

PUBLIC SECTOR CORPORATE GOVERNANCE IN ZIMBABWE: THE NEXUS BETWEEN THE ZIMCODE AND STATE-OWNED ENTERPRISES

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Abstract

The nexus of political and legal dynamics in Zimbabwe's public sector generates a strain on the corporate governance that emerges in that environment, thereby making the application of the ZIMCODE in state-owned enterprises (SOEs) implausible. This perspective paper is a riposte to a writing by Chavunduka and Sikwila (2015) titled "Corporate Governance in Zimbabwe: The ZIMCODE and State Owned Enterprises Connection", where the authors sought to examine the implementation of the national corporate governance code by state-owned enterprises and develop a nested model to be used by SOEs in implementing the code. The writer contends that the ZIMCODE is not the right apparatus to produce responsible behaviour in Zimbabwe's SOEs. A qualitative approach is used. Document analysis is employed to gain insights into the corporate governance trends and challenges in Zimbabwe's state enterprises. The main sources used were government reports, conference papers, published research, and newspaper articles. The paper brings to attention factors such as cronyism, corruption, and political interference, which make ZIMCODE incompatible with governance in Zimbabwe's SOEs. It concludes that the principles-based soft law approach to corporate governance is incompatible with Zimbabwe's public sector landscape and argues for a rules-based legislative solution that will impose stringent regulatory oversight.

Keywords: Corporate Governance, State-Owned Enterprises, ZIMCODE, Principles-based, Rules-based

INTRODUCTION

Corporate governance in the public sector is rapidly becoming a topical issue in developing countries due to the vital function it serves in building and sustaining healthy economic systems. The recent wave of highly publicised corporate scandals that has roiled state-owned enterprises in Zimbabwe has been attributed to deficiencies in corporate governance. In 2016, the country's Auditor-General, while presenting a report on State Enterprises and Parastatals to Parliament, conceded that most of the challenges that continue to afflict Zimbabwe's public sector entities are of a corporate governance nature (Office of the Auditor-General of Zimbabwe, 2016). This ought to be a signal for the country's policymakers to awaken to the realities of an ineffectual corporate governance framework and act to address the governance deficiencies that are distressing state-owned enterprises.

Objective of the Study

The objective of this study is to proffer an alternative perspective to the discourse on corporate governance in state-owned enterprises in Zimbabwe by returning to the rules-based versus principles-based corporate governance debate and placing the national corporate governance code (ZIMCODE) within the context of the political and legal dynamics that exist in the country's public sector. The paper aims to make connections with previous studies on corporate governance in Zimbabwe and give insights that will stimulate new and important questions around the compatibility of the ZIMCODE with state-owned enterprises.

LITERATURE REVIEW

The numerous corporate scandals, scoundrels, crises, and collapses that have made headlines around the globe over the past decade have awakened renewed discourse about corporate governance among academics, researchers, and practitioners alike. Scandals involving corporations like Enron, WorldCom, and Parmalat at the turn of the century gave the world a rude awakening to the importance of good corporate governance (GCG) and effective regulatory oversight in corporations (Bozec & Dia, 2012; Downes & Russ, 2005; Boyd, 2003; Vinten, 2002).

Although there has been increasing consciousness around the importance of corporate governance in contributing to sustainable development goals, it is disheartening to note that the situation in most African countries has deteriorated, and there is still a dearth of studies focusing on the importance of corporate governance and its practice in state owned corporations (Sawe & Muneja, 2017; Ayandele & Isichei, 2013).

Corporate governance is a set of processes, customs, value codes, policies, laws and structures governing the way a corporation is directed, controlled and held accountable. It ensures that the organization is run properly, that goals are being achieved and funds are being managed with high standards of propriety and probity (Corporate Governance Framework for State Enterprises and Parastatals in Zimbabwe, 2010).

Corrigan (2014) advances that at the heart of corporate governance is the management of corporate power; the central issue being the need for the prudent stewardship of corporations, and making a distinction between personal wealth and corporate power in the management of a company. To achieve this, corporate governance systems seek to ensure oversight and accountability to hold business operations to legal and ethical strictures.

A state-owned enterprise, also known as a parastatal, is defined by Sáez & Yang (2001) as a commercial entity that is controlled by the arms of state machinery. It is incorporated as a company or by virtue of a statute and is either partially or fully owned by the government. These commercial entities occupy strategic sectors of the economy and are intended to develop the country through nationalisation of key areas such as transportation, energy, agriculture and mining, among others. Sikwila, Chavunduka and Ndoda (2015) concur that state-owned enterprises are vital for the development of the country in the various economic sectors in which they operate, in order to facilitate the accomplishment of the government's socialistic objectives. Annually, billions of dollars in public funds are allocated by Governments across the world towards the operations of state-owned enterprises. For this reason, Wadie (2013) argues that effective governance within the public sector is imperative to ensure the efficient use of resources, the strengthening of accountability for the stewardship of national resources, and the improvement of administration and service delivery. Available empirical evidence suggests that bad governance is one of the reasons why some countries experience negative growth rates and remain poor when others are progressing (Kaufman & Kraay, 2000; Rose-Ackerman, 2004).

SUBJECTIVE ANALYSIS

The State-Owned Enterprise Corporate Form

One of the major challenges in SOE corporate governance system in Zimbabwe is the confused and complex SOE ownership structures (Mafi, 2014). It is cynical to note that Chavunduka and Sikwila (2015) decide to turn a blind eye to both the eccentric ownership structure of the state-owned enterprise and the political dynamics that operate in the parastatal sector. These factors complicate the corporate form of the SOE and have a profound impact on how the state-owned enterprise is run. Instead, the authors choose to equate the SOE's corporate form to that of a

private public corporation. The present writer differs with this conception of the state-owned enterprise. Matching up the state-owned enterprise to the private public corporation is, to say the least, a poor point of departure. Such a misconception gives an incorrect depiction of the SOE; one that will blur the understanding of the peculiar corporate features of the SOE which make its corporate governance demands different from that of a private public corporation.

Anatomically, the corporate form of the state-owned enterprise differs in so many respects from that of the private enterprise; particularly in as far as the separation of ownership and control are concerned. Corporate realism theory dictates that ideally, the State should be separate from the SOE as a body corporate; and the board of directors left to run the enterprise independent of any State influence and interference. The exact corporate form of the state-owned enterprise in Zimbabwe; how it differs from that of a private corporation, if at all they differ; and the relationship between SOEs and the State as a shareholder are of course not the focus of this paper. The writer recommends these questions for future research.

Corporate Governance and Political Interference

Boards must be independent of political interference and be seen to be so. In Zimbabwe, however, there is an undeniable interplay between politics and the governance of the SOE. This is largely a result of the state's involvement in the appointing of parastatal boards of directors (Zvavahera & Ndoda, 2014). More often than not, these board appointments have been riddled with cronyism; where the appointment of members to the boards has largely been based on political expediency and rarely on pure merit. The situation is exacerbated in instances where the appointed board members have political connections. Such a situation opens the door for undue influence and political interference in the day to day running of the SOE. Fan, Wong and Zhang (2014) opine that because the government has the right to appoint the CEO, the CEO's political affiliation provides a convenient proxy for political influence in the SOE.

This complicates the governance structure of the SOE and compromises the quality of corporate governance practiced in state-owned enterprises. For instance, in the aftermath of the Salarygate scandal that hit the country's parastatal sector during the 2013-2014 period, it was revealed that corporate governance was alien at most of the affected state enterprises and parastatals, amid allegations that the responsible ministers were "running the show" (Rusvingo, 2014). Rose-Ackerman (2004) argues that all political systems need to mediate the relationship between private wealth and public power. It is the failure by the Zimbabwean government to mediate this relationship in the public sector which has led to dysfunctional state-owned enterprises captured by self-serving political interests.

The Corporate Governance Framework for State Enterprises and Parastatals

Corporate governance in the Zimbabwe's public sector is not a new invention. Chavunduka and Sikwila (2015) seem to suggest that the ZIMCODE is siring corporate governance standards that have been nonexistent in the public sector. Corporate governance systems have always been part of SOEs, yet corporate managers have wilfully decided not to comply with them. In 2010, the Ministry of State Enterprises and Parastatals issued the Corporate Governance Framework for State Enterprises and Parastatals which is similar to the ZIMCODE, in letter and spirit. Yet, bad corporate governance practices still remained rampant in SOEs; with major parastatals such as Premier Service Medical Aid Society (PSMAS), Zimbabwe Broadcasting Corporation (ZBC), Zimbabwe Revenue Authority (ZIMRA), Air Zimbabwe, and the Municipality of Harare becoming archetypes of serious corporate malfeasance over the past five years.

Weak corporate governance systems in SOEs and parastatals, coupled with unbridled political interference in the operations of state owned enterprises have been the major causes of poor performance in SOEs. The whole system has not provided the fundamental checks and balances essential for sound corporate governance, creating a fertile ground for corporate misdemeanour. The "Salarygate" scandal that rocked the country's public sector during the 2013-2014 period, which became one of the biggest public sector scandals in post-independence Zimbabwe, was just a delayed manifestation of the weak corporate governance systems in SOEs.

The Rules v Principles Debate

It is noteworthy to mention that although Chavunduka and Sikwila (2015) view the ZIMCODE as a potent key to corporate governance deficiencies in Zimbabwe, they acknowledge that the USA governance system is a gold standard for good corporate governance even after debacles such Enron, WorldCom, and Parmalat. The present writer opines that the USA has achieved such high standards of GCG primarily because the country has opted for a rules-based approach over a principles-based one and codified its corporate governance framework into the Sarbanes Oxley Act of 2002. The Sarbanes Oxley Act was designed to enhance the reliability of financial reporting and to improve audit quality. It marshalled a new era for the audit profession in the United States by ending over a Century of self-regulation and instituting independent oversight of public company audits by the Public Company Accounting Oversight Board (PCAOB). The Act strengthened corporate governance, shifting responsibility for the external auditor relationship away from corporate management to independent audit committees. It instituted whistleblower programs and stricter criminal penalties for malfeasance such as lying to auditors.

These measures and others were geared toward reinventing and reinvigorating the US corporate governance framework to avert a recurrence of the celebrated corporate scandals.

Consequently, in view of the explosion of high-profile scandals in Zimbabwe's state-owned enterprises in recent years, it becomes the thesis of this paper that the principles-based approach embodied by the ZIMCODE is inadequate to address the corporate malpractice that has shaken the core of the country's public sector. The unwillingness by corporate executives in SOEs to adhere to the Corporate Governance Framework for State Enterprises and Parastatals in Zimbabwe which was issued in 2010, is clear evidence that self-regulation will not work for public sector corporate governance in Zimbabwe anytime in the foreseeable future. Rose-Ackerman (2004) asserts that those who benefit from a corrupt status quo will seek to impede reform. The answer to corporate governance reform in Zimbabwe's public sector therefore lies not in a voluntary code that operates on a "comply or explain" basis, but rather in a rules-based legislative solution which carries legal force behind it.

The Missing Gatekeeper

Another latent problem with attempting to employ the governance code in state-owned enterprises comes with issues of enforcement. There has evidently been political unwillingness to institute, and enforce, corporate governance reforms to enhance probity, lucidity, accountability, and good governance in the public sector in Zimbabwe. The key question in adopting a principles-based approach in state-owned enterprises is: who shall have the responsibility of enforcing the code? And, how effective shall they be? So far, the country's anti-corruption board, the Zimbabwe Anti-Corruption Commission (ZACC), which draws its mandate from the Constitution of Zimbabwe, has been undermined by political forces. Despite being given the powers to rein in corrupt activity in the country's public and private sectors, ZACC has failed to enforce the criminalization of exposed malfeasance and to secure the conviction of several highly-placed individuals who have been implicated in some of the recent high profile corporate scandals.

It is against this backdrop that the present writer raises a red flag over the effectual implementation and enforcement of a principles-based governance code in a public sector that has failed to respect a Constitutional Commission formed by statute to handle unethical behaviour and corporate malpractice in public entities. For this reason, all theories, approaches, and efforts at corporate governance reformation will fail in Zimbabwe's current corruption riddled environment. The obliteration of corruption is a precondition for the efficacy of any intended corporate governance framework in Zimbabwe. Therefore, any corporate governance model in the public sector will only work if the government is willing to annihilate corruption and

depoliticise the management of the SOEs (Africa Corporate Governance Network, 2016; Mafi, 2014).

Hear No Evil, See No Evil, Speak No Evil

For any corporate governance system to be effective, it needs to be supported by a robust whistle blowing framework to expose misconduct and corporate malpractice; particularly so, if the system is a principles-based one where compliance is voluntary. The Organisation for Economic Co-operation and Development (2015) underlines that the protection of whistleblowers who disclose wrongdoing in governments is recognised as the core of the public sector integrity framework; it is an essential element for safeguarding the public interest, promoting a culture of public accountability, and in many countries is proving crucial in the reporting of misconduct, fraud and corruption. The United Kingdom, which has a principles-based corporate governance system in the form of The UK Corporate Governance Code, provides whistleblower protection under the Public Interest Disclosure Act (PIDA) of 1998. Similarly, in the United States, where the rules-based Sarbanes Oxley Act is the basis for the country's corporate governance system, whistleblower protection is provided for under the Whistleblower Protection Act of 1989.

In Zimbabwe, whistleblowers have no protection; legal or otherwise. This quandary is compounded by the various gagging mechanisms such as the Official Secrets Act [Chapter 11:09] which prevent employees in SOEs from disclosing information about activities happening inside the enterprises. This makes the public disclosure of concealed malfeasance and corporate malpractice in state-owned enterprises dangerous, and puts potential whistleblowers in a dicey situation. A strong whistle blowing programme is a key element of the first line of defence against malfeasance in the public sector. It encourages employees to disclose any irregularities without the fear of retaliation, and facilitates the early detection of any issues thereby helping to prevent corporate malpractice.

Verdict

The major weakness with the ZIMCODE is that it is principles-based soft law. Principle-based mechanisms by their very nature operate on a "comply or explain" basis, which is evidently not the most effective approach in attempting to bring about any meaningful turnaround in Zimbabwe's SOEs. Considering the present backdrop of vague corporate form, arbitrary political interference, cronyism, unbridled corruption, and no secure whistle blowing apparatus, the implementation of the ZIMCODE alone is not adequate to fix the dysfunctional corporate governance system in Zimbabwe's state-owned enterprises. The national corporate governance

code may prove more effectual in the private sector, as a mechanism to reinforce the corporate governance provisions of the Companies Act [Chapter 24:03].

Restoration of good corporate governance in the public sector requires, first and foremost, a paradigm shift in the way the State runs SOEs; by treating the enterprises as the corporate bodies that they are presumed to be, and refraining from interfering in their running and exerting undue political pressure on the corporate management. The second step is to enforce adherence to already existing corporate governance systems and begin to hold corporate executives accountable for the enterprises' performance.

CONCLUSION

Developing a suitable system of corporate governance for the public sector is an important priority for Zimbabwe's economic development. Unbridled corruption, political interference and bad governance practices in state-owned enterprises have become major risks to the growth and sustainability of the country's public sector. As such, the public sector corporate governance system cannot be left under the custody of the principles-based "comply-or-explain" ZIMCODE; furtively hoping that the nation shall see much compliance and little explanation for non-compliance in state-owned enterprises. The recent explosion of corporate scandals in Zimbabwe's state-owned enterprises and parastatals has demonstrated that the country's public sector is incapable of self-regulation. This makes a strong case for a rules-based corporate governance system that will impose stringent regulatory oversight in the country's state-owned enterprises.

WAY FORWARD

The separation of ownership and control is undoubtedly the major topic in corporate law and corporate governance. The eccentric corporate structure of state-owned enterprises in Zimbabwe and how it influences corporate governance in the parastatal sector is a critical theme that calls for further investigation. It is imperative that future studies in this area be focused on the corporate structure of state-owned enterprises in Zimbabwe in order to clearly delineate the position of the State as the major shareholder in SOEs, as well as illuminate the relationship between the parent Ministry, the Board of Directors, and the Chief Executive Officer of the SOE; all in relation to the position and interests of other stakeholders in the public enterprises. Comparative studies should also be undertaken, putting Zimbabwe's SOE corporate governance system side by side with systems in other countries to draw evidence and lessons from the similarities and divergences in order to improve Zimbabwe's corporate governance landscape, particularly in the public sector.

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