THE ROLE OF REGULATORS AND IMPACT OF CORPORATE GOVERNANCE ON THE PERFORMANCE OF AUSTRALIAN-LISTED COMPANIES: LEGAL ANALYSIS

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Abstract

This paper addresses the regulatory role and impact of corporate governance on the performance of Australian-listed companies. The research problem concerns understanding how regulatory bodies like the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA), supported by statutes like the Corporations Act 2001 (Act 2001) and the Financial Accountability Regime Act 2023 (FAR Act) influence corporate governance and company performance. The purpose of this research is to explore the correlation between governance practices and firm performance within the Australian legal framework. A doctrinal research methodology was used to examine statutory advancements, the roles of regulatory bodies, and corporate governance principles. The findings indicate that robust governance protocols and stringent regulatory enforcement foster investor trust, protect shareholder rights, and ensure legal compliance (Wilmart, 2007). This paper concludes that a synergistic approach combining self-regulation with statutory oversight is essential for maintaining financial market integrity and enhancing corporate performance (Schaeken Willemaers, 2014). This paper contributes to the legal analysis of regulatory frameworks, corporate governance, and their impact on the stability and performance of Australian-listed companies, fostering a competitive and trustworthy market environment.

Keywords: Corporate Governance, Listed Company, Firm Performance, Corporate Law, Investor Confidence, Misconduct, Financial Accountability Regime

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1. INTRODUCTION

Societies are governed by a matrix of codified laws and rules. Similarly, corporate entities and businesses also operate under a definitive set of regulations. These rules aim to create a fair, ethical, informed, and competitive market that leads to, contributes towards and works as a growth engine for the economic prosperity of a country and its local community. Other underlying benefits of such regulations are that they support and add value to global trade, industry and commercial transactions. It is paramount for the integrity of equity markets that businesses that intend to invite and use public money must face a more stringent regulatory regime too.

The financial collapse of Enron, WorldCom, Tyco, Lehman Brothers, Satyam, the fall of Royal Ahold, and corporate misconduct by Trio Capital Group and financial institutions in Australia including Commonwealth Bank of Australia (CBA), National Australia Bank (NAB), and Australia and New Zealand Banking Group (ANZ Bank), demanded an urgent review of the corporate laws and regulations. These events required that the role of regulators be more proactive in their efforts and more punitive in approach. Accountability and transparency in businesses and decision-making became the basic features leading to corporate law reforms by governments around the world (Coffee, 2006).

It is evident that soft regulations and negotiated settlements by regulators through enforceable undertakings in many cases have had an adverse effect on the rights of shareholders and investors and weakened the overall viability of the financial market (Arlen, 2012). Such regulatory behavior caused an uproar regarding the failure of the regulators as law enforcement agencies to prevent and prosecute serious business misconduct. With many top corporate executives escaping prosecutions, the questions have become louder and the tenor more assertive forcing the governments to introduce policies targeted at plugging the loopholes (Black, 2001).

However, there remains a notable gap in understanding the dynamic relationship between corporate governance practices and the performances of listed companies within the Australian regulatory context. Existing literature predominantly focuses on either governance frameworks or company performance metrics but seldom explores the interconnectedness of these aspects comprehensively. This study addresses this gap by examining how corporate governance influences company performance, specifically within the purview of Australian-listed companies.

The primary aim of this research is to analyze the role of regulators and the impact of corporate governance on the performance of Australian-listed companies. The study seeks to answer the following research questions:

RQ1: How do regulatory bodies influence corporate governance practices in Australian-listed companies?

RQ2: What is the correlation between corporate governance and the financial performance of these companies?

RQ3: How do regulatory frameworks and governance practices enhance investor confidence and market stability?

This research is grounded in the theory of regulatory governance, which posits that effective regulatory frameworks are essential for maintaining market integrity and fostering economic growth. The study also draws on corporate governance theories that emphasize the importance of transparency, accountability, and ethical business practices in enhancing company performance and investor trust.

Understanding the interplay between regulatory oversight and corporate governance is crucial for policymakers, investors, and corporate managers. This study's findings will contribute to the ongoing discourse on optimizing regulatory frameworks to ensure robust corporate governance, thereby protecting investor interests and maintaining market stability. The relevance of this research is underscored by the increasing complexity of financial markets and the continuous evolution of corporate governance practices (Wilmarth, 2007).

The study employs a doctrinal research methodology, incorporating a comprehensive literature review, case studies of notable financial collapses, and an analysis of regulatory policies and their implementation. This approach allows for a nuanced understanding of the regulatory environment and its impact on corporate governance and company performance.

The research identifies that strict regulatory oversight and adherence to corporate governance principles significantly enhance investor confidence and market stability. The findings underscore the necessity for regulators to adopt a proactive and punitive stance to prevent corporate misconduct. Moreover, the study contributes to the existing body of knowledge by providing empirical evidence on the positive correlation between corporate governance practices and the financial performance of Australian-listed companies.

The structure of this paper is as follows. Section 2 reviews the relevant literature providing a foundation for understanding the current state of regulatory governance and corporate performance. Section 3 details the doctrinal methodology employed in this study, including the selection of case studies and the framework for analysis. Section 4 presents the main findings, highlighting the impact of regulatory oversight on corporate governance and company performance. Section 5 discusses these findings in the context of existing theories and practical implications. Finally, Section 6 concludes the paper, offering recommendations for future research and policy development.

2. LITERATURE REVIEW

The correlation between corporate governance and the performance of a listed company is an evolutionary trend, demonstrating its significant impact on various financial outcomes such as profitability, and risk management. Corporate governance practices, often shaped by regulatory frameworks, attract investors by ensuring transparency and accountability (Houcine et al., 2022). It is a continuing process that must keep pace with changing market dynamics.

Many developed and developing corporate regulatory jurisdictions have seen a marked improvement in the positive outlook and business viability of listed companies that follow a planned governance model. This paper explores and examines the literature specifically dealing with the impact of corporate governance principles on the performance of a listed company. In this regard, reliance has been placed on research material and evaluations conducted by noted academicians and professionals to show that adoption of good governance systems enhances the performance of the company by building investor confidence.

This literature traces the historical events in the corporate world such as Enron and others to establish that corporate misconduct played a significant role in shaping the regulatory regimes around the world making them more proactive and accountability-driven. The cited literature also shows that practical measures adopted by listed companies under the corporate governance framework have a positive correlation with building investor confidence. Matters including but not limited to independence and diversity in the board of directors, prudent and transparent decision-making protocols and timely dissemination of information to the shareholders/investors have been identified as key areas that play a direct role in the performance of the company. This paper also presents an overview of the legal regime applicable to listed companies in Australia and the functions of the regulators.

Studies show that there is a correlation between financial regulations to sustainable growth while ensuring consumer trust (Balaraj, 2023). At the core of corporate regulations rests the belief that the "spirit of the rules" must be adhered to in order to restore consumer confidence (Schaeken Willemaers, 2014). Therefore, investor protection is treated as the basic theme behind the success of the securities market (Payne, 2015).

Corporate governance involves a set of relationships between a company's management, its board, shareholders, and other stakeholders. It also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined (Yasser et al., 2011). The studies have shown that companies with high corporate governance outperformed the market, while those with poor governance ratings underperformed.

It is one way to address agency problems when conflicts arise between owners and agents, leading to variations in firm performance as it aims to resolve these conflicts through mechanisms like board size, board independence, gender diversity, and chief executive officer (CEO) duality, which are believed to influence corporate performance (Bhagat & Bolton, 2008).

In the context of Australian markets "shareholder engagement" continues to dominate corporate law reform (Hill, 2010). Similarly, the "shareholder primacy norm" where investor rights prevail, has been considered to play a key role in remodeling Australian corporate law (Harris et al., 2008). It has been forcefully argued that consumer trust is at the center of securities markets (Pritchard, 2002). Generally, all laws must conform to human behavior and in this context, investor sentiment ranks highly in the study of behavioral finance. And this sentiment often falls prey to greed and deceptive practices (Qiu & Welch, 2006).

For instance, it was noted that "the Enron and WorldCom episodes demonstrated an appalling failure of corporate governance safeguards at universal banks as well as their clients" (Wilmarth, 2007, p. 100). Thus, it can be argued that a viable and strong securities market is dependent upon the regulations ensuring that the management of listed companies will not defraud the investors (Black, 2001).

One question that rattled many thinking minds was how to avoid such incidents in future. While they were still engaged in their quest to find the right answers, the world saw the collapse of the banking system. The foremost causality, as happened previously, was the investor confidence in the financial markets, its participants and the regulators. The key focus was then placed by the governments on cultivating transparency within the market ecosystem, striking a balance between a free market and safeguards that preserved its credibility.

The four main factors that require regulatory attention in relation to investor confidence in financial markets are: a) registration, licensing and monitoring of listed entities; b) risk management protocols ensuring protection against manipulation, fraud, misrepresentation, insider trading, false, misleading or incorrect disclosures, concealment of risks and exposures; c) continuous scrutiny, vigilance, monitoring and supervision; d) investor awareness and information systems. These factors act as the cornerstone of regulatory oversight.

Since laws primarily deal with and control human behavior, therefore, the political dimensions cannot be overlooked. The multipronged regulatory strategy has economic as well as political motives and observed that engaging retail investors in the securities market allows the entities to grow thereby adding value to the economy (Schaeken Willemaers 2014). Ahulu and MacCarthy (2020) while analyzing the available literature on the impact of corporate governance on a company's performance noted that "there is a positive relationship between corporate governance practice and a firm's market value" (p. 54).

Research by Kiel and Nicholson (2005) highlights the importance of board diversity and independence in enhancing firm performance, while Kieschnick and Moussawi (2018) show that effective governance leads to more optimal financing decisions. In Australia, the Corporations Act 2001 (Act 2001) and the Australian Securities and Investments Commission (ASIC) play crucial roles in shaping governance practices. Empirical studies by Al-Ahdal et al. (2020) and Goel (2018) provide evidence that good corporate governance positively affects financial performance, emphasizing transparency and board independence. Additionally, Khatib et al. (2021) find that board diversity enhances governance quality and financial outcomes in financial institutions. Strong corporate governance frameworks are associated with better financial performance, increased investor confidence, and more sustainable business practices.

ASIC responsibilities include enhancing corporate performance, registering financial services providers, promoting investor confidence, and enforcing financial laws. The importance of ASIC's role has increased post-COVID-19 due to heightened corporate vulnerability.

Backhouse and Wickham (2020) highlight the importance of a robust legal and regulatory framework for aligning an organization's performance with economic, social and environmental goals. The role of boards of directors is emphasized, particularly the need for independent directors to ensure unbiased decision-making. Shareholder rights and activism are the drivers of transparency and accountability.

Corporate governance on firm performance is impacted by various governance attributes such as board composition, audit committees, ownership structure, compensation, gender diversity, and disclosure practices. The presence of both insiders and outsiders on corporate boards generally enhances financial performance. Specifically, board size, the frequency of board meetings, and shareholder concentration positively impact financial performance, while board committees have a negative effect, and CEO duality shows no significant impact.

Alzoubi et al. (2024) provide a meta-analysis of the relationship between board composition and firm performance in Australia, highlighting the unique regulatory, market, and cultural contexts. While larger boards can benefit from diverse perspectives, some studies have found an inverse relationship between board size and firm performance, particularly in smaller firms where coordination issues may arise (Merendino & Melville, 2019). On the other hand, companies that are more diverse may see improved performance with larger boards (Francoeur et al., 2008).

Companies with high board skills and governance scores tend to outperform the market, reinforcing the importance of board size and expertise in driving firm performance. However, other researchers have cautioned that larger boards may lead to inefficiency, as it can become difficult for all members to express their views, ultimately resulting in less decision-making (Cheng, 2008).

Many researchers argue that independent directors help safeguard against managerial self-interest, leading to improved performance (Muniandy & Hillier, 2015). However, not all research supports the positive relationship between board independence and firm performance. Duchin et al. (2010), for example, suggest that in certain contexts, external directors may not add much value, particularly if they lack sufficient understanding of the company's operations.

The potential for board diversity, particularly gender diversity, to improve firm performance has received increasing attention. Numerous studies have indicated that more diverse boards, including those with female directors, can lead to improved financial outcomes, innovation and creativity (Brahma et al., 2021; Marquez-Cardenas et al., 2022; Yilmaz et al., 2021). In contrast, Elgadi and Ghardallou (2022) found no significant relationship between female board representation and firm performance. Still, the broader literature suggests that female directors bring unique perspectives that enhance the board's decision-making capacity (Kim & Starks, 2016). Companies with diverse and skilled boards were found to outperform the market, suggesting that female directorship, as part of board diversity, could enhance corporate governance quality and firm outcomes.

CEO duality, where the CEO also serves as the chair of the board, presents both advantages and disadvantages for firm performance. Some studies, like Lee and Ko (2022), highlight that CEO duality can improve decision-making efficiency and access to resources, particularly during times of uncertainty.

Wasiuzzaman (2019) suggests that larger firms with bigger boards are often better able to manage risk, leading to higher levels of debt without compromising financial stability. The role of female directors in influencing leverage decisions has also been studied, with some research suggesting that female board members are more risk-averse, leading to lower levels of debt. Setó-Pamies (2015) finds that companies with more female directors tend to pursue more sustainable financial practices, including lower leverage, which can protect firms from financial distress.

3. RESEARCH METHODOLOGY

The main focus of this paper is to show that a corporate governance framework that emphasizes self-regulation by listed companies must be complimented with a robust regulatory regime to ensure that investor interests and the integrity of the financial market remain secured. This balanced approach takes self-regulation and statutory regulation as complimenting forces and not as adversarial or mutually destructive measures. Therefore, the methodology adopted in this paper includes a review of the statutory advancements made in the Australian regulatory landscape relating to listed companies, the functions of the regulators and the basic theme behind these laws. Proceeding further, this paper a) identifies and highlights the key features and intent of the regulatory regime including the applicable Australian laws and role of regulators including ASIC and Australian Prudential Regulation Authority (APRA) in relation to listed companies and b) finds the beneficial correlation between the cited law and the corporate governance scheme introduced by Australian Stock Exchange (ASX).

The primary methodology adopted in this paper includes:

- Doctrinal research: This method involves a detailed examination of statutory advancements in the Australian regulatory landscape relating to listed companies. It focuses on analyzing the functions of regulators and the fundamental themes underpinning these laws.
- Analytical method: An in-depth analysis of the corporate governance framework and its implications for the performance and governance of listed companies.

To ensure a comprehensive approach, the following alternative methods are also suitable for conducting this research:

1. Comparative legal research: Cross-jurisdictional comparison — comparing the Australian corporate governance framework with those of other jurisdictions to identify best practices and potential areas for improvement. This method can highlight differences and similarities in regulatory approaches and their effectiveness.
2. Empirical legal research:
   - Surveys and questionnaires — conducting surveys or distributing questionnaires to corporate governance experts, regulators, and investors to collect quantitative data on perceptions and the effectiveness of current regulations.
   - Statistical analysis — utilizing statistical tools to analyze data from corporate financial reports, stock market performance, and compliance records to assess the impact of governance regulations.
3. Socio-legal research:
   - Interviews — conducting in-depth interviews with key stakeholders such as regulators, corporate executives, and investors to gain qualitative insights into their experience and opinions on the effectiveness of corporate governance regulations.
   - Case studies — analyzing specific case studies of listed companies that have faced regulatory actions to understand the practical implications and outcome of regulatory measures.

Incorporating these alternative methods into the research methodology can provide a more comprehensive and nuanced understanding of corporate governance and regulatory frameworks. For instance, combining doctrinal research with empirical methods such as surveys and interviews can offer both detailed legal analysis and practical insights.

4. RESEARCH RESULTS

4.1. Impact analysis of regulatory initiatives

The above-stated regulatory regime has a clearly stated direction. It is persuasive and preventive in nature as well as proactive by design. The regulations stress timely interference before inaction becomes a breach. Additionally, under the enforcement provisions, the regulators are equipped with legislative powers to address the omissions and misconducts through actions that include civil and criminal prosecutions, and imposition of fines and penalties.

The overall intended impact of this regulatory regime can be summarized as:

a) it creates a fair and efficient financial market that works in an efficient and orderly manner;

b) it places additional duties of loyalty, good faith, care and due diligence, lawful use of position and information on the directors;

c) it protects the financial market from systemic risks through oversight of regulatory bodies;

d) it promotes the generation of capital by attracting entities and investors;

e) it ensures informed decision-making and builds shareholder and investor confidence.

4.2. Impact of corporate governance principles on company performance

The question that has time and again directed and dictated intellectual, academic and legal discourse is whether the corporate governance protocols, codes and regulations have a direct correlation with the performance of a listed company. The need for this debate stems from the periodic eruption of large-scale misconduct by various listed companies in different legal and regulatory jurisdictions.

The Organization for Economic Co-operation and Development (OECD) outlines key principles of corporate governance as fairness, transparency, accountability and responsibility. These principles aim to resolve agency problems, align the interests of shareholders and management, and improve form performance by mitigating risks, enhancing decision-making and fostering investor confidence (OECD, 1999).

There is a divergence in opinion on the impact of corporate governance on the overall performance of a listed company. Many commentators agree that rules of corporate governance when adopted, applied and followed proactively, do improve the performance of a company and build investor trust.

In the United Kingdom, the Financial Reporting Council (FRC, 2018), defines corporate governance as follows: "The system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place" (p. 1).

The performance, trajectory and growth of a financial market, preservation of its core values and statutory structure, the viability of listed entities, and coherence of regulatory oversight preventing a statutory breach, timely sharing of information, maintaining and demonstrating financial discipline and abiding by the recognized accounting standards, collectively lead towards the development of investor confidence. Investor confidence and trust in a financial market is the backbone of a financial market as observed by the World Bank (2016): "Corporate governance (CG) concerns the system by which companies are directed and controlled. It is about having companies, owners and regulators become more accountable, efficient and transparent, which in turn builds trust and confidence" (para. 2).

There is evidence that lends credence to the fact that corporate governance standards add value to a listed company leading the organization to achieve better results (Antwi et al., 2021). Moreover, the adoption and application of corporate governance principles enhance the positive perception of listed companies which translates into better share prices (Ahulu & MacCarthy, 2020). Furthermore, financial market growth and corporate governance are interlinked and changes in positive corporate governance outlook will impact the market growth as well (Guha et al., 2020). As a corollary to the above, evidence also suggests that corporate governance schemes employed by listed companies have a significant positive impact on the shareholders (Bebchuk et al., 2009).

It must be noted that corporate governance must be taken in terms of specific measures adopted by the companies. Gompers et al. (2003) after highlighting core corporate governance practices and mechanisms analyzed two fictional companies named "Democracy Firm" and "Dictatorship Firm", respectively, and found a positive correlation between corporate governance and stock returns during the decade of 1990s. Additionally, it merits mention that solid corporate governance protocols within the listed entity impact its performance (Bhagat & Bolton, 2008).

It would be appropriate to also examine what impact a weak or absent corporate governance structure will have on a listed company. It has been shown that firms with low corporate governance scores have low performance, lower valuations and lower dividend payments to shareholders (Brown & Caylor, 2004).

De Jong et al. (2005) in their study on the collapse of the corporate giant Royal Ahold which was at one point in time the world's largest international retail grocery and food service company, concluded that "poor corporate governance (absence of internal as well as external oversight of management's strategy and implementation) was a significant factor in Ahold's collapse" (p. 24).

In a global context, the study by La Porta et al. (1998), which emphasized shareholder protection, marked a pivotal moment in understanding how corporate governance can drive corporate performance. It concluded that countries with stronger shareholder protection witnessed higher firm performance. Further studies, such as those by Fremond and Capaul (2002), support this, indicating that improvements in corporate governance practices lead to better financial outcomes and increased shareholder value.

• Transparency as a principle ensures that companies disclose accurate, timely, and relevant information regarding their operations and financial status. This principle is crucial in creating a favorable environment for both domestic and international investment.

• Fairness, which mandates equal treatment of shareholders, prevents conflicts of interest and fosters trust.

• Accountability compels management and the board to act in the best interests of stakeholders, reducing the chances of fraud or unethical behavior.

• Finally, responsibility mandates that corporate actions comply with legal requirements and ethical standards, which enhances corporate sustainability and reputation.

Studies have revealed the positive effect of these principles on company performance. The adherence to governance principles such as transparency, fairness, and accountability significantly improved financial performance, particularly in terms of growth and profitability. Their findings align with global evidence, such as the Goldman Sachs JBWere (2006) report on Australian companies, which indicated that companies with strong corporate governance structures tended to outperform the market.

Moreover, the BDO Kendall's report (Gettler, 2007) revealed that Australian mid-sized companies with weak corporate governance structures underperformed, with only two out of 150 companies receiving a five-star rating for their governance practices. This finding highlights the importance of governance in ensuring not only compliance but also sustainable corporate growth and profitability.

While numerous studies affirm the positive relationship between corporate governance and company performance, some inconsistencies remain. For example, the study by Klapper and Lover (2004) across emerging markets revealed that while corporate governance improved market valuation and operational performance, the impact was more pronounced in countries with weaker legal systems. This indicates that in jurisdictions where legal enforcement is lacking, corporate governance acts as a substitute mechanism for safeguarding investors' interests.

The mixed results in the literature can partly be explained by variations in regulatory environments and institutional frameworks across countries. Corporate governance does not operate in isolation but interacts with the broader socio-political and economic systems of a given jurisdiction. For instance, the presence of robust legal protections for shareholders and strong enforcement mechanisms can amplify the impact of governance practices on performance. Conversely, in countries with weaker regulatory environments, governance practices alone may not be sufficient to drive performance.

The theoretical framework used to understand these variations is rooted in agency theory and stewardship theory. Agency theory posits that corporate governance mechanisms are essential in resolving conflicts of interest between shareholders (principals) and managers (agents), thereby improving firm performance. Stewardship theory, on the other hand, suggests that managers are motivated to act in the best interests of shareholders without the need for strict governance controls, which can also lead to positive firm outcomes. The interaction between these theories and the regulatory environment helps explain why corporate governance's impact on performance can differ across contexts.

A critical analysis of corporate governance studies also reveals some limitations. Many empirical studies rely on cross-sectional data, which may not capture the dynamic nature of governance reforms and their long-term impact on performance. Additionally, governance metrics often vary across studies, with different weightings assigned to factors such as board independence, CEO duality, and shareholder rights. This variation in methodology makes it difficult to compare results across different studies and jurisdictions.

4.3. Specific governance measures that impact the performance of a company

There are many factors relating to internal management, corporate affairs and strategies of the listed company that impact its performance and value. These can be categorized as follows:

a) constitution of and diversity in the board;

b) pay, perks and privileges of directors and c-suite executives;

c) reporting and disclosure efficiency;

d) ownership shares of directors in the company;

e) transparency in decision-making using good business judgment;

f) investment philosophy;

g) financial discipline and auditing of accounts.

These factors have been assessed as being at the foundation of the performance of a listed company. All these factors to some degree are included in the corporate governance scheme, principles and framework applicable in different regulatory jurisdictions.

Hasan et al. (2023) in their study established that there is a significant relationship between the board size, percentage of independent directors, audit committee members, board meeting frequency and firm performance. Abhilash et al. (2023) identified gender diversity, ownership structure, board structure, board size, independence of the board, disclosure protocols, accounting standards, CEO qualification, and CEO duality as some of the practical and effective features of good corporate governance practices. As noted by Bussin et al. (2023), an alignment between long-term incentives (pay-performance) of the CEO with the interests of the shareholders of the company can also contribute towards a company's performance. Bebchuk et al. (2009) start by posing a question: "[But] which provisions, among the many provisions firms have and outside observers follow, are the ones that play a key role in the link between corporate governance and firm value?" (p. 784). They proceeded to identify six indices including staggered boards, limits to shareholder amendments of the bylaws, supermajority requirements for mergers, supermajority requirements for charter amendments, poison pill and golden parachute agreements referred to as entrenchment provisions to have a negative correlation with firm valuation.

5. DISCUSSION OF THE RESULTS

5.1. Theoretical framework

According to the Australian Government Guide to Regulatory Impact Analysis, regulation is "any rule endorsed by the government where there is an expectation of compliance" (Department of the Prime Minister and Cabinet, 2020, p. 10) — this short but potent expression encapsulates the philosophy adopted and followed by Australian policymakers. It shows that the underlying objective of regulations is essentially a duty cast upon the government to:

a) ensure that markets and businesses operate in an open, fair, informed and transparent manner;

b) competition and healthy trade practices are encouraged;

c) deceptive and unfair business schemes are deprecated in the interest of consumers and investors;

d) a business-conducive environment is developed and over-regulation is avoided;

e) businesses are aligned with national and global economic trends and best practices (Department of the Prime Minister and Cabinet, 2020).

It further demonstrates that under its regulatory writ, the government will seek compliance with the stated objective through its enforcement powers. This policy is designed to secure the welfare of all the stakeholders including the companies, shareholders, investors, consumers and financial markets.

5.1.1. Need for regulations

The Australian Government has prepared a policy framework named Guide to Regulatory Impact Analysis that clearly outlines what objectives the policymakers must set for themselves for the creation and continuation of a robust and effective regulatory regime noting that: "Policy makers reflect on how regulation affects individuals, businesses, community organisations as well as its broader economic and competition impacts" (Department of the Prime Minister and Cabinet, 2020, p. 5).

5.1.2. Australian capital market: An overview

"The Banking and Capital Markets community plays a crucial role in advancing resilient, sustainable, and dynamic growth within the global financial system", says the World Economic Forum (WEF, n.d., para. 1).

The ASX is ranked fifth by the WEF in financial systems and capital markets in addition to being the seventh-largest foreign exchange market based on global turnover. The total market capitalization of ASX is $2.3T and it is one of the world's top 10 listed exchange groups. ASX also has the 12th largest bond market in the world.

The major markets in the Australian financial system are the credit market, stock market, money market, bond market and the foreign exchange market. Different securities including equities (shares), units in trusts and options are listed on the ASX.

The major industry sectors listed on ASX include materials, financials, information technology, healthcare, industrials, energy, consumer discretionary, consumer staples, real estate, communication services, and utilities.

5.2. Capital market regulatory regime

The Act 2001 is the primary law that governs the formation, registration and affairs of listed companies operating in Australia. It comprises different provisions dealing with the registration of different types of companies, their powers, legal status, rights and obligations. The power to administer the Act 2001 vests in the ASIC constituted under the ASIC Act 2001. In addition to the Act 2001, the Financial Accountability Regime Act 2023 (FAR Act) also governs the banking, insurance and superannuation industries. APRA established under the APRA Act 1998 regulates banks, insurance companies and most superannuation funds. The primary objectives of APRA include setting prudential standards, continuous monitoring and supervision to ensure licensed entities remain compliant with the law.

ASX also regulates the listed companies through its Listing Rules and Corporate Governance Principles and Recommendations (CGPR) framed by the ASX Corporate Governance Council (CGC).

CGC was established by ASX. This independent body comprises representatives from the business and finance community. The CGC is mandated to "develop and issue principles-based recommendations on the corporate governance practices to be adopted by ASX listed entities" (ASX CGC, n.d., para. 4).

Act 2001 states that "a company, managed investment scheme or other body is listed if it is included in the official list of a prescribed financial market operated in this jurisdiction" (Chapter 1, Part 1.2, Section 9).

Listing requires additional and mandatory regulatory measures that have to be adopted by companies in order to be able to trade their securities in a financial market. Under the ASIC Act 2001, these additional requirements are provided in the legal document referred to as the "Listing Rules" meaning any rules (however described) that are made by the operator of the market, or contained in the operator's constitution, and that deal with: a) admitting entities to, or removing entities from, the market's official list, whether for the purpose of enabling financial products of those entities to be traded on the market or for other purposes; or b) the activities or conduct of entities that are included on that list (ASIC, 2022, p. 41).

In a general and simpler sense, listing means the stage where the securities of a company are allowed/able to trade in a financial market subject to the provisions of the ASIC Act 2001 and Listing Rules of the financial market where they are so traded.

5.3. Functions and powers of the regulators in capital market

5.3.1. The background

Companies play a significant role in any regulated economy. This role comes with a huge responsibility too. Australian Law Reform Commission (ALRC, 2020) on Corporate Criminal Responsibility in its final report observed that: "The social and economic role of corporations means that the regulations that apply to corporations must be successfully calibrated in order to ensure their appropriateness and effectiveness in securing corporate compliance with legitimately determined regulatory standards for the health of the Australian economy as a whole" (p. 31).

Primarily, the Australian capital market revolves around the ASIC, APRA, and ASX, listed entities and their managements including directors and CEOs, the traders/investors and other intermediary licensed entities performing various functions. Together, these participants are responsible for the integrity and viability of the ASX. ASIC and ASX provide the necessary regulatory framework through Act 2001, Listing Rules and Corporate Governance Framework, the entities follow the said framework and list their securities for trading and the investors trade in the listed securities under a well-regulated legal scheme.

The role of ASIC has been under the public spotlight, especially in the aftermath of many banking scandals. The Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (ASIC, n.d.) after careful evaluation of the role of ASIC and APRA in matters of regulatory misconduct observed as follows: "When misconduct was revealed, it either went unpunished or the consequences did not meet the seriousness of what had been done. The conduct regulator, ASIC, rarely went to court to seek public denunciation of and punishment for misconduct. The prudential regulator, APRA, never went to court. Much more often than not, when misconduct was revealed, little happened beyond apology from the entity, a drawn-out remediation program and protracted negotiation with ASIC of a media release, an infringement notice, or an enforceable undertaking that acknowledged no more than that ASIC had reasonable 'concerns' about the entity's conduct" (Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 2018, p. 19).

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry filed its final recommendation to improve the regulatory functions of ASIC and APRA.

The process for full implementation of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry recommendation (76 in total) was slow. Three legislative attempts were made to create a FAR. The latest of these legislative instruments (FAR Act) was introduced in March 2023 and was granted assent in September 2023 and has now become law.

In essence, the FAR Act codifies the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The FAR is scheduled to be applicable to the banking industry in March 2024 and insurance and superannuation sectors in March 2025. The objectives of the FAR Act are to provide for a strengthened accountability framework for a) financial entities in the banking, insurance and superannuation industries, and persons who hold certain positions, or have certain responsibilities, related to those financial entities; and b) confer on APRA and ASIC functions and powers (including information gathering, investigation and enforcement powers) that relate to obligations under that framework, and can be performed and exercised in aid of their functions and powers under other laws (FAR).

The enhanced powers and functions of ASIC include advisory jurisdiction, administrative power, conferred powers, regulatory enforcement powers, power to impose fines and penalties, powers to grant or refuse approvals and permission and power to initiate criminal proceedings. The role of ASIC can be summarized as:

- maintaining the performance of the financial system and related entities;
- promoting investor confidence and informed investor participation;
- administering law effectively;
- making qualitative analysis of information received about and from listed entities and sharing it with the public (ASIC investigations and enforcement).

Till June 2023, ASIC (2024), had initiated regulatory proceedings/actions including civil and criminal prosecutions in respect of different categories of regulatory misconducts relating to credit, financial advice, insurance, investment management, continuous disclosure, audit, directors' duties and governance failures, insider trading and market manipulation.

ASIC Act 2001 and FAR Act have numerous provisions that are aimed at creating a balanced, informed, vigilant, orderly and competitive financial market that remains compliant with the law. These provisions specifically relate to the constitution of the board of directors, adoption of CGPR, timely disclosure of information, holding regular shareholders' meetings, maintaining and sharing financial records, duties of directors and payments of dividends to investors, to name a few. Section 760A Chapter 7 of Act 2001 clearly outlines the statement of objectives of this chapter and emphasizes on:

- creating a regulated space for investors to make an informed and confident decision;
- facilitating flexibility and innovation in the provisions of financial products;
- ensuring fairness and transparent markets for financial products;
- holding guard against systemic risks to the financial system.

In addition to the above, there are certain general obligations that need to be fulfilled by a financial service licensee. These obligations require that:

- the licensee efficiently, honestly and fairly provides the services covered under its license;
- sufficient internal arrangements are made by the licensee to manage conflict of interests in relation to the provision of financial services;
- it complies with the conditions of license and financial service laws;
- it retains adequate trained and professional resources to provide the services;
- it must have adequate risk management systems;
- it must have an effective and operational dispute resolution system.

5.3.2. Role of ASX

The ASX believes that: "Good governance underpins strong business performance and is essential to retaining the trust and goodwill of ASX's stakeholders, including shareholders, employees, regulators, customers, market participants, and the broader market" (ASX, 2024, p. 1).

The principal attributes of ASX Listing Rules can be summarized as:

- promote ethical practices, business integrity, fairness in decision-making and timely disclosures of information;
- develop an informed market where participants are aware of the risks associated with the gains;
- arrange and enforce proper scrutiny of entities desirous of listing their securities;
- ensure the listed companies maintain financial prudence, discipline, and transparency and maintain proper accounts that give a true and fair picture of their financial position.

5.3.3. Corporate governance principles and recommendations

Under Rule 4.10.3 of the Listing Rules, it is strongly recommended (not a mandatory condition) that listed companies adhere to the CGPR (Acer, 2021). However, in case the company does not adopt any recommendation of the CGPR it must clearly give its reasons for not doing so under the "if not, why not" policy.

The main features of CGPR (ASX CGC, n.d.) comprise the following:

1) to lay solid foundations for management and oversight;
2) to structure the board to be effective and add value;
3) to instill a culture of acting lawfully, ethically and responsibly;
4) to safeguard the integrity of corporate reports;
5) to make timely and balanced disclosure;
6) to respect the rights of security holders;
7) to recognise and manage risk;
8) to remunerate fairly and responsibly.

6. CONCLUSION

This research underscores the integral role that corporate governance plays in fostering a robust financial market. The findings of this study show that corporate governance in terms of specific measures adopted by the management of listed companies coupled with strict oversight by regulators act in unison to form and structure a strong financial market. The core of regulatory policies is to bolster investor confidence and protection of consumer rights. This is achieved through transparency, accountability, sound judgment, and ethical business practices, which are the pillars that legislation aims to reinforce.

The Act 2001, FAR Act, Listing Rules, and other regulations stress:

a) maintaining a vigilant regulatory oversight and enforcement regime;
b) demanding efficiency, independence and diversity in the constitution of boards of listed companies;
c) encouraging the hiring of qualified management teams by directors;
d) persuading directors to adopt transparency in decision-making and timely sharing of information;
e) emphasizing record and account keeping to demonstrate financial discipline.

These obligations are both understandable and desirable as a listed company intends to receive and seeks to benefit from public money.

The investors are potentially unaware of the internal affairs of the listed company and therefore are precluded from making an "informed" decision while investing their money. This gap in the availability of information unfavorably restricts the equality of bargaining power and limits investor confidence. The regulations duly enforced by the regulators require the directors to share vital information about the internal affairs of the company with the investors and the market.

This matrix of legal and regulatory rules and corporate governance principles coupled with internal corporate affairs and management schemes of listed companies are essential for the success, strength and survival of financial markets, the stakeholders, the performance of listed entities, and the overall economic well-being of the country. It is widely believed that wars have impacted our lives in many ways but most importantly they have taught us how to prevent them. Similarly, financial corporate scandals led the governments towards legal reforms.

The findings of this paper are pivotal for future research as they provide a comprehensive understanding of the mechanisms that underpin effective corporate governance. This research lays a foundation for further exploration into how specific governance measures, such as board diversity, transparency in decision-making, and financial discipline, can be optimized to enhance firm performance. Additionally, it opens avenues for investigating the dynamic relationship between emerging disruptive technologies (like cryptocurrency and artificial intelligence [AI]) and regulatory frameworks. Future studies can build on this work to develop more nuanced governance models that are adaptable to the rapidly changing global financial landscape.

The implications of this research are significant for policymakers, regulators, and corporate managers. For policymakers, the study offers evidence-based recommendations for enhancing legal frameworks to better protect investors and maintain market stability. Regulators can use the insights to refine their oversight mechanisms and enforcement strategies, ensuring that they are equipped to handle emerging challenges in the financial market. Corporate managers can benefit from understanding the critical governance practices that contribute to firm performance and investor confidence, thereby aligning their strategies with regulatory expectations and market demands. In this fast-paced era of digital globalization, cryptocurrency, influencers, AI and many others have emerged as "disruptive" forces that require tight monitoring. Surely, the regulators are and will be tested. The rules of the game are changing rapidly. A question that will reverberate through the legal, academic and government circles, consumer bodies, investors and stakeholders is whether the corporate regulators are ready for the challenges ahead. Additionally, examining the long-term effects of current corporate governance practices on market stability and investor confidence would provide valuable insights. The ongoing evolution of global financial systems requires continuous assessments and adaptation of regulatory frameworks to safeguard the interests of all stakeholders.

While this study provides a comprehensive analysis of the role of regulators and the impact of corporate governance on the performance of Australian-listed companies, it is not without limitations. First, the doctrinal research methodology predominantly relies on the examination of statutory frameworks, case law, and existing literature. This approach, while offering valuable legal insights, limits the scope for empirical validation of the findings. The absence of quantitative data or real-time case studies may restrict the practical applicability of the conclusions, especially in rapidly evolving corporate environments.

Second, the research is confined to the Australian regulatory and corporate governance landscape, making the findings specific to this jurisdiction. While comparisons with other legal systems are touched upon, the cross-jurisdictional application of these results is limited. Corporate governance practices and regulatory mechanisms vary significantly across countries, which may limit the generalizability of the findings to other legal or market environments.

Finally, the scope of this research does not extend to the emerging trends in corporate governance, such as the impact of technology advancements like AI and cryptocurrency on governance practices. As these disruptive technologies gain prominence, future research would need to address their regulatory implications, which were beyond the purview of this study.

In light of these limitations, future studies should incorporate empirical data, cross-jurisdictional comparisons, and an examination of emerging technologies to provide a more holistic understanding of corporate governance in a globalized, digital economy.

In conclusion, while the current regulatory measures are effective in maintaining market stability, they must evolve to address future challenges. This research not only contributes to the academic discourse on corporate governance but also provides practical guidelines for improving regulatory practices and corporate management. As the financial landscape continues to evolve, ongoing research in this area will be essential to ensure that governance frameworks remain effective and relevant.

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