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**TOPIC:**

**CONTEMPORARY TRENDS IN BOARD STRUCTURES**

**BY**

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# ABSTRACT

Board structure is a critical aspect of corporate governance, and it plays a crucial role in determining the effectiveness of a company's decision-making processes. A company's board of directors is responsible for overseeing the management team and ensuring that the company's goals and objectives are aligned with its long-term strategy. In this seminar work, we shall explore the different types of board structures that companies use, and we shall examine the advantages and considerations of each structure. By understanding the various board structures, companies can choose the one that aligns with their goals and industry, and ensure effective governance and decision-making. These boards often include individuals with expertise in areas related to the organization’s purpose. It is important for a company to choose a board structure that aligns with its goals, size, and industry.

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# LIST OF CASES

1. ECONET WIRELESS NIGERIA LIMITED V. ECONET WIRELESS LIMITED AND ANOR (2014)7 NWLR, PART 1405, particularly the dictum of Mbaba JCA.

**LIST OF STATUTES**

1. Companies and Allied Matters Act (2020).

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**INTRODUCTION**

The board of directors is charged with oversight of management on behalf of shareholders, in order to protect the interests of shareholders, the board of directors must assume an effective oversight task. It is assumed that board performance of its monitoring duties is influenced by the effectiveness of the board, which in turn is influenced by factors such as board composition and quality, size of board, duality of chief executive officer, board diversity, information asymmetries and board culture (Brennan, 2006).

The issue of structure of the board of directors as a corporate governance mechanism has received considerable attention in recent years from academics, market participants, and regulators. It continues to receive attention because theory provides conflicting views as to the impact of board structure on the control and performance of companies, while at the same time the empirical evidence is inconclusive. To date, the relationship between board structure (as opposed to board processes) and company performance has been the most studied aspect among all board investigations (Bhagat and Black, 1999). In these studies, it is often assumed that a company's financial performance is mainly determined by board characteristics. In view of the importance attached to the institution of effective corporate governance, the Federal Government of Nigeria, through her various agencies came up with various institutional arrangements to protect the investors of their hard- earned investment from unscrupulous management/directors of listed firms in Nigeria. These institutional arrangements, produced the “code of corporate governance best practices” issued in November 2003. The code proposes that the business of a firm should be managed under the direction of a board of directors who delegates to the CEO and other management staff, the day-to-day management of the affairs of the company. The best practices of the code also recommend that the board sees to the appointment of a qualified person as the CEO and other management staff. The directors, with their wealth of experience, are expected to provide leadership and direct the affairs of the business with high sense of integrity, commitment to the firm, its business plans and long-term shareholder value. In addition, the board provides other oversight functions. Other mechanisms of corporate governance include audit committee, shareholders rights and privileges. The emergence of mega banks in the post consolidation era prompted the Central Bank of Nigeria to issue a new code of corporate governance[[1]](#footnote-1) which became operative in 2006. In the same vein, the Nigerian Securities and Exchange Commission (SEC), published the revised Code of Corporate Governance in September, 2009 after consultations with other regulatory bodies. The new code was issued to address the weaknesses of the 2003 code and to improve the mechanism for its enforce ability. It requires the separation of the position of the managing director from that of the chief executive officer. Also, the code recommends that the number of non-executive directors should be more than that of executive directors subject to a maximum board size of twenty (20) directors. In order to ensure both continuity and injection of fresh ideas, non-executive directors should not remain on the board for more than three terms of four (4) years each, that is, twelve (12) years. The study adopted the definition of board structure as given by Tricker (1994). He noted that board structure distinguishes between those directors who hold management positions in the company and those who do not. Those with management positions are referred to as ***insider directors in the United States or executive directors in United Kingdom*** ***and Australia.*** **The top person in the board is the chairman**. He could be an executive or a non-executive of the company. If the CEO happens to be a director on the board, then he is an executive director.

# CHAPTER ONE

**CONCEPTUAL FRAMEWORK OFCONTEMPORARY TRENDS IN BOARD STRUCTURES**

**HISTORY AND MEANING OF** **BOARD STRUCTURES**

According to the Black’s law lexicon[[2]](#footnote-2) a board was defined inter alia: “…A group of persons having managerial, supervisory, or advisory powers … while structure was described as …any piece of work composed of parts…” also, the court of appeal in ratio seven in the case of ECONET WIRELESS NIGERIA LIMITED V. ECONET WIRELESS LIMITED AND ANOR[[3]](#footnote-3) his Lordship was of a corroborative view when he immune the board of company thus: …with respect to the effect of the company at general meeting; the board of directors and the managing director, he posited inter alia also that “…any act of the members of a company in general meeting , the board of directors, or of a managing director, while carrying on the usual way the business of the company itself and the company shall be criminally and civilly liable thereof to the same extent as if it were a natural person[[4]](#footnote-4) .It could be deduced from the above case that company board structure is exempted from criminal and civil liability while executing the objectives of the company in Nigeria and in other countries around the world. This no doubt creates the need to adumbrate a little about historical findings of board structure in the modern world.

The history and meaning of board structures elucidated above can be traced back to the development of corporate governance practices and the need for effective oversight and decision-making in organizations. The concept of boards of directors dates back to several centuries. The origins can be traced to medieval trade guilds and early joint-stock companies where groups of individuals were appointed to oversee and manage business affairs. The Industrial Revolution in the 18th and 19th centuries led to the emergence of large-scale corporations. As companies grew in size and complexity, there arose a need for a formal governing body to represent shareholders' interests and provide strategic direction.

Over time, legal and regulatory frameworks were established to govern corporate entities. Laws and regulations set guidelines for board structures, responsibilities, and fiduciary duties to protect stakeholders and ensure proper corporate governance. Several corporate scandals in the 20th and early 21st centuries, such as **Enron and WorldCom**,[[5]](#footnote-5) highlighted governance failures and the importance of effective board oversight. These scandals prompted regulatory reforms and increased scrutiny on board structures and practices.

Board structures are designed to provide governance and oversight in organizations, it represents shareholders and act as stewards of the company, overseeing management, setting strategic direction, and ensuring compliance with laws and regulations.

Boards make key decisions that impact the organization, including approving major investments, appointing senior executives, setting corporate policies, and monitoring performance. They provide guidance and monitor management's actions to align them with the company's goals and shareholder interests. Boards are accountable to shareholders and other stakeholders. They are responsible for ensuring transparency, ethical conduct, and the long-term sustainability of the organization. Boards play a crucial role in safeguarding stakeholders' interests and ensuring responsible business practices.

Board members have a fiduciary duty to act in the best interests of the company and its shareholders. This duty requires them to exercise due care, loyalty, and good faith in making decisions and overseeing management. They must avoid conflict of interest and act with integrity and honesty. Board structures have evolved to establish a framework for effective corporate governance, ensuring accountability, decision-making, and strategic guidance in organizations. They are integral to the functioning and success of companies across different industries and regions.

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# CHAPTER TWO

**CONTEMPORARY TREND IN NIGERIAN BOARD STRUCTURES**

In Nigeria, there have been several contemporary trends in board structures that align with global practices:

Firstly, Board Diversity: Similar to global trends, there is an increasing emphasis on board diversity in Nigeria. There is recognition of the importance of gender diversity and the inclusion of women on boards. Additionally, efforts are being made to enhance ethnic and regional diversity to ensure a broader representation of the Nigerian population.

Secondly, Independent Directors: The inclusion of independent directors on boards is gaining momentum in Nigeria. This trend is driven by corporate governance reforms and regulations, such as the Nigerian Code of Corporate Governance. Independent directors are expected to provide objective oversight, ensure transparency, and protect the interests of minority shareholders.

Thirdly, Skills-Based Composition: Nigerian companies are recognizing the need for directors with specialized skills and expertise. Boards are actively seeking individuals with financial acumen, industry knowledge, legal expertise, and technological know-how to navigate complex business landscapes. This trend reflects the growing complexity of business operations in Nigeria and the need for diversified skill sets on boards.

Fourthly, Board Evaluation and Refreshment: There is an increasing focus on board evaluation and refreshment in Nigeria. This involves periodic assessments of board effectiveness, individual director performance evaluations, and succession planning. Nigerian companies are placing importance on ensuring that boards remain relevant, agile, and responsive to changing business environments.

Fifthly, Corporate Social Responsibility (CSR): CSR considerations are gaining prominence in boardrooms across Nigeria. Boards are recognizing the importance of social and environmental sustainability, as well as ethical business practices. They are expected to oversee and guide the organization's CSR initiatives, which can encompass initiatives related to education, healthcare, poverty alleviation, environmental conservation, and community development.

Sixthly, regulatory Compliance: Nigerian board structures are influenced by regulatory frameworks and requirements. The Securities and Exchange Commission (SEC) and other regulatory bodies have introduced guidelines to promote good corporate governance practices. Boards are expected to comply with these regulations, ensuring transparency, accountability, and ethical conduct in their decision-making processes.

Lastly, Technology Integration: With the growing digital landscape in Nigeria, there is an increasing focus on technology integration within board structures. Boards are recognizing the importance of digital literacy and technology expertise to effectively address digital disruption, cyber security risks, and technology-driven business opportunities.

While these trends indicate progress in Nigerian board structures, it is important to note that implementation and adherence may vary across different companies and industries. Furthermore, continued efforts are needed to further enhance corporate governance practices and ensure the effective functioning of boards in Nigeria.

# CHAPTER THREE

## **A COMPARATIVE OVERVIEWOF THE CONCEPT OF CORPORATE BOARD STRCUTURE**

A comparative overview of the concept of corporate board structures can be examined by considering different models that exist globally[[6]](#footnote-6). Here are some key board structure models and their characteristics:

1. **Unitary Board Structure:**
* Prevalent in Anglo-American countries, such as the United States and the United Kingdom.
* Typically composed of a single board that includes both executive and non-executive directors.
* Executive directors are involved in day-to-day management, while non-executive directors provide oversight and strategic guidance.
* Non-executive directors are expected to bring independent judgment and objectivity to the board.
1. Two-Tier Board Structure:
* Commonly found in continental European countries, including Germany and the Netherlands.
* Consists of two separate boards: a management board (executive board) and a supervisory board (non-executive board).
* The management board is responsible for day-to-day operations, while the supervisory board oversees management and represents shareholder interests.
* The supervisory board is typically composed of non-executive directors and has the authority to hire or dismiss members of the management board.
1. Dual Board Structure:
* Seen in some European countries, such as Sweden.
* Involves two separate boards: an executive board and a non-executive board.
* The executive board handles operational matters, while the non-executive board focuses on strategic decision-making and governance.
* Both boards work together to ensure effective management and oversight of the organization.
1. Board Structure with Board Committees:
* Commonly adopted in many countries, including the United States and Canada.
* The main board is supported by various committees, such as audit, compensation, and nominating committees.
* Committees consist of a subset of board members and are responsible for specific areas of governance and oversight.
* Committee members possess specialized expertise and provide recommendations and advice to the full board.
1. Board Structure with Executive and Non-Executive Chairs:
* Found in various countries, including the United Kingdom and Australia.

# CHAPTER FOUR

## **FINDINGS, CONCLUSION AND RECOMMENDATIONS**

**Corporate board structure/governance challenges in Nigeria**
There are many challenges to the effectiveness of corporate board structure/governance in Nigeria. They range from corrupt practices, ownership structure, slow and inefficient judicial process to lack of enforcement mechanisms by regulatory bodies.[[7]](#footnote-7)

**Corruption**

Corruption is one of the major challenges to the smooth practice of corporate governance in Nigeria. It is the widespread belief that you cannot get anything, especially from government or public officials without offering a bribe. Therefore, private business managers who need to obtain some permission or waivers from government cannot do so unless through corrupt practices. Corruption permeates everywhere. It is the same practice even among highly placed persons in both public and private sectors.

Recently, even amid the anti-corruption war by this present administration, Transparency International rated us among 148 least corrupt countries in the world. This in defiant of all efforts by successive governments, especially from the military regime of late General Murtala Muhammed/Olusegun Obasanjo to curb corruption in the country, not much has been achieved. This situation continues to endanger corporate governance practice in the country. According to Yakasai, “The greatest challenge to good corporate governance in Nigeria is corruption. It is a real problem in any non-transparent developing nation whereby corporate executives milk their own companies and become ‘fat cats’ while the investors become ‘anemic’, a situation very prevalent in Nigeria.”

**Ownership structure of businesses**

As said earlier, the Nigerian private sector was dominated by British Companies (after British interests during the colonial era). Following political independence, one of the key economic liberation (development strategies) immediately pursued by the then Nigerian government was to foster domestic ownership and control of the Nigerian Private Sector. Traditionally, this had significant implications for corporate governance. By restricting significant foreign ownership that potentially could have acted as external checks and balances, the resulting indigenous owners and major shareholders were able to perpetrate several corruption dealings at the expense of minority investors.

However, it must be noted that the restriction in foreign ownership through the Nigerian Enterprises Promotion Act of 1972 and 1977, still allowed foreign participation for up to 60 or 40 per cent depending on the industry. Indeed, many foreign corporations were still able to devise strategies (such as buying stakes through local investors or indigenous firms to circumvent the regulations in order to hold percentages in Nigerian corporations higher than those provided in the law (Achebe, 1989). It is thus important to balance the view that restrictive foreign ownership could have impacted positively on Nigerian corporate governance system, particularly with examples of corporate scandals in Cadbury Nigeria, 2007; Halliburton scandal 2008 and Siemens bribery scandal 2009. No proof that majority foreign ownership could improve corporate governance in those corporations.

**Judiciary**
The judicial system in Nigeria is not only slow, inefficient and expensive but has been tainted with corruption. Court cases take an average of 10 to 20 years before judgment is delivered. In most cases, parties to the cases are either too old or may have died. If the level of corruption in the judiciary has become so prevalent to the extent that Supreme Court Justices and Senior Advocates are being tried for involvement, how can an average Nigerian get justice from such a system?

**The political environment**

Although Nigeria attained political independence about 58 years ago, the country has been under military rule for 29 years. As a developing democracy, the dominant political class is those who have had access to power in the last 58 years. They control both the politics and the economy. Where they are not directl owners of companies, they own through their surrogates who are appointed directors. This political class exerts a great influence on what happens in the boardrooms of directors. Beyond this, most of the strategic businesses in Nigeria, especially in the oil and gas sector, are in the hands of the federal government. With a corrupt and bureaucratic civil service in control of such organizations, it is not difficult to tell what would happen to corporate governance in such organizations.

**Lack of proper regulatory and enforcement mechanism**

Good corporate governance requires the strengthening of regulatory agencies as well as boosting the capacity of corporations to appoint competent board of directors. A situation where the regulatory agency is weakened by political considerations and also, where it is being saddled with too many functions as the case of the CBN, does not augur well for regulation. While the CBN is supposed to regulate the banks, it is also responsible for initiating monetary policies, issuing currency, advise the government on fiscal and monetary matters, manage the country’s payment and settlement system, formulate banking rules, serves as banker to other banks and ensure rapid economic development (Wilson 2006, Inyang 2009). This clearly overburdens the CBN and distracts it from its core duties and responsibilities.

**Ignorance of minority shareholders**

Most minority shareholders are illiterate and ignorant of the rules guiding business practices. They not only found it difficult to interpret the figures but also do not understand business ethics. They therefore are not in a position to question the board and management on the malpractices and sharp practices being perpetrated in the companies where they have interest.

**Poverty**
In spite of all our God-given natural resources, Nigeria is one of the poorest nations in the world. What naturally follows is that people are subjected to diseases, hunger and untimely death. Is it any wonder that Nigeria has the highest number of religious followers in the world? If our leaders cannot fix our problems with what God gave us, the followers can at least, feed themselves with the word of God. Hence, our religious institutions are the most populated in the world. This level of poverty will make it difficult, if not impossible for the average Nigerian to participate actively in whistle blowing which is part of the ways good corporate governance can be promoted.

**Lack of observance of rule of law**

Despite having enjoyed democracy for about 30 years out of 58 years of independence, our political environment is largely dominated by military mentality. This mentality, which hardly obeys the rule of law, permeates most of our institutions and these include corporate organizations. Without following the basic rule of law, which includes equality before the law, supremacy of the law and respect for individual human rights, no corporate organization can be said to be fair. They don’t even obey their rules of corporate governance.

**Alien corporate governance structure**

As stated earlier, Nigerian corporate governance structure had its origin in the colonial era. It witnessed the dominance of British companies, subject to British laws, but in the Nigerian business environment. “As a result, issues relating to the conduct and governance of Nigerian corporations, which are combined within the provisions of the company legislation have their roots in the country’s colonial past.” (Okike 2007)7. Nigeria thus inherited an Anglo-Saxon defined framework of corporate governance. Furthermore, while the country’s attainment of independence led different boardroom squabbles among directors, management, to the replacement of the Companies Ordinance of 1922 with the Companies Act of 1968, the UK corporate law remained a huge influence. For example, the 1968 Company Act was extensively influenced by the UK Companies Act of 1948 (Okike 2007). It has indeed been argued that despite the several company law reforms over the years, the legal system of corporate governance in Nigeria has remained fashioned along the Anglo-Saxon model. For us to observe proper corporate governance in Nigeria, there is the need to do the followings.

**Making public governance responsible**

From our discussions so far, it is obvious that the level of development of our public governance has a negative effect on corporate governance in the country. If public governance has not been responsible, and does not obey the rule of law, it will reflect on the type of corporate governance we practice. We also observe that poverty and unemployment are serious threats to corporate governance in the country. People who are poor and unemployed should not be expected to have the confidence to be whistle blowers; they fear they are not protected. This is the situation of the average Nigerian. Meanwhile, there is a provision in Chapter 2 of our 1999 Constitution, which says that he should be educated and given employment by government but the same Constitution says if he is not provided with these services, he cannot sue the government for such denial. This, this writer believes, is wrong.

We are of the opinion that for us to have patriotic Nigerian citizens, the provisions in Chapter 2 of the Constitution under Fundamental Objectives and Directive Principles of State Policy should be made enforceable and justiciable. This is the one way government can be made responsible to the citizenry. When that is done, other elements of the society, like corporate world, will take a cue from there.

**Unification and enforcement of corporate governance codes**

As stated earlier, we already have a body – the FRC, working on a unified code of corporate governance. The code is only suspended. In fact, FRC is reviewing the code. We recommend that such an exercise be encouraged so that Nigerians can have a unified and enforceable code. This will go a long way to enhance corporate governance practice in the country.

**Independent and efficient judiciary**

It is well noted that the present government is fighting corruption in the judiciary. For the first time in the history of the judiciary, Supreme Court Justices and Senior Advocates are being tried for corruption. This is commendable. But this exercise must be done in accordance with the rule of law. There is also the need to create special courts for corporate offences. We once had special tribunals for failed banks. This will help in speedy dispensation of justice. Above all, there is the need to improve the welfare of the judiciary. The judges and other officials must have enhanced welfare packages to attract hardworking professionals into the service.

**Need to protect private capital**

Private capital is necessary for economic development of the country, but no development can come without good corporate governance. In the words of the former Chairman of the United States Securities and Exchange Commission, Arthur Levitt, “If a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere. If investors are not confident with the level of disclosure, capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere. All enterprises in that country, regardless of how steadfast a particular company’s practices may be, will suffer the consequences.”

**Good public governance**

To promote corporate governance in Nigeria, we must make public governance fair, accountable and responsible. No strong corporate governance can emerge from a public governance system that is undisciplined, corrupt and unaccountable. This is especially so when the State in Nigeria owns virtually everything. Once you do not belong to the political class or you are not an agent to them, you are a loser. In the words of Ayodele Adelaja Adekoya, “The challenges of good corporate governance in Nigeria are more external than internal to corporations, and effort to address these challenges must come from the public governance spectrum. It must be initiated from the country’s legal and regulatory frameworks, not from the boardrooms of corporations. Good corporate governance is predicated on good public governance, and a political system that ensures public accountability is necessary for ensuring good corporate governance.”

RECOMMENDATIONS:

The future of the Boards members will revolve around adoption of the trends discussed below and could help to reshape corporate governance in the years to come. These trends are already gaining momentum and have impacted on boards’ performance. The trends are still expected to fundamentally redefine their roles and structure by 2030:

**RECOMMENDATIONS**

1. Elevated stakeholder voice from more diverse groups

There is need for a shift from shareholder primacy to stakeholder primacy. For the boards, there is need to sacrifice the shareholder primacy for the unknown landscape of creating long-term value for more people that the shareholder alone.

The 2021 Edelman Trust Barometer revealed that eighty six percent of respondents expect Chief Executive Officers to publicly speak out on societal challenges and there is enough evidence that executives are responding, by shifting from being internally-focused businessmen and women to assuming greater and broader societal leadership roles like in Australia and New Zealand fostering stakeholder trust and confidence as an increasing part of their role. We submit that the Boards need to be ready for and embrace this shift.

This is because we live in an increasingly turbulent world, with boards needing help to stay on top of recent trends and adapt to ever-changing market conditions. Key focus areas such as cyber security and environmental, social and governance (ESG) initiatives are more important than ever as boards deal with the effects of changes in the field.

Many boards struggle to shift from old modes of operation to new measures. Implementing changes such as increased stakeholder and investor involvement, as well as adapting to new technology and innovations, can be challenging in the boardroom.

2. More transparent decision-making

There is no doubt that more is expected from the Boards and as such the need to be more transparent in decision making becomes a crucial factor. The position of the law still upholds the shareholder primacy rule, but the reality of where the Boards stand today is that stakeholders the Boards are accountable to them.

1. Greater accountability – and consequences – for boards

The first two trends bring us to the third: the onus on boards to be open, accountable and admit where they go wrong or where a mistake is made. The challenge is that news and public sentiment moves like wild fire than boards can react and having to work out what happened after the story has broken puts them very much in the back seat. Directors that follow an agreed decision-making approach, which includes consulting and sense-checking externally, will be better able to defend their actions.

For example, artificial intelligent (AI) can guide better decisions where fast thinking is required, offering simulations of stakeholder responses. When more considered responses are in order, consultation, critical challenge and review points can support decision-making. Boards need to govern for both speeds, with suitable checks and balances in place for both.

4. Faster, more unpredictable pace of change

Boards need to be able to cope when changes and new rules emerge, the usual procedures favoured by traditional board members just don’t apply. Instead, boards need to test quickly, assess and adjust. But, while many organisations talk about becoming agile and resilient, we see few boards putting it into practice. Most hold meetings in quarterly cycles, with pre-set information and they generally don’t look beyond the knowledge, experience, skills and network reach of incumbent directors for input.

Changing this reactive approach is critical, but challenging. Many boards so are incredibly time poor; they don't have enough unstructured time together; meetings are jammed with agenda items and overly structured; and boards generally don't get adequate time with management.

5. Complex business ecosystems that make governance more challenging

The forces of digitalisation, globalisation and dispersion (of people, organisations, supply chains) have created a mind-boggling level of complexity for boards.

Directors may think that making the systemic changes should rather wait, while they address the four issues identified above as the key challenges for boards right now - regulatory and legal demands; outdated and manual modus operandi; technology and skills gaps; and competing stakeholder and ESG pressures. But the links between today’s challenges and the trends creating tomorrow’s conditions for boards - those that act now to rethink their operating model can ease pressures now and get ahead of change.

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 [↑](#footnote-ref-1)
2. 9th edition, edited by Bryan A. Garner in 2009, Printed in the United States of America@ page 196. [↑](#footnote-ref-2)
3. (2014)7 NWLR, PART 1405, particularly the dictum of Mbaba JCA. [↑](#footnote-ref-3)
4. See paras F-G of the above report. [↑](#footnote-ref-4)
5. Corporate board and governance has become a burning issue all over the world. It became most pronounced in the United States especially after the collapse of two corporate giants- Enron representing the power sector and WorldCom representing the communication sector in 2001 and 2002 respectively. In addition, one of the world’s top five accounting firms –Arthur Andersen, collapsed under the corporate scandal generated in Enron. They audited the accounts.

Our awareness of major corporate governance issues in Nigeria started with the discovery of overstatements in Cadbury Nigeria Plc. accounts in 2007. Since then, many more have followed. [↑](#footnote-ref-5)
6. It's important to note that the adoption and implementation of these trends can vary across companies and jurisdictions. Additionally, the size, nature, and ownership structure of organizations can influence the specific board structures and practices that are appropriate for them. [↑](#footnote-ref-6)
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