AN OVERVIEW ANALYSIS OF SHAREHOLDER ACTIVISM IN ZIMBABWE

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Abstract

Shareholder activism refers to any legal mechanisms that disgruntled shareholders invoke to change an investee company's undesirable decisions, policies and practices. Shareholder activism entails, inter alia, measures, campaigns and/or proposals that are employed by one or more shareholders of a company to effect some reform in that company regarding its business, governance, management, strategy or in respect of a particular corporate action or fundamental transaction that is considered or undertaken by their company. Therefore, shareholder activism is one of the tools that could be employed by shareholders in Zimbabwe to voice their concerns and change certain poor corporate decisions and/or illicit conduct of company directors. As such, shareholders of companies in Zimbabwe have a plethora of mechanisms that could assist them to voice their concerns and promote good corporate governance practices. For example, in 2014, Zimbabwe introduced the National Code of Corporate Governance (Corporate Governance Code 2014) which consolidated corporate governance principles in a single policy instrument. The Corporate Governance Code 2014 empowers shareholder activist to promote good corporate governance practices by selling their shares, exercising their right to vote at annual general meetings and enforcing certain disclosure and transparency requirements in Zimbabwe. Zimbabwe has also recently enacted the Companies and Other Business Entities Act [Chapter 24:31] 4 of 2019 (COBE Act). The COBE Act provides shareholders with several avenues such as the derivative action, the oppression remedy and the appraisal remedy by which disgruntled shareholders could compel company directors to change their decisions and actions. However, despite these legislative and self-regulatory activism mechanisms that shareholders could employ to improve good corporate governance practices, corporate mismanagement remains a major problem in Zimbabwe. This article analyses shareholder activism under the current self-regulatory and statutory framework in Zimbabwe. It appears that the current statutory and self-regulatory framework for shareholder activism is flawed and inadequately enforced to combat shareholder passivity challenges in most companies in Zimbabwe. Accordingly, some recommendations that could be employed by policy makers and other relevant stakeholders to effectively promote shareholder activism in Zimbabwe are provided.

Keywords: *shareholder activism, corporate governance, derivative action, oppression remedy, appraisal remedy.*

JEL Classification: K22

1. Introductory remarks

Shareholder activism refers to any legal or self-regulatory mechanisms that disgruntled shareholders invoke to change an investee company's undesirable decisions, policies and practices.[3] Shareholder activism also entails, inter alia, measures, campaigns and/or proposals that are employed by one or more shareholders of a company to effect some reform in that company regarding its business, governance, management, strategy or in respect of a particular corporate action or fundamental transaction that is considered or undertaken by their company. In practice, shareholder activism could include litigation and non-litigation measures that may be employed by shareholders to voice their concerns and change certain poor corporate decisions and/or illicit conduct of company directors in Zimbabwe. One of the foundational principles of the Zimbabwean company law is the separation of corporate ownership and control between shareholders and directors.[4] In principle,

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[3] N. Mans-Kemp and M. Van Zyl, 'Reflecting on the Changing Landscape of Shareholder Activism in South Africa', 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 1, 1-11; Z. L. Dube & N. M. Mkumbiri, 'An Analysis of the Impact of Shareholder Activism in Corporate Governance: The Case of the Zimbabwean Banking Sector', 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 11, 11-17.
[4] See related discussion by R. Cassim, 'The Power to Remove Company Directors from Office: Historical and Philosophical Roots', 25(1) *Fundamina* (2019), pp. 37, 39-46; A. Keay, J. Loughrey, T. McNulty, F. Okanigbuan and A. Stewart, 'Business Judgment and Director Accountability: A Study of Case-Law over Time', 20(2) *Journal of Corporate Law Studies* (2020), pp. 359, 363; B. Steyn,

shareholders are owners of companies whilst directors have control of the companies' day to day business.[5] Shareholders provide companies with equity capital but they usually lack the skills and time to manage such companies. This is one of the reasons why shareholders appoint directors as agents to run companies on their behalf.[6] To that end, company directors in Zimbabwe are statutorily obliged to protect and promote the interests of their shareholders and companies.[7] However, since shareholders are not usually involved in the day to day management of companies and do not have access to some corporate information, directors may sometimes abuse their authority and make decisions that do not align with their shareholders' and/or company's interests.[8] It is such instances of divergence of directors' and shareholders' interests that make shareholder activism a significant corporate governance tool in Zimbabwe. Shareholder activism is important since it can be directed at any environmental, social and corporate governance (ESG) issues affecting a company in Zimbabwe.[9] Shareholder activists usually focus on the promotion of good corporate governance practices in investee companies through querying company directors' independence and accountability, corporate performance and directors' remuneration.[10]

Shareholder activism is an emerging phenomenon in the Zimbabwean context and currently, there is a dearth of literature on the subject in Zimbabwe.[11] To this end, this article analyses the various mechanisms for shareholder activism in Zimbabwe.[12] In this regard, the relevant provisions of the COBE Act and the Corporate Governance Code 2014 are discussed to determine whether they promote robust and effective shareholder activism in Zimbabwe. It is submitted that an adequate regulatory framework will encourage shareholder activism.[13] Accordingly, the article briefly discusses the position of shareholder activism under the COBE Act and the Corporate Governance Code 2014. Thereafter, various forms of litigation as means of shareholder activism in Zimbabwe will be examined. An exploration of the role of annual general meetings (AGMs) in promoting shareholder activism in Zimbabwe is discussed and some recommendations are provided in respect thereof.

2. Shareholder activism under the COBE Act and the Corporate Governance Code 2014

Shareholder activists in Zimbabwe primarily derive their power from the COBE Act and the

and L. Stainbank, 'Separation of Ownership and Control in South African-Listed Companies', 16(3) *South African Journal of Economic and Management Sciences* (2013), pp. 316, 318.

[5] Sections 13 and 24 of the National Code of Corporate Governance 2014 (Corporate Governance Code 2014). However, this traditional belief has been challenged by R. Cassim, 25(1) *Fundamina* (2019), pp. 37, who argues that shareholders do not own companies but rather own interests in a company. Cassim further argues that the assets of a company belong to the company and not to the shareholders and that a company is a legal person which cannot be owned by another person.

[6] Section 201 of the Companies and Other Business Entities Act [Chapter 24:31] 4 of 2019 (COBE Act); sections 8 and 24 of the Corporate Governance Code 2014.

[7] Section 23 of the Corporate Governance Code 2014 states that a company 'must conduct its business in a manner that best serves the interests of the shareholders, including minority shareholders' and section 195(4) of the COBE Act provides that 'every director shall exercise independent judgment and shall act within the powers of the company in a way that he or she considers, in good faith, to promote the success of the company for the benefit of its shareholders as a whole'.

[8] See sections 57 and 59 of the COBE Act, section 23 of the Corporate Governance Code 2014.

[9] See related discussion by M. Welker and D. Wood, 'Shareholder Activism and Alienation', 52(3) *Current Anthropology* (2011), pp. S57, S58-S69; Z.L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 13.

[10] See related discussion by N. Mans-Kemp, and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 2-3, who point out that a sound system of corporate governance attracts investment. Also see S. Viviers and N. Mans-Kemp, 'Successful Private Investor Activism in an Emerging Market', 21(1) *Corporate Governance* (2021), pp. 92, 92-110; A. Beebeejaun, and J. Koobloll, 'An Assessment whether Shareholder Activism Can be a Corporate Governance Driver in the Case of Mauritius: A Comparative Study', 60(6) *International Journal of Law and Management* (2018), pp. 1313, 1314; Z.L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 11; G.J. Cundill, P. Smart and H.N. Wilson, 'Non-Financial Shareholder Activism: A Process Model for Influencing Corporate Environmental and Social Performance', 20(2) *International Journal of Management Reviews* (2018), pp. 606, 606-626.

[11] See related discussion by Z.L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 12.

[12] Ibid, pp. 11; G.J. Cundill, P. Smart, and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 606.

[13] N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 2.

Corporate Governance Code 2014.[14] It appears that the COBE Act and the Corporate Governance Code 2014 do not adequately provide for both litigation and non-litigation forms of shareholder activism in Zimbabwe. Shareholder activism forms may be categorised as exit and voice mechanisms under the COBE Act and the Corporate Governance Code 2014.[15] Exit mechanisms occurs when a shareholder chooses to sell his or her shares and move out of the company as a way of activism or protest against certain decisions, actions or policies of that company.[16] Notably, another related term for the "exit mechanism" is "divestment".[17] Divestment occurs when subsidiary assets, investments or divisions of a company are sold in order to improve performance and maximise the value of the controlling company. On the other hand, voice mechanisms occurs when a shareholder provide clear reasons for his or dissatisfaction in an attempt to rectify certain conduct or force certain changes in their companies.[18] In this regard, a disgruntled shareholder holds on to his or her shares and in a bid to induce changes within the company instead of moving out of the company.[19] Shareholders may air their dissatisfaction and views through formal channels such as voting, shareholder proposals and litigation as well as informal channels such as private negotiations.[20] The voice mechanisms for shareholder activism may also be categorised into public and private mechanisms.[21] Private voice mechanisms of shareholder activism usually take the form of formal out of court correspondence and dialogue between shareholder activists and the offending company directors or their proxies and/or agents.[22] Public voice mechanisms of shareholder activism include litigation, shareholder proposals and voting at AGMs or shareholder meetings and social media activism.[23]

3. Litigation as a form of shareholder activism in Zimbabwe

Shareholder activists may engage the courts of law to seek legal recourse and to effect policy and behavioral change in the investee companies in Zimbabwe. The COBE Act provides shareholders with various remedies which they can invoke to protect their company and corporate interests. The three types of litigation that may be evoked by shareholder activists in Zimbabwe include the dissenting shareholder's appraisal rights remedy (appraisal remedy)[24], the oppression remedy[25] and the derivative action.[26] In this regard, it must be noted that the discussion under this sub-heading is not meant to discuss all the substantive and procedural aspects of the aforesaid litigation remedies in Zimbabwe. Rather, the object here is to provide an overview discussion of the stated litigation remedies only to the extent that they either promote or restrict shareholder activism in Zimbabwe.

The appraisal remedy is provided for in section 233 of the COBE Act. This remedy is an exit

[14] Section 220(3) of the COBE Act & section 1 of the Corporate Governance Code 2014. Both private and public companies in Zimbabwe are statutorily required to comply with the corporate governance principles set forth in the Corporate Governance Code 2014.

[15] Section 220(3) of the COBE Act & section 1 of the Corporate Governance Code 2014; see related discussion by G.J. Cundill, P. Smart and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 608; N. Mans-Kemp, and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 2; S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 92.

[16] G. J. Cundill, P. Smart and H. N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 611; N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 2; S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 92; A. Beebeejaun and J. Koobloll, 60(6) *International Journal of Law and Management* (2018), pp. 1315; K. Chee Ying, 'Shareholder Activism Through Exit and Voice Mechanisms in Malaysia: A Comparison with the Australian Experience', 26(2) *Bond Law Review* (2014), pp. 87-114.

[17] G.J. Cundill, P. Smart, and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 611; N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 2.

[18] K. Chee Ying, 26(2) *Bond Law Review* (2014), pp. 87-114.

[19] Ibid, pp. 87-114.

[20] Ibid, pp. 87-114.

[21] S. Viviers, and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 93.

[22] Ibid, pp. 94; Z.L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 11.

[23] Section 167(3) of the COBE Act; section 11 of the Corporate Governance Code 2014; see also S. Viviers, and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 93; Z.L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 11.

[24] Section 233 of the COBE Act.

[25] Sections 62 and 223 of the COBE Act.

[26] Section 61 of the COBE Act.

mechanism for shareholder activists who feel that the company's policies or practices no longer align with their interests and as such, the company cannot meet their investment expectations.[27] The appraisal remedy offers shareholder activists an opportunity to exit the affected company.[28] The appraisal remedy is usually invoked when the company directors' decisions amount to a fundamental variation of shareholders rights and/or during a contemplated or contested merger.[29]

However, shareholder activists intending to exit any company in Zimbabwe via the appraisal remedy route could face a couple of hurdles. Firstly, the appraisal remedy is a very technical and complex procedure. Shareholder activists intending to invoke the appraisal remedy as an exit mechanism should fully comply with all the formalities and procedural requirements that are stipulated in the COBE Act.[30] For example, an activist shareholder who fails to give the company a written notice objecting to the contemplated resolution could fail to invoke the appraisal remedy even though he or she voted against the impugned resolution during the meeting.[31] Secondly, the dissenting shareholder activist could fail to get a fair valuation of his or her shares as determined by the directors or the court depending on the circumstances.[32] The determination of a fair value of the shares is not easy.[33] Although the affected shareholder should demand that the company pay a fair valuation of his or her shares,[34] the company may apply to a court for an order varying the company's obligations and the court will make an order that is just and equitable, having regard to the financial circumstances of the company.[35] The fair value in respect of any shares must be determined as at the date on which, and time immediately before, the company adopted the resolution that gave rise to a shareholder's rights under section 233 of the COBE Act.[36] The company must pay the affected shareholder the agreed amount within ten business days after the shareholder accepted the offer.[37] Section 233(3) of the COBE Act requires the company to send a notice that the resolution has been adopted to each shareholder who gave the company a written notice of objection but there is no specific penalty for failure to do so. Section 233(10) of the COBE Act requires the company to send to each affected shareholder a written offer to pay an amount considered by the company's directors to be a fair value of the relevant shares.[38] However, there is no specific penalty for failure to do so. Although shareholders could compel the company to fulfil its obligations in terms of section 233(3) and (10) of the COBE Act, that could result in other lengthy legal proceedings. The above-mentioned hurdles could hinder shareholder activists from employing the appraisal remedy to effectively change undesirable corporate decisions, practices and policies in their companies.

The oppression remedy is provided for in section 223 read with section 62 of the COBE Act. Shareholder activists may commence litigation under the oppression remedy when the directors or any other persons in control of the entity have acted illegally, fraudulently or oppressively towards

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[27] See related discussion by B.M. Wertheimer, 'The Shareholders' Appraisal Remedy and How Courts Determine Fair Value', 47(4) *Duke Law Journal* (1998), pp. 613, 615.

[28] M.F. Cassim, 'The Introduction of the Statutory Merger in South African Corporate Law: Majority Rule offset by the Appraisal Right (Part 2)', 20(2) *South African Mercantile Law Journal* (2008), pp. 147, 158.

[29] Sections 143, 228 and 233(1) of the COBE Act; section 49 of the Corporate Governance Code 2014, states that "when a merger or takeover occurs, minority shareholders should be given the opportunity to sell their shares at market value".

[30] Section 233(4)(c)(ii).

[31] Section 233(2) of the COBE Act provides that: "at any time before a resolution referred to in subsection (1) is to be voted on, a dissenting shareholder may give the company a written notice objecting to the resolution". Although the use of the term "may" could make it sound as if the shareholders' notice of objection to a proposed resolution is discretionary, it should be noted that without such a notice a dissenting shareholder cannot successfully invoke the appraisal remedy. Additionally, section 233(3) of the COBE Act provides that a company is obliged to send a notice that the resolution has been adopted only to those shareholders who would have sent a notice of objection first. Furthermore, section 233(4) of the COBE Act provides that only shareholders who would have sent a notice of objection to the company are eligible to demand the payment of a fair valuation of their shares. Therefore, it is submitted that regardless of the use of the word "may" in section 233(2) of the COBE Act, the context points to the fact that the legislature intended the submission of an objection notice by a dissenting shareholder to be mandatory.

[32] See section 233(10) and (13) of the COBE Act.

[33] Section 233(1) of the COBE Act.

[34] Section 233(4) of the COBE Act.

[35] Section 233(16)(a) and (b) of the COBE Act.

[36] Section 233(15) of the COBE Act.

[37] Section 233(12)(b) of the COBE Act.

[38] Section 233(10) of the COBE Act.

the petitioning member.[39] Although the aforesaid provisions use the term "members" instead of "shareholders", it is submitted that the two terms should be used interchangeably.[40] In section 222(1) of the COBE Act, the term "member" includes a person who is not a member of the company but to whom shares in the company have been transferred or transmitted by operation of law. Unlike the derivative remedy, there are no shareholder threshold or quorum requirements for one to commence litigation under section 223 of the COBE Act.[41] Therefore, in general, shareholder activists who own a single share can approach a court for legal recourse under section 223 of the COBE Act provided the other jurisdictional matters are met.

A few aspects of the oppression remedy could impede its effectiveness as a shareholder activism tool in Zimbabwe. For example, the institution of legal proceedings under section 223 is limited to current shareholders. It is submitted that under the COBE Act, the oppression remedy may not be invoked by a shareholder who only became a shareholder after the conduct complained of was already committed and resolved so as to effectively protect the company and shareholders' interests. Moreover, non-contemporaneous and new shareholders could be prejudiced by suffering the consequences of directors' misconduct that took place before they became shareholders of the affected company. Additionally, judging from the South African experience,[42] there is a high probability that the Zimbabwean judiciary may struggle to ascertain the meaning of oppressive conduct, unfairly prejudicial conduct or acts or omissions that unfairly disregard the interests of the applicant. This could make it difficult for shareholder activists to prove that their interests were interfered with by certain corporate decisions, practices and policies of company directors in Zimbabwe. Consequently, due these definitional deficiencies, shareholder activists could struggle to effectively invoke and rely on the oppression remedy in Zimbabwe.

The COBE Act also provides for a statutory derivative action or remedy.[43] A derivative action is a claim that is usually brought before a court of law by a complainant seeking redress on behalf of a company when the directors are either unable or unwilling to do so.[44] The action is called "derivative" because the complainant who is usually a minority shareholder, assumes the place of the company to seek redress on its behalf.[45] Although a positive outcome of derivative litigation does not directly benefit disgruntled shareholders, they could indirectly benefit from the re-alignment of the company and directors' corporate interests. Cassim FHI *et al* correctly stated that the shareholder derives his or her right to litigate from that of their company.[46] Derivative actions are a practical expression of the checks and balances that could be invoked by shareholder activists to monitor their company directors' conduct in Zimbabwe.[47]

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[39] Section 223 of the COBE Act provides that: "[a] member of a company may apply to the court for an order in terms of section 225 on the ground that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, including himself or herself, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so oppressive or prejudicial". This is a carbon copy of section 994(1) of the United Kingdom (UK) Companies Act 2006 c 46.

[40] It is submitted that the legislature's inclination to choose the term "members" was due to its copy and paste of the UK's oppression remedy. See sections 994, 996 and 998 of the UK Companies Act 2006.

[41] According to section 61(3)(c) of the COBE Act, a shareholder must own at least ten percent of a company's voting power to commence derivative litigation.

[42] For example, in *Aspek Pipe Co (Pty) Ltd v Mauerberger* 1968 (1) SA 517 (C), the court conceded that the term "oppressive conduct" is elusive.

[43] Section 61 of the COBE Act.

[44] D. J. Weidner, 'Dissatisfied Members in Florida LLCs: Remedies', 18(1) *Florida State University Business Review* (2019), pp. 1, 6; G.K. Sahu, 'Investors Protection: The Derivative Action', 3(3) *International Journal of Law* (2017), pp. 101, 104; T. Mongalo, C. Lumina and F. Kader, *Forms of Business Enterprise: Theory, Structure and Operation* (Pretoria, Van Schaik Publishers, 2004), pp. 273.

[45] *Kufandada v Dairiboard Zimbabwe Ltd* [2015] ZWHHC 564, held that a derivative applicant does not represent the other shareholders but represents the company to enforce rights derived from the company.

[46] F.H.I. Cassim, M.F. Cassim, R. Cassim, R. Jooste, J. Shev and J.L. Yeats, *Contemporary Company Law* 2ed (Cape Town, Juta and Co, 2012), pp. 775; *Estmanco (Kilner House) v Greater London Council* 1982 1 WLR; M.F. Cassim, *The New Derivative Action Under the Companies Act: Guidelines for Judicial Discretion* (Cape Town, Juta and Co, 2016), pp. 5.

[47] See related discussion by J. Erickson, 'The Gatekeepers of Shareholder Litigation' 70(1) *Oklahoma Law Review* (2017), pp. 237, 239; J.W. Hendrikse, and L. Hefer, *Corporate Governance Handbook: Principles and Practice* 3ed (Cape Town, Juta & Co, 2019), pp. 3.

Section 61(1) of the COBE Act provides that only company shareholders are eligible to commence derivative proceedings on behalf of the company in Zimbabwe. Shareholder activists in Zimbabwe can initiate derivative action proceedings against company directors to enforce or recover losses incurred by the company through the negligence or violation of such directors' fiduciary duties.[48] However, there are several deficiencies which could make it difficult for shareholder activists to rely on a derivative action in Zimbabwe. Firstly, shareholder activists may only institute derivative actions in instances where they claim damages or where there is a breach of a fiduciary duty to the company itself by directors under the COBE Act.[49] As such, it appears that shareholder activists cannot institute derivative actions against the company directors' negligence, proposed controversial acts and omissions in Zimbabwe.[50] However, it is worth noting that the company directors' negligence could be wider than their breach of fiduciary duties.[51] Consequently, the limited scope of conduct that forms the basis of derivative actions could discourage shareholder activists from litigating against corporate injury resulting from company directors' negligence in Zimbabwe.[52]

Secondly, the COBE Act introduces the contemporaneous ownership rule into Zimbabwe's derivative remedy.[53] According to the contemporaneous ownership rule, shareholder activists should prove that they were shareholders at the time of the affected transactions for them to successfully institute derivative action against directors in Zimbabwe.[54] A wholesale application of the contemporaneous ownership rule in a dynamic legal, business and political environment like Zimbabwe could impose undesirable barriers on shareholder activists' access to justice.[55] Additionally, the findings of independent empirical research by Hoffman, Garth, Nagel and Plager revealed that the contemporaneous ownership rule makes the derivative remedy's *locus standi* requirements restrictive and a barrier to potential derivative action applicants.[56] In its current form, section 61(3)(b) of the COBE Act could inadvertently frustrate minority shareholder activists' voices in Zimbabwe.[57]

Thirdly, section 61(3)(c) of the COBE Act only allows shareholders with a minimum shareholding of ten per cent to institute derivative action against the company directors. This could result in minority shareholders who own less than ten per cent of a company's shares failing to institute derivative proceedings against company directors in Zimbabwe. It is submitted that section 61(3)(c) of the COBE Act arbitrarily limits shareholders' access to justice and hinders shareholder

[48] Section 61(1) of the COBE Act.

[49] Section 61(3)(a) of the COBE Act. In this regard, Zimbabwe could get inspiration from section 260(4) of the UK Companies Act 2006 which states that: "[i]t is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company". Also see H. Baum, and D.W. Puchniak, 'The Derivative Action: An Economic, Historical and Practice-Oriented Approach' in D.W. Puchniak, H. Baum, and M. Ewing-Chow, (eds) *The Derivative Action in Asia: A Comparative and Functional Approach* (Cambridge, Cambridge University Press, 2012) 78-79.

[50] This is in sharp contrast with the approach in other common law jurisdictions. For example, section 165 of the Companies Act 71 of 2008 is targeted at the protection of a company's legal interests. H.H. Stoop, 'The Derivative Action Provisions in the Companies Act 71 of 2008', 129(3) *South African Law Journal* (2012), pp. 527, 535; M.F. Cassim, (2016), pp. 16.

[51] B.A. Garner, 'Black Law Dictionary', (2004) 3284-3285 https://epdf.pub/queue/blacks-law-dictionary-8th-edition.html accessed 23 March 2021. It is clear that, unlike breach of duty, negligence manifests in different degrees such as ordinary negligence and gross negligence.

[52] M.F. Cassim, (2016), pp. 16; P.A. Delport, Q. Vorster, I.M. Esser, S. Lombard & D. Burdette, *Henochsberg on the Companies Act*, Vol 1, Issue 2 (Durban, LexisNexis, 2012), pp. 585. In this regard, Zimbabwe could learn from South Africa's derivative remedy which seeks to protect corporate interests and it extends beyond derivative litigation based on breach of directors' fiduciary duties, to include actions against third parties or instituted by third parties against the company. See F.H.I. Cassim *et al*, (2012), pp. 781; P.A. Delport, Q. Vorster, and E.S. *Henochsberg on the Companies Act*, (2012), pp. 585; H.H. Stoop, 129(3) *South African Law Journal* (2012), pp. 536.

[53] Section 61(3)(b) of the COBE Act.

[54] See related discussion by S. Wells, 'Maintaining Standing in a Shareholder Derivative Action', 38(1) *U.C. Davis L. Rev.* (2004), pp. 343, 345.

[55] See related discussion by F. Hamadziripi, *Derivative Actions in Contemporary Company Law: A Comparative Assessment from an Enhanced Accountability Perspective* (LLD Thesis University of Fort Hare 2020), pp. 149.

[56] M. Hofmann, 'The Statutory Derivative Action in Australia: An Empirical Review of its Use and Effectiveness in Australia in Comparison to the United States, Canada and Singapore', 1(1) *Corporate Governance eJournal* (2005), pp. 1, 4; B.G. Garth, I.H. Nagel and S.P. Plager, 'Empirical Research and the Shareholder Derivative Suit: Toward a Better-Informed Debate', 48(3) *Law and Contemporary Problems* (1985), pp. 137, 139.

[57] National Assembly Hansard 09 May 2019, Volume 45, No 48, pp. 21.

activism in Zimbabwe. Derivative litigation is generally very expensive to institute and prove against the defaulting company directors.[58] The applicant is obliged to pay all the legal costs for the derivative action.[59] As a result, institutional shareholders may only consider derivative action and litigation where the likelihood of success is very high.[60]

4. The role of AGMs in promoting shareholder activism in Zimbabwe

Shareholder activists could also voice their concerns regarding corporate policies and practices by exercising their right to present proposals, vote and ask questions during their companies' AGMs in Zimbabwe.[61] Every company incorporated in Zimbabwe is required by the law to hold an AGM once every twelve months.[62] Any failure by a company to hold an AGM is a punishable offence that attracts a civil penalty.[63] An AGM provides shareholder activists with an opportunity to legally scrutinise directors' conduct, decisions and actions.[64] The nature and scope of issues discussed at an AGM makes it a potentially effective platform for shareholder activists to voice their concerns on corporate ESG issues in Zimbabwe.[65] Company directors in Zimbabwe have a duty to make sure that AGMs are easily accessible to all shareholders by treating all shareholders equitably. They are further required to ensure that the procedures for holding AGMs are not unnecessarily expensive or complicated.[66] Furthermore, company directors must ensure that shareholders' meetings are convened at a place, date and time that makes it possible for all shareholders to attend the meeting.[67] The Corporate Governance Code 2014 provides that the quorum of a shareholders' meeting must be clearly defined so as to ensure reasonable participation by different classes of shareholders at an AGM.[68] Shareholder activists should attend AGMs because they play an informative role as directors inform shareholders about the company's operations, management, administration and achievements.[69] For example, company directors report to the shareholders on the company's compliance with the Corporate Governance Code 2014 at each AGM.[70] This provides shareholder activists with a chance to assess their companies' compliance with good corporate governance practices. Furthermore, an AGM enables company directors to explain to the shareholders about their compliance or non-compliance with principles of corporate governance.[71] Chairpersons of committees of boards of directors should attend shareholders' meetings to respond to issues that relate to their areas of competence and to assist such board chairpersons to answer any questions.[72] Shareholders should also have reasonable and transparent access to relevant company records which must ordinarily be availed to them by company directors.[73] However, such access to corporate information should not compromise sensitive corporate information which, in the best interests of the company, must not be disclosed.[74] Important documents such as a summary of the company's

[58] See related discussion by N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 7.
[59] Ibid, pp. 7.
[60] Ibid, pp. 7.
[61] Section 167(3) of the COBE Act; section 11 of the Corporate Governance Code 2014; S. Viviers, and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 94; A. Beebeejaun and J. Koobloll, 60(6) *International Journal of Law and Management* (2018), pp. 1318; N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 4.
[62] Section 167(1) and (2) of the COBE Act.
[63] Section 167(7) of the COBE Act.
[64] Section 14 of the Corporate Governance Code 2014.
[65] Z.L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 15.
[66] Section 38 of the Corporate Governance Code 2014.
[67] Section 27 of the Corporate Governance Code 2014.
[68] Section 36 of the Corporate Governance Code 2014.
[69] Section16 of the Corporate Governance Code 2014.
[70] Section 220(3) of the COBE Act.
[71] Section 220(3) of the COBE Act.
[72] Section 35 of the Corporate Governance Code 2014.
[73] Section 12 of the Corporate Governance Code 2014 provides that full, timely and transparent disclosure should be made in the annual reports regarding the exercise of corporate power.
[74] Section 25 of the Corporate Governance Code 2014.

strategic plan, reports on the company's performance indicators and growth prospects, management practices and policies pursued by the board, reports on analyst briefings, including positive and negative media reports, should be made accessible to all shareholders in advance to give them adequate time to prepare for the AGM.[75] For public companies, shareholder activists can review the report of the audit committee[76] and review the board's "comply or explain" report on the company's corporate governance guidelines and the Corporate Governance Code 2014.[77]

Shareholder activists may utilise an AGM as a useful forum to discuss and ask questions. This is known as the forum function. For example, shareholder activists in Zimbabwe have the right to place issues on the agenda of an AGM.[78] Shareholders in Zimbabwe should be given sufficient time to prepare adequately for the meeting and to contribute to all discussions on the AGM agenda.[79] Shareholders should be allowed to request for the adjournment or postponement of the meeting if matters of great complexity are under consideration at the AGM.[80] An AGM also provides shareholder activists an opportunity to contribute towards the formulation of desired corporate strategies in Zimbabwe.[81] The notice convening a shareholders' meeting must be timeously given to all shareholders to allow them enough time to formulate their positions on the agenda and conduct any relevant consultations before the meeting.[82] Companies should establish relevant procedures and mechanisms which make it possible for minority shareholders to object to a majority decision and refer conflicts between them and controlling shareholders to arbitration.[83] Companies should also effectively promote shareholder activism through AGMs and related platforms in Zimbabwe.

Shareholder activists may take any appropriate action to protect and promote the interests of the company during AGMs in Zimbabwe.[84] Shareholders who fail to attend AGMs in person can still participate through their proxies.[85] Proxy voting is utilised in Zimbabwean companies because its rules are clear, objective and simple.[86] Companies are discouraged from imposing voting caps as they are hostile to corporate democracy.[87] Dilution of voting rights must not be permitted unless it is authorised by a resolution passed by a majority of shareholders.[88] AGMs provides shareholders with the opportunity to set or approve their directors' compensation including salaries and pensions.[89] Any anti-takeover measures must be approved by shareholders at a meeting held for that purpose.[90]

However, AGMs are only held once a year.[91] This is too long for shareholders to pass resolutions regarding urgent key corporate issues.[92] Shareholder activists should utilise extraordinary general meetings (EGMs) to minimise the negative effects of this status quo in Zimbabwe. However, only shareholders owning at least five per cent of the paid-up share capital of a company are eligible to request an EGM.[93] Consequently, minority shareholders owning less than the prescribed five per

[75] Section 32 of the Corporate Governance Code 2014; section 167(5)(c) of the COBE Act.
[76] Section 167(5)(d) of the COBE Act.
[77] Section 167(5)(e) of the COBE Act.
[78] Section 167(6) of the COBE Act.
[79] Section 30 of the Corporate Governance Code 2014.
[80] Section 30 of the Corporate Governance Code 2014.
[81] Section 16 of the Corporate Governance Code 2014.
[82] Section 26 of the Corporate Governance Code 2014.
[83] Section 44 of the Corporate Governance Code 2014.
[84] Section 15 of the Corporate Governance Code 2014; N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 4
[85] Section 40 of the Corporate Governance Code 2014.
[86] Section 39 of the Corporate Governance Code 2014.
[87] Section 42 of the Corporate Governance Code 2014.
[88] Section 45 of the Corporate Governance Code 2014.
[89] Section 167(5)(b) of the COBE Act.
[90] Section 48 of the Corporate Governance Code 2014.
[91] See related discussion by N. Mans-Kemp, and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 8-9; A. Lafarre, and C. Van der Elst, 'Blockchain Technology for Corporate Governance and Shareholder Activism', *Tilburg Law School Legal Studies Research Paper Series No. 07/2018* (2018), pp. 11.
[92] See related discussion by A. Lafarre, and C. Van der Elst, *Tilburg Law School Legal Studies Research Paper Series No. 07/2018* (2018), pp. 11.
[93] Section 168(1) of the COBE Act.

cent of shares could end up being prejudiced since they cannot request an EGM.[94] Moreover, the attendance of AGMs by shareholders has been very poor and inconsistently enforced in Zimbabwe.[95] This is counter-productive considering that section 170 of the COBE Act provides that no binding decisions shall be made for the company unless a quorum is present.[96] If the quorum is not met, then the shareholders' meeting shall be adjourned.[97] The poor attendance of AGMs by shareholders in Zimbabwe could be attributed to several reasons ranging from limited time to speak, not taking AGMs seriously, geographical distance challenges and ignorance of shareholders' rights.[98] Some shareholders who fail to travel to attend AGMs physically do not even exercise their proxy voting rights in Zimbabwe.[99] Thus, AGMs are not effectively utilised as special platforms for shareholders to exercise their decision making.[100] Furthermore, minority shareholders have little or no incentive to participate in corporate decision-making and ultimately, their vote becomes inconsequential.[101]

4.1. Shareholders meetings during the Coronavirus (COVID-19) pandemic in Zimbabwe

Environmental and corporate governance issues became topical, especially during crises such as the 2007-2008 global financial crisis and the COVID-19 pandemic in Zimbabwe and other countries globally.[102] COVID-19 has affected almost all company operations globally. It is pertinent to examine whether shareholder meetings would continue to be held effectively taking into consideration the restrictions posed by the COVID-19 pandemic to all companies in Zimbabwe. Efforts to curb the spread of COVID-19 such as social distancing and restrictions on physical gatherings have made physical AGMs almost impossible to conduct in Zimbabwe. Some big companies have thousands of shareholders who cannot gather in one place due to social distancing and restrictions on physical gatherings. It is submitted that companies in Zimbabwe should take advantage of the technological advancements brought about by the fourth industrial revolution and hold online AGMs.[103] The current company laws in Zimbabwe allows companies to conduct online meetings.[104] Thus, companies in Zimbabwe should encourage electronic voting provided that adequate procedures and processes are formulated to avoid abuse.[105] Companies must ensure that the weaknesses associated with online meetings and remote voting such as transparency, verification and identity concerns are adequately addressed.[106] In this regard, the companies in Zimbabwe should incorporate appropriate technology to enhance their online AGMs.[107] Such technology could include block chain technology which reduces shareholder voting costs and facilitates fast decision-making,

[94] Section 168(1) of the COBE Act.
[95] Z. L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 13.
[96] Section 170(2) of the COBE Act.
[97] Section 170(3) of the COBE Act.
[98] Z. L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 13; A. Beebeejaun, and J. Koobloll, 60(6) *International Journal of Law and Management* (2018), pp. 1318.
[99] Section 171(1) of the COBE Act provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint one or more persons, whether members or not, to act in the alternative as his or her proxy to attend and vote instead of him or her. Also see Z.L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 13.
[100] See related discussion by A. Lafarre and C. Van der Elst, *Tilburg Law School Legal Studies Research Paper Series No. 07/2018* (2018), pp. 8.
[101] See related discussion by A. Lafarre and C. Van der Elst, *Tilburg Law School Legal Studies Research Paper Series No. 07/2018* (2018), pp. 9.
[102] N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 1.
[103] Ibid, p. 2; A. Lafarre and C. Van der Elst, *Tilburg Law School Legal Studies Research Paper Series No. 07/2018* (2018), pp. 13.
[104] Section 170(10)(a) and (b) of the COBE Act provides that both private and public companies in Zimbabwe may hold virtual meetings but members who are not physically present at the meeting should be heard and seen by the other members by electronic means. Furthermore, section 43 of the Corporate Governance Code 2014 states that greater use of electronic devices or other facilitative instruments, such as web casting, e-mails, electronic and print media and proxy voting, should be encouraged by companies in Zimbabwe.
[105] Section 43 of the Corporate Governance Code 2014.
[106] A. Lafarre, and C. Van der Elst, *Tilburg Law School Legal Studies Research Paper Series No. 07/2018* (2018), p. 15.
[107] Ibid, p. 15.

facilitates cross-border shareholder participation in AGMs and EGMs.[108]

5. Other forms of shareholder activism in Zimbabwe

Disgruntled shareholders in Zimbabwe can at any time privately sell all or some of their shares to any individuals or institutions to express their dissatisfaction with the offending company's practices and policies without involving the courts. While shareholder activists in Zimbabwe can privately offload their shares anytime to express their unhappiness with a company's policies and activities, the effects of divestment go well beyond the mere selling of shares. For instance, if there is a mass exodus of shareholders, the offending company's market value will be adversely affected and prospective shareholders may be skeptical about investing in the same company in the future.[109]

Divestment is not always an effective tool for shareholder activists in Zimbabwe for the following reasons. Firstly, shareholder divestment is easy and convenient when there is a liquid equity market to minimise the cost of exit.[110] However, this is not the case with Zimbabwe's equity market. Zimbabwe's equity market has been fraught with liquidity challenges owing to a lack of an official national currency and uncontrolled exchange rates.[111]

Secondly, institutional shareholders who usually hold substantial shares could find it difficult to sell their shares within a short time without significantly undervaluing their share prices.[112] Consequently, institutional shareholders end up not divesting out of an offending company for fear of selling their shares at undervalued prices. Thirdly, divestment fails to communicate a clear message to an offending company's directors regarding what aspects of its ESG policy and practices need to be changed.[113] This follows the fact shareholder activists do not usually make their concerns verbally known to the offending company before selling their shares.[114] Therefore, disgruntled shareholders could deprive themselves of the opportunity to engage with the offending company's directors to achieve the desired change by selling their shares.[115]

In light of the above, it is submitted that a threat to sell shares rather than actual divestment could be a better tool for shareholder activists to cause policy change in companies in Zimbabwe.[116] Since company directors' remuneration usually depends on the company's share price, directors might readily respond to shareholder activists' threats to divest to protect their personal emoluments.[117] Company directors in Zimbabwe are sometimes not accountable to their companies for any remuneration which they receive as directors or as employees of their companies' subsidiaries or of any other company in which the company is interested.[118] This could give rise to abuse of remuneration processes by company directors in Zimbabwe. Institutional shareholders in Zimbabwe

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[108] See related discussion by A. Lafarre, and C. Van der Elst, *Tilburg Law School Legal Studies Research Paper Series No. 07/2018* (2018), pp. 13, 18 and 26.

[109] G.J. Cundill, P. Smart, and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 611; N. Mans-Kemp, and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 4; S. Viviers, and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 92 and 94.

[110] G.J. Cundill, P. Smart, and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612.

[111] The persistence of the black-market and adoption of the multi-currency system in Zimbabwe has been another challenge facing the equity market.

[112] G.J. Cundill, P. Smart, and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; N. Mans-Kemp, and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 4. M. Welker, and D. Wood, 52(3) *Current Anthropology* (2011), pp. S57-S69.

[113] G.J. Cundill, P. Smart, and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; S. Viviers, and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 92-93; A. Beebeejaun, and J. Koobloll, 60(6) *International Journal of Law and Management* (2018), pp. 1516.

[114] S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 94.

[115] G.J. Cundill, P. Smart, and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; S. Viviers, and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 93; A. Beebeejaun, and J. Koobloll, 60(6) *International Journal of Law and Management* (2018), pp. 1516.

[116] See related discussion by G.J. Cundill, P. Smart and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 4; S. Viviers, and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 94.

[117] S. Viviers, and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 94.

[118] Section 23(5) of the Corporate Governance Code 2014.

could use their bargaining power to alter corporate conduct and policy by combining threats to divest and private discussions.[119]

Shareholder activists may also engage in private discussions with the relevant company's board of directors or any other delegated representatives to alter environmental, social and corporate governance practices in Zimbabwe.[120] In this article, the terms "discussions" and "dialogue" are used flexibly to include email correspondence, phone calls and physical or online meetings.[121] Company directors might be more comfortable sharing more confidential information during private dialogues than at AGMs and EGMs.[122] Furthermore, since private dialogues are viewed by company directors as more constructive and minimal risk of an investee company's reputational damage, company directors in Zimbabwe should be more willing to consider shareholders' concerns presented through private dialogue.[123] Private dialogue allows the offending company's directors to have a better understanding of shareholders' concerns regarding any wrongful corporate policies and practices of their company without jeopardising relationships.[124] However, the success of private dialogue as mechanisms of shareholder activism is difficult to determine since most of the dialogues are held privately and confidentially.[125] To overcome this challenge, shareholder activists in Zimbabwe should consider conducting press briefings before and after such dialogues.[126] Critics of private dialogue as a form of shareholder activism also argue that such dialogues could be more effective if other shareholders are made aware of all ESG challenges that are faced by their company.[127] Another challenge of private dialogue is that it may only be effectively invoked by institutional shareholders because of the financial influence they wield.[128]

However, it also has to be noted that institutional shareholders and/or investors may not be effective activists because they usually relinquish ownership rights to asset managers.[129] It is these asset managers who will engage the directors and/or appointed officials of the target company to raise their concerns.[130] To this end, the actual institutional shareholders may not be wary of the private discussions between their asset managers and directors of the investee company.[131] Additionally, institutional investors could prefer private dialogue to public confrontational forms of activism to protect the image of the investee company which could hurt their investment.[132] Furthermore, institutional shareholders are weak activists because they are generally concerned with only one arm of the ESG considerations namely corporate governance.[133]

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[119] See related discussion by S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 94.
[120] See related discussion by G.J. Cundill, P. Smart and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 93.
[121] S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), p. 96.
[122] Ibid, p. 96.
[123] Ibid p. 96; N. Mans-Kemp, and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 2.
[124] G.J. Cundill, P. Smart and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; N. Mans-Kemp, and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 2.
[125] G.J. Cundill, P. Smart and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 4; S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 93 and 95; Z.L. Dube, 5(25) *Mediterranean Journal of Social Sciences* (2014), pp. 15.
[126] See related discussion by G.J. Cundill, P. Smart and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612.
[127] S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 95.
[128] G.J. Cundill, P. Smart, and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 2; S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 93.
[129] S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 93.
[130] Ibid.
[131] Ibid..
[132] G.J. Cundill, P. Smart and H.N. Wilson, 20(2) *International Journal of Management Reviews* (2018), pp. 612; N. Mans-Kemp and M. Van Zyl, 24(1) *South African Journal of Economic and Management Sciences* (2021), pp. 4.
[133] See related discussion by S. Viviers and N. Mans-Kemp, 21(1) *Corporate Governance* (2021), pp. 100. Institutional shareholders are usually concerned about directors' remuneration and this could enable companies to get away with social and environmental malpractices. Moreover, other corporate governance issues such as directors' independence which mostly affect minority shareholders are left out of shareholder activism.

6. Concluding remarks

The enactment and introduction of several shareholder activism mechanisms in the COBE Act and the Corporate Governance Code 2014 in Zimbabwe is commendable.[134] Additionally, virtual shareholders' meetings and the role played by the courts and other related role-players has enhance shareholder activism in Zimbabwe. However, despite all these commendable efforts, shareholder activists are still struggling to voice their concerns to change inappropriate corporate decisions and actions of company directors in Zimbabwe. It is submitted that the shareholder threshold requirements and the contemporaneous ownership rule introduced into the COBE Act's derivative action could inadvertently impede shareholder activism in Zimbabwe. In this regard, section 61(3)(b) and (c) of the COBE Act should be amended to eliminate the contemporaneous ownership rule and the shareholder threshold requirements. Furthermore, the Zimbabwean policy makers should consider amending the COBE Act to provide for adequate indemnification and refunding of successful derivative litigants.

Furthermore, the Zimbabwean policy makers should develop more detailed guidelines on the fair valuation of a dissenting shareholder's shares. Section 233(3) and (10) of the COBE Act should be amended to effect penalties for a company's failure to notify dissenting shareholders about the adoption of the affected resolution as well as the written offer to pay an amount that is considered to be the fair value of the relevant shares by the company's directors. In addition, the definitional deficiencies of the oppression remedy in the COBE Act should be addressed to enhance shareholder activism in Zimbabwe.

It is further submitted that shareholders in Zimbabwe should be educated on the importance of attending AGMs. Companies should also value and respect minority shareholders' input and participation in AGMs and other related activities. Companies should consider sending periodic emails to their shareholders as part of their efforts to educate them about the importance of attending AGMs in Zimbabwe.[135] The institutional shareholders have a special role to play in protecting corporate interests against abuse by self-interested directors since minority shareholders usually lack the financial clout to effect change in companies. Institutional shareholders should utilise threats to divest coupled with private discussions to change undesired corporate policies, decisions and actions in their companies.[136]

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