AN EVALUATION OF THE PRINCIPLE OF ACCOUNTABILITY AND TRANSPARENCY UNDER THE COMPANIES ACT NO 10 OF 2017

By

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Cl1744]

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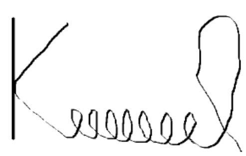

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DEDICATION

I would love to dedicate this dissertation to my late father, Mr Musengo Kayombo, and my late Bishop Daniel John Mwamba. May your souls continue to rest in eternal peace. I love you and thank you for everything thus far.

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I would love to dedicate this dissertation to my parents, Astridah Kayombo and Musengo Kayombo, who have always believed in me, and whose poured their heart and finances into my Education, and God Almighty, who has made this possible. I love and appreciate them so much.

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ABSTRACT

This research paper is primarily focused on assessing whether the Company Law Act No. 10 of 2017 has efficiently and effectively promoted the principles of Transparency and Accountability, bearing in mind that these principles are considered the most important corporate principles in corporate governance. Accountability, referring to those in power being answerable to those who gave them the power, the shareholders are considered the owners of the company, while the Directors and Secretaries are considered to be company officers, who have the sole responsibility of running the affairs of the company, which holds such a high degree of power, Transparency which refers to full disclosure of company records to those that are entitled to that full disclosure. Corporate governance laws may differ from country to country, but the principles remain constant. In determining the efficiency of the company law act, other legislative frameworks have proven to promote accountability and transparency, and these frameworks include the Banking and Financial Services Act, Securities and Exchange Act. All these Acts give birth to Regulatory bodies that ensure that corporate governance is respected and promoted. For example, the Securities Exchange Act gave birth to the Securities Exchange Commission, the Banking and Financial Services Act gave birth to the Bank of Zambia, which has the sole responsibility of promoting corporate governance in financial institutions the securities exchange commission has the responsibility of, regulating and fostering fair and efficient trading through licencing and regulating securities exchanges, clearing and settlement agencies and self-regulatory organizations; to ensuring the financial integrity of transactions and avoidance of systemic risk in the capital markets, providing for licensing and regulation of capital markets operators, to providing for licensing and regulation of credit rating agencies. Lastly, this paper addresses the fact that the corporate governance laws of Zambia should not exist in isolation, but rather it is cardinal that lessons may be drawn from other countries such as Kenya and South Africa

TABLE OF STATUTES

Accounting Act No 13 of 2008

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Banking and Financial Services Act No 9 of 2026

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TABLE OF CASES

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RE London and General Bank No.(No 2) [1895])

Secretary of State for Trade and Industry v Tjolle [1998] 1 BCLC 333

Shaw &Sons(Salford) Ltd v Shaw [1935] 2 KB 113

South Africa Broadcasting Corporation v Mpofu [2009] 4 All SA 169 (GSJ)

Zambia Consolidated Copper Mines Limited v. Richard Kangwa and Others, (2000) ZMSC 129 (SCZ Judgement No.23 of 2000)

CHAPTER ONE

1.0 INTRODUCTION

Corporate governance is a concept that has been in existence for quite some time; it dates back to 1992, when the Cadbury Code was first introduced. Sir Adrian Cadbury's code advocated good corporate governance practices, including the wider use of non-executive directors, a division of responsibilities between the chairman and the board with independent members, and public reporting on whether the corporate governance code had been complied with or why it had not. [1] The Cadbury report advocated for what is referred to as the **comply or explain,** which meant that companies were supposed to adhere to the principles as prescribed by the Cadbury report, and the principles that were not agreeable to the company were supposed to be explained. [2]

Corporate governance can be defined as a framework of rules, principles, and practices that govern how a company is directed, managed, and monitored in the interest of stakeholders.[3] "The Directors are a body to whom is delegated the duty of managing the general affairs of the Company. A director is therefore considered an agent too. A corporate body can only act through its agents, and it is, of course, the duty of those agents to act as best they can to promote the interests of the corporation whose affairs they are conducting.

This paper focuses on the efficacy of the provisions of the Companies Act No. 10 of 2017 in promoting accountability and transparency. The paper will also focus on the duties and responsibilities of company directors in ensuring accountability under the Companies Act No. 10 of 2017, and identify gaps and weaknesses in the current legal Framework that hinder the effective enforcement of transparency and accountability. This paper will also highlight the significance of the regulatory bodies in the promotion of corporate governance, particularly the Bank of Zambia, the Securities and Exchange Commission, and the Patents and Companies Registration Agency. Lastly, propose recommendations for strengthening the corporate governance framework in Zambia to enhance transparency and accountability.

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[1]Bob Thicker. *Corporate Governance: Principles, Policies and Practices* (Oxford University Press, 2012) 13
[2]Kadidji Banda . 'The enhancement of corporate governance in Zambia ' University of Zambia 15
[3]David Ini Grace, *The Impact of Corporate Governance on Financial Stability and Performance of SMMEs in Africa* (Dissertation, Selinus University 2023) 2

1.1 BACKGROUND OF THE STUDY

Corporate governance served as a balance because it existed before the principal act of company law, which was enacted in 2017. Corporate Governance is not a new concept, but its recognition and implementation in Zambia is what is considered new. The establishment of the Department of the Institute of Directors in Zambia led to the recognition of Corporate Governance. Globally, the history of corporate governance dates back to the formation of the East India Company, the Hudson Bay Company, and other major chartered companies established in the 16th and 17th centuries. [4]

In Zambia before independence, corporate law was very static, and the only available company statute was the Companies Act of 1921, which was from the United Kingdom. For a period of about seventy years, Zambia held on to the United Kingdom legislation on company law; however, in 1994, there was an enactment of the Companies Act 1994 [5]

Historically and legislatively, it is clear that there must be a standard against which a director's actions and conduct are measured. This measure originates from the fiduciary relationship between the company and directors, and the duties that flow from that relationship.[6] That fiduciary relationship can only be guarded if corporate governance is followed and implemented.

Corporate governance dates back to 1992, when the Cadbury Code was first introduced. Sir Adrian Cadbury's code advocated good corporate governance practices, including the wider use of non-executive directors, a division of responsibilities between the chairman and the board with independent members, and public reporting on whether the corporate governance code had been complied with or why it had not. [7] Corporate governance is the combination of laws, regulations, rules, and voluntary private-sector practices that help ensure a company can attract capital from investors, operate efficiently, generate profit, meet obligations, and meet societal expectations.[8]

The Desire for Corporate Governance to be implemented in companies was introduced in 2000 in Zambia. It was enshrined in the Institute of Directors in Zambia's national agenda in 2000, despite insufficient evidence of compliance by body corporates with Good governance practices. From the

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[5] Reagan Blankfein Gates *'Gates company law and practice in Zambia'* 2017 5

[6] Quinten Sam van der Heever, '*The Powers of Directors and Limitations* ' (LLM dissertation, University of Pretoria 2013) http://hdl.handle.net/2263/27442 accessed 7 November 2025

[7] Bob Thicker. *Corporate Governance: Principles, Policies, and Practices* (Oxford University Press, 2012) 13

[8] Holly J. Gregory & Marsha E. Simms∗ Corporate Governance: What it is and why it matters 2

year 2000 until now, despite the implementation of the Institute of Directors Agenda, there was still weak compliance in corporate governance; furthermore, directors were not being held liable as they should be[9]

1.2 STATEMENT OF THE PROBLEM

Corporate governance are the rules and regulations that help to ensure that companies are run in an orderly, effective, and efficient manner and that the rights and interests of shareholders, directors, and other stakeholders are respected and considered. For corporate governance to be fully functional, this functionality is solely dependent on whether the principles of accountability and Transparency are being adhered to

Under the Companies Act No. 10 of 2017, directors are authorized to manage the affairs of the company in accordance with section 86 of the Companies Act, which stipulates that *'The Business of the company shall be managed by or under the supervision of the Director* '[10] Furthermore, in the effort to promote accountability and transparency, the Companies Act further imposes various duties, such as the full disclosure of remuneration avoiding of conflicts of interest. Section 107, which stipulates that ' *A director shall avoid any situation in which the director has or is likely to have a direct or indirect interest that conflicts or is likely to conflict with the interests of the company* '[11]define the duties of the Directors in Section 106, which stipulates that *'a director shall promote the success of the company, exercise independent judgement, disclose information about the director's remuneration in the financial statements of the company* '[12] All these sections are cardinal in the promotion of accountability and transparency.

However the act does not make comprehensive provisions that are very cardinal to corporate governance, in contrast the National Corporate governance code provides for the corporate governance mechanisms that have not been comprehensively provided for and explained in the Companies Act No 10 of 2017, such as board independence, distinguishment of the roles of the chair person and chief executive officer, stakeholder inclusion comprehensive board member evaluations, Environmental and social Governance policies. These provisions have been

[9] Kadidja Banda , The Enforcement of Corporate Governance in Zambia, the Company Law Reform (University of Zambia) 2013 29
[10] Companies Act No 10 of 2017
[11] Ibid
[12] Ibid

implemented in the apply and explain principles, which means that they are not mandatory for companies to adhere to.

The non-binding Nature of the National corporate governance code and the lack of extensive provisions within the Companies Act No 10 of 2017 have the possibility of encouraging non-adherence to the principle of accountability and transparency ,this existence gap of non-comprehensiveness has the possibility of therefore perpetuating non-adherence to the principles of transparency and accountability, which in turn will be detrimental to the smooth running of companies.

1.3 GENERAL QUESTIONS

To assess the efficacy of the Companies, Act provisions in encouraging adherence to the principle of transparency and accountability.

1.3.0 SPECIFIC OBJECTIVES

1. To underscore the concepts of accountability and transparency in corporate governance
2. To discuss the legal provisions on accountability and transparency under the Companies Act No 2017
3. To examine the extent to which the Regulatory bodies promote accountability and transparency in Zambia
4. To draw lessons from Kenya and South Africa on how Zambia can reform its corporate governance framework to enhance accountability and transparency

1.4 GENERAL QUESTION

How effective are the provisions of the Companies Act in encouraging adherence to the principles of transparency and accountability?

1. What are the concepts of transparency and accountability in the context of corporate governance?
2. What legal provisions on transparency are provided under the Companies Act No 10 of 2017?

3. What regulatory bodies in Zambia are responsible for the promotion of Accountability and Transparency?
4. What lessons can Zambia draw from Kenya and South Africa on how to reform its corporate governance framework to enhance accountability and transparency?

1.5 RESEARCH METHODOLOGY

The research methodology will be a secondary study. Therefore, data will be collected from legislative documents such as statutes and case law. Books, journals, theses, online sources, and articles will also be used. The aforementioned materials will be evaluated and organized to arrive at a concrete conclusion for the research.

1.6 SIGNIFICANCE OF THE STUDY

This research will identify potential gaps in the Company Law Act No. 10 of 2017 and suggest possible reforms to the law. This research is important to students of the law because it not only delves into the deficiencies in the Companies Act but also expands knowledge of transparency and accountability. This research will be significant for directors, as it will serve as a guide to existing laws and provide insight into how they can improve adherence to transparency and accountability.

1.7 SCOPE OF RESEARCH

The research will involve an analysis of the current Companies Act, Cap 10 of the Laws of Zambia. This analysis will be limited to the provisions that govern directors' powers in the Companies Act, relevant case law, and the corporate governance principle of accountability. And transparency

1.8 LITERATURE REVIEW

Sims and Gregory [13]define corporate governance to be a combination of laws, regulations, rules, and voluntary private-sector practices that help ensure a company can attract capital from investors, operate efficiently, generate profit, meet obligations, and meet societal expectations. However, that doesn't adequately define corporate governance.

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[13] Holly J. Gregory & Marsha E. Simms∗ Corporate Governance: What it is and why it matters 2

Agarwal and Sanju Rawal[14] The view on corporate governance frameworks is that they do not exist on their own, but their foundation is surrounded by human judgment, deliberation, and oversight, with clear responsibilities and well-understood legal doctrines like fiduciary duties and the business judgment rule.

In order for the laws and principles of corporate governance to be effective, there are principles that are considered the cornerstone of corporate governance, and these include accountability and transparency in *Ezejiofor R and Ijeoma N.* [15] Findings: They emphasized what elements are expected in the principle of transparency and accountability to be comprehensive, both the type of information and the manner in which it is disseminated. The emphasis is that the corporate framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. For the company to promote transparency through its disclosure of financial statements, these statements ought to be true and on point.

Bonazzi M. [16]defines the function of the board as a collective responsibility to: 'determine the company's purpose and ethics. decide the direction, that is, the strategy; plan; monitor and control managers and the CEO; and report and make recommendations to shareholders.[17]

Ezejiofor R and Ijeoma N [18] Further assert that accountability is highly expected from the board of directors, who should be accountable to the company and shareholders, and there is a need for a corporate governance Framework to support it. "The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders'

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[14] Megha Agarwal1 and Sanju Rawal, 'Structuring the barriers of AI integration in corporate governance ' (Corporate Governance Insight, Volume: 7, Number:2, December 2025,)29

[15] Ngozi Ijeoma and Raymond Ezejior 'An Appraisal of Corporate Governance Issues in Enhancing Transparency and Accountability in Small and Medium Enterprises (SME).'

[16] Livia Bonazzi, Sardar M.N. Agency theory and corporate governance: A study of the effectiveness of the board in its monitoring of the CEO. Islam 9 Volume 2 Issue 1 2007 (Agency theory and corporate governance | Journal of Modelling in Management | Emerald Publishing)

[18]

According to *Duffy, the* principle of accountability in corporate governance requires that the company's officers be answerable to someone above them. Decisions that affect the company should be fully disclosed. Directors are therefore answerable to shareholders, who are considered to be the owners of the company; apart from that, no one can control them. ‘No matter what decision a board takes, they should be able to back it up. Important corporate decisions will inevitably lead to questions, and this isn’t a bad thing – merely a sign of engagement and diligence.’

According to *F.Jeosever*[19]For the board of Directors to act responsibly, the corporate governance framework needs to provide strategic guidance for the company, effective board management, which means scrutiny of how the board is running the company's affairs, and the board's accountability to the company and its shareholders. This means that, for directors to act in accordance with the rules and regulations governing governance, there must be a clearly stated framework they will adhere to, as it is written and carries consequences for non-adherence.

Kaey and Loughey[20] affirm that the amount of discretion a power-holder possesses is also significant in determining the necessary degree of accountability. Directors have significant power in companies; the legislative framework that guides their duties should include provisions that hold them accountable, and these provisions should be accompanied by penalties for non-adherence to the rules. In exercising their power, directors of public companies enjoy ‘a remarkable degree of freedom from shareholder command and control '. The fact is that the shareholders in a large company are at a disadvantage when compared with the board. [21]

It is important to note that transparency and accountability are the building blocks of corporate governance, as their essence lies in the scrutiny and oversight of every decision made. This pertains to the clarity and openness with which a company communicates its operations, decisions, and

[19] Fiana Jeosever, Grand Kirkpatric, ‘The revised OECD principles of corporate Governance and their relevance to non-OECD countries’ 9, 2005. Accessed on 5th March 2026.
[20] Keay, AR and Loughrey, J (2015) The framework for board accountability in corporate governance. Legal Studies, 35 (2). 252 - 279. ISSN: 0261-3875

performance to stakeholders. Transparency is achieved through accurate and timely disclosure of financial and nonfinancial information, allowing stakeholders to make informed decisions.[22]

Mwanawasa C[23] asserts that not all the corporate governance principles can be incorporated into the law, because even if they stand, these principles are not mandatory. The solution is to apply the law in a context where corporate governance principles are strongly promoted and championed by legal practitioners, thereby encouraging companies to improve their application and enforcement.

Mwanawasa C further states that for there to be an improvement in corporate governance laws in Zambia, it is cardinal that stakeholder inclusivity should be mandatory, the concept of integrated reporting should be introduced, supported, and promoted by Zambian institutions in charge of corporate governance through the Company Law Act.[24]

The National Corporate Governance Code provides for flexibility in adherence to corporate governance principles, meaning that no law mandates this code to be adhered to. 'It is not a rigid set of prescriptions but a flexible framework, based on the "apply and explain" philosophy, which challenges businesses to go beyond compliance and embrace good corporate governance as a culture. The Code recognizes that good governance is not just about financial performance; it is about long-term value creation, safeguarding the environment, strengthening governance structures, nurturing society, and preserving our environment and cultural heritage'[25]

Another improvement that can be made is the promotion of a corporate governance framework that shows a clear distinguishment of the Chief Executive Office and the chairman, unlike a framework that is completely devoid of the differences in *Musikali.* [26]' findings: Corporate governance codes recommend that the positions of the chief executive officer (CEO) and the

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[22]Christianah Pelumi Efunniyi, Angela Omozele Abhulimen, Anwuli Nkemchor Obiki-Osafiele3, Olajide Soji Osundare, Edith Ebele Agu5, Ibrahim Adedeji Adeniran, ' Strengthening corporate governance and Financial compliance: Enhancing accountability and transparency, Finance & Accounting Research Journal', Volume 6, Issue 8, August 2024. p1599
[23] Chipokota Mwanawasa, ' A case Analysis of the viability of the current regulation and enforcement mechanisms of corporate governance in Zambia' 2016, University of Cape Town .37
[24] Chipokota Mwanawasa, ' A case Analysis of the viability of the current regulation and enforcement mechanisms of corporate governance in Zambia' 2016, University of Cape Town .62
[25] Ministry of Justice, National Corporate Governance Code
[26] Lois M. Musikali, The law affecting corporate governance in Kenya: a need for review. 2008

chairman of the board (chairman) are separated, because having one person occupying both the roles of CEO and chairman is to concentrate too much power in one person's hands, therefore making the company vulnerable to abuse'.

Solomon[27] Further affirms that in order for there to be corporate governance reforms, there are certain issues that policymakers, practitioners and theorists should adopt, such as splitting the role of chairman and Chief Executive, introducing non-executive directors and increasing the quality and quantity of corporate disclosure. Such laws are supposed to be provided for in the legislative framework of a country rather than the codes that are considered soft law.

Cuomo and Malin, [28] recognize that the efficacy of both the hard-law and soft-law approaches should not be ascertained at an early stage. First, mostly soft law is increasingly seen as a complementary rather than an alternative way to solve corporate governance problems; this means that the corporate governance codes that countries have set up are not the ultimate solution but complement the actual legislative laws that govern corporate governance; henceforth, there is a need for the legislative framework to cover all possible lacunas about corporate governance.

Kaira H. [29]In her study on a church called Lusaka Presbytery, the church listed how accountability was implemented: 'conducting periodic audits of its financial and operational activities to assess compliance with regulations, identify areas of risk, and ensure accountability. The audit reports are presented to the governing board and other stakeholders to provide insight into the church's performance and identify areas for improvement.

1.9 CHAPTER OUTLINE

General Introduction

This chapter includes a brief introduction, the study's background, a literature review, and a conclusion. This chapter provides a basic overview of the research and what is expected of it.

Chapter 2

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[27] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 61.

[28] Cuomo, Francesca, Christine Mallin, and Alessandro Zattoni. "Corporate governance codes: A review and research agenda." *Corporate governance: an international review* 24, no. 3 (2016): 222-241.

[29] Harriet Kaira. 'Assessing the effect of corporate governance principles on management of the United church of Zambia: A case of Lusaka Presbytery' (2023).p36

An analysis of the concepts of Accountability and Transparency in corporate governance

This chapter provides a full explanation of the concepts of transparency and accountability in the context of corporate governance.

Chapter 3

Legal Provisions of Transparency and Accountability In the Zambian Legislative Framework

This chapter addresses the legal provisions on transparency and accountability under the Companies Act No. 10 of 2017.

Chapter 4

The efficacy of the Companies Act No 10 of 2017 in promoting Transparency and Accountability.

This chapter explains the extent to which the Companies Act No 10 of 2017 provides for the effective enforcement of transparency and accountability.

Chapter 5:

Enhancing Transparency and Accountability in Zambia: Lessons from Kenya and South Africa

This chapter helps to draw lessons from South Africa and Kenya concerning how these countries have improved and applied corporate governance.

CHAPTER 2

UNDERSCORING THE PRINCIPLE OF ACCOUNTABILITY AND TRANSPARENCY IN CORPORATE GOVERNANCE

2.0 INTRODUCTION

Corporate governance is a central concept in company law and corporate regulation, concerned with the systems, structures, and processes through which companies are directed, controlled, and held accountable and answerable. It provides the framework in companies within which corporate power is exercised, corporate decisions are made, and the interests of shareholders and other stakeholders are protected. As companies continue to play a vital role in economic development, the importance of corporate governance has become increasingly significant in ensuring that corporate entities operate in an efficient, responsible, and sustainable manner.

The concept of corporate governance has been defined in various ways by different scholars and institutions, each emphasizing a particular aspect of its function and purpose. While these definitions differ in emphasis, they converge on a common theme: corporate governance is fundamentally concerned with the regulation, control, and orderly management of companies through clearly defined structures of authority, responsibility, and oversight. It governs the relationships between the principal actors within the company, including directors, managers, shareholders, and other stakeholders, and establishes the mechanisms through which decisions are made and corporate objectives are pursued.

At its core, corporate governance is not merely concerned with the internal administration of companies, but also with ensuring that corporate conduct is aligned with legal obligations, ethical standards, and long-term strategic objectives. It encompasses both the formal systems by which companies are managed and the relational dynamics between those who control corporate resources and those whose interests are affected by corporate decisions. In this regard, corporate governance serves not only as a mechanism of corporate control but also as a means of promoting legitimacy, accountability, and institutional trust.

Central to the effectiveness of corporate governance are the principles of transparency and accountability, which serve as essential indicators of good governance practice. Transparency requires openness, clarity, and the timely disclosure of relevant information concerning the company's affairs, thereby enabling stakeholders to make informed assessments of corporate conduct and performance. Accountability, on the other hand, ensures that those entrusted with corporate authority are answerable for the decisions they make and the manner in which they exercise their powers. Together, these principles promote responsible decision-making, strengthen oversight mechanisms, and reduce the likelihood of abuse, fraud, and mismanagement within the company. This section, therefore, examines the concept of corporate governance through selected scholarly definitions while underscoring the significance of transparency and accountability as foundational principles of good corporate governance.

2.1CARDINALITY OF CORPORATE GOVERNANCE

Corporate governance has existed for quite some time, and the reason is that it has so many benefits to companies, which include;

<u>Encouragement of trust among stakeholders:</u> A good and effective corporate governance framework encourages investors, shareholders, customers, and suppliers to put their trust in the company and themselves in general. This is significant because it helps the growth of the company and general development, as these rules are regulated. It is quite difficult for a company to be trusted if, at all, they are well known for acting dishonestly and without integrity, transparency, and morally right attitudes. [30]In a company where there is trust among shareholders, the company will inevitably succeed.

<u>Attracts investment in companies:</u> An effective corporate governance system is bound to attract investors, who, in turn, bring investment into the company. The reason given is the certainty that their investment will be guided by a corporation whose rules and regulations keep it accountable, transparent, and fair to other parties.

<u>Enhancing long-term sustainability and reducing risks:</u> an effective corporate governance system helps to identify risks at an early stage and mitigate them before they happen. Checks and balances

[30] Ibid

are done at fixed intervals to identify whether all the members of the company are acting accordingly. [31]

Gives a vivid explanation of the responsibilities and Duties of the company officers: Corporate governance aims to vividly explain what is expected of the directors, secretaries, and managers. This is important because no one oversteps their authority or underperforms because they are clearly being guided by rules and regulations, which are referred to as corporate governance. Section 83 of the Companies Act[32] gives an in-depth of the expected functions of a secretary, which include the provision of guidance to directors concerning their duties, responsibilities, and powers. Directors' powers are also highlighted in the Act, such as the management and supervision of the company. [33]

Proper Allocation of Funds in the Company. helps to ensure that the Board of Directors plans and allocates the finances of the company appropriately: the finances of the company are the heartbeat of the company. All members of a company need to know how much revenue it has, how many assets it has, and how many liabilities it has. Corporate governance, as a system, helps ensure that everyone in charge of finance is required to report how much they have. Ensures that those governing and managing an organization's accounts are appropriately managed.

Ensures board Accountability: Corporate governance through the legislative and regulatory framework of the company laws of countries gives particular rules which govern how stakeholders are expected to conduct themselves, and the prime expected behaviour is an accountable, transparent, and integrity-filled behaviour_to ensure shareholders and, where appropriate, other stakeholders can and do hold boards accountable. Shareholders, who are considered the owners of the company, have the right to hold the Board Accountable for every decision made and at a fixed interval, probably if a meeting can be held at fixed intervals.

2.1 PRINCIPLES OF ACCOUNTABILITY AND TRANSPARENCY

Corporate governance cannot exist without Transparency and Accountability, as they are considered the pillars of corporate governance. The efficacy of the laws and regulations of

[32] Metric Stream, What is corporate governance? (https://www.metricstream.com) accessed on the 14th May 2026 .

[32] Companies Act No 10 of 2017

[33] Section 86, Company Law Act No 10 of the Laws of Zambia

corporate governance is dependent on the extent to which the directors are Accountable and transparent to shareholders and other stakeholders of the company. The board and management should endeavour to uphold and nurture accountability, transparency, fairness, and integrity in all aspects of the company's operation.

Directors are considered agents of a company that has the core responsibility of promoting accountability and transparency. Agents have fiduciary duties to discharge towards their principal. And it is a rule of universal application that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect." [34]

Directors, therefore, have loyalty to the company in which they are; they owe the company loyalty, care, and acting in good faith. Misuse of power and failure to account for actions taken can deprive the company of the fiduciary duty expected of directors. In underscoring accountability and Transparency in corporate governance, it is cardinal to note that Directors and shareholders are cardinal. Accountability and Transparency are significant in corporate governance because they are the main pillars of corporate governance; without these two principles, an effective corporate governance structure would be hard to achieve. Corporate governance provides an architecture for accountability and transparency. [35]Accountability and Transparency, in simple terms, in company law, accountability usually refers to whether the board is responsible for the actions being taken in the company. Transparency, which is the board fully disclosing what is happening in the company,

1. **ACCOUNTABILITY**

Accountability can further be defined as a principle that a company or government must be able to account for its performance transparently and fairly.[36] Accountability can be defined as the obligation of company members to take full ownership of their actions, decisions, and their consequences. Being accountable refers to the clear allocation of decision-making within the

[34] Ibid
[35] Derek Higgs, Review of the role and effectiveness of non-executive directors. 11
[36]Bambang Karsono , Good Corporate Governance: Transparency, Accountability, Responsibility, Independency dan Fairness , Vol. 4, No. 5, May 2023.

company, being fully transparent, and providing an ethical justification for all decisions and policies.

Accountability automatically encourages a form of scrutiny of all actions, which means that those in power will not act carelessly but will take all forms of precautions, knowing that they will be held liable for all the decisions and actions, and will have to bear the consequences. Accountability in corporate has two aspects to it; these include responsibility and answerability. The responsibility being defined refers to the duties and responsibilities assigned to individuals or entities in the company, while answerability refers to what is expected from the members of the company to make a report of what they have done, and to comprehensively justify their actions. [37]

Many scholars have defined accountability in different spectrums that all come down to one meaning. Accountability can also be defined as "the requirement of those in authority, and exercising responsibility, to justify and explain their actions to those on whose behalf they act.[38] Or Accountability can be defined as an obligation to present an account of and answer for the execution of responsibilities to those who entrusted those responsibilities." Accountability can also be defined as 'an obligation for power holders and their officials to provide accountability, present, report, and disclose all kinds of activities that are the responsibility of the party giving power."[39]

Accountability focuses on three important questions: Who is accountable? Who are they accountable to? What are the constituent processes needed for accountability to work? And to what extent? [40] Directors are accountable to shareholders, who are the major stakeholders of the company, as they invest their money in the company and expect accurate disclosure of the company's financial state.

Shareholders are considered the owners of the company, In the case of **ZCCM v Kangwa and others**, *a* shareholder was described as **a** beneficial owner of the company who has and enjoys the

[37] Ibid

[38] Ismail Salem Elshahoubi , 'An investigation into corporate governance and Accountability practices: Evidence from Libyan listed companies'(2019) 101

[39] Bambang Karsono. Good Corporate Governance: Transparency, Accountability, Responsibility, Independency, and Fairness, (Volume No 5 2023) .813

[40] Ishmail Salem Elshahoubi, 'An Investigation into Corporate Governance and accountability practices: Evidence from the Libyan countries ', A Thesis Submitted to the University of Reading in Fulfilment of the Requirements for the Degree of Doctor of Philosophy Department of Informatics Systems and Accounting (BISA) Ismail Salem Elshahoubi February 2019 101

overriding authority over the company's affairs and even over the wishes of mere nominees or Directors". Another case that defines what a shareholder is, **Bank of Zambia v Chibote Compensation.**[41] Held: "shareholders as beneficial owners of the company have and enjoy as of right, overriding authority over the company's affairs and even over the wishes of mere nominees or Directors".

However, the notion that shareholders have overriding powers over the directors was refined. Despite having the position of ownership of the company, that position should not be arbitrarily used. And despite them being owners of the company, the expectation of directors being answerable to their powers is limited in the case of **Ackim Chirwa, Levy Joseph Ngoma, and U-Fuel (Z) Limited v. Mini Mart Development**, where it was held that shareholders do not exercise direct control but rather define the scope of directors' powers. Similarly, in the case of **Automatic Self-cleansing Filter Syndicate Co Ltd v Cunninghame** established that a director's authority is derived from the company's constitution, or rather, the articles of association of the company.

The indicators of accountability are as follows: obligations, controllability, responsiveness, and transparency.[42];

a.1 Mechanisms that enforce Accountability

There are ways in which Accountability is enforced in companies, and these include:

1. **Financial controls:** The processes by which Directors are accountable to shareholders are referred to as the process of financial controls. This is the process where the directors make a concise report on the activities and the progress of the company; this is important because it helps shareholders and other significant stakeholders to assess whether the company will stand the test of time [43] Section 246(1)(a)(b) of the Companies Act NO 10 of 2017 requires the board to keep accounting records that show the position of the company, audited statements, daily expenses, assets and liabilities of the company.

[41] (SCZ 14 of 1999)
[42] Bambang Karsono , "Good Corporate Governance: Transparency, Accountability, Responsibility, Independency and Fairness"(2023) Vol. 4, No. 5, .
[43] Adrain Cadbury ,The financial aspects of corporate governance 1992 (https://www.ecgl.globa)

provides that auditors are also accountable to the shareholders through the directors in the sense that they provide an external and objective check on the directors' financial statements.[44] Henceforth, no one is exempt from scrutiny of the affairs; each person is required to give an account.

2. **Auditing.** Auditing is a process by which there is an independent verification of financial statements. The Accounting Act No 13 of 2008 defines audit as an independent examination of evidence from which the financial statements of an enterprise are derived, to give the reader of the statements confidence as to the truth and fairness of the state of affairs which the financial statements disclose, but does not include book-keeping, cost accounting, and business or cost systems.

3. **Disclosure obligations**: Directors are supposed to disclose the financial statements of the company, including the remuneration that they receive, and auditors are supposed to disclose an unbiased report of their examination of the financial statements, ensuring that shareholders are informed effectively, promptly, and truthfully. The beneficial ownership of the company should be disclosed, including who stands to benefit from the shares, the remuneration, the salaries, and the profits, amongst others. Failure to abide by disclosure obligations attracts such as a fine not exceeding twenty thousand penalty units, which amounts to K8000

2. TRANSPARENCY

In order for companies to thrive and be successful, transparency should be the foundation by which stakeholders are guided; the principle should be enshrined in the company's articles and at the core of the company. Many scholars have attempted to define transparency, but all definitions point to one trajectory, which is the full disclosure of material information by the stakeholders of the company. Some of the definitions of transparency include;

[44] Ibid

Transparency can be defined as the provision of clear, precise, and timely information to stakeholders, investors, and potential investors regarding the company's performance, financials, risks, and decision-making processes. Transparency involves full disclosure of issues about the company, including how effectively the company performs. The stakeholders should be provided with that information, including what risks are involved in the company, whether there are operational risks, whether there are strategic risks, or financial risks. All this information should be made available to the company stakeholders.

"Transparency is at the heart of stakeholder trust, ethical governance, long-term investment, and regulatory compliance. Transparency places governance as a proactive and strategic tool; there is a need for board member disclosure and stakeholder engagement."[45] Stakeholders thrive on the basis that companies are transparent, because it not only boosts their confidence in the company but also motivates them to invest more in the company.

"A strong disclosure regime that promotes real transparency is a pivotal feature of market-based monitoring of companies and is central to shareholders' ability to exercise their shareholder rights on an informed basis." In order for transparency to be effective, there is a need for strong disclosure rules, which have been referred to as corporate governance in the aforementioned paragraphs. This strong disclosure regime is cardinal because it encourages shareholders to freely and informatively exercise their rights without full disclosure; it will be quite difficult for shareholders to exercise their rights on an informed basis.

Realizing good governance requires openness, involvement, and easy access for the whole community to the processes of organizing organizations, companies, and government. Openness and ease in accessing information will contribute to the realization of various other indicators '[46]

In an attempt to disclose information it is cardinal that information that is being disclosed is of relevance and not unnecessary and ambiguous for instance the only information that should be privy to investors, shareholders and other stakeholders should only be disclosed to them material information: Material information can be defined as the things that the company should fully

[45] Hellen Kimani, The importance of transparency in Corporate Governance practices (Importance of Transparency in Corporate Governance Practices)

[46] Bambang Karsono ,Good Corporate Governance: Transparency, Accountability, Responsibility, Independency dan Fairness , Vol. 4, No. 5, May 2023 .

disclose to the company include any information omissions or misstatements that can be expected to influence an investor's assessment of a company's value., financial position and possible risks.[47] Such as the company's financial position and performance: Transparency in an entity assists creditors and investors in evaluating that entity's financial position. This is important because it shows that those in charge of the entity care about being transparent about finances and are looking out for the entity in the long run. Concealing the financial status of a company may be detrimental to the company because it raises suspicions.

ATTRIBUTES OF TRANSPARENCY

For transparency to be an effective principle, there is a need for it to have the following attributes that should be provided in providing transparent information. For information to be considered transparent, it should be;

Clear: the statements that are produced by directors and auditors need to be vivid and accessible to the shareholders and investors. There is a need for financial statements that are provided by directors and the auditors to be clear to an extent that it does not raise any doubt or need for further need for scrutiny; there should be no form of ambiguity in that information. [48]Financial statements, current and future strategies of the company, the company's performance, financials, risks, and decision-making processes should be clearly recorded for the sake of the shareholders of the company.

Convenient: The company's performance, financials, risks, and decision-making processes should be presented at particular intervals that are regular and fixed times to ensure that if there is a need for any form of scrutiny, it can be done efficiently and promptly. To ensure that any inconsistencies are quickly resolved, which creates an effective running of the company.

Accessible: The company's performance, financials, risks, and decision-making processes should be available to the stakeholders of the company, who directly benefit from this information. The information should not be kept a secret under any circumstances; Inaccessibility makes disclosure

[47] Mathias Cormann, ' G20/OECD principles of corporate governance 2023'(G20/OECD Principles of Corporate Governance 2023) 25

[48] Hellen Kimani 'The importance of Transparency in Corporate Governance practices', 2025.

quite impossible if there are so many channels through which the stakeholders have to pass to access the information.

Integrity: The information should be truthful and sufficient. In order for transparency to fully be in effect in the company, stakeholders must be provided with honest and correct information. Without honesty, there will be no need to provide that information. The provision of dishonest information makes the stakeholders lose trust in the company. Without honesty, untrue financial statements will be released, biased reports by auditors, and directors will not declare any form of conflict of interest because they have no integrity whatsoever. In the case of **South Africa Broadcasting Corporation v Mpofu**, it was held that integrity is a key underlying good corporate governance; good corporate governance is therefore based on clear ethical behaviour and personal integrity.

The board and management should endeavour to uphold and nurture accountability, transparency, fairness, and integrity in all aspects of the company's operations. Because Transparency is not an optional disclosure, it is a governance obligation that enables accountability in order to function effectively. It is a prerequisite for integrity to be evident in the company.

IMPORTANCE OF ACCOUNTABILITY AND TRANSPARENCY IN CORPORATE GOVERNANCE

Accountability and Transparency are pillars of corporate governance, and there should be reasons why it is important. The reasons attributed to Accountability being a pillar in corporate governance are

I. **Acts as a form of protection**: As corporate governance suggests, there is a need for rules and regulations to dictate what is expected of the company officers and other members of the company. The core purpose of accountability is that stakeholders' interests are protected, recognized, and their interests are fully secured; without corporate governance principles being adhered to, the probability of those who have the responsibility of running the affairs of the company acting arbitrarily is high.

II. **Prevention of the misuse of Authority:** Inevitably, the people who have been given the authority to run the affairs of the company might act arbitrarily. However, with the requirement of corporate governance, they will be automatically held accountable.

III. **Transparency practices enable shareholders and investors to make informed decisions.** One of the major reasons for corporate governance being set up as a form of rules to govern corporations is the protection of shareholders' rights. Shareholders are entitled to take part in meetings in the companies, and this can only be done if there is a good corporate governance framework that guards the company and promotes transparency. Being completely open about the decisions made, the finances of the company, the liabilities of the company, allow shareholders to decide whether they should continue dealing with the company, the company's liquidity, and possible risk management strategies to protect their shares if needed.

IV. **Fosters Trust and Credibility. There** is a need for shareholders, investors, amongst others, to trust the affairs of the company, and the only supporting factor to that trust is clear, accurate, and timely information from the directors who have the responsibility of running the day-to-day activities of the company. Trust from shareholders and investors encourages the perpetuity of the company.

V. **Curbs misconduct**: The ultimate goal of transparency in corporate governance is to make sure that, because all cardinal information, such as the company's performance, financials, risks, and decision-making processes, is out there, any sort of misconduct from the company officers and stakeholders can be avoided, and everything that will be done will be fully disclosed[49]

VI. **Reduces misconduct:** When members of the company are fully aware that their actions regarding the company will be fully disclosed and a report of what has been happening in the company will need to be shared with the shareholders, this automatically reduces any possible misconduct because there is expected for disclosure [50]

Accountability and transparency are intertwined; one principle would not be in existence without the other. For a company to be sufficiently accountable to its stakeholders, there should be full

[49] Hellen Kimani, The importance of transparency in Corporate Governance practices (Importance of Transparency in Corporate Governance Practices)

[50] Ibid

disclosure of the financial status of the company, the risk exposure, status of the company, amongst others.

2.3 CONCLUSION

In conclusion, accountability and transparency are not merely theoretical ideals, but practical and indispensable principles that sustain corporate integrity and effective governance. As foundational pillars of corporate governance, these principles serve as essential mechanisms for promoting responsible corporate conduct, enhancing oversight, and ensuring that power within the company is exercised lawfully and ethically. Accountability ensures that those entrusted with corporate authority are answerable for their decisions and actions, while transparency ensures that such actions are open, visible, and capable of scrutiny by relevant stakeholders.

The effectiveness of corporate governance within any company is closely dependent on the extent to which accountability and transparency are embedded in its governance structures and operational systems. These principles influence the manner in which boards discharge their oversight functions, how reporting systems are designed and implemented, the degree of regulatory compliance maintained, and the ethical culture cultivated within the organization. When properly observed, accountability and transparency foster trust among stakeholders, reduce opportunities for abuse of office, and promote order, discipline, and legitimacy in corporate administration.

Ultimately, the success, efficiency, and sustainability of any company are significantly dependent on the observance of accountability and transparency. Their proper integration into corporate governance frameworks not only strengthens internal control and decision-making processes but also enhances stakeholder confidence and contributes to the long-term stability and success of the company.

CHAPTER 3: LEGISLATIVE FRAMEWORK SUPPORTING TRANSPARENCY AND ACCOUNTABILITY

3.0 INTRODUCTION

Transparency and accountability are fundamental principles of corporate governance, as they promote openness in corporate decision-making and ensure that those entrusted with the management of companies are answerable for their conduct. For these principles to be effectively upheld, they must be firmly embedded within a country's legislative and regulatory framework. A sound legal framework provides the basis for enforcing standards of conduct, regulating corporate behaviour, and ensuring that corporate actors discharge their duties in a manner consistent with good governance.

In Zambia, the principal statute governing company affairs is the Companies Act No. 10 of 2017. This Act provides the legal foundation for the incorporation, regulation, and administration of companies, while also establishing the framework within which corporate governance principles are to be observed. Among its key objectives is the promotion of responsible corporate conduct through legal mechanisms that encourage transparency, accountability, and compliance in the management of corporate entities.

Although the Companies Law Act is the primary act that governs corporate governance, there are other supporting acts, such as the Corporate Insolvency Act, the Banking and Financial Services Act, 2017, the Securities Act, 2016, and the Insurance Act, 2021. This assists in the promotion of transparency and accountability. The Companies Act No. 10 of 2017 plays a central role in embedding corporate governance principles of Accountability and Transparency in Zambia's corporate legal regime. It does so by prescribing duties, responsibilities, and reporting obligations for directors, company secretaries, auditors, and shareholders, thereby creating legal safeguards against abuse, mismanagement, and corporate misconduct. These provisions are essential in ensuring that corporate governance is not merely aspirational, but legally enforceable.

Strong legislative frameworks are indispensable to effective corporate governance because they foster transparency, accountability, and integrity in corporate decision-making. By establishing systems of checks and balances, such frameworks protect shareholder interests, enhance investor confidence, and promote the sustainable and ethical management of corporate entities. This chapter, therefore, examines the legislative framework in Zambia, with particular emphasis on the extent to which the Companies Act No. 10 of 2017 supports and advances the principles of transparency and accountability in corporate governance.

3.1 THE ROLE OF THE COMPANIES ACT NO 10 OF 2017 IN THE PROMOTION OF ACCOUNTABILITY AND TRANSPARENCY

The act that governs company Law in Zambia is the Companies Law Act No. 10 of 2017 It states the core responsibility that is enshrined in the preamble of the act is to *promote the development of the economy by encouraging entrepreneurship, providing for shareholders 'rights and obligations, the conduct of meetings and the passing of resolutions by shareholders, and to encourage transparency and high standards of corporate governance by providing for the functions and obligations of company secretaries and directors.* [51]

The Companies Act No 10 of 2017 does recognize the significance of corporate governance; it states *encourages transparency and high standards of corporate governance by providing for the functions and obligations of company secretaries and directors.* [52] *Specifically in Sections 83 and 106 of the Companies Act*[53]. One of the most important areas of corporate governance is company officers knowing exactly what they are supposed to do, and this is the first step in highlighting transparency and accountability. Corporate governance aims to vividly explain what is expected of the directors, secretaries, managers, and others for its principles to be adhered to. Those who must abide by those principles actually know the roles and responsibilities and abide by them. This

[51] Companies Act No 10 of 2017

[52] Companies Law Act Cap 10 of 2017

[53] 'A company secretary shall provide directors collectively, individually, with guidance about their duties, powers, and responsibilities, inform the board of directors on legislation relevant to or affecting the meetings of members of the board, and the reports relating to the operations of the company. Section 106 Directors will avoid conflicts of interest

is important because no one oversteps their authority or underperforms because they are clearly being guided by rules and regulations, which are referred to as corporate governance.

However, the Companies Act No 10 of 2017 takes a step further in the upholding of transparency and accountability through imposing disclosure on companies, intensifying the duties and responsibilities of directors, and requiring prompt, accurate, and financial reporting procedures. All these processes are an assurance that companies are providing clear, accurate, and timely information to stakeholders regarding the company's performance, financials, risks, and decision-making processes. These processes may help to ensure that shareholders, creditors, and other interested stakeholders can assess whether the company is functioning on the pillars of corporate governance, which are transparency and accountability.

.3.2 ACCOUNTABILITY OF COMPANY OFFICERS

Every stakeholder and company officer in the company has a significant role to play in upholding the principle of accountability and transparency. Shareholders have a role to play, auditors have a role to play, Directors have a role to play, and Secretaries are the company officers who are usually scrutinized more closely for aspects of accountability and transparency within the company. Because they have the responsibility of holding the company together. A director manages the affairs of the company, which is a significant role that should be held accountable and transparent. A director is cardinal because not only are they at the fulcrum of corporate management of the company, but they also have participation in the financial obligations of the company, and the fact that they have been given the responsibility in the management of the company. The common Law position of a secretary limits them to being who is considered a mere servant, and the case of **Barnet Hoares & Co v South London Tramways Co.** [54]This case affirmed a secretary to be an errand servant by defining a secretary as a mere servant who does what has been instructed to do, and that no individual should he has authority in representation, trustworthy statements.

[54] [1887] 18 QBD 815 (CA)

3.3 MECHANISMS THAT THE COMPANIES USE IN THE PROMOTION OF ACCOUNTABILITY AND TRANSPARENCY

The Companies Act No 10 of 2017 plays a very cardinal part in the promotion of corporate governance principles, and it does so through ;

1. **Strengthening Fiduciary Duties of Directors**

A director of a company owes the company fiduciary duties, as there is a fiduciary relationship exists. The director's fiduciary relationship to the company arises from the nature of his position in relation to the company and the company's position in relation to him.[55] A relationship involving a fiduciary duty is a relationship that involves trust; a director, therefore, is a fiduciary and must act in the best interests of the company and act in good faith. [56] Some of the duties that the company Law recognizes include.

a) **Duty to avoid conflict of interest.**

The director is supposed to stay away from where they have a direct interest or an interest that conflicts with the interests of the company. Disclosure for directors means that the board of Directors is supposed to disclose without any particular reserve exactly what the company is paying them and justify the subsistence of the current level of remuneration in comparative terms. [57]Disclosure should also include a comprehensive summary of the performance conditions and what the executive needs to meet those conditions, and the reasons attributed to the performance conditions being chosen. This information is important for the shareholders in order to assess whether the directors have earned the remuneration. A director is expected to disclose any interest to the board in a transaction involving the company.

In accordance with section 110 of the Companies Act, a director must disclose their interest in a transaction if the nature and monetary value of the director's interest can be quantified and the nature and extent of the interest; furthermore, the Director is not allowed to vote in a matter concerning that transaction. [58]Case law that talks about conflict of interest includes the case of **Re**

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[55] Lindi Coetzee and an-Louis van Tonder, 'The fiduciary relationship between a company and its directors ', 2008

[56] Howard Sher, ' Company Directors' Responsibilities and Duties ' 129

[57] Reegan Blankfein Gates, Gates on understanding company Law: A conceptual and Functional Approach, 2018, 133.

[58] Section 110 1(a)(b) companies Act No 10 of 2017

Smith v Fawcett.[59] The case reasoned that directors must exercise their discretion bona fide in what they consider, not what a court may consider, is in the best interests of the company, and not for any collateral purpose.

Another case that talks about a conflict of interest is the case of **Bell v Eden Project Limited, the Eden.** [60]The brief facts of the case are that the directors had registered a trademark in their own name. It was held that they breached the fiduciary duty because they acted in their own interests and not in the interests of the company.

b) The director is supposed to act in the best interests of the company,

and this involves them being accountable and Transparent in all their dealing; if a conflict of interest arises, it is because they did not act according to the principles of accountability and transparency. If there are ulterior motives, that is already an indicator that directors are not being transparent. A director is supposed to show a duty of care,

2. Maintenance of Financial Records

Financial statements consist of annual records, day-to-day expenses, assets, and liabilities of the company, emoluments, compensation, and loans, also showing what the Directors are being paid, including the emoluments paid to them and any compensation paid to them. Emoluments are described as fees and percentages paid to the director, any sums paid by way of expenses and allowances, and the estimated value of any other benefits received by the director. [61] Directors are expected to create an annual report; the financial statements present a report on the company's financial performance for the previous financial year and its financial position as at the end of that year.

Section 106 of the Companies Act affirms this position: 'A director shall disclose information about the director's remuneration in the financial statements of the company.'[62] The directors' report and other statements published in the same document provide supporting information, much of it in narrative rather than in numerical form. Shareholders and other investors use the

[59][1942] Ch 304
[60]
[61] Section 249 (4)
[62] Companies Act No 10 of 2017

information in the annual report and accounts to assess the stewardship of the company. If the remuneration that the shareholders have seen in the financial statement is absurd, they have the right to ask for the reasons attributed to the amounts the directors are receiving as remuneration.

The cardinal principle of this section is that it exposes both principles of accountability and transparency within it. Disclosure of an interest by a director to the Board of Directors means that the Director wants to be transparent by the fact that he has a beneficial interest in the transaction; furthermore, he wants to be accountable if something goes wrong, or to avoid any possible conflict of interest.

The Board of Directors must keep accounting records. This is in accordance with Section 246 of the Companies Act; these financial records should be correctly recorded and give a concise explanation of the transactions that have been taking place in the company. The importance of these financial statements is that they vividly show where the company stands. The accounting records presented by the Board show the company's daily expenditures, income, assets, and liabilities. [63]

The main defect that the Companies Act has is that accessibility of accounting records is mainly limited and available only to the Directors, secretaries and auditors of the Company. Section 248 of the Companies Act stipulates that ‘ A company shall at its registered office make its accounting records available for inspection to the directors, secretaries and auditors of the company at reasonable times.

Relevance of keeping financial Records

Evidence and Traceability: The relationship that exists in keeping financial records in the encouragement of accountability and transparency is that by keeping those records, they act not only as evidence of what was occurring in the company throughout the year, but also who is answerable for making those records. If there is no traceability of the financial records, it shows that the company is not only lacking that transparency, but further on, if something goes wrong, there will be no one who will be answerable. Shareholders should be able to ask why certain

[63] Section 246 Company Law Act No 10 of 2017

expenses are there in the financial statements, why directors are being paid such emoluments, amongst others. Without these records, traceability will be impossible.

3. Annual General Meetings

At the end of the year, meetings are held in companies. These meetings include the bringing out of financial statements, discussion of how the company has been run; not only that, but shareholders are present. The major importance of the AGM is the appointment of Directors, the appointment of Auditors, Consideration and adoption of financial statements, ▪ Receipt of auditor's reports.

At the Annual General Meeting, Shareholders are the individuals who own the company to whom Directors owe accountability. Furthermore, at the annual general meeting, auditors are present who assess and account for the reports of the company that are submitted to the Board of Directors. [64]

4. Financial Reporting

In a company, financial reporting is mandatory; it is cardinal because it deals with accountability and transparency of a company. Depending on the type of company, an audit committee can be formed. An audit committee can be defined as a set of experienced individuals of the main board of directors. Their goal is mainly to advise the main board of Directors on issues that are about the adoption of annual financial statements, the effectiveness of the system of internal control, and risk management effectiveness of the audit function, and issues concerning the external auditors

The Audit committee is cardinal because they help in the promotion of accountability and transparency in a company by overseeing financial reporting and disclosure, monitoring the choice of accounting principles, hiring and monitoring the external auditor, overseeing the internal audit function, overseeing regulatory compliance, reviewing the company's financial control, among others.

In a company, there is a need for an examination of the financial statements to ensure they have been carried out in a truthful, transparent, and trustworthy manner, and this is where the function

[64] Section 262 Company Law Act No 10 of 2017.

of the auditor is needed. An auditor is defined as "one who conducts an audit. Specifically, an auditor is a person or firm (usually an accountant or accounting firm) that conducts a formal examination and verification of an individual's or organization's records and accounts, finances, or compliance with a set of standards."[65]

An audit is defined as 'an independent examination of evidence from which the financial statements of an enterprise are derived to give the reader of the statements confidence as to the truth and fairness of the state of affairs which the financial statements disclose, but does not include book-keeping, cost accounting, and business or cost systems.[66] It is cardinal that a company has both internal auditors and external auditors of the financial statements being provided by the company to ascertain the validity, authenticity, and truthfulness of the financial statements. emphasizes the role of audit committees in enhancing financial reporting quality, detecting fraud, and ensuring regulatory compliance.

Auditors are prescribed with the common law duty of exercising reasonable care and skill in their evaluation of duties, and they ought to certify to the shareholders of the company what they actually believe to be true in the case of **RE London and General Bank No.**[67] the brief facts of the case are the auditor of the company made a report of loans that were not realizable with the full knowledge that those loans where not realizable, the components of his report showed the true and fair view and that was what the shareholders of the company relied on and they therefore declared a dividend be paid out, However the liquidator sued the auditor on the basis that they did not exercise reasonable skill and required them to reimburse the company The courts held hat the prior duty of an auditor is ensuring reasonable care and skill before the certify the authenticity of the statement, and the auditor must be honest, Furthermore the court also held that the auditor must examine the books to ascertain the true financial position of the company.

It is cardinal that a company has both external and internal auditors. External auditors are important. They help in ensuring that shareholders can rely on the reports because they do not stand to benefit from anything when they are not authentic. External auditors are also important

[65]Cornell Law School 'Auditor' (https://www.law.cornell.edu/wex/auditor) accessed on the 28th April 2026.
[66] Accounting Act No 13 of 2008
[67] [1895] 2 Ch673

because they have the responsibility of verifying the corporate processes that are involved in the preparation of accounts, hence the need for them to be independent.

5. Liability Provision

If company officers or other members of the company are not performing, not presenting, reporting, and disclosing all kinds of activities that they are responsible for, the Companies Law Act gives the power to the party, making them liable for their actions. To stay accountable and transparent at all times. There are mainly three parties that are held liable when they do not carry out their tasks or fully disclose their interests, and these include;

I. Directors.

Directors have a huge role to play in the company. The company states that they manage the affairs of the company, and this management requires them to be personally liable in instances where they do not act accordingly. The only circumstances in which a director will not be held liable for not fully disclosing or having a personal interest are that they were acting in good faith for a proper purpose, had no particular personal interest, and lastly, where the officer believes that they were acting in the interests of the company. [68]If directors did not meet these standards, they would be held liable; that is, solely after the company finds out that they made a decision that was not valid, the officer would be held personally liable. Section 120 of the Companies Act No 10 of 217 states that the consequences of a director breaching their duties include compensating the company or being removed from office.

II. Auditors' Liability:

Basically, auditors prepare and present reports to the company, disclose the relationship interest or debt in the company, and report serious breaches of corporate governance to by the directors In accordance to section 255 of the company's law act it requires that the auditor sign on the report that they have made concerning the company and in an event that they refuse to sign it shows that

[68] Section 121 (a)(b)(c)(d) No. 10 of 2017

they do not want to be accountable towards the report that the made because the might be possible fraudulent activities going on in that report.

Conflict of interest liability: Section 258 states that the auditor should not have any conflict of interest. This is because even their report will be made to fit their interest and not based on the factual scrutiny of financial statements. If such an instance occurs, an auditor will be held liable if their interest was not declared at all. They're not declaring their interests, which shows a lack of transparency. Section 259 of the Companies Act imposes liability on the auditor, stating. The auditor shall be charged in accordance with the law regulating the practice of auditing in Zambia. If at all, they do not act accordingly.

3.4 CONCLUSION

In conclusion, the Companies Act No. 10 of 2017 provides a robust legislative foundation for promoting transparency and accountability in corporate governance in Zambia. Through its provisions on shareholder participation, financial disclosure, and the mandatory duties imposed on directors, the Act establishes clear legal standards aimed at ensuring openness, responsibility, and ethical corporate conduct. These mechanisms are essential in strengthening oversight within companies, limiting opportunities for abuse and mismanagement, and ensuring that those entrusted with corporate authority remain accountable for their actions. Ultimately, by fostering honesty, enhancing corporate discipline, and promoting investor confidence, the Act plays a significant role in advancing sound corporate governance and supporting the long-term sustainability and success of companies in Zambia.

CHAPTER 4REGULATORY AND LEGISLATIVE FRAMEWORK OF CORPORATE GOVERNANCE IN ZAMBIA

4.0 INTRODUCTION

The concept of corporate governance in general came about as a result of various bank failures during the 1990's, which led to their subsequent liquidation. For instance, banks like Meridian BIAO and others were cited for a lack of proper corporate governance practices.[69] However, in Zambia, the concept gained traction soon after, characterized by nationalization, in which the government created structures that supervised, directed, and controlled all state-owned enterprises.

This and other factors led to the need for standardized corporate governance structures and oversight. As of now, Zambia has set up regulatory bodies that provide oversight on all things corporate governance, such as the Bank of Zambia, Securities and Exchange Commission, and the Lusaka Stock Exchange Commission. It has gone a step further to establish legislative frameworks, such as the Banking and Financial Services Act.[70]the Companies Act[71]and the Securities Act.[72]

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[69] Kadidja Banda, Enhancement of corporate governance in Zambia. P6
[70] No 7 of 2017
[71] No 10 of 2017
[72] No 41 of 2026

In essence, the principles of corporate governance already exist within various pieces of legislation in Zambia. The Companies Act No. 10 of 2017 promotes transparency and accountability by strengthening directors' duties, requiring disclosure of directors' interests and remuneration, and mandating that companies prepare and present financial statements.

Zambia has also established several regulatory bodies that play a significant role in promoting transparency and accountability. These institutions have been granted authority under the Companies Act No. 10 of 2017 to assist in enforcing corporate governance standards. Through oversight, monitoring, compliance enforcement, and regulatory supervision, they continue to advance accountability and transparency within the corporate sector. This chapter, therefore, examines the efficacy of Zambian company law and regulatory bodies in promoting accountability and transparency in corporate governance.

4.1 EFFICACY OF REGULATORY AND LEGISLATIVE FRAMEWORK IN THE PROMOTION OF ACCOUNTABILITY AND TRANSPARENCY

1. **Bank Of Zambia (BOZ)**

The Bank of Zambia has been provided with core responsibilities of supervision of banks, conducting inspections, requiring mandatory financial disclosures by banks and financial institutions, issuing directives, and imposing sanctions on banks that do not comply. Corporate governance is especially important in the financial services sector because of the fiduciary character of banking and insurance activities and the systemic consequences of failure. Banks have a fiduciary relationship with their customers. Customers are defined as the people who have access, have accessed, or have the intention of accessing a financial service or financial product.[73] The banking sector needs transparency and accountability,

Banks are most likely to fail if at all corporate governance principles are not instilled they have the capability of becoming a failed institution the Banking and Financial services Act Defines a failed institution as "a bank or a financial institution hat is no longer viable or likely to be no longer viable and has no reasonable prospects, with reference to the timing and other relevant

[73] Section 2 Banking and Financial Services Act (No 6 of 2026)

circumstances that include under capitalization, insolvency or possibility of attaining insolvency, incapability of meeting financial obligations as they fall due "[74].

An unregulated bank can affect the world's economies. An example of a failure was the 2008 Global Financial Crisis. The crisis not only resulted in the collapse of well-known financial institutions such as Lehman Brothers but also halted global credit markets and required unprecedented government intervention worldwide.[75] The solution was to ensure that all systemically important financial institutions are included in an effective risk-control and unified-supervision mechanism, even those that are unbanked but whose failure could have negative consequences for financial stability. [T]he main cause was that the board of directors and executives engaged in excessive risk-taking with minimal accountability and Transparency[76]. Henceforth, the need for mechanisms to be put in place so that banks adhere to corporate governance principles. Even banks in Kenya have been affected by poor corporate governance systems. Various reasons were given that may have contributed to the collapse of banking institutions in Kenya. The Centre for Corporate Governance outlined the following reasons as being major contributors to this phenomenon: insider lending and conflict of interest, weaknesses in regulatory and supervisory systems, poor risk management strategies, lack of internal controls, and weak corporate governance practices.[77]

Banks require transparency and accountability by virtue of being custodians of people's money. Conflicts of interest, insider trading, and weaknesses in regulatory and supervisory systems can be reduced if the banks are more transparent and accountable; furthermore, an institution such as the Bank of Zambia needs the highest level of adherence to corporate governance principles. The nation's finances do not need to be in the hands of institutions that do not practice accountability. A poor banking system has the potential of impeding economic progress, exacerbate poverty, and destabilize economies. [78]

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[74] Section 2, Banking and Financial Services Act No 6 of 2026

[75] David H. Erkensa, Mingyi Hunga, Pedro Matos ' Corporate Governance in the 2007-2008 Financial Crisis: Evidence from Financial Institutions Worldwide 'University of Southern California, Los Angeles 2014 8

[76]

[77] Eric Ernest Mang'unyi, ' Ownership Structure and Corporate Governance and Its Effects on Performance: A Case of Selected Banks in Kenya', (International Journal of Business Administration Vol. 2, No. 3; August 2011)p5

[78] James R Barth, Gerard Capio , Ross Levine 'Bank Regulation and supervision what works for you best '2002

4.2 ACCOUNTABILITY OF BANKS AND FINANCIAL INSTITUTIONS TO THE BANK OF ZAMBIA

The Supervision of Banks is carried out by the Bank of Zambia and is prescribed by the Banking and Financial Services Act No 9 of 2026 and the Corporate Insolvency Act. The Banking and Financial Services Act is important in promoting accountability and transparency because it ensures that banks are supervised by the Bank of Zambia. The principal law that governs banks and financial institutions is the Banking and Financial Services Act.[79] There are mechanisms that the Bank of Zambia expects to follow in promoting accountability and transparency, and it has sections that advocate for transparency and accountability. The Bank of Zambia, therefore, promotes accountability and Transparency through

I. **Mandatory Financial Reporting:**

Companies' banks and financial institutions, inclusive, are supposed to prepare reports in accordance with the standards of the International Financial Reporting Standards. These statements are supposed to be submitted to their regulators; in this case, the regulator of Banks and Banking institutions is the Bank of Zambia. Banks and Financial institutions are expected to record the assets and liabilities, income and expenditure, and performing and non-performing loans. section 75 of the Banking and Financial Services Act stipulates that the Bank or a financial institution shall submit to the bank of Zambia a form that is regulated by the bank of Zambia containing, the statement of assets of assets and liabilities at the close of the business day of each month, income and expenditure, the amount of the regulatory and reserve funds, statement showing non-performing loans, non-performing loans and restructured loans, and lasting statements relating to banks or other institutions. [80]

The relevance of Mandatory Financial reporting is that it encourages transparency and accountability the bank of Zambia needs to be aware of how much income the bank has and how much liability a bank has and financial institution to ascertain whether the bank is still fit to be custodians of people's money, and to avoid any possible bank failures, a Bank that has more liabilities that assets is more prone to fail, protects investors and shareholders when shareholders and investors have full knowledge of how much the bank has what liabilities and assets they have

[79] Banking and Financial Services Act No 9 of 2026
[80] No 9 of 2026

it boosts their confidence and makes them aware of the liquidity of the bank, it helps to ensure that banks are complying to the standards that are set by the act Banks are accountable to the bank of Zambia as the regulator and supervisor of financial institutions.

Banks and financial institutions are mandated to disclose all the assets that they have, it encourages disclosures, it ensures that banks are accountable to the regulators ensuring that all banks and financial institutions are transparent about the assets and liabilities that they have as a bank because this will ensure that the bank of Zambia is fully aware of how much the bank has as they are the regulator of all banks to ensure that customers funds are not misused, it also helps prompt detection of insider abuse and corruption minus declaring what assets and liabilities a bank has it is very much possible that the funds of customers can be embezzled and misused, and lasting the declaration of liabilities and assets ensures that customers of the bank have confidence in their dealings.

I. Promotion of Auditing and Internal Controls

The first thing that the act does in encouraging the promotion of transparency and accountability is the existence of an external auditor. An external auditor can be defined as a person who is independent, objective, knowledgeable integrity, filled that not a director or senior officer, and who has the sole purpose of scrutinizing the company's financial statements. This auditor's main functions are to audit the financial statements of financial service providers, submit reports to the shareholders, and determine whether the financial service provider is insolvent or likely to become insolvent.[81]The board of Directors is supposed to submit the audit to the banks, the financial service provider, and the shareholders of the bank.[82]

II. Ensuring Directors comply with and uphold corporate governance standards [83]

Directors of the financial service provider have the core responsibility of overseeing and supervising the affairs of the financial service provider. [84]This means that all financial reports and internal controls need to be scrutinized by directors of the company before they submit them to the Bank**.** Significantly the have the duty to ensure that the corporate governance principles are being

[81] Section 95 (1) and (2) Banking and Financial Services Act No 9 of 2026
[82] Section 8 No 9 of 2026

[84] Section 41 No 9 of 2026

adhered to in the company. They further encourage transparency and accountability in the financial service provider by ensuring that shareholders are enlightened on the internal controls and information of the financial service provider at annual general meetings. [85]Directors know that they ought to be accountable and transparent to their shareholders before they are accountable and transparent to the Bank.

III. Licensing and Regulation of Banks:

Unlicensed banks and financial institutions cannot operate without the authorization of the Bank of Zambia, and for a bank to obtain a license to operate in Zambia[86]It must meet certain criteria. The Bank of Zambia issues several licences, including a banking licence, a financial business licence, a community banking licence, and an alternative financial service licence. [87]Licencing of banks and financial institutions encourages corporate governance by holding those that do not have a licence accountable. This is in accordance with section 10 (2) of the Banking and Financial Services Act No 9 of 2026. Furthermore, a corporate governance criterion must be met, such as policies on governance, risk management, and internal controls [88] and also the transparency and adequacy of the legal, operational, and managerial governance and ownership structures [89]

IV. Supervision and Inspection of Banks:

The core responsibility as prescribed by the Banking and Financial Services Act in the preamble is "supervision and the regulation of financial services providers." [90]provide for monitoring compliance with anti-money laundering(illegal or dirty money is put through a cycle of transactions, or washed, so that it comes out the other end as legal or clean money[91]The role that the Bank of Zambia Plays in combating money laundering encompasses the establishment of strong anti-money laundering (AML) policies and procedures, cooperation with regulatory agencies, and the incorporation of sophisticated technologies to monitor and identify suspect

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[85] Ibid
[86] Section 10(1) Banking and Financial Services Act No 6 of 2026.
[87] Section 9, Banking and Financial Services Act No 6 of 2026.
[88] Section 12 (2)(b)
[89] Section 12(7)(c)
[90] No 9 of 2026
[91] Alex Ferguson 'Money Laundering.'(https://www.oas.org)

activities[92] The Bank of Zambia plays a major role in ensuring that money laundering is combatted within banks, and this all goes back to how fully the bank discloses its activities, assets, liabilities, performing and non-performing loans. countering terrorism financing, and proliferation financing among financial service providers. Bank of Zambia is furthermore set up, monitors, and enforces regulations for commercial banks and non-bank financial institutions to ensure a stable financial system.[93]

V. Presentation of Financial Statements:

The constituent components of a financial statements provided for by Banking and Financial Services Act are stated in Section 89 (2) as the " Financial statements that consist of risk management processes and practices, disclosed directors' interests, and audited reports of the financial year" Every bank is supposed to therefore submit the management processes and practices that the bank is being run by to Bank of Zambia so that Bank of Zambia verifies whether on not they are operating in accordance to the guidelines that are expected of them, Disclosed Directors interest these would include transactions that the directors may have a conflict of interest this is cardinal because it encourages transparency as the directors will fully state his interest and if at all they will benefit in any way.

These reports are supposed to be authentic and the actual representation of the financial service provider's financial position as at the end of the financial year, inclusive of all the results of the operations and changes of the financial position of the financial service provider."[94]

The board of directors is expected to present at annual general meetings all statements required to be presented to shareholders at annual general meetings. The constituent components of the report should include the directors' disclosed interests, risk management processes, and audited report of the financial year, and the prerequisite requirement of the statements that are being provided is that they should be true.

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[92]Sylvester Chishala, Evaluating the Role of Zambian Commercial banks in the prevention of money laundering: A case study of Access Bank Limited. (The University of Zambia, Institute of Distance Education, Faculty of Commerce and Law, in collaboration with the University of Zambia and the University of Zimbabwe) 66
[93] Filo, What are the main functions of the Bank of Zambia? (https://askfilo.com/user-question-answers-smart-solutions/what-are-the-functions-of-the-bank-of-zambia-list-and-3335373038343430) accessed on 21/04/26
[94] No 7 of 2017

4.3SECURITY AND EXCHANGE COMMISSION

The establishment of the Securities and Exchange Commission is provided for by Section 7 (1) of the Securities and Exchange Act No 41 of the Laws of Zambia. The objectives of the commission are enshrined in the preamble which states that the commission has the core responsibility of regulating and fostering fair and efficient trading through licencing and regulating securities exchanges, clearing and settlement agencies and self-regulatory organizations; to ensuring the financial integrity of transactions and avoidance of systemic risk in the capital markets, providing for licensing and regulation of capital markets operators, to providing for licensing and regulation of credit rating agencies and protect the integrity, transparency and reliability of the credit rating process and credit ratings, providing for registration of securities and conduct of securities business; to providing for the regulation of collective investment schemes, in order to prohibit insider dealing in securities and other offences, to provide for auditing and corporate responsibility of listed companies and companies whose securities have been registered with the Commission, .

[95]The Functions of the Commission, as provided by the Act, are to regulate capital markets, license and regulate securities exchanges, and ensure financial integrity in transactions and the avoidance of systemic risk. [96]

MECHANISMS IN WHICH THE SECURITIES EXCHANGE COMMISSION PROMOTES ACCOUNTABILITY AND TRANSPARENCY

The Securities and Exchange Commission has several ways in which it promotes accountability and transparency, and these include;

i. **Regulation and Supervision of Financial Markets**

It is the core responsibility of the commission to ensure that capital markets are properly regulated. This encourages accountability and transparency, because the pioneers of these capital markets will be cautious of how they operate, because of the full knowledge that they need to be accountable to the commission. Section 9 of the Act further supports the notion of the commission regulating the financial markets by ensuring that those who are in charge are regulated efficiently,

[95] The Securities and Exchange Commission's Act No 41 of 2016
[96] Ibid

stipulating that the functions of the commission are to regulate the activities of managers, trustees, and custodians.[97],

The Regulatory powers that the Securities and Exchange Commission is guided by four prerequisite requirements, which include that the individual who has an intention of dealing or advising on securities must be licensed by the Securities and Exchange Commission, that all the Securities of a public company that are publicly traded must be registered by the Securities and Exchange Commission, and that the Collective investment schemes must be authorized by the commission [98]

ii. Licensing of Capital Markets

A license is a representation that the commission gives that a capital markets operator a capital markets operator is defined by the act as " means a person registered, authorized or licensed in accordance with this Act to perform specific functions in the capital markets, including a person or entity, whether incorporated in Zambia or not, who is granted or receives authorization from the Commission, an intermediary, nominee or a person conducting a professional development or asset management programme"[99]

The functions of the commission include:

a. regulate the activities of securities exchanges and the settlement of securities transactions,
b. license and regulate capital markets operators,
c. license and regulate clearing and settlement agencies, and other participants in the capital markets.[100]

The licences granted by the by the commission is for an individual Establishing and operating a credit rating agency, and certain criteria should be met that align with corporate governance principles and this is mandatory, this criterion is in accordance to section 48 2(b) of the Securities and Exchange exact stipulates that the ownership structure, organizational structure and the

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[97] Cap 41 of the Laws of Zambia
[98] Pangaae Partners 'Introduction to the Lusaka Stock Exchange' (http://www.pangaeapartners.com/luseinfo.htm) accessed on the 05/05/26
[98]
[99] Section 2 Securities and Exchange Commission Act No 41 of the Laws of Zambia
[100] Section 9 ,2 (b)(c)(d)Securities and Exchange Commission Act No 41 of the Laws of Zambia

corporate governance policy of the proposed credit rating agency without this criterion met the commission can reject the application of the licence.

The commission giving Licences encourages accountability and transparency by ensuring that those who have been granted authorization to perform functions of the capital markets are held liable for any decision that is made concerning the capital markets. Note that not everyone is given that licence, but a certain criterion ought to be followed.

iii. Mandatory Disclosure requirements

Annual Reports: The Securities and Exchange Commission promotes accountability through the establishment of the board, ensuring that companies that are licensed provide annual reports. Annual reports will indicate the financial statements for the year. These are to be provided by the board of directors. These annual reports will comprise the expenses. Section 8 of the Act talks about the existence of the board that will have the responsibility of implementing the Act.

iv. I)Ensuring Sound financial structures and processes,

including risk management and internal audit controls. Submission of Annual Reports: All the companies that are licensed under the Act are mandated to submit annual reports. This is important because the commission should be aware of the corporate governance policies that are guiding the company, and the commission needs to ascertain whether the company is adhering to those policies [101]

v. REGULATION OF CAPITAL MARKETS

The committee regulates the capital markets by giving the licensed person authorization. Authorization is the first step of regulating the capital market, because once the commission grants permission to an individual, they have assessed the individual and can properly monitor them. Authorization refers to any consent, permission, recognition, or capacity given or granted by the Commission to a licensed person for carrying on business, a transaction, or a series of transactions as a capital markets operator or for doing any act or omitting to do any act incidental to business,

[101] Section 47(1)(a)

a transaction, or a series of transactions."[102] "The Commission is obliged to implement a risk-based approach in the supervision and regulation of capital markets, and in combating money laundering and countering the financing of terrorism, proliferation, and proliferation financing."[103]

vi. AUDITING

Licensed companies are expected to file annual reports to the Securities Exchange Commission; this is in accordance with Section 47. (1) which stipulates that "A company licensed under this Act shall file with the Commission, within ninety days of the date of the company's financial year, an annual report which shall include: Information on the corporate governance policy of the company and any other information required by the Commission. (b) Audited financial statements or other returns as may be prescribed by the Commission. Audited consolidated financial statements, where the company is a holding company or a subsidiary." The production of annual reports is cardinal to the promotion of accountability and transparency, because companies are able to produce statements that have been thoroughly scrutinized by independent and qualified external auditors, which thereby proves that there is accuracy in this report. Directors are held accountable if at all the consolidated audits are untrue are tempered with.

To further transparency and accountability there is need for the audits to be in accordance with accounting act that provides for the precise manner of auditing This is in accordance to Section 47 (2) it stipulates that The financial statements to be included in an annual report that include policies, audited financial statements, audited consolidated financial statements are mandated to be audited in accordance with auditing and other standards as provided in the Accountants Act., For further transparency, it is a prerequisite that those audits are in accordance with the standards of the Accountants Act

vii. BOARD SUPERVISION AND OVERSIGHT

[102] Section 2 The Securities Act, 2016 No 41 of the laws of Zambia
[103] Chipasha Mulenga "Securities Markets and Their Regulation in Zambia: A New Dawn or a Rebranding of the Old Norms?" (http://dx.doi.org/10.17159/1727 3781) 2024/ 6

The Board of Directors is responsible for overseeing that the affairs of the listed companies are carried out in a transparent and accountable manner. Failure to do so, they will be held liable: Section 8,1(a) talks about the board being responsible for overseeing the affairs of the commission by putting in place effective, efficient, and transparent systems of corporate governance.

BY virtue of the Board having that Authority it is cardinal that their actions are supervised by the commission, to avoid mismanagement of funds, and failure to efficiently manage the affairs of the listed companies, SEC has the responsibility to scrutinize, the board thoroughly, the annual reports that the board approves even as far as the audit committee that the company has to ensure that things are being run properly.

4.4 LUSAKA STOCK EXCHANGE IN THE PROMOTION OF ACCOUNTABILITY AND TRANSPARENCY

The establishment of the Lusaka Stock Exchange was initiated in 1993, and its operations are governed by the Securities Exchange Act, which plays a principal role in promoting good corporate governance principles such as fairness, accountability, transparency, integrity, and fairness among others. The Zambian Lusaka Stock Exchange Corporate Governance Code (LuSE Code) was launched in 2005 in conjunction with the Institute of Directors Zambia (IoDZ), which was established in April 2000. These developments occurred after Zambia noticed the importance of the concerns that corporate governance principles aimed to tackle."[104]

"The LuSE, as Zambia's primary stock exchange, serves as a focal point for companies seeking capital and investors aiming to deploy their funds."[105]"In the LUSE context, this transparency extends to financial reporting, operational performance, and strategic decision-making. Investors, both domestic and international, rely on transparent information to make informed decisions about

[104] Chipokota Mwanawasa A case analysis of the viability of the current regulation and enforcement mechanisms pf corporate governance in Zambia ,University of Cape University of cape town. 34

[105] Chansa Chiwele, ' The effects of corporate governance on financial performance on selected companies listed at the Lusaka Securities Exchange' University of Zambia,2024, p.4

their investments."[106]To further promote good corporate governance, a corporate governance code was enacted, which is referred to as the Lusaka Stock Exchange Corporate Governance Code.

The importance of the code is that it is designed to enhance Corporate Governance as well as ascertain whether any particular Corporate Governance issues should be highlighted for particular attention in respect of a listed or quoted company[107]. To promote adherence to corporate governance Laws and Principles the Luska stock Exchange Listed and Quoted Companies are require mandated to submit to the Commission at the end of the financial year a concise and comprehensive report, that shows where the complied with the code and the areas in which they did not comply LUSE then aware companies that complied tremendously as the best Listed and Quoted Companies, this puts that particular company on the map meaning that investors will have awareness of that particular company, because investors are usually encouraged by companies that are adhering to corporate governance principles.

Accountability and Transparency are the linchpins for Luse listed companies, key because investors, stakeholders, public benefit greatly from the companies' accountability and transparency. The elements that are focused on by the listed companies include financial reporting, operational performance, and strategic decision-making.[108]

i. Board Accountability and Transparency

The code ensures the board is fully aware of its duties and obligations through induction and training, which is cardinal to promoting corporate governance principles, as it raises awareness of what they are supposed to do and enables them to do so effectively.[109]

The code, or the annual report, must contain a brief biography of each director standing for election or re-election at the annual general meeting. At each AGM, a director who is the longest serving among all is elected. [110]The code encourages the rotation of a director in that no one can be a

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[106] Chansa Chiwele, ' The effects of corporate governance on financial performance on selected companies listed at the Lusaka Securities Exchange', University of Zambia,2024, p.5
[107] John Janes ' Lusaka Stock Exchange corporate governance code '
[108] Chansa Chiwele, The effects of corporate governance on financial performance of selected at the Lusaka Stock Exchange ,(University of Zambia 2024),p5.
[109] The Lusaka Stock Exchange (LuSE) Corporate Governance Code for listed and quoted companies
[110] Ibid

director for a long period of time, because this has the potential of making them comfortable and biased in decision-making, presentation of annual reports, and control of internal controls

ii. Emphasis on audit committee:

"Audit committees are also responsible for assessing the adequacy of internal financial control systems. The strengthening of internal financial controls can ensure that phenomena like fraud, mismanagement, embezzlement, misappropriation, and errors in reporting are eliminated and their consequences minimized. Audit committees play a crucial role in risk management and oversight. The proactive identification, assessment, and monitoring of risks contribute to mitigating potential threats to the financial stability of the organization."[111]

iii. Market surveillance and monitoring

The Lusaka Stock Exchange code takes what is known as the 'comply and explain approach, which requires bodies corporate to submit within three months of their respective financial year. [112] The essence of the comply-and-explain principle is that companies are expected to adhere to corporate governance principles; however, if they cannot, they should provide a concrete explanation for why they cannot. Companies that are listed under LUSE are therefore required to disclose their annual financial statements, their audited reports, and related party transactions.

iv. Accurate Financial Reporting

LUSE requires that companies prepare audited statements in accordance with International Financial Reporting Standards. International Financial Reporting Standards are globally accepted methods for preparing financial statements that promote accountability, transparency, consistency, and reliability. The standards also promote accountability and transparency by explaining what should be in financial statements**.** Financial statements ought to show the results of management's stewardship of the resources entrusted to it. This information, along with other information in the notes to the financial statements, provides users of financial statements with information about the amount, timing, and uncertainty of the entity's future cash flows in order that they can make

[111] Ibid
[112] Kadidja Banda, Enhancement of corporate governance in Zambia. 37

economic decisions. Financial statements contain information about assets, liabilities, equity, income and expenses, gains and losses, contributions by and distributions to owners in their capacity as owners."[113] The LUSE corporate code provides for transparency and accountability through having internal and external audits carried out in companies.

v. Enforcement of the Code

The sole purpose of the Lusaka Stock Exchange corporate governance code is the promotion of corporate governance principles in companies listed on the Lusaka Stock Exchange. The LUSE code is based on the comply or explain principle in corporate governance, which implies that companies are mandated to adhere to the principles that are set by the code; in instances where they do not, they should give a comprehensive explanation as to why they are not complying. [114]It ensures that these principles are adhered to in the governance of their companies. The code advocates for Board accountability, Stakeholder involvement and participation, and transparency in decisions that are made by the Board of Directors. The Luse corporate code provides for transparency and accountability through having internal and external audits carried out in companies.

4.5 PATENTS AND COMPANY REGISTRATION AGENCY ROLE IN ENFORCING ACCOUNTABILITY AND TRANSPARENCY

The governing body of the Patents Company Registration Agency is the Board of Directors, which has been given authority by the PACRA Act specifically in Section 6 of the Patents and Companies Registration Act No. 4 of 2020. The overall functions of the board within the Agency are to promote good governance in the Agency and formulate the policies, programs, and strategies of the Agency. Approve the annual work plan and activity reports of the Agency. Approve the annual budget estimates and financial statements of the Agency; monitor and evaluate the performance of the Agency against budgets and plans. The Patents and Company Registration Agency is crucial to promoting accountability and transparency in companies, and it does this through;

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[113] Hennie Van, Gruening Darrel, Scott Simonet, Terblanche, International Financial reporting standards: A practical guide. 5

[114] Comfort Mulenga, 'Enhanced Transparency In Zambian Listed Companies: The Case for Risk Management and Risk Disclosure' (2013) (UNZA). 28

a) **The registration of companies;**

Registration of Business Names in accordance with Act No. 16 of 2011, Corporate Insolvency Act No. 9 of 2017, and the Companies Act No.10 of 2017. When a company is being registered there are particularly four things that the Patents and Registration the first one being the name of the company I, the questions that arise is whether the name that is supposed to be registers does not belong to some other company, because if a company registers another company's name it means that in an even that company commits fraud or theft they can easily refuse accountability.

PACRA has the responsibility of ensuring that proper procedures are adhered to when registering the company. Accountability further requires that a company provide the Directors, the shareholders, and what the company will be all about. Disclosure of who the Directors in a company are when registering the company is important because the directors are at the fulcrum of corporate management of the company and ensure the safe running of the company.

Section 86 of the Companies Act states that they have the core responsibility of running the affairs of the company**. Registration of Business Names** in accordance with Act No. 16 of 2011, Corporate Insolvency Act No. 9 of 2017, and the Companies Act No. 7 of 2017. Receive and investigate complaints of alleged or suspected breach of the Acts referred to above and, subject to the directives of the Director of Public Prosecutions, prosecute offences under those Acts, as the case may be. iii. Collect, collate, and disseminate information on the law relating to the Acts referred to above."[115]

b) **Validating certificates of companies**;

Validating certificates in accordance with the Companies (Certificates Validation) Act, Cap. 41 of the laws of Zambia. Accountability and transparency are promoted through confirming the legal existence of the company, promoting accurate disclosure details that include the directors of the company, the managers of the company, and the owners of the company. Information is made available to the public forum, which in turn promotes accountability and transparency.

c) **Administration of Patents[116]**

[115] Allan Chungu Mwaba. 'Patents and Company Registration Agency Annual Report' .1 2024 accessed on (https://www.pacra.org.zm/files/annual-reports/Pacra-2024-ANNUAL-REPORT-2025.pdf)
[116] Section 4 Patents Act No 40 of 2016

The agency is responsible for receiving applications for patents, scrutinizes the name of the paten and if they meet the criteria a patent is granted and later enforced by the act**, Trade Marks and Designs to companies:** in accordance with the Trade Marks Act No. 11 of 2023, administration of trademarks is cardinal because its gives some one the authority to use a particular name and no one else can use it, so the person or company signed under that trademark will be liable for any action carried out by the company.

4.5 CONCLUSION

This chapter endeavoured to provide an account of the efficacy of the legislative and regulatory framework of corporate governance in Zambia. It was discovered that corporate governance came about due to bank failures in the early 1990's, citing a lack of proper governance practices and general oversight. It further discussed that in Zambia, corporate governance, though initially characterized by nationalization, has evolved and now has established a legislative and regulatory framework.

The legislative framework comprises the Banking and Financial Services Act, the Securities Exchange Act, and the Lusaka Exchange Code, and sets out to promote accountability and transparency in corporations, whereas the regulatory framework comprises the Bank of Zambia, the Lusaka Stock Exchange Commission, the Securities Exchange Commission, and the Patents and Companies Registration Agency**,** and sets out to supervise and oversee financial institutions to ensure compliance with corporate governance guidelines.

The following chapter will deal with the Lessons that Zambia can draw from Kenya and South Africa regarding their corporate governance frameworks.

CHAPTER 5 ENHANCING TRANSPARENCY AND ACCOUNTABILITY IN ZAMBIA: LESSONS FROM KENYA AND SOUTH AFRICA

5.0 INTRODUCTION

Corporate governance systems have been in existence for quite some time in South Africa and in Kenya, and these reforms can be an inspiration for the current system in Zambia. The South African corporate governance system on transparency and Accountability is mainly regulated and supervised by the King IV Report on corporate governance, the Companies Act No 71 of 2008, and Johannesburg Stock Exchange listing requirements, while the Kenyan Corporate governance system is governed by the principal Act, which is the Companies Act of 2015, Capital Market Act. Kenya and South Africa have gone through various changes in order to attain a functional, effective, and efficient corporate governance system.

If a report had lacunas in South Africa, it would be changed henceforth; the changes in the reforms over the years, particularly the King I, King II, and King III. There have been three reports before the King IV report, each one of which had its own weaknesses and strengths. For instance, the first King's report, which was enacted in the year 1994, focused on accountability, transparency, and ethical leadership. Its main defect was that it focused on limited companies and excluded other types of companies. Apart from that, the rules and regulations surrounding the King's 1 were mandatory, so companies would not apply the governance principles on purpose. 'King 1 was based on the voluntary principle, resulting in a high element of self-regulation by local companies.

The voluntary principle adopted by King I was in line with the voluntary principle advocated in the 1992 Cadbury Report on UK Governance'[117].

The second King's report, enacted in 2002, made the main improvements to the II King's report by including banks, listed companies, and financial and insurance entities.[118] However, it also had defects, which include complex principles for small organizations. The third King's Report was enacted in 2009. The main difference was that it introduced integrated reporting and mainly adopted the apply and explain approach. The core weaknesses were that it was too lengthy, causing less application by companies, because most of them were uncertain about what exactly King II advocated for, and generally did not comprehend because of the complexities.

In Kenya corporate governance dates as far back as 1990 "On October 8, 1999, the Corporate Sector at a seminar organized by the Private Sector Initiative for Corporate Governance, where they formally adopted a national code of best practice for Corporate Governance, the whole essence of it was to act as a guide to corporate governance in Kenya, it further on made it mandatory for the private sector initiative to establish the Corporate Sector Foundation, and collaborate with the Global Corporate Governance Forum, the Commonwealth Association for Corporate Governance."[119] Corporate governance in Kenya has come a long way, hence the need for a country like Zambia to draw some lessons from it. Currently, the legislative framework that girds corporate governance in Kenya is the Companies Act 2015 and the Capital Markets Authority (CMA) Code of Corporate Governance Practices for Issuers of Securities.

5.1 CORPORATE GOVERNANCE IN SOUTH AFRICA

Corporate governance enforcement in South Africa is anchored in the Companies Act 71 of 2008 and the King IV Report, mainly. The objective of the South African Companies Act 71 of 2008 is to regulate companies in South Africa and set fundamental requirements to which companies,

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117 Phumzile Langeni ' The value of corporate governance: a comparison between the perceived value of King III and King II ' University of Pretoria 2018, p. 85
118 Ibid
119 ' Principles for Corporate Governance in Kenya and a Sample Code of Best Practice for Corporate Governance ' 6

directors, and shareholders must comply, while the purpose of the King IV report is to give guidance on the rules of corporate governance within organizations, and those who want to adhere to it can do so.

The King's Reports have been revised over the years, particularly with the revision of three King's Reports, which were initiated, assessed, and, in instances where there lacking there were gaps, improved. The very first King report was initiated in the year 1994, and its prior focus was on what the board does in the company, and further dealt with financial and regulatory aspects of corporate governance, Ethical leadership, and internal audits in the company.[120] Then there was an evolution to the second Kings Report in the year 2002, its prior focus was on the company's risk management systems in companies, internal audit systems, and its focus was on environmental and social responsibility in corporate governance. [121]

Subscription to the King's Report is not strict, as many companies in South Africa voluntarily subscribe to the King IV Code, which contains the leading principles and practices for corporate governance in South Africa.[122] Some of the principles of corporate governance that the King IV Code advocates for are the following ;

• **Discipline**: involves commitment by a company's senior management to adhere to behaviour that is universally recognized. • Transparency: the ease with which an outsider can analyse a company's actions, economic fundamentals, and the non-financial aspects pertinent to the company's business. As such, it measures how effective management is in making information available to reflect the company's true situation. [123]

• **Independence:** A good corporate governance system in a country includes a company that intensifies the extent to which mechanisms are implemented to minimize or avoid potential conflicts of interest, such as the participants and the composition of the board of directors and board committees. [124]

[120] Esser, I-M., and P. A. Delport. "The South African King IV Report on corporate governance: is the crown shiny enough?." *Company Lawyer* 39, no. 11 (2018) ,1

[1] Corporate Governance Laws and Regulations South Africa 2025-2026
(https://iclg.com/practice-areas/corporate-governance-laws-and-regulations/south-africa)
[123] Jackie Young, 'Corporate governance and risk management a south African perspective' Corporate Ownership & Control / Volume 7, Issue 3, Spring 2010. 143
[124] Ibid

Accountability: What the king reports advocates for in terms of transparency is that, in a company that seeks to adhere to corporate governance principles, there is a necessity to allocate accountability to decision-makers. The decision-makers in this case are the directors, who have the core responsibility of running the affairs of the company; they should be held accountable for the decisions they make concerning the company. Mechanisms must exist and be effective to allow for accountability. The importance of such an action is that it provides investors with the means to query and assess the actions of the board and its committees.[125]

Responsibility: This allows for corrective action and penalizing mismanagement regarding the management of the company. While the board of directors is accountable to the company, it must act responsibly towards all stakeholders.[126]

•**Fairness:** all systems within the company must be balanced in considering all interested parties and the future of the company. The rights of various groups must be acknowledged and respected.
• Social responsibility: a well-managed company will be aware of, and respond to social issues, and place a high priority on ethical standards[127].

In apply and explain, it is a shift from a compliance-based approach because many companies do not follow through with it. King IV also emphasizes transparency and accountability through a three-part remuneration report (background statement, policy, and implementation report) and encourages a mix of variable and fixed remuneration to support long-term value creation. Shareholder approval of the remuneration and implementation reports was also recommended.

5.2 LESSONS THAT ZAMBIA CAN LEARN FROM SOUTH AFRICA

For Zambia to possibly attain a progressive, effective, and transparent corporate governance system, some steps should be followed, and these include;

1) APPLY A STRONGER APPLY AND EXPLAIN

The ambiguity in the corporate governance structure is what may have been limiting the enforcement of the principles. In Kenya and South Africa, the Apply and Explain is cardinal

125 Ibid
126 Ibid
127 Ibid

because it encourages companies to apply corporate governance principles and to be fully aware of what they are applying. Instead of comply-or-explain, which forces companies to comply with principles they do not fully understand and, in the long run, causes them to fail.

'Apply and Explain.' "It's not what you do, but why that counts in corporate governance. "[128] Companies should know why they are adopting the principles of corporate governance, which makes adherence easier, and explain how they have implemented them in practice, furthermore the apply and explain is a compulsory system of corporate governance implicating that A country that adopts is mandated to adherence the rules of corporate governance in Zambia, the adherence of corporate governance principles is optional, henceforth the reason why companies are quite reluctant in following those rules. Countries such as Kenya and South Africa have strict, robust systems that mandate that companies follow corporate governance rules. **Apply and Explain.'** "It's not what you do, but why that counts in corporate governance. King IV's Disclosure Regime forces governing bodies to take action and have the right results."[129] It is a corporate governance principle that not only requires companies and organizations to adopt corporate governance codes but also to provide an in-depth of what they are about, and further to explain how they are applicable in companies. Applying and explaining is a mandatory corporate governance practice, which implies that a company must comply with corporate governance principles and explain why it has done so.

In Zambia, the newly enacted National Governance Code follows the principle of 'Comply and Explain.' The "**Comply or Explain"** approach is characterized by voluntary compliance with the recommended provisions, and mandatory disclosure[130]Companies have to state in their annual reports whether they comply with the Code provisions, identify any areas of non-compliance, and explain the reasons in light of their own particular circumstances.

The comply and explain principle is detrimental to Zambian companies because it suffers from several practical deficiencies regarding its effectiveness and applicability, because companies will just comply for the reason that they know that there is mandatory disclosure required without having comprehensive information; hence, even applicability is quite difficult. Furthermore,

[128] Parmi Natesan and Prieur Du Plessis , Why King IV's "apply and explain" is so important 2019
[129] Parmi Natesan and Prieur Du Plessis , Why King IV's "apply and explain" is so important 2019
[130]Ministry of Justice , National Corporate Governance Code .p3

another defect that is identified with the comply and explain principle is that companies provide vague and non-comprehensive reasons when they fail to apply the code.[131] . In Zambia, seeing that the country is not extensively informed about corporate governance principles, the best rule that can be used to guide the National Governance could be the Apply and explain.

2) STAKEHOLDER INCLUSION

Stakeholder inclusivity can be defined as the approach that a governing body takes to take into account the legitimate and reasonable needs, interests, and expectations of all material stakeholders in the execution of its duties in the best interest of the organization over time. [132]

A company applying the stakeholder-inclusive approach does not only focus on making the providers of capital the priority, but rather gives parity to all the sources of value creation, including, among others, social and relationship capital embodied by stakeholders. [133]Both the Company Law Act No 10 of 2017 and the Zambian Corporate Governance Code are not as inclusive as they should be about stakeholders, and stakeholder inclusivity is cardinal to the promotion of accountability and transparency.

3) INTRODUCTION OF INTEGRATED REPORTING

South Africa adopted integrated reporting a long time ago, specifically when the King III report was introduced, which was mainly chaired by Professor Judge Mervyn King. It was then intensified in the King IV report. The recommendation about integrated reporting in the King III report was that integrated reporting was supposed to be mandatory for companies. This meant that all companies that had consented to be guided by the King III report were supposed to comply by providing comprehensive information about the company's strategy, governance, and prospects through a written report submitted to the company's stakeholders and shareholders. The whole purpose was that stakeholders could ascertain the value of the company. [134] An integrated report

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[131] George Hadjikyprianou. 'The principle of "Comply or Explain" Underpinning the UK Corporate Governance Regulation: Is There a Need for a Change?' 2015.
[132] Kings IV Report
[133] Ibid
[134] Takunda Chipochangu Grace Mukeredzi, Impact of Integrated reporting on financial performance (University of KwaZulu-Natal) 16

is defined by the King's Report as providing sufficient information about a company's strategy, governance, and prospects.

The pillars of integrated reporting include

Business Environment: The business environment has advanced significantly and tremendously over the years. For businesses to stay applicable and to be sustainable, they must advance along with it and be up to date; thus, the need for integrated reporting.[135].

Information to stakeholders: Non-financial stakeholders need more qualitative and complete information, as it is linked to performance. There has been an increase in the need for such information, and integrated reporting enables companies to deliver qualitative information to stakeholders. In integrated reporting, there is a need to provide important information; companies need to understand and quantify the information requested. Companies also need to ensure that all this information is communicated effectively.

Integrated reporting is crucial to companies as it has so many benefits, which include;

Enhanced Communication: Integrated reports provide a more comprehensive view of an organization's value creation, enabling better communication with stakeholders, including investors, customers, employees, and regulators[136]

Improved Decision-making: Integrated reporting facilitates a deeper understanding of the organization's performance and risks, leading to more informed decision-making by management and the board[137]

Long-term Value Creation: By considering the broader impact of their activities on various capitals, organizations can adopt sustainable practices that contribute to long-term value creation[138]

Transparent Sustainability Reporting: Integrated reporting promotes transparency and accountability in an organization's sustainability efforts, fostering trust among stakeholders[139]

[135] Ibid
[136] Integrated reporting in corporate reporting practices (Integrated-Reporting.pdf)
[137] Ibid
[138] Ibid
[139] Ibid

The Zambian corporate governance system needs to adopt provisions that support integrated reporting. The benefits are evident, such as enhanced communication, long-term value creation, and Transparent Sustainability.

4) INTENSIFYING THE DUTIES OF A DIRECTOR

In the south African company law Act it does specify what exactly is expected of a company director, Two of the duties outlined that particularly stand out in respect of governance of companies state that: a director must not use the position of director to gain an advantage for himself or knowingly cause harm to the company, and to ensure that he communicates to the board, at the earliest possible opportunity, any information that comes to his attention unless it is immaterial to the company and; a director must act in good faith, in the best interests of the company, with the degree of care, skill and diligence that may be reasonably expected of a person carrying out the same functions in relation to the company as that director and having the general knowledge skill and experience of that director.

5.3 CORPORATE GOVERNANCE IN KENYA

Corporate governance in Kenya is a robust framework focused on transparency, accountability, and ethical leadership, governed primarily by the Companies Act 2015 and the Capital Markets Authority (CMA) Code of Corporate Governance Practices for Issuers of Securities (2015) The main legislative framework for corporate governance in Kenya includes The Companies Act sets out the primary legal framework governing the formation, operation, and dissolution of companies, including aspects of corporate governance., The Insolvency Act, Chapter 53 of the Laws of Kenya, provides regulations for dealing with financially distressed companies and influences how companies manage their finances. The Partnership Act, Chapter 29 of the Laws of Kenya, and the Limited Liability Partnerships Act, Chapter 30 of the Laws of Kenya, have the core responsibility of registering and planning, organizing, and directing the affairs of Limited Liability Partnerships.

KENYAN CORPORATE GOVERNANCE CODE

The Kenyan Corporate Governance Code is guided by the 'Apply or Explain ', which means that companies are expected to comply with all the corporate governance principles, but with a flexible aspect. In instances where companies do not comply, they should provide concrete reasons for their non-compliance. This enables companies to be flexible in their adherence to corporate governance principles. The purpose of the code is to “provide minimum standards that are expected from the owners of the company (shareholders), the individuals that manage the affairs of the company (directors), chief executive officers, and management of a listed company to promote high standards of conduct as well as ensure that they exercise their duties and responsibilities with clarity, assurance, and effectiveness. ”[140]

1. GUIDING PRINCIPLES THAT UPHOLD CORPORATE GOVERNANCE

In general, the code advocates for a firm foundation for the board of directors for the effective execution of their roles and responsibilities, promotion of shareholder rights, improvement of stakeholder relations, safeguarding of the integrity of financial reporting, risk management and risk control, and promotion of timely and balanced disclosure. The CMA promotes corporate governance principles by;

i. **Promoting shareholders' rights**.

Shareholders are very cardinal in the company as they are considered owners of the company and deserve their rights to be respected and valued in the company. Chapter 2 of the Capital Markets Act Cap 485 (Code of corporate governance practices for public listed companies in Kenya) mandates Directors to protect, respect, and uphold the rights of the shareholders the code advocates for transparency through allowing the shareholders to fully participate in annual meetings, with comprehensive information provided to them about the company, the have the opportunity to question the management on how the company is going making them answerable to what decisions they have made in the long run,

The code advocates for the shareholders to be able to ask questions and have an in-depth understanding of how the company is being operated, and seek clarification on the company’s performance as reflected in the annual reports and accounts. The management has the responsibility of providing an answer to all the pressing questions concerning the company’s

[140] The Capital Markets Act (Cap. 485A)

performance as per the annual report. This right shall be exercised in such a way as not to disrupt the business of an Annual General Meeting.'[141]

This section does affirm the whole purpose of what accountability is all about, which is an obligation for power holders and their officials to provide accountability through presenting, reporting, and disclosing all kinds of activities. The power holders in this case are the Directors or the management that have the mandate not only to disclose but also to permit shareholders to seek clarification on how the company has been performing.

ii. Having Governance Audit

The area that the code addresses when it refers to governance audit includes the leadership and strategic management of the company. The whole purpose of governance of the leadership of the company and its management is for the sole purpose of adherence to Accountability and Transparency. The code places emphasis on scrutinizing the leadership and the management of the company.

The code also ensures compliance with Laws and Regulations, communication with stakeholders, and Board independence. There is a need for the board to be independent, for non-biased decisions to be made. What distinguishes the management of the company is its functionality. The board is responsible for the policies, direction, and accomplishment of an organization's or a company's purpose, while the management is responsible for the running of the affairs of the company.[142] The Kenyan Capital Markets Act also ensures that the Board's systems and procedures are consistent with shareholder and stakeholder value enhancement, corporate social responsibility, and investment, which are aspects the Zambian Company Law Act does not recognize to its full extent.

iii. Conducting Internal Controls, Risk Management, and Accountability:

The Board has a responsibility to ensure adequate systems and processes of accountability, risk management, and internal control are in place in order to achieve its strategic objectives. The Board should put in place adequate structures to enable the generation of true and fair financial statements. Internal controls are defined as "The process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the

[141] Section 3 1(h) The Capital Markets Act (Cap. 485A)
[142] Ministry of Justice, National Corporate Governance Code'

achievement of effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations."[143]

5.4 LESSONS DRAWN FROM KENYA CONCERNING CORPORATE GOVERNANCE

I. <u>Introduction of a disqualification order</u>

Company officers who are not complying with the standards of the Act should be disqualified, and the principal Act that governs corporate governance.

Kenyan Company Law Act provides for disqualification orders on company officers who are not acting accordingly, and the instances that attract disqualification include

A. Committing an offence: In section 215, Disqualification on conviction for an offence.[144] A director who commits an offence will be disqualified from being a director
B. In Section 216, the act disqualifies a director on the basis that they acted fraudulently, in breach of duty, or committed an offence while the company is in liquidation or under administration.[145] A director who committed fraud is given fifteen years disqualification, meaning.
C. In Section 217, Disqualification on conviction of an offence involving failure to lodge returns or other documents with the Registrar, because this is clear-cut evidence that they might be hiding some critical information that the. The courts are the ones that have been accorded the authority to disqualify directors of insolvent companies.[146].
D. In section 218—Duty of court to disqualify unfit directors or secretaries of insolvent companies[147]If a company director is considered to be unfit by the courts

The Companies No. 17 of 2015 is specific about the circumstances under which a director should be disqualified, and this is cardinal. The Companies Act No 10 of 2017, however, has not intensified the disqualification of directors, and some may use that gap to purposely commit fraudulent activities because they know that the legislative framework is weak in that area, and

143 Chapter 5 CMA
144 Kenyan Company Act No 17 of 2015
145 Ibid
146 Ibid
147 Ibid

will cause a lot of directors and other company officers to commit fraud and abuse of power, among other things.

II. COMPARATIVE ANALYSIS OF THE KENYAN AND SOUTH AFRICAN CORPORATE GOVERNANCE FRAMEWORKS: IMPLICATIONS FOR ZAMBIA

In the Kenyan Capital Markets act it encourages the presence of the audit committee which has the sole responsibility of Reviewing and make recommendations on management programs established to monitor compliance with the code of conduct, In Zambia currently there are two codes of governing corporate governance which include LUSE code and National corporate governance code, which are both being guided by the comply and explain which is not practical and applicable for a country like Zambia,

Apart from Kenya and South Africa, the Companies Act No 7 of 2017 focuses more on the directors, secretaries, and shareholders, but does not recognize the presence of stakeholders and their importance in the promotion of corporate governance. The principal law should recognize stakeholders and their importance, as they are equally important for the promotion of corporate governance in a company. Furthermore, the Company Law Act does not specify the lack of specificity on the presence of the audit committee, as the Kenyan CMA does, and that is detrimental to companies, because an Audit committee is very important. After all, the assistance to ensure that companies are complying with the code of a country determines how much an external auditor should be paid, and the consideration of an external auditor is cardinal, as it shows that there’s a group mandated to ensure that corporate governance is followed by ensuring non-biased individuals (external auditors) are involved. If the principal act does not prescribe, it is left to the company's discretion, which will, in turn, be problematic.

III. Clearly stating the functions of the Audit Committee:

The Kenyan code encourages the presence of an audit committee and prescribes its functions. An audit committee is very cardinal, some of the importances of the audit committee as prescribed by the CMA are to Review and make recommendations on management programs established to monitor compliance with the code of conduct, appoint the external auditor, determine the fee that the auditors will get, and be inquisitive of way an external auditor resigns or is dismissed in a company of the external auditor, discuss with the external auditor before the audit commences, the nature and scope of the audit, and ensure coordination where more than one audit firm is involved; review management's evaluation of factors related to the independence of the Company's external auditor. Both the Audit Committee and Management should assist the external auditor in preserving independence, be informed, vigilant, and effective overseers of the financial reporting process and the Company's internal controls.

In Zambia, however, the existence of an audit committee is mandatory, which is detrimental because the benefits are outlined in the CMA, such as reviewing the external auditor's audit, questioning the dismissal or resignation of an external auditor, determine the fee that the auditors will get. There is a need for external auditors to be supervised and regulated by the company's audit committee. This does not reduce the objectivity of their audits, but rather helps to ensure that both the internal auditors and external auditors are working in tandem.

a) Expansion of Environmental, Social, and Governance, and Sustainability Transparency

ESG refers to the Environmental criteria of the company or organization. This means that in a company, it should focus on preserving the natural world; the social criteria of the company deal with the relationship of the people in the company, stakeholders, investors, among others; and the people and Governance criteria, running of the company.[148] ESG is cardinal as it acts as an encouragement to investors who would love to invest in a particular company. Usually, in an event where they see that those principles are respected, they have trust in the particular company.

The Companies Act No 10 of 2017 does not refer to ESG principles in any aspect. This is detrimental because investors' capital in companies not only brings development to the company, but it also contributes to economic development. It is detrimental for the principal act of company law not to directly talk about it and leave it to other subsidiary legislation. Zambia should encourage ESG principles in all companies through the Company Law Act to show the severity of the matter.

Mwanawasa intensified this by saying that "The disadvantage of a non-mandatory corporate governance system in a country such as Zambia is that voluntary practices that are targeted at enforcing corporate governance may not be successful. Most countries, including Zambia, have

[148] International Labor Organization's, 'What is ESG?

not attained a stage where they can self-regulate, and effective enforcement can thrive, and one of the obstacles to this is the rampant level of corruption surrounding many business transactions.” [149]

Although the regulatory and legislative framework provides for transparency and accountability, enforcement has not been made stringent and mandatory under the principal law, thereby making companies comply with these principles on a discretionary basis, and not mandatory.

“However, it could be argued that the Zambian Companies Act is a ‘narrow’ piece of legislation that only focuses on the company and the protection of shareholders as far as the procedures of a business are concerned. This Act is perceived as relying and focusing mostly on financial reporting for enforcing company responsibility and accountability. The Act does not have a broad-based, inclusive approach that can take into consideration the different stakeholders associated with the operations of a company; Unlike the South African Companies Act and the Kenyan Companies Act al, there are no specifications for the promotion of corporate governance principles as a requirement under law.”[150]

CONCLUSION

This chapter has endeavoured to draw lessons from the Kenyan and South African corporate governance systems. The reason attributed to the selection of Kenya and South Africa is not t just their corporate governance laws existing for a long time, but the constant improvements made over the years. South Africa and Kenya have such a robust framework concerning corporate governance, and the reason is not only because corporate governance has existed for a long period of time, but also because there are always improvements to the corporate governance reforms in South Africa and Kenya to meet the changes and the effort that is instilled in the regulatory and legislative framework.

There are multiple lessons that the Zambian legislative and regulatory Framework has drawn such as shifting the corporate governance code from the comply and explain to the apply or explain like

[149] Mwanawasa Chipokota, The regulation and Enforcement of corporate governance in Zambia (LLM) Dissertation, University of Cape Town

[150] Chipokota Mwanawasa. A case analysis of the viability of the current regulation and enforcement mechanisms of corporate governance, University of Cape Town Law Faculty in partial fulfilment of the requirements of a Master’s Degree in Commercial Law (LLM). 36

south Africa, increasing stakeholder inclusivity in the same manner that the South African Companies Law Act does, Encouraging Board independence, emphasize on integrated reporting as it is cardinal that companies to focus on reporting on issues such Environmental, Social Governance in the same manner that South Africa Advocates for it, independent and transparent board, strong enforcement mechanisms, intensified transparency and Accountability of directors, and Effective regulatory Institutions. Introduction of the disqualification order

In conclusion, Zambia's improvement in corporate governance adherence is not dependent on making more laws. because there are already existent legislative framework and regulatory framework that promote corporate governance principles however legislative framework and the regulatory Framework is bereft of provisions that encourage enforceability, that do not emphasize on the Apply and explain principle, that are devoid of provisions that encourage intensifying annual corporate governance assessments, expansion of environmental social and governance and sustainability transparency, South Africa and Kenya on the other hand have enforced those areas of corporate governance.

CHAPTER 6

The main objective of this paper was to assess whether the Companies Act has effectively promoted accountability and transparency through its provisions, and the particular findings are that it has, to some extent, which include strengthening the duties of the directors, upholding shareholder rights, and requesting auditors to be transparent and to avoid any form of conflict of interest.

This study further espoused that it is not only the Companies Act that upholds corporate governance principles but also Acts such as the Banks Act, which is supervised by the Banking and Financial Services Act, the Securities and Exchange Act, which Supervisees listing companies in the Lusaka Stock Exchange, and the Securities Exchange Commission, and the Patents and Company Registration Agency.

Lastly, the findings of this chapter concerning the corporate governance frameworks of South Africa and Kenya are that they have quite robust corporate governance frameworks due to improvements over the years, and identifying where the corporate governance frameworks are not being effective and efficient. For Zambia to attain such a level, here are some recommendations. Lastly, this paper highlighted that Zambia has a possibility of improving tremendously if at all lessons are drawn from Kenya and South Africa the lessons including ethical leadership, stakeholder inclusivity, Integrated reporting, board independence, amongst others.

RECOMMENDATIONS ON THE ENHANCEMENT OF CORPORATE GOVERNANCE IN THE COMPANIES LAW ACT

a. SIMPLIFYING LAWS about CORPORATE GOVERNANCE: For companies to fully adhere to corporate governance laws, they should first have a comprehensive understanding of what those laws are all about, the legal consequences of non-adherence, amongst others. Laws such as the Corporate Governance Code, the Companies Law Act No 10 of 2017, the Securities Exchange Act,

b. AMENDMENTS TO THE ACT: The Act needs to be flexible enough to meet the corporate governance changes that have been aforementioned, such as stakeholder inclusivity, board independence, integrated reporting, mentioning the Chief Executive Officer and making provisions for their functions in the company, among others; furthermore, there is a need for corporate governance laws to be improved at a fixed period.

c. MANDATORY ADHERENCE: The Companies Act should prescribe provisions that are mandatory in the promotion of transparency and accountability, apart from the LUSE code of corporate governance the other existing code is the Government Corporate Governance Code which is structured in ay that it is not mandatory law henceforth companies may or may not choose to abide by the provisions that have been put in the code no matter how effective they are. The need for the Company Act to make mandatory provisions about corporate governance is cardinal

d. COMPREHENSIVE COMPLIANCE PROGRAMS: Apart from legislative reforms it is cardinal for policies to be put in place within companies that are comprehensively talking about corporate governance, procedures, and training programs that align with legal and regulatory requirements about corporate governance , these training programs are important especially to company directors and secretaries because they are at the fulcrum of corporate management and need to have full knowledge on corporate governance rules and how they are applicable.

e. DEFINING ROLES AND RESPONSIBILITIES WITHIN GOVERNANCE STRUCTURES: Clearly define the roles and responsibilities of the board of directors, executive leadership, compliance officers, and audit committees. Ensure independent oversight to prevent conflicts of interest and enhance corporate integrity. Establish accountability mechanisms to address compliance violations

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