

A Review of the Tenure of Boards of Directors in State Owned Enterprises in Zimbabwe.

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Abstract: A trend has emerged whereby every time a new minister is appointed, the boards of state owned enterprises falling within the portfolio of the concerned minister are dismissed and replaced by a new board often perceived to be loyal to the minister. This necessitated a review of the corporate governance framework and tenure of boards of state owned enterprises. A review of the enabling legislation and government policies was done. It was noted that the existing framework does not adequately provide for the security of tenure of boards of directors making boards open to dismissal by the minister at his or her pleasure. Security of tenure of the board will attract professional, competent and independent persons who would otherwise be on those boards but for politics.

Key words: board of directors, corporate governance, tenure of boards of directors

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I. Introduction

A trend has emerged whereby every time a new minister is appointed, the boards of state owned enterprises falling within the portfolio of the concerned minister are dismissed and replaced by a new board often perceived to be loyal to the minister. In this paper I review the Corporate Governance and Public Entities Act, and the policy on corporate governance in Zimbabwe, in relation to the life of a board of state owned enterprises in Zimbabwe.

In this paper, I argue that the tenure of directors of state owned enterprises should be secured. This, I contend will ensure that these directors save in an independent and professional manner without having to play to the whims of the minister. The board should only be removed for good cause. Therefore the reasons for the removal of the board should be disclosed and the concerned board should be given an opportunity to defend itself. It is necessary that parliament through its various portfolio committees or the Committee on standing rules and appointments be involved to ensure that there is transparency and the board is not removed simply because it has refused to do that which the minister wants. The minister must be accountable.

I further contend that if the security of tenure of the board is guaranteed, the state owned enterprises will attract professional, competent and independent persons who would otherwise be on those boards but for politics. As recognized in the framework drafted by the government in 2010, the tenure of the board should not be affected by the change in ministerial appointment. The rationale for this is simple. The board serves the interests of the government being the shareholder representing the public. It does not serve the interests of the minister. It serves the people.

Significance of the paper

The importance of state owned enterprises in the Zimbabwean economy cannot be overemphasized. These state owned enterprises have failed to discharge their key mandates and have drained the fiscus. They continue to do so. Naturally the public is interested in the operations of state owned enterprises because at the end of the day these state owned enterprises are funded by the public through taxes and the public expects these entities to deliver. In the Transitional Stabilisation Policy, the Government said at page 64

In addition, 70 percent of these entities are technically insolvent, presenting an actual or potential drain on the fiscus, owing to weak corporate governance practices and ineffective governance control mechanisms.

379. Furthermore, fiscal risks have arisen from debts assumption by central Government, re-capitalisation requests, and called-up guarantees of public enterprises and local authorities. It went on to say at page 71

415. Poor corporate governance and inadequate oversight of State Entities also created space and opportunity for rent-seeking and other corrupt practices which served to further weaken an already inefficient, undisciplined and costly sector and added yet further challenges with regard to the ease and cost of doing business in the economy.

Thus, the Government identified corporate governance as one of the key factors affecting the performance of state owned enterprises. It committed to reform. But has the Government reformed? I hope that the recommendations I make herein will strengthen the governance of state owned enterprises.

The issue of the tenure of boards of state owned enterprises in Zimbabwe has not been adequately looked into. This may be attributable to the fact that most boards have failed and their dismissal is good riddance. People would want to see the failed board dismissed. The bulk of the literature on corporate governance of state owned enterprises has focused on the appointment of boards.

Background to the Research and Research Context

A trend has emerged whereby every time a new minister is appointed, the boards of state owned enterprises falling within the portfolio of the concerned minister are dismissed and replaced by a new board often perceived to be loyal to the minister. The board serves at the pleasure of the minister. In this paper I discuss the removal of directors of state owned enterprises from office. The aim is to review the adequacy of the present governance framework and make recommendations to strengthen the independence and efficiency of the board through a security of tenure system.

The Energy and Power Development Minister, on 8 July 2019, soon after assuming office, dismissed the entire Zimbabwe Electricity Supply Authority (ZESA) board. The dismissed board was appointed on March 19 2019 by the previous minister. As at beginning November 2019, the minister had not appointed a new board and the state enterprise was operating without a board. Key questions arise. In the absence of a board who gives strategic direction to management? Would this have happened to a private entity? Will would be or prospective board members accept appointment with a possibility of such a humiliating exit barely three months in office? Is the minister accountable to anyone?. Is the minister's decision good for the nation/ stakeholders?

Other ministers have also replaced old boards. The Zimbabwe Revenue Authority (Zimra) board was fired and the Zimra management was directed to report directly to treasury pending the appointment of a new board. The finance minister was appointed on 7 September 2018 and he dissolved the board on 1 October 2018. In an interesting development, the minister of transport and infrastructure development dissolved the Zimbabwe National Road Authority (ZINARA) Board and tasked his deputy with overseeing the state owned enterprise and corporate governance there at. The minister was appointed on 7 September 2018 and the board was dissolved on or about 11 October 2018. The Netone board was dissolved on 10 October 2018 while the National Social Security Authority (NSSA) board was dissolved on 13 October 2018. October was a month of board dissolutions. It is noteworthy that the selection and appointment of a new board is a process which requires time. In the majority of cases, the old board was fired leaving a vacuum. The permanent secretary in the parent ministry then steps in and plays the role of the board often with disastrous consequences.

II. Literature Review

The objective of corporate governance is to ensure managers act in the best interests of shareholders (Nkundabanyanga, Ahiauzu, Sejaaka, & Ntayi, 2013; Verriest, Gaeremynck & Thornton, 2013). A board of directors plays a critical corporate governance role and mitigates conflicts of interests by monitoring activities of corporate managers (Ali & Nasir, 2014; Kilic, 2015; Jan, & Sangmi, 2016; Lee & Isa, 2015). The responsibilities of the board include providing strategic direction to the firm (Nekhili & Gatfaoui, 2013), determination of compensation packages for corporate managers, evaluation of managers' performance (Wang & Hsu, 2013), and enhancements of internal control systems (Lambe, 2014; Maganga & Vutete, 2015). Weak implementation of corporate governance leads to firms' poor financial performance which ultimately leads to corporate failure (Norwani, Mohamad, & Chek, 2011). Without an effective enforcement of the rules and regulations in regards to corporate governance, it will be very difficult for developing economies to attract investment (Agyemang, Aboaye, & Ahali, 2013).

Literature on board appointments is abound. From the extant literature the point has been made that most board appointments in Zimbabwe are characterized by cronyism, patronage and political affiliation and rarely on merit (Chimbari, 2017). A trend has been witnessed whereby political heavy weights who would have lost in elections are appointed to key board positions. The current chairpersons of the national airline, National Railways of Zimbabwe and the ZINARA are former ministers. They served the previous government and assumed new positions without allowing any significant period of time to cool off.

Zimbabwe has a total of 107 state owned enterprises. Zimbabwe has entities wherein it is the sole shareholder while in others it is a majority shareholder. The Government as the major or only shareholder in those state owned enterprises is responsible for the selection and appointment of directors of the boards to the state owned enterprises.

The Corporate Governance Framework of State Owned Enterprises of 2010 provides useful guidelines on the selection, appointment and function of boards of state owned enterprises. It is not law. It was just a framework which the government decided not to fully implement. The Public Entities Corporate Governance Act

(Chapter 10:31), (the Act), regulates the selection and appointment of directors to the boards of state owned enterprises. The Act was promulgated in 2018. It sets out the key considerations in the appointment of board members. Among these considerations are gender and regional balance. The Act does not however adequately deal with the removal of directors from office. The Act simply states that prior to removing directors from office, the concerned Minister shall notify the president and the minister cannot remove the board without the president's endorsement. Section 16 of the Act provides that no board member of a public entity shall be dismissed or required to vacate his or her office unless—(a) he or she has been guilty of conduct inconsistent with his or her membership of the entity; or (b) he or she has become disqualified for appointment to the board; or (c) where he or she was appointed to the board by virtue of having a particular qualification, he or she has ceased to have that qualification; or (d) he or she has failed to comply with his or her conditions of service or with the provisions of his or her performance contract; or (e) he or she, whether individually or together with other members of the board, has failed to draw up a strategic plan or to comply with its provisions or to attain any material objective set out in it; or (f) he or she has been absent, without just cause and without leave of the board or its chairperson, from three or more consecutive meetings of the board; nor, in any such case, unless the line Minister has been given at least seven days' written notice of the intended dismissal or removal from office. In dismissing the ZESA board, the minister suggested that the board lacked urgency and seriousness suggesting incompetence.

The Act envisages that within two months of appointment board members should agree on key deliverables. Failure to deliver on agreed terms will necessitate a dismissal.

III. Discussion

The tenure of board members is a critical issue. Once appointed, the board should be allowed to discharge its mandate without undue interference or fear that it may be fired if it disagrees with the minister. It is damaging and embarrassing for anyone to be fired. This is even so where reasons for the decision to remove one from the board or even the entire board are not given and the removed director or board is not given an opportunity to defend his or her/ its position. Boards of state owned enterprises are selected and appointed by the minister. They serve at the pleasure of the minister. The minister wields immense power. The minister can dismiss the board without giving any reasons to the removed directors or to the public. The law envisages that reasons should be given. It is important to note that, the state owned enterprises are funded by public funds. The public has a direct interest in the affairs of state owned enterprises. It is impossible for the entire population to be involved in the state owned enterprise hence that role is delegated to the executive. The executive must therefore account to the public.

A trend has emerged whereby every time a new minister is appointed the boards of state owned enterprises falling within the portfolio of the concerned minister are dismissed and replaced by a new board perceived to be loyal to the minister. In formulating, the Corporate Governance Framework of State Owned Enterprises of 2010, the government sought to address this challenge by providing in paragraph 3.7.4 that the tenure of the Board shall not, in any way be affected by the tenure of office of the responsible minister. It does appear that new ministers on assuming office their first task is to remove boards of state owned enterprises falling within their portfolios. Often the outgoing board is accused of incompetence, abuse of office or corruption and some board members are even arrested but to date no conviction has been secured.

Security of tenure and independence are intertwined. There is a good reason for the appointment of independent directors in the private sector. Proponents of agency theory advocate for a majority of outside and independent directors (Taktak&Mbarki, 2014). Independent directors are considered to be objective, shareholder focused monitors of management (Cohen, Frazzini& Malloy, 2012; Hassan & Omar, 2015). The presence of independent directors on the board ensures robust debate, gives greater weight to a board's deliberations and judgment (Heravia, Saat, Karbhari, & Nassir, 2011). The directors should be truly independent (Akpan& Amran, 2014). Independence is just but one of the qualities. The board should be independent and competent. Further having an independent board of directors alone without the necessary protection and freedom from political interference may not be effective (Vagliasindi, 2008). Vagliasindi (2008) states

Whereas the government, as the shareholder of state owned enterprises, has a legitimate right to influence state owned enterprises, the scope and extent of influence in practice has been excessive and calls for some limitations, namely appropriate roles for the government includes setting objectives and performance targets, appointing directors, monitoring the performance of the enterprise and its Board. Aside from these intervention rights – which need to be clearly spelled out and publicly disclosed – the remaining authority should sit with a professional Board and management.

It is necessary that there is continuity and institutional memory is preserved. This explains why in the private sector there is provision for rotation in the retirement of directors. This will ensure that some directors who are familiar with the operations of the state owned enterprise will remain in office when the board is reconstituted. Therefore when removing directors from office instead of dissolving the entire board, the minister

should consider the need for continuity. Of course where the board has failed dismally there is no point in retaining failed directors. The exercise of the discretion to fire the board should be used in a reasonable and responsible manner.

In conclusion I contend that Zimbabwe has robust framework for ensuring sound corporate governance in state owned enterprises. There is however need to strengthen the framework by ensuring that Parliament plays an active oversight role. Parliament should oversee the appointment and removal of directors from office so that directors are not removed from office for political reasons but for genuine failures on their part. This will ensure that state owned enterprises attract qualified and competent personnel who will perform their duties with professionalism and integrity instead of seeking only to please the minister.

IV. Recommendations

I therefore make the following recommendations

1. The selection and appointment of boards of directors of state owned enterprises should be done in an open and transparent manner involving the people through their representatives in parliament. It is noteworthy that commissioners for various constitutional commissions are interviewed and selected by a Committee of parliament. The Committee then shortlists successful candidates which it then recommends to the appointing authority. The same procedure should be employed in the selection of directors of state owned enterprises. If this is considered cumbersome for the Committee on standing rules, but should not be, given the importance of state owned enterprises and their cost to the public, portfolio Committees, can play this role. This will ensure that board members are appointed on merit and directors of questionable standing are not appointed. The selection process should be rigorous and so should be the removal process. A rigorous selection process will scare away weak candidates who thrive on appointments. Selection should be based on merit.

I am alive to the fact that this process may be deemed cumbersome given the number of state owned enterprises Zimbabwe has. Zimbabwe is in the process of reforming its state owned enterprises and the number of these enterprises may be significantly reduced as some will be merged while others will be privatized or offloaded.

2. On appointment, the law requires that the directors should be given clear letters of appointment with clearly articulated key deliverables which are agreed with the appointing authority and signed off before assuming office. This will facilitate appraisal of the board. It is necessary that the performance of the board be evaluated regularly and the outcome of the evaluation be communicated to the board for consideration of reply. It is of course difficult to accuse directors of failure when the central government is not performing.

3. Prior to removing directors from office, the minister should inform the relevant committee of parliament which will interrogate the reasons advanced by the minister. This should be part of parliament's oversight role. The concerned directors or board should be given an opportunity to defend its position. This is important in that the deliberations even if the board is eventually dissolved will help the future board.

4. The life of the board should not be dependent on the appointment of a minister. The assumption is that the directors just like any other employees of the state serve the interests of the state and not that of a particular political party.

5. No state owned enterprise should be allowed to operate without a board. Should the minister for a good cause wish to remove the board he or she should have the replacements ready on the removal of the existing board.

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