Customary Arbitration and Transformative Corporate Governance for Family-Owned Businesses: A Contextualist Perspective

Accepted for publication in European Business Law Review

Customary Arbitration and Transformative Corporate Governance for Family-Owned Businesses: A Contextualist Perspective

ONYEKA K. OSUJI*
DORCAS OLUWAFIKUNAYO TAIWO**

Abstract
The aim of this paper is to consider the viability of customary law-based alternative dispute resolution mechanisms for addressing disputes in family-owned businesses (FOBs). FOBs are recognised as the most dominant form of business organisation in the world and their contribution to national and global economies through localised employment, direct investment in the communities, stable working environments and preservation of tradition is widely recognised. Despite the existence of agreement in the literature regarding this, scholars have yet to undertake in-depth explorations of conflict management context of FOB governance. As the success of FOBs largely depends on how they cope with disputes and disruptions, their governance itself plays a particularly important role and should benefit from a level of research to promote their sustainable existence and socioeconomic contributions. Using a combination of several theories including access to justice, legal transplant and socioeconomic wealth, the article takes a contextualist approach to corporate governance and argues that in certain contexts, customary arbitration is pertinent for contemporary FOB disputes alongside formal Western-style corporate law and governance. The paper then outlines how customary arbitration underpinned by a differentiated approach to corporate governance can be implemented.

Introduction

The aim of this paper is to consider the viability of customary law-based alternative dispute resolution (ADR) mechanisms for addressing disputes in family-owned businesses (FOBs). It proceeds on the basis that conflict is 'intrinsic to social interaction because people have different goals, ideas, and activities'[1] and, in the case of FOBs, 'a prominent characteristic'.[2] The key question the paper considers is how the integration of customary arbitration can facilitate a context-based transformative corporate governance for FOBs, particularly in pluralistic societies with an interplay of informal customary law and formal corporate law and corporate governance rules. Customary arbitration is a visible manifestation of culture. Culture influences dispute resolution in different ways such as the existence, nature and framing of disputes and the outcome of the resolution process which, in turn, can shape the parties' expectations of, and attitudes to the process. [3] The fact is that 'culture influences decisions about right or wrong and ultimately justice is well documented in the field of dispute/conflict resolution [and]

* Dean and Professor of Law at Essex Law School, University of Essex, Colchester, United Kingdom.
** Lecturer in Law at Essex Law School, University of Essex, Colchester, United Kingdom.

[1] Cristina Alvarado-Alvarez, Immaculada Armadans, Maria J. Parada, M. Teresa Anguera. *Unravelling the Role of Shared Vision and Trust in Constructive Conflict Management of Family Firms. An Empirical Study from a Mixed Methods Approach*, 12 Front. in Psychol. 1, 4 (2021).
[2] Ritch L. Sorenson, *Conflict Management Strategies Used by Successful Family Businesses*, 12(4) Fam. Bus. Rev. 325 (1999).
[3] Lola Akin Ojelabi, *Adopting Culture-Specific Dispute Resolution Processes in Australia: Which Way Forward for Access to Justice?* 29 Australian J. Fam. L. 235, 244-245 (2015).

[g]iving content to justice is a cultural activity'.[4] Integrating customary arbitration in the governance structure of FOBs can make a difference in the outcomes and consequences of dispute resolution.

As the success of FOBs largely depends on how they cope with disputes and disruptions, their governance itself plays a particularly important role[5] and should benefit from a level of research to promote their sustainable existence and socioeconomic contributions. This is especially so as efficient access to justice and a well-functioning justice infrastructure plays a key positive role for businesses and economic development.[6] Nevertheless, customary arbitration does not feature in FOB and broader corporate governance scholarship even when dispute resolution is the focus. Discussions of FOBs have ranged from their resilience and economic performance[7] to governance[8] and boards of directors[9] with empirical studies and chronological and historical accounts.[10] Similarly, FOB governance is a top research topic and issues receiving attention in recent times[11] range from its importance to simple decision-making in the day-to-day operations, to its relevance for business performance and succession planning. An exponential growth in family business research in the last few decades in management, accounting, and entrepreneurship studies has not been matched by scrutiny of the role of customary arbitration and other ADR methods in the corporate governance of FOBs. This is notwithstanding evidence that informal and ADR mechanisms can be effective in enhancing access to justice, while providing rapid, consent-based dispute resolution.

---

[4] Ojelabi, *supra* n. 3, at 241.

[5] Julia Suess, *Family Governance – Literature Review and the Development of a Conceptual Model* 5(2) J. Fam. Bus. Strat. 138 (2014); Patricia D. Olson, Virginia S. Zuiker, Sharon M. Danes, Kathryn Stafford, Ramona K.Z. Heck, Karen A. Duncan, *The Impact of the Family and the Business on Family Business Sustainability* 18(5) J. Bus. Ven. 639 (2003).

[6] Arnaud Deseaua, Adam Levai and Michèle Schmiegelow, *Access to Justice and Economic Development: Evidence from an International Panel Dataset* Eur. Econ. Re. 172 (2025) ; World Bank Group, *World Development Report 2017: Governance and the Law* 83, 140 (1 April 2025, 12:25 PM BST), https://www.worldbank.org/en/publication/wdr2017.

[7] Yasin Yilmaz, Sebastian Raetze, Julia de Groote and Nadine Kammerlander, *Resilience in Family Businesses: A Systematic Literature Review* 37(1) Fam. Bus. Rev. 60 (2024); Nick Beech, David Devins, Jeff Gold & Susan Beech, *In the Family Way: An Exploration of Family Business Resilience* 28(1) Int'l J. of Org. Analy. 160 (2020); Alan D. Cruz, Antonio M. Fierro, Rodrigo Basca, Maria J. Parada, Cristina Alvarado-Alvarez, *Resilience and Family Business Groups in Unstable Economies* § 13, 315-352 (Marita Rautiainen, Peter Rosa, Timo Pihkala, Maria J. Parada & Allan D. Cruz eds., Palgrave Macmillan, Cham 2019).

[8] R. Esteban Brenes, Kryssia Madrigal & Bernardo Requena, *Corporate Governance and Family Business Performance* 6(3) J. Bus. Res. 280 (2011); Cesar Camisón-Zornoza, Beatriz Forés-Julián, Alba Puig-Denia & Sergio Camison-Haba, *Effects of Ownership Structure and Corporate and Family Governance on Dynamic Capabilities in Family Firms* 16 Int'l Ent. and Man. J. 1393 (2020).

[9] Y Bammens, W Voordeckers and A van Gils, *Boards of Directors in Family Businesses: A Literature Review and Research Agenda* 13 Int'l J. Man. Rev. 134 (2010); Cristina Bettinelli, Andrea Sangermano, Mara Bergamaschi & Morten Bennedsen, *Family Firms' Boards: A Systematic Review and Research Agenda,* Corporate Governance: An International Review (1 April 2025, 13:04 PM BST), https://doi.org/10.1111/corg.12631.

[10] Barbara Bird, Harold Welsch, Joseph H. Astrachan & David Pistrui, *Family Business Research: The Evolution of an Academic Field* 15(4) Fam. Bus. Rev. 337 (2002).

[11] Jan-Folke Siebels, Dodo Z. Knyphausen-Aufseß, *A Review of Theory in Family Business Research: The Implications for Corporate Governance* 14(3) Int'l J. Man. Rev. 280 (2012); Bart J. Debicki, Curtis F. Matherne, Franz W. Kellermanns, James J. Chrisman, *Family Business Research in the New Millennium: An Overview of the Who, the Where, the What, and the Why* 22(2) Fam. Bus. Review 151 (2009).

Moreover, while more developed countries are receiving increased attention,[12] research on FOBs' corporate governance in developing and emerging economies remains limited. Despite the existence of agreement in the FOB literature regarding the importance of, and contribution of FOBs to national and global economies, scholars have yet to undertake in-depth explorations of conflict management context of FOB governance in regions such as Africa with informal customary law rules existing alongside formal Western-style corporate law and governance. This is especially so considering calls for a cultural perspective on African business.[13] Nigeria is an example of where participants in FOBs in are more likely to be culturally and linguistically homogenous. Nigeria operates a dualist legal system comprising of English common law[14] and customary law. This duality is a result of the colonial influence and the subsequent imposition of English law.[15] While the historical and contemporary role of customary arbitration in providing a functional and less expensive means of accessing justice at communal and 'grassroots' levels in different parts of Nigeria is documented,[16] its integration in the FOBs' corporate governance framework is less evident despite the prevalence of that business ownership model in the country.

These are matters of corporate governance in context. Since 'corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders',[17] would an understanding of the relationships entail consideration of the participants' shared culture? Again, if it 'also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined',[18] to what extent can corporate governance design be informed by shared culture and cultural mechanisms inform structures? The overall theoretical grounding of this paper is therefore a

[12] Vinod Thakur & Sabyasachi Sinha, *Family Governance Structures in Family Businesses: A Systematic Literature Review and Future Research Agenda*, 62(6) J. Small Bus. Man. 3016, 3023 (2023).
[13] Mamadou Dia *Africa's Management in the 1990s and Beyond* (Washington, DC: World Bank 1996); Lovemore Mbigi, *Ubuntu: The African Dream in Management* (Randburg, S. Africa: Knowledge Resources 1997).
[14] The applicability of received English laws to Nigeria is subject to the existence of equivalent Nigerian legislation. Hence, where there is a local enactment on any matter, received English law will not apply. *See* Akintunde O Obilade*, The Nigerian Legal System* 77 (Spectrum Books Limited 1979).
[15] John O Asein, *Introduction to Nigerian Legal System* 5 (Ababa Press Limited Lagos 2d ed. 2005).
[16] Olubayo Oluduro, *Customary Arbitration in Nigeria: Developments and Prospects* 19(2) J. Int'l Comp. L. 307 (2011).
[17] G20/OECD Principles of Corporate Governance 2015, 9.
[18] *supra*.

combination of access to justice, legal transplant theory,[19] socioeconomic wealth (SEW) theory,[20] contextual family therapy theory[21] and theory of the third.[22]

Our arguments are four-fold. First, proceeding on the basis that '[t]here is no single model of good corporate governance',[23] we argue that traditional corporate governance and existing family-business specific mechanisms may not be well suited for context-sensitive resolution of disputes in societies with a significant presence of FOBs and where customary rules exist side-by-side with formal rules of business. While traditional corporate governance mechanisms are formalised and the family is a primary arena for the largely informal FOB-specific mechanisms, there is modest consideration of both formal and customary business rules in either approach to conflict resolution. Our second argument is therefore the need for customary arbitration in the unique circumstances of interplay of FOB and formal and customary business rules. The prominence given to customary rules and principles in New Zealand's Disputes Tribunal is a useful indication of the viability of this suggestion. New Zealand's Disputes Tribunals established under the Disputes Tribunal Act 1988 and replacing the Small Claims Court (Dispute Tribunals Rules 1989)[24] provides an efficient, inexpensive and informal resolution of small disputes, with self-representation and exclusion of lawyers and judges.[25] The third leg of our argument is the need to ensure an arbitration framework in the customary dispute resolution. To that extent, New Zealand's Disputes Tribunal has a limited utility as a model due to its design as a litigation mechanism even if it is less formal than conventional adjudication. We have therefore responded to the call for 'differentiating between various family governance structures while exploring their influence on the family system and the business system' and 'to provide pathways for family business researchers to be aware of the human-related aspects of family businesses by focusing on the family paradigm'. [26]

We further argue that deploying Western approaches and principles of corporate governance and dispute resolution to FOBs and other customary relationships/informal scenarios, without consideration of domestic socio-economic and socio-political peculiarities, risks potential friction. The Western-focused perspective of the FOBs literature, for instance, prescribes some form of ownership recognised in law which can

---

[19] J Gillespie, *Towards a Discursive Analysis of Legal Transfers into Developing East Asia* 40 NYU J. Int'l L. Pol. 657, 688 (2008).

[20] Keith H. Brigham & G. Tyge Payne, *Socioemotional Wealth (SEW): Questions on Construct Validity,* 32(4) Fam. Bus. Rev. 326–329 (2019); Felipe Hernández-Perlines, Antonio Ariza-Montes & Luis Araya-Castillo, *Socioemotional Wealth, Entrepreneurial Orientation and International Performance of Family Firms* 33(1) *Econ. Res -Ekonomska Istraživanja* 3125–3145 (2020); R. Gabrielle Swab, Chelsea Sherlock, Erik Markin & Clay Dibrell, "*SEW" What Do We Know and Where Do We Go? A Review of Socioemotional Wealth and a Way Forward* 33(4) Fam. Bus. Rev. 424–445 (2020).

[21] Ivan Boszormenyi-Nagy & Geraldine M. Spark, *Invisible Loyalties*. (New York: Routledge 2014); Ivan Boszormenyi-Nagy, *Foundations of Contextual Therapy: Collected Papers of Ivan Boszormenyi-Nagy, M.D.* (New York: Routledge 2014).

[22] Lina Nagel, Steffen Roth & Heiko Kleve, *Theory of the Third: A Cybernetic Approach to Escalative Conflict Dynamics in Business Families.* 41 Systems Res. Beh. Sci 1 (2023).

[23] G20/OECD, *supra* n. 17, at 0.

[24] Peter Spiller, *The Disputes Tribunals of New Zealand* (Thomson/Brookers 2003).

[25] Franklin Ngwu & Kalu Ojah, *Intra-Africa Trade and the Need to Rethink the Neo-Liberal Approach* 16(4) Trans. Corp. Rev. (2024).

[26] Thakur & Sinha, *supra* n. 12, at 3018.

be legally transferred from one person to another.[27] African FOBs are, however, largely underpinned by relational relationships rather than contractual relationships where norms are enforced through social networks rather than legal documents.[28] Unlike environments with clear policies and guidelines on ownership and asset distribution, African FOBs are largely founded on familiarity and strong family ties with little or no documentation, and institutionalised guidelines on how operations should be carried out.[29] Many African FOBs operate within the informal economy such that the informality, partly attributed to administrative and legal hurdles to business registration and licensing,[30] pose challenges to using formal and contractual parameters for defining FOBs.[31] The coexistence of Western-based formal legal frameworks, considered by some as alien, and multiple informal ethnic group-based customary arrangements even hinder intra-Africa trade.[32] We reinforce the argument that international arbitration as a Western construct may be unsuitable for developing countries with entrenched traditional dispute resolution systems.[33]

This paper therefore makes several contributions underpinned by its contextualist approach to corporate governance. First, it challenges the viewpoint that corporate law and corporate governance are 'relatively culturally neutral in nature'.[34] It departs from the dominant literature on the meaning, composition and governance of FOBs, which has centred on the Global North.[35] The paper then contributes to scholarship on a 'differentiated approach to corporate governance'[36] by focusing on FOBs, the African regional context and the roles of customary arbitration in facilitating the broader ideal of access to justice. In doing this, we also contribute to scholarship on legal pluralism. According to Van Den Berghe, '[i]n more operational terms, pluralism is characterised by the relative absence of value consensus; the relative rigidity and clarity of group definition; the relative presence of conflict, or, at least, of lack of integration and complementarity between various parts of the social system; the segmentary and specific character of the relationship, and the relative existence of sheer institutional duplication (as opposed to functional differentiation or specialisation) between the various segments

[27] Hernando de Soto, *The Mystery of Capital* (London: Transworld Publishers 2000); Frederic L. Pryor, *Some Economics of Property Relations* § 9, 264–289 (Frederick L. Pryor ed., (Prentice-Hall Inc1985).
[28] Doreen Nyarko Anyamesem Odame & Robert E. Hinson, *African Family Dynamics and Family Business – A Perspective Article* 14(5) J. Fam. Bus. Man. 878, 879 (2024); Alejandro Portes & William Haller, *The Informal Economy* § 18, 403–427 (Neil J. Smelser & Richard Swedberg eds, Russell Sage Foundation 2005).
[29] Odame, *supra* n. 28.
[30] Susanna Khavul, Garry D. Bruton and Eric Wood, *Informal Family Business in Africa* 33(6) Entr. Th. Pr. 1219, 1222 (2009).
[31] Khayul, Bruton & Wood, *supra* n. 30, at 1220.
[32] Ngwu & Ojah, *supra* n. 25.
[33] Samson L. Sempasa, *Obstacles to International Commercial Arbitration in African Countries* 41(2) Int'l Comp. L. Quart. 387, 392 (1992).
[34] David Cabrelli & Mathias Siems, *A Case-Based Approach to Comparative Company Law* § 1, 10 (Mathias Siems and David Cabrelli eds., Bloomsbury Publishing 2018).
[35] Terry A. Beehr, John A. Drexler, & Sonja Faulkner, *Working in Small Family Businesses: Empirical Comparisons to Non-Family Businesses* 18(3) J. Org. Beh. 297 (1997); Lucia Naldi, Mattias Nordqvist, Karin Sjoberg, & Johan Wiklund, *Entrepreneurial Orientation, Risk Taking, and Performance in Family Firms* 20(1) Fam. Bus. Rev. 33 (2007).
[36] Cally Jordan, *Voluntary Codes of Corporate Governance: Evolution and Implications* § 12, 209, 223 (Oonagh Fitzgerald ed., Centre for International Governance Innovation 2020).

of the society'.[37] Interestingly, the G20/OECD Principles of Corporate Governance 2015 note that '[t]here is no single model of good corporate governance.'[38]

Second, proceeding on the basis that access to justice is society specific and culturally appropriate, the paper shows that customary arbitration can offer an effective and legitimate mechanism for facilitating transformative corporate governance for FOBs. With insights from New Zealand's Disputes Tribunals, the paper demonstrates that the contextualization of FOBs will help to develop a more nuanced foundation for conflict resolution in such businesses. While governance systems for conflict resolution exist in FOBs, their suitability for the type and complexity of the dispute is necessary for their effectiveness.[39] This is a contribution to family governance scholarship. Compared to business system side of FOBs' corporate governance, scholarship on 'family governance-governance of the relationship among family members and family relationship with the business' is relatively recent.[40]

Third, the paper demonstrates that informality in structures and standards is not antithetical to corporate governance and can even be a component of access to justice provision. In this regard, the paper contributes to scholarship on sustainable development bearing in mind that Goal 16 of the UN Sustainable Development Goals (SDGs) aims to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable institutions at all levels.' The contribution of FOBs to accelerating progress towards achieving the SDGs is recognised by the strategic partnership of the United Nations Trade and Development (UNCTAD) and the Family Business Network in the 'Family Business for Sustainable Development'[41] initiative targeted at mobilising such businesses' commitment to concrete, measurable SDGS' contributions. The impact of FOBs is deeply ingrained in communities because they offer local economic growth through localised employment, direct investment in the communities, stable working environments and preservation of tradition.[42] These factors are directly linked to the attainment of SDG 8, which emphasises decent work and economic growth. Indeed, case studies have shown that with their unique values and long-term perspective, FOBs can drive sustainability and contribute to the SDGs.[43]

The rest of the paper is structured as follows. First, the paper considers the conceptions of FOB and family and underlines the impact of the differing understandings of family in the Global North and Africa. Second, it demonstrates that the inevitability of conflicts

---

[37] Pierre L. van den Berghe, *Toward a Sociology of Africa* 43(1) *Soc. For.* 11–18(1964).
[38] G20/OECD, *supra* n. 17, at 10.
[39] Sacristan-Navarro M., Cabeza-Garcia L. *When Family Firm Corporate Governance Fails: The Case of El Corte Ingles*, 10(2) J. Fam. Bus. Man. 97–115 (2019).; Asael Islas-moreno, Manrrubio Muñoz-rodríguez, Vinicio Horacio Santoyo-cortés, Enrique Genaro Martínez-gonzález, Norman Aguilar-gallegos & Wyn Morris, *The Role of Conflict in the Adoption of Governance Practices in Family Businesses* 12(4) J. Fam. Bus. Man. 959–980 (2021).
[40] Thakur & Sinha, *supra* n. 12, at 3016.
[41] *Family Business for Sustainable Development* (1 August 2024), https://fbsd.unctad.org/.
[42] Angela Powers & Jingyan Zhao, *Staying Alive: Entrepreneurship in Family-Owned Media across Generations* 14(4) Balt. J. Man. 641 (2019).
[43] Naomi Birdthistle, *Harnessing the Power of Purpose: How Family Businesses are Incorporating Sustainable Development Goals for Good* Griffith Asia Insights (8 May 2024, 14:48 PM BST), https://blogs.griffith.edu.au/asiainsights/harnessing-the-power-of-purpose-how-family-businesses-are-incorporating-sustainable-development-goals-for-good/.

neccesitates resolution mechanisms. It then examines the existing corporate governance and family governance approaches to formal and alternative dispute resolution in FOBs, noting questions around their effectiveness. The third part provides an account of customary arbitration in pre- and post-colonial Nigeria and underlines challenges to dispute resolution through the formal courts and ADR systems. With references to legal transplant theory, the case is made for a context-specific corporate governance framework for FOBs. In the fourth part, the paper shows that customary arbitration is pertinent for contemporary FOBs in certain contexts and uses New Zealand's Disputes Tribunal to illustrate that an informal dispute resolution mechanism can be supported by a legal framework. Before concluding, the paper outlines how customary arbitration underpinned by a differentiated approach to corporate governance can be implemented for FOBs.

FOBs and Family – A Contextualist Perspective

FOBs – formal or informal – are recognised as the most dominant form of business organisation in the world.[44] They represent more than 60% of global gross domestic product (GDP) and around 60% of global employment,[45] with the world's largest 500 family enterprises estimated to be the third largest 'trillion-dollar economy' after the United States and China if they were a national economy. In Europe with its strong tradition of FOBs in the proportion of company and employment numbers, Germany is the regional lead.[46] FOBs account for around 70% of small and medium enterprises (SMEs) in Africa.[47] They are linked to both national and regional economic growth and sustainable development[48] as important contributors to the creation of wealth and employment in economies ranging from small enterprises serving the neighbourhood to large conglomerates that operate in multiple industries and countries.[49] Cross-jurisdictional estimates show similar significant contributions of FOBs to society and

[44] Mike Burkart, Fausto Panuzi & Andrei Shleifer, *Family Firms* 58 J. Fin. 2167 (2003); Rafael La Porta, Florencio Lopez-De-Silanes and Andrei Shleifer, *Corporate Ownership around the World* 54(2) J. Fin. 471 (1999); Mustafa Kavas, Paula Jarzabkowski & Amit Nigam, *Islamic Family Business: The Constitutive Role of Religion in Business* 163(4) J. Bus. Eth. 689–700 (2020); Alvarado-Alvarez, Armadans, Parada & Anguera, *supra* n. 1.

[45] Eduardo Asaf, Igor Carvalho, Acha Leke, Francesco Malatesta & Jose Tellechea, *The Secrets of Outperforming Family-Owned Businesses: How they Create Value-and How you can Become One* McKinsey & Company, 8 July 2024, 10:03 AM BST), https://www.mckinsey.com/industries/private-capital/our-insights/the-secrets-of-outperforming-family-owned-businesses-how-they-create-value-and-how-you-can-become-one#/ .

[46] Isabel C. Botero, Cristina Cruz, Alfredo De Massis & M. Nordqvist, *Family business Research in the European context* 9(2) Eur. J. Int. Manage. 139-159 (2015); Lauri Oinaala, Robert Stover & Desmond Teo, *How the Largest Family Enterprises are Outstripping Global Economic Growth* Ernst & Young Global (16 January 2025, 10:25 AM GMT), https://www.ey.com/en_gl/insights/family-enterprise/family-business-index#:~:text=Europe%20has%20a%20strong%20tradition,of%20employees%20(3.35%20million).

[47] Rob Withagen, *African Family-Owned Businesses are Becoming More Open to Investment* The Africa Report (20 August 2024, 11:25 AM BST), https://www.theafricareport.com/100119/african-family-owned-businesses-are-becoming-more-open-to-investment/.

[48] Rodrigo Basco, *Family Business and Regional Development—A Theoretical Model of Regional Familiness* 6 *J. Fam. Bus. Strat.* 259–271 (2015); Esra Memili, Hanqing C. Fang, James J. Chrisman & Alfredo De Massis, *The Impact of Small-And Medium-Sized Family Firms on Economic Growth* 45 *Small Bus. Econ.* 771–785 (2015).

[49] Veland Ramadani & Frank Hoy, *Context and Uniqueness of Family Businesses* § 2, 9 (Leo-Paul Dana & Veland Ramadani (eds., Springer Cham2015).

national economies,[50] including in India where FOBs contribute more than 75% of national GDP.[51] In multi-ethnic and culturally diverse Nigeria, ranked as the fourth largest African economy, an estimated GDP of US$253 billion[52] is partly fuelled by around 23.4 million FOBs including some of the biggest ones in West Africa.[53] Known as *chaebols*, FOBs played a leading role in the transformation of the South Korean economy and its emergence out of poverty after the Japanese occupation and Korean war.[54]

Essentially, a FOB is 'a business governed and/or managed with the intention to shape and pursue the vision of the business held by a dominant coalition controlled by members of the same family or a small number of families in a manner that is potentially sustainable across different generations of a family or families'.[55] However, there is no standardised, universally accepted definition or understanding of a FOB. This may be partly due to the relatively young nature of FOB research as a field of academic study in comparison with more established fields. Despite widespread acknowledgment of the dominant role of FOBs in many countries, few scholars paid attention to the specificities of family-owned and family-controlled companies prior to the 1980s.[56] In recognition of the growing importance of family business research as a scholarly discipline, the field has gained momentum in recent decades with researchers taking different approaches to the definition of a FOB.

Nevertheless, the literature reveals two foremost theoretical approaches to definition of FOBs: the components-of-involvement and essence approaches. The components–of–involvement approach focuses on the identity of the individuals involved as the key element of a definition. It posits that family involvement in some form – ownership, governance, management or succession – is sufficient to gain the FOB label.[57] For example, Barnes and Hershon simply defined a FOB as one in which a single family or individual controls its ownership.[58] Similarly, after analysing 90 different definitions from 33 countries, the European Commission adopted the Finnish approach and conceptualised FOB as one in which the majority of votes are in the possession of a

---

[50] Family Business UK, *Annual Report 2023* 4 (8 July 2024, 15:22 PM BST), https://mcusercontent.com/0be059c72164016f85babd128/files/b3d98276-487c-697c-6b5e-5fff8cf73f31/FBUK_Annual_Report_2023.02.pdf .

[51] Avinash Goyal & Chaitali Mukherjee, *Five Differentiators of Outperforming Family-Owned Businesses in India,* McKinsey & Company (10 December 2024, 10:22 AM GMT) https://www.mckinsey.com/featured-insights/future-of-asia/five-differentiators-of-outperforming-family-owned-businesses-in-india.

[52] International Monetary Fund, *GDP, Current Prices* (10 July 2024), https://www.imf.org/external/datamapper/NGDPD@WEO/DZA/ZAF/MAR/NGA/EGY/AFQ.

[53] Asoko Insight & BusinessDay, *West Africa's Family-Owned Business Landscape* 21 (10 July 2024) https://a.storyblok.com/f/43998/x/866b4a161c/ai21_-fob-west-africa_book.pdf .

[54] Tharawat Magazine, *The Giants of Korea: The Success Story of the Chaebol*, (8 July 2024) https://www.tharawat-magazine.com/economic-impact-family-businesses/korea-success-story-chaebol/.

[55] Jess H. Chua, James J. Chrisman, Pramodita Sharma, *Defining the Family Business by Behaviour* 23 Entre. Th. Pract. 19, 25 (1999).

[56] Ramona K. Z. Heck, Frank Hoy, Panikkos Z. Poutziouris & Lloyd P. Steier, *Emerging Paths of Family Entrepreneurship Research*46 J. Sma. Bus. Man. 317 (2008).

[57] Siebels & Knyphausen-Aufseß, *supra* n. 11, at 284; James J. Chrisman, Jess H. Chua and Pramodita Sharma, *Trends and Directions in the Development of a Strategic Management Theory of the Family Firm* 29(5) Entre. Th. Prac. 555 (2005).

[58] Louis B. Barnes & Simon A. Hershon, *Transferring Power in the Family Business* 54(4) Har. Bus. Rev. 105 (1976).

natural person, their immediate family or a representative of the family.[59] Here, to the extent that ownership and managerial control is concentrated within a family unit, then that business is seen as a FOB so that family members' close involvement with the business is seen as essential.

In contrast, the essence approach believes that family involvement is essential but should not be the sole criteria as the family involvement must be directed towards a distinctive characteristic for which that FOB is uniquely known. The approach focuses on how much influence the family has on the policy of a business and the importance of perpetuating the family's control of the operations of the business.[60] On this premise, the argument is that the 'theoretical definition must be based more on the essence of family influence than the components of family involvement … [as the] intentions and vision of a dominant family coalition and the potential transgenerational sustainability of that vision are the theoretical features that distinguish family and nonfamily firms.'[61] An early prescription by Miller and Rice for qualification as a FOB is that the members of one family must 'own enough of the voting equity to enable them [to] control strategic policy and tactical implementation.'[62] Similarly, Donnelly described a family business as one which is closely identified with at least two generations of a family and the link has had a mutual influence on the company policy and the interests and objectives of the family.[63]

Other scholars suggest that FOBs can only truly be identified by a convergence of both the components-of-involvement and essence approaches. Leach *et al* are of the view that single-family effectively controls the firm through the ownership of greater than 50% of the voting shares, and a significant portion of the firm's senior management team is drawn from the same family.[64] In any event, irrespective of the approach being utilised, the generally accepted prerequisites for classifying a firm as a FOB are ownership, management, control, generations, and the intention to pass the business down as an inheritance within the family. FOBs are characterised by significant levels of family involvement and majority ownership.[65] Indeed, a key identifier of FOB is family.

The term 'family' encompasses a sense of belongingness and loyalty to one's relatives characterised by interdependence and long-term commitments.[66] The importance of families to individual and community wellbeing cannot be overstated. Family, as an

[59] Family Entrepreneurship Working Group, *Family Entrepreneurship: Family Enterprises as the Engines of Continuity, Renewal and Growth Intensiveness* (Finnish Ministry of Trade and Industry, 2005); European Commission Directorate-General for Enterprise and Industry, *Overview of Family-Business-Relevant-Issues: Research, Networks, Policy Measures and Existing Studies – Final Report of the Expert Group* 10 (November 2009).
[60] Naomi Birdthistle & Rob Hales, *The Meaning of Being a Family Business in the 21st Century* § 2, 11 (Naomi Birdthistle & Rob Hales eds., Emerald Publishing Limited 2023).
[61] Chrisman et al., *supra* n. 11, at 5.
[62] E. J. Miller & A. K. Rice, *The Family Business in Contemporary Society* § 9, 107 (E. J. Miller & A. K. Rice eds., 1st ed. Tavistock Publications Limited 1967).
[63] Robert Donnelley, *The Family Business* 42(4) Har. Bus. Rev. 93–105 (1964).
[64] Peter Leach et al, *Managing the Family Business in the U.K.: A Stoy Hayward Survey in Conjunction with the London Business School* Stoy Hayward (1990).
[65] Nurten Dede & Evren Ayranci, *Exploring the Connections Among Spiritual Leadership, Altruism, and Trust in Family Businesses 48*(6) Qual. & Quan. Int'l J. Meth. 3373–3400 (2014).
[66] Dawn O. Braithwaite et al., *Constructing Family: A Typology of Voluntary Kin* 27(3) J. Soc. Per. Rel. 388-407(2010).

institutional system, has been a basic unit of society since prehistoric times.[67] In the dominant literature, FOBs are largely conceptualised as comprising of immediate relatives connected through blood or marriage.[68] Despite the significant level of FOB activities in other regions, a perusal of the definitions and descriptions of FOBs in the literature appear Eurocentric and North American[69] with the dominant understanding reflecting the American and European notions of family. Rosenblatt *et al*, for example, define FOBs as those in which two or more members of the same family control, are directly involved in, and own a majority of the business.[70] Similarly, Tobak and Nabradi define a FOB as an 'enterprise in which the majority ownership and/or majority control belongs to the same family, and at least one family member actively works in the business'.[71] The concept of family in these contexts indicates tight circles of immediate relatives connected through blood or marriage.[72] Here, the family is seen through the lens of the nuclear unit consisting of parents and children. Therefore, in the descriptions of FOBs, there are elements of formal ownership, or a right to property, recognised in the law which individuals can sell, trade, or transfer to other generations[73] This understanding of family limits its meaning in comparison to its scope across the Global South.

For example, the 'African family is large, very large'.[74] While recognising the cultural diversity of the continent, the meaning of family in the African context extends beyond the nuclear family – families are more closely knit with membership straddling more than one household.[75] For example, Mbiti observes that 'for African people, the family has a much wider circle of members than the work suggests in Europe or North America. In traditional society, the family includes children, parents, grandparents, uncles, aunts, brothers and sisters who may have their own children and other immediate relatives', with relationships based on kinship and affinity and including adopted and fostered children.[76] As a result, a broader set of individuals are included under the rubric of family than would be the case for a corresponding definition of the family in the global north.

The unique socioeconomic, cultural and political landscape of the African continent significantly influences the meaning of family and family-owned businesses. While Africa is a highly diverse continent with distinct historic and economic development and social traditions, the family system is largely similar with the family comprising of more than just its nuclear parts of mother, father and children. Large extended families, in various

[67] Kenji Itao & Kunihiko Kaneko, *Evolution of Family Systems and Resultant Socio-Economic Structures* 8 Hum. Soc. Sci. Com. 243 (2021).
[68] Beehr, Drexler & Faulkner, *supra* n. 35; Naldi, Nordqvist, Sjoberg & Wiklund, *supra* n. 35.
[69] Jula Pindado & Ignacio Requejo, *Family Business Performance from a Governance Perspective: A Review of Empirical Research* 17(3) Int'l J. Man. Rev. 279–311(2015); Hanqing Fang, Kulraj Singh, Taewoo Kim, Laura Marler, & James J. Chrisman, *Family Business Research in Asia: Review and Future Directions* 39(4) *Asia Pac. J. Man.* 1215–1256 (2022); Thakur & Sinha, *supra* n. 12, at 3023, 3041.
[70] Paul Rosenblatt et al, *The Family in Business: Understanding and Dealing with the Challenges Entrepreneurial Families Face* (San Francisco, CA: Jossey-Bass 1985).
[71] Julia Tobak & Andras Nabradi, *The TONA model: A New Methodology for Assessing the Development and Maturity Life Cycles of Family Owned Enterprises* 5 J. Inno. Kno. 236, 237 (2020).
[72] Beehr, Drexler & Faulkner, *supra* n. 35; Naldi, Nordqvist, Sjoberg & Wiklund, *supra* n. 35.
[73] Soto, *supra* n. 27; Pryor, *supra* n. 27, at 264-289.
[74] Peter Geschiere, *"The African Family is Large, very Large" Mobility and the Flexibility of Kinship – Examples from Cameroon'* 21(3) Eth. 335(2020).
[75] Brian Siegel, *African Family and Kinship* Anthropology Publications. Paper 3 (1996).
[76] John S. Mbiti, *African Religions and Philosophy* 106 (London: Heinemann Educational Books Ltd. 1969).

configurations and across multiple generations, live together, pool resources and share responsibilities for communal growth and wellbeing. In Kenya, for example, 'extended family households and family ties beyond the household are much more prevalent than nuclear family units made up of husband, wife, and their children... most marriages are really between extended families, not merely between individuals as in the West'.[77] While the nuclear family type is generally becoming more prominent in recent times,[78] African societies are traditionally structured around the extended family with the relationship between family members largely governed by customs and traditions.

Culture therefore has a significant impact in the composition and operations of FOBs in Africa. In fact, a popular principle for indigenous African business is ubuntu, which means 'humanity to others' and connotes that people are what they are because of what all people are.[79] As a result, FOBs can be designed to foster communal living and prosperity. In this type of business arrangement, the differences between FOBs and other businesses can be more pronounced. In terms of strategic goals and performance outcomes,[80] FOBs are more likely than other businesses to look beyond profits for purpose, strive to protect their reputations and adopt a long-term orientation.[81] Their unique characteristics include familial ties, long-term orientation and SEW with Patel and Chrisman noting that FOBs pursue non-economic goals that create SEW including the ability to exercise family influence.[82] In this situation, conflicts are inevitable from time to time in FOBs and acknowledging the role of 'familiness'[83] may be crucial.

Dispute Resolution and FOBs' Governance

In FOBs, conflicts can occur between family and non-family members, family members or non-family members.[84] Conflicts of family-business, family-ownership or family-business-ownership types[85] can overlap between family and business irrespective of the

---

[77] Philip L. Kilbride, Collette A. Suda, & Enos Njeru, *Street Children in Kenya: Voices of Children in Search of a Childhood* (Westport, CT: Greenwood Publishing Group, 2000).

[78] Betty Bigombe & Gilbert M. Khadiagala, *Major Trends affecting Families in Sub-Saharan Africa* 2 (20 July 2024, 9:22 AM BST), https://www.un.org/esa/socdev/family/Publications/mtbigombe.pdf; Haley McEwen, *Nuclear Power: The Family in Decolonial Perspective and 'Pro-Family' Politics in Africa* 34(6) Dev. So. Af. 738 (2017); Donald Aletheia, Sara Lowes & Julia Vaillant, *Family Structure and Childcare in Sub-Saharan Africa* 114 Am. Econ. Ass. Pa. Pro. 449 (2024).

[79] Mbigi*, supra* n. 13*;* Vipin Gupta, Nancy Levenburg, Lynda Moore, Jaideep Motwani & Thomas V. Schwarz, *Family Business in Sub-Saharan Africa Versus the Middle East* 11(2) J. Af. Bus. 146 (2010).

[80] Luis R. Gomez-Mejia, Cristina Cruz, Pascual Berrone & Julio De Castro, *The Bind That Ties: Socioemotional Wealth Preservation In Family Firms* 5(1) Aca. Man. Ann. 653–707 (2011).

[81] Cristina Cruz, Martin Larraza-Kintana, Lucia Garcés-Galdeano, Pascual Berrone, *Are Family Firms really more Socially Responsible?* 38 Entre. Th. Pract. 1295–1316 (2014); Jianhua Ge & Evelyn Micelotta, *When Does the Family Matter? Institutional Pressures and Corporate Philanthropy in China* 40(6) Organization Studies 833, 850 (2019).

[82] Pankaj C. Patel & James J. Chrisman, *Risk Abatement as a Strategy for R&D Investments in Family Firms* 35 Strat. Man. J. 617 (2014).

[83] Allessandro Michilli Guido Corbetta & Ian C. MacMillan, I, *Top Management Teams in Family-Controlled Companies: 'Familiness', 'Faultlines', and Their Impact on Financial Performance 47*(2) *J. Man. S.* 20 (2010).; Thomas M. Zellweger, Kimberly A. Eddlestonn & Franz W. Kellermanns. *Exploring the Concept of Familiness: Introducing Family Firm Identity* 1(1) J. Fam. Bus. Strat. 54–63 (2010); Julia Sues, *Family Governance – Literature Review and the Development of a Conceptual Model.* 5(2) J. Fam. Bus. Strat. 138–155(2014).

[84] Nikola Rosecká, Ondrej Machek, *Non-Family Members and Conflict Processes in Family Firms: A Systematic Review of Literature* 92(2) *J. Bus. Econ.* 235–281 (2022).

[85] Hong Qiu & Mark Freel, *Managing Family-Related Conflicts in Family Businesses: A Review and Research Agenda.* 33(1) *Fam. Bus. Rev.* 90–113 (2020).

location of the triggers.[86] Dysfunctional behaviour may be displayed in interactions with others and can cause conflicts and negatively affect the family business.[87]

Tensions and conflicts in FOBs are real as a growing body of scholarship[88] shows and this can be attributed to a number of factors. The categorisation by Caputo et al[89] of conflicts in FOBs as organisational, firm growth, and family control and performance conflicts helpfully illuminates the breadth of potential triggers for conflicts in FOBs. Disputes can arise over matters such as allocation of resources and distribution of assets and power, management and leadership, succession and control, communication and information asymmetry, and competence, employment, roles and rewarding or sanctioning of family members, and changes any of these may entail can affect the FOBs' performance.[90] Personal matters such as divorce can affect FOBs[91] and can even be bi-directional.[92] Disputes can be triggered by differing perceptions of the priorities of the business. Differences in perceptions of ethical standards can cause conflicts.[93] As the SEW theory[94] explains, non-economic factors are important to family businesses and, as such, corporate decisions may need or result in a cost and benefit analysis and balancing of non-economic factors and financial goals. In matters such as diversification of business, assets and

---

[86] Franz W. Kellermann & Kimberly Eddleston, *A Family Perspective on When Conflict Benefits Family Firm Performance* 60(10) J. Bus. Res. 1048–1057 (2007); Shital Jayantilal, Silvia F. Jorge & Tomas M. Palacios, *Effects of Sibling Competition on Family Firm Succession: A Game Theory Approach* 7(4) J. Fam. Bus. Strat. 260–268 (2016).

[87] Grant Gordon & Nigel Nicholson, *Family Wars: Classic Conflicts in Family Business and How to Deal with Them* (Kogan Page 2008); Roland E. Kidwell et al, *Families and Their Firms Behaving Badly: A Review of Dysfunctional Behaviour in Family Businesses* 37(1) Fam. Bus. Rev. 89-129 (2024).

[88] Peter S. Davis & Paula D. Harveston, *The Phenomenon of Substantive Conflict in the Family Firm: A Cross-Generational Study* 39(1) *J. Sm. Bus. Man.* 14–30 (2001); Frank Hermann, Alexander Kessle, Lavinia Nosé L & Daneila Suchy, *Conflicts in Family Firms: State of the Art and Perspectives for Future Research* 1(2) J. Fam. Bus. Man. 130–153 (2011); Torsten Pieper, Joseph H. Astrachan & George E Manners, *Conflict in Family Business: Common Metaphors and Suggestions for Intervention* 62 Fam. Rel. 490-500 (2013); Kent Rhodes & David Lansky, *Managing Conflict in the Family Business: Understanding Challenges at the Intersection of Family and Business* (New York, Palgrave Macmillan 2013); Hoelscher M. *Does Family Capital Outweigh the Negative Effects of Conflict on Firm Performance?* 4(1) J. Fam. Bus. Man. 46–61(2014).

[89] Andrea Caputo, Giacomo Marz, Massimiliano M. Pellegrini & Riccado Rialti, *Conflict Management in Family Businesses: A Bibliometric Analysis and Systematic Literature Review* 29(4) *Int'l J. Conf. Man.* 519–542 (2018).

[90] Peter S. Davis & Paula D. Harveston, *The Phenomenon of Substantive Conflict in the Family Firm: A Cross-Generational Study* 39(1) J. Sm. Bus. Man. 14–30 (2001); Blanco-Mazagatos V., Quevedo-Puente E., Delgado-Garcia J. *How Agency Conflict between Family Managers and Family Owners Affects Performance in Wholly Family-Owned Firms: A Generational Perspective* 7 J. Fam. Bus. Strat. 167–177 (2016); Jayantila, Jorge & Palacio, *supra* n. 86.

[91] Kajsa Haag & Lars-Goran Sun, *Divorce in the Family Business: Unfolding the Legal Problems by Learning from Practice* 6(1) J. Fam. Bus. Man. 81–96 (2016); Haag K., Achtenhagen L. *The Impact of Divorce on the Family Business System in SMEs-Patterns of Coping Strategies, Commitment, and Ownership Regulations* 44(4) Int'l J. Entre. Sm. Bus. 335–358 (2021).

[92] Paul Sanchez-Rui, Ileana Maldonado-Bautist, Matthew Rutherford, *Business Stressors, Family-Business Identity, and Divorce in Family Business: A Vulnerability-Stress-Adaptation (VSA) Model* 9(3) J. Fam. Bus. Strat. 167–179 (2018).

[93] Roland E. Kidwell, Franz W. Kellermanns & Kimberly A. Eddleston, *Harmony, Justice, Confusion, and Conflict in Family Firms: Implications for Ethical Climate and the "Fredo Effect."* 106(4) J. Bus. Eth. 503–517 (2012).

[94] Luis R. Gómez-Mejía, Katalin T. Haynes, M. Nύῆez-Nickel, K.J.L Jacobson & Jose Moyano-Fuentes, *Socioemotional Wealth and Business Risks in Family-controlled Firms: Evidence from Spanish Olive Oil Mills* 52 Admin. Sci. Quar. 106-137 (2007); Kerstin Fehre & Florian Weber, *Why Some are More Equal: Family Firm Heterogeneity and the Effect on Management's Attention to CSR*. 28(3) Bus. Eth.: A Eur. Rev. 321–334 (2019); Swab, Sherlock, Markin & Dibrel, *supra,* n. 20.

investments, innovation in products and services and expansion and internationalisation, SEW-related conflicts can arise and affect the FOBs' operations and performance.[95] As intergenerational misunderstandings and conflicts on gender, religious and political ideologies exist in families,[96] these can be present in FOBs.

The acculturation-gap distress hypothesis[97] suggests that potential gaps between the norms a family's heritage and 'mainstream' culture can result in significant differences in the beliefs and behaviours of family members, including different generations. For a FOB, what is 'mainstream' may depend on time and place as business evolves. Likewise, individuals in FOBs may gravitate towards different values and beliefs,[98] including religions,[99] which may influence SEW-related[100] approaches and behaviours.

Some commentators see conflicts as both 'essential' to and a 'reason' for failure of FOBs.[101] Conflicts are not necessarily bad and may be beneficial to family businesses,[102] for example, in relation to tasks and strategies (cognitive conflicts) and responsibility for tasks (process conflicts).[103] This, however, requires a forum for discussions with clarity and trust and therefore a constructive approach to dispute resolution. Governance mechanisms are important for relationship regulation and conflict resolution in FOBs.[104]

---

[95] Pascual Berrone, Cristina Cruz & Luis R. Gomez-Mejia, *Socioemotional Wealth in Family Firms: Theoretical Dimensions, Assessment Approaches, and Agenda for Future Research* 25 Fam. Bus. Rev. 258–279 (2012); Thilo J. Pukall & Andrea Calabrò, *The Internationalization of Family Firms: A Critical Review and Integrative Model* 27(2) Fam. Bus. Rev. 103-125 (2013); Timothy J. Morgan, & Luis R. Gomez-Mejia, *Hooked on a Feeling: The Affective Component of Socioemotional Wealth in Family Firms* 5(3) J. Fam. Bus. Strat. 280-288 (2014); Luis R. Gomez-Mejia, Pankaj C. Patel & Thomas M. Zellweger, *In the Horns of the Dilemma: Socioemotional Wealth, Financial Wealth and Acquisitions in Family Firms* 44 J. Man. 1369-1397 (2018); Jean-Luc Arregle *et al*, *Family Firm Internationalization: Past Research and an Agenda for the Future* 52 J Int'l. Bus. Stud. 1159–1198 (2021).

[96] Casey M. Gambon, Elizabeth R. Watters & Kayla Reed-Fitzke, *Gender, Religious, and Political Ideologies among Three-Generation Families: Implications for Family Conflict* 70(5) *Fam. Rel.* 1529–1545 (2021); Roy Suddaby & Peter Jaskiewicz, *Managing Traditions: A Critical Capability for Family Business Success* 33(3) *Fam. Bus. Rev.* 234–243 (2020).

[97] Mayra Y. Bamaca-Colber, Carolyn S. Henry, Norma Perez-Brena, Jochebed G Gayles & Griselda Martine, *Cultural Orientation Gaps Within a Family Systems Perspective.* 11(4) J. Fam. Th. Rev. 524–543 (2019).

[98] Pasquale M. Picone, Alfredo De Massis, Yi Tang, Ronald F. Piccolo, *The Psychological Foundations of Management in Family Firms: Values, Biases, and Heuristics*. 34(1) *Fam. Bus. Rev.* 12-32 (2021).

[99] Ted A. Paterson, Dave Specht & Dennis Duchon, D, *Exploring Costs and Consequences of Religious Expression in Family Businesses* 10(2) J. Man. Sp. Rel. 138–158 (2013); Kavas, Jarzabkowski & Nigam, *supra* n. 44.

[100] Fabian Ernst, David Bendi & Lea Puechel, *Religion in Family Firms: A Socioemotional Wealth Perspective on Top-Level Executives with Perceived Religiosity* 194 J. Bus. Eth. 707-730 (2024).

[101] Steffen Großmann & Arist Von Schlippe, *Family Businesses: Fertile Environments for Conflict* 5(2) J. Fam. Bus Man. 294-314 (2015).

[102] Christina A. E. Claßen & Reinhard Schulte, *How Do Conflicts Impact Change in Family Businesses? The Family System and Familiness as a Catalytic Converter of Change* 30(7) J. Org. Ch. Man. 1198-1212 (2017); Alvarado-Alvarez, Armadans, Parada & Anguera, *supra* n. 1.

[103] Kellermanns & Eddleston, *supra,* n. 86.

[104] Siebels & Knyphausen-Aufseß, *supra* n. 11; Keanon Alderson, *Conflict Management and Resolution in Family-Owned Businesses* 5 J. Fam. Bus. Man. 140-156 (2015); Thomas Zellweger & Nadine Kammerlander, *Family, Wealth, and Governance: An Agency Account* 39(6) *Entre. Th. Pract.* 1281–1303 (2015); Tomás González-Cruz, José Antonio Clemente-Almendros & Alba Puig-Denia, *Family Governance Systems: The Complementary Role of Constitutions and Councils* 34:1 *Economic Research-Ekonomska Istraživanja*, 3139-3165 (2021).

Dispute resolution does not feature prominently in some formal corporate governance codes. The UK Corporate Governance Code 2024, like its previous iterations, focuses on the areas of board leadership and company purpose, division of responsibilities, composition, succession and evaluation, audit, risk and internal control and remuneration and does not contain provisions for dispute resolution. The 'comply or explain' approach of the UK Corporate Code is an informal provision[105] which has been noted for lacking an enforcement mechanism, including by external regulatory authorities.[106] In terms of enforcement, shareholder pressure as the preferred option in the Code has had a mixed result.[107] The UK Corporate Governance Code provides for the ability of investors (shareholders) to 'engage constructively and discuss with the company' and their 'every right to challenge explanations if they are unconvincing'.[108] There are no provisions for dispute resolution between the corporate participants. Arguably, the implicit assumption is the effectiveness of the formal legal system, which is globally renowned,[109] as well as the adequacy of provisions for directors' duties, removal of directors, derivative claims, unfair prejudice and other corporate governance matters in the Companies Act 2006. Several European countries have modelled their corporate governance codes after the UK Corporate Governance following its initial version in 1992.[110] This may be due to the similarities in the business and operating environments.

Governance mechanisms identified in scholarship for conflict resolution in FOBs include traditional corporate governance ones such as shareholders in general meeting and board of directors.[111] Articles of association[112] of FOBs and other companies may,[113] but do not typically, include dispute resolution clauses. Shareholders' agreements[114] are also a formal contractual mechanism for creating personal obligations and potentially providing for conflict resolution. However, in treating FOBs as just a business, traditional corporate governance embeds some assumptions,[115] including on participants' rationality and bargaining powers that may be unsuitable for family businesses. This has prompted a proposal for 'corporate family law'[116] to respond to the unique circumstances of FOBs.

---

105 Marc T. Moore, *Whispering Sweet Nothings: The Limitations of Informal Conformance in UK Corporate Governance* 9 J. Corp. L. St. 95, 103 (2009).

106 Andrew Keay Comply or Explain in Corporate Governance Codes: In Need of Greater Regulatory Oversight 34(2) *Leg. St.* 279, 291 (2014).

107 Bobby V. Reddy, *Thinking Outside the Box – Eliminating the Perniciousness of Box-Ticking in the New Corporate Governance Code* Mod. L. Rev. 692 (2019); Brian R. Cheffins & Bobby V. Reddy, *Thirty Years and Done – Time to Abolish the UK Corporate Governance Code* 22 J. Corp. L. St. 709-748 (2022).

108 UK Corporate Governance Code 2024, p.4.

109 Oliver Brand, *Conceptual Comparisons: Towards a Coherent Methodology of Comparative Legal Studies* 32 Brook. J. Int'l L. 405–466 (2007); Catherine Valcke, Comparing legal styles 15(3) *Int'l J. L Cont* 274-296 (2019); D. J. Ibbetson, *The Renaissance of English Legal History* Camb. L. J. 80(S1):S91-S106 (2021).

110 E. Wymeersch, *The Enforcement of Corporate Governance Codes* 6(1) J. Corp. L. Stu. 113 (2006).

111 David B. Audretsch, Marcel Hülsbeck & Erik E. Lehmann, *Families as Active Monitors of Firm Performance* 4(2) J. Fam. Bus. Strat. 118-130 (2013); Cristina Bettinelli, Marco Mismetti, Alfredo De Massis, Barbara Del Bosco, *A Review of Conflict and Cohesion in Social Relationships in Family Firms* 46 *Entre. Th. Pract.* 539–577 (2022).

112 *Bratton Seymour Service Co. Ltd v. Oxborough* [1992] BCLC 693 at 698 (Steyn LJ); Law Commission, *Shareholder Remedies (Law Commission Report No. 246)* (HMSO, 1997), paras.7.3-7.12.

113 *Fulham Football Club (1987) Ltd v. Richards* [2011] EWCA Civ 855.

114 *Welton v. Saffery* [1897] AC 299; *Snelling v. John G. Snelling Ltd* [1973] 1 QB 87; *Cane v. Jones* [1980] 1 WLR 1451; *Growth Management Ltd v. Mutafchiev* [2007] 1 BCLC 645.

115 Allison A. Tait, *Corporate Family Law* 112 *Nw. U. L. Rev.* 1-60 (2017).

116 Tait, *supra* n. 115.

Moreover, the traditional mechanisms reflect 'a purely corporate governance logic' lacking an adequate account of 'family complexity', a label relating to the number and relationships of family members and generations in FOBs.[117] Family complexity differs from business complexity, including in relation to impact and risk profile and management.[118] Family complexity is emphasised in family governance which refers to 'a system of processes and structures put in place at the highest level of the business, family, and ownership to make the best possible decisions regarding the direction of the business and assurance of accountability and control.'[119]

FOB-specific conflict resolution corporate governance mechanisms such as 'family councils', 'family protocols', 'succession plans', 'family assemblies' or 'family meetings', and 'family constitutions' have also appeared in scholarship.[120] Informal outlets for dispute resolution include family events, celebrations, retreats, discussion, culture and values.[121] These formal and informal 'family governance'[122] mechanisms for dispute resolution are, however, closely tied to family complexity and, as such, may be controlled by certain family members without due consideration of business complexity. The observation that '[t]he family governance structure is clearly separate from the corporate governance and management of the family-owned firm'[123] is an implicit nod to concerns raised by FOB dispute resolution mechanisms controlled by family members. As a result, 'family offices'[124] are wealth management structures controlled by professionals for the benefit of families.

Additionally, both corporate governance and family governance approaches can utilise ADR. From the corporate governance perspective, it is possible in some jurisdictions to include clauses in the articles of association to facilitate recourse to arbitration[125] and

[117] González-Cruz, Clemente-Almendros & Alba Puig-Denia, *supra* n. 104.
[118] Ivan Lansberg, *Succeeding Generations: Realizing the Dream of Families in Business* (Harvard Business Review Press 1999); Alberto Gimeno-Sandig, Gemma Baulenas & Joan Coma-Cros, *Family Business Models: Practical Solutions for the Family Business* 57-77 (Palgrave Macmillan 2010); Alfredo De Massis, Josip Kotlar, Giovanna Campopiano & Lucio Cassia, *Dispersion of Family Ownership and the Performance of Small-to-Medium Size Private Family Firms* 4(3) J. Fam. Bus. Strat. 166–175 (2013); Danny Miller, Isabelle Le Breton-Miller & Richard H. Lester, *Family Firm Governance, Strategic Conformity, and Performance: Institutional v. Strategic Perspectives* 24(1) Org. Sci. 189-209 (2013).
[119] Miguel Gall & Denise Kenyon-Rouvinez, *The Importance of Family and Business Governance* § 4, 45 (Kenyon-Rouvinez & Ward eds., Palgrave Macmillan 2005).
[120] Isabel C. Botero, Gonzalo Gomez-Betancourt, Jose B. B. Ramirez & Maria P. Lopez-Vergara, *Family Protocols as Governance Tools: Understanding Why and How Family Protocols are Important in Family Firms* 5(2) *J. Fam. Bus. Man.* 218-237 (2015); Rocio Arteaga & Susana Menendez-Requejo, *Family Constitution and Business Performance: Moderating Factors*. 30(4) *Fam. Bus. Rev.* 320–338 (2017); Antonio Duréndez, Antonia Madrid-Guijarr & Gines Hernández-Cánovas, *Do Family Firms' Specific Governance Mechanisms Moderate the Cost of Debt?* 29(1) *Aus. Acc. Rev.* 49–63 (2019).
[121] Thakur & Sinha, *supra* n. 12, at 3019, 3020.
[122] Thakur & Sinha, *supra* n. 12, at 3016, 3017.
[123] González-Cruz, Clemente-Almendros & Alba Puig-Denia, *supra* n. 104, at 3144.
[124] Lucia Naldi, Francesco Chirico, Franz W. Kellermanns & Giovanna Campopiano, *All In The Family? An Exploratory Study of Family Member Advisors and Firm Performance* 28(3) *Fam. Bus. Rev.* 227–242 (2015); E. Rivo-López, Monica Villanueva-Villar, Alberto V. García & Santiago Lago-Peñas, *Family Offices: What, Why and What For* 66(4) *Organizational Dynamics* 262–270 (2017); González-Cruz, Clemente-Almendros & Alba Puig-Denia, *supra* n. 104.
[125] *Fulham Football Club (1987) Ltd supra* n. 113; *Tomolugen Holdings Ltd v. Silica Investors Ltd* [2015] SGCA 57; *L Capital Jones Ltd v. Maniach Pte Ltd* [2017] SGCA 3; *Anupam Mittal v. Westbridge Ventures II Investment Holdings* [2023] SGCA 1; *Teo Heng Tatt v. All Kurma Sdn Bhd & Ors* [2024] CLJU 1471.

other ADR methods for resolving disputes. Likewise, shareholders' agreements relating to FOBs can include similar clauses, and these would be enforceable as a matter of contract law. Contractual clauses for reference to arbitration and other ADR methods are normally enforceable.[126] Family governance can also involve ADR methods. In practice, informal arbitration and informal mediation are also used utilised and may involve family leaders, relatives, friends or spiritual or religious leaders.[127]

Nonetheless, the degree of formality of governance structures for FOBs is contested in scholarship.[128] While some[129] argue that formality of governance structures and processes is necessary for effective dispute resolution, others[130] suggest that it can harm the underlying family relationships. Since 'both family and business identities are intertwined' in FOBs with 'shared histories, relationships, interactions, traditions and practices', a governance mechanism that focuses on either may not capture the full essence. Likewise, dispute resolution should reflect both identities.[131]

Another issue relates to the strategies utilised in the approaches to FOBs' conflicts resolution. Management strategies for conflicts in FOBs may include vacillation, domination, separation and third-party intervention.[132] Of all these strategies, third-party intervention appears to offer opportunities for mutual conflict resolution. Arguably, the traditional corporate governance mechanisms of shareholders in general meeting and board of directors as well as FOB-specific mechanisms such as family council, family protocol and succession plan are susceptible to vacillation, domination and separation.

In contrast, customary arbitration system, as historically conceived, provided a flexible, simple and informal method of administering disputes where parties had a say in the way their disputes were administered and trusted the elders of the community, presumed to be knowledgeable of prevalent customs to resolve their dispute and ensure justice.[133] Before showing that customary arbitration offers a middle ground that utilises both formality and informality, this paper traces the role of customary arbitration in Nigeria as an illustration of contextualist considerations in dispute resolution in FOBs.

Customary Arbitration and FOBs

Customary arbitration was a predominant method of resolving civil disputes and it existed in the various indigenous communities in Nigeria prior to the British colonial

---

[126] *Foley v Classique Coaches* [1934] 2 KB 1; *Queensland Electricity Generating Boad v. New Hope Collieries Pty Ltd* [1989] 1 Lloyd's Rep 205.
[127] Thakur & Sinha, *supra* n. 12, at 3037.
[128] Thakur & Sinha, *supra* n. 12, at 3034-3038.
[129] Botero, Betancourt, Ramirez & Vergara, *supra* n. 120; Zellweger & Kammerlander, *supra* n. 104.
[130] Mira Bloemen-Bekx, Anita Van Gils, Frank Lambrechts & Pramodita Sharma, *Nurturing Offspring's Affective Commitment through Informal Family Governance Mechanisms* 12(2) *J. Fam. Bus. Strat.* 100309 (2019); Ken McCracken, *Best Practice Myths and Trusted Advisers* 5(2) J. Fam. Bus. Man. 130–139 (2015); Jeffery S. McMullen & Benjami Warnick, *To Nurture or Groom? The Parent-Founder Succession Dilemma* 39(6) *Entrep. Th. Pract.* 1379–1412 (2015).
[131] Maura McAdam, Eric Clinton, Willaim B. Gartner & Eleanor Hamilton, *How Family Business Practices are Created, Maintained, and Transformed across Generations from a Community of Practice Lens Entrep. Reg. Dev.* 1, 2 (2024).
[132] Qiu & Freel, *supra* n. 85.
[133] L. A. Ayinla, *ADR and the Relevance of Native or Customary Arbitration in Nigeria* 5 U. Il. L. J. 254, 260 (2009).

rule.[134] Customary arbitration was used to resolve private and trade disputes between members of the community as well as between communities in pre-colonial Nigeria. Prior to colonialism and the establishment of the modern state, exchange of goods and services featured in many Nigerian communities. Although occurring in a largely informal manner, trade of items such as food, oil palm, clothes, calabashes and, indeed, slaves within and across communities was the norm.[135] From around 1851 when Lagos, Nigeria, was first colonised, trade evolved to be more international in nature with both importation and exportation of mainly agricultural products such as cocoa, rubber and groundnuts[136] by mostly British companies.

To effectively manage the trading activities, pre-colonial societies developed indigenous methods of resolving economic and social disputes.[137] Several communities and ethnic groups developed dispute resolution mechanisms, including mediation and arbitration though not described in such exact terms. These mechanisms were characterised by an overlap rather than clear boundaries. Mediation and customary arbitration were preferred because of their capacity to promote cohesion even after disruptive disputes as restoration of the pre-dispute cordiality was an integral part of most African cultures founded on the principle of promoting reconciliation and re-adjusting disturbed social relationships.[138]

Customary arbitration, like customary law, is determined by the customs and traditions of the community to which it applies. Like modern day domestic and international arbitration, the consent of both parties was integral to the validity of the customary arbitration process. The elder selected by an aggrieved claimant was expected to call the other party against whom an accusation had been made[139] who then had the option to accept or refuse the elder selected by the claimant. If they chose to submit to this particular elder's jurisdiction, all the parties involved were then expected to agree on a date, place and time for the hearing of the case. Otherwise, both parties would have to agree on another suitable elder to act as their arbitrator.[140]

---

[134] Paul O. Idornigie, *Overview of ADR in Nigeria* 73(1) Arbitration 73 (2007); Chinedum I. Umeche, *Customary Arbitration and the Plea of Estoppel Under Nigerian Law* (35) 2 Comm. L. Bul. 293 (2009); Abdulmumini A. Oba, *Juju Oaths in Customary Law Arbitration and their Legal Validity in Nigerian Courts* 52 J. Af. L. 139, 140 (2008); Oluwafemi A. Ladapo, *Where does Islamic Arbitration Fit into the Judicially Recognised Ingredients of Customary Arbitration in the Nigerian Jurisprudence* 8(2) Af. J. Conf. Res. 103, 110 (2008).

[135] R. Olufemi Ekundare, *An Economic History of Nigeria 1860-1960* 50 (Methuen & Co Ltd 1973); E. Isichei, *A History of Nigeria* § 3 (Longman 1983).

[136] Chi B. Anyansi-Archibong, *Strategy and Structure of Enterprise in a Developing Country* 81 (Avebury 1988).

[137] Niki Tobi, *Sources of Nigerian Law* (MIJ Professional Publishers, Lagos 1996); Obilade, *supra* n. 14 at 17; Ben Nwabueze, *Machinery of Justice in Nigeria* 45 (1st edn, Butterworths 1963); Ayinla, *supra* n. 133 at 255; Andrew Chukwuemerie, *The Internationalisation of African Customary Law Arbitration* 14(2) Af. J. Int'l Comp. L 143 (2006); Olubayo Oluduro, *Customary Arbitration in Nigeria: Developments and Prospects* 19(2) J. Int'l Comp. L. 307, 321 (2011).

[138] Muhammed M. Akanbi, *Domestic Commercial Arbitration in Nigeria: Problems and Challenges* 151 (Lambert Academic Publishing: Germany 2012); J. M. Elegido, *Jurisprudence* 128 (Spectrum Law Lagos 2001); Andrew Chukwuemerie, *The Internationalization of African Customary Law Arbitration* 14(2) Af. J. Int'l Comp. L. 143 (2008).

[139] Judith Fumnanya Rapu, *Alternative Dispute Resolution of Indigenous African Disputes: An Irrelevant Myth or Catalyst for Modern Global Relations?* Nig. Inst. Ad. Le. Stu. J. 271, 294 (2012).

[140] Taslim O. Elias, *The Nature of African Customary Law* 217 (Manchester University Press 1956).

Furthermore, just like in contemporary arbitration practice, parties had a right to fair hearing as well as some form of legal representation by whosoever they desired.[141] Likewise, the elders were required to issue arbitral awards, which though not always written like those in contemporary times, contained allusions to the legal principles employed including the need for consent/voluntary submission of disputes to arbitration.[142] Similarly, the elders were compelled to do justice in order to 'command the respect and approval of the overwhelming majority of the people'.[143] One of the consequences of the deeply rooted respect for tradition and religion was that the disputing parties readily abided by the decision of the elders in order not to suffer the wrath of the gods.

With the advent of colonisation, and arrival of religions like Christianity and Islam, the influence of customary law and practice, premised on beliefs in ancestral gods, diminished in Nigeria.[144] The institutions founded on traditional religions, including dispute resolution, were progressively dismantled by, among others, being denied legal recognition and ultimately ceasing to function optimally. Consequently, the growth of the practice of customary arbitration was stifled and its recognition therefore limited within the confines of common law and statute.

Crucially, customary arbitration remains the only legally binding pre-colonial method of resolving disputes in Nigeria and any issue determined in customary arbitration proceedings constitutes *res judicata* against future proceedings between the parties.[145] It is regarded as a question of fact and largely a matter of evidence and proof before the courts.[146] The mechanism provided, and should still provide, a functional means of accessing justice at communal and 'grassroots' levels especially in rural and underdeveloped parts of Nigeria devoid of the complexities and associated costs of litigating in state courts.[147]

Nonetheless, it was once observed that 'until comparatively recently, not much effort has been made toward putting the law and practice of customary arbitration in a proper perspective.'[148] Exemplified by *Okpuruwu v Okpokam*[149] which denied its constitutional validity, some Nigerian judges trained in the English legal tradition questioned the exact parameters and principles of customary arbitration. In *Agu v Ikewibe*,[150] Nigeria's Supreme Court settled the controversy by describing the practice of referring a dispute

---

[141] Martin Chukwuka Okany, *The Role of Customary Courts in Nigeria* 5 (Fourth Dimension Publishing Co Ltd 1984).
[142] *Njoku v. Ekeocha* (1972) 2 ECSLR 199; *Obodo v. Oline* (1958) SCNLR 298.
[143] Elias, *supra* n. 140 at 272.
[144] Abdulmumini A. Oba, *supra* n. 134, at 140.
[145] *Egesimba v. Onuzirike* (2002)15 NWLR (Pt. 791) 446; *Okparaji v. Ohanu* (1999) 9 NWLR (Pt. 618) 280; O. K. Edu, *The Effect of Customary Arbitral Awards on Substantive Litigation: Setting Matters Straight* 25 J. Priv. Prop. L. 46 (2004).
[146] Evidence Act CAP E14 Laws of the Federation of Nigeria 2004, s 18; *Okpowagha v. Ewhedoma* (1990) ANLR 208, 213.
[147] Abubakar M. Sani, *Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints* 8 J. Mar. Cons. Res. 14, 20 (2015).
[148] Virtus C. Igbokwe, *The Law and Practice of Customary Arbitration in Nigeria: Agu v. Ikewibe and Applicable Law Issues Revisited* 41 J. Af. L. 201, 202 (1997).
[149] (1988) 4 NWLR (Pt. 90) 554, 571-574; Igbokwe, *supra* n. 148.
[150] (1991) 3 NWLR (Pt. 180) 385.

to one or more laymen designated as 'the only accessible judicial authorities'[151] as customary arbitration. Specifically, the court defined customary arbitration as the 'voluntary submission of the parties, to the decisions of the arbitrators, who are either the chiefs or elders of the community, and the agreement to be bound by such decisions or freedom to resile where unfavourable.'[152] This definition captures the essential features of a valid customary arbitration, which are an arbitration agreement, a dispute, reference to a third party and a decision which will be final and binding on the parties.

Unfortunately, customary arbitration's position in the dispute resolution matrix is undeveloped.[153] There is no legislative framework to enable the development of a standardised and precise national approach to customary arbitration.

Nigeria inherited many of its rules and regulations from the colonial government. Nigeria has had British-styled laws from as early as 1863 when English law was introduced to Lagos as an English colony by virtue of Ordinance No.3 of 1863 through which the statutes of general application, rules of common law and doctrines of equity in force in England on 1 January 1900 became part of Nigerian law.[154] With legal transplantation described as the 'moving of a rule or system of law from one country to another or from one people to another'[155] with its occurrence dependent on various reasons including military operations, conquest or colonisation,[156] Nigeria, like much of Africa, is a historical example of legal transplantation and its use as a development tool.[157]

Nevertheless, based on Gillepsie's argument that an important factor for measuring a transplant's success is changes in legal behaviour in the recipient country,[158] legal transplantation has been partially successful in Nigeria given that its laws and behaviours have predominantly mirrored the received legal system irrespective of domestic peculiarities. English common law remains a major source of Nigerian law despite the existence of domestically codified laws. Legal transplantation placed the common law civil justice system alongside Nigerian customary dispute resolution frameworks like customary arbitration. Customary law includes both the laws of the indigenous population before colonisation as well as Islamic law. Islamic law has a wider application

---

151 Samuel O. Ezediaro, *Guarantees and Incentives for Foreign Investment in Nigeria* 5 Int'l Law 770, 775 (1971). *See also* Andrew Chukwuemerie, *Salient Issues in the Law and Practice of Arbitration in Nigeria* 14 Af. J. Int'l Comp. L. 1, 5 (2006).

152 *Agu v. Ikewibe* (1991) 3 NWLR (Pt. 180) 385, 407.

153 Senyo Adjabeng, *Alternative Dispute Resolution in Ghana, Mediate: Everything Mediation* (13 August 2007), https://www.mediate.com/articles/adjabengs3.cfm; Adedoyin Rhodes-Vivour, *Arbitration and Alternative Dispute Resolution as Instruments for Economic Reform* (8 July 2024), https://drvlawplace.com/wp-content/uploads/2020/07/ARBITRATION-AND-ADR-AS-INSTUMENTS-FOR-ECONOMIC-REFORM.pdf .

154 Obilade, *supra* n. 14; Joseph O. Orojo & M. Ayodele Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* 12 (Mbeyi & Associates 1999).

155 Alan Watson, *Legal Transplants: An Approach to Comparative Law* 21 (2nd ed. University of Georgia Press 1993).

156 Michele Graziadei, *Comparative Law as the Study of Transplants and Receptions* § 16, 456-457 (Reimann & Zimmermann eds., OUP 2006).

157 For more on legal transplantation, *see* Pierre Legrand, *What "Legal Transplants"?* § 2, 55 (Nelken & Feest eds., Hart Publishing 2001); Mathias Siems, *Comparative Law* 197 (Cambridge University Press 2014); Edward M. Wise, *The Transplant of Legal Patterns* 38 Am. J. Comp. L. 16 (1990); David Nelken, *The Meaning of Success in Transnational Legal Transfers* 19 Win. Yr. Bk. Acc. Jus. 349, 362 (2001).

158 John Gillespie, *Towards a Discursive Analysis of Legal Transfers into Developing East Asia* (2008) 40 NYU J. Int'l L. Pol. 657, 688 (2008).

in the northern states of Nigeria, although not indigenous to that part of the country, and for all practical purposes, is treated as customary law.[159]

The dispute resolution system alongside the laws regulating its existence and mode of operation in present day Nigeria is rooted in, and closely patterned after the common law system having undergone a wholesale legal transplantation. Section 6(6)(b) of Nigeria's Constitution empowers the formal courts to adjudicate on matters of civil rights and obligations.[160] These are English-styled courts keeping the colonial legacies of written records of proceedings, precedents, enforcement of decisions and contempt punishment power.

However, the administration of justice faces challenges in Nigeria. Only about 8% of disputes are referred to courts, lawyers and administrative tribunals leaving the remaining 92% to other less structured mechanisms such as involving friends and family as third-party neutrals.[161] Even then, the volume of cases remains a huge challenge for the formal courts. Users of the formal system are not particularly satisfied with the quality of the processes and outcomes of these paths to justice given the perceived unfairness in both formal and informal dispute resolution processes.[162] This dissatisfaction may be hinged on factors including the relatively slavish reliance on technicalities,[163] abuse of procedural tools by legal practitioners, congested court dockets and extensive delays experienced in the administration of justice.[164]

As a result, ADR mechanisms have been promoted for a more effective dispensation of justice to complement Nigeria's courts.[165] Following projections in 1988 of increases in domestic and international trade and investment and consequential disputes,[166] statutory arbitration, in the Arbitration and Conciliation Act 1988 recently updated in the Arbitration and Mediation Act 2023, has been at the forefront of providing a more conducive ADR environment. Similarly, Nigeria's federating states, including Lagos and Oyo,[167] have established multi-door courthouses and ADR centres to facilitate timely

---

[159] Asein, *supra* n. 15.
[160] Constitution of the Federal Republic of Nigeria 1999 (as amended).
[161] Hague Institute for Innovation of Law, *Justice Needs and Satisfaction in Nigeria 2018: Legal Problems in Daily Life* 20-21 (22 June 2024, 12:03 PM BST) https://www.hiil.org/projects/justice-needs-and-satisfaction-in-nigeria/.
[162] Hague Institute for Innovation of Law, *supra* n. 161.
[163] SC. 622c/2019: *Orji Uzor Kalu v. Federal Republic of Nigeria & Ors* (Supreme Court of Nigeria, 8 May 2020).
[164] *Ariori v. Elemo* (1983) 1 SCNLR 1; Damfebo K. Derri, *Alternative Disputes Resolution in Nigeria: A Functional Approach* 139 (Malthouse Press Limited 2016); World Bank Group, *Doing Business 2020 – Comparing Business Regulation in 190 Economies: Economy Profile Nigeria* 87 (5 July 2024) https://archive.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf .
[165] Brendan Malkin, *Nigeria Brings ADR as Part of Court Reforms*, The Lawyer 5 (London, 2 August 2004); Yemi Osibajo, *Proposals for the Reform of the High Court of Lagos State (Civil Procedure) Rules* (Lagos State Ministry of Justice, Lagos 2004).
[166] I. O. Taiwo, *Potential Effects of Privatisation on Economic Growth: The Nigerian Case* 1 Af. Rev. Mo. Fin. Ba. 51(1990); Konyinsola Ajayi, *Nigeria's New Arbitral and Conciliation Process* 7(9) Int'l Ba. L. 140 (1989).
[167] Lagos Multi-Door Courthouse Law 2007 (revised in 2015) and Oyo State Multi-Door Courthouse Law 2017. *See also* Enugu State Multi-Door Courthouse Law 2018.

resolution of disputes and, which despite some challenges, have eased the pressure on the courts.[168]

These ADR reforms largely reflect the Western legal traditions although euphemistically labelled 'global norms/international best practices'. The UNCITRAL Model Law on International Commercial Arbitration, for example, is not designed to recognise or integrate customary arbitration. Notably, the G20/OECD Principles of Corporate Governance 2015 highlighted that '[m]any countries have found that alternative adjudication procedures, such as administrative hearings or arbitration procedures organised… are an efficient method for dispute settlement, at least at the first instance level.'[169] This is, however, potentially problematic. As Tyler once noted, '[r]ather than using traditional or idealized trial-based systems of dispute resolution as criteria against which to evaluate alternative dispute resolution programmes, it may be more reasonable to define a set of desired attributes for a dispute resolution programme and to… ask what goals the justice system is seeking to achieve and then examine the ability of different procedures to achieve those goals.'[170] The World Bank also suggested that '[j]udicial reform needs to be developed with local culture and traditions in mind, and activities need to be sequenced with benchmarks to show demonstrable quick results'.[171]

Nigeria's legal transplantation has not fully considered local conditions such as the existing customary arbitration framework.[172] This is especially so as the origins of ADR predate and spread beyond the geographic boundaries of Western legal traditions.[173] Necessary for legal transplantation are similarities in culture and legal systems between transplant and recipient countries and the infrastructure and institutions to enforce the law. For a FOB corporate governance framework to be effective, therefore, its contextualisation in the country's socio-political and economic peculiarities is needed,[174] as otherwise its long-term viability and effectiveness remains questionable. Given its multi-ethnic and diverse nature and status as a middle-income emerging market dominated by FOBs and the informal economy,[175] Nigeria is an African country that exemplifies the need for contextualising dispute resolution-related aspects of corporate governance. The utility of customary arbitration for contemporary FOBs is therefore addressed next.

---

[168] Emilia Onyema, *The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC* 2(7) Apog. J. Bus. Prop. Const. L. 96 (2013); Gogo Otuturu, *The Multi-Door Courthouse Concept: A Revolution in Alternative Dispute Resolution* 6(4) Grav. Rev. Bus. Prop. L. 99 (2015).
[169] G20/OECD, *supra* n. 17, at 19.
[170] Tom R. Tyler, *The Quality of Dispute Resolution Processes and Outcomes: Measurement Problems and Possibilities* 66 Denv. U. L. Rev. 419, 420 (1989).
[171] Waleed H. Malik, *E-Justice: Towards A Strategic Use of ICT In Judicial Reform*, The World Bank (10 January 2025, 10:02 AM GMT), ftp://pogar.org/LocalUser/pogarp/judiciary/wmalik/ejustice.pdf.
[172] Ademola J. Bamgbose, *Towards a Suitable Domestic Arbitration Practice in Nigeria* (PhD Thesis, University of Warwick 2016).
[173] Jerome T. Barrett & Joseph Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Social, and Cultural Movement* (San Francisco: Jossey-Bass, 2004).
[174] Abner Cohen, *Cultural Strategies in the Organization of Trading Diasporas* 266–281 (C. Meillassoux ed., Routledge 1971); Philip D. Curtin, *Cross-Cultural Trade in World History* (CUP 1984); G. Austin, *Reciprocal Comparison and African History: Tackling Conceptual Eurocentrism in the Study of Africa's Economic Past* 50(3) Af. Stu. Rev. 1 (2007).
[175] Onyemaechi Joseph Onwe, *Role of the Informal Sector in Development of the Nigerian Economy: Output and Employment Approach* 1(1) J. Econ. Dev. Stu. 60 (2013); Ernest Etim & Olawande Daramola, *The Informal Sector and Economic Growth of South Africa and Nigeria: A Comparative Systematic Review* 6(4) J. Op. In. Tech. Mar. Compl. 134 (2020).

Contemporary FOBs and customary arbitration

FOBs are vital to Nigeria's economic development and their growth is spurred by the need for survival in an environment where a significant proportion of the population currently, and for the foreseeable future will, live below the poverty line.[176] A high rate of entrepreneurship and FOBs– comprising of grandparents, parents, guardians, children, siblings, cousins, nieces, nephews and many more– represent around 60% of businesses.[177] The prevalence of FOBs in Nigeria, like many other developing countries, spans decades of trading and agriculture before and during colonisation. Several apprenticeship programmes based on customs and traditions have been successful in continuously producing entrepreneurs who set up businesses which are then likely to be run by family members. For example, the businesses of Ndigbo in Nigeria are historically typically family-owned, starting off as sole proprietorships having 'graduated' from the apprenticeship system, and some eventually evolving into limited liability or publicly quoted companies, attracting international investors.[178]

United by family and kinship ties, Nigerian FOBs have also ventured into emergent areas. For example, a study[179] has identified the emergence of a new breed of cluster in a non-traditional sector (entertainment). It showed that an address (51 Iweka Road, Onitsha) has, alongside Lagos, became the hub of the Nigerian movie industry. Similarly, in the Nnewi geographical cluster of motor spare parts dealers, the businesses shared strong family and ethnic ties which are typical of Igbos in South-eastern Nigeria.[180] These clusters arose mainly because of cultural and historical influences rather than being based purely on geographic proximity.

For FOBs, this suggests that relational conflicts which can erode family social capital[181] and, as such, conflict resolution should take structural, cognitive, and relational dimensions of familiness[182] into account. According to Miller and Breton-Miller, the features that distinguish FOBs from nonfamily businesses are: '(1) close emotional bonds and connections among family members who own and participate in running the firm, and between the family and the business; (2) an unusual capacity and incentive for privacy and secrecy; and (3) rare managerial discretion possessed by family owners and

---

176 World Bank Group, *The World Bank in Nigeria* (21 July 2024), https://www.worldbank.org/en/country/nigeria/overview.

177 Moniepoint, *A Monie Story: A Deep Dive into Nigeria's Family-Owned Businesses* (12 July 2024), https://casestudies.moniepoint.com/familybusinesses/.

178 Okey Nwuke, Chizoba Nwoye and Nnaemeka Onoyima, *Family Businesses, Succession and Survival Strategies* 26 Ind. Af. Ent. 59, 63 (2020).

179 Nnamdi Madichie & Anayo D. Nkamnebe, *51 Iweka Road (Onitsha, Nigeria): Could this Single African Address Redefine Business Cluster Development?* 6(3) Wor. Rev. Entre. Man. Sust. Dev. 229-243 (2010).

180 Nnamdi O. Madichie, Anayo Nkamnebe & Ellis I. Idemobi, *Cultural Determinants of Entrepreneurial Emergence in a Typical Sub-Sahara African Context* 2(4) *J. Enterp. Comm. Peo. Pl. Glob. Eco.* 2(4):285-299 (2008).

181 Nikola Rosecká & Ondrej Machek, *How Relational Conflict Harms Family Firm Performance: The Mediating Role of Family Social Capital and the Moderating Role of Family Ownership* 44 J. Fam. Econ. Iss. 854-869 (2023).

182 Cristina Alvarado-Alvarez, Immaculada Armadans & Maria J. Parada, *Tracing the Roots of Constructive Conflict Management in Family Firms* 13 Negot. Con. Manage. Res. 105–126 (2020).

leaders.'[183] Depending on the priorities of families in control of FOBs, these features can have both positive and negative manifestations and outcomes.[184]

In emphasising the importance of fairness and loyalty in familial relationships, the contextual family therapy theory[185] underlines mutual respect and reciprocity as requirements for relational ethics needed in such relationships. A key pillar of the theory is the role and impact of environment, including family, community and society, in shaping people and their identity and perceptions. In facilitating understanding of the role of participants in family and other social relationships, the goal of the theory includes conflict resolution in addition to building and improving familial and other relationships and promoting healthy interactions and communications. The relevance of the contextual family therapy theory in the family business setting has been acknowledged recently with regards to transgenerational transfer of entrepreneurial culture.[186]

Arguably, customary arbitration provides a forum for relational ethics and for the sustenance of family social capital. Since some family (moral) values may be integrated, reinforced and socialised within FOBs,[187] a sense of justice and fairness is more likely to be guaranteed and sustain the social capital when relational ethics receives attention in dispute resolution. Drawing on the definition of FOBs given by Chua et al,[188] the description of their characteristics by Miller and Breton-Miller,[189] and the need for shared vision and trust,[190] there is the need for conflict resolution in FOBs to reflect and promote the family nexus and essence, shared vision, close emotional bonds and connections, trust, open-mindedness, privacy and secrecy, and sustainable outcome. Additionally, relational ethics requires that less weight should be given to managerial discretion which may expose conflict resolution to domination by interested parties and unfair outcomes. In relation to family system, family business system, non-family members, and external environment, which are the 'subdimensions of family boundaries',[191] Table below shows how these indicators apply to governance mechanisms for conflict resolution in FOBs. Customary arbitration is pre-eminently positioned to reflect those indicators.

Indicator	Traditional Corporate Governance	Customary Arbitration	Family Governance
Family nexus and essence	L	H	H

[183] Danny Miller & Isabelle Le Breton-Miller, Family Firms: A Breed of Extremes? *45*(4) *Entre. Th. Pract.* 663, 664 (2020).
[184] Miller & Breton-Miller, *supra* n. 183.
[185] Boszormenyi Nag & Spark, *supra* n. 21; Boszormenyi-Nagy, *supra* n. 21.
[186] Sheila K. Hanson, Heather M. Hessel, Sharon M. Danes, *Relational Processes in Family Entrepreneurial Culture and Resilience* 10 J. Fam. Bus. Stra. 1-12 (2019).
[187] Ritch L. Sorenso, *How Moral and Social Values become Embedded in Family Firms* 10(2) J. Man. Spi. Rel. 116–137 (2013).
[188] Jess H. Chua, James J. Chrisman, Pramodita Sharma, *supra* n. 55.
[189] Miller & Le Breton-Miller, *supra* n. 183.
[190] Alvarado-Alvarez, Armadans, Parada & Anguera, *supra* n. 1.
[191] Alvarado-Alvarez, Armadans, Parada & Anguera, *supra* n. 1, at 12.

Relational ethics	L	H	H
Shared history	L	H	H
Shared tradition	L	H	H
Shared vision	M	H	H
Emotional bonds and connections	L	H	H
Privacy and secrecy	L	H	H
Communication/bridging information asymmetry	M	H	M
Trust	L	H	M
Legitimacy	M	H	M
Third-party element	H	H	L
Costs and efficiency	H	M	L
Managerial discretion	H	M	L
Legal pluralism	L	H	M
Access to justice	M	H	L
Certainty (finality of outcome)	H	H	L

H=high; L=low; M=medium

Table: *FOBs' Dispute Resolution Mechanisms in Legal Pluralism*

Customary arbitration offers a third-party intervention that is less adversarial than the formal judicial system and corporate governance dispute resolution mechanisms and provides room for relational ethics to be prioritised in a more structured way than existing family governance mechanisms. The third-party element of customary arbitration is not alien to FOB corporate governance. The role of professional advisers in interpersonal conflict resolution and corporate governance for FOBS generally has received scholarly attention.[192] Mediation has also become an increasingly crucial conflict resolution mechanism in FOBs.[193] In postulating a 'theory of the third', Nagel et al[194] have

[192] Salvato, C., & Corbetta, G. *Transitional Leadership of Advisors as a Facilitator of Successors' Leadership Construction* 26(3) *Fam. Bus. Rev.* 235–255 (2013); Kelin Gersick & Neus Feliu, *Governing the Family Enterprise: Practices, Performance, and Research* 196–225 (Melin, Nordqvist & Sharma eds., *Sage* 2014); Alexandra Bertschi-Michel, Nadine Kammerlander & Vanessa M. Strike, *Unearthing and Alleviating Emotions in Family Business Successions* 44(1) *Entrep. Th. Pract.* 81–108 (2020).; Julia K. de Groote & Alexandra Bertschi-Michel, *From Intention to Trust to Behavioral Trust: Trust Building in Family Business Advising* 34(2) Fam. Bus. Rev. 132-153; Thakur & Sinha, *supra* n. 12, at 3037-3038.

[193] John M. Haynes, Thomas M. Usdin et al, *Resolving Family Business Disputes through Mediation* 10 Fam. Bus. Rev. 115–134 (1997); Alvarado-Alvarez, Armadans, Parada & Anguera, *supra* n. 1; Nagel, Roth & Kleve, *supra* n. 22.

[194] Nagel, Roth & Kleve, *supra* n. 22.

found that third-party elements and interventions such as consultants, professional mediators and nonfamily members are not usually neutral and can result in the escalation or de-escalation of disputes within FOBs. Arguably, the recognition of third-party recourse in the theory of the third has linkages to rule of law. After all, '[t]he rule of law depends upon the existence and availability of courts and tribunals to which citizens may resort for the determination of differences between them which they cannot otherwise resolve.'[195]

Having an independent arbitrator in customary arbitration may assist in moderating the culture basis of dispute resolution in FOBs. As Akin Ojelabi eloquently observed:

> the idea of culture as the basis of any dispute resolution process must acknowledge the following: culture is not static — it changes over time; culture is what people say it is, and power has a lot to do with how culture is formed and deployed; the answer to who speaks for culture has a lot to do with whose voice is louder; culture is often contested; there is no homogenous cultural group, intra-group differences usually abound; and culture can be employed and deployed to fight a cause or restrict control and oversight. Because culture may be employed to achieve the interests of those in power, adopting cultural norms or processes should be pursued cautiously.[196]

The recognition of and support for customary arbitration for FOBs is line with the provisions of the UN Declaration on the Rights of Indigenous Peoples. The Declaration refers to rights to 'maintain and strengthen their distinct political, legal, economic, social and cultural institutions' (article 5), 'promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards' (article 34), and 'access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights' (article 40). For these reasons, the United Nations Development (UNDP), through the 'Activating Village Courts in Bangladesh (AVCB) Programme', is supporting Bangladesh in improving its village courts as an 'effective local dispute resolution mechanism'.[197] The courts were created under the Village Courts 2006 with jurisdiction in minor civil and criminal cases and provide access to justice to rural residents of the country.

[195] *Johnson v. Gore Wood & Co* [2002] 2 AC 1, 22 (Lord Bingham).
[196] Ojelabi, *supra* n. 3, at 238.
[197] United Nations Development Programme, *Activating Village Courts in Bangladesh Phase III* (10 March 2025, 10:03 AM GMT), https://www.undp.org/bangladesh/projects/activating-village-courts-bangladesh-phase-iii#:~:text=The%20Activating%20Village%20Courts%20in,from%20January%202016%2DJune%202022.

Nevertheless, customary arbitration is still recognised by Nigeria's Constitution[198] and the Arbitration and Conciliation Act 1988, section 35(b) of which acknowledges arbitration 'in accordance with the provisions of other laws.' Customary arbitration is valid to the extent of its consistency with any other statutory law in force in Nigeria[199] and the courts will recognise its existence and binding character where appropriate.[200] The courts have also shown a willingness to enforce customary arbitration awards provided the award meets the prescribed criteria.[201] Finally, customary arbitration may be used for the settlement of social disputes between different families and for commercial disputes between traders.[202]

Overall, recognising the role of customary arbitration in FOBs will promote access to justice and, consequently, sustainable development. The International Commission of Jurists (ICJ) underlined 'the potential role of indigenous and other traditional and customary justice systems in efforts to achieve "access to justice for all" and "effective, accountable and inclusive institutions" under UN Sustainable Development Goal 16.'[203] Although labelled imprecise by some,[204] a helpful definition of access to justice by the United Nations Development Programme (UNDP) is 'the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.'[205] This definition underlines that dispute resolution can be pursued through both formal and informal means insofar as they are likely to be effective. Access to justice 'serves to focus on two basic purposes of the legal system– the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state. First, the system must be equally accessible to all, and second, it must lead to results that are individually and socially just.'[206] As Friedman argued, access to justice involves questions as to 'who is supposed to have access; to what; and for what purpose?' and 'whether there is a realistic and practical way of turning this claim into reality, and of pursuing this complaint.'[207] What is justice in a FOB scenario may not apply to other contexts due to relational ethics. Similarly, the institution of a

[198] Constitution of the Federal Republic of Nigeria *supra* n. 160, at ss 315(1) and 315(4)(b) recognize customary law as an 'existing law' and by implication upholds the validity of customary arbitration as it is derived from customary law.
[199] G. Ezejiofor, *The Prerequisites of Customary Arbitration* 16 J. Priv. Prop. L. 30, 32 (1992-1993); C. A. Candide-Johnson & Olasupo Shasore, *Commercial Arbitration Law and International Practice in Nigeria* 5 (Lexis Nexis 2012).
[200] *Okoye v. Obiaso* (2010) 8 NWLR (Pt .1195) 145, 171-172; *Achor v. Adejoh* (2010) 6 NWLR (Pt. 1191) 537, 569.
[201] However, it must be noted that the courts have been somewhat inconsistent in stating the essential ingredients for a valid customary arbitration award. *See Egesimba v. Onuzuike* (2002) 15 NWLR (Pt. 791) 466; *Awonusi v. Awonusi* (2007) All FWLR 1642, 1662; *Achor v. Adejoh* (2010) 6 NWLR (Pt 1191) 537, 569; *Okoye v. Obiaso* (2010) 8 NWLR (Pt 1195) 145, 171-172.
[202] Ernest E. Uwazie, *Modes of Indigenous Disputing and Legal Interactions among the Ibos of Eastern Nigeria* 34 J. Leg. Pl. 89 (1994); Ezejiofor, *supra* n. 199.
[203] International Commission of Jurists, *Indigenous and other Traditional or Customary Justice Systems in the Asia-Pacific Region: Report of the 2018 Geneva Forum of Judges and Lawyers*, 5 (Geneva, 2019).
[204] Adrian Bedner & Jacqueline Vel, *An Analytical Framework for Empirical Research on Access to Justice* Law, Social Justice and Global Justice Journal 1 (28 February 2024), https://warwick.ac.uk/fac/soc/law/elj/lgd/2010_1/bedner_vel/.
[205] *See* United Nations Development Programmes, *Programming for Justice: Access for All – A Practitioner's Guide to a Human-Right-Based approach to Access to Justice* (Bangkok: UNDP 5, 2005).
[206] Mauro Cappelletti and Bryant Garth, *Access to Justice and the Welfare State: An Introduction* 6 (Cappelletti & Garth eds., EUI 1981).
[207] Lawrence M. Friedman, *Access to Justice: Some Historical Comments* 37 Ford. Ur. L. J. 3 (2010).

claim in a forum where relational ethics may not be prioritised may not be regarded as a pathway to justice and the justness of its outcome may be questioned by key FOB players. A Yoruba proverb, '*Aa Kii ti Kootu de dore*' ('friends who go to court never return as friends') captures the disconnect between the justice system through the formal courts and ADR mechanisms and Nigerian communities and how this can influence perceptions of justice.

What role customary arbitration can play in dispute resolution and broader corporate governance of contemporary FOBs is then the question. The prominence of customary rules and principles in New Zealand's Disputes Tribunal is a useful indication of the plausibility of customary law-based dispute resolution mechanism utilising both formal and informal methods and operating within ambits of the formal legal system. One of the prerequisites for appointment as a 'Referee' of the Disputes Tribunals is 'the candidate's awareness of tikanga Māori' Rule 35C(2)(d) of the Disputes Tribunal Rules 1989 (SR 1989/34). Tikanga Māori refers to Māori customary law, principles and practices.

The Disputes Tribunal has been in existence in New Zealand following the enactment of the Disputes Tribunal Act 1988 which came into force in 1989.[208] Previously, there were several Disputes Tribunals in the country until March 2017 when s. 261 of the District Court Act 2016 consolidated them into a single Disputes Tribunal. Currently, one Disputes Tribunal exists with 'offices' in different locations.[209] The Tribunal has the powers of a court.[210] However, the provisions of s.19(1)(e)(f) underline key differences. According to the subsections, '(e) where it appears to the Tribunal that an agreement between the parties, or any term of any such agreement, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, the Tribunal may make an order varying the agreement, or setting it aside (either wholly or in part): (f) where it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation, or mistake, or any writing purporting to express the agreement between the parties does not accord with their true agreement, the Tribunal may make an order varying, or setting aside, the agreement or the writing (either wholly or in part)'. The power to vary parties' agreement or a term of an agreement is not consistent with common law principles which enable the courts to set aside agreements in such circumstances.[211]

Unlike a conventional court, however, the Disputes Tribunal can facilitate negotiated settlements of disputes between parties which can then be adopted as approved settlements.[212] Similarly, section 25(2)(3) states: 'Where the Tribunal finds that a person who appears to it to have a sufficient connection with the proceedings on a claim in the capacity of an applicant or a respondent has not been given notice of the proceedings, it may direct a Registrar to give, and the Registrar shall give, to such person notice of the claim, and of the time and place for hearing. For the purposes of this section, a person has a sufficient connection with the proceedings on a claim if that person's presence as an applicant or a respondent is necessary to enable the Tribunal to effectually and completely determine the questions in dispute in the claim or to grant the relief that it

---

[208] Disputes Tribunal Act 1988 (New Zealand), s. 1(2).
[209] Disputes Tribunal Act *supra* n. 208, s. 4A.
[210] Disputes Tribunal Act *supra* n. 208, ss 19, 20.
[211] *E.g., Royal Bank of Scotland v. Etridge* (No 2) [2001] UKHL 41.
[212] Disputes Tribunal Act *supra* n. 208, s. 18.

considers to be due.' There is no room in these provisions for the adversarial system of a conventional court. The informal nature of the Tribunal is exemplified by the provision that '[n]o proceedings of the Tribunal, or order or other document of the Tribunal shall be set aside or quashed for want of form'.[213]

Decisions of the Disputes Tribunal made between 1 January 2024 and 31 July 2024 included cases between relatives such as a dispute over payments by a mother for the son,[214] a claim by an accountant against the trustee of a family trust,[215] a claim against a former partner for removing the applicant's vehicle from her property after the relationship ended,[216] a claim by a company against its former shareholder, director and employee for reimbursement of payments for internet supply to the respondent's home after the employment relationship ended,[217] claims and counterclaims over the mortgage and outgoings of a house jointly purchased and serving as the parties' joint residence before their relationship broke down,[218] a claim by a couple against their former daughter in-law over the latter's disposal of their gift to their grandchild,[219] a claim for profit share on property sale by a couple against their daughter's partner[220] and social arrangements (airport transfer and pet care) between parties in a relationship.[221] Other cases triggered by informal arrangements decided by the Tribunal within the period included informal lodging and boarding arrangements,[222] disputes between flatmates,[223] a claim relating to an agreement between two neighbours to share costs of a new power cable,[224] a claim against a house guest for damage to property,[225] failure to repay a loan by a friend[226] and by a flatmate[227] and claim by a member against a club.[228] Business context specific cases included claims for a breach of agreement to purchase a business,[229] relating to informal peer-to-peer non-intermediated transactions,[230] for inadequate pre-inspection of property before the applicant purchased property at an auction,[231] and for poor management services.[232] These cases demonstrate that an informal mechanism can be propped by formal law to resolve disputes arising from both formal and informal transactions and in business and non-business contexts involving relatives. Instructively, the G20/OECD Principles of Corporate Governance 2015 suggest that '[a]s new experiences accrue and business circumstances change, the different provisions of the corporate governance framework should be reviewed and, when

[213] Disputes Tribunal Act *supra* n. 208, s. 54.
[214] *AA v. BB* [2024] NZDT 80.
[215] *E Ltd v. MN as trustee of NC Family Trust & OC* 2024 NZDT 182.
[216] *OT v. KD* [2024] NZDT 49.
[217] *T Ltd v. BE* [2024] NZDT 78.
[218] IQ & WK v. HK [2024] NZDT 134.
[219] *DU & TU v. OE* [2024] NZDT 75.
[220] *ND & OD v. MF* [2024] NZDT 32.
[221] *CL v. HG* [2024] NZDT 118.
[222] *TD v. KD* [2024] NZDT 174; *TD v. MT* [2024] NZDT 173; *TN v. KM* [2024] NZDT 106.
[223] *WL v. SE* [2024] NZDT 160; *NH v. TC* [2024] NZDT 175; *IX v. HO* [2024] NZDT 90; *XQ v. HM* [2024] NZDT 140; *WD v. NU & OT* [2024] NZDT 38; *MT v. BX* [2024] NZDT 85.
[224] *PQ v. ET* [2024] NZDT 73.
[225] *DQ v. CC* [2024] NZDT 22.
[226] *HC v. HT* [2024] NZDT 223.
[227] *MT v. BX* [2024] NZDT 85.
[228] *KN v. XD Inc* [2024] NZDT 131.
[229] *B Ltd v C Ltd & others* [2024] NZDT 99.
[230] *SB v. LQ* [2024] NZDT 128; *BL & CM v. KB (aka CK)* [2024] NZDT 180; *MU v. GB* [2024] NZDT 189.
[231] *BD v. C Ltd* [2024] NZDT 63.
[232] *SX v. Q Ltd & TX* [2024] NZDT 112; *SX v. R Ltd & M Ltd* [2024 NZDT 14.

necessary, adjusted.'[233] How a suitable corporate governance framework for customary arbitration in the FOB context is therefore considered next.

Customary arbitration via differentiated corporate governance

To an extent, the Disputes Tribunal is a model although it is designed as a less formal litigation mechanism. The Tribunal is a division of the District Court,[234] and, as such, a court. This is also evident from its origins as reflected in section 82 of the Disputes Tribunal Act 1988 which repealed the Small Claims Tribunals Act 1976 and subsequent amending legislations and the confirmation by section 83 that legislative references to the Small Claims Tribunals apply to the Disputes Tribunal and vice versa. Sections 19 and 20 of the 1988 statute also confirm that the Disputes Tribunal has the powers of a court. Due to the Disputes Tribunal's status, this paper does not propose a wholesale adoption of its approach in the integration of customary arbitration for FOBs. Instructively, section 13(2)(4) of the Disputes Tribunals Act suggests that the Tribunal's proceedings are judicial and not arbitral, while section 58(2) declares explicitly that such proceedings are 'judicial proceedings'. The proposal in this paper is for a free-standing customary arbitration model, including in status and jurisdiction, even if some suggestions are derived from the legal framework supporting the Disputes Tribunal.

In the first instance, a differentiated approach to corporate governance is required for FOBs in recognition of the interplay of family complexity and business complexity, the latter including the operative legal pluralism. The G20/OECD Principles of Corporate Governance hint at differentiated corporate governance in proclaiming that '[w]hat works well in one company, for one investor or a particular stakeholder may not necessarily be generally applicable to corporations, investors and stakeholders that operate in another context and under different circumstances.'[235] The Principles also reiterate the need 'to allow for flexibility and address specificities of individual companies.'[236]

Similarly, the UK Corporate Governance, since its 2010 iterations, has reflected a 'differentiated approach to corporate governance'[237] with inbuilt flexibility that allows adaption to companies of different types and in diverse circumstances.[238] The Code expresses the need for 'flexibility' and 'taking full account of company circumstances' as well as the application of its principles 'in the context of the particular circumstances of the company' such as 'the size, complexity, history and ownership structure of a company'.[239] It is also provided that shareholder evaluation of the comply-or-explain reports should take 'a company's individual circumstances' into account.[240] While the Code focuses on companies with 'a premium listing', typically large companies, it acknowledges the need for separate corporate governance codes for different company

[233] G20/OECD, *supra* n. 17, at 13.
[234] Disputes Tribunal Act *supra* n. 208, ss 2(b), 4(1).
[235] G20/OECD, *supra* n. 17, at 13.
[236] G20/OECD, *supra* n. 17, at 13.
[237] Cally Jordan, *Voluntary Codes of Corporate Governance: Evolution and Implications* 209, 223 (Fitzgerald ed., Centre for International Governance Innovation 2020).
[238] Keay, *supra* n. 106 at 279.
[239] UK Corporate Governance Code, *supra* n. 108 at 3, 4.
[240] UK Corporate Governance Code, *supra* n. 108 at 4.

types.[241] This has limited the reach of the Code due to the number of UK listed companies and the declining influence and performance of the UK stock market.[242]

Differentiated corporate governance needs a legal and institutional framework. Notably, the explanation to Principle 1 ('ensuring the basis for an effective corporate governance framework') of G20/OECD Principles of Corporate Governance 2015 observes that '[e]ffective corporate governance requires a sound legal, regulatory and institutional framework that market participants can rely on when they establish their private contractual relations.' It also suggests a 'desirable mix between legislation, regulation, self-regulation, voluntary standards' reflecting 'a country's specific circumstances, history and tradition'.[243] Integrating customary arbitration in FOBs via differentiated corporate governance therefore requires a clear legal framework, specifying jurisdiction and other matters. In Nigeria's case the recognition and legitimisation of the practices identified in *Agu v Ikewibe*[244] in a structured legislative framework, with necessary modifications, can elevate them as national approaches to dispute resolution. Customary arbitration will then be placed on a more prominent and impactful position in the dispute resolution system. However, clarity of jurisdiction is a necessity. For instance, the status of Nigeria's statutory arbitration in corporate governance is not completely clear. While a court recognised the arbitrability of shareholder disputes,[245] the Federal High Court declared that tax matters were non-arbitrable due to the exclusive jurisdiction over tax matters vested on it by Nigeria's Constitution.

In contrast, the subject matter (contract or quasi-contract, tortious destruction, loss or recovery of property) and monetary (Aus$30,000 limit) jurisdiction of New Zealand's Disputes Tribunal is specified by section 10(1) of the Disputes Tribunal Act 1988. A provision in section 13 that allowed parties to agree to extend the Tribunal's subject matter jurisdiction was repealed by section 37 of the Tribunals Powers and Procedures Legislation Act 2018. According to section 16(1)(2), parties cannot contractually exclude or limit the Tribunal's jurisdiction, including via an arbitration clause or agreement except when section 11(1) of the Arbitration Act 1996 applies. The Tribunal may strike a claim over which it does not have jurisdiction or transfer the claim to the District Court or to the Motor Vehicle Disputes Tribunal where applicable.[246] A transfer of proceedings can come from the District Court or the High Court to the Tribunal.[247]

The legal framework for customary arbitration should also provide a statement of overarching principles, preferably within a statute. The experience of New Zealand Disputes Tribunal is an indication that statutory provision of overarching principles can enhance the effectiveness of the process, including with regards to the application of legislative provisions in a diverse range of areas. The Tribunal has, for example, determined disputes relating to the Fair Trading Act 1986,[248] Contract and Commercial

---

[241] UK Corporate Governance Code, *supra* n. 108 at 5.
[242] Brian R. Cheffin & Bobby v. Reddy, *Will Listing Rule Reform Deliver Strong Public Markets for the UK?* 86(1) Mod. L. Rev. 176 (2023).
[243] G20/OECD, *supra* n. 17, at 13.
[244] (1991) 3 NWLR (Pt. 180) 385.
[245] *Fagbola v. Niger Offshore Service Ltd & SBM Offshore Inc.* (Suit No. FHC/L/CP/1570/2014).
[246] Disputes Tribunal Act *supra* n. 208, s. 36.
[247] Disputes Tribunal Act *supra* n. 208, s. 37.
[248] *HI v. B Ltd* [2024] NZDT 8; *NC v. GT Limited* [2024] NZDT 39; *HI v. D Ltd and FB* [2024] NZDT 26.

Law Act 2017,[249] Credit Contracts and Consumer Finance Act 2003,[250] Compensation Act 2001,[251] Limitation Act 2010,[252] Property Law Act 2007,[253] Contributory Negligence Act 1947[254] and Personal Properties Securities Act.[255] The reasonable care and skill principle stipulated in the Consumer Guarantees Act 1993 has been applied in a number of cases the Tribunal decided.[256]

To ensure greater accessibility to the overarching principles as well as the legal framework, procedures and processes of customary arbitration, guidelines should be published. Instructively, section 56A of the Disputes Tribunal Act 1988 inserted by s.60 of the Tribunals Powers and Procedures Legislation Act 2018 requires website publication of information about the Tribunal's purpose, procedure and requirements for instituting claims and guidelines on progress of cases and access to information relating to them. The Tribunal has published a booklet explaining its role and processes and procedures.

Providing legal foundations for customary arbitration in FOBs is also useful for access to justice purposes. A fundamental component of the concept of access to justice is the provision for 'access to procedures for making rights effective through state-sponsored public and fair dispute resolution processes. It implies equal access to authoritative enforceable rulings and outcomes that reflect the merits of the case in light of relevant legal principles.'[257] Interesting, G20/OECD Principles of Corporate Governance 2015 underline the need for 'interactions and complementarity between different elements of the corporate governance framework and its overall ability to promote ethical, responsible and transparent corporate governance practices.'[258]

The access to justice approach to customary arbitration will enable the consideration of structural and systemic issues and not just individualised remedies of the typical traditional corporate governance dispute resolution mechanisms if these are required for relational ethics, fairness and justice. This can facilitate the transgenerational transfer of culture in family FOBs and the participation of other family and non-family members in the process. Unconstrained by technical rules, customary arbitration can integrate elements of mediation and, like New Zealand's Disputes Tribunal, can facilitate negotiated settlements in pursuit of relational ethics. Flexibility and informality in customary arbitration should, however, not be unbounded. As with the Disputes Tribunal,[259] rehearing of a matter, for example, should only be on limited grounds.

---

[249] *BB v. NC* [2024] NZDT 127; *ID v. SN* [2024] NZDT 171; *SM v. KN* [2024] NZDT 176; *QA v. FI & II* [2024] NZDT 231; *BE v. D Ltd & DO Ltd* [2024] NZDT 230; *HB v. ST* [2024] NZDT 178; *MN v. EX* [2024] NZDT 68; *MD v KC* [2024] NZDT 41; *LT v. NC* [2024] NZDT 25; *SC v. CX* [2024] NZDT 51; *DG v. CM* [2024] NZDT 207.
[250] *MT v. BX* [2024] NZDT 85.
[251] *BS v. X Ltd* [2024] NZDT 70; *HI v. D Ltd and FB* [2024] NZDT 26.
[252] *B Ltd v. OQ & ST* [2024] NZDT 15; *T Ltd v. BE* [2024] NZDT 78.
[253] *ND & OD v. MF* [2024] NZDT 32.
[254] *IB v. ED* [2024] NZDT 95; *QG v. BE* [2024] NZDT 96.
[255] *KM v. N Ltd* [2024] NZDT 209.
[256] *BL & KL v. QT* [2024] NZDT 206; *DN v SC* [2024] NZDT 202; *CT v. DF Ltd* [2024] NZDT 167; *TZ & AS v. TQ* [2024] NZDT 220; *HI v. B Ltd* [2024] NZDT 8; *HI v. D Ltd and FB* [2024] NZDT 26; *DE v. UC Ltd* [2024] NZDT 203.
[257] Hazel G. Genn, *ADR and Civil Justice: What's Justice Got to Do with It?'* (Hazel Genn, CUP 2009).
[258] G20/OECD, *supra* n. 17, at 13.
[259] *D Ltd v. KC* [2024] NZDT 117; *BU v. B Ltd* [2024] NZDT 18.

To ensure that customary arbitration enhances access to justice, there is the need to ensure its cost effectiveness. This can be achieved through a number of measures, including reduced formalities and fees and limited power to award costs. For instance, New Zealand's Disputes Tribunal cannot award costs except in limited circumstances such as frivolous or vexatious claims or knowingly instituting claims outside the Tribunal's jurisdiction.[260] Part-time service for customary arbitrators and investigators is cost efficient although it may be helpful for the lead arbitrator to work fulltime to provide general administration. As section 7(5) of the Disputes Tribunal Act implies, a Referee serves on a part-time basis unlike the Principal Disputes Referee who oversees the Tribunal's general administration[261] and its Referees' roster and training and, in consultation with the Chief District Judge, issue directions for its work. -s.6(2).[262]

Another measure to reduce costs associated with customary arbitration with a broader appeal to access to justice is the exclusion of legal representation. This will help to retain the essential nature of customary arbitration and differentiate it from formal adversarial legal proceedings. Lawyers are trained in the adversarial system and, if allowed in, may introduce it and change the essential character of customary arbitration. While legal representation is seen by some as essential to access to justice,[263] questions surrounding access to justice include where a system such as customary arbitration allows legal representation simultaneously with anticipating self-representation by a significant proportion of the parties. Self-represented litigants often fail at different stages of civil proceedings[264] being confronted by issues such as costs and time for managing cases, complexity of cases, and isolation from friends and family.[265] Simplification of court processes and procedures in the US, for example, has not helped in addressing the challenges.[266] While online self-help courts are regarded as relatively inexpensive and facilitate access to justice, an experiment of interpretation of legal issues involving a mock online portal showed noticeable differences between laypeople and lawyers.[267] Although there were outliers, lawyers were more knowledgeable, more focused and clearer than laypeople in reporting legal issues. This concern may not exist in a system that is modelled after New Zealand's Disputes Tribunal where lawyers are not allowed.[268] According to section 38 of the Disputes Tribunal Act 1988, parties are normally expected to personally conduct their cases before the Tribunal and representation is not allowed but for exceptional cases such as the officers, employees and members of corporations. The increasing number of self-represented litigants in New Zealand is not only

---

[260] Disputes Tribunal Act *supra* n. 208, s. 43.
[261] Disputes Tribunal Act *supra* n. 208, s. 6C.
[262] Disputes Tribunal Act *supra* n. 208, s. 6(2).
[263] *See* Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Lawyers, Power, and Strategic Expertise* 93 Denv. L. Rev. 469-521 (2015-2016).
[264] Victor D. Quintanilla, Rachel A. Allen & Edward R. Hirt, *The Signalling Effect of Pro se Status* 42(4) L. Soc. Inq. 1091-1121 (2017).
[265] Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report* (20 March 2025), https://scholar.uwindsor.ca/lawpub/85.
[266] Colleen F. Shanahan & Anna E. Carpenter, *Simplified Courts can't Solve Inequality* 148 (1) *Daedalus* 128–135 (2019).
[267] Bridgette Toy-Cronin & Bridget Irvine, "*Tighten, Cull and Focus": An Experiment Examining Lay and Lawyer Claims in a Mock Online Court* 47(4) L. Soc. Inq. 1234-1263 (2022).
[268] Disputes Tribunal Act *supra* n. 208, s. 38(7).

attributable to the costs of formal court proceedings and may include popular perceptions of law, legal services and accessibility of the courts.[269]

Due to the familiness and relational ethics factors in FOBs, as previously discussed, confidentiality of proceedings of customary arbitration should be adopted. Similarly, the proceedings of New Zealand's Disputes Tribunal are private although it may permit the presence of 'any proceedings a person who has a genuine and proper interest either in those proceedings or in the proceedings of the Tribunal generally'.[270] Under section 20A of the Disputes Tribunal Act 1988, the Tribunal can require the anonymity of witness and evidence, a breach of which is an offence. People may be dissuaded from approaching dispute resolution mechanisms if they entail publicising their family and its issues even if there are serious issues that need to be investigated and resolved fairly and efficiently. It may be a different case when they are assured of confidentiality of proceedings and outcomes. Likewise, reporting of cases and decisions of customary arbitration should be anonymised. The Disputes Tribunal also adopts anonymity in its reports which are published online.[271]

The relationship between customary arbitration and regular courts and tribunals should be clarified, just like its enabling statute has done for New Zealand's Disputes Tribunal. The right to appeal to a regular court should be specified but only on limited ground. By contrast, decisions of the Disputes Tribunal are normally final and binding on the parties[272] and may be appealed to the District Court for being 'unfair' and 'prejudicially' affecting the appellant.[273] Unfair and prejudicial is, in turn, defined as failing 'to have regard to any provision of any enactment that is brought to the attention of the Referee at the hearing; and (b) as a result of that failure, the result of the proceedings is unfair to the appellant'.[274] It will also be helpful to clarify that decisions, orders and agreed settlements may be made and enforced as part of customary arbitration. If this requires the involvement of the regular courts, it should be made clear in the enabling statute.

Access to justice and other goals of customary arbitration will be farfetched if a competent institution of arbitrators does not exist. As a result, there should be provisions for the qualifications, appointment, training and operations of arbitrators in customary arbitration. Knowledge of applicable customary law is necessary. Accordingly, one of the prerequisites for appointment as a 'Referee' of the Disputes Tribunals is 'the candidate's awareness of tikanga Māori'.[275] Tikanga Māori refers to Māori customary law, principles and practices. To ensure that cultural groups are adequately represented in the Tribunal Rules, advertisements and other efforts are required to attract nominations from 'diverse backgrounds and diverse ethnic and age groups'.[276] Applying this requirement to customary arbitration may additionally help to address intergenerational issues.

---

[269] Bridgette Toy-Cronin, *I Ain't No Fool: Deciding to Litigate in Person in the Civil Courts* 4 Nw. Ze. L. Rev. 723-754 (2016).
[270] Disputes Tribunal Act *supra* n. 208, s. 39.
[271] https://www.disputestribunal.govt.nz/disputes-decision-finder/?Filter_Jurisdiction=26.
[272] Disputes Tribunal Act *supra* n. 208, s. 23.
[273] Disputes Tribunal Act *supra* n. 208, s. 50(1).
[274] Disputes Tribunal Act *supra* n. 208, s. 50(2).
[275] Disputes Tribunal Rules 1989 (SR 1989/34), R. 35C(2)(d).
[276] Disputes Tribunal Rules 1989 *supra* n. 275, R. 36.

Rather than general statements, a degree of specificity should apply to the qualifications and competence of customary arbitrators. The enabling legal framework for New Zealand's Disputes Tribunal contains general statements unpacked in subsidiary legislation. Section 7 of the Disputes Tribunal Act 1988 provides that a Referee must have 'a relevant qualification (for example, a qualification in law, mediation, or arbitration) or has had relevant training' and 'the personal attributes, knowledge, and experience' required for the role. This provision is complemented by the Disputes Tribunal Rules 1989 as subordinate legislation modified from time to time. According to Rule 38(2)(a)(iv), (vi) the 'personal attributes' of a Referee should include their ability 'to respond sensitively and appropriately to cultural differences' and 'to engage in alternative ways of resolving disputes, and to assess when such alternatives are appropriate'. Rule 38(2)(c) further requires demonstration of the 'use of commonsense and practical judgement'. By Rule 38(3), a Referee's relevant 'knowledge and experience' may include, among others, 'the law and the legal system generally', 'mediation, arbitration, and conflict management', 'the language and customs of any ethnic group', 'any profession, business, trade, or other occupation, whether engaged in for payment or otherwise', 'any skill or interest' and 'any community organisation or voluntary organisation'. Customary arbitration-appropriate criteria may therefore be specified.

One of the questions surrounding qualifications of customary arbitrators is whether a law background is required. Drawing from New Zealand's Disputes Tribunal, a mix of legal practitioners and laypeople may be appointed as customary arbitrators. A 'Principal Disputes Referee' is required to have a law degree[277] and, additionally, is assessed against the requirements for appointment of a 'Referee',[278] which as stated, include 'awareness of tikanga Māori'. Legal background is necessary due to issues of corporate governance and company law and other areas of law that may arise in connection with customary arbitration. Although mentioned in Rule 38(3) of the Disputes Tribunal Rules 1989, law knowledge or background is merely one of the factors in an indicative list for Referee's qualifications.

Due to the fact-based inquiry into customary law in Nigeria,[279] for example, the recognition and appointment of investigators may enhance the efficacy of the customary arbitration process. New Zealand's Disputes Tribunal provides a helpful template. Section 2(b) of the Disputes Tribunal Act 1988 defines an 'Investigator' as 'a person appointed under section 41(1) to inquire into, and report to the Tribunal upon, any matter of fact'. According to s.41(1), the Tribunal may 'appoint a person to inquire into, and report to it upon, any matter of fact having a bearing on any proceedings and may give such directions as to the nature, scope, and conduct of the inquiry as it thinks fit.'

A special body for the appointment and training of customary arbitrators may be established with a degree of autonomy from political authorities to maintain the judicial element of customary arbitration. It may be helpful to keep a list of customary arbitrators, consisting of persons with the right qualifications, knowledge, experience and attributes to be appointed. A certification scheme may be introduced for arbitrators and

[277] Disputes Tribunal Act *supra* n. 208, s. 6A(2); Disputes Tribunal Rules 1989 *supra* n. 275, Rs 35A(4)(b), 35A (6).
[278] Disputes Tribunal Rules *supra* n. 275, R. 35B(3)(4).
[279] Evidence Act, Cap. E14, Laws of the Federation of Nigeria 2004, s. 18(1); *Ojiogu v. Ojiogu* (2010) LPELR-2377, 31*; Ogene v Ogene* (2008) 2 NWLR (Pt. 1070) 29, at 48.

investigators. Networks and associations of FOBs, customary arbitrators and other stakeholders may assist in enhancing the effectiveness of the appointment, certification and training processes for customary arbitration. The formation of associations of customary arbitrators and FOBs at local, sector and national levels may be encouraged to provide a collaborative forum for identifying, sharing and disseminating values, standards and governance models and structures. As studies show,[280] networks and associations can play some roles in governance of FOBs, including sharing and mimicry of best corporate governance practices. Since FOBs differ,[281] including in kinship ties,[282] as reflected in differences in governance structures adopted,[283] a forum for understanding the heterogeneity may be useful.

Conclusion

Dispute resolution is inextricably linked to the notions of justice and sustainable development. This paper has investigated the plausibility of integrating customary arbitration in the corporate governance of FOBs, especially in plural societies, like Nigeria, where Western-style formal rules coexist with customary rules of business. Drawing theoretical insights from access to justice, legal transplant theory, SEW, contextual family therapy theory and theory of the third, we argue that customary arbitration should be considered as a context for transformative corporate governance for FOBs. Acknowledgement of the family relationships underpinned by cultural homogeneity or affinity is needed in the development of dispute resolution structures and broader corporate governance standards and principles for FOBs. Traditional corporate governance conflict resolution structures are not particularly suited to advance relational ethics and other peculiarities of FOBs, while family governance mechanisms may not score well on the third-party element for perceptions of fairness and justice. Customary arbitration offers a middle ground with a strong sense of legitimacy, efficiency and cultural and contextual relevance.

Partly using the statutory provisions for and experiences of New Zealand's Disputes Tribunal as a template, the paper demonstrates how a bespoke customary arbitration framework designed for dispute settlement in FOBs can create a better corporate governance structure that takes cognizance of the underlying, and still apposite, customary rules that apply to business. Propped by a differentiated corporate

---

[280] Leif Melin & Mattias Nordqvist, *The Reflexive Dynamics of Institutionalization: The Case of the Family Business* 5(3) *Strat. Org.* 321–333 (2007); Maria J. Parada, Mattias Nordqvist & Alberto Gimeno, *Institutionalizing the Family Business: The Role of Professional Associations in Fostering a Change of Values* 23(4) *Fam. Bus. Rev.* 355–372 (2010); Gersick & Feliu, *supra* n. 192 at 196; Thakur & Sinha, *supra* n. 12, at 3028.

[281] Fehre & Weber, *supra* n. 94; James G. Combs, Kristen K. Shanine et al, *What Do We Know about Business Families? Setting the Stage for Leveraging Family Science Theories* 33(1) *Family Bus. Rev*. 38–63 (2020); Joshua J. Daspit, James J. Chrisman, Triss Ashton & Nicholas Evangelopoulos, *Family Firm Heterogeneity: A Definition, Common Themes, Scholarly Progress, and Directions Forward* 34(3) *Fam. Bus. Rev.* 296–322 (2021).

[282] Taewoo Kim & Laura Marler, Are Non-Blood Related "Family" Members Treated Differently? Determinants of Bifurcation Bias among Family Members in the Family Firm 12(1) *J. Fam. Bus. s Man.* 12(1), 136–151 (2020); Xiaodong Yu, Laura Stanley L et al, The Invisible Hand of Evolutionary Psychology: The Importance of Kinship in First Generation Family Firms *Entrepreneurship Theory and Practice*, 44(1), 134–157 (2020).

[283] Rocio Arteaga & Alejandro Escribá-Esteve, Heterogeneity in Family Firms: Contextualising the Adoption of Family Governance Mechanisms 11(2) J. Fam. Bus. Man. 200-222 (2020).

governance architecture, implementation of the proposed free-standing customary arbitration model for dispute resolution in FOBs may require a legal and institutional framework, statutory statement of overarching principles, enhanced accessibility through published guidelines, limitations to flexibility and informality, access to justice framework, exclusion legal representation and other cost effectiveness measures, clarity of subject matter jurisdiction, confidentiality of proceedings and anonymised reporting of cases and decisions. The relationship between customary arbitration and regular courts will need to be clarified, including with respect to enforcement of decisions and orders and appeals. A customary arbitration body may need to be established to oversee the appointment, training and regulation of arbitrators and investigators.

In carving out spaces for customary arbitration, this paper offers original contributions to corporate governance, family governance, legal pluralism and ADR scholarship. In ascribing a role for customary arbitration in sustainable development, it contributes to that field as well as to the Global South discourse. The paper has provided the contours for effective integration of customary arbitration in the corporate governance of FOBs.