

Corporate Governance and the Law Governing the Management of Companies in Zimbabwe.

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Abstract: *The study assesses the complementarity of corporate governance guidelines in Zimbabwe and the Company' Act (Chapter 24:03). It centres on corporate governance in companies and how company law comes in. A survey was carried out on 28 entities using questionnaires and interviews. The majority of the respondents were not aware of the convergence of corporate governance principles and the law. According to the respondents there are gaps between the Companies Act (24:03) and the National Code of Corporate Governance (ZIMCODE). The research shows that the law has been used to punish those found on the wrong side of corporate governance to a greater extent.*

Key Words: *Companies Act, Corporate governance, Parastatals, ZIMCODE, Zimbabwe.*

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I. Background to the Study

This research focuses on the issue of the company law of Zimbabwe and the corporate governance code in the face of persistent poor corporate governance. It looks at what the law says and best practices and strategies of strengthening the two for best governance. Corporate governance is important because there is a level of confidence that is associated with a company that is known to have good corporate governance. It is known to be one criterion that is being used by foreign investors when looking for local companies to invest in (Kaplan, 2012). Subsequent to the economic collapse and financial calamity encountered by different nations within East Asia, Russia, Latin America and the U.S including a raise in the figure of firm calamity like those of Enron and WorldCom, corporate governance provisions have been sighted to be the most essential legal bodies involved in reorganizing corporations at international level. In the local scene, we have witnessed the collapse of several companies, mainly banks such as Time Bank, Royal Bank, Afro-Asia Bank, Barbican Bank, among others. In the Zimbabwean framework, it was the Zimbabwean Stock Exchange (ZSE) de-listings from 2003 which compelled the Zimbabwean regulator (Securities Commission of Zimbabwe, formed in 2008) to take steps to safeguard the securities market and investors to minimise future collapses. For this cause, one of the fundamental steps that were applied by the Securities Exchange Zimbabwe (SECZ) was to support the establishment of a corporate governance code which had to be fulfilled directly by Zimbabwean listed firms (SECZ, 2013). The Institute of Directors, the Zimbabwe Leadership Forum and the Standards Association of Zimbabwe Institute worked together with the government to come up with the National Code on Corporate Governance (Herald, 2015). The Government of Zimbabwe has since introduced the corporate governance code (ZIMCODE) which was adopted by cabinet in 2014. Despite the presence of monitoring organisations such as the Standards Association of Zimbabwe, Institute of Directors, Zimbabwe Stock Exchange, Securities Commission of Zimbabwe, Procurement Regulatory Authority of Zimbabwe, the judicial system and relevant ministries, companies continue to ride on loopholes in company governance guidelines. Until the recent conviction of former Air Zimbabwe directors on fraud, corruption and mismanagement, little has been effected through the courts to handle such commercial cases - an implication that there may be some openings in either the corporate governance guidelines or the company law.

1.2 Objectives Of The Study

1. To assess governance gaps between the contents of the Companies Act (24:03) and the national code for corporate governance.
2. To identify ways of harnessing the corporate governance principles and the law governing the management of companies in Zimbabwe.

II. Literature Review

2.1 Corporate Governance

Corporate governance broadly refers to the mechanisms, processes and relations by which corporations are controlled and directed (Douma and Schreuder, 2013). Governance structures identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and includes the rules and procedures for making decisions in corporate affairs. Corporate governance includes the processes through which corporations' objectives are set and pursued in the context of the social, regulatory and market environment (Wright, 2014). Governance mechanisms include monitoring the actions, policies and decisions of corporations and their agents.

2.2 Role of Corporate Governance

Research has shown that well governed organizations perform better, emphasizing the need for good corporate governance (Miring'u and Mouria, 2011; Bebchuck *et al.*, 2004). On the other hand, bad corporate governance has proven to lead to collapse of companies (Kyereboah and Biekpe, 2006). Bad corporate governance leads to problems of mismanagement, pilferage, red tape, wastage, unreliable services and other operational influences. Deviant behavior and unethical activities need to be corrected at an early stage (Kasambira and Nyamuda, 2001).

The United Nations Report (2006) reveals that organizations should report on corporate governance and how they manage the concerns of all stakeholders. Organizations and management engage in various unethical practices including fraud, bribery and corruption. Corruption is defined as misuse of public or corporate position or power for personal gain. For instance, a manager can flout tender procedures and get a kickback. Some organizations have justified bribery as part of their culture. Bribery by nature is hidden and thus, discourages business transparency and accountability.

2.3 The Principal – Manager Relationship

The association between shareholders and managers tackled theoretically by Jensen and Meckling (1976). They demonstrate the matters of division of ownership and control and concentrated ownership influence the agency cost and manager's decisions for the company. In companies where the supervision of managers is either by controlling owners or legal protection of shareholders is low, managerial discretion is usually a difficulty. Kyereboah - Coleman A and Biekpe (2006) debate how managers might enrich themselves instead of shareholders both in fiscal and non-pecuniary terms.

However, with new rules and transformations on the London Stock Exchange, dual class shares were forbidden. Frank *et al.* (2004) state that family controlled companies were swiftly being taken over and ownership became dispersed in the UK. The basic perspective is that the Anglo- Saxon legal traditions provide a basically strong legal protection of minority shareholders (for instance in La Porta *et al.* (1997). This raises security of minority shareholders, reduce the threat for minority shareholders to be expropriated by managers and or controlling shareholders. Encouraging this, dispersed ownership has been seen to be quite rare for most nations with other legal origin than the Anglo Saxon or general law custom.

2.4 Stakeholder Theory

A stakeholder is any group or individual who can be affected or can affect an organization e.g. suppliers, customers, stockholders, employees, media, politicians, the community, government and financial institutions among many others (Miring'u and Muona, 2011). Each stakeholder has a different motive for example, the employee wants to secure a job and earn a salary, the investor wants to invest in a profit-making business, the government wants tax and the media wants to sell news to the public. The benefits of the stakeholders' theory is that it is democratic as it takes into account the interests of the public, also thousands of lives are connected together and depend upon the proper working of the firm, which demands good corporate governance and compliance with the corporate law.

2.5. The Concession / Fiction Theory

According to this theory, a corporation is a state-created reification (Padfield, 2013). The corporation is a fabrication since its life is consequential from the state and the latter grants to it the special privileges of entity status, perpetual existence and limited liability. In return, the corporate owed services to the public good and the state must legalize corporations to implement this responsibility to give in return. The theory supports the suggestion of state infringements into business activities. It gives favour to legal scholars who think that management or any corporate organ should not have a leading control in the corporation.

2.6 Conceptual Framework

The conceptual framework around which this research is centered is diagrammatically represented.

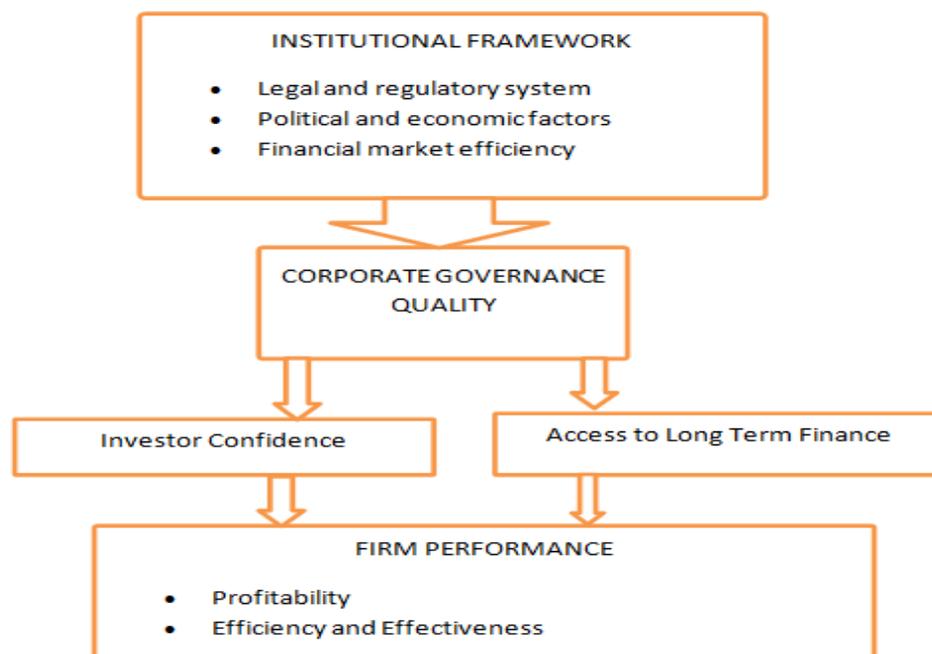


Figure 2.1: Law, Corporate Governance and Performance (Adapted from Haque *et al.*, 2006).

III. Research Methodology

The research takes both a qualitative and quantitative approach based on a sector survey coupled with the researcher's impressions and interpretations on the complementarities of the corporate governance code and the law in both private and public companies. The researchers used the survey research approach. Research instruments were questionnaires, structured interviews and secondary data. Secondary data was gleaned from annual reports, government circulars and corporate governance documents and other publications.

IV. Data Analysis

Benefits Derived from Zimbabwean Law

Out of the twenty-eight respondents, 28.6% stated that there are no benefits of Zimbabwe corporate governance derived from the Zimbabwean Company law, 71.4% said there were benefits derived. The Zimbabwean law has implemented a new code that will guide all corporates on good governance (Herald; April 2015), therefore these are some of the benefits that corporate governance has derived from the Zimbabwean law.

Effects of Law on Corporate Governance

14% of the respondents said that law remotely benefited corporate governance, 47% said it benefited moderately, 14% stated that law strongly benefited corporate governance and 25% said it was not applicable. When a board is selected, the duty of the members is to work entirely in the interest of the entire organization just like in the principal-agency theory where, according to Wright (2014), an agency is the relationship between two parties, where one is a principal and the other is an agent who represents the principal in transactions with a third party. Agency relationships occur when the principals hire the agent to perform a service on the principals' behalf, therefore the law has assisted in preventing board members from working towards their own conflicts of interest resulting in economic, financial, or other loss (Nyakazeya, 2014).

Effect of a National Code on Corporate Governance

All respondents agreed that having a national code on corporate governance positively affects the Zimbabwean corporate governance landscape and thus promote compliance with the law.

Extent of Zimbabwe Law Assistance

28.6% of the respondents said the Zimbabwean law remotely assisted in improving corporate governance principles in ensuring the perpetrators of poor governance are brought to the courts, 60.7% said it moderately assisted and 10.7% said it strongly assisted. The law has previously not been taking any action on corporate governance offenders in Zimbabwe (Nyakazeya, 2014). In Zimbabwe, only the late Edmund Garwe

resigned as education minister in 1996 after his daughter was found in possession of exam papers she had accessed after he had taken them home in what many said was a rare example of the upholding of corporate governance and avoidance of conflict of interest.

Adoption of Good Corporate Governance

7.1% strongly believed that the Zimbabwean law assisted in improving corporate governance principles in ensuring adoption of good corporate governance code by all entities, 57.1% said it moderately assisted and 35.7% said it remotely assisted. Most of the respondents said it moderately assisted in ensuring adoption of good corporate governance code by all entities.

The Zimbabwean law might still be a bit backward in improving corporate governance but the government is doing its best in ensuring that law assists in improving corporate governance principles. An example is the law that is set to prevent conflicts of interest, Section 50 of the PFM Act stipulates that “Every public entity shall adhere to and implement the principles of sound corporate governance, policies, procedures and practices”.

Guidance to Managers

21% said Zimbabwe law strongly assisted in providing guidance to managers on how to run companies and apply the best corporate governance practices, 32% said it remotely assisted and 47% said it moderately assisted. Thus most of the respondents were of the opinion that Zimbabwe law moderately assisted in providing guidance to managers on how to run companies and apply the best corporate governance practices. Managers need motivation in order to act in the best principal’s needs (Douma and Scheuder, 2013). However in Zimbabwe officials in public offices are expected to act on behalf of and in the best interest of the citizenry.

Gaps between the Companies Act and National Corporate Governance Code

Out of the twenty-eight respondents, 50% were of the opinion that there were gaps between the companies Act (24:03) and the National Code of Corporate Governance, 7% disagreed and 43% were not sure. The majority of the respondents were in line with what the Vice President Emmerson Mnangagwa who said in the Herald (2015) that the Code deals with some of the inadequacies of the Act and anticipates an immediate revision of the legal framework on corporate governance, starting with the Companies Act. Interviewees were also of the opinion that the Companies Act does not adequately complement the corporate governance practices in bringing offenders to book.

**4.9 Evaluation of the association between company law and the corporate governance code
Strength of key factors are analysed through the Chi-square test.**

Table 4.1 Test Statistics

	Does the Zimbabwe corporate governance derive benefit from the Zimbabwe law	Is there good corporate governance in Zimbabwe	How much has the Zimbabwean law assisted in improving corporate governance principles in the following aspects: ensuring the perpetrators of poor governance are brought to the courts	Are there gaps between the companies Act (24:03) and the national code of corporate governance
Chi-Square	5.143 ^a	18.500 ^b	10.786 ^b	8.857 ^b
df	1	2	2	2
Asymp. Sig.	.023	.000	.005	.012

a. 0 cells (.0%) have expected frequencies less than 5. The minimum expected cell frequency is 14.0.

b. 0 cells (.0%) have expected frequencies less than 5. The minimum expected cell frequency is 9.3.

Of the four key areas tested as shown in Table 4.1, they all appear to be significant, as the levels of significance are all less than 0.05. Research has revealed that the main aim of the national code was to fill the gap that was left out by the Companies Act (24:03), this is seen in Cde Emerson Mnangagwa’s speech when he said in the Herald (2015) that the Zimbabwean Code deals with some of the inadequacies of the Act and anticipates an immediate revision of the legal framework on corporate governance, starting with the Companies Act.”The research has proved that the law has been used to punish those found on the wrong side of corporate governance to a greater extent as some of the literature and results from the respondents’ shows that the Zimbabwean government has implemented law to punish those on the wrong side of good corporate governance, the likes of Mr. Cuthbert Dube. Most of the objectives of this research were met, on some questions, the respondents did not seem to understand the concepts of corporate governance and the Zimbabwean law but with the help of literature valid conclusion could be drawn.

V. Recommendations

The government must set up rules and regulations on corporate governance and set up strict measures against offenders so as to ensure that there is good corporate governance in Zimbabwe. The government and relevant authorities should try to fight and govern against corruption in companies at all levels and those found on the wrong side of the law must be severely dealt with. Since the law enforcement agents are not fully knowledgeable about the companies Act and national code of corporate governance, the authorities must organize workshops so as to provide the necessary and required information to them and must perhaps have some quarterly reviews so as to see if the agents are well informed and have the knowledge pertaining to an Act or policy. Corruption needs to be curbed at managerial levels to ensure that law enforcement agents perform their duties with minimal interruptions. This will allow the law to take its course in case of corporate governance breaches. Law enforcement agents need to be educated on the operation and legal personality of a company. In that way they will be able to interpret the law and corporate governance codes with less difficulty.

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