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The Legal 500 Country Comparative Guides Zimbabwe **CORPORATE GOVERNANCE**

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This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in Zimbabwe.

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ZIMBABWE CORPORATE GOVERNANCE



1. What are the most common types of corporate business entity and what are the main structural differences between them?

The most common types of corporate business entities in Zimbabwe are: (1) limited liability companies and (2) private business corporations. There are two types of limited liability companies, namely: private limited companies and public limited companies.

The main structural differences are summarised as follows:

Limited liability companies	Private business corporations (PBCs)
Mainly meant for medium to large businesses.	Mainly meant for small to medium businesses including sole traders.
Comprises directors and shareholders.	Consists of members.
Shareholders hold shares	Members hold member's interest.
Has share capital (authorised and issued).	Has member's contributions.
Both companies and individuals can be shareholders in a company.	Companies cannot be shareholders or hold a member's interest in a PBC, only individuals can be members.
Directors are responsible for the day-to-day management of a company.	Members are responsible for the day-to-day management of the PBC.
The constitutive documents are certificate of incorporation, memorandum of association, articles of association, CR5 and CR6.	The constitutive documents are incorporation statement and bylaws.
Lodging of annual returns is compulsory.	Does not require annual returns to be lodged.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this

jurisdiction?

Historically, companies have been viewed as shareholder centric, that is, as tools to create wealth for the sole benefit of their shareholders. However, recently there have been significant changes on the objectives of a company. The current topical issues, developments, trends, and challenges include the following:

- Whose interests must be promoted in running the daily business of the company? Is it the interest of shareholders alone or does it include the interests of other stakeholders of the company such as employees, customers, suppliers, and the general public?
- To whom do the directors of a company owe their fiduciary duties? Is it the company or the shareholders?
- Whether a company has any eco-social responsibilities?
- The emergency and role of non-executive independent directors.
- Owner-management problem, a situation where the dominant shareholder is the managing director of the entity.
- Abuse of the separate juristic personality of a company in related party transactions.
- Protection of minority shareholders and their appraisal rights.

3. Who are the key persons involved in the management of each type of entity?

The key persons involved in the management of a company are:

- The board of directors;
- Company officials or management personnel, such as, Chief Executive Officer or Managing Director; and
- Shareholders

Private business corporations (PBCs) are managed by their members.

4. How are responsibility and management power divided between the entity's management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)

The board of directors is responsible for the overall management of corporate entities. According to section 218 of the Companies and Other Business Entities Act [Chapter 24:31] ("*COBE Act*"), the board of directors shall be responsible for decisions on all matters except those reserved to the shareholders by the COBE Act or by the company's constitutive documents.

The board of directors is primarily responsible for the oversight and decision-making related to strategic direction, financial planning, and setting of core policies that outline the company's purpose, values, and structure. A company may then have board committees and other management personnel who are responsible for the day-to-day operational matters. These include but are not limited to the Chief Executive Officer, Managing Director, Finance Manager, and other managers. Management decisions should support or implement strategies and goals which are set by the board of directors.

The economic owners, that is, shareholders/members of the company, are not involved in the day-to-day management of business operations of an entity. They do not have direct management power over an entity. Shareholders have the right and responsibility to ensure that an entity is properly run and managed and thus provide checks and balances to the directors. However, an exception to the foregoing is the case of an owner managed entity wherein the owner is also the manager thereof, this is applicable to private companies.

Shareholders generally exercise their power in relation to the strategic direction of a company when acting in a general meeting of members. In this regard, they must participate in general meetings and exercise their voting rights in the best interests of the company. Some of the powers the shareholders have include, amongst others:

- a. passing special and general resolutions;
- b. amending the company's constitutive documents;
- c. appointing and removing directors;
- d. appointing and removing auditors;
- e. approving director's emoluments, and;

- f. approving major transactions.

Pursuant to a general meeting, the resolutions by the shareholders will be recorded in writing. In the case of a private limited company, shareholders may also adopt a written resolution signed by all the members in the absence of a general meeting and such a resolution will be valid and effective for all purposes as if it had been passed at a general meeting of members – section 176 of the COBE Act.

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

The principal sources of corporate governance in Zimbabwe are as follows:

5.1 Companies and Other Business Entities Act [Chapter 24:31] ("*COBE Act*");

5.2 Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules SI 134 of 2019 ("*ZSE Listing Rules*") and Securities and Exchange (Victoria Falls Exchange Listings Requirements), 2020 ("*VFEX Listing Rules*") (both the "*Listing Rules*");

5.3 National Code of Corporate Governance, 2014 ("*National Code on Corporate Governance*");

5.4 Banking Act [Chapter 24:20];

5.5 Insurance and Pension Commission Act [Chapter 24:21];

5.6 Public Entities and Corporate Governance Act [Chapter 10:31] – for Government controlled entities whether private or public;

5.7 Public Procurement and Disposal of Public Assets Act [Chapter 22:23];

5.8 Public Finance Management Act [Chapter 22:19];

5.9 The Constitution of Zimbabwe; and

5.10 Insolvency Act [Chapter 6:07] – for insolvent entities.

6. How is the board or other governing body constituted? Does the entity have more than one? How is responsibility for

day-to-day management or oversight allocated?

Companies are governed by a single board of directors.

The board of a private company is constituted in terms of the COBE Act and the articles of association. In addition to the aforesaid, public companies are required to comply with the Listing Rules regarding constitution of the board.

The following guidelines specified in section 195 of the COBE Act are apposite to note:

1. in respect of both private and public companies, at least one (1) director must be ordinarily resident in Zimbabwe; and
2. any director who is the Chief Executive Officer of the company shall not be the chairperson of the board.

According to section 200 of the COBE Act, the following persons are disqualified from holding the office of a director:

1. a body corporate;
2. a minor (that is, any person below the age of eighteen (18) or any person under legal disability); or
3. a person who is removed by the court from any office of trust on account of misconduct save with the leave of the court; or
4. a person who has at any time been convicted whether in Zimbabwe or elsewhere, of theft, fraud, forgery or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or
5. any person who is adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country.

The ZSE and VFEX Listing Rules provide further regulations regarding the constitution of the boards of public companies, as follows:

1. independent directors must be the majority on the board of directors of a public company;
2. the board chairperson must be an independent director; and
3. the board chairperson and the Chief Executive Officer must be appointed by the board.

Whilst the board of directors has oversight over the management of the company, it usually delegates the day-to-day management to executive directors and officers of the company, including but not limited to,

chief executive officer, managing director, finance director, and departmental managers. Further, in terms of the ZSE and VFEX Listings Rules, public companies are required to appoint board committees, including but not limited to, audit committee, nomination committee, remuneration committee, and risk committee. The role of board committees is to provide a platform for boards to deal with specific issues that require specialized areas of expertise and to provide advisory services to the board. See section 73(5) of the VFEX Listing Rules.

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

The appointment and removal of the board of directors is primarily governed by the COBE Act, a company's articles of association, the VFEX and ZSE listing requirements, and a contract of employment in the case of an executive director. Generally, directors are appointed and/or removed by the members at a general meeting or by a written resolution of members. Where there is a vacancy, a company's articles of association may provide that the directors may fill such vacancy until the next general meeting where the appointment will have to be ratified or rejected by the members. See sections 201-203 of the COBE Act.

In addition to the above, a shareholders' agreement may provide that a shareholder has power to appoint and remove a particular number of directors. Thus, the owners have significant control and influence over the appointment and removal of directors.

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

Two types of directors typically serve on the board, namely:

- a. Executive directors – directors who are part of the executive management team;
- b. Non-executive directors – directors who are not involved in the day-to-day management of the business and these may be independent or non-independent;

The following requirements specified in the COBE Act and Listing Rules govern board composition:

1. a private company with more than one (1)

- and fewer than ten (10) shareholders must have two (2) or more directors;
2. a private company with ten (10) or more shareholders must have not less than three (3) directors;
 3. a public company must have not less than seven (7) and not more than fifteen (15) directors;
 4. independent directors must be the majority on the board of directors of a public company; and
 5. No more than 40% of the directors may be appointed as executive directors.

Director independence

In terms of section 206(2) of the COBE Act, public companies must have at least three (3) non-executive or independent directors on its board of directors. An independent director is defined as a director of the company who has not or whose family members have not received any payment or held any share or interest, or any post in the company.

There is no requirement for director independence in respect of private companies.

Board diversity

According to section 220(4) of the COBE Act public companies are required to formulate and implement a policy to promote diversity and gender balance in their governance structures and employment policies. The requirement is not specific but is left to the discretion of the board.

There is no requirement for board diversity in respect of private companies.

Tenure

According to section 66(3) of the ZSE Listing Rules, all directors of public companies, other than executive directors must retire by rotation at least once in every three years or as provided for in the company articles.

The tenure of directors of private companies is governed by the company's articles of association.

Succession

Save to the extent that the articles of association provide for rotation and retirement of directors, there are generally no qualifications or requirements regulating the succession of board members for private companies.

Public entities have a board term limit for directors and

the Chief Executive Officer of *circa* 10 years.

9. What is the role of the board with respect to setting and changing strategy?

The directors, together with the company's executive management team, are responsible for determining and directing the overall business performance and strategy plans for the company. Their role includes strategic planning, risk management and financial reporting. Generally, management develops and implements corporate strategy and operates the company's business under the board's oversight, with the goal of producing sustainable long-term value creation.

10. How are members of the board compensated? Is their remuneration regulated in any way?

In terms of section 207 of the COBE Act, a company may pay reasonable emoluments to directors. The emoluments of directors of public companies must be approved by the shareholders at an annual general meeting. Thus, the requirement to pay directors' emoluments is mandatory on the part of public companies and not necessarily so in respect of private companies. The remuneration of directors of private companies is generally governed by the company's articles and shareholders' resolutions. There is no set standard or scale of directors' fees.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

Directors have various fiduciary duties to the company which are broadly summarised as follows: (a) duty to act with care, skill, and attention, (b) duty of loyalty, and (c) duty not to disclose conflict of interest. The duties are owed to the company as a whole and not to individual shareholders.

The potential consequences for breach of fiduciary duties include the following:

- a. Personal liability for damages suffered by either the company or shareholders; and/or

- b. Removal from the office of a director; and/or
- c. Criminal liability, for example, in cases of fraud or misappropriation.

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Yes, they are permitted. Indemnities are governed under section 74 of the COBE Act.

Unless otherwise provided in the Act or articles of association or contract, every director of a company is entitled to an indemnity from the company for payments made and personal liabilities incurred by him or her (a) in the ordinary and proper conduct of the affairs of the company and (b) in or about anything necessarily done for the preservation of the undertaking or property of the company. Thus, the scope of the indemnity is only limited to this extent. Suffice to state that the indemnity is not limited to board members, it extends to the managing director, agent, auditor, company secretary and other officers of the company.

Further, any provision contained in the articles of association or in any contract which exempts a director or officer of the company from liability which by law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company shall be void. No officer of the company may be indemnified by the company from any civil penalty levied against him in terms of the COBE Act.

Companies are also permitted to indemnify directors and officers of the company against personal liability which may be incurred by them in defending any legal proceedings (civil or criminal) involving the company.

The indemnities or protections are typical. They apply automatically by operation of law to the extent highlighted hereinabove. They are also normally included in contracts of employment of executive directors.

Generally, publicly listed companies usually obtain an insurance cover in favour of the directors in respect of the specified indemnities.

13. How (and by whom) are board members typically overseen and evaluated?

Board members are typically evaluated by the

shareholders at general meetings of members. At general meetings, shareholders review the reports of the board, more particularly, with respect to the following responsibilities and activities:

1. A statement of financial position and a statement of comprehensive income as at the end of the financial year which must be in accordance with section 184 of the COBE Act, must comply with financial reporting standards prescribed by the Public Auditors and Accounting Board under the Public Accountants and Auditors Act [Chapter 27:12], and any other appropriate accounting rules and standards;
2. A 'comply or explain' report on the company's corporate governance guidelines (in respect of a public company); and
3. Whether the board has complied with the company's memorandum of association or the COBE Act.

In the event that members are dissatisfied with the conduct or work of the board of directors or any particular director, they are empowered to remove or elect more directors, to the extent permitted by the COBE Act and the articles of association.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

Yes, the board is required and must engage with the economic owners of an entity. In terms of section 195(4) and (5) of the COBE Act, directors are required to do all things necessary to promote the success of the company for the benefit of the shareholders as a whole and to act fairly as between the shareholders. Thus, shareholder engagement is not only legal and regulatory requirement but a strategic opportunity for the board to foster relations and establish accountability and reputation.

Generally, directors engage with and report on their actions to members in general meetings. In addition, directors may engage members by way of one-on-one meetings. Directors of public companies may also conduct road shows for purposes of explaining critical transactions contained in any circulars or announcements and getting feedback from the constituency of members.

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

Yes. According to sections 96 and 97 of the COBE Act, a company is permitted to have a dual and multi class capital structure provided that this is set out in the company's memorandum of association. However, whilst a company may have a dual or multi-class capital structure, the requirement is that it must always have ordinary shares in addition to any other class of share capital as may be prescribed in the company's constitutive documents. Generally, all the shares of any particular class have identical preferences, rights, and limitations with other classes except to the extent that the company's memorandum provides otherwise.

Dual class and multi-class capital structures are very common in Zimbabwe in both private and public companies. They can be listed on a stock exchange. These are used for various reasons depending on a company's objectives, including but not limited to, differentiating members' voting rights, capital raising whilst avoiding dilution, retaining control of the company and for long term strategic decisions.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

Private companies are generally not required to disclose any information to the public. However, where a private company has been placed under corporate rescue proceedings or liquidation, it is required in terms of the Insolvency Act [Chapter 6:07] to disclose the corporate rescue or liquidation plans and any other information that may be lawfully requested by the constituency of creditors.

On the contrary, public companies have stringent disclosure requirements. They are mandated to disclose, *inter alia*, the following information to the public:

1. Major corporate actions;
2. Material price sensitive information;
3. Corporate governance information, including but not limited to, board appointments and removals;
4. Information relating to general meetings, including but not limited to, voting rights and proposed resolutions;
5. Information relating to the financial position and income of the company; and
6. Any other information which may be specified in the COBE Act and Listing Rules.

Public companies disclose information to the public through cautionary statements, announcements, circulars, periodic financial statements, annual reports, audit reports and other reports as may be prescribed.

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

Yes. Members with five per centum (5%) or more of the voting rights of paid-up capital of the company are entitled to place issues on the agenda of a general meeting and to request the company to hold a general meeting of members. This power is provided in sections 167(6), 168 and 174 of the COBE Act.

In order to propose matters for a vote, the authorised members specified hereinabove may submit a requisition to the directors requesting for circulation of proposed resolutions to members entitled to receive notice of a general meeting. A copy of the requisition should contain signatures of all the requisitionists and must be deposited with the company not less than six (6) weeks before the general meeting. In addition, the requisitionists should tender a sum reasonably sufficient to meet the company's expenses in giving effect to the proposed resolution.

To request for a special general meeting, known as an extra-ordinary general meeting (EGM), the authorised members specified hereinabove must submit a requisition to the board of members signed by one or more of the requisitionists. The requisition must specify the objects of the meeting. On receipt of the requisition, the directors must issue a notice of an EGM within twenty-one (21) days from the date of the requisition, failing which, the requisitionists themselves will be entitled to convene the EGM.

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

In terms of sections 60 and 61 of the COBE Act, members may bring direct or derivative actions against directors for their failure to observe their fiduciary duties, especially where there is fraud or misappropriation. Shareholders may bring an action in court against any manager, officer, or director of the entity in two ways:

1. Direct action – a member or members may bring a direct action in court in their name to enforce or recover damages caused to him or

her by violation of a duty incumbent upon such an officer, manager, or director.

Members may also bring a direct action against the entity seeking any relief that is not prohibited by the law.

2. Derivate action – a member or members may bring an action in court in their names and on the entity’s behalf against any manager, officer, or director to enforce or recover damages caused to the company by violation of the duties owed by that manager, officer, or director to the company.

2. Derivative actions (actions by members on behalf of the company) – section 60 of the COBE Act;
3. Actions against another shareholder – section 223 as read with section 225 of the COBE Act permits a shareholder to apply to court for an appropriate order against another shareholder on the grounds that the company’s affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some parts of members;
4. Dissenting shareholder appraisal rights – section 233 of the COBE Act provides an exit remedy to minority shareholders who may be against some major corporate actions.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity’s management?

Shareholder activism is one of the tools that can be employed by shareholders to voice their concerns and promote good corporate governance practices. It is common particularly in public companies which are faced with strict regulatory and corporate governance requirements which are designed to protect the minority shareholders. There is however little shareholder activism in private companies as these are more shareholder oriented.

Shareholder activism is common amongst minority shareholders. Major shareholders do not need to engage in activism as they have a plethora of avenues for controlling the affairs of the company, including but not limited to, appointment and removal of directors. Recent trends in Zimbabwe show that minority shareholders join hands to voice their concerns or institute legal proceedings against the company or other shareholders. A notable example is the recent case of *Thomas Mabuzwe & 6 Others vs Securities and Exchange Commission of Zimbabwe & 12 Others HC 5923-21* where seven shareholders instituted legal proceedings against public listed companies for migrating their shares from one central securities depository (CSD) to another without their consent. As at the date of this article, the matter is still pending final determination by the High Court of Zimbabwe.

Shareholders of companies in Zimbabwe have a plethora of mechanisms that could assist them to voice their concerns and influence corporate decisions. First, the COBE Act provides several avenues by which disgruntled members may compel directors to change certain decisions and actions. They include the following:

1. Direct actions by members against directors – section 60 of the COBE Act;

The National Code on Corporate Governance also empowers shareholder activists to promote good corporate governance practices by selling their shares, exercising their right to vote at general meetings and enforcing certain disclosure and transparency requirements.

Further, one of the most powerful tools that is used by shareholder activists is voter pooling arrangements whereby shareholders combine their voting rights to block a special resolution from being passed.

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

There are three (3) types of shareholder meetings:

- a. Annual General Meeting – section 167 of the COBE Act. This meeting is held once every year.
- b. Extraordinary General Meeting – section 168 of the COBE Act. This meeting can be held at any time on requisition by members holding not less than five per centum of the paid up capital of the company.
- c. Statutory meeting – section 166 of the COBE Act. This is a general meeting which is held by public companies not less than one month nor more than three months from the date at which the company is entitled to commence business.

Information that may be presented by the directors at general meetings include the following:

- i. Nominees for board appointments;
- ii. Proposed shareholder emoluments;

- iii. Board report on its responsibilities and activities;
- iv. Board's "comply and explain" report on company's corporate governance guidelines;
- v. Audit committee report;
- vi. External auditor's report; and
- vii. Board recommendations and actions authorising any distributions or relating to issuance of bonds or other borrowings by the company.

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

There are no such institutional organisations which provide voting recommendations in Zimbabwe. Voting is generally influenced by a class of shareholders through a vote pooling arrangement, shareholder activism or on advice from a fund manager.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

Entities are required to conduct their business lawfully and with regard for environmental, health, safety, and other sustainability issues. Stakeholders of an entity may enforce corporate governance in many ways.

Employees have an interest in the corporation's well-being. As part of fostering a culture of compliance, employees can and should be encouraged to report compliance issues promptly. Companies should have in place and publicize mechanisms for employees to seek guidance and to alert management and the board about potential or actual misconduct without fear of retribution. In listed companies, employees also sit in board committees like audit and risk management. Further, employees also act as compliance officers and are generally responsible for production of accounts and reports which are critical in running a company. Lastly, a company secretary has, in terms of the law, the duty to advise directors on matters of law and procedure for good governance including the convening of statutory meetings and voting.

Creditors and employees have the power to apply for the placement of a company under corporate rescue proceedings in terms of the Insolvency Act [Chapter 6:07] where a company is financially distressed and is unable to meet its debts as and when they fall due or for purposes of arresting any mismanagement.

Customers may hold an entity to account for unfair practices to consumers, including but not limited to, distribution of unhealthy products, false and misleading representations, and unfair, unreasonable, or unjust contractual terms. The rights of consumers are more fully provided for in the Consumer Protection Act [Chapter 14:44].

The role of suppliers in corporate governance is primarily provision of input on the decisions that might impact the supply chain. This includes what, when, and how their product/service is delivered. Suppliers also benefit from reassurance that an entity will continue to need and pay for its products and services lawfully and timeously.

Lastly, regulators and Government bodies also play a vital role as they monitor, assess, and ensure legal, financial, and environmental compliance by an entity. Citizens have rights to challenge unlawful conduct by a company.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

According to section 195(5) of the COBE Act, in making decisions, the board and management body are obliged to consider the interests of all of the company's constituencies, including stakeholders such as employees, customers, suppliers and the community in which the company does business. To further this right, public listed entities are obliged in terms of the Listing Rules to publish any information which is material to the company.

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

The issue of Environmental, Social, and Governance (ESG) factors has recently become a global language for measuring a company's impact beyond just the bottom line. Investors are increasingly looking for companies committed to responsible practices, while consumers are choosing brands that align with social and environmental

values.

The key considerations given by corporate entities regarding ESG include the following:

- i. The need to attract foreign investment as some investors seek sustainability-focused assets;
- ii. Enhancement of brand reputation – through ESG reporting, companies gain trust and loyalty from stakeholders; and
- iii. Driving sustainable development – aligning business goals with ESG can contribute to national progress on critical issues like poverty, education, and climate change.

Sections 399-404 of the ZSE Listing Rules regulate sustainability reporting and disclosure for public entities. Listed entities are required to disclose their sustainability policy, including mitigation of risks, sustainability performance data and other material information which deepens stakeholders' understanding of corporate performance. In its report, a listed company is required to provide a balanced and objective view of its performance by including both positive and negative impacts on environment and society, how it relates to its stakeholders and contribute to sustainable development.

The Zimbabwe Stock Exchange (ZSE) and Victoria Falls Stock Exchange (VFEX) are now mandating ESG reporting in annual reports. The sustainability information must be provided in an annual report or standalone sustainability report. Listed entities are encouraged to apply international accepted reporting frameworks such as the Global Reporting Initiatives (GRI) Sustainability Reporting Guidelines or Standards.

Though there are no specific regulations for private companies, ESG issues and sustainability reporting and transparency have lately become a priority to most private companies in order to enhance their visibility to the investor community as they have become a determinant factor in the investors' choice of investments.

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

Investors of a company are generally composed of institutional and private investors. They include members, banks, pension funds, venture capital funds,

private equity funds, and real estate investment trusts. Their financial power and quest for returns demands that they invest in sustainable entities that have sound corporate structures. Thus, investors play a huge part in shaping the corporate direction of a company. They can promote good corporate governance practices and thus hold the board and management to account.

Investor responsibilities include the following:

1. Exercise voting power in favour of or against certain proposals, including, election of directors, director emoluments, major asset transactions and mergers and acquisitions;
2. Engaging in constructive dialogue with the board of directors to advocate for better corporate practices and responsible behaviour;
3. Proposing shareholder resolutions addressing governance, social and environmental issues;
4. Encouraging the adoption of policies and practices that improve corporate ethics and performance standards; and
5. Divesting from companies that engage in unethical and unsustainable practices.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

Short termism refers to a situation where the board of directors of a company focuses on the short interests of its shareholders neglecting the interests of its other stakeholders. In terms of section 195(4) of the COBE Act the board of directors has a positive legal obligation to exercise independent judgment, to act within the powers of the company and in good faith to promote the success of the company for the benefit of its shareholders as a whole. Further in terms of section 195(5) of the COBE Act, the board of directors in exercising its powers under section 195(4) of the Act, has a duty to consider the long-term consequences of any decision, the interest of the company's employees, the need to foster relationships with suppliers, customers and others and the impact of the company's operations on the community and the environment it operates in, amongst other things. Directors must perform their duties in a way which promotes sustainable value creation over a long term as this will promote the success of the company for the benefit of the company's shareholders and other stakeholders. The challenge however is that some of the rights given to stakeholders may not be justiciable or enforceable in a court of law.

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