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RESEARCH PAPER

Implementation of the Public Entities Corporate Governance Act (Chapter 10.31) by State Owned Enterprises (SOEs) in Zimbabwe

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ABSTRACT

The study sought to investigate the effectiveness of the implementation of corporate governance legislation with specific focus being on the Public Entities Corporate Governance (PECG) Act (Chapter 10:31) of May 2018 by State Owned Enterprises in Zimbabwe. The research was inspired by the continued and endless occurrence of a plethora of corporate scandals in State Owned Entities. The objectives of the research were to investigate the implementation status of the PECG Act that is measuring the extent of compliance by SOEs to the provisions of this corporate governance legislation. The study also sought to establish if the PECG Act is a "one size fits all" kind of legislation given the fact that such SOEs are found in different categories like banking, agriculture, education, social services, engineering and energy. The study adopted mainly a qualitative research approach with questionnaires and interviews being used as data collection instruments. Data for analysis was collected from the management and board members of various categories of SOEs. The population of the study was 107 and the sample was 82. 70 responded to the questionnaire making an 85% response rate while 25 key informants were interviewed. Research findings showed that the presence of corporate governance scandals in SOEs affected the way these organizations operate. The study concluded that PECG Act is a one size fits all kind of legislation although there is a great disconnection between provisions of PECG Act and practice. The study recommends that more corporate governance workshops be done and provisions of an adequate remuneration for executives and non- executive directors of SOEs to match their qualifications and expertise. Board independence should be maintained and transparent appointment of members into public offices as well as the privatization of less performing non-essential SOEs.

Key Words: Corporate Governance, State Owned Enterprises, Public Entities

1. INTRODUCTION

State Owned Enterprises have been drowned into scandals which have left them underperforming and recording losses over the years. These endless scandals range from embezzlement of funds, unscrupulous rewarding of tenders and nepotism amongst others [1]. In the new political dispensation, the Government of Zimbabwe carries an anti-corruption drive which has seen the strengthening and reinforcement of the Zimbabwe Anti-Corruption Commission (ZACC) [2]. The existence of the anti-corruption body shows the need by the Zimbabwean Government to build on good corporate governance in State Owned Enterprises. The Corporate Governance Unit in the Office of the President and Cabinet provides an advisory role and centralized support mechanism for line ministries of different SOEs to ensure strict compliance by all SOEs with the provisions of the PECG Act. The government of Zimbabwe in this vain has put in place the Public Entities Corporate Governance Act (PECG Act) which aims to govern the activities and how these SOEs are being managed and directed.

According the Auditor General Report in the year 2015, the underperformance of State Owned Enterprises (SOEs) in Zimbabwe has been greatly linked to poor corporate governance scandals which have negatively affected their financial performance [3]. In some cases, Chief Executive Officers of such entities have been un-procedurally rewarding themselves hefty salaries, among other forms of malfeasances. The growth and performance of State Owned Enterprises and Quasi Government entities have been largely threatened by growing cases of corruption, embezzlement of funds, nepotism and many other factors which have forced some out of business and others on the blink of collapsing [4]. In view of this, the Government of Zimbabwe in May 2018 enacted the Public Entities Corporate Governance Act (PECG) Act Chapter 10:31. The Act seeks to provide for governance of public entities in compliance with Chapter 9 of the Zimbabwean Constitution which provides for the uniform mechanism for regulating conditions of service for members of public entities and their senior employees. In this regard it is of tantamount importance to have an in depth analysis and have comprehensive understanding whether or not there is a code which supports hefty salaries which CEOs have been awarding themselves [1]. To that end, the PECG Act carries provisions to which SOEs must abide with, contravention prosecution in terms of this Act may be instituted. In the year 2014, the government of Zimbabwe put forward a proposal that all State Owned Enterprises (SOEs) CEOs should be paid US$ 6000.00 [1]. This was a temporary measure to stop CEOs from unreasonably rewarding themselves but the government continued to review salaries for CEOs which contradicted with the proposal which they had previously made in 2014. This is now clearly enshrined in the PECG Act which sees conditions for those CEOs. The year 2014 witnessed greatest scandals by SOEs as 5 of the 78 SOEs including Zimbabwe Electricity Supply Authority, Air Zimbabwe, Harare City Council, Premier Service Medical Aid Society and Zimbabwe Broadcasting Corporation were fingered on the forefront of scandals. [5]. Reports showed that the top executive team was netting a total of USD 1.3 million as monthly salaries and allowances [6].

In the midst of all these scandals the medical aid society was owing a considerable number of stakeholders US$ 38 million by 31 December 2013.

According to Sifile *et al.,* (2014) the board of directors forms the epitome of corporate governance hence survival of corporates is hinged on the effectiveness of boards and their controlling functions [7]. The appointment of boards for SOEs has to be done according to the dictates and provisions of the PECG Act to ensure their effective discharge of duty. In line with appointment of the boards of directors for SOEs, the Act stipulates that no person shall be appointed as a member of the board for a public entity for a term longer than four years where appointment may be renewed only one further such term one. Additionally to ensure effective discharge of duty by such board members of SOEs the Act requires that no person shall be appointed to the board of public entity if he or she is a member of two other such boards.

The PECG Act also mentions the functions of the Corporate Governance Unit (CGU) which is found in the Office of the President. The unit is important to spearhead the practice of good corporate governance by SOEs by providing an advisory and centralized support mechanism for line ministries. In addition, the Act highlight provisions that look into the remuneration of non-executive members of public entities which it requires to be fair and appropriate which essentially must be reached based on qualification and experience amongst other considerations. The issue of remuneration has being seen CEOs in some SOEs rewarding themselves too high salaries and allowances.

The PECG Act requires that no person may be appointed to be the CEO if one has already served as the CEO of the entity for one or more periods whether consecutive and not amounting in the aggregate to ten years. In this regards, the Act highlight conditions of service for the senior staff of SOEs in which service of CEOs and other senior staff shall be fixed by boards of entities concerned at properly constituted meetings. However such conditions of service are required by the Act to be consistent with members' performance contracts and give specification of terminal benefits.

The SOEs have typically contributed to the growth of economies in both developed and developing countries [8]. In a bid to improve the performance of such SOEs empirical evidence shows that privatisation of SOEs for both the developed and developing world is likely to lead to greater change in the economic performance of such SOEs. The rapid internationalisation is one of the reform strategies which SOEs may adopt as a reform strategy [6]. The reforming of SOEs through the reform of the functioning of SOE boards in many countries is regarded as a priority as a result of significant pressure to improve performance of SOEs [9].

There has been a growing interest in the corporate governance of SOEs which such interest may be attributed to the global importance of SOEs [10]. Despite the growth in interest to the corporate governance of SOEs, scanty literature is available on the implementation of the PECG Act to SOEs. Municipalities are SOEs in the category of councils whose mandate is to provide social services to residents in various parts of the country including social amenities amongst other functions.

In this study, implementation of the PECG Act is being investigated to check on effectiveness and challenges in the implementation of the Act.

2. METHOD AND MATERIAL

2.1. Research Design

The study adopted a qualitative research approach to determine the effectiveness of implementation of the PECG Act by State Owned Enterprises in Zimbabwe.

2.2. Respondents

As a way of fulfilling objectives of this study, the management, board members and board chairpersons for State Owned Enterprises formed target population. A total of 82 respondents participated in the study who were chosen on a simple random basis from the different categories of SOEs in Zimbabwe. The management and board members of SOEs constituted the target population of the research because of the knowledge and experience they possess in regards to corporate governance.

2.3. Data collection and analysis

Primary data was gathered through the use of interviews and questionnaires. The study also used secondary sources such as the internet and documentary evidence to have a comprehensive understanding of the problem so as to come up with bankable solutions. Probability and non-sampling techniques were used in coming up with a sample of 82 respondents for completing the questionnaires and 25 for taking part in the interviews.

3. RESULTS AND DISCUSSION

The results of the study pointed out that 97.30% of the different categories of SOEs in Zimbabwe are facing political challenges which have acted as a hindrance to the manner through which they execute their duties (Figure 1). This is similar to results of the study by Mashavave (2017) in which 75% of the respondents agreed to the fact that there is political interference in running of SOEs [11]. Such political interference hence poses a challenge in the effective implementation of the PECG Act which may come as ministerial directives. Some of the

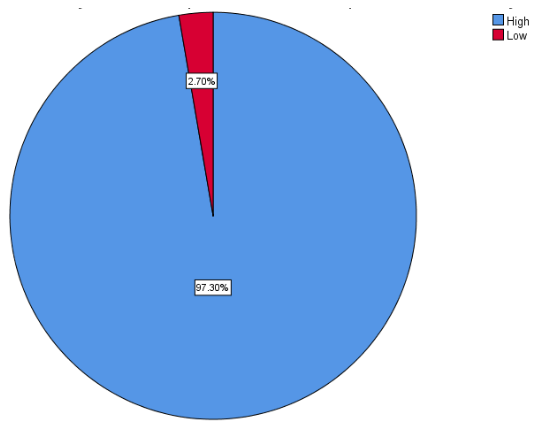

Figure 1. Political interference in SOEs

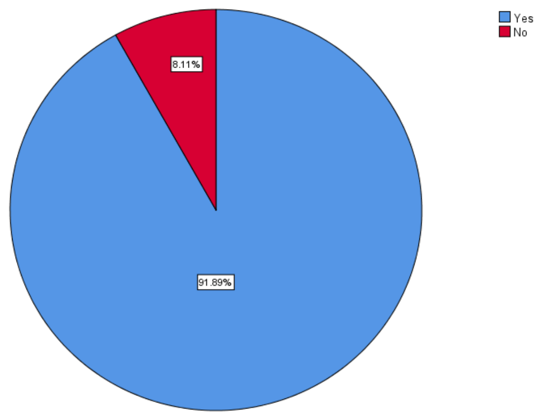

Figure 2. PECG Act as a one size fits all kind of legislation

directives are contrary to the best corporate governance practices.

There is a disconnection between the provisions of the Act and what is being put into practice by management and board members of SOEs. As such recommendations that are laid down in this section may be found useful to policy makers, board members, management and CEOs of SOEs in Zimbabwe. Workshops on corporate governance best practices may be done to increase the understanding of corporate governance framework and practices by different stakeholders in the environs of SOEs. It is through such workshops that may help further induct top management to perform their duties with competence and due diligence. Workshops help in further increasing the appreciation of various provisions of the PECG Act by custodians of corporate governance in the environs of SOEs. The study also established that there is high political interference in the execution of duties by board members which has posed a challenge on the implementation of the PECG Act. As such meddling of politics with SOEs activities should be clearly discouraged and stated in public policies that public entities should stick to their mandates as political interventions compromises their functionality.

As contained in the Auditor General Office Report, Zimbabwe, (2019) there are broad categories of SOEs including boards, commissions, councils, companies and corporations, financial institutions, hospitals and tertiary institutions. Participants from these categories were posed with a question to comment if the PECG Act is applicable in their different entities. 91.89% of the respondents agreed with the assertion that the PECG Act is a one size fit all kind of legislation. As such respondents alluded that the different categories of SOEs should be guided by specific Acts of parliament which governs the formation of relevant SOEs.

The results collected from the study indicated that SOEs are facing serious problem in the implementation of the PECG hence endless corporate scandals. All the participants agreed with the contention that SOEs are facing corporate governance challenges such as corruption and lack of due diligence in rewarding contracts amongst other which have hindered proper implementation of the Act.

Corporate governance may also be taken to refer to the relationship between the governed and those with task to govern in the organizational set up [12]. Corporate governance refers to private and public institutions, laws included, regulations and accepted business practice, which in a market economy govern the relationship between corporate managers and entrepreneurs who are corporate insiders on the one hand, and those who invest resources in corporations, on the other hand [13].

A lot of research into corporate governance is derived from the agency theory [14]. Such problems are common in present day corporations that also do not exclude SOEs. As such, the agency theory described by Vitolla et al., (2020) stated that the theory involved a contract in which the shareholders engage the directors in order to carry out some duties on their behalf and may include delegation of roles to other agents. [15]. Inducing such agency to act in the interest of the principal creates agency costs. Such costs include the cost of trying to monitor the agent to bring down deviant activities.

In this view, aberrant and deviant activities has been prevalent in SOEs in Zimbabwe where directors sometimes take entities as their own properties, to the extent of getting unauthorized benefits including remuneration not commensurate to the performance and qualifications to the expense of company shareholders [16]. In Zimbabwe billions of dollars were lost through directors who are handsomely rewarding themselves in various government and other political initiatives so as not to interfere with the operations of SOEs. [17]. The agency problem has been witnessed in the majority of State Owned Enterprises (SOEs) which have been left crawling over the past years by the management due to f poor corporate governance practices. Kamau *et al.,* (2017) postulated that for any public entity not to collapse there is need for total compliance with corporate governance principles which include but not limited to appointment, team composition, control procedures and processes and performance management [6]. The study was a key milestone to the corporate governance of SOEs in Kenya but it failed to explore the causes of non-compliance to corporate governance codes such as the Mwongozo Code of governance in Kenya [18]. Thus such a study may be done in Zimbabwe where various reports from the Auditor General have pointed out corporate governance malpractices by SOEs.

4. CONCLUSIONS AND RECOMMENDATIONS

The implementation of the PECG Act has been negatively impacted by poorly composed boards whose duties are also being affected by political interference. It has proven difficult to deal with such a challenge as the occupation of higher positions in SOEs requires someone with a strong political background hence appointed members pay more attention to political obligations overlooking the mandate of the entity.

The study also highlighted the challenges being faced in the implementation of the PECG Act in SOEs. In this respect, the researchers recommend independence of boards, the government and other political initiatives so as to interfere less with the operations of SOEs. Intervention should only be limited to strategic matters and other issues of paramount importance. To promote such there should be board independence and the role of the government in SOEs should be narrowed to policy development and setting performance contracts whilst board members, board chairpersons and management should be given room to execute their duties independent of politics thus promoting professional functioning of SOEs.

The PECG Act supports the view that appointment of executive and non-executive directors should be done on merit and not aligned to politics. The PECG Act sets out that nomination should consider skills and qualifications of individuals concerned. The government may in addition consider a skill-based nomination as in the case of South Africa that has in addition to the Kings Reports added a Handbook for the Appointment of Persons to

Boards of State and State Controlled Institutions. The Handbook carries procedure and qualities of those who may be appointed to such boards of public entities. To ensure transparency in appointment to key positions in SOEs, Zimbabwean policy makers may need to set up an independent tribunal or such a parliamentary committee with experts that assumes responsibility of choosing and appointing board members on a transparent basis which will be approved by the government.

5. ACKNOWLEDGEMENT

NA

6. CONFLICT OF INTEREST

The authors have declared that there is no conflict of interest.

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