

# CORPORATE GOVERNANCE: EFFECTIVENESS OF ZIMBABWEAN HARD LAW ON BLOCKHOLDERS' PROTECTION

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## Abstract

The broad objective of this article is to scrutinize the effectiveness of hard law paraphernalia that are there present to protect blockholders of multilateral financial institutions in Zimbabwe. This article focused on descriptive documentary reviews of texts around financial institutions, judicial reports, and Statutory Acts. The study found and revealed that hard laws and regulations yes exist to protect blockholders but the challenge, however, was guaranteeing their enforcement making hard law highly unproductive therefore killing investor confidence in Zimbabwe. The results are quintessential for law enforcement agents, regulators of banks and managers as they need to craft a quality effective management framework on the protection of blockholders' equity which will attract foreign direct investment and that will promote the country's economic development.

**Keywords:** Corporate Governance, Hard Law, Investment, Blockholder, Equity

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## 1. Introduction

The former chairman of US securities Exchange Commission (Arthur Levitt) once said "If a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere. If investors are not confident with the level of disclosure, and legal system capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere." Supporting the above assertion (Sir Adrian Cadbury, UK, Commission Report: Corporate Governance, 1992) also posited that the governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of blockholders, corporations and society.

Corporate governance (CG), phraseology that was only used by a handful academics and shareholders, but has now become the life and soul of business and a staple of discussion in corporate boardrooms, academic meetings, and policy circles around the globe (Becht, Bolton, and Röell, 2003). Two events have led to the heightening of interest in corporate governance. During the wave of financial crises in 1998 in Russia, Asia, and Brazil, the behavior of the corporate sector affected entire economies, and deficiencies in corporate governance endangered the stability of the global financial system (Becht, Bolton, and Röell, 2003). Just three years later

confidence in the corporate sector was sapped by corporate governance scandals in the United States and Europe that triggered some of the largest insolvencies in history (Becht, Bolton, and Röell, 2003). In the aftermath, not only has the phrase corporate governance become nearly a household term, but economists, the corporate world, and policymakers everywhere began to recognize the potential macroeconomic consequences of weak corporate governance systems (Aganin et al., 2003).

The scandals and crises, however, are just manifestations of a number of structural reasons why corporate governance has become more important for economic development and well-being (Becht, Bolton, and Röell, 2003). The private, market based investment process is now much more important for most economies than it used to be, and that process is underpinned by better corporate governance. At the same time, the allocation of capital has become more complex as investment choices have widened with the opening up and liberalization of financial and real markets, and as structural reforms, including price deregulation and increased competition, have increased companies' exposure to market forces risks (Levine 1997; World Bank 2001). These developments have made the monitoring of the use of capital more complex in certain ways, enhancing the need for good and strict corporate governance which is the major reason underpinning this research.

This article will do a documentary review of extensive literature on legality and corporate

governance in Zimbabwean multilateral blockholder's equity. An array of well established body of research has for some time acknowledged the increased importance of legal foundations, including the quality of the corporate governance framework, for economic development and well-being (La Porta and others 1997, 1998). To the best of my knowledge no research has been done under to the topic, "Corporate Governance: Effectiveness of Zimbabwean Hard Law on Blockholder Protection" The article is mapped as follows: It starts with the methodology, definition of corporate governance and a small description of why corporate is on the radar of governance. A general overview of corporate governance and the business environment in Africa and the banking sector in Zimbabwe is going to be discussed. Literature review on the evidence of the effectiveness of Zimbabwean hard law on blockholders' equity protection will also be investigated since it is the soul and life of this study.

The article explores recent research texts documenting on how legal or hard law aspects have impact on multilateral institutions and investor confidence. Texts in documentary analysis can be defined broadly as books, financial reports, book chapters, essays, interviews, discussions, newspaper headlines and articles, historical documents, speeches, conversations, advertising, theater, informal conversation, or really any occurrence of communicative language (Creswell, 2002). The article will conclude by highlighting some main policy and research areas that need further enquiry. The driving force for doing this research is to contribute to the body of research on hard law and governance of corporates especially multilateral institutions issue which has thus far been subjected to insufficient research.

## 2. Research Methodology

The philosophy behind any successful research is determined by the methodology that is used. In this case, the descriptive-document philosophical analysis is the qualitative driving methodological approach in this paper. Flick (2002) states that qualitative methods are those that take the researcher's communication with the field and its members as an explicit part of knowledge production. In this grand method, the researcher's subjectivity in the analysis of contributions with regard to good corporate governance is a process to be respected. Mukusha (2011), on descriptive analysis, notes that the object of descriptive research is to portray an accurate profile of persons, events or situations. Thus, the descriptive philosophical analysis as a method is used to reveal the need for sustainable good corporate governance. This article is based on the documentary reviews of countries' multilateral financial institutions. Documents to be reviewed include financial sector policy documents and research articles carried in

Zimbabwe. Secondary sources information includes the use of multilateral banks' annual reports, the internet, Statutory Acts, judicial reports (from the Ministry of Justice, Legal and Parliamentary Affairs), the Reserve Bank of Zimbabwe guidelines, Banking Association of Zimbabwe (BAZ) reports, statutory Acts, Institute of Directors of Zimbabwe (IODZ) reports, Institute of Chartered Accountant Zimbabwe (ICAZ) journals, Institute of Bankers Zimbabwe (IOBZ) reports, Chamber of Commerce reports, lawyers and financial analysts.

## 3. Literature review

According to (Saunders et al., 2000, cited by Estabrooks, & Degner, 2006) a literature review is the basis for research, its main purpose is to give an insight into what other authors have researched in the same area. This article reviews relevant literature and explores areas of legal protection mechanisms for shareholders evaluated by other authors.

## 4. Defining Corporate Governance

The eighteen century literary titan Samuel Johnson (1709-1784), once said, "Definitions to paraphrase are like watches, none is ever exactly correct (Johnson 1709, cited by Greg, 1997) and vary widely. According to (Tarentino, 2009 cited by Butler, & Butler, 2010) corporate governance addresses the process, system and controls by which organizations operate. It also refers to the relationship between those who are governed and those who govern. On a political front it can be regarded as the relationship between the government and its citizens. But Oman (2001) defines corporate governance as referring to the private and public institutions, including laws, regulations and accepted business practice, which in a market economy govern the relationship between corporate managers and entrepreneurs (corporate insiders) on the one hand, and those who invest resources in corporations, on the other hand.

Others consider corporate governance as simply the prevention of theft (Nganga et al., 2003). Shleifer and Vishny (1996), state that corporate governance deals with the ways suppliers of finance to corporations assure themselves of getting a return on their investment, how they make sure that managers do not steal capital or invest in bad projects. In other words, corporate governance is "the mechanism through which outside investors are protected against expropriation by insiders" (Shleifer and Vishny, 1996). Insiders, according to this definition, include managers, major shareholders (individuals, other firms, family interests or governments) as well as large creditors such as banks. Outsiders include equity investors, providers of debt and minority shareholders. Thus far, the divide in the discussion of corporate governance seems to be between insiders, those that have a management role in the firm (at

either management or board levels) and those that have an interest in the firm but do not have any management roles, generally referred to as outsiders.

Nganga et al., (2003) have indicated the many forms that expropriation can take, including outright theft of assets, transfer pricing, excessive executive compensation and diversion of funds to unsuitable projects that benefit one group of insiders. Because of these forms, it becomes inevitable to prevent expropriation through appropriate corporate governance mechanisms and protect small investors from large ones, as well as debt providers from equity investors. Okeahalam and Akinboade, (2003) argues that although in the literature the discussion seems to centre on the relationships that develop within a firm, specifically concerning managers and investors, the concept of corporate governance is much broader than this. It also encompasses the relationship created between the corporation and a firm with its shareholders, the workforce and at large.

They went on to say that corporate governance also encompasses the setting of an appropriate legal, economic and institutional environment that allows companies to pursue long-term shareholder value and maximum human-centered development, while remaining conscious of their other responsibilities to stakeholders, the environment and society in general (Okeahalam and Akinboade, 2003). Perceived this way, corporate governance (CG) takes a developmental measurement, thus explaining the curiosity that the debate has generated around the world of business. Best corporate governance practice is viewed and now connected with the sophistication of societies. Now the provision of goods across the globe is affected by good governance practices. It is also concerned with the internal processes, systems, practices and procedures as well as formal and informal rules that govern institutions. It concerns the manner in which the rules and regulations are applied and followed, the relationships these rules and regulations determine or create and the nature of these relationships (World Bank, 2003).

From this discussion it is now very clear that corporate governance must not be viewed only as the maximization of shareholder wealth, but an effort to balance shareholder interests with those of other stakeholders, such as managers, employees, customers, suppliers of corporations' inputs and investors, in order to achieve long-term sustainable value and contributing to the economic development of the countries in which the corporations operate (Dyck et al., 2003). Since they are so many definitions for corporate governance this study take the definition by According to (Tarentino, 2009 cited by Butler, & Butler, 2010) where corporate governance should addresses the process, system and controls by which organizations operate and governed by regulators and law.

## 5. Dimensions of legalization

Abbott and Snidal (2000) distinguish harder from softer international law based on three dimensions:

- **Obligations.** Harder law will have a higher degree of legal obligation, while softer law will have weaker or no legal obligation.
- **Precision.** International law may be written in more or less detailed and precise language. Harder law will have a higher degree of precision, while softer law will use more vague, general or abstract wording.
- **Delegation.** Harder law is more likely to delegate interpretation or enforcement to an independent third party (like an international court or tribunal). Softer law is more likely to keep interpretation or enforcement within the parties, allowing more room for political maneuvering.

## 6. Synopsis of corporate governance in Africa

According to Ernst and Young's 2011 "Africa attractive survey" the continent is traditionally viewed as a high-risk continent by international investors. It is often believed that African economies are characterized by macro-economic instability, trade restrictions, and weak institutional environments regarding property rights and the judicial system, and onerous state regulations for economic activities (Imhoff, 2003). In effect, countries that fail to establish acceptable standards of transparency and governance, within the bounds of good laws and an efficient criminal justice system, lose the trust and support of their citizens and the international community. Such countries find it increasingly difficult to attract trade and foreign investment (Lamberti, & Noci, 2012). Foreign investors comfortably assess political risk, business risk, market risk and currency risk but they shy away from risks of lawlessness and corruption that all too often results from poor governance. Both of these last two risks impute unpredictability and volatility (Lamberti, & Noci, 2012).

According to Rossouw (2006) Africa has launched national codes of corporate governance often driven by private sector and private bodies as shown below:

- Ghana (Manual on Corporate Governance in Ghana, 2000);
- Kenya (Private Sector Corporate Governance Trust, 1999);
- Malawi (Corporate Governance Task Force, 2001);
- Mauritius (Report on Corporate Governance for Mauritius, 2003);
- Nigeria (Code of Corporate Governance for Nigeria, 2003);
- South Africa (Institute of Directors, 1994 and 2002 – King Report

- Tanzania (Steering Committee on Corporate Governance in Tanzania, 2000);
- Uganda (Manual on Corporate Governance Codes of Conduct, n.d.);
- Zimbabwe (Principles for Corporate Governance in Zimbabwe, n.d.); and
- Zambia (Institute of Directors of Zambia, 2000) (Rossouw 2006).

Rossouw (2006) confirms that the national codes all emphasize the ethical nature of good corporate governance and special emphasis is placed on the fact that good corporate governance is based on the following fundamental values: Transparency, Accountability, Responsibility and Justice or Probity.

## 7. Nature of Corporate Organizations in Zimbabwe

Zimbabwe got its independence from white supremacist regime in 1980 and has sustained a substantial private sector. The Zimbabwe Stock Exchange (ZSE) was established under an Act of Parliament and the ZSE Act and the Companies Act regulate companies in Zimbabwe. The first stock exchange in Zimbabwe opened its doors shortly after the arrival of the Pioneer Column in Bulawayo in 1896 (Zimbabwe Stock Exchange, 2006). Since Zimbabwe to this date doesn't have a capital market regulator, shares are transferred freely and shareholders' rights are defined in the memos and articles of association (Zimbabwe Companies ACT: Chapter 24:03 of 1996). Zimbabwe has a predominantly English common law system with some Dutch civil law influence; its commercial code is derived from the UK Companies Act of 1948.

The Companies Act (Chapter 24:03) of 1996 and the Zimbabwe Stock Exchange Act of 1996 govern corporate activities in Zimbabwe and is based on common law, to some extent influenced by Roman-Dutch law. (Companies Act (Chapter 24:03 of 1996). All public and private companies are governed by the Companies Act and its regulations. Zimbabwe's financial system by African standards is relatively well developed and diverse. In its role as the arbiter of the financial sector, regulator and lender of last resort, the Reserve Bank of Zimbabwe has a direct and central role to play in bank regulation (Reserve Bank of Zimbabwe 2009). Corporate law is embodied in the Companies Act (1951) and, in the Zimbabwe Stock Exchange Act (1996) and all companies, whether private or public are subject to the Companies Act (Companies Act chapter 24:03 updated). The Registrar of Companies and, the Minister of Justice are empowered to investigate potential violation of this Act (Mangena and Tauringana, 2006).

## 8. The Financial Sector in Zimbabwe

One of the most important sectors of any economy is the financial sector (Chimombe, 1983). According to the above assertion financial markets can be understood as a system composed of individuals and institutions, instruments and procedures that bring together borrowers and savers, no matter the location. According to the Government of Zimbabwe Banking Act Chapter 24:20 (1999), Zimbabwe's financial services sector comprises commercial banks, merchant banks, finance houses, building societies, the People's Own Savings Bank (POSB), credit unions and housing cooperatives, money lenders, numerous insurance companies and pension funds in relation to the above list, further adds venture capital companies, asset management companies, developmental institutions and the Zimbabwe Stock Exchange (Chirozva and Tumba, 2001 and Zengeni, 2011). Commercial banks, asset management companies, unit trusts and microfinance institutions are regulated by the Reserve Bank of Zimbabwe (RBZ), whilst insurance companies and pension funds are regulated by the Registrar of Insurance. The Zimbabwe Stock Exchange is a self-regulating Authority under the direction of the Ministry of Finance although the Securities Commission supervises its work (Tumba, 2001). The People's Own Savings Bank (POSB) is regulated by Ministry of Finance and yet credit unions are under the regulation of the Ministry of Youth, Gender and Employment Creation. With respect to the manner in which Zimbabwe's financial services sector is regulated (Zengeni, 2011) cites Zimbabwe's Minister of Finance, as advocating for a single financial services authority, a regulator that regulates the entire financial services so that the country does not have an eclectic piecemeal regulation where insurance, banks, asset management, equity houses, venture capital and companies listed on the stock exchange, each having its own regulator (Zengeni, 2011).

## 9. Multilateral investors or blockholders

According to Barclay and Holderness (1989), a block holder is someone who owns a large amount of a company's shares and/or bonds, or block. In terms of shares, these owners are often able to influence the company with the voting rights awarded with their holding. For example, if a mutual fund held 10 million shares in a company or 10% of the shares outstanding, they would be a block holder and have considerable influence over who is on the board of directors.

Jones (1992) expatiated that Multilateral banks (MNBs) are banks with physical operations in more than one country. They operate as subdivision or branch offices, wholly owned subsidiaries, joint ventures or strategic partnerships (Naaborg *et al.*, 2004). Naaborg *et al.*, (2004), likens his definition to

Beck *et al.*, (1999), and define a foreign bank in the case where more than fifty per cent (50%) of its shares are foreign owned. Foreign-owned banks played an important role in the development of the financial system of developing countries (Naaborg *et al.*, 2004).

Multinational banks as well as other financial institutions operating in Zimbabwe are governed by the Companies Act of 1996 (Chapter 24:03) and a host of other regulatory laws. A commercial code on corporate governance is available: the Principles of Corporate Governance in Zimbabwe: Manual for Best Practice was published in 2001 and launched by the Ministry of Industry and International Trade. These principles encourage banks to comply with the Combined Code which has provisions for the protection of shareholders. The Companies Act regulates business activities and protects shareholders by making the board accountable to them. Section 196 of the Companies Act provides for an aggrieved shareholder to report to the Registrar of Companies within 30 days. The Registrar of Companies under the Ministry of Justice administers and regulates the Companies Act.

The Reserve Bank of Zimbabwe, as the principal supervisor of all financial institutions, follows its own laws and regulations. There are two pieces of legislation: the Banking Act of 1999 (Chapter 24:20) and the Reserve Bank of Zimbabwe Act 22:15. Two guidelines were also issued in 2004, namely, Corporate Governance (Guideline No. 02 – 2004/BSD) and Minimum Internal Audit Standards in Banking Institutions (Guideline No. 01 – 2004/BSD). Banks are compelled to comply with both the laws and the guidelines to ensure good standards of corporate governance. These laws and guidelines, also called principles, policies, recommendations or codes of best practice are legal mechanisms that greatly help in the protection of foreign shareholders' investments through sound corporate practices by their management and staff.

As at 30 June 2011 Zimbabwe had 4 foreign owned banks namely; Standard Chartered Bank and Stanbic Bank (wholly foreign owned subsidiaries and headquartered in UK), Barclays (67.7% foreign owned), MBCA (78.5% foreign owned) [Reserve Bank of Zimbabwe (RBZ), and Eco Bank Zimbabwe which was given a commercial banking license, effective 15 May 2012 by Reserve Bank of Zimbabwe granted EBZ a commercial banking license, effective 15 May 2012 (Website of Ecobank Transnational, 2012). Total shareholding of multilateral banks; June 2009 (26, 7%), June 2010 (26, 7%) and June 2011 (23, 5%) (RBZ Monetary policy Statement: 2009, 2010, 2011).

Barclays Bank is majority foreign-owned by Barclays PLC. The holding company is publicly owned with headquarters in London, United Kingdom. It also subscribes to the Combined Code. Barclays Bank of Zimbabwe is one of the leading

banks in Zimbabwe and has operated in the country since 1912, (Barclays, 2011). The bank was listed on the Zimbabwe Stock Exchange (ZSE) and is a subsidiary of Barclays Bank Plc, (ZSE, 2011). The bank was among the top 10 most capitalized counters on the Zimbabwe stock exchange and twenty-second companies in the world (ZSE statistics, 2011). The bank has a big commercial banking network giving it presence throughout Zimbabwe, with 39 branches and 45 active ATMs, (Barclays, 2010). Barclays bank of Zimbabwe's corporate banking division enjoys close to 30% market share as it serviced quite a number of the country's listed blue chip companies (New Africa Securities, 2009). Barclays bank just like any other multinational bank operating in the country is well integrated with regional and international investors or financiers, as it is regarded as safe for doing business with. The number of commercial banks rose from 11 in the year 2000, (RBZ, 2001).

As stated above Standard Chartered Bank is a wholly owned subsidiary of Standard Chartered PLC (UK), listed on both the London Stock Exchange and Stock Exchange of Hong Kong. It has sufficient share capital in public hands. The bank is governed by the UK Principles of Best Practice as contained in the Combined Code on Corporate Governance (Financial Reporting Council in June 2006; the Combined Code). Standard Chartered Bank is the oldest and largest international bank in Zimbabwe and is recognized as the leading bank in the country (Akhtar, 2001).

Like Standard Chartered Bank, Stanbic Bank is a wholly, foreign-owned subsidiary of Standard Bank Group and publicly owned with headquarters in Johannesburg, South Africa. Standard Bank Group PLC is listed on the Johannesburg Stock Exchange (JSE) and the Namibian Stock Exchange. Stanbic subscribes to the Code of Corporate Practices and Conduct (King Code). Subsidiary entities within the Standard Bank Group, including Stanbic Zimbabwe, are guided by these principles to establish their respective governance frameworks.

Multinational banks, being wholly owned and majority foreign-owned by shareholders from the 'West', invest their capital in the expectation of a positive return. Investment in Africa, specifically in Zimbabwe, comes with risks: takeovers by government; the inability to repatriate dividends because of foreign exchange controls; confiscation of assets; and even closure. Many questions arise, such as:

- What legal mechanisms exist to protect shareholders' investment?
- Are these legal mechanisms effective?
- Are enforced mechanisms effective?
- If these mechanisms are not effective, what should be done to remedy the situation to attract direct foreign investment (both human and capital) into Zimbabwe?

## 10. Zimbabwe Legal system and blockholder protection

The most prominent vehicle for corporate governance is the legal protection in national laws. The claim is that national legal protections have a profound influence on the willingness to invest resources in firms (Shleifer and Vishny, 1997). In Zimbabwe, the Police are constitutionally mandated to investigate all criminal matters in relationship with financial institutions the cases is brought before the courts for prosecution. When investigating economic crimes, there are other specialized units, that is, officers from the Central Bank (Reserve Bank of Zimbabwe), National Economic Conduct Inspectorate, Forensic Scientists and investigators from Zimbabwe Revenue Authority and the Comptroller and Auditor General (Zimbabwe Anti-Corruption Commission Act 2004).

The Police officers with training work hand in glove with financial institutions when investigating economic crimes and trials takes place in the following courts depending on the magnitude or value of the amounts involved: Magistrate's Court, Provincial Court, Regional Court and High Court (Reserve Bank of Zimbabwe, 2003). The Bank Use Promotion and Suppression of Money Laundering Act, Chapter 24:24 empower Police to recover proceeds of crime in whatever form (cash or assets). When freezing money, the Police apply for a subpoena through the courts and the court issues the subpoena instructing the bank or finance house to freeze the money involved. In Zimbabwe, most multilateral banks have security departments. The security departments receive all reports of criminal activities and the department keeps the Police telephone numbers and they in turn contact the Police who would have been attached to banks for three months learning computer systems and banking systems. So that they are well versed in investigating these economic crimes since information is stored on computer.

There are a number of regulations in place to control economic criminal activities and protect shareholders' investment. These are:

1. Prevention of Corruption Act, Chapter 9:16
2. Serious Offences Act, Chapter 9:17
3. Exchange Control Act, Chapter 22:05
4. Insurance Act, Chapter 24:07
5. Banking Act, Chapter 24:01
6. Reserve Bank Act, Chapter 22:15
7. Criminal Procedure and Evidence Act, Chapter 9:07
8. Postal and Telecommunications Services Act, Chapter 12:02
9. Sales Tax Act, Chapter 23:08
10. Audit and Exchequer Act, Chapter 22:03
11. Companies Act, Chapter 24:03
12. Public Accountants and Auditors Act, Chapter 27:03
13. Building Societies Act, Chapter 24:02

14. Bank Use Promotion and Suppression of Money Laundering Act, Chapter 24:24

The Zimbabwe government has put in place some administrative regulations of economic activities like the National Economic Conduct Inspectorate, Zimbabwe Revenue Authority and the Anti-Corruption Commission.

Multinational banks (Standard Chartered Bank, Stanbic, MBCA, Ecobank and Barclays) adhere to the principles and provisions of the Combined Code on Corporate Governance. They also subscribe to the Basel Committees' views and standards on legal corporate governance and protection of shareholders as recommended in the Basel II Banking Regulations (Reserve Bank of Zimbabwe, 2003). These multilateral banks are also governed by the Code of Best Practice developed by the Commonwealth Secretariat and derived from the corporate governance code of the Organization for Economic Co-operation and Development (OECD, 1999). The OECD's Principles of Corporate Governance represent the minimum standards that countries agree upon, without being prescriptive and binding.

They are equally applicable to countries with civil and common law traditions such as Zimbabwe (OECD, 1999). The OECD principles encourage the rights of shareholders (and others) to receive relevant information about the company in a timely manner and equitable treatment of foreign shareholders, among other things. Multilateral banks are also subject to the principles and provisions of the Commonwealth Association for Corporate Governance Guidelines: (Principles for Corporate Governance in the Commonwealth, 1999). The Reserve Bank of Zimbabwe plays an important role in promoting effective corporate governance for banks and similar financial institutions it regulates. The Reserve Bank of Zimbabwe has a strong interest in ensuring that there is effective corporate governance at every bank and financial institution (Reserve bank of Zimbabwe, 2011). However, the excessive supervisory powers vested in the Central Bank are cause for concern by multinational banks. The banks assert these powers are prone to abuse as is currently evidenced where guidelines, policies and codes which are highly 'perishable' are enacted and issued at short notice and with immediate effect (World Bank, 2003).

## 11. Commercial Arbitration Centre as Alternative courts

Foreign shareholders can approach the courts directly if their statutory rights are allegedly violated for protecting their rights. In cases of redress against violations (statutory remedies), the Commercial Arbitration Centre (CAC) provides effective alternatives to the courts as a means of recourse for aggrieved shareholders (Banks & Banking Survey, 2006).

The establishment of the CAC in July 1995 has gone a long way towards complementing the administrator of justice in Zimbabwe. Arbitration is now regularly chosen by shareholders of multinational banks as the means of resolving commercial disputes and the superior courts have an enviable record of enforcing arbitrage agreements and awards expeditiously, economically and reliably although some analysts have expressed concern about the effectiveness of the CAC as it only sits as an arbiter in cases where both parties to a dispute have agreed to arbitration in the Articles of Association (Klapper, and Love, 2004).

## 12. Property rights uncertainty

According to a Business and Banking Survey (2006) there is a lack of security on property rights that currently permeate the banking sector following the Indigenization and Economic Empowerment Act, (2008) programme which was after the nationalization or indigenization of foreign-owned banks (Indigenization and Economic Empowerment Act, 2008). The new bill on property rights states that all multinational companies, including banks operating in Zimbabwe, should compulsorily dispose of a stake of their shareholding to locals in a 51:49 ratio in favor of the locals.

The law gives Zimbabweans the right to take over and control many foreign owned companies in Zimbabwe. The law defines an indigenous Zimbabwean as “any person who before the 18th of April 1980 was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person (Indigenization and Economic Empowerment Act, 2008). According to the World Bank’s Doing Business (2012) report; multilateral banks adopted a conservative stance evidenced by the withholding of foreign investment into the Zimbabwe subsidiary. Uncertainty about property rights has played a significant role in dampening investment in the economy (World Bank’s Doing Business, 2012). Courts are a last resort for shareholders due to their ineffectiveness in protecting shareholders’ rights and so multinational banks have experienced the absence of foreign participation, technology transfer and skills shortage because of intellectual capital flight.

## 13. Institute of Directors Zimbabwe (IoDZ)

Most of the multilateral banks are active members of the IoDZ, a body with corporate governance that is gaining recognition in the country largely due to its efforts of promoting the principles set out in the Cadbury Report of UK, the King Report of South Africa and UK Code of Best Practice developed by the Commonwealth Secretariat and derived from the OECD’s Corporate Governance Code (IoDZ, 1993).

This body (IoDZ) is also responsible for monitoring compliance of governance principles of member organizations and has been actively participative in boosting shareholders activism in Zimbabwe (Banks & Banking Survey, 2006). Multilateral banks are also members of the Bankers Association of Zimbabwe, which is a coalition of banks in Zimbabwe which actively seek to protect shareholder investment as shown in an article of the Banks & Banking Survey 2006.

## 14. Law enforcement challenge in Zimbabwe

According to the Banks & Banking Survey (2006), corporate governance is not credible unless laws are applied effectively. And for this to happen, regulators must have sufficient authority and resources. The review of the regulatory framework for multinational banks in Zimbabwe indicates that, in most cases, reasonable regulations have been put in place to achieve the key objectives of corporate governance, particularly in the areas of board composition, disclosures, board sizes and internal audit committees’ independence (Banks & Banking Survey, 2006). However, the effectiveness of these rules depends on the ability of the regulatory agencies to enforce, that is, to execute a process that provides restitution when rules are broken.

Anecdotal evidence indicates that enforcement of rules and regulations is increasingly challenged by a weak judiciary system, making it difficult to obtain convictions when rules are violated. Thus, banks or financial regulators can work hard to administer the law and identify violators but the normal process of enforcement is not equipped to apply the new laws. The commercial law system in Zimbabwe is thus perceived to be inefficient (Banks & Banking Survey, 2006).

Enforcement of laws via courts assumes that: courts have resources to handle cases in a timely way, and judges understand the banking sector and new legal concepts well enough to enforce the law. The Banks & Banking Survey (2006) has not that the judiciary in Zimbabwe is plagued by weaknesses that include:

- Politicization and lack of independence
- corruption and low remuneration (low morale)
- Too few judges, staff and lawyers with little commercial expertise (brain drain)
- Ignorance of the legal system, hence a slow and patchy process to obtain a satisfactory resolution due to backlogged courts, and
- Bias or selectivity in judgments due to corrupt court officials and judges.

## 15. Findings

To a large extent the legal and institutional framework for effective corporate governance, including the

protection of foreign shareholders, exists in Zimbabwe by virtue of laws such as those related to Companies Act, Banking Act, and various Codes. The problem, however, lies with enforcement, which appears to be weak or non-existent in most instances (World Bank's Doing Business, 2012).

## 16. Conclusions

The banking sector appears generally to be over-regulated, volatile, risky, corruption-infested, and susceptible to political interference through takeovers by the government (nationalization) or closure by the Central Bank at any time. The regulatory framework for the protection of foreign shareholders is there and only needs enforcement for it to be effective. The legal framework in Zimbabwe needs to be improved to ensure that banks play a more active corporate governance role albeit laws and regulations, particularly, those relating to bankruptcy, are difficult to enforce. Even where collateral is available, it is not easy for banks to realize such collateral.

As argued by Cooter (1996), among others, who emphasizes that there needs to be social support for legal reforms to have an impact. In states and/or locations where laws are consistent with social norms: 'the law is obeyed out of respect. Under such a system, private citizens supplement official enforcement of the law, which is critical because officials lack the information and motivation to enforce the law effectively on their own.' Critically, Cooper argues that legal protection will simply be ignored where the legal protection is inconsistent with social norms. The Central Bank has too much power at executive and supervisory levels, which is prone to abuse. This is to the detriment of the shareholders as well as the entire national financial system. Internally, the legal mechanisms and the structure of banks to protect shareholders are highly robust and effective. The CAC's effectiveness is limited to those entities with arbitration clauses in their Articles of Association.

## 17. Recommendations and areas for further research

Through its various ministries, for example, the Ministries of Industry and International Trade, Justice, Legal and Parliamentary Affairs, the Zimbabwean government should consider adopting and upholding the rule of law and court decisions. The government needs to abide by the rules of the Constitution carefully and strictly (Banks and Banking Survey, 2006 Bulletin). The rule of law helps to attract foreign direct investment, increase shareholder investment and protection, promote activism in the economy and offer a safe haven for foreign shareholder investment.

This will greatly help to resuscitate all sectors of the economy, including the banking sector, which

happens to be key in financial intermediation. There is a need to strengthen the enforcement mechanisms of regulatory instruments and the judicial system to restore shareholder confidence in the rule of law (Banks and Banking Survey 2006 Bulletin). Government needs to show political will by committing time and money to the processes and structures of protecting multinational companies and their shareholders. Community watchdogs for example the establishment of strong monitoring and watchdog organizations on corporate governance and shareholder protection can also be an effective legal protection mechanism capable of protecting shareholder value and investment. Two areas of further research are suggested (a) The relationship between shareholder activism and bank performance, (b) Blockholdism, corporate governance and bank performance.

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