ABRIDGED REPORT

BALANCING RULES AND FLEXIBILITY FOR GROWTH

A Study of Corporate Governance Requirements Across Global Markets Phase 2 – Africa

Think Ahead

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How to read this report

ACCA and KPMG in Singapore have jointly conducted a research project examining similarities and differences of corporate governance requirements across a selection of African markets. This report is an abridged version of the results. For additional details and analysis, please refer to the Main Report.

1. Foreword

The 2014 study conducted by KPMG in Singapore and *ACCA, Balancing Rules and Flexibility,* looked at 25 markets across three economic zones, and three geographic zones, encompassing both developing and developed nations. Our follow up study, *Balancing Rules and Flexibility for Growth,* focuses on 15 markets on the continent of Africa.

The reasons for a focus on Africa are compelling. According to World Bank data Africa had six out of the 12 fastest-growing economies between 2014 and 2016, and the continent's population[1] is set to more than double by 2060, with a corresponding increase in the urbanised and middle-class population. This growth story also illustrates the challenges of rapid economic growth in developing economies.

Against this background, the need for adequate and effective corporate governance frameworks becomes even more critical than previously. This growth requires investment and investors will only invest where they can see a strong and effective corporate governance infrastructure to protect their investment.

Studies have shown that investors are willing to pay a premium for companies with good governance, and this price premium is even higher in markets with weak legal protection[2].

Sophisticated and sound corporate governance practices can be helpful in obtaining new and much-welcomed investments in Africa, as good-quality corporate governance is especially important for investors. In 2015, Africa received only 3.1% of the world's foreign investment[3].

While this study stands alone, the research framework is broadly consistent with that used in Phase 1, to allow a degree of comparison, albeit at a different point in time, and with a revised set of OECD principles from 2015 as a benchmark. As with Phase 1, the aim of this study is to raise awareness of corporate governance requirements and help markets continue to raise corporate governance standards.

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[1] Source: World Bank
[2] Chen, K.C.W., Chen, Z. and Wei, K.C.J (2009) Legal protection of investors, corporate governance and the cost of equity capital. Journal of Corporate Finance. Vol. 15, Issue 3.
[3] United Nations Conference on Trade and Development, World Investment Report, 2016

Having high standard corporate governance frameworks in place at national levels is fundamental. It facilitates market confidence and business integrity. It signals governments' commitment to create credible arrangements for investors, taking their rights into consideration and providing support mechanisms that safeguard their investment. It is therefore no coincidence that, in its Reports on the Observance of Standards and Codes, the World Bank evaluates corporate governance as a key indicator of a market's resilience and the potential for capital markets to develop.

We ought to be mindful, however, that corporate governance is not a static concept but rather a means to an end. While this report presents a ranking based on the laws, rules and good practice guidance, we should not be expecting that the governance frameworks that prevail today remains adequate in the future. It is important to monitor emerging good practice and consider its introduction when and where appropriate.

Furthermore, success in implementing corporate governance codes or similar frameworks, whether they are mandatory or voluntary by nature, depends on efforts made by enforcing bodies as well as businesses themselves. Corporate governance helps management deliver the long-term success of the company: to this aim boards provide effective oversight in the interest of the company while taking into account that of stakeholders and the wider society. Nothing is more disheartening than having first-rate frameworks in place which fail to translate into positive change.

While the direction of travel is definitely set, establishing high standards in frameworks is just a starting point. It is down to each one of us to take up the challenge and facilitate good corporate governance to support economic health, sustainable growth and financial stability. As a global accountancy body, we are looking forward to supporting this journey, working with policy makers and other interested parties to identify reform priorities, improve governance frameworks and practice, and ultimately contribute to strengthened economic performance.

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2. Definitions

Term/abbreviation	Definition
Adequacy	Whether the requirement addresses the risk that it is intended to address.
Corporate governance code	A document/instrument drafted to capture a majority of the key corporate governance requirements for a market. It is typically endorsed by the government or the stock exchange regulator and is generally applicable to publicly listed companies. It may vary in strength from voluntary, 'comply or explain' or mandatory.
Clarity and completeness	Extent to which the requirement reflects all aspects of OECD Principles in an easily comprehensible manner.
'Comply or explain'	Companies are required to state whether they adopt the recommended requirement and, if not, why they have chosen not to. In this report, we have included under 'comply or explain' variations such as 'comply and explain', 'apply or explain', 'apply and explain' or 'if not, why not' instruments.
CSR	Corporate Social Responsibility
Degree of enforceability	Enforceability of the instrument, e.g. mandatory, voluntary, or comply or explain.
Developed and developing economies	The classification in the World Economic Outlook on the IMF website divides the world into two major groups: advanced economies (which the study refers to as 'developed') and emerging market and developing economies (which the study refers to as 'developing').
Effectiveness	Whether the requirement can be carried forward as intended.
Elements	Specific corporate governance requirements which formed the basis of the study. The elements are grouped together to form a theme.
GDP	Gross Domestic Product
IMF	International Monetary Fund
Instrument	The mechanism used for introducing the corporate governance requirements. For example, corporate governance codes, listing rules, company law.
Leading Practice	Practice above and beyond the practices recommended by the OECD Principles.
Mandatory (M)	Companies must comply with the requirement, or face fines/penalties. For example, listing rules, company law.
Market	An area or arena in which commercial dealings are conducted. This differs from the definition of 'country', which is described as 'a nation with its own government, occupying a particular territory'.
OECD	Organisation for Economic Co-operation and Development
OECD Principles	OECD Principles of Corporate Governance 2015
Pillar	Basic tenet of corporate governance framework. Pillars are made up of related 'themes' (see below). For further details, please refer to Appendix A: Research approach, specifically A.6 Research framework.
Prevalence	Number of times a requirement is found in the corporate governance framework of the market.
Requirement	In this study the term is used to refer to requirements, principles and recommendations.
Stock options	The right to buy or sell shares at a specified price on or before a specified date.
Theme	A theme is a sub-section of a Pillar and is made up of a group of related elements .
Two-tiered boards	A supervisory board is responsible for overall strategy and oversight whilst execution and management is carried out by a management board.
Unitary boards	Unitary boards include both executive and non-executive directors and make decisions as a unified group.
Voluntary (V)	Companies are encouraged to follow the guidelines but are not required to and do not need to explain why not if they choose not to follow them; an example is better practice guidelines.

3.About the study

3.1 Objectives

The overall objectives of the study are to:

- examine corporate governance requirements in terms of clarity and completeness of content, degree of enforceability and prevalence, in relation to the OECD Principles of Corporate Governance (2015)
- identify common and basic corporate governance requirements and emerging trends
- raise awareness of the similarities and differences in corporate governance requirements across markets, geographic regions, economic zones and pillars and themes of corporate governance, and;
- inform other corporate governance industry research.

3.2 Scope and approach

The study focused on identifying the number (prevalence) and type of instruments and requirements that have been adopted to a varying degree of enforceability across African markets. It also considered how clearly and holistically the requirements, principles and recommendations found within the instrument specify the objective, and expected action or behaviour in relation to the ACCA-KPMG research framework (refer to Appendix A: Research approach). The requirements were analysed according to the aspects noted in Figure 3.1.

3.2.1 Structure of the analysis

The report focuses on three main types of analysis with respect to the approach:

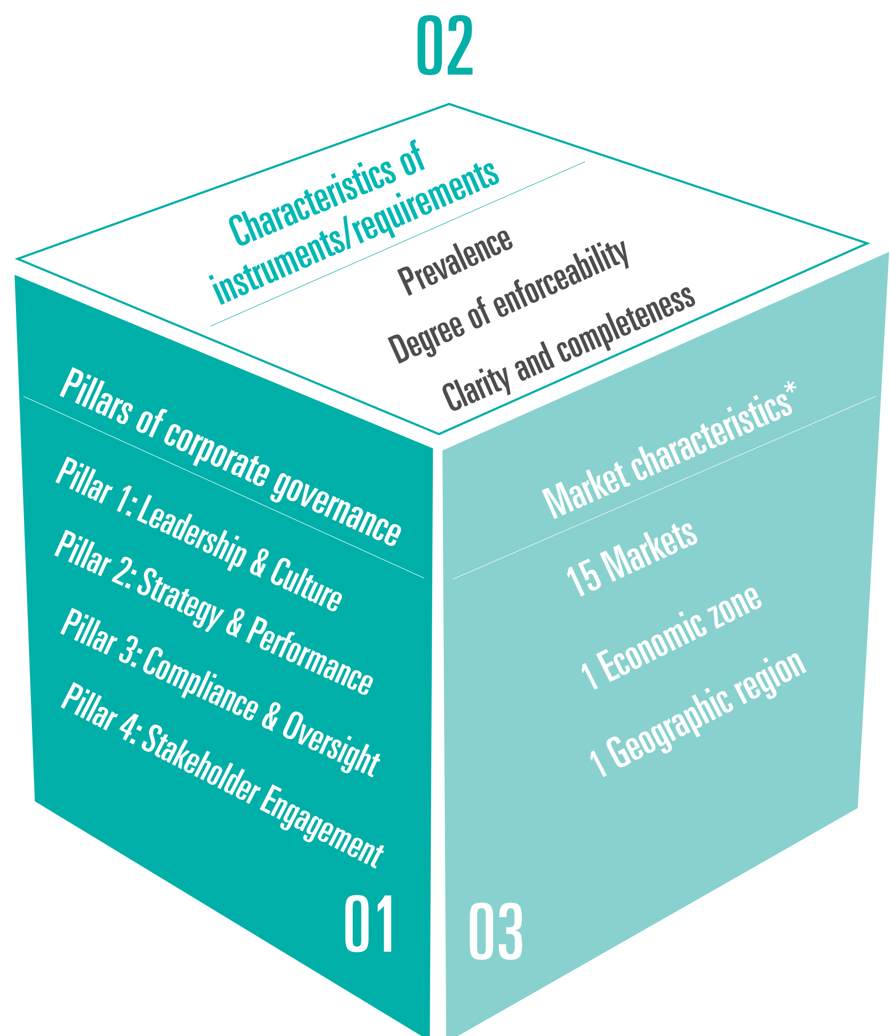
- The profile of corporate governance instruments – the types of instruments (such as company law, corporate governance code and listing rules), as well as the degree of enforceability of the instruments (such as mandatory, 'comply or explain' and voluntary) (section 6).
- The state of adoption of OECD Principles – analysis of adoption of the Principles in different markets, and of the take-up of leading practices (section 8).
- Clarity and completeness of requirements – analysis by pillar and theme of the results across the markets studied (section 9).

3.2.2 Scope limitations

The following limitations should be noted while reviewing the study:

- This study focuses on the corporate governance requirements only. It has not reviewed levels of enforcement by regulators or compliance by companies.
- The study does not include industry-specific corporate governance instruments (for example, banking and finance sector or state-owned enterprises).

Figure 3.1: ACCA-KPMG CG study analysis approach 2017



* Phase 1 of the study focused on 25 markets across 3 economic zones and 3 geographic regions. This phase covered just 1 economic zone and 1 geographic region.

3.3 About phase 1

Phase 1 of the study, *Balancing Rules and Flexibility*, examined the corporate governance requirements of 25 markets with varying levels of adoption and implementation maturity, and drew comparisons to global practices.

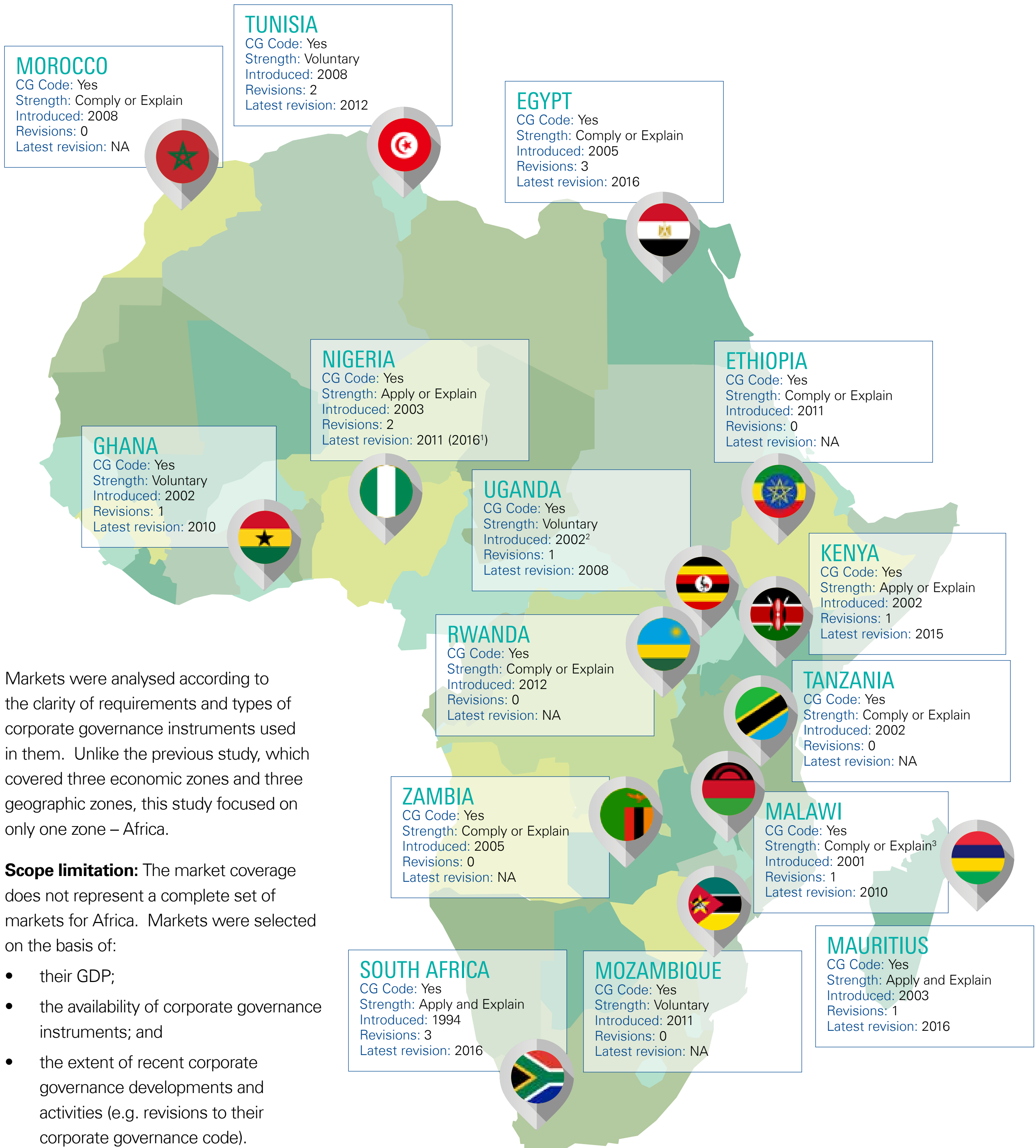
The requirements were assessed for clarity and completeness in relation to a research framework developed based on principles contained within the OECD Principles 2004 and KPMG's Board and Governance Principles.

While the core of the methodology for phase 2 is broadly consistent, the research framework has been upgraded to reflect the revised OECD Principles 2015, which has an impact on the elements categorised as 'OECD' and 'Leading Practice', and therefore the scoring attributable to these elements. These changes mean that there is a limit to the comparability of results from phase 1 to phase 2.

Phase 1 Rankings					
1	UK	10	Taiwan	18	Canada
2	US	11	South Africa (equal 11th)	19	China
3	Singapore	12	Thailand (equal 11th)	20	Cambodia
4	Australia (equal 4th)	13	Korea	21	Japan
5	India (equal 4th)	14	UAE	22	Vietnam
6	Malaysia (equal 4th)	15	New Zealand	23	Myanmar
7	Hong Kong (equal 7th)	16	Philippines	24	Brunei (equal 24th)
8	Russia (equal 7th)	17	Indonesia	25	Laos (equal 24th)
9	Brazil				

3.4 Geographic coverage

Figure 3.2: Geographic coverage of ACCA-KPMG corporate governance study 2017



Markets were analysed according to the clarity of requirements and types of corporate governance instruments used in them. Unlike the previous study, which covered three economic zones and three geographic zones, this study focused on only one zone – Africa.

Scope limitation: The market coverage does not represent a complete set of markets for Africa. Markets were selected on the basis of:

- their GDP;
- the availability of corporate governance instruments; and
- the extent of recent corporate governance developments and activities (e.g. revisions to their corporate governance code).

[1] The CG Code released in October 2016 is not currently in effect. This revised Code was therefore excluded from the research.
[2] The CG Guidelines of the Institute of Corporate Governance of Uganda were first introduced in 2002 and revised in 2008 but the Capital Markets Corporate Governance Guidelines also considered in the study were first introduced in 2003 and have not been revised since.
[3] Malawi issued the Company Act 2013 on 31 January 2017 which is outside the scope of this research. Therefore this Act has not been taken into account for this report.

4. Key findings

Profile of corporate governance instruments (Section 6)

Corporate governance codes provide clarity but are not a 'one-stop-shop' for corporate governance requirements

Each of the 15 markets studied has a corporate governance code (or equivalent) in place. Corporate governance codes provide an efficient and effective framework in which to clarify the principal corporate governance requirements within a market. Nonetheless, reviewing a corporate governance code in isolation from other corporate governance requirements (such as company law, listing rules and better practice guidelines) may not give a complete picture.

The study reviewed 58 corporate governance instruments containing approximately 1300 requirements (pertaining to the research framework elements outlined in Appendix A: Research approach). This equates to nearly four instruments and 85 requirements on average per market with which directors and other key stakeholders must familiarise themselves.

The nature of companies in Africa affects corporate governance requirements

While the study focused on corporate governance requirements for listed companies, it should be noted that a significant proportion of companies in Africa are not listed. In many cases, they are small and medium enterprises or state-owned enterprises and family-owned businesses (operating as private companies) often large in size.

Many African countries' capital markets and financial institutions are evolving, although Africa as a whole cannot be characterised by one single market type. For example, in South Africa state ownership is less common and stock markets are active and Nigeria has a vibrant stock exchange, whilst Ethiopia does not have one and Mozambique has one of the smallest stock exchanges in the world.

Although basic corporate governance rules and regulations may be applicable to all types of companies as defined in company law, there remains a challenge for regulators to design and establish a corporate governance framework that is practical and able to raise corporate governance standards across all types of companies.

Evolution of Corporate Governance Codes (Section 7)

African corporate governance codes may require more frequent and timely review

Even though most markets in the study have adopted their first corporate governance code only since 2000, the standard of the instruments in their corporate governance frameworks is relatively high. South Africa has shown itself to be an early adopter and is relatively progressive in corporate governance. This has influenced a number of other African markets, which have benefited as fast followers in corporate governance practice.

In the markets covered in this study, corporate governance codes were introduced in two tranches, 2000 - 2005 and 2008 - 2012. The first tranche could be seen as a reaction to the release of the first OECD Principles in 1999, while the second could be a reaction to the global financial crisis of 2008. Although South Africa has recently launched the King IV™ Report[4] (the third revision), 6 of the 15 markets studied are on the first version of their codes, and one-third of the markets studied have only recently revised their codes. Nonetheless, the standard of these codes is relatively high, because these markets were able to leverage the lessons learned in the evolution of similar codes in other markets.

The impetus of the new OECD Principles 2015, the announcement by the UN Industrial Development Organization that 2016 - 2025 would be the Third Industrial Development Decade for Africa[5] and the need to encourage an increase in foreign direct investment indicates that now could be the right time for regulators to reassess and revise their codes.

State at Adoption: OECD Principles 2015 (Section 8)

The standard of corporate governance frameworks in Africa is relatively strong

Based on our methodology (Appendix A), the corporate governance frameworks of markets studied in this report were marked and aggregated to provide the rating below.

South Africa is clearly a leader and is at the forefront of corporate governance framework development when compared with developing, and even most developed, economies studied in Phase 1. Indeed, South Africa has been relatively progressive in corporate governance regulation since the introduction of the King Code in 1994, which had been inspired by the UK's Cadbury Code of 1992. Kenya and Mauritius also performed strongly with their recently revised codes.

It should be noted that the overall results, even for the lowest-rated markets in the study, were relatively strong too when compared with the results for the markets studied in Phase 1. While acknowledging that these studies were done at different times (see section 3 'About the study'), even the lowest-scoring markets in the study, still had the fundamentals of a robust corporate governance framework that reflects the requirements contained in the 2015 OECD Principles.

[4] The King IV Report on Corporate Governance for South Africa ('King Code IV'), Institute of Directors in Southern Africa, 2016. IoDSA website: <www.iodsa.co.za/?page=AboutKingIV>, accessed 21 April 2017.

[5] UNIDO Annual Report 2016

Markets	Scores
South Africa	145
Kenya	128
Mauritius	126
Nigeria	124
Uganda	120
Egypt	109
Rwanda	106
Morocco	102
Tunisia	98
Mozambique	90
Tanzania	85
Ghana	82
Zambia	80
Malawi	67
Ethiopia	59

Strong alignment with and adoption of OECD Principles

The study found that a majority of these markets (10 out of 15) have aligned their corporate governance requirements with more than 80% of the OECD's related principles, indicating that these principles have played a part in shaping corporate governance requirements across African markets.

Of the 81 questions in the study, 52 related to the OECD principles, and the extent to which markets adopted these requirements ranged between 94% (49 out of 52 elements for South Africa) and 65% (34 out of 52 elements for Ethiopia).

An additional 29 areas of leading or better-practice requirements were included in the study, which represent emerging areas that markets may consider in future revisions of their codes. For these areas, Nigeria was the best performer, with requirements present for 79% (23 out of the 29 elements) of the leading practices.

Well-defined corporate governance requirements (on paper) may lack enforceability in practice

While all markets mandate elements of corporate governance, the degree to which they are supplemented by principles or leading practices varies.

Overall, the study found that 68% of the 1300 requirements reviewed were non-mandatory, with the remaining 32% of requirements being mandatory in nature.

The study also found that the markets with the highest attributed scores for clarity and completeness of requirements had the majority of their requirements in 'comply or explain' instruments.

Having too many prescriptive or mandatory requirements could lead to a 'compliance only' culture (only doing the bare minimum) and could disengage smaller-sized companies. Too little enforcement may lead to indifference towards or even disregard of the requirements. Effective corporate governance requires investment in establishing a strong regulatory oversight and enforcement function to ensure the consequences for non-compliance are in place, understood and are strong enough to be a disincentive, for example, increased regulatory scrutiny, fines or delisting.

Clarity and completeness of corporate governance requirements (Section 9)

‘Structural/ procedural’ corporate governance requirements are better defined than ‘behavioural’ aspects

Overall the most well-defined corporate governance requirements were found in (ranked in order):

Rank	Theme	Pillar
1	Stakeholder Engagement	Pillar 4
2	Leadership and Culture	Pillar 1
3	Compliance and Oversight	Pillar 3
4	Strategy and Performance	Pillar 2

The underlying themes (ranked in order) were as follows:

Rank	Theme	Pillar
1	Financial and non-financial disclosures	Pillar 3
2	Role of the board	Pillar 1
3	Shareholders’ rights	Pillar 4
4	Stakeholder engagement	Pillar 4
5	Director independence	Pillar 1
6	Audit Committee and financial integrity	Pillar 3
7	Remuneration Committee	Pillar 2
8	Assurance	Pillar 3
9	Nominating Committee	Pillar 1
10	Directors’ time and resources	Pillar 1
11	Remuneration structure	Pillar 2
12	Performance evaluation	Pillar 2
13	Risk governance	Pillar 3
14	Board composition and diversity	Pillar 1

Irrespective of Pillars, this shows that the better-defined areas of corporate governance in Africa are those that are the more structural or procedural in nature. The less well-defined areas of corporate governance are those less tangible and more behavioural or relationship based. These are ‘emerging’ as critical areas in enhancing corporate governance frameworks.

5. The way forward

Africa is a diverse continent and, overall across the 15 markets reviewed, the study found a wide divergence among corporate governance requirements in clarity and degree of enforceability, and in the prevalence of instruments. As regulators, policymakers, directors and corporate governance practitioners seek to understand, clarify and take decisions to implement and enhance corporate governance practices, greater clarity is required. This may be done by providing greater explanations in non-mandatory requirements or by increasing the enforceability of compliance mechanisms.

The study noted that most markets mandate the basic requirements and supplement these with non-mandatory approaches. Although the majority of corporate governance requirements came from 'comply or explain' rules and voluntary instruments, this may not necessarily be the best solution for all markets. Having a balanced approach, which mandates core tenets and supplements these with a principles-based approach, provides an effective framework that allows companies the flexibility to establish practices relevant for their circumstances. Regardless of which approach is taken, both have to have a strong oversight and enforceability framework to be effective.

Critical components of the OECD Principles (such as disclosures, the role of the board, and shareholders' rights) feature as key areas of strength and show that the focus in these markets may have been on 'getting the basics right'.

Nonetheless, it is clear that several of the markets studied have moved ahead of OECD Principles as evidenced by the number of leading practice requirements being included. Indeed, the recently released King IV™ Report of South Africa contains several progressive elements that were not considered to be within the research framework as they were judged to go beyond leading practice, and in fact constitute emerging practice. These include giving the board responsibility for governing the technology and information framework (including a specific and separate responsibility for governing cybersecurity risk frameworks), and for reviewing the adequacy and effectiveness of the technology and information and compliance functions.

Although decisions about developing, defining and enforcing corporate governance requirements are specific to the political, legal, economic, social and cultural environment of each market and there is no 'one-size-fits-all', there is value in continuing to compare against internationally accepted standards of corporate governance.

The purpose of corporate governance is to enable long term success of business. As Africa continues on its journey to drive economic growth, its markets must ensure that they have the corporate governance frameworks in place to allow them to evolve and adapt to the rapidly changing business environment. By looking to other economic and geographic zones, and improving awareness of practices and requirements elsewhere, markets may adopt best approaches for their markets from the successes and experiences of others.

One-third of the markets studied have recently reviewed their codes. The impetus of the new OECD Principles and the announcement by the UN Industrial Development Organization (UNIDO) that 2016–25 will be the Third Industrial Development Decade for Africa[6], and the need to encourage an increase in foreign direct investment, indicates that now could be the right time for regulators to reassess their codes and revise them if necessary.

[6] UNIDO Annual Report 2016

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