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ZIMBABWE NATIONAL CODE OF CORPORATE GOVERNANCE

EXECUTIVE SUMMARY

1. Zimbabwe will, for the first time, have a National Code of Corporate Governance if this draft code is adopted and will join 150 other countries which have similar national codes.

Foreword

2. The Foreword to the Code is by His Excellency, R. G. Mugabe, President of the Republic of Zimbabwe. In it he recalls the publication by the Government in November 2010 of the Corporate Governance Framework for State Enterprises and Parastatals which sets out governance issues relating to this sector of the national economy.
   His Excellency appropriately highlights the absolute necessity of good corporate governance in both the public and private sectors and positively asserts that national development hinges on good corporate governance at every level. He links the Code to Chapter 9 of the new Constitution and shows that the basic values and principles of public administration and leadership in that Chapter resonate with the provisions of the Code. Authored by the highest authority in Zimbabwe the Foreword gives gravitas to the Code and proves Government's abiding commitment to and acceptance of the Code as a national blueprint on good governance.

Acknowledgments

3. The Code Project Board acknowledges the sterling work of the many people who were involved in the drafting of the Code and the financial contribution of companies and organizations whose financial assistance and other contribution made it possible to produce the Code.

Preface

4. In the Preface the Chairperson of the Project Board gives a broad outline of the process leading to the completion of the Code, the involvement of several individuals and business entities in that process and the imperatives for and main objectives of the Code.

   There are four threads running through the Preface. First, that the absence of a code of corporate governance in Zimbabwe partly contributed to the deterioration of governance standards during the past few years of economic hardships resulting in the collapse of certain economic institutions especially in the financial services sector. Second, the economic hardships called for focussed and patriotic leadership in all sectors of the economy in order to move the country forward. Third, that certain concerned business entities and executives felt the need to play a positive role in resuscitating the economic fortunes of the country and took the initiative to come up with a framework for corporate governance in the form of a code, to apply across the whole spectrum of business enterprises. Fourth, the Code brings Zimbabwe into line with other nations that have adopted similar codes of corporate governance.

   The Chairperson gives a brief explanation of the approach to corporate governance taken in the Code. It adopts what has come to be known as the ñapply or explainô approach which requires business entities to comply with the provisions of the Code and, where they fail to do so or depart from its provisions, to give an explanation for such failure or departure. This approach is different from other approaches, such as the ñcomply or elseò approach which involves sanctions for breach of code provisions.

   The chairman also makes the important point that the standards set by the Code are higher than the minimum standards set by relevant legislation. This means that if a business entity complies with the Code, it *ipso facto* will have complied with the law. Thus the Code not only complements the existing legislation but it raises the bar of corporate governance much higher than that set by the law.

Structure of Code

5. The structure of the Code is that it is divided into Chapters and each Chapter consists of a preamble, a statement of a principle or principles of corporate governance and recommendations for implementing those principles. This summary will not set out the detailed provisions of the Code and will not, in particular, set out all the recommendations, each and every one of them. It will highlight the major provisions in order to provide a quick appreciation of the Codeôs contents.

Chapter 1: Application of Code

6. This Chapter deals with the application of the Code. It provides that the Code applies to all business entities regardless of the manner of their incorporation or establishment but recognises that sector specific codes, whose principles derive from the Code, should be put in place by the appropriate sectors. Some draft sector specific codes have been produced by the Project Committee and will be made available as separate documents which however derive their force from this Code. Annexed to the Code are certain provisions of the new Constitution which have a bearing on corporate governance.

Chapter 2: Ownership & Control

7. This Chapter deals with ownership and controls issues of a business entity and the proper conduct of those who own or control business enterprises:
    - Corporate power should be evenly balanced between owners or shareholders, management and directors and should not be concentrated in one individual or one group of individuals as that can result in business failure and collapse;
    - The manner in which corporate power is distributed in any business entity should be disclosed in the financial statements;
    - Shareholders in general meeting are the ultimate authority of a business entity but their decisions must take into account the interests of minority shareholders and endeavour always to protect them;
    - Nominee shareholders must disclose, upon request by relevant authorities, the beneficial owners of the shares they hold ;
    - Companies must establish employee share ownership schemes and ensure that communities in which they operate benefit from their activities;
    - Shareholder relations should be governed by written shareholder agreements. In the case of parastatals and other state-controlled entities their joint venture contracts must now comply with legislation enacted in terms of section 315 (2) of the new Constitution.
    - The major shareholder of a business entity should not be involved in the day-to-day management of the business, unless that is inevitable;
    - There must be transparency in the conduct of the affairs of companies and all other business entities which is ensured by, for example, availing all relevant information to shareholders and giving them adequate notices of any meetings they are required to attend, simplifying the procedures for conducting shareholdersô meetings by putting in place voting rules which are clear and simple and fair to all shareholders and which, where appropriate, encourage voting by proxy, absentia voting, voting by e-mail or fax and which eschew voting caps and the dilution of voting rights, especially of minority shareholders.

Chapter 3: Boards of Directors

The role and functions of the Board of Directors are set out in this Chapter:

- It is the governing and directing body of a company;
- It provides effective entrepreneurial leadership based on professionalism, the realisation that risk, performance and sustainability are inseparable, effective controls for assessing and managing risks, and the recognition that the best interests of the company are paramount;
- It provides leadership through setting business strategies aims and plans including rescue procedures when the company is financially distressed, the appointment of an independent non-executive chairperson of the board who does not double up as the CEO and assiduous accountability to shareholders;
- It should have a charter outlining, among many other things, the vision, mission and values of the company and the parameters of exercising leadership at all levels of the company, the policies and practices of the company designed to assist in identifying and assessing company risks and key performance indicators and proper succession plans for all personnel of the company;
- It must conduct itself with honesty and integrity and in the best interests of the company, always taking into account the interests of minority shareholders;
- It must correct corporate misdemeanours as and when they are detected;
- It should ensure that every director should commit himself/herself to the company, be knowledgeable about its operations and political operating environment, exercise independence in decision making, meet the legal duties of good faith, loyalty, care, skill and diligence, avoid conflicts of interest, imbue company personnel at every level with good moral values and espouse the concept of *Ubuntu/Hunhu* which is expressed in the statement ñ*Ubuntu,Ngumuntu, Ngabantu";*
- It should not engage in selective corporate disclosure;
- It should partly consist of non-executive directors so as to balance corporate power also as a measure of seeking to protect the interests of minority shareholders;
- It should ensure that officers of the company are appointed on merit and recognise the central role of certain officers such as the company secretary;
- It must put in place mechanisms for regularly assessing its own performance including that of its chairperson and provide schemes for director development.

Chapter 4: Governance of Risk

8. The management of business risks is key to the success of any business entity. This important aspect of business is addressed in this Chapter:

- The board must establish efficient systems for assessing its business risks and determine the levels of the companyôs risk tolerance. More specifically the Board should appoint a risk management committee whose functions must be clearly spelt out, including the roles of the internal and external auditors;
- The board must establish an efficient and reliable whistle-blowing system to guard against corporate misdemeanours.

Chapter 5: Information Management

9. Central to good corporate governance is the handling of the companyôs information management systems and disclosure of information. Systems should be put in place to manage the companyôs information, including ICT, so as to provide an integrated reporting system which is holistic and governed by proper disclosure channels. The role of the Board of Directors in this regard is set out with clarity.

Chapter 6: Conflict Prevention & Resolution

10. This chapter is dedicated to conflict prevention and resolution. Many companies have fallen victim to insider trading and corruption. Conduct which is likely to give rise to corporate conflict is listed e.g. obtaining and accepting secret commissions and inducements. 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 companiesô 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.

Chapter 7: Compliance & Enforcement

11. The ñcomply or explainò approach of the Code is explained in detail in this Chapter. Compliance with any rules depends on whether the rule concerned is a law backed up by sanctions or a standard backed up by other sanctions which have no force of law. Compliance can therefore be enforced by application of sanctions or it can be voluntary. The ñapply or explainò approach requires a contextual response to the provisions of the Code. It does not place an entity in the predicament whether to comply or not but raises more the question of considering how the provisions of the Code can be suitably applied in the given circumstances and where it is not possible to comply to the letter a departure will have to be explained. This approach has both elements of flexibility and indirect coercion. These are buttressed by the Codeôs provisions on disclosure, among others. The role of the Board of Directors in ensuring compliance is outlined in detail in this Chapter.

Chapter 8: Stakeholder Relations

12. In this Chapter the importance of the company's stakeholders is emphasised because stakeholders are affected and affect a company's operations. Shareholders, institutional investors, creditors, suppliers, customers, employees, regulators, trade unions, the media, analysts, and whole communities are all important stakeholders with whom the company must engage regularly and constructively. It should ensure that they are consulted, as appropriate, and treated with respect and fairness. The board of Directors should be proactive in its dealings with stakeholders. It must formulate policies and procedures of engagement with its stakeholders and take on board their views and opinions and be responsive. It should regularly disclose information required by its stakeholders and use ADR methods to solve any conflicts which may arise.

Chapter 9: Role of Government

13. All business thrives in an enabling environment created by the Government. In this Chapter the role of Government in business in outlined in detail. Government must create an enabling environment in which business can thrive, participate through State enterprises in the development of the economy and provide the necessary infrastructure and basic services such as electricity, water and communication facilities. These provisions are necessary for the efficient functioning of business. Government must also actively combat corruption through legislation and the establishment of effective anti-commissions. It should itself respect all laws and lead by example.

Chapter 10: Epilogue

14. In this concluding part of the Code business people are urged to take advantage of the Code as a practical guide to corporate governance and to view it, not only as developmental in outlook but also as work in progress. The experiences gained in using the Code will inform future work of adapting the Code to answer to the governance needs of business in this country. The point is made that Zimbabwe should be attractive to investors and that the Code is one of the many ways in which this is sought to be achieved. Faith is place in the market that it will judge corporate behaviour against the standards set by the Code and constrain business to keep on the narrow and straight. The government, opinion leaders, financial analysts, academic institutions, the media and all players in business are urged to assist in ensuring that the Code is applied. The epilogue candidly recognises that the Code is not only just a good beginning but also that it lays a solid foundation upon which to build a better Zimbabwe.

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