“How the New National Code ("ZimCode") of Corporate Governance ("CG") will contribute to sustainable development”.?

Presented by
Canaan Farirai Dube
Chairman of the Zimbabwe Leadership Forum (ZIMLEF) at the IAC 2015 Annual conference held in Victoria Falls.
PRESENTATION OUTLINE

PART ONE

• Defines:
  ▫ Sustainability and development
  ▫ ZimCode – its purpose and approach
  ▫ ZimCode’s link with CG
• Discusses how ZimCode contributes to sustainable development from five perspectives
  ▫ Business continuity – Corporate Power and Ownership concentration
  ▫ Board – appointment, development, evaluation and succession planning.
  ▫ Control – risk governance
  ▫ Dispute resolution – inquisitorial vs. adversorial

• Conclusion.
Part Two

Definition of sustainability:

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”
Unpacking sustainability.

- Time – addressing both the present and the future.
- Need driven or based – Maslow’s hierarchy of needs - see diagram below:
• Addresses continuous and generational quality, maintenance and improvement of life.

• Development is therefore part of sustainability and one cannot exist without the other.
- Its Three Important Dimensions for all companies:
  - economic growth,
  - social responsibility and
  - responsibility for the environment.

- The social and environmental responsibility, inseparable from economic growth.
- Profitability and growth create jobs and wealth; companies have to continue to provide products and services that people need.
What it is all about:

• Promotes ethical responsibility and sound corporate governance practices;
• Provides a safe working environment in which the health of employees is protected and their opportunities for self-development are enhanced;
• Promotes cultural diversity and equity in the workplace;
• Minimises adverse environmental impacts; and

• Provides opportunities for social and economic development within the communities we operate.
• Recognizes stakeholder rights i.e. the rights of interested parties e.g. employees, the community, suppliers, customers etc.

• Encourages co-operation between the company and its stakeholders in creating wealth, jobs and economic stability
- Recognises efficient management of the social, environmental and economic factors that affect the company, its business activities, products and services, and their impact throughout the entire value chain;

- Manages stakeholder expectations by balancing and managing the social, environmental and economic risks that have the potential to adversely affect relationships with stakeholders of the company;

- Adopts of practices and behaviour, which are compatible with the values of society.
Is the ability of companies, through their governance practices and market presence, to positively influence ecosystems (improving natural resources, reducing pollution levels, etc), society (supporting local populations, creating employment etc.) and economic development (distributing wealth through dividends, paying fair salaries, respecting supplier payment obligations etc.).

**N.B.**
Companies with sustainability practices will be more likely to operate in harmony with the societies in which they operate, maintain their market presence and help maintain and increase profitability levels.
The Terminology Swamp.

- Corporate sustainability (CS)
- Corporate social responsibility (CSR)
- Corporate responsibility (CR)
- Corporate citizenship (CC)
- Triple bottom line (TBL)
- Three Ps (profit, planet, people)
- Sustainable development (SD)
CG and ZIMCODE

- **Definition of CG**
  - A system by which entities are governed, controlled and directed in order to achieve their goals.
  - This system is made up of policies, processes and people, which are necessary in order to meet the expectations of the company’s shareholders and other stakeholders with integrity, respect, transparency and in a responsible manner.
Unpacking CG

• Concerned with achieving a balance between social and economic objectives, and between the objectives of individuals and the company.

• Its matrix exists to encourage the efficient use of resources and also to ensure that someone is held to account for the way in which these resources are used.

• The goal is to align as closely as possible the interests of individuals, corporations and society.
• The environmental, social and economic factors and Corporate Governance are at the heart of the corporate and business strategies.

• Sustainability – one of the essential pillars of CG
ZimCode - the what?

- Launched on April 9 2015 – a first for Zimbabwe
  At the heart of ZimCode is CG as defined above
ZimCode the why

• Corporate Failures, Scandals and Malfeasance

• Reaction to outdated Companies Act - 1951
• To minimize corporate collapses and instill discipline within the business sector.
• Establish minimum standards for corporate leadership.
• Attract and preserve investment for overall national economic turnaround and growth.
• Need to raise the bar on corporate governance above legal stipulations on the concept.
• Need to improve business reporting standards – i.e. integrated reporting anchored by the triple text or triple bottom line or three Ps – Planet, People and Profit
The new constitution of Commerce such as:

- redefining capital into four (4) issues – Financial, Human, Natural and Social.
- Interaction among assets – e.g. People, Technology and Capital – networks that drive wealth creation.
- The importance of individuals in providing capital.
- Moral duties of directors and their ethical conduct.
- Quality decision making processes.
• Improved company performance – sustainability
• Higher firm valuation and share performance
• Reduced risk of corporate crisis and scandals
ZimCode the Approach

- Rooted in our culture, values, morality and ethics

- Emphasis on inclusive approach to corporate governance as opposed to the enlightened shareholder approach appreciating that the latter has only instrumental value (stakeholder interests only taken into account if it will be in the shareholder’s interests to do so), and the former (stakeholder legitimate interests and expectations being taken into account in decision making if only it is in the best interests of the entity to do so).

- Movement from compliance based audit to risk based audit – i.e. change from tick box compliance with systems and procedures to evaluating their effectiveness.
ZimCode the how:– the 5 perspectives to sustainability

• Business continuity perspective – corporate power abuse and ownership concentration.
• Many entities collapse because of corporate power abuse, itself a consequence of ownership concentration, e.g. banking sector –
• An official investigation into the operations of Interfin Banking Corporation (IBC) unearthed wholesale looting that left the bank reeling from non-performing insider loans of US$60 million, poor corporate governance and general abuse of depositors’ funds by the bank’s shareholders and individuals linked to them. (By Chris Muronzi/Clive Mphambela)
• To minimise corporate collapses and promote sustainability or business continuity, ZimCode (Chapter 2) advocates for:
  • A functional balance of power among shareholders, boards and management.
  • Respect for minorities by major and majority shareholders.
  • Major or majority shareholders only to be part of management in terms of an agreement approved by an Annual General Meeting.
  • A block voting system at shareholders meeting electing directors to be encouraged i.e. minorities to group their shares up to 10% and demand board representation.
• Right of a **majority of minority shareholders** to object to a majority shareholder decision which is oppressive and refer such for resolution by conciliation and/or arbitration.

• A broadened and popularised share ownership schemes involving management and communities in which businesses are located – economic empowerment and indigenisation.
Boards and Ethical Leadership Perspective

• Many entities collapsed and continue to collapse because of unethical corporate leadership in Boards

*Dube, entire PSMAS board fired*  January 27, 2014

• THE government has fired the entire Premier Service Medical Aid Society (PSMAS) board and forced its Chief executive Cuthbert Dube to resign

• ZimCode (Cap 3) attacks this by agitating that:
  ▫ Board members should attend at least 75% of board meetings every year.
• Only technosavvy, competent and experienced board members with sound and good character be appointed to boards – *the what you know and not the who you know approach*.

• Members should always act in the best interests of the company and not those who appointed them.

• Directors should observe and abide their moral duties of conscience, character, hardwork, patriotism, honest, conviction, creative charisma, inclusivity and common sense based on *Ubuntu* – a swing from corporate governance to personal governance – the former being a subset of the later.
• Board members should not sit on more than six boards and not chair more than four boards of listed companies for effectiveness.
• Board member independence should be evaluated and confirmed annually by the board and reported to the AGM.
• Board fees should be approved in advance and not by ratification.
• Board fees should be reported to all stakeholders for individual directors’ annual reports.
• Board member performance should be annually evaluated with suitable recommendations, including dismissal from the Board.
• Board member training and development should be well structured and resourced and must address the results of board member evaluation. Board members to observe 3 term limits of 4 years each not exceeding 12 years in any event without AGM approval based on proper evaluation of on independence, availability and effectiveness.
Control - Risk Governance Perspective

- Weak control systems in businesses expose businesses to sustainability challenges.
- Most entities suffer collapse and reduced profitability because of weak control systems.
- ZimCode (Cap 4) minimises this risk by emphasizing that:
  - Directors of companies should understand risk and how it can be measured, enhanced, eliminated or mitigated.
A systematic, documented and formal risk assessment be done annually.

Robust systems and procedures should be in place to address the four lines of defense.

Internal Auditors should be independent and report functionally to the Audit Committee Chair and administratively to the CEO.

Independent external auditors should be appointed and their reappointment should be done annually taking into account a formally documented assessment of their independence and performance.

The external audit lead person or firm to change every five years.
• Robust and transparent procedures should be in place to handle disputes/disagreements between internal and external auditors and management, including the board should be in place.

• There should be an audit committee of the board with clear and smart terms of reference.

• A robust and transparent procedures and structures should be in place for listed companies to deal with combined assurance.
Corporate Conflict Prevention & Resolution Perspective

- Corporate conflicts are inherent in business and they can destroy entities and effect corporate sustainability.
- Many companies have fallen victim to insider trading and corruption.
- To address this, ZimCode (Cap 6) proposes the following: **Dos and donts**
  - Board members must know how to identify red flags for corporate conflicts and should nip them in the bud.
  - Controlling shareholders should comply with the law and best practice in what they do or say on behalf of the company and its business.
  - Conflict of interest must be avoided and methodologies must be in place to identify and resolve this.
Conflict Prevention & Resolution

• Every business entity should therefore establish conditions, processes, procedures and systems for the prevention and resolution of corporate conflicts.
• Conflict prevention makes it possible for companies to safeguard the rights of shareholders and to protect the companies’ reputation.
• In resolving corporate conflicts companies are encouraged to take advantage of the available ADR methods. The recommendations in this chapter will help the companies to prevent and, when they arise, detect, corporate conflicts.
Methodology:

- Issues should be resolved inexpensively and tenuously, inquisitorially as opposed to adversarially, to build rather than destroy relationships.
- Distinction to be drawn between processes of dispute resolution (litigation, arbitration, mediation, conciliation and others) and the institutions that provide dispute resolution services.
- Creation of the corporate conflict resolution (CCR) committee encouraged with clear terms of reference.
- CCR committee should have at least two (2) independent board members with a representative of the minority shareholders, all being appointed on the basis of experience, integrity, competence and effectiveness in corporate conflict resolution.
- To avoid prejudice, resolutions of corporate conflicts reached should be respected by the parties and implemented expeditiously.
ZimCode Compliance & Enforcement Perspective

• ZimCode is an important source of corporate governance, and has critical business sustainability messages.

• Operates on apply or explain approach.

• Encourages compliance with its provisions or to give reasons for non-compliance, which should carry the company forward in a sustainable way.

• For Listed companies, the new listing rules require mandatory compliance with ZimCode provisions to remain listed in the Zimbabwe Stock Exchange.
Conclusion

• Embrace ZimCode – a must have and a must need.

• Make it your Bible for daily reference on issues of corporate governance and ethical leadership.

• Embrace ZimCode’s teachings and the eight important steps needed to achieve sustainable entities through CG.
8 Important Steps needed to achieve Sustainable entities through CG

1. Embed sustainability and CG in the company’s vision
2. Formulate a CG & sustainability strategy
3. Embed sustainability in every part of business
4. Walk the Talk (action speak over words)
5. Set-up a powerful body – committee on the board
6. Establish a code of conduct
7. Bring stakeholders on board
8. Think beyond reporting / ticking boxes
• I thank You
• Let me thank you especially for listening and those who did not listen, I thank you as well for not dozing.
Contact ZIMLEF for further information:

Tsitsi Mutasa  
Managing Consultant  
ZIMBABWE LEADERSHIP FORUM  
10 Leander Road, Greendale, Harare  
Tel: 04-487061/ 485763  
Cell: 0778 034 477  

Email: admin@zimlef.co.zw or tmutasa@zimlef.co.zw