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BADAR MOHAMMAD ALMEAJEL ALANAZI

Shaqra University, Saudi Arabia

EFFECTIVE IMPLEMENTATION OF CORPORATE GOVERNANCE: A COMPARATIVE LEGAL ANALYSIS ON SAUDI ARABIA AND AUSTRALIA REGULATIONS

Abstract:

This paper aims to develop a practical framework for effective corporate governance in emerging economies. Using qualitative data, we explain the need for the effective implementation of corporate governance through a comparative legal analysis of two countries: Australia and Saudi Arabia. Our analysis indicates that emerging countries in Asia and the Middle East, such as Saudi Arabia, lack proper accountability, management, and understanding of the contractual legal agreement that defines business relationships in corporate organizations. These observations are consistent with the agency theory of corporate governance, which theorizes that effective implementation of corporate governance requires effective management of organizational resources and avoidance of conflict of interest between and among managers and shareholders. Our study enhances our understanding of the ways countries could achieve the proper implementation of corporate governance in practical terms.

Keywords:

Corporate Governance, Effective Implementation, Law, Legal Analysis, Australia, Saudi Arabia

1. Introduction

Corruption and the breakdown of laws in institutions and corporate organizations have necessitated the need for effective implementation of corporate governance. This is so especially in economists around the world. For instance, the 2008 financial crisis that had affected by the U.S., Europe, and then metamorphosed in other countries in the world, is a clear-cut example. It was an indication of how corruption and distortion of laws and order can destroy companies and meltdown economic resources of big corporations and the economic infrastructure of societies. (Meteb 2015). When a country's legal system is affected, contract enforcements will be hampered, and conflict of interests cannot be easily resolved. That is because weak information [will ensue], which will lead to the prohibition of surveillance and control. This, in turn, is a matter that will result in the spreading corruption and the absence of trust. Thus, undermining a company's administration and performance (Fawzy 2003). Lack of fairness, transparency, and trust in the corporate world is a big problem. Dishonest managers that do not disclose the company's real facts and figures to investors can never thrive. The reason is simple: Every corporate player needs to be knowledgeable about the real situation of the business to ensure effective planning, accounting, and goal achievement (AlEssawy 2003).

In response, legal scholars have conducted numerous studies on the need for effective corporate governance and its benefits for economic growth and stability in institutions and organizations. Some scholars, for instance, have focused on the conceptualization of the term "corporate governance"(L'Huillier 2014; Meteb 2015).This group of studies not only saw the need for defining the term, but they also argue that the term "corporate governance" has not been clearly operationalized in academic literature. Far from a simple definition of the concept, which is often describe as "a process of getting corporate tasks done," scholars within this camp argue that the concept of corporate governance should include the structure through which the corporate goals are devised with clear and determined paths to "achieving such objectives and the performance surveillance systems"(Meteb 2015). However, anothergroup of studies focuses on more technical features of corporate governance. Ghabayen (2012); for example, has studied the link between Board mechanisms and committee composition in corporate governance, arguing that both variables have to work hand-in-hand to achieve optimal performance in corporate organizations. Finally, other smaller groups of studies argue that more emphasis should be placed on the principles of corporate governancethan on any other variable (OECD, 2014, 2019). However, only a handful of studies have extended their theoretical discourses on the ontology of effective implementation of corporate governance in emerging economists. The scarcity of information on this subject is regrettable because it is the sort of practical knowledge that countries appear to be requiring if they are to ensure maximum operation within corporate institutions.

This current study shifts from these theoretical discourses to a more practical one. The focus of this paper is to provide a practical framework for effective implementation of corporate governance by offering a comparative legal analysis of Australia and Saudi Arabia and providing a practical recommendation for the Kingdom of Saudi Arabia to follow so as to achieve real corporate governance performance and results. Using the agency theory of corporate governance, the paper argues that for emerging countries—like Saudi Arabia—to achieve effective implementation of corporate governance, the country's corporate regulation must work on three things: (1) proper understanding of the contractual agreement embedded in the business relationship between the manager and the corporate owner; (2) management of conflict in corporate affairs; and (3) proper accountability and transparency.

This study attempted to contribute to the knowledge base by exploring the need for effective implantation of corporate governance regulation in economists in general and Saudi Arabia in particular. Using quantitative data analysis, we examine, in practical terms, how emerging markets, such as Saudi Arabia, can achieve effective implementation of corporate governance that will allow them to compete in the marketplace. To this end, we structure the paper into three sections, including the introduction. Section two consists of the theoretical perspective and literature review on corporate governance. Section three discusses the method used in the study and analysis of the qualitative data that were sourced from the literature. Finally, section four concludes the paper by summarizing the major findings and offering policy recommendations and suggests areas for future research.

2. Theoretical Perspective and Literature Review

2.1 Agency Theory of Corporate Governance

Surveying the literature on corporate governance and effective implementations of company regulations, one notices a great amount of literature on the subject. There is also ample literature on the subject and the application of many theories to explain the structure, operation, and phenomenon of the concept. Some of the theorists that are often cited in the legal scholarly literature are the stewardship theory and stakeholder theory of corporate governance.(Donaldson 1990; Turnbull 1997; Heath and Norman 2004; Baker 2010). The basic argument of the stewardship theory is that managers are seen as the “stewards” (or custodians) of corporations they manage. In other words, managers are regarded as professional leaders that have the know-how to steer the affairs of an organization. In addition, managers are also regarded as the keepers of company assets and can work better and harder to maximize shareholders’ returns(Donaldson 1990). The theory also posits that managers capitalize on non-economic motive variables, such as the need for achievement, recognition, and work ethics to achieve managerialgoals (Mason 200).

As for the stakeholder theory, it focuses on the stakeholder’s interests of a firm. More specifically, the theory emphasizes more on the role of the governing board and their activities, especially in chasing stakeholder interests (Cooper 2007).The problem with the stewardship theory is that it puts more emphasis on managers and, by default, places a positive feature on managers while neglecting their negative outcome. The theory is, therefore, weak in addressing the “conflict of interest”between the principal and the manager incorporate organizations (Jensen 1976).Stakeholder theory also neglects the role of other important players in a company. The theory mainly focuses on the satisfaction of the stakeholder’s interests, even though in the process of satisfying a stakeholder’s interest, sometimes, many other issues arise. Thus, one can see that both the theorists did not address the central problem imbedded in corporate governance, which is the contractual agreement between the two leading parties in a corporate organization: The stakeholder and the manager. We need a more comprehensive theory that will address this important issue in order to thoroughly explain the ontology of the effective implementation of corporate governance in sovereign countries.

This paper, therefore, uses agency theory to explain the effective implementation of corporate governance. Agency theory can be defined as a “contractual” association between a party (principal) working with another party (agent) to provide service(s) on behalf of the principal, which implicates that some decision-making powers would be yielded to the agent” (Jensen 1976, p. 311).The theory is suitable in explaining corporate governance and performance for three reasons. First, agency theory addresses the contractual relationship between the principal (stakeholder) and the human agent (manager). It is important to point out that it is the contractual agreement that makes a company exists. It is the contractual agreement that lays down the laws and procedures directing a company’s operation. It is the contractual agreement that brings people together and the relationship that is taking place between them. This agreement is important and it determines the success or failure of any company(Mallin 2012).Second, agency theory is appropriate in explaining corporate governance because it responds to the central question of conflict of interest between the manager and the owner. For example, managers can exploit the owner’s resources (Berle and Means 1932) because both have different interests and objectives(Eisenhardt 1989, p. 543).The focus of agency theory is to checkmate the activities of managers and ensures that they do not use their power against the stakeholder and vice-versa (Tirole 2006).

Third, the theory also addresses two crucial features of the relationship between the two parties—power and accountability—not only between principals and managers but also between the board of directors, shareholders, and the community within which a corporation exists. As it happens, all working relationships and the laws guiding those relationships involve some form of power relations (Raven 2008). That is to say that there is a need to measure how managers exercise their powers when undertaking their corporate responsibilities. Monks and Minow (1995) for instance, posit that one of the most important issues that agency theory tackles are about “how to grant managers enormous discretionary power over the conduct of business while holding them accountable for the use of the power.” This is vital in maintaining the smooth and effective running of a company, and it is one of the reasons why agency theory fits in explaining the corporate governance phenomenon.

The many conflicts of interest and man’s self-centered emotions are inevitable. There is a tendency that a manager may choose the wrong path of deceits and power abuse. In this sense, stakeholders couldmanagethe power of the manager by putting an appropriate governance structure. As Jensen &Meckling (1976) pointed out that, managers are not always positive. Sometimes, they act against stakeholders that recruited them. With this, therefore, “appropriate governance structures (to monitor costs) must be put in place to protect the interests of shareholders” (ibid, 305).Despite all the positive aspects of agency theory, it nonetheless has its own drawbacks. For example, it is argued that Boards are becoming weaker and useless because more power is vested to managers (Kunz and Pfaff 2002). In addition, as managers run the affairs of a corporation, accountability is growing weaker and conflict and corruption ensue in consequence of the decline in the monitoring role of Boards.

With all of these negative features, however, the agency theory is essential in solving corporate governance issues. If applied in any corporate organization, agency theory can be used to “align” the interest of the two parties: Both the manager and the principal owner (Shleifer, A. and Vishny 1997). Also, the application of the theory in a company can help in saving the wealth of the shareholder from being stolen as well as help the manager from drifting away from their primary duties and responsibilities (Alakkas 2016).More so, the agency theory is essential in reducing the rising conflict between the manager and the owner: The principal can limit agent abuse or manipulation by “creating incentive programs for managers that will limit any illegitimate activities by the agent” (Jensen and Meckling 1976). To ensure a healthy work relationship between the two parties, agency theory suggests the use of economic incentives, such as equity compensation, financial rewards, or accounting gamesmanship to motivate the manager to work in accordance with the laid down rules (Coffee 2013). To this end, we raise the following questions:

- What legal relationship exists between a stakeholder and a corporate manager?
- What are the bottlenecks that prevent companies from achieving their goals?
- How should a country ensure the effective implementation of its corporate governance and plans?

2.2 Effective Corporate Governance

Although legal scholars have tried to define and situate the concept based on common legal grounds, the word “corporate governance” has no universally agreed-on definition. Made up of two compound words—“corporate” and “governance”—the term has been viewed by different scholars from different perspectives. For example, some scholars have defined the term in terms of its composition while others define it in terms of its function. Some scholars consider corporate governance as a system while others only focus on the key players (managers, stakeholders, shareholders, and board of directors) and how they collectively function to achieve a company’s goals. In this section, we will review various definitions of corporate governance, analyze the objectives of corporate governance, and look at codes of conduct and legal basis for the establishment of corporate governance.

Corporate governance is a combination of two words: “Corporate” and “Governance.” In order to understand what the compound word means it is essential that we begin by defining each word, and then move on to define the compound word. The word “corporate” entails a group, an association, or an assembly of people. This collection or assemblage of people is organized in some enterprise (e.g. a business enterprise) and is directed by some form of agreement (Vagneur2016).“Governance,” on the other hand, is referred to as a system of control or a way of managing people and resources, which “determines a course of action through an intended or “emergent system of processes” (ibid, 2016). Looking at both the definitions, we can summarize, in less technical terms, the two words. Corporateis referred to as a group of people (managers and stakeholders) who come together to work in an enterprise (a company, an organization, or an institution) and are directed by laws. The word governance, on the other hand, simply referred to as a way or process of managing the people that come together to run an enterprise.

Corporate governance, therefore, can be defined as a system run by people where a company’s business is managed and controlled by laid down rules and procedures. OECD (2004) observed that corporate governance is nothing but “a system by which business corporations are directed and controlled.” Raut (2018, p. 4) offered a brief, straightforward definition of corporate governance as a “combination of policies, processes, and laws that determinewho gets what and how a company is managed.”On the same vein, King (2006) sees corporate governance as “the governance of any entity.” When dissecting King’s definition, it is obvious that the scholar only focuses on the governance part of an enterprise (entity). He neglected the other critical aspect of it (the social relationship and the contractual agreement that brings and binds the people/players together). Raut's definition is more comprehensive as the scholar attempted to blend the two aspects together. However, the scholar's definition falls short in operationalizing who the corporate players are. Also, the scholar did not mention the words "stakeholders," "CEOs," and "Board of Directors"—all-important key terms thatshould be included in the corporate governance definition. Thus, a more comprehensive and technical definition is required.

More technically, Capital Market Authority (2017, p. 7) defined capital corporate governance as follows:

> "[A set of] rules to lead and guide the Company that includes mechanisms to regulate the various relationships between the Board, Executive Directors, shareholders,and Stakeholders, by establishing rules and procedures to facilitate the decision making process and add transparency and credibility to it with the objective of protecting the rights of shareholders and Stakeholders and achieving fairness, competitiveness and transparency on the Exchange and the business environment."

According to this definition, four variables are necessary attributes in corporate governance. First, laws and rules are essential. It is the rules that guide the affairs of a corporation and determine how it will operate. In other words, the rules lead the corporation in all its operations and relations—both internally and externally. Second, the relationship variable is an important aspect of corporate governance without which a company ceases to exist. The definition outlines the various parties involve in a corporate relationship: The Board members, shareholders, Executive Directors and stakeholders among others. Third, the rights of shareholders, as well as stakeholders, are highlighted in this definition. It is important to note that one of the major purposes of corporate governance is to protect the rights and interests of the shareholders, who are the owners of a corporation. Finally, the definition talks about some of the essential features that must be factored in corporate governance, such as; accountability, fairness and transparency. These attributes are essential for ensuring that the parties involved relate according to law and that each party achieves its purpose without injuring the other.

Shleifer and Vishny (1997, p. 737) contend that corporate governance should be defined in two perspectives: As a mechanism and as a decision-making process. Corporate governance must be regarded as both market-based and institutional approaches that encourage the self-interested controllers of a company (executive decision makers of the company) to take decisions which maximize the company value to its owners (who provided capital). In other words, "Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment" (ibid, p. 737).As a structure through which authority is exercised and shared by various stakeholders and groups to guarantee the achievement of a company's goals, corporate governance works to achieve the goods of the organization and manages (OECCD 2016).Its objectives include, among other things, to enhance shareholder's investment, to protect stakeholders' interests, to ensure that corporate goals are achieved, and to ensure a smooth working relationship between the company owners and its handlers, without which none of the corporate objectives would be achieved (OECD 2016).

With this, the various players involved in a corporate organization must settle all their differences and work in unison to achieve company objectives. That is because a corporate organization is a system, which is comprised of different components, groups of people, and departments. Once a component is faulty, or not in tandem with other institutional parts of the organization, then the company plans would never be executed and company goals would never be achieved.

2.3 Effective Implementation of Corporate Regulations in Saudi Arabia

In the last few decades, corporate governance structures were not fully established in the Middle East and North Africa (MENA) region in general and Saudi Arabia in particular. Though there were strong economic prosperities in the region, the lack of proper implementation of effective corporate governance had left a huge gap that needs to be filled with better regulations. In response to this hiatus, the Organization for Economic Cooperation and Development (OECD) set to close this gap in 2005 as it embarked on a MENA-OECD Initiative on Governance and Investment for Development. The goal was to help establish an effective corporate governance program that could improve firms in the MENA region to perform at the optimal level (Koldertsova 2010). Shortly after this great initiative, members of the six GCC states (including Saudi Arabia) signed the Dubai Declaration on Corporate Governance in 2006. The aim of this signature was to upgrade the corporate governance structures in their countries because they realized the importance of effective corporate governance implementation not only for their firms but also for their economic growth and development.

For instance, some of the many benefits of corporate governance for countries in the GCC region in particular and the MENA region, in general, are that it reduces financial risks and uncertainties arising from corporate mismanagements and conflicts (Ghabayen 2012, p. 170).It also enhances the company's productivity and performance, attracts investment capital, and provides a good working relationship between a company and the environment (Vinten 2017).However, effective corporate governance implementation in Saudi Arabia is at an amateurish stage. It is not as professional, especially when juxtaposed with other countries in the west, such as the United Kingdom, France, and Australia. For example, one of the crucial problems of corporate governance in Saudi Arabia is the issue of transparency. A company's information is kept hidden and affairs within the entity remained closed as managers and stakeholders misuse power in consequence of the weak regulatory environment and political instability in place. These are no doubt some of the main causes of the barrier to foreign investment and they undermine investor confidence thus leading to weak economic growth (Ihsan 2012).

Effective implementation of corporate governance is therefore needed in Saudi Arabia for several reasons. The main reason is to improve the quality and transparency of public financial information. It is also needed in order to improve the efficacy of capital markets, which will, in turn, attract new investors to the KSA market and bring improvement in the confidence of current investors. It is within this context that the Capital Market Authority issued first Corporate Governance Regulations in 2007 and revised it in 2009 in order to attract more investors and "solve the agency problem in the country" (ibid 2012). Part 10, Articles 94 and 95 of the Saudi Corporate Governance Regulations as it is enshrined in its 2007 Capital Market Authority states the laws governing the effective implementation of corporate governance in the country:

> ***Article (94):*** **“**The Board shall establish governance rules for the Company in accordance with the provisions of these Regulations, and shall monitor their implementation, verify their effectiveness, and amend them as necessary. To that end, the Board shall: (1) Verify that the Company is in compliance with these rules; (2) Review and update the rules pursuant to statutory requirements and best practices; (3) Review and develop codes of professional conduct representing the Company’s values and other internal policies and procedures in order to fulfill the Company’s requirements and in accordance with best practices; and (4) regularly inform the Board members of the developments in corporate governance and best practices, or authorize the audit committee or any other committee or department to undertake this task. ***Article (95):*** If the Board forms a corporate governance committee, it shall assign to it the competencies stipulated in Article (94) of these Regulations. Such committee shall oversee any matters relating to the implementation of governance and shall provide the Board with its reports and recommendations at least annually.”[1]

Despite the many weaknesses in Saudi corporate governance, the above laws show that the Kingdom is serious in reforming its corporate institutions. The focus of the article (94) is on laws governing the structure, power play, and operation of the corporation. The article puts more emphasis on the Board, and this is important because the Board is the governing body of a firm. If they abide by the laid down rules, the company thrives. If they do not abide by the rules, the company fails. Article (95) also stresses on corporate structure and the power of Board members, with emphasis on Board organization and functions to ensure that a company’s goals are not only properly planned and executed but also achieved. The Saudi Regulation has significantly helped improved corporate governance in the country. One of the strengths of the Capital Market Regulation, for example, has been its concerns with rights of shareholders’ in terms of providing transparent information. Also, the chairman of a company cannot occupy the CEO position at the simultaneously. That is to say that CEO duality in Saudi is not allowed (Saudi Corporate Governance Regulation 2017).However, at this juncture, it is pertinent to ask the following questions: How does the Saudi corporate governance implementation fare in comparison with other countries in the First World? Is the Kingdom competing or does it lag behind?

2.4 Effective Implementation of Corporate Regulations in Australia

Like Saudi Arabia, Australia also has its corporate governance regulation known as “the Principles of Good Corporate Governance and Best Practice Recommendations”. This Corporate Governance principle was released by the Australian Securities Exchange (ASX) Corporate Governance Council. The first edition of the Corporate Governance Principles and

[1] KINGDOM OF SAUDI ARABIA: Capital Market Authority, Corporate Governance Regulations as Issued by the Board of the Capital Market Authority in Pursuant to Resolution Number (8-16-2017) Dated 16/5/1438H Corresponding to 13/2/2017G Based on the Companies Law Issued by Royal Decree No M/3 dated 28/1/1437H and Amended by Resolution of the Board of the Capital Market Authority Number 3-57-2019 Dated 15/9/1440H Corresponding to 20/5/2019G

Recommendations ("Principles and Recommendations") was first introduced in 2003. In addition, the second edition of the Act was published in 2007 and a third in 2014. However, there are still many other issues that are not captured in the first, second, and third editions of the Principles. Be that as it may, in 2017, the ASX Corporate Governance Council ("Council") decided that it was a suitable time to start working on a fourth edition of the Principles and Recommendations to address developing questions around many other important things like culture and values as many companies do not live by good moral values" (ASX Corporate Governance Council 2019).

Therefore, the fourth edition of the Principles has been published, and it will officially be released by January 2020 (ibid 2019).The aim of the Regulation is to strengthen the already established corporate governance laws and mechanisms and improve efficiency, performance, and professionalism. Australia Regulations holds corporate players and the parties involved to account. For Australia, corporate governance entails not only procedures and processes but also refers to rules by which power and authority are exercised.[2]Because corporate governance encompasses different rules, mechanisms, and processes of power relations within a corporation, there is a need for more checks and balances to ensure that parties involved perform their duties without interference or conflict. This is because investor confidence is determined by good corporate governance. And First World countries, such as Australia, realize that when there is investor confidence, entities listed on the ASX can compete for capital in the global marketplace (Christensen 2010).

Australia's Corporate Governance Regulations(2019) have listed eight broad principles of corporate governance designed to establish an effective corporate governance structure. The principles are as follows:

1. The principle for good management and checks and balances. This principle calls on the listed companies to adopt great work ethics, leadership, and management in their overall operations. On top of that, they should have oversight. That is to say that they should regularly review their performance.
2. Install and organize a functioning board that adds value: Listed entities are also charged with the responsibility of structuring the board members well enough. Each member should be assigned roles and responsibilities, so they add value to the corporation.
3. The principle of good company culture: Companies are tasked with the responsibility to adopt good company culture that is geared towards fairness, responsibility, and strong work ethics.
4. The principle of protecting the integrity of corporate reports: Corporate organizations must weave discipline into their practices. They should also come up with security measures to ensure that the integrity of a company is not only protected but that the company report is also safeguarded.
5. The principle of openness and transparency: A listed entity should adopt the behavior of making timely and open disclosure. The matters of a company have to be transparent

[2] (see Justice Owen in the HIH Royal Commission, The Failure of HIH Insurance Volume 1: A Corporate Collapse and Its Lessons, Commonwealth of Australia, April 2003 at page xxxiv) as quoted from ASX Corporate Governance Council (2019), p. 1.

6. The principle of respect and honoring the rights of security holders: Corporate organizations must adopt this principle. All entities should imbibe the culture of respect. More importantly, security holders should be provided with appropriate information. This will enable them to exercise their rights.
7. The principle of risk management: This principle stresses that listed entities should not only be responsible and open-minded in their business dealings, but they should also be risk-takers. That means they should adopt good risk management practices and periodically review the effectiveness of their actions.
8. The principle of fair remuneration and corporate social responsibly: Companies A should pay remuneration. In fact, the remuneration should be fair and motivating enough to retain and attract best directors and also, to align their interests with the creation of value for security holders and with the entity’s values and risk appetite.

Looking at the above principles, we can deduce a number of things. First, there is a clear-cut explanation for what roles firms are expected to perform. Second, there are many reminders of the burden of responsibilities and expectations that parties have to bear. And finally, accountability and fairness are emphasized to ensure transparency and a win-win situation at the end of every business relationship and transaction.

3. Methodology and Analysis

In order to answer our research questions, we link the effective implementation of corporate governance to a number of variables (as outlined by the OECD). As shown in Figure 1, these criteria or variables are represented as major indicators for the effective implementation of corporate governance for countries. Thus, for a country to achieve effective implementation of corporate governance and grows its economy, three variables must come to play: (1) Managers and stakeholders must understanding the contractual agreement that lays down the laws and procedures directing their relationship and a company’s operation.(2) Avoidance of conflict when exercising corporate tasks or governance. (3) Accountability must ensue to hold the managers, stakeholders, shareholders, and board members responsible for their actions. These variables were posited to be related to good corporate governance virtues, which were posited to ensure effective implementation of corporate governance.

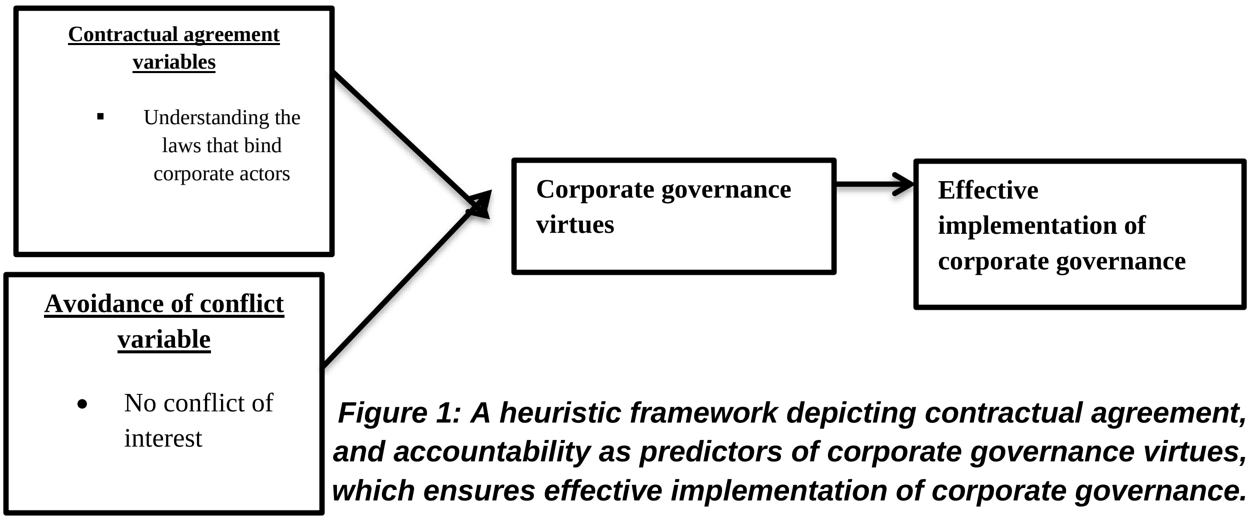

Figure 1: A heuristic framework depicting contractual agreement, and accountability as predictors of corporate governance virtues, which ensures effective implementation of corporate governance.

Method

The goal of this paper was to explore the effective implementation of corporate governance and, more specifically, to explain the need for effective implantation of corporate governance regulation in Saudi Arabia for companies and securities market stability and development.The qualitative research methodology was used to undertake this task. More specifically, we used a case study method to answer the research questions raised in the previous section. A case study was used because it is applicable in this kind of study and because it is effective at comparing legal analysis of Australia and Saudi regulations.

Case study

Australia

Principle number 3 of Australia's Corporate Governance Principles and Recommendations are considered. The principle states that: "A listed entity should instill and continually reinforce a culture across the organization of acting lawfully, ethically and responsibly." What this Regulation entails is that (a) all listed companies in Australia must delineate—in clear terms—the roles, responsibilities, and "standards of behavior" that each corporate player, whether it is the manager, employees, or a director, is expected to embody in their operations. In addition, (b) dissemination of information is a key principle in Australia's corporate governance.

According to the ASX Corporate Governance Council (2019, p. 6), "The board or a committee of the board should be informed of any material breaches of the entity's code of conduct, as they may be indicative of issues with the culture of the organization." Finally, (c) training and professionalism are crucial. Managers of corporations in Australia are well-trained; employees are expected to act professionally, and directors and senior executives "must speak and act consistently with the code…and reinforce it by taking appropriate and proportionate disciplinary action against those who breach it." In fact, Recommendation 3.4 of the Regulation (ibid, p. 16) states that: "A listed entity should: (a) have and disclose an anti-bribery and corruption policy, and (b) ensure that the board or a committee of the board is informed of any material breaches of that policy."

Saudi Arabia

Article 75 of Saudi Arabia's Corporate Law (CL) stipulates that "the corporation should be bound by all the acts performed by the board of directors within the limits of its competence… [And] the corporation should also be responsible for damages arising from unlawful acts committed by directors in the administration of the corporation" (Capital Market Law 2003, Art 66).However, the Board members' duty of standard care in Saudi-Arabia has not been clearly specified. It has not been stated both in the country's Company Law(CL) or the Corporate Governance Code [CGC] (ibid 2003).Saudi regulators, meanwhile, do not see much benefits in these legislations when it comes to stipulating the measure of care for the corporation's board members. In addition, the article also suggests that mistakes and other wrong decisions in work performance are not punishable, especially for board members. There is, therefore, the need for the Saudi regulator to make clear the laws and principles of operations especially for board members' liabilities regarding the duty ofcare under the CL. It is equally important that the Regulation adapt the duty of care concept as well as definitions from other international jurisprudence, such as Australia's Companies Act. Doing so will help in making the points as plainly as possible, which will thus increase the country's corporate performance practices.

Findings

The findings for the research question were gathered during the initial analysis of the case study's content. These findings were important because they provide answers regarding the research questions that seek to answer a comparative legal analysis on Saudi Arabia and Australia's corporate governance regulations. Our findings, thus, provide the following answers for our research questions:

1. What legal relationship exists between a stakeholder and a corporate manager?

For any country to achieve effective implementation of corporate governance, that country must understand the relationship (bounded by a contractual agreement) between stakeholders and corporate managers. Clearly, Australia is in cognizance with this, that is why it recommends, in its Corporate Governance Regulation, that: "A listed entity's values are the guiding principles and norms that define what type of organization it aspires to be and what it requires from its directors, senior executives, and employees to achieve that aspiration"(ASX Corporate Governance Council 2019).In the case of Saudi Arabia, however, this principle is not fully understood among the key stakeholders of the corporation. It is recommended that the corporation in the Kingdom should be fully aware of the contractual agreement that defines how key actors should relate with one another as the Saudi Regulation recommends:

> "…Board members and top executives should be trained in a designated institute of directors as found in the UK [and other developed countries, such as Australia] but which has yet to be established in Saudi Arabia. The institute of directors would take on a range of useful roles and responsibilities, including raising awareness of the advantages of corporate governance among directors and top executives and enhancing their management skills."[3]

The emphasis here is that, for effective implementation of corporate governance in Saudi Arabia to be achieved, a cordial relationship must take place between managers, stakeholders, and shareholders. However, this cordial relationship can only be achieved when the managers and shareholders understand the contractual agreement that defines their relationship and exercise reasonable care, skill, and diligence to achieving a harmonious working relationship (Capital Market Law 2003, Art. 5 A).

2. What are the bottlenecks that keep companies from attaining their goals?

To ensure effective implementation of corporate governance, a country must (a) identify the bottlenecks that prevent companies from achieving their goals and (b) work

[3] Corporate Governance Regulations as Issued by the Board of the Capital Market Authority Pursuant to Resolution Number (8-16-2017) Dated 16/5/1438H Corresponding to 13/2/2017G Based on the Companies Law Issued by Royal Decree No M/3 dated 28/1/1437H and Amended by Resolution of the Board of the Capital Market Authority Number 3-57-2019 Dated 15/9/1440H Corresponding to 20/5/2019G

together to eliminating them. As a country with clearly defined laws, Australia understands that. In its Corporate Governance Regulation, it recommends that[4] “The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity.” The aim is to avoid conflict of interest and ensures that roles are clearly assigned to ensure separation of powers and work performance. Separation of ownership and control in Saudi Arabia, however, has not yet been fully realized because most companies in the Kingdom are family-owned (Ministry of Commerce 2013).It is recommended that corporations in the Kingdom should be fully aware of the conflict arising from the conflict of interest among managers, investors, or board members if the effective implementation of corporate governance in the country is to be achieved.

3. How should a country ensure the effective implementation of its corporate governance and plans?

Australia achieves effective corporate governance by ensuring a highlevel of transparency in the operation, performance, and governance of company managers and stakeholders. For example, in its Corporate Governance Regulation, the country recommends that: “A listed entity should have and disclose a written policy for complying with its continuous disclosure obligations under listing rule 3.1.”[5]In the case of Saudi Arabia, on the other hand, this principle is well established, even though openness and transparency are some of the foremost elements of corporate governance best practices (Al Mulhem 2008).Unfortunately, the disclosure requirements had been very low in Saudi Arabia.To achieve effective implementation of corporate governance, Saudi Arabia must ensure that leaders play by the rules and remain transparent in their business dealings within their respective companies.

4. Conclusion and Recommendations

4.1 Conclusion

The present paper uses qualitative data to show how Saudi Arabia can effectively implement corporate governance and improves its economy. Using the agency theory of corporate governance, the paper analysis the principles of corporate governance in Australia and Saudi Arabia, and offers the need for effective implementation of corporate governance in the later. The crucial point of this essay is the comparative legal analysis between the two countries and the explanation of how the other country (Saudi Arabia) can learn from the other (Australia) to better its corporate governance principles. Our findings reveal that Saudi Arabia lacks proper accountability in its corporate governance dealings, proper management, conflict in its corporate environment, and proper understanding of the contractual legal agreement that defines business relationships in organizations.

These observations are consistent with the agency theory of corporate governance, which theorizes that effective implementation of corporate governance requires effective management of organizational resources and avoidance of conflict of interest between and among managers and shareholders.The findings answer the research question raised by

[4] ASX Corporate Governance 2019; Recommendation 2.5, p. 15.

[5] ASX Corporate Governance, Principle 5, Recommendation 5.1, p. 21

this study: (1) That a contractual agreement is a legalrelationship that exists between a stakeholder and a corporate manager, and corporations in Saudi Arabia should ensure that both parties honor it to ensure mutual working relationships; (2) That conflict of interest is one of the major bottlenecks that prevent companies from achieving their goals, and Saudi Arabia should work to averting such problem; and, finally, (3) For Saudi Arabia to ensure effective implementation of its corporate governance, proper accountability must ensue. Further research should focus on the role of managers in upholding contractual agreements and implementing effective corporate governance.

4.2 Recommendations

The paper offers the following recommendations:

- That Saudi Corporate Governance Code should emphasize the need for understanding contractual agreements between parties in corporate governance relationships. Company managers and principle shareholders should be conscious of the fact that it is the legal contract that binds them together. Thus companies that want to achieve effective implementation of corporate governance must respect all terms of business contracts.
- The Capital Market Authority of Saudi Arabia should also include articles on conflict avoidance in its Regulation. This is because the conflict of interest is one of the major problems affecting the existence and operations of corporations in Saudi Arabia. Understanding ways to avert or mitigate conflict is beneficial for managers, shareholders, the board of directors, stakeholders, and the company at large.
- The paper also recommends that the Saudi Regulation should pay serious attention to accountability. Corporate players in a company are known for breaching laws and undermining legal agreements; however, if there is a strong principle of checks and balances and accountability, it will serve as deterrence for the breaches of laws and for undermining legal agreements.

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