African Journal of Emerging Issues
Peer reviewed | Double blind | Interdisciplinary

African Journal of Emerging Issues (AJOEI)
Online ISSN: 2663 - 9335
Available at: https://ajoeijournals.org

CORPORATE GOVERNANCE

LAWS, REGULATIONS, STRUCTURES AND PROCEDURES AND THEIR IMPACT ON CORPORATE GOVERNANCE IN KENYA

Author: Samwel Omwenga Makini, PhD

Institution: University of Nairobi

Faculty of Business and Management Sciences

Publication Date: July 2026

ABSTRACT

Corporate governance has emerged as a critical determinant of organizational accountability, transparency, sustainability, and performance across public and private sector institutions. In Kenya, the effectiveness of corporate governance is largely shaped by the interplay among legal frameworks, regulatory mechanisms, governance structures, and organizational procedures, which collectively influence strategic decision-making, oversight, stakeholder relations, and institutional legitimacy. This study examines how laws, regulations, structures, and procedures shape corporate governance in the Kenyan context, drawing on agency theory and contemporary governance principles. The study adopted a qualitative, doctrinal, and descriptive research design, grounded in a comprehensive review and synthesis of statutory provisions, regulatory frameworks, policy documents, and contemporary scholarly literature on corporate governance in Kenya and internationally. Documentary analysis was used to examine the legal, institutional, structural, and procedural mechanisms that influence governance effectiveness across public and private organizations. The findings indicate that effective corporate governance in Kenya depends not only on robust legal and regulatory frameworks but also on the strength of governance structures and the effectiveness of internal organizational procedures that operationalize governance principles. The study concludes that strengthening enforcement mechanisms, enhancing board independence and diversity, promoting ethical leadership, and adapting governance systems to emerging challenges such as sustainability reporting, digital transformation, cybersecurity risks, and artificial intelligence governance are essential for improving organizational performance and institutional legitimacy in Kenya.

Keywords: *Corporate governance, laws, regulations, governance structures, organizational procedures, Kenya, accountability, transparency, board effectiveness, regulatory compliance.*

1.0 Introduction

Corporate governance in Kenya has undergone substantial transformation over the past two decades, driven by globalization, financial market liberalization, public sector reforms, and growing stakeholder demand for accountability, transparency, and ethical conduct (OECD, 2023; World Bank, 2022). This evolution reflects a broader shift toward aligning national governance practices with international standards and best practices. The Kenyan corporate governance framework is anchored in a multifaceted, interconnected system comprising constitutional provisions, statutory laws, sector-specific regulations, governance structures, and organizational procedures. Together, these elements shape institutional accountability, strategic decision-making, and overall organizational performance (Tricker, 2019).

A critical milestone in Kenya's governance trajectory was the promulgation of the 2010 Constitution of Kenya, which fundamentally redefined governance norms by embedding core principles such as integrity, transparency, accountability, public participation, and sustainable development. These constitutional imperatives apply across both the public and private sectors, providing a normative foundation for corporate governance practices. Consequently, the Constitution continues to exert a profound influence on legislative frameworks, regulatory regimes, and organizational governance practices in Kenya (Government of Kenya, 2010).

The effectiveness of corporate governance in the Kenyan context largely depends on the dynamic interplay among legal frameworks, regulatory oversight, organizational structures, and internal governance procedures. Together, these mechanisms mitigate agency conflicts, enhance managerial accountability, and safeguard stakeholder interests. In turn, robust governance systems contribute to improved organizational performance, strengthened stakeholder confidence, and enhanced institutional legitimacy (Shleifer & Vishny, 1997; OECD, 2023).

2.0 Methodology

This study adopted a qualitative, doctrinal, and descriptive research design to provide a comprehensive analysis of corporate governance in Kenya. The doctrinal approach involved a systematic and critical examination of primary and secondary legal sources, including constitutional provisions, statutes, subsidiary legislation, regulatory instruments, governance codes, and policy frameworks that underpin corporate governance practices in Kenya. This approach enabled the study to interrogate the normative foundations, coherence, and applicability of the existing governance framework.

In addition, the study employed documentary analysis to synthesize and interpret evidence from scholarly literature, institutional and regulatory reports, and international governance benchmarks. This method facilitated the triangulation of data sources, thereby enhancing the validity, depth, and contextual relevance of the findings (Creswell & Creswell, 2018). The descriptive component further supported a structured presentation and interpretation of governance mechanisms and their implications for institutional performance and accountability.

The study was grounded in Agency Theory and Stakeholder Theory, which together provide a robust analytical lens for examining corporate governance dynamics. Agency Theory explains the mechanisms needed to mitigate conflicts of interest arising from the separation of ownership and control, particularly between shareholders (principals) and managers (agents) (Jensen & Meckling, 1976). In contrast, Stakeholder Theory broadens the governance perspective by emphasizing organizations' responsibilities to a wider array of stakeholders, including employees, regulators, customers, and the broader society (Freeman, 1984).

The integration of these theoretical perspectives enabled a more holistic evaluation of the interactions among legal frameworks, regulatory oversight, governance structures, and organizational procedures in the Kenyan corporate governance landscape. This combined framework is particularly relevant in emerging economies such as Kenya, where governance effectiveness is shaped not only by formal legal mechanisms but also by broader stakeholder expectations and institutional realities.

3.0 Theoretical Framework

This study is grounded in Agency Theory and Stakeholder Theory, which together offer a robust analytical lens for understanding the relationships among laws, regulations, governance structures, procedures, and corporate governance outcomes (Freeman, 1984; Jensen & Meckling, 1976).

3.1 Agency Theory

Agency Theory, advanced by Jensen and Meckling (1976), holds that the separation of ownership and control in modern corporations creates agency conflicts arising from divergent interests between principals (shareholders) and agents (managers). Managers may pursue personal objectives that are inconsistent with shareholder wealth maximization, thereby creating agency costs (Jensen & Meckling, 1976).

Corporate governance mechanisms, including legislation, board oversight, disclosure requirements, independent audits, and regulatory supervision, are designed to minimize agency conflicts by strengthening accountability, transparency, and managerial monitoring (Fama & Jensen, 1983; Shleifer & Vishny, 1997). In the Kenyan context, statutory provisions in the Companies Act 2015, the Capital Markets Authority Corporate Governance Code, and the Mwongozo Code mitigate agency problems through board independence, fiduciary duties, and enhanced disclosure obligations (Government of Kenya, 2015a; Government of Kenya, 2015b; Government of Kenya, 2015c).

3.2 Stakeholder Theory

Stakeholder Theory holds that organizations have obligations not only to shareholders but also to employees, customers, regulators, creditors, suppliers, communities, and society at large (Freeman, 1984). From this perspective, effective governance requires balancing competing stakeholder interests and promoting sustainable value creation (Mallin, 2019).

The Constitution of Kenya 2010, particularly its principles of public participation, accountability, inclusivity, and sustainable development, reflects the stakeholder orientation of governance in the Kenyan context (Government of Kenya, 2010). Similarly, recent governance reforms that emphasize environmental, social, and governance considerations further reinforce stakeholder-based governance approaches (OECD, 2023).

3.3 Theoretical Integration

The integration of Agency Theory and Stakeholder Theory offers a comprehensive explanation of corporate governance dynamics in Kenya. Whereas Agency Theory emphasizes control mechanisms to reduce managerial opportunism, Stakeholder Theory broadens governance objectives to include ethical conduct, sustainability, and social responsibility (Freeman, 1984; Jensen & Meckling, 1976). Together, these theories explain the rationale for legal frameworks, regulatory institutions, governance structures, and organizational procedures that underpin effective corporate governance systems (Aguilera et al., 2015).

4.0 Empirical Literature Review

4.1 Laws and Corporate Governance

Empirical literature consistently shows that robust legal frameworks are critical to enhancing investor confidence, reducing information asymmetry, and strengthening organizational accountability. Foundational work by La Porta et al. (1998) offers compelling cross-country evidence that jurisdictions with stronger investor protections have more effective corporate governance, deeper financial markets, and higher levels of external financing. These findings underscore the centrality of legal institutions in shaping governance outcomes by constraining managerial opportunism and aligning the interests of corporate insiders with those of investors.

In the Kenyan context, the enactment of the Companies Act, 2015 marked a significant milestone in corporate law reform by modernizing the legal framework for corporate entities. The Act introduced enhanced safeguards for minority shareholders, strengthened directors' fiduciary duties, and expanded corporate disclosure and transparency requirements. Collectively, these reforms have improved governance standards, reinforced accountability mechanisms, and fostered greater investor confidence in Kenya's corporate sector (Government of Kenya, 2015b).

4.2 Regulations and Corporate Governance

Regulatory frameworks provide operational guidance for implementing governance principles (OECD, 2023). Studies of firms listed on the Nairobi Securities Exchange indicate that compliance with the Capital Markets Authority Corporate Governance Code is positively associated with improved governance disclosure practices, stronger board effectiveness, and greater investor confidence (Capital Markets Authority, 2024).

Similarly, the implementation of the Mwongozo Code has improved board performance, strategic oversight, and accountability within Kenyan state corporations (Government of Kenya, 2015c).

4.3 Governance Structures and Corporate Governance

Numerous studies identify board effectiveness as a strong predictor of corporate governance quality (Fama & Jensen, 1983; Tricker, 2019). Board independence, diversity, competency, and committee effectiveness significantly influence organizational performance and strategic decision-making (Mallin, 2019).

Kenyan studies likewise indicate that organizations with independent boards, active audit committees, and robust risk-management structures demonstrate higher levels of accountability and operational efficiency (Capital Markets Authority, 2024).

4.4 Organizational Procedures and Corporate Governance

Internal procedures are the operational mechanisms by which governance principles are implemented (Tricker, 2019). Previous corporate failures in Kenya have shown that governance weaknesses often stem from implementation failures rather than from legal inadequacies (World Bank, 2022).

Organizations with strong internal controls, effective whistleblowing mechanisms, and well-developed compliance systems tend to experience fewer instances of fraud, corruption, and financial mismanagement (OECD, 2015).

5.0 Conceptual Framework

The conceptual framework for this study is based on the proposition that corporate governance effectiveness in Kenya is determined by the interaction of legal, regulatory, structural, and procedural governance mechanisms (Aguilera et al., 2015; OECD, 2023). Specifically, the framework posits that legal and regulatory frameworks, governance structures, and organizational procedures constitute the primary independent variables that collectively influence the effectiveness of corporate governance systems within organizations.

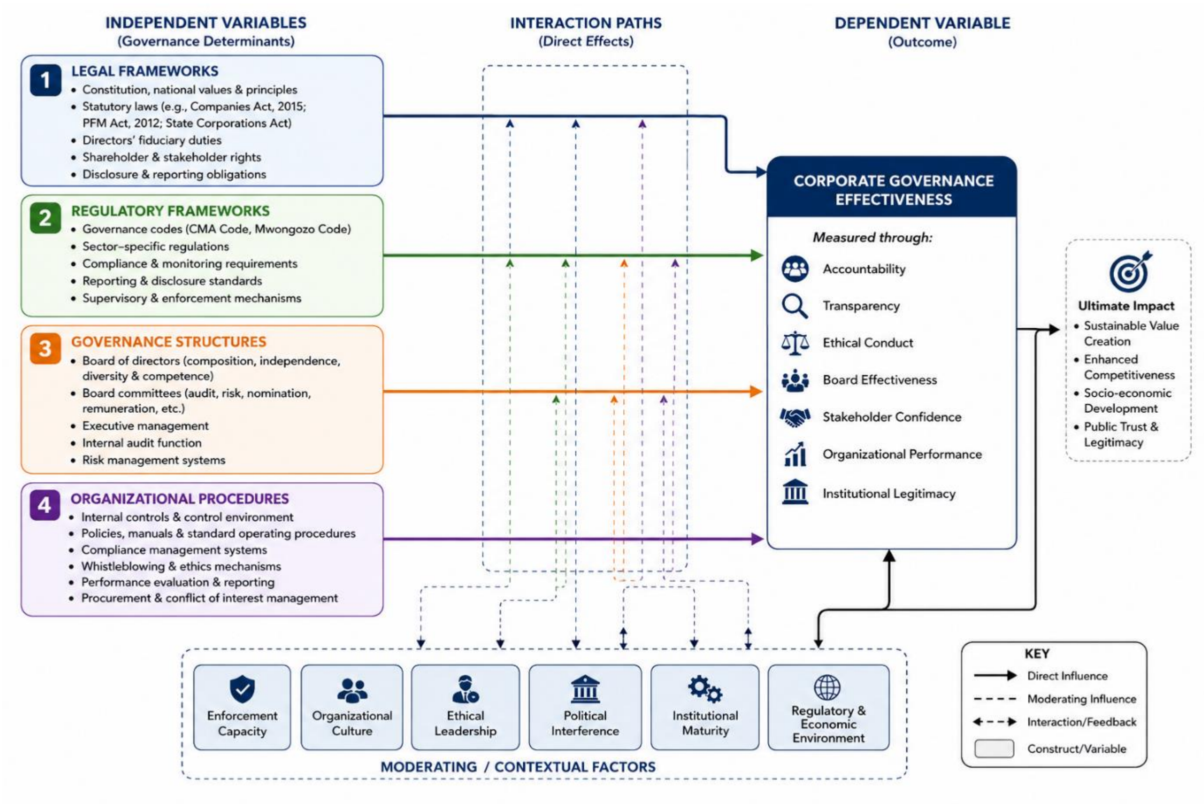
The first independent variable, legal frameworks, encompasses constitutional provisions, statutory laws, and legislative instruments that establish the legal foundation for corporate governance, define fiduciary obligations, protect stakeholder rights, and prescribe accountability requirements (La Porta et al., 1998). The second independent variable, regulatory frameworks, comprises governance codes, sector-specific regulations, and supervisory mechanisms that operationalize legal requirements and set standards for compliance and oversight (OECD, 2023).

The third independent variable, governance structures, refers to the institutional arrangements that allocate authority, responsibility, and oversight within organizations. These structures include boards of directors, board committees, executive management, internal audit functions, and risk management systems that support strategic direction and organizational control (Fama & Jensen, 1983; Tricker, 2019). The fourth independent variable, organizational procedures, encompasses the formalized systems, processes, and internal controls through which governance principles are implemented and institutionalized within organizational operations (OECD, 2015).

These governance determinants collectively influence the dependent variable, corporate governance effectiveness, which is operationalized through measurable dimensions such as accountability, transparency, ethical conduct, board effectiveness, stakeholder confidence, organizational performance, and institutional legitimacy (Mallin, 2019; OECD, 2023). Higher effectiveness across these dimensions indicates stronger governance systems and improved organizational outcomes.

The framework also recognizes that the relationship between the independent variables and corporate governance effectiveness may be shaped by several moderating factors, including enforcement capacity, organizational culture, leadership commitment, political interference, institutional maturity, and the broader socio-economic and regulatory environment (World Bank, 2022). Consequently, the effectiveness of corporate governance in Kenya is viewed not as a function of individual governance mechanisms operating in isolation, but as the outcome of an integrated, mutually reinforcing governance ecosystem (Aguilera et al., 2015).

Conceptual Model



Source: S. Makini 2026

Conceptual Framework and Theoretical Anchoring

This study conceptualizes corporate governance effectiveness as a multidimensional outcome shaped by institutional, structural, and procedural determinants and moderated by contextual factors. The framework is theoretically anchored in Agency Theory, Stakeholder Theory, and Stewardship Theory, which together explain how governance mechanisms align managerial actions with organizational and societal expectations.

The independent variables include legal and regulatory frameworks, governance structures, and organizational procedures. From an agency perspective, legal and regulatory frameworks serve as external control mechanisms that mitigate opportunistic behavior by establishing enforceable rules, disclosure requirements, and accountability standards. These frameworks define the boundaries within which organizations operate and provide the basis for monitoring and sanctioning noncompliance. Governance structures, such as boards of directors and specialized committees, function as internal control systems that oversee management, ensure strategic direction, and safeguard shareholder and stakeholder interests. Organizational procedures, including internal controls, policies, and operational systems, institutionalize governance practices by embedding compliance, risk management, and ethical standards into day-to-day activities.

The dependent variable, corporate governance effectiveness, is operationalized through a set of interrelated dimensions that capture both internal performance and external legitimacy. Accountability and transparency align with agency theory, emphasizing answerability and information symmetry between principals and agents. Ethical conduct and board effectiveness reflect stewardship principles, under which leaders are expected to act in the organization's best interests with integrity and competence. Stakeholder confidence and institutional legitimacy are grounded in stakeholder theory, highlighting the importance of trust, inclusivity, and responsiveness to diverse stakeholder interests. Organizational performance serves as an overarching outcome that integrates efficiency, sustainability, and value creation.

The relationship between these determinants and governance effectiveness is moderated by enforcement capacity, organizational culture, ethical leadership, political interference, institutional maturity, and the regulatory environment. Enforcement capacity strengthens governance outcomes by ensuring that rules are not merely symbolic but are actively implemented. Organizational culture and ethical leadership reinforce stewardship behavior by shaping norms, values, and ethical decision-making within institutions. Conversely, political interference may weaken governance systems by distorting accountability structures and undermining independence. Institutional maturity enhances the stability and predictability of governance practices, while the broader regulatory environment defines the intensity and consistency of external oversight.

Overall, the framework holds that effective corporate governance arises from aligning formal rules, institutional structures, and organizational practices, mediated by contextual conditions and guided by theoretical principles that balance control, accountability, and stakeholder responsiveness.

6.0 Discussion

The findings demonstrate that corporate governance effectiveness in Kenya is determined not only by legal frameworks but also by the interaction of legal, regulatory, structural, and procedural dimensions.

First, legal frameworks provide legitimacy and establish minimum governance standards. However, legislation alone is insufficient without effective enforcement institutions. Second, regulatory frameworks operationalize legal requirements by translating broad principles into measurable compliance obligations. Third, governance structures provide the institutional architecture for oversight and strategic direction. Finally, organizational procedures translate governance principles into routine operational practices.

The Kenyan experience shows that governance failures often persist despite comprehensive laws and regulations. Consequently, strengthening implementation mechanisms and institutional capacity remains a critical governance priority.

Table 1: Summary of the documentary review

Component	Description	Purpose	Rigor/Replicability Measures
Data Sources	Constitutional provisions, statutes, regulations, governance codes, policy documents, scholarly articles, institutional reports, international frameworks (e.g., OECD)	To provide comprehensive coverage of corporate governance frameworks in Kenya	Use of credible, authoritative, and relevant sources; emphasis on both local and global standards
Selection Criteria	Relevance, recency, authority, and applicability to corporate governance	To ensure inclusion of high-quality and contextually appropriate documents	Predefined inclusion/exclusion criteria for consistency and transparency
Research Design	Qualitative, doctrinal, and documentary analysis	To systematically examine legal and governance frameworks	Clearly defined methodological approach
Analytical Approach	Thematic analysis	To categorize and interpret governance dimensions	Use of structured coding into key themes (legal, regulatory, structural, procedural)
Key Themes	Legal frameworks, regulatory oversight, governance structures, organizational procedures	To organize findings into coherent governance pillars	Consistent thematic framework applied across all sources
Data Extraction	Identification and synthesis of key concepts, provisions, and governance mechanisms	To derive meaningful insights from diverse documents	Systematic extraction protocol
Triangulation	Cross-validation using multiple data sources (academic, policy, institutional)	To enhance validity and reduce bias	Comparison across independent sources
Theoretical Alignment	Agency Theory and Stakeholder Theory	To guide interpretation and analysis	Consistent linkage between empirical evidence and theory
Outcome	Identification of patterns, gaps, and governance effectiveness determinants	To inform conclusions and policy implications	Transparent synthesis process
Replicability	Clearly documented procedures and criteria	To enable future studies to replicate the methodology	Explicit documentation of steps, sources, and analytical framework

7.0 Policy Implications

The findings of this study generate several policy implications.

First, regulators should strengthen enforcement mechanisms to improve compliance with governance standards. Second, organizations should prioritize board independence and make competency-based appointments to enhance oversight. Third, institutions should invest in building governance capacity, particularly in emerging areas such as cybersecurity, digital governance, and artificial intelligence oversight.

Fourth, policymakers should continue harmonizing governance regulations across sectors to minimize regulatory fragmentation and improve consistency in governance standards. Finally, organizations should institutionalize ethical leadership and integrity systems as core elements of governance reform.

8.0 Contribution to Knowledge

This study makes a substantive contribution to the corporate governance literature by advancing an integrated analytical framework that examines the legal, regulatory, structural, and procedural determinants of governance effectiveness in an emerging economy. Departing from the dominant strand of prior research that isolates individual governance mechanisms, this study adopts a systems-oriented perspective that explicitly recognizes the interdependence, complementarity, and potential trade-offs among governance institutions and processes. In doing so, it provides a more nuanced and context-sensitive understanding of how governance architectures operate in practice, particularly in environments with evolving institutional frameworks.

Furthermore, the study contributes to policy and practice by systematically identifying and examining the institutional, regulatory, and implementation gaps that continue to constrain governance effectiveness in Kenya, despite significant legal and regulatory reforms. In particular, it highlights challenges related to enforcement capacity, regulatory coordination, organizational compliance, and the translation of formal rules into effective governance outcomes. These insights have practical implications for policymakers, regulators, and organizational leaders seeking to strengthen corporate governance systems, enhance accountability, and promote sustainable organizational performance.

9.0 Recommendations for Future Research

Future research should prioritize rigorous empirical studies that quantify and disentangle the relative contributions of legal frameworks, regulatory regimes, governance structures, and organizational procedures to corporate governance performance across sectors in Kenya. Such studies could use mixed-methods approaches, including econometric modeling, panel data analysis, and case study designs, to establish causal relationships and assess the effectiveness of specific governance mechanisms across diverse institutional contexts.

In addition, comparative analyses across key sectors, including state corporations, listed companies, financial institutions, and county governments, would provide deeper insights into sector-specific governance dynamics, institutional constraints, and variations in regulatory compliance and enforcement. These comparative perspectives would not only enrich the contextual understanding of corporate governance in Kenya but also help identify best practices and sector-tailored policy interventions to enhance governance effectiveness and organizational performance.

References

Aguilera, R. V., Desender, K., Bednar, M. K., & Lee, J. H. (2015). Connecting the dots: Bringing external corporate governance into the corporate governance puzzle. *Academy of Management Annals, 9*(1), 483–573.

Capital Markets Authority. (2024). *State of corporate governance report*. Capital Markets Authority.

Central Bank of Kenya. (2021). *Corporate governance guidelines for institutions licensed under the Banking Act*. Central Bank of Kenya.

Fama, E. F., & Jensen, M. C. (1983). Separation of ownership and control. *Journal of Law and Economics, 26*(2), 301–325.

Freeman, R. E. (1984). *Strategic management: A stakeholder approach*. Pitman Publishing.

Government of Kenya. (2010). *Constitution of Kenya, 2010*. Government Printer.

Government of Kenya. (2012). *Public Finance Management Act, No. 18 of 2012*. Government Printer.

Government of Kenya. (2015a). *Code of corporate governance practices for issuers of securities to the public, 2015*. Capital Markets Authority.

Government of Kenya. (2015b). *Companies Act, No. 17 of 2015*. Government Printer.

Government of Kenya. (2015c). *Mwongozo: Code of governance for state corporations*. State Corporations Advisory Committee.

Government of Kenya. (2024). *State Corporations Act (Cap. 446 Revised Edition 2024)*. Government Printer.

Insurance Regulatory Authority. (2021). *Corporate governance guidelines for insurers and insurance groups*. Insurance Regulatory Authority.

International Finance Corporation. (2019). *Corporate governance progression matrix for emerging markets*. International Finance Corporation.

Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs, and ownership structure. *Journal of Financial Economics, 3*(4), 305–360.

La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (1998). Law and finance. *Journal of Political Economy, 106*(6), 1113–1155.

Mallin, C. A. (2019). *Corporate governance* (6th ed.). Oxford University Press.

Monks, R. A. G., & Minow, N. (2011). *Corporate governance* (5th ed.). John Wiley & Sons.

Organisation for Economic Co-operation and Development. (2015). *OECD guidelines on corporate governance of state-owned enterprises*. OECD Publishing.

Organisation for Economic Co-operation and Development. (2023). *G20/OECD principles of corporate governance 2023*. OECD Publishing.

Retirement Benefits Authority. (2018). *Corporate governance guidelines for retirement benefits schemes*. Retirement Benefits Authority.

Sacco Societies Regulatory Authority. (2015). *Corporate governance guidelines for deposit-taking savings and credit cooperative societies*. Sacco Societies Regulatory Authority.

Shleifer, A., & Vishny, R. W. (1997). A survey of corporate governance. *Journal of Finance, 52*(2), 737–783.

Tricker, B. (2019). *Corporate governance: Principles, policies, and practices* (4th ed.). Oxford University Press.

United Nations Conference on Trade and Development. (2020). *Guidance on core indicators for entity reporting on contribution towards implementation of the Sustainable Development Goals*. United Nations.

World Bank. (2022). *Corporate governance in emerging markets: Strengthening institutional frameworks for sustainable development*. World Bank Group.