



# Corporate Governance and the Legal Environment: Some Theoretical Insights and Related UAE Evidence

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## Abstract

Corporate Governance (CG) is complex. It has several strands and dimensions and has been much researched. Such research confirms that while “trust” is fundamental to CG, the legal environment figures prominently within it. Within that environment, corporate law provisions often place a fiduciary (trusting) duty-obligation on directors to act in the best interests of the firm and stakeholders. Such provisions tend to be enshrined within three recurring principles, Probity, Accountability and Transparency, and designed to engender, support and encourage trust amongst all concerned. While extant country-specific corporate laws-rules-regulations prevail, additionally, CG matters are often realised via a voluntary (comply or explain) code. To that extent, such codes are part of the legal environment. Thus, a key objective of the paper is to assess, within the UAE context, the extent of any commonality or sharing of the above

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three principles (primarily Transparency), between that country's CG laws and Code and those of some other major economies. This objective is partly accomplished by undertaking a thematic analysis and comparison of major international CG Codes with their UAE equivalent, while drawing on constructs embedded within Agency and Corporate Trust theories. Results indicate that the UAE CG statutes and code exhibit a high degree of comparability-sharing with relevant major international laws-codes. They provide an opportunity to better appreciate that while CG is, indeed, country-specific; the issues-principles upon which it is grounded are, in a UAE context, relatively shared and global. This bodes well for freer capital inflows and foreign direct investment.

**Keywords:** Corporate Governance (Code), Legal Environment, Thematic Analysis, Trust, UAE

## 1. Introduction

“Money makes the world go around”, sings the popular 1970s film-musical “Cabaret”. And, of course, this claim has some basis and foundation. But if money makes the world go round, then it is “trust” that lubricates its flow and path. For trust is probably the critical ingredient behind all successful human relationships. Indeed, some argue that without trust we would not be able to sustain any form of human relationships.

In business, the notion of trust is fundamental to contractual agreements. It is particularly typified in the case of listed limited liability companies, where shareholders (principals) entrust their capital to the board of directors (agents) – creating a traditional principal-agent relationship - replete with all the issues that emerge from that principal-agent tension or conflict. This is the (classic agency theory) conflict whereby principals wish their agents to maximise their (principal) interests, whereas there is likelihood that the agents wish to (at least partially) fulfill their own self-interest.

In other words, the economic devolution of ownership to professional managers results in the separation of ownership from control. While shareholders own the company and provide its

capital, the board has control over the economic ability of the firm, and hence, are privy to inside information. This is not so for the shareholders who own the firm. This gap in terms of information ownership and accessibility is often referred to as information asymmetry. And the related tension or conflict between owners and managers is referred to as the agency conflict. This is the conflict that arises when some managers (agents) pursue (only or a part of) their own interests at the expense of those of the owners (principals). Regardless, principals continue to repose trust in agents. And, in particular, shareholders in listed companies continue to entrust their capitals into the hands of their boards of directors. Why?

In part, the answer to this lies in features embedded within Corporate Governance (CG) and its integral and related principles, processes, practices and procedures. In part, trust continues to be placed because of mitigating features set up as a response to these agency conflicts. Such features include contractual arrangements that closer align the interests of both principal and agent (bonding), monitoring activities such as both internal and external audit and reporting and legal requirements and obligations imposed on directors (primarily via the relevant Company Law). Such features are part of CG arrangements and, in part, are often enshrined within CG Codes set up within individual countries.<sup>1</sup> While such Codes are strictly not law or part of the legal environment, much of the CG literature regards them as law and so does this paper<sup>2</sup>. In this context we observe that within the corporate world, the notion of trust embodies the normative impact of legally delegated authority of personal property to a trustee for the mutual benefit of

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<sup>1</sup>For instance, “The UAE Corporate Governance Code (2009)” (formally the Ministerial Resolution No. (518) of 2009 Concerning Governance Rules and Corporate Discipline Standards, as amended by Ministerial Resolution (84) of 2010), “The U.K. Code on Corporate Governance (2012)”, “The OECD Principles of Corporate Governance (2004)” and the Third South African “King Report on Corporate Governance” (often referred to as King 111 in this paper.).

<sup>2</sup> Issues relating to the enforceability of law through a robust, efficient, timely and vibrant judiciary are clearly of significant consequence, but for purposes of this paper have been consciously not discussed in it.

contracting parties. And in modern societies the normative impact of societal rules, laws, and legitimacy of conduct, particularly in terms of business activity, is reflected in the economic wealth generated through the degree of trust that subsists between contracting parties (Fukuyama, 1995). However the CG features identified and discussed earlier bring with them a cost – agency costs. These agency costs are the result of attempts to reduce the tension brought about by the divergence of interest between managers (agents) and shareholders (principals) (Berle & Means, 1932; and Jensen & Meckling, 1976). Examples include bonus (bonding) costs, internal audit costs and importantly, external audit costs. Against the above background, the purpose of this paper is to provide some theoretical insights into some of the legal arrangements that enable -or support such CG features both generally and with some particular emphasis on the United Arab Emirate (UAE) environment. And, subsequent to this introductory set of comments, the paper goes on to achieve its purpose via four sections.

In order to facilitate later discussion and evaluation, Section 1 sets out some aspects of the background and context to the paper and outlines its main objectives while providing a clarification and some limited discussion of some key relevant CG terms and parlance. This section also reviews some relevant literature in relation to trust, corporate governance, features inherent within corporate governance (such as probity, accountability and transparency) and then discusses how some of these issues link in with others within the overall fabric of governance.

Section 2 provides an exposition of the methodology employed to achieve the objectives of the paper. It also presents a limited explanation of the analytical technique used for that achievement – i.e. thematic analysis.

Section 3 undertakes the execution and accomplishment of the objectives of the paper and presents the results of that exercise.

## 2. Research background, context, key terms and objectives

In part, this section explains and discusses terms critical to an appreciation of it. Such terms include trust, probity, accountability, transparency and, of course, CG itself.

### Research background and context

The context of the paper is essentially twofold. The first is CG generally and, more particularly, the individual CG Codes of the four selected environments - i.e. the United Kingdom, South Africa, the OECD and the UAE. The second relates to the precise macro- and micro- economic aspects of the selected environments themselves. While not much need be stated in relation to three of the four contexts, it would be appropriate to state somewhat more about the fourth - i.e. the UAE. Accordingly, some of the paragraphs that follow serve to precisely fulfill that function. Considering the first of these two features, one observes that CG is the manner in which boards “control and direct” the activities of the companies of which they are directors (Cadbury Committee, 1992).

However, more important than what it is about, are the principles upon which CG should be developed. And, in terms of principles, the following words of the Cadbury Committee (1992, Section 3) are most informative.

“The principles on which the Cadbury Code is based are those of openness, integrity and accountability. They go together. Openness on the part of companies, within the limits set by their competitive position, is the basis for the confidence which needs to exist between business and all those who have a stake in its success. An open approach to the disclosure of information contributes to the efficient working of the market economy, prompts boards to take effective action and allows shareholders and others to scrutinise companies more thoroughly. Integrity means both straightforward dealing and completeness. What is required of financial reporting is that it should be

honest and that it should present a balanced picture of the state of the company's affairs. The integrity of reports depends on the integrity of those who prepare and present them. Boards of directors are accountable to their shareholders and both have to play their part in making that accountability effective. Boards of directors need to do so through the quality of the information which they provide to shareholders and shareholders through their willingness to exercise their responsibilities as owners".

Arguments for adhering to the Code tend to be of a twofold nature: First, a clear understanding of "responsibilities" and an open approach to the way in which they have been discharged will assist boards of directors in framing and winning support for their strategies. It will also assist the efficient operation of capital markets and increase confidence in boards, auditors and financial reporting and hence the general level of confidence in business. Second, if standards of financial reporting and of business conduct more generally are not seen to be raised, a greater reliance on regulation may be inevitable. Any further degree of regulation would, in any event, be more likely to be well directed, if it were to enforce what has already been shown to be workable and effective by those setting the standard.

While Cadbury refers to Integrity, Accountability and Openness, this paper suggests that the terms Probity, Accountability and Transparency are marginally more helpful in conveying fuller insights into the nature of CG. Thus, for this paper, these terms are employed and used as the basis for examination. Taking each of these in turn, one observes that the term Probity certainly embraces the concept of acting with Integrity. But, it is more than that. Together with several other features, significantly ethicality, it also includes acting with full propitiousness and honesty. And for that reason the term Probity is employed in this paper. Further, the paper argues that Probity is supported by enabling and ensuring that members of the Board of Directors are fairly remunerated – i.e. sound and equitable remuneration systems and applications. This is consistent with the bonding inferences contained within classic

Agency Theory explications. It leads to the argument that wholesome director remuneration procedures and practices are crucial for directors to conduct their corporate affairs and discharge their responsibilities with probity. Equally, because probity is so embracive and encompassing we observe it includes and subsumes the other two principles of accountability and transparency.

Consistent with Cadbury Committee (1992), this paper uses the term accountability; though instead of the term Openness this paper uses one of its synonyms - transparency. Finally, this paper suggests that Accountability is supported and encouraged through sound Leadership while Transparency is supported by sound measures of Internal Control. The argument is that all that encourages good Leadership encourages and enhances accountability and all that encourages the establishment and practice of sound Internal Control also encourages and supports Transparency. Such thinking has influenced some of the methodological approach used within the paper. Corporate Governance provisions have been codified within many jurisdictions, such as the OECD Code (2004), the South Africa King III (2009) Code and the UK Code on Corporate Governance (2010). In all likelihood, these Codes provide a basis for, and a major paradigm shift towards, convergence of core provisions - anticipating similar corporate governance mechanisms and exhibiting comparable internal structures of monitoring and control. The background to this paper is the issue of Corporate Governance. And the precise contexts or reference points within which the paper is presented are the CG approaches-thinking as contained in the following four CG Codes:

1. OECD Code, 2004
2. South Africa - Kings III Report Code, 2009
3. UAE Corporate Governance Code, 2009
4. UK Code on Corporate Governance, 2012

Considering the above Codes, one must observe that they all do not have the same degree of application, enforcement and monitoring. For instance, the UK CG Code 2012 is operated on a “comply or explain” basis. That is corporates may choose to apply particular provisions of the Code and not others. But when provisions are not

applied, there is an obligation to explain why and how. This is referred to as the “comply or explain” obligation of that Code. Other CG Codes are required to be applied on a compulsory basis with no provision for particular opt outs. Still other Codes are provided in the form of Guiding Principles only with the intention that corporates give expression to both the spirit and the letter of these principles. This is true of the OECD’s 2004 Principles of Corporate Guidance. Additionally, because of its relative uniqueness, aspects of the precise prevailing context of CG within the UAE are aired in the part of the paper.

### **The UAE environment – selected economic and legal highlights**

With a population of circa 5 million (2012 CIA World facts), of which 20% is native to that country, the UAE has the world’s 7<sup>th</sup> highest annual per capita GDP at circa \$48,000 (2012-CIA World facts). In absolute terms, it has 30<sup>th</sup> highest GDP in the world. It is an emerging economy with a 2012 GDP of \$360 billion. In the Cooperation Council for the Arab States of the Gulf (CCASG), in GDP terms, it ranks second, after Saudi Arabia. Within the Middle East-North Africa (MENA) region, it ranks third (after Saudi Arabia and Iran). The preceding statistics provide an impetus and motivation to contribute to the body of knowledge in relation to CG in the UAE. In part, this is because despite its differences, it exhibits an evolving Corporate Law and CG environment somewhat similar to those in the major economies buried within a set of dynamics, specific to the UAE. These include its cultural background, Islamic heritage and an evolving and vibrant economic demography. In this context, two particular themes are relevant: the legal environment and the UAE Companies Law. The legal requirements of listed firms were first issued in 1984 (UAE Commercial Companies Law No. 8, 1984). Some of these placed fiduciary duties on directors, similar to those contained in the UK Companies Act (2006). Previously, the UAE Companies Law (1984) reflected a somewhat limited set of legal provisions. But, with increasing economic activity and intense global interaction with UAE firms, the provisions were appropriately updated in 2010. This was also the result of an exponential increase in FDI’s and increased demand by foreign investors for greater protection (Cornelius & Kogut, 2003); the UAE Companies Law was updated



in 2010. The intention was to provide foreign investors with efficient legal recourse and unimpeded access to UAE capital markets. So, with a few exceptions (military contracts and air travel) reserved for Emiratis and the State, “majority-ownership” rights in many industry sectors are now enabled.

### **Key research terms**

Consideration of any issue requires an appreciation of its key concepts and terms integral to it and upon which it is predicated. In the present context of CG and some Codes linked with it, the following concepts and terms are of consequence. Hence a brief re-consideration of them is in order. And, as some emphasis is placed on the issue of transparency, this is considered in some more detail. These key terms and issues are trust, probity, accountability, transparency, CG and its nature and impact.

**Trust** in its conceptual form is integral to this paper. If one were to assume the Utopian possibility of total trust being present at all times, in all situations and shared by all persons, then any arrangements designed to minimise, ensure or encourage the placing of trust would be redundant. In other words, arrangements such as those encompassed within CG would be superfluous and redundant.

**Probity** is described as the quality of possessing strong moral principles and expressing them through the exercise of honesty and decency. In the corporate world, this would imply that all relevant information, both financial and non-financial, is available to users so that they may make informed economic decisions and that economic welfare for all stakeholders is given due regard and be made available for and open to public scrutiny (OECD, 2002). Some limited reflection on the issue suggests that the issues of accountability and transparency are subsumed within the concept of probity.

**Accountability** refers to the obligation or willingness to appropriately accept responsibility, or to account, for one's actions. It also refers to the quality or state of being accountable. In the present context, it refers to the responsibility of the board for the economic-sustainable welfare of the firm, with it (the board) being ultimately accountable for its actions in relation to the firm.

**Transparency**, in its simplest sense, means clear, unhindered honesty in the way that one does business. In the corporate world, the board has stewardship over the assets of the firm and in fulfillment of that stewardship, will put in place mechanisms of internal control so as to safeguard investors' interests and provide long-term economic sustainability to the firm. Such internal control features help bring about transparency which may also be seen as a "lack of hidden agendas or conditions, accompanied by the availability of full information required for collaboration, cooperation, and collective decision making. It is an essential condition for a free and open exchange whereby the rules and reasons behind regulatory measures are fair and clear to all participants."

In other words, transparency is more than mere honesty. Being transparent also depends on the form, disclosure, degree, factuality, and timeliness of that honesty. For example, if a company engages in a practice that costs its members or shareholders money, but doesn't admit its responsibility for the loss until years later, that is not transparent behaviour, regardless of how completely the company discloses it. The separation of ownership from control presents managers with the opportunity to expropriate or maximise their own utility at the expense of the owners is implicit within Agency Theory (Berle & Means, 1932; Jensen & Meckling, 1976). In this context, both internally adopted and externally imposed mechanisms of corporate governance, collectively, provide a degree of transparency that may well decrease agency costs and create positive wealth effects for owners. Further, regulatory imposition on firms to behave and externally disclose information to and constrain managerial behaviour, so orchestrating a level of transparency in financial reporting that facilitates the efficacy and utility to users of financial information (Mallin, 2012).

Taking regard for the preceding discussion, one could capture its essence within the following Figure 1.

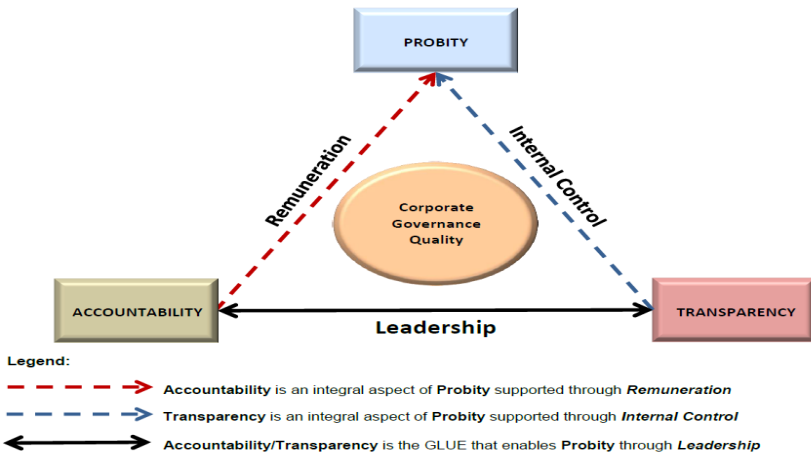


Fig 1: Interlinkage of Corporate Governance Themes and Related Support Constructs

Figure 1 captures the interlinkage between the three themes of **Probity**, **Accountability** and **Transparency**. It suggests that Accountability and Responsibility are essential ingredients of Probity, all of which are enabled via three specific constructs, namely, **Remuneration** (the contractual obligation between contracting parties i.e. owners and managers), **Leadership** (enabling vision and strategy) and **Internal Control** (monitoring and control of the the firms assets).

### Corporate Governance - nature and impact

CG is often described as the set of principles and processes that govern the way a company is “directed and controlled”. Fundamentally, it is about such questions as what business is for – and in whose interests companies should be run, and how. Wider issues such as business ethics via entire value chains, human rights, bribery and corruption, and climate change are among the great issues of our time that increasingly cross-cut the corporate boardrooms. As a result, inevitably there is a fusion between corporate governance and wider societal concerns.

The OECD (1999), states: “Increasingly, the OECD and its member governments have recognised the synergy between macroeconomic and structural policies. One key element in improving economic

efficiency is corporate governance, which involves a set of relationships between a company's management, its board, its shareholders, and other stakeholders." Thus, CG calls for directors and executives in companies to exercise probity, transparency, and accountability so as to create sound governance in the firm at all levels. These concepts are implicitly discussed in "Corporate Legitimacy, Conduct, and Governance - Two Models of the Corporation" (Eisenberg, 1983). In his deliberation, Eisenberg addresses five fundamental questions:

1. What is the fundamental institutional nature of the corporation within society?
2. How is the power of the corporation legitimated?
3. What should be the objective and the manner of conduct of the corporation?
4. What should be the role of management in the corporation?
5. What should be the role and composition of a corporation's board of directors?

### **Research relevant theories**

This paper is a theoretical one. It evaluates the research data in a particular fashion and engages with two important theories: Agency Theory and Theory of Corporate Trust.

#### **Agency Theory**

Much has been written and opined in terms of this theory. Its literature is historic, vast and varied. It encompasses some as old as that of Adam Smith (1776) to Berle & Means (1932) to Jensen & Meckling (1976) and Watts & Zimmerman (1986). Thus, not much need be re-stated at this juncture, especially as the aspects of the theory relevant to this paper have already been stated on the first page of this paper.

#### **Theory of Corporate Trust**

To a large extent, the Theory of Corporate Trust is an exploratory one that enables the conceptualisation and manifestation of trust. The theory also facilitates an explanation of the constituents of trust in enabling a desired managerial behaviour (Fukuyama, 1995).

Indeed, from a corporate perspective, the role of **trust** is encapsulated in Corporate Governance.

Part of the role of CG is to manage agency issues by aligning the interests of owners with that of management (Maher & Anderson, 1999). Corporate Governance, therefore, is set mechanisms by which companies are directed and controlled (Cadbury Committee, 1992). This suggests that corporate governance mechanisms must contribute to the efficient running of a business in such a way that reduces managerial propensity to engage in purposeful intervention in reported earnings that may have an economic impact on the firm value (Healy & Wahlen, 1999). As detailed below, CG is one mechanism for operationalizing trust in a multi-stakeholder environment. The Theory of Corporate Trust provides the propositional underpinning by which the three major Codes are evaluated and their influence on the UAE CG Code development. The latter enables the evaluation of the impact of externally-imposed influences on UAE regulators and compliance quality of UAE firms.

### **Theory of Corporate Trust - UAE perspective**

Kuran (2005) suggests that the modern corporation is not recognised in the Islamic tradition since Islamic jurisprudence only recognises a natural person while the concept of “Limited Liability” recognises a corporation as a “legal person”. However, since corporations are run by natural persons, the idea of limited-liability has found grounds in the Islamic world and corporations exist subject to similar legal and statutory implications and fiduciary duties as those in the West. However, the “corporation” is a relatively new concept in the UAE. Corporate Governance is one mechanism in operationalizing **trust** in a stakeholder environment. However, the efficacy of Corporate Governance Codes is evaluated in this paper from an international perspective and hence the impact of that perspective on UAE CG Code.

### **3. Research objectives**

The paper has two main objectives:

1. The first objective is to identify the presence (absence) and comparable sharing of particular themes critical within CG Codes (i.e. probity, accountability and transparency) in the four previously identified themes.
2. The second objective is to consider and evaluate the same four Codes in terms of the two previously identified theories – i.e. Agency Theory and the Theory of Corporate Trust – particularly in the context of the UAE.

#### **4. Research Methodology, Design and Approach**

In this section an analysis-examination of identified constructs of CG in terms of the two referenced theories – i.e. the Theory of Corporate Trust and Agency Theory– **and** the contents of the four identified CG Codes is undertaken. The analysis is undertaken through a process of ‘thematic analyses. This analysis enables the revelation and confirmation (or otherwise) of the thematic recurrence of the identified themes within the four Codes. Thus, drawing much on some relevant literature, this section provides:

1. A brief exposition of thematic analysis and then employing a limited form of this analysis, show how each of the immediately preceding terms have been considered within the relevant literature.
2. A considered argument appropriately referenced into the (professional and academic research) literature as to how the four referenced CG Codes reflect one or more of the three identified CG themes.

#### **Thematic Analysis**

This part of the current section is devoted to an explanation of Thematic Analysis (TA), the analytical technique used to analyse the data relevant to this paper. TA is a method of researching and analysing qualitative data. In essence, the method requires the researcher to identify a limited number of themes (or recurring patterns) that may lie submerged within data provided by, or originating from, a range of meaningfully comparable sources. TA is often used as a relatively simple method of qualitative data analysis. Braun and Clarke (2006) see it as a foundational method

of analysis and suggest its simplicity recommends itself for initial research and newer researchers. While some methods of analysis are tied in with particular theories, thematic analysis is relatively free-standing and may be applied within the context of most (if not all) theories. Appropriate usage of thematic analysis enables a rich and detailed description of all the relevant data while still addressing any complexity that may be contained within it. For this reason Braun and Clarke (2006: 79) define thematic analysis as “a method for identifying, analysing and reporting patterns within data”. More helpfully, they (Braun and Clarke, 2006: 79) explain a (pattern or) theme as capturing “something important about the data in relation to the research (question) and represents some level of patterned response or meaning within the data set.” The identification of themes within the relevant data being researched enables a measure of organization to be reflected across it but equally it allows a level of description to be applied to it. And, in some cases, the analysis may well suggest impossible interpretations to aspects of the research data. In some instances, the identification of patterned themes may be assisted through the use of numeric codes and (possibly) sub-codes. However, in all cases, the intention would be to “tease out” common patterns (themes) that lie submerged within individual experiences, accounts, statements or pronouncements. The analysis may be conducted at superficial level or at a more intensive in-depth level. The former requires identification only of recurring themes that are very obviously observed, while the latter requires a more considered and inquiring analysis to reveal also themes that are not observable at the superficial level. This paper employs limited “thematic analysis” in accomplishing the first of its two objectives and so it would be appropriate to consider thematic analysis at an initial superficial level only. Thus, Thematic Analysis is used to search and evaluate for the three relevant themes of Probity, Accountability and Transparency. Not unexpectedly, these three themes do appear with some significant recurrence within all the four CG Codes evaluated. Concurrently, the theory of Corporate Trust provides the basis for conceptual review of how the notion of Trust is operationalized within a corporate perspective through the lens of specific Corporate Governance Codes.

## **Research Data**

To achieve the paper's objectives, the precise text within three major CG Codes and one not fully globally-appreciated Corporate Governance Code are evaluated against potential thematic bases. The three major Corporate Governance Codes are those of the UK, OECD and South Africa, They provide the basis for thematic evaluation and comparability with that of the last CG Code - i.e. that of the UAE. Thus data for the review of CG codes is derived from the following published CG Codes:

1. UK Code on Corporate Governance, 2012
2. South Africa - Kings III Report Code, 2009
3. UAE Corporate Governance Code, 2009
4. OECD Code, 2004

## **Research Analysis**

Employing Thematic Analysis, a selected review of important themes and code development is conducted identifying developments that have taken place in major jurisdictions/global organisations such as the UK and the OECD. These developments are compared with CG Code development within the UAE. As such, the main research question investigated is: What are the similarities of major provisions of Corporate Governance codes in the global context that relate to the concepts of Probity, Accountability and Transparency? And, in reviewing these CG Codes, the three previously identified conceptual constructs of Probity, Accountability and Transparency are employed. Good support for such an approach is provided by La Porta et al 2002; Larcker & Tayab, 2008 and IFRS, 2010.

## **5. Research Findings and Related Discussion**

This section of the paper is limited to a **very brief** revelation and discussion of its main findings. Regrettably, space constraints do not permit a fuller explanation and interpretation of the paper's findings. However, a visual depiction of them is presented in Tables 1 and 11 (Pages 17 and 18) of this section - one that also provides some limited discussion of the identified themes and their related support constructs.



## **Relationship between conceptual themes and Corporate Governance Codes**

Thematic Analysis of conceptual themes and the transpiring relationships that have been discussed under Probity, Accountability and Responsibility in the preceding sections describe the need for corporate governance codes.

Four major codes analysed for similarity within identified CG themes are presented in TABLE 1 (Page 17). While the list is not exhaustive, the principal themes representing Probity, Accountability and Transparency are individually evaluated - each on the basis of its main supporting construct i.e. Remuneration, Leadership and Internal Control respectively. Emerging from the three themes identified earlier, namely, Probity, Accountability and Transparency, three interrelated major themes are identified that have a relevant bearing, namely, Leadership, Remuneration and Internal Control. The themes are investigated and comparison made with the provisions of the UAE Corporate Governance Code (2010) and the major European and South Africa codes identified above.

The relationship between the above themes and constructs are diagrammatically represented in FIGURE 1 (Page 10), demonstrating the inter-linkage that transpires and how these are codified within the various corporate governance provisions. And, these are tabulated within TABLE 1(Page 17) following:

The three key themes of Corporate Governance, Probity, Accountability and Responsibility, have their roots in Agency theory. Theories of corporate governance suggest that major CG codes should exhibit core structural provisions. This would suggest that in both emerging capital markets (such as the UAE) and developed capital markets, provisions of CG codes should generally provide evidence of core structures that are much the same or, at least, very similar. The findings revealed in Table 11 (Page 18) confirm this to be very much the case.

**Relationship between “Probity and Remuneration”**

Figure 1 suggests that much of the contractual relationship (between managers and owners) is manifest through Remuneration designed to facilitate managerial behaviour that will bring about maximisation of shareholder wealth and stakeholder interests (Becht et al, 2005; Bergstresser & Philippon, 2006; and Peng & Roell, 2008). The CG Codes examined provide evidence of transparency via responsible disclosure of management-director remuneration. Indeed, Agency Theory would argue that under optimal contractual settings managers will work in the best interests of the owners and various stakeholders (Pornsit et al, 2010). The level of transparency will be a function of the quantity and quality of director remuneration disclosure (Khan, 2009; Ali & Hwang, 2000). Such thinking is supported by prior research on the inter-relationship between “Remuneration”, firm performance and firm value (Watts & Zimmerman, 1978, 1986; Bhagat & Bolton, 2011).

Not surprisingly therefore, the Thematic Analysis of the CG Codes undertaken (TABLE 11), reveals broadly similar provisions related to director remunerations. The provisions on remuneration indicate that it is the responsibility for an independent “Remuneration Committee” to decide on director remuneration as a mechanism of monitoring, control and transparency.

Table 1: Tabular Presentation Themes Embedded Within Corporate Governance and Their Related Support Constructs

<b>Probity</b>	<b>Accountability</b>	<b>Transparency</b>
<b>Supported by fair Remuneration manifest via</b>	<b>Supported by sound Leadership manifest via</b>	<b>Supported by strong Internal Control manifest via</b>
Definition of responsible officers	Remuneration and Firm Performance	Responsibilities
Responsibilities Chair	Remuneration and Firm Value	Purpose, tasks and powers
Corporate governing body	Board Performance	Reporting to shareholder
Duality	Director Performance	Performance and Evaluation of Board

<b>Probity</b>	<b>Accountability</b>	<b>Transparency</b>
<b>Supported by fair Remuneration manifest via</b>	<b>Supported by sound Leadership manifest via</b>	<b>Supported by strong Internal Control manifest via</b>
Board Size	Value Creation	Delegation of authority
Board Balance (ED's and NED's)	Remuneration Committee Size	Audit Committee Size
Board Meetings	Remuneration Committee Independence	Audit Committee Independence
Formalities: BoD Meetings	Remuneration Committee Chairman	Audit Committee Chairman
Corporate Governance responsibilities	Remuneration Committee expertise	Audit Committee expertise
Directors' induction	Directors' Remuneration	Risk assessment
Info. for directors for decision-making	Shareholders rights	
Director training		
Evaluation of Board Performance		

Table 2: Corporate Governance Themes and Related Manifestations

**Relationship between “Accountability and Leadership”**

The relationship between Accountability and Responsibility is facilitated through Leadership (Figure 1, above). The role of the board of a corporate body is to provide vision and strategy for business growth and sustainability. Further, boards have the responsibility to provide oversight by ensuring that a collective measure of RISK is appropriate to business risk-appetite (Radner, 2002). The board also has responsibility for compliance with regulatory and statutory provisions as well as corporate governance principles and their disclosure requirements (Abdelsalam et al, 2007). The appropriateness of Remuneration policy and Leadership will enable firms to discharge their duties in a faithfully accountable (and transparent) manner ensuring relevant levels of disclosure (The European Commission Action Plan on Company Law and Corporate Governance [12 Dec 2012]). Not surprisingly therefore, again, the Thematic Analysis of the four CG Codes undertaken (TABLE 11), reveals a high consistency of

similar provisions (detailed within that Table) related to Leadership.

### **Relationship between “Transparency and Internal Control”**

It is the responsibility of the corporate board to facilitate and enable mechanisms of internal control. Such controls help safeguard the assets and interests of all stakeholders. Indeed, mechanisms of internal control provide the basis for safeguarding the firm’s assets and positively control the firm’s exposure to various types of financial and non-financial risk. Firms with a robust set of internal control systems, monitored by an equally robust internal audit function that detects and reports material weaknesses in organisational mechanisms depict higher levels of transparency (Chadwick, 2000). CG Codes and relevant statutes place a fiduciary duty and responsibility for safeguarding the assets and resources of a firm on its directors. Accordingly, CG Codes facilitate effective monitoring and control system so as to enable boards to take responsibility for their actions, while providing incentive alignments toward corporate goals and objectives. Therefore, optimal contractual relationship between stakeholders (primarily shareholders) and directors tend to facilitate probity and transparency exercised in conjunction with effective leadership which itself is supported by strong internal control mechanisms. Not surprisingly therefore, again, the Thematic Analysis of the four CG Codes undertaken (TABLE 11), reveals a high consistency of similar provisions (detailed within that Table) related to Leadership.

### **Corporate Governance and the UAECG Code**

Having determined the key themes structured within CG and the forms in which each of these are manifest (TABLE 1) within the four CG Codes of interest (TABLE 11), it is of further interest and in fulfillment of Objective 2, to comment on how these features are shared or commonly expressed within the relevant UAE CG Code. Space constraints do not permit a detailed discussion of these issues, but a simple listing of the same follows:

- The UAE CG Code (CGC) contains highly comparable provisions with regard to Probity-Accountability-Transparency. For instance, as is the case for the three other CG Codes considered in this paper, Article 1 of the UAE CGC specifically identifies the relevant officers who bear legal responsibility and their rights of office. This suggests that Article 1 goes some way to mitigate the “duality” issues, thus enhancing leadership quality.
- Equally, Articles 4, 5 and 6 of the UAE CG Code identify the fiduciary duties on the Board of Directors (BoD) – these being very similar to the three major Codes considered in this paper. Thus, again, with regard to the fiduciary and legal impositions, the UAE CG Code appears to be structured according to international standards of Corporate Governance.
- One distinction, however, between the three major CG Codes considered in this paper and the UAE CG Code is the fact that the latter exhibits the “**comply**” dynamic rather than the “**comply-or-explain**” exhortation.
- While several provisions in the UAE CG Code attempt to mirror or reflect the three other major CG codes, others are relatively singular. For instance, somewhat uniquely, the UAE CG Code (Article 118) re-iterates the Commercial Companies Law requiring Director’s Remuneration to be no greater than 10% of net profits after disbursements. Thus, in remuneration terms, board members are limited to an upper ceiling of 10% of net profits. Consequently, it follows that no Director’s Remuneration may be paid in a loss-making year.
- Further, while directors are nominated by majority shareholders, their utility to persuade to act in a particular manner via levels of director remuneration appears to be restricted.

## 6. Summary and Conclusions

This paper has been about Corporate Governance. More specifically, it has been about particular legal implications relating to CG. And, even more specifically, it has been about the legal implications relating to CG, as contained within the CG Codes and Principles of four individual jurisdictions. Further, the paper has compared and evaluated the UAE CG Code with those of three major CG Codes. Overall, it has determined a high degree of comparability and similarity between these three CG Codes and that of the UAE CG Code. While recognising that the effectiveness of any Code or legislation is inherently linked in with an effective, timely and unimpaired judiciary, consistent with Cornelius & Kogut (2003), the paper suggests that one positive outcome of its determination, will likely be an enhanced willingness and favourable disposition toward the advancement of healthy positive Foreign Direct Investments in the UAE. On that basis, this bodes well for the economy of the UAE.

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