CORPORATE GOVERNANCE – TRANSITIONING FROM PRIVATE TO PUBLIC COMPANIES

Thapelo Tsheole
Chief Executive Officer
BICA 10th Biennial Conference
GICC

17 August 2018
Private vs Public Company

Private Company
- A company held under private ownership whose shares are not publicly traded in the equity market.

Public Company
- A company whose shares are listed, and can be bought by the general public on a stock exchange.
What is Corporate Governance?

• “Corporate governance involves a set of relationships between a company’s management, its board, its shareholders, and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and the structure for monitoring performance” – (OECD, Principles of Corporate Governance, 2004).

• “Corporate governance is defined as the system by which companies are directed and controlled” - (Cadbury Committee, 1992).
- A lot of commonalities exist between the governance of private and public companies.

- Major differences are with regards to **accountability**, **board structure** and **transparency**.

### Governance of Private Versus Public Companies

<table>
<thead>
<tr>
<th></th>
<th>PRIVATE COMPANY</th>
<th>PUBLIC COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Primary Accountability</strong></td>
<td>Shareholders</td>
<td>Shareholders &amp; Regulators</td>
</tr>
<tr>
<td><strong>Principal Stakeholders</strong></td>
<td>Shareholders</td>
<td>Shareholders</td>
</tr>
<tr>
<td><strong>Performance Monitoring</strong></td>
<td>Financial Statements</td>
<td>Financial Statements</td>
</tr>
<tr>
<td><strong>Governance/Board Structure</strong></td>
<td>Executive Directors</td>
<td>Executive Directors Non Executive Directors</td>
</tr>
<tr>
<td><strong>Transparency</strong></td>
<td>Limited disclosure</td>
<td>In line with corporate governance requirements &amp;</td>
</tr>
<tr>
<td></td>
<td>requirements</td>
<td>In line with regulatory requirements</td>
</tr>
</tbody>
</table>
There is no single model of corporate governance.

One of the commonly adopted framework is the G20/OECD Principles of Corporate Governance (OECD, 2015)

Adopted by the Financial Stability Board, G20 and OECD members.

The 7 Principles focus on the following cornerstones of governance:

1. **Ensuring the basis for an effective corporate governance framework**
   - Be developed with a view to impact on overall economic performance, market integrity and the promotion of fair and well-functioning markets.

2. **The rights and equitable treatment of shareholders and key ownership functions**
   - Shareholders should be sufficiently informed about, and have the right to approve or participate in, decisions concerning fundamental corporate actions and changes.

3. **Institutional investors, stock markets, and other intermediaries**
   - Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding investments.
5. The role of stakeholders in corporate governance
   - Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and to the competent public authorities and their rights should not be compromised for doing this.

6. Disclosure and Transparency
   - Disclosure should include, but not limited to, material information on: financial and operating results of the company, non-financial information, remuneration of the board and key executives, information about board members, related party transactions, foreseeable risks.
   - Preparation of financial statements and audit responsibilities

7. The responsibilities of the board
   - Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.
King III - Fundamental Highlights

Fiduciary duty
Mainly independent, non-executives
Chairman – Independent, Non-Executive

- BOARDS & DIRECTORS
  and
  BOARD APPRAISAL

- AUDIT FUNCTION
  Emphasis on independence & rotation of auditors

- RISK GOVERNANCE
  Risk mitigation, indicators and risk review
  Overall compliance with the laws

- IT SECURITY
  Integrity & protection of data

- STAKEHOLDER RELATIONS
  Investor Relation Officer
  Compliance Officer

- CORPORATE REPORTING
  Integrated reporting; ESG Reporting
The Fiduciary Duty to Shareholders

- Misalignment of interests points to failed governance structures
- The Board has oversight role over the affairs of the Company
- Therefore, has a fiduciary duty to shareholders with respect to the affairs of the business the conduct of the CEO
- Most accounting scandals were as a result of over-empowering the CEO and relaxing the oversight duty of the Board
- Ethics must be upheld (Auditors, Management, etc)

Source: http://www.accounting-degree.org/scandals/
BSE Listing Requirements - Continuing Obligations

COMPARSED TO PRIVATE COMPANIES, PUBLICLY LISTED COMPANIES MUST OBSERVE THE FOLLOWING ON A CONTINUING BASIS:

• Release of cautionary announcements and price sensitive information *(you don’t just Tweet!)*
• Information not public until release through X-News
• Publication of financial information to all shareholders
• Financial Statements and Annual Report (compliance with IFRS and the Act)
• Narrative on compliance with King III (Apply or Explain)
• Dealings in securities by Directors, CEO, Principal Officer, Company Secretary, Associates
• Closed period – prohibited periods for dealings by Directors
• Disclosure of related party transactions (and various levels of approvals)
# From BSE to BSE Limited – Governance Issues

<table>
<thead>
<tr>
<th>NATURE OF ENTITY</th>
<th>BSE MAIN COMMITTEE</th>
<th>BSE LIMITED BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Statutory Body</td>
<td>• Governed by BSE Act of 1994</td>
<td>• Company registered with CIPA</td>
</tr>
<tr>
<td>• Governed by BSE Act of 1994</td>
<td>• Governed by the Companies Act</td>
<td>• Has a registered Constitution and stated capital</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPOINTMENT OF DIRECTORS</th>
<th>BSE MAIN COMMITTEE</th>
<th>BSE LIMITED BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 3 Independent members appointed by Minister of the MFED</td>
<td>• 2 can be Non-Independent, CEO is an ex officio Director with no voting rights</td>
<td></td>
</tr>
<tr>
<td>• Non-Independent Executive &amp; Non-Independent, Non-Executive are nominated for election by the Members of the Exchange</td>
<td>• Independent and Non-Independent Directors are nominated for election by shareholders</td>
<td></td>
</tr>
<tr>
<td>• CEO is not a Member of the Main Committee</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHAIRPERSON</th>
<th>BSE MAIN COMMITTEE</th>
<th>BSE LIMITED BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Non-Independent Non-Executive</td>
<td>• Independent Director</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMMITTEES</th>
<th>BSE MAIN COMMITTEE</th>
<th>BSE LIMITED BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Listings and Trading Sub Committee</td>
<td>• Regulatory Committee</td>
<td></td>
</tr>
<tr>
<td>• Audit Committee</td>
<td>• Risk and Audit Committee (the Chairperson of which shall be a member of BICA)</td>
<td></td>
</tr>
<tr>
<td>• Investigations and Disciplinary Committee</td>
<td>• Nominations and Governance Committee</td>
<td></td>
</tr>
<tr>
<td>• Governance and Remunerations Committee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Board Tender Committee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Board Trustees</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPETITION</th>
<th>BSE MAIN COMMITTEE</th>
<th>BSE LIMITED BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Broker representation on the Main Committee made it difficult for eligible broking firms to be licensed.</td>
<td>• A highly independent Board will allow for admission of eligible broking firms. This will boost investor confidence.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONFLICT OF INTEREST</th>
<th>BSE MAIN COMMITTEE</th>
<th>BSE LIMITED BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>• High perceived and real conflict of interest - CEO regulates broking firms but also reports to a board comprising mainly of broking firms</td>
<td>• Eliminated – board comprises mainly of Independent Directors.</td>
<td></td>
</tr>
</tbody>
</table>
Promoting Good Governance - BSE Initiatives

• The introduction of the Sustainable Stock Exchange (SSE) initiative in 2009 by the United Nations was intended to encourage listed companies to report on their Environmental, Social and Governance (ESG) performance and promote improved ESG disclosure and performance.

• BSE became a Partner Exchange in July 2016, becoming the 11th signatory to the initiative in Africa. BSE partnered with UNDP in 2017 to profile sustainability practices of listed companies and is developing a Model Guidance on Reporting ESG information to Investors.

• BSE adopted King III as part of the Listing Requirements. King III recommends integration of economic, social and environmental reporting (sustainability reporting). Public Interest Entities (PIEs) in Botswana are also required to comply with King III by BAOA.


• In the medium to long term, subject to the approval of shareholders, BSE Limited intends to list on the BSE, and will be fully subject to the Listings Requirements. This will elevate its corporate governance standards as well as it corporate reporting.
### Promoting Good Governance – BSE Initiatives

<table>
<thead>
<tr>
<th>Our Mission</th>
<th>To drive sustainable economic growth by providing a gateway for raising capital and accessing investment opportunities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our Vision</td>
<td>To be a world-class securities exchange delivering innovative products and services.</td>
</tr>
</tbody>
</table>

#### Corporate Values

| Innovation | • Reinvent products & services  
• Adopt best practices |
|------------|-----------------------------|
| Integrity  | • High ethical standards  
• Accountability            |
| Sustainability | • Responsible use of financial, human and environmental resources |
| Efficiency | • Achieving more with less |
| Commercial Focus | • Revenue maximization for company and stakeholders |
| Teamwork   | • Collaboration with internal and external stakeholders |

#### BSE is a member of:
- Committee of SADC Stock Exchanges (CoSSE)
- African Securities Exchanges Association (ASEA) – which has 28 members
- World Federation of Exchanges (WFE)
- Partner Exchange - UN Sustainable Stock Exchange (SSE) Initiative
- Recognised Stock Exchange – UK’s HMRC (ongoing)

---

Pursuit of international best practice
Conclusion

- Good corporate governance is not an end in itself. It is a means to create market confidence and business integrity, which in turn is essential for companies that need access to equity capital for long term investment.

- Good corporate governance supports economic efficiency, sustainable growth and financial stability and the quality of corporate governance affects the cost of access to capital for growth and ultimate equitable wealth creation for stakeholders.

- Good corporate governance is an enable of sustainable economic growth, economic diversification and sustainable wealth creation for households.

- The stock market regulation should support effective corporate governance (listing rules, adoption and enforcement of King Code of Corporate Governance)

- Policy makers should have the responsibility to raise awareness of good corporate governance for all companies, including smaller and unlisted companies.

- Board should direct companies so that they achieve a positive sustainable economic, social and environmental performance.
Contact Us

Interact with us:

Facebook: Botswana Stock Exchange

Twitter: @TheOfficialBSE

LinkedIn: Botswana Stock Exchange

Website: www.bse.co.bw