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TRANSNATIONAL PERSPECTIVES ON CORPORATE GOVERNANCE: A COMPARATIVE LEGAL ANALYSIS OF INDIA, USA, UK, AND CHINA

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1. Introduction

The word "governance" originated from the Greek word "kubemao," which means “to steer." As a result, governance refers to the process of directing the state's operations. Governance is defined as a technique of exercising legitimate and impartial power for the objective of boosting the use of a country's resources for development rather than growth[1]. The sum of the varied contexts individuals and institutions, both public and private, handle their shared concerns is also referred to as governance. It's a never-ending process of balancing opposing or divergent interests and working together to achieve a common goal. It encompasses both formal organisations and governments with the authority to compel conformity, along with informal agreements that institutions and individuals have decided to or believe are in their best interests.'.[2]

Since the past few years, concept of corporate governance has gained considerable attention and pace, particularly in the aftermath of major commercial frauds not only in India but all around the world. some of the scam that shook the corporate world as a whole are waste management scandal, Emron WorldCom scandal, Tyco American international group. these scandals took place in the economy of USA but impacted the whole world. Another big scandal took place in China by the Stephen Wang, chairman and an executive director of one of the biggest textile companies Hontex International Holdings Co Ltd in 2004. one of the biggest and most controversial scams of UK was done by a company named FlowTex ran a Ponzi scheme wherein non-existing industrial equipment were supplied to shareholders and then leased back to them. And lastly in India we all are aware of the Satyam scam and Harshad Mehta scam that made an impact on the country at a large level. it shook the corporate world and led to the rise for the need of corporate governance. As a result of this, in today's shifting corporate world, Corporate Governance has become a must-have for every organisation. It acts

[1] World’s bank document on “governance and development” (1992)
[2] **Commission on Global Governance** (1995)

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as a guide for a company. It assists business executives in taking decisions that are beneficial for all and is in the interests of shareholders and is not opposed to any law and public policy.

The management of the organisation must operate honestly, ethically, with dignity, openness, and integrity. These principles ensure a balance between the rights of shareholders and those of all stakeholders, such as the corporation, providers, lenders, community, and so on. Adopting those guidelines would surely be beneficial to firms in the long term. As a result, in terms of adopting the best corporate governance principles, the Indian Parliament passed the Companies Act, 2013, which overturns the earlier Companies Act, 1956. The Act of 2013 has been enacted with the goal of unifying legal provisions and promoting corporate governance in India.

Collapse of governance practices can result in the extinction of large businesses. The depth of mishandling in the company's performance has been shown by a number of previous corporate scandals. The shortcomings of Kingfisher Airlines, Geetanjali Gems, and the Nirav Modi Scam are already in the corporate malfeasance charts. The Indian corporate sector appears to be significantly influenced by its western equivalent, not just in terms of enacting legislation, as well as in terms of imitating corporate misconduct. The failure of large corporations such as theirs was enough to highlight the importance and necessity of corporate governance, which is intended to distinguish between the powers of management and those of the board of directors, and to set a course for the company to operate in a good governing structure, which is the main goal of corporate governance.

The degree to which multinational firms adhere to basic corporate governance principles has now become a key issue in attracting international investment. The impact of corporate governance and foreign investment flows has become increasingly essential in this globalisation era, as quantitative constraints have been abolished and trade barriers have been dismantled. Flow of capital from foreign institutional for capital market investment and foreign investment with Indian huge corporations will come if they are convinced of the effective implementation of basic corporate governance principles in India and abroad.

2. Statement of Problem

As a consequence of enhanced corporate failures worldwide, corporate mismanagement has evolved into a multi-faceted issue. A lot of elements are responsible for the persistent challenges of corporate incompetence in India, including the numerous kinds of ownership and

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sorts of organisations. Families own the bulk of publicly traded enterprises in India. According to studies, family-controlled businesses make up 85 to 90% of all corporate sectors of India, accounting for 75% of workforce, 65% of GDP, and 71% of capitalisation. [3]As a result, based on the number of publicly traded companies and their inputs, one can assess the degree of the loss that their failure can/has brought to shareholders and investors. As an outcome, the scope of this research is limited to corporate scandals or failures in public listed companies.

The domination of controlling and non-controlling shareholders is a major element involved in corporate failure in India and other countries. The majority shareholders have the capacity to direct the company's entire management and act violate corporate governance's key objectives of impartiality, responsibility, integrity, disclosure, and truthfulness. Challenges regarding governance practices in publicly traded firms are not exclusive to India; they occur in other nations as well. Indeed, established democratic countries like the United States, the United Kingdom, and China were among the first to encounter corporate failures and develop legal control mechanisms.

Corporate governance is a globally recognised phenomenon. The complexities of governance practices are not unique to the Indian corporate sector; they exist worldwide.

3. Origin of Corporate Governance in USA

Many legislations were enacted to curb the issue of misconduct in companies. Some are effective and some are not. The first Act of USA related to corporate governance was Securities Act 1933. For the very first time, the federal govt, led by Franklin D. Roosevelt, took re - establish people's faith in the share market. This Act was enacted to provide for the management of stock exchange and counter markets functioning in interstate and international commerce. The Act's primary goal was important for two reasons: First, investors must get monetary as well as other essential information about stocks being issued for sale to the public; and second, deception, misleading statements, and other types of fraud in the selling of securities are prohibited. The Act included measures for the licensing of securities in order to attain these goals. Every corporation that wanted to sell its stocks had has to register it with

[3] Qaiser Rafique Yasser, "Challenges in Corporate Governance – A Family Controlled Business Prospective", International Journal of Innovation, Management and Technology, Vol. 2, February, 2011, available at: http://www.ijimt.org/papers/108-M499.pdf,visited on 05.04.2025

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Securities Exchange Commission.[4]

Investment organizations and advisers are registered and regulated under the Investment Company Act of 1940. The Act mandates to declare their fiscal situation and investing practises to investors whenever stock is first sold and on a frequent basis thereafter, in order to achieve this goal. Therefore, the Act regulates the dissemination of information about the firm and its investment goals to the investors.

Due to the advent of the Watergate crisis[5], the year 1970 once more proved to be a big blow for the US corporate sector. This controversy had a significant impact on the corporate world as well. Legal and statutory organisations in the United States were able to identify control deficiencies that had enabled several large companies to make unlawful political donations and bribing public officials during an inquiry into the Watergate crisis. As a result, Foreign and corrupt practices Act was enacted in 1977. The aim of this Law was to meet accounting disclosure rules that prevented enterprises and individual executives from manipulating foreign leaders through private bribes or favours.

3.1 Enron Scandal in USA[6]

This is the most famous scandal of USA. Enron was founded in 1985 and began to collapse in 2001. It starts recording income based on projections of future sales. Unfortunately, they had difficulty attracting investors. As a result, they established unconsolidated affiliates or special purpose enterprises to participate in syndicates in order to artificially inflate revenue. However, it failed to improve its financial flow, and on December, it declared bankruptcy. Almost half of the company's needed profits were shown to be fraudulent. This was discovered to be attributable to the Board of Directors' failure to supervise and follow governance norms. Almost 10,000 people lost their employment, and millions were lost by investors. This generated concerns about accounting, auditing, and the efficiency of corporate governance practices. As a result, the US government has undertaken the Sarbanes-Oxley Act, which sets new advanced rules for all public companies, management, and public accountancy firms.

[4] https://www.sec.gov/fast-answers/answersregis33htm.html visited on 1.05.2025
[5] **United States v. Nixon, 418 U.S. 683 (1974)**
[6] **Skilling v. United States (No. 08-1394) 2010**

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3.2 Model of corporate governance in USA

The outsider model of governance is used in the United States, which is noted for its shareholder-centric approach. The Anglo-Saxon paradigm of corporate governance is sometimes known as the Anglo-US approach[7]. Management with minor owning stock manage the organisations, and boards are rarely independent from management. New investors are invited to participate in corporate governance, while big investors are discouraged. Investment banks, and mutual funds, have the option of selling their stock if they are unhappy with the company's performance. Another distinguishing feature of the outsider model is that it is a market-based system in which shareholders are provided information in a timely manner and top management are regulated through market-based rewards and sanctions. As a result, the government is less involved.

4. Corporate governance in United Kingdom

The Outsider Model of Corporate Governance is used in the United Kingdom, just as it is in the United States. The United Kingdom has a federal government with a unified set of laws governing corporate governance. However, in the United Kingdom, Corporate Governance was a source of worry.

United States of America, *v. BCCI Holdings (Luxembourg)*.[8] is one of the major scandals of Uk in which BCCI published results revealed steadily increasing profits, though by the late 1970s, the bank had amassed an unacceptable number of bad debts due to irresponsible lending practices. In the 1980s, BCCI was investigated by a number of financial authorities and intelligence organisations due to suspicions that it was poorly controlled. As the bank's liabilities grew, it resorted to increasingly desperate measures to keep it viable. He attempted 'insider trading,' but it just resulted in even more massive losses. The bank was only able to stay afloat because to deceptive bookkeeping and significant misspending of depositor funds. BCCI was implicated in enormous money laundering as well as other bank fraud, and also gaining control of a large American bank unlawfully. The BCCI affair was the world's largest bank fraud. Its demise resulted in huge loss of money.

[7] Dr. J. J. Irani Committee Report on Company Law, p.3, available at http://reports.mca.gov.in/ Reports/23- Irani%20committee%20report%20 of%20the%20expert%20 committee%20on% 20Company% 20law,2005.pdf visited on 01.06.2025.
[8] 961 F. Supp. 287 (D.D.C. 1997)

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Another leading case was *Bishopsgate Investment Management Ltd v Maxwell (No 2)*[9] Maxwell Communications Corporation was a major British media conglomerate with over 400 subsidiaries. Robert Maxwell, the head of the company was discovered drowned in his yacht on November 1991. The great empire of printing and other enterprises fell in a relatively short time after Maxwell's unexpected death, amid a scandal over stunning financial tactics. Maxwell's business owes its lenders £2.8 billion, according to inquiries. Maxwell's sudden death sparked a wave of unrest, with banks scrambling to call in enormous debts. Among the most significant multinational insolvencies in contemporary history was the Maxwell case.

Due to these scandals Cadbury committee was established which recommended Firstly, firms' CEO and Chairman must be segregated so that no single person has unrestricted decision-making authority. Secondly, directors should contain at least three non-executive directors, two among whom two should be independent of CEOs financially or personally. Finally, each executive board must have an audit committee made up of independent directors. This committee also mandated that every corporation adhere to these standards, failing which they must explain why. Many other committees were established to review the system of corporate governance which further led to development of codes.

5. Corporate governance in China

Many measures promoting corporate governance were implemented in the 1990s, but the notion of corporate governance was virtually unknown in China until 2001. In 2001, China was shaken by the Ying Guang Xia, a blue-chip business that achieved a revenue of 178 million Yuan. In 1999, the figure was 567 million Yuan, and in 2000, it was 567 million Yuan. The China's Company Law, 1933 was passed in 1933. The major goal of this Legislation was to standardise company structure and operations, safeguard legal rights and liberties of firms, shareholders, and lenders, maintain social stability, and support the growth of the socialist - oriented market economy.[10] As a result, the regulation covers provisions in relation to limited company incorporation and organisational structure, equity transactions of limited liability companies, issuance and sale of securities of limited company, the competences and responsibilities of corporate executives, managers, and senior managers, corporate debt, corporate accounting and finance, and so on. Furthermore, in 2006, the Corporation Law was revised to bring China's corporate governance norms fully up to speed.

[9] [1993] BCLC 814
[10] Article 1, The Company Law of the People's Republic of China, 1933.

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5.1 Code of Corporate Governance for Listed Companies, 2002

The China Securities Regulatory Commission (CSRC) and the National Economic and Trade Commission jointly issued China's initial code of corporate governance on January **7,** 2002**,** and it was revised again in 2011 and 2016.[11] China's Code, like most other Codes around the world, contains broad and ambiguous language that describes only core principles instead of clear and specific regulations on topics such as shareholders' rights, board member, board, and management board responsibilities, stakeholder commitment, and disclosure requirements, among others. As more international investors think about investing in Chinese stocks, these attempts to embrace and conform to global principles of good corporate governance are becoming increasingly important. China's present corporate governance rules are well-defined and based on assumptions**.**

As a result, China's corporate law has established a national standard for forming and administering private limited companies and corporations limited by shares. The China Securities Exchange (CSX) was established in May 2002 According to the Consumer Product Safety Commission (CPSC), from 1998 to 2001, the corporation has 'falsely revealed facts about numerous productions by fabricating sales receipts' 'Investors were come to think they were investing in facilities that never existed.' Following that, investors are encouraged to purchase subsequent stock issuances.

This affair, dubbed "China's Enron," underlined the significance of corporate governance Furthermore, he created a framework for China to rewrite its laws in light of international law. controversies in the corporate world as a result, China has adopted corporate governance with zeal. As a result, major modifications to existing company law laws were enacted in 2001. In the academic and business communities, there is a heated discussion over which governance model China is employing. As per Farrar (2001), all models, including German, Japanese, US, and UK models, have affected the Chinese model. It's simply a mash-up of all styles. China's structure appears to fall into a separate group that could be labelled "corporate governance featuring Chinese elements."[12]

[11] Corporate Governance in China, available at: https://www.msci.com/documents/10199/1d443a3d-0437- 4af7-aa27-ada3a2655f6d visited on 5.06.2025

[12] Fuxiu Jiang & Kenneth A. Kim, "Corporate governance in China: A modern perspective", Journal of Corporate Finance 32 (2015) 194, available at: https://www.researchgate.net/ publication/299410188 _Corporate_governance_in_China, visited on 06.07.2025.

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6. Corporate governance model in India

In essence, India's corporate governance system is as useful and consistent as those of the United States and the United Kingdom. In many aspects, it outperforms Mainland Europe as well as other international markets. According to the World Bank's Report on the Adherence of Codes and Standards on India's corporate governance codes, India followed or largely followed most of the OECD good corporate governance practices. Several governmental and non-governmental organisations, in addition to significant enterprises, have substantially contributed to raising corporate governance practises in India. In India there are mainly three types of companies' viz. private companies, public companies and public sector undertakings. Each of these companies has distinct kind of shareholding pattern. Thus, the corporate governance model in India is a mix of Anglo-American and German Models. India follows various guidelines of OECD too.

The OECD has established key principles that can be divided into different key principles: Guaranteeing the Foundation for a Sound Corporate Governance Structure; Shareholder and Key Ownership Function; Equal and fair Treatment of Shareholders; Stockholder Role in Governance Practices; Transparency and Disclosure; and Board Accountabilities.

Two Models of corporate governance in India

The word corporate governance is vulnerable to both restricted and broad approaches when it comes to the idea of corporate governance. This is a very well fact that such company's primary goal is to generate a profit. The question then becomes if such benefit should be only for the good of the company at the expense of all other parties involved, or profit earned by the company after taking into account all interested parties (also known as Stakeholders). The solution to this problem will lead to two separate corporate governance models: the Shareholders Model also known as outsider model and the Stakeholders Model which can be also knows as insider model or corporate governance.

Milton Friedman was the first to propose the Shareholder Theory. he argues, that companies have no normative responsibilities other than to maximise their own profit. On the other hand, the insider model theory of corporate governance examines the influence of business operations on all stakeholders involved. This concept suggests that corporate leaders (officials and boards) should address the interests of all parties during the governance process. This includes striving to resolve disputes between stakeholder interests as much as possible.

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Conclusion & Suggestion

Corporate governance is now a necessity in all countries. Even developed Western nations, with very well legislative / regulatory mechanisms, really aren't excuses. The corporate governance systems of the United States, the United Kingdom, China, and India are founded on two separate concepts. Unlike with the British method, which depends on more soft law and self-regulating mechanisms such as Codes, the US system of governance is built considerably mostly on hard law and a regulatory state, whereas the first two nations use the outsider model that has its own originality. The Insider approach is used in the last two countries. Regardless of which countries adopted various models, corporate failures and profits were the frequent cause and purpose of all company. One model aims to make a profit for shareholders, while the other aims to make a profit for the company.

The Companies Act, 2013, is based on the rules of industrialised countries, because the complexities of corporate governance really aren't unique to India. The entire world The United States, the United Kingdom, and China, in particular, are major business influences. The growth of corporation law in India has been influenced by the private sector. These nations have their laws have evolved depending on the structure of their ownership patterns, with the United States and Canada leading the way. The United Kingdom follows the dispersed ownership or outsider model, whereas China follows the insider model or Concentrated.

The laws of the United States, the United Kingdom, and China show that each country's legal structure is built on its own unique circumstances. These nations have undoubtedly incorporated measures from different jurisdictions, but each has done so while keeping in mind the country's constraints. In contrast to India, which is a combination of insider and outer models, it must be careful in imitating and implementing into its legislation. Shareholders, Directors, and Regulators are the three primary common elements in any company's structure, and they all play a role in guaranteeing corporate governance. With the broad powers provided on them by corporate laws, they constitute the core group to manage, oversee, and control the administration and performance of any corporation. To ensure the company's performance, these organisations are expected to operate professionally, autonomously, and prudently, especially in family-owned public corporations. The much more active these bodies are in a firm, the less likely it is that there will be a corporate mishap. As a result, a company's performance is determined by the effectiveness of its shareholders, board of directors, and regulators.

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The Companies Act of 2013 contains specific safeguards for protecting the interests of shareholders. The first attempt in this direction is shareholder democracy. The annual general meeting is a significant tool for shareholders to exercise control over the company's management. All shareholders are granted the power to have access to the company's financial records and raise any questions they may have, appoint the company's director and auditors, establish the auditors' remuneration, and declare the dividend at the annual general meeting.

Insider Trading is also a very prevalent activity found in any firm, including family-owned businesses, and it has the potential to damage shareholder confidence in the organisation. Trading after gaining access to non-public price sensitive information is known as insider trading. The advantage of possessing such info is that anyone with it may predict the company's overall condition, and any insider with it can influence the corporate accounting stability for his own profit. To counteract the insider's effect on the company, corporate law today forbids insider trading and punishes those who engage in it. Despite the presence of such strict regulations preventing insider trading, the recent spike in insider trading cases illustrates the incompetency of implementing these provisions.

Non-controlling shareholders are the victims of company mismanagement. The action lawsuit was created to allow a class of non-controlling shareholders to question the company's managers' activities. Only when the Satyam fraud was uncovered did it become clear how urgent it was. Unlike in the United States, Indian corporation law did not previously include such safeguards. In alternative to class action lawsuits, shareholders can file actions for oppression and management. These claims, like class action suits, are filed by a small number of people in order to avoid tyranny and mismanagement, but the law does not define these terms as such. Importantly, the Companies Act of 2013 empowers the tribunal to hear cases of oppression and management.

The board of directors is the kingpin of a company's efficient administration. The board of directors serves as a link between both the company's shareholders and management. In reality, they hold a key position in the company's administration. The board of directors has been given broad authority, and it can exercise all powers and perform all acts necessary for the company's effective supervision. The board of directors must employ these discretionary powers with caution. If used properly, it will undoubtedly succeed in keeping a regular testing on the company's management. The executive directors, however, can readily convince the non-

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executive directors because the board of directors is made up of both executive and non-executive directors. Various provisions of the Companies Act 2013 have been established to separate the board of directors from the influence of the executive directors and management. It not only gives shareholders the right of inspection but also establishes the proper checks and balancing mechanism to assure that the organization's efficacy and independence are not jeopardised.

Despite the many procedures enacted under the Companies Act of 2013, which regulate the internal process of the corporate model, corporate governance cannot be guaranteed completely. Family members, in particular, form the dominating body in family-owned businesses, with the ability to influence and manage the businesses in one way or another, regardless of the levels of mutual restrictions. Autonomous external bodies must monitor, manage, and regulate the firms in order to separate them from such control within the companies. The Ministry of Corporate Affairs, an administrative authority, is in charge of regulating the corporations in this case. The Ministry of Business Affairs is the major regulatory authority in charge of formulating policies to ensure that corporate laws are properly administered.

The Ministry of Corporate Affairs also oversees the professional bodies that are in charge of the company's management. In furthermore, the Ministry of Corporate Affairs conducts several measures to enhance the corporate sector's ease of doing business while keeping stakeholders' interests in mind. This multitasking approach of the Ministry of Business Sector aids in the corporate sector's long-term growth, but it sadly necessitates a great deal of devotion, planning, and implementation. Through its web portal, the Ministry is able to construct a single platform. It is not easy to provide effective corporate governance, especially in family-owned businesses. To overcome the current weaknesses in India’s corporate governance system and achieve standards seen in leading economies such as the USA, UK, and China, a range of practical reforms can be considered:

- Bridging the gap between regulatory provisions and their enforcement is essential. Authorities like SEBI and the Ministry of Corporate Affairs should intensify the frequency and depth of their inspections, enforce stricter consequences for violations, and leverage advanced technology for more effective compliance monitoring.
- A primary obstacle lies in the dominant influence of promoters within Indian companies. Limiting the terms of promoter-directors, requiring that appointments of

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independent directors receive approval from a majority of minority shareholders, and clearly separating the roles of Chairperson and CEO would significantly increase board accountability and independence.

- Achieving real independence on company boards requires transparent nomination processes for independent directors, more rigorous and objective criteria for determining true independence, external validation of director backgrounds to identify ties with promoters or management, and compulsory training programs that keep directors updated on best practices in governance.
- Giving minority shareholders a stronger voice can be accomplished by fortifying legal avenues for raising issues and calling extraordinary general meetings. Facilitating electronic voting, offering strong safeguards against retaliation, and mandating representation of institutional investors on boards can further reinforce minority interests.
- India needs to move beyond mere compliance to substantive, detailed disclosures. Adopting global financial reporting standards, instituting third-party audits for improved auditing practices, and establishing independent whistleblower channels that ensure anonymity and security will make it easier to detect and address irregularities promptly.
- Regulatory changes must be matched by a shift in corporate mindset. Initiatives to educate leaders and boards about the importance of ethical practices, transparency, and accountability are crucial, particularly in family-owned or founder-led companies. Recognition through awards, improved corporate governance ratings, and public commendations can motivate firms to go beyond compliance and embed best practices at all levels.
- India is one of the few nations that has enacted corporate social responsibility legislation. Companies that fall short of their CSR spending targets must explain why it happened in their annual report. The board of directors needs to put forth the effort and take CSR effectively. CSR efforts should be overseen by a board of directors who are as enthusiastic about them as they are about any other corporate activity.
- Boards must be conscious of their own strengths and shortcomings in order to rule effectively and encourage high standards for performance. At least once a year, each director must adhere to clear quality standards and assess their own contributions.

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- Monitoring a performance of the company is a crucial part of good corporate governance and a board's role. To do so, the company's key performance indicators (KPIs) and proper measures for measuring successes and failures must first be established.
- Directors should agree on a reporting format and frequency as a board to guarantee that all items that need to be reported are reported. Board portal software can help with performance monitoring by keeping track of board actions and their impact on performance, as well as archiving all board reports in one location.
- It is critical to have independent directors in order to ensure good corporate governance. Independent directors' remuneration is one element that could jeopardise their ability to effectively discharge their duties. The Ministry of Corporate Affairs, must set the pay of the independent directors for this purpose. It might be legislated that the corporations lodge the compensation with the Ministries, which would then settle the independent directors' remuneration based on the service done immediately. This eliminates the possibility of bias in determining remuneration while also ensuring the impartiality of the independent directors. As a result, the adjustments can be made to this extent by altering section 149(9) of the Act.

By adopting these targeted reforms, India can significantly raise the bar in corporate governance, foster greater trust among investors, and ensure more equitable and sustainable business development that aligns with international standards.