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Is it worth the effort?

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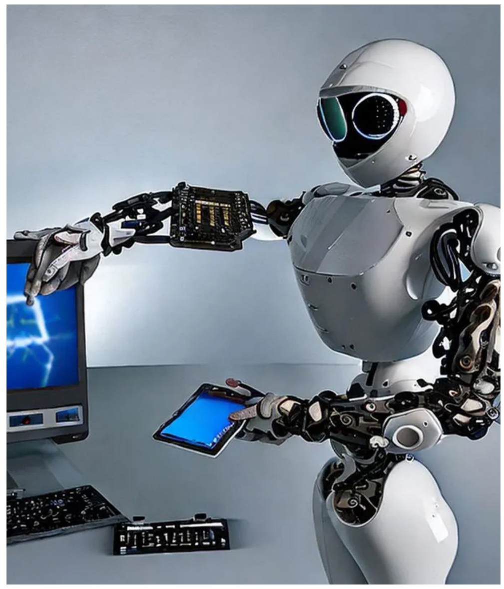

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Foreword

"Governance- prerequisite for a vibrant economy"

THE Institute of Directors Zimbabwe (IoDZ) is Governance Institute that is exclusively dedicated to upholding excellence, enterprise, integrity, and ethics in directors, raising the standard of corporate governance in industry and commerce.

The survey commissioned by IoDZ and carried out by our Research partners Precise Research ran under the theme "ESG Smarter business for a stronger world".

For 65 years the Institute has provided empowering systems and platforms to entrepreneurs, organization leaders, and executives in the public, private, profit, and non-profit sectors with the latest and best leadership and governance skills trends, mindsets, ideas, know-how, and other tools in the interest of the organizations and best practice in the world over.

"As IODZ, we believe that good governance is a prerequisite for a vibrant economy and an important business system that propels businesses to deliver value to its stakeholders. We are proud initiators of Women on Boards Zimbabwe, Future Directors Zimbabwe, the Chairman's Forum, and our flagship development programme Advanced Certificate in Company Direction among other solutions. The Institute takes pride in celebrating women, men, and entities that uphold good governance practices," IoDZ Chief Executive Officer Cathrine Nyachionjeka said.

"The annual survey is testimony to our commitment to fostering good corporate governance in Zimbabwe, as the saying goes you can't quantify what you can't measure, insights from the survey help to assess the state of Corporate governance in our country and celebrate our wins as we as work on our gaps."

In this age, success is no longer measured by finances alone, but by how well you prepare for and adapt to the realities of a highly dynamic world. Environmental Social Governance isn't just about ticking a box, it's about making a difference, for the world and your business. It's about creating sustained outcomes for environmental and societal good and governing your business responsibly and inclusively to build long-term resilience.

IoDZ is committed to working with you as you embrace positive changes, adopt a good working culture, and take action-oriented steps towards better ESG practices.

"As leaders, we encourage you to continue to focus beyond just the numbers but on the overall impact of our actions in the communities we operate from and ensure sustainable long-term resilience, particularly in our part of the world where we face the brunt of Climate change," Nyachionjeka added.

We continue sharpening governance skills and promoting ESG policies among corporates noting that most consumers are increasingly seeking brands that align with their values and support responsible practices.

Enjoy this edition!

Cathrine Nyachionjeka
IODZ Chief Executive Officer

ESG Disclosure:

Is it worth the effort?

The 2023 AIRE Center and UNDP ESG Business Handbook emphasize the importance of firms actively addressing social, environmental, and economic concerns. They argue that businesses can enhance their long-term financial success, human rights, and environmental protection by implementing ESG practices and aligning their strategy with the Sustainable Development Goals (SDGs), thus shaping the world. Larry Kahaner argues that during the past decade, companies have begun to understand that producing excessive waste during industrial processes is a symptom of inefficiency. Lowering the volume of waste products is not only environmentally right but profitable. WRITES ALEXANDER MAUNE

What is ESG?

According to the 2019 In Gold We Trust report, ESG, or Environment, Social, and Governance, is a set of criteria used to evaluate a company's operations. It includes factors like energy and water use, social interactions with local communities, and anti-corruption and human rights policies. ESG goes beyond reducing CO2 emissions and considers a company's impact on society, beyond its balance sheet. Martin Kremenstein emphasized that ESG is more than just a financial measure. ESG is therefore more than three words. ESG elements, including environmental, social, and governance aspects, are increasingly viewed as significant financial risks and directly impact a company's credit rating. These variables include environmental factors like innovation, emissions, and resource use, social factors like workforce, human rights, community, and product responsibility, and governance factors like management, shareholders, and CSR strategy.

Disclosure requirements

In the 1970s, companies began releasing CSR reports to address social and environmental impacts of their operations. These reports evaluated ethical, environmental, philanthropic, and economic aspects, often focusing on short-term activities like volunteering and community involvement. This revealed a lack of knowledge about the relationship between economic success and external factors related to social, environmental, and governance norms. As the relationship became more widely acknowledged, businesses were encouraged to integrate financial information with non-financial actions.

The growing movement for environmental reporting has led to businesses providing data on their environmental impact, including greenhouse gas emissions, energy use, water use, and workforce diversity. However, there is a negative perception that CSR reporting is a tool for greenwashing. ESG standards emerged as a framework for measuring sustainability and ethical effects, encompassing issues beyond CSR reporting. These initiatives specify precise objectives with measurable outcomes, monitoring and quantifying a business's operations and accomplishments, making them difficult to falter.

ESG Standards

Global organizations and nations have established guidelines for businesses to improve sustainability, accountability, and transparency in ESG aspects. Some countries are implementing rules and regulations on ESG disclosure obligations, advancing further. Some of these standards include:

- The EU Corporate Sustainability Reporting Directive (CSRD), effective from January 2022, mandates large companies and public-interest entities in the EU to annually disclose information on their ESG performance, aiming to enhance transparency and accountability.
- The EU Sustainable Finance Regulation, EU Taxonomy for Sustainable Activities, and Sustainable Finance Disclosure Regulation (SFDR) are key policies supporting the European Green Deal and EU Action Plan for Financing Sustainable Growth. They aim to enhance private sector transparency and accountability regarding ESG impacts and risks for sustainable economic growth and investment.
- The EU Corporate Sustainability Due Diligence (CSDD) policy aims to promote businesses' responsibility to uphold human rights and the environment in the single market.
- The EU Carbon Border Adjustment Mechanism (CBAM) is a mechanism designed to ensure that imported goods are priced similarly to domestically produced goods, thereby preventing carbon leakage and ensuring equal carbon emissions costs.
- The International Sustainability Standards Board (ISSB), established in 2021, is a private-sector organization responsible for developing and approving IFRS Sustainability Disclosure Standards.

ESG Regulations

Legislation imposing legally enforceable duties on business actors with respect to environmental standards and human rights has been adopted in several nations. Certain European nations have taken the lead in enforcing laws that support and advance ESG norms. Some of these legislations include:

I. The Clean Air Act in the USA which sets out to regulate industries' air pollution by expanding the authority of the Federal Environmental Protection Agency so that it can take effective action against this problem.
II. The EU's Emissions Trading System introduced a "cap and trade" system, setting out "the cap" on the total amount of certain greenhouse gases that the EU operators can emit and also allowing them to "trade" with one another as needed.
III. France introduced mandatory climate change-related reporting for institutional investors.

IV. Germany introduced Sustainability Code that provides a framework for reporting non-financial performance.
V. Netherlands adopted a Corporate Governance Code with principles and best practices focused on promoting good governance of their companies.

Overview of Global Reporting Frameworks

Businesses utilize various frameworks to understand materiality concerns and report on them, forming the basis for sustainable and integrated reporting on ESG elements. These frameworks articulate the concept of materiality in different ways, catering to different audiences and addressing materiality concerns in a holistic manner. Some of the frameworks available include:

The UN Global Compact (UNGC) requires companies to commit to sustainability principles in human rights, labor, environment, and anticorruption. Signatories must produce an annual communication on progress (COP) detailing progress in embedding these principles into strategies and operations.

The Global Reporting Initiative (GRI) helps businesses and governments understand and communicate their impacts on issues like climate change, human rights, and corruption.

The International Integrated Reporting Council (IIRC) is a global coalition of regulators, investors, companies, and NGOs.

The Sustainability Accounting Standards Board (SASB) sets industry-specific standards for corporate sustainability disclosure, ensuring it is material, comparable, and decision-useful for investors. These standards address sustainability topics that significantly impact a company's financial condition or operating performance.

The Task Force on Climate-related Financial Disclosures (TCFD) is an investor-focused framework that requires companies to disclose the environmental impact on them, aiming to ensure the financial sector considers climate-related issues and functions efficiently. This helps investors make informed decisions about companies' strategies, businesses, and financial plans.

Few African countries such as Ghana, Nigeria, and South Africa have developed sectoral governance codes and practices to regulate governance in various sectors. Ghana has developed two major ESG reporting frameworks, the Sustainable Banking Principles and Sector Guidelines (SBP) and the Ghana Stock Exchange Guidance Manual for Disclosures on ESG reporting for listed companies. Nigeria's Financial Reporting Council (FRC) is committed to adopting the International Sustainability Standards Board (ISSB), while South Africa covers ESG under King IV.

Balancing the Environment and Profitability – A Talmudic perspective

Now let's focus on the letter "E" in ESG and attempt to analyze, from a Talmudic standpoint, how profitability and the environment are balanced. The Talmud is one of the most challenging and perplexing religious texts in the world. Talmud is a comprehensive term for the Mishnah and Gemara as joined in the two compilations known as Babylonian Talmud/Talmud Bavli (6th Century) and Jerusalem Talmud (5th Century). The Talmud is the Jewish oral law. The Mishna, originally an old oral tradition, was compiled and edited in written form about 1,800 years ago, while the Gemara, which consists mainly of commentaries on the Mishna, was completed approximately 1,500 years ago.

The Talmud emphasizes the value of acting honorably in economic transactions because, more than any other human activity, these transactions put our moral fiber to the test and expose our character flaws. Larry Kahaner contends that in an era where our innate desire is to maximize our profits regardless of the costs, it is via money and trade that we reveal our human weaknesses, our prejudice, and our capacity for treating people fairly. No transaction is little, no infraction is insignificant in the eyes of the Talmud.

Ancient rabbis prioritized environmental preservation while also focusing on economic growth. They weighed the benefits of green spaces in urban areas against the potential harm caused by economic growth. The Jerusalem Talmud, Kiddushin 4:12, 12 states that, "Do not live in a town that doesn`t have a green garden." By this the rabbis highlights the importance of green spaces in urban areas, emphasizing the need for both aesthetic and health benefits. The rabbis viewed green spaces as a vital component of urban living, balancing economic growth with environmental protection.

In the book, "In the Marketplace," Rabbi Meir shares a story about Turkish towns in the late 18th century, who complained about the unpleasant smell of dye vats. The local rabbis agreed, but deemed it an economic catastrophe. They believed that the town would have to pay an ecological price to maintain its economic base. This was before the introduction of synthetic dyes, which can be unhealthy. The story highlights the need to balance economic growth with environmental health.

Environment

Environmental standards are guidelines that outline how companies' use of energy and raw materials affects the environment. They cover topics like waste management, pollution, climate change, and natural resource depletion. Companies can reduce their environmental impact by investing in renewable energy, promoting sustainable practices, and reducing greenhouse gas emissions. However, all businesses require energy and resources, which are also affected by environmental factors like droughts and biodiversity loss.

Care for the environment

The idea that everything-including the environment-belongs to God and that one of mankind`s job is to act as its caretaker plays a large role in how the Talmudic rabbis viewed the world`s resources. Ecclesiastes Rabbah (7:13) says, "God said to Adam: 'everything you see I created for your sake. See to it that you do not spoil and destroy the world for if you do, there will be no one to repair it after you.'" The Talmud (Taanit, 23a) tells a story that one day as Rabbi Honi ha-Ma`agel was travelling on the road he encountered a man planting a carob tree. He asked the man, "How long does it take for the tree to bear fruit?"

The man replied, "It takes seventy (70) years for the tree to bear fruit." He asked him, "Are you certain you will live another seventy (70) years?" The man replied, "When I came upon this land, I found a grown carob tree that my ancestors had planted for me. I am doing the same by planting this tree for my descendants" (Judovits, 2009). One of the hallmarks of Talmudic environmental beliefs is that what someone does in one place can affect someone else no matter how much distance is between them (Larry Kahaner, 2003). For example, traces of radioactivity from the Chernobyl nuclear plant accident were found in the milk of cows grazing in Scandinavia (Larry Kahaner, 2003). The Torah (Deuteronomy 20:19) states that: "When you besiege a city you shall not destroy its fruit trees. Man`s life depends on the trees of the field. The Talmud (Shabbos, 67b) states that, "It is forbidden to cause the oil in a lamp to burn too quickly, thus wasting fuel." The Midrash (Genesis Rabbah/Great Genesis, 13:3) summarily states that, three things are of equal importance: earth, humans and rain. Currently, the whole word is grappling with the effects of environmental pollution that has caused climate change.

Is ESG disclosure worth the effort?

What are the benefits of ESG disclosure in companies' financial statements? Several reasons have been given to justify ESG disclosure by companies. The following are some of the reasons for ESG disclosure in financial statements:

- Improved transparency and trust: By disclosing detailed information about their ESG performance, companies demonstrate commitment to transparency, which helps build

stakeholder trust. This can be particularly important in the modern business environment where investors, customers, partners, employees, and others increasingly demand sustainable, ethical corporate behaviour.
- Decreased costs: A strong ESG program can decrease expenses. These include lower costs in operations (energy, water, materials, and waste) and in human resources (higher productivity and easier talent attraction, avoiding non-compliance penalties).
- Stronger competitive advantage: Investors are likelier to invest in companies that disclose their ESG performance. Partners and customers are increasingly looking for responsible companies to do business with. Employees want to work for and stay with companies committed to building a positive impact on people and the planet.
- Better risk management: Preparing ESG programmes will help companies identify and manage potential risks and opportunities. For example, a company that discloses information about its carbon emissions may be able to identify opportunities to reduce those emissions, mitigate the associated risks, and lower costs.
- Giving back to employees and local communities reduces labor strikes and blockades, reducing operational risk. Banks and financial institutions may be more willing to issue loans or credit lines if a company's ESG ratings gain prominence in the public eye, thereby reducing the risk to operations.

ESG also plays a crucial role in determining investment resource allocation, cost, and usage. ESG scores are included in indexes, impacting the flow of money and influencing the demand for a company's shares. Proactive ESG risk reduction can generate long-term shareholder value. Businesses with ESG compliance outperform those without, and higher ESG ratings have traditionally generated better returns, although it's difficult to attribute this outperformance to ESG. However, the outperformance makes sense since fund and portfolio managers could be more inclined to put money into businesses that they believe have a long-term future.

Recommendations

The following are some of the recommendations found in literature for companies that seek to embrace ESG strategies and reporting.

ESG Strategy:

- Companies must define their ESG Goals and Objectives, identifying relevant ESG issues and setting measurable targets that align with their business strategy. These goals help track progress towards sustainability and ethical impact, such as reducing carbon footprint, waste, and improving energy efficiency for manufacturing companies.
- The ESG materiality assessment is a crucial process that helps identify the material risks and opportunities associated with business activities, including environmental impact, social impact of products or services, and business governance structure.
- ESG standards should be integrated into business operations, rather than treated as a separate initiative, to ensure their regulation and integration into decision-making processes across the organization.
- ESG reporting and monitoring are crucial for any ESG strategy, demonstrating commitment to sustainability and transparency, and identifying areas for improvement, attracting investors and customers who value ethical impact and sustainability.

Reporting:

- Sustainability reporting should highlight key challenges and negative practices in practice, highlighting them more clearly in their reports. Companies should also indicate their plans for addressing these issues, demonstrating transparency and fostering dialogue between the wider community and companies. This approach helps to highlight progress and establish a foundation for dialogue between the company and the wider community.
- Companies should acknowledge and use the principle of report or explain when reporting on sustainability aspects. If certain elements of the report are not applicable to the company, they should be clearly explained in the reports.
- The term "CSR" and "ESG" should be clearly distinguished to avoid confusion. CSR reporting is often mistaken for ESG reporting, which is still referred to as reports on socially responsible business. Therefore, it is crucial to differentiate between these two terms.
- The reporting methodology should be explicitly mentioned to ensure clear criteria and facilitate monitoring and evaluation, as it is beneficial for companies to consistently use the methodology they use.
- Companies should invest in internal ESG teams to ensure a systematic approach to sustainability, focusing on permanent strategies, policy development, standards implementation, and sustainability reporting, rather than relying on ad hoc approaches.

Conclusion

Many nations and organizations have implemented laws controlling the disclosure and reporting of businesses' non-financial activities, leading to a growing interest in ESG reporting and compliance. Investors, banks, and fund managers are demanding businesses adhere to ESG standards, urging them to run sustainably and make relevant data available to the public. This shift in thinking could benefit investors by encouraging businesses to embrace good governance standards and become more aware of their impact on the social and environmental sphere.

Alexander Maune (Ph.D.) is an IoDZ member as well as a Talmudic and Zoharic scholar and consultant. Mailto:alexandermaune6@gmail.com.


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Evidence Informed Corporate Sustainability Programming:

Beyond ESG

Corporate sustainability as a subject matter has become a burning issue in this 4th industrial revolution at the cusp of the fifth. When it comes to Sustainability as topic, it grounds the development debate in a global framework, within which a continuous satisfaction of human needs constitute the ultimate goal (Dyllick & Hockerts, 2002). WRITES BY DR. DILIAH A. MUTAMBARA (PHD)

At organizational level, this goal drives the maintenance and growth of economic, social and environmental capital base. In order to realize this goal, implementation of a comprehensive sustainability program aligned to the needs on the ground is key.

The deployment of evaluative evidence in sustainability programming requires a holistic sustainable development lens. Additionally, it should be aligned to the United Nations 17 Sustainable Development Goals (SDGs), the 2030 agenda (UN General Assembly, 2015). Furthermore, this supports the notion of programming beyond the usual implementation of an Environment, Social and Governance (ESG) initiative.

The deployment of evaluative evidence in sustainability programming requires a holistic sustainable development lens.

In responding to the dynamic 21st century, the wicked sustainability problems being faced in the business world, its employees, and the surrounding business footprint and beyond continue to surge. A need of evaluative evidence is crucial in designing responsive programs. However, this notion of using evidence, requires agility in encompassing the SDGs in a broader context. Its inclusion, embodies a possibility norm of societal evolution towards a more equitable, sustainable, just and wealthy world in terms of governance practices, environment conservation, human & labor rights compliance, social responsibility as well as cultural achievements preserved, meeting the needs of the current and future generation.

When it comes to the SDGs, the 5 Ps summarizes its structure which are Planet, People, Prosperity, Peace and Partnerships. In today's, sustainability programming these 5Ps should be an ideal practice within the programming cycle. The cycle then focuses from risk assessment, strategic planning, implementation, monitoring, evaluation, reporting and learning. With this new paradigm, leadership sensitization is a critical phase for programming buy-in.

In some instances, where corporations have embraced the implementation of effective sustainability programs beyond ESG, a business case is drawn. In some cases, there is measurement of return on investment showcasing financial value, attraction of investors, minimization of non-compliance risks especially for exporters, mitigation of human and labor rights violations and support the notion of economic growth, decent work within just work spaces.

In conclusion, partnerships are a vital component to achieve the desired results and realize a return on investment. The key subject matter experts, scholars, development entities as well as policy enforcers among others are key to be included during the programming cycle.

ABOUT THE AUTHOR:

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ESG: Smarter Business for a stronger world

The world continues to demand smarter business practices for corporates and individuals for it to turn out stronger and better through how we respect environment, social and governance framework and standards. SAYS OLD MUTUAL ZIMBABWE GROUP CHIEF EXECUTIVE SAMUEL MATSEKETE.

He said this at the recent IODZ Annual Dinner that ran under the theme "Smarter Business for a Stronger World" where he implored companies to uphold ESG principles highly to create not only a stronger but a safer and more favourable world. ESG is a framework for leading, managing, and evaluating performance in environmental and ethical matters. It is a framework, under the new global economic model, that, in a way, seeks to ensure our initiatives and activities are profitable to both people and the planet.

"Environment encompasses climate and climate change, how we use or manage natural resources to ensure sustainability, and the way we handle waste amongst other related factors. We now talk and hear about concepts like environmental footprint and its impact on nature, which is, really, a summation of these factors," said Matsekete.

As we all utilize air, water, and other finite resources of this planet, Matsekete said it is in everyone's collective best interest to mitigate negative impact, but rather promote positive effects.

"On the social aspect companies should look at the impact business has on the people it interacts with. This includes employees, customers, suppliers, and the communities in which the business, whatever the size of the venture, operates. Issues to be recognized and managed under this include health and safety, labour relations, treating suppliers and customers fairly, relationships with local communities, and the conscience for the common and wider public good."

He said that governance is also a crucial aspect of ESG as it reflects how a business or any venture or organization for that matter is led, managed, and controlled.

"Under a strong ESG framework, governance seeks to ensure alignment of all interests and all people groups amongst its stakeholders, including investors, customers, employees, suppliers, regulators, and the wider society at large.

"The right governance frameworks also seek to ensure that beyond aligning the interest of all stakeholders, the right practices are upheld to protect and enhance the environment and the wider society. When you look at all the 17 Sustainable Development Goals being promoted by the United Nations (SDG 6 Clean Water and Sanitation, or 9 Industry Innovation and Infrastructure, or 13 Climate Action) these are an elaboration of ESG. The United Nations Climate Change Conference (COP, COP 26 specifically) intensified calls for businesses to commit to net-zero targets and to urgently take more robust action on climate change," said Matsekete.

Among the objectives of National Development Strategy (NDS) 1, Matsekete said there is a focus on promoting new enterprise development, employment, and job creation, strengthening social infrastructure and social safety nets, ensuring sustainable environmental protection and resilience, and promoting good governance and corporate social investment.

"These objectives are ESG. For business, we must recognize that ESG is the new way of business. The fifth Industrial Revolution Industry 5.0 (coming after the 4IR – driven by technological advancements) is a neologism that incorporates sustainability, human centeredness, and concern for the environment in addition to the utilization of advanced technologies AI which were debated under 4IR. Businesses are now required to report on their sustainability initiatives.

"But before reporting is the actual business. Business leadership therefore has to uphold ESG or sustainability as an embedded part of how they do business, from defining their business case to the strategies we craft, the business plans, and how we seek to extract or deploy resources to how we create and share value amongst people and with the environment.

"A robust ESG proposition enables companies to access new markets and expand within existing ones. The right ESG practices earn you the right to do business and the ultimate license to operate. Markets are increasingly considering ESG in their buying decisions.

He said a major study conducted by McKinsey and Company in 2022 revealed that companies with socially beneficial engagement activities, as perceived by the public and social stakeholders, received a social license to extract resources with minimal planning or operational

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Effective ESG implementation Matsekete noted that it offers various benefits, including combating rising operating expenses.

Research conducted by McKinsey, titled "McKinsey on Finance," has revealed that ESG practices can impact operating profits by up to 60 percent.

“The same report identified a strong correlation between resource efficiency and financial performance. Environmental initiatives that save water, energy, and manage waste generation and disposal can effectively reduce associated costs. Implementing green energy projects to power facilities and offices also reduces energy acquisition costs (e.g., diesel for generators and payments to power utilities).

“Maintaining a positive social reputation decreases reportable incidents within a business, thus saving costs related to hospital bills and medical emergencies. A compelling external value proposition can provide companies with greater strategic flexibility, reducing regulatory pressures.

“The right ESG principles are a form of self-regulation that hedges against overbearing external regulation. Research across various sectors and geographic regions has shown that a strong ESG performance lowers the risk of regulatory actions against companies.”

Matsekete also pointed out that a robust ESG proposition can enhance investment returns by directing capital toward more promising and sustainable opportunities, such as renewables, waste reduction, and climate resilience.

He said it also helps companies avoid stranded investments that may not yield returns due to longer-term environmental issues, such as land degradation during mining operations or child labor in farming operations.

“It's essential to recognize that proper consideration of investment returns starts with the right baseline. In the realm of ESG, it's crucial to understand that a "do-nothing" approach typically represents a deteriorating trend rather than a straightforward path. Conversely, the right ESG principles yield lower costs of finance or capital.

“A robust ESG proposition can enable companies to attract and retain high-quality employees, boost employee motivation by instilling a sense of purpose, and ultimately increase overall productivity. There is a positive correlation between employee satisfaction and shareholder returns.”

According to research conducted by the London Business School, companies listed on Fortune's "100 Best Companies to Work For" generated annual stock returns 2.3 percent to 3.8 percent higher than their peers over 25 years.

Employees are inspired by a positive corporate culture, a safe working environment, and a workplace that provides a proper work-life balance.

Matsekete further said that an organization with a strong social reputation serves as motivation for employees.

“The right ESG practices create an environment in which more innovations are inspired. More and more innovations are designed to consume fewer resources, and to maximize benefit and convenience to people.”

He added that Old Mutual subscribes strongly to ESG principles and stands ready to partner with the government and like-minded local and international organizations to create positive futures for people and our environment.


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Corporate governance
key to economic development

Corporate governance is a crucial aspect of any economy as it ensures transparency, accountability, and ethical behavior within organizations. In Zimbabwe, corporate governance has gained significant attention in recent years due to its potential to enhance economic growth and attract foreign investment. This article will discuss the current state of corporate governance in Zimbabwe, its challenges, and potential solutions. WRITES LLOYD CHIRINDO

Corporate governance is a crucial aspect of any economy as it ensures transparency, accountability, and ethical behavior within organizations.In Zimbabwe, corporate governance has gained significant attention in recent years due to its potential to enhance economic growth and attract foreign investment. This article will discuss the current state of corporate governance in Zimbabwe, its challenges, and potential solutions.

Zimbabwe's corporate governance framework is primarily based on the Companies Act and the Zimbabwe Stock Exchange (ZSE) listing requirements. These regulations aim to promote good governance practices by providing guidelines for board composition, disclosure requirements, and shareholder rights. However, despite these regulations being in place, there are several challenges that hinder effective corporate governance implementation.

One of the major challenges faced by Zimbabwean companies is weak enforcement mechanisms. While regulations exist on paper, their implementation and enforcement are often lacking. This creates an environment where companies can easily disregard good governance practices without facing any consequences. To address this issue, regulatory bodies such as the Securities and Exchange Commission of Zimbabwe (SECZ) need to be strengthened with adequate resources and powers to enforce compliance.

Another challenge is the lack of independent directors on boards. Many companies in Zimbabwe have boards dominated by executives or representatives of major shareholders, which compromises their independence and objectivity. Independent directors play a crucial role in ensuring that decisions are made in the best interest of all stakeholders rather than just a select few. Encouraging companies to appoint independent directors through regulatory incentives or mandatory requirements would help improve corporate governance practices.

Furthermore, there is a need for greater transparency and disclosure by companies in Zimbabwe. Many organizations fail to provide timely and accurate information to shareholders and other stakeholders. This lack of transparency erodes trust and confidence in the business community, making it difficult for investors to make informed decisions. Strengthening reporting standards and ensuring regular audits can help improve transparency levels.

Shareholder activism is relatively weak in Zimbabwe compared to other countries with well-developed corporate governance systems. This has allowed some companies to operate without proper oversight or consequences for non-compliance. Shareholders often lack awareness about their rights or face barriers when trying to exercise them effectively. Educating shareholders about their rights and encouraging them to actively participate in decision-making processes can help promote better corporate governance practices.

To address these challenges, collaboration between various stakeholders is essential. The government needs to work closely with regulatory bodies such as SECZ to ensure effective enforcement of regulations while also providing necessary resources for capacity building initiatives. The business community should actively engage with regulators and adopt best practices voluntarily rather than waiting for mandatory requirements.

Furthermore, civil society organizations can play a vital role in advocating for improved corporate governance standards through research, awareness campaigns, and engagement with policymakers. These organizations can also provide platforms for dialogue between different stakeholders to address concerns related to corporate governance effectively.

Additionally, various organizations and institutions are working towards promoting good governance practices. The Institute of Directors Zimbabwe (IODZ) provides training programs and resources to enhance directorship skills and promote ethical behavior among directors. The Securities and Exchange Commission of Zimbabwe (SECZ) also plays a role in overseeing compliance with corporate governance standards.

Despite these initiatives, challenges remain in fully implementing effective corporate governance practices throughout the country. Continued efforts are needed to strengthen regulatory frameworks, enhance enforcement mechanisms, promote transparency, and ensure independence within boards.

In conclusion, while there are existing regulations governing corporate governance in Zimbabwe, their implementation faces significant challenges such as weak enforcement mechanisms, lack of independent directors on boards, inadequate transparency levels, and limited shareholder activism. Addressing these challenges requires collaborative efforts from the government, regulatory bodies like SECZ.

Lloyd Chirindo, Pro. Dir, Cr.FrA is a Channel Partner for riskHive Enterprise Risk Management Software and Forensic tools, United Kingdom and Risk Leader of the Year– 2023 (African Region), awarded by the Enterprise Risk Management Institute of Zimbabwe (ERMIZ)

'Life is finite, we do not

FINANCIAL services behemoth First Capital Bank Zimbabwe (FCB) last year appointed Tapera Mushoriwa as managing director, taking over from Ciaran McSharry who has been with the bank since 2018. He joined the bank from the National Building Society (NBS) where his role was also managing director. Prior to this role, Mushoriwa worked for Cassava Fintech International, Steward Bank, and Standard Chartered in various senior leadership positions. The ZIMDIRECTOR's Beaven Dhliwayo (BD) sat with Tapera Mushoriwa (TM) to appreciate his illustrious journey. Below are the excerpts from the interview.

BD: Tell us a brief background about yourself. Who is Tapera Mushoriwa? Any early struggles. How did these experiences shape you into the leader you are today?

TM: Thank you for affording me this interview opportunity. Tapera Mushoriwa is an affable person whose life story is synonymous with a bunch of roses – scenic and inspiring but only after fearlessly dealing with the thorns. A dive into my childhood draws up an exciting map of key principles that shaped my future, thanks to my parents for contributing the most to this blueprint of my life. I am sure you agree that in the history of professions, 'accountability' is the teacher's breakfast, and 'hard work' is like oxygen to an entrepreneur. Now, just imagine the life of a child to a Headmistress and an Entrepreneur.

From a tender age, we would work under strict supervision at my father's small business enterprise during the school holidays. The stern man would even ask us to write reports, justifications, and memos on decisions, performance, and what others would see as basic requests. Now I can afford to laugh it off and appreciate that this was my first leadership development program. On the other hand, I was sent to a boarding school at the age of 8 years, thanks to my mother. At first, it felt like prison, but as days rolled by, I began to appreciate the significance of this 'push from the nest' to my personal organisation skills, self-confidence, and co-existence. In retrospect, these early life experiences shaped my leadership journey as I learned the importance of critical and out-of-the-box thinking, discipline, the science of accountability and time management, and the art of hard work and responsibility from an early age.

BD: Growing up did you dream about being a banker? What was your inspiration to become the successful banker you are today?

TM: As a child, I always admired the suave, professional, clean-looking suited banking executives who made important business decisions impacting renowned institutions. I always had a keen interest in what made organisations tick, the workings of finances, how they contributed to the economy, and what set them apart from the competition. This burning desire shaped my purpose-driven career journey, driven by a clear vision to become the CEO of a bank and broken down into specific actions. This started with me being recruited in the prestigious Standard Chartered International Graduate Programme (IGP) where only two candidates were selected annually in each eligible country. Interestingly, I have aspired to be a CEO from the time I understood how this would achieve my purpose to help people and businesses grow. Inspired by younger executives such as Dr Chanakira, I even set an aggressive time target of mid-30s for this goal. I am humbled to have achieved the goal although out of timeline.

BD: Do your childhood friends and siblings feel surprised to see you in the role you enjoy today and if so, why?

My childhood friends have always believed that as a purpose-driven person, I would take my career to a level of strategic impact. They say I always wanted to influence the decisions of the games we played or things we did. As for my siblings, it came as no surprise after gaining early exposure to leadership, performance, and accountability tenets from our parents. I have always been inspired by other people's successes and have learned that whilst goals may be difficult, they can be achieved through meticulous planning, discipline, focus, and dedication.

BD: Describe your a-ha moment at which point you knew your career might become a success.

TM: I remember the very first time that I was headhunted, I could not believe it. What a contrast from what I had experienced earlier as a jobseeker. Weekly, I would walk around the city with my printed CVs and deliver them to different organisations in the hope of getting 'that interview call' which rarely came. But after getting the first opportunity at employment, I never looked back. I promised myself that if I got even half an opportunity, I would not let myself down. Admittedly, the philosophers were right when they said that the test of the pudding is in the eating. After that first job encounter, the 'headhunter calls' were normalised, and I was encouraged that my work was finally speaking for itself and getting noticed.

have tomorrow, start now'

BD: What was the best advice anyone ever gave you, and did you follow it?

TM: The best advice I have received is that 'Life is finite, we do not have tomorrow, start now'. This statement brings everything into perspective in how I operate and I have followed it religiously. By understanding that time and opportunity wait for no man and that the best time to act is now, you exit your excuses and unlock the beast in you, overcoming resource constraints and artificial, especially mindset barriers to achieve your desired goals.

BD: Tell us how the Bank (FCB) approaches innovation and change.

TM: At FCB, our innovation is based on a well-considered strategy that is centred around making a lasting banking experience for our customers as they conduct their business. Before we push for any innovation, we first examine how that change aligns with our values, our mission, and our goals. We ask ourselves the question: why are we doing this? What problem are we solving? What value are we creating for our customers and shareholders? We deliberately build a culture necessary to support positive change and innovation. The last part is putting in place the infrastructure needed to make it work, such as appropriate technology, and making sure we have the right resources to see it through.

BD: What sets the Bank apart from its competitors?

What we have learned is that having a great plan for innovation is not enough. For that plan to work, you need a culture that constantly enables innovation. This is one factor that sets us apart and is core to our culture. At First Capital Bank while we keep our eye on disruptive innovation, we consider innovation to be anything we must do to continuously serve our customers better and meet their changing needs. We have invested in digital technology more than most, but we also continue to inculcate a culture where innovation is part of our fabric. We are part of a regional Group with a solid reputation for service and credibility. Our solutions for doing business are scalable and extend across our footprint in the region.

BD: What are the biggest challenges facing the Bank, so that we understand the company's priorities and areas for growth?

TM: Understandably, the rapid changes in the operating environment are challenging for every business. One cannot underplay the impact of global geo-political tensions, climate change, emerging technologies, and policy variations on the global financial services sector. However, what is most instructive is one's response to them. In this global melee, our group's regional footprint across Africa positions us to be more agile, and more resilient, and to thrive with our valued customers and shareholders. Also, our transition to new digital platforms was not always smooth, but it helped us to better understand the needs of our customers and positioned us to serve them better. With that, our biggest growth area has been agility as we continue to prioritise our customers.

BD: At this point may you share with us an update on your new investments and developments?

TM: We have demonstrated our commitment to Zimbabwe by firmly digging our roots when we broke ground on our New Head Office in Borrowdale. True to our culture of innovation, we also took heed of the call and were the first bank to list on the VFEX. This move has allowed us to explore new frontiers and we look forward to the benefits of this move. As an industry thought leader, we support various industry initiatives of national impact. Last year we sponsored the 8th edition of the Banks and Banking survey to promote sustainable financing models that will improve our economy. We also partnered with ZNCC for the 2023 national economic review, a move we believe has helped businesses plan for 2024. We remain committed to continuing to unlock financial solutions that position us as the preferred customer-centric bank for doing business through interventions such as credit structuring deals with powerhouses such as European Investment Bank, Afreximbank, and AfDB among others.

BD: Where do you see FCB in the next five years?

Over the past year, we extended our support to productive sectors and small and medium enterprises, while enhancing our digital platforms. On our current trajectory, we fully expect to lead the market in these critical areas over the next five years. We have firmly positioned ourselves as a bank that facilitates business and trade in our market. Our goal is to secure a strategic position as a top-tier bank that enhances the local economy in a significant way.

BD: What sort of impact have you achieved in the banking sector?

TM: In 2023, we became the first bank to list on the Victoria Falls Stock Exchange (VFEX). We believe that our listing may inspire other peers to also explore this route. In brief, listing on VFEX enhances our capacity to raise capital in hard currency for our customers, benefitting the economy. We have secured critical lines of credit to support productive sectors, at a time when capital is needed the most. Finding innovative ways to access international capital, as we have done, will be a major priority for banks in Zimbabwe, and a key growth catalyst for industry and commerce going forward.

BD: Any parting message for the corporate world in Zimbabwe.

At First Capital Bank we believe that behind every dark cloud, there is a silver lining. As global headwinds continue unabated, disrupting the economic prospects of nations, there remains an equal measure of bankable opportunities for the nimble-footed. It is this 'half-full glass' mentality that must precede the 'half-empty' mindset for us to progress and prosper. What will set your business apart is your ability to have your ear to the ground and your finger on the pulse, innovating and turning challenges into opportunities for growth. And of course, a dependable financial partner to take care of your banking needs. This is why as your agile, innovative, and leading global provider of financial service solutions with deep roots across Africa, First Capital Bank Zimbabwe is extending a warm hand for collaboration to the corporate world - one where there is no loser. I humbly invite you to come and experience 'banking redefined' with your customer-focused bank – First Capital Bank.

ROLE OF ARTIFICIAL INTELLIGENCE IN FOSTERING CORPORATE BOARDS EFFECTIVENESS:
IS ZIMBABWE PREPARED?

In the current Fourth Industrial Revolution (4IR), it is worth mentioning that artificial intelligence is transforming every facet of business worldwide. WRITES MUFARO DZINGIRAI

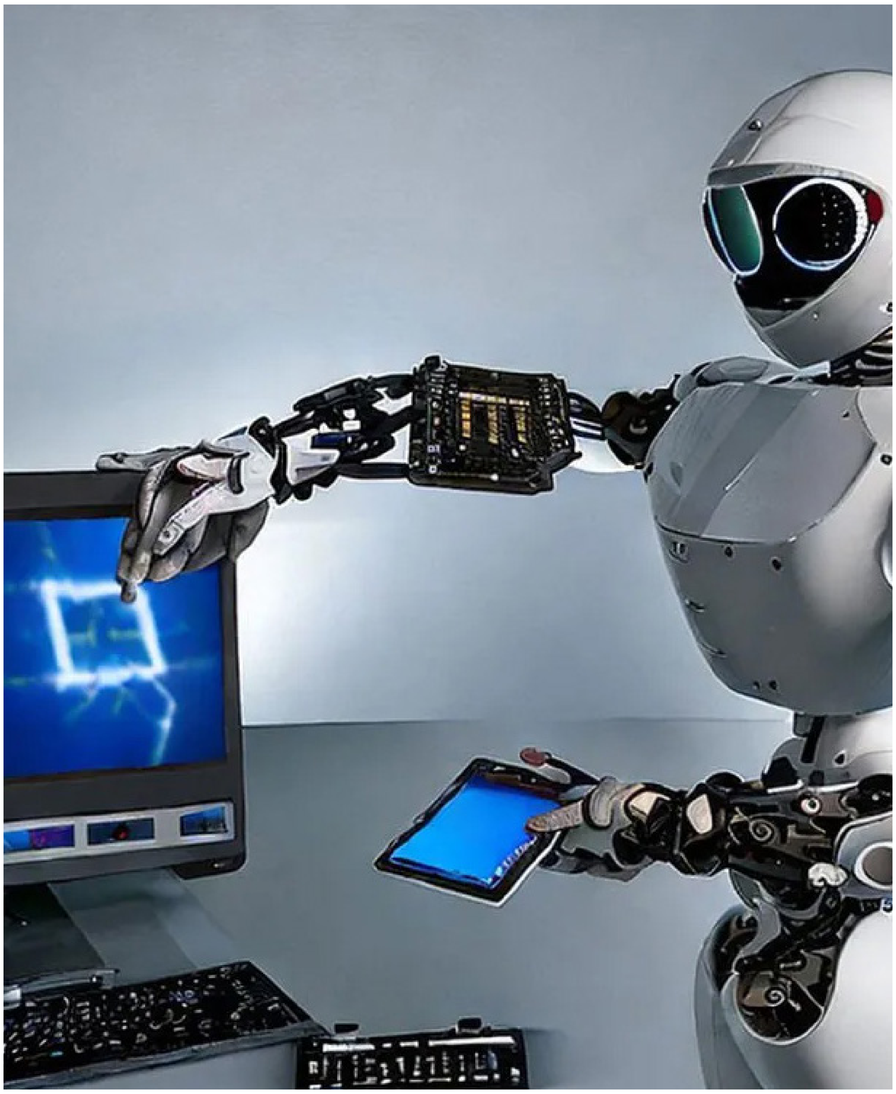
Artificial intelligence is the need of the hour in the Zimbabwean context given that the country has a "demographic dividend" in terms of the young and tech-savvy population which is a strong foundation for the adoption of artificial intelligence technologies. Of late, in the corporate world, artificial intelligence is gaining traction when it comes to transforming how corporate boardroom activities are carried out by board members. With a clear strategic direction, it is not surprising to observe that artificial intelligence adoption can enhance compliance, augment governance, mitigate bias, foster real-time informed decisions, and facilitate collaboration among board members.

It appears that the sustainable future in the corporate world depends on the agility of the organization in responding to technological advancement including artificial intelligence.

It is an open secret that artificial intelligence presents unprecedented challenges and opportunities for board members in Zimbabwe. With the effective utilization of artificial intelligence, corporate boards can inculcate a culture of innovation and sustainable growth. More interestingly, artificial intelligence technologies strengthen the capacity of boards in terms of making robust strategic informed decisions.

As such, the bright and sustainable future for companies in Zimbabwe depends on the extent of artificial intelligence adoption in the corporate boards whereby the board members can fuse artificial intelligence-based insights and human expertise in crafting strategic plans that drive companies towards sustainable competitive advantage.

Despite the fact that artificial intelligence is gaining momentum in the discourse related to corporate governance in the 21st century, it is unfortunate that most corporate boards in developing countries like Zimbabwe are facing insurmountable challenges. This hinders the progress towards the adoption of artificial intelligence technologies like artificial intelligence bots, data analytics, machine learning, generative artificial intelligence, deep learning, robots, chat generative pre-trained transformer, and data mining.



Specifically, challenges like corruption, nepotism, economic turmoil, fear of the unknown in terms of embracing artificial intelligence, lack of innovation culture, lack of artificial intelligence skills, poor information technology governance, lack of corporate will, and shallow understanding of artificial intelligence within the context of corporate governance are hindering effective adoption of artificial intelligence in Zimbabwe.

Having captured the challenges related to the slow adoption of artificial intelligence in corporate boards, it must be noted that the failure to adopt artificial intelligence in corporate boards is associated with a plethora of negative implications on the effectiveness of corporate boards. These negative implications can be in the form of a lack of sustainable growth, and limited efficiency and effectiveness in the corporate boardrooms.

In recent years, proactive board members have been expected to adopt cutting-edge technologies to recalibrate and optimize strategic decision-making mechanisms and systems. Nonetheless, if artificial intelligence technologies are ignored, it is not surprising that many corporate boards in Zimbabwe are struggling to inculcate a culture of better governance.

Although human experience, judgments, and views are of utmost importance in corporate boards, there is a dire need to shift towards data-based governance and management whereby corporate boards are at the forefront of utilizing artificial intelligence technologies effectively and efficiently when synthesizing voluminous data. This can be done with the sole purpose of extracting valuable insights. While this is an approach that can be adopted by proactive board members, it is discouraging to observe that most of the corporate boards in Zimbabwe are struggling to effectively adopt artificial intelligence technologies in corporate boardrooms.

For Zimbabwean corporate boards to implement artificial technologies, there are many key factors that must be taken into account by the boards. Firstly, artificial intelligence training and capacity-building programs on how to effectively harness the power of artificial intelligence must be clearly captured in the strategic plan. Secondly, the corporate boards must develop explicit regulatory and compliance guidelines in an attempt to foster responsible and ethical use of artificial intelligence technology in accordance with the best international standards.

Thirdly, there is a dire need to develop a clear artificial intelligence strategy that speaks to the business goals of the company. This can be done through establishing quantitative and qualitative indicators of measuring the effectiveness of artificial intelligence technologies in corporate boards. Fourthly, a holistic approach to strategic decision-making must be adopted whereby the corporate boards strike a balance between human judgment and artificial intelligence-generated insights.

Interestingly, technology can not replace the knowledge and experience of board members. Lastly, the data privacy and security plan must be formulated to ensure confidentiality and privacy of sensitive information.

Looking forward, although Zimbabwean corporate boards appear to be slow to adopt artificial intelligence technologies in corporate boards, it is imperative to note that artificial intelligence ensures sustainable growth and effective corporate governance in the current 4IR. The corporate boards in Zimbabwe are hereby encouraged to embrace artificial intelligence so as to optimize strategic decision-making by extracting insights from data mining and data analytics.

The collaboration between industry, academia, and government creates a conducive environment for the effective adoption of artificial intelligence in the Zimbabwean corporate boards. To this end, the future belongs to companies with corporate boards that have an inclination towards the adoption of artificial intelligence that is supported by a culture of innovation.

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DIRECTORS' DUTIES AND LIABILITIES

UNDER SECTION 54 OF THE COMPANIES AND OTHER BUSINESS ENTITIES ACT [CHAPTER 24:31]

In 2019, Zimbabwe gazetted the Companies and Other Business Entities Act [Chapter 24:31] (hereinafter, "the COBE Act") which came into effect on 13 February 2020. The COBE Act repealed the Companies Act [Chapter 24:03] 47 of 1951 (hereinafter, the old Companies Act) and the Private Business Corporations Act [Chapter 24:11]. The old Companies Act had been in force for more than six decades. Subject to certain amendments, the old Companies Act was largely archaic, incompatible with international best practices and contemporary ways of doing business. DR FRIEDRICH HAMADZIRIPI

1: Introduction

In 2019, Zimbabwe gazetted the Companies and Other Business Entities Act [Chapter 24:31] (hereinafter, "the COBE Act") which came into effect on 13 February 2020. The COBE Act repealed the Companies Act [Chapter 24:03] 47 of 1951 (hereinafter, the old Companies Act) and the Private Business Corporations Act [Chapter 24:11]. The old Companies Act had been in force for more than six decades. Subject to certain amendments, the old Companies Act was largely archaic, incompatible with international best practices and contemporary ways of doing business.

One of the legislative innovations of the COBE Act is the partial codification of company directors' and officers' duties. This was done to enhance corporate governance standards, the balancing of the rights and corporate responsibilities of directors and shareholders and to promote the accountability of company directors. To this end, every company director and officer ought to be acquainted with the content, meaning and scope of their duties as per the COBE Act, the applicable common law principles and the possible concomitant liability issues. This article analyses section 54 of the COBE Act.

2: Preliminary aspects relating to directors' duties in Zimbabwe

According to section 195(1)-(3) of the COBE Act a private company with more than one and fewer than ten shareholders shall have two or more directors, a private company with ten or more shareholders shall have not fewer than three directors, and a public company shall have not fewer than seven nor more than fifteen directors. At least one director shall be ordinarily resident in Zimbabwe. Any director who is a company's chief executive officer (CEO) shall not also be the chairperson of the board of that company. To this end, CEO duality is not allowed in Zimbabwe.

In addition, according to section 2(1) of the COBE Act, the term "director" includes any person occupying the position of director or alternate director of a company, whatever his or her title. Notably, the definition may not be very helpful as it is tuatologous, open ended and non-exhaustive to include executive and non-executive directors, de facto, de jure, nominee, ex officio and also shadow directors etc. However, it is argued that the legislature might have adopted this one-size-fits-all definition to enhance directorial accountability.

3: Partial codification versus total codification of directors' duties

Partial codification refers to a systematic and authoritative statement of the leading legal principles on a given subject, whether the rules are found in statutes or in common law. Complete codification of the law refers to a process of collating and restatement of the law in a statute undertaken usually to abolish the common. The codification of the law forfeits the flexibility of the common law. By virtue of section 197(2)(a)(i) of the COBE Act which states that company directors who breach their duty of care may be held liable in accordance with the principles of the common law, it is submitted that Zimbabwe has partially codified directors' duty of care, skill and attention/diligence.

The common law relating to the directors' duty of care, skill and attention/diligence will continue to apply in Zimbabwe in areas not covered by the statutory provisions and the courts should always consult established common law principles in complex cases. However, statutory provisions will take precedence over the common law in all matters relating to the directors' duty to act with care, skill and diligence in Zimbabwe. Partial codification preserves the common law to the extent that it does not conflict with the relevant statutory provisions.

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4: Analysing section 54 of the COBE ACT

1. Every director of a company has a duty to perform as such in good faith, in the best interests of the company, and with the care, skill, and attention that a diligent business person would exercise in the same circumstances.Good faith - directors are to exercise the powers conferred on them bona fide in what they honestly consider, not what the court considers to be in the best interests of the company. Directors have more time and knowledge and expertise to evaluate the best interests of the company than judges. The court may not question the merits of a commercial or financial decision of directors. The test of good faith is subjective as it relates to the director's state of mind.Even sole directors can fail to act in the best interests of the company. For example, in the case of Neptune Ltd v Fitzgerald (No 2) 1995 1 BCLC 352 (Ch) the director arranged for the company to make gratuitous/redundancy payments to him on the termination of his service contract with the company.
   The best interests of the company - It is not the business of the court to determine the best interests of a company, that is for the shareholders and directors. There should be reasonable grounds for directors to believe that they were acting in the best interests of the co.
   Care, skill, and attention - impliedly; care, skill and attention are different. Directors are to exercise reasonable care, skill and attention that would be exercised by a person carrying out the same functions as a director and with the same general knowledge, skill and diligence that the director has. Care and skill are influenced by the nature and size of the company and position and responsibilities of directors. The test is partly subjective and partly objective.
   Diligence - attending properly to one's duties. In practice, devoting attention to the company's affairs, proper supervision and mentoring of other company officers and employees, regular attendance of board meetings, acquiring and maintaining sufficient knowledge and understanding of the company's business to properly discharge their duties, signing documents without careful analysis, basic financial literacy, read and understand a company's financial statements.

2. In performing that duty, the director may rely on information, opinions, reports or statements (including financial statements) of independent auditors or legal practitioners or of experts or employees of the company whom the person reasonably believes are reliable and competent to issue such information, opinions, reports or statements.
   Clearly, the reference to 'reasonable belief' implies an objective standard. As such, a director satisfies this requirement if a reasonable person placed in his position would have made the same decision as her/him.

3. Subsec (2) applies only if the person makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that such reliance is unwarranted.
   The COBE Act does not define what a diligent business person is. Company directors in Zimbabwe can rely on sec 54(2) of the COBE Act. Such reliance is only applicable if the person makes a proper inquiry that was required and/or indicated by the circumstances. Notably, the COBE Act does not define or provide guidance on the meaning of a proper enquiry. It is hoped that this would be treated on a case by case basis as circumstances present.

5: Synthesizing the duty of care, skill and attention in good faith in the best interests of the company

A notable cause for concern regarding Zimbabwe's codification of directors' duties is the fusion of the duty of care, skill and diligence with the directors' fiduciary duty to act in good faith and in the best interests of the company.

This approach could confuse company directors regarding the scope of their duties as well as the meaning and application of their duty to act with care, skill and diligence, could also give rise to legal uncertainty and the poor accountability of company directors in Zimbabwe. The duties are different. Firstly, although the same conduct may result in breach of both the fiduciary duty to act in good faith in the interests of a company and the duty of care, skill and attention, the consequences that could be suffered by the offenders are different.

The fiduciary duty is based on a breach of trust and not the commission of a delict or breach of contract. On the other hand, a breach of the directors' duty of care, skill and attention raises a delictual question in the form of negligence. Consequently, this fusion could make it difficult to hold company directors accountable in Zimbabwe.

A court could mistakenly venture into an enquiry of breach of trust when faced with a question of breach of directors' duty of care, skill and diligence because the legislature formulated section 54(1) of the COBE Act in a way that seems as if the duty of care, skill and diligence is a sub-category of the fiduciary duty to act in good faith and in the best interests of the company or vice versa. This could be too onerous for any stakeholder attempting to hold directors accountable considering the current challenges associated with proving any breach of the duty to act in good faith and in the best interests of the company by directors in both Zimbabwe and South Africa.

6: Burden/onus of proof

Traditionally, the plaintiff bears the burden of proving that the defendant had a material personal interest in the transactions and that s/he was not independent. This is a necessary presumption which encourages the exercise of directorial authority through venturesome risk taking and maintains the internal group dynamics within the board of directors. It is submitted that section 54(4) is couched as a presumption to the effect that if a director satisfies the requirements of section 54(4)(a)-(c) s/he will be presumed to have fulfilled the "duty under this section" which includes directorial financial disinterestedness. As such it is argued that the Zimbabwean legislature commendably followed the traditional approach that plaintiffs have the onus to prove the defendant's personal interest in the impugned transaction.

7: Conclusion

The legislature should be applauded for the partial codification of directors' duties in the COBE Act. However, some of the shortcomings highlighted above should be addressed for the protection of minority shareholders and promotion of good corporate governance practices in Zimbabwe. As noted above, there is no direct mention of the duty to act for a proper purpose. Although section 54 is silent about the duty to act for a proper purpose, the incorporation of the duty to act in the best interests of the company includes it. The directors' duties are comprehensive but scattered all over the COBE Act.

There is need for expertise and careful consideration of the meaning and scope of directors' duties lest directors make decisions that could cost the company's financial resources and goodwill. The duties of directors have been partially codified and the common law still applies in instances where the COBE Act is silent and in instances where the legislative provisions are vague. It must be noted that the duty of care, skill and attention is different from the duty to act in good faith in the best interests of a company.

FOR MORE SEE THE BOOK TITLED "ASPECTS OF CONTEMPORARY COMPANY LAW IN ZIMBABWE" (2023) EDITED BY DR FRIEDRICH HAMADZIRIPI www.iodz.co.zw

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CONSTITUTIONAL COMPLIANCE

as good corporate governance practise for the private company in Zimbabwe

Do company directors need to be aware of, and respect important provisions in the Zimbabwean Constitution? And, are there any real and significant risks associated with 'constitutional non-compliance' in Zimbabwe? WRITE JAMES TSABORA

The answer to both questions is an emphatic yes. The breadth and width of the private company has massively grown in the 21st century. Indeed, the company's social, and economic impact have also grown. Productive activities of the private company now contest various aspects of society and in the process, impacting on social life, livelihoods and human dignity. What this means is that the private company no longer function in a closed and isolated space with minimal public regulation. In contrast, it is now a powerful social actor with far reaching impact on society. In this vein, it is inescapable that company directors must appreciate certain provisions in the national Constitution as they navigate away from new forms of legal risks inherent in constitutional non-compliance.

Directors that ignore certain important provisions run the risk of plunging the company into constitutional non-compliance, and thus serious litigation risk. Of all provisions in the national Constitution, the Declaration of Rights and Freedoms (hereinafter referred to as 'the DoR') is the most important. This DoR, sometimes known as the Bill of Rights, contains the fundamental human rights and freedoms of persons, natural or juristic. In application, it is binding to both natural or juristic persons.

Constitutional compliance is thus no longer only a moral choice. Section 54 (d) of the National Corporate Governance Code now requires this. Section 54 provides that the leadership of the Board of Directors must be based on 'complete compliance with, and respect for, applicable laws, especially the Bill of Rights as set out in the Constitution and adherence to non-binding rules, codes and best practice standards."

Several rights can be used to exemplify. Section 65 of the Constitution is the employment rights clause. A company is no longer unrestricted in determining the content of employment contracts since such contracts must respect section 65, which safeguards the right of workers to 'fair and safe labour practises', to be paid a fair and reasonable wage, to form and join trade union of their choice and to just, equitable and satisfactory conditions of work.

The Equality clause in section 56 of the Constitution is another good example. Companies are prohibited from implementing practices such as recruitment, promotion and demotion, transfers, discipline of employees, payment of wages or general treatment of employees in a manner that is unfairly discriminatory. However, section 56 recognises that companies can only practise fair discrimination; they just need to prove that whatever discriminatory practise they implement, it is 'fair, reasonable and justifiable in a democratic society'.

All provisions of the DoR are equally critical for the private company now. Companies are required to respect their officers' rights to dignity, security, freedom from torture, degrading and inhuman treatment,

freedom from slavery and against forced or compulsory labour by the Constitution.

Another illustration can be made on the right to privacy. This right affects companies in several ways. It is a right that affects the relationship between companies and their own employees on company premises or at the workplace. Employees must not share confidential, private information or data of the company to third parties, and the company may not do the same in relation to its employees. Customers must not broadcast private information of a company, since the company has a right to privacy. Finally, the right affects the interactions between a private company and state authorities – state institutions or regulatory bodies may not do the same unless required by a clear law.

On freedom of association in section 58, companies are free to associate with organisations of their liking, or not associate with any organisation they do not like. Examples include membership in Confederation of Zimbabwe Industries (CZI) etc. On a similar note, companies are required to respect their employees' right to freedom of association; or the right of other companies to associate with anyone they choose. Companies are not allowed to craft internal policies or promote practices that outlaw the exercise of these rights by their officers or employees.

The issue of access to information is critical in this Information Age. The right to access to information is mainly targeted to information held by the state. However, companies may be compelled to release held by the company in so far as the information is required for the exercise or protection of a right. The only defence for the company against releasing information is that such information is not required in the exercise or protection of a right. Release of company information is detrimental to company secrets, and directly conflict with the right to privacy, and it is up to the courts to determine how the two rights can be reconciled. Internal company policies must ensure that there are mechanisms to protect and respect this right without damaging the company's operations and integrity.

The right to property in section 71 of the Constitution is critical to private companies – the strength of legal guarantees against arbitrary expropriation of private property is central to the attraction of foreign investment. Accordingly, private companies, local or foreign, are impacted by the nature of protections for property rights, the due process in expropriations and the regime for compensation for loss of property in both cases.

For companies in the agricultural investment sector, and holding agricultural land as assets or capital, directors need to appreciate the power of the state to expropriate agricultural land, the legal mechanisms for protest against the expropriation, the platforms to seek redress and the compensation regime. The relevant provision, section 72, grants the right to claim compensation for expropriated land to indigenous Zimbabweans and beneficiaries of bilateral investments agreements only. Foreign companies that hold land can only claim compensation on improvements on the land, and not the loss of the land itself. In Zimbabwe, the judicial process is explicitly barred from entertaining court challenges brought to request compensation for loss of land by foreign investors, with compensation being available to indigenous persons only.

Apart from rights, section 85 of the Constitution is also very important. This section provides for the question of standing in court (locus standi), chiefly, who can approach the court to protect infringed rights. In terms of this section, five avenues to go to court are created. Firstly, the company whose rights are infringed can approach the court, and demand redress or relief. In the second instance, a company can approach the courts on behalf of another company, or a company that cannot act for itself. Thirdly, any company acting as a member, or in the interests, of a group or class of companies has the right to approach the court in cases of rights violations. Fourthly, a company can approach the courts to vindicate rights and freedoms in the public interest. Finally, any association of companies can approach the courts in the interests of its members. This means that companies that are members of statutory or non-statutory associations can approach the courts where rights of its members are infringed.

Apart from the right of standing, courts are obliged to grant appropriate redress or remedy in cases of violations of rights. These remedies include a declaration of rights and an award of compensation in cases of rights infringements. What this mean in general is that private companies are now direct beneficiaries of the rights and freedoms in the Constitution. Significantly, it means that companies can seek constitutional protection; the marketplace is no longer restricted to the common law causes of action and remedies but also rely on remedies and causes of action in the Declaration of Rights

Conclusion

The Constitution is now a critical legal document for actors in both private and public spaces. Indeed, the private company is now drawn into the limitless horizons established by the rights agenda in the Constitution. What this entails is that the company is no longer a closed space without interest in constitutional rights. Actions of private entities at the market place are now subject to constitutional assessment. Constitutional regulation of the private sector is in the interests of safeguarding the rights of citizens, communities, business and commercial actors and other third parties. In this manner, society directly admit to the social and human impacts of the private sector. Accordingly, company directors must embrace this direction in company law, and take actions that are in compliance with the Constitution.

Women on Boards: Building a Female Talent Pipeline for the Mining Industry

Nowadays, it must be part of the organization's strategy to prioritize gender diversity with the emergence of Environment, Social and Governance (ESG) which requires deliberate effort to report on the social aspect that includes gender mainstreaming. WRITES JESSICA CHONZI

In as much as the mining industry is traditionally a male dominated industry, it is not spared from reporting on gender diversity statistics and initiatives in boards as globally there is a decisive push to create diverse and inclusive working environments and increase women's quota in critical positions.

The gender disparity in the mining industry is alarming as the industry lags behind other sectors in gender diversity in the workplace with estimates of women comprising only 12% of the global mining workforce (EY, 2022). This undoubtably contributes to the small number of women in senior management and board positions.

Locally, extracting from six Zimbabwean mining companies' websites, only 30% percent of women are sitting on boards of directors. The breakdown is as follows:

Mining Company	Male Board Members	Female Board Members	Total Board Members
Zimplats	6	4	10
Bindura Nickel Corporation Limited	6	2	8
Zimbabwe Consolidated Diamond Company	4	3	7
Rio Zim	7	0	7
(Caledonia Mining Corporation (PLC	7	1	8
Karo Platinum	7	1	8
Total	**37**	**11**	**48**

*Source: the respective mining companies' websites, January 2024.

Globally, in 2022, women held 17.6% of director positions within top 500 listed mining companies up from 4.9% in 2012. Across the top 500 listed mining companies worldwide, 27% had no women on their boards, a significant improvement on the position in 2012 when 75.6% of the companies had no women on their boards. In addition, promising improvement has been made with respect to women occupying the board chairperson position. By 2022, 11 women held the role across the top 100 listed mining companies worldwide, a noticeable improvement from 2012 when Cherly Carolus of Gold Fields was the sole female chairperson (White & Case LLP, 2023).

Studies have found that there are a number of positive benefits to gender balanced boards and that a critical mass of 30% or more women at board level or in senior management produces the best financial results (UK Department of Business, Innovation and Skills, Women on Boards, 2011). However, looking at the mining sector globally only 16 of the top mining companies and less than 8% of the top 101-500 mining companies have more than one female director which is a considerable distance from the required 30% "critical mass" driving towards a gender balanced board, and even further from full gender parity.In technical industries that are traditionally dominated by men (mining, construction, oil, gas) the challenge of finding women who have considerable industry experience is not to be underestimated. Men vastly outnumber women majoring in science, technology, engineering, and math (STEM) fields in college. Hence, women are particularly under-represented in STEM education, and consequently, in

STEM careers in the Mining Industry. Many girls and women are held back by societal biases, social norms, stereotypes, and expectations to enroll and pursue STEM subjects and careers.

In order to tackle this challenge, making use of a female talent pipeline will help in recruitment of women in mining to reach senior management and board positions. By definition, a talent pipeline is a cohort of qualified candidates fit to fill future roles that might open up within the company. These could be external or internal candidates. A strong talent pipeline allows any entity to have a better understanding of candidates' skills, qualifications, and fit before they join. This deeper knowledge can lead to more informed hiring decisions and increase the chances that the entity will hire someone who is a good match for the company culture. These warm leads are great for male dominated industries, such as mining, which are characterised by having have fewer women in the industry.

Mr Thomas Lusiyano, a seasoned Mining Engineer and director of several mining companies, averred that the low numbers of women in the mining industry's workforce in general and management positions in particular, results in a restricted talent pool for promotion to executive and board positions. As a direct consequence, the few women sitting on the boards of mining companies are sourced externally, from other industries, capitalizing on the fact that relevant experience and transferable skills (e.g., legal, financial, human resources, audit, and management skills) from other industries such as manufacturing, agriculture, banking, tourism, and general services, can also provide a valuable contribution and much needed diversity and cross-pollination to the board. However, the limited knowledge, experience, and understanding of the unique business models and risks associated with the mining industry by 'externals' can lead to inordinate delay in their ability to provide effective guidance and direction after onboarding. Hence, it is crucial for mining companies to make deliberate efforts to attract and recruit more women in critical positions as part of a deliberate strategy to build a viable female talent pipeline in support of diversity and inclusion in the mining industry. In this way, mining entities will be able to harness the full commercial and social benefits inherent in gender diversity.

It can be argued that efforts to encourage the participation of women in mining starts with motivating young ladies to enroll in STEM subjects through career expos in schools and universities. The career expos will be aimed at equipping young women in the communities with the knowledge of career opportunities in mining, and dispelling the negative stereotypes around the industry, and reframing their attitudes towards taking up certain jobs in the industry.

In an interview with Gloria Zvaravanhu, the Non-Executive Director and Audit Committee Chairperson of Karo Mining Holdings, she highlighted that firstly, an inclusive culture needs to be fostered in the mining industry, buttressed by equal opportunity policies at organisational level that show leadership commitment on gender equality, promote an inclusive environment where everyone feels valued and that also ensure fair treatment and representation of women in the workplace. She noted that part of the culture setting would need the establishment of measurable goals and metrics for gender diversity and inclusion so as to hold managers accountable for progress. Once the culture is set and the goals have been put in place, other strategies can be employed to develop the female talent pipeline in the mining industry.

The executive management level (i.e., the level immediately below the board) can constitute a solid talent pipeline of future female board members, if deliberate mentoring is instituted. Across the top 500 listed mining companies globally, for every two women directors there are three women in the executive management positions. This indicates that there are women at the top level of organizations who are gaining experience that may lead them to a place on the board.

In a conversation with Rose Nhamo, an Independent Non-Executive Director for Bindura Nickel Corporation Limited, she concurred that the executive management level is potentially a solid talent pipeline where women should be developed and groomed in preparation for executive board directorship appointments, hence she urges mining companies to have dedicated leadership development programs for women within the organisations, starting from Graduate Development Programmes. Looking forward, the depth of the pipeline at the executive management level is likely to significantly affect the rate at which women are appointed to board positions.

Diversity policies also assist in building a female talent pipeline. A diversity policy that is disseminated throughout an organization to educate employees on the benefits and importance of diversity, raise awareness levels throughout the organization, and ensure that diversity is one of the key considerations when making appointments makes a huge impact in creating the paradigm shift that is required to catapult deserving women to leadership positions.

A policy like this would also allow companies to set their own gender diversity targets and to be held accountable for those targets. A case in point is Anglo-American which has in place a Diversity Approach as gender diversity is a strategic priority for the group. In recent years, Anglo-American has set in motion a number of initiatives to improve female representation in its workforce, aligned with its vision of being an employer of choice in the mining industry. To promote and replicate internal best practice in the area of gender diversity, Anglo American has a corresponding Gender Compendium that highlights initiatives that have been successful around the world in improving the representation of women in Anglo American's workforce, categorized according to the following 4 strategic themes: establishing a conducive working environment, driving gender diversity through robust workforce planning and recruitment, accelerating gender diversity through employee development, and improving communication and understanding of gender diversity objectives (PwC, 2013).

Developing targeted gender inclusive recruitment strategies to attract female talent by actively seeking out qualified women for future positions through diverse recruitment channels across all levels from board to executive roles is crucial. This can be achieved through collaboration with universities, women's organizations, and professional networks such as PROWEB, Institute of Directors in Zimbabwe (IODZ) and the Institute of People Management in Zimbabwe (IPMZ), to identify and connect with potential candidates.

It can also be argued that investment in Female-Targeted Skills Development is also a strategy to build a veritable female talent pipeline. Mining companies can go an extra mile to provide scholarships and internships for young women enrolling in STEM subjects to give them exposure to the industry from an early stage. Collaborating with community organizations to identify and support female talent within the local community and understand their needs and involve them in women in mining-related activities can also assist in boosting the mining knowledge and skills in women.

As a natural corollary of the above-mentioned skills development strategy, establishing mentorship programs that pair female employees with experienced mentors who can provide guidance and support can be adopted. Since there are limited numbers of female mentors in the mining industry in Zimbabwe, local mining companies can engage female mentors from sister companies internationally on the Mentorship Program. For example, South African mines have made significant strides in promoting women in mining due to the number of laws, and regulations that require or encourage companies to ensure and accelerate the sustainable participation of women in the South African Economy. Hence, mining companies such as Zimplats and Mimosa can leverage on this opportunity and pair mentors with Implats, whereas Karo Platinum can pair with Tharisa Minerals, and Unki Mines with Anglo American Mines worldwide.

From an analysis of leading global companies, it has been observed that ensuring that women get the sponsorship they need to move up the professional ladders has proved elusive for career advancement to the board level. According to Harvard Business Review (2019), too few women are reaching the top of their organizations, and a big reason is that they are not getting the high-stakes assignments that are prerequisite for a shot at the C-suite. Often, this is due to a lack of powerful sponsors demanding and ensuring that they get these stepping-stone jobs. But in order for these kinds of relationships to flourish, both executives and their organizations must be clear about what sponsorship is and what steps they might take in order to ensure women have the full-bloom sponsorship support they need.

Overall, it can be concluded that while tremendous strides have been made in significant areas on gender diversity and inclusivity, efforts to build a female talent pipeline must be continued to achieve the minimum 30% critical mass of women on boards and executive management positions in order to achieve maximum positive impact on company performance. It is expected that the globally increasing scrutiny on companies' ESG practices, coupled with market-led and legislated demands on sustainable practices will lead to the inexorable and irreversible creation of more and better opportunities for women on boards of directors and leadership positions in general.

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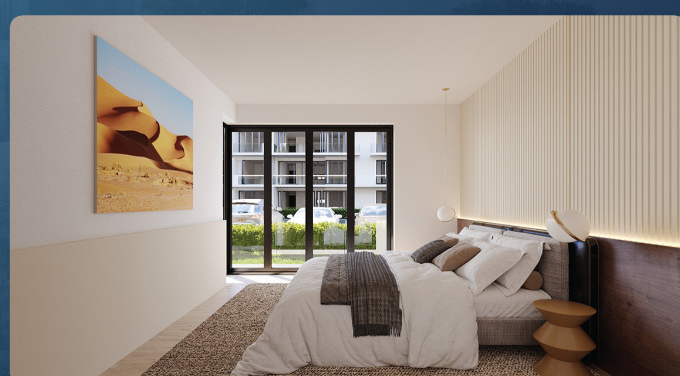

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