

# The Agent/Stewardship Corporate Governance Analysis Of Soes In Zimbabwe's Ict Sector

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## Abstract

The paper examined the agent and stewardship models in light of corporate governance breaches in Zimbabwe's SOEs in the ICT sector. SOEs have been plagued with accusations of poor corporate governance practices. In the agent and steward theory, directors as dictated by Zimbabwe's Companies And Other Business Entities Act [Chapter 24:31] (2020) and Zimbabwe's Public Entities and Corporate Governance Act [Chapter 10:31] (2018) are deemed to be agents and stewards respectively, care takers, thus having the common law duties of care, trust and acting in outmost good faith on behalf of the company. Zimbabwe has seven SOEs in the ICT sector, this paper inductively assessed the four major ones namely, NetOne, TelOne, PowerTel, and Telecel. The paper was guided by the two forenamed statutes which govern the four SOEs. It identified the key tenet duties of a director from the statutes, anchored by the agency theory and the stewardship theory perspectives in governance vis a vi the interviews executed on the four SOE boards and the State actors. The interviews identified the breaches in corporate governance in the boards. These were in turn examined in the eyes of the agent and stewardship models. The paper revealed that these two models, whilst ideal are susceptible to breaches, creating a hub for corporate malfeasances and defected agents. Good corporate governance equates good business. It sends a good signal to the outside world of prospective investors.

**Keywords:** Corporate Governance, Thematic Analysis, Stewardship, Agent, the Act, SOEs Act.

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## 1. INTRODUCTION

The National Code on the Corporate Governance in Zimbabwe (2014) (hereby by known as the Code) provides no precise definition of corporate governance. The Code is applicable to all entities in Zimbabwe. The Public Entities Corporate Governance Act [Chapter 10:31] (2018) (hereby known as the SOEs Act) also does not provide a precise definition. The SOEs Act is applicable to all State Owned Enterprises in Zimbabwe. It requires that public entities honour good corporate governance and that:

1. The board of every public entity shall conduct the business and affairs of the entity in accordance with- (a) the provisions of the Good Corporate Governance Code, where the entity is a public commercial entity; and (b) such of the principles of good governance set out in the Second Schedule as are applicable to the public entity concerned, where it is not a company' (Section 26).

**The King IV (2016) of South Africa defines corporate governance as:**

'...The exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes...Ethical culture, Good performance, Effective control, Legitimacy' (p11).

Indeed corporate governance is whereby one attains ethical culture, good performance, effective control and

legitimacy through the use of ethical and leadership by the governance body (King IV, 2016). It balances the economic and social goals and between communal goals and individuals in an agency settings.<sup>[1]</sup>

SOEs are mandated by the government to serve the needs of the citizenry. SOE's in Zimbabwe suffer from poor leadership both at board and management levels. They are riddled with insurmountable debts and saddled with heavy boards. Weak corporate governance structures, poor levels of transparency, accountability and poor internal control mechanism are prevalent.<sup>[2]</sup> In the 80s and 90s decades SOEs contributed more than 40% of Zimbabwe's Gross Domestic Product. This pales in comparison to the years 2011-2015 where losses had doubled in Zimbabwe's 107 SOEs. The Postal and Telecommunications Regulatory Authority's (POTRAZ) fourth quarter reports for year 2019 reveals that SOE in ICT sector lagged behind, sluggish in performance. The mobile network operator Econet Wireless (a non SOE) had 82.1% of the total ITC sector revenue. The remaining 18% went to the SOEs and minor private players. POTRAZ is the chief regulatory authority for the telecommunications industry in Zimbabwe.

Company Law requires that directors should be accountable to their shareholders. Inherently directors have fiduciary duty.

Fiduciary requires trust. This effectively means that directors are in a position of trust and are therefore stewards. Thus, in Zimbabwean law, directors' duties are based on stewardship theory. This duty is higher than that of an agent as the person must act as if he or she were the principal rather than a representative (the Companies and Other Business Entities Act [Chapter 24:31] (2020)). Successful SOEs require good corporate governance practices. This equates to good business. The empirical framework was anchored by the agency and stewardship theories, the regulatory SOEs Act and the Companies and Other Business Entities Act [Chapter 24:31] (2020) (hereby onward referred to as the Companies Act). They all deal with directors' duties and obligations. Board instability creates institutional instability and institutional deficiencies. Failing/ailing SOEs translate into poor services/low quality products and inefficiency. The end result is out of reach expensive products/services. The two forenamed statutes govern the four SOEs. It identified the key tenet duties of a director from the statutes, anchored by the agency theory and the stewardship theoretical perspectives in governance vis a vie the interviews executed on the four SOEs board of directors and the State actors. The interviews identified the breaches in corporate governance in the four. These were in turn examined through the lenses of the agency and stewardship theory(s). Underperforming SOEs bleed the economy Good corporate governance practices attract potential investors. Good corporate governance practices can curb agency costs.<sup>[1]</sup> Tricker<sup>[3]</sup> posited that company law requires that directors should act in the fiduciary interests of the shareholders. Boards have the responsibility to enhance sound corporate governance structures and systems are in place.

## 2. LITERATURE REVIEW

This reviewed the agency and the stewardship theory(s). These two theories were used in the Results and Discussion Section.

## 3. THE AGENCY THEORY

This is based on the nature of the agent –principal relationship. This relationship arises when the principal (shareholder) arms the agent (manager/director) with a mandate.

The latter is given agency fees as reward. However the agent is said to have defected if they pursue their own self interests. As of consequence principal incurs agency costs.<sup>[4]</sup> Within this relationship, the problem arises when the agent acts in breach of the mandate and pursues self interests at the expense of the principal.<sup>[5]</sup> Under the agency theory:

'...human behaviour is assumed to be essentially self-seeking and self-focused and management 'enjoying' a privilege control of information over shareholders, this control is assumed to manifest in sub-optimal decision making (from the shareholders perspective)' (Fisher and Lovell, 2006; p360)

Due to the quirky nature of this relationship agency costs arise. These are inevitable borne by the principal. Agency costs arise in two forms. Firstly, it is a task to monitor the said agent and routine activities of the agent in the pursuit that the agent consistently acts in the principals' best interests at all times. Second, the principal and the agent may suffer from different attitudes towards risks (ibid). It is argued

that under this model shareholders do not have enough control.<sup>[6]</sup> Due to the unbalanced nature of this relationship, it is arguably the principal who suffers. The key to most economists is efficiency.<sup>[7]</sup> It is assumed efficiency leads to profit maximization. Efficiency is compromised when the agent breaches the principal's mandate (ibid). Hardwick and Letza<sup>[7]</sup> emphasised the need to maximise both the principal and the agent's utility whilst recognizing the fact that the former and latter, by their nature, are on opposite extremes. Thus a need arises for congruency between the principal and the agent's goals. The solution, according to the agency theory, is to offer more incentives to the agent. The rationale being that the more incentives the agent gets, the more the agent is incentivized to act in the best interests of the principal (ibid).

The principal-agent theory is widely used to explain why closely-held firms have better economic performance than do publicly owned firms.<sup>[8,9]</sup> It is therefore argued that public organizations are inefficient, as they are state owned compared to the private held capital ownership enterprises. It is argued that public entities as in state owned lack market discipline. Due to the lack of market discipline, managers in public enterprises can pursue self maximization at the expense of the principal (the State). There are more incentives in private owned entities. These are designed to make that the agent be it the manager or director does not defect. These incentives are arguable the restraints that caution and keep the agent at within its terms of remit.<sup>[10]</sup> The agency problem also suffers from what is known as asymmetric information in that the agent has more information than the principal. The principal becomes weak in the sense that information is power. This therefore effectively means that more power rests with the agent. Information therefore creates power dynamics. The principal that is the shareholder cannot monitor the agent at all times. It is impossible and time consuming. The argument is that if the principal can say monitor the agent at all times, then what would be the use of hiring an agent. Agents are hired by the principal as the former might not have the time and expertise but the money to finance the mandate.

Companies can monitor the activities of an agent through various corporate governance mechanisms.<sup>[11]</sup> Good corporate governance mechanisms create a stable environment for both the agent and the principal. Poor corporate governance mechanisms foster an opportunistic environment. The agent is said to have defected if it pursues self maximization at the expense of the principal. The principal has to maximize the rewards in order minimize the temptation to defect.<sup>[12]</sup> This can be viewed in the eyes of the Games Theory/Prisoner's Dilemma (ibid).

## 4. STEWARDSHIP THEORY

This argues that managers/directors are trustworthy individuals who do not necessarily act to maximise their self interests. The theory argues that managers seek to maximise the shareholders interests with other reasons such as intrinsic values being the driving force.<sup>[5]</sup> Furthermore, it is argued that the divorce from ownership and control does not necessarily lead to conflict of interests but promotes management growth and professionalism. This, in turn,

enriches the shareholders' returns (ibid). In the steward theory, directors as per the Companies Act are stewards and deemed caretakers of the company. They therefore have the common law duties of care, trust and act in outmost good faith on behalf of the company they work for as agents. (www.sundaymail.co.zw). under this theory managers are viewed as keen in acting in the best interest of the principal. It is argued that they are motivated by intrinsic needs and are not driven by monetary incentives. In this case boards and executives of SOEs have the responsibility to ensure success and viability of the organizations they superintend over. Personal motivation is key driver under this theory. It is assumed that managers are benevolent and are not blinded by greed.

The steward theory assumes that managers are happy as employees pursuing the principal's best interests at all times (Chambers and Cornforth 2010). Other reasons such as peer recognition and respect may be the driving force. Intrinsic value is what drives them, that personal inner satisfaction (Okpara n.d). This can be likened to Immanuel Kant principle of goodwill, the willing to be good. It is argued that this stewardship theory's weakness is that it assumes the benevolent humankind and ignores that sometimes it has frailty as it can succumb to temptation. Not everyone is good, not all managers/directors are good, good stewards. One cannot assume benevolence in all.

## 5. MATERIALS AND METHODS

The selected sampled consist those having the relevant background in corporate governance namely the SOEs board of directors (BD) (sitting directors and the vacated ones), the Permanent Secretary in the Ministry of Information Communication Technology. These were interviewed through semi structured questions. Thematic analysis (TA) was used. TA can be used to analyse most types of qualitative data including data collected from interviews, focus group discussions and surveys. Braun and Clarke<sup>[13]</sup> argue that it compatible with social constructionist, post structuralist and critical approaches to research. It is usually applied to a set of texts, such as interview transcripts wherein the researcher closely examines the data to identify common themes, topics, ideas and patterns of meaning that come up repeatedly;

"TA is a method for systematically identifying, organising, and offering insight into, patterns of meaning (themes) across a dataset. Through focusing on meaning across a dataset, TA allows the researcher to see and make sense of collective or shared meanings and experiences. Identifying unique and idiosyncratic meanings and experiences found only within a single data item is not the focus of TA."<sup>[14]</sup>

An inductive approach to data coding and analysis is a 'bottom up' approach as it is driven by what is in the data. This means is that the codes and themes derive from the content of the data themselves – so that what is 'mapped' by the researcher during analysis closely matches the content of the data. In contrast, a deductive approach to data coding and analysis is a 'top down' approach. The researcher brings to the data a series of concepts, ideas, or topics that they use to code and interpret the data. This effectively means is that the codes and themes derive more from concepts and ideas the researcher brings to the data and what is 'mapped' by the researcher during analysis does not necessarily closely link to the semantic data content.<sup>[14]</sup>The inductive was employed.

Four (4) Chief Executive Officers (CEO1-4) from Telecel, TelOne, Powertel and NetOne were interviewed. Five (5) former directors and eleven (11) sitting non-executive were also interviewed (TelOne 3), Powertel 3), NetOne (3) and Telecel 1) (BD1-BD16). A third of the directors were new to the boards. The Permanent Secretary represented the parent Ministry (P1). Data analysed thematically provides an adjustable theoretically and reachable stance when qualitative data is analysed. Six steps were followed when data was analysed thematically (see Braun and Clarke, 2014) and these are familiarisation of data; generation of initial codes; searching of themes; reviewing themes; defining themes and the write up. Verbatim quotations were italicised where appropriate. All the respondents had at least an academic qualification ranging from a Masters degree to PhDs.

## 6. RESULTS AND DISCUSSION

This section is split into two. The first is the results of the interviews conducted on the CEOs and directors. The second part is the resultant discussant.

### RESULTS

#### Corporate governance:

'...defines policies, procedures and systems by which companies are managed and directed. Important issues around governance hinges on transparency and accountability which are crucial for the success of any organisation. For good governance to prevail in SOEs, the SOEs Act should be revisited and corrected on a lot of anomalies by experts in governance since it is not clear, for instance, reporting structure and roles (PS1)'.

The majority of the directors highlighted that integrity was of concern in some of the SOE's. It was posited that some of the directors did have all the attributes of being good board members, in pursuit of best practice. It is however in the long run, that they tend to maximize their own self interests:

"In the past and present, political interference in the choosing board members and other executive directors in SOEs is still a problem. Some CEOs and board members abuse the companies' resources. Some members are recruited to become board members without the requisite qualifications and experience and this has been a serious phenomenon" (BD2).

This means loss of integrity and ethical values when the agent (director) defects and pursues self maximization. It was posited that good corporate governance when put into best practice includes:

'... the prevention of self-seeking CEOs' dominance; elimination of the risk of wrong or misleading financial disclosure; success is guaranteed; improves the confidence in the entity' executives; long term investments are encouraged; decrease of the likelihood of the risk pertaining to the reputation of the entity as well as that good governance is connected to good and ethical leadership. As long as BDs are serving on numerous boards, corporate governance cannot be enhanced due to the fact that such systems will end up impeding their effectiveness since they will not have ample time for board tasks' (PS1).

The findings reveal instances political appointments are made to those without requisite expertise, skills and proper qualifications:

"Another obstacle is that of the composition of the board.

The board of directors in most SOEs in the ICT sector do not have people with finance and auditing skills, human resources expertise and we anticipate to see more people of these in our boards and also given the fact that telecommunication being a complex sector, we anticipate to see telecommunications engineers in the boards" (CEO3).

Divergent interests between the CEO and the board is a common occurrence. This hampers and misaligns the entity. The SOEs Act, ideally meant to govern the operations of SOEs is grey on reporting structures, and duties. For example, the roles and functions of chairman and the directors are not given. It is not clear how SOEs and even Ministries relate to the Corporate Governance Unit (CGU). The CGU is the corporate governance regulatory authority for SOEs in Zimbabwe (as per section 6 of the SOEs Act). It was noted that there was no clarity on the SOE oversight functions exercised through multiple agencies by Government, namely the Ministry of Finance and Economic Development, Office of the President and Cabinet and agencies such as Zimbabwe's State Enterprises Restructuring Agency (SERA). They all exercise oversight. Arguably this creates conflict. This can lead to an SOE pursuing multiple conflicting goals. One can posit that accountability to all means accountable to none. It is virtually impossible for one to be accountable to all:

"The Act meant to govern the operations of SOEs is proving difficult to operationalise because it is not clear and explicit in terms of whom does what. The reporting structure is not clear and is causing confusion as to what SOEs should report to the Corporate Governance Unit (CGU) and what they should report to the line Ministry" (PS).

The four CEOs noted that most SOEs in the ICT sector changed their board of directors often in the years 2016-2021. This posed threats to institutional stability. It was also noted that shareholder engagement was intermittent. To counter this Government needs to be actively engaged as the principal to ensure accountability of the SOEs are accountable.

## 7. DISCUSSION

The abuse of power and authority by some of directors is a breach in the agency theory. Directors and CEOs are given huge trust with huge responsibilities in their positions as stewards of public resources in SOEs. In their fiduciary duties as trustees, they need to exercise the duty of care and skill (as required SOEs Act). The boards and their CEOs must be held to account to the principal. They are after all, agents of the SOEs, stewards. Opaqueness harbours corrupt illicit tendencies. The common law and the statute (the Companies Act) impose onerous duties (heavy and burdensome) on directors. These are as follows:-

- i) Duty to exercise due care and skill.
- ii) Duty not to make secret profits.
- iii) Duty to consistently act in the best interest of the Company.
- iv) Duty to act *intra vires* (in good faith).
- v) The duty to disclose
- vi) The duty not to have any personal interest that conflict with the interests of the company
- vii) The duty to exercise independent discretion.

The principal has to maximize the rewards in order minimize the temptation to defect.<sup>[12]</sup> This can be viewed in the eyes of the Games Theory/Prisoner's Dilemma (ibid).

## Section 54 of the Companies Act charges:

'Duty of care and business judgment rule (1) Every manager of a private business corporation and every director or officer of a company has a duty to perform as such in good faith, in the best interests of the registered business entity, and with the care, skill, and attention that a diligent business person would exercise in the same circumstances'.

Good corporate governance lowers investment risks. The State must take the lead in supervision and surveillance of the SOEs. This will prevent pilfering, errant boards and other malfeasances. The absentee landlords system should be discouraged. It leaves the agent unsupervised. It is argued that a rationale being acts in rationale way. An unsupervised agent in the long run would naturally be tempted to defect and maximise their own self interests. This is largely due to the fact that in the long run, it becomes self defeating to be maximising the interests of a constantly absent landlord. According to the SOEs Act Sec 31 (2a):

'Members of boards of the public entities shall be appointed for their knowledge of or experience in administration, management or any other field which is relevant to the operation and management of the public entities concerned... have an appropriate diversity of skills, experience or qualifications for managing the entity, including skills, experience or qualifications in the fields of law, accountancy and one or more of the engineering disciplines' (Part III, Section 11).

SOEs serve the utilitarian need. They are supposed to remain competitive and sustainable, provide a service/ or good at an affordable price to the public. It tricky to balance unlike a private entity which is not public duty bound but serves the needs of private shareholders.

One can posit that directors in SOEs should adopt principles based corporate governance approach rather than the instrumental principle approach. Principle based approach rises the need good ethical practices in the boardroom. Principle based approach to corporate governance necessitates good ethical practices, the upholding of good principles. This means letting go of the Machiavellian boardroom practices in favour of the Kantian's goodwill.

## 7. CONCLUSION

Inefficient institutions breed more costs in their struggle to provide the public good/services. Sustainability is the key to any business enterprises. SOEs need to be sustainable, viable and competitive. This is their ultimate utopia. The SOEs Act can result in enhanced corporate governance, transparency and accountability. One weakness of the Act is that it does not fully apply to ministries and government departments. Ironically these are supposed to be enforcers of good corporate governance in SOEs. The SOEs Act has the potential to enhance good corporate governance behavioural practices. It needs more detailed supervision to ensure active compliance. Good ethics (Kantian ethics and altruism) should be instilled.

Transparency and openness of the process remains the key. Accountability creates transparency. Transparency creates openness in institutions, processes and procedures.

The State should also take an active lead in the surveillance of SOE through its regulatory institutions. The regulatory institutions should be strengthened, emboldened. Passive surveillance is akin to an absentee landlord. Government should be proactive as the major shareholder and institutional investor. It is after the principal in the agent settings. The SOEs and the regulatory institutions are all agents in the ICT regulatory sphere, all representing the principal (The Government).

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