

Exploring the factors adopted in malus and clawback provisions

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LIST OF ACRONYMS AND ABBREVIATIONS

CEO	chief executive officer
CFO	chief financial officer
CRD	capital requirements directives
ESG	environmental, sustainability, and governance
EU	European Union
FCA	Financial Conduct Authority
FSB	Financial Stability Board
HR	human resources
IoDSA	Institute of Directors South Africa
LTI	long-term incentive
LTIP	long-term incentive plan
OECD	Organisation for Economic Co-operation and Development
PRA	Prudential Regulation Authority
SARS	South African Revenue Service
SEC	Securities and Exchange Commission
UK	United Kingdom
USA	United States of America

ABSTRACT

The global financial crisis of 2008 has triggered attention on the relationship between pay and performance at executive level, exposing risk-taking behaviour and reduced shareholder trust. Under this context malus and clawback was developed to provide recourse, withhold or recover remuneration, to drive pay aligned to performance and ethics. This paper aims to explore how malus and clawback provisions are designed and implemented to ensure accountability and fairness in executive remuneration.

The study rationale is to better understand the context which adds or detracts from making malus and clawback deliver on its intent. That understanding is delivered through exploring and analysing remuneration frameworks, legal and contractual structures, and procedural fairness in applying malus and clawback.

The paper employed an interpretivist, qualitative approach to understand from participants lived experiences. The phenomenological study was conducted through 13 semi-structured interviews with experts possessing about 10 years of experience. The data was analysed thematically by identifying recurring patterns. The study revealed three interrelated dimensions. First, definitional clarity and distinctions of triggers; second, coherent legal and contractual structures that secure enforceability; and third relates to procedural fairness that fosters legitimacy and trust. When integrated within broader governance systems, these provisions shift beyond compliance to strengthen ethical accountability and stakeholder confidence.

Boards and remuneration committees should incorporate malus and clawback clauses within broader governance systems that balance deterrence with fairness. Policymakers and regulators are encouraged to promote disclosure consistency and procedural guidance to ensure equitable enforcement. The study contributes to the body of knowledge around fair and responsible application of malus and clawback in executive remuneration delivered through a hybrid governance perspective that reconciles agency-based control with stewardship-based trust.

KEYWORDS

Malus and clawback, executive compensation/ remuneration, corporate governance.

PLAGIARISM DECLARATION

I declare that this research project is my own work. It is submitted in partial fulfilment of the requirements for the degree of Master of Business Administration at the Gordon Institute of Business Science, University of Pretoria. It has not been submitted before for any degree or examination in any other University. I further declare that I have obtained the necessary authorisation and consent to carry out this research.

Nqobile Dlamini

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1. INTRODUCTION TO THE RESEARCH PROBLEM

1.1 Background

The fragility of global financial systems and the contribution of executive compensation structures to incentivising excessive risk-taking were exposed by the financial crisis of 2008 (Dicuonzo et al., 2022). The confidence of stakeholders in corporate governance, quality of disclosure, and frameworks of remuneration was deeply affected, which led to enhanced scrutiny of the link between executive compensation and the performance of companies (Dicuonzo et al., 2022). Porcuna Enguix (2021) found that compensation incentives usually resulted in company financial gains in the short-term, but at the cost of sustainable and long-term shareholder value, with executives involved in manipulations of earnings and risk-shifting for maximisation of personal gains. In response to these issues, regulatory and governance reforms led to the introduction of malus and clawback provisions as mechanisms to enhance accountability and align executive compensation with long-term outcomes.

According to Sheedy et al. (2023) malus and clawback are ways to adjust compensation, particularly variable compensation. In malus the adjustment reduces or enables withholding an award in full or in part before it is in the hands of the person. Clawback is defined as recovery (in full or in part) of an award after it has reached the hands of the person (Sheedy et al., 2023). Therefore, malus provisions allow companies to decrease or withhold unvested variable remuneration, while clawback provisions allow for recovery of awards paid to executives (Perkins & Shortland, 2024). These provisions are aimed at addressing misconduct and misstatement of financial performance by executives, as well as failures in the risk management measures of companies (Dell'Erba & Ferrarini, 2024). Current developments in regulatory frameworks, such as the United Kingdom (UK) Corporate Governance Code, now necessitate that companies reveal the factors, scope, and implementation of malus and clawback provisions (Ferrarini & Ungureanu, 2024). In a similar vein, South Africa's King IV Report on Corporate Governance for South Africa 2016 (King IV) (IODSA, 2016) focusses on transparent practices in executive remuneration to enhance ethical governance and trust amongst stakeholders (Mahommed & Schutte, 2023). However, despite enhanced implementation, the effectiveness of these provisions is still inconsistent and questionable (Remesal, 2024).

When news headlines spotlight executives' pay, society questions the role of governance in mitigating misalignment between executive remuneration and company performance. Notably, the sustainability risk linked with compensation of executives underscores the significance of malus and clawback provisions (Medinda & Febrianto, 2023). By 2023, almost 80% of firms operating in the European Union had incorporated environmental, sustainability, and governance (ESG) targets into the executive pay structures, with almost 22% incorporating malus and clawback in explicit terms (Segal, 2025). In fact, a 2023 survey (Beasley, 2024) showed that less than a third of executives assert that key risks are communicated, and that these are a standard feature in scheduled discussions at management meetings. This raises the issue of risk measures in executive compensation, and there is a rising demand for accountability with regard to commitments related to social, economic, and corporate governance. However, challenges related to implementation, enforcement, procedural fairness, and legal multifacetedness remain unresolved (O'Sullivan, 2024). Consequently, the current study analysed the contextual factors that shape malus and clawback clauses, specifically their contributions to guaranteeing fairness and accountability in executive compensation.

The subsequent sections describe the study's problem statement and the research aims and objectives.

1.2 Problem statement

Although the provisions of malus and clawback are anticipated to enhance accountability by aligning executive behaviour, corporate performance, and shareholder interests, their pragmatic effectiveness is still uncertain. Studies by Dicuonzo et al. (2022) and Porcuna Enguix (2021) emphasise quantitative analyses in the context of the financial services sector, specifically the banking industry, specifically investigating the influence of clawback and malus provisions on quality of reporting and earnings management. However, such analyses often neglect the wider dynamics of governance that tend to impact the design, enforcement, and interpretation of these mechanisms (Ferrarini & Ungureanu, 2024; Perkins & Shortland, 2024).

Furthermore, little or no attention is paid to ways in which malus and clawback provisions are negotiated and operationalised by stakeholders in practice,

specifically as these relate to developing trends such as sustainability-linked compensation metrics and developing governance structures (Zalewska, 2022). In addition, the absence of clarity amplifies the question whether malus and clawback provisions are valuable tools for effective governance, and whether they improve transparency and fairness, or whether they are mainly symbolic mechanisms.

While the provisions are endorsed broadly, inconsistencies in the requirements, implementation, and enforcement weaken their possible effectiveness (Porcuna Enguix, 2021). This results in vastly inadequate accountability, with corporate misconduct projected to corrode 1.7% of the equity value of the United States of America (USA) on a yearly basis, projected to increase to US\$744 billion in 2030 (Miller, 2024). Apart from financial losses, ineffective application also tends to lead to unsustainable practices, which adversely impact companies' reputation and deteriorate investors' trust in the executives (Dell'Erba & Ferrarini, 2024).

These concerns indicate a need to conduct research to analyse the contextual, legal, and governance factors that impact the implementation of malus and clawback provisions, which provided the rationale for the present study. Specifically, the present study problem statement is focused on whether malus and clawback foster accountability and fairness in executive compensation. Such insights are important to regulatory bodies and policymakers planning to enhance accountability of executives and ensuring sustainable governance practices.

1.3 Research aim and objectives

The overall aim of the present study was:

To explore how malus and clawback provisions are designed and implemented to ensure accountability and fairness in executive compensation.

This was achieved by meeting three research objectives (ROs):

RO1: To explore the definitions of, distinctions between, and factors related to malus and clawback provisions in executive compensation frameworks;

RO2: To analyse the legal and contractual structures that support the adoption and enforcement of these provisions across governance contexts; and

RO3: To explore the processes and practices that promote procedural fairness in the application of malus and clawback provisions.

The next section delineates the scope of the study.

1.4 Scope of the research

The focus of this dissertation is malus and clawback policies in the context of corporate governance and executive compensation. It is concerned with the design, triggers, and implementation processes of these provisions, especially how they have been operationalised to promote accountability and fairness. Thus, the study looks at how malus and clawback provisions are used by boards, regulators, and other players in corporate governance to shape executive behaviour.

The study's scope includes a review of legal and contractual frameworks that underlie malus and clawback, such as codes of governance, regulatory directives, and contracts between boards and executives. It also includes an analysis of the nature of procedures, including decision protocols, enforcement practices, and disclosure requirements that form the basis of successful procedures.

Although informed by international regulatory and governance perspectives, there is an emphasis on contexts in which corporate governance codes and remuneration practices based on sustainability are actively discussed and implemented. The analysis focuses on organisational practices and governance mechanisms, rather than individual companies. In this respect, the study provides both conceptual and practical insights into what influences the nature of malus and clawback provisions, without attempting to generalise the results to all industries or jurisdictions.

The next sections review the contribution of the study to practice and theory.

1.5 Research contribution

1.5.1 Contribution to practice

The core contribution of this study to business is to establish and enforce corporate governance mechanisms that are effective in ensuring that executive compensation overcomes information disadvantages and inherent conflicts that lead to corporate corruption. The fact that the interests of shareholders and managers are in constant conflict makes the principal–agent relationship questionable. Agency theory emphasises the risk of self-interest on the part of managers, especially when they have an edge over shareholders and boards in terms of information (Muzata & Marozva, 2022). Jensen and Meckling (1976) define principal-agent relationship “as a contract under which one or more persons (the principal(s)) engage another person (the agent) to perform some service on their behalf which involves delegating some decision making authority to the agent. If both parties to the relationship are utility maximisers, there is good reason to believe that the agent will not always act in the best interests of the principal” (p.5). This asymmetry can be exploited by managers, who are in a better position to obtain information about operations, to reinforce behaviours that are less focused on long-term sustainability of the organisation and more on short-term profits (Mahomed & Schutte, 2023; Ross, 2020). This increases the threat of corporate malpractices and corruption, which are addressed by systems to address good governance. Malus and clawback provisions are aimed at inculcating accountability in executive compensation plans. Malus and clawback can neutralise granted rewards, thereby acting as corrective mechanisms to deter opportunistic behaviours and reinforce compliance with sound risk management practices (Aben et al., 2021).

The global financial crisis of 2008 further increased the demand for more effective governance and remuneration controls, which resulted in the introduction of clawback regulation in the USA under the Sarbanes-Oxley Act (2002) and the implementation of follow-up reforms in the European Union, the Netherlands, Australia, China, India, and South Africa (Mahomed & Schutte, 2023; Sheedy et al., 2023). These controls focus on the need for ethical and responsible leaders and the protection of stockholders. Ronald and Gulbenkian (2020) also believe that malus and clawback policies can eliminate principal–agent problems, encourage ethical

decision-making, protect the reputation of corporations, and encourage the creation of long-term value.

1.5.2 Contribution to theory

There are numerous theories on executive remuneration, and, depending on the research, the theoretical focus could lean towards ethics or human behaviour theories, amongst others. Ethics theories are premised on moral reasoning, virtues, and values. They provide rules and guidelines for decision-making, thus focusing on how things ought to be, but are not predictive (Crane et al., 2019). Albeit that behaviour theories consider diverse factors impacting both ethics and behaviour, related frameworks have shortcomings in explaining alignment of executives' interests with those of shareholders and balancing power between company leaders and owners (Perkins & Shortland, 2024). The theoretical contribution of the current study is the alignment of executives' interests with those of shareholders, and balancing their powers, by employing agency theory (Jensen & Meckling, 1976) and stewardship theory (Davis et al., 1997). Agency theory and stewardship theory provide various, though complementary, methods of regulating executive behaviour and governance.

Agency theory focuses on an existing conflict of interest between owners (principals) and executives (agents) (Kimbini, 2024). The theory suggests that executives' actions, enabled by information asymmetry, are motivated by personal financial gains rather than long-term shareholder value (Perkins & Shortland, 2024). This brings about agency costs such as excessive risk-taking, short-termism, and corporate misconduct (Dyck, 2024). Within this theoretical framework, malus and clawback provisions could be seen as ways to reduce agency costs by aligning executives' incentives with those of shareholders, thereby preventing opportunistic behaviour and imparting accountability to remuneration systems.

Stewardship theory holds that executives share pro-organisational and collectivist objectives, which are aligned to long-term corporate success and value to stakeholders (Porcuna Enguix, 2021). In this sense, executives are custodians and not opportunistic agents, which makes strong control mechanisms unnecessary (Siwendu & Ambe, 2024). However, the repetitive instances of executive misconduct and compensation scandals seem to call the universal applicability of stewardship

theory into question (Kimbini, 2024). Malus and clawback provisions built into a governance framework thus offer another line of defence in striking a balance between the ideal of stewardship and the realities of agency-based risks (Perkins & Shortland, 2024).

In placing malus and clawback provisions within the framework of agency and stewardship theories, the present study illustrates the dual purpose of applying these two theories—devising disciplinary tools to overcome incentive misalignments and creating precautionary measures that promote ethical leadership and long-term organisational sustainability. Thus, the two theoretical lenses are used to explain contextual and governance issues that influence the design and adoption of malus and clawback provisions.

1.6 Conclusion

This chapter provided an introduction and background to the study, namely the use of malus and clawback provisions in attempting to align executive remuneration with company performance and enhancing governance. This was followed by a discussion of the study's problem statement, the research aim, namely, to explore how malus and clawback provisions are designed and implemented to ensure accountability and fairness in executive compensation, as well as the supporting research objectives. The subsequent sections detailed the scope of the research, namely the use of malus and clawback provisions in the domains of executive remuneration and corporate governance, viewed through the lenses of agency- and stewardship theory, which was followed by the study's contributions to theory and practice. The next chapter reviews extant literature in this domain.

2. LITERATURE REVIEW

2.1 Introduction

This chapter provides a comprehensive review of relevant literature on executive compensation and corporate governance, with a focus on malus and clawback provisions, as well as the study's theoretical foundation, namely agency theory and stewardship theory. The review includes the impact of the 2008 financial crisis on pay practices and the regulatory reforms that followed. As part of the research objectives, this chapter aims to critically assess the efficacy of malus and clawback provisions in ensuring that executive remuneration aligns with stakeholder interests in the long term. The discussions commence with the study's theoretical foundation.

2.2 Theoretical foundation

As mentioned, the present study drew on two theories, namely agency theory and stewardship theory, discussed below.

2.2.1 Agency theory

The design of executive compensation has been a long-standing subject of academic interest, and agency theory (Jensen & Meckling, 1976) is one of the most important theories for understanding the relationship between managers (the agents) and shareholders (the principals). According to Jensen and Meckling (1976), agency theory holds that there is an inherent conflict of interests between these parties, which could be attributed to the fact that managers do not necessarily work in the best interests of shareholders. An asymmetric flow of information, also referred to as 'information imperfection', leads to managers knowing more about the business than shareholders do, creating opportunities for self-serving behaviours.

From the perspective of agency theory, a compensation-contracting system like pay-for-performance could alleviate the agency problem by aligning managers' interests with those of shareholders (Bhuyan et al., 2022). However, the scope and worth of these mechanisms in reducing agency costs are controversial. Controversy lie in for example, increased costs, unintended remuneration restructuring, substitution of earnings management and reporting quality (Hoffmann et al., 2022). While short-term rewards have been hypothesised to motivate managers to ensure the

achievement of performance goals, it has been noted that rewards for performance can lead to high-risk and counterproductive behaviours that are not in the long-term interests of the organisation (Chen & Vann, 2017).

2.2.2 Stewardship theory

Stewardship theory (Davis et al., 1997) holds that, as organisational leaders are the custodians of the firm, they are naturally inclined to acting in the best interests of the firm's shareholders. Davis et al. (1997) explained that managers will act in the best interests of the company due to their long-term commitment, and that there is thus no need for extensive control of payments based on financial performance. Agency theory (Jensen & Meckling, 1976) incorporates trust and the view that executives are not only motivated by money, but also by the responsibilities (achieving business goals, higher order needs emanating from performing the job) attached to their position (Davis et al., 1997). Stewardship theory refutes the assumptions of agency theory, but it does not completely reject the validity of questions regarding executive pay. Instead, it suggests that alternative approaches to governance offered by stewardship theory could help make executive compensation more equitable and consistent with building long-term value. Agency theory is said to focus on economic, extrinsic motivations and reward. The alternative offered by stewardship theory is grounded in intrinsic motivation and rewards (Davis et al., 1997).

While agency theory and stewardship theory illuminate logic behind executive compensation design, the former theory makes transparent the difficulties inherent in aligning executives' behaviour with shareholder interests. Stewardship theory may not highlight challenges but risk-averse owners can persist in viewing executives as self-serving even in the presence of stewardship theory that executive motivations naturally aligned to interests of shareholders (Davis, et al., 1997). As Bell (2021), Madlela (2018), and Mahomed and Schutte (2023) illustrate, performance-based pay and risk incentives do not always yield the desired outcomes; short-term rewards for performance may undermine the company's long-term sustainability.

Figure 1 provides the conceptual framework of the relationship between identified theory, governance mechanism in malus and clawback, research focus which aims to provide understanding of accountability and fairness in executive remuneration.

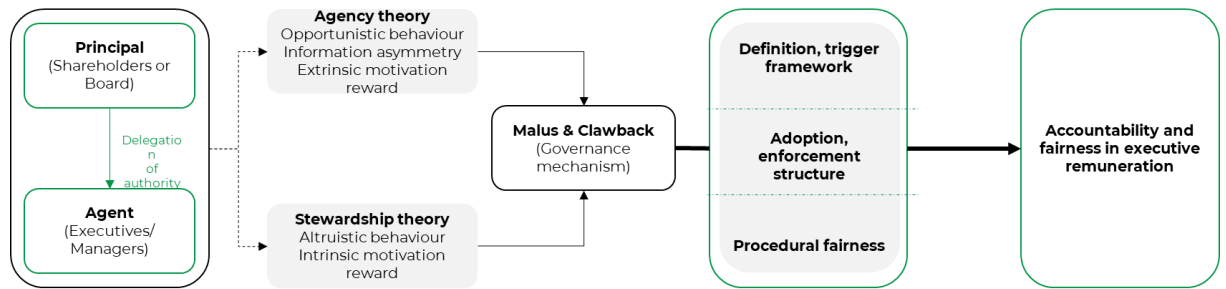


Figure 1: Conceptual framework of malus and clawback adapted from ChatGPT

The subsequent sections discuss executive remuneration and its relation to corporate governance.

2.3 Executive remuneration

Corporate abuse has been a major catalyst for executive compensation reform, as cases of financial fraud have underscored the need for legitimacy of executive remuneration in terms of firm performance (Bussin et al., 2023). Recent scandals, such as those involving Enron, Steinhoff, and EOH, drew attention to the negative impact of executives' misconduct on shareholder value and, ultimately, an economy as a whole (Chen & Vann, 2017; Comins, 2023; Meth, 2024). In the Enron scandal, executives were involved in accounting misstatements to overstate the company's financial position, which subsequently causing significant financial losses to shareholders. This motivated sweeping reform of corporate governance practices, including tighter regulation of executive compensation in the USA, exemplified by the Sarbanes-Oxley Act of 2002 (Chen & Vann, 2017). The Steinhoff accounting fraud case, which cost shareholders billions in lost shareholder value, raised questions about the company's reward regime, including short-term bonus schemes with varying pay-for-performance ratios that became key instruments in senior management's portfolio (Meth, 2024).

The relevance of executive compensation as a motivator of individual misconduct is justified in light of these cases. Executive compensation that is based heavily on short-term performance metrics can create an incentive for executives to engage in high-risk or unethical behaviour in order to meet financial goals. As Velte (2020) explains, the design of performance-based incentivisation can lead to perverse incentive structures in which executives pursue short-term goals that jeopardise the survival of the company. When compensation and business performance are out of

sync, misaligned incentives can lead to enduring reputational damage for both companies and a public outcry about serious financial misstatements and fraud (when applicable) (O'Sullivan, 2024).

2.3.1 Executive compensation in the UK and US financial sectors

The USA, followed by the UK, led legislative and regulatory reform governing executive compensation and linking executive pay to company performance, which explains their dominance in financial services in the wake of the 2008 global financial crisis (Mahomed & Schutte, 2023).

According to O'Sullivan (2024) the 2008 financial crisis was attributed to governance and risk failures within financial institutions wherein incentives were awarded based on inaccurate information. Reforms such as Sarbanes-Oxley (SOX) section 304 on clawbacks were born as a response. Zalewska (2022) posits that the crisis stressed the importance of governance mechanisms for executive remuneration and material risk-taking within the banking sector. Ensuing targeted European Union (EU) regulations for credit institutions, such as Capital Requirements Directive (CRD) III and IV, are aimed at prescribing application of malus and clawback provisions on variable remuneration (Angeli & Gitay, 2015; Ferrarini & Ungureanu, 2024). Similarly, the Bank of England working paper *measuring the effects of bank remuneration rules: evidence from the UK* (Sakalauskaite & Harris, 2022) cites European Union (EU) and UK reforms to prevent a resurgence of the build-up of risk leading up to the global financial crisis in banking. Bonus caps, deferrals, and stocks as compensation evidently lowered systemic risks and rendered greater financial stability (Sakalauskaite & Harris, 2022). Remesal (2024) asserts that, although there is growth in the number of US public firms beyond the financial sector adopting malus and clawback provisions, over 70% of 401 S&P 500 companies in 2024 (Hicks et al., 2024), the adoption rate in the non-financial sector has not kept pace. The adoption rate of these governance practices in China is a fraction of that of the USA (about five times less) (Zhou et al., 2024).

The 2008 financial crisis demanded comprehensive reforms of financial triggers of malus and clawback provisions with regard to executive compensation; however, there is increasing advocacy for non-financial triggers. Financial triggers relate to elements directly relating to financial health and performance of a company such as

revenue, income, ratios (Madlela, 2018; Mahomed & Schutte, 2023). Non-financial triggers refer to metrics not directly linked to accounting outcomes, namely compliance, risk, strategic and qualitative goals (Angeli & Gitay, 2015; Hicks et al., 2024). Financial measures are easier to define and measure, while non-financial triggers or metrics demand promoting a long-term outlook in variable pay (Madlela, 2018). Research by Busch et al. (2015), Dicuonzo et al. (2022), and Ferrarini and Ungureanu (2024) concur on the growing awareness of sustainable governance in executive compensation. This involves the integration of ESG criteria in executive compensation and withholding or recovery of remuneration should the organisation's sustainability be put at risk (Dicuonzo et al., 2022).

Further, the risk in this stakeholder era, beyond shareholder primacy, means that governance practices in executive compensation need to govern risk at a societal impact level (Mahajan et al., 2023). This calls for responsible executive compensation that is risk-proof from ethical, reputational, and value-detracting behaviours that impact the various stakeholders, including employees, shareholder activists, and communities of operations, to name a few. Integrating incentive alignment and accountability at a strategic performance level needs to consider a stakeholder consciousness that observes broad value creation (Busch et al., 2015; Dicuonzo et al., 2022).

2.3.2 Executive remuneration in SA

Studies are concentrated in US and UK (Al-Faryan, 2024). However, Mahmood et al. (2021) assert that earnings management (EM) is a common practice in listed companies in Morocco, Philippines, UAE and South Africa. EM is a practice adopted by management to alter organisational earnings to achieve a predetermined target increase opportunity for corporate fraud (Mahmood et al., 2021). In following the US and UK inspiration South Africa (SA) ethical and regulatory reform on executive remuneration has included King Code of Good Corporate Governance iterations (King III and IV) (voluntary regulation) and Johannesburg Stock Exchange (JSE) Listing Requirements (mandatory for listed companies) (Madlela, 2018).

Scholtz et al. (2025) asserts that King IV (IODSA, 2016) has been instrumental in promoting fair and transparent remuneration in South Africa. From a corporate governance framework perspective, the King Code is one the regulations that has

positioned South Africa as a frontrunner among its emerging economy counterparts in the African continent (Scholtz et al., 2025). However, Mazibuko (2024) argues that despite increasing trend of malus and clawback policy adoption the provisions are not popular among executives. She further highlights inconsistencies in malus and clawback provisions in listed company environments in Africa (Mazibuko, 2024). The non-legislated nature of King IV (IODSA, 2016) leads to increased inconsistencies as far as it relates to application of discretion and disclosure of malus and clawback provisions (Mahomed & Schutte, 2023). Legislation presents another challenge in that trigger events in South Africa are limited to computational error. Thereby not encompassing broader events such as misconduct or financial misstatement (Hoffmann et al., 2022).

2.3.3 Executive remuneration and corporate governance

Corporate governance, risk, and performance-based compensation are inherent factors in executive compensation due to the need to align interests of principals and agents (Ferrarini & Ungureanu, 2024). Performance-based compensation is intended to encourage managerial performance and align compensation with organisational financial performance (Bussin, 2015). Bell et al. (2021) point out that there has been a major growth stock incentive awards, which are based on benchmarking against peer companies. Due to the award being contingent on how well a company does relative to its peers it discourages executives from engaging in risk-taking behaviours for their own benefit. Further, such awards serve as a deterrent to executive remuneration resulting from chance (market shocks unrelated to the effort of the executive) (Bell et al., 2021). However, peer benchmarking may neglect awareness of the outputs of controls, which could hinder its ability to measure performance and contribute to creating value in the short term without adding long-term value. While there is much debate about whether incentive items are the main cause of companies' overexposure to risk, the 2008 financial crisis brought to light numerous incidences of such risk-taking due to incentive items that motivated executives to assume excessive risks, which ultimately led to the crisis (Bhuyan et al., 2022). Strong corporate governance mechanisms such as malus and clawback are necessary to align incentives to executive efforts and performance of company as well as shareholder interests by undermining any opportunism efforts by executives (Bell et al., 2021)

Corporate governance is an important influence in determining executive compensation. The Organisation for Economic Co-operation and Development (OECD) (2011), in its Principles of Corporate Governance, emphasises the importance of transparency, accountability, and fairness in determining executive compensation packages (Velte, 2020). Bhuyan et al. (2022) argue that executive compensation should be based on the long-term performance of the organisation, and that it should be precisely targeted at aligning interests of principals and agents; ensuring that the incentives of executives align with the interests of shareholders. This alignment is essential to reduce agency costs. However, executive compensation structures, in practice, often do not ensure this alignment, especially if short-run organisational performance is taken into account (Bhuyan et al., 2022).

The financial crisis of 2008 put executive remuneration in the spotlight, emphasising the need for effective corporate governance structures. Erkens et al. (2012) noted that the negative consequences of the crisis highlighted the weaknesses of executive compensation structures, particularly in terms of poor complementarities between compensation and long-term company performance. Many executives were awarded substantial salaries and bonuses based on their performance, but their companies' performance was subpar, resulting in significant losses for shareholders. According to Velte (2020), the crisis also shook shareholder confidence in corporate governance practices, most notably in the area of remuneration of executives. The crisis subsequently heightened pressure for changes that would more closely tie executive compensation to firm performance and shareholder interests. This led to the acceptance and implementation of more rigid corporate governance structures, resulting in increased transparency and accountability regarding executive remuneration incentives.

Several regulatory reforms have been implemented to rein in excessive executive compensation and to better align compensation with long-term performance. For example, the demand for corporate governance, including in compensation practices, led to the promulgation of the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010 in the USA. These Acts also address disclosure of executive compensation and clawback provisions, which commit companies to recover money paid to chief executive officers (CEOs) and chief financial officers (CFOs) in cases of failed financial reporting by these officers (Chen & Vann, 2017; Kubick et al., 2020). More recently, the UK's Financial Conduct Authority (FCA) and Prudential

Regulation Authority (PRA) attempted to better align executive compensation with a company's long-term performance through reforms designed to limit executive compensation encouraging excessive risk-taking and improve the effectiveness of corporate governance regimes (Angeli & Gitay, 2015). However, despite these reforms, shareholders' long-term interests have often proved to have remained incompatible with executives' remuneration.

Velte (2020) states that many regulatory changes introduced after the financial crisis have not been strong enough to restrain exorbitant pay or incentivise a better alignment of compensation with performance. One of the key difficulties has been that executive compensation packages are complex. They comprise a combination of salary, bonuses, share options, and other forms of performance-based pay, and this complexity undermines efforts to dissect the finer details of the relationship between executive compensation and firm performance (Aben et al., 2021).

However, there is some evidence that corporate governance reforms have positively influenced executive compensation reforms and enhanced transparency and confidence. Bhuyan et al. (2022) observe that the combination of clawback provisions and enhanced disclosure requirements has elevated transparency around executive remuneration, leading to a rise in confidence amongst shareholders in the US. However, Velte (2020) suggests that, even though these reforms may be moving in the right direction, they are insufficient in isolation to address the fundamental issues related to executive compensation. The demand for reform is particularly pronounced in the areas of remuneration structure and control, and stems from a loss of investor trust, dissatisfaction with short-term and self-serving managerial behaviour, and a desire for more ethical, sustainable, and long-term-oriented corporate governance, particularly in the wake of financial crises and scandals (Velte, 2020).

Also inherent in corporate governance reforms to ensure enhanced control over executive remuneration is transparency. Brazilian regulatory employment perspective puts emphasis on enforcing accountability as well as adherence to employee rights, even in the application of malus and clawback provisions (Mayer Brown, 2025). Although legislation and statutory provisions that encompass malus and clawback application in executive remuneration are underscored by the need to restore trust and give comfort to shareholders, executives as a stakeholder rights

cannot be ignored (Müller et al., 2020). 'Say-on-pay' rights permitting shareholders to vote on remuneration scheme design, scope, execution and disclosure reflect procedural oversight and fairness demands on remuneration decisions (Müller et al., 2020). Further, this gives rise to the concept of procedural fairness, which is focused employing transparency, trust, mutual accountability between managers (executives/ agents) and owners (shareholders/ principals) in executive remuneration policy provisions and procedures (Davis et al., 1997).

2.4 Malus and clawback provisions in executive remuneration

Efforts to align executive remuneration with company performance include malus and clawback provisions in executives' pay structures, both of which allow the organisation to reduce executives' remuneration in certain events, such as excessive risk-taking. Malus provisions allow withholding of incentives earned but not yet paid, while clawback provisions allow the recovery of remuneration already paid or vested (Sheedy et al., 2023). These provisions allow adjustment of performance-related pay to mitigate possible failure and to observe and manage risk and short-termism (Mahomed & Schutte, 2023; Ronald & Gulbenkian, 2020). These mechanisms were presented as a solution to address errors in the allocation of incentives that encourage risk-taking and corporate misbehaviour. However, serious questions have arisen about the effectiveness of these provisions in practice.

The legal frameworks for malus and clawback provisions vary widely between countries, and is often a patchwork of legislation. In USA, the Sarbanes-Oxley Act of 2002 instituted clawback provisions and fraud prevention measures to counter executive fraud such as grossly understated losses or inflated profits (Kubick et al., 2020). Fried and Shiloh (2011) stated that, while the Sarbanes-Oxley Act is a great step in the right direction, its effectiveness is limited, as only the Securities and Exchange Commission (SEC) has the authority to apply clawback provisions. With the enactment of the Dodd-Frank Act of 2010, the concept of clawback clauses was expanded to cover executive remuneration in the banking sector resulting from financial interactions that have no connection to financial misstatements (Chen & Vann, 2017). Thus, although legislation has made considerable strides in outlawing self-serving behaviour, there is considerable doubt regarding its reception, administration, implementation, and, ultimately, its effectiveness (Mahomed & Schutte, 2023).

South Africa's King IV and the Australian Securities Exchange's Corporate Governance Principles (Madlela, 2018) suggest that South Africa and Australia, respectively, employ malus and clawback provisions, albeit on a more accommodating, non-binding basis (Madlela, 2018). King IV (IODSA, 2016), for example, states that companies should have policies that provide for the possibility for the recovery of compensation in instances of misconduct. King IV recommends that companies' procedures allow for the recovery of damages in such instances. The FCA and the PRA in the UK published comprehensive guidance on clawbacks for the banking sector, as well as on how to prevent excessive risk-taking by executives (Angeli & Gitay, 2015). These provisions became particularly relevant in the aftermath of the 2008 financial crisis, which highlighted the need for better supervision of executive remuneration in banks.

While the use of malus and clawback provisions has become widespread, their effectiveness in motivating companies to make fewer missteps and align executive compensation with long-term performance remains uncertain (Cheung et al., 2025; Velte, 2020). Clawbacks present a set of challenges. One problem is that there is no consistency in their enforcement. Many executives are able to escape the sanctions of clawbacks because of loopholes in regulations, or simply because their behaviour is difficult to prove (Mahomed & Schutte, 2023). Furthermore, the provision is costly due to example litigation, especially in larger financial institutions with complex capital structures (Fried & Shiloh, 2011). These difficulties have prompted some to ask whether malus and clawback provisions have reduced the substance and increased the symbolism of ensuring executive accountability (Chen & Vann, 2017).

Another issue that makes the implementation of these provisions cumbersome is the intricacies of the structure of executive compensation packages. Total remuneration packages are typically complex, as they often include options, bonuses, and long-term incentives, making them an obvious target for the optimisation of malus and clawbacks (Bell et al., 2021). Stock options and deferred compensation may not be subject to clawback, because the value of such options and compensation is dependent on long-term performance measurements that may be difficult to measure in the short term (Velte, 2020).

Despite such challenges, there is evidence that malus and clawback clauses have had a positive impact on corporate governance, particularly in industries where the

provisions have been more strictly enforced. For example, in the banking sector in England, clawback provisions have been shown to inhibit risk-taking behaviour and enhance long-term wealth creation (Sakalauskaite & Harris, 2022). However, the success of these provisions hinges largely on the overall regulatory environment and the willingness of boards and regulators to apply them consistently (Madlela, 2018).

In summary, while malus and clawback provisions are popular mechanisms for mitigating risk in executive compensation, they face scrutiny of their effectiveness. Their effectiveness is hampered by inadequate and inconsistent implementation due to existing legislation and the complexity of executive rewards. Nevertheless, malus and clawback provisions can form an integral part of the overall framework of executive remuneration and serve as a means of reconciling executive remuneration with the creation of long-term value for shareholders.

The next section highlights the challenges and limitations in employing malus and clawback provisions.

2.4.1 Challenges and limitations of malus and clawback provisions

A major challenge related to malus and clawback provisions is downward risk-sharing. Clawback and malus provisions in executive compensation are subject to several preconditions that limit their ability to achieve executive accountability, and one of the biggest challenges is harmonising the way in which these provisions are implemented across jurisdictions, South Africa, US, Australia, The Netherlands, UK, France and Germany (Madlela, 2018). Additionally, while some countries have established clawback provisions through legislation such as the Sarbanes-Oxley Act and the Dodd-Frank Act (Madlela, 2018), a few countries have adopted a more flexible approach, leaving the implementation of such provisions to individual firms (Madlela, 2018). This inconsistency makes it difficult to estimate the likely impact of such clauses, as companies in some jurisdictions may be subject to stricter enforcement than those in others.

Another challenge is uneven enforcement. Al-Faryan (2024) argues that unequal enforcement can have a detrimental impact on the legitimacy of such measures, where companies operating in relatively lenient regions may be able to reap the benefits of their illicit activities without bearing all of the consequences.

Another drawback is the high cost of introducing and administering malus and clawback provisions. Negotiating compensation recovery from executives is legally complicated and time-consuming because it usually involves executives pushing back against the clawback or malus decision. According to Fried and Shiloh (2011), for some companies, the cost of taking action to recover executive compensation purportedly outweighs the gains from any potential litigation, which is why they choose not to enforce these provisions at all.

Executive pay schemes typically comprise complex combinations of cash- and share-based incentive plans and deferred plans that render clawback largely ineffective. As Velte (2020) opines, the complexity associated with these packages makes it especially challenging to decide when a clawback should be invoked and how it should be executed, likely discouraging firms from adopting or fully implementing these provisions.

Furthermore, malus and clawback provisions may have the effect of creating short-termism in executive decision-making. While short-term compensation models do ensure the recovery of compensation for current equity, they sometimes contribute to a perverse incentive programme that encourages executives to focus more on short-term financial matters than on long-term strategic risks. Angeli and Gitay (2015) observe that, with an emphasis on short-term financial performance as the focus and target, executives may resort to risk-seeking behaviours because they are forced to achieve short-term production targets, thereby jeopardising company stability.

Malus and clawback provisions run the risk of not achieving their objective (deter misconduct), because executives may go to extreme lengths of concealing negative news via earnings management to avoid the financial punishment accompanying the clawback (Zalewska, 2022).

Another set of issues concerns conflicts of interests between management and shareholders, as well as the best way to implement the provisions. Feng and Johansson (2018) suggest that management will oppose the introduction of malus and clawback provisions, especially when managers perceive them as a means of bargaining against their interests. On the other hand, shareholders might prefer that such provisions be included to provide protection for their investments and hold executives accountable for their behaviour. Malus and clawback provisions in contracts can foster negotiations.

In summary, while malus and clawback provisions are useful components of executive compensation plans, they are rendered impractical or ineffective in the manner of their implementation, high costs, and unintended consequences (Cheung et al., 2025). These challenges could be addressed through increased harmonisation of international standards for regulation and a more rational approach to executive compensation packages. Until these problems are solved, the full potential of malus and clawback provisions cannot be realised (Zalewska, 2022).

Many studies on malus and clawback provisions followed a quantitative research approach and focused on the financial services industry, mainly banking (Hoffmann et al., 2022; Velte, 2020). Qualitative research is required to demonstrate the tensions in implementing clawback and malus. Operational and legal complications that tend to influence the occurrence of provisions being effective in practice are highlighted in interviews and practitioner studies. An implementation review by Financial Stability Board (FSB) (2021a) based on supervisory conversations with firms in different jurisdictions suggests that companies often favour malus and in-year adjustments over ex post facto clawback, since clawbacks are seen as harder to implement. Clawbacks tend to lead to litigation and take longer to impose. Some firms extend their deferrals and consider malus a de facto form of clawback to avoid conflict (FAB, 2021a). This implies that, despite the presence of clawbacks, boards depend more on malus to enforce them. Mahmood et al. (2021) interviewed finance professionals in a qualitative study in the UAE, and found that the participants generally perceived clawbacks as an effective deterrent to earnings management and an indicator of accountability, but identified ambiguity regarding triggering, evidentiary burdens, and fear of talent flight as major obstacles to effective adoption (Hoffmann et al., 2022). These conclusions are related to the international issues of deterrence and retention.

Sheedy and Canestrari-Soh (2023) performed a mixed-methods analysis (survey and 41 interviews in 15 organisations with accountability regimes), and point to a set of cultural and process challenges: boards and senior managers reporting conflicts between fairness and deterrence, an inability to balance individual culpability and organisational factors or behavioural norms, and the necessity to document the decisions on malus or clawback activation more clearly. The literature thus indicates three common themes: enforceability is contingent upon employment law and contract design, the transparency of triggers and due-process protocols is a

precondition of legitimacy, and the burden of practical enforcement is frequently borne by surrounding pay structures (for example, deferrals, vesting, governance).

2.4.2 Measuring the effectiveness of malus and clawback in improving earnings quality and financial reporting

Quantitative studies on malus and clawback generally provide evidence that well-structured malus and clawback provisions strengthen the credibility of financial reporting. In large USA samples, firm-initiated clawbacks were also linked to fewer misstatements and an increased perceived quality of reporting (Chan & Vann, 2017; Velte, 2020). Chan et al. (2012) recorded a reduction in post-adoption restatements. The marketplace and the auditors also reacted positively, which is in line with increased credibility of financial statements. These findings indicate that clawbacks are not only symbolic, but that they affect both preparers and external monitors. Expanding on the suggestion that it matters how a policy is written, Erkens et al. (2018) distinguish between strong and weak clawbacks, and argue that strong ones, those with more extensive triggers and longer look-back, are associated with improvements in the quality of financial reporting, reduced turnover of CEOs due to misreporting, and reduced CEO compensation, suggesting a real disciplinary power. The findings of Erkens et al. (2018) indicate that contractual specificity is relevant in increasing deterrence. DeHaan et al. (2013) also studied voluntary adopters, and reported post-adoption increases in the quality of financial reporting, consistent with an ex-ante deterrent effect on manipulation to prevent restatements.

Likewise, auditors increase or decrease their effort in a manner that is consistent with reduction in misstatement risk following adoption of clawback provisions (Chen & Vann, 20), and attributes the benefits to changes in audit practices. Research by Bakke et al. (2023) found that capital-market implications, such as valuation benefits, are observed around the announcement of mandatory clawback regimes, which suggests that investors anticipate greater alignment and unmanipulated earnings when clawbacks are instituted (Bakke et al., 2023). Laboratory experiment in 2018 demonstrated that malus and bonus caps lower risk-taking, more so than simple performance-based bonuses, which suggests malus provisions could deter opportunistic behaviour that would otherwise worsen reporting quality. However, the applicability of the experiments to complex corporate environments may be limited (Harris et al., 2018). Overall, the literature suggests that clawbacks deter

opportunistic reporting, while malus curbs risky incentives at source, although the effects vary according to contractual strength and regulatory enforcement.

The next section delves into differences in the enforcement of malus and clawback provisions across sectors and countries.

2.4.3 Differences in enforcement across industries and countries

There is a significant disparity in implementation of malus and clawback provisions due to sectoral and jurisdictional rules. Malus and clawback are integrated into banking in the UK and EU via prudential remuneration regimes (European Banking Authority and European Central Bank guide), resulting in a higher incidence of ex post facto risk adjustment relative to most non-financial sectors. Supervisory reviews in the UK report aggregate malus/clawback adjustments by event, indicating active oversight (European Central Bank, 2024; FSB, 2021b). This regulatory embedding guarantees that malus is not an option but is embedded in the pay system. In comparison, SEC Rule 10D-1 (effective December 2023) on clawback policy requires that USA stock-exchange-listed issuers of all types to maintain clawback policies, but its terms are less generous than those on malus, because they are only narrowly concerned with restatement-based recovery, and the rule sets a cleaner but weaker floor than bank-specific regimes (O'Sullivan, 2024). This disparity highlights the existence of compulsory structures that may be present but still restrict the range of enforcement.

Cross-border recoverability is an added feature. Comparative reports by Mayer Brown (2025) and Müller et al. (2020) give insight that in certain jurisdictions (such as parts of Europe and Latin America), labour laws, constitutional guarantees, and civil law restrictions make it difficult to recover payment once it has been made; thus, firms depend on deferral and malus, or plan structure (vesting, choice of governing law), to increase the likelihood of recovery (Mayer Brown, 2025; Müller et al., 2020). Ho (2023) also notes divergence between UK and EU banking remuneration reforms (for example, the UK's removal of bonus caps versus the EU's retention), which may change the relative importance of malus and clawback within the overall pay toolkit and the ease with which they may be operated (Ho, 2023). Such differences are why identical contractual terms have greater deterrence effects in certain industries and jurisdictions than in others.

The next section discusses sustainability metrics related to malus and clawback provisions.

2.4.4 Integration of sustainability metrics into executive compensation frameworks

Incorporating sustainability measures into executive compensation is becoming increasingly focused on aligning leadership incentives ESG deliverables; however, there is empirical evidence of promise and constraint in these efforts. An in-depth HEC Paris (2025) study of 674 executives in 73 large European companies (from 2013 to 2020) shows that, although 60% of executives had implemented ESG objectives into pay structures, these measures were mostly discretionary. Binding ESG targets constituted less than 5% of the bonus calculation, with the impact on pay variance being negligible (less than 1%) compared to almost 87% of traditional finance-based metrics. This implies that ESG-related compensation is frequently symbolic in nature, and not intended to generate material behavioural change (HEC Paris, 2025).

Conversely, the Chinese A-share listed companies (in the period 2012 to 2021) demonstrated stronger and deeper integration. Executive compensation as an incentive had a substantial positive effect on corporate ESG ratings through green innovation promotion, environmental disclosure, and financial performance (Zhu et al., 2024). The impact was strongest where the independent director oversight was greater and weakest where there was a high level of executive shareholding. European companies seem to employ ESG metrics more as a signalling mechanism, whereas, in China, observable cash pay and sustainability-related improvements are generated through actual linkages between incentives and performance—reflecting that the success of ESG integration is contingent upon incentive form and corporate governance environment, as well as performance.

The amalgamation of metrics of ESG into executive remuneration has given rise to scholarly debate, specifically on the role of malus and clawback clauses in boosting sustainable corporate behaviour. Ferrarini and Ungureanu (2024) argue that connecting malus and clawback to ESG outcomes improves accountability through penalisation of executives for failing to attain sustainability targets in the long term, thus depressing opportunism in the short term. Zalewska (2022) views these clauses

as corrective tools that allow strengthened transparency and builds the confidence of shareholders.

Medinda and Febrianto (2023) and O'Sullivan (2024) hold different opinion on the practical effectiveness of the alignment of non-financial and financial performance, primarily due to their distinct geographical and regulatory contexts. The former study on Indonesia development banks concerns looks at *malus* and clawback as deterrents to decisions and behaviour that detract from ensuring company long term viability (performance wise and financially) (Medinda & Fabrianto, 2023). The latter study takes things a step further in their US and broader comparative study by asserting that long term company stability possible through ESG integration in pay-for-payment criteria (O'Sullivan). While *malus* and clawback tied to ESG indicators are meant to enhance commitment, enforcement remains questionable, due to the ambiguity and subjectivity inherent in assessing sustainability outcomes (Mahomed & Schutte, 2023).

In a contrasting argument, when goals of ESG are clearly defined and assured externally, these provisions appear to be efficient barriers to reputational damage caused by the misconduct of executives (Dell'Erba & Ferrarini, 2024). In addition, *malus* and clawback provisions allow the balancing of expectations of shareholders and stakeholders by integrating ethical accountability and governance into decision-making of executives (Dicuonzo et al., 2022). On the other hand, applying the perspective of stewardship, over-dependence on punitive measures tends to corrode the inherent motivation needed for performance (O'Sullivan, 2024). This, *malus* and clawback provisions are a promising governance tool. However, their effectiveness is subject to jurisdiction, clear ESG goals, balanced interest, and a long-term horizon. Furthermore, Busch et al. (2015) note that sustainability measures lack a proper definition. The ambiguity in metrics results in inconsistent measurement, superficial actions and compromises investment and risk management. Consequently, the risk associated with this ambiguity is misaligned incentive-company performance relationship in executive remuneration (Busch et al., 2015).

2.5 Conclusion

The literature review assessed the practical and theoretical dimensions of executive compensation, corporate governance, and the contributions of *malus* and clawback

clauses in boosting sustainability and accountability. The discussion stressed developing the theoretical basis by contrasting agency theory, which focusses on information asymmetry, self-interest, and agency costs, with stewardship theory, which focuses on alignment of executive remuneration with sustainability and performance outcomes of the organisation. This theoretical perspective illustrates the tension between risk-taking, remuneration, and value-creation in the long term.

The literature review also discussed the compensation of executives in wider frameworks of governance, considering the effects of the financial crisis of 2008 on exposing loopholes in remuneration practices, which led to reforms in regulatory frameworks, for instance, King IV (IODSA, 2016), the Dodd-Frank Act, the Sarbanes-Oxley Act, and the APRA guidelines (Sheedy et al., 2023). These reforms enhanced malus and clawback provisions as mechanisms of corrections in executive compensation structures while focusing on eliminating misconduct, decreasing excessive risk-taking, and ensuring efficient risk management, leading to the restored confidence of stakeholders. The next chapter presents the present study's research aim and research questions.

3. RESEARCH QUESTIONS

In spite of reforms introduced to address executive corporate misconduct and executive remuneration not being commensurate with company performance, the problem of whether malus and clawback foster accountability and fairness in executive compensation persists. This informed the present study's research questions, which are listed below, together with extant literature, where pertinent.

3.1 Main research question and research sub-questions

The main research question of the study was:

How are malus and clawback provisions designed and implemented to ensure accountability and fairness in executive compensation?

This question was answered through four research sub-questions (RSQ):

RSQ1: *How are malus and clawback provisions defined, distinguished, and triggered within executive compensation frameworks?* (Mahomed & Schutte, 2023; Moolman & Giliam, 2019).

RSQ2: *What legal and contractual mechanisms underpin the adoption and enforcement of malus and clawback provisions across different governance contexts?* (Ferrarini & Ungureanu, 2024; Mahomed & Schutte, 2023; Ronald & Gulbenkian, 2020; Velte, 2020).

RSQ3: *How do organisations design processes and practices to ensure procedural fairness in the application of malus and clawback provisions?* (Mahomed & Schutte, 2023; Moolman & Giliam, 2019).

These questions guided the inquiry and ensured that the findings would contribute meaningfully to scholarly and practical debates on executive compensation governance.

The main aim of the current study was to explore how malus and clawback clauses are designed, applied, and contextualised across frameworks of executives' compensation, specifically in relation to accountability and fairness. The debate amongst researchers stresses that malus and clawback provisions are now a major aspect in governance of executive compensation structures (Mahomed & Schutte,

2023; Zalewska, 2022). Their effectiveness, however, is still questionable, due to unsteady enforcement, different legal structures, and varying industry practices (Ferrarini & Ungureanu, 2024).

Extant literature (Bell et al., 2021; Dicuonzo et al., 2022) provides descriptive and quantitative assessments of the outcomes of clawback and malus provisions in enhancing governance of executive compensation structures. However, research has failed to uncover the detailed viewpoints of stakeholders engaged in operationalising these provisions. Therefore, the present study explored the debate in terms of contextual challenges and alignment with wider sustainability and governance objectives. The formulation of the research questions was informed by gaps in the existing body of literature, as well as the objective of the study, which demanded definitional clarity of malus and clawback provisions, an understanding of legal reinforcements, the manner of integration into ESG goals, and procedural fairness.

3.2 Conclusion

This chapter presented the main research question and RSQs that guided the study, which questions were based on identified gaps in literature. The next chapter details the methodology followed in conducting the research.

4. METHODOLOGY

4.1 Introduction

This chapter describes the methodology followed in conducting the research, which was aimed at understanding the design and implementation of malus and clawback provisions to promote accountability and fairness in executive pay. The discussion commences with the research philosophy in which the study was based, followed by the research approach and strategy, including the methods employed. The chapter concludes with the strategies employed to ensure rigour and the ethical considerations that were deemed pertinent to the study.

4.2 Research philosophy

Research philosophy reflects a researcher's view on the nature of knowledge (i.e., truth) and how information on it could be gained (Asenahabi, 2019; Saunders & Lewis, 2018). An interpretivist philosophical approach is concerned with gaining meaning and perspectives from their habitat as informed by real world contexts (Asenahabi, 2019). In the present study, an interpretivist philosophy was considered appropriate for seeking to understand the design and implementation of malus and clawback provisions to achieve accountability and fairness in executive compensation, as executive remuneration is dynamic, due to contextual factors (Lim, 2025). The interpretivist approach allowed an in-depth analysis of participants' perspectives and lived experiences (Lim, 2025). According to Islam and Aldaihani (2022), interpretivism is best applied in studies aimed at establishing meaning and the process of negotiation in organisations

4.3 Research approach

The present study followed a qualitative approach, which focuses on textual, rather than statistical data, aligned with an interpretivist philosophy (Lim, 2025). While the findings of qualitative research are not generalisable to the study population, the data provide rich insights that may not be achieved through quantitative instruments such as surveys (Islam & Aldaihani, 2022). A qualitative approach relies on words to discover meanings and interpretations, aimed at explaining the depth of social phenomena (Muzari et al., 2022). In the present study, the data were gathered

through semi-structured interviews with participants. This approach allows a researcher to gain in-depth insights into the meaning participants attach to a phenomenon and the influence of the context within which the phenomenon occurs (Lim, 2025).

Chivanga and Monyai (2021) emphasise that qualitative methods are especially appropriate when the research question focuses on 'how' and 'why', and not 'what' or 'how many'. Phillips et al. (2024) explain that qualitative inquiry enables the researcher to reveal layered meanings and socially constructed realities that a quantitative approach may fail to show. The qualitative approach was considered most suitable to achieve the aim of the study, as it enables a nuanced understanding of the information provided by participants. This view is supported by Muzari et al. (2022), who note that qualitative inquiry is appropriate for investigating phenomena that are affected by cultural, legal, and governance frameworks. The environment of executive compensation brings together multiple disciplines. Such a multi-disciplinary context necessitates a dive from the perspective of experts who engage regularly with complexities and inter-discipline considerations driving malus and clawback provisions, within executive remuneration.

4.4 Approach to analysis

Deductive reasoning starts with a set of theories or suppositions and exposes them to empirical research, usually in a quantitative approach, which often involves accepting or rejecting hypotheses (Phillips et al., 2024). In contrast, inductive reasoning starts with certain observations and then develops more widely applicable theoretical knowledge, which then results in the development of novel ideas and explanations that are based on the data (Chivanga & Monyai, 2021).

In the present study, the data were analysed inductively. Taherdoost (2021) observes that inductive reasoning is particularly useful when the researcher is seeking to reveal patterns, meanings, and relationships that have not been well theorised in existing literature.

4.5 Research strategy

A research strategy or design is the plan for carrying out a study, and includes the methods employed to sample participants and collect and analyse the data. An

exploratory research strategy is an approach that relies on being flexible and adaptable in exploring research that is undefined or underexplored (Olawale et al., 2023). It moves from broad to a narrow focus through data gathered through interviews, case studies and focus groups. The dynamism inherent in explorative research design does not mean the inquiry is void of direction (Olawale et al., 2023). The present study followed an exploratory research strategy, which is suitable for areas that have received insufficient research attention and little is known about a phenomenon (Olawale et al., 2023). Part of the study objective was to “characterize, comprehend, and elucidate” (Adeniran & Tayo-Ladega, 2024, p. 191) the experience of the participants of how malus and clawback provisions are applied as corrective and or punitive measures in executive remuneration.

4.6 Time horizon

The present study followed a cross-sectional time horizon, which means the data were collected at a single point in time, rather than intermittently over an extended period in order to make comparisons and determine changes over time (Kesmodel, 2018).

4.7 Methods

This section discusses the research methods employed to select participants from the population and gather and analyse the data.

4.7.1 Population and sampling

The domain of executive compensation has links to the fields of human resources and behaviour, finance, tax, legislation, governance, and industry regulations, to name a few disciplines. Such a multi-disciplinary context necessitated the perspective of experts who engage regularly with complexities and inter-disciplinary considerations with regard to malus and clawback provisions in executive remuneration. The population of the current study comprised executives and managerial-level professionals of South African-based firms who also hold expertise in designing executive remuneration.

Participants were selected using purposive sampling, also known as ‘judgement sampling’, whereby the research selects participants based on their ability to

contribute rich and meaningful data (Saunders & Lewis, 2018). To ensure that participants possessed relevant knowledge and experience, the inclusion criteria were a minimum of 10 years' experience in a management position related to executive remuneration, with detailed knowledge on malus and clawback clauses.

Prospective participants were identified through LinkedIn and the present researcher's professional networks and industry associations. The realised sample comprised 13 participants, as data saturation—the point at which no new insights emerge from additional interviews (Rahimi & Khatooni, 2024)—had clearly been reached.

4.7.2 Data collection

Primary data were collected through semi-structured interviews, guided by an interview guide containing open-ended questions (Muzari et al., 2022). Semi-structured interviews allow researchers the flexibility to alter the order of the questions according to the flow of the discussions. The researcher is able to collect detailed responses of participants and ask additional, probing questions in order to gather additional insights and clarity (Muzari et al., 2022).

The interview questions were formulated to generate detailed insights into the main areas of the study: (1) the definition, factors, and interpretation of malus and clawback provisions, (2) legal and contractual frameworks that support their implementation, and (3) the processes that guarantee accountability fairness and alignment of executive remuneration with governance objectives. It has been argued by Phillips et al. (2024) that semi-structured interviews are specifically effective in addressing the research problem using 'how' and 'why' questions. Open-ended questions also allow participants to share their practical experience and detailed perspectives that are not captured by means of quantitative surveys.

In conducting semi-structured interviews, data in the form of the participants' own words are collected, reflecting their lived experience (Kallio et al., 2016; Paley, 2010). The interview questions were based in the literature, and moved from the general to the specific. Further, the use of an interview guide ensured the interviews remained on the topic of conversation while allowing participants to elaborate on their experiences (Adeniran & Tayo-Ladega, 2024; Kallio et al., 2016; Leavy, 2022; Paley, 2010). Hence the guide followed Kallio et al.'s (2016) recommendations that the

interviews be “participant-oriented, not leading, clearly worded, single-faceted and open ended” (p. 2960). Saunders et al. (2018) emphasise that semi-structured interviews yield rich, detailed insights into phenomena, aligned with the interpretivist philosophy of this study. The interview questions, together with the relevant focus area and supporting literature, are listed in Table 4.1.

Table 4.1: Interview guide

Focus area	Literature supporting the interview questions	Interview questions
Background through demographic information	Creswell and Creswell (2018) posit that demographic questions help contextualise participant responses.	<ol style="list-style-type: none"> 1. What is your role or position and the industry in which you work? 2. How many years of experience do you have working in the remuneration profession, and specifically senior management/executive remuneration policy? 3. What role do you play in development and or implementation of senior management/executive remuneration policies such as malus and clawback?
Malus and clawback: definition and requirements	Mahomed & Schutte, 2023; Moolman & Giliam, 2019	<ol style="list-style-type: none"> 4. How should companies design malus and clawback policies to be effective and enforceable? 5. What are the trigger events that should be considered under malus and clawback provisions?
Malus and clawback structural ambit	Ferrarini & Ungureanu, 2024; Mahomed & Schutte, 2023; Ronald & Gulbenkian, 2020; Velte, 2020	<ol style="list-style-type: none"> 6. How are malus and clawback incorporated into current frameworks (e.g., policies, contracts/agreements, incentive plans)? 7. Which of these frameworks best serve malus and clawback intent? 8. What are the existing conflicts across frameworks, if any? 9. How can existing conflicts be remediated?

Focus area	Literature supporting the interview questions	Interview questions
		10. Who are the stakeholders authorised to define terms and conditions of malus and clawback in frameworks?
Malus and clawback enforcement	Mahomed & Schutte, 2023; Moolman & Giliam, 2019	11. How is procedural fairness institutionalised in law, codes of good practice, and company policies? 12. What are the challenges in ensuring procedural fairness across stakeholders? 13. Would you say legal impediments and enforcement issues related to ex post facto tools such as malus and clawback are dependent on jurisdiction? If yes, why?

One pilot interview was conducted to test the interview guide, followed by a total of 13 interviews with subject matter experts who were well versed in the subject of executive remuneration. The pilot interview served multiple purposes. It enabled the present researcher to determine the clarity of the questions, assess the opening format of the interview, and determine the duration of the interviews (Suhimat, 2025).

The semi-structured interviews with the 13 participants, who were based in Gauteng, were conducted virtually, using Microsoft Teams. The sample comprised 60% women and 40% men. They had an average of 17 years' experience working with executive remuneration. The participants' professional backgrounds were diverse; the sample included lawyers, a mathematician, and B.Com graduates who worked in the fields of mining, telecommunications, financial services, legal and advisory services, accounting and advisory services, and logistics. The participants' positions ranged from Head of Reward and other areas of the human capital value chain, such as performance and analytics, to Company Secretary with extensive experience in corporate governance, a firm Partner, and a Chief People Officer.

At the start of every interview, the present researcher introduced the study and reiterated participant consent and rights. In addition, the present researcher articulated the sequence of interview events, to ensure participants knew what to expect. The interviews were recorded, with the participants' permission, which ensured accuracy of the collected data (Paley, 2010). According to Keen et al. (2022) virtual interviews mimic natural conversation. A non-traditional platform such as Microsoft Teams provides a remote form of face-to-face interviewing, with the researcher still able to observe body language (Keen et al., 2022).

While the semi-structured interview progressed through each question and response, the researcher used reflection, paraphrasing, and echoing where necessary to ensure an accurate understanding of each response provided (Mwita, 2022; Suhiemat, 2025). In addition, non-verbal cues were observed, such as facial expressions and body language. Moreover, participants were allowed time to gather their thoughts on their responses, and the probing questions were posed with awareness of the sensitivity of the topic of malus and clawback (Xu et al., 2025).

Challenges experienced during the data collection process included interviewees not showing up for interviews. The researcher had to conduct multiple follow-ups and send reminders to secure appointments with participants. One participant became flustered 10 minutes into the interview and requested that the researcher immediately stop the recording. The participant had arrived in the interview session immediately from a day of successive meetings. She felt she needed a pause or break between her work engagements and the interview. She nevertheless continued with the interview. The researcher guided the pace progressively enabling the participant to reach a state of calm as she answered the questions. In this interview, the researcher had to rely on taking notes and paraphrasing the participant's answers to questions. Consequently, this interview took longer than the expected 40 minutes. Table 4.2 provides a demographic profile of the participants.

Table 4.2: Participant profile

Seniority	Gender	Race representation	Years of experience range	Current industry presence
Senior management: 5 Executive management: 8	Female: 8 Male: 5	African: 8 Indian: 0 Coloured: 2 White: 2 Foreign-national: 1	10 to 26 years	Multinational corporations: 9 Pan-African companies: 4

The next section discusses the method of data analysis employed in the current study.

4.7.3 Data analysis

The data were analysed using thematic analysis, which is widely used in qualitative inquiries aimed at exploring perceptions, experiences, contextual influences, and practices (Byrne, 2022). Braun and Clarke's (2006) six-step method was employed, which aims to identify, explore, analyse, and interpret, recurring patterns systematically and in a structured way by developing overarching themes by coding the detailed participant data.

First, the interview recordings were transcribed using a Microsoft Teams functionality. As the first step in the analysis, the present researcher ensured immersion in the data by carefully reading and rereading the transcripts while listening to the audio/video-recordings, to ensure accuracy of the transcription. In the next step, through open coding initial codes were generated manually, capturing meaningful segments of data. In the next step, the codes were grouped into categories or sub-themes, which were then collated into overarching themes. The themes were then refined through comparison with the data, to ensure that the themes were distinct and that they represented the meaning conveyed by the data. In the final step, each theme was given a concise, descriptive label (Braun & Clarke, (2006).

The next section discusses the measures taken to ensure rigorous research.

4.8 Strategies to ensure trustworthiness

Strategies were employed to ensure the study's trustworthiness, which entails meeting the criteria of credibility, transferability, dependability, and confirmability (Guba & Lincoln, 1994). Credibility relates to the believability of the findings, which requires demonstrating that the findings are based in the data (Guba & Lincoln, 1994). In the present study, credibility was enhanced by the selection of experts for participation and, in some cases, member-checking of the interview transcripts (Keen et al., 2022). In addition, the researcher gained a deep understanding of the data through prolonged engagement with the transcripts (Guba & Lincoln, 1994).

Dependability requires that the research explain how the findings were derived by providing a detailed explanation of the process, thus providing an 'audit trail' (Guba & Lincoln, 1994). The present study provides a detailed description of the approach to and method of analysis, thereby enhancing transparency around how the researcher arrived at the findings. In addition, the findings are supported by verbatim quotes from the interview transcripts (Lim, 2025; Nowell et al., 2017).

Confirmability is enhanced by the researcher guarding against personal bias in analysing and interpreting the data (Guba & Lincoln, 1994; Lim, 2025). The present researcher guarded against personal bias and preconceived notions influencing the analysis of the data by continuously practising reflexivity and engaging with the study leader on the interpretation of the findings (Lim, 2025).

While qualitative findings are not generalisable, transferability can be achieved by ensuring that the reader is able to judge whether the findings are applicable to a different context (Guba & Lincoln, 1994). To enhance the present study's transferability, the present researcher provided detailed descriptions of the study context, the study problem, and the methodology employed in conducting the research (Lim, 2025).

Although qualitative research incorporates interpretation, the above steps were taken to ensure the findings were accurate, credible, and based on the experiences of the participants, as recommended by Adeniran and Tayo-Ladega (2024) and Nowell et al. (2017).

The next section addresses the ethical considerations that were considered pertinent to the present study.

4.9 Ethical considerations

The main consideration in research that involves human participants is to ensure that participants do not come to harm as a result of participation in a study, especially if the topic under study is sensitive. Ethical clearance (See Appendix ...) to conduct the study was obtained. Participants were ensured of anonymity, and all personal identifiers were removed in the reporting. Participants were fully informed of the aim of the study and what participation entailed, and were assured that the data would be used only for research purposes. Participants were required to sign an informed consent form (See Appendix...) prior to the interviews, which form contained details about the study and ensured participants that participation was voluntary. Participants were not remunerated for participation, and could withdraw from the study at any point, without any consequences. The data are stored securely on a password-protected device that is accessible only by the researcher.

4.10 Conclusion

This chapter provided a detailed discussion of the methodology followed in conducting the study, commencing with a description of the interpretive research philosophy in which the study was based. This was followed by discussions of the qualitative research approach, the inductive approach to analysis, and the exploratory research strategy. Subsequent sections detailed the cross-sectional time horizon and the methods used, namely purposive sampling, data collection through semi-structured interviews, and thematic analysis of the collected data. The chapter concluded with the strategies employed to ensure rigour and the ethical considerations that were upheld throughout the research. The next chapter reports the findings of the study.

5. FINDINGS

5.1 Introduction

This chapter presents the empirical findings from 13 interviews with South African remuneration and governance practitioners with regard to malus and clawback provisions. The analysis yielded five themes: *Definitional clarity and trigger scope*, *Design features that anchor accountability*, *Legal and contractual architecture*, *Procedural fairness and governance practices*, and *Effectiveness conditions*. The findings are supported by verbatim quotations from the interview transcripts. Table 5.1 maps the RSQs and the related themes, sub-themes, and examples of codes.

Table 5.1: RSQs and related themes

RSQ	Examples of open codes	Examples of categories	Themes
RSQ1: How are malus and clawback provisions defined, distinguished, and triggered within executive compensation?	“malus vs clawback”, “trigger taxonomy”, “look-back”, “instrument coverage”, “deferral as value-at-risk”	Definitional Boundaries and Distinctions Trigger Taxonomy and Scope	Theme 1: Definitional Clarity: Distinctions, Triggers, and Scope
RSQ2: What legal and contractual mechanisms underpin the adoption and enforcement of malus and clawback provisions across different governance contexts?	“policy–rules–award letters”, “single source of truth”, “deferral/vesting schedules”, “net vs gross recovery”, “tax/legal consultation”	Policy Architecture and Artefact Integration Contractual Embedding and Labour Law Alignment	Theme 3: Legal and Contractual Architecture across Governance
RSQ3: How do organisations design processes and practices to ensure procedural fairness in the application of malus and clawback provisions?	“representation rights”, “proportionality”, “documentation/minutes”, “appeals windows”	Representation Rights and Proportionality Documentation, Communication, and Appeals	Theme 4: Procedural Fairness, Due Process, and Governance Practice

The profile of the 13 participants in this inductive study is set out below in Table 5.2. It outlines the participants' gender, race, job title, the sector in which they operate in delivering on executive remuneration, and their years of experience in dealing with executive remuneration, including applying policies such as malus and clawback. The profile further indicates whether the participant is internal or external to the company. An internal adviser is a full time employee providing guidance and advice, while an external or independent advisory is a professional rendering services to corporate clients. A hybrid participant operates in both capacities. On average, each interview was 35 minutes long with a total of 411 minutes in interview time across the 13 interviews.

Table 5.2: Participant profile

Participant Number	Gender	Race	Job title	Years' experience	Internal/ Extern firm	Sector of operation
1	Female	Coloured	Group Head: Organisational Development, Performance & Reward	13	Internal Remuneration Advisory	Mining and renewables energy
2	Male	Black African	Group Head: Total Reward Governance	19	Internal Remuneration Advisory	Telecommunication
3	Female	White	Partner	15	External Remuneration Advisory	Multi-industry
4	Male	Coloured	Group Reward Governance	18	External Remuneration Advisory	Financial services
5	Female	Black African	Partner	17	External Remuneration Advisory	Multi-industry
6	Female	Black African	Managing Director	15	Hybrid Remuneration Advisory	Multi-industry
7	Male	White	Partner	23	External Remuneration Advisory	Multi-industry

Participant Number	Gender	Race	Job title	Years' experience	Internal/ Extern firm	Sector of operation
8	Female	Black African	Director: Total Reward	26	Internal Remuneration Advisory	Logistics, supply chain, and infrastructure
9	Male	African	Company Secretary	19	Internal Remuneration Advisory	Mining
10	Female	Foreign-national	Head of Reward: Corporate & Investment Bank (CIB)	12	Internal Remuneration Advisory	Financial services
11	Male	Black African	Chief People Officer	15	Internal Remuneration Advisory	Logistics
12	Female	Black African	Head of Reward, Performance Management and HR Analytics	10	Internal Remuneration Advisory	Financial services
13	Female	Black African	Partner	10	External Remuneration Advisory	Multi-industry

The themes that emerged from the data are discussed below.

5.2 Theme 1: Definitional clarity, distinctions, triggers, and scope

Triggers of malus and clawback policy

Participants noted that incentive design is the foundational drive to develop a malus and clawback policy. This stemmed from shareholders' (owners') need for surety that executive remuneration is responsibly dispensed. In cases of erroneous payment or discovery of detractors to payment, such as misconduct, misstatement of financial results, they have the ability to withhold or recoup payment at their discretion.

Participant 1: *"It's built into our incentive scheme rules, short and long term. We're busy redesigning our long-term incentive schemes."*

Participant 8: "... it was developed based on the new total rewards incentive that was designed to take care of the short- and long-term incentive".

Participant 13: "...when I get involved with clients, it's specifically when we look at incentives, right? I will help them design the structure, make sure that it makes sense, but in ensuring that, I need to make sure that the relevant governance documents are put in place or governance provisions are put in place. So my role has always been that if I'm working with a client, I will be the person that advises them on such, explaining the like the importance offered, how they would basically implement it if they were to implement it".

However, numerous participants attributed the development and definition of malus and clawback provisions as a reaction to external events, coupled with investor pressure. Beyond the global financial crisis of 2008, participants noted local examples of financial scandals, such as Steinhoff and Sasol.

Participant 8 said "misconduct, financial loss, reputational damage to the company, putting the company at risk", "value attached to that in terms of if there is a misconduct and it costs the company a certain amount", "financial misconducts", "misuse the company's assets... for their need or own business needs".

Participant 7: "A fund manager wrote to all its investee companies and said, 'If you do not put a malus and clawback policy in place, we will vote against your policies no matter what else you do.' So, there's been a lot of pressure from institutional investors to put it in place, and, obviously, the high-profile corporate failures like Steinhoff et cetera, the Tongaat Hullet. It's been quite a lot of pressure to make sure you put an adequate policy in place."

Participant 9: "External events, ... so the policy, like I said, was triggered by, or rather, why we adopted it, it was triggered by external events, but it's good to have just in case..."

Some participants made it clear that the existence of such provisions cannot be justified by tick-box compliance, nor because of the increasing number of firms putting it in place.

Participant 2: "...you've got to look at what you're trying to protect in your own space. "So, you have to look at what talks to you. What do you believe you have to guard against—financial risk, reputation? You have to guard against based on your experience".

Participant 13: "... I often say to my clients that, if you want something to work right, you need to make it specific to yourself".

Participant 10: "post financial crisis was it was actually that's when, you know, Malus and Clawback, at least to my understanding, became mainstream in the reward space".

Participant 4: "So you only ever make guidelines based on learnings either on cases that you've dealt with or from your peers".

Participant 5: "Malus and Clawback is ..., but it's gaining a lot more prominence over the last five years. I'd say where a lot of companies are aligning to international best practice and following suit".

Clear definition

Participants spoke about key factors that support clearer definition in malus and clawback and these include applicability, specificity in terms of value attached to the misconduct, recovery boundaries and layered design process that ensures alignment with existing structures.

Participant 2: "don't be selective on specific levels, just go for everybody", "It is across all employees", "the general principle of the malus and the clawback applies to everybody", "policy extend to post termination? Yeah, yes".

Participant 4 corroborated by saying that malus and clawback "should in practice cover the whole organization, because anybody could potentially in future harm the business in some way".

Participant 8 stressed that it is important to define the value of misconduct, "misconduct, financial loss, reputational damage to the company, putting the company at risk", "value attached to that in terms of if there is a misconduct and it costs the company a certain amount", "financial misconducts", "misuse

the company's assets... for their need or own business needs". Further stated the multiple stages involved in designing and validating a malus and clawback policy "worked with Advisory Firm X... put up the policy, have it audited by Advisory Firm X and Advisory Firm A. Extensive work went into designing that policy... needed to speak to our total incentive plan policy... and deemed solid by the auditors".

Participant 9 added, *"applicable to long term incentive scheme, short term including guaranteed pay and pensions and yeah so post-retirement", "we can draw back from there", "applicable to basically all employees".*

Participants consistently drew a functional boundary between malus and clawback while noting that many policies begin with generic phrasing and evolve only when organisations confront specific scenarios.

Participant 3: *"Malus is obviously not as contentious because it's the pre-vesting forfeiture. Clawback was a lot more";*

Participant 5: *"So malus is beforehand. So if you recoup A bonus beforehand versus clawback, recouping a bonus after hand after the fact". Further, said "...adjust the standalone policy based on those lessons learned";*

Participant 13: *"So if you look at malus, you can incorporate it in either the STI policy or the long term incentive policy because it looks at an event before... If you look at the clawback, you've now paid out the money, so it can't be subject to the rules that are within the like. It can't be subject to the rules because the rules govern what happens before the company pays the money".*

Participant 12: *"Generally the policy will be very a generic policy that covers all, yeah";*

Participant 13: *"I often say to my clients, 'Take a step back, assess your situation or your circumstances, and then say what would constitute a trigger event in your company's perspective'." "But the second thing is that it needs to evolve. Those trigger events need to evolve. It's been at least five years now that I've seen companies implementing the malus and clawback, but it's still the same trigger events"*

Clear definitions to malus and clawback are foundational to the implementation of malus and clawback. Further, clear purpose, driver of malus and clawback policy is fundamental to design and implementation.

Trigger stack, time lapse and scope

Participants described a common trigger taxonomy that extends beyond financial misstatement, to encompass misconduct, control failures, regulatory breaches, and reputational harm, with look-back periods to preserve recourse. Other participants corroborated that reputational, conduct, and regulatory failures require explicit drafting, even where immediate earnings effects are absent, and cited examples in banking where pre-payment malus was used during investigations.

Several participants expressed financial triggers' primacy. They noted that they are easier to measure, track, and investigate, while the same cannot be said for non-financial triggers, which are more complicated to define. However, they also emphasised that non-financial and regulatory triggers should be explicitly stated, as conduct and compliance failures could impact stakeholders without immediate effects on earnings.

Participant 2: *"Financial results are often number one..."*

Participant 9: *"... for financial, it's a one-liner. It says, if you the lead company to financial losses or to the company having to publicly restate financial statements, that's clear, it's easy. It's the non-financial part that sort of requires multiple sentences"*.

Participant 12: *"I think the non-financials are the ones that can bring some sort of ambiguity..."*

Participant 2: *"What we do as a company also may land us in trouble, and we're saying it shouldn't really just be financial."*

Participant 6: *It's very important to emphasise the non-financial because, sometimes, we just think it's mainly financial, no non-financial and regulatory misses, non-compliance or violations, as well as reputational... I would pull*

the malus and clawback policy on them" "it's a mix of financial and non-financial elements... "regulatory violations or reputational damage instances". "I think you could add ethical breaches... "non-compete violations"..."risk management failures", and non-compliance with "stringent compliance" regimes, such as "AML" (Anti-Money Laundering).

The comprehensive trigger design reduces blind spots where conduct risks are high but accounting impacts lag. The interviews also clarified the boundaries of culpability and the relationship between malus and clawback and disciplinary processes.

Participant 7: "... it's not directly a disciplinary process. It's a separate process ... sometimes overlapping with disciplinary, sometimes not".

Participant 7 noted scenarios where human resource (HR) leaders must execute corrective adjustments without personal culpability for a misstatement signed off elsewhere. Look-back horizons and proof standards emerged as central to perceived fairness and enforceability.

Participant 1 presented "The person had built a pool for the child, in the child's house, went on holiday and she said it's an absolute nightmare, you know, just practically."

Participant 6: "the other soft issue that you've got to think about from an enforceability and or not enforceability, maybe from just the challenges as to what it causes, maybe executive morale, because you know you've got to manage these things very confidentially as well."

Participant 9: "It says the company can come after you three years after a trigger event. Even if you leave today, three years later, we can still try to come back after you".

The participant made this statement while simultaneously acknowledging the procedural sensitivity of affected executives when discovery occurs late. The firms balance legal certainty from defined periods against fairness considerations when causation surfaces after long lags.

Scope determinations covered instrument coverage, and distinguished between current and former executives. Participants described inclusion of cash bonuses,

deferred shares, and long-term incentives in plan rules and award letters, with cross-references to the overarching remuneration policy.

Participant 6: *"In the employment contract, there's usually a broad reference ... include it in the rules of those incentive structures ... reference it there... Malus and clawback should cover current and former executives".*

Participant 12: *"I guess you want to make sure that all your REM [remuneration] related documentation do make reference of this Malus and Clawback conditions. So be it your performance bonus letters or scheme rules, be it your long term incentive scheme rules".*

Complementing this view, Participant 12 observed the following about trigger statements in practice.

Participant 12: *"They've always been quite high level ... then it leaves a lot of discretion ... largely left to the RemCo [remuneration committee]"*.

Participant 12 added that explicit malus/clawback signposting often appears in scheme rules and award letters, rather than individual employment contracts. The coherent cross-referencing across artefacts strengthens scope clarity, but high-level drafting could expand discretion and variability.

Participant 13 noted that, even where clients have not yet imposed recovery, fairness is documented through deliberation and representation.

Participant 13: *"There must have been sufficient deliberation ... the person was given the opportunity to defend themselves".*

Participant 9 echoed the untested nature of fairness in many organisations.

Participant 9: *"It seems like that the steps are fair... but until you are on the other side of the line... it hasn't been tested".*

The precise definitions and clear triggers reduce disputes; however, procedural assurances are critical when applying definitions to complex facts. Participants highlighted that "generic" policies gain strength when tailored to organisational risk maps and supported with examples. Participant 6 noted the importance of clear policies.

Participant 6: “...provide some examples in your procedures ... and that's why the biggest one everyone goes to is just the misstatement of financials”.

Participants’ converged on the view that a robust definitional architecture, encompassing distinctions between malus and clawback, a thoroughly specified and evidenced trigger set, instrument scope, and look-back mechanics, creates the preconditions for credible and proportionate enforcement. Table 5.3 operationalises Theme 1 with concrete governance artifacts and evidentiary anchors.

Table 5.3: Trigger taxonomy, look-back, and artefact location

Trigger category	Typical look-back window	Primary artefact(s)	Proof/evidence source
Financial misstatement	36 months from discovery/sign-off	Policy, long-term incentives (LTI) rules, award letter	External audit, internal audit
Misconduct/ethics breach	12–36 months	Policy, cross-refer to investigation outcome	Investigation report, HR/legal
Control failure/regulatory breach	24–36 months	Policy, risk gateways in plan rules	Internal audit, regulator notice
Reputational harm (defined)	12–24 months	Policy with examples, award letter	Board minutes, legal opinion

The integration of elements of theme one definitional clarity, distinctions, triggers, and scope, together with operationalisation factors summarised in table 5.3 enable enforcement of malus and clawback. Further, to transform provisions such as malus and clawback into applied responsible governance the next theme two extended this by enumerating the design features of malus and clawback that bring about accountability in executive compensation.

5.3 Theme 2: Design features that anchor accountability

Deferral and vesting

Design features embedded in award architecture determine whether malus and clawback operate as credible accountability levers. Deferral length and vesting schedules are used to hold sufficient value at risk until material uncertainties have crystallised, thereby preserving ex-ante adjustment capacity.

Participant 1: *"So, we didn't do anything in any case. ...the view from the lawyers was ... because there was an investigation that was underway, because that was still in process. Then, between the prescribed officer and the company, they ended up in a settlement to suspend the vesting. Also, we didn't issue any new awards..."*

Participant 2: *"... if we don't put these guardrails of recovery or corrections, where could we end up? We could end up probably overpaying runaway incentives, right? Or underpaying? Where you end up being in, I'm trying not to reveal much, but being in the various court systems because you have unpaid people, right? So you have to put, you have to put a policy in place that says should we be found to be having met an error or a participant having met an error, irrespective of level. It must be a policy that governs you, that helps you to make a correction or to make a recovery".*

Performance consideration

These decisions illustrate how deferral and staged vesting provide a practical locus for malus while investigative and control processes run their course. Performance conditions and weightings were described as the second pillar of design discipline, shaping the alignment of realised pay with risk-adjusted outcomes. Although participants acknowledged heavy reliance on financial metrics, they cautioned against leaving non-financial risk unattended in scorecards.

Participant 1: *"We're busy redesigning our long term incentive schemes because our shareholders have complained about our ESG performance condition and there's a lag."*

Participant 12: *"Because it's so high-level, it leaves a lot of discretion. In the scheme rules, it will reside there. In the award letter, it will reside there. Just to say, obviously you know this award or incentive is condition of a malus and clawback conditions and policies"*.

Participant 6: *"That's why your malus and clawback policy needs to also be aligned to all other policies that manage human capital within an organisation. Because, for instance, if there was executive misconduct, whether it's fraud, dishonesty, gross negligence, underperformance and all those things, the policies that also enable the organisation to act relative to that misconduct needs to, you know, make sense and align with your malus and clawback policy... And it's very important to emphasise the non-financial because, sometimes, we just think it's mainly financial"*.

As the Institute of Directors South Africa (IoDSA) (2016) emphasised, coherent policy architectures and transparent remuneration disclosures are preconditions for predictable application. Where measures and thresholds are generic, boards retain discretion but sacrifice ex ante clarity, which can undermine both deterrence and perceived fairness when triggers are contested.

Clause specificity, look-back horizons, and the mechanics of recovery emerged as decisive determinants of enforceability. Participants favoured longer look-backs to strengthen recourse, albeit with recognition that fairness may require causation-based assessment.

Participant 9: *"It says the company can come after you three years after a trigger ... we can still sort of try and come back after you and see what we can claw back"*.

Participant 6: *"You might find the trigger event twenty years or ten years down the line. Does that then mean that the executive is off if you can prove that they were responsible and you've paid them an incentive?"*

Legislation interfaces

The clarity of a defined window helps set expectations for both executives and boards. However, tax and employment law interfaces complicate recovery design. Participants noted that recovery bases also vary by policy.

Participant 2: *"Do you go back net or gross? That's where tax and legal advice come in early."*

Participant 3: *"On an incentive award, so that your tax liability, is deferred for a ... exercised. So, that was a big piece of work that we did there... And then from an employment law perspective, there is this very strange provision in the Basic Conditions of Employment Act... I think it's section 35, but I always just get a bit confused. So what the section says basically is that an employer may not let me just speak to it first. So what it says is an employer may not require an employee to repay remuneration unless it arises from an error in calculation of the remuneration"*

Participant 7: *"So that's why it's very important from a clawback point of view that the whatever trigger event and we'll define what trigger events are, has occurred, needed to be knowable and had happened before you settled. So by settled, literally you delivered the shares, you'd paid the money, it had been taxed. It's quite a useful thing to say. Once it's been taxed, it's kind of settled and clawback is after that time".*

Participant 13: *"I'm not going to be arguing with SARS [South African Revenue Service]... No, I'll have you pay me back. Then you go argue with SARS."*

These views demonstrate why policies should specify look-back periods, net versus gross recovery, and tax handling to minimise disputes at the time of activation. Sector sensitivity influences calibration and practical feasibility across financial and non-financial settings. Participants working in highly regulated sectors described more frequent use of deferral, control gateways, and ex post facto adjustments because earnings quality, conduct risk, and supervisory expectations are salient. Participant 1 explained how visible sanctioning practices in banking can reinforce deterrence.

Participant 1: *"Every month, send out a group-wide e-mail ... employees were dismissed for theft, fraud, and dishonesty ... and I'm sure all banks do it; they take criminal action".*

Participants reported that enforceability improves when look-back periods, net-versus-gross recovery, and tax handling are specified upfront with early legal and tax consultation, rather than left to case-by-case negotiation.

Policy embedding

Plain-language policy drafting and systematic communication were repeatedly identified as prerequisites for legitimacy and defensibility.

Participant 7: *“Malus is before that time. ... so it needs to be ... a letter saying that you have read and fully understood the policy.”*

Participant 7 also elaborated on acceptance mechanics at the grant to pre-empt later disputes.

Participant 4: *“And also acknowledging, sorry, not only communicating it to people ... whether it’s an acceptance ... which include malus and clawback”.*

Participant 10: *“In that communication, the facts of what has happened and the impact and how that links back to one of the triggers per the policy was it was clearly laid out.”*

These acknowledgments, recorded at the award and reinforced by platform prompts, convert awareness into informed consent, thereby narrowing the scope for retrospective claims of ambiguity. Participant 13 explained that fairness must be evidenced rather than asserted.

Participant 13: *“Sufficient, like there must have been sufficient deliberation on the matter ... whether the results of it are fair, depends on who’s speaking.”*

Participants also distinguished corrective pay adjustments from disciplinary processes to avoid procedural conflation.

Participant 7: *“... it’s not directly a disciplinary process. It’s a separate process ... parallel process, sometimes overlapping with disciplinary, sometimes not”.*

These accounts emphasise that even the strongest clauses fail if governance artefacts, such as minutes, findings, and notifications, do not demonstrate a proportionate and well-reasoned application.

5.4 Theme 3: Legal and contractual architecture across governance

Malus and clawback policy/ provision artefacts

The participants indicated that enforceability depends on a coherent “stack” of governance artefacts that locate malus and clawback within a board-approved policy and then cascade the obligations through service contracts, long-term incentive plan (LTIP) rules, and award letters. Participants emphasised the value of a standalone instrument as the normative anchor.

Participant 4: *“...I've been awarded X amount in a short-term incentive, but it is subject to clawback, and here's a link to the clawback policy or guideline, right? The same way with your shares. When you're giving the share award under the LTI plan, make sure that it's in the letter. Clearly state there that 'This award is subject to malus. Here is a link to the actual policy'”.*

Participant 7: *“Have a separate, competent, well-drafted policy approved by the remuneration committee or the board, whichever is the proper authority; that's a critical thing. And then, make sure it's understood, make sure it's acknowledged and implemented at all times.”*

Participant 13: *“A policy is definitely the best, because, in a policy, you can go as detailed as you want to go and explain all these things. So, for me, it would be a whole separate policy where a person can look at it, criticize it, ask questions. That would be the best.”*

In practice, this anchor is read together with scheme rules and letters of appointment to ensure consistent coverage and visibility.

Participant 5: *“You typically do have it in your scheme rules, specifically in your LTI rules, but, again, it's not as comprehensive, and that's why your standalone policy is always recommended, where that standalone policy will then reference the scheme rules. The two are read in conjunction.”*

Participant 2 promoted a single source of truth.

Participant 2: *"You maintain it in one document. There's only one source of the truth, which is your malus and clawback policy. Then, anything else is just a reference."*

This approach limits conflict across documents and supports predictable application.

Participants noted that visibility is secured by locating conditions in artefacts that executives routinely read at grant or payout.

Participant 12: *"In the scheme rules; it will reside there. In the award letter, it will reside there ... this award or incentive is a condition ... as per the malus and clawback conditions and policies"*.

Under the Employment Equity Act 55 (1998), proportionality and the opportunity to make representations inform fairness standards for employment-related benefits. Participants consistently framed incentives as discretionary benefits regulated by fairness standards, rather than as rigid contractual entitlements, which shape both drafting and procedure.

Participant 3: *"An incentive is what we call a benefit of employment... So, where the issues lie is in the unfair labour practice provisions of the Labor Relations Act."*

Participants noted that, to mitigate challenge risk, the policy must institutionalise both substantive and procedural fairness.

Participant 3: *"You need to have a substantively fair reason ... what is the trigger event ... do you have proof? ...and then also ... a procedural fairness element... You do need to give an executive a fair opportunity to make representations"*.

In parallel, participants linked processes to employment law norms without conflating them with discipline.

Participant 7: *"... it's not directly a disciplinary process. It's a separate process ... the similar employment law matters that go with that."*

This separation helps preserve the corrective character of malus and clawback while respecting natural justice expectations.

Limitation- and prescription periods appear in policies to provide certainty, but participants also flagged evidentiary and proportionality burdens when activation occurs long after payment.

Participant 9: *"It says the company can come after you three years after a trigger event. Even if you leave today, three years later, we can still try and come back after you and see what we can claw back."*

Others stressed that causation should prevail over rigid time bars in severe cases, yet accepted that such positions may be constitutionally contested and costly to litigate.

Participant 6: *"Time shouldn't necessarily be the issue; it should be the cause and the correlation to who was responsible... I know malus and clawback, we always say, 'Is it really enforceable in the context of people's rights?'"*

Participant 3 cautioned that, despite contractual framing, non-cooperation will *"still ultimately ... end up in litigation"*, and that employers *"have to sue in the sense of instituting a claim for a contractual breach and damages in order to recover that money"*.

Broad stakeholder consult, broader recovery reference, and strict enforcement

Participants also highlighted the design choice between net and gross recovery in jurisdictions where tax vests on award or exercise. Also, emphasised early consultation with tax authorities such as South African Revenue Services (SARS) and corporate legal department or function within the company.

Participant 2: *"When you start going back, you're going to, take into account because you've paid someone net, right? You've paid the 45% to South the Tax man. When you go back, what you go back? Do you go back the net or you go back the net and the tax? And what does it say? Are you saying to the person go and recover the 45% from the tax authority?"*

In addition to salary attachment, some practitioners consider broader recovery references. Participant 6 proposed: *"Include that as a reference of the means through which you would clawback"* when asked about accessing retirement savings, illustrating the need to specify permissible sources of recovery in policy terms.

Participants described drafting and governance inputs that span the company secretary, group legal advisers, external advisers, and the RemCo.

Participant 6: *"I would say develop with experts with Legal you know, input and governance experts as well."*

Participant 7: *"Institutional shareholders are very adamant on that, then the group legal counsel will be involved, and then your external remuneration and legal advisers would be involved."*

Participant 1: *I also got Mr Z to give us an independent view. He brought one of the lawyers from Advisory Firm X to also give an independent view."*

Participant 8: *"So, my responsibilities, basically I worked with Advisory Firm X, the reward side of Advisory Firm X. So that is Mr Z and his team."*

Participant 10: *"So, Legal, for sure. ...particularly from an employment legal perspective, and, I guess, from a risk perspective as well ... obviously including reward and RemCo".*

In terms of reporting disclosure, the remuneration report signals the existence of the framework, even if underlying policies are not publicly reproduced.

Participant 9: *"[Stakeholders] just know in the report that we have a malus and clawback policy, and usually it's sufficient for them."*

In some organisations, integrated report processes embed the disclosure discipline around executive remuneration. Participant 12 described responsibilities *"as well as integrated report submissions as it relates to executive remuneration,"* highlighting the role of public reporting in consolidating governance assurance. The findings indicate that a robust legal architecture requires a clear, board-approved master policy; consistent incorporation across contracts, plan rules, and award letters; explicit fairness procedures that will withstand labour law scrutiny; and early alignment with tax recovery mechanics.

5.5 Theme 4: Procedural fairness, due process, and governance practice

Representation and proportionality

The participants emphasised that procedural fairness rests on a straightforward workflow for trigger assessment, independence in deliberation, and documented opportunities for affected executives to respond. Participant 7 described a staggered process that begins with management signalling possible triggers, followed by committee oversight and structured representation.

Participant 7: *"You do need to give an executive a fair opportunity to make representations as to why malus and clawback ought not to be applied."* Typically, management is responsible for *"alerting them through the office of the chief executive officer. There's definitely a right of representation by management, and, in some cases, they are even permitted to have legal representation as well. So, it must be clear that management has had a very substantive ability to explain and rebut."*

Participant 5: *"It needs to be proportional ... and there is a right of representation"*.

Participant 10: *"... documentation of what the procedure would look like. And what that process would look like"*.

Participants linked fairness to rights of representation, timelines, proportionality, and consistency checks across cases, noting that corrective clawbacks should match the magnitude of error and that payment terms must be reasonable.

Participant 7: *"It needs to be fair. It needs to be proportional... So, in other words, if there's a mistake of 1% in the account, and therefore a mistake of, let's say, 1% in the value that you received, I cannot ask to claw back more than 1%"*.

Record-keeping

Fairness was also described as a function of deliberative quality and the opportunity to be heard. Participant 13 said that deliberative quality is emphasised as a recordable standard rather than a formulaic test. Participants described documented

minutes and decision trails as essential to show that the individual had a genuine opportunity to explain or rebut.

Participant 13: *“There must have been sufficient deliberation on a subject before a decision is made, and there needs to be proof of that, that it was actually deliberated ... the person that is accused to have done something ... was given the opportunity to defend themselves. So, that's how the policies are documented, and, in most instances, to say that there must have been sufficient deliberation. Everyone must have been afforded an opportunity to at least express their views before you get to a conclusion...”*

Participant 13 emphasised that policies are often drafted to allow judgement, which increases the burden to evidence procedural reasonableness.

Participant 13: *“It's not a 'yes' or 'no' kind of answer.”*

The implication is that records of meetings, submissions, and responses form the backbone of defensible outcomes.

Participants' views converged on the importance of timely processes, but acknowledged that many organisations have yet to test their procedures under stress. In fact, the majority of the participants stated that, in their career, they had not adequately tested the strength or weakness of malus and clawback policies across the history of different organisations through a real trigger situation.

Participant 7: *“I haven't seen a lot of either cases or legal developments or factual developments in the world.”*

Participant 9: *“It would be a hypothetical situation, because we haven't had to walk the path with this step... I read it, and it seems fair”.*

Participant 12: *“Like I said, luckily, we've never really had a trigger event to take place where somebody could have also ill-represented themselves or ill-represented the performance. Or maybe their performance was so bad that we needed to do something as a recourse.”*

Participant 5 narrated an external-audit-driven recovery.

Participant 5: *"There was a gross misstatement of the financial results ... after it was found through an audit, an external audit finding... Therefore, the bonuses were incorrectly calculated... And employees had to now pay back the money"*.

Participant 2: *"You have got to work through your audits. Mostly, it's going to be your external audits; they'll give you that independent view."*

Awareness and commitment

These accounts demonstrate how independent assurance provides the factual basis that supports both substantive fairness and the proportional calibration of outcomes. Several participants linked fairness to governance education, periodic attestations, and documented awareness to ensure that executives cannot credibly claim surprise.

Participant 12 said: *"I think a lot more communication needs to exist around malus and clawback... something that needs to almost happen on an annual basis from our awareness point of view ... those policy tests ... to prove that you've gone through the policy every year... I think for the exec level, malus and clawback should be one of those"*.

Participant 4 commented: *"... also acknowledging, not only communicating it to people. They need to acknowledge that they saw the clause in the letter. So, whether it's an acceptance for some, some organisations might do an acceptance of an award, not because we need you to accept your LTI award, but because we need you to acknowledge the terms and conditions associated with the award, because the award is given to you"*.

Participant 10 added: *"You kind of receive an award letter, these are the terms and conditions, and part of that is malus and clawback, and you accept that. I think that is what it is, but ... whatever it is, ... people need to consciously understand what it means, not tacitly just kind of accept it, need to consciously understand what they're signing up for"*.

The logic is that routine awareness campaigns and attestations reduce disputes about notice and comprehension, thereby reinforcing perceived legitimacy when provisions are applied.

Notification and appeals were framed within broader employment law norms and the separation from disciplinary routes. Participant 7 stated fair and proportionate processes were essential in corrective or disciplinary actions. Where possible, these actions can run in parallel; disciplinary action, and document-led process on malus/ clawback to adjust payment.

Participant 7: "Things need to be proportional, ... procedural and substantive fairness. So, the most advanced policies have a clear procedural elements... There's definitely a right of representation by management ... and, in some cases, they even permitted to have legal representation as well... The whole thing because it can be quite a big impact on them. So it's corrective".

Participant 3 warned that procedural fairness can fail through organisational fragmentation.

Participant 3: "It's the departments not speaking to each other, so that it's not effectively sort of captured and applied."

These accounts suggest that notification letters, representation windows, and appeal routes need cross-functional coordination to avoid procedural gaps. The findings depict procedural fairness as an ecosystem, comprising trigger detection and fact-finding that relies on independent evidence, a documented, independent committee process with rights of representation and proportionality checks.

5.6 Theme 5: Effectiveness and outcomes: moderators, barriers, and enablers

Outcomes and control

Theme 5 highlights how malus and clawback policies influence organisational outcomes, the factors that moderate their effectiveness, barriers to enforcement, and enabling mechanisms that ensure compliance. Across the interviews, participants consistently emphasised that the ultimate purpose of these policies is to enhance governance, protect shareholder value, and align executive behaviour with corporate objectives, while also mitigating financial, reputational, and operational risks.

Several participants noted observable organisational outcomes when malus and clawback mechanisms are properly designed and implemented. These include fewer

financial restatements or sanctionable events, improved internal control ratings, and higher stakeholder confidence.

Participant 5: *"making sure that the existence of the policy is disclosed in your REM reports and also in your corporate governance statements is very important. And I think it's just to create that shareholder confidence that should there be anything, you do have a policy that's specific to that and you can recover over and above the employment context that would also enable you to hold an executive accountable for any eventuality that they do that's outside of your expectations as an organization"*

Participant 9: *"External events triggered adoption, but having the policy in place provides assurance that executives act transparently and within expected norms."*

This highlights the preventive function of pre-established mechanisms.

Participant 8: *"Malus and clawback are designed to protect the organisation against financial loss or reputational damage, particularly among executives with access to sensitive resources."*

This illustrates the direct link between policy application and internal control outcomes. These outcomes are critical in maintaining regulatory compliance and sustaining investor trust, particularly for listed companies and those operating in high-stakes financial environments.

Oversight moderator

Effectiveness is moderated by organisational factors such as board risk appetite, audit maturity, ownership structure, and executive market dynamics. Participants frequently pointed out that the willingness of boards to enforce policies is closely tied to their risk tolerance.

Participant 5: *"the different roles that are played by the different areas, by way of risk, by way of audit, by way of compliance, all your internal control functions"*

Participant 10: *“People need to consciously understand what they are signing up for, and the board’s appetite for risk determines how strictly these policies are applied.”*

The maturity of internal audit functions was also mentioned repeatedly. Well-developed audit frameworks provide the necessary assurance that malus and clawback triggers are accurately identified and verified. Ownership structure, including family ownership or dispersed institutional investors, affects both the design and perceived legitimacy of the policy. Market dynamics, such as competitive executive remuneration trends, further moderate outcomes, as companies must balance rigorous enforcement with talent retention concerns.

Participant 11: *“It is one thing to design a policy for retention, but another to ensure that it aligns with company strategy and the expectations of high-performing executives.”*

Barriers

Barriers to effectiveness often arise from legal, operational, and behavioural factors. Litigation risk remains a significant concern, as poorly documented triggers or discretionary enforcement can expose organisations to legal challenges.

Participant 10: *“I observed cases where employment relationships broke down and years of litigation ensued, highlighting the importance of clarity and enforceability in drafting.”*

Similarly, talent flight concerns can constrain strict application of malus and clawback, particularly in competitive sectors where executives have high mobility. Weak documentation and ambiguous triggers were recurrent themes—generic language in policy documents can undermine enforceability.

Participant 13: *“Companies often rely on generic misstatement or reputational damage triggers, but if it’s not specific to your organisation, it’s very difficult to hold someone accountable”.*

Participant 12: *“I guess you want to make sure that all your remuneration related documentation do make reference of these malus and clawback conditions.”*

The maturity of malus and clawback in the South African market also emerged during the interviews. Following the financial crisis, reforms mainly emerged in the location most impacted, the US. In spite of the presence of good corporate governance codes such as South Africa's King III, released in 2009, around the time of the global financial crisis, the adoption of malus and clawback policies is not as entrenched as the US. This reflects the importance of the impact of context on such provisions.

Participant 3: "So, Advisory Firm X's was actually pretty seminal in the malus and clawback thinking in South Africa. So, it obviously started several years ago, when the Steinhoff incident happened, and it had already been established overseas because of Enron and all of the gross financial misconduct by executives there. So, obviously, what happened overseas sort of infiltrated South Africa. So, we saw this adoption of malus and clawback measures, I'd say a solid seven to eight years ago is when it started coming into the market, and it was largely focused on financial misstatements."

Participant 7: "... pretty much from the earliest implementation of malus and clawback policies in South African companies, which has probably been on the go for, I don't know, ten years or so now, first of all at Advisory Firm A, and now at Advisory Firm X, have assisted companies in drafting malus and clawback policies in response to obviously global developments and pressure from local shareholders."

Participant 9: "I think most listed companies from that point onwards immediately implemented this policy because that's how we ended up with it... I think it's five years now, since around 2019, I think"

Such barriers emphasise the need for precise, company-specific policy language, supported by credible verification mechanisms.

There were some contrasting views on malus and clawback's objective informing policy language and underscoring purpose of having such provisions, at least at the onset. Whereas participant 5 felt that the policy is not punitive in its entirety:

"So a lot of the triggers are just there was a mistake in the accounts or there was a mistake in the determination of the amount that got settled to me."

Therefore it's corrective, not punitive. There are some things in clawback which can be punitive”;

Participant 9 was adamant that about the nature of the policy intent to act as a deterrent governance mechanism:

“this thing is meant to be like a stick before you need it and the carrot is the share schemes”, “The stick is there's this thing. If you falsify information, you sort of mislead and whatnot”, “if you do wrong, there will be consequences”, “The language is clear. Don't. Don't do this”.

Participant 4: *“But they published in their report that they've been able to successfully execute that. So I guess you'll start seeing more of it come around. I guess that because this is fairly new to us in South Africa. I think people had put out guidelines and policies and not really thought about the detail around how do you actually execute that. It was almost put in place just to say we've got this policy or we've got this guideline and then when it got down to actually implementing it.”*

Enablers: assurance, alignment

Enablers identified by participants include scenario testing, pre-commitment communications, independent legal reviews, and periodic policy audits. Scenario testing, where executives and boards consider hypothetical trigger events, reinforces the clarity and credibility of the policy.

Participant 6 mentioned: *“...I have not had the opportunity to test their effectiveness from an implementation perspective because we've never in the organization that I've worked for had a situation where there was either malus that could be proven and clawback that had to be effected”. “Most of us have not had an opportunity to test the efficacy of these policies”.*

Participant 9: *“You have to think about scenarios as if they have already happened; drafting in that context ensures the policy is implementable when needed.”*

Participant 12: *“You also have to do almost like an acid test ... you want to bring some sort of a check or an acid test into that conversation”.*

Pre-commitment messages, such as educational meetings with top managers, boost awareness and acceptance, and thus reduce the chances of conflict that may occur when malus or clawback is implemented. Independent legal reviews are also an essential measure in maintaining mechanisms that are faithful to statutory labour law, corporate governance practices, and the sustainability of contract enforceability.

Participant 11: *“Legal parameters are critical; understanding case law ensures that the policy is both enforceable and strategically aligned.”*

However, other participants mentioned challenges in this regard.

Participant 3: *“The difficulty is, of course, that there is not a lot of case law. I haven’t seen a lot of either cases or legal developments.”*

Regular policy usage and performance audits are ongoing enablers of board- and HR activities to identify shortfalls, assess compliance, and make the necessary changes as risks evolve.

Several participants also highlighted the importance of alignment with corporate strategy and performance metrics.

Participant 8: *“Malus and clawback are integrated into total rewards and incentive structures, which must align with company objectives to maintain credibility and impact.”*

This alignment ensures that enforcement is not arbitrary but objective, which instils stakeholder confidence and promotes the continuation of integrity within the organisation. Combined with strict documentation, external validation, and open communication, these enablers complement one another, adding both perceived and real effectiveness to malus and clawback mechanisms within organisations.

5.7 Summary

This chapter reported the findings under five interrelated themes, which address the structure, practices, and consequences of malus and clawback policies. Theme 1 highlighted the importance of precision in defining malus versus clawback, as well as the triggers that lead to stock misstatements, misconduct, regulatory violations, and reputational damage, including look-back and coverage of instruments and

current and former executives. The cross-referencing of contracts, award letters, and policy documents enhances enforceability and procedural fairness. Theme 2 focused on design elements, including deferral levels, vesting stages, performance weightings, and score measures, which root accountability and create value at risk. Plain and clear language in communication and written acceptance enhance the legitimacy of such provisions and reduce the likelihood of disputes. Theme 3 relates to the need to have a policy that is: independently board-certified; that is regularly incorporated into scheme rules and contractual provisions; that conforms with employment law standards and that ensures that the right policies and procedures are in place, which policies take into account tax implications. Theme 4 addressed procedural fairness, emphasising independent deliberation, proportionality, timelines, and representation rights, reinforced through structured documentation, attestations, and annual policy awareness. Theme 5 focused on effectiveness, highlighting improved internal controls, stakeholder confidence, and reduced sanctionable events, while noting barriers such as litigation risk, weak documentation, talent flight, fairly novel circumstances of development or adoption, and enablers like scenario-testing, legal reviews, and periodic audits. The findings are discussed, together with extant literature, in the next chapter.

6. DISCUSSION OF FINDINGS

6.1 Introduction

This chapter presents a critical discussion of the findings reported in Chapter five. It links the views of the participants on South African remuneration and governance to agency theory (Jensen & Meckling, 1976) and stewardship theory (Davis et al., 1997). Ferrarini and Ungureanu (2024) posit that proper governance structures, including malus and clawback provisions, are needed to ensure fairness and accountability in executive pay. Zalewska (2022) notes that these mechanisms enhance transparency and alleviate moral hazard, and Dicuonzo et al. (2022) state that they improve sustainable governance practices. This chapter discusses whether the present study's findings verify or refute extant literature. The discussion is divided into sections, according to the three research questions, and highlights shortcomings in existing practices and contextual issues in South African governance systems. The discussion presents an analysis of the application of clawback and malus provisions in practice, as well as of their role in making executive remuneration governance ethical and transparent. Subsequent sections address the impact of the broader context, followed by a synthesis of the findings and theoretical implications. The final section provides a theoretical integration.

6.2 RSQ1: How are malus and clawback provisions defined, distinguished, and triggered within executive compensation frameworks?

This RQ was focused on gathering understanding of how malus and clawback provisions support enforcement of the policy provisions within executive compensation through how they are defined and how trigger events are implemented.

Malus and clawback provisions were originally designed as a reaction tool in US to prevent recurrence of 2008 global financial crisis (Mahommed & Schutte, 2023). Hoffman (2022) and Velte (2020) assert that governance mechanisms such as malus and clawback were developed as risk-mitigation, behavioural tool adjuster and way to improve alignment of interests between executives and shareholders. The findings reinforce that malus and clawback development was induced by the need to restore shareholder, investor and market confidence. It was also a reactive mechanism to a

global crisis that South African organisations are also exposed to due investor relations. Further confirming agency theory problem of the need to impose accountability on executives, including ensuring that remuneration aligns to interests of shareholders (Velte, 2020).

Triggers are clear in one piece of legislation and regulation such as in Basic Conditions of Employment Act 75 (1997) as far as it relates to computational error. Yet not explicit in other statutes for example in Companies Act are inferred (Mahomed & Schutte). Therefore, necessitating clarity in provisions from definition, trigger to execution of malus and clawback provisions policy. The findings show that, although South African organisations are aware of the conceptual difference between malus and clawback, there are still inconsistencies in the definition and operationalisation of these mechanisms across sectors. Thereby confirming the ambiguity in regulation and legislated cited in literature. Typically, malus is considered a pre-vesting adjustment that enables the company to lower or cancel unvested awards when there are risk events, whereas clawback is a post-vesting recovery arrangement, which enables the company to recover paid awards if it is found that there was misconduct or misrepresentation. However, in most cases, the line between the two is not clearly defined, as Ferrarini and Ungureanu (2024) note, because the generic wording of policies and an inadequate connection to risk-specific triggering events lead to blurred boundaries between the two concepts. This challenge was echoed in the present study, with participants stating that most companies only refine definitions once there is a real enforcement situation, which indicates a reactive instead of a proactive governance culture.

Dell'Erba and Ferrarini (2024) warn that imprecise definitions could result in too much discretion on the part of the board, undermining the predictability of the procedure and leading to a lack of executive confidence (Zalewska, 2022). This observation aligns with the findings of the current research, as a number of the participants acknowledged that their respective organisations used generalised provisions and that remuneration committees had a lot of leeway in the interpretation. This flexibility is attained at the cost of consistency and unbiased decisions. Conversely, Velte (2020) argues that excessive specification of trigger conditions may bring more risk to the law and reduce managerial discretion, especially where strict rules overlook situational subtleties. This argument is partially justified by the findings of the present

study, as some of the participants cautioned that overly detailed triggers could inhibit boards in unexpected crises.

According to OECD (2023) guidelines, clear triggers related to misconduct, misrepresentation, and reputational damage are prescribed. Participants noted following these principles to a great extent, with financial misstatement recognised as the most common trigger. Non-financial triggers, such as ethical issues, compliance problems, and cultural misconduct, were underrepresented by participants. This observation is in line with those of Dicuonzo et al. (2022) and Mahomed and Schutte (2023), who note that emerging economies tend to focus on measurable financial results at the expense of behavioural or ethical aspects. At odds with this, developed jurisdictions (US, UK) are progressively integrating environmental and social misconduct into the definition of triggers, which indicates a transition to holistic responsibility.

Fried and Shilon (2011) and O'Sullivan (2024) stress that the clear definition of a term not only increases enforceability, but also promotes procedural fairness, due to the establishment of consistent expectations. The present study's findings confirm that clarity has to be ensured against a company's risk appetite and governance maturity. Vague definitions run the risk of being hollow gestures, which have little deterrence value. Good governance needs definitions that are operationally specific and contextually relevant. When organisations achieve this, procedural integrity is promoted, the risk of litigation reduces, and the organisation's ability to improve the credibility of the governance of executive remuneration is strengthened.

Beyond definitional clarity, another challenge can be found in clawback period. Although look-back period's intent is to preserve recourse, time lag presents practical challenges to recovery such as executives who are no longer in the employ of the company and or incentives spent in acquiring assets (O'Sullivan, 2024; Zalewska, 2022). Fried and Shilon (2011) assert that companies almost never recover the money due to cost-benefit analysis. Findings confirm the difficulty in enforceability with former executives and those who have spent incentives. Findings further cite evasion of clawback through resignation or settlement course of action, and extend to include the impact on executive morale.

6.3 RSQ2: What legal and contractual mechanisms underpin the adoption

and enforcement of malus and clawback provisions across different governance contexts?

RSQ2 sought to understand the mechanisms that aid adoption and enforcement of malus and clawback in executive remuneration. Gaps persist across different governance contexts. As examples, narrow focus on financial misstatement and limited scope of recovery in the US; absence or vague procedural and enforcement guidelines in South Africa; structural and contractual gaps in the UK (Velte, 2020).

The findings reveal that the combination of the quality of the legal and contractual structures of malus and clawback provisions is the key determinant of their effectiveness and validity enabling enforcement. The majority of South African organisations undertake a multi-tiered approach, whereby recovery provisions are incorporated into approved artefacts, management approved award letters, board-approved remuneration policies, LTIP policies, high-level LTIP rules, and individual employment contracts. This practice helps to maintain transparency and consistency, which is consistent with the finding of Dell'Erba and Ferrarini (2024) that coherent design of contract boosts enforceability. Nevertheless, the findings of the present study show that fragmentation of malus and clawback provisions remains if documentation between the governance artefacts do not align and there is a lack of certainty regarding which provision to apply in recovery disputes.

A number of participants recommended a single source of truth policy that prescribes authority and process. This is consistent with the view of Müller et al. (2020) and Hoffmann et al. (2022), who caution that the incoherent governance documents weaken enforcement and postpone corrective action. Although the existence of structural coherence enhances control, the present study's findings reveal an underlying institutional contradiction between the labour law regime and corporate governance structures in South Africa. Labour laws focus on procedural justice and proportionality, and restrict the unilateral recovery that corporations are willing to impose. This duality is noted by Mahomed and Schutte (2023), who point to the fact that companies that follow King IV (Mahomed & Schutte, 2023) have to reconcile the necessity to be fair and the need to be able to enforce a contract. The present study supports this observation by demonstrating that organisations are more likely to negotiate recoveries rather than implementing them in a hard and litigious manner, which is indicative of a stewardship-based approach as opposed to an adversarial

governance culture (Davis et al., 1997). The present study further reveals the non-punitive nature and objective of malus and clawback as articulated by some participants.

However, there are differing views on this issue in the literature. Hoffmann et al. (2022) warn that strict enforcement harms trust and demotivates executive participation, particularly in environments based on relational governance. Markets associated with relational governance include ones with a collectivist culture, low power distance such as Asia, South America and Western Europe (Davis et al., 1997). On the other hand, Velte (2020) and Dell'Erba and Ferrarini (2024) posit that stricter legal actions could discourage unwanted behaviours and maintain the trust of investors. The findings of the present study lie in-between these extremes: legal enforceability is most successful in the presence of fairness and transparency. According to suggestions made by participants, recovery depends not just on effective documentation, but also on an ethical firm culture and the goodwill of executives.

Hicks et al (2024) encourage companies to gear up by reviewing their malus and clawback policies as governance and regulation evolves. One of the steps includes ensuring that malus and clawback provisions are legally sound by engaging legal counsel. O'Sullivan (2024) adds to this by articulating the law firm guidelines to malus and clawback implementation; a board committee that is knowledgeable about requirements of policy provisions, alignment of executive contract with policy and readiness for litigation. The study confirms this as participants mentioned consultation at a broader level in the legal and contractual architecture of malus and clawback. Participants spoke about engaging internal and external advice across tax, legal and company secretariat, particularly when it comes to executive contracts and incentive scheme rules. Broader stakeholder consultation enhances the ability of malus and clawback to be developed and implemented fairly whilst demanding accountability.

Typical course of action when applying malus is to recover the paid or settled executive remuneration mainly through variable pay. However, as expressed in the findings at times the executives is unable to pay back as the money is tied up in purchased assets. Hoffman et al. (2022) and O'Sullivan (2024) distil recovery broader than incentive pay forfeiture. There is a split perspective offered in literature

on which remuneration to include or exclude when it comes to application of clawback. Hoffman et al. (2022) posits that regulation in banking sector seeks to extend clawback applicability to fixed remuneration. A contrast perspective is recovery cannot be extended to non-incentive based remuneration such as base pay and retention bonuses as it does not fall in the ambit of regulation governing malus and clawback enforcement namely Section 10D of the Securities Exchange (SEC) Act of 1934 (O'Sullivan, 2024). Participants also offered a split view; one comparable with recovery beyond incentive pay such as use an executive's provident fund, as far as permissible by South African labour law and pension fund legislation. The other confirming limiting recovery to incentive based. Depending on the context and risk being mitigated (financial, reputational), participants extended to mention mutual separation as an alternative employed by remuneration committee in their exercise of discretion.

A hybrid system governing body—a combination of legal accuracy and ethical adaptability, presented by O'Sullivan (2024) and Bhuyan et al. (2022), was proposed by the participants in the present study. Although it is based on the law such as Sarbanes–Oxley Act of 2002 (O'Sullivan, 2024), local enforcement relies on leadership ethics and institutional maturity. The maturity of institutions relates to ability of systems and policies to support decision making in executive remuneration/ malus and clawback in a way that promotes fair and transparent practices (OECD, 2023). Thus, in order to achieve sustainable governance in South Africa, a combination of formal legal frameworks and trust-based systems is required. A strict punitive strategy might be effective, but may come at the expense of organisational unity, whereas a mixture of contractual and moral systems facilitates fairness, legitimacy, and stability in the long run. In addition, applying a broader lens to malus and clawback design consultation and recovery mechanisms fosters enforcement.

6.4 RSQ3: How do organisations design processes and practices to ensure procedural fairness in the application of malus and clawback provisions?

In this stakeholder era, transparency, accountability and fairness are increasingly pronounced. This includes application of policies relating executive remuneration, more especially in the growing fair pay dialogues (Velte, 2020). RSQ3 designed to gather information on how fairness is embedded in the processes and practices

relating to application of malus and clawback beyond the illusion created in some legislation (Mahomed & Schutte, 2023).

Procedural fairness was shown to be a characteristic of credible malus and clawback practice. The findings show that fairness is not merely a legal provision, but also a moral and cultural demand. Greater institutionalisation of organisational processes (by informing affected executives, allowing them to make an appeal, deliberating publicly, and taking decisions proportionally) enhances compliance and reduces resistance. Sheedy and Canestrari-Soh (2023) state that fairness provides legitimacy by creating the perception of equity (alignment between executive conduct, remuneration and sanction) and procedural justice, a view that was confirmed by the participants, who perceived fairness as a necessary condition to maintain executives' trust.

The OECD (2023) principles also associate procedural fairness with stakeholders' confidence in the process, consultation, and documentation. The procedures reported by participants in the present study resemble these recommendations: independent remuneration committees often review cases, and all the decisions are documented so that they can be traced. Davis et al. (1997) and Hariskos et al. (2023) are in favour of this strategy, claiming that fairness will enhance commitment and long-term cooperation. However, Fried and Shiloh (2011) argue that disciplinary firmness, and not procedural consultation, would function better in deterring misconduct. The findings of the present study dispute this view by showing that over-rigidity puts trust at risk and could lead to reputational backlash. In reality, firms that enforce recovery clauses in extreme ways suffer a reputational cost, and those that exercise fairness preserve legitimacy despite controversy. This may be further supported by employing alternative ways, such as mutual separation, as expressed by some participants.

Mahomed and Schutte (2023) and Sheedy and Canestrari-Soh (2023) found that accountability is more effectively developed when organisations follow transparent and well-documented procedures, rather than only sanctions. The present study confirms this postulation; governance actions that are unbiased and evidence-based elicit a positive response from executives, supporting assertions of stewardship theory (Davis et al., 1997) in the context of a sanctioned executive. Nowell et al. (2017) reason that internal validation and consistency across cases is related to

procedural reliability, which corresponds to the concerns of participants on keeping audit trails and reviewing policies periodically especially with the support of external experts. Fairness as a legal and cultural principle has been strengthened in the South African context. The expectation of proportionality in decision-making is addressed in King IV Code (IODSA, 2016), where the inclusivity and consultation are underscored by the Code's stakeholder-inclusive approach (Mahomed & Schutte, 2023). The findings of the present study add to the literature the notion that fairness is a construct beyond formal compliance; it represents a relational protection that reinforces ethical leadership. Procedural fairness is used to turn malus and clawback requirements into mechanisms of ethical governance and to make sure that accountability is practised fairly, transparently, and respectfully.

The untested or lack of wide experience in malus and clawback application can undermine the ability to ensure procedural fairness when a trigger event arises. The consequent reliance on discretion and inconsistent treatment poses a challenge to establishing fairness in the application process (Mahommed & Schutte, 2023). South Africa's non-binding guidelines such as in King IV Code (IODSA, 2016) and absence of statutory guidelines specifying how to deal with proportionality, former and existing executives, lead to company discretion (Madlela, 2018; Mahommed & Schutte, 2023; Velte, 2020). The participants confirmed this in arguing the presence of minimal case law and or disclosure on how malus and clawback provisions were enacted by companies following a trigger event, especially events in the public domain.

The next section discusses the impact of the broader context on what contributes to accountability and fairness in malus and clawback provisions.

6.5 Broader contextual implications

As stated by Erkens et al. (2012), the global financial crisis of 2008 exposed the failure of the relationship between corporate governance and company performance. Although many companies suffered as a result of the crisis, the biggest impact was observed in financial institutions. The crisis emanated from an interplay of factors, including risk-taking behaviour by financial institutions and uncontrolled risks through executive compensation practices (O'Sullivan, 2024). Substantial risks taken by financial sector companies leading up to the crisis led to investors, amongst various stakeholders, demanding more stringent measures in executive compensation.

Angeli and Gitay (2015) argued that the financial sector, especially banking, released comprehensive guidance on clawbacks. As exposed by the crisis, greater risk persists in financial institutions across, lending/credit, investment, and transaction structures and practices (Dicuonzo et al., 2022). Consistent with this context in the present study's findings was prevalence of financial triggers in malus and clawback policy, financial sector focus, and different maturity levels of countries.

The findings show financial triggers are more apparent malus and clawback provisions. The reactive response to malus and clawback policy adoption triggered by the financial crisis, including ensuing pressure from institutional investors, meant that management (agents) needed to regain shareholder (owner) trust. DeHaan et al. (2013) stated that, in pursuit of regaining confidence, common triggers in clawback provisions were linked to accounting restatements. Reinforcing this, O'Sullivan (2024) claims that legislative responses such as Dodd-Frank Act (2010) cemented financial restatements and related financial measures as primary clawback triggers. However, participants in the present study also emphasised the growing importance of non-financial triggers that increasingly put firms at various risks: reputational (e.g. excessive remuneration when company performs poorly), social (executive remuneration not aligned to fair labour practices), and natural (unmet environmental targets resulting in a penalty). Evidently, the shift towards integrating ESG factors into executive variable remuneration supports long-term and sustainable company prospects (Dell'Erba & Ferrarini, 2024). Malus and clawback policy needs to extend to non-financial aspects such as customer satisfaction, diversity, employee engagement, and health and safety.

The findings of the present study indicate that the USA was among the first countries, if not *the* first country, to institute clawback provisions based on the Sarbanes-Oxley Act of 2002. The participants noted that malus and clawback policy development and adoption have grown in recent years. Numerous adopters have done so due to public exposure of misconduct. Yet evidence is that there is low enforcement of malus and clawback. Participants further added, the scarcity of case law and disclosure of how malus and clawback policy is applied hinder accountability and fairness. According to Muller et al. (2020) and Zalewska (2022), the USA, followed by the UK, pioneered the earliest mandatory clawback mechanism, while countries South Africa, Germany, lag in establishing statutory foundations for governance mechanisms such as malus and clawback provisions. In addition, Ferrarini and Ungureanu (2024) describe how

the EU-led reform through capital requirements directives (CRDs) through mandatory subjection of variable pay to deferral and malus and clawback provisions, with more stringency in financial institutions.

Whether a lead or lag adopter of malus and clawback provisions, enforcement, accountability, and fairness are not guaranteed. Challenges span legislative force, governance initiatives, and adequate guidance. Literature such as the comparative study by Mahomed and Schutte (2023) corroborates this. In South Africa, King IV (IODSA, 2016) does not prescribe how to implement clawback. Discretion further creates inconsistency in malus and clawback application. South African legislation is also silent on horizon for clawback and scope of employees (existing, former). In contrast, USA challenges encompass proving misconduct and difficulty in clawback cases reaching court. In the UK, the challenge is accountability, as executives hide behind group decisions in self-preservation efforts (Sheedy & Canestrari, 2023).

Countries converge on the need for reform. The context in which malus and clawback provisions exist directs whether the governance mechanism is legislated, regulated, and/or guided. Industry type, an effective balance between financial and non-financial triggers, and country maturity are some of the myriad contributors to accountability and fairness in malus and clawback. In essence, the findings highlight the integrated impact of malus and clawback provisions reflecting broader accountability in executive compensation, beyond financial triggers. Observable is that financial and non-financial considerations are not mutually exclusive. Thereby calling for integration of legal and procedural factors in documentation and application, whilst upholding contextual appropriateness to foster effectiveness.

Transparency is one of the levers to accountability as policy and decisions connected to that policy are disclosed through reporting suite such as remuneration, corporate governance reports (OECD, 2023). King IV (IODSA, 2016) fosters fair and responsible remuneration by encouraging companies to disclose their policy and implementation as well as non-binding shareholder vote outcomes on each section (IODSA, 2016). However, as participants expressed, the relative novelty of detailed reporting on malus and clawback policy and implementation makes it difficult to understand the extent of exercise of oversight, a demonstration of shareholder responsibility and executive accountability.

6.6 Synthesis and theoretical implication

This section provides a summary of the findings. The effectiveness of malus and clawback policies rests on degree of legal transparency, procedural fairness, and compatibility with organisational culture. The present study reveals that the conciseness, recorded triggers, and systematic methods of control enhance enforceability and organisational legitimacy, as postulated by Ferrarini and Ungureanu (2024) and Zalewska (2022). However, the findings also illuminate the reality that procedural justice, trust, and honest communication with executives play an equally important role in credibility and compliance. Following the provisions of a contract is not risk-proof; companies are still exposed to reputational or regulatory risks. Bhuyan et al. (2022) states that sustainable governance is created not through punitive regulation, but through the interaction of control and ethics. In theory, the present study bridges the gap between agency theory and stewardship theory by explaining how South African companies are reshaping themselves into hybrid forms of governance. Agency theory (Jensen & Meckling, 1976) explains why strict monitoring tools (deferrals, look-back period, and performance-based provisions) ought to be in place to make sure that executive pay aligns the interests of shareholders with those of the executives and reduces moral hazards. This view is supported by Dell'Erba and Ferrarini (2024).

Other studies (Mahomed & Schutte, 2023; Velte, 2020) indicate that excessive control can destroy motivation and organisational unity. Fairness, proportionality, and a participatory form of governance, which has been the South African practice, is clarified by stewardship theory (Davis et al., 1997). When trust-based systems are instituted in a transparent and ethical culture, they can co-exist with formal controls (Hoffmann, 2022; Sheedy & Canestrari-Soh, 2023). In the present study, though, an integrative model of governance, a combination of structural discipline (based on agency theory), and relational ethics (based on stewardship theory) is proposed. In this model, malus and clawback mechanisms would be used not just as deterrents, but also to enhance fairness, accountability, and sustainable value-creation.

6.7 Theoretical integration: Towards hybrid governance

Based on the findings of the present study, an integrated agency–stewardship framework is proposed, one that places malus and clawback as control and employs

complementary trust tools. Trust tools are mechanisms that establish manage or foster corporation within governance or organisational context, for example internal control systems (Chan et al., 2012), fairness principles (Hariskos et al., 2023), and relational tools - power (Davis et al., 1997). Agency mechanisms, such as deferrals, look-back periods, and financial triggers, deliver discipline to discourage opportunistic behaviour, whereas stewardship mechanisms, such as procedural fairness and participatory deliberation, enhance ethical legitimacy and cooperation. These mechanisms are coupled within a hybrid model of governance in South Africa's legal and cultural environment, which balances contractual control with relational ethics. This synthesis fills a major gap in the body of literature by depicting how moral accountability (stewardship) and formal accountability (agency) could be institutionally combined. Therefore, malus and clawback are not only corrective and or deterrent mechanisms; they are also ethical governance tools that incorporate notions of fairness, sustainability, and trust regarding executive remuneration packages and ethical accountability.

6.8 Conclusion

This chapter discussed the findings of the present study alongside relevant extant literature. The discussion concluded that malus and clawback provisions are slowly enhancing accountability in South African corporate governance, albeit that their enforcement is skewed. The findings give credence to the global literatures' emphasis on the need for clarity of the definition, procedural fairness, and consistency of regulations. The findings also highlight local labour legislation issues, process demands, and scarcity of resources as precondition factors. Theoretically, the present study creates a middle ground between agency theory and stewardship theory by illustrating the adoption of contractual control and ethical commitment to govern efficiently. Agency theory underscores transparency and misconduct prevention, and stewardship theory highlights the importance of justice and trust in the long-term. To redesign recovery tools such as malus and clawback to be feasible and transparent organisations will require paying more attention to concrete policies, ethical practice, and quantified assimilation. Lastly, the research established that actual accountability of executive compensation is not confined to compliance. It is the outcome of the weaving together of law, ethics, trust, and governance structures to evolve into stewardship, as opposed to being a deterrent and punishment. Such

change will ensure that performance, integrity and confidence of executive leadership is achieved through executive reward structures.

7. CONCLUSIONS AND RECOMMENDATION

7.1 Introduction

This chapter provides a synthesis of the main findings of the study. By combining the empirical findings, theoretical perspectives, and comparative literature, it offers a cumulative understanding of how well-defined, legal, and procedural integration all come together to drive fairness and accountability regarding governance of executive remuneration. This chapter begins by summarising the key findings in relation to each of the research questions, theoretical and practical implications of the findings. Also given the paradigms of Agency Theory (Jensen & Meckling, 1976) and Stewardship Theory (Davis et al., 1997), it draws conclusions on how these theories can mutually rely on each other in the construction of responsible governance. Finally, the chapter ends with practical recommendations for organisations, regulators, and policymakers, followed by an overview of the study's limitations and recommendations for future research.

7.2 Summary of the research findings per RSQ

7.2.1 RSQ1: How are malus and clawback provisions defined, distinguished, and triggered within executive compensation frameworks?

The findings indicate that malus has been differentiated into a pre-vesting adjustment in most organisations in South Africa, and clawback as a post-vesting recovery (Mahomed & Schutte, 2023). Nonetheless, definitions are not universal and, in many cases, are vague, which leads to ambiguities in implementation. Specific triggers (financial misstatement, regulation violations, reputational damage) are more predictable and fairer, whereas ambiguous terms permit overuse of discretion by remuneration boards (O'Sullivan, 2024). The participants observed that two- to three-year look-back periods allow accountability, but should be flexible to unpredictable events or triggers. Definitional clarity not only reinforces legal defensibility, but also contributes to executive trust and organisational integrity. An unclear or responsive definition undermines the credibility of governance, while clear and context-sensitive terms promote consistency, procedural justice, and transparency in executive remuneration schemes.

7.2.2 RSQ2: What legal and contractual mechanisms underpin the adoption and enforcement of malus and clawback provisions across different governance contexts?

The study found that South African organisations use the layered legal framework, meaning board-approved policies, LTIP regulations, and employment contracts. This multi-level structure enables homogeneity and accountability, but can be confusing when documents become misaligned. The participants emphasised the need to deploy one source of truth to achieve full enforcement and sense-making. Labour law requirements of fairness and proportionality limit unilateral recovery, as they encourage organisations to engage in negotiation rather than litigation (Mahomed & Schutte, 2023). The balance of legal, contract and ethics illustrates a culture of governing in which procedural justice and legal accuracy are equally valued. The correct enforcement is, therefore, dependent not only on written agreements, but also on a moral society, transparent books of accounts, broader stakeholder integration and honesty in leadership. Legal transparency and equity strengthen compliance and legitimacy through collaboration in executive compensation management. Overall, this is corroborated by Mahomed & Schutte (2023) who connect transparency, fairness and collaboration as fundamentals to enhancing accountability; Ferrarini and Ungureanu (2024) and Zhu et al. (2024) extend to remark that disclosure and stakeholder engagement and alignment facilitate accountability enabling enforcement.

7.2.3 RSQ3: How do organisations design processes and practices to ensure procedural fairness in the application of malus and clawback provisions?

Procedural fairness was identified as playing a significant role in the rigour of malus and clawback provisions. In an effort to encourage fairness and transparency, organisations undertake a systematic process that includes investigation, committee discussion, executive representation, and documentation (Madlela, 2018; Mahomed & Schutte, 2023; Mayer Brown, 2025). The participants noted that fairness enhances trust and encourages cooperation, contributing to mitigate reputational damage in application of malus and clawback. Procedural fairness enhances ethical legitimacy by giving executives a chance to articulate their own arguments and applying proportionate decision-making in enforcement. Other companies carry out

awareness campaigns each year to raise awareness of malus and clawback provisions, and some have identified low testing because of a low number of trigger events. South African legal standards of governance, such as King IV (IODSA, 2016) and Companies Act 71 (2008), were seen as both a cultural and a legal imperative. Finally, procedural fairness remakes punitive procedural recovery into credible tools of moral accountability and accountable business supervision.

7.3 Conclusion

The findings indicate that a combined governance structure could be an efficient mechanism of effecting the malus and clawback provisions to balance legal control, ethical stewardship, and compatibility with sustainability. These mechanisms should not serve as a punitive tool; rather, they should be incorporated as a part of an organisational culture of fairness, transparency, and accountability. This strategy is synonymous to an integrated agency model, where executives act as both responsible agents and custodians of organisational integrity. Other processes are of considerable importance, such as deferred incentives, look-back periods, clear triggers, and independent oversight, which aid managing misconduct, financial misstatements, and reputational damage, without harming trust. However, over-indexing on strict legal/ contractual or punitive enforcement may lead to fear and discouragement and poor relationships between the board and the executives.

Viewed from the perspective of stewardship, procedural fairness, dialogue, and proportionality improve legitimacy and moral credibility. Executives would embrace governance outcomes when they feel they have been treated fairly and that due process has been observed. However, fairness should be functional within official accountability systems to guarantee uniformity in its enforcement. By ensuring that the ethics and laws go hand in hand, companies could build trust, thus enhancing responsibility and promoting a transparent culture of responsible corporate citizenship.

This study makes a contribution to knowledge by providing insights into South African executive remuneration by demonstrating the development of both malus and clawback arrangements, as companies balance the intersection of corporate governance reform (King IV) and labour-law fairness, in the context of ethical compliance and stewardship. In addition, through the promotion of an integrated

agency–stewardship framework, the study shows that accountability is achievable through legal enforceability and cultural legitimacy, intra-Western legal rationality, and South African relational ethics in an ethically balanced, sustainable corporate governance model.

7.4 Recommendations

This section offers practical and policy-related recommendations to enhance the design and implementation of malus and clawback provisions in South African organisations.

7.4.1 Corporate boards and RemCos

Definitions and triggers should be made clear; there should be a clear distinction between malus (pre-vesting forfeiture) and clawback (post-vesting recovery). Financial and non-financial triggers should be identified in terms of misconduct, non-compliance, and reputation damage, together with examples, to ensure consistency and transparency. Examples could include case law. ESG implementation could be strengthened by linking executive compensation to quantifiable ESG criteria, including carbon capturing, diversity in the workplace, and ethical behaviour. Organisations should embrace independent verification systems, review and iteration of measures, and regular audits to avoid symbolic compliance or ‘greenwashing’.

7.4.2 Policymakers and regulators

Policymakers should coordinate legal frameworks such as single-source remuneration policies, LTIP rules, and employment contracts into an authoritative governing document. This would provide coherence, minimise interpretive conflicts, and enhance legal enforceability. Procedural fairness should be embedded. Policymakers should institutionalise inclusive procedures that are representative of the executive, and proportional recovery and deliberation should be done in writing. Remuneration committees should be trained regularly, and audit trails should be kept to facilitate procedural validity.

7.4.3 Corporate governance practitioners and compliance officers

Regulatory compliance should be enforced. Regulators and industry participants should develop national standards on malus and clawback policies to ensure these are standardised, disclosed, and applied fairly across industries. Practitioners should encourage the development of an ethical culture through enhance awareness, fairness, and communication to promote compliance and trust-based governance. This will encourage sustainable accountability and restore public confidence in the fairness of executive remuneration systems.

The subsequent sections review the limitations of the study, followed by recommendations for future research.

7.5 Limitations of the study and avenues for future research

Although valuable in providing insight into the practice of malus and clawback in South Africa, this study has several limitations. First, the research is context-specific. The study focused on executive remuneration in organisations with an African presence, which may limit the transferability of the findings to other countries and sectors characterised by different legislation and corporate governance frameworks. The present study followed a qualitative approach, relying on a small number of in-depth interviews, which may also limit the transferability of the findings, and may have introduced potential subjective interpretation, recall bias, and organisational perceptions. The sensitivity of executive remuneration may have influenced the openness of the participants and created bias. Furthermore, the research was limited to individuals who were directly engaged in executive pay design, and did not explore the views of investors and regulators. The study focused on current practices, and did not consider past trends or legislation. These limits were carefully established in order to ensure that the research was focused and manageable; nevertheless the findings offer a profound understanding of the design and implementation of malus and clawback provisions.

Access to sensitive internal documents was limited, reducing the present researcher's ability to triangulate policy implementation with outcomes. Furthermore, the study focused primarily on existing policies and practices, as long-term data are insufficient to determine the impact of malus and clawback mechanisms on long-term behavioural responses. Another limitation is the present study's cross-sectional time

horizon, which means that developments over time could not be tracked and compared. Finally, although ESG integration was explored, changing regulatory standards and corporate sustainability practices means that the findings may need to be periodically updated to ensure relevance. These limitations highlight areas where caution should be exercised in interpretation and show areas for future research.

7.6 Recommendations for future research

Given the limitations of the qualitative methodology, including the small sample size and the reliance on subjective perceptions, future research could adopt a complementary quantitative approach to enhance generalisability. Cross-country comparative studies could explore the functional roles of malus and clawback mechanisms in a variety of legal, regulatory, and corporate governance regimes. Such research could follow a longitudinal horizon to measure executive behaviour and organisational outcomes over time, which could yield knowledge on the lasting effects of these provisions on accountability, performance, and organisational culture. The collection of qualitative data could be done using a larger sample size. Such research could integrate malus and clawback provisions with ESG and assesses correlations between financial and reputational outcomes. Future research could also investigate industry-specific differences, particularly in high-risk industries such as banking, mining, and energy, where variations in incentive structures and regulatory oversight are evident. Finally, additional research on emerging ESG metrics and sustainability-linked incentives is recommended to understand how these affect executive decision-making, corporate ethics, and stakeholder trust.

7.7 Concluding remarks

This research explored the design, implementation, and effectiveness of malus and clawback provisions in South Africa's executive remuneration practices, as well as their significance in promoting accountability, fairness, and ethical management. The findings suggest that these mechanisms are most effective when embedded in the entire governance structure, and should balance legal controls with procedural fairness, rather than being considered in isolation as tools to punish individuals. By harmonising well-defined contractual definitions, written triggers, delayed incentives, and in-depth independent supervision, organisations are in a position to manage

financial misstatements, misconduct, and reputational risks, and to preserve trust between executives and boards. Overall, the research suggests the importance of a hybrid model that combines elements of compliance with ethical stewardship as a human-centred, transparent, and credible approach to executive remuneration and corporate governance in contemporary organisations.

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APPENDIX A: Interview guide

Title: Exploring the factors adopted in malus and clawback provisions

Main research question: how are malus and clawback provisions designed and implemented to ensure accountability and fairness in executive compensation?

The following interview guide contains questions that were be posed to participants to achieve the objectives of the research.

Main research focus area	Linked questions
Background	<ol style="list-style-type: none"> 1. What is your role or position and industry you work in? 2. How many years of experience do you have working in the remuneration profession, and specifically senior management/ executive remuneration policy? 3. What role do you play in development and or implementation of senior management/ executive remuneration policy such as malus and clawback?
Malus and clawback definition and requirements	<ol style="list-style-type: none"> 4. How should companies design malus and clawback policies to be effective and enforceable? 5. What are the trigger events that should be considered under malus and clawback provisions?
Malus and clawback structural ambit	<ol style="list-style-type: none"> 6. How is malus and clawback incorporated into current frameworks (e.g. policies, contracts/ agreements, incentive plans)? 7. Which of these frameworks best serve malus and clawback intent? 8. What are the existing conflicts across frameworks, if any? 9. How can existing conflicts be remediated? 10. Who are the stakeholders authorised to define terms and conditions of malus and clawback in frameworks?
Malus and clawback enforcement	<ol style="list-style-type: none"> 11. How is procedural fairness institutionalised in law, codes of good practice and or company policies? 12. What are the challenges in executing on procedural fairness across stakeholders? 13. Would you say legal impediments and enforcement issues to ex post tools such as malus and clawback are dependent on jurisdiction? If yes, why?

APPENDIX B: Consistency matrix

Title: Exploring the factors adopted in malus and clawback provisions

Hypotheses	Literature review	Data collection tool (interview questions)	Analysis
RQ1: How are malus and clawback provisions defined, distinguished, and triggered within executive compensation frameworks?	Moolman & Giliam, 2019; Mahomed & Schutte, 2023	Interview questions 4, 5	Thematic analysis
RQ2: What legal and contractual mechanisms underpin the adoption and enforcement of malus and clawback provisions across different governance contexts?	Ferrarini & Ungureanu, 2024; Mahomed & Schutte, 2023; Ronald & Gulbenkian, 2020; Velte, 2020	Interview question 6, 7, 8, 9 and 10	Thematic analysis
RQ3: RSQ3: How do organisations design processes and practices to ensure procedural fairness in the application of	Mahomed & Schutte, 2023; Moolman & Giliam, 2019	Interview questions 11, 12 and 13	Thematic analysis

Hypotheses	Literature review	Data collection tool (interview questions)	Analysis
malus and clawback provisions?			

APPENDIX C: Ethical clearance

Gordon Institute of Business Science University of Pretoria	Ethical Clearance Approved
<p>Dear Nqobile Dlamini,</p> <p>Please be advised that your application for Ethical Clearance has been approved. You are therefore allowed to continue collecting your data. We wish you everything of the best for the rest of the project.</p> <p>Ethical Clearance Form</p> <p>Kind Regards</p>	
<p>This email has been sent from an unmonitored email account. If you have any comments or concerns, please contact the GIBS Research Admin team.</p>	

APPENDIX D: Consent letter



Informed Consent Letter

I am currently a student at the University of Pretoria's Gordon Institute of Business Science (GIBS) and completing my research in partial fulfilment of an MBA.

I am conducting a research project to understand the factors adopted in malus and clawback provisions through semi-structured interviews. Our interview is expected to last about an hour. Your participation is voluntary, and you can withdraw at any time without penalty. By signing this letter you have given permission for:

- The interview to be recorded;
- Verbatim quotations from the interview may be used in the report, provided they are not identified with your name and or that of your organisation; and
- All data will be reported and stored without identifiers.
- All data will be securely stored and only accessed by the researcher and academic supervisor.

If you have any concerns, please contact my supervisor or me. Our details are provided below.

Researcher name: Nqobile Dlamini
Email: 05095906@mygibs.co.za
Phone: +27 79 350 0619

Research Supervisor Name: Prof/Dr Mark Bussin
Email: drbussin@webmail.co.za
Phone: +27 82 901 0055

Signature of researcher: _____

Date:

Signature of participant: _____

Date:

APPENDIX E: List of codes

Phases 1–2: Initial coding (Descriptive)	Phases 3–4: Axial coding (Categories & Relationships)	Category Description	Phases 5–6: Themes (Refined & Named)	Analytical meaning	Indicative verbatim/ source quote(s) [Participant number]	Further verbatim examples from other participants
<p>"Malus happens before you pay."; "Clawback happens after payout."; "Policy trigger/ driver"; distinction between financial/ non-financial"; "Build into incentives"; "Generic wording in definitions"</p>	<p>Definitional Boundaries and Distinctions</p>	<p>Participants distinguish between Malus (pre-vesting adjustment) and Clawback (post-vesting recovery) based on timing and causal link.</p>	<p>Theme 1: Definitional Clarity: Distinctions, Triggers, and Scope</p>	<p>Consolidates definitional clarity through distinctions, explicit triggers, and look-back rules that determine fairness and predictability.</p>	<p>'Malus is before vesting, Clawback is after – it's not a disciplinary process but a corrective mechanism.' [P7]</p>	<p>P3, P4, P5, P7, P13</p> <p>"But where we got more creative with this is obviously your sort of different kind of more conduct based trigger events for clawback... You know what we see often is the damage to reputation and goodwill of the company if there is misconduct and then if there are failures in risk management, all those kind of events which are, I want to say soft in the sense that they're conduct based." [P3] "Then linked to that where you've got the classic definition of malus, which talks to literally recouping the event. Sorry, recouping the funds after a trigger event versus clawback. So malus is beforehand. So if you recoup A bonus beforehand</p>

Phases 1–2: Initial coding (Descriptive)	Phases 3– 4: Axial coding (Categories & Relationships)	Category Description	Phases 5– 6: Themes (Refined & Named)	Analytical meaning	Indicative verbatim/ source quote(s) [Participant number]	Further verbatim examples from other participants
						<p>versus clawback, recouping a bonus after the hand after the fact,..." [P5]</p> <p>"But what you do, what you do observe is that companies have generic wording. So if you want to be effective at it, I often say to my clients, take a step back, assess your situation or your circumstances" [P13]</p>
<p>"Financial misstatement"; "Fraud or deliberate manipulation"; "Executive misconduct"; "Breach of fiduciary duty / governance failure"; "Control failure or risk management lapse"; "Regulatory sanction or fine"</p>	<p>Trigger Taxonomy and Scope</p>	<p>Participants outline specific triggers such as financial misstatement, misconduct, control failure, regulatory breach, and reputational harm.</p>		<p>Extends accountability through risk-based triggers that combine financial and non-financial indicators across governance domains.</p>	<p>'It's essential to emphasize non-financial and regulatory triggers... reputation and conduct failures also qualify.' [P6]</p>	<p>"like any other organization you're going to have probably financial misstatements. Whether it's an overstatement or an understatement, it's more often an overstatement that gives rise to these things" [P2]</p> <p>"I'm going to say the standard trigger events around misstating the company's financial information, theft, fraud" [P1] "I think the typical ones would include the material misstatements of financial results,</p> <p>P2, P3, P6, P12</p>

Phases 1–2: Initial coding (Descriptive)	Phases 3– 4: Axial coding (Categories & Relationshi ps)	Category Descriptio n	Phases 5– 6: Themes (Refined & Named)	Analytical meaning	Indicative verbatim/ source quote(s) [Participan t number]	Further verbatim examples from other participants
						<p>executive misconduct, breach of fiduciary duties or any breach of company policy. And then obviously there are regulatory violations or reputational damage instances..you could add ethical breaches, you could add non-compete violations"</p> <p>[P6] "But yeah, it would be a mix of both financial and non-financial, even though largely would be largely weighted on the financial components." [P12]</p>
<p>"Applies to short-term incentives (STI) / cash bonuses."; "Covers long-term incentive plans (LTIs) / deferred shares."; "12-month look-back period."; "24-month look-back period."; "36-month look-back period."; "Policy references LTI plan rules."; "Policy references employment contract";</p>	<p>Instrument Coverage and Look-back Mechanisms</p>	<p>Scope definitions include look-back windows (12–36 months), instrument coverage (cash bonuses, deferred shares), and artefact referencing.</p>		<p>Emphasise scope clarity via coherent artefact referencing, ensuring consistent interpretation and enforcement across policies.</p>	<p>'The company can come after you three years later; that's why look-back clarity is critical.' [P9]</p>	<p>"The person had built a pool for the child, in the child's house, went on holiday and she said it's an absolute nightmare, you know, just practically." "Two years post the vesting that we have to claw back" [P1] "it's year two of the clawback period " [P3] "In the award letter as you</p>

Phases 1–2: Initial coding (Descriptive)	Phases 3– 4: Axial coding (Categories & Relationshi ps)	Category Descriptio n	Phases 5– 6: Themes (Refined & Named)	Analytical meaning	Indicative verbatim/ source quote(s) [Participan t number]	Further verbatim examples from other participants
"Standalone policy"						<p>issue out the shares on an annual basis. It is part of the award letter. It is part of the policy that we have. On our share scheme, it is part of the JSE letter that gets issued out when the shares are vested to say the remaining shares are so much and these are the conditions that still apply to that award. "</p> <p>"In the code of conduct and the contract, employment contract" [P8]</p> <p>"you don't define it in your Malus and Clawback guideline. So you define it in your disciplinary policy. Because remember I said you want to piggyback off that as much as possible" [P4]</p> <p>"I guess you want to make sure that all your REM related documentation do make reference of this Malus and Clawback</p>

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						<p>conditions. So be it your performance bonus letters or scheme rules, be it your long term incentive scheme rules." "also partly maybe the employment contract... But obviously in the scheme rules it will reside there. In the award later it will reside there [P12]</p>
<p>"Vesting contingent on audit verification."; "Investigation suspends vesting."; "Deferral aids corrective action"; "Generally in LTIs and STIs/ Share awards"</p>	<p>Deferral and Vesting Structures</p>	<p>Deferral and staged vesting mechanisms are used to retain value at risk during investigation or audit processes to enable corrective actions.</p>	<p>Theme 2: Design Features that Anchor Accountability and Risk</p>	<p>Shows that design features like deferral and vesting operationalise accountability, keeping risk exposure active until verification.</p>	<p>'We suspended vesting during investigation – deferral gave us the room to apply Malus properly.' [P1]</p>	<p>"Where do we see if we don't put these guardrails of recovery or corrections, where could we end up? We could end up probably overpaying runaway incentives, right? Or underpaying? Where you end up being in, I'm trying not to reveal much, but being in the various court systems because you have unpaid people, right? So you have to put, you have to put a policy in place that says should we be found to be having met an error or a participant</p> <p>P2, P5, P8, P10</p>

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						<p>having met an error, irrespective of level. It must be a policy that governs you, that helps you to make a correction or to make a recovery."</p> <p>[P2] "it's very important to be clear ensuring that it's timely and the payment, the payment criteria, how, how long it's applied after payment or vesting in so far as the shorter long term incentive is concerned. I think it becomes very, very key and critical to really have that sitting in that standalone policy" [P5]</p> <p>"On our share scheme, it is part of the JSE letter that gets issued out when the shares are vested to say the remaining shares are so much and these are the conditions that still apply to that award...Should something happens and you've already received maybe they</p>

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						<p>vest in 3 equal tranches, so you've already received 1st tranche. So if something was to be discovered that should be paid over." [P8] "Maybe just reflecting on an experience I had just post financial crisis was it was actually that's when, you know, Malus and Clawback, at least to my understanding, became mainstream in the reward space. And at that point in time, because it wasn't a typical,... there was also things like extended deferrals and things like that" [P10]</p>
<p>"Combination of financial and non-financial KPIs."; "Under-performance"; "Link to policies e.g. risk"; "Performance conditions"; "Awards vs company's performance"</p>	<p>Performance Metrics and Risk Alignment</p>	<p>Balanced scorecards and performance thresholds combine financial and non-financial indicators to embed accountability in reward design.</p>		<p>Indicates that multi-metric scorecards reduce over-reliance on earnings-based triggers and promote balanced accountability.</p>	<p>'Scorecards still focus on financials; non-financial risk should also be reflected.' [P12]</p>	<p>P1, P5, P6, P8, P9, P10, P11</p> <p>"We're busy redesigning our long term incentive schemes because our shareholders have complained about our ESG performance condition and there's a lag." [P1] "So, the biggest premise is that you are effectively driving a pay</p>

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						<p>for performance principle, all right, to the extent that there needs to be clear measurables and deliverables... you need to have clearly defined trigger events as part of your risk management matrix" [P5] "was just going to say on the trigger events, the part of the policy that should be very clear is the definition of trigger events. What would those be? It's very important. It's very important....In most instances, it's relating to performance conditions and to what extent to those performance conditions are a true reflection of the company's performance and also to what extent the audit of those performance conditions in terms of claimed achievements are substantiated</p>

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						by the audit outcomes" [P6] "Where there's been significant risk events, so you know where to achieve the financial outcomes, perhaps there was there were some actions taken that have resulted in some significant risk event for the organization." [P10]
"tax recovery limits/ complications"; "Section 34/35 BCEA limitation"; "Difficulty recovering funds"; "Participant acknowledgment"	Taxation and Recovery Design	Policies specify whether recovery applies to net or gross pay, with tax handling and legal consultation to ensure enforceability and fairness.		Integrates legal and tax consultation to avoid enforcement disputes and secure procedural legitimacy in pay recovery.	'Do you go back net or gross? That's where tax and legal advice come in early.' [P2]	"And then from an employment law perspective, there is this very strange provision in the Basic Conditions of Employment Act... I think it's section 35, but I always just get a bit confused. So what the section says basically is that an employer may not let me just speak to it first. So what it says is an employer may not require an employee to repay remuneration unless it arises from an error in calculation of the P3, P7, P13

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						<p>remuneration " [P3] "So that's why it's very important from a clawback point of view that the whatever trigger event and we'll define what trigger events are, has occurred, needed to be knowable and had happened before you settled. So by settled, literally you delivered the shares, you'd paid the money, it had been taxed. It's quite a useful thing to say. Once it's been taxed, it's kind of settled and clawback is after that time." [P7] "In that communication, the facts of what has happened and the impact and how that links back to one of the triggers per the policy was it was clearly laid out." [P10] "Malus is before that time. ... so it needs to be ... a letter saying that you have read and fully</p>

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						<p>understood the policy." [P7]"So in most instances, when I do my job, the biggest thing I take into account is the tax implications of it... So I need to make sure that whatever I do from a tax perspective all the boxes, whether you in South Africa or outside of South Africa. The one nuance there is to it though is the tax component offered because I remember asking a client because generally they'll say it's a call back of all the monies including what they paid to SARS and I'm like it didn't make it to their account and the client's argument was, well, I'm not gonna be arguing with SARS and saying I've had to now go back. Now pay me back. No, I'll you pay me back. Then you go</p>

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						argue with SARS [P13]
<p>"Minimal activation"; "never tested malus"; policy drafted but untested; post-King IV adoption; institutional pressure; "Standalone policy approved by the board."; "Cross-referenced in remuneration policy."; "Clause included in award letters."; "Clarity through employee attestation."; "Incorporate in incentive/ award letter"</p>	<p>Policy Architecture and Artefact Integration</p>	<p>Malus and Clawback provisions are anchored in a board-approved standalone policy that cross-references incentive plan rules and award letters.</p>	<p>Theme 3: Legal and Contractual Architecture across Governance</p>	<p>Illustrates that coherent governance architecture requires consistent documentation across policy, plan rules, and contracts.</p>	<p>'Maintain one source of truth – a single Malus and Clawback policy approved by the board.' [P2]</p>	<p>P1, P2, P4, P5, P7, P12, P13</p> <p>"we have a Malus and Clawback policy. It's built into our incentive scheme rules, short and long term" [P1] "we keep it all in the Malus and Clawback policy. And then we just reference every other related document to that to say including any of its updates that are made, any revisions that are made on an ongoing basis" [P2] "Your more bigger and more mature companies literally have a standalone policy." [P5] "And then the actual incentive letter is another way of putting it out in person's face to say... However,</p>

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						they ask conditions to this reward that we're giving you" [P12] "So you can either have a whole policy on its own that just deals with malus and clawback, or you can incorporate it into your policy like your normal total remuneration policy" [P13]
"Embedded in employment contracts."; "Policy cross-referenced with employment law clauses."; "HR and legal co-governance."; "Integration with incentive governance"	Contractual Embedding and Labour Law Alignment	Remuneration policies are harmonised with employment law norms, ensuring procedural fairness and minimizing litigation risk under the LRA.		Links compliance to fair-labour practices, showing how employment law mediates enforcement legitimacy.	"And that's why your malus and clawback policy needs to also be aligned to all other policies that manage human capital within an organization" [P6]	P3, P5, P7, P10, P11, P13 "So even though the way we structure these policies is a more direct route in the sense that we've based it in the law of contract and you can demonstrate that there's a contractual provision, all of that kind of stuff. If someone doesn't want to comply with that, it's still ultimately going to end up in litigation" [P3] "So there are a couple of things that you need to do to draft it competently. You need to be very cognizant of the Basic Conditions of Employment

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						<p>Act" [P7] "Yeah, the employment contracts, definitely. Also, I've actually seen it. So with my current employer, when you get your reward letter" [P10] "I think the legal parameters is very critical because a lot of understanding of case laws because there are a lot of policies that are written out there that you can't enforce because they don't embrace the legal statute." [P11] "you want to make sure that all your REM related documentation do make reference of this Malus and Clawback conditions" [P12]</p>
<p>"consultant input/ external consultants"; "cross-functional collaboration"</p>	<p>Legal Consultation and Enforcement Pathways</p>	<p>Organisations involve legal, remuneration, and external counsel to clarify enforcement procedures and define contractual obligations.</p>		<p>Identifies cross-functional alignment between RemCo, legal, and external counsel as essential to enforceability and fairness.</p>	<p>'Legal and remuneration advisors must both sign off to prevent future disputes.' [P7]</p>	<p>P1, P2, P5, P7, P8, P11 "I also got Mr Z to give us an independent view. He brought one of the lawyers from Advisory Firm X to also give an independent view" [P1] "you're going to need someone to understand</p>

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						<p>the legalities. And I'm talking about corporate legal, right? They'll give you a good framing. You probably cannot ignore gatekeeper like who looks after governance, you know, so probably it's likely going to be your Company secretary one way or the other because they would know the King IV and the Companies Act and this and that you know" [P2] "obviously institutional shareholders are very adamant on that, then the group legal counsel will be involved and then your external remuneration and legal advisors would be involved" [P7] "basically I worked with Advisory Firm X, the reward side of Advisory Firm X. So that is Mr Z and his team...So my responsibility was to, yeah, work together, put up the policy,</p>

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						have it audited by Advisory Firm X and Advisory Firm " [P8]
"due process"; "right/opportunity to respond"; "record of deliberation"/ "deliberation hearing"; "Proportional sanction/ Proportionality"	Representation Rights and Proportionality	Executives are given the right to make representations before any recovery decision, ensuring procedural fairness and transparency.	Theme 4: Procedural Fairness, Due Process, and Governance Practice	Establishes fairness through structured representation, ensuring executives can present evidence and rebut decisions.	'There is always a right of representation; management must have the chance to respond.' [P7]	P3, P5, P7, P10, P13 "But you do need to give an executive a fair opportunity to make representations as to why Malus and Clawback ought not to be applied. So that is the procedural fairness element of it in that before you exercise a final discretion, you want to get both party sides" [P3] "a full-on standalone policy which then goes into the different scenarios and the different penalties and proportionality measures" [P5] "I think it's very important that the policy framework, and it could be a procedure document that supports the policy, includes how investigations are going to be done, how executives are going to

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						<p>be provided an opportunity to respond" [P7] "So where there was a trigger event, um, it was formally communicated to the relevant individuals in the form of a formal letter communication, so formal communication and in that communication the facts of what has happened and the impact and how that links back to one of the triggers per the policy was it was clearly laid out. And the individuals were given an opportunity to provide any representation, should you know, they believe that there might have been something that has not been fairly, I guess, represented in" [P10]</p>
<p>"transparent messaging"; "Written notification to executives."; "Transparency and fairness reflected in written record."</p>	<p>Documentation, Communication, and Appeals</p>	<p>Deliberations and proportional decisions are documented through formal minutes, notification letters, and structured</p>		<p>Shows that proportional, documented, and reviewable decisions underpin defensibility and stakeholder trust.</p>	<p>'Minutes and proportionality records show the decision was reasoned, not arbitrary.' [P13]</p>	<p>P3, P7, P10 " So you would have the structure of the responsible persons, then the trigger events, then what does the board? It's not, it's not super</p>

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		appeal windows.				pedantic, but it does say these are the steps you need to take. These are the considerations you need to take into the whole inquiry. So for example, the RemCo needs to consider the proximity of the participants to the trigger events, you know their level of responsibility, but then also as part of that investigation process, then afford them an opportunity to make representations that can be written or it can be oral." [P3] "I think in in general, making sure things are fair, making sure that there's detailed understandin g by means of written communicatio ns, written acknowledge ment, attendance at information sessions, record all of the attendance of those sessions. So they can't

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						plead ignorance" [P7]
"training"; "policy sign- off/ Education and sign-off by executives"; "Attendance and acknowledge ment letters"	Governanc e Education and Awareness Mechanism s	Annual governance awareness and policy attestations are introduced to ensure sustained understandi ng and compliance by executives.		Connects procedural legitimacy to sustained awareness through ongoing education and attestation s.	'Executive s must re- confirm policy understan ding annually through attestation s.' [P12]	"I think in general, making sure things are fair, making sure that there's detailed understandi g by means of written communicatio ns, written acknowledge ment, attendance at information sessions, record all of the attendance of those sessions" [P7] "it's people need to consciously understand what it means, not tacitly, just kind of accept it, need to consciously understand what they're signing up fo" [P10] "I think a lot more communicatio n needs to exist around Malus and Clawback, at least at an exec level, whether that is, you know, like, yeah, some sort of awareness or education

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						around this that you don't necessarily wait for an actual event to take place for people to know what is expected or what would it look like should that event take place. I think it's something that needs to almost happen on an annual basis from our awareness point of view" [P12]
"Positive investor and shareholder feedback."; "Fewer compliance breaches."; "Control mechanism"	Observable Outcomes and Indicators	Organisational results linked to effective malus and clawback policies, such as improved internal control and stakeholder confidence.	Theme 5: Effectiveness and Outcomes : Moderators, Barriers, and Enablers	Highlights how clearly designed policies prevent misconduct and strengthen internal governance confidence .	"Having the policy in place provides assurance that executives act transparently and within expected norms." [P9]	P5, P6, P8, P9, P10, P11, P13 "ensuring that there's that internationalization by way of ensuring that companies are able to attract foreign direct investments and to do that, companies have been obliged to have these best practice policies in place" [P5] "And effectively now these malus and clawbacks are now really put in place to make sure to mitigate against these risks" [P5] "making sure that the existence of the policy is disclosed in your REM

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						<p>reports and also in your corporate governance statements is very important. And I think it's just to create that shareholder confidence that should there be anything, you do have a policy that's specific to that and you can recover over and above the employment context that would also enable you to hold an executive accountable for any eventuality that they do that's outside of your expectations as an organization" [P6] "It's all good that we have this policy as a deterrent for people" [P9] "I guess because now it's it is fairly standard practice shareholders would expect that there would be some sort of mechanism to trigger malus or clawback if there is something that does happen from</p>

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						<p>a, you know, that impacts the organisation based on the triggers, yeah." [P10]</p> <p>"The other stakeholders, shareholders, because they want to make sure that companies are protected. So if you don't have it and you list it, what you will typically observe is that either institutional investors will say, listen, why don't you have this other companies have it?" [P13]</p>
<p>"Integration with incentive governance"; "Communication & awareness"; "Audit and assurance maturity"</p>	<p>Moderators of Effectiveness</p>	<p>Factors such as board risk appetite, audit maturity, and market conditions that influence enforcement strength.</p>		<p>Suggests that governance culture and organisational context moderate how effectively the policies operate.</p>	<p>"The board's appetite for risk determines how strictly these policies are applied." [P10]</p>	<p>"because I think if it's one person, it's easier. But the moment it's a syndicate, I think it just becomes very, very, very difficult...I'm going to say, a syndicate of sorts involved. And um, you know, how do you know? I'm just going to say if it was a billion rand fraud that 10 million is due to Interviewee 1" [P1]</p> <p>"the different roles that are</p>

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						<p>played by the different areas, by way of risk, by way of audit, by way of compliance, all your internal control functions" [P5] "in most cases the malus and clawback exists at such a high level that even some of those representative of those countries don't form part of scope of that particular policies in some cases" [P12]</p>
<p>"Unclear policy"; "Context specificity/alignment"; "Jurisdiction/company maturity"; "Resignation before recovery"; "Proof difficulties/burden"; "Scenario testing"; Jurisdictional difference"</p>	<p>Barriers and Enablers</p>	<p>Legal and operational obstacles versus supportive practices like scenario testing, legal reviews, and audits.</p>		<p>Stresses that policy clarity and contextual relevance are vital to overcome enforcement barriers.</p>	<p>"Companies often rely on generic triggers, but if it's not specific to your organisation, it's difficult to hold someone accountable." [P13]</p>	<p>"And then from an employment law perspective, there is this very strange provision in the Basic Conditions of Employment Act. ...I think it's section 35...So what the section says basically is that an employer may not let me just speak to it first. So what it says is an employer may not require an employee to repay remuneration unless it arises from</p> <p>P3, P6, P9, P10, P11, P12</p>

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						<p>an error in calculation of the remuneration " [P3] "I'll check with my colleague now that for the South African context, the policy 100% works, but I don't know if it has been tested from a Canadian perspective and from a Zimbabwean perspective because labour laws are not the same" [P9] "But you have to think about a scenario as if it has already happened when you design the thing" [P9] "I think the legal parameters is very critical because a lot of understanding of case laws because there are a lot of policies that are written out there that you can't enforce because they don't embrace the legal statute" [P11] "that definitely could hinder. But like I said, in most cases the malus and clawback exists at such</p>

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						a high level that even some of those representative of those countries don't form part of scope of that particular policies in some cases" [P12] "you also have to do almost like an acid test" [P12]
"Alignment with regulation/ good governance"; "Alignment with key areas - rules, policy, risk & other artefacts"	Strategic Alignment	Integration of malus/claw back into reward systems and corporate strategy to ensure credibility and compliance .		Emphasise s that alignment with organisatio nal strategy enhances legitimacy and long-term impact.	"Malus and clawback are integrated into total rewards, which must align with company objectives." [P8]	P1, P5, P6, P8, P9, P10, P12 "we have a Malus and Clawback policy. It's built into our incentive scheme rules, short and long term" [P1] "mean, look, shareholders want the accountability at the end of the day" [P2] "so the biggest premise is that you are effectively driving a pay for performance principle, all right, to the extent that there needs to be clear measurables and deliverables, which are then going to justify the level of payout that incentive scheme is going to drive. So that's the first

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						<p>premise or your point of departure. Then linked to that where you've got the classic definition of malus, which talks to literally recouping the event" [P5]</p> <p>"And effectively now these malus and clawbacks are now really put in place to make sure to mitigate against these risks" [P5]</p> <p>"So disclosure and transparency, making sure that the existence of the policy is disclosed in your REM reports and also in your corporate governance statements is very important"</p> <p>[P6] "It's one of those nice insurance policies we have and we've tucked somewhere and never to think about it again and hope to never meet it" [P9]</p> <p>"I think for me my I guess the bottom line is that it's important to have such policies and</p>

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						the absence of such policies can open you to other governance issues that could be an issue potential in the future if these are not defined upfront." [P12]