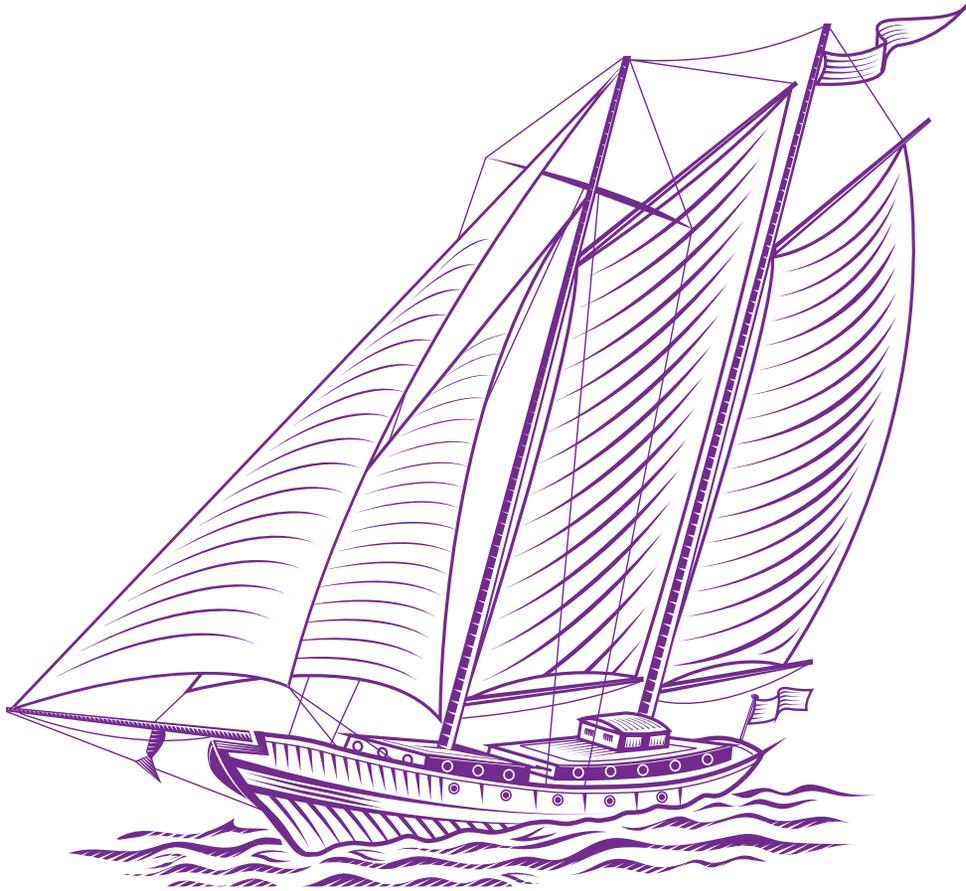




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TRAVEL HEALTH INSURANCE AND COVID-19 PANDEMIC: EVIDENCE FROM BOSNIA AND HERZEGOVINA

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ABSTRACT. Until the COVID-19 pandemic, the world was experiencing a rapidly growing trend of tourist travel and overnight stays. As a result of COVID-19 restrictions, the travel and tourism sector experienced a fall and suffered financial losses. The purpose of the research was to investigate the role and importance of travel health insurance on the case study of Bosnia and Herzegovina (BiH). The first part of the research was conducted on the basis of processing historical data from secondary sources. The second part of the research is based on the processing of data that reflect attitudes of tourists-travellers about travel health insurance before and during pandemic collected through online survey. The processing of the data from the primary and secondary sources was done through a single-variant statistical data analysis (analysis of frequency and distribution), and the correlation analysis and correlation analysis with the assessment of its statistical significance using the Chi-square test. The results confirm that during the COVID-19 pandemic in BiH, the absolute number of contracted travel insurance decreased due to the reduced number of travels, but the number of those who obligatory contracted travel health insurance increased. Of those who travelled abroad during the pandemic, 82% always or at times contracted travel health insurance. Almost half (47%) of those who contracted travel health insurance contracted an

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additional COVID-19 insurance. Those who travelled abroad during the pandemic, 9% had health problems caused by the COVID-19 virus infection. Main conclusion is that travel health insurance increases the willingness of tourists to travel even in case of increased risk (such the COVID-19 pandemic) and that it represents a successful model of risk sharing between tourist guests and hosts, with the mediation of insurance companies.

Keywords: COVID-19, tourist travelling, travel health insurance, Bosnia and Herzegovina.

JEL classification: I13, Z32.

Recommended citation: Vasko, Z., Ostojic, A., Jalic, N., Vasko, M., *Travel health insurance and COVID-19 pandemic: evidence from Bosnia and Herzegovina*, Studia UBB Negotia, vol. 68, issue 3 (September) 2023, pp. 7-26, doi: 10.24193/subbnegotia.2023.3.01

Introduction

In order to protect travellers from the risk of illness or injury during the trip, the insurance industry has introduced certain types of insurance through which the passenger transfers all or part of health care costs in case of unforeseen health problems to an insurance company (insurance premium). In this way, the tourism and insurance industries work together to increase the health and safety of travellers and revenue and profit on both sides. In the Bosnia and Herzegovina (BiH) insurance market, travellers can be insured against the following risks during their travel: illness, accident, ticket cancellation, loss or damage to luggage and liability to third parties. These types of insurance also exist in most other countries, but in developed, countries the traveller can be insured against some additional risks. Listed risks accompany all travel, regardless of their reason. The most common reasons for travelling outside the place of residence are family visits, tourist visits or business trips. Travel health insurance is one of the types of travel insurance that can be contracted individually or in combination with other complementary risks that accompany travel. Travel health insurance protects travellers from exposure to increased costs that may be caused by injury or illness whose

remediation requires one-time medical interventions or hospitalization. If there is an agreement between the two countries on mutual recognition and coverage of medical expenses, the costs of health care abroad are reimbursed by the health insurance fund in the home country. If such agreement does not exist, the costs of emergency medical care are paid by the traveller. Travellers who are aware of the risks of possible extra costs, use alternatives to contracting individual and group health insurance. The costs of this insurance (premium) are relatively small concerning the benefits the insured can achieve. There are different ways and models (packages) of contracting travel insurance. Sometimes it is included in the offered tourist package, sometimes they are part of the overall life insurance, and sometimes tourists contract it individually. There are also different types of health services and the amount of coverage of costs that individual travel health insurance packages include.

Literature Review

Until the outbreak of the COVID-19 pandemic, the world was experiencing a rapidly growing trend of tourist travel and overnight stays in the country and abroad. Tourism has become one of the fastest-growing sectors of the world economy. Between 2009 and 2019, the growth of tourism revenues in international tourism was 54%. 1.46 billion tourist arrivals were recorded in the world, and 1.20 million in BiH in 2019 (UNWTO, 2020). The emergence of epidemics and pandemics negatively affects the development of the tourism industry (Lukovic & Stojkovic, 2020). As a result of COVID-19 restrictions on international mobility, the travel and tourism sector suffered losses of almost USD 4.5 trillion in 2020, with global travel and tourism GDP declining by 49.1% compared to 2019 and reaching only USD 4.7 trillion in 2020. Consumption of domestic visitors decreased by 45%, while consumption of international visitors decreased by 69.4% (WTTC, 2021). The year 2020 is considered the worst year in the history of the tourism industry. In 2021, global tourism experienced an increase of 4% compared to 2020. However, international tourist arrivals (overnight visitors) were still 72% below the pre-pandemic year of 2019 (UNWTO, 2022).

The quality and price of medical services are one of the reasons for visiting another country, so a special type of medical tourism has emerged in recent times (Lunt *et.al.*, 2021). It is important for tourist

regions that there is sufficient capacity for the health system, not only for the local population but also for temporary tourist visitors (EC, 2020). However, with the emergence of epidemics and pandemics, the quality, availability and price of health services have become one of the important factors of tourist supply and demand and the choice of a particular tourist destination. Any travel and stay outside the home, especially outside the home country, is associated with the risk of travel-related illnesses, particularly communicable diseases (Rossello *et al.*, 2017). Gobbi *et al.* (2021) express the view that the COVID-19 pandemic will undoubtedly mark a 'before and after' in public and travel health. Chebli & Ben Said (2020) found that after pandemic experiences, travellers will be more concerned about access conditions and the quality of health care the destination offers. According to Flaherty *et al.* (2019), one study of travel agents determined that two-thirds of travel agents had been approached by their clients for travel health advice (and this referred to the period before the COVID-10 pandemic). Lukovic & Stojkovic (2020) believe that in new pandemic circumstances, it will be necessary to introduce and update travel insurance. Flaherty *et al.*, (2019) point out that people planning a trip must be aware of the provisions of the health insurance policy regarding its coverage if they fall ill during their stays abroad.

The pandemic caused by different strains of the COVID-19 virus became a COVID crisis because it changed the business conditions of almost all sectors and changed consumer behaviour due to increased stress from illness and death (Deloitte Canada, 2020). The pandemic has changed the conditions and possibilities of travelling in general due to numerous restrictions that have varied depending on the country and the time of travelling. In general, tourists are considered risk groups that have contributed significantly to the spread of infectious diseases (Baker, 2015): On the other hand, during the pandemic caused by the COVID-19 coronavirus, a new risk for tourists emerged, the risk of infection with the virus, the treatment of which required special conditions of isolation or hospitalization. The fear of infection by coronavirus became mutual, both among the guests and the hosts. During the COVID-19 crisis, the tourism industry must identify resilient solutions for a wide range of problems and challenges (Andrei & Dragoi, 2021)

The costs of healthcare for the COVID-19 virus were not included or were not sufficiently included in the standard travel health insurance packages. After dealing with this new situation, insurance companies have

developed a new product - travel health insurance with included coverage for the COVID-19 virus. Some airlines or hotels have included the obligation to have a travel health insurance policy with COVID-19 risk as a condition for using their services, so this type of insurance has become one of the conditions for recovery and survival of the tourism industry in the world in the pandemic era. Some analysts suggest that after easing and cancelling travel restrictions, it will take two to three years for the travel and tourism sector to regain its former strength. Some analysts suggest that after easing and lifting travel restrictions, it will take two to three years for the travel and tourism sector to retrieve its former strength (Deloitte Canada, 2020). As Stojanovska Stefanova & Magdinceva Sopova (2021) stated, it is very important to learn from the whole COVID-19 crisis. Many mitigation measures will be needed to rid tourists of pandemic fears, but also to make the tourism industry more prepared to face similar risky situations in the future. Widely used travel health insurance is certainly one of these mitigation measures (Glusac, 2021).

Research Methodology

The subject of the research is travel insurance, more specifically travel health insurance as its subtype, as an instrument for sharing the costs of unplanned use of healthcare services during tourist trips and stays in tourist destinations. The goal of the research was, first, to investigate the role and importance of travel health insurance in the tourism industry in general, and then to determine the extent to which travel health insurance is present in Bosnia and Herzegovina. Since the research took place at the time of the COVID-19 pandemic, its results, and especially the attitudes of the surveyed tourist travellers, may join the impact of this extraordinary event on the subject of the research.

In addition to reviewing the available literature sources on travel health insurance, the research was conducted in more detail on the case study of the insurance and touristic market in Bosnia and Herzegovina. Based on secondary data sources (the Insurance Agency of the Republic of Srpska or RS) it has been determined how many insurance companies operating on the RS market offer travel health insurance, under which conditions this insurance is contracted and at what prices. Secondary data for the period 2017-2021 were processed using descriptive statistics methods. The second part of the research is based on the processing of

data from a primary source, provided through our own survey on the attitudes of tourists-travellers towards travel health insurance. That part of the data collection was organized through an online survey. A survey questionnaire was created using Google forms and distributed through social networks and group mailing lists. The survey became active online on January 25, and the goal of collecting at least 100 answers was realized after eleven days, on February 5, 2022.

The steps of the research logic are shown in the following diagram.

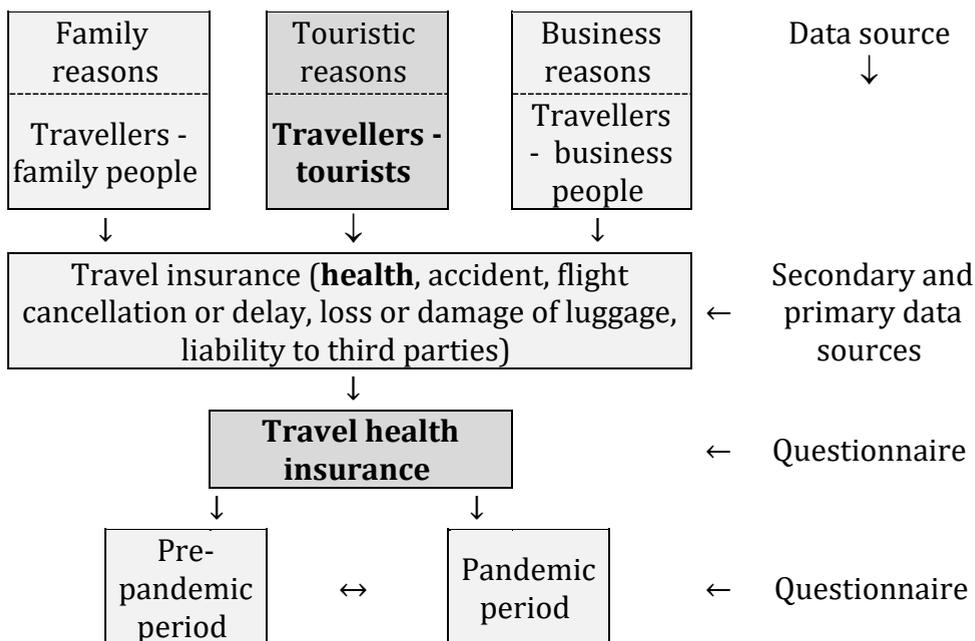


Figure 1. Research process on the use of travel health insurance
Source: Authors' design.

Geographically, the research area is focused on Bosnia and Herzegovina (questionnaire) partly only to the Republic of Srpska (insurance market data from another entity could not be provided in a compatible format), but they can be considered representative of the whole of BiH.

During the research, the researchers were guided by two key questions:

1. To what extent do BiH tourists-travellers use the travel health insurance service?

2. Has the pandemic changed the attitudes of BiH tourists regarding contracting travel health insurance?

To persuade participants to participate in the survey, the questionnaire was reduced to just 12 questions. The first four questions referred to the description of the sample, i.e. the socio-demographic characteristics of the respondents. Other questions related to the attitudes of the respondents regarding the use of travel health insurance before and during the COVID-19 pandemic. All questions were closed type, except for one, which had the possibility of multiple-choice answers. Basic mathematical and statistical methods were used to process secondary data. The processing of the data from the primary and secondary sources was done through single-variant data analysis (analysis of frequency and distribution). To determine the correlation between the obtained answers to some questions, the Chi-square test was used. (χ^2). Figures and tables were used to visualize the research results.

Results and Discussions

The COVID-19 pandemic has had a major impact on the tourism industry through a reduction in the number of tourist arrivals and overnight stays. The COVID-19 pandemic had an impact on the tourism sector in the Western Balkans, particularly in Albania and Montenegro, where in the first nine months of 2020, there were 77.7 % fewer arrivals and 79.7 % fewer tourists' overnight stays than in the same period in 2019 (Bogdanov *et al.*, 2022). After the recovery from the war, BiH became a desirable tourist destination with high percentage growth in the number of tourists (Vasko & Vasko, 2018). The number of tourist arrivals in BiH in the first pandemic year (2021) was just 35.5%, and in the second pandemic year at 58.5% compared to the last pre-pandemic year (2019). The decline in the number of arrivals and overnight stays was dramatic among foreign tourists, and the number of domestic tourists in 2021 returned and even slightly exceeded the number of their arrivals in 2019.

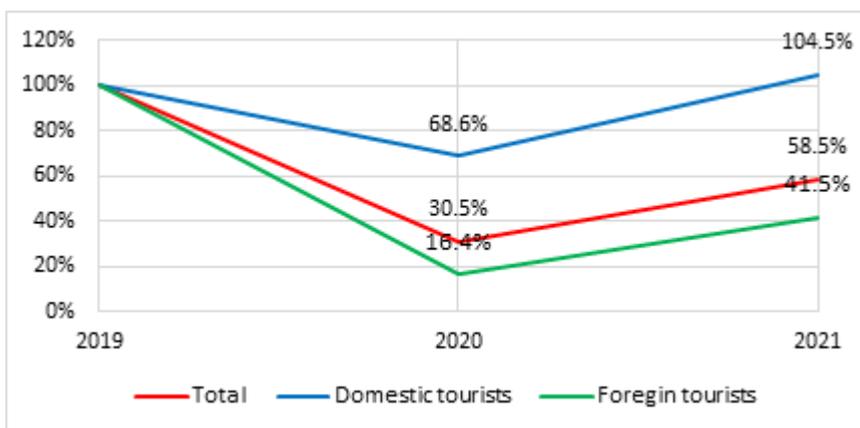


Figure 2. Number of tourist arrivals in BiH (2019-2021) (2019=100)
Source: Authors' processing data of the AS BiH (AS BiH, 2021; AS BiH, 2022)

The number of tourists overnight stays in BiH was 36.8% (2020) and 66.1%, respectively.

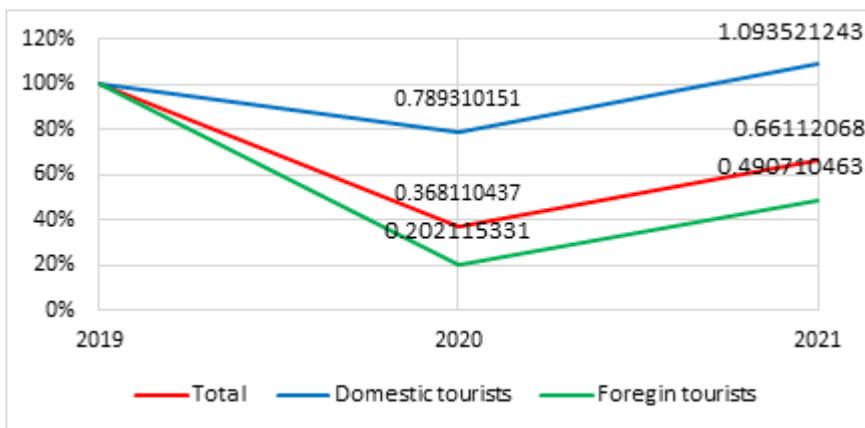


Figure 3. Number of tourists overnight stays in BiH (2019-2021) (2019=100)
Source: Authors' processing data of the AS BiH (AS BiH, 2021; AS BiH, 2022)

Travel health insurance coverage

On the insurance market in BiH, there are insurance companies with registered headquarters in one of the two BiH entities. Insurance companies whose headquarter is in the RS or FBiH may provide life and

non-life insurance services in another entity through registered branches. Despite all the problems facing the BiH economy, insurance premiums in both entities show a positive growth trend (Vasko, 2017). In the RS, insurance services have been provided by 25 insurance companies, 14 insurance companies based in the RS and 11 insurance companies based in the FBiH in the period 2017-2021 (IA RS, 2022). In the same way, sales and travel insurance services are offered. More detailed data on the number of policies and the value of the calculated premium based on travel health insurance are shown in the table in Annex, and the key findings are shown in the following chart.

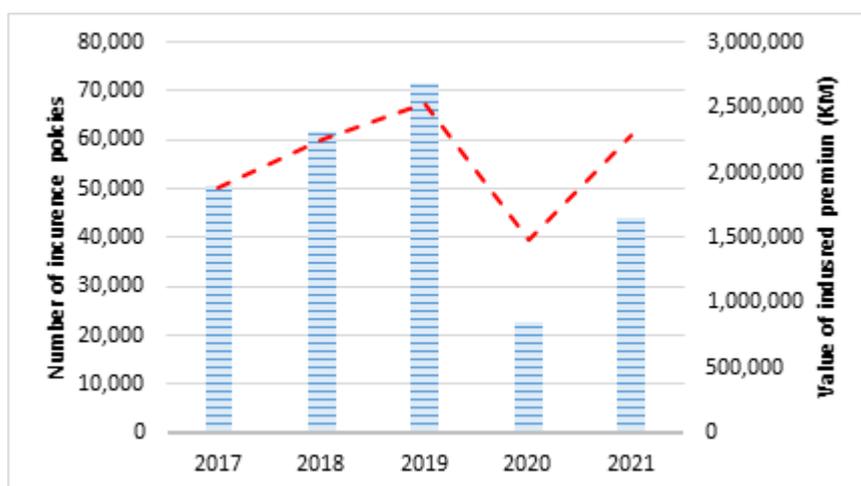


Figure 4. Number and value of contracted travel insurance policies in the Republic of Srpska (2017-2021)

Source: Own processing data of the IS RS (IA RS, 2022)

The research of the travel insurance market in BiH based on secondary sources, according to the Insurance Agency of the Republic of Srpska, came to the following conclusions:

- Travel insurance was contracted by 84% of insurance companies present on the RS market (21 out of 25 companies), based on data for the period 2017-2021;
- Five insurance companies are particularly active in offering travel health insurance, with a market share of 71%;
- Travel insurance participates with 1.12% of total contracted non-life insurance premiums in RS (in 2021);

- Travel insurance contracting had a trend of strong growth until the outbreak of the pandemic, both in terms of the number of policies and in terms of value (average growth of 18% per year);
- The pandemic and the reduction in the number of travels caused a decrease in the number of travel insurance beneficiaries by 68% in 2020, and by 38% in 2021, compared to the pre-pandemic year 2019;
- During the period of the COVID-19 pandemic (2020-2021), there was an increase in the average travel insurance premium from 36.3 KM to 58.6 KM (1 KM=0.51 Euro) per the insurance policy, compared pre-pandemic period (2017-2019).

The method of grouping data by the Insurance Agency does not allow the separation of only health insurance from total travel insurance (although most travel insurance policies are concluded due to and include travel health insurance). Therefore, an additional survey was conducted to provide data on the use of travel health insurance services.

Attitudes of tourists about travel health insurance

Tourists from the entire Bosnia and Herzegovina participated in this research, fulfilling the initial condition that they had previously had travel experience.

The invitation to participate in the survey was distributed through social media networks and mailing groups, without specifically targeting age or other specifics, so the sample can be considered a random sample, but not statistically representative of BiH due to its small size. The invitation emphasized that only BiH residents should participate in the survey and those who travelled for tourist reasons so that all participants in the survey can be equated with tourists.

The empirical survey was conducted on 100 respondents and in the sample, there were 58 male and 42 female respondents. In terms of age, people over 50 (40%) dominate and the least were respondents under 30 (24%). Respondents mostly had a university degree (86%) and the rest had at least a secondary education. The largest share of respondents had a monthly income at the household level of 1,000 to 3,000 KM, and the least with incomes up to 1,000 KM.

Table 1. Socio-demographic characteristics of the sample of respondents (n=100)

Characteristics		Frequency	Percentage	
1	Gender	Male	58	58.0
		Female	42	42.0
2	Age	< 30 years	24	36.0
		30 - 50 years	26	24.0
		> 50 years	40	40.0
3	Level of education	Secondary school	14	14.0
		University degree	86	86.0
4	Monthly family income	< 1.000 KM	12	12.0
		1.000 KM - 3.000 KM	54	54.0
		> 3.000 KM	34	34.0

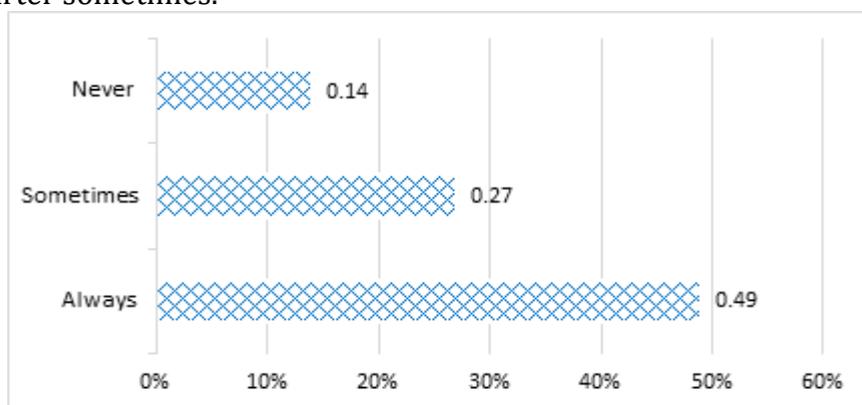
Source: Authors' data processing based on own survey.

Respondents' attitudes towards travel health insurance

The first finding is that tourists from Bosnia and Herzegovina know how travel health insurance works because 88% of them answered in the affirmative to the first question "Are you familiar with the concept and manner of using travel health insurance?".

Period before the COVID-19 pandemic

A high percentage of tourists contracted voluntary travel health insurance before the pandemic, almost half always, and an additional quarter sometimes.

**Figure 5.** Frequency of using travel health insurance (n=100)

Source: Authors' data processing based on own survey.

Only 10% of those who travelled as tourists had to use certain health services abroad, i.e. the need to activate travel health insurance or some other method of payment for such cost. Half of tourist paid personally cost of health service during travelling, and the other half reimbursed these cost at the expense of compulsory or voluntary health insurance. In other words, every third tourist reimburses the cost of their health care service during a tourist trip abroad at the expense of voluntarily buying travel health insurance.

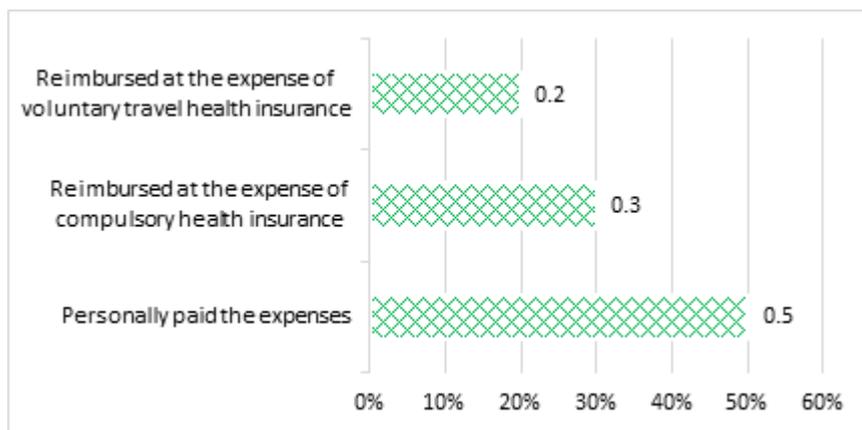


Figure 6. Method of payment for medical/dental intervention during a tourist stay abroad (n=100)

Source: Authors' data processing based on own survey.

The period after the COVID-19 pandemic

As expected, most tourists travelled less during the pandemic than before, either due to reduced opportunities (65%) or due to voluntary abstinence due to fear of coronavirus infection (19%). Only fifteen percent of tourists travelled the same during the pandemic as before, and only one percent more than before the pandemic.

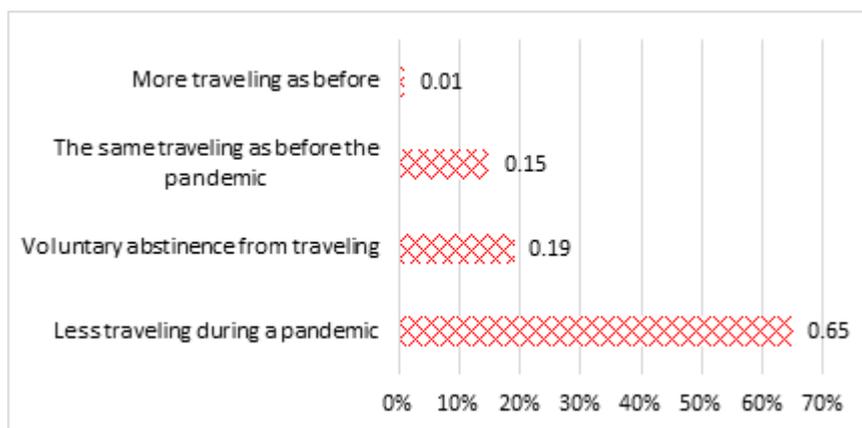


Figure 7. Frequency of travel during a pandemic (n=100)

Source: Authors' data processing based on own survey.

Of those who travelled during the pandemic, 83% travelled abroad and thus acquired a sufficient condition to need to contract travel health insurance. This was done by 82%, always or at least sometimes, and 14% did not. Almost half (47%) of those who contracted travel health insurance contracted an additional insurance clause coverage of the cost of health services caused by COVID-19 infection (a new insurance company service adapted to the new situation). This data indicates that passengers were aware of the increased risks of infection by the new coronavirus and that they rationally contracted the additional insurance service against this type of new risk (which is the reason why the average cost of insurance during the pandemic increased).

Under the influence of pandemic risks, the number of those who always contract travel health insurance increased by 12% in favour of those who did so occasionally. At the same time, the number of those who did not take out this type of insurance also increased by 4%, possibly due to problems contracting the service or feeling out of protection from vaccination (mostly vaccinated or tested travelled during the pandemic).

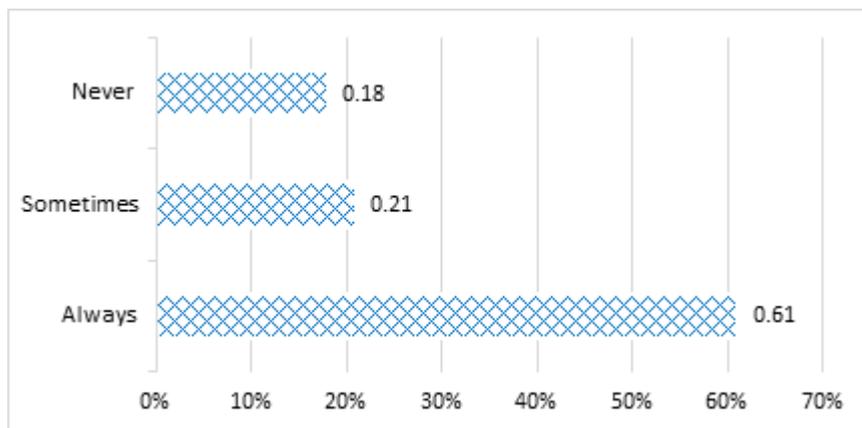


Figure 8. Frequency of using travel health insurance (n=83)

Source: Authors' data processing based on own survey.

Table 2. The difference in travel health insurance contracting before and during a pandemic (n=83)

	Always	Sometimes	Never
Before pandemic	49%	37%	14%
During pandemic	61%	21%	18%
Difference	+12%	-16%	+4%

Source: Authors' data processing based on own survey.

Of those who contracted travel health insurance during their tourist trips during the pandemic period, 83% did so voluntarily, and in 13% of cases, it was conditioned by the use of a travel arrangement.

Most often, travel health insurance is concluded in a classic way, by visiting the premises of the insurance company. However, the involvement of travel agencies in the provision of this additional service is evident (19%), as well as visiting intermediaries to contractors (7%) or doing business online (6%), which was particularly appropriate for pandemic risks and restrictions.

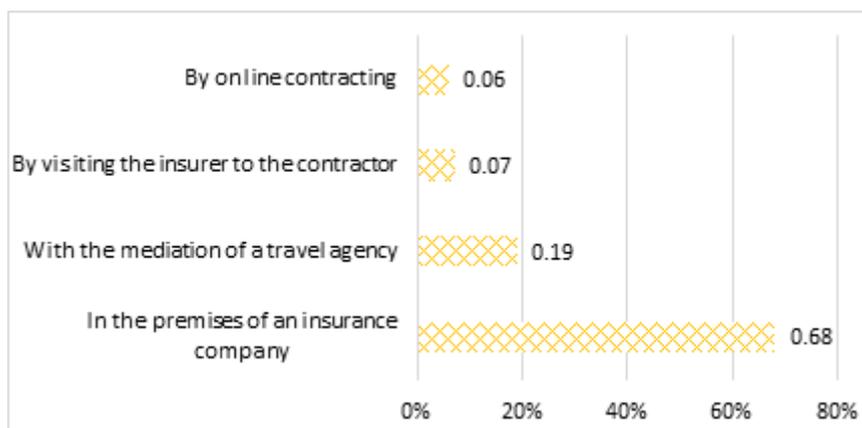


Figure 9. Ways of contracting travel health insurance (n=68)

Source: Authors' data processing based on own survey.

Finally, of those who travelled abroad during the pandemic, 9% had health problems caused by the COVID-19 virus infection and all had contracted travel health insurance, but one-third did not contract a supplementary COVID clause. This 9% got sick only from diseases caused by the COVID-19 virus. Older data claimed that between 30-50% of travellers become ill or injured whilst travelling (Leggat *et al.*, 1999). Recent insight into several studies (Angelo *et al.*, 2017) found that between 6 and 87% of travellers became ill during or after travel.

Relationship between socio-demographic characteristics of respondents and their attitudes

The results of the Chi-square test are presented below only for those variables where there was statistical significance between the observed variables. The chi-square test was done based on the total number of respondents (n=100). In general, the amount of monthly family income at the household level did not have an impact or correlation with the examined variables.

Table 3. Influence of socio-economic characteristics of tourists on some attitudes regarding travel health insurance (n=100)

	Familiarity with the travel insurance concept		Use of travel insurance before a pandemic		Frequency of travelling during a pandemic	
Gender	-	n.s.	7.138	0.028*	4.489	0.026*
Age	-	n.s.	14.578	0.006**	8.536	0.014*
Education	4.233	0.004*	11.565	0.003**	-	n.s.
Income	-	n.s.	-	n.s.	-	n.s.

** $p < 0.01$, * $p < 0.05$ (n.s. – not significant)

Source: Authors' data processing based on own survey.

Education had a certain impact on the respondents' familiarity with the concept of travel health insurance, and more educated respondents have a more positive attitude. Before the pandemic, women were more sensible and generally contracted travel insurance more often than men. Both, the age of the respondents, and the gender had an impact on certain variables. Respondents over the age of 50 paid more attention to contracting travel health insurance before the pandemic. As expected, those under the age of 30 give the least importance to this type of insurance. During the COVID-19 pandemic, men travelled more intensively than women. During the pandemic, middle-aged people travelled most often.

Conclusions

Worries about health during tourist travelling and stays have always been one of the top tourist's priorities, especially when they travel abroad. The COVID-19 pandemic increased the risk of infection and fatal outcomes from that virus to that extent that tourist travels were completely suspended for a while and later conditioned by taking numerous preventive measures (testing for the presence of the virus, vaccination, etc.), including mandatory contracting travel health insurance. Tourists have already contracted travel health insurance, but even more so during the pandemic. This research confirmed that most insurance companies in BiH offer travel health insurance, and this type of insurance

participates with 1.12% in the total non-life insurance portfolio. The number and total value of travel health insurance policies decreased during the pandemic, due to reduced tourist traveling. However, the number of those who voluntarily contracted this type of insurance has increased by 12%, and the average value of one insurance policy has also increased due to the inclusion of the COVID-19 clause. Contracting travel health insurance is not a preventive measure, rather it is solution for mitigating the consequences in case of illness during travel and stays outside the home country. Increasing the coverage of tourists with travel health insurance the probability of insured risk, and thus can reduce the price of this type of insurance service. Digitization of contracting this type of insurance can also increase its dispersion and reduce the price. On the other side, contracting travel health insurance reduces the worries of tourists about how to pay urgent health care cost during their stay abroad and also has a positive impact on their decision to travel even in conditions of increased pandemic and similar health risks. Voluntarily contracting travel health insurance relieves the health system of the host country and the country from which the tourist coming by part or all of the costs of their emergency medical treatment during a stay abroad. Increased contracting of travel health insurance makes business easier for travel agencies, hoteliers and carriers. Thus, travel health insurance is one of the factors that can contribute to a faster recovery of world tourism, because for years there will be fear of repeating a similar pandemic scenario.

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AN OVERVIEW OF THE USE OF CLAWBACK AS A GOVERNANCE MECHANISM ON EXECUTIVE REMUNERATION IN SOUTH AFRICA

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ABSTRACT. The use of malus and clawback provisions has increased in recent years due to the demand for tighter controls on incentive-based compensation. The alignment between executive pay and individual performance creates a culture of responsible decision-making and accountability within an organisation. This paper seeks to evaluate the current state of governance legislation on the clawback of remuneration in the South African context. A systematic literature review was conducted to provide descriptive insight on the technical and procedural approach applied to the clawback of remuneration. These findings were then compared to other countries so that similarities, differences, and areas of further research could be identified. Through detailed content analysis, it was found that the South African governance regime lags behind its international counterparts regarding remuneration clawback. Due to the absence of relevant statutory guidelines, discretion is frequently applied, leading to inconsistent treatment of clawback amongst listed companies. The use of clawback as a risk-mitigation mechanism is also relatively new in South Africa and comparative studies provide useful insight on the technicalities and administration processes applied abroad. The lessons learnt and strategies applied internationally serve as a benchmark for the development of clawback legislation in South Africa.

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BACKGROUND AND INTRODUCTION

The global financial crisis experienced in 2008 drew attention to weaknesses in the governance of remuneration as misalignment was found to exist between pay and performance. Excessive incentive-based compensation, inadequate risk-taking and a focus on short-term results also played a significant role contributing to the global economic instability (Melone, 2009). As shareholders lost confidence in the accuracy of financial reporting, the need to institute measures to hold executives accountable for unsubstantiated risk-taking arose (Hirsch *et al.*, 2017).

According to Bhagat & Romani (2010), effective management over executive remuneration results in reduced levels of risk and improved shareholder value in the long term. The alignment of incentives to actual performance ensures that rewards are only granted for contributions that drive business growth and strategy Bussin & Ncube (2017). This inspires accountability on the part of executives whilst also restoring confidence in the market (Madlela, 2018). El Mahdy (2019) explains that the structure of remuneration packages and the establishment of appropriate performance criteria becomes vital in streamlining pay to performance. Studies have also shown that the incorporation of risk-mitigating mechanisms such as malus and clawback in remuneration contracts encourages a long-term business outlook, whilst also creating a culture of responsibility within an organization (Ronald & Gulbenkian, 2022).

Moolman & Giliam (2019) explain that malus and clawback are used as mechanisms to manage risk exposure and to control the self-

serving behaviours of individuals. Malus provisions permit the adjustment of the value of an award prior to vesting, whilst clawback allows the recovery of awards subsequent to vesting (Franklin, 2016). In this way, management is afforded the opportunity to re-evaluate the adequacy of variable remuneration, so that any modifications or recoveries are made, if necessary, upon the occurrence of certain pre-agreed events (Moolman & Giliam, 2019).

Chen & Vann (2017) explain that clawback is an effective governance mechanism that serves a dual purpose. Clawback is punitive as it aims to invalidate unjust benefits received by creating adverse consequences for the individual concerned, whilst also serving as a remedial measure as companies are reimbursed for any unwarranted losses incurred (Melone, 2009). Clawback permits the employer to recoup excessive amounts paid to employees in error, or alternatively, it discharges the employer from an obligation to pay an employee if the employee did not rightfully earn the amount (Melone, 2009). Fried & Shilon (2011a) add that clawbacks are commonly used to control the reckless conduct of senior executives as this has a detrimental impact on the risk exposure of companies.

Velte (2020) explains that effective management on executive remuneration impacts on shareholder satisfaction, and therefore it is imperative to institute mitigating controls when executive performance falls below standard. Jensen & Murphy (1990) add that incentive-based compensation in many companies is influenced by appropriate decision-making, transparency and accuracy in financial reporting. The inclusion of clawback provisions in the remuneration structure not only ensures better control over remuneration, but also promotes an ethos of ethical leadership in the business (El Mahdy, 2019).

According to Chan *et al.* (2012) the incentive exists for executives to manipulate results to obtain personal benefit, and with the inclusion of clawback, the actions of executives are confined to certain limits (Chen & Vann, 2017). Clawback imposes a monetary penalty on executives for the misrepresentation of financial results Chan *et al.* (2012). Studies have shown that senior executives perceive clawback to add value as it augments internal controls as opposed to substituting other forms of internal controls (Chan *et al.*, 2012; Chen & Vann, 2017).

Better quality in financial reporting was also noted amongst various institutions that include clawback in the remuneration (Chen & Vann,

2017). Finnemore *et al.* (2022) explain that clawback improves credibility of the financial results which enhances investor confidence. Chan *et al.* (2012) agrees as the number of financial restatements are found to reduce with the enforceability of clawback. Mahoney (2019) also supports this view as the existence of clawback tends to keep executives focussed on accuracy in financial reporting.

Walker (2021) explains that the use of clawback as a risk mitigation mechanism contributes positively to value creation in listed companies, as the increased use of clawback in executive compensation inspires behavioural change in leadership. In this way, an ethical culture is created as transparency and commitment to principled governance becomes a priority (Walker, 2021). Walker (2021) explains that the concept of unjust enrichment is also controlled through the process of recovering amounts erroneously paid out.

Velte (2020) also argues that the inclusion of clawback provisions in executive compensation results in better alignment between executive responsibility and stakeholder interests. Clawback assists in creating accountability for decision-making, which results in more robust reasoning and justification processes within the business (Hirsch *et al.*, 2017). Denis (2012) adds that by creating monetary consequences for unethical conduct, the incentive to disclose accurate financial information is compounded.

On the contrary however, the enforceability of clawback provisions may deter the use of judgment in decision-making as serious consequences may arise if an error is subsequently detected (Securities and Exchange Commission, 2015). Executives may choose to abstain from risky projects where the outcomes are uncertain in an effort to ensure the accuracy of financial reporting (Securities and Exchange Commission, 2015). Decisions may be taken with a view to maximize short-term benefits rather than long-term performance, which in turn, has an adverse operational impact on the business (Securities and Exchange Commission, 2015). Walker (2021) adds that companies may opt for higher base salaries as opposed to issuing variable compensation that is subject to forfeiture.

In studies conducted by the OECD, it was found that the use of clawback has increased in various jurisdictions globally, particularly in listed companies (Cormann, 2021). Within the South African context, an increased tendency to use malus and clawback provisions by listed

companies is also evident (van Zyl & Mans-Kemp, 2022). As the enforceability of clawback provisions has both financial and legal consequences, Moolman & Giliam (2019) explain that policies and processes applied by companies need to be robust and clearly defined.

In light of the increased use of clawback by locally listed companies, it is not clear whether any regulatory guidance on remuneration clawback exists in the South African context, and whether such regulation is sufficient in addressing the issues posed by clawback. The purpose of this paper therefore is to determine how existing legislation and governance codes deal with clawback of remuneration locally in South Africa, and to contrast this to other jurisdictions so that improvement areas can be identified. This paper aims to provide a broad understanding of the governance codes applicable to the clawback of remuneration to identify any similarities, differences, and improvement areas. In achieving this goal, the South African governance regime on remuneration is compared to that of the USA and UK which represent developed economies, and which were at the forefront of the global recession experienced a few decades ago. Through this comparison, the approach to remuneration clawback may be standardized across jurisdictions so that best practice can be applied coherently amongst companies. Furthermore, details on how to enforce a clawback on current and former employees may be determined.

This paper comprises of four sections. The first section provides the background and introduction and explains the purpose of the study. The next section elaborates on the methodology applied, after which section three includes a detailed discussion and analysis on the findings. Lastly, section four provides concluding remarks and recommendations for further research.

OBJECTIVES AND METHODOLOGY

This paper seeks to provide descriptive insight on the clawback of remuneration to better understand the technicalities and procedural approach applied in various jurisdictions. Grant & Booth (2009) explain that narrative descriptions are commonly used to examine the current literature available on a topic. An overview of literature describes the relevant characteristics so that conceptual or thematic analysis may be

performed Grant & Booth (2009). The presentation of such findings may occur in a narrative or tabular format Grant & Booth (2009).

Through a systematic review, the integration of data occurs across various independent data sets so that the current state of literature is understood (Nowell et al., 2017; Thorne, 2000).

Common themes, similarities and differences are also identified so that recommendations can be made for further research (Grant & Booth, 2009; Kim *et al.*, 2017). Booth (2006) explains that a qualitative systematic review is not merely an aggregation of existing knowledge. Instead, it aims to interpret the data and to isolate themes and constructs so that a comprehensive understanding of the data can be obtained (Booth, 2006). Snyder (2019) adds that systematic reviews are commonly used to inform existing policy on a particular matter.

Systematic reviews focus on a particular research question so that information sought from the literature is relevant in addressing a specific issue. The research question formulated should be understandable, free of ambiguity and clearly formulated (Tawfik *et al.*, 2019). In terms of data eligibility and identification, Tawfik *et al.* (2019) suggest that appropriate scoping criteria be applied to exclude unrelated and duplicated information from the literature surveyed. Scrutiny of the reference lists of relevant articles or citation tracking assists in identifying similar literature (Tawfik *et al.*, 2019).

Snyder (2019) explains that the aim of a systematic literature review is to identify data that meets specific inclusion requirements with the intention to answer the research question. In this way, consistency in findings across various data sets can be identified (Sydner, 2019).

Yang & Tate (2012) explain that systematic reviews entail a structured method in terms of searching, filtering and categorising the data. Clear documentation of the process followed in identifying, analysing and synthesizing the literature improves the credibility of the findings documented in the study (Liberati *et al.*, 2009).

Once appropriate data has been sourced, King & He (2005) suggest that the researcher identify trends and common themes amongst the various data sets so that inferences may be drawn. Nowell *et al.* (2017) explain that thematic analysis enables the researcher to capture important aspects that link the data together. In this way, the current state of literature on the research question is brought to the fore (Yang & Tate, 2012).

In the context of this paper, the systematic review comprises of both data selection and content analysis. Data was sourced through a search of relevant legislation, governance frameworks, journal articles, legal interpretations and through the use of keywords. References to remuneration clawback assisted in isolating the most applicable information. The titles and abstracts were surveyed for suitability in addressing the research question. No limits were applied in determining the quantity of data to include. As this is a qualitative review, information was sourced until saturation was reached. Snyder (2019) explains that the search strategy applied in a systematic review enables the researcher to identify and categorise pertinent information so that reliable findings can be obtained.

Thereafter, the content was analysed through a narrative overview commencing with a broad synopsis of applicable governance principles and narrowing down to the technical detail applied to remuneration clawback. This enabled the researcher to evaluate the current state of legislation in a particular jurisdiction. Lastly, findings from each jurisdiction were integrated to identify similarities and differences, and to identify areas where development or further research is required.

A diagram representation of the research methodology applied to this study is included below:

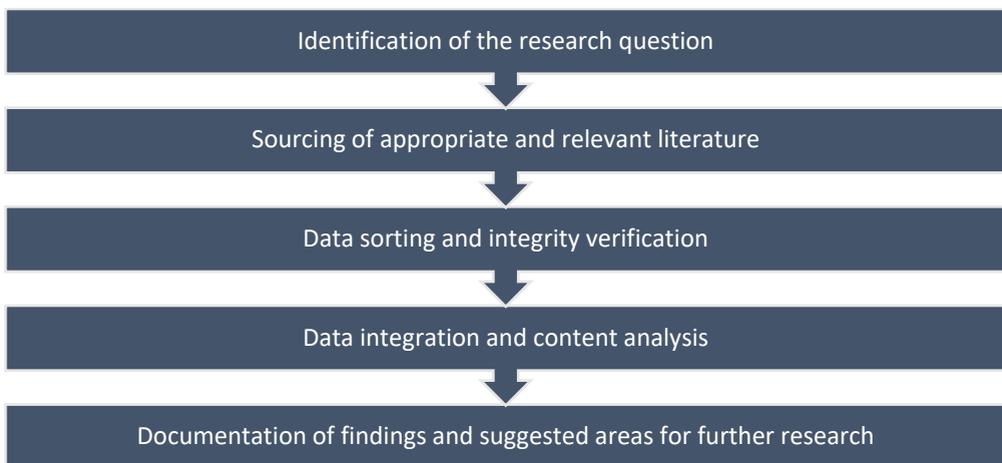


Figure 1. Illustration of the research methodology
Source: Authors' compilation

A similar approach was adopted in studies conducted by Aleti *et al.* (2013), Auler *et al.* (2017), Colosia *et al.* (2013), Kitchenham *et al.* (2009) and Santisteban *et al.* (2016) in which relevant data was sourced to address a specific research question. Explicit criteria were then applied to isolate the most pertinent information after which comparative analysis with independent data sets was carried out to identify any trends and anomalies. Inferences were drawn on the findings and suggestions were made for further research.

DISCUSSION AND ANALYSIS

South African overview

Governance legislation on remuneration clawback in South Africa is informed primarily by the King IV Report on Corporate Governance for South Africa ('King IV') and the Companies Act 71 of 2008. The former advocates for the application of good governance principles, whilst the latter deals with the reporting requirements and fiduciary duties of executives. The Basic Conditions of Employment Act 75 of 1997 alludes to the concept of procedural fairness in relation to remuneration clawback. Lastly, the Banks Act 94 of 1990 expands upon specific remuneration clawback guidelines for companies operating in the banking sector. A comprehensive overview on the status of current legislation is provided below.

King IV Report on Corporate Governance for South Africa

King IV advocates for responsible governance over remuneration. This includes transparency and close alignment between remuneration and the fulfilment of the organization's strategic objectives (IOSDA, 2016). Responsible governance also requires senior management to implement measures to mitigate risk exposure (IOSDA, 2016). Moolman & Giliam (2019) explain that clawback allows the opportunity to re-evaluate the adequacy of variable remuneration and adjust if necessary.

King IV also advocates for better accountability on remuneration. The 'apply and explain' principle required by King IV allows companies and other stakeholders the opportunity to evaluate the extent to which

the principles and recommendations of King IV are being adhered to. The remuneration committee is tasked with the oversight on the adequacy of remuneration in terms of the policies of the company (IODSA, 2016).

Sufficient disclosure on remuneration is also required which includes detail on the reasons behind particular transactions and the manner of implementation (IODSA, 2016). Whilst remuneration should motivate and reward employees for contributions made to the business; King IV requires that transparency, ethics and adherence to the business strategy form the foundation of any payment made to employees (IODSA, 2016). For variable remuneration, adequate reasoning needs to be provided in justification for the award of short and long-term incentives, as well as any assumptions used in determining these amounts (IODSA, 2016).

Individual performance is scrutinized against pre-agreed targets in determining the amounts to be awarded (IODSA, 2016).

In terms of clawback, the Guide to the Application of King IV encourages the use of clawback as a mechanism to control unjust enrichment (SARA & IODSA, 2017). Excessive risk taking in pursuit of incentive targets is dissuaded, and instead behaviour that concurs with the company's strategy, objectives and risk management approach is encouraged (SARA & IODSA, 2017).

King IV however does not prescribe the manner in which clawback is to be implemented, and instead leaves this responsibility to the board of directors to deliberate (IODSA, 2016; SARA & IODSA, 2017). The report does however require detailed disclosure on the circumstances, conditions and process applied to the enforceability of clawback (IODSA, 2016; SARA & IODSA, 2017). The disclosure thereof should also adhere to applicable regulations and international best-practice (SARA & IODSA, 2017). King IV supports this as benchmarking of remuneration against other companies both locally and abroad ensures that remuneration is fair in relation to the services rendered (IODSA, 2016).

The appointment of a King IV compliant remuneration committee is mandatory for listed companies in South Africa. Madlela (2018) does however point out that whilst the application of King IV is mandatory for listed companies, the report itself is not legislated and merely provides a set of recommendations for companies. Consequently, companies apply discretion which leaves room for inconsistency in application.

In a study conducted by van Zyl & Mans-Kemp (2022), it was found that the use of clawback by listed companies has increased in South Africa over the past decade, however the disclosures relating to clawback were found to be inconsistent between companies. The link between pay and performance was not clearly articulated, and in many instances, a high-level overview on the application of clawback was provided without sufficient detail on the mechanics (van Zyl & Mans-Kemp, 2022). In light of this, there exists a need to benchmark the current local governance approach to international best-practice so that coherence can be created amongst companies.

In terms of the JSE listings requirements, clawback is regarded as a corporate action for which specific principles apply (JSE,2017). Prior to the execution of a clawback, part 1.1 of the Corporate Action Timetable requires a Stock Exchange News Service ('SENS') announcement to be made (JSE, 2021). Disclosure is also required on the method, formulas and assumptions applied in determining the amounts clawed back (JSE, 2021). The JSE however does not prescribe the mechanics around the clawback transaction from a legislative perspective, and instead leaves this aspect to the board to determine.

Companies Act 71 of 2008

The Companies Act 71 of 2008 elaborates on corporate responsibility and the fiduciary duties of directors. From a remuneration governance perspective, this Act focuses on the reporting requirements and the conduct of directors. Clawback is not dealt with directly. In terms of reporting, sections 28 and 29 of the Companies Act 71 of 2008 emphasize the need for accuracy and completeness of the accounting records and financial statements. Section 30 of the Companies Act 71 of 2008 demands that all categories of remuneration be disclosed separately to enable users to distinguish between the fixed and variable components.

Section 76 of the Companies Act 71 of 2008 discourages self-serving behaviours on the part of directors and instead emphasizes the importance of clear communication and transparency. This section requires that directors act in good faith and in the best interest of the company whilst displaying the knowledge, skill and care expected of a person in such a role. Directors may also incur liability for breach of

fiduciary duties in terms of section 77 of the Companies Act 71 of 2008. Furthermore, section 214 of the Companies Act 71 of 2008 remands directors for any false statements, reckless conduct and non-compliance. Certain actions are specified in section 214 of the Companies Act 71 of 2008 and include falsification of accounting records, providing false or misleading information, misstatement or omission of amounts with fraudulent intent and providing untrue statements. These actions are analogous to the contingent events used to enforce a clawback, and by inference therefore, the enforcement of a clawback would result in a breach of fiduciary duties on the part of directors, yet legislation does not explicitly state this.

The Companies Act 71 of 2008 does however preserve the integrity of directors when honest mistakes are made in that fiduciary duties are not breached if the director acted in the best interest of the company. An evaluation of the circumstances is therefore essential. To encourage exposure of misconduct, section 159 of the Companies Act 71 of 2008 safeguards whistle blowers from all forms of civil, criminal and administrative liability.

Basic Conditions of Employment Act 75 of 1997

Moolman & Giliam (2019) explains that existing employment law also prevents employers from enforcing clawback in the absence of a written contractual right. Section 34(1) of the Basic Conditions of Employment Act 75 of 1997 only permits employers to recoup amounts from the remuneration of an employee in specific instances provided a written agreement exists between both parties. Whilst overpayments resulting from mathematical error may be recovered in terms of section 34(5) of the Basic Conditions of Employment Act 75 of 1997, this Act remains silent on the recovery of funds due to misconduct, fraud or other forms of misrepresentation.

Banks Act 94 of 1990

In addition to the regulations above, companies in the banking sector are subject to the Banks Act 94 of 1990 ('Banks Act'). Regulation 43 of the Banks Act 94 of 1990 requires banks to disclose the details surrounding malus and clawback in the remuneration report (SARB,

2012). Detail should be provided on the processes and procedures followed and should incorporate both quantitative and qualitative information (SARB, 2012). The performance criteria impacted by the clawback needs to be disclosed as well as the approach adopted by the bank in adjusting remuneration through the use of clawback (SARB, 2012). At present, the Banks Act does not stipulate exactly what the policies should contain, and neither is the preferred approach to clawback prescribed.

Whilst the South African Reserve Bank ('SARB') retains the power to issue direction to banks on how to clawback variable remuneration, the process applied remains unclear (SARB, 2015). The Basel Committee on Banking Supervision (2015) emphasizes that remuneration structures within a bank concur to the business's risk strategy, its long-term interest, value and objectives. Remuneration should reflect a balance between risk taking and risk outcomes (Basel Committee on Banking Supervision, 2015). Risk outcomes should be measured over a number of years so that remuneration pay-outs are aligned to results (Basel Committee on Banking Supervision, 2015). The inclusion of malus and clawback provisions in remuneration plans enable the bank to defer payments until risk outcomes are more certain (Basel Committee on Banking Supervision, 2015). Consequently, the use of these provisions is strongly encouraged in the banking sector so that recovery can occur without unnecessary delay.

In light of the above, explicit guidance on how to execute the clawback is not presently available in South Africa. The absence of distinct guidelines on remuneration clawback leaves companies with no option but to apply discretion on the most suitable approach. Further research is therefore required to specify the mechanics surrounding clawback for both current and former employees.

USA overview

Various legislation exists in the USA that refer to the clawback of remuneration. Since the onset of the financial crisis, regulatory authorities proposed several reforms to legislation to ensure better oversight on remuneration. The Model Business Corporation Act of 2016 governs the conduct of companies and directors. This Act is supported by various doctrines applied in the common law. The mechanics on the application of clawback is expanded upon in other legislation, such as the Sarbanes-

Oxley Act of 2002, the Dodd-Frank Wall Street Consumer Reform and Protection Act of 2010 and the Securities Exchange Act of 1934, all of which are discussed in detail below.

Model Business Corporation Act (2016) and common law doctrines

The Model Business Corporation Act (2016) exists in the USA and clarifies the fiduciary duties of directors. Section 8.30 of the Model Business Corporation Act (2016) requires directors to act with reasonable care, in good faith and in the best interest of the business. This section also expects directors to possess a general awareness of the business activities and its financial affairs. Whilst directors may rely on the inputs from colleagues, the responsibility to ensure that competent individuals are allocated to tasks remains the responsibility of the board in terms of Section 8.30(d) of the Model Business Corporation Act (2016). In this way, the accountability of the board is tied to actual involvement (Sparks & Hamermesh, 1992).

Section 8.31 of the Model Business Corporation Act (2016) also holds directors liable for decisions that are not in good faith and not in the best interest of the business. Decisions resulting from a lack of objectivity or self-serving behaviours, or those displaying a lack of oversight or resulting in financial benefits also fall within the scope of section 8.31 of the Model Business Corporation Act (2016). In terms of this section, directors may be held liable for both reputational and monetary damages and any clauses pertaining to recovery of compensation or disgorgement may be instituted (American Bar Association, 2016).

Melone (2009) explains that any material misstatement of financial information results in a breach of the duties of good faith and loyalty, and therefore further action may be instituted from a legal perspective. Sparks & Hamermesh (1992) add that directors may be held personally liable where gross negligence is proven to exist. Whilst section 8.31 of the Model Business Corporation Act (2016) describes the consequences resulting from a transgression, the business judgement rule is applied in the common law and provides refuge for individuals that act with reasonable care, in good faith and for the best interest of the company (Sparks & Hamermesh, 1992). This rule protects executives that were not directly involved in perpetrating the misstatement and presumes

that sound judgement is applied by the board if decisions taken conform to a rational purpose that is in line with the business strategy (American Bar Association, 2016).

Sparks & Hamermesh (1992) explain that the corporate opportunity doctrine is commonly applied in the USA. This doctrine strives to direct business pursuits so that there is no conflict between professional duties and self-serving behaviours (Sparks & Hamermesh, 1992). As directors have a fiduciary duty of loyalty to the business, opportunities aligned to the business interest should be pursued, as opposed to those that provide personal gain to the executives involved (Sparks & Hamermesh, 1992). In terms of subsection F of the Model Business Corporation Act (2016), a breach of fiduciary duties is deemed to occur when directors pursue self-interests that are not aligned to business interests.

Non-disclosure of financial interests may also result in the transaction being considered unfair. Fairness in the context of section 8.61 of the Model Business Corporation Act (2016) refers to whether the transaction is beneficial to the business and whether it is comparable to an independent arms-length transaction. Walker (2021) explains that the doctrine of equitable restitution is also applied in common law. This doctrine aims to bridge the gap between the amount of compensation granted to executives and the level of responsibility undertaken by executives (Warren, 2010). Any failure on the part of the executive to fulfil corporate responsibilities results in the employer possessing a right to recover or withhold compensation for those services (Warren, 2010). As clawback strives to prevent unfairness resulting from unjust enrichment, the doctrine of equitable restitution may be invoked to ensure this.

In addition to the above, Caywood (2010) explains that the corporate waste doctrine is applied which demands that directors be held accountable for the use of corporate resources. Directors are accountable to shareholders for any excessive or unjustified expenditure (Caywood, 2010). The concept of corporate waste encapsulates the disregard to act in the best interest of the business (American Bar Association, 2016), and any action that constitutes a waste of corporate resources carries consequences for the executive involved in terms of section 8.31 of the Model Business Corporation Act (2016).

Melone (2009) adds that if the terms and conditions attached to executive compensation are found to be too favourable to executives, the issue of corporate waste is commonly brought to the fore. Caywood (2010) mentions that this doctrine places the onus on proof on shareholders and in many cases, insufficient factual evidence is available to successfully prosecute a director, which leads to high litigation costs. As this doctrine on its own is ineffective in holding directors accountable for unwarranted expenditure, clawback was expanded upon in other legislation to create consequences for performance that is incoherent to business strategy.

Various other legislation also exists in the USA in which detail is provided on how to design and implement clawback policies on remuneration. Such legislation includes the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Consumer Reform and Protection Act of 2010 and the Securities Exchange Act of 1934. The clawback provisions in these acts is discussed in further detail below.

Sarbanes-Oxley Act of 2002

Section 34 the Sarbanes-Oxley Act of 2002 provides specifically for the clawback of compensation from the chief executive officer ('CEO') and chief financial officer ('CFO') of public interest entities. Schwartz (2008) explains that section 34(2) of the Sarbanes-Oxley Act of 2002 holds the CEO and CFO accountable for creating an internal control environment that promptly responds to identified misconduct. Section 34 of the Sarbanes-Oxley Act (2002) is however only applicable if the misstatement resulted from an act of misconduct and if the company is required to restate results due to non-compliance with financial reporting requirements (Fried & Shilon, 2011a). This section also requires executives to forfeit any bonuses or incentive-based compensation received within 12-months prior to an earnings restatement (Brown *et al.*, 2015). Melone (2009) adds that section 34 of the Sarbanes-Oxley Act of 2002 is punitive in that it requires the reimbursement of the full amount of the award.

Brown *et al.* (2015) explain that the absence of misconduct impedes on the application of section 34 of the Sarbanes-Oxley Act of 2002, as the existence thereof is mandatory. Judgement is required in identifying misconduct and the intention of the offender becomes paramount (Fried & Shilon, 2011a). Mahoney (2019) adds that in many cases an admission of guilt does not occur and that makes recovery of compensation an

arduous exercise. Studies have also shown that many listed companies failed to adopt robust clawback policies as the enforceability of section 34 of the Sarbanes-Oxley Act of 2002 was oftentimes very costly and inefficient (Fried and Shilon, 2011b).

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

A few years later, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 was introduced. Brown *et al.* (2015) explain that this act required all public companies to include clawback as part of executive remuneration. Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 permits employers to recover excess compensation from employees if financial results were misstated within a 3-year period prior to the restatement. According to Chan *et al.* (2012), this clawback applies irrespective of whether an act of misconduct has occurred, and places the responsibility of enforcement on the employer, rather than on the regulatory authorities. In this way, section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 expands upon section 34 of the Sarbanes-Oxley Act (2002) as the latter only permitted a recovery from executives in the case of identified misconduct or fraud (Brown *et al.*, 2015).

Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 allowed the recoupment of the excess amount paid out, as opposed to section 34 of the Sarbanes-Oxley Act of 2002 which requires the recovery of the full amount (Fried & Shilon, 2011b). One of the shortfalls of section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 however, is that it limits the application of a clawback to cases of misrepresentation of financial results that necessitate an accounting restatement, whilst overlooking other types of non-financial misconduct (Fried & Shilon, 2011b).

Securities Exchange Act of 1934

In 2015, the Securities Exchange Commission ('SEC') introduced section 10D as part of the Securities Exchange Act of 1934. This section is applicable to listed companies and expands upon section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 10D(a) of the Securities Exchange Act of 1934 requires listed companies to adopt, disclose and enforce policies relating to the clawback

of incentive awards, or the companies could face delisting. Board (2015) explains that this section brought the concept of 'earning' into incentive awards. Where an accounting restatement occurs, it should be determined whether or not the executives involved earned their compensation prior to the restatement. If compensation was not earned, then it may be recouped from current or former executives (SEC, 2015).

The Listing Standards for Recovery of Erroneously Awarded Compensation (SEC, 2015) explain that incentive-based compensation in the context of section 10D of the Securities Exchange Act of 1934 includes both cash and equity awards that are 'granted, earned or vested based wholly or in part upon the attainment of a financial reporting measure'. Financial reporting measures refer to the correct application of accounting principles, as well any other financial metrics derived from reported financial information (Kesner *et al.*, 2015; SEC, 2015).

In cases where an award is subject to several conditions, all conditions need not be met before the executive obtains a 'non-forfeitable' interest in the award (SEC, 2015). According to the Listing Standards for Recovery of Erroneously Awarded Compensation (SEC, 2015), the fulfilment of financial criteria is sufficient to create an obligation on the part of the company to pay the award and a contingent right on the part of the executive to receive the award. Non-financial metrics and performance criteria are ignored when determining whether a non-forfeitable interest in an award has been obtained (SEC, 2015). Once the contingent right to the award is established, the amounts is deemed to be earned and is therefore subject to clawback in accordance with section 10D of the Securities Exchange Act of 1934 (SEC, 2015). This occurs despite the non-satisfaction of other conditions attached to the award (SEC, 2015). Bachelder (2015) adds that awards may only be recouped after receipt, and deemed receipt occurs on the earlier of the date on which the award became earned by the executive and the date of actual payment (SEC, 2015).

Bachelder (2015) and Kesner *et al.* (2015) explain that cash or equity awards linked to time, strategic, operational or service measures are excluded from the definition of incentive-based compensation and therefore the clawback of such amounts would not be subject to section 10D of the Securities Exchange Act of 1934. Kesner *et al.* (2015) also add that discretionary and retention bonuses are also excluded from the scope of section 10D of the Securities Exchange Act of 1934. The clawback

of non-incentive awards would therefore be subject to section 304 of the Sarbanes-Oxley Act of 2002 provided an action of misconduct is found to exist. In the absence of misconduct, section 304 of the Sarbanes-Oxley Act of 2002 will not apply, and therefore the rules and doctrines applicable in the common law may be enforced.

The concept of materiality also plays an important role in determining whether or not to enforce a clawback. The use of judgement is necessary in determining materiality as all relevant facts need to be considered (SEC, 2015). A series of immaterial errors may aggregate to a material amount, and therefore sound judgement should be exercised in determining what to report. Unnecessary delays in reporting material accounting errors, whether intentional or not may result in criminal liability on the part of the executive and the company involved (SEC, 2015).

Therefore, to apply section 10D of the Securities Exchange Act of 1934, the restatement must result from an accounting error or material financial blunder that was used initially in determining the amount of compensation paid to executives (SEC, 2015). Fuerst & Sengar (2016) explain that the date of enforcement of section 10D of the Securities Exchange Act of 1934 is the date on which the company is required to make an accounting restatement. This date is the earlier of the date on which the board of directors have resolved that a material error exists, or the date on which a court concludes that the financial results require a restatement.

Upon identification of an accounting restatement, section 10D(b) of the Securities Exchange Act of 1934 advises that executive compensation be recalculated for a period of 3-years prior to the restatement to determine any excess amounts paid out (SEC, 2015). Bachelder (2015) explains that the 3-year period is referred to as a 'look-back period', the purpose of which is to determine the surplus amounts that should be recouped from current or former executives (SEC, 2015). The Listing Standards for Recovery of Erroneously Awarded Compensation (SEC, 2015) clarify that the restatement must be to correct material inaccuracies in previously issued financial results. If financial results were not incorrectly represented initially, section 10D of the Securities Exchange Act of 1934 will not apply, and instead relief should be sought from section 304 of the Sarbanes-Oxley Act of 2002 or through the rules and doctrines applicable in the common law.

Bachelder (2015) adds that section 10D of the Securities Exchange Act of 1934 applies whether or not the executive was responsible for the restatement. This concept is referred to as 'no fault recovery' (Kesner *et al.*, 2015; SEC, 2015), and the amount clawed back would be the gross amount, pre-tax (SEC, 2015). Kesner *et al.* (2015) explain that the purpose of this is to ensure that the company is fully reimbursed for the excess amounts initially paid out in error.

All individuals in key management or finance roles as well as those tasked with the responsibility of policy-making are regarded as executives in the company and are subject to the clawback rules per section 10D of the Securities Exchange Act of 1934 (SEC, 2015). Furthermore, companies are not permitted to indemnify executives from the enforcement of a clawback in terms of section 29(a) of the Securities Exchange Act of 1934 (Bachelder, 2015; SEC, 2015).

The Listing Standards for Recovery of Erroneously Awarded Compensation (SEC, 2015) emphasize that the use of discretion by the board is also limited when it comes to enforcing section 10D of the Securities Exchange Act of 1934. Non-application of section 10D of the Securities Exchange Act of 1934 is only permitted in cases where the amount to be recovered exceeds the cost of recovery, or where recoupment contravenes the law (Bachelder, 2015). The manner of recovery however is left to the discretion of the company issuing the award. Several mechanisms are available such as cancelling unvested awards, forfeiting awards and deduction from future remuneration amongst others (SEC, 2015).

There may be situations where both section 10D of the Securities Exchange Act of 1934 and section 304 of the Sarbanes-Oxley Act of 2002 apply to the same amount. In such cases, Kesner *et al.* (2015) explain that section 304 of the Sarbanes-Oxley Act of 2002 will be applied first, after which the amount recovered will be deducted in determining the clawback per section 10D of the Securities Exchange Act of 1934 (SEC, 2015). In contrast to section 304 of the Sarbanes-Oxley Act of 2002, section 10D of the Securities Exchange Act of 1934 refers to non-fulfilment by the company with the prerequisites in financial reporting, for which misconduct need not exist (SEC, 2015.)

Warren (2010) does however point out that existing clawback legislation in the USA does not directly address compensation that is not incentive-based, and neither is non-adherence to performance metrics that do not result in gross misconduct. Whilst the doctrine of equitable

restitution discussed above may be invoked in this instance, it remains an area where further research is required.

UK overview

The repercussions of the financial crisis in the USA had a ripple effect on the UK and on various other jurisdictions globally. In response to the public concern on the appropriateness of remuneration and the adequacy of bonuses paid to senior executives, regulatory authorities in the UK legislated guidelines on remuneration clawback. The Greenbury Report on Directors Remuneration and the UK Corporate Governance Code defined the acceptable principles of good governance. The Companies Act of 2006 expanded upon the roles and responsibilities of directors and companies in achieving common goals, whilst the Employment Rights Act of 1996 sought to protect the interests of employees upon the enforcement of clawback. The technicalities on the process applied to clawback amounts is described in various policy statements issued by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA).

Greenbury Report on Directors Remuneration

In 1995, the Greenbury Report on Directors Remuneration was introduced to propose governance standards pertaining to the responsibility and accountability of directors. The Greenbury Report on Directors Remuneration highlights that it is crucially important to align the remuneration of directors to performance, so that better accountability and responsibility can be obtained over remuneration (Greenbury, 1995). Price (2016) explains that the Greenbury Report attempted to address concerns resulting from inadequate financial reporting and the lack of accountability that resulted during the financial crisis. The Greenbury Report also supports restrictions on earnings for senior executives so that remuneration is aligned to market practice (House of Commons of the United Kingdom, 1995).

Price (2016) explains that the Greenbury Report proposed that remuneration committees comprise solely of non-executive directors so that independent supervision can occur over remuneration. These committees were tasked with the responsibility to oversee the fairness

of directors remuneration and should evaluate the adequacy of key performance measures applied in the business (Greenbury, 1995). The Greenbury Report also favoured the adoption of longer-term incentives at senior executive level to better align director interests to shareholder interests (Price, 2016).

Whilst performance measures should adequately compensate directors for services rendered to the business, performance metrics should be designed to reward improvements made to the business (Greenbury, 1995). Price (2016) explains that remuneration committees were also encouraged to adopt a firm line with respect to discretionary bonuses so that the financial position of companies is appropriately evaluated before any rewards are paid out. The link between pay and performance was emphasized (Price, 2016).

UK Corporate Governance Code

The UK Corporate Governance code was drafted subsequently to expand upon the basic principles of good governance. This code focussed on building onto the principles of remuneration addressed in the Greenbury Report, and elaborated on issues arising from the financial crisis including misconduct and inadequate governance (Financial Reporting Council, 2018a). The UK Corporate Governance Code requires that policies on directors remuneration be designed to incorporate the values, purpose and the strategy of the business, whilst also reflecting the commitment and responsibilities assigned to the role in question (Financial Reporting Council, 2018a). Den Exter (2013) explains that adherence to the UK Corporate Governance Code is mandatory for listed companies, and therefore all provisions of the Code need to be applied on a 'comply or explain' basis. In this way, stakeholders hold management accountable for decisions taken Price, (2016).

In designing remuneration policies, the UK Corporate Governance Code suggests that the remuneration structure be kept simple, transparent, and fair in relation to the level of risk undertaken and the outcomes delivered (Financial Reporting Council, 2018a). For incentive-based awards, authority to exercise discretion on the payment of amounts vests with the remuneration committee (Financial Reporting Council, 2018a). This committee is permitted to override formulaic outcomes that may be

perceived as being too excessive (Financial Reporting Council, 2018a). The Guidance on Board Effectiveness (Financial Reporting Council, 2018b) explains that the remuneration committee may adjust the value of awards due to unforeseen circumstances, if results have not been achieved, or if outcomes differ to what was initially intended. This ensures that amounts eventually paid to directors is aligned to the contribution made to the business (Financial Reporting Council, 2018b).

Furthermore, provisions to recover previously issued compensation may also be included in the remuneration policies of companies (Financial Reporting Council, 2018a). Whilst the remuneration committee is permitted to set limits on what is considered reasonable, clawback and malus provisions may also be included in remuneration policies (Financial Reporting Council, 2010; (Financial Reporting Council, 2018b). Detail is required on the circumstances for which such provisions may be invoked. Such circumstances include misleading information or misstatement of accounts, misconduct, reputational damage or corporate failure (Financial Reporting Council, 2018b).

Price (2016) explains that the increased disclosure requirements proposed by the UK Corporate Governance Code aims to improve transparency in reporting, as better transparency contributes to better accountability over remuneration. If accountability is established, corrective action can be taken by management (Price, 2016). The Financial Reporting Council (FRC) also suggest that disclosures on remuneration focus on the substance of transactions as opposed to the legal form (Price, 2016). In addition, improvement in stakeholder relationships was encouraged particularly between directors and shareholders. The purpose of this was to ensure alignment between remuneration and shareholder needs (Price, 2016).

Companies Act of 2006

Further guidelines on the factors that contribute to the efficient and responsible management of directors and companies is outlined in the Companies Act (House of Commons of the United Kingdom, 2006a). This act protects directors that act within the best business interest, whilst also creating consequences for those that deviate from acceptable norms. The Companies Act (House of Commons of the United Kingdom,

2006a) also explains the role of stakeholders in approving the remuneration policies of companies. Chapter 2 of the Companies Act (House of Commons of the United Kingdom, 2006a) details the fiduciary duties of directors. Section 172 of the Companies Act (House of Commons of the United Kingdom, 2006a) indicates that directors are obliged to act within good faith and to promote the best interests of the company. This section also requires directors to maintain a high standard of conduct and to promote the long-term success of the company in all business pursuits. Directors are also required to exercise independent judgement in terms of section 173 of the Companies Act (2006a) and should carry out daily activities with reasonable care, skill and diligence.

Section 176 of the Companies Act (House of Commons of the United Kingdom, 2006a) stipulates that directors should not accept benefits from third parties. The Explanatory Notes (House of Commons of the United Kingdom, 2006b) to this section indicate that the purpose of this is to encourage directors to refrain from pursuing personal interests which may conflict with business interests. Disclosure is also required for any interests held in terms of sections 177 and 182 of the Companies Act (House of Commons of the United Kingdom, 2006a).

From a remuneration perspective, section 226B of the Companies Act (House of Commons of the United Kingdom, 2006a) states that remuneration may only be paid to directors in terms of the remuneration policy, or a pre-approved directors' resolution. If the latter option of chosen, a memorandum should accompany the submission detailing deviations from the remuneration policy in terms of section 226D of the Companies Act (House of Commons of the United Kingdom, 2006a). Any payments made to directors without the necessary approval carry civil consequences in terms of section 226E of the Companies Act (House of Commons of the United Kingdom, 2006a). In terms of this section, directors that wrongfully approved a payment are obliged to indemnify the company for any losses incurred.

Furthermore, section 232 of the Companies Act (House of Commons of the United Kingdom, 2006a) nullifies any arrangement that may exempt directors from liability for breach of fiduciary duties. A breach of fiduciary duties includes negligence, breach of trust and the non-fulfilment of corporate duties (House of Commons of the United Kingdom, 2006b).

The non-disclosure of directors remuneration, or the disclosure of false or misleading information amounts to reckless conduct in terms of sections 418 and 422 of the Companies Act (House of Commons of the United Kingdom, 2006a) for which directors are liable for an offence, indictment, a fine or imprisonment.

In discharging the fiduciary duty of directors to report material information to shareholders, section 234B of the Companies Act (House of Commons of the United Kingdom, 2006a) mandates directors of listed companies to prepare a remuneration report. The Directors Remuneration Report Regulations 2002 (House of Commons of the United Kingdom, 2002) were drafted to provide guidelines on the type of information to include, pertaining specifically to emoluments earned by directors. The Auditing Practices Board (2002) explains that detailed information relating to remuneration committees, performance-related remuneration and liabilities incurred by directors should be disclosed to shareholders in the directors remuneration report. Section 8 of the Directors Remuneration Report Regulations (House of Commons of the United Kingdom, 2002) legislates the provision of financial statements to shareholders which include adequate disclosure on directors remuneration.

Section 3 of Schedule 7A of the Directors Remuneration Report Regulations (House of Commons of the United Kingdom, 2002) stipulates that remuneration policy should include detailed information on the performance conditions attached to remuneration. This information includes benchmarking to comparative companies, an explanation on the assumptions used, as well as a summary of the performance conditions and explanations on why such conditions were chosen. Any variation to the terms attached to performance conditions also require disclosure in terms of section 9 of Schedule 7A of the Directors Remuneration Report Regulations (House of Commons of the United Kingdom, 2002). If, for any reason, performance criteria are not attached to incentive awards, explanation is also required in terms of section 3 of Schedule 7A of the Directors Remuneration Report Regulations (House of Commons of the United Kingdom, 2002).

Disclosure is also required for any significant awards or lumpsums paid to past directors in terms of section 14 of Schedule 7A of the Directors Remuneration Report Regulations (House of Commons of the United

Kingdom, 2002). Shutkever (2002) explains that remuneration policies should also explain the rationale behind the length of contracts granted to directors as well as justification for the categories of remuneration offered. Malus and clawback arrangements should also be disclosed in the directors' remuneration report indicating the criteria of enforceability for each category of remuneration. Disclosure is also required when such provisions have been invoked during the period.

Employment Rights Act of 1996

Section 13 of the Employment Rights Act (House of Commons of the United Kingdom, 1996) prohibits employers from deducting any amounts from the remuneration of employees except if permitted through a statutory provision or if the employee has provided written consent to such a deduction. Furthermore, adequate notice needs to be provided by the employer to the employee in writing in terms of section 13(2) of the Employment Rights Act of 1996, detailing the areas of concern so that remedial action may be taken by the employee prior to any deductions from remuneration. The Financial Services Authority (FSA) also emphasizes that the terms and conditions included in contracts need to be fair, and should adequately explain the rights and obligations of both parties (Financial Services Authority, 2010). Detailed explanations should be provided by employers when the intention is to reclaim amounts from employees (Financial Services Authority, 2010).

Section 13(4) of the Employment Rights Act of 1996 does however permit employers to adjust for computation errors made in determining the value of remuneration payable. In addition, section 14 of the Employment Rights Act of 1996 permits employers to deduct any overpayment of remuneration as well any amounts accruing to regulatory authorities in terms of statutory provisions. The Employment Rights Act of 1996 seeks to defend the employee from unfair practice on the part of the employer. Employers are not permitted to clawback amounts except in cases of mathematical inaccuracy, provided adequate notice was given to the employee. Other circumstances warranting the enforcement of clawback are not addressed, and therefore the principle of fairness outlined in this act should be considered in conjunction with other relevant legislation.

PRA and FCA guidelines

The Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) have also issued various guidelines on remuneration to curb short-termism and excessive risk-taking by directors (Prudential Regulation Authority and the Financial Conduct Authority, 2015). Clause 19C.3.6 of the FCA Handbook (Financial Conduct Authority, 2017) specifies that the remuneration policies adopted by companies should conform to the business strategy and values. Remuneration policies should also promote effective risk management in terms of clause 19C.3.7 of the FCA Handbook (Financial Conduct Authority, 2017). In addition, performance of employees should be aligned to the long-term interests of the business, and measures should be place to avoid conflicts of interest in accordance with clause 19C.3.9 of the FCA Handbook (Financial Conduct Authority, 2017).

Furthermore, clause 19C.3.13 of the FCA Handbook (Financial Conduct Authority, 2017) requires companies to demonstrate that remuneration decisions have considered both the current and future financial position of the company. The determination of remuneration should also be done independently by the remuneration committee to prevent any undue influence in accordance with clause 19C.3.17 of the FCA Handbook (Financial Conduct Authority, 2017). Clause 19C.3.4 of the FCA Handbook (Financial Conduct Authority, 2017) also specifies that employees should be categorised depending on seniority and the level of risk imposed on the business. Employees should be made aware of the categories and should understand the implication of the status allocated to them in terms of clause 19C.3.5 of the FCA Handbook (Financial Conduct Authority, 2017).

Policy statement PS 7/14 (Prudential Regulation Authority, 2014) explains that by exposing variable remuneration to the risk of forfeiture, a safety net is created in which management can exercise better control over the amounts eventually paid. In determining the value of variable remuneration, the PRA and FCA are in agreement that both financial and non-financial metrics should be considered (Prudential Regulation Authority and the Financial Conduct Authority, 2015). Clause 15.4 of the PRA Rulebook (Prudential Regulation Authority, 2020) also specifies that the award of variable remuneration should be tied to individual performance, as well as the performance of the relevant business unit and the firm as a whole.

Furthermore, clause 15.9 of PRA 2015/53 (Prudential Regulation Authority and the Financial Conduct Authority, 2015) specifies that fixed remuneration should comprise a major component of total remuneration so that companies may exercise discretion in determining whether or not to issue variable remuneration. Clause 19D.3.61 of FCA 2015/27 (Prudential Regulation Authority and the Financial Conduct Authority, 2015) and clause 19A.3.51 of PRA 2014/22 (Prudential Regulation Authority, 2014) emphasize that variable remuneration should only be paid if permitted by the financial performance of the business as a whole. Furthermore, the contingent nature of such remuneration should be made known to employees in terms of clause 4.6 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2014).

From a risk mitigation perspective, policy statements PRA PS12/15 and FCA PS15/16 (Prudential Regulation Authority and the Financial Conduct Authority, 2015) explain that both malus and clawback are seen as effective risk management tools on variable remuneration.

Hoffmann *et al.* (2019) explain that inclusion of malus and clawback impacts on the likelihood of the pay-out. Clawback may be enforced upon agreement by the employee to refund certain amounts in particular circumstances (Prudential Regulation Authority and the Financial Conduct Authority, 2015). Alternatively, companies may opt to extend the length of time between date of award and the date of vesting (Prudential Regulation Authority and the Financial Conduct Authority, 2015). This represents a malus condition in which the company retains control over the unvested amounts for a longer period. The PRA and FCA (Prudential Regulation Authority and the Financial Conduct Authority, 2015) explain that this is known as a deferral period and should essentially incorporate the estimated timeframe in which the results from poor performance, misconduct or excessive risk taking are expected to surface. Studies have also shown that the application of moderate deferral periods assists in improving risk management within companies (Hoffmann *et al.*, 2019).

In determining the length of the deferral period however, factors such as the level of responsibility, strategic influence and seniority of the position should be considered, in addition to the nature of the business, its risks and activities (Prudential Regulation Authority and the Financial Conduct Authority, 2015; Prudential Regulation Authority, 2020). Whilst the PRA and FCA retain authority to adjudicate on the duration of the

deferral period, an extended period is proposed to ensure effective risk management over the long term (Prudential Regulation Authority and the Financial Conduct Authority, 2015).

Rule 15.21 of the PRA Rulebook (Prudential Regulation Authority, 2020), clause 15.21 of PRA 2015/53 and clause 19D.3.62 of FCA 2015/27 (Prudential Regulation Authority and the Financial Conduct Authority, 2015) explain that the criteria for the application of both malus and clawback need to be clearly specified and should include situations where the conduct of employees resulted in financial loss or fell short of acceptable standards. Green & Pierson (2018) explain that at present, only financial loss and unacceptable conduct are currently prescribed for the enforcement of clawback. The criteria for clawback is therefore very limited and hinders on the ability of the board to enforce clawback in the case of corporate failure (Green & Pierson, 2018). Clause 19A.3.51B of PRA 2014/22 (Prudential Regulation Authority, 2014) explains that relevant factors together with the employee's level of responsibility in perpetuating the exposure to risk should be considered in determining the amount to clawback. Rule 15.22 of the PRA Rulebook and clause 15.22 of PRA 2015/53 (Prudential Regulation Authority and the Financial Conduct Authority, 2015; Prudential Regulation Authority, 2020) specifies that adjustment should be made to variable remuneration if material error, employee misconduct, material failures in risk management or a material downturn in financial performance is found to exist.

Clause 4.8 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2014) specifies that in cases of misconduct or material failures in risk management, employees directly and indirectly involved may be held accountable. By virtue of seniority of a position, employees are expected to be aware of business activities and are responsible for effective implementation of internal controls. Employees may therefore be implicated for the failure to identify and address issues timeously.

From a timing perspective, clawback may be applied within a period of seven years from the date on which variable remuneration was granted if misconduct or a failure in risk management is identified in terms of clause 15.2 of PRA 2015/53 (Prudential Regulation Authority and the Financial Conduct Authority, 2015). The PRA and FCA (Prudential

Regulation Authority and the Financial Conduct Authority, 2015) explain that this period may be extended to ten years if investigations have commenced that are likely to result in an adjustment to remuneration.

Companies are also encouraged to apply fairness and consistency in the enforcement of clawback policies (Prudential Regulation Authority, 2021). While criteria for enforcement should be specified, remuneration committees retain the right to exercise discretion on the suitability thereof in accordance with clause 4.13 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2021). Remuneration policies should clearly define the approach followed in determining the amount to be reimbursed as required by clause 4.14 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2021). Furthermore, if performance measures are used in determining the value of variable remuneration, clause 19C.3.22 of the FCA Handbook (Financial Conduct Authority, 2017) specifies that both current and future business risks are considered.

In determining the amount to be clawed back, clause 19C.3.37 of the FCA Handbook (Financial Conduct Authority, 2017) emphasizes that non-financial metrics form a major component of the performance assessment process. Clause 4.19 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2021) also advises companies to adopt a comprehensive approach in that a numeric value should be assigned to both the qualitative and quantitative implications of the action. Qualitative implications are described in clause 4.19 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2021) and include the adverse financial impact resulting from reputational damage, tainted stakeholder relations, loss of customer support and duration of the unfavourable repercussions of the wrongdoing amongst others. The damage resulting from these aspects should be estimated and included together with financial loss, fines and other regulatory costs in determining the value of the clawback (Prudential Regulation Authority, 2021).

Clause 4.22 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2021) also provides authority to the remuneration committee to evaluate the amount of the clawback if information subsequently comes to light that impacts on the value initially determined. Furthermore, companies are expected to justify how remuneration has been adjusted to incorporate risks undertaken in

accordance with clause 5.16 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2021) Clause 5.17 of the Remuneration Supervisory Statement SS2/17 (Prudential Regulation Authority, 2021) stipulates that both long-term risk factors as well as unexpected future losses be incorporated into the performance measures so that a combination of financial and non-financial criteria are used in determining the amounts eventually paid. Clause 15.20 of the PRA Rulebook (Prudential Regulation Authority, 2020) also emphasizes that company sustainability is critical in deciding whether or not to pay variable remuneration.

Clawback legislation in the UK is quite comprehensive and in many instances, replicates the approach adopted by the USA. From the literature above, it appears as though the focus of regulatory authorities is to recover amounts erroneously paid out, whilst also creating punitive consequences for the offender. The alignment between performance and remuneration is frequently emphasized in both the UK and USA. Legislation in these jurisdictions also clarifies the stance to be adopted by companies in enforcing clawback. South African legislation on the other hand is silent on the mechanics to be applied to remuneration clawback. Furthermore, the approach adopted locally differs drastically to comparative jurisdictions. A summary of the key findings is included below:

Table 1. Summary of the key findings. Tabular representation of the treatment of remuneration clawback across various jurisdictions

	South Africa	USA	UK
1	Limited clawback focus due to the absence of clear guidelines.	Focus on restitution mechanisms to curtail unjust enrichment.	Focus on restitution to align personal and business interests.
2	Trigger events limited to computational error.	Trigger events include misconduct, financial restatement, fraud, or any other contractually agreed condition.	Trigger events include misconduct, financial restatement, fraud, or any other contractually agreed condition.
3	Inadequate statutory/legislative guidance.	Developed legislation on clawback.	Developed legislation on clawback.
4	Focus on procedural fairness and employee rights.	Focus on procedural fairness and employee rights.	Focus on procedural fairness and employee rights.

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	South Africa	USA	UK
5	Discretion is frequently applied due to the absence of clear guidelines.	Discretion is infrequently applied.	Discretion applied to reduce the payment of excessive incentive awards.
6	Inconsistency in application between companies.	Homogenous application between companies due to the prevalence of appropriate guidelines.	Homogenous application between companies due to the prevalence of appropriate guidelines.
7	No specific guidance on the approach clawback in later years.	Guidance is provided on clawback in later years. A 3-year look back period is applied.	Guidance is provided on clawback in later years. A 7-year look back period is applied.
8	No guidance on clawback from former employees.	Guidance is provided on clawback from former employees.	Guidance is provided on clawback from former employees.
9	Lack of clear administrative and procedural guidelines.	Administrative and procedural guidelines exist.	Administrative and procedural guidelines exist.
10	Common law principles not applied to remuneration.	Culture of responsible decision-making is encouraged through doctrines applied in the common law.	Common law principles not applied to remuneration.
11	Limited use of clawback in aligning pay to performance.	Clawback used to align pay to performance.	Clawback used to align pay to performance.
12	Limited enforcement of clawback as a method to inspire behavioural change.	Clawback is a punitive and remedial measure to inspire ethical conduct.	Clawback is a punitive and remedial measure to inspire ethical conduct.
13	Existing remuneration policies favour malus as clawback legislation is non-existent.	No preference is noted. Legislation is developed to support both.	Malus provides better control over remuneration over a longer period.
14	Deferral of vesting periods not applied.	Deferral of vesting periods not applied.	Deferral of vesting periods is applied.
15	No clear directive on the exposure of variable remuneration to clawback.	Variable remuneration partially exposed to risk of forfeiture.	Variable remuneration exposed to risk of forfeiture in full.

Source: Authors' compilation

CONCLUSIONS

In this paper we discussed the current state of governance legislation on clawback in South African. The findings were benchmarked against other jurisdictions to determine how well South Africa fares in relation to its global counterparts with the aim of facilitating policy change locally. The following aspects are noted as improvement areas with the South African context.

Despite the increased use of clawback amongst listed companies in South Africa, inadequate governance procedures are found to exist. Whilst King IV advocates for good governance and encourages adherence to international best-practice, further research is needed on how to develop existing laws to effectively deal with clawback on remuneration.

The governance structures implemented by companies and other regulatory bodies in South Africa tend to focus more on the operational aspects surrounding clawback. If companies decide to enforce a clawback, the internal reporting requirements are made clear, yet no guidance is given on how to enforce clawback from a statutory perspective. The rights and responsibilities of employers and employees remain vague, despite clawback having huge financial and reputational consequences.

Currently, in terms of South African employment law, the enforceability of a clawback provision will require the employer to have a contractual right against the employee. Procedural fairness is an aspect emphasized in labour law, particularly when deducting amounts from remuneration. As clawback policies applied by listed companies currently incorporate the use of board discretion, employees should ideally be afforded the opportunity to make counter representations to reduce the value proposed as a clawback. Consistency needs to be applied in the implementation of the policies and therefore formalisation of the legislation and processes around clawback is imperative.

Furthermore, the trigger events for the enforceability of a clawback need to be clearly articulated so employees are aware of the actions to avoid. Key performance measures also need to incorporate clearly defined criteria. Transparency and disclosure are also necessary on the process followed by companies prior to the recoupment of awards. Technicalities such as clawback in the later years, as well as clawback from current and former employees are not dealt with in South

African legislation at present. Consequently, the reporting requirements and administrative processes fall short. Further research on these aspects is required.

The overview of the comparative jurisdictions evidences the commitment of regulatory authorities to exercise better control over executive compensation. Whilst certain laws may emphasize specific requirements, such as the existence of misconduct or a financial restatement, various other doctrines and rules exist within the common law that inspire a culture of responsible decision-making at senior levels of management. The alignment between the personal interests of executives and the fiduciary duty to act within the business interest is a common focus in both the USA and the UK. Clawback is used as a mechanism in these jurisdictions to align executive remuneration to individual performance.

The exposure of variable remuneration to the risk of forfeiture also enables remuneration committees to exercise full control over the amounts in question. Management is afforded the opportunity to consider various factors, including long-term sustainability of the business before committing to any payment. The incorporation of both financial and non-financial performance metrics also incentivizes employees to excel as incentive awards are not guaranteed.

The coherence in the approach adopted by the USA and the UK creates harmony as companies are subject to a similar set of standards. Performance can be gauged across international borders and in this way, areas of concern can be timeously identified and addressed. The approach to administration and reporting can also be standardized so that the process functions optimally. Jurisdictions such as South Africa that do not have an established regulatory regime on clawback can therefore definitely consider the approach adopted in these jurisdictions as a basis from which to build on existing law. Through the sharing of knowledge and collaboration, efficiencies on remuneration clawback can be maximised.

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EXPLORING THE CIRCULAR ECONOMY EMBEDDED IN THE BUSINESS MODEL. THE PERSPECTIVE OF VIETNAM

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ABSTRACT. The Covid-19 pandemic has exposed the leadership inability of the head of several states. This is also an occasion for countries' policymakers to reconsider policies regarding priorities for policies. Combining with the COP26 conference after the beginning of the new normality, where policymakers gathered for initiating collective actions to tackle climate change. This event turns out that requires collective action in the private and business sector in handling sustainability. These events play very crucial factors in paving the way for the increase of competitiveness in the market through a more sustainable business model. The circular economy is a recent tendency of developed countries while implementing policy within these criteria. The approach of the Environment, Social and Governance report indicator (ESG) is not new and a favorable option for many multinational corporations including small and medium-sized enterprises in several developed countries. ESG is expected that investors and policy-makers would evaluate firms regarding sustainability. It is to say that ESG will be a factor in the process of shaping the global circular economy. However, enterprises in developing countries might take slow progress in this regard, especially in Vietnam. The dissemination of the circular economy is somewhat slow. Vietnam is gradually employing this economic model. And firms operating within the country are being encouraged to

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shift their linear business model to a circular economic business model. Vietnam's government is making its effort to pave the way for more sustainable economic development by raising awareness of the circular economy, ESG, and sustainable business. Based on the exploratory research, this paper uses web content analysis, secondary sources, and literature research especially the national policies to revise the perspectives of the government and firms. Moreover, this paper should view the development trend of the circular economy in Vietnam. This paper will investigate the situation in Vietnam by analyzing national reports and policies. Several enterprises implementing the circular economy model will be taken under consideration regarding their direction and how they perceive it.

Keywords: Circular economy, business model, shared values creation, Vietnam, policy implication

JEL classification : Q56, F16, M14, Q01

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INTRODUCTION

The circular economy model has received more attention in recent years from nations across the world. The knowledge-based economy differs significantly from the conventional linear economy in its approach, even though the two terms are used differently. In the linear economy, resources are wasted, which causes the depletion of today's natural resources. Vietnam has achieved its socioeconomic progress, but it is also struggling with issues like resource scarcity, pollution, and climate change. Vietnam is heading toward the processes of urbanization, population growth, and industrialization. Nonetheless, there is a slow and steady economic paradigm shift from the linear economic model. Substantial alterations in the way of production and utilization of goods and materials and disposal are required when thinking about how present

production and consumption systems are to be converted into sustainable ones (Ness, 2008). It is founded on constant growth and material extraction, which has severe adverse effects on the “environment and resource availability”(Vermunt et al., 2019). Climate change is expected to affect two of Vietnam's most important export sectors - industry and agriculture - as well as trade-related logistics and transport infrastructure (World Bank, 2022). Vietnam's Prime Minister, Pham Minh Chinh, reaffirmed his commitment to join the global effort to combat climate change during the COP26 conference held in Scotland. However, companies in Vietnam might take slow progress in this regard. Thus, Vietnam should ultimately take the responsible initiative to address global issues for enhancing economic competitiveness and a conscious society. Local companies are not aware of the necessity of forming a circular economy embedded in the business model. Vietnam must put an emphasis on developing a circular economy to tackle the conflict between economic progress and environmental conservation and communicate with local companies (Tri, 2021).

Recently, the circular economy has captured the attention of policymakers. Schroeder et al. (2019) claimed that the definition of Circular Economy has not been formed in a universal common ground. While the European Environment Agency or EEA (EEA, 2016) conceptualized the circular economy that “the concept can, in principle, be applied to all kinds of natural resources, including biotic and abiotic materials, water and land. The factors that could drive the effectiveness of a circular economy include “Eco-design, repair, reuse, refurbishment, remanufacture, product sharing, waste prevention, and waste recycling” (EEA, 2016). The Circular Economy concept was deprived as an economic model that turns the waste output of one industry into an input resource of another industry or circulating within an enterprise itself. From this point, the Institute for Circular Economy Development (ICED) of Vietnam claimed that the circular economy partly contributes to the increase in the value of businesses while bracing for the reduction of resource exploitation, waste treatment expenses, and environmental pollution. From an academic point of view, the circular economy is regarded as an economic model associated with sustainability, production, and consumption while considering the improvement of societal well-being and the effective use of energy resources (Tapaninaho & Heikkinen, 2021). In the same vein,

the shift from a conventional linear business model to circular business model results in not only financial benefits but also societal and environmental benefits (Lewandowski, 2016). After Covid-19 and the urgency of energy resources, Velenturf & Purnell (2021) have pushed forward the adoption of a circular economy business model within enterprises. This would lead to a shift from the conventional business model to the more circular and sustainable one (Palmié et al., 2021). Nevertheless, the appearance of businesses that introduce this type of business model is very limited. Thus, looking at the Vietnam Circular Economy Hub, which is an initiative of the Institute of Strategy and Policy on natural resources and Environment and the United Nations Development Programme the establishment of a specialized hub. This hub was in charge of the dissemination of circular economy with knowledge and project bases creating a forum for businesses and society. They have been working and studying with several companies capturing this trend of economics. These companies were listed in the subsection “partners and network”. This paper would analyze the understanding and the employment of circular economy and other relevant factors from either business or governmental actors. From that point, a context of Vietnam when exploiting the circular economic model would be visible. This study analyses the government’s approaches toward this economic model and how it would help encourage businesses to embrace the circular economy embedded in their business model. The finding is expected to contribute to the research on the circular economy from the perspective of a developing country which is Vietnam in the process of upgrading to an upper middle-income country.

LITERATURE REVIEW

Circular economy

Closing material loops through resource reduction and recovery in the process of both manufacturing and consumption is the goal of the circular economy (CE). Multiple research projects have examined the ways in which CE benefits the environment while assisting businesses in developing new business prospects (Chen, 2020). CE aimed at taking the

place of the conventional open-ended economic model which is centered around the linear basis of the production and consumption model. This traditional model is the popular model where raw materials engender final products and they become wastes after being consumed (Geng et al., 2012). CE has many definitions depending on the approaches and the school of thought (Nikolaou et al., 2021). Throughout many empirical studies on the definition of the CE and its theoretical and practical frameworks, Kirchherr et al. (2017) claimed that there were 3 dimensions that scholars focus on economics, society, and environment. Ghisellini et al. (2016) stated that there were many misconceptions about defining circular economy by the only waste management approach, meanwhile, the economic model takes care of societal and economic healthy resources and being. The importance of the CE has been raised globally and more deeply recently after several events such as the energy crises, the devastation of the environment, etc (Barrie & Schröder, 2022; Lieder & Rashid, 2016). Velenturf & Purnell (2021) argued that despite the hard promotion of CE in society, there have been many controversies so far, they also reminded their audiences about the drawback of this economic model if mis-conceptualization happens. In this sense, the environmental factor is the ultimate driver of the CE (Nikolaou et al., 2021; Velenturf & Purnell, 2021). CE can contribute to sustainable development as well as devastate it if these two terms are separated (Nikolaou et al., 2021; Velenturf & Purnell, 2021). Concerning the principles of the CE, the 3R principles stemmed from the 3Rs initiative proposed by Japan's Former Prime Minister Koizumi at the G8 summit (Ministry of Environment, Government of Japan (2004). Since that day, the 3R principles (reuse, recycle, reduce) were used by most scholars, especially in the Vietnam context where the circular economy is emerging (Nguyen et al., 2020; Hai et al., 2019). However, the set of principles changes over time. This was due to the limitation of the 3Rs principles. Scholars claimed the CE goes beyond the notion of the 3Rs such as product design or efficient waste ecosystem, etc, to minimize environmental impact while maximizing the economic benefits (Geisendorf & Pietrulla, 2017; Ghisellini et al., 2016). The Waste Framework Directive issued by European Commission added one more R which was "recovery" (European Commission, 2008). Scholars like Potting et al. (2017) framed the 9R principles to measure the circularity

of business. These uncommon principles confuse countries and businesses. There is much literature conducted on the CE and many issues and relevant factors around it. Recently, developing countries like Vietnam are focusing on disseminating the CE and implementing policies to associate the CE with the development strategy. However, it seems that the country is approaching this economic model by integrating environmental management issues, and sustainability into new related policies regarding economic development. By putting emphasis on the economic and sustainable dimensions, it is also, according to scholars, an approach to the CE (Schroeder et al., 2019; Pieroni et al., 2021). It is understandable that the principle of the 3Rs was mostly utilized in Vietnam as the country is in the initial stage where policymakers, the government, and other related institutions have to disseminate the CE notion (Nguyen et al., 2020). This perception means the 3Rs are suitable for the country at this stage where firms and other relevant stakeholders such as consumers and suppliers, etc could comprehend the notion and enhance the use of the CE in the future.

The circular economy business model

Geisendorf & Pietrulla (2017) claimed that most of the CE-related studies apprehend the CE as an approach toward the construction of a new business model. In this sense, firms also need to focus on integrating CE-related value creation, delivery, and capturing the value proposition in their business model (Chen, 2020). The circular economy business model has been adding many demands for policymakers, practitioners, and businesses leaders regarding its complexity, variables, and structure (Pieroni et al., 2021). Controversy is still existing strongly regarding how to define the circular economy business model (CEBM). Several factors were considered essential for the CEBM such as the consumers' behaviors, types of products, manufacturing process, technological advancement (Linder & Williander, 2015). While Vermeulen (2015) indicated more macro factors which decide the companies' change of business model such as regulation, consumption, type of energy, the assessment of the impact on the environment, etc Vermeulen (2015). The business model is usually used to form the business strategy of firms. It also serves as a guideline to define the competitive factors for racing with other foe

companies, building relationships with suppliers and partners, etc. Hence, those factors defined by either Linder & Williander (2015) or Vermeulen (2015) could be regarded as the competitiveness of firms in the context where the CE is mainly focused. In the CE, the traditional business model would be shifted to the CEBM integrating the CE principles with the value proposition (Geissdoerfer et al, 2020; Linder & Williander, 2015; Pollard et al., 2023). In the same vein, CEBM is constructed based on the traditional linear business model with the enhanced feature of the CE-related value chain to seize the opportunities within the section of value creation and proposition (Pollard et al., 2023). From the perspective of management consulting companies, there are several models which have been approved for the more circular economy by studying several case studies implemented by both Accenture and the OECD in 2014 and 2019 such as “Circular Supplies”, “Resource Recovery”, “Product Life Extension”, “Sharing Platforms”, and “Product as a Service” (Accenture, 2014; OECD, 2019). Jensen (2022) published his article at the World Economic Forum where the scholar mentioned the same approach of the business model towards circular economy justifying the appropriateness of the models such as “Circular inputs”, “Sharing economy”, “Product use extension” and “Resource recovery”. Meanwhile, the institutions expressed their perception with additional characteristics for CEBM. For instance, the Ministry of Economic Affairs and Climate Policy of the Kingdom of Netherlands (2022) formed its guideline for businesses to implement the CEBM mentioning “Resource models”, “Design models”, “Lifetime extension models”, Platform (sharing) models”, “Product-as-a-Service models (PAAS)”, “End-of-Life models”, “Lifecycle models”.

THE METHODOLOGICAL APPROACH

This paper will use the comparative analysis and explore studies from existing research such as policy documents to understand the situation in Vietnam and where the country is progressing in this field. Reports from companies as references for implication for the formation of a circular economy embedded in the business model. For the discussion of corporations’ behavior, the author used the database from the Vietnam Circular Economy Hub (CE Hub). Specifically, the companies

which had profiles in the section “nghiên cứu điển hình” (case study) would be used as a case for web-content analysis. In this sense, the section which would be selected in the companies’ website is “về chúng tôi” (about us), or in some cases, they would be in the section “giới thiệu” (Introduction). In order to justify the direction and vision of the companies, a coding scheme was built. These data would be used to analyze generally the direction to see whether these companies are moving toward sustainable development. Moreover, companies’ report such as Saigon Asset Management and PwC, needs to be taken into consideration to evaluate the readiness for a circular economy or sustainable development. However, there was a limitation to this analysis. First, several companies listed on the CE Hub have not launched their website, so the reliability could be reduced. Hence, the author only chose those firms listed below that have a website to analyze. Moreover, because this study is aimed at firms operating in Vietnam, the language should be in Vietnamese attaching a translation. Hence, the author would dig deeper into these companies to analyze their approach to the circular economy, mainly focusing on the 3Rs principle (Potting et al., 2017). A coding scheme with codes is described below.

Coding scheme

No	Theme	Code translated into English	Code in the original language
1.	Sustainable development	Green, clean, environment, sustainability, carbon, circular economy, improving, (circular)	“Xanh”, “sạch”, “môi trường”, “bền vững”, “kinh tế tuần hoàn”, “cải thiện”, “tuần hoàn”.
2.	Environmental protection	climate change, pollution, Safety, garbage, nature	“biến đổi khí hậu”, “ô nhiễm”, “an toàn”, “rác”, “tự nhiên”.
3.	Societal contribution	goods, (society), healthy, employment, solution, awareness, community	“sản phẩm”, “xã hội”, “sức khỏe”, “việc làm”, “giải pháp”, “nhận thức”, “cộng đồng”.

This coding scheme was created to analyze the approach to the sustainability of these companies to capture the possibility of combining principles and value creation. National policies will be used to analyze the accountability and affectability related to the government. Moreover, the this paper analyzed the companies’ strategy through the models proposed by Accenture (2014) and the Ministry of Economic Affairs and

Climate Policy of the Kingdom of Netherlands (2022). From this way, this study could offer an insight of the firms' behaviors towards the CE and how they adopt this notion to their business model.

RESULTS AND DISCUSSIONS

There are several articles that attempt to evaluate the amount of progress of the circular economy in businesses from various economic sectors employing unique metrics. This indicator helps demonstrate to governmental authorities and stakeholders how consistently the development and operational organization of the circular economy is proceeding in companies. However, Vietnam is still lagging in this context as the definition of circular economy is not in a common line. Vietnamese policy is not identifying clear criteria to assess a company operating in the country. Hence, a communal CE embedded in the business model should be addressed as the first step for companies to follow. Regarding principles of circular economy as a guideline for business and policymakers. There are more added variations to the original one. The R principles might vary, depending on the situation of the country. In the research of Reikea et al. (2018), they found out that there was interchangeable use among these R principles. However, scholars pointed out that these principles do not include the value-oriented model. This is to say that government should create a favorable mechanism and policy supporting the combination of values of businesses and society. In return, companies should account for the strategy for value creation and retention. Accenture (2014) has outlined the value creation of a circular economy including four key points: "lasting resources" hinting at regenerable resources, "liquid markets" implying the accessibility of products, "long life cycles" referring to long-lasting products, and "linked value chains" contributing to zero waste from production (Accenture, 2014). This company also posed the percentage indicating the value which is respectively 40%, 10%, 30%, and 20%. Nevertheless, it is still dependent on the industry to define the rate of values (Accenture, 2014). In Vietnam, there are pioneer companies that are applying sustainable business methods from the inside. This could consist of Green Joy, Galaxy Biotech, Mitix Group, etc. These cases are

pioneers; however, they have a different perspective on the “green business” model applying the circular economy. It is very hard to measure the success rate of the model. This paper will dig deeper into these models and analyze if it is comparable to models proposed by institutions and consulting corporates.

Firms' Behaviours

The 26th Conference of the Parties on the United Nations climate convention, which was well-known as the UN Climate Summit with the participation of nearly 200 countries. This conference marked the 4 common goals to tackle climate change which are the mitigation of CO₂ emissions, assistance to countries influenced by climate change, financial aid for environmental the purpose, and collaboration among member countries and other stakeholders to cope with the global crises (The COP26 Presidency, 2021). This conference was a milestone for Vietnam when the country had made a very strong commitment to achieving zero CO₂ emissions by 2050 by decarbonization, halting completely deforestation by 2030, and the use of coal energy by 2040 respectively. Vietnam is still in the process of industrialization and is classed as low middle-income country. Although the government is targeting the upper middle-income country position for Vietnam, it is still doubtful that the country would achieve the commitment. However, the commitment is applauded by other developed countries, and they are willing to aid financially for the country. The Vietnamese government has been preparing for years before the commitment with several promulgated directives and policies which would be discussed in the section below. Many indication systems were set up such as the Sustainability indicators for the stock market, the ESG Report indicators for firms, etc. Firms in Vietnam regardless of their nature, in that respect, are obliged to the policies and transition their conventional business model to new business model gradually. This section would help comprehend the perspective of firms in the current context. After COP26, several firms are switching their business model by applying the “sustainable” factor to it. We could observe changes in their approaches, production processes, or incentives for new green products. Vietnam's Circular economy hub comprised its partner companies which have their vision and strategy to develop the business

to the circular economy orientation. This study did some research on several firms which have a website for web-content analysis to justify companies' green or circular economy embedded business.

Table 1. Selected Firms Vietnam Circular Economy Hub

No	Company	Product	Approach	Business model
1.	Green Joy	Home decoration Dining utensils Grass Straw	This firm uses green materials to produce goods with a business model oriented to sustainable development goals. The production is a closed process assured by the firm with a low ecological footprint. The strategic product is grass straw, these straws would decompose easily.	Circular supplies, resources recovery
2.	Refill	Packaging	This firm is using the same orientation as Green Joy toward the sustainable development goals of the UN. The firm mentions the circular economy in its statement of business model. A closed-loop business is based on reusing bottles to reduce plastic waste.	Circular supplies, resources recovery
3.	Heineken - Vietnam	Beverage - Beer	Heineken Vietnam directs its business toward sustainability by contributing to societal contribution and environmental protection. It is clear that this firm utilizes an intensive circular economy embedded business model from product processing and packaging to recycling of waste and reduction of CO2 emission in logistics and storage.	Circular supplies, resources recovery, circular design
4.	Lasuco	Sugar from canes	Sugar was made from cane. Waste like bagasse was used to produce electricity.	Circular supplies, resources recovery, circular design

No	Company	Product	Approach	Business model
5.	Galaxy Biotech	Packaging	Producing bio bags by natural compositions.	Circular design, circular Supplies
6.	HG FARM CO., LLC	Agriculture	Circular agricultural model for goods such as Mushroom-Cow-Duck-Rice-Electricity.	Sharing platform, resource recovery.
7.	Nestlé Vietnam	Food product	The corporate established its brand as a corporate promoting a circular economy. Nestlé Vietnam put 3 principles which are reducing waste and pollution, enhancing the ecosystem, and forging the product life cycle. Hence the 3R model is integrated.	Circular supplies, resources recovery, design models
8.	Mitix Group	Food product	3R principles were applied clearly. After harvesting and selecting coffee beans for producing coffee products, the firms used the skin of coffee berries to add flavour to cascara tea. Other wastes were used for other products like packaging and fertilizer.	Circular supplies, resources recovery,

Source: compiled by the author

Table 1 has demonstrated the iconic companies, most of them are large in size of the company, leading to creating sustainable approaches to their business models. This is to note that among these companies, the leading companies leading in the manufacturing process are those with international related brands like Heineken Vietnam or Nestlé. These companies use the 3R principle to apply to their production process to make it more sustainable. The other companies as symbols in industries have the same approach to the circular economy model whereas companies embed the model like 3R in their operational process. Most companies apprehend the business models which are circular supplies and resources recovery (see Table 1). They replace their single use input by more circular and recyclable inputs. Moreover, the wastes from the production process would be utilized for other products or share to other companies. From this perception, the diversification of products is one

approach which assist companies in handling the wastes. Companies is perceiving that sustainability as their approach to capturing value creation for society and the environment. These companies usually integrate their CEBM into their sustainability plan.

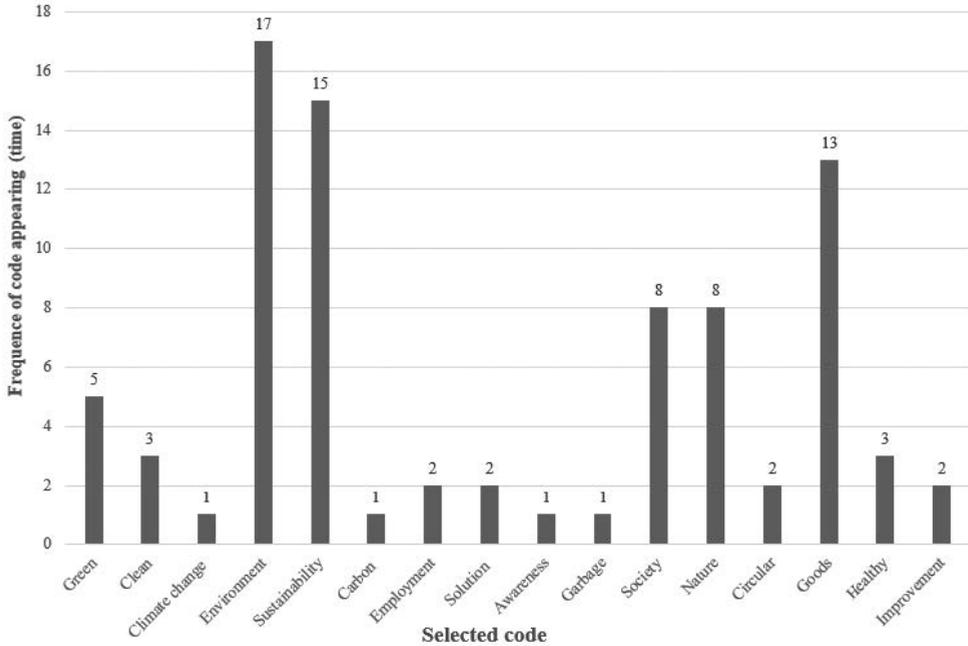


Figure 1. Frequency of code of selected firms
Source: Author’s data

These codes were found intensively in the “về chúng tôi” (about us or company) or “giới thiệu” (introduction). Figure 1 describes the intensive appearance of words used to introduce the selected firms and their approach to operation towards the circular economy. Based on this figure, the paper could show how firms perceive circular economy by mentioning these words. And to what extent these firms could commit to the transition of circular economy embedded in the business model? Figure 1 displayed an intensive appearance of environment and sustainability which are concentrated by most of the companies in Viet Nam lately. Society and nature were emphasized to show the subjects of these companies wanting to create value through good products. It indicated

the tendency that firms are seizing the environment and society as business opportunities to develop sustainable development. Moreover, investors could apprehend the sustainable business models of firms to invest in. Aside from these companies, to encourage the sustainable business model, Saigon Asset Management, which is a fund management and financial advisory provider, put their concentrates on investing in firms that pay attention to environmental and social issues alongside financial profits. Another attention in this firm is that they used the term “environmental – Social – Governance (ESG)” while heading to the SDGs (sustainable development goals) set by the UN in the introduction materials (Saigon Asset Management, 2020). This is to show that Funds in Vietnam seem to open their investment criteria to ESG which means the capital investments shall consider ESG factors. Another example of the ESG environment is that HDBank and Affinity fund had come to an agreement to fund companies practicing the ESG criteria with the amount of 300 million USD (Tú, 2021). In the opinion of the author, this financial support, and investment are expected to contribute to capacity building which would aim at serving society’s needs. This is to say that financial institutions are concerned about the position of the circular economy in Vietnam. This tendency is more active when Vietnam committed to achieving zero CO2 emissions after the COP26 summit. Hence, international financial institutions have realized the opportunities for economic development accordingly to the model of the circular economy. These arguments lead to the increase of FDI flow to Vietnam. Nevertheless, the ESG factor of a company is increasingly being considered in investment analysis decisions in the Vietnamese market, with the aim of providing a broader perspective on the risks and opportunities of investing in a company's shares. Thus, practicing ESG is one of the advantages which helps a company attract large investment capital, FDI with preferential interest rates, and other terms. Moreover, the Ho Chi Minh City Stock Exchange (HoSE) has launched the “VN Sustainability Index (VNSI) indicating 20 companies with the highest sustainability scores ranging from all industries. From there, these companies will be honored in the HoSE. However, the VNSI and the ESG concept are still quite unfamiliar to Vietnamese investors. It could be due to the unclear definition and dissemination from the governmental actors. Hiếu (2023)

regarded that the Vietnam government promulgated many policies afterward to guide and direct private sectors toward sustainability which could help the nation achieve the goal intensively as well as redefine the circular economy. In 2022, PwC launched a survey to evaluate the firms' readiness for ESG implementation which indicated the majority of firms in Vietnam emphasized on factor "Governance" more than others. The rates of companies not reporting and not being literate about ESG were very high (PwC, 2022). In this sense, companies in Vietnam are not apprehending fully ESG literacy leading to incompliance. Aside from the above-listed companies that have studied the concept of circular economy, many others are still struggling with the criteria. Hiếu (2023) noticed that although the government was making its effort by issuing regulations, many companies felt puzzled by the implementation of the ESG strategy. In general, companies in Vietnam are ready to apply the circular economy embedded model. However, the diffusion of this model is still limited.

Policy Corridors

A circular economy is an economic approach to forging the interrelationship between economic growth and the environment. This approach is backed by SDGs in the context of climate change. According to some reports Vietnam is accelerating the process of industrialization, modernization, and urbanization, leading to pressures from pollution and environmental degradation issues due to the growing development process. Hence, climate change would affect all aspects of the socio-economic aspect with a clear view. In 2019, Politburo concluded the development policy following the direction of resource management and environmental protection. This conclusion has drawn many downsides in the practices regarding environmental issues. The issues have not been noted and given consent among ministries on clear policies for environmental protection. At the COP26 conference, Vietnam committed to achieving zero CO₂ emissions by 2050 with other 150 countries. Many arguments have risen due to the position of Vietnam. The Communist Party announced its nation's direction and goals to become a "developed country by 2045". This direction indicated that the country is still in the industrialization and modernization process, and it still has a very long way to achieve. However,

Vietnam is ranked among countries emitting CO2 a lot to the environment. This could be due to the fast pace of development of the country.

This commitment of the state leader has his own reasoning to back his perspective. Vietnam has realized the importance and the urgency of implementing the green growth strategy aiming at sustainable development. The government has been giving a positive signal by issuing relevant policies.

Table 2. List of major national policies

No	Name	Form	Issuing authority	Year
N/A	Vietnam's national green growth strategy		Ministry of Planning and Investment	2012
03/CT-NHNN	Promoting green credit growth and environmental – social risks management in credit granting activities	Directive	Vietnam National Bank	2015
95/2018/ND-CP	Providing for issuance, registration, depositing, listing, and trading of government debt instruments on the securities market	Decree	The Government	2018
1604/QĐ-NHNN	Approving the project to develop a green bank in Vietnam	Decree	Vietnam National Bank	
986/QĐ-TTg	Approving the strategy for the development of Vietnam's banking industry to 2025, orientation to 2030	Decree	The Prime Minister	
163/2018/NĐ-CP	Provisions on the issuance of corporate bonds	Directive	The Government	
96/2020/TT-BTC	Guidelines for information disclosure on the stock market	Circular	Ministry of Finance	2020
N/A	Guideline to issue “green bonds, social bonds, and sustainability bonds”	Guideline	State Securities Commission of Vietnam	2021
153/2020/ND-CP	“Prescribing private placement and trading of privately placed corporate bonds in domestic market and offering of corporate bonds in the international market”	Decree	The Government	

Source: compiled by the author

Table 2 demonstrated that Vietnam's government has been directing its attention to environmental and social issues. Nevertheless, looking at the implemented policies above, it is indicated that the government put more emphasis on the financial sector of development policy such as securities or banking system, etc. It could be understood that the direction of the government will be calling for investments in projects related to social and environmental issues via capitalization or investments. Moreover, it needs to be noticed that Vietnam is still an emerging market, and the development policies still need to consider concentrating on the economics of the country while other factors are added value. Nevertheless, the world tendency is to focus on sustainability and ESG in terms of investments and circular economy considerations. In order to achieve the national goal several policies were prepared and implemented as commitments and current state before the COP26 (see the above table). As of 2020, the State Securities Commission of Vietnam issued a guideline for firms to lever the importance of the projects which relatively contribute to social and environmental issues. Moreover, the Ho Chi Minh City Stock Exchange (HoSE) promulgated the Vietnam Sustainable Index (VNSI) in 2017 selecting qualified firms from the VN100 index. The VN100 Index is compiling 100 stock symbols of 100 firms having the largest market capitalization on the HoSE stock exchange. Listed in the stock basket of VNSI, these companies would be evaluated based on the reference of financial and standard institutions such as the Global Reporting Initiative and OECD with the assistance of the German development agency. This was a big step for Vietnam to attract more FDI from multinational firms. In general, it is expected that VNSI would create a measure for the market by listing well-qualified firms which could help investors refer to the "green" nature of their investment portfolio. The author added that this index shall encourage other firms to compete with each other regarding sustainability. These also paved the way for calling for more investments in the economy. Table 2 displayed the dominant policies that have a major role in building a concrete policy corridor. Besides these major policies, the other public authorities also follow and implemented other policies that affect each field of the economy. According to Table 2, it is visible that the government encourages businesses to employ the CE

concept in the business model which could enhance the businesses' financial capacity via the support of the government. In this sense, firms could require financial and policy support from governmental actors for their business model transition. Although VNSI is being considered as a foundation that could develop other indicators, it has some downsides that might limit the investment capacity. Nguyen & Tran (2022) exposed 2 controversial arguments on the VNSI that most of the investors in Vietnam are short-term by focusing on the VN30 and VNINDEX, which are two other large and dominant indexes in Vietnam's stock exchange leading to less attention on firms' social responsibilities. An opposite argument was posed that most investors were leaving Vietnam due to the limitation and the lack of social responsibilities activities (World Bank, 2022). Therefore, it is indispensable that the VNSI need to be upgraded and visible, and more transparent to investors. In sum, it is justified that Vietnam is encouraging the employment of the CE in the private sector through the mean of financial support. Public-Private Partnership is the strategy that highlights the cooperation between private organizations and public institutions. Vietnam's government has been utilizing this term for many years and has been expressing the need for this strategy in the long run. It is indispensable that the Vietnamese government could do the same strategy as the Netherlands mentioned above. This is to find an appropriate strategy of circular business model in the context of the country. Although the most important thing is to educate the notion of CE to the private sector and the people. Educational institutions such as universities, research centers and think tanks have the role of disseminating as well as consulting the CE concept to relevant stakeholders and firms through the form of seminars, and conferences. Meanwhile, the ministries and provincial agencies have used the same approach for the local companies. Many think tanks and research centers were established by the universities, and ministries to serve the application of the CE. The CE Hub is one of them such as the Institute for Circular Economy Development or the Vietnam Business Council for Sustainable Development, etc. The financial policies cited in Table 2 bring two consequences which are the call for FDI for the relevant issues and financial support for firms operating in Vietnam.

CONCLUSION

Vietnam is still developing a favorable policy for businesses to adopt local principles. Criteria are yet to be clearly defined. CSR activities are beneficial for companies rather than the socio-economic context in Vietnam. Businesses should embrace the strategy of shared values creation combining synthesis of R principles attached to the business model. It is necessary to pay attention to international standards as a guideline for business development, for instance, the ESG reporting while considering 17 sustainable development goals of the UN. This is because of the orientation of the government which is the transition of the business model toward sustainability. Besides the 17 SDGs of the UN, Vietnam regards the CE as one approach to achieving sustainable development. Thus, the CE is integrated into the sustainable business model from the business management perspective. Especially, Companies are demanded to stick with a circular economy embedded in the business model for creating shared values for society to receive values and legitimacy from society. Although the adoption of the circular economy of Vietnam is not very visible to the globe, the study found that the government has been preparing for this economic model for many years. Many relevant policies were implemented as legal corridors for firms to adapt to the situation and transform their business model accordingly. Table 2 demonstrated the effort of the government in assisting firms financially to transform their business model. Firms, which were sampled in the section “firms’ behaviors”, indicate visibly their business model toward a more environment-friendly model after viewing the government policies. Vietnam’s government put its emphasis on calling for more investment in the improvement of the business model accordingly to the circular economic model. The creation of a sustainability stock basket could help foreign investors to choose better companies. The relevant national policies highlight terms which is favorable for widening the financial pathway. This leads to the call for financial collaboration for sustainable business from other governments and foreign firms. In conclusion, Vietnam might take a gradual series of steps to employ the circular economic model, however, Vietnam is on the right track to achieve it. As in the scope of the COP26 conference, Vietnam chooses the approach of calling for collaboration as the country is still under a very high rate of

industrialization. Understandably, Vietnam requires more financial assistance to brace for the circular economy. Vietnam's major export markets such as the US, EU, Japan, etc. are currently setting high standards for green products. Especially when Vietnam has put many big mega trade agreements to boost the exports. These agreements will open a wider door for foreign direct investment, their inquiry on sustainable business is harder. The policies of Vietnam would encourage businesses operating within the country to adopt their circular economy embedded in the business model. From the above arguments, the velocity of applying any criteria of sustainability or circular economy is quite slow due to the lack of clear guidance from relevant authorities. The Vietnamese government develop its strategy to embrace sustainable development where the CE plays a crucial role. Barros et al. (2021) claimed that the application of the CE to the business model could drive sustainability. Shao et al. (2020) defined the influential factors of the CEBM which is impacted by the shift of business model as the customer segment, relationship, and key partnership (Salvador et al., 2021; Shao et al., 2020). Although the Vietnam government is pushing forward relevant policies, confusion among business leaders is happening. Nevertheless, the study result found that companies are in favour of choosing the circular supplies and resources recovery as their business model. This is the sign indicating the willingness of Vietnamese firms to apprehend and integrate the CE into their plan for sustainability. It could be said that the CE is a reliable and durable approach, from the firms' perspective, towards the sustainable business. In the context that many EU and US markets are expected Vietnam's goods-exporting industries could require businesses to meet green standards, eco-design, etc. To contribute to the realization of green and sustainable economic development orientations, the author proposes that the Government to further strengthen the participation of the business community in building and perfecting the legal system, law, and environmental regulations. Through the active participation of businesses, business leaders could comprehend actively and effectively the regulation related to the environment correlating to their industries. This also helps the government to passively facilitate access to information on policies concerning the environment, green economy, and sustainable development for enterprises which could promote the improvement of the business environment. The Ho Chi Minh City Stock Exchange has its sustainability index to promote the sustainability

strategy for firms operating in Vietnam. However, the criteria are still not clear. Furthermore, this basket of stock is selected from the top largest capitalized enterprises. It is still room for advancing this index for enterprises to compete to attract investments. A roadmap for meeting emission reduction requirements should be determined with immediate updated information and directly to firms by relevant public authorities at governmental, local, and agency levels. At the same time, the authorities should soon work with firms in each field to form technical guidelines on emission reduction by sector and operating model. As we have seen in the study that the cooperation among three players who are the governmental actors, firms, and academics could create a proper guideline suitable for the economic context of the country. Recently, investors tended to choose firms that effectively operate ESG reporting. Nevertheless, only a few companies apply ESG to their business. The government must study and apprehend the ESG standard from other developed countries or EU institutions. From that point, it could be easier for the public authorities to follow these standards and enhance international integration in the international arena. This action will contribute to the increase of FDI flowing to the economy. It is also easier for foreign investors concerning the choice of Vietnamese partners and investments. In the context of production and business is very difficult, all support for businesses is very valuable, especially in implementing new policies so as not to lose the market, especially the export market when the international movement is moving very fast and strongly towards green growth. This is also a way for Vietnam's government to keep pace with its commitment at COP26 and to make it an advantage to draw more FDI flowing into Vietnam.

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ANALYSIS OF THE DIGITIZATION LEVEL OF SMALL AND MEDIUM ENTREPRESIS IN TOURISM. IDENTIFYING THE LEVEL OF DIGITIZATION OF BUSINESSES FROM BĂILE FELIX, BIHOR, ROMANIA

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ABSTRACT. The topic of digital transformation in our country has had a major impact on both society and the economy, with all its sectors being a paradigm for them. At the same time, the digital transformation of our country is one of the most important components of the National Recovery and Resilience Plans. This fact is also due to the position on which Romania is ranked within the hierarchy based on the Digital Economy and Society Index (European Commission, 2021).

Referring to it, we observe a less favorable position of our country, ranking 27th out of the 27 member states of the European Union (European Commission, 2022) with an annual growth lower than the other countries and less convergent. Thus, in order for the European Union to fulfill its objective of the digital decade, Romania must create the ideal context for a significant change in the pace of training and acquisition of basic digital skills.

We therefore observe how the introduction of digital technology has corroborated the way tourism companies assert themselves. Digital technology has become an invaluable business tool widely used in the travel and tourism sector Lee & Wicks (2010). We are talking about an economic-social phenomenon reflected in one of the basic sectors of

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many nations, whose expansion was particularly pronounced in 2019, 2020, as a result of the collapse left in this industry by the COVID19 pandemic. Digital transformation represents a substantial challenge for both organizations and national economies, being a topic that has sparked interest for academic studies and researchers.

Starting from this necessity and carrying out a review of the existing works on the market, it was found that there are no studies related to the digitalization level of tourism businesses in Romania. Thus, the present work evaluates, measures and quantifies the level of digitization of small and medium-sized enterprises in the field of tourism, with Băile Felix resort in Bihor county as a working sample.

Keywords: digitalization, tourism, level of digitalization, small and medium enterprises, digital tools

JEL Classification: Z32, Z39

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INTRODUCTION

The industrial world is turning into a digital world in which the business environment (globally and regionally) is beginning to adopt holistic business models. It offers a new "design" of products and services. Digital transformation began to develop in different fields of activity, starting from customer experience, operational processes, business models (Westerman et al., 2014) to employees (Bouee, 2015) and company relations. The benefits of digital transformation are felt at both enterprise and customer levels. He considered this process to be an evolutionary one that leverages digital skills and technology for better market positioning. Thus, the technological transformation that was initially an opportunity, later became a necessity (Kraus et al., 2021).

The Internet connects the tourist to information and puts him in a direct link with the hotel, the travel agency or any other enterprise in the tourism field. Moreover, as a side effect of the introduction of digital into the business environment, we are seeing a change in demand and supply. The demand becomes much more flexible and the offer receives new forms of exposure. The introduction of digital technology has corroborated the way tourism companies assert themselves. Digital is the new normality for the world and in order to develop and overcome this impasse in which it is, the tourism industry must find the best way to capitalize on technological solutions (Barykin et al., 2021). Thus, the imperative to capitalize on the opportunities offered by the digital environment has never been more important.

Innovations in digital technologies are considered the foundation of economic growth. They are also a critical factor of competitiveness. Numerous researches emphasize the fact that the development of enterprises, especially small and medium ones, is carried out simultaneously with the integration of digital technologies and Internet-based techniques. In this way, digital technologies increase the sales and the revenues and improve the interaction with customers. At the same time, they facilitate expansion into other markets.

The digitization of small and medium-sized enterprises is a complex process that requires, in addition to the company's resources, the existence of favorable conditions at the country level (Lee & Wicks (2010)). Thus, although digitization brings many benefits for businesses (at the level of management, marketing or access to resources), businesses face many barriers and difficulties.

Small and medium-sized tourism enterprises often encounter numerous barriers in the digitalization process. These barriers differ depending on the level and degree of digitization adopted by the company. Among them are the lack of digital skills and competences, the lack of financial funds from the internal source or poor access to funding sources and problematic infrastructure (European Commission, 2021).

The importance of digitization in the context of small and medium enterprises has also attracted the interest of the academic world. The number of studies dealing with this subject is in an increasing trend.

Analyzing scientific databases such as Scopus, respectively ProQuest, Microsoft Research and Google Scholar, we distinguish an increased interest in this topic. This is observable by reference to the large number of existing papers (see Table 1).

Table 1. Number of publications in this field

Database	Number of papers	Number of publications (articles/journals)	Number of papers existing in the field
Web of Science	3.414	1.667 articles	376 (economics+business) articles
ProQuest	2.313.287	9.849 articles	-
Researchgate	7.308	163 journals	25 (economics+business) journals
Microsoft Research	3.959	2.365 articles	12 (economics) articles
Semantic Scholar	3.560.000	711.710 articles	35.400 (economics+business) articles

Source: Authors' work

However, despite the relevance of the subject, in the sphere of tourism, academic contributions have focused on specific themes. Less attention was paid to digitization from a broader perspective, qualitative contributions and analysis of the level of digitization and implementation patterns. We even notice the lack of overviews of the factors affecting the level of digitization of small and medium-sized enterprises. Carrying out a review of existing studies, we identify that academic contributions have focused on digital solutions and tools used, such as artificial intelligence (Chui et al., 2018; Tussyadiah, 2020; Sarmah et al., 2017), the blockchain (Muheidat et al., 2022; Treiblmaier, 2020; Stylos et al., 2021; Belias et al., 2021), augmented and virtual reality in tourism (Egger & Neuburger, 2022; Cranmer et al., 2020; Correia Loureiro et al., 2020), the Internet of Things (Verma & Shukla 2019; Ordonez et al., 2020; Guo et al., 2022), the use of robots (Haynes, 2020; Ivanov et al., 2022), the proliferation of smart destinations (Jovicic, 2019; Faur & Ban, 2021).

Referring exclusively to the studies carried out in Romania, there were no studies on the market regarding the degree of use of small and medium enterprises in Romanian tourism. However, there are a number of studies related to niche areas/counties of our country (Musteață-Pavel et al., 2021, Moza, 2021).

Thus, the limited number of academic contributions on this topic constituted the starting point of the present study. This study aims to contribute to the topic of digitization of small and medium enterprises in tourism. At the same time, it aims to answer the following question: What is the level of digitization of small and medium-sized enterprises active in Romanian tourism? In other words, we will establish as a research problem: Identifying the degree of digitization of small and medium enterprises in Romanian tourism. Thus, this study aims to examine the degree of digitalization starting from the analysis of the specialized literature, the analysis of the tools and the determinants of digitalization, carrying out all the previous steps in order to identify and establish a grid related to the evaluation of the degree of digitalization. Thus, the following 3 objectives will be established in order to provide the possibility to establish the subsequent hypotheses:

H1: Analysis of specialized literature. Obtaining tangible conclusions regarding the existing studies in the field of the level of digitization in tourism,

H2: Identifying the determinants of digitization,

H3: Establishing hypotheses for further research.

The importance of this paper will be noted by the fact that it provides the ideal context for the analysis of the factors that determine the digitization of SMEs. Also, this work is important because it analyzes the degree of digitalization and wants to lead to a complete knowledge of what digitalization means in tourism. The first part of the paper is a literature review. This fulfills the first objective while the second part of the paper aims to establish the indicators of the grid and the hypotheses that will generate the continuation of the present research.

LITERATURE REVIEW

From an academic point of view, digitization is a relevant topic. Moreover, digital transformation is a vast process, a manifestation of a social transformation, reflected at the company level as a technology-based

organizational conversion. Numerous reviews and empirical studies on the topic already exist; The research carried out shows an early stage. After reviewing and analyzing the specialized literature, we can identify five main research subfields within our theme: defining the phenomenon and conceptually delimiting the terms, characterizing the changes determined by the structural changes of companies, how to implement digital transformations in different fields of activity, opportunities driven by it and the adjacent challenges, matrices, mechanisms and relationships between digital transformation, the enterprise and the business environment.

However, what we propose is the review of studies and specialized literature that deal with the issue of the degree of digitization. The speed and extent of digital transformation differs between sectors. Those service and manufacturing companies are more susceptible than the construction sector for example. At the same time, during the United Nations Conferences for Trade and Development, a hierarchy of industries "affected" by digitalization was carried out. These included media and entertainment, retail, technology, healthcare, travel, transport and logistics, communications, professional services, financial services and more (European Commission, 2021). The very fact that industries are undergoing digital transformation at different speeds reflects how businesses understand digital transformation.

In the process of developing the digitization of S.M.E.s in tourism, a key role is represented by public administrations and professional associations. The way in which public administration institutions get involved in the digitization of tourism businesses is also influenced by the well-being of the states and their characteristics. Thus, the various reports identifies five typologies: the social-democratic model, also called the Nordic model, corporatist or continental model, Mediterranean, Eastern European, Anglo-Saxon.

The Nordic S.M.E.s are the ones that register higher levels of digitization indicators compared to other countries. 70% of them register an average level of digitization. Anglo-Saxon small and medium enterprises but also the mediterranean and continental regions also demonstrated an average level of digitization in tourism (50%). The countries of Eastern Europe, (the category where Romania is also included), seem to lag behind, registering a percentage of 44% with an average level of digitization.

Among the few existing studies on this niche, we notice that they are focused on some countries or regions. The small number of studies is also due to the difficulty of accessing relevant statistical data or even their non-existence. Thus, many studies that analyze the degree of digitization are qualitative research. In this sense, one of the first existing studies on this topic belongs to Arora & Rathi (2019). It analyzes the degree of digitization of Indian small and medium enterprises. The results of the studies show that the size of the company is a key factor in the adoption of digital. Moreover, it reflects the fact that digitization is motivated by the desire to increase sales, competitiveness and profitability. Mitroliu & Kitsios (2019) assess the degree of digitization and strategies of small and medium enterprises in Greek tourism. They highlight the 4 factors that evaluate the performance of digital transformation strategies: customers, employees, digital and financial innovation. Velikova (2019) conducts a qualitative survey to determine the level of digitization in the tourism sector in Bulgaria. It finds that digital enhances the value offered to the consumer at product, place and promotion level. There are numerous barriers at the level of small businesses and countless possibilities to improve the situation. Another study on this topic belongs to Lee & Wicks, (2010), which, through several case studies, evaluates the digitization level of SMEs in Malaysia. In this study, the level of digitization implemented in marketing, sales, product development and process improvement is analyzed. At the level of Tunisia, Bellakhal & Mouelhi (2020) suggest that the level of digitization among Tunisian small and medium-sized enterprises (SMEs) is low. Tunisian SMEs lack the necessary resources and capabilities to implement digital technologies. Returning to Europe, the better position is held by Slovenia. This is the leading country when we talk about tourism 4.0 and looking from the perspective of innovations and technologies. In the group of countries V4 (Romania, Czech Republic, Slovakia, Poland) + Serbia, the research belonging to Pantovic et. al shows a degree of digitization at an early stage. The analysis of the level of digitization of small and medium-sized tourism enterprises in Italy is carried out by Raimo et al., (2022). The empirical findings show that the level of digitization is medium, being closely related and influenced by the size of the company, its profitability and financial leverage.

Regarding recent research carried out by the European Commission, significant differences were found in the adoption of digital technologies in tourism businesses across Europe. Thus, there is a very large discrepancy

between northern and southern countries. The first category integrated digital much better at the SME level. Moreover, it is found that SMEs in tourism have a much lower degree of absorption compared to large enterprises in the same sector (European Commission, 2021).

CURRENT TRENDS OF DIGITIZATION IN TOURISM AT THE SME LEVEL

Although we talk about an uneven adoption of digital technology by SMEs in tourism, this transformation has had a profound impact on the field, changing the way services and products are delivered. According to the OECD, using digital in tourism businesses will create an additional value of up to USD 305 billion by 2025, by increasing profitability (OECD, 2021).

The tourism industry is characterized by heterogeneity, being a complex that brings together several industries. At the same time, we are talking about the tourism industry as having an information-intensive nature. In this context, OECD data from 2019 show us that 77% of accommodation and catering SMEs have a website and 70% use social networks. Moreover, the way people shop and travel have a strong position in the need to adopt technologies at the company level. The findings indicated that the number of customers who purchased tourism products online in 2020 is very varied from country to country (Romania 29%, U.K 915).

It is easy to understand how the demand, (which is influenced by numerous variables such as: the presence of consumption habits of generation Z and not only), the level of social, economic and cultural development influences the need to adopt technology in the process of providing tourist services. Thus, expressively but briefly, we will mention that the trends include: the use of online platforms in the planning stage and before it in complementarity with a series of offline sources, the tendency and desire of the client to stay connected, real-time updates, improvement of payment methods and others. According to the specialized literature, the tools used are distinguished: automation technologies, robotics, blockchain, large databases, the Internet of Things, augmented and virtual reality, artificial intelligence.

In this context, UNWTO exposes the previously mentioned in a development report. Tourism-specific data and non-specific data such as card transactions, mobility services or sensors can provide valuable information for stakeholders, managing economic impact but also tourism flows. However, the report also mentions barriers such as confidentiality, data reliability, existing gaps at the organization level, but also the great financial efforts to which SMEs are subjected.

The fact that only 17% of small and medium-sized enterprises in Europe have integrated digital technologies explains that companies are not aware or ignore the benefits brought by digital transformation. Organizations find it difficult to identify needs and develop effective strategies. Statistics belonging to the OECD reveal that small and medium-sized enterprises have adapted digital technology such as cloud computing, big data analysis, e-commerce, social networks and the website.

The European Small and Medium Enterprises Annual Report 2020/2021 illustrates the taxonomy of sectors according to the use of digital technology. Within it, although tourism is not presented as an individual field, accommodation and food services are presented as registering a low level of implementation of digital technologies (European Commission, 2021).

The digitization of Romanian tourism presents itself in various forms. Thus, looking from the perspective of travel agencies, in 2018, following a study presented at the Romanian Digital Conference, the 3rd edition, it was found that, although we live in a world so dependent on the Internet, half of the agencies of tourism subject to the study (45%) do not have an optimized website. Moreover, only 27% of them have implemented a semi-online reservation system (the reservation cannot be completed successfully) and 10% have implemented a fully functional online reservation system. Regarding the social networks on which travel agencies are active, Facebook is the most popular social network among them, but the allocated budgets are in most cases (69%) below 100 euros according various media reports.

MODELS OF DIGITIZATION IN TOURISM

The adoption of digital technologies has been achieved unevenly, and thus gaps appear between companies. Thus, if in the case of large companies we are talking about standardization and economies of scale, in the case of SMEs we are talking about limited access to the necessary infrastructure and financial support.

Following a review of business ecosystems, it was found that there are four big archetypes of digital integration in business, also applicable in tourism (OECD, 2021). The first category is represented by vertical integration, where the relationship with the tourist is close, the value chain is integrated and the data is collected and analyzed inside it, thus, the digital integration will be carried out directly to the company, at the level of the entire planning process, offering, after-sales. The second category is multi-faceted ecosystems, where third-party products are offered and integrated. In this context, digitization must be carried out at the level of both structures. The third model is modular businesses. In this model, the products and services are sold through other companies and the links with the tourist are limited. Last but not least, reseller businesses require a certain digitalization process. It is necessary for companies to constantly innovate in offering products and services.

Digital platforms have gained public attention due to innovation. Tourism SMEs must find a place within these ecosystems and adapt. Establishing a strategic approach is essential, taking into account both the tourist search process and booking, preparation, travel, arrival and post-travel engagement. This strategy must provide added value by taking into account the combined activity and interests of the organization, consumers and governments.

At the same time, this process of digital adoption at the SME level is based on a series of theoretical models rooted in the field of ICT, psychology or sociology. These models and theories have been applied in numerous scientific studies to describe and explain how technology is adopted at the organizational level. Thus, a first model is T.O.E (technology-organization-environment), belonging to Tornatzky et al., (1990). The first variable, technology is analyzed from the perspective of the benefits perceived by the customer, the second - the organization is analyzed from the perspective of managers' attitudes towards innovation and the

ability of human resources in this sector, while the third variable refers to external influences. Another widely used model is the theory of diffusion of innovations - D.O.I (Rogers, 2010), which exposes the five factors and aspects that need to be evaluated to analyze the organization's capacity, namely the innovation adoption rate, advantages, compatibility, complexity, probability and observability. The relationship between consumer attitudes, intentions and beliefs gives rise to other models, among which we mention those belonging to Fishbein & Ajzen (1975).

DETERMINANTS OF DIGITIZATION

Digital transformation reaches all sectors of the economy. Recent work from the OECD assesses the intensity and level of digitization of sectors, analyzing the number of technology tools implemented as well as the volume of tangible or intangible ICT investments, existing human capital but also interactions with the market. The conclusions following the analysis of the studies show us that tourism businesses have an enormous, untapped potential when we talk about digital solutions.

It is interesting to understand and observe the variables that define the level of digitization. A low level of digitization involves the use of the following tools: e-mail, website, internet banking, internal e-mail systems, online data storage, online collaborative work, computerized control system, customer satisfaction surveys, video conferencing, management systems. An average level of digitization involves the use of computerized reservation systems, interaction with suppliers in a digital manner, analytical tools, customer relationship management systems, mobile applications, online chat, professional networks.

Such a model is also developed by the European Commission, in order to calculate scores from the perspective of digitization of small and medium-sized enterprises. Thus, the digital index derives from giving a point for meeting the following conditions: more than 50% of the company's employees use computers connected to the Internet in their daily work, the existence of ERP software packages, the Internet connection is a fixed one, web sales accounted for more than 1 % of total turnover and B2C web sales more than 10% of web sales, the Internet of Things is integrated in any form, any type of social network is used, the existence of a digital customer relations network, the existence of a call center or other

customer communication facilities, fall into the category of businesses with e-commerce sales with a turnover of at least 1%, use multiple social media channels (European Commission, 2021).

Such models, grids and structures have been developed in order to identify the degree of digitization, both in the tourism sphere and at the level of other sectors. Stich et al., (2020) proposes an evaluation grid referring to the resources used, information systems, company culture and organizational structure. Helmer et al., (2021) proposes a model based on identified opportunities, the integration of digital at the level of management, development and maintenance.

We observe an analysis of the level of business digitization from two major perspectives, namely: the client-oriented perspective, respectively the digitization of business processes. Thus, we will continue to focus on the digitization of the services offered to customers, calling on basic tools used in communication with the customer: e-mail, website, computerized reservation systems, online data storage, customer satisfaction questionnaires, as well as tools such as IOT applications, gamification, sensors, the use of augmented and virtual reality, robots, artificial intelligence.

DISCUSSIONS AND CONCLUSIONS

As a vast process, digital transformation is a topic that has attracted interest for study from both academia and professionals. However, we can affirm the fact that the studies are still at an early stage. Few studies closely assess the level of digitization of tourism businesses. Existing statistics and studies about them show us wide discrepancies between countries, industries, fields and subfields. The specialized literature, the current trends of digitization and its determinants were analyzed together with the evaluation grids made available by the European Commission, the OECD or others applied in those studies. Although the tourism sphere registers a low level of digitization, both in Romania and throughout Europe, the trend is to rebuild this sector through the use of digital technology. Online platforms allow access to international markets, management and sustainable development. The tools range from using technologies in business processes to technologies that deliver tourism experiences. Thus, as I mentioned previously, according

to the specialized literature, the following are distinguished: automation technologies, robotics, blockchain, large databases, the Internet of Things, augmented and virtual reality, artificial intelligence. Therefore, for the next level of the study, based on these conclusions, we will propose the following hypotheses. H1: The digitalization level of the organizations in the established sample is low. H2: All tourism organizations will register at least 3 variables according to the OECD low level of digitization. H3: Innovation and digital integration in business is a challenge for SMEs.

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SETTING AND COMMUNICATING OBJECTIVES IN BASKETBALL VERSUS BUSINESS ORGANIZATIONS

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ABSTRACT. Basketball and business organizations can be compared from various standpoints (organizational structure, type of teams, processes etc.). One such standpoint is regarding objective setting. By undergoing a literature review analysis on the topic of objective setting in basketball versus business organization, the author tried to answer the research question: “are there any differences in the way basketball and business organizations conduct their objective setting activities?” Considering this, the objective of this paper is to provide an insight into how objectives in basketball and business organizations are set, and if there are any similarities or differences in the way they conduct this activity. The results however, did not provide clear and sufficient information if there are any differences between how objectives are set and communicated in basketball versus business organizations. Furthermore, a simple literature review like this one cannot provide a clear answer to the research question, as the necessary information regarding objective setting in basketball organizations is, in most cases, not public or easily identifiable. Moreover, the author was not able to identify research on the topic of how exactly basketball organizations set their objectives or what criteria they take into consideration when setting these objectives. This proves the fact that topics like how basketball organization set their objectives for each season or what criteria they take into consideration when undergoing this activity could be considered relevant for a future and more detailed qualitative/quantitative research having as target group: basketball teams that play in the Euroleague/Romanian National Basketball League.

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Introduction

Firstly, as stated in a previous article “*Basketball and business have always had a relationship, be it on the side of the club owners that also own and lead businesses or on the side of partnerships, endorsements or other marketing activities*” (Branga, 2021). Secondly, basketball and business organizations can be compared from various standpoints such as organizational structure and/or activities, marketing, and objective setting. The latter, the way objectives are set in basketball versus business organization, represents the topic of this article. Furthermore, the purpose of this paper is to provide an insight into how objectives in basketball and business organizations are set, and if there are any similarities or differences in the way they conduct this activity. In addition, this study will contribute to the further development of theory on the topic of objective setting especially in basketball organizations. The fact that this area is not sufficiently researched is a reason for why further research on this topic is needed. Considering this, the research objective and question for this article is to identify if there are any differences in the way basketball and business organizations conduct their objective setting activities.

Methodology

First, the research philosophy chosen by the author for this article is critical realism. Based on this, the research type is inductive as the gathered data serves as basis for the theory. Second, the objective for this article was to provide an insight into how objectives in basketball and

business organizations are set, and if there are any similarities or differences in the way they conduct this activity. Third, concerning the time horizon, this is a cross-sectional study as the information researched was at one point in time (the moment the article was written). Regarding the information, the source of the data is external, secondary and multiple sourced (ex.: Organizations' websites, Journals, News websites, Media accounts etc.). Considering this, the research question for this article was *"are there any differences in the way basketball and business organizations conduct their objective setting activities?"* The research hypothesis is *"objective setting in basketball is conducted the same as in business organizations."*

Literature Review

Objectives or goals?

In basketball and business organizations, planning can be considered as one of the most important management activities. In this regard, according to Robbins & Coulter (2016) *"planning is often called the primary management function because it establishes the basis for all the other things managers do as they organize, lead, and control"*. More so, the two authors mention that planning *"involves two important aspects: goals and plans"* Robbins & Coulter (2016). As a definition of what goals are, the authors quote Molz who wrote, *"Goals are desired outcomes or targets"* Robbins & Coulter (2016). On the other hand, plans are defined, according to Robbins & Coulter (2016), as *"documents that outline how goals are going to be met"*. A similar opinion comes from Baker & Esherick (2013) who wrote, *"Planning involves developing organizational goals and objectives, then establishing the necessary methods, processes, and activities to attain those goals"*. Because this article analyzes objective setting in basketball versus business organizations, we will focus in the following sections only on objective setting and not on planning.

Regarding objectives, Witcher (2020) wrote, *"Objectives are strategically desired outcomes that must be managed effectively if the organization is to continue to fulfil its purpose"*. Moreover, Witcher (2020) underlines the idea that *"objectives must be meaningful and clear to the people who use them and linked to realistic measures of progress so that*

those managing the objectives will know in enough time if it is necessary to intervene and make appropriate changes". As can be observed in this last statement, the author analyzes the topic from a strategic management point of view. Similar to Witcher (2020), Hill et al. (2016) wrote, *"A goal is a precise, measurable, desired future state that a company attempts to realize"*. In the same context, Wheelen et al. (2018) wrote, *"a company's objectives are also critical to the effort to implement a strategy"*. Considering this, one could state that objective setting has a strategical importance for both basketball and business organizations alike. However, Gallery & Carey (2014) et al write about goals and objectives from a different standpoint. They write, *"Goals are defined as aspirational statements of desired ends. They are not necessarily meant to be achieved. Rather, they are something the organization continually strives to attain"*. Furthermore, they go on and state *"...it's fine to include organizational goals as long as the organization develops specific objectives that further define their intended outcome for each goal"* (Gallery & Carey, 2014). Similar to other quoted authors before, Mullin et al., (2014) differentiate in their book *"Sports Marketing"* between goals and objective noting, *"Goals are typically broad statements, whereas objectives provide more detailed, usually quantified targets"*. More so, they go on and state, *"clarifying goals and objectives is what sets the "manager" apart from the "caretaker""* (Mullin et al., 2014). This again underlines the fact that objective setting has a strategical importance for basketball organizations. Therefore, as can be observed, some authors differentiate between goals and objective, others treat them as being similar. In this regard and for a better understanding of the topic at hand, we will use the terms "goal" and "objective" synonymously across this article.

Characteristics and benefits of setting objectives

It can be stated that the literature (for sports or business organizations alike) available at the moment is filled with scientific articles or books that underline the importance of goals or objectives. A first aspect that needs to be considered when setting goals and objectives is, according to Mullin et al. (2014), that they *"should emanate from ongoing analysis"*. Also, in their work entitled *"Sport Management – Principles and Application"* Hoye et al. (2006) underline the fact that *"organizational*

objectives serve as markers” on the way to fulfilling the vision of the organization. Furthermore, according to Armstrong (2006), in business organizations *“at the beginning of each year, senior business and functional leaders meet with the CEO to discuss and set goals for the coming year”*. Another important characteristic about goals that Armstrong (2006) mentions is that *“employee goals are updated as necessary to reflect changes in priorities and new opportunities”*. Considering this, one can state that an organizations ability to adapt its objectives should be an important aspect to focus on.

Regarding the characteristics of objectives, some authors consider that they need to be S.M.A.R.T. – Specific, Measureable, Attainable, Realistic, Time bound. In this regard, Hill et al. (2016) provide four main characteristics for a well-constructed goal:

- Precise and measurable;
- Address crucial issues;
- Challenging but realistic;
- Specifies a time period in which goals should be achieved;

Other authors, such as David and David (2017), go a step further and consider that there are eight desired characteristics of objectives:

- Quantitative;
- Measurable;
- Realistic;
- Understandable;
- Challenging;
- Hierarchical;
- Obtainable;
- Congruent across departments;

The previous mentioned authors also consider the fact that clearly established objectives offer many benefits such as David and David (2017):

- provide direction;
- allow synergy;
- assist in evaluation;

- establish priorities;
- reduce uncertainty;
- minimize conflicts;
- stimulate exertion
- aid in both the allocation of resources and the design of jobs;
- provide a basis for consistent decision making by managers;
- serve as standards by which individuals, groups, departments, divisions, and entire organizations can be evaluated;

Considering all these characteristics for objectives and benefits that they might bring, two questions (one for each domain) come to mind:

- Do basketball organizations take into account all the characteristics of an objective when setting them, or are they mostly considering their budget?
- Do business and basketball organizations adapt their individual employee objectives during the year or not?

However, the current literature review done for this article cannot provide an answer to these two questions. This shows, once again, how important and necessary future research on the topic is.

Types of objectives in basketball and business organizations

The same as with any other management aspect, objectives are, according to the literature, categorized in various types as the literature review for this article has shown. First, in the case of sports organizations, an important aspect that Hoye et al. (2006) note is that *“objectives are normally set in each of the major operational areas of an organization, such as on-field performance, youth development, finances, facilities, marketing and human resources”*. A similar opinion comes from Locke & Latham (2013) who divide goals into three types:

- Outcome goals: *“refer to the end points of activities, such as results of competition (ex.: winning versus losing; finishing a race; making the varsity team)”*;
- Performance goals: *“refer to an athlete’s personal achievement, such as the number of points scored in a game or finishing time for a 5K race”*;

- Process goals: “refer to specific skills, technique, and strategies used to perform satisfactorily”;

The World Association of Basketball Coaches who differentiates between two types of goals also underlines the fact that objectives/goals can be set on different levels (individual/team/organization). Also, there are outcome and performance goals. “Outcome goals refer to collective or individual results”, while “performance goals focus on the desired steps toward an outcome, rather than the outcome itself” (World Association of Basketball Coaches). However, these aspects are from the standpoint of practice planning and not from the organizational standpoint as those described by Hoye et al. (2006).

For a better understanding on how objectives/goals can look like for a basketball organization, the author has given some examples of such objectives in the following table.

Table 1. Examples of objectives 1

Domain	Area	Source	Authors own examples
Sports (Basketball)	Operations	Hoye et al. (2006)	Ensure a sufficient budget in order to reach the playoff this season.
	On-field performance		Increase rebounds by +5 per game.
	Youth development		Qualify with all youth teams to the final 4.
	Finances		Increase revenue by 10%.
	Facilities		Lower the energy consumption.
	Marketing		Develop new campaigns for the sponsors.
	Human resources		Hire two new members for the scouting department.

Source: Author’s representation according to Hoye et al. (2006)

For a better understanding on how objectives/goals for a basketball organization can look like, the author provides some examples of objectives, according to the three types developed by Locke & Latham (2013), in the following table.

Table 2. Examples of objectives 2

Domain	Type	Source	Authors own examples
Sports (Basketball)	Outcome	Locke & Latham (2013)	Win the championship this season.
	Performance		Individual level: increase the number of points scored per game. Team level: Decrease the number of points received.
	Process		Individual: apply new training technique to develop more skills. Organization: develop and implement new strategy in order to bring more fans to the games.

Source: Author's representation according to Locke & Latham (2013)

Second, moving on to business organizations, Armstrong (2006) categorizes objectives into four types:

- *goals for customer satisfaction;*
- *goals for people;*
- *goals for growth;*
- *goals for productivity;*

A different point of view comes from Robbins & Coulter (2016) who wrote that there are just two types of goals:

- Stated goals – *“official statements of what an organization says, and what it wants its various stakeholders to believe, its goals are”;*
- Real goals – *“goals that an organization actually pursues, as defined by the actions of its members”;*

However, this means that if one would like to find out what the objectives of an organization are, one should follow the actions of its members. The questions that arise are if and how big the difference between stated goals and real goals are? Because the aim of this paper is a different one, we will not provide an answer to this question now. Moreover, this aspect can also serve as a topic for further research.

Another different point of view comes from David & David (2017) who classify objectives in three categories:

- Long-term - *“they represent the results expected from pursuing certain strategies....Without long-term objectives; an organization would drift aimlessly toward some unknown end.”*
- Financial objectives - *“growth in revenue, growth in earnings, higher dividends etc.”*
- Strategic objectives - *“larger market share, quicker on-time delivery than rivals, higher product quality than rivals etc.”*

As one can observe, there are different points of views about the types of objectives. However, even though they might seem different at first, they are similar because they all give the individuals/teams/organizations a sense of direction. If we look at what types of objectives there are in basketball and business organizations, we can state that, from this point of view, they are similar.

Objective setting in Basketball versus Business organizations

In the previous sections, we saw how the literature describes what objectives/goals are in basketball and business organization. However, how do they look like in reality? Are there any differences? In order to be able to give an answer to these questions and for a better understanding of the subject at hand, the author underwent a research in order to identify how the objectives of basketball organizations that play in Euroleague and in the Romanian National League look like for the 2022-2023 season.

Table 3. The objectives of Euroleague Teams for the 2022-2023 season

Nr. Crt.	Country	Team	Objective for 2022-2023 season	Status	Source
1	Germany	Alba Berlin	Could not be clearly identified	-	(Alba Berlin, 2022)
2	Turkey	Anadolu Efes Istanbul	Win Euroleague	X	(Anadolu Efes, 2022)
3	Monaco	AS Monaco	Become a shareholder of the Euroleague	✓	(Basket News, 2022a)
4	Spain	Cazoo Baskonia Viktoria-Gasteiz	Could not be clearly identified	-	(Baskonia Basketball Club, 2022)
5	Serbia	Crvena Zvezda mts Belgrade	Could not be clearly identified	-	(Crvena Zvezda Belgrade, 2022)
6	Italy	EA7 Emporio Armani Milan	Reach the Euroleague final four	X	(Basket News, 2022b)
7	Spain	FC Barcelona	Win Euroleague	X	FC Barcelona, 2022)
8	Germany	FC Bayern Munich	Reach the Euroleague playoffs	X	(Cauchi, 2022)
9	Turkey	Fenerbahce Beko Istanbul	Win Euroleague	X	(Itoudis, 2022)
10	France	LDLC ASVEL Villeurbanne	Win Euroleague in 5-7 years	X	(Basket News, 2022c)
11	Israel	Maccabi Playtika Tel Aviv	Reach the Euroleague playoffs	✓	(Euroleague Basketball, 2022)
12	Greece	Olympiacos Piraeus	Reach the Euroleague playoffs	✓	(Basket News, 2022d)
13	Greece	Panathinaikos Athens	Could not be clearly identified	-	(Radonjic, 2022)
14	Serbia	Partizan Mozart Bet Belgrade	Reach the Euroleague playoffs	✓	(EuroHoops, 2022)
15	Spain	Real Madrid	Win Euroleague	✓	(Euroleague, 2022)
16	Spain	Valencia Basket	Could not be clearly identified	-	(Vidal, 2022)
17	Italy	Virtus Segafredo Bologna	Reach the Euroleague playoffs	X	(Scariolo, 2022)
18	Lithuania	Zalgiris Kaunas	Reach the Euroleague playoffs	✓	(EuroHoops, 2022)

Source: Author's own research based on sources mentioned within the table

Table 4. The objectives of Basketball Teams in the Romanian National League for the 2022-2023 season

Nr. Crt.	Team	Objective for 2022-2023 season	Status	Source
1	ABC Laguna Sharks București	Could not be clearly identified	-	(BC Laguna Sharks Bucuresti, 2022)
2	U Banca Transilvania Cluj-Napoca	Win the Super Cup, National Cup, Championship	✓	(U BT Cluj-Napoca, 2022)
3	BC CSU Sibiu	Reach the playoff	✓	(Sadean, 2022)
4	CS Dinamo București	Could not be clearly identified	-	CS Dinamo Bucuresti Baschet, 2022)
5	CSM 2007 Focșani	Could not be clearly identified	-	(CSM Focsani 2007, 2022)
6	CSM Galați	Could not be clearly identified	-	(CSM Galati, 2022)
7	CSM Târgu Jiu	Remaining in the first league	✓	(CSM Targu Jiu, 2022)
8	CSM Târgu Mureș	Could not be clearly identified	-	(CSM Targu Mures, 2022)
9	CS Rapid București	One of the first three places	✓	(Helcioiu, 2022)
10	CSA Steaua București	Reach the playoff	X	(Ilie, 2022)
11	CSM ABC Athletic Constanța	Could not be clearly identified	-	(CSM Constanta, 2022)
12	CSM Petrolul Ploiești	Reach the playoff	X	(CSM Ploiesti, 2022)
13	CSM CSU Oradea	Win the Super Cup, National Cup, Championship	X	(Sere, 2022)
14	CSM VSKC Miercurea Ciuc	Could not be clearly identified	-	(CSM VSKC Miercurea Ciuc, 2022)
15	CSO Voluntari	Win the National Cup, Championship in order to constantly play in european championships	X	(Istrate, 2022)
16	FC Argeș Pitești	Could not be clearly identified	-	(fotbalclubarges.ro, 2022)
17	SCM OHMA Mozart Bet Timișoara	Reach the playoff	✓	(SCM Timisoara, 2022)
18	SCMU Craiova	Could not be clearly identified	-	(SCMU Craiova, 2022)

Source: Author's own research based on sources mentioned within the table

In order to determine the objectives for Euroleague and Romanian Basketball Teams in the 2022-2023 a research on different sources (ex.: official websites, basketball related news websites, social media) was undergone. As can be observed in the previous tables, the author was not able to identify all the objectives for the teams enrolled in the Euroleague championship or in the Romanian National Basketball League in 2022-2023. However, this aspect can be further analyzed from two perspectives: first, this does not mean that the organization does not have any objectives set, but rather that they did not make them public; second, in some cases the objectives that were made public were not clear or rather specific enough. Examples for the latter from the research: *“we want to be better from game to game”*, *“we want to improve our game and then we will see what we can achieve”*, *“we want to give our best in each game”*.

As can be observed in the previous two tables, some basketball organizations clearly communicate that they want to win the trophy, while others are very vague about what their intentions in the season are. Although, as mentioned previously, the objectives might be set internally in each organization and known by all the players and staff. This is an important aspect in objective setting. However, many clubs do not clearly communicate their objectives to the communities of fans and other interested in this aspect. This raises the question as to *why would a basketball organization not clearly communicate their objective also externally?* Especially if we consider what Covell et al. (2007) wrote about smart goals or objectives: *“they provide consistency throughout the organization and a blueprint for effectiveness”*. An answer to the above written question might be, that the clubs do not want to communicate their objectives *“to the outside world”* in order to not be required to give explanation to their stakeholders in case they do not achieve the established objectives. As we can see in the tables above, from the 18 clubs that play the Euroleague, 13 have disclosed their objectives and only six managed to achieve them. In comparison, in the Romanian National Basketball League, from the 18 clubs, half disclosed their objectives and only five managed to achieve them.

In the case of objective setting for business organizations, we can look at what objectives Apple has set for the following years. The reason why the author chose this specific company is that Apple is one of the

most valuable companies in the world. According to (Apple Corporation, 2021), the company has an objective to increase the number of employees at the San Diego headquarters with more than 5000 new employees until 2026. Moreover, Apple set an objective of building a campus in Austin worth 1 billion dollars. As we can see, Apple's objectives are S.M.A.R.T. – Specific, Measureable, Attainable, Realistic, Time bound. Comparing Apple's objectives with those set by basketball organizations active in Euroleague or in the Romanian National League we can clearly see a big difference as very few basketball organizations have stated objectives that can be considered as being S.M.A.R.T.

Setting objectives can have positive benefits not only for the team/organization but also for the individual. So, clear objective can be considered as a motivational factor that drives individuals to achieve the desired performance. More so, in his book *"Organizational Behavior"* Witcher(2022) underlines the idea that many studies support the fact that performance can be enhanced through specific and difficult goals.

Conclusions

In conclusion, considering the aim of this paper, a research was done in order to find out how objectives in basketball and business organizations are set. For this, several databases such as: ProQuest, Science Direct, Web of Science or Google Scholar were questioned on keyword or phrases such as *"goal setting in Basketball organizations"*, *"objective setting in Basketball organizations"*, *"objectives of Basketball organizations"*, *"what to consider when setting objectives for Basketball organizations"*, *"criteria for setting objectives in Basketball organizations"*. The results however, did not provide clear and sufficient information for answering the research question: *"are there any differences in the way basketball and business organizations conduct their objective setting and communication activities?"* Moreover, the author was not able to identify research on the topic of how exactly basketball organizations set their objectives or what criteria they take into consideration when setting these objectives. This means that in order to be able to validate/ invalidate the defined hypothesis more specific research is required. This

proves the fact that topics like how basketball organization set their objectives for each season or what criteria they take into consideration when undergoing this activity could be considered relevant for a future and more detailed qualitative/quantitative research having as target group: basketball teams that play in the Euroleague/Romanian National Basketball League. In addition, the fact that previous research on the topic was not identified can be considered a limitation for the present paper and a potential topic for future researches.

Furthermore, if for business organizations goals/objectives appear in the mission statements, the same is not the case for basketball organizations, as the research for this article has shown. The objectives, in the case of basketball organizations active in Euroleague or in the Romanian National League, were not easily found, and in some cases are even nowhere publicly communicated. However, this does not mean that they do not exist; it simply means that the organization did not state them publicly and thus are not easily or at all identifiable. That is why, the author suggests, having an “objective tracker” on their website. This would mean that the objectives for each team would be visible for everyone and they can thus track their progress in achieving them. This would ensure a better communication with the fan base of each team.

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