the importance of adapting to changing economic, social, and environmental landscapes to maintain investor confidence and drive sustainable economic growth.

#### **4.8 CONCLUSION**

This chapter has provided an extensive exploration of the legal framework of corporate governance within the English legal system. Key findings and insights can be summarized as follows:

1. **Statutory Framework:** The Companies Act 2006 is the cornerstone of corporate governance regulation in England, governing directors' duties, shareholder rights, and disclosure requirements.
2. **Common Law Principles:** Common law principles, including directors' fiduciary duties and shareholder remedies, complement statutory regulations and provide flexibility.
3. **Shareholder Rights and Responsibilities:** Shareholders have rights to vote, information, and dividends, but they also bear responsibilities to act in good faith and engage responsibly.
4. **Directors' Duties and Liabilities:** Directors owe fiduciary duties, and breaches can lead to civil and criminal liabilities, including disqualification.
5. **Challenges:** Corporate governance in England faces challenges, including executive compensation, shareholder activism, board diversity, ethical concerns, and cybersecurity.

In a nutshell, the legal framework of corporate governance in England is characterized by a rich history, robust regulations, and a commitment to adapt to contemporary challenges. By addressing these challenges and continuously refining the framework, England can maintain its position as a global leader in corporate governance, ensuring accountability, transparency, and responsible business practices.

## **CHAPTER FIVE**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 CONCLUSIONS**

Chapter one introduced the fundamental aspects of the research, its background, the statement of the problem that sought to be addressed, the research objectives, the research questions, the scope and significance of the study, various literature review that is cardinal to the study, limitation of the study, the ethical considerations to be followed. It also highlighted the salient features, the character, and the content of Chapter 2,3,4 and 5.

Chapter two argued that in today's interconnected and rapidly changing business landscape, corporate governance plays a pivotal role in ensuring the responsible and sustainable functioning of companies. The chapter undertook a comprehensive analysis of corporate governance in both developed and developing economies, supported by case examples and practical insights. From the established governance structures of developed economies to the evolving practices in developing nations, the significance of corporate governance transcends geographical boundaries. It is a critical driver of transparency, accountability, and ethical conduct, ultimately shaping the success and impact of companies on the global stage.

It has further been argued in the chapter that while challenges and criticisms persist, corporate governance continues to evolve to meet the demands of an increasingly complex business environment. Emerging trends, such as ESG integration and stakeholder-centric approaches, are reshaping governance practices and aligning them with a broader set of societal values.

To strengthen corporate governance, it is imperative that companies, governments, and stakeholders collaborate to address these challenges, leverage emerging trends, and implement recommendations for improvement. The benefits of effective corporate governance extend beyond legal compliance; they encompass sustainable growth, responsible behavior, and trust in business. As the global economy continues to evolve, corporate governance will remain a cornerstone for companies seeking to thrive in a world where ethical, responsible, and transparent practices are not only valued but expected.

The chapter further submits that by acknowledging the importance of corporate governance and actively working towards its enhancement, both developed and developing economies can pave the way for a future where businesses are not only profitable but also socially and environmentally responsible, contributing to the well-being of society as a whole.

Chapter three has explored the principles, significance, impact, and mitigation of corporate governance in both developing and developed economies. Here are the key takeaways from the discussion: Corporate governance is a set of principles and processes that guide how companies are directed and controlled. Key principles of corporate governance include transparency, accountability, fairness, responsibility, and independence. Effective corporate governance fosters trust and confidence, enhances shareholder value, and safeguards stakeholder interests. Governance practices influence organizational behavior, performance, and risk management. Identifying and mitigating governance challenges is crucial for organizational success. Real-world case studies and legal precedents illustrate the practical application of governance principles and their impact.

In a summary, the chapter argued that organizations are urged, both in developing and developed economies, to prioritize corporate governance. By adhering to best practices, implementing transparent and ethical governance frameworks, and learning from the successes and failures of others, organizations can enhance their performance, mitigate risks, and build trust with stakeholders.

Chapter four has provided an extensive exploration of the legal framework of corporate governance within the English legal system. Key findings and insights can be summarized as follows:

1. **Historical Evolution:** The historical development of corporate governance in England, from the Bubble Act of 1720 to the Companies Act 2006, has shaped the modern legal framework.
2. **Statutory Framework:** The Companies Act 2006 is the cornerstone of corporate governance regulation in England, governing directors' duties, shareholder rights, and disclosure requirements.
3. **Common Law Principles:** Common law principles, including directors' fiduciary duties and shareholder remedies, complement statutory regulations and provide flexibility.
4. **Regulatory Bodies and Codes:** Regulatory bodies like the FRC and voluntary codes such as the UK Corporate Governance Code play vital roles in promoting transparency and best practices.
5. **Shareholder Rights and Responsibilities:** Shareholders have rights to vote, information, and dividends, but they also bear responsibilities to act in good faith and engage responsibly.
6. **Directors' Duties and Liabilities:** Directors owe fiduciary duties, and breaches can lead to civil and criminal liabilities, including disqualification.
7. **Challenges:** Corporate governance in England faces challenges, including executive compensation, shareholder activism, board diversity, ethical concerns, and cybersecurity.
8. **Comparative Analysis:** A comparative analysis with international frameworks highlights both strengths and challenges in corporate governance practices.

In a nutshell, the legal framework of corporate governance in England is characterized by a rich history, robust regulations, and a commitment to adapt to contemporary challenges. By addressing these challenges and continuously refining the framework, England can maintain its position as a global leader in corporate governance, ensuring accountability, transparency, and responsible business practices.

## **5.2 RECOMMENDATIONS**

Enhancing corporate governance practices and policies is crucial for promoting transparency, accountability, and sustainability in both developing and developed countries. Here are some recommendations to improve corporate governance:

### **5.2.1 Enhance Board Diversity:**

Diverse boards are more likely to encourage constructive debates which leads to better decision making and the ability to adapt to changing market conditions more effectively. To realize these benefits, it is important to promote diversity in its broadest sense, including gender, ethnicity, age and professional backgrounds, to bring varied perspectives to governance. This will help create an inclusive board culture that respects and values diverse perspectives and ensure equitable participation and avoids tokenism.

### **5.2.2 Strengthen Ethics and Compliance:**

By developing and enforcing robust ethics and compliance programs within an organization, it helps establish a culture of integrity. This can be achieved by setting clear expectations for ethical behaviour and promoting zero tolerance approach to misconduct. This, in turn enhances governance of the organization.

### **5.2.3 Implement Disclosure, Transparency and ESG Practices:**

ESG practices provide a framework for companies to integrate environmental, social and governance considerations into their business strategies. By doing so, companies can strengthen their governance practices and align their operations with broader societal goals and create long term-value creation for both stakeholders and shareholders. Companies can also be encouraged to adopt comprehensive and timely disclosure practices, including financial reporting, risk management and corporate social responsibility. Transparent reporting builds trust among stakeholders and enables informed decision-making.

### **5.2.4 International Collaboration:**

Foster international collaboration and knowledge sharing on corporate governance practices, organizations like the international Corporate Governance Network (ICGN) and the Organization for Economic Co-operation and Development (OECD) provide platforms for sharing best practices and developing global standards.

#### **5.2.5 Strengthen Legal and Regulatory Reforms:**

Regular monitoring, evaluation, and updates of regulations are necessary to address emerging challenges and evolving governance practices which can contribute to the development of effective reforms that support good corporate governance.

#### **5.2.6 Whistleblower Protection:**

Whistleblowers play a crucial role in improving corporate governance as they help prevent fraud, corruption and other financial irregularities by exposing wrong doing, promoting accountability, and facilitating necessary reforms. By developing robust mechanisms that protect whistleblowers who may report unethical or illegal activities with the organizations, this will encourage employees to come forward with concerns without fear of retaliation.

#### **5.2.7 Capacity Building:**

Promote training and education programs on directors, executives, and governance professionals to improve understanding and compliance with governance principles. Building awareness of governance practices can contribute to a culture of accountability and ethical behaviour.

#### **5.2.8 Leverage Technology:**

Technology facilitates efficient communication and collaboration among board members, management, and stakeholders. Digital platforms such as video conferencing tools, and collaboration software enable remote and real time communication making it easier for geographically dispersed individuals to participate in meetings, share documents and collaborate on governance related matters. This enhances decision-making processes and promotes effective governance practices.

#### **5.2.9 Executive Compensation:**

Implement transparent and performance-based executive compensation practices that align the interests of executives with long-term shareholder value. Disclose executive compensation details to ensure accountability.

Practical Example: The Rise of ESG Integration:

Many companies, including global giants like Microsoft and Unilever, have integrated ESG considerations into their business strategies, recognizing that responsible governance and sustainability can enhance long-term value.

Practical Example: Regulatory Reforms in the European Union (EU):

The EU's Sustainable Finance Action Plan introduces regulatory changes that encourage sustainability reporting and responsible investment practices, illustrating the role of governments in shaping governance trends.

Corporate governance practices may vary depending on the cultural, legal, and economic contexts of each country. By embracing these recommendations, both developed and developing economies can work toward improving corporate governance practices that align with evolving global standards and address the needs and expectations of stakeholders.

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