



FROM FORM TO FUNCTION: ENFORCEMENT-CENTRED REFORMS FOR SUSTAINABLE CORPORATE GOVERNANCE

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Abstract:

The substantial “enforcement gap” in the developing country’s capital markets makes them less trustworthy. This is because corporate governance rules that are formally adopted do not actually function. This research article contends that the primary issue is not about a lack of laws but it an insufficiency of enforcement capability. It is, therefore, presented in this article that an integrated, four-pillar enforcement architecture is the basis for sustainable corporate governance reforms by going beyond the usual focus on legislative form. This article employs a doctrinal and comparative policy analysis to look at how the four-pillars that follow function together: regulatory design (Pillar 1), which strategically combines voluntary codes along with mandatory rules; supervisory regulation (Pillar 2), which requires independent and powerful securities regulators; adjudicatory capacity (Pillar 3), which includes specialised courts and strong arbitration; and market discipline (Pillar 4), which is driven by institutional investors as well as a free media. The analysis shows that these components cannot function on their own as they function together as a unified functionary. If one of them fails, the whole enforcement framework could fall apart. The article finds that sustainable corporate governance is an exercise in institutional transformation as it requires a context-specific, sequenced strategy that strengthens the connections within this framework. It concludes that it is only by the means of such a comprehensive process for the sustainable corporate governance that the developing countries can move from reform in form towards reform in function, and consequently effectively protecting minority shareholders, generating long-term investment, and achieving market confidence.

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I. INTRODUCTION

The integrity of capital markets in the developing countries relies on a seemingly straightforward requirement that of the strong safeguarding of its minority shareholders. But there is a perverse “enforcement gap” among the nicely designed and formally adopted rules and the lack of their practical application. The proliferation of new corporate governance norms, whether they are well created in one place or carefully taken from another, is not being an appropriate remedy. The best laws only have a little impact for developing a financial market and their credibility in the eyes of the investors.¹ Without their enforcement, these rules are often ignored pretending following it with a “creative compliance” which draws attention to the difference between following the law in a formal way and finding ways around it in practice. It shows that even though rules may be clear, formalism can be used to avoid legal oversight.² This dynamic erodes the integrity of the institutions systematically and makes investors less likely to trust them. This deficit is not just a technicality, but it is a harmful force that makes investors less likely to invest the long-term capital needed for development. Enforcement is the key factor that explains why legal origins have different effects on financial development.³ So, the most important is to close this gap and to move from the symbolic enactment of laws to a clear and consistent ability to carry them out by showing this ability to a sceptical global investment community.

This enforcement gap is a widespread problem like it is an apparition in the structure of corporate governance. Even though there have been lot of reforms, enforcement is still “woefully inadequate,”⁴ which means that the benefits of reforms are lost and minority shareholders are still at risk. Enforcement is still the critical failure point in smaller developing

¹ Katharina Pistor, ‘The Standardization of Law and Its Effect on Developing Economies’ (2002) 50(1) *Am J Comp L* 97, 125.

² Alice Belcher, ‘Regulation by the Market: The Case of the Cadbury Code and Compliance Statement’ [1995] *JBL* 321, 321–42.

³ John C Coffee, Jr, ‘Law and the Market: The Impact of Enforcement’ (2007) 156(2) *U Pa L Rev* 229, 232.

⁴ Charles Oman, Steven Fries and Willem Buiters, ‘Corporate Governance in Developing, Transition and Emerging-Market Economies’ (OECD Policy Brief No 23, 2003), 28.

countries.⁵ Insider trading is a clear example of this dissonance. A thorough survey showed that many countries passed laws against insider trading but the way they are enforced has been spotty.⁶ Although enacting insider trading laws is relatively simple and does not result in a lower cost of equity, enforcing these laws is difficult and is linked with a lower cost of equity in a country.⁷ This clear difference shows a harsh truth that just having the law is a dangerously misleading stand-in for its strong enforcement.

This disconnect is fatal to market credibility. The most well-structured frameworks become irrelevant when they are not enforced, making them invisible to calculus of long-term investors.⁸ The Korean experience is a lesson as even though there were robust plans to make markets that focused on shareholder value, the stubborn enforcement problems made them less effective.⁹ The end result is a deception that actively keeps individual from making long-term investments which is what it was meant to do. This challenge is not only confined to history. Similar dynamics are also researched in other emerging markets as it is widely stressed that the enforcement counts rather than the just the legal rules.¹⁰

Enforcement is essential for sustainable corporate governance, and it is contended that to address enforcement gap, an effective enforcement should be redefined not as a binary option, but as a dynamic framework comprising four-pillars which are interrelated to each other, i.e., regulatory design, supervisory regulation, adjudicatory capacity, and market discipline. This framework transcends the traditional, albeit constrained,

⁵ World Bank, *Global Financial Development Report 2019/2020* (World Bank 2019) 58, 119-123.

⁶ Utpal Bhattacharya and Hazem Daouk, 'The World Price of Insider Trading' (2002) 57 *J Finance* 75, 104.

⁷ *ibid.*

⁸ Pistor (n 1) 125-28.

⁹ Stephen J Choi and Kon Sik Kim, 'Establishing a New Stock Market for Shareholder Value Oriented Firms in Korea' (2003) 3(2) *CJIL* 277, 277-89.

¹⁰ Stijn Claessens and Burcin Yurtoglu, 'Corporate Governance in Emerging Markets: A Survey' (2013) 15 *Emerging Markets Rev* 1, 25-27.

private-public enforcement dichotomy,¹¹ an approach which is reaffirmed continually by OECD and World Bank.¹² These four-pillars are synergistic in nature and the failure of one compromise one another and the entire structure risks collapse. OECD's comments about China are an illustrative case in point. At that point in its stage of development, the country could not rely on private enforcement alone as it needed the strong public machinery of regulator like the China Securities Regulatory Commission.¹³ This illustrates how the strength of one pillar (public supervision) is very significant for the viability of another (private action).

Therefore, this research article provides a comprehensive plan about how to leap forward from corporate governance reform in *form* to reform in *function*. It asserts that sustainable reforms necessitate a diagnostic, context-specific approach which can fortify the interconnectedness within this four-pillar framework. This article offers a pathway for developing countries to establish a governance framework in which rules are not only articulated but also reliably and consistently enacted by analysing the synergies and shortcomings within this context.

This research article proceeds as follows: Part II of this article starts the analysis by describing about the four-pillar enforcement architecture. On this foundation, Part III provide a critical analysis of how this four-pillar framework contributes sustainable corporate governance in developing countries and Part IV derives the conclusion for an enforcement-centred approach to reform.

II. FOUR-PILLAR ENFORCEMENT ARCHITECTURE

After establishing the ramifications of the enforcement gap in this research article, it now articulates its four-pillar enforcement architecture to close

¹¹ Erik Berglöf and Stijn Claessens, 'Enforcement and Good Corporate Governance in Developing Countries and Transition Economies' (2006) 21(1) World Bank Res Observer 123, 146.

¹² OECD, *Corporate Governance Factbook 2023* (OECD Publishing 2023) 39-68; OECD, *G20/OECD Principles of Corporate Governance* (OECD Publishing 2023); World Bank, 'Corporate Governance' (24 February 2016) <https://www.worldbank.org/en/topic/financialsector/brief/corporate-governance> accessed 30 November 2025.

¹³ OECD, *China in the Global Economy: Governance in China* (OECD, 2005) 317.

this gap. The four-pillars framework evolves beyond its diagnostic roots to establish the fundamental rationale of a genuinely sustainable corporate governance. It includes regulatory design, which is the strategic mix of voluntary and mandatory rules; supervisory regulation, which is the ability of an independent and powerful regulators; adjudicatory capacity, which is how well courts and arbitration work; and market discipline, which is about how well the power of institutional investors and the media contributes to the enforcement. Here, sustainability is taken away from its vague moral meaning and turned into a real economic state which is characterised by foreseeable capital flows, institutional robustness, and credible, non-negotiable obligations to minority rights.

A. Pillar 1: Regulatory Design

Regulatory design in the enforcement architecture faces a strategic choice as whether it should be strict with the law or flexible with voluntary corporate governance codes. These “comply-or-explain” codes which consist of “best practice” recommendations are being considered as the cornerstone for the governance framework globally. Its adoption is now almost universal and as per the OECD reporting that 82 percent of the jurisdictions surveyed have adopted these codes or some form of it.¹⁴ These codes are taken as a good as they are vital for their flexibility and to be relied on market mechanisms for driving implementation and enforcement. These codes help employ a “comply or explain” model where companies are encouraged for following the codes but must explain deviations publicly. This approach promotes transparency and allows market forces to discipline firms as investors and creditors can reward or punish firms based on their adherence to the codes.¹⁵

The debate surrounding voluntary codes frequently centres on their potential inefficacy. Due to the absence of legal obligations, there exists a risk which voluntary codes may not lead to meaningful changes in corporate governance procedures.¹⁶ But that reputational concerns and

¹⁴ OECD, *Corporate Governance Factbook 2023* (OECD Publishing 2023) 40-42.

¹⁵ Eddy Wymeersch, ‘Enforcement of Corporate Governance Codes’ (ECGI Law Working Paper No 46/2005, 2005) 8.

¹⁶ Paul Coombes and Simon CY Wong, ‘Why Codes of Governance Work’ (2004) 2 McKinsey Q 49.

enhanced disclosure obligations often exert sufficient pressure to encourage compliance particularly when the issuer of the code has substantial influence and when detailed compliance information is readily available to the market. In addition to their substantive contributions, the very process of developing and introducing corporate governance codes serves an important educational and market signalling function. Prior to the complete implementation of these codes, they direct the focus of corporations, investors, and legislators towards essential governance matters, promoting a culture of corporate accountability and openness. Such reputational accountability seeks to link the national regulations with the expanding array of “soft law” civil regulations.¹⁷ It serves a critical discursive function to stimulate and guide discussions within the corporate and investment communities laying the groundwork for broader reforms. Moreover, voluntary governance codes assist investors and analysts in assessing the governance quality of firms thus influencing investment decisions.

But the effectiveness of these voluntary codes largely depends on their proper introduction, market acceptance, and the mechanisms supporting their enforcement.¹⁸ In jurisdictions where voluntary disclosure codes exist, investors and other stakeholders heavily rely on the availability and quality of disclosures to evaluate companies’ adherence to governance principles.¹⁹ Disclosure provides the market with critical information, allowing investors to evaluate governance in conjunction with other investment parameters and about how well the country protects the investors with or without such parameters separately.²⁰ Companies that neglect best practices and insufficiently disclose deviations will likely become less appealing to investors, thereby fostering improved governance through market discipline.

¹⁷ Kevin TD Jackson, ‘Global Corporate Governance: Soft Law and Reputational Accountability’ (2010) 35(1) *Brook J Intl L* 41, 106.

¹⁸ Simon Wong, ‘Developing and Implementing Corporate Governance Codes’ (Global Corporate Governance Forum Private Sector Opinion Issue No 10, 2008) 3.

¹⁹ Jeremy Cooper, ‘Corporate Governance: An IOSCO Perspective’ (Presentation at OECD-ADBI 8th Round Table Capital Market Reform in Asia, 2006) 1-5.

²⁰ Lucian A Bebchuk and Assaf Hamdani, ‘The Elusive Quest for Global Governance Standards’ (2009) 157(5) *U Pa L Rev* 1263, 1317.

Many jurisdictions integrate them into mandatory disclosure frameworks particularly through stock exchange listing rules to enhance the effectiveness of voluntary codes. This mixed model obligates the listed companies to declare their adherence to the designated code and, if noncompliant, to elucidate the rationale for any divergence under the “comply or explain” framework.²¹ This model encourages widespread adoption of best practices while maintaining flexibility for firms to adapt governance structures to their specific circumstances.

It is essential that governance codes and formal legislation are enacted to complement and strengthen one another for an effective legal framework of corporate governance.²² But the transplantation of these voluntary code model into developing countries does not guarantee an automatic improvement in corporate governance standards. In practice, without the supporting pillars of market discipline and regulatory oversight, the “comply or explain” mechanism often fails. Companies which fail to comply with codes often provides unsatisfactory explanations for their non-compliance citing reasons that codes are often serve as signalling mechanism, irrespective of their conformity to domestic economic and legal framework.²³ Unfortunately, such explanations are rarely subjected to rigorous scrutiny or follow-up study undermining the credibility of these best practice recommendations.

Moreover, the enforcement of voluntary codes depends heavily on other market forces particularly the activism of institutional shareholders and the role of an independent media. But most developing countries lack a robust base of institutional investors with the long-term investment horizons and active engagement necessary to monitor firms effectively.²⁴ As a result, institutional investors in these markets often cannot be relied upon to look on the corporate governance practices or apply adequate pressure on corporations to adhere to voluntary codes. The media may either lack the capacity to investigate corporate governance issues

²¹ European Securities and Markets Authority, ‘Report on 2024 Corporate Reporting Enforcement and Regulatory Activities’ (2025) 37-38.

²² Wong (n 18) 3.

²³ Carsten Gerner-Beuerle, ‘Diffusion of Regulatory Innovations’ (2017) 13(2) J Inst Econ 271, 290-99.

²⁴ Claessens and Yurtoglu (n 10) 11, 26.

effectively or may face government-imposed restrictions that prevent them from doing so.²⁵ These limitations weaken one of the key mechanisms supporting voluntary compliance.

Notwithstanding these limitations, the promotion of voluntary adherence to corporate governance norms should remain a priority in the developing countries. Voluntary codes serve an important complementary role to mandatory legal frameworks by promoting a broader culture of compliance and awareness regarding principles of good corporate governance. Even when enforcement is even in the context of weak formal enforcement, voluntary codes can stimulate gradual improvements, foster public debate on governance standards, and pave the way for more comprehensive legal and regulatory reforms over time with transparency.²⁶

B. Pillar 2: Supervisory Regulation

The entire enforcement architecture is fundamentally compromised if the judiciary only offers slow, *ex-post* redress and market discipline remains nascent. The indispensable stabiliser in this context is supervisory regulation, which is the strong, independent securities regulator. This pillar is often the most poorly developed in developing countries. A significant challenge for most developing countries is the combination of a weak judicial system and underperforming administrative agencies, particularly in areas requiring sophisticated rulemaking and enforcement such as financial disclosure.²⁷ This dual institutional failure creates a vacuum. In many instances, administrative bodies are simply not equipped to address the complex nature of corporate governance violations thereby exacerbating systemic weaknesses.

In the process of reform on regulation, it is essential for these countries to explicitly delineate the responsibilities of the supervisory regulators. Clarity of mandate ensures that regulators are neither overwhelmed by

²⁵ Alexander Dyck, Natalya Volchkova and Luigi Zingales, 'The Corporate Governance Role of the Media: Evidence from Russia' (2008) 63 J Finance 1093, 1095-97.

²⁶ Magdi R Iskander and Nadereh Chamblou, *Corporate Governance: A Framework for Implementation* (World Bank 2000) 18.

²⁷ Bernard S Black and Reinier Kraakman, 'A Self-Enforcing Model of Corporate Law' (1996) 109(8) Harv L Rev 1911, 1911.

responsibilities outside their expertise nor restricted from acting decisively within their domain. Using supervisory regulation more proactively can help less the load on regulation which means that rules do not have to be changed as often which leads to the stable regulation.²⁸

Furthermore, securities regulators should be independent and accountable operationally to foster both public trust and accountability.²⁹ This includes the regular publication of decisions, enforcement actions, and rulings in publicly accessible forums as well as issuing comprehensive reports on regulatory activities and enforcement outcomes. Transparency in regulation relates more to on a three-dimensional rule-based approach transparency in legal framework, values and objectives of regulations, and accountability.³⁰

Particularly critical to the success of regulatory agencies is their independence.³¹ Such independence must be both operational and financial. Regulatory bodies must have the authority to act decisively without undue political interference. Financial autonomy is very important. If the funding of regulator is subject to approval by government, its independence can be compromised severely. While it is common for securities regulators for generating revenue through fees collected from activities like new securities issues or trading, the requirement to remit a portion of these funds to budget undermines their effective autonomy. Institutional reforms must aim to secure independent revenue streams and establish budgetary process which shield regulators from political or bureaucratic influence.

²⁸ Jaime Caruana, 'Regulatory Stability and the Role of Supervision and Governance' (Keynote address at the Tenth High-level Meeting on Global Banking Standards and Supervisory Priorities, Montevideo, 28 October 2015).

²⁹ IOSCO, *Objectives and Principles of Securities Regulation* (2017) Principle 2.

³⁰ Christine Kaufmann and Rolf H Weber, 'The Role of Transparency in Financial Regulation' (2010) 13(3) JIEL 779, 796.

³¹ Erik Berglöf and Stijn Claessens, *Enforcement and Corporate Governance* (World Bank 2004) 25.

An efficient strategy for enhancing enforcement mechanisms could entail establishing a cohort of administrative judges under a regulatory agency.³² These judges can receive specialised training and can be empowered for enforcing disclosure duties and regulations against self-dealing comprehensively. Judges should possess the authority to impose significant civil fines, with their jurisdiction potentially limited to agency enforcement proceedings or broadened to encompass lawsuits by investors for restitution.³³ This could strengthen enforcement without the general courts which are overburdening and while also simultaneously promoting specialisation and expertise in corporate governance.

One key advantage of specialised courts is that it has the ability of judges for developing expertise in particular types of disputes and, over the time, this specialisation results in consistent and informed decision-making. Also, specialised courts can tailor their procedural rules to better suit the specific nature of the disputes they adjudicate. For example, in some countries where written submissions traditionally dominate proceedings, specialised courts may allow for oral arguments to facilitate a more dynamic and responsive adjudication process.

It is of the utmost importance that judgements issued by courts especially those made by specialised tribunals be extensively disseminated while also being conveniently available to the public. As a foundational component of rule of law, this transparency is critical for economic development.³⁴ The publication of written opinions by judges improves transparency, increases public understanding of corporate governance matters, and fosters the establishment of a coherent body of jurisprudence. Furthermore, it enhances the oversight of the law and helps to build trust among investors and other stakeholders which is essential for legal regime of good corporate governance.

³² John C Coffee, Jr, 'Privatization and Corporate Governance: The Lessons from Securities Market Failure' in Merritt B Fox and Michael A Heller (eds), *Corporate Governance Lessons from Transition Economy Reforms* (Princeton University Press 2006) 293-94.

³³ *ibid.*

³⁴ Cf Katharina Pistor and Chenggang Xu, 'Incomplete Law' (2003) 35 NYU J Intl L & Pol 931, 965-968.

C. Pillar 3: Adjudicatory Capacity

The successful implementation of corporate governance reforms relies significantly on a robust, capable, politically autonomous, and adequately funded judiciary.³⁵ In many different developing countries, the legal process is hindered by inefficiencies, characterised by sluggishness and excessive complexity, while court systems are frequently so overwhelmed that obtaining a prompt resolution to corporate governance conflicts becomes virtually unattainable. Also, the judiciary may lack the technical sophistication necessary to address the nuances of corporate governance cases adequately.³⁶

In more severe instances, judicial corruption renders any formal shareholder protections meaningless.³⁷ Corruption and incompetence within the judiciary significantly erode shareholders' incentives to pursue enforcement of their rights as the likelihood of receiving a fair and timely judgment is greatly diminished.³⁸

Moreover, a quality, speed and access to judicial process represents significant economic development.³⁹ A recommended practical response to is the increased utilisation of private arbitration processes as an alternative or complement to conventional court litigation.⁴⁰ Specialised commercial courts or dedicated commercial courts within the judiciary provide as effective options for institutional reforms to mitigate these systematic delays.⁴¹

Private arbitration offers the advantages of expediting dispute resolution and easing the burden on the formal judicial system. Nevertheless, it is of the utmost importance to recognise that effective arbitration usually

³⁵ Coffee, 'Law and the Market' (n 3) 308-11.

³⁶ *ibid* 260-62.

³⁷ Black and Kraakman (n 27) 1911.

³⁸ Simeon Djankov and others, 'Courts' (2003) 118(2) Q J Econ 453, 457-460.

³⁹ World Bank, *Doing Business 2020* (World Bank 2020) 33-34.

⁴⁰ Christopher R Drahozal and Quentin R Wittrock, 'Is There a Flight from Arbitration?' (2008) 37(1) Hofstra L Rev 71, 77-78.

⁴¹ Weixia Gu and Jacky Tam, 'The Global Rise of International Commercial Courts: Typology and Power Dynamics' (2021) 22 CJIL 443, 491-492.

depends on a domestic court that is proactive and consistent.⁴² This reliance is codified in international law which takes domestic courts with the fundamental of recognising and enforcing arbitral awards.⁴³ The reliability and credibility of the legal system are crucial when it comes to the execution of arbitral awards because national courts retain the authority ultimately for granting or refusing enforcement.⁴⁴ In the jurisdictions where the judiciary is weak, inconsistent, or corrupt, even arbitration can be failed for enforcing corporate governance norms.

It is crucial to recognise that private arbitration systems are most effective when they operate within a broader context of effective public enforcement institutions. Arbitration is a hybrid form of dispute resolution which relies on the domestic courts for recognition and enforcement of its awards.⁴⁵ If the courts and enforcement agencies are weak, corrupt, or inefficient, arbitration cannot function optimally. Arbitration relies at pivotal junctures on court enforcement of arbitral awards. Another successful method of enhancing judicial system's capacity to handle complicated corporate governance conflicts is the formation of specialised commercial courts often known as dedicated commercial benches within courts. This is in addition to the use of arbitration.

D. Pillar 4: Market Discipline

Beyond the rigid, government approved framework of statutory enforcement lies a more fluid, but possibly more unyielding, governing force, i.e., the domain of market discipline. This component does not work through the harsh tool of legal decree, but it works through the subtle, pervasive pressures of economic consequences and reputational destruction. The market itself becomes the judge, jury, and executioner in a distributed enforcement system. But this great potential is very fragile.

⁴² Walter Mattli, 'Private Justice in a Global Economy: From Litigation to Arbitration' (2001) 55(4) Intl Org 919, 925-28.

⁴³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 30 UNTS 3 arts III, V.

⁴⁴ Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 443-88.

⁴⁵ *ibid.*

It depends on certain institutional and cultural nutrients that are hard to find. Institutional investors and the media are the typical agents of this pillar. In theory, they are praised as watchful guardian against expropriation. But in the harsh reality of developing markets, their story is one of promise that is always put off, a story of hidden power that is held back by internal contradictions and external limits. Their symbiotic dance can create either a symphony of accountability or a cacophony of complicity.

Institutional investors possess the capacity to influence corporate governance across global markets.⁴⁶ The prevalence of institutional ownership has increased across a variety of markets, which has led to a commensurate growth in the influence that institutional investors have on the mechanisms that regulate corporate governance. In some countries that are characterised by dispersed ownership, institutional investors fulfil a role distinct from that of dispersed individual shareholders and because institutional investors control large shares and they possess a significant motivation to cultivate proficiency in making investment choices and oversight.⁴⁷ Institutional investors are in a position to play a considerably more active and knowledgeable part in corporate governance activities than ordinary shareholders who have smaller holdings and are more dispersed. This expertise equips institutional investors to take on this role. Their sizable ownership stakes confer greater authority to ensure management accountability for acts that diverge from the shareholders' best interests. Also, their ability to access company information and exercise concentrated voting power significantly enhances their effectiveness in monitoring corporate management.

Institutional investors enhance liquidity, volatility, and market accuracy in the markets in which they participate.⁴⁸ These market improvements, in turn, facilitate more effective corporate monitoring and strengthen

⁴⁶ Stuart L Gillan and Laura T Starks, 'Corporate Governance, Corporate Ownership, and the Role of Institutional Investors: A Global Perspective' in Thomas Clarke and Marie dela Rama (eds), *Corporate Governance and Globalization* (vol 3, Sage Publications 2006) 141-62.

⁴⁷ Lucian A Bebchuk, Alma Cohen and Scott Hirst, 'The Agency Problems of Institutional Investors' (2017) 31(3) *J Econ Perspectives* 89, 91-93.

⁴⁸ Gillan and Starks (n 46) 141.

governance structures. Furthermore, the function of institutional investors may vary depending on the degree of financial liberalisation and specific government policies, but where institutional investors are influential, their impact on corporate governance can be substantial.⁴⁹ They significantly influence corporate governance and monitor executive remuneration practices. Institutional ownership concentration positively impacts executive compensation pay-for-performance variability, inversely correlated with overall compensation level, despite controlling for factors like company size, business categorisation, investment potential, and company performance.⁵⁰ This suggests that institutional investors can act as important checks against excessive or misaligned executive pay structures. But institutional investors can sometimes act counter to the expectations placed upon them. Research on proxy contests indicated that entrenched management teams often seek and find allies among institutional investors, thereby undermining the role of these investors as independent monitors.⁵¹ They also act to counter to the expectations placed upon them, as the research shows that despite large ownership, they often remain passive.⁵²

In markets characterised by concentrated ownership structures in developing countries, institutional investors take on expanded roles beyond monitoring management and has showed implications on transforming the governance structure in the corporation.⁵³ Given their generally longer-term investment horizons, institutional investors can maintain significant portfolio assets over time offering the stable capital needed for sustained corporate growth and development. This contrasts with individual investors who typically favour shorter-term investment strategies. The ability of institutional investors to provide long-term capital makes them highly attractive to companies thus increasing their

⁴⁹ *ibid.*

⁵⁰ Jay C Hartzell and Laura T Starks, 'Institutional Investors and Executive Compensation' (2003) 58(6) *J Finance* 2351, 2351.

⁵¹ John Pound, 'Proxy Contests and the Efficiency of Shareholder Oversight' (1988) 20(1-2) *J Fin Econ* 237, 237.

⁵² Ian Appel, Todd A Gormley and Donald B Keim, 'Passive Investors, Not Passive Owners' (2016) 121(1) *J Fin Econ* 111, 133-34.

⁵³ Bebchuk, Cohen and Hirst (n 47) 107.

influence. Companies are motivated to upgrade their corporate governance practices to attract and satisfy these investors' expectations.

The rising presence of institutional investors in the developing countries has profoundly impacted the shift of various countries towards market-oriented economies.⁵⁴ Despite these advances, the degree of institutional engagement remains relatively low in many regions. For example of China where several legal restrictions curtail the ability of institutional investors to own significant stakes in companies thus limiting their influence on corporate governance practices.⁵⁵ Chinese regulations forbid institutions from possessing substantial, influential stakes, and the current legal incentives are insufficient to promote active involvement with portfolio businesses.⁵⁶ Consequently, even with the rise of institutional activism globally, legal frameworks can substantially limit institutional investors' ability to drive governance reforms in certain markets.

Implementing reforms to a corporate governance framework while essential is not in itself sufficient to bring about sustainable reform. A broader societal awareness and understanding of the process and the reasons behind it is crucial for lasting impact.⁵⁷ Even countries with weak laws and poor judiciary can still get better if there is a lot of pressure from the media that supports for good corporate governance.⁵⁸ Given these circumstances, it is very necessary to have a media that is both active and objective in order to improve corporate governance, particularly in developing countries. The media can highlight governance issues for the broader public and investors alike by fostering transparency and enabling greater accountability through investigative journalism and public discourse.

⁵⁴ OECD, *Mobilising Institutional Investors for Financing Sustainable Development in Developing Countries* (OECD Publishing 2021) 8-9.

⁵⁵ Chao Xi, *Corporate Governance and Legal Reform in China* (Wildy, Simmonds and Hill Publishing 2009) 108-49.

⁵⁶ *ibid.*

⁵⁷ Robert W McGee, 'Corporate Governance in Developing Economies' in Robert W McGee (ed), *Corporate Governance in Developing Economies* (Springer 2009) 3, 14.

⁵⁸ Alexander Dyck and Luigi Zingales, 'The Corporate Governance Role of Media' (NBER Working Paper 9309, 2002), 31.

A free and vibrant media environment acts as an important tool for protecting investors and enhancing the integrity of corporate systems. Through the creation of public dialogue, the media not only informs but also generates pressure for corporate governance improvements. The OECD emphasises the importance of dialogue among various stakeholders, including stock exchanges, investor groups, securities regulators, regulation organisations, academia, and the public, for effective governance methods.⁵⁹

The media directly influences the enforcing corporate governance at all levels: local, national, regional, and globally.⁶⁰ By gathering, verifying, selecting, and distributing information, media outlets reduce cost of monitoring of stakeholders and investors.⁶¹ The media, acting as a credible information intermediary, lowers barriers to oversight, making it easier for market participants to detect misconduct and hold corporations accountable. Investigative journalism is an important component as early detection of corporate malpractice as the media can expose it before they escalate into larger crises. Media attention can significantly influence the governance practices of corporations by enhancing transparency and encouraging corrective action.⁶²

Moreover, businesses in developing countries aiming at attracting foreign investment must acknowledge the significance of favourable media coverage in global markets.⁶³ To secure favourable attention from foreign media outlet and by foreign investors, firms must demonstrate adherence to sociocultural and governance measures expected in the investors' home countries. Thus, media plays a dual role that domestically, by fostering transparency and good governance, and internationally, by acting as a bridge between companies and potential foreign investors. In this way, the

⁵⁹ OECD, *Policy Framework for Investment* (OECD 2006) 137.

⁶⁰ Berglöf and Claessens, *Enforcement and Corporate Governance* (n 31) 26.

⁶¹ Alexander Dyck, Natalya Volchkova and Luigi Zingales, 'The Corporate Governance Role of the Media: Evidence from Russia' (ECGI Finance Working Paper No 154/2007, 2006).

⁶² Louise Gorman, Theodore G Lynn and Mark L Mulgrew, 'The Influence of the Newspaper Media on the Corporate Governance Practices of Irish Listed PLCs' (2010) 7(3) *Corp Ownership & Control* 259.

⁶³ Dyck, Volchkova and Zingales, 'The Corporate Governance Role of the Media: Evidence from Russia' (n 61) 23-27.

media becomes not merely a passive observer but an active participant in the maintain legal regime of good corporate governance.

For the media to properly function as a watchdog of corporate governance, it must provide precise and impartial reporting.⁶⁴ The independence of the media is compromised in developing countries. Media are in influencing position and they inhibit their capacity as effective watchdogs but without independence, they cannot fulfil their vital role of scrutinising corporate and political actors or of contributing to transparency and accountability within the corporate governance system.

The media enhances corporate governance through mechanisms related to reputation.⁶⁵ Media scrutiny can pressure politicians to enact corporate governance reforms. Politicians can support reforms when media attention highlights corporate malpractice which could damage their reputations if left unaddressed. The media's capacity to shape political reputation enables it to indirectly oversee and affect corporate governance procedures by highlighting deficiencies in the legal and regulatory framework.⁶⁶ International coverage can even compel domestic policymakers to act, concerned about national reputation on the global stage. The media directly alters the reputations of corporate actors.⁶⁷ Managers and executives may act in shareholders' interests not solely out of fiduciary duty, but also out of concern for their personal reputations.⁶⁸ The media's influence extends beyond internal corporate circles to broader society.⁶⁹ It shapes how managers and board members are perceived by a range of stakeholders, including investors, employees, customers, and regulators. The negative media portrayals can lead to diminished trust, reduced stock prices, regulatory scrutiny and, therefore, through affecting reputational capital, the media wields and important indirect power for the corporate governance.

⁶⁴ Gorman, Lynn and Mulgrew (n 62) 15.

⁶⁵ Dyck and Zingales (n 58) 4.

⁶⁶ Gorman, Lynn and Mulgrew (n 62) 15.

⁶⁷ Dyck and Zingales (n 58) 4.

⁶⁸ Dyck, Volchkova and Zingales, 'The Corporate Governance Role of the Media: Evidence from Russia' (n 61) 8.

⁶⁹ Dyck and Zingales, (n 58) 4.

III. FOUR-PILLARS FOR SUSTAINABLE CORPORATE GOVERNANCE

The dominant paradigm of corporate governance reform in developing countries has been entranced, to detrimental effect, by the governance model, a relentless, nearly theological quest for legislative perfection through the incessant recitation of transplanted law and codes. This analysis, on the other hand, makes a clear epistemological break, arguing that the existential crisis is not a lack of norms but a deep enforcement gap, a yawning chasm where *de jure* rights fall into the void of *de facto* powerlessness, systematically undermining the real promise of minority shareholder protection. The unique contribution is the architectural plan for a collaborative enforcement environment, which is made up of four-pillars that work together to create a strong foundation for a sustainable corporate governance. The most important factor about this framework is that it completely changes the way one think about reform. Instead of being a static list of rules, it becomes a dynamic, self-sustaining ecosystem of accountability.

The first pillar, regulatory design, breaks down the conventional binary of mandatory versus voluntary codes and it instead purposes a sophisticated regulatory mechanism. Within this framework, voluntary “comply-or-explain” codes are not idolised as symbols of good governance instead they are reconceptualised as a contingent mechanism whose efficacy is not inherent but reliant on the strength of the entire enforcement system. The analysis correctly points out their theoretical appeal which comes from their flexibility and foundational belief in market-driven discipline.⁷⁰

Consequently, the strategic promotion of voluntary codes must remain as a strategic priority. They are not a panacea, but they are an essential component of a long-term and sequenced reform strategy. Weak enforcement does not make their value go away but it changes it. They operate as an important diagnostic instrument because they show the gaps in market discipline and regulatory capacity that need to be fixed. Even though they are not perfect, these codes can catalyse incremental improvements, encourages important public debate, and most

⁷⁰ Wymeersch (n 15) 8.

importantly, serve as a cultural and ideological vanguard, and it paves the way for the more comprehensive, enforcement-focused reforms that must follow. Therefore, the code is not the end of the reform journey but is the essential prologue.

But this potential suffers a catastrophic decline in developing markets where as noted, the necessary robust base of institutional investors is absent.⁷¹ This reveals that the pillar's structural integrity is not independent rather it is synergistically dependent on the vitality of market discipline. The failure of market discipline induces thereby the also failure of this pillar and it exemplifies the clear illustration of framework.

The second pillar, supervisory regulation, goes up against the securities regulator which is the central nervous system of public enforcement. The analysis contends that the regulator's statutory mandate is an empty ceremonial façade devoid of the essential attributes of operational sovereignty, fiscal autonomy, and profound technical expertise.⁷² For the sake of strong legal basis of corporate governance, it is important that governance codes and formal laws are made to complement and strengthen one another for an effective legal framework of corporate governance.⁷³ This pillar is strategically essential because it acts as a systemic circuit breaker and a strong regulator can replace a deficient judiciary and activate dormant market participants.⁷⁴ This axiom is clearly shown by the assessment about China which did not depend only on private enforcement mechanisms but adopted a supervisory regulation and functioned with the robust public administrative bodies as an indispensable enforcer.⁷⁵ Its independence within this framework is not merely an attribute but it is the inviolable nucleus of its very credibility and its effectiveness.

The third pillar, adjudicatory capacity, deals with the profound challenge of dysfunctional judiciary in developing countries. The analysis does not

⁷¹ Claessens and Yurtoglu (n 10) 11, 26.

⁷² IOSCO (n 29) Principles 2-4.

⁷³ Wong (n 18) 3.

⁷⁴ Howell E Jackson and Mark J Roe, 'Public and Private Enforcement of Securities Laws: Resource-Based Evidence' (2009) 93(2) J Fin Econ 207, 237.

⁷⁵ OECD, *China in the Global Economy* (n 13) 317.

merely lament a system characterised by sluggishness and excessive complexity rather it employs a sophisticated array of institutional remedies, ranging from specialised commercial courts to the procedural efficiencies of private arbitration. Its true critical insight, however, it is most evident in how it breaks down the inherent ontological trade-offs that these solutions require. Arbitration promises quick resolution, but it only works if the court wants to avoid is proactive and consistent judiciary as it seeks to circumvent on the enforcement of awards.⁷⁶ This creates a vicious cycle wherein the remedy is dependent like a parasitically upon the health of the affliction which is meant to be cure. In this context of institutional paradox, the idea of embedding the administrative law judges inside the regulator's own system is a masterstroke of institutional innovation.⁷⁷ It combines supervisory and adjudicatory power to circumvent around a paralysed general judiciary, a solution whose significance is underscored by the value of public enforcement capacity.⁷⁸

For the minority shareholder, the structure of corporate governance is still just a fascinating outer layer, which is an elegant but uninhabitable in practice, without a way to settle disputes. This portal to justice is not weak only in the developing countries but it is often ruinous with its foundations shattered by three institutional problems: a process that moves at a glacial pace and is stuck in the past, a backlog of cases that is too big to handle, and a lack of understanding of the complex way that corporate finance works. In this labyrinth, the minority shareholder's search for justice turns into a perilous task where the time and money spent on litigation itself is a form of denying justice making legal protections not only impossible to enforce but also cynical fictions.⁷⁹ This procedural failure is made much worse by systemic corruption which turns the courts from a place of principle into a place of influence in which legal outcomes are bought and sold and the law itself turns into the most powerful tool of expropriation, systematically destroying the very reasons a minority shareholder to seek legal recourse.

⁷⁶ Born (n 44) 460-88.

⁷⁷ Coffee, 'Privatization and Corporate Governance' (n 32) 293-94.

⁷⁸ Jackson and Roe (n 74) 229-233.

⁷⁹ Djankov and others (n 38) 511.

The fourth pillar, market discipline, brings together the seemingly distinct elements of institutional capital along with the media to create a unified theory of reputational enforcement. The analysis expertly balances the contradictory nature of institutional investors, praising their theoretical role as sophisticated monitors who can link executive pay to performance,⁸⁰ while also dissecting their actual dysfunction as passive, conflicting entities, in which entrenched management teams often seek and find allies among them.⁸¹ This goes along with the conception that the media is not just a passive observer, but an alchemist of reputation that can change people's political, business, and social standing.⁸² The pillar's vitality can, therefore, be seen to be dependent, a fragile structure threatened by the "compromised" independence of the media in developing countries.

The theoretical framework of the institutional investor as an archetypal overseer is structurally robust. Their aggregation of capital gives them not only economic power but also a unique ability for sophisticated oversight, something that the scattered, rationally apathetic retail shareholder would hate positioning them as the market's private prosecutors. But this theoretical giant is built on shaky ground, and when it encounters the harsh realities of perverse incentives and structural conflicts, it falls apart. The presumed vigilance of these institutional watchdogs is a paradox of governance because they often have a deep lack of internal awareness which means a failure of self-diagnose their own stewardship deficits and are therefore inactive when they need to be active.

The true strength and extreme fragility of market discipline are not found in the individual power of either agent, but in the fragile, interdependent relationship between them. They are in a *pas de deux* where the media provides the spark of revelation, the exposed scandal or the dissected related party transaction, that sets off the dry tinder of investor worry. On the other hand, the media's functionary only gains its destructive power

⁸⁰ Hartzell and Starks (n 50) 2351.

⁸¹ Pound (n 51) 237.

⁸² Dyck and Zingales (n 58) 4.

when institutional capital pulls it along, turning a single headline into a corporate disaster. This feedback loop is what makes reputational enforcement work as an engine. But systemic corruption is like a universal solvent that breaks down both parts of this delicate chemistry as it drives away the institutional arbiters of quality who demand honesty, while also creating a media landscape that is either silent or dishonest. So, to strengthen this pillar, it is needed to create an investor ecosystem through stewardship codes and conflict-mitigation, and it is needed to protect the media with a strong, constitutional defence of a free and financially resilient media.

In its ultimate synthesis, the framework's interpretive strength lies in its unwavering focus on synergistic interdependence, a fundamental structure in which the failure of one link ensures the disintegration of the entire chain. The elegant and devastating reason is unavoidable: voluntary codes (Pillar 1) turn into an irrelevant language without the lexicon of market discipline (Pillar 4), which is its own rendered mute by a venal judiciary (Pillar 3) and a controlled regulator (Pillar 2). The unavoidable conclusion is that reform needs to be a group effort, not a solo effort. It needs to be a coordinated effort of institutional capacity, clarity in regulations, and civil society vibrancy. This plan for a self-reinforcing enforcement architecture is the best strategic plan. It is a clear way to move from the rocky landscape of reform in form to the fertile field of reform in function. These measures can protect minority shareholder rights, and it attracts long-term capital, and also creates a truly sustainable path for development.

IV. CONCLUSION

This study has traversed the complexities of corporate governance reforms in developing countries, intentionally moving beyond the superficial aspects of rulemaking to confront the more profound and persistent challenges of their implementation. The analysis shows in stark detail that the continuous developments of laws, codes and rules, no matter how well-written they are is just a show of governance unless they are backed up by a strong, multi-dimensional enforcement system. The credibility of framework of corporate governance, and thus the stability of the financial markets it claims to support, relies not on the symbolic significance of legal texts but on the concrete, unwavering and credible enforcement of their

provisions. Without this essential transformation from legislative structure to institutional function, even the most progressive governance frameworks deteriorate into the mere book of laws which is easily navigated by corporate insiders and met with justified scepticism by minority shareholders and the global investment community.

A journey toward substantial enforcement is not a singular undertaking. It necessitates the synergistic reinforcement of a series of interrelated institutional pillars. The latent potential of those voluntary governance codes which is characterised by doctrinal flexibility and reliance on voluntary codes which is entirely dependent on a robust market discipline without the critical scrutiny of committed institutional capital and a vigorous, unrestrained media, this model deteriorates into a mere ritual with its explanatory notes becoming unexamined justifications for governance failure. At the same time, the concept about the institutional investor as a smart monitor is often undermined by a web of conflicts, a culture of passivity, and not too frequently, legal structures that are designed purposively to limit their power. This creates a big gap between their theoretical role and their weak power in practice.

The adjudicatory pillar which is the last resort for help is often the most broken. A court system that is slow, or in its worst form, corrupt at the system level, cuts the vital link between rights and their realisation by turning formal shareholder protections into an inhumane and complicated deception. Although specialised commercial courts along with the allure of arbitration provide a means to inject efficiency and expertise, their effectiveness is ensnared in a paradoxical ontological cycle, with their legitimacy reliant on the very judicial system whose deficiencies prompted their establishment; a weak and corrupt judiciary cannot enforce reliably the decrees of its private competitors. This complex web of dependencies shows a basic truth that no pillar is sperate stronghold. The ability of a securities regulator to act as a strong *ex-ante* enforcer is affected permanently by its operational independence, financial independence, and its ability to keep political and oligarchic capture from getting in.

As a result, the search for sustainable corporate governance turns out to be, at its core, a deep and long-term process of institutional alchemy. It requires a careful, context-sensitive, and well-planned strategy, a

diagnostic assessment of a country's unique institutional weakness and social pressures. Reforms cannot be implemented in isolation as they must be interwoven intricately. The strengthening of regulatory autonomy must occur simultaneously with the development of market discipline. The development of judicial competence must be accompanied by the liberation of a media enabled to serve as an unyielding guardian of reputation. The ultimate objective is to build a natural environment for accountability that reinforces itself. This niche should be a place where rules are not just written down but also lived out, at which accountability is not just an abstract idea but a constant behaviour, and where protecting the minority shareholder is not just a vague goal but the most important part of a market economy that is dynamic, credible, and truly sustainable.