REGULATION OF BOARD DYNAMICS IN CORPORATE GOVERNANCE LEGAL FRAMEWORK IN MALAWI: A NECESSARY ADOPTION TOWARDS BOARD EFFECTIVENESS

MASTER OF LAWS (COMMERCIAL) THESIS

VITUMBIKO POGGIE MWANDEMANGE GUBUDUZA

UNIVERSITY OF MALAWI

MARCH 2022

REGULATION OF BOARD DYNAMICS IN CORPORATE GOVERNANCE LEGAL FRAMEWORK IN MALAWI: A NECESSARY ADOPTION TOWARDS BOARD EFFECTIVENESS

MASTER OF LAWS (COMMERCIAL) THESIS

VITUMBIKO POGGIE MWANDEMANGE GUBUDUZA

LLB (Honours) – University of Malawi

Thesis submitted to the Faculty of Law, University of Malawi, in partial fulfilment of the requirements for the award of the degree of Master of Laws (Commercial)

University of Malawi

March 2022

DECLARATION

I, the undersigned, hereby declare that this thesis is my own original work, which has not been submitted to any other institution for similar purposes. Where other people's work has been used, acknowledgement have been made.

Full Legal Name

Signature

Date

CERTIFICATE OF APPROVAL

The undersigned certifies that this thesis represents the student's own work and effort and has been submitted with my approval.

Signature: ______________________________ Date _____________________________

Ngeyi Ruth Kanyongolo, PhD

Supervisor

ACKNOWLEDGEMENTS

I would like to acknowledge the support I got from the following people:

My husband, Mayamiko Gubuduza, and our children, Zahra (6) and Zayne (3), who have weathered the constant absence as I tried to juggle family, education, and career. It was extremely difficult for all of us.

My sister and best friend, Frieda Mwandemange, for never tiring of listening to my dreams, challenges, complaints, and never-ending plans; and for encouraging me to keep on course.

My supervisor, Dr Ngeyi Kanyongolo for checking up on me more than I checked up on her; for being patient, calmly pushing, guiding, and encouraging me throughout this exercise. Your calmness kept me calm when I got overwhelmed.

Thank you.

ABSTRACT

This study focuses on how board dynamics can enhance board effectiveness and positively impact corporate governance in Malawi through appropriate regulation. Bad boardroom behaviours have the potential to derail effectiveness of the board in promoting the long terms success of the company and its members. Research has shown that corporate failures occur even when companies have complied with structural, demographical, and other corporate governance principles. The study set out to examine the extent to which board effectiveness can be improved by incorporation of board dynamics in Malawi's corporate governance framework. The study explored the current legal framework of corporate governance in Malawi, the extent to which board dynamics improve board effectiveness, and the need for their incorporation in the country's corporate governance legal framework to improve board effectiveness. The study found that the current corporate governance legal framework does not recognise the impact that boardroom behaviours can have on the effectiveness on the board. Further, it has not introduced the concept and components of board dynamics to ensure board effectiveness. The study therefore argues that there is a need to incorporate components of board dynamics in the country's corporate governance framework to limit corporate failures, and to ensure that the board promotes the long-term success of the company and its members.

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS

RBM	: Reserve Bank of Malawi
OECD	: Organisation for Economic Co-operation and Development
ICSA	: Institute of Company Secretaries and Administrators
FRC	: Financial Reporting Council
OECD	: Organisation for Economic Co-operation and Development
NCGRC	: National Corporate Governance Review Committee

CHAPTER ONE

INTRODUCTION

1.1 Background

Corporate governance is a system by which companies are directed and controlled.[1] It refers to the processes, structures, policies and laws that govern the management of a company, looks at how the board of directors of the company oversees the operations of the company, and how they are accountable to the company and its members.[2] These processes, structures, policies and laws form part of the current corporate governance framework that guides and regulates governance of companies. In Malawi, the Malawi Code II is the Code of Best Practice in corporate governance and was enacted in 2016 to become the Companies Act (Corporate Governance) Regulations 2016.[3] Further, Section 184(1) of the Companies Act[4] requires directors to comply with any code for corporate governance as may be prescribed and to comply with sector codes where they exist.[5] The Companies Act is to the effect that any code of corporate governance prescribed under the section shall be directory in nature.[6] The Companies Act contains structural requirements, corporate governance requirements, and the duties of the board.

The Board must ensure that they meet their responsibilities to promote the long-term success of the company and its members. Cross defined four responsibilities of the board as setting strategic aims, using leadership to implement these aims, supervising management and reporting to shareholders.[7] These aims are reflected in corporate governance codes in United Kingdom, South Africa, as well as in Malawi. The codes

---

[1]Brian Coyle, *Corporate Governance* (5th edn, ICSA Publishing Ltd 2016) page 4.
[2]Ibid.
[3]Companies Act No 15 of 2013, Chapter 46:03 of the Laws of Malawi
[4]No 15 of 2013
[5]Section 184(2) of the Companies Act No 15 of 2013
[6]Section 184(3) of the Companies Act No 15 of 2013
[7]Jeremy Cross, *Boardroom Dynamics*, (ICSA Publishing Ltd 2019) page 4

state what boards are supposed to do, what outcomes they should focus on and what structures they should have to achieve this.[8]

However, there is an emerging view that while these structures are important and necessary, the focus on committees, structures and tasks is not sufficient for boards to be effective and achieve their responsibilities in practice.[9] The focus should instead be on how boards function, the group processes that underpin them, and the behaviors that board members may display both individually and collectively, referred to as boardroom dynamics.[10]According to Huse, corporate governance is seen as the interactions between various internal and external actors and the board members in directing a firm for value creation.[11]This is in line with the emerging view that the board's interactions and processes to achieve their responsibilities in practice is what constitutes corporate governance.

Board dynamics are the interactions between board members individually and collectively, and how these interactions influence and are influenced by their stakeholder system[12]. Most broadly, boardroom dynamics opens the black box of boardroom behaviors to see how boards carry out their responsibilities, rather than what is supposed to happen on paper.[13] They are about how boards behave and misbehave, rather than about what tasks they do; about how they discuss board issues rather than what issues they discuss.[14] If boards do not pay particular attention to how they behave and engage, individually and as a team, then the board will not be effective. As a result, the duties of board directors in setting strategic aims of the company may not be met. Board dynamics are key in ensuring that boards that have met all corporate governance requirements do not fail.[15] The Malawi corporate governance legal framework excludes board dynamics from its scope. Further,

---

[8] Ibid.
[9] Ibid.
[10] Ibid. United Kingdom is an example a jurisdiction that is continually reforming to adopt board dynamics as a principle of best practice. The UK Corporate Governance Code was amended in 2013, 2016, 2018 in a bid to improve and incorporate requirements pertaining to board processes to manage board dynamics.
[11] Morten Huse, *Board, Governance and Value Creation: The Human Side of Corporate Governance* (Cambridge University Press 2007) page 15
[12]Cross (2019), page 21.
[13]Ibid.
[14]Ibid.
[15] Cross (2019), page 4

available research on the performance and effectiveness of boards does not address the question of how boards make decisions although this may well be the most important factor in determining the effectiveness of the governance as an enterprise.[16]

There has been several failures and problems in major corporations like Enron, Volkswagen, Royal Bank of Scotland, and others. The cause of the Volkswagen crisis in 2015 related to diesel emissions causing the company to spend a lot of money to cover costs, pay for penalties and compensation claims. Further, the CEO and senior executives were indicted on fraud and conspiracy charges and the Board only found out the day before the scandal broke.[17] Locally, Malawi Savings Bank[18] was sold after losses due to toxic loans that were given to politicians of the ruling party showing deep lack of compliance culture and poor decision-making by the Board before the sale of the Bank.[19] Analysis of the causes of such corporate failures confirms that excessive risk-taking was linked to the failure of board oversight and board effectiveness.[20] These failures are not meant to suggest that the central tenets of governance are wrong but that they are often diluted or thwarted by human behavioral factors and that the structural elements are not enough.[21] Further, a process-oriented approach was more important than structure for boards of directors, like Volkswagen's, to be effective and to detect, deter, defend against malfeasance and corruption.[22] Commentary from the regulators, investor community and from those in

---

[16] Richard LeBlanc and James Gilles, *Inside the Board Room: How Boards really work and the Coming revolution in Corporate Governance* (John Willey and Sons 2005) page 25

[17] Cross (2019), page 7

[18] <https://www.voanews.com/africa/public-pressure-forces-malawis-president-suspend-bank-sale>; <https://www.mwnation.com/mps-amnesia-affects-malawi-savings-bank-resolve/>; <https://african.business/2015/08/finance-services/controversy-as-government-sells-malawi-savings-bank/>; <https://times.mw/government-revives-malawi-savings-bank-debt-collection/>; accessed on 7th February 2021

[19] Other companies include Citizen Insurance Company Limited (*In The Matter Of The Financial Services Act 2010 Exparte: The Registrar Of Financial Services,* Commercial Case No. 55 Of 2011); and Alliance Capital Limited whose failure suggest that at management and board level, presence of board dynamics could have prevented cases going to the extent they did. See also <https://www.mwnation.com/citizen-insurance-company-under-liquidation/;https://malawilii.org/mw/judgment/high-court-commercial-division/2012/5> accessed on 23rd December 2020;

[20] 2010 United Nations Conference on Trade and Development, 'Corporate Governance in the wake of the Financial Crisis; downloaded on <https://unctad.org/system/files/official-document/diaeed20102_en.pdf> page 1

[21] Ibid.

[22] 2010 United Nations Conference on Trade and Development, 'Corporate Governance in the wake of the Financial Crisis; downloaded on <https://unctad.org/system/files/official-document/diaeed20102_en.pdf> page 1 accessed 29th December 2020

the broader governance community focuses on the areas that have shown do not consistently equate with governance outcomes.[23] The omission has implications in that it can lead to board ineffectiveness and multiple failures as has been noted internationally as well as locally where governance failures were disguised as caused by corruption and 'core institutional weakness'.[24] These governance failures may easily have been caused by very poor corporate governance processes and lack of appreciation of impact of boardroom dynamics. The failure to fully appreciate and ensure proper board interactions, in addition to board structure or board demographics, will have a negative impact on board effectiveness, and in turn, lead to poor governance.

1.2 Problem Statement

There have been corporate governance failures even where companies have complied with best practice relating to board structures and board demographics.[25] These corporate failures have shown a lack of boardroom effectiveness despite complying with the core corporate governance principles. It is suggested that meeting all requirements relating to board structures and demographics does not bring about an effective board. A report on Boardroom Behaviours by Sir David Walker found that appropriate boardroom behaviours are an essential component of best practice corporate governance.[26] It also found that the absence of guidance on appropriate boardroom behaviour represents a structural weakness in corporate governance systems.[27] It is established that components of board dynamics is the missing piece in ensuring that there are no governance failures.[28]The Malawi corporate governance legal framework which consists of the Companies Act, The Companies Act (Corporate Governance Regulations) the Malawi Stock Exchange Rules, Malawi Code II and Sector Guidelines, and Reserve Bank of Malawi directives, will be reviewed to assess whether it provides for board dynamics within its scope.

---

[23]Ibid, Page 72

[24]Cash gate Scandal was indicated as caused by corruption but could have been caused by core institutional failures which show that poor corporate governance was part of the problem. See https://www.theguardian.com/global-development/poverty-matters/2014/feb/28/malawi-cashgate-corruption-scandal-accountability > accessed 29th December 2020.

[25]Cross (2019), Page 4

[26]David Walker, 'Boardroom Behaviours,' A report by the Institute of Chartered Secretaries and Administrators (ICSA) 2009, page 3.

[27]Ibid.

[28]Ibid.

1.3 Objectives of the study

The main objective of this thesis is to examine the extent to which board effectiveness can be improved by incorporation of board dynamics in Malawi's corporate governance legal framework. Specifically, the thesis assesses how board dynamics improve board effectiveness. Further, the study reviews the content of Malawi's current legal framework to assess whether board dynamics have been considered in the legal framework. The thesis proposes how board dynamics can be incorporated in the corporate governance legal framework to ensure that they improve board effectiveness when followed. The thesis, therefore, contributes to the corporate governance framework in arguing for the boardroom effectiveness through incorporation of board dynamics so that policy and lawmakers consider adopting board dynamics to enhance corporate governance objectives. This thesis argues that consideration of board dynamics in Malawi's corporate governance legal framework can positively impact board effectiveness and promote long- term success of the company.

1.4 Research Questions

This research investigates the following main question: To what extent can board effectiveness be improved by incorporation of board dynamics in Malawi's corporate governance legal framework? Specifically, the study addresses the following research questions:

1. What is the content of the current legal framework of corporate governance in Malawi vis-à-vis board dynamics?
2. To what extent do board dynamics improve board effectiveness?
3. How can board dynamics be incorporated in Malawi's corporate governance legal framework to improve board effectiveness?

1.5 Significance and justification of the Study

This thesis makes a significant contribution towards the deepening of knowledge on this emerging aspect of corporate governance and board effectiveness, and how boards can ensure value creation of the companies they sit on. The results of the research will thus be a reference point for stakeholders on this subject as they consider proposing some changes in the current corporate governance legal framework. The thesis will also act as a guide to company secretaries on how they can incorporate and support the introduction of board dynamics in their respective boardrooms to ensure effective decision-making and board effectiveness, and ultimately enhanced corporate governance.

The study also discourages the lack of proactiveness that can be prevalent among company secretaries in most companies where their duty is limited to note taking and production of minutes. This study will support and empower the company secretary in taking the view that as governance professionals, they are supposed to support the directors in promoting the success of the company and ensure that the company strategy is met. The company secretary and the Chair have a role to ensure that the Board has an environment that allows them to have robust interactions and ensure that their relationships allow them to debate and make proper decisions. The Chair and Company secretary therefore need to set and facilitate an environment that brings all the board dynamics components into the fore. This study will therefore not only help law makers, but it will also empower the Chair, Company Secretaries (and directors as well) to ensure appropriate board dynamics in their companies and executive meetings. This will in turn ensure that boards are effective in carrying out their duties.

1.6 Hypothesis

The study proceeds on the premise that board behaviours can lead to an effective board if they are managed or regulated; and therefore, that the board will not be effective if the current corporate governance legal framework in Malawi does not regulate board dynamics.

1.7 Scope of the Study

The study examines how board effectiveness can be improved by incorporating board dynamics in Malawi's corporate governance legal framework. It should, however, be noted that this thesis is not exhaustive regarding what the corporate governance requirements should entail. The thesis does not discuss corporate governance elements relating to structure and demographics as these are not relevant to the topic under discussion, except to show that they are not enough for the board to be effective. The thesis does not discuss all components of board dynamics but zeroes in on key components i.e. cohesion and challenge, decision making, diversity, stakeholder engagement and culture.

1.8 Literature Review

Literature on corporate governance generally has focused on demographics and structure of the board, and less on corporate dynamics.[29] With regard to books on corporate governance, the focus is generally on the general principles of corporate governance including the legal and regulatory aspects of governance.[30] Coyle discusses corporate governance elements relating to remuneration, relationship with shareholders, reporting to shareholders, boardroom practice, risk management, internal controls, and corporate social responsibility and sustainability.[31] He argues that an effective board of directors, must have an appropriate balance of skills and experience, and well-motivated individuals as directors; and that good corporate governance is meant to promote the best long term interests of the company.[32]

In their book, Wixley, Everingham and Louw[33] attempt to deal comprehensively with numerous and varied responsibilities assumed by company directors, by incorporating latest developments in governance. They provide a practical guidance to enable directors to discharge those responsibilities effectively, not only in terms of compliance but also in terms of ensuring sustainability and long-term growth.[34] They focus on King IV Report and the enhanced responsibilities of directors to ensure that there are no failures in corporate governance. However, they do not discuss board dynamics and how these can prevent corporate failures if heeded by directors and company secretaries. This thesis, therefore, fills the void by focusing on board dynamics as an emerging tool for board effectiveness.

Interviews carried out by Lotendre unanimously characterized board dynamics as very important or extremely important.[35] The interviews confirmed Lotendre's hypothesis that board dynamics is a highly significant variable in board efficacy even though it

[29]Coyle (2016), page 4
[30]Ibid.
[31]Coyle (2016) page 5
[32]Coyle (2016), page 21
[33]Tom Wixley, Geoff Everingham and Karen Louw, *Corporate Governance: The Directors Guide* (5th edn, Siber Ink CC 2019) page 1.
[34]Ibid.
[35]Lotendre, L., 'The Dynamics of the Boardroom' (2004) 18 *Academy of Management Executive* 101 on page 101

has received very little attention in research.[36] He found that independent, intrepid, informed, diverse (in background and expertise) directors willing to speak up when concerned and to challenge management and each other, are crucial to healthy and constructive board dynamics and to effective corporate governance.[37]

Other writers support the argument that focus should be on how boards work and the behaviour faculties that need to be managed. LeBlanc[38], Steinberg, and Macincini[39] and others, found that searching for and promoting a greater understanding of how boards make decisions, and the factors that lead to board and director effectiveness will lead to good governance and organisational performance. LeBlanc opines that the mix of behavioural characteristics of directors have a major impact on the way in which directors make decisions and, by extension, on the effectiveness of governance of the corporation.[40] Some directors were of the view that creating the right chemistry was the most important factor in achieving board effectiveness;[41] and that the elusive notion of group chemistry for board and management was a significant factor in determining the effectiveness of the governance of an enterprise, even though it is difficult to define, let alone create.[42]

Most studies have also shown that regulation is a key part of corporate governance. An Institute for Company Secretaries and Administrators (ICSA) report on Boardroom Behaviours holds that the absence of guidance on appropriate boardroom behaviours represents a structural weakness in the current system and is an opportunity to be explored to prevent recurrent of corporate failures.[43] This is because studies have shown that most companies involved in scandals met all structural and demographical regulatory requirements. This approach was taken by the United States of America (USA) who immediately after the spate of corporate failures, enacted the Sarbanes Oxley Act 2002. This recent shift occasioned by the numerous

---

[36] Ibid.
[37] Lotendre, 104
[38] Le Blanc, (2005), 138
[39] Minichilli, A et al., 'Board task Performance: An Exploration of Micro-and Macro-Level Determinants of Board Effectiveness', (2011) 33 *Journal of Organisational Behaviour,* 193
[40] LeBlanc, (2005), 139
[41] Leblanc,144
[42] Ibid, page 143
[43] Sir David Walker (2009) 'Boardroom Behaviours,' A report by the Institute of Chartered Secretaries and Administrators (ICSA), page 3

corporate failures, has further shown that board structures and demographics are not enough to promote board effectiveness and good governance.

The ICSA report, however, differs with the USA approach in that appropriate guidelines be proposed, even though researchers understood the difficulty and impracticality of prescribing appropriate behaviours. Leblanc on the other hand, is of the view that searching for and promoting a greater understanding of how boards make decisions and the factors that lead to board and director effectiveness does not imply the imposition of more rules and regulations; but that rather, it should be fewer.[44] He also opined that the role of the regulator should move more towards research on the relationship of corporate governance to corporate performance, on finding the issues that really matter in governance, and to providing information to organisations on how to deal with them.[45]

It has been argued by Minichilli[46] and Amaral-Baptista[47] that there are determinants that lead to board effectiveness that need to be implemented. While noting the gap in research in board effectiveness, they both identify board process, behavioral influences, cognitive, environmental, and social factors as having an influence on board effectiveness, board decision making and in turn, strategy execution. Several elements were noted that speak to board effectiveness. Amaral-Baptista opines further that there should be an instrument that helps boards gain additional insight into the non-structural factors that affect the quality of board performance, hence complementing the structural dimensions that are usually employed to assess board effectiveness.[48]

Apart from Cross, who summarizes various studies and discusses board dynamics and its various components, there is not much else written on board dynamics. This speaks

---

[44] LeBlanc (2005) page 256
[45] Ibid, page 256.
[46] See n.40
[47] Amaral-Baptista et al, 'Factors for Board Effectiveness from the Perspective of Strategy Implementation: Proposal of an Instrument, Corporate Ownership and Control,' (2010) Vol 8, issue 1, page 709
[48] Amaral-Baptista et al, 'Factors for Board Effectiveness from the Perspective of Strategy Implementation: Proposal of an Instrument, Corporate Ownership and Control,' (2010) Vol 8, issue 1, page 709

to the difficulty in researching and reviewing board interactions. LeBlanc suggests that lack of research in this area may have been due to the nature of boards, who as a class, tend to be closed groups, bound by confidentiality, privilege and are very difficult to access.[49] As a result, access to board meetings to study directors' behaviors has been through materials such as annual reports, proxy circulars, press releases and court hearings. The human factor in governance has been left out.[50] Available literature thus reinforces the thesis of this paper, that corporate governance literature does not discuss the impact of boardroom dynamics and board behavior on board effectiveness. There is need to delve into this topic because, if absent, board dynamics can negatively impact corporate governance.

Locally, the effect of boardroom dynamics and board dynamics has not be studied. While some writers have written about company law and law and practice of boardroom meetings,[51] the concept of board dynamics has not been investigated or studied. It is a new concept which needs to be investigated further to see if it can benefit corporate governance in Malawi and ensure that companies in Malawi become more foolproof in as far as corporate governance failures are concerned.

The literature sampled in this study shows that board dynamics is yet to be assessed in the Malawi context. Currently, focus is still on ensuring that board structures and board demographics are followed through, but adherence to board structures and demographics cannot prevent corporate governance scandals. This study is different from previous studies in that the focus is no longer on importance of board structures and board demographics. The focus is on how board dynamics can enhance board effectiveness and positively impact corporate governance in Malawi through appropriate regulation.

1.9 Methodology and Limitations of the Study

The study employs the doctrinal research methodology to answer the main and specific questions. Doctrine is known to be the synthesis of rules, principles, norms and values which justify any segment of law and presumes to be a part of general

[49] LeBlanc, page 25
[50] Ibid, page 26
[51] Alan Muhome, Law and Procedure of Corporate Meetings in Malawi, (Allan Hans Publishers 2019)

law.[52] Doctrinal research provides a systematic exposition of the rules governing a particular legal category; analyses the relationship between rules; explains areas of difficulty; and predicts future development.[53] Under this, the validity of the research is unaffected neither by the empirical world nor by an appeal to any external reality.[54] Conclusions are mostly dependent on black letter law or other written sources.

This methodology has been preferred because of the need to examine the regulatory framework which is in writing. The study has therefore considered books, statutes, directives and guidelines that Malawi has adopted regarding corporate governance. Reports, articles and results of research on board dynamics, board effectiveness and corporate governance were studied and considered. An analysis was therefore done to find out whether board dynamics components have been included as part of the corporate governance legal framework and whether such inclusion can lead to effectiveness of the board. Further, journal articles, policy papers arguing for and against board dynamics were looked at. The thesis has used such information to analyze and assess the impact of board dynamics on board effectiveness and corporate governance generally. It is from this analysis that the answer to the main questions was arrived as and recommendations made where appropriate.

The study did not go as far as taking the views from Company Secretaries or chairs of boards to understand whether they see the value in board dynamics and whether regulation of the same is the best approach. It is hoped that at the time of considering the regulation of the same, views from company secretaries and board directors will be considered. Be that as it may, the aim of contacting the company secretaries and board chairs was to understand their views on importance of board dynamics. In the researcher's view, the information from studies and research done on the subject was enough for the purpose.

---

[52]Pradeep M. D., 'Legal Research- Descriptive Analysis on Doctrinal Methodology', (2019) International Journal of Management, Technology and Social Sciences (IJMTS), 4(2), pp. 93–103. <doi: 10.47992/IJMTS.2581.6012.0075> page 97; and also, Hutchinson, Terry C. and Nigel Duncan. "Defining and describing what we do: Doctrinal legal research." Deakin Law Review 17 (2012): 83-119, at page 107

[53]Roper, Christopher (1987) 'Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission,' 5 J. Prof. Legal Educ., page 201.

[54]Ibid.

The other limitation is that relying on desk research has inherent challenges in that one can easily miss the contemporary issues on the ground. Efforts to use recent and relevant reports were made. The researcher also faced challenges in finding relevant materials from the University library. Most available journal articles and books are outdated and were not much useful as board dynamics, though it has been fairly introduced since the 2000s. Board dynamics has not been widely advocated for or regulated as proposals have been left to company secretaries and Chairs of boards to implement if deemed fit for their unique situations.

1.10 Layout of Chapters

Chapter 1 is the introduction to the study. Chapter 2 gives an overview of the conceptual and theoretical framework of board dynamics, board effectiveness and corporate governance. It discusses the behavioural theory of boards and the sociological legal theory underpinning board dynamics and corporate governance. Chapter 3 discusses the approaches to regulation of corporate governance, the current corporate governance legal framework, and the history of the framework. It argues that the current legal framework, while contradictory in terms of regulatory approach, is lacking due to absence of extensive requirements on board dynamics. Chapter 4 assesses selected components of board dynamics and their positive impact on board effectiveness and, in turn, corporate governance. This chapter argues that components of board dynamics impact the promotion of the success of the company, and good governance, thus allowing the board to be effective. Chapter 5 makes recommendations and concludes the study.

1.11 Conclusion

This chapter has introduced the study by first defining the concept of corporate governance and the emerging view that board structures, while important and regulated, are not sufficient for boards to be effective. The emerging view, which is to the effect that focus should be on interactions, behaviors and processes that underpin board meetings and decisions making is now advocated for. The chapter has also briefly explained the doctrinal research methodology which will be used to carry out the study. Hypothesis, problem statement and a justification of the study have been provided. Research objectives and justification of the study have also been outlined.

The chapter has also highlighted the methodology used in the study to obtain data. A review of the literature on a subject has been given as well as the layout of chapters.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK: BOARD DYNAMICS, BOARD EFFECTIVENESS AND CORPORATE GOVERNANCE

2.1 Introduction

This chapter analyses the concepts and theories that underpin this study. It provides a conceptual framework to board dynamics, board effectiveness, and corporate governance and the relationship amongst these three concepts. The theoretical framework for boardroom dynamics reflects the philosophical underpinnings of the relationship between board behaviours, boardroom dynamics and corporate governance. The framework provides a foundation for assessment of the need for board dynamics and the resultant legal reform. The chapter evaluates the behavioural theory of boards and sociological theory of law.

2.2 Conceptual Framework for Board Dynamics, Board Effectiveness and Corporate Governance

2.2.1 Board Dynamics

Boardroom dynamics are the interactions between board members individually and collectively in the boardroom.[55] Board dynamics, even though similar to boardroom dynamics, are those interactions that influence and are influenced by their wider stakeholder system.[56] The boardroom dynamics that emerge from the board are more than the accumulation of what board directors might individually bring.[57] The thesis mainly discusses how these boardroom dynamics impact board effectiveness and how components of board dynamics shape and are shaped by, the culture and behaviours outside the boardroom. Cross proposed a broader model of corporate governance which considers structural, demographics, attributes and dynamics called the 11Cs of

[55]Cross (2019), Page 73
[56]Ibid
[57]Ibid.

corporate governance.[58] The focus is on the 4th quadrant of axis of Board and Behavioural in Practice which consists of board dynamics. These include board cohesion and challenge, decision-making, stakeholder engagement, leadership culture, ethics, diversity, and board environment which have an impact on board effectiveness. The following chapter will, however, focus on board cohesion and challenge, decision-making, diversity, stakeholder engagement and culture as these are crucial to board effectiveness so that a deeper study of these components can be made out.

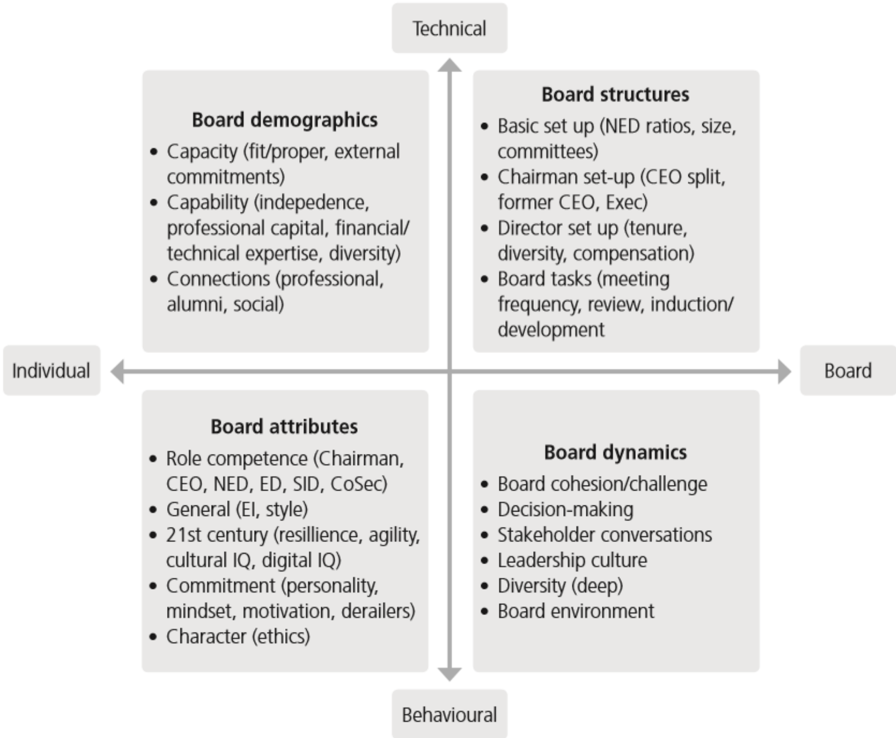

Fig 1: The 11 Cs Model of Corporate Governance (adapted from Cross, 2013), including detailed components for each quadrant.

2.2.1.1 The case for Board Dynamics

There is increased recognition of the mismatch between results of science and the governance processes for companies.[59] Directors know that boardrooms are not consistently rational places and that human factors such as trust, power, influence and relationships are key to performance.[60] There is an assumption that companies survive because they have optimal governance structures.[61] Long concluded that for

[58]Cross (2019) Page 17
[59]Cross (2019), page 71
[60]Ibid, 72
[61]Long, Tracy, 'The Evolution of FTSE 250 Boards of Directors: Key Factors Influencing Board Performance and Effectiveness,'(2007) 32 *Journal of General Management* 45; also, page 72 of Cross

practitioners and scholars alike, corporate governance and board performance are inextricably linked but not fully understood.[62] LeBlanc has thus argued that board process may be the missing link between corporate governance and corporate performance which will be found in the appropriate interaction of boards for successful decision making.[63] Bad behaviour scuppers good governance consistently such that the people element of governance is essential as its the reason companies fail.[64] The power of behaviours has historically been underestimated in board meetings yet its impact has far reaching consequences on board effectiveness and organisational performance hence the proposition that this needs to be considered and managed by board directors. It is argued that that cohesiveness, debate, and conflict norms are intervening variables which mediate the relationships between board input and board outcomes and board effectiveness on the other hand.[65] While board structure is key, there is a need to shift our approach to governance to these intervening variables, relationships between board input and board outcomes, board behaviours that directors must have; and processes relating to board dynamics. Understanding boardroom dynamics is vital if boards are to be effective. Chapter 4 discusses in detail the major components of board dynamics and why lack of these can affect the effectiveness of the board.

2.2.2 Board Effectiveness

An effective board is vital to the long-term success of a company.[66] The United Kingdom Financial Reporting Council Guideline (FRC Guideline) in 2018 defined an effective board as one that defines the company's purpose and then sets a strategy to deliver it, underpinned by the values and behaviours that shape its culture and the way it conducts business.[67] An effective board will thereafter need to execute the strategy, values, behaviours and culture in the way it conducts business. Further, a successful company is led by an effective and entrepreneurial board, whose role is to promote

[62]Long, T., 'The Evolution of FTSE 250 Boards of Directors: Key Factors Influencing Board Performance and Effectiveness" (2007) 32 *Journal of General Management,* 45
[63] LeBlanc, (2005) page 29
[64]Cross (2019) page 72
[65]Abigail Levrau and Lutgart Berghe, 'Corporate Governance and Board Effectiveness: Beyond Formalism,' (2006), Vlerick Leuven Gent Management School, Vlerick Leuven Gent Management School Working Paper Series, page 6.
[66]Wixley et al., page 93
[67]The United Kingdom Financial Reporting Council, 2018, Guidance on Board Effectiveness, Page 4

the long-term sustainable success of the company, generating value for shareholders and contributing to the wider society.[68]

Section 177(1) of the Companies Act requires board directors to act in a way that promotes the success of the company for the benefit of its members. In so doing, the board must have regard for the interests of the company's employees, the need to foster the company's business relationships with suppliers, customers and others, the impact of the company's operations on the community and environment and the need to act fairly between members of the company. Section 177(2) allows different companies to have different or additional objectives other than promoting the success of its members, such that section 177(1) will apply as if those other objectives will promote the success of the company. Since the duty of the board is to define the purpose, values, culture, behaviours of the company and deliver it and also promote the success of the company with regard to interests of stakeholders, it follows that the elements that will bring about board effectiveness will be those that will empower the board to fulfil its purpose and duty under section 177(1).

2.2.2.1 Board Effectiveness and Boardroom Behaviours

An effective board defines the company's purpose and sets a strategy to deliver the purpose underpinned by the values and behaviours that shape its culture and the way it conducts business.[69] It is, therefore, no wonder that board effectiveness is deeply linked to the behavioural characteristics of the directors and the interaction between individual board members.[70] There is recognition that the behavioural nature of boards needs to be understood to gain greater accountability.[71] The integration of the Higgs Report with the other UK Corporate Governance Code in 2003 gave credence to the concept that board behaviour had an influence on board effectiveness.[72] The report identified board behaviour as an influence on board effectiveness and a wider

---

[68]Ibid

[69]The United Kingdom Financial Reporting Council, 2018, Guidance on Board Effectiveness, Page 3

[70]Ibid, page 157. Similar sentiments are reflected in the 2018 FRC Guidance on Board Effectiveness, on clause 6 of page 1

[71]Morten Huse, *Board, Governance and Value Creation: The Human Side of Corporate Governance* (Cambridge University Press 2007) page 15.

[72]Annie Pye & Andrew Pettigrew, 'Studying Board Context, Process and Dynamics: Some Challenges for the Future'(2005) 16 *British Journal of Management* 27-38. They hold the view that and personal characteristics and behaviour dynamics as influences on effective boards and that "a board and its effectiveness are defined by the integrity and character of board members"

predictor that might lead to strengthening board effectiveness. Board process, and others, may be a better predictor of the outcome of an effective board than a singular measure of firm performance.[73] The FRC Guideline on board effectiveness is to the effect that an effective board must define and set behaviours in the way it conducts its business. The Board therefore must have regard for those behaviours by putting in place processes that will allow the board to guard against behaviours that will derail the board from defining and executing their tasks and fulfilling the company's purpose. It is argued that such board dynamics processes must therefore be executed to ensure the board fulfils its purpose.

The mix of behavioural characteristics of directors has a major impact on the way directors make decisions, and by extension, on the effectiveness of the governance of the corporation.[74] Board behaviour improves or indeed derails board effectiveness, and in turn, organisational performance such that it is important to have a complete inventory of competencies and behavioural characteristics needed by the board to fulfil its functions.[75] It follows, therefore, that good board dynamics improve board effectiveness to a great extent. Further, it is suggested that board process, which is the manner in which boards organise to, and actually do make decisions, is key to ensuring that the board is effective.[76] This is because positive group processes and team-based characteristics are now seen as indicators of a board functioning effectively.[77] Minichilli et al show that board task performance processes affects corporate financial performance.[78] Board task performance, which focuses on how a board carries out its tasks and the processes it follows, will ultimately affect the performance of the company.[79] It follows, therefore, that if the board tasks are

---

[73]Shaker A Zahra & John A Pearce, 'Boards of Directors and Corporate Financial Performance: A Review and Integrative Model' (1989) 15 *Journal of Management*, 291-334 at 310

[74]Leblanc, (2005), page 138

[75]LeBlanc, (2005), page 148

[76]Ibid.

[77]Finkelstein, Sydney, and Ann C. Mooney. 'Not the Usual Suspects: How to Use Board Process to Make Boards Better' (2003) 17 *Academy of Management* pp. 101–13 < http://www.jstor.org/stable/4165959> accessed 19th November 2020.

[78]Aspasia S.Pastra,'Board of Directors' Dynamics, Board Effectiveness and Organisational Performance: The case of Nordic Region, 'A thesis submitted for the degree of Doctor of Philosophy, Brunel Business School Brunel University, September 2017, page 77

[79]Finkelstein, Sydney, and Ann C. Mooney. "Not the Usual Suspects: How to Use Board Process to Make Boards Better" (2003) 17 *Academy of Management* pp. 101–13, <http://www.jstor.org/stable/4165959> accessed 19th November 2020.

performed to the required standard which leads to organisational performance, then the board will be seen to be effective. For that to be done, the correlation between board effectiveness and boardroom behaviours and how that affects overall corporate governance will be discussed.

2.2.3 Corporate Governance

Early attempts to define corporate governance appear in the United Kingdom Cadbury Report of 1992 and the South Africa King Report of 1994 where corporate governance is defined as 'the system by which companies are directed and controlled'. Such a definition does not particularly help in clarifying the meaning of corporate governance.[80] Several corporate governance reports, writers, and codes[81] and judges[82] have over the years attempted to improve the definition. It is now generally accepted that the development of loyal, inclusive stakeholders' relationships has become one of the most important determinants of commercial viability and business success. The recognition of stakeholder concern is not only good for business, but politically expedient and morally ethically just, even if in the strict legal sense, corporations remain directly accountable to shareholders.[83] This, in turn, made the concepts of corporate social responsibility and corporate citizenship highly prominent[84] such that this view has been considered in the definition of corporate governance.

Subsequently, corporate governance has been defined as the system of regulation, overseeing corporate conduct and balancing the interests of all stakeholders, who can be affected by the corporation's conduct, to ensure responsible behaviours by corporations and to achieve the maximum level of efficiency and profitability for a corporation.[85]This definition captures company processes in relation to corporate

---

[80]Jean Jacques du Plessis, Anil Hargovan, Mirko Bagari, *Principles of Contemporary Corporate Governance* (Cambridge University Press 2011) page 3
[81]Australian Securities Exchange (ASX) Principles of Good Corporate Governance and Best Practice Recommendations
[82]*Justice Owen in The Bell Group Ltd vs Westpac Banking Corporation* (No.9) [2008] WASC 239 (28th October 2008) [4362].
[83]Jean Jacques du Plessis, Anil Hargovan, Mirko Bagari, (2011) Principles of Contemporary Corporate Governance, Cambridge University Press, New York. Page 5
[84]Jean Jacques du Plessis, Anil Hargovan, Mirko Bagari, *Principles of Contemporary Corporate Governance* (Cambridge University Press 2011) page 8.
[85]Ibid, page 10

governance for proper stewardship over a company's assets and the duties of the company to its stakeholders. While this definition aptly considers the wider stakeholder system, it recognises the impact of board behaviour on corporate governance. Corporate governance definitions will often be biased and reflect the values of those using them.[86] Huse defines corporate governance as the interactions between various internal and external actors and the board members in directing a firm for value creation.[87] The definition recognises the impact of behaviour, the influence and interactions with external and internal actors and indeed the need for value creation in meeting the responsibilities.

The concepts of boardroom dynamics, board effectiveness, and corporate governance are interlinked. Boardroom dynamics which are the interactions in the boardroom impact the effectiveness of the board and how decisions are made. To ensure that the board is effective, the board needs to manage the boardroom dynamics through ensuring robust interactions and relationship management to ensure that the board is working as a team and to prevent board dysfunction. The board must understand the board dynamics, their components and how these influences and can be influenced, through deliberate board processes, for the board to be effective. An effective board carries out its responsibilities and promotes the success of the company which ultimately leads to good corporate governance.

2.3 Theoretical framework Underpinning Board Dynamics and Corporate Governance

The theoretical framework for board dynamics and corporate governance is discussed to derive an understanding of board behaviours so that an assessment of the need for board dynamics and the necessity of the resultant legal reform can be made. Corporate governance must no longer confine its analysis to the relationship between managers, boards and shareholders as the narrowness of this focus is the major contributing factor to the present round of corporate scandals of which Enron is the most emblematic.[88] Theoretical perspectives that speak to the different behaviours that can be exhibited in the board room have been identified. Further, the sociological theory

[86] Huse (2007), page 14
[87] Ibid.
[88] Thomas Clarke, *Theories of Corporate Governance: The Philosophical foundations of Corporate Governance* (Routledge Taylor and Francis Group) page 26

of law was used to derive an understanding of the purpose of the law in engineering behaviour and interactions to bring about law and social change.

2.3.1 Behavioural Theory of Boards and Corporate Governance

Corporate governance is constantly changing and evolving, and changes are driven by both internal and external dynamics.[89] Issues in the external environment such as the breakup of large conglomerates like Enron have directly and indirectly caused the changes in corporate governance.[90] van Ees et al. summarised and integrated previously published research to develop a behavioural framework for future research agenda on boards and corporate governance.[91] They contend that a behavioural theory on boards and governance may underlie many features of an emerging stream of studies. They argue that boards, in reality, may not be so much concerned with solving conflicts of interests, but rather engaged in dealing with the complexity and uncertainty associated with strategic decision making.[92] A behavioural theory of boards and corporate governance may provide the foundation for an emerging avenue of research. The emerging avenue could be that boards may be less concerned with solving conflicts of interest, as per agency theory, but with solving problems of coordination and managing complexity and uncertainty associated with strategic decision-making. [93]

van Ees et al. outlined a behavioural theory of boards and governance which in many ways challenges the mainstream approach for understanding boards and governance in contemporary research. First, a behavioural theory of boards and corporate governance will be more focused on the interactions, behavioural processes, and actions in the boardroom rather than outcomes (such as the performance) of boards. [94] Most studies that have explored boards from an economic perspective have neglected actual board behaviour and have analysed relationships between ideal-typical board

[89]Sheskin, A., 'A Critical Review and Assessment of the Sociology of Law.' (1978) Vol. 3, *Central Michigan University Mid-American Review of Sociology*, 109.
[90]Haslinda et al., page 94
[91]van Ees, H., Gabrielsson J., & Huse, M.,, 'Toward a Behavioural Theory of Boards and Corporate Governance,' (2009) *17 Corporate Governance: An international Review* 307-319; https://core.ac.uk/download/pdf/52040055.pdf, page 17, accessed on 16th February 2021
[92]Ibid, page 2
[93]Ibid, page 17
[94]van Ees, H., Gabrielsson J., & Huse, M., 'Toward a Behavioural Theory of Boards and Corporate Governance,' (2009) 17 *Corporate Governance: An international Review* 307 at 308

constructs and corporate performance.[95] In contrast, for a behavioural theory of boards and corporate governance, the actual interactions and behavioural processes in and around boards will be the starting point.[96] Secondly, this behavioural perspective of boards and corporate governance could focus on decision-making processes rather than structures and outcomes.[97] The behavioural perspective will accept that board decision-making behaviour is contingent upon the relative power and relationships among various coalitions of internal and external actors. Thirdly, this proposed theory would, in addition to dealing with conflicts from divergent stakeholder coalitions, emphasize board members contributions and knowledge in dealing with the complexity and associated uncertainty related to strategic decisions to solve organisational problems. Such a proposed theory can be used to explain the current understanding that the behaviours of board directors impacts the success of a company than the structure of boards which has been the focus in the recent past.

This theory does not, however, consider that behaviours will impact the individuals and the society; as well as the duties that boards play in line with section 77 of Companies Act. It does not consider that the relevance and applicability could however be combined with the sociological theory of law. I argue that the behaviours will need to be managed by the law that is meant to apply in society to alleviate conflict and align interest. This result will compel companies to comply with or explain or indeed adhere to corporate governance requirements relating to board dynamics.

2.3.2 Sociological Theory of Law

The sociological movement in law takes its starting point from the relationship between law and society.[98] Pound defines the sociological theory of law as containing two components; that the law is a means of alleviating conflict through the imposition of organized force, and that law functions to secure the realization of as many

---

[95]Ibid

[96]Hans van Ees, Jonas Gabrielsson and Morten Huse, 'Toward a Behavioural Theory of Boards and Corporate Governance,' (2009) 17 Corporate Governance: An international Review, 307 at 308

[97]Ibid.

[98]Hunt A., 'Perspectives in the Sociology of Law' (1975) 23 *The Sociological Review* 22-44; < Doi:10.1111/J.1467-954X.1975.Tb00030.X>; accessed on 22nd December 2020.

individual interests as possible.[99] He argues that in any given society the legal system represents an attempt to adjust the interests of individuals with each other and with the interests asserted on behalf of society and the state, with the least possible sacrifice of the whole.[100]

Cotterrell describes the sociology of law as the systematic, theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience.[101] It consists of various sociological approaches to the study of law in society, which empirically examines and theorizes the interaction between law and legal institutions, on the one hand, and other (non-legal) social institutions and social factors, on the other.[102] Areas of socio-legal inquiry include the social development of legal institutions, forms of social control, legal regulation, the interaction between legal cultures, the social construction of legal issues, legal profession, and the relation between law and social change.[103]An acceptance of the necessity of law is a primary characteristic, necessary and positive ingredient in the maintenance of social order and the attainment of progress.[104] Where deficiencies in the law are noted, they are deemed amenable to scientific knowledge and expertise such that scientific procedures are invoked to find remedies before changes in the law are made.[105]

In this theory, the law is seen as a mechanism to compel individual interests through organised force. While this theory applies more to the criminal and justice for purposes of preserving order,[106] the theory is equally applicable to corporate governance where corporate governance frameworks are meant to compel companies

---

[99]Louis H. Masotti and Michael A. Weinstein, Theory and Application of Roscoe Pound's Sociological Jurisprudence: Crime Prevention or Control? 2 U. MICH. J. L. REFORM 431 (1969). Available At: <https://Repository.Law.Umich.Edu/Mjlr/Vol2/Iss2/11> accessed on 8th January 2021.

[100]Snyder, *A Legal Philosophy for The Practicing Lawyer: Roscoe Pound's Theory of Social Interests*,' 36 CONN. B.J. 22, 22-23 (1962).

[101]UK Essays. (November 2018). *Sociology of Law: Theories and Concepts.*' Retrieved from Https://Www.Ukessays.Com/Essays/Sociology/Classical-Sociology-Theories-Applied-To-Law-Sociology-Essay.Php?Vref=1; accessed on 8th January 2021.

[102]Ibid.

[103]Ibid.

[104] Sheskin, A., 'A Critical Review and Assessment of the Sociology of Law' (1978) 3 *Central Michigan University Mid-American Review of Sociology* pp. 109.

[105]Ibid.

[106]Louis H. Masotti & Michael A. Weinstein, *'Theory and Application of Roscoe Pound's Sociological Jurisprudence: Crime Prevention or Control?* (1969) 2 U. Mich. J. L. Reform 431 Available at: <https://repository.law.umich.edu/mjlr/vol2/iss2/11> accessed on 8th January 2021

to comply or explain how they have adhered to the requirements. The framework must be a positive ingredient for attainment of order and progress. It is based on this theory that the need to regulate components of board dynamics will be made to ensure that the boards are effective, that they promote the success of the company and its members as a whole, and that the company creates value. The reform being advocated for, cannot exist in a vacuum but will apply in an industry for good governance of organisations. This theory, therefore, is an extension to the theoretical framework where the behavioural theory of boards has not extended to.

2.4 Conclusion

This chapter has looked at the various definitions of corporate governance which are propagated based on the stakeholder whose benefit the governance framework will impact. The chapter has also discussed the interrelationship amongst boardroom dynamics, board effectiveness, and corporate governance and the need to ensure that board behaviours are managed through proper board processes and board dynamics. Considering that corporate governance must no longer confine its analysis to the relationship between managers, boards and shareholders,[107] and that board behaviours are an important aspect of board governance, a behavioural theory of boards and corporate governance best explains the emergence of boardroom dynamics and its impact on corporate governance. Advocating for a behavioral theory of boards and corporate governance would adequately conceptualize boardroom dynamics, board dynamics, its regulation and corporate governance. The sociological theory reflects the need to regulate components of board dynamics to ensure that the boards are effective, thus promoting the success of the company. It complements the behavioural theory of boards in that that board processes that will need to be put in place to manage boardroom dynamics, will need to be regulated to compel the corporate society towards management of board behaviours.

[107]Clarke (2004) page 26.

CHAPTER THREE

CURRENT CORPORATE GOVERNANCE LEGAL FRAMEWORK FOR MALAWI

3.1 Introduction

Corporate governance practices are based on a set of legal, regulatory, and institutional frameworks comprising legislation, regulation, standards, self-regulatory arrangements, voluntary commitments and other business practices.[108] How these frameworks are formulated is shaped by global standard-setting bodies in combination with country- and industry-specific circumstances including history and tradition.[109] Companies Act[110]provides the basis, including rules related to the establishment of a company, corporate governance and directors' duties and thus apply to all listed and unlisted companies.[111] As such, this thesis focuses only on the corporate governance framework in relation to companies. This chapter analyses the current corporate governance legal framework for Malawi and the regulatory approach taken. It is argued that the current framework has not considered board behaviours after corporate failures in 2000s partly due to lack of ownership on the corporate governance agenda to adopt and effect new best practice. Further, the rules-based approach to corporate governance that was adopted cannot be used to regulate board behaviours.

3.2 Approaches to Regulation of Governance

There are several approaches to regulation of corporate governance. A rules-based approach to corporate governance is based on the view that companies must be required by law (or by some other form of compulsory regulation) to comply with

---

[108]Steven Blinco, Michelle Galbarz, Stefan Hohl and Raihan Zamil, 'Bank Boards – A Review of Post-Crisis Regulatory Approaches' (2020) 25 *FSI Insights on Policy implementation* <https://www.bis.org/fsi/publ/insights25.htm> accessed on 24th May 2020.
[109]Ibid.
[110]Chapter 15 of 2013
[111]Ibid.

established principles of good corporate governance.[112] The advantage is that companies cannot ignore the rules but must meet the same minimum standards of corporate governance. This is the approach taken by the USA in coming up the Sarbanes-Oxley Act 2002.[113] The disadvantage to this approach is that same rules might not be suitable for every company as circumstances of each company are different[114] and not all aspects[115] can be regulated easily. Further, there are some aspects of corporate governance that cannot be easily regulated compulsorily.[116]

A principles-based approach to corporate governance is based on the view that a single set of rules is inappropriate for every company such that while outcomes and principles are set, the controls, measures, and procedures to achieve that outcome are for each organisation to determine.[117] Where the company cannot comply, it should indicate so to shareholders and its reasons for non- compliance. Disadvantages of the principles-based approach include the fact that unconvincing explanations occur when companies explain the deviation from the comply or explain rule. [118] The comply or explain rule can lead to a focus on box ticking. The consensus in Australia, New Zealand, South Africa, and the United Kingdom appears to be that heavy regulation and one size fits all approaches to corporate governance should be avoided.[119]

The third approach to regulation is the hybrid approach. Hybrid mechanisms of corporate governance regulation have been described as constituting a strategy of enforced self-regulation.[120] According to Ayres and Braithwaite, enforced self-regulation occurs where the law delegates to private sector bodies, such as self-regulatory organisations, the task of formulating substantive rules, to which certain

---

[112]Approaches to Corporate Governance: Rule-based and Principle Based, retrieved on <https://bowenstaff.bowen.edu.ng/lectureslides/1586351448.pdf> accessed on 23rd December 2020; on page 1.
[113]Ibid, page 3
[114]Ibid
[115]Such as negotiating the remuneration of directors, deciding the most suitable range of skills and experience for the board of directors, and assessing the performance of the board and its directors.
[116]Approaches to Corporate Governance: Rule-based and Principle Based, retrieved on <https://bowenstaff.bowen.edu.ng/lectureslides/1586351448.pdf>; accessed on 23rd December 2020; on page 3.
[117]Ibid, page 3
[118]LeBlanc, page 48
[119]Nicholson, S., 'The Role of the Regulator', in K. Rushton (ed), *The Business Case for Corporate Governance* (Cambridge University Press, 2008) page 100.
[120] Ibid.

legal sanctions are then attached.[121] It envisions that in particular contexts it will be more efficacious for the regulated firms to take on some or all of the legislative, executive, and judicial regulatory functions.[122] As self-regulating legislators, firms would monitor themselves for noncompliance; and as self-regulating judges, firms would punish and correct episodes of noncompliance.[123]

There is no conclusive evidence to suggest that one approach is better than the other.[124] A country will need to look at the stage of development, the mischief it seeks to manage, and the political will, such that each country will need to determine the approach on its own. The hybrid approach has implemented the best of both approaches and is the best form of regulation for Malawi due to its ability to allow flexibility depending on the mischief to be managed. The law makers would need to evaluate the requirement and how it would be best regulated to ensure adherence.

3.3 Regulation and Enforcement of Corporate Governance

The OECD Principles of Corporate Governance suggests that a sound legal, regulatory and institutional framework for corporate governance can include a mix of legislation, regulation, self-regulatory arrangements, voluntary commitments and business practices that are a result of a country's specific circumstances, history and tradition.[125] While it is the role of businesses to act responsibly, governments have a duty to protect public interest and must take a leading role in providing an enabling framework for responsible business conduct. National codes of corporate governance over time tend to find their way in an evolutionary manner into listing requirements of stock exchanges, rules of professional bodies, and into legislation effecting corporate governance reform from the bottom up.[126]

---

[121]Ayres, I., & Braithwaite, J., '*Responsive Regulation: Transcending the Deregulation Debate,'* (Oxford University Press 1992), 102
[122]Ibid, page103
[123] Ibid.
[124]Approaches to Corporate Governance: Rule-based and Principle Based, page 7; retrieved on https://bowenstaff.bowen.edu.ng/lectureslides/1586351448.pdf; accessed on 23rd December 2020;
[125]OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris, <https://doi.org/10.1787/9789264236882-en> accessed on 14th May 2020, p. 13)
[126]Simon Deakin and Jacqueline Cook (1999) Research Paper, '*Regulation and the Boundaries of Law*,' prepared by the United Kingdom Company Law Review Steering Group.

However, the direct involvement of the state is not a necessary condition for the existence of regulation in this sense, since rules may be derived from the activities of industry associations, professional bodies or similarly independent entities.[127] Enforcement of a law or framework is key to ensure compliance with the code or framework. Without a threat of enforcement by private and public actors, governance frameworks risk remaining theoretical constructs that will not lead to the emergence of a corporate governance culture.[128] For any corporate governance framework to work and be effective, enforcement of corporate governance must be excellent. Although there is still plenty of room for improvement, the legal and regulatory framework to ensure regulation of corporate governance has changed and improved dramatically in recent years[129] and different countries have taken different approaches to regulating corporate governance.

3.4 History and Existing Framework of Corporate Governance Regulation in Malawi

The first ever open and meaningful discussion on corporate governance in Malawi took place in 1997 at the Society of Accountants in Malawi Conference where participants appealed for the formation of a corporate governance committee to look at corporate governance issues and consider the necessity of establishing the Institute of Directors in Malawi.[130] The taskforce was constituted in 1998 and after consultations, the Code of Best Practice for Corporate Governance (Malawi Code I) was developed and adopted in 2001.[131] The code was drawn from South African King Report, the Kenyan corporate governance principles and the Guidelines of the Commonwealth Association for Corporate Governance.[132] Further, the Institute of Directors in Malawi, whose aim was the promotion of good corporate governance in Malawi, was established in 2003.[133]

[127] Ibid

[128] LeBlanc, page 798

[129] Ibid.

[130] Andrew Lipunga, 'A Review of Disclosure Provisions in Malawian Codes of Corporate Governance' (2014) 5 *International Journal of Business and Social Science* 246-256, on 249, 247

[131] Ibid, page 247

[132] Ibid.

[133] Ibid.

Despite this implementation, the Malawi Code I was not widely accepted, manifested by the continued reference to and compliance with foreign codes such as the King Report and the Cadbury Code by companies in their annual reports and the listing requirements issued by the Malawi Stock Exchange.[134] This was an indication that the Malawi Code I lacked credibility and needed to be strengthened, a fact that was confirmed by a report issued after the country assessment carried out by the World Bank in 2007.[135] The report further recommended a comprehensive review of the Companies Act and an update of the Malawi Code I. The review was eventually done in 2010 by the Institute of Directors. The revised code, which was principles-based and voluntary, was called the Malawi Code II with further sectoral specific codes.[136]The Malawi Code II was established in 2010 and launched on 1st June 2010 by the Institute of Directors (Malawi) while the Sector Guidelines[137] were launched in February 2011.[138]

Another important corporate governance development in Malawi was the issuance of the Corporate Governance Guidelines for Malawian Banks in 2010 by the Reserve Bank of Malawi (RBM Code). Unlike the others, the RBM Code which is principles-based, is mandatory and was issued in lieu of directives in accordance with the Banking Act of 1989.[139] A study by Lipunga however shows that the Malawi Code I had a very wide incorporation gap to the OECD Principles of Corporate Governance, which has unfortunately further widened by the revision which culminated into Malawi Code II.[140] A relatively low incorporation gap was revealed in relation to the RBM Code. The study showed that the corporate governance disclosure provisions have been neglected in the revision process and that more work needs to be done to

[134]Ibid.
[135]Ibid, page 247
[136]Andrew Munthopa Lipunga, 'A Review of Disclosure Provisions in Malawian Codes of Corporate Governanc*e'*, International Journal of Business and Social Science, (2014) Vol 5, No. 1, page 246-256 on page 249.
[137]These include the Incorporated Micro Small and Medium Enterprises Guidelines, listed companies' guidelines, parastatal organizations guidelines and member-based organizations guidelines
[138]National Corporate Governance Review Committee (NCGRC)The Malawi Code II: Code of Best Practice for Corporate Governance in Malawi; Sector Guidelines for Listed Companies downloaded on https://www.yumpu.com/en/document/read/37863310/the-malawi-code-ii-sector-guidelines-for-listed-companies> accessed 20th March 2020
[139]Lipunga, page 254
[140]Ibid.

perfect the Malawi Code II to ensure that all important corporate governance requirements have been fully incorporated.

The Malawi Code II was the Code of Best Practice in Corporate Governance unless inconsistent with the Act or any Regulations made under the Corporate Governance Guidelines.[141] Further, it was a code of best practice which took the principles-based approach to regulation. Around 2016, the Malawi Code II was enacted, word for word to become the Companies Act (Corporate Governance) Regulations 2016.[142] Further, Section 184(1) of the Companies Act[143] requires directors to comply with any code for corporate governance as may be prescribed. It goes further to require directors to comply with sector codes where they exist.[144]The Companies Act is to the effect that any code of corporate governance prescribed under the section shall be directory in nature.[145] The court, the Registrar or any authority shall be entitled to have regard to such a code in interpreting and applying any of the provisions of the Act.[146] This shows that while Codes of Best practice are principles-based in nature, they have been made into law by section 184 of the Companies Act hence taking a rule-based approach. Apart from enacting the Malawi Code II overarching principles into law as Companies Act (Corporate Governance) Regulations, Section 184 has gone a step further to indicate that any code of corporate governance and sector codes that exists are directory in nature and shall be complied with. As an extension, any codes that may exist or be drafted in Malawi will have to be complied with. This means that while the hybrid approach would be beneficial to Malawi, it will be difficult for the codes and the law to be regulated by every company as they are different.

It is being argued, therefore, that by being enshrined into law, the Malawi Code II thus took a rule-based approach to corporate governance and moved away from the principles-based approach. A rules-based approach to regulation prescribes a set of rules, and how to behave and is based on the view that companies must be required by

[141]Interpretation of Malawi Code II under Companies (Corporate Governance) Regulations, 2016, Act No 15 of 2013
[142]Companies Act No 15 of 2013, Chapter 46:03 of the Laws of Malawi
[143]No 15 of 2013
[144]Section 184(2) of the Companies Act No 15 of 2013
[145]Section 184(3) of the Companies Act No 15 of 2013
[146]Section 184(3) of the Companies Act No 15 of 2013

law (or by some other form of compulsory regulation) to comply with established principles of good corporate governance.[147]The Companies Act (Corporate Governance) Regulations 2016 still requires the board to comply or explain, a key characteristic of the principles-based approach despite being enacted as subsidiary legislation.[148] This is contradictory to the intentions of section 184 of the Companies Act. This contradiction must be rectified to allow best practice guidelines to be made through amendment of section 184 of the Companies Act. Having looked at the history of corporate governance, the current legal framework is evaluated.

3.5 The Current Corporate Governance Legal Framework in Malawi

The current corporate governance framework in Malawi consists of the Companies Act[149] and the Companies Act (Corporate Governance) Regulations which was previously the Malawi Code II. The Companies Act, under section 184 and Malawi Code II refers to the Sector Codes which are directory in nature and must be complied with. These form a significant part of the corporate governance framework. The Act, which applies to listed and unlisted companies, outlines the duties of board directors, appointment and their removal or directors, shareholders and their rights and powers, responsibility of company secretaries, directors' liabilities and other significant requirements in as far as corporate governance is concerned. In addition, section 184 of Companies Act refers to other sector codes which relate to corporate governance that may be promulgated which will have the force of law.

Additionally, section 34 of the Financial Services Act[150] gives power to the Registrar of Financial Institutions to issue directives with respect to the conduct, affairs and conduct of individuals in the financial sector. As a result, the Registrar of Financial Institutions has issued the Financial Services (Risk and Governance Requirements for Bank and Bank Holding Companies) Directive, 2018 which prescribes minimum risk and governance requirements for banks and bank holding companies. These also have the force of law and must be complied with as per section 184 of the Companies Act

[147]Approaches to Corporate Governance Rule Based and Principle Based,' <https://bowenstaff.bowen.edu.ng/lectureslides/1586351448.pdf>; accessed on 7th December 2020
[148]Regulation 1.3 of Companies Act (Corporate Governance) Regulations
[149]No. 15 of 2012
[150]No. 26 of 2010

[151]and section 34 of the Financial Services Act. Further, the Malawi Stock Exchange Rules also have the force of law in line with section 34 of the Financial Services Act. This reinforces the point that the Malawi corporate governance legal framework took a rules-based approach to regulation.

3.6 Vacuum in the Current Malawi Corporate Governance Law vis a vis Board Dynamics

The Companies Act (Corporate Governance) Regulations require the board to ensure that the decisions on material matters are in the hands of the board, a definition of materiality be clear, and that material matter should include the acquisition and disposal of assets, investments, capital projects and authority levels.[152] The specific components of decision-making and how decisions must be made so that the board is effective have not been outlined. The Regulations also require the board, as part of its decision-making process, to take into consideration wider societal interests and other circumstances affecting how the organisation fulfils its license to operate.[153] Further the Regulations require the Board to ensure that a dialogue, based on mutual understanding of the objectives of the organisation, exists between the board itself and the owners of the organisation. The Regulations thus have a limited view of what constitutes board effectiveness or specify what the board must do to ensure that proper process for decision-making, process for stakeholder engagement, ethics, culture, challenge and cohesion, diversity, board environment and indeed board operations are done effectively. The Regulations have also failed to require proper board behaviours that will positively impact board effectiveness.

The Institute of Directors that drafted the Malawi Code II in 2010 has not reviewed or updated this Code of Corporate Governance which was eventually incorporated into the Companies Act (Corporate Governance) Regulations. The Companies Act (Corporate Governance) Regulations 2016 have instead focused on the structure of

[151]According to a discussion with drafting department of the Ministry of Justice, the idea behind section 184 is to give power to the Registrar of Companies to act on companies who fail to meet requirements of other codes or subsidiary legislation. The Registrar of Financial Institutions and the Registrar of Financial Institutions will thus work together and act on a company that fails to adhere to corporate governance requirements set by self-regulatory bodies like the Reserve Bank of Malawi, Malawi Stock Exchange Rules, National Construction Council or other bodies. This section allows the companies to be regulated everywhere to ensure there is no gap in terms of monitoring adherence.

[152]Regulation 4.7 of Companies Act (Corporate Governance) Regulations

[153]Regulation 4.12 of Companies Act (Corporate Governance) Regulations

the board in relation to board sub committees, role of chairperson, company secretary and members of the board, non-executive members of the board, appointment, remuneration, external communications, related party transactions, training and development, risk management and controls.[154] However, the Regulations have considered ethics, good citizenship, sustainability though in the usual casual manner.[155] With respect to board dynamics, a cursory approach has been taken as the requirements have glossed over the board dynamics components. This shows that the concept of board dynamics has not been specifically dealt with since the Malawi Code was rolled out in 2010 and no review was done prior to gazetting in 2016. Further, in 2010 board dynamics was still a relatively new concept with researchers starting to realise that board conversations and behaviours could better construe whether the board was effective as opposed to structure.

One of the biggest challenges of corporate governance law in Malawi is the lack of effective mechanisms for implementing sanctions. While observance of the code is mandatory, the process of enforcement under the Companies Act is unclear or is not enforced at best by the Registrar of Companies. The Companies Act (Corporate Governance) Regulations 2016 does not have enforcement procedures in terms of administrative sanctions or indeed penalties as part of the Regulations. On the other hand, the Financial Services (Risk and Governance Requirements for Bank and Bank Holding Companies) Directive, 2018 does carry administration and monetary penalties.[156] Enforcement of regulatory instruments is as important as the creation of those instruments.[157]The nature and scale of the Companies Act (Corporate Governance) Regulations 2019 therefore confirms that existing standards are inadequate, and that a more robust approach to corporate governance behaviours is necessary.

[154]Regulations 6-15 of Companies Act (Corporate Governance) Regulations
[155]Regulation 16-18 of Companies Act (Corporate Governance) Regulations
[156]Regulation 21 and 22 of Financial Services (Risk and Governance Requirements for Bank and Bank Holding Companies) Directive, 2018
[157]Ngwu, F.N., Osuji, O.K., Ogbechie, C., & Williamson, D. (eds.), Enhancing Board Effectiveness: Institutional, Regulatory, and Functional Perspectives for Developing and Emerging Markets (1st ed Routledge 2019) , https://doi.org/10.4324/9781315169477 accessed 4th May 2021

3.7 Conclusion

This chapter has discussed the approaches to regulation, history, and vacuum under the current corporate governance legal framework. The approaches to regulation have been discussed arguing that that the rules-based approach to corporate governance that was inadvertently adopted cannot regulate board behaviours. Further approaches to regulation of corporate governance have been evaluated including the argument that the hybrid approach, as opposed to rules-based approach, which is the system of regulation in Malawi, best suits the implementation of board dynamics and board effectiveness. It has also been argued that the current framework has not considered board behaviours after the well documented corporate failures in 2000. The Companies Act (Corporate Governance) Regulations 2016 still requires the Board to comply or explain, a key characteristic of the principles-based approach despite being enacted as subsidiary legislation.[158] This is contradictory in that the nature of the regulations and section 184 requires all subsidiary legislation to be directory in nature. This contradiction must be rectified to allow best practice guidelines to be made through amendment of section 184 of the Companies Act.

[158]Regulation 1.3 of Companies Act (Corporate Governance) Regulations

CHAPTER FOUR

ASSESSMENT OF IMPACT OF BOARD DYNAMICS ON BOARD EFFECTIVENESS

4.1 Introduction

This chapter assesses the impact of board dynamics on board effectiveness**.** Components of board dynamics normally correlate with board effectiveness and task performance which leads to organisational performance, as discussed above. Cross proposed a broader model of corporate governance which considers structural, demographics, attributes and dynamics called the 11Cs of Corporate Governance.[159] This chapter, however, focuses on board cohesion and challenges, decision-making, culture, and diversity so that a deeper study of these components can be made out.

An effective board will therefore need to execute the strategy, values, behaviours and culture in the way it conducts business. Further, a successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to the wider society.[160] The need to promote the success of the company and its members as a whole is in line with Section 177 of the Companies Act. As such in assessing the impact of the board dynamics on board effectiveness, we will show how each of the components of board dynamics will contribute to promoting the success of the company and its members; and in meeting the purpose, strategy, culture, values and behaviour of the company. The chapter thus argues that board dynamics positively impacts board effectiveness such that this creates value for the organisation and allows directors to fulfil their board duties.

[159]Cross, page 17
[160]The United Kingdom Financial Reporting Council, 2018, Guidance on Board Effectiveness, page 4

4.2 Cohesion and Challenge

Cohesion is defined as the tendency for a group to be in unity while working towards a goal or to satisfy the emotional needs of its members.[161] Various components create cohesion in groups and teams such as social element, task element and utility element.[162] Further, creating the right chemistry was seen as the most important factor in determining and achieving board effectiveness of an enterprise.[163]Cohesion brings several benefits to boardroom business. It can enhance decision-making by encouraging extensive dialogue around alternative options. High levels of board cohesion reduce information asymmetry as key information is shared between Board and Management to optimise value creation.[164] In turn, high levels of these characteristics are likely to give rise to high levels of innovation, ability to apply one's strengths, more time spent on boards tasks and higher sustained energy levels. Group cohesion also reduces levels of stress and anxiety significantly, which is relevant to the modern board context with increasingly greater demands and scrutiny.[165] Research into board behaviour has also shown that that interpersonal attraction[166] and the right board chemistry, is important in achieving board cohesiveness, as without the ability to work as a group, the board cannot be effective. [167] Further, the *2018 Financial Reporting Council's Guidance on Board Effectiveness* requires the boardroom to be a place for robust debate where challenge, support, diversity of thought and teamwork are essential features. Cohesion aids collaboration and communication among board members and influences performance outcomes.[168]

The most significant recommendation that real world governance experts agree on is that boards must have open, challenging interchange between directors and the CEO

[161]Cross (2019), page 84.

[162]Social element is where a group likes each other and will want to work together; a task element is where a group approaches a challenge with the same mindset and information; and a utility element where a group will jointly gain meaning from working together

[163]LeBlanc (2005), page 143-144

[164]Ibid.

[165]Ibid.

[166]Forbes D.P., Miliken F., 'Cognition and Corporate Governance: Understanding Board of Directors as Strategic Decision- Making Groups' (1999) 24 *Academy of Management Review* 489

[167]Finkelstein, S., Mooney A. C., 'Not the Usual Suspects: How to use Board process to make Boards Better' (2003), 1792, *Academy of Management Executive* 101

[168]Abigail Levrau and Lutgart Berghe, 'Corporate Governance and Board Effectiveness: Beyond Formalism' (2006) Vlerick Leuven Gent Management School, Vlerick Leuven Gent Management School Working Paper Series. 6; page 14

and among directors themselves.[169] As concluded above, boards that work well have constructive critical dialogue among board members and senior management and such open dialogue is the single best indication of board effectiveness.[170] The board should thus ensure that they build relationships within and outside the boardroom to bring about psychological safety that allows cohesion and challenge. The role of the chair is key in ensuring that this board dynamic is affected by encouraging the board members to give their views.

However, where high level of cohesion is reflected in a board, board effectiveness can be compromised and can prove detrimental to the quality of the board's decision-making. Highly cohesive boards can sometimes be distracted by too much banter and personal exchange which causes groupthink.[171] Groupthink is the overriding desire for consensus and unanimity leading to poor decision-making in cohesive groups due to suppression of internal dissent and consequent inadequate evaluation.[172]A study has shown that high team cohesion can also lead to reduced task commitments, time wasting, goal related problems, communication problems, decreased focus, social isolation and social attachments, unless there is also high task cohesion present. [173] It is therefore important that the team must be cohesive but be aware of the task element to be completed so that the board team does not experience the negative impact of high cohesion.

Boards need to have a moderately high level of team cohesion accompanied by an appropriate amount of challenge[174] for members to function at their potential and guard against the dynamic of groupthink.[175] The key dynamic that must exist within the boards to achieve their tasks, and positively influence organisational performance, is a balance of cohesion and challenge. This balance allows the board to build good

---

[169]See n.38

[170]Morten Huse, *Board, Governance and Value Creation: The Human Side of Corporate Governance* (Cambridge University Press 2007) page 14

[171]Cross, page 85

[172]Ibid.

[173]James Hardy et al. 'Exploring the Potential Disadvantages of High Cohesion in Sports Teams' (2005) 36 *Small Group Research* pp.166 - 187.

[174]Also known as cognitive conflict in psychology, which refers to task orientated differences in judgement among team members and is about disagreements in terms of viewpoints, ideas, and opinions.

[175]Cross (2019), page 85

relationships and challenge well so that there is cognitive conflict. This allows members to speak candidly about their views for or against the motion. This will eliminate groupthink and ensure proper decision making which is the most critical responsibility for the board. Without the balance of cohesion and challenge, the board members will not have the psychological safety that allows communication and consideration of different perspectives that can be candidly brought forward by each of the members. With cohesion and challenge, the board will be able to make the best decision in defining the purpose, setting strategy, values, culture, behaviours and promoting the success of the company.

4.3 Board Decision-making

Decision-making processes of boards are greatly influenced by behavioural characteristics of individual directors.[176] Board decision-making is a function of the competencies and behavioural characteristics of individual directors and how they work together.[177]A large part of corporate governance is about small group decision-makings. The way boards organise and make decisions is described as board process which leads to the concept of an effective board.[178] The *2018 ICSA Guidance on Board Effectiveness* found that well informed and high-quality decision-making does not happen by accident and that factors leading to poor decisions are predictable and preventable. The guidance also recognises that most complex decisions depend on judgement but the decisions of well-intentioned and experienced leaders can be distorted due to difficulty of assessing evidence and arguments objectively.[179] Boards can minimise the risk of poor decisions by investing time in the design of their decision-making policies and processes including the contribution of committees in obtaining input from key stakeholders and expert opinions when necessary.[180] Executives should spend as much time reviewing the process of decisions as they do in reviewing and discussing the content.[181] The board, therefore, has to agree on a deliberate and appropriate process which must be followed to ensure that the human

[176]LeBlanc, page 3
[177]LeBlanc, page 8
[178]LeBlanc page 138
[179]Cross, page 100
[180]Cross, page 95
[181]Daniel Kahneman, Dan Lovallo, and Olivier Sibony, 'Before you Make that Big Decision' (2011) *Harvard Law Review*; accessed 21st December 2020

interactions and behavioural characteristics do not negatively prejudice proper decision-making.

Boards must also use evidence-based practice which is the conscientious effort, explicit clarity and judicious use of the best available evidence from multiple sources to increase the likelihood of a favourable outcome.[182] The assumption behind this methodology is that decisions about problems, opportunities and solutions should be based on the best available evidence without limiting the attention to quality, relevance and source of evidence.[183] The four sources that can be used are professional expertise, internal organisation data, most up to date scientific evidence and the local context, more specifically, the key stakeholders, their values and concerns.[184] Another key aspect to manage during board decision-making is bias. Manet found that bias plays a significant role in board decision-making and particularly undermines perceived benefits of independent directors.[185] Cross argued that governance regulations must emphasise the effects of bias in decision-making and mandate the use of de-biasing procedures.[186] The 2018 United Kingdom Financial Reporting Council's (FRC) Guidance on Decision-Making has also made specific considerations that boards may consider to minimise bias in decision-making.[187] Clearly, an effective process to decision-making must be adopted to ensure that decisions are made objectively and based on evidence.

However, there are some downsides to using evidence-based decision making. A research by Sicat has shown that that gathering, managing and evaluating the abundance of evidence produced, can be costly and highly time-consuming in an already complex process.[188]As described by Ridell, evidence-based requires a recognised requirement or demand for research; a supply of qualified researchers; ready availability of quality data; policies and procedures to facilitate productive

[182]Cross (2019), page 98
[183]Ibid., page 97
[184]Ibid., page 19
[185]Daniel R. Denison, 'Bringing Corporate Culture to the Bottom Line' (1984) 13 *Organizational Dynamics* 5-22
[186]Cross, (2019), page 104
[187]Ibid
[188]Sicat, P., 'Evidence-based Policymaking, A Double-edged Sword?' (*Public Policy Hub,* 15th May 2020)<https://publicpolicyclub.com/2020/05/15/blog-evidence-based-policymaking-a-double-edged-sword/> accessed 7 February 202.

interactions with other researchers; and a culture in which openness is encouraged and risk taking is acceptable.[189] Further, for evidence-based policymaking or indeed decision making to be valuable and achieve desired outcomes, consideration must be on how these decisions are happening.[190] Additionally, a study suggests that one of the reasons managers do not use evidence as the basis of their decision making is that it changes the power dynamics inside the organization. In a culture supportive of evidence-based decision-making, decision power would be distributed according to individuals' competency and mastery of evidence as a critical resource for decision making rather than organizational politics and structural power.[191]

Regardless of these challenges, evidence-based decision-making supports good decision-making if boards focus on the evidence, the process being used to make the decision. An effective board should not be concerned with power dynamics since the board must work as a team and individual egos have no place in decision-making. The board must understand the behaviours needed for board decision-making. Complex decision-making is costly such that the board should ensure use of experts and the needed information for the board to arrive at a good decision. Such evidence-based decision-making and management of bias will allow the board to produce the best company purpose, strategy, values, culture and behaviour. The board will be able to promote the success of the company and its members. A board that uses best evidence and minimises bias will be aware of cruciality of their decision-making duties toward the company's success.

4.4 Diversity

The third component to board dynamics is diversity. Boardroom diversity refers to a mix of human, intellectual and social capital (where capital is defined as the general or specific skills acquired through training and experience) that a board of directors

[189] Michael Howlett, 'Policy Analytical Capacity and Evidence-Based Policymaking: Lessons from Canada' (2009) 52 *Canadian Public Administration* 153-175

[190] Ibid.

[191] Vishwanath V Baba and Farimah HakemZadeh 'Toward a Theory of Evidence-based Decision Making' (2012) *Management Decision* 832-867<https://www.researchgate.net/publication/235312633_Toward_a_theory_of_evidence_based_decision_making> accessed on 29th December 2020

comprises collectively and draws upon during governance function.[192] It is those varied personal characteristics and physical differences in board members that make the board diverse.[193] In recent years, there has been a focus on increasing diversity which originally started by focusing on independence but has now substantially broadened to other areas of diversity.[194]

Diversity is the concept of valuing everyone.[195] Categories of diversity include social category difference which includes, race, age, gender, ethnicity, religions, sexual orientation; differences in knowledge and skill, differences in values and beliefs, personality differences and organisation or community status differences.[196] As such, diversity has over the years, extended beyond gender as seen from the 10-year evolutions on principle of gender from the UK Governance Code. It also considers deep diversity under the personality differences category.[197] Additionally, the Code requires that appointments and succession plans should be based on merit and objective criteria, should promote diversity of gender, social and ethnic backgrounds and cognitive and personal strengths.[198] The *FRC Guide to Boardroom Effectiveness (2018)* also mentions provisions for diversity and the impact that diversity may have in the boardroom. Article 88 of the FRC Guide to Boardroom Effectiveness (2018) provides that diversity in the boardroom can have a positive effect on the quality of decision-making by reducing the risk of groupthink. However, this does not mean that diversity comes without difficulties. Among the most noticeable disadvantages of cultural diversity include language barriers, social tension, and civic disengagement.[199] Board members with the same background share a language which

---

[192]Ingley, C., ‘Board Dynamics and the Influence of Professional Background, Gender and Ethnic Diversity of Directors’ (2003) 11 *Corporate Governance* 218-220 at page 219

[193]Chris Ogbechie and Dimitris Koupofoulos, ‘Corporate Governance and Board Practices in the Nigerian Banking Industry’, (2010) <https://ssrn.com/abstract=154381> or <https://dx.doi.org/10.2139/ssrn.1543811> or < http://dx.doi.org/10.2139/ssrn.1543811>

[194]Richard LeBlanc, *The Handbook of Board Governance; A Comprehensive Guide for Public, Private and Not for Profit Board Members*, (John Wiley and Sons Inc 2016) page 49

[195]Cross (2019), page 166

[196]As such, when considering diversity, things can get detailed and potentially complicated. To simplify, it is easiest first to consider what types of diversity are most important internally and externally to the board.

[197]Cross (2019), page 177

[198]Ibid, page 167

[199]Andrew Burton, ‘The Disadvantages of Cultural Diversity’ (The Classroom, 18th June 2018) https://www.theclassroom.com/the-disadvantages-of-cultural-diversity-12082787.html accessed 23rd March 2021.

reflects similarities in interpreting, understanding and responding to information.[200] Board diversity may reduce communication, complicate decision-making processes, and damage cohesiveness.[201] If boards are too diverse, debate may be hampered by difficulties in understanding of alternatives, attributable to differences in language or background.[202] Further, heterogeneous boards have a greater potential for disputes, as they are less able to agree on means and objectives and it may be difficult to reach consensus.[203] Consequently, these negative effects can impair management quality and corporate performance. The likelihood of conflict is higher in diverse boards and this can be problematic if a firm is operating in a strong competitive market where the possibility to react quickly to changes is an important task.[204]

The positives, however, far outweigh the risks. As such, each company must decide and balance out the type of diversity needed and ensure that the board is still cohesive. It should be noted that these are not reasons to avoid diversity, but rather, factors to keep in mind as companies consider a more diverse board. With input from shareholders, boards need to decide which key aspects of diversity are important in the context of the business and its needs.[205] These key aspects of diversity must then be implemented so that the benefits of diversity can be considered for added value.

4.4.1 Gender diversity

Diversity is a significant issue in governance and boardrooms specially in relation to ratios of women on boards and this is a key concern worldwide and in Malawi. The general conclusion is that men and women are similar in how they make decisions but differ on decisiveness and collaboration.[206] Research suggests that male senior leaders

[200] Zenger, T.R., & Lawrence, B.R., 'Organisational Demography: The differential Effects of Age and Tenure Distributions on Technical Communications' (1989) 32 *Academy of Management Journal,* 353
[201]Bassett-Jones, N., 'The Paradox of Diversity Management, Creativity and Innovation.' (2005) 14 *Creativity and Innovation Management* 169–75. <doi:10.1111/J.1467-8691.00337.X.>
[202]Pelled, L., 'Demographic Diversity Conflict and Work Group Outcomes: An Intervening Process Theory' (1996) 7 *Organisation Science,* 615
[203] J. Goldstein, K. Gautum and, W. Boeker, The Effects of Board Size and Diversity on Strategic Change' (1994) 15 *Strategic Management Journal*, 241
[204] Williams, K., & O'Reilly, C., 'Forty Years of Diversity Research. A Review' in Staw, B.M. and Cummings, L.L. (eds.), *Research in Organizational Behaviour* (Greenwich 1998), 77
[205]Ibid.
[206]Cross, page 109

are more decisive while women are likely to collaborate in decision-making.[207] This may slow down decisions but will enhance the evidence base and engagement of those responsible for implementing the decision.[208] This will increase analysis and reduce bias.[209] It is argued that there is a performance benefit and effectiveness, in terms of effective decision-making, if women lead or are involved in decision-making processes at senior levels in organisations. Boards now realise that to benefit from diversity, that need to move from corporate monoculture and boardroom uniformity and consider whether they have the right composition to provide diverse perspectives that today's businesses require for effective boards.[210] The board must ensure that it has the diversity to provide varied perspectives and to confront the thinking of management.

Section 11 of Gender Equality Act[211] provides that an appointing authority in the public service shall appoint no less than forty per cent (40%) and no more than sixty per cent (60%) of either sex in any department in the public service. While this may have been included as affirmative action and to improve gender equality, its benefits are more specific for boards. Further, Section 11 of the Gender Equality Act means that Malawi leverages off the benefits of having women on boards. While this may be required for public board appointments, it is not a requirement for listed and un-listed companies. The Companies Act must adopt a similar requirement to ensure consistent adoption of benefits of diversity. Having more women on board will bring about board effectiveness due to their ability to commit and collaborate.

---

[207]Ibid. See also Thoits, Peggy A., 'Gender Differences in Coping with Emotional Distress. Pp. 107138 in John Eckenrode (ed.), The Social Context of Coping, New York: Plenum. This research found that in accord with gender stereotypes, women were more likely than men to belong to the dependent decision-making profile. Women may utilize other people for support and advice when making decisions, like how women are more likely than men to use social support as a coping strategy.
[208]Ibid.
[209]Further, there was a Research done by McKinsey and Company where 366 boards were researched and found that female directors enhance board independence, take their non-executive director roles more seriously, prepare more conscientiously for meetings and ask more awkward questions. Women are better team players and are more empathetic on average, than men. Teams that are high performing were those who were more likely to have high levels of turn turning, where they were skilled at both speaking up and including others when needed. Research has also found that female directors have better attendance at board meetings and male directors have better attendance when boards are more gender diverse. See <https://www.mckinsey.com/business-functions/people-and-organizational-performance/our-insights/why-diversity-matters> accessed on 20th April 2021
[210]Ingley, page 219
[211]Cap 43:03 of 2013 of the Laws of Malawi

On the other hand, Pechersk noted negative effects of having female directors on board especially with adherence to quotas.[212] Quota may have strong negative effects on boards due to an obligatory appointment of women rather than for their skills and expertise, thus, leading to a possible negative firm's performance.[213] These issues can easily be managed by ensuring that the female directors meet attributes and demographics required for the board position. I propose that boards for listed and unlisted companies must ensure a minimum of 40% women representation on the board to benefit from having women on board. Women representation will empower the board to collaborate, take their board roles seriously, prepare well for meetings, enhance board independence, and have high levels of turn turning. This will contribute positively to the board's duty of promoting the success of the company since members will come well prepared and the board will leverage off the benefits of having women representation as they define and meet the company's purpose and duties.

4.4.2 Other Types of diversity

The business case for diversity if often positioned at either end of the spectrum, whereby either diversity leads to significant positive benefits or a lack of diversity leads to a number of negative outcomes.[214] A diverse organisation[215] has a better customer strategy due to increased representation of that customer group within leadership conversations and decision-making.[216] A diverse group membership will increase the impact on problem-solving abilities and enhance decision-making. Lastly, a diverse board is likely to be flexible, agile, and resilient.[217] That is, its ability to horizon scan and quickly pivot to adapt to external environmental conditions is seen to be enhanced through increasing its diversity.[218] Boards must consider race and ethnic diversity where context allows. Where an organisation has a key stakeholder

[212]Pechersk, A., 'Diversity in Board of Directors: Review of Diversity as a Factor to Enhance Board Performance' (2016) 9 *Studia commercialia Bratislavensia*, 88-101 at page 93
[213] Ibid.
[214]The first three of these benefits are largely external benefits whereas the final 3 are largely internal benefits to an organisation's board, board committees or executive leadership teams.
[215]Knowledge and skill, values and beliefs, social category, and personality differences.
[216]Other benefits include reduction in the cost of integrating new workers, who due to globalisation are themselves taken more increasingly for a diverse population; a diverse leadership group often has the benefit of increasing the reputation of its company, which leads to that company becoming an attractive proposition for talented individuals to join.
[217]Cross (2019), page 171
[218]Ibid

population to consider and that population is not represented in the board, then boardroom dynamics and a variety of other outcomes will suffer. [219] Cultural diversity, which is also context dependent, must be considered if an organisation has significant stakeholders who are working in different countries or who are from different cultures. [220]

There are challenges with working in a multicultural or diverse environment. Although multicultural teams have potential for being the most effective and productive teams, they often become the least productive. Greater diversity among team members makes interaction and group dynamics considerably more complex.[221] The challenges reported by respondents include first, that team development is slower because time required to build rapport and trust is longer. Secondly, communication among diverse people is more difficult and time-consuming.[222] Further, creating common understanding requires considerably more effort, and that different expectations held by diverse people often lead to misunderstanding, conflict and more negative evaluations of each other.[223] Knowledge of these is not meant to derail the concept of diversity. However, boards must ensure that they take steps to mitigate such challenges and ensure that the boards are not too diverse.

The organisational stakeholder context is perhaps the biggest driver of diversity considerations in the boardroom. Once the board decides and implements the kind of diversity that will add value to the organisation, the second major consideration is how, in terms of structures and leaderships style, will the Chair ensure that the represented diversity is valued and heard rather than excluded. [224] Such considerations will make the board effective as the board members will leverage off different perspectives that will improve board decision-making.

[219]Cross, page 174
[220]Ibid, page 175
[221]M. Trefry, 'A Double-Edged Sword: Organizational Culture in Multicultural Organizations' (2006) 23 *The International Journal of Management*, page 563.
[222]Ibid
[223]Ibid.
[224]Ibid.

Diversity of skills, background and personal strengths are important drivers of a board's effectiveness, creating different perspectives among directors, and breaking down a tendency towards groupthink.[225] A diverse board has a customer strategy due to increased representation of that customer group within leadership conversations and decision-making.[226] The board will have problem-solving abilities and enhance decision-making, and will be flexible, agile, and resilient. Such a board will benefit from the different perspectives, debate issues, and make decisions that will promote the long terms success of the company and its members.

4.5 Stakeholder Engagement

Board dynamics have been referred to as the interactions between board members individually and collectively, and how these influence and are influenced by their wider stakeholder system.[227] The definition of board dynamics means that the wider stakeholder system will influence and is influenced by the interactions between board members. Challenges in an organisation lie in the interface and relationships between people, teams, functions, and different stakeholder needs.[228] This is a key consideration for board dynamics such that having stakeholder conversations requires significant attention by the board. *FRC 2018 Guidance on Board Effectiveness* points out that an effective board appreciates the importance of dialogue with shareholders, the workforce and other key stakeholders; is proactive in ensuring that such dialogue takes place, and that the feedback is taken into account in the board's decision-making.

In Malawi, the duty to consider the wider stakeholder system is enshrined under section 177 of the Malawi's Companies Act.[229] The section requires the director to act in a way that would promote the success of the company for the benefit of its members as a whole. In so doing, the board must have regard to the interests of the

---

[225]2018 Financial Reporting Council's Guidance on Board Effectiveness; <https://www.frc.org.uk/getattachment/61232f60-a338-471b-ba5a-bfed25219147/2018-Guidance-on-Board-Effectiveness-FINAL.PDF>, accessed on 25th January 2021

[226]Other benefits include reduction in the cost of integrating new workers, who due to globalisation are themselves taken more increasingly for a diverse population; a diverse leadership group often has the benefit of increasing the reputation of its company, which leads to that company becoming an attractive proposition for talented individuals to join.

[227]Cross (2019) page 117

[228]Cross (2019) page 120

[229]Companies Act, No 15 of 2013, Chapter 46:03 of the Laws of Malawi.

company's employees, the need to foster the company's business relationships with suppliers, customers and others, the impact of the company's operations on the community and environment and the need to act fairly between members of the company. This specific duty for board directors is also provided for under the Companies.

However, there is growing concern that stakeholder participation is not living up to its claims. There are times in which stakeholders are focused on their own interests. Often, external stakeholders are community groups or political appointees who might not act in a company's best interest if the company is not offering anything that helps the stakeholder with his constituents.[230] When stakeholders operate for the sake of their personal interest over the interest of their companies, they may block progress.[231] Consultation fatigue may develop as stakeholders are increasingly asked to take part in participatory processes that are not always well run, and as they perceive that their involvement gains them little reward or capacity to influence decisions that affect them.[232]This would create ambiguities and delay decisive action.[233]This may be compounded by the existence of non-negotiable positions or actors with veto power that limit the extent to which the process can empower participants to influence decisions. The resulting cynicism can lead to declining levels of engagement and put the credibility of participation at risk.[234] This credibility has also been questioned on the basis that many stakeholders may not have sufficient expertise to meaningfully engage in what often highly technical debates are.

Stakeholder engagement which is in tandem with the stakeholder theory and is referred to under section 177 of the Companies Act, requires stakeholder engagement and not stakeholder management. The stakeholder theory has moved away from an entirely corporate – centric focus in which stakeholders are viewed as subjects to be managed towards more of a network-based, relational, process-oriented view of

---

[230] Leonard, K., 'Advantages and Disadvantages of Stakeholders,' '(*Chron Newsletter, 9th July 2020*) accessed on 20th March 2022

[231] Ibid.

[232]Reed, M.S., 'Stakeholder Participation for Environmental Management: A Literature Review' (2008) 141 *Biological Conservation*, 2417

[233]Ibid

[234]Ibid

company stakeholder engagement.[235] The key stakeholders must therefore be engaged and not managed so that their views are considered, and feedback provided on how the board has considered their views. This will manage the challenges referred to above.[236] Engagement will allow consideration of diverse views from stakeholders which will feed into the board's decision-making processes. This will make the board effective and successful since engaging and considering the stakeholder leads to long term sustainability of the company. Further, stakeholder engagement will allow the board to promote the success of the company and its members. It is not possible for the board to promote the success of the company and its stakeholders without engaging with stakeholders and meeting their expectations. The feedback must be fed into the decisions of the board and this will allow the board to promote the success of not only the company, but all its stakeholders.

4.6 Culture

The last component of board dynamics to be looked at is culture. Organizational culture is based on expectations that a given group of people has created, discovered, or developed to manage problems both internally and externally.[237] These effective patterns of expectations are taught to new members as the appropriate way to perceive, think, and feel in relation to those problems.[238] Culture can exist in the form of unspoken values and attitudes that are held by people within organizations[239] such that the type of culture an organisation holds can negatively affect organisation performance. This was seen in the 2000s where a series of corporate scandals and failures led the UK's government to investigate what has been going wrong in some

[235]Cross (2019), page 142

[236]See *n*223-227

[237]Edgar H. Schein, 'The Role of the Founder in Creating Organizational Culture,' (1983) 12 *Organizational Dynamics* 13-28 at page 14

[238]Marianne G. Fortuna, 'Boardroom Cultural Governance: An Examination of the Beliefs Boardroom Cultural Governance: An Examination of the Beliefs and Values of Board Directors and Executive Management in U.S. and Values of Board Directors and Executive Management in U.S. Based Multinational Corporations (MNCs) Based Multinational Corporations (MNCs); also see Edgar H. Schein, 'The Role of the Founder in Creating Organizational Culture,' (1983) 12 *Organizational Dynamics* at page 14

[239]Anand V., et al. 'Business as usual: The acceptance and perpetuation of corruption in organizations' (2004) 18 *Academy of Management Perspectives* 39. <https://www.semanticscholar.org/paper/Business-as-usual%3A-The-acceptance-and-perpetuation-Anand-Ashforth/0fe8b94bc785650d8aaa26e6eca7b84c25cc88a5> accessed 4th February 2021

large corporations.[240] These investigations identified destructive corporate cultures emanating from greedy and self-serving leaders in boardrooms.[241] The cultural and behavioural characteristics of organizations have a performance effect.[242]

Boardroom cultural governance is defined as beliefs, values, and inferred behaviours of the key actors both inside and outside of the boardroom that influence and control the organization. The boardroom cultural governance beliefs, values and inferred behaviours of these extremely important key actors and how they perform are critical to the financial and economic well-being of their respective organizations.[243] Ineffective boards are often a result of failure of board culture[244] and dynamics are fundamentally linked to the culture of the board.[245] Culture has a powerful and sometimes overwhelming impact on the organisation's decision-making and performance.[246] Companies must therefore understand that it is not the formal ethics which deem that an organization is corruption free, but it is the culture embedded within the organization which maintains ethical conduct throughout both the formal and informal systems.[247] When boards develop and expand their understanding of corporate culture and align it with the ethical and business standards of the entity including corporate strategies, the board will be effective and will be able to create long-term shareholder value.

---

[240] C. Villiers, 'Boardroom Culture: An Argument for Compassionate Leadership,' (2019) 30 *European Business Law Review* 253-278 at page 253 <http://www.kluwerlawonline.com/abstract.php?area=Journals&id=EUL R2019012> accessed on 4th February 2021

[241] Ibid

[242] Daniel R. Denison, 'Bringing Corporate Culture to the Bottom Line' (1984) 13 *Organizational Dynamics* 5-22 at page 20.

[243] "Boardroom Cultural Governance: An Examination of the Beliefs and Values of Board Directors and Executive Management in U.S. Based Multinational Corporations (MNCs)." *CGN: Psychology (Topic)* (2012): n. Page 65 (MNCs)' (2012) CGN*: Psychology* (Topic), page 65

[244] Richard M. Steinberg, Catherine L Bromilow, 'Corporate Governance and the Board: What Works Best?' (2000), *The Institute of Internal Auditors Research Foundation*, Florida, USA., page 66

[245] Didier Cossin and José Caballero, 'The Four Pillars of Board Effectiveness,' (2014), <10.1002/9781119615705.ch1.> accessed 20th November 2020.

[246] Alan L. Wilkins and William G, Ouchi, 'Efficient cultures: Exploring the Relationship Between Culture and Organizational Performance' (1983) 28 *Administrative Science Quarterly* 468-481

[247] Anand V., et al. 'Business as Usual: The Acceptance and Perpetuation of Corruption in Organizations' (2004) 18 *Academy of Management Perspectives* 39

There are contradictory views on the level of importance of characteristics of organisational culture.[248] A strong organizational culture can stifle divergent thinking in an organization, especially if there is insistence on a single right way to do things or if there is little value placed on differences in perspectives and approaches.[249] Too much uniformity in mental models about ways of work to be approached may encourage employees to accept existing paradigms for the organization's work without ever questioning them.[250]It can create barriers to change, diversity and acquisitions and mergers.[251] A company can face difficulty in its attempts to change its ways in a dynamics and highly competitive environment.[252] The Board will therefore need to be agile and ensure appropriate embedment and speeding up of culture change across the organisation.

An effective board defines the company's purpose, strategy, values and behaviours that shape its culture and the way it conducts business. Defining culture that speaks to the strategy and company purpose is key to promoting the success of the company. A saying that culture eats strategy for breakfast[253] means that an empowering culture is the route to success hence the need to set the culture as per section 177 of the Companies Act. This culture must be set at the top by the board and must be embedded in the entire organisation. The culture will thus support the attainment of the strategy thus ensuring that the purpose, strategy, values behaviours that have been decided is supported by an appropriate culture that will enable the promotion of the success of the company and its members.

4.7 Conclusion

Drawing from the 11Cs model of corporate governance, this chapter mainly focused on board cohesion and challenge, decision-making, diversity, culture, and stakeholder

[248]Hee Song Ng and Daisy Mui Hung Kee, 'Organisational Culture can be a Double-edged Sword for Firm Performance' (2013) 7 *Research Journal of Business Management* 41-52 at page 47

[249]M. Trefry, 'A Double-Edged Sword: Organizational Culture in Multicultural Organizations' (2006) 23 *The International Journal of Management* 563.

[250]Ibid, page 570

[251]Hee Song Ng and Daisy Mui Hung Kee, 'Organisational Culture can be a Double-edged Sword for Firm Performance,' (2012)7 *Research Journal of Business Management*, 42

[252]Ibid.

[253]Jacob M. Engel, 'Why does Culture eat Strategy for Breakfast?' (*Forbes*, 20th November 2018) https://www.forbes.com/sites/forbescoachescouncil/2018/11/20/why-does-culture-eat-strategy-for-breakfast/?sh=bc3a3461e098 accessed 6th May 2021

conversations which are also elements of board effectiveness. The chapter concludes that a balance of cohesion and challenge must be present to bring about psychological safety which allows members to communicate opinions for or against the motion. Further, evidence-based decisions and management of bias leads to objective and unbiased decisions relating to purpose, strategy, values, culture and behaviours, which will contribute to the success of the company.

In terms of diversity, the chapter concludes that the benefits of diversity will positively impact board effectiveness of a company if the approach taken by section 11 of the Gender Equality Act is affected. The Companies Act must be amended to require a similar approach for director appointments. Inclusion of other types of diversity will make the board effective, as the board members will leverage off different perspectives that will improve board decision-making. [254]Culture is a key factor for meeting the company's strategy and promoting the success of the company and the board must set the tone at the top while ensuring that it changes the culture where needed.

Lastly, stakeholder conversations are a key consideration for board dynamics such that having stakeholder conversations requires significant attention by the board. This chapter has found that a board that engages its stakeholders will allow consideration of the members' perspectives which if considered, can lead to the long-term success of the company and its members. Such a board will also fulfil its duty under section 177 of the Companies Act and will be seen to be considering the long terms success of the company.

[254]Ibid

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This thesis aimed at assessing the extent to which board effectiveness can be improved by incorporation of board dynamics in Malawi's corporate governance legal framework. The interrelationship amongst the concept of boardroom dynamics, board dynamics and board effectiveness and the need to ensure the same is managed through proper board process has been discussed. The theoretical framework of the thesis was discussed where the behavioural theory of board and the sociological theory of law were analysed in line with the study. A behavioural theory of boards and corporate governance best explains the emergence of boardroom dynamics and its impact on corporate governance. In turn, the sociological theory helps explain the need to regulate components of board dynamics to ensure that the boards are effective, promote the success of the company and that the company creates value.

Chapter 3 has discussed the approaches to corporate governance regulation and the current corporate governance legal framework which includes the statutes and subsidiary legislation; and further that the framework has taken a rules-based approach considering section 184 of the Companies Act. This technically means that any code that shall be prescribed shall be complied with. While this may not possibly be what the drafters intended, that is the position propagated by section 184 of the Companies Act. The history of the framework and the vacuum in as far as management of boardroom behaviours is concerned was discussed. It was noted that Malawi's current corporate governance legal framework has left a vacuum in as far as management of board behaviours and board dynamics is concerned.

In Chapter 4, the extent to which boardroom dynamics impacts board dynamics was examined. It has been argued that decision-making must consider balance of cohesion and challenge, to bring about psychological safety which allows members to communicate opinions for or against the motion. This allows full discussion of all concerns and allows members to manage bias and make evidence-based decision so that objective and unbiased decisions are made after full consideration of diversity thereby setting the companies purpose and strategy and promoting its success.

In terms of gender diversity, the chapter has concluded that the benefits of diversity will positively impact the success of the company if section 11 of the Gender Equality Act is adopted by companies so they can leverage off the benefits brought by women representation on boards. The Companies Act therefore needs to take a similar approach for director appointments even though the requirement may have looked at other benefits. Inclusion of other types of diversity will allow the board to consider and leverage off different perspectives that will improve board decision-making which decision results in long term success of the company.[255] Further, stakeholder conversations are a key consideration for board dynamics such that having stakeholder conversations require significant attention by the board. It has been argued that a board that engages its stakeholders will be effective as the stakeholders' views will be considered in decision-making as the success of the members cannot take place without knowing what success means for the stakeholders. Such a board will also fulfil its duty under section 177 of the Companies Act and will be seen to be considering the long-term success of the company. Lastly, it has been argued that culture must be set at the top by the board and must be embedded in the entire organisation. The culture will support the attainment of the strategy thus ensuring that the purpose, strategy, values behaviours that have been decided is supported by an appropriate culture that will enable the promotion of the success of the company and its members.

5.2 Recommendations

It is proposed that regulatory agencies and other groups involved in establishing a framework of governance within which boards operate may find it worthwhile to consider the mix of behavioural characteristics, skills, aptitudes, and capabilities of directors. These are considered more important than some of the traditional structural regulations in ensuring that corporations are governed in the best interests of all the

[255] LeBlanc (2005), Page 199

shareholders.[256] While the Institute of Company Secretaries and Administrators (ICSA) found that it may be undesirable, even unhelpful to prescribe appropriate behaviors by legislative provisions supported by penal or regulatory sanctions, ICSA nevertheless considers it possible to formulate guidelines on the behaviors of directors when discharging their duties.[257] Getting the best out of the board and encouraging best practice boardroom behaviors are critical aspects of corporate governance but currently seem to be a neglected area.[258]

5.2.1 Regulation of Board Dynamics

LeBlanc noted that searching for and promoting a greater understanding of how boards make decisions and the factors that lead to board and director effectiveness does not imply the imposition of more rules and regulations but should rather lead to fewer.[259] He further opined that many rules substantially increase the costs of operations and restrain organisations from acting to promote growth and development and thus retarding growth. [260] He, however, notes that rules do improve corporate performance and assure more effective operation of the institution, from taking action to promote growth and development. It is my view that regulation is key in this aspect despite concerns around regulating human behaviour as opined by LeBlanc. Board dynamics is key to board effectiveness and corporate performance especially when looking at the duties of board as indicated in the first chapter. For those duties to be carried out, how boards interact and make decisions is too important a factor to be left to chance. Further, boards have always been referred to as the 'black box' which speaks to their secretive nature. Regulating board behaviour and board process allows the board to be more open and deliberate about their interactions and good behaviours. This will ensure better decision making and board effectiveness so that their responsibilities and duties are met.

Given that the main driver for developing codes is the growing recognition by governance policy makers, that legislation can be excessively rigid and does not fit

[256]LeBlanc (2005) page 199
[257]ICSA Report on Boardroom Behaviours https://www.cgi.org.uk/assets/files/pdfs/consultations/09.04%20ICSA%20Policy%20Report%206.pdf page 3.
[258]Ibid.
[259] Leblanc (2005) page 256
[260] Ibid, page 257

with the one size fits all approach,[261] it is recommended that guidelines related to board behaviours and how boards should discuss issues be laid out where company secretaries will be required to comply or explain non-compliance. This being a new concept, it cannot be compulsorily compelled on the outset and I would propose that a guideline be made to see how companies receive and utilise the concept voluntarily; and explain if they are unable to. Policies and procedures manual will need to be drafted and the board charters be amended to include the procedures adopted.

Company secretaries will be required to ensure that the Board is trained on these guidelines and the Chair of the Board takes full responsibility of ensuring that the guidelines are followed through. The Company Secretary and the Chair will be required to give a report on how they have embedded the components of board dynamics in its Annual Report. It is further recommended that once the guidelines are made aware and followed, the same be made into law as Regulations to the Companies Act. These will need to be enforced by the Registrar of companies and/or the respective self-regulating agencies. As illustrated by the sociological theory of law, the guidelines will bring change in the construct of the society and compel companies to adhere to the components of board dynamics in promoting the success of the company and its members as a whole.

5.2.2 Enforcement of Board Dynamics

Enforcement while the principles- based guidelines, will be through the comply and explain approach to be taken. Monitoring of the policies and procedures that have been drafted and followed will need to be done. Further, by reporting to shareholders in the annual report, the chair and the company secretary will need to explain where the processes have not been followed so that the stakeholders and shareholders are made aware. Once the regulations have been gazetted, the Registrar of Companies and the industry regulators will need to ensure the same is followed and penalties meted out where there is non-compliance.

A key requirement that can be incorporated in the current framework is the requirement for boards to consciously and formally agree on its behavioural objectives so as to act as a unified body irrespective of the nature of the tenure of

[261]Ibid, 47

individual members and to drive board process through a uniting set of behaviours.[262] The board must adopt the specific list that will be indicated in the guidelines and specifically list down the behaviours the board would like to be implemented in addition to those laid out in the directives. The Board will also need to indicate the behaviours they will guard against for purposes of board effectiveness in the areas of board decision-making, stakeholder interactions, diversity, culture and cohesion and challenge.

Further, section 184 of the Companies Act must be amended to allow principles-based approach as an option for regulation of certain aspects of corporate governance requirements that cannot be made compulsory. This is key because any law that targets boardroom behaviours would require a comply or explain approach to governance until where the industry is ready to move to the next step. However, a balance will need to be implemented to ensure that the board guards against bad behaviours that can derail board effectiveness and requiring boards to explain the processes used to guard against those behaviours.

5.3 Board Evaluation of board dynamics

Board dynamics discussed above must be evaluated to ensure that appropriate processes in managing boardroom dynamics is made along with other areas under the 11Cs model of corporate governance. Board evaluation is a critical structural tool for assessing board effectiveness and efficiency as it enables review of the dynamics of the board. [263] The Companies Act (Corporate Governance) Regulations requires a board evaluation to be done annually to review the mix of skills and experience of the members of the board. The level of evaluation would depend on the type of organisation such that large organisations may also consider evaluating the chairperson, other members of the board, board subcommittees and the Chief Executive Officer.[264] This requirement is basic in that it allows a company to decide whether to conduct evaluation. The regulations have not indicated the importance of

[262]ICSA Report on Boardroom Behaviours, Page 6
[263]Steinberg, R.M., Bromilow, C.L., 'Corporate Governance, and the Board: What Works Best?' 2000 *The Institute of Internal Auditors Research Foundation*, Florida, USA., page 66
[264]Regulation 5.1. and Regulation 5.2 requires organisations to agree in advance the type of evaluation suitable for their organisation and how to measure and report it in the organisation's annual report.

coming up with objectives of the board evaluation, the specific areas that could be evaluated, how the evaluation should be done and what must be done with the results.

Directors' performance evaluation is a critical component of a regulatory framework for corporate governance.[265] The OECD Principles of Corporate Governance underscore this by stating that corporate governance "provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.[266] Performance evaluation promotes directors' accountability by clarifying their roles and responsibilities and providing relevant information for stakeholder decisions. It can lead to improved directors' effectiveness by communicating performance expectations, values, and standards, identifying skills gaps, experience, and development needs. It can also lead to efficient skills utilisation of individual directors and boards of directors for the benefit of directors, firms, and stakeholders.[267]

5.3.1 Process for Board evaluation of Board dynamics

An evaluation will need to be conducted on a yearly basis and can be facilitated internally or externally. The supporting documents referred to will need to include the need to conduct evaluation of board behaviours, among other evaluation objectives. The guidelines will need to form part of the survey questions that are done in the evaluation process. Alternatively, a review can be done through an evaluator sitting in to monitor the board meetings and note behaviours which are in line or not in line with the guidelines. A comprehensive report with recommendations must be prepared and discussed with the chair and board. The recommendations will need to be tracked for closure during board meetings and progress reviewed in the next board evaluation.

---

[265]OECD (2015), *G20/OECD Principles of Corporate Governance*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264236882-en> p. 53) accessed on 4th May 2021

[266]OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris, <https://doi.org/10.1787/9789264236882-en.> p. 9) acceded 4th May 2021

[267]Ngwu, F.N., Osuji, O.K., Ogbechie, C., & Williamson, D. (eds.), E*nhancing Board Effectiveness: Institutional, Regulatory, and Functional Perspectives for Developing and Emerging Markets* (1st ed Routledge 2019) , https://doi.org/10.4324/9781315169477 accessed 4th May 2021

5.4 Conclusion

The study set out to find out the extent to which board effectiveness can be improved by incorporation of board dynamics in Malawi's corporate governance legal framework. The result is that the board effectiveness can be improved to a great extent if board dynamics are included in our corporate governance framework. This thesis recommends that the corporate governance framework must be amended with guidelines suggested above. It is necessary to have clear guidelines to govern what board behaviours must be followed for the board to be effective. As illustrated above, these guidelines, will ensure boards are able to prevent company failures and make decisions that promote the success of the company. Companies are required to comply or must explain non-compliance and report to shareholders. The registrar of companies or respective industry regulators must enforce compliance with requirements. The chair and company secretary must also ensure that board evaluation includes board dynamics. Malawi will prevent failures or bad decisions happening in companies if board dynamics are considered.

BIBLIOGRAPHY

CASES

In the Matter of The Financial Services Act 2010 Exparte: The Registrar of Financial Services, Commercial Case No. 55 Of 2011);

The Bell Group Ltd vs Westpac Banking Corporation (No.9) [2008] WASC 239 (28th October 2008) [4362] (Justice Owen)

STATUTES

Companies Act No. 15 of 2013
Financial Services Act, No 26 of 2010
Gender Equality Act Cap No. 3 of 2013

SUBSIDIARY LEGISLATION

Companies Act (Corporate Governance) Regulations 2016
Financial Services (Risk and Governance Requirements for Bank and Bank Holding Companies) Directive, 2018

TEXTBOOKS

Armachand, D., and & B.J. Jayraraj, *Corporate Culture and Organisational Effectiveness*, (Global Business Press, New Delhi 1992)

Ayres, I., & Braithwaite, J., *Responsive Regulation: Transcending the Deregulation Debate*, (Oxford University Press, New York 1992).

Brian Coyle, *Corporate Governance*, 5th Ed., (ICSA Publishing Ltd, London 2016).

Clarke, T., *Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance*, Routledge Taylor and Francis Group, London (2004)

Cooke, W., & Kothari, U., *Participation: The New Tyranny?* (eds.) (Zed Books 2001)

du Plessis, J.J., Hargovan, A., Bagari, M., *Principles of Contemporary Corporate Governance*, (Cambridge University Press, New York 2011)

Huse M., *Board, Governance and Value Creation: The Human Side of Corporate Governance*, (Cambridge University Press, New York 2007)

Jean Jacques du Plessis, Anil Hargovan, Mirko Bagari, (2011) *Principles of Contemporary Corporate Governance*, Cambridge University Press, New York.

Cross J., 'Boardroom Dynamics' (ICSA Publishing Ltd, London 2019).
King M., *The Corporate Citizen: Governance for All Entities* (Penguin Books 2006)

Le Blanc R., and Gillies, J., *Inside the Boardroom: How Boards Really Work and the Coming Revolution in Corporate Governance,* (John Wiley and Sons 2005).

Le Blanc, R., *The Handbook of Board Governance; A Comprehensive Guide for Public, Private and Not for Profit Board Members* (John Wiley and Sons 2016))

Muhome, A., (2019), 'Law and Procedure of Corporate Meetings in Malawi', Allan Hans Publishers, Malawi.

Nicholson, B., (2008). The Role of The Regulator' in Ken Rushton (ed) *The Business Case for Corporate Governance*, (Cambridge University Press 2008)

Wixley T., Everingham, G., & Louw, K., (2019). '*Corporate Governance: The Directors Guide*,' 5th Ed Siber Ink CC.

ARTICLES

Agyris, C., 'Some Limits of Rational Man Organisation Theory' *Public Administration Review*, (1973) 33 *(*253).

Alchian A., & Demsetz H., 'Production, Information, Costs and Economic Organisation'. 62 *American Economic Review* (1972) *777*

Amaral-Baptista, 'Factors for Board Effectiveness from the Perspective of Strategy Implementation: Proposal of an Instrument,' *Corporate Ownership and Control*, (2010) 8(1), 709.

Anand, V., 'Business as Usual: The Acceptance and Perpetuation of Corruption in Organizations,' (2004), 18 *Academy of Management Perspectives*, 39

Armachand D., & Jayraraj B.J., 'Corporate Culture and Organisational Effectiveness' (1992), *Global Business Press*.

Baba V., & Hakemzadeh F., 'Toward a theory of evidence-based decision making' (2012) 50 *Management Decision* 832

Bassett-Jones, N., 'The Paradox of Diversity Management, Creativity and Innovation,' (2005)14, 2 *Creativity and Innovation Management*, 169–75.

Blinco S., Galbarz M., Hohl, S., & Zamil, R., March 2020 'Bank Boards – A Review of Post-Crisis Regulatory Approaches' (2020) 25 *FSI Insights on policy implementation* available on www.bis.org.

Cossin, D., & Caballero, J., 'The Four Pillars of Board Effectiveness,' (2014), <10.1002/9781119615705.ch1.> accessed 20th November 2020.

Deakin S., & Cook J., ‘Regulation and the Boundaries of Law,’ prepared by the United Kingdom Company Law Review Steering Group (1999).

Denison D.R., ‘Bringing Corporate Culture to the Bottom Line’ (1984) 13 *Organizational Dynamics* 5

Finkelstein S., & Mooney A., ‘Not the Usual Suspects: How to use Board process to make Boards Better’ (2003) *Academy of Management Executive 1792* 101

Forbes, D.P., & Miliken F., ‘Cognition and Corporate Governance: Understanding Board of Directors as Strategic Decision- Making Groups’ (1999) 24 *Academy of Management Review* 489

Goldstein J., Gautum K., & Boeker., ‘The Effects of Board Size and Diversity on Strategic Change’ (1994) 15 *Strategic Management Journal* 241-260

van Ees, H., Gabrielsson, J., & Huse, M., ‘Toward a Behavioural Theory of Boards and Corporate governance’ (2009) 17 *Corporate Governance: An International Review* 307-309

Hee Song Ng, & Daisy Mui Hung Kee, ‘Organisational Culture Can be a Double-edged Sword for Firm Performance,’ (2013) *Research Journal of Business Management,* (2013) 7: 41-52

Howlett M., ‘Policy analytical capacity and evidence-based policymaking: Lessons from Canada’ (2009) 52 *Canadian Public Administration* 153

Hunt, Alan., ‘Perspectives in the Sociology of Law’, (1975) 23 *The Sociological Review* (1975)23(1_suppl): 22-44.

Hutchinson, T.C., & Duncan, N., ‘Defining and Describing What We Do: Doctrinal Legal Research’, (2011) 83 *Deakin Law Review* 17 (2012): 83-119.

Ingley C, ‘Board Dynamics and the Influence of Professional Background, Gender and Ethnic Diversity of Directors’ (2003) 11 *Corporate Governance* 218

Kahneman, D., Lovallo D., & Sibony O., ‘Before you Make that Big Decision...,’ (2011) 89 6 *Harvard Business Review,* 50.

Kirkpatrick, G., ‘The Corporate Governance Lessons from the Financial Crisis,’ Financial Market Trends, (2009), Pre-publication Version for Vol. 2009/1 OECD 2009.

Levrau, A. A., & B. Lutgart., ‘Corporate Governance and Board Effectiveness: Beyond Formalism’, Vlerick Leuven Gent Management School, (2006) Working Paper Series. 6.

Lipunga A.M, ‘A Review of Disclosure Provisions in Malawian Codes of Corporate Governance’ (2014) 5 *International Journal of Business and Social Science* 246

Long, T., 'The Evolution of FTSE 250 Boards of Directors: Key Factors Influencing Board Performance and Effectiveness,' (2007) 32 *Journal of General Management,* 245.

Lotende, L., 'The Dynamics of the Boardroom' (2004) 18(1) *Academy of Management Executive* 101.

Louis H., Masotti, L. H., & Michael, A. Weinstein, M.I., 'Theory and Application of Roscoe Pound's Sociological Jurisprudence: Crime Prevention or Control? (1969) 2 *University of Michigan Journal of Law Reform*, 431.

Manet, O., '*Effects of Bias in Boardroom Decision-making'* (2018). Retrieved from https://www.ukessays.com/assignments/effects-of-bias-in-boardroom-decision-making-2021.php?vref=1 downloaded on 2nd December 2020

Masotti, L.H., and Weinstein, M.A., 'Theory and Application of Roscoe Pound's Sociological Jurisprudence: Crime Prevention or Control? (1969) 2 U. Mich. J. L. Reform 431Available at: https://repository.law.umich.edu/mjlr/vol2/iss2/11

Minichilli, A., 'Board task Performance: An Exploration of Micro-and Macro-Level Determinants of Board Effectiveness' (2011) 33 *Journal of Organisational Behaviour* 193

Ngwu, F.N., Osuji, O.K., Ogbechie, C., & Williamson, D., F.N. Ngwu, O.K. Osuji, C. Ogbechie and D. Williamson (eds.), Enhancing Board Effectiveness: Institutional, Regulatory, and Functional Perspectives for Developing and Emerging Markets (1st ed Routledge 2019) <https://doi.org/10.4324/9781315169477 accessed 4th May 2021

Nicholson, B., 'The Role of The Regulator' in the Business Case for Corporate Governance (Ken Rushton ed.). Cambridge, Cambridge University Press (2008), 100.

Ogbechie, C., & Koupofoulos, D.N. 'Corporate Governance and Board Practices in the Nigerian Banking Industry', (2010) Vol. 9(2), *African Research Review* (2010) Vol. 9(2), Serial No. 37, April 2015: 104.04-117

Pechersk, A., 'Diversity in Board of Directors: Review of Diversity as a Factor to Enhance Board Performance' (2016) 9 *Studia Commercialia Bratislavensia* 88.

Pelled, L., 'Demographic Diversity Conflict and Work Group Outcomes: An Intervening Process Theory' (1996) 7 *Organisation Science* 615

Pradeep M. D., 'Legal Research- Descriptive Analysis on Doctrinal Methodology', (2019) *International Journal of Management, Technology and Social Sciences* (IJMTS), 4(2), pp. 93–103.

Pye, A., & Pettigrew A., 'Studying Board Context, Process and Dynamics: Some Challenges for the Future' (2005) 16 *British Journal of Management*, 27-38; Available at SSRN: https://ssrn.com/abstract=681677

Reed, M.S., 'Stakeholder Participation for Environmental Management: A Literature Review' (2008) 141 *Biological Conservation* 2417

Richard M., Steinberg, C., and Bromilow, L., 'Corporate Governance and the Board: What Works Best?' (2000), The Institute of Internal Auditors Research Foundation, Florida, USA.

Roper, C., 'Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission', (1987) *Prof. Legal Educ*. 5 J. 201.

Schein, E.H., 'The Role of the Founder in Creating Organizational Culture' (1983) 12 *Organizational Dynamics* 13

Sheskin, A., 'A Critical Review and Assessment of the Sociology of Law.' 1978) Vol. 3, *Central Michigan University Mid-American Review of Sociology*, 109.

Simon D.S., and Cook, J., (1999) Research Paper, 'Regulation and the Boundaries of Law,' *United Kingdom Company Law Review Steering Group*.

Snyder, A., 'A Legal Philosophy for The Practicing Lawyer: Roscoe Pound's Theory of Social Interests,' 36 CONN. B.J. (1962) 22, 22-23.

Steinberg, R.M., and C.L., Bromilow, 'Corporate Governance, and the Board: What Works Best?' (2000) *The Institute of Internal Auditors Research Foundation* 66

Thoits, P.A., 'Gender Differences in Coping with Emotional Distress. Pp. 107138 in John Eckenrode (ed.), (1991) The Social Context of Coping, New York: Plenum.

Trefry M., 'A Double-Edged Sword: Organizational Culture in Multicultural Organizations' (2006) 23 *The International Journal of Management* 563.

Villiers, C., 'Boardroom Culture: An Argument for Compassionate Leadership,' *European Business Law Review*, (2019) 30 (2), 253-278.

Wilkins A.L., & William G.O., 'Efficient cultures: Exploring the relationship between culture and organizational performance' (1983) 28 *Administrative Science Quarterly* 468

Williams K., O'Reilly C, 'Forty Years of Diversity Research. A Review', in Staw, B.M. and Cummings, L.L. (eds.), *Research in Organizational Behaviour* (Greenwich 1998) 77.

Zahra S.A., & Pearce J.A., 'Boards of Directors and Corporate Financial Performance: A Review and Integrative Model' (1989) 15 *Journal of Management* 291.

Zenger T.R., Lawrence B. R., 'Organisational Demography: The Differential Effects of Age and Tenure Distributions on Technical Communications' (1989) 32(2) Academy of Management Journal (1989) 32(2), 353

GUIDELINES AND REPORTS

2010 United Nations Conference on Trade and Development, 'Corporate Governance in the Wake of the Financial Crisis', (2010); downloaded on <https://unctad.org/system/files/official-document/diaeed20102_en.pdf> accessed 29th December 2020

Approaches to Corporate Governance: Rule-based and Principle Based, <https://www.studocu.com/row/document/ajayi-crowther-university/accounting/approaches-to-corporate-governance/10373899> accessed on 23rd December 2020.

Australian Securities Exchange (ASX) *Principles*), *Principles of Good Corporate Governance and Best Practice Recommendations,* 4th Edition February 2019, <https://www.asx.com.au/documents/asx-compliance/cgc-communique-27-feb-2019.pdf> accessed 26th January 2021.

Financial Reporting Council, '2018 FRC Guidance on Board Effectiveness' (2018) https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code/frc-guidance-for-boards-and-board-committees> accessed 4th December 2020

G20/ Organisation for Economic Co-operation and Development (OECD): Principles of Corporate Governance, (2015) OECD Publishing, Paris, <https://doi.org/10.1787/9789264236882-en.> accessed on 25th May 2021.

Institute of Chartered Secretaries and Administrators (ICSA), 'Boardroom Behaviours',' (8th June 2009), accessed on <https://vdocument.in/international-boardroom-behaviours-icsa-the-icsa-boardroom-behaviours.html?page=1>A report by the Institute of Chartered Secretaries and Administrators (ICSA) accessed 28th November 2020.

National Corporate Governance Review Committee (NCGRC)The Malawi Code II: Code of Best Practice for Corporate Governance in Malawi; Sector Guidelines for Listed Companies, <https://www.yumpu.com/en/document/read/37863310/the-malawi-code-ii-sector-guidelines-for-listed-companies> accessed on 25th January 2021

THESES

Aspasia S. Pastra, 'Board of Directors' Dynamics, Board Effectiveness and Organisational Performance: The case of Nordic Region, (2017), (PhD Thesis) Brunel Business School Brunel University.

Fortuna, M. and K.D. Loch. 'Boardroom Cultural Governance: An Examination of the Beliefs and Values of Board Directors and Executive Management in U.S. Based Multinational Corporations (MNCs),' (2012) (MA Dissertation), Georgia State University.

NEWSPAPER ARTICLES/WEBSITES AND BLOGS

Burton, A. ‘The Disadvantages of Cultural Diversity’ (*The Classroom*, 18th June 2018) <https://www.theclassroom.com/the-disadvantages-of-cultural-diversity-12082787.html> accessed 23rd March 2021.

Chiyembekeza, C., ‘Citizen Insurance Company Under Liquidation,’ (*The Nation*, 22nd August 2014) <https://www.mwnation.com/citizen-insurance-company-under-liquidation/> accessed 23rd December 2020;2020.

Engel, J.M. ‘Why does Culture eat Strategy for Breakfast?’ (*Forbes*, 20th November 2018) <https://www.forbes.com/sites/forbescoachescouncil/2018/11/20/why-does-culture-eat-strategy-for-breakfast/?sh=bc3a3461e098> accessed 6th May 2021.

Hunt, V., D. Layton, and S. Prince, ‘Why Diversity Matters” (*McKinsey and Company*, 1st January 2015) <https://www.mckinsey.com/business-functions/people-and-organizational-performance/our-insights/why-diversity-matters> accessed 20th April 2021.

Kapalamula, A., ‘Government Revives Malawi Savings Bank Debt Collection,’ (*The Times Group Media*, 11th March 2021*)* <https://african.business/2015/08/finance-services/controversy-as-government-sells-malawi-savings-bank/>; <https://times.mw/government-revives-malawi-savings-bank-debt-collection/>; accessed on 7th February 2021.

Leonard, K., ‘Advantages and Disadvantages of Stakeholders,’ ‘(*Chron Newsletter, 9th July 2020*) accessed on 20th March 2022

Masina, L. ‘Controversy as Government sells Malawi Savings Bank,’ (*African Business*, 7th August 2015) <https://african.business/2015/08/finance-services/controversy-as-government-sells-malawi-savings-bank/>; <https://www.mwnation.com/mps-amnesia-affects-malawi-savings-bank-resolve/>; accessed 7th February 2021.

Masina, L. ‘Public Pressure forces Malawi’s President to Suspend Bank Sale,’ *(VOA News*, 10th June <2015) <https://www.voanews.com/africa/public-pressure-forces-malawis-president-suspend-bank-sale>; accessed 7th February 2021.

Wild, L. ‘Malawi's Cashgate Corruption Scandal Highlights Importance of Accountability’ (*The Guardian*, 228th February 2014) <https://www.theguardian.com/global-development/poverty-matters/2014/feb/28/malawi-cashgate-corruption-scandal-accountability> accessed 29th December 2020.

Sicat, P., ‘Evidence-based Policymaking, A Double-edged Sword?’ (*Public Policy Hub*, 15th May 2020) <https://publicpolicyclub.com/2020/05/15/blog-evidence-based-policymaking-a-double-edged-sword/> accessed 7 February 202.

UK Essays, ‘Sociology of Law: Theories and Concepts.’ (November 2018) <https://www.Ukessays.Com/Essays/Sociology/Classical-Sociology-Theories-Applied-To-Law-Sociology-Essay.Php?Vref=1>; accessed on 8th January 2021.

GUIDELINES

Australian Securities Exchange (ASX) Principles of Good Corporate Governance and Best Practice Recommendations.

Financial Reporting Council's Guidance on Board Effectiveness (July 2018), <https://www.frc.org.uk/getattachment/61232f60-a338-471b-ba5a-bfed25219147/2018-Guidance-on-Board-Effectiveness-FINAL.PDF> accessed on 25th January 2021.

National Corporate Governance Review Committee (NCGRC)The Malawi Code II: Code of Best Practice for Corporate Governance in Malawi; Sector Guidelines for Listed Companies, <https://www.yumpu.com/en/document/read/37863310/the-malawi-code-ii-sector-guidelines-for-listed-companies> accessed on 25th January 2021.

G20/ Organisation for Economic Co-operation and Development (OECD): Principles of Corporate Governance, OECD Publishing, Paris, <https://doi.org/10.1787/9789264236882-en.> accessed on 25th May 2021.

REPORTS

United Nations Conference on Trade and Development, *Corporate Governance in the wake of the Financial Crisis* https://unctad.org/system/files/official-document/diaeed20102_en.pdf page 1, accessed on March 2021.

Walker, D., *Boardroom Behaviours*, A report by the Institute of Chartered Secretaries and Administrators (ICSA 2009).

ICSA Governance Institute, *The Stakeholder Voice in Board-decision-making: Strengthening the Business, Promoting Long-term Success*' (2017) https://www.icsa.org.uk/assets/files/free-guidance-notes/the-stakeholder-voice-in-Board-Decision-Making-09-2017.pdf, accessed on August 2020.

ICSA Report *Organisational Culture in Sport: Assessing and Improving Attitudes and Behaviour* (2018) https://www.cgiglobal.org/media/g4fnuqcp/organisational-culture-in-sport.pdf, accessed on 16th August 2020