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Enhanced Transparency In Zambian Listed Companies: The Case for Risk Management and Risk Disclosure.

By

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A dissertation submitted inpartial fulfilment of the requirements for the degree of Master of Laws (Taught)

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DECLARATION

I, **COMFORT MULENGA,** hereby declare that this dissertation represents my original work, and other works cited or used are duly acknowledged. This work has not previously been submitted for a degree, diploma or other academic qualification at this or any other University or Institution of learning.

Signature……………………………………

Date………………………………………..

CERTIFICATE OF APPROVAL

'This dissertation of **COMFORT MULENGA**has been approved as being in partialfulfilment of the requirements for the award of Master of Laws (Taught) by the University of Zambia.'

SIGNED..

DATE...

ABSTRACT

Corporate governance as a discipline is in its own right is a relatively new and extremely dynamic and emergent subject. It has taken prominence after the notorious collapse of several international high profile companies such as Lehman Brothers, Enron and WorldCom. One important element of corporate governance is that of risk management and risk disclosure. The management of business risk is a strategic issue which is becoming increasingly important for boards of directors and senior management. The purpose of the study is to examine whether or notthe Zambian corporate governance framework has responded to the international corporate governance trend of risk management and the subsequent risk disclosure.

The dissertation examines and discusses the importance of corporate governance and the governance elements of risk management and risk disclosure in relation to how they enhance transparency in listed companies. The research was conducted mainly through desk research and interviews were also conducted with key informants.

The findings were that the governance element of risk and risk management are not incorporated into the Companies Act as a statutory requirement but they are found under the Lusaka Stock Exchange Corporate Governance Code (LuSE Code) .
The research further found that risk management and risk disclosure is important for listed companies because it enhances transparency and it also allows the company's stakeholders to have a clear picture of the state of the company's affairs, particularly in today's volatile corporate environment. This disclosure ought to be sufficient, timely and accurate. It was observed by the author that there is more emphasis placed on financial risk disclosures as opposed to non financial risk disclosure.
It can be concluded that the case for risk management and risk disclosure is an important and relevant consideration in our Zambian context and it requires that the law and policy makers in so far as corporate governance is concerned regroup in order to revise and update the LuSE Code and the Companies Act in order to keep abreast with international best practice in corporate governance reform.

DEDICATION

To my late father, Mr James GershomMulenga.

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I wish most sincerely to give thanks to God Almighty who has kept me in His hands during my studies and for the constant reminder of His grace and the fact that he has a good plan for my life.

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LIST OF ACRONYMS

AGM	Annual General Meeting
ACCA	Association of Chartered Certified Accountants
CIPE	Centre for International Private Enterprise
FSP	Financial Service Providers
IODZ	Institute Of Directors Zambia
IFC	International Finance Corporation
LuSE	Lusaka Stock Exchange
OECD	Organisation of Economic Cooperation and Development
PACRA	Patents and Companies Registration Agency
Plc	Public listed company
SOX	Sarbanes-Oxley Act
SEC	Securities and Exchange Commission
UK	United Kingdom
UNDP	United Nations Development Programme
USA	United States of America

1.0 CHAPTER ONE – INTRODUCTION

This introductory chapter sets the general background on corporate governance and what it is about. It examines the importance of corporate governance, transparency, disclosure and its importance and it also discusses the theories of corporate governance. The statement of the problem, the purpose and objectives of the study, the research questions, the methodology and rationale of the research are also discussed. The chapter concludes with an overview of the chapters of the research.

1.1 General Background

This research is premised on corporate governance. In particular it looks at the area of transparency and disclosure in relation to listed companies in Zambia[1]. Currently Zambia has twenty one (21) companies listed on the Lusaka Stock Exchange[2] (LuSE). In Zambia, the Companies Act[3]constitutes the principal statutory corporate governance framework. It is supplemented by other statutes such as the Securities Act[4], the Banking and Financial Services Act[5] and the Bank of Zambia Act.[6] It is also supplemented by the Lusaka Stock Exchange Listing Requirements and the Lusaka Stock Exchange Corporate Governance Code (LuSE Code) published in March, 2005.

Corporate governance as a discipline in its own right is relatively new and it is an extremely dynamic and emergent subject. It has taken prominence after the notorious collapse of several international high profile companies such as Lehman Brothers, Enron, WorldCom, Maxwell Publishing and Fidentia. This has focussed world attention on the role that strong corporate governance needs to play to prevent corporate failures. Therefore, nations around the world are instigating far reaching

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[1] The Lusaka Stock Exchange Listing Requirements, Practice Notes Section 3 under 1.1, stipulates the general principle of disclosure.
[2] http://www.luse.co.zm/index.php(accessed on 13th April, 2012).
[3] Cap 388 of the Laws of Zambia.
[4] Cap 354 of the Laws of Zambia.
[5] Cap 387 of the Laws of Zambia.
[6] Cap 360 of the Laws of Zambia.

programmes for corporate governance reform, as evidenced by the proliferation of corporate governance codes and policy documents, voluntary or mandatory, both at the national and supra-national level.[7]

WalubitaLuwabelwa[8] observed that, Zambia has also experienced spectacular failures in the last two decades particularly in the sectors of banking, commerce and industry. The classic example is that of the Meridian BIAO Bank, which was dogged from its early days by a liquidity problem believed to have been caused by funds being transferred from more profitable banks to aide less profitable banks. He further writes, that a close examination of underlying factors causing the collapse of most Zambian companies suggest a deficiency in adhering to good corporate governance standards.[9] Other companies which collapsed include the Africa Commercial Bank and the Bank of Credit and Commerce.

In the aftermath of recent corporate failures world wide, there is now a greater demand by various stakeholders for transparency and disclosure by companies and developments have taken place in this regard in various other jurisdictions. Zambia as a developing country needs to latch on to these developments in corporate governance in order to forestall corporate failures which would be very harmful to our developing economy.

There is always a link between good corporate governance and compliance with the law. Good governance is not something that exists separately from the law and it is entirely inappropriate to unhinge governance from the law.[10] According to the Centre for International Private Enterprise[11] (CIPE), corporate governance infuses the democratic values of fairness, accountability, responsibility and transparency into corporations. It maintains the integrity of business transactions and in so doing

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[7] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 11.
[8] Corporate Governance Regulatory Framework in Zambia: Recommendations for Improvement (Masters thesis, University of Cape Town, February, 2011), 2.
[9] Ibid, he cites The Institute of Directors of Zambia Manual on Corporate Governance: A guide for companies and organisations on best practices in corporate governance (2004), 1 and 2.
[10] Institute of Directors of Southern Africa, King Code of Governance for South Africa, King III Report (Institute of Directors, Southern Africa, 2009), 6.
[11] CIPE is one of the leading organisations that has worked with the Institute of Directors Zambia (IODZ) to institute and develop the concept of corporate governance in business practices in Zambia.

strengthens the rule of law and democratic governance. A powerful antidote for corruption, corporate governance clarifies private rights and public interests, preventing abuses of both.[12]

1.2 Corporate governance

The term corporate governance lends itself to several definitions; therefore there is no single accepted definition of corporate governance. Some of the definitions of corporate governance are as follows:

Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting.[13]

Corporate governance is the system of checks and balances, both internal and external to companies, which ensures that companies discharge their accountability to all their stakeholders and act in a socially responsible way in all areas of their business activities.[14]

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationshipsamong the management, Board of Directors, controlling shareholders, minority shareholders and

[12] Centre for International Private Enterprise (CIPE), Corporate Governance for Emerging Markets, Reform Toolkit (CIPE, Washington D.C, August, 2008), 3.
[13] Report of the Committee on the Financial Aspects of Corporate Governance, (Cadbury Code,1st December, 1992), 15.
[14] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 14.

other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.[15]

Naidoo[16] observes that corporate governance encompasses the following:

(a) the creation and ongoing monitoring of an appropriate and dynamic system of checks and balances to ensure the balanced exercise of power within a company;

(b) the implementation of a system to ensure compliance by the company with its legal and regulatory objectives;

(c) the implementation of a process whereby risks to the sustainability of the company's business are identified and managed within acceptable parameters; and

(d) thedevelopment of practices which make and keep the company accountable to the company's identified stakeholders[17] and the broader society within which it operates.

The focus of this research is on the third point which relates to the implementation of a process whereby risks to the sustainability of the company's business are identified and managed within acceptable parameters. It is important that Zambia does not lag behind in international trends and best practice in corporate governance especially in view of the fact that the country subscribes[18]to the Organisation of Economic Cooperation and Development (OECD) Principles on Corporate Governance.

The OECD Principles of Corporate Governance,[19] originally adopted by the 30 member countries of the OECD in 1999, have become a reference tool for countries

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[15] The World Bank, Report on the Observance of Standards and Codes (ROSC), Corporate Governance Country Assessment: Zambia (World Bank: December, 2006).

[16]Ramani Naidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009), 3.

[17] A company's stakeholders are those individuals and groups that have an interest in the company's affairs, including those that have a direct interest in its financial success such as shareholders, creditors and employees. It may also include those who are indirectly affected by the company's activities such as the government and surrounding communities. However, in this research paper the focus is on the shareholders.

[18]The corporate governance framework of Zambia is benchmarked against the OECD principles of corporate governance. Hence, the World Bank's Report on the Observance of Standards and Codes (ROSC), Country Assessment for Zambia, 2006 sought to review the legal andregulatory framework, as well as practices and compliance of listed firms and asess the frameworkrelative to an internationally accepted benchmark which is that of the OECD.

[19] The full text of the Principles is available on http:// www.oecd.org/daf/corporate/principles/

all over the world. Following an extensive review process that led to adoption of revised OECD Principles of corporate governance in the spring of 2004, they now reflect a global consensus regarding the critical importance of good corporate governance in contributing to economic vitality and stability. Good corporate governance contributes to growth and financial stability by underpinning market confidence, financial market integrity and economic efficiency.[20]

The OECD Principles of Corporate Governance provide specific guidance for policy makers, regulators and market participants in improving the legal, institutional and regulatory framework that underpins corporate governance, with a focus on publicly traded companies. The OECD Principles have become the international benchmark for corporate governance, forming the basis for a number of reform initiatives, both by governments and the private sector[21].

The Principles cover six key areas of corporate governance, one of which is that of disclosure and transparency,[22]and under this principle it is provided that:

> The corporate governance 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.
>
> Disclosure[23] should include, but not be limited to, material information on:
>
> 1. The financial and operating results of the company.
> 2. Company objectives.
> 3. Major share ownership and voting rights.
> 4. Remuneration policy for members of the board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board
> 5. Related party transactions.
> 6. Foreseeable risk factors.

[20]FiannaJesover and Grant Kirkpatrick, The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries, Vol 13, No 2 (Oxford: Blackwell Publishing, 2005), 127.
[21] Ibid.
[22]Chapter V.
[23]Chapter V (A).

7. Issues regarding employees and other stakeholders.
8. Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented.

Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non financial disclosure.

1.3 The importance of good corporate governance

Good corporate governance is important because it constitutes the most important element in guaranteeing the healthy development and growth of companies, protecting them from the repercussions of any local or international crisis, attracting foreign investment, improving general performance, boosting local and international confidence in them and consolidating their successful interaction with liberalisation and globalisation.[24]

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. [25]

The major advantages of good corporate governance lie in the increased ability of properly governed companies to attract institutional and foreign investment, to implement sustainable growth and to identify and manage their business and other risks within predetermined parameters, thereby limiting their potential liability. In the contest for scarce skills and human talent, properly governed companies with a

[24]Dr Saidi Nasser, Corporate Governance in MENA Countries: Improving Transparency and Disclosure, The second Middle East and North Africa Regional Corporate Governance Forum (Beirut: 2004), 14. This is quoted from the preface given by Mr Adnan Kassar who at the time was President of the Federation of Chambers of Commerce, Industry and Agriculture in Lebanon.

[25] The World Bank, Report on the Observance of Standards and Codes (ROSC), Corporate Governance Country Assessment: Zambia (World Bank: December, 2006).

reputation for being good corporate citizens are also more easily able to attract better calibre employees.[26]

Corporate governance is also important because it enables well governed companies to have access to capital at competitive rates. Where once corporate governance may have been regarded a soft issue, the quality of a potential investee company's corporate governance is now ranked alongside its returns on investment ratios in determining whether a potential investor will invest in that particular company. Outstanding financial performance at any cost is no longer the sole consideration when making investment decisions.[27] International ratings agencies Moodys and Standard and Poors now employ standard corporate governance rating criteria in their evaluation methodology, directly linking the quality of a company's corporate governance with the quantum and rate at which it is able to secure funding.[28]

If a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere. If investors are not confident with the level of disclosure, capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere.[29]

1.4 Transparency

According to Black's Law Dictionary,[30] transparency is defined as:

> Openess, clarity, lack of guile and attempts to hide damaging information. The word is used of financial disclosures, organisational policies and practices, law making and other activities where organisations interact with the public.

Transparency is an essential element of a well functioning system of corporate governance. Corporate disclosure to stakeholders is the principal means by which

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[26] Ramani Naidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009), 10.
[27] Ibid.
[28] Ramani Naidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009), 10.
[29] Ibid, 11.
[30] Brian A. Garner, Black's Law Dictionary, 9th ed (St Paul, MN: West A. Thompson Reuters Business), 1638.

companies can become transparent.[31] Just as good government requires transparency so that the people can effectively judge whether their interests are being served, corporations must also act in a democratic and transparent manner so that their owners can make educated decisions about their investments. This is what corporate governance is all about.[32]

1.5 Disclosure

A major feature of the law relating to registered companies is the amount of information about the company which has to be compiled and disclosed. The reasoning behind this requirement was perhaps best encapsulated by the American Judge, Justice Brandeis, who once said that, 'sunlight is the best of disinfectants; electric light the best policeman.'[33]

In the context of English company law, the 1973 White Paper on Company Law Reform stated that it was government's view that disclosure of information is the best guarantee of fair dealing and the best antidote for mistrust. So, the reasoning behind the disclosure requirements is that fraud and malpractice are less likely to occur if those in control of corporate assets have to be specifically identifiable and know they have to disclose what they have been doing. This means that public disclosure is intended to protect investors and creditors who either put money into the company or deal with it.[34] It is submitted that this reasoning can equally be extended to the Zambian situation, particularly since Zambia has adopted most of the English company law.

For public companies which are listed on the Stock Exchange, there is the additional, extra legal requirement to disclose information to the Stock Exchange.[35] This disclosure excepts price sensitive information, which according to the Lusaka Stock

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[31] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 119.
[32] Instituting Corporate Governance in Developing, Emerging and Transitional Economies, A Handbook, (Wahington: Centre for International Private Enterprise, March 2002), 3.
[33] Simon Goulding, Company Law, 2nd ed. (London: Cavendish Publishing Limited, 1999), 11.
[34] Ibid.
[35] Lusaka Stock Exchange Listing Requirements, General Principles, (c), (e) and (g).

Exchange Listing Requirements Practice Notes means; information which if it were to be published, would be reasonably likely to affect the company's share price.

Disclosure is critical to the functioning of an efficient capital market. The term disclosure refers to a whole array of different forms of information produced by companies, such as the annual returns, annual report which includes the directors report, the profit and loss account, balance sheet and other mandatory items. It also includes all forms of voluntary corporate communications, such as management forecasts, analysts presentations, the Annual General Meeting, press releases, information placed on corporate websites and other corporate reports, such as stand-alone environmental or social reports.[36]

Disclosure in most instances will be referred to in repect of financial accounting information. However, there are various forms of disclosure and financial accounting information represents one aspect of corporate disclosure.

Financial accounting information can be defined as:-

> the product of corporate accounting and external reporting systems that measure and publicly disclose audited, qualitative data concerning the financial position and performance of publicly held firms.[37]

However, disclosure of financial accounting information is not the subject of this research. The focus is on corporate risk disclosure.

1.6 The importance of disclosure

Improvements in disclosure result in improvements in transparency, which is one of the most important aims of corporate governance reform worldwide.

The Cadbury Report[38] of 1992 stated that; "The lifeblood of markets is information and barriers to the flow of relevant information represent imperfections in the

[36] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 120.
[37] Ibid, 121.
[38] Report of the Committee on the Financial Aspects of Corporate Governance: The Code of Best Practice (UK Cadbury Code, 1992), 33.

market…The more the activities of companies are transparent, the more accurately will their securities be valued."

Disclosure and transparency can be used as a powerful tool to influence companies and protect investors. They are a basis for attracting capital, and raise the degree of confidence in financial markets and protect market integrity by fostering ethical behaviour. Availability of information facilitates the good functioning of markets, decreases the cost of capital and results in a more efficient resource allocation.[39]
The information to be disclosed must be accurate, timely and sufficient.

1.7 Theories of corporate governance

There are three different theoretical frameworks for corporate governance and it is important to consider these theoretical frameworks. Each of these frameworks approaches corporate governance in a slightly different way, using different terminology and views corporate governance from a different perspective.

1.7.1 Agency theory

The first detailed theoretical exposition of agency theory was presented by Jensen and Meckling in 1976.[40] They defined the managers of the company as 'the agents' and the shareholder as 'the principal.' In other words, the shareholder, who is the owner or principal of the company, delegates day-to-day decision making in the company to the directors who are the shareholder's agents. The problem that arises as a result of this system of corporate ownership is that the agents do not necessarily make decisions in the best interests of the principal.[41] One of the principal assumptions of agency theory is that the goals of the principal and agent conflict. In finance theory, a basic

[39] Dr Saidi Nasser, Corporate Governance in MENA Countries: Improving Transparency and Disclosure, The second Middle East and North Africa Regional Corporate Governance Forum (Beirut: 2004), 58-59.
[40] Michael C. Jensen and William H. Meckling, "Theory of the Firm: Managerial Behaviour, Agency Costs, Structure and Ownership,"Journal of Financial Economics, Vol 3, (1976).
[41] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 17.

assumption is that the primary objective for companies is shareholder wealth maximisation. In practice this is not necessarily the case.

Managers are likely to display a tendency towards egoism, that is, behaviour that leads them to maximise their own perceived self interest.[42] This can result in a tendency to focus on project and company investments that provide high short term profits, rather than the maximisation of long term shareholder wealth through investments, in projects that are long term in nature. The reduction in the shareholders' welfare is known as residual loss in agency theory terminology. This agency problem presents shareholders with a need to control management.[43]

Another important and basic assumption of agency theory is that it is expensive and difficult for the principal to verify what the agent is doing. There are a number of ways in which shareholders and managers' interests are aligned, but these are costly.[44] They are known as agency costs. Agency costs, refers to the cost to the company of monitoring the directors to ensure their compliance with profit maximisation goals.[45] The total agency cost arising from the agency problem can be summarised as comprising of: the sum of the principal's monitoring expenditures; the agent's bonding expenditures;[46] and any remaining residual loss. One of the main reasons that the desired actions of principal and agent diverge is their different attitude towards risk.

1.7.2 Transaction cost theory

[42] John R. Boatright, Ethics in Finance, (Blackwell: Oxford,1999). Quoted in Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 17.
[43] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 17 – 18.
[44] Ibid, 18.
[45] L.E Talbot, Critical Company Law, (Oxon: Routledge-Cavendish, 2008), 108.
[46] Bonding expenditures or costs refers to the costs incurred by the directors or managers of the company as they seek to demonstrate to the shareholders that they are accountable and following the shareholder wealth maximisation objective. For instance through the provision of extra information about risk management in their annual reports, which will add to the costs of the accounting process or they may expend additional resources in arranging meetings with primary shareholders.

The theory of Transaction Cost Economics (TCE) is most closely associated with the work of Oliver Williamson in the 1970's. Williamson stated that the transaction cost theory, was an interdisciplinary alliance of law, economics and organisation.[47] Transaction cost theory is based on the fact that firms have become so large that they, in effect, substitute for the market in determining the allocation of resources. Indeed, companies are so large and so complex that price movements outside companies direct production and the markets co-ordinate transactions. Within companies, such market transactions are removed and management co-ordinates and controls production. The organisation of the company, for example, the extent of vertical integration seems to determine the boundaries beyond which the company can determine price and production.[48] In other words, it is the way in which the company is organised that determines its control over transactions.

Clearly it is in the interests of the company management to internalise transactions as much as possible. The main reason for this is that such internalisation removes risks and uncertainties about future product prices and quality. It allows companies to remove risks of dealing with suppliers to some extent. Any way of removing such information asymetries is advantageous to company management and leads to reduction in business risk for the company.[49]

Traditional economics considers all economic agents to be rational and profit maximisation to be the primary objective of the business. Conversely transaction cost economics attempts to incorporate human behaviour in a more realistic way. In this paradigm, managers and other economic agents practise bounded rationality.[50] Bounded rationality according to this theory means that human beings act rationally, but only within certain limits of understanding. This means for example that the managers of a company will in theory act rationally in seeking to maximise the value of the company for its shareholders, but their bounded rationality might make them

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[47] Transaction Cost Economics: An overview, 3. Available on http://organisationsandmarketsfiles.wordpress.com/2009/09/williamson-o-transaction-cost-economics-an-overview.pdf. (Accessed on 18th October, 2012).
[48] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 21-22.
[49] Ibid, 22.
[50] Ibid.

act differently.[51] Business is very complex, and large businesses are more complex than small businesses. However, in any business, there is a limit to the amount of information that individuals can remember, understand or deal with.[52]

Transaction cost economics also makes the assumption of opportunism. This means that managers are opportunistic by nature. Given the problems of bounded rationality and opportunism, managers organise transactions in their best interests, and this activity needs to be controlled. Such opportunistic behaviour could have dire consequences on corporate finance as it would discourage potential investors from investing in companies.[53] Immediately, similarities can be seen between agency theory and transaction cost economics, as both theories present a rationale for management to be controlled by shareholders.[54]

1.7.3 Stakeholder theory

One of the first expositions of stakeholder theory, couched in management discipline was presented by R. Edward Freeman.[55]The stakeholder theory is of the view that the purpose of corporate governance should be to satisfy, as far as possible the objectives of all key stakeholders – employees, investors, major creditors, customers, major suppliers, the government, local communities and the general public. A role of the company's directors is therefore to consider the interests of all major stakeholders. However, some stakeholders might be more important than others, so that management should give priority to their interests above the interests of other stakeholder groups. [56]

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[51] Brian Coyle, Corporate Governance Study Text, 6thed, (London: ICSA Publishing, 2009), 10.
[52]Ibid, 9.
[53] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 22.
[54]Ibid.
[55] This was in his book entitled, Strategic Management: A Stakeholder Approach, first published in 1984 and recently republished in 2010 by Cambridge University Press.
[56]Brian Coyle, Corporate Governance Study Text, 6th ed. (London: ICSA Publishing, 2009), 10.

A basis for stakeholder theory is that is that companies are so large, and their impact on society is so pervasive that they should discharge accountability to many more sectors of society than solely their shareholders.[57]

Stakeholder theory states that a company's managers should make decisions that take into consideration the interests of all the stakeholders. This means trying to achieve a range of different objectives, not just the aim of maximising the value of the company for the shareholders. [58]

1.8 Statement of the problem

Risk is an inherent part of any business, therefore a person subscribing onto the shares of a listed company ought to be aware that there are certain risks which are inherent in the company they are investing in. In recent years the corporate environment has become volatile due to the tougher economic climate, even from a global perspective, and as such, the management of business risks is a strategic issue which is becoming important not only to a listed company's board of directors and executive management but also to shareholders. Therefore, it is important that the listed companies disclose to their shareholders their risk management strategy or policy.

Under the Zambian Companies Act,[59]which constitutes the principal statutory framework for corporate governance in the country, the governance element of risk management and risk disclosure are not provided for. This is most notable from sections 175 to 181 which are the provisions relating to the Directors Report which are the key provisions in respect of disclosure concerning the state of affairs of a company. This is compounded also by the fact that the Lusaka Stock Exchange Corporate Governance Code is notcomprehensive and does not adequately supplement the Companies Act in relation to the governance elements of risk management and disclosure. In this regard, there is clearly a gap in our jurisdiction because international best practice incorporate governance as regards risk

[57] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 23.
[58] Brian Coyle, Corporate Governance Study Text, 6^{th} ed. (London: ICSA Publishing, 2009), 11.
[59]Cap 388 of the laws of Zambia.

management and disclosure now places a legal obligation on companies to disclose the principal risks and uncertainties they face as well as to disclose how those risks are being managed.

1.9 Purpose or objectives of the study

The purpose of the study is to examine whether or notthe Zambian corporate governance framework has responded to the international corporate governance trend of risk management and the subsequent risk disclosure.

1.10 Rationale of the study

It is hoped that this research will add to the body of knowledge in corporate governance, particularly in relation to risk management, risk disclosure and enhanced transparency. It is hoped that the research will be relevant to policy makers and the administrators of the country's corporate governance framework.

1.11 Research questions

The questions that the research will seek to answer are:

1. Why are the governance elements of risk management and risk disclosure important for listed companies and should they be voluntary or mandatory?
2. Are the governance elements of risk management and disclosure incorporated into the corporate governance framework in Zambia?
3. What form should this disclosure take; should it be contained in an intergrated report or in the directors' report as a business review?

1.12 Methodology

The methodology employed in the research will be desk research through the reading of various literature, laws, codes of corporate governance and reports. Interviews will also be conducted with key informants from relevant institutions and internet research will be conducted. Further, information will also be obtained by way of conducting physical searches at relevant institutions such as the Patents and Companies Registration Agency (PACRA) and Lusaka Stock Exchange (LUSE).

1.13 Overview of chapters

Chapter one gives a conceptual framework of the the research. It has looked at corporate governance and why corporate governance is important. It has also looked at the concepts of disclosure and transparency as well as outlining the theories of corporate governance. It has also given a statement of the problem, the purpose, objectives and rationale of the research, and it has outlined the research questions.

Chapter two examines the Zambian legal and regulatory framework in so far as corporate governance and the concepts of disclosure, transparency and risk management are concerned. It also looks at the institutional framework for corporate governance within the country.

Chapter three examines the concept of risk, risk management and corporate risk disclosure and it discusses their importance to the corporate governance realm. This chapter also examines the current status in Zambia with regard to the aforesaid governance elements.

Chapter four is a comparative analysis of the South African, United Kingdom and Zambian jurisdictions. It also includes a brief analysis of the United States of America from the perspective of the Sarbanes-Oxley Act (SOX). The comparative analysis is made for purposes of drawing lessons from the selected jurisdictions in relation to best practices for enhanced transparency as relates to risk management and disclosure.

Chapter five draws conclusions based on the findings of the research recommendations on the way forward will be made.

1.14Conclusion

This chapter has set the general background on corporate governance and it has discussed the concepts of transparency and disclosure and their importance in terms of corporate governance. The theories of corporate governance, the statement of the problem, the purpose of the study, the rationale of the study, the research questions and methodology have also been discussed in this chapter.

2.0 CHAPTER TWO – THE LEGAL AND REGULATORY FRAMEWORK FOR CORPORATE GOVERNANCE IN ZAMBIA

2.1 Introduction

This chapter examines and considers the legal and regulatory framework in Zambia. The chapter will examine the various statutes which form part of the legal framework of corporate governance in Zambia. It also examines the regulatory framework by looking at the various institutions which have a key role to play in corporate governance.

2.2 THE LEGAL FRAMEWORK FOR CORPORATE GOVERNANCE IN ZAMBIA

2.2.1 The Companies Act

The Companies Act,[1] constitutes the principalstatutory corporate governance framework. The Companies Act is administered by the Patents and Companies Registration Agency (PACRA) which is established under the Patents and Companies Registration Agency Act.[2] It is in the Companies Act that one can find the disclosure requirements of companies incorporated in Zambia.

The Companies Act[3] sets out the type of Companies that can be incorporated in Zambia and these are listed as:

(a) a public company; or

(b) a private company being-

(i) a private company limited by shares;

(ii) a company limited by guarantee; or

(iii) an unlimited company.

[1] Cap 388 of the laws of Zambia.
[2] No. 15 of 2010.
[3] Section 13.

Companies which are listed on the Lusaka Stock Exchange (LuSE) are public companies, and the company name is followed by the letters 'Plc.'[4] Incorporation of a company is provided for under section 6 of the Companies Act[5] which provides that:

> Subject to this Act, two or more persons associated for any purpose may incorporate a company by subscribing their names to an application for incorporation in the prescribed manner and form upon payment of the prescribed fee.

Sections 175 to 180 of the Companies Act provides for the directors' report. The directors' report is part of the annual accounts report and is an essential document in so far as disclosure and transparency of the state of the company's affairs is concerned.

Section 176 makes it mandatory for directors of a company to prepare a directors' report as follows:

> The directors shall prepare, in conjunction with the annual accounts, a report (in this Act called "the directors' report") with respect to the state of the company's affairs.…

The report deals with any change during the financial year in-

(a) the nature of the business of the company or its subsidiaries; or

(b) the classes of business in which the company or any subsidiary has an interest, whether as member of another company or otherwise;

so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries.[6]

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[4] Section 37 (1), Companies Act

[5] Companies (Amendment) Act, No. 24 of 2011.

[6] Section 176 (2).

The Act[7] further provides for the general matters of the directors' report and these are follows;

(a) the names of the persons who at any time during the financial year were directors of the company;

(b) the principal activities of the company and of its subsidiaries in the course of that year; and

(c) any significant change in those activities in that year.

The directors' report should contain particulars of:-

(a) any significant changes in the fixed assets of the company or of any of its subsidiaries in the financial year that occurred; and

(b) any significant differences between the values, as included in the balance sheet, of such assets as consist of interests in land and the market values thereof.[8]

If the company has issued any shares or debentures in that year, the Act[9] provides that the directors' report shall state-

(a) the reasons for making the issue;

(b) the classes of shares issued;

(c) as respects each class of shares-

(i) the number issued; and

(ii) the consideration received by the company for the issue; and

(d) as respects each class of debentures-

(i) the amount issued; and

(ii) the consideration received by the company for the issue.

The Act[10] also provides that if, at any time in that year, arrangements subsisted to which the company was a party, being arrangements at least one of whose objects was to enable directors of the company to acquire benefits by means of the acquisition of shares in or debentures of the company or of any other body corporate, the directors' report shall contain a statement explaining the effect of the arrangements and giving

[7]Section 177.
[8]Section 177 (2)
[9]Section 177 (3).
[10]Section 177 (4).

the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired under the arrangements.

The Act[11] goes on to provide that the directors' report shall contain:-

(a) particulars of any important events affecting the company or any of its subsidiaries which have occurred during the year;

(b) an indication of likely future developments in the business of the company and of its subsidiaries; and

(c) an indication of the activities (if any) of the company or its subsidiaries in the field of research and development.

A directors' report[12] shall also contain prescribed information about the arrangements in force during that year for securing the health, safety and welfare at work of employees of the company and its subsidiaries, and for protecting other persons against risks to health or safety arising out of or in connection with the activities at work of those employees.[13]

If in the course of a financial year, a company has carried out business of two or more classes that in the opinion of the directors differ substantially from each other, the Act[14] provides that the directors' report relating to that year shall state-

(a) the proportions in which the turnover for that year (so far as stated in the annual accounts for that year) is divided amongst those classes (describing them); and

(b) as regards business of each class, the extent or approximate extent (expressed, in either case, in monetary terms) to which, in the opinion of the directors, the carrying on of business of that class contributed to or restricted, the profit of or loss, before taxation of the company for that year.

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[11] Section 177 (5).

[12] Section 177 (6). This is in relation to a company of a class prescribed for purposes of this paragraph of the Act.

[13] Section 177 (7) provides that the particulars required by subsection (6) may be given by way of notes to the company's accounts in respect of the financial year in question instead of being stated in the directors report.

[14] Section 178 (1).

The Companies Act[15] also requires that the directors' report include the average number by the month of a company's employees and amount, by the year, of their wages. There is also a provision for the directors' report to state the total value of any gifts or donations with a total value of more than fifty monetary units made for any purpose during the financial year.[16]

Particulars of exports are also required to be included in the directors' report.[17] Thus, where the business of a company consists of or includes the supplying of goods, the Act provides that the director's report in relation to a financial year shall, unless the turnover for that year did not exceed five hundred monetary units-

(a) state the value of any goods exported by the company from Zambia; or

(b) state that no goods were exported by the company from Zambia during that year, if no goods were exported.

However there is an exception[18] to the effect that disclosure of the information relating to exports shall not be required to be disclosed if-

(a) it is in the national interest that the information should not be disclosed; and

(b) the Minister issues a certificate to that effect.

The above cited are the relevant provisions under the Zambian Companies Act as relates to the directors' report which forms part of the annual report and the disclosure requirements therein. It can be seen from the many sections cited above that there are numerous matters required to be disclosed in the directors' report but it is also evidently clear that there is no provision for risk management disclosure. This reveals a significant gap in the Zambian company legislation.

In so far as companies legislation is concerned, the main instrument for delivering mandatory disclosure is the annual accounts and reports, which the directors are required to produce, to have audited by the company's auditors,[19] to send them to the

[15] Section 179.
[16] Section 180.
[17] Section 181.
[18] Section 181 (4).
[19] Section 173.

company's members,[20]to table them before the members in the Annual General Meeting (AGM)[21] and also to register them with PACRA and this is contained in the annual returns.[22] This ultimately is aimed at ensuring that there is transparency and accountability in the way directors conduct company's affairs.

As regards the scope and rationale of the annual reporting requirement Davies[23] observed that, on the basis of "forewarned is forearmed" the fundamental principle underlying the Companies Act has been that of disclosure. If the public and the members were enabled to find out all relevant information about the company, this thought the founding fathers of our company law, would be a sure shield. Basically, however, disclosure remains the basic safeguard on which the Companies Acts pin their faith. Not only may disclosure by itself promote efficient conduct of the company's business, because the company's controllers (whether directors or large shareholders) may fear the reputational losses associated with the revelation of incompetence or self dealing, but the more interventionist legal strategies, going beyond disclosure, depend upon those who hold the legal rights being well informed about the company's position. Thus disclosure is the bedrock of company law.

The directors of the company have a legal obligation to produce the annual report and accounts which include the directors report which essentially discloses the state of the company's affairs. The obligation laid upon the directors of the company to produce annual accounts relating to the financial position of the company and to accompany those accounts with a directors report revealing the company's state of affairs, brings to the fore the directors stewardship of the company. It will show if the directors have discharged their common law duty to act in good faith, in what they believe to be the best interests of the company. In modern English company law under their current Companies Act, 2006 the directors common law duties have been codified[24] and the

[20]Section 182.
[21]Section 183.
[22]Section 186.
[23] Principles of Modern Company Law, 8th ed. (London: Sweet & Maxwell), 711 - 712
[24] Companies Act, 2006, section 171 to 177 provides for the general duties of directors. Section 178 provides for the civil consequences of breach of general duties.

duty to act in good faith has been formulated as the duty to promote the success of the company.

Together with the non fiduciary duty to exercise care, skill and diligence, the duty to promote the success of the company (the duty to act in good faith) expresses the law's views on how directors should discharge their functions on a day to day basis.[25] Therefore the disclosure mechanism of the annual report is important as it serves to inform the shareholders of the company, so that they can assess whether the directors and company management are conducting the business of the company in a proper manner. In the case of listed companies whose securities are traded on the stock exchange, investors will be interested in the company's reports and accounts. The term 'investors' certainly includes those who are already shareholders in the company, but it goes on more broadly than that so as to embrace those who are contemplating investment in it but are not yet shareholders.[26] The creditors of the company will also be interested in the financial position and state of the company's affairs.

The annual report and accounts of a company are the principal way in which the directors make themselves accountable to the shareholders. The financial statements present a report on the financial performance of the company over the previous financial year and the financial position of the company as at the end of that year. The directors' report and other statements published in the same document provide supporting information, much of it narrative than in numerical form. Shareholders and other investors use the information in the annual report and accounts to assess the stewardship of the company.

The annual report and accounts is an important document for corporate governance because it is a means by which the directors are made accountable to the shareholders and provides a channel of communication from directors to shareholders. The report and accounts enable the shareholders to assess how well the company has been governed and managed.[27]

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[25] Paul L. Davies, Principles of Modern Company Law, 8th ed. (London: Sweet & Maxwell), 506
[26] Ibid, 713.
[27] Brian Coyle, Corporate Governance Study Text, 6th ed. (London: ICSA Publishing, 2009), 146

Davies observes that one can conclude that where there is a public market in the company's equity or debt securities, the company's annual reports and accounts will be avidly read, not only by existing shareholders and creditors but by a wider investing public. Thus the statutory accounts and reports are used by a wider investment community than just the shareholders, in the case of publicly traded companies[28]. In this way, the annual reports and accounts have moved beyond company law to become part of securities or capital markets law as well.[29]

2.2.2 The Securities Act

The Securities Act[30]provides for the regulation of the securities industry. It establishes the Securities and Exchange Commission (SEC)[31] and defines its objects and functions. The functions of the SEC include, *inter alia*;

(a) to take all available steps to ensure that the Act and any rules made under it are complied with;

(b) to supervise and monitor the activities of any securities exchange and the settlement of transactions in securities;

(f) to promote and encourage high standards of investor protection and integrity among members of any securities exchange;

(g) to support the operation of a free, orderly, fair, secure and properly informed securities market; and

(h) to regulate the manner and scope of securities on any securities exchange, the exchange rules, listing requirements, margin requirements, capital adequacy requirements, disclosure and periodic reporting requirements, trade settlement and clearing requirements.[32]

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[28] The term publicly traded company is synonimus to listed company.
[29] Principles of Modern Company Law, 8th ed. (London: Sweet & Maxwell), 714
[30]Cap 354 of the Laws of Zambia.
[31]Section 3.
[32]Section 4.

The Lusaka Stock Exchange (LuSE) which is Zambia's only stock exchange, is licenced and established under the Securities Act[33]. The Act also provides for the registration of securities.[34]

Securities according to the Act[35] means;

(a) shares, debentures, stocks or bonds issued or proposed to be issued by a government;

(b) shares, debentures, stocks, bonds or notes issued or proposed to be issued by a body corporate;

(c) any right or option in respect of any such shares, debentures, stocks, bonds or notes; or

(d) any instruments commonly known as securities or which are prescribed by rules made by the Commission to be securities for the purposes of the Act.

2.2.3 The Lusaka Stock Exchange Listing Requirements

Public limited Companies are either "quoted" on the stock exchange or they are listed. A listed company is one which has a presence on the top tier of the LuSE (the listed tier). The listed tier is composed of public limited companies (Plc's) that have met the LuSE listing requirements and have had their listings approved by the LuSE and the full LuSE Board and have paid their listing fee commensurate with the market value of their issued capital.[36] The Listing Requirements provide the criteria for listing securities on the stock exchange. A company which is granted a listing must comply with the Listing Requirements of the LuSE.

A company that has registered its issued equity securities with the SEC in Zambia will automatically be quoted on the LuSE. Although a quoted company has not met the requirements to be listed on the LuSE, it is expected that this company will work towards being a listed company.

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[33] Section 9.
[34] Section 32.
[35] Section 2.
[36] Zoran M. Zuze and Brian K. Tembo, Lusaka Stock Exchange Frequently Asked Questions and Answer Guide (Lusaka: Lusaka Stock Exchange Limited, 2007), 3.

Once a company has been listed on the LuSE it must observe the continuing obligations as provided for under the Listing Requirements.[37] Observance of the continuing obligations is essential to the maintenance of an orderly market in securities and to ensure that all users of the market have simultaneous access to the same information.[38]

In the Listing Requirements[39], securities are defined as:-

> including stocks, shares, debentures (issued by a company having a share capital), units of stocks issued in place of shares, and options on stocks or shares or on such debentures or units, and rights thereto, but does not include:
>
> 1. share in a private company; or
> 2. stocks or shares in a public company which cannot be acquired or transferred without the consent or approval of the directors or any representatives of the company, other than such consent or approval required by, under or by virtue of any law, or any options on or rights to such stocks and shares.

The Listing Requirements deal extensively with the issue of disclosure.[40] The Practice Notes of the Listing Requirements provide for the duty to disclose and under the general principles of disclosure it states that it is a general principle of the listing requirements that significant company information should be published in full and timeously.[41]

The Listing Requirements also provide extensive guidelines on the disclosure of price sensitive information[42].

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[37]Section 3.

[38]Section 3, introductory paragraph 3.

[39] Definitions of the Listing Requirements, vi.

[40] Under the introduction , general principles (c) and (g), Sections 3.3, 3.11, 3.45, Section 6 and its appendix deal with pre-listing statements and whats required to be disclosed.

[41]Practice Notes 3 (1.1).

[42]Practice Notes 3 (1.3), 3.4 (a).

The Listing Requirements define price sensitive information as:-

> unpublished information which if it were to be published, would be reasonably likely to affect a company's share price.[43]

The Practice Notes[44] also have provision for the release of formal financial information and in relation to the annual reports and general meetings it is stated follows:-

> Companies are encouraged to make the most of existing opportunities for communicating with investors. The annual report, for example, is an opportunity
> for reinforcing corporate messages and providing indicators for the company's future direction and strategy. Subject to (a) (i)[45] above, the annual general meeting
> is the forum in which directors and both institutional and individuals can discuss
> issues affecting the company.

2.2.4 Lusaka Stock Exchange Corporate Governance Code

The Lusaka Stock Exchange Corporate Governance Code for listed and quoted companies was published in March 2005.[46] The code is intended to provide clear guidelines aimed at enhancing corporate governance as well as to obtain a baseline indication of core governance standards and practices in companies listed or quoted on the Lusaka Stock Exchange. 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 listed or quoted companies.[47] Listed and quoted companies are required to submit to the LuSE within 3 months from the end of their respective financial years a report stating their areas of compliance and

[43] Practice Notes, Guideline 1.

[44] 3.4 (b) (i).

[45] This provision deals with the release of price sensitive information at meetings.

[46] Lusaka Stock Exchange Corporate Governance Code, 2005.

[47] Foreword to the LuSE Code by then Chairman John Janes.

non compliance with the Code. On the basis of these reports the LuSE gives awards to the best listed and quoted companies in good corporate governance practices in terms of the Code.[48]

The LuSE Code is a comply or explain code meaning that companies must comply with its provisions and where they do not comply, they must explain the non compliance.

Part G of the Code deals with the corporate governance element of risk. The principles under this part are as follows:-

1. The board should identify key risk areas of the business enterprise.
2. The board should identify key performance indicators of the business enterprise.
3. The board should monitor these key risk areas and key performance indicators as part of a regular review of processes and procedures to ensure the effectiveness of its internal systems of control.
4. These risk strategy policies should be clearly communicated to all employees to ensure that the risk strategy is incorporated into the language and culture of the organisation.
5. The board should make use of generally recognised risk management and internal control models and frameworks in order to maintain a sound system of risk management and internal control.
6. A formal risk assessment should be undertaken at least annually.
7. The board should include a statement on risk management in the annual report.

The LuSE Code does give a guideline on the responsibility of the board when it comes to the issue of risk and risk management. However, on the aspect of disclosure, the only requirement is that the board should include a statement on risk management in the annual report. It is this author's view that this is too narrow an approach in that it gives the board latitude to interpret this in a simplistic manner such that they can even just put one sentence on risk management and they will have complied. The

[48] Ibid.

LuSE Code needs to be more specific and require companies to give more detail as is the case under the South African King Code of Governance.[49] In terms of the LuSE Code this is an area which is deficient and needs to be updated.

2.2.5 The Banking and Financial Services Act

The Banking and Financial Services Act,[50]provides for the regulation of the conduct of banking and financial services, it provides safeguards for investors in and customers of banks and financial institutions and it provides for matters connected with or incidental to the same.[51] This Act[52] applies to all banks, financial institutions and financial businesses, whether or not constituted by any Act, and it provides for the licensing of companies as banks[53].

All banks and financial institutions have to comply with the provisions of this Act. Currently, there are four banks or financial institutions listed on the LuSE, these are, Zambia National Commercial Bank (ZANACO), Standard Chartered Bank Plc, Investrust Bank Plc and Cavmont Capital Holdings Zambia Plc.[54]

The Act[55]mandates the directors of banks and financial institutions to place before the shareholders at every annual general meeting an annual financial statement. Included in that annual financial statement is a directors' report containing various information and most notable, is the requirement for information on risk management, processes and practices during the year.[56] It can be seen from the aforestated that banks and financial institutions are particular about the governance element of risk and its disclosure to the shareholders. This approach would best be extended to the other companies listed on the LuSE.

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[49] King III, Principle 4.
[50]Cap 387 of the Laws of Zambia.
[51]Preamble to Cap 387.

[52]Section 3.
[53]Section 4.
[54]http://www.luse.co.zm. (accessed on 21st September, 2012).
[55]Section 56 (1).
[56]Section 56 (1) (b) (ii).

Pursuant to section 125 of the Banking and Financial Services Act, there are guidelines known as the Banking and Financial Services (Corporate Governance) Guidelines of November, 2006. These Guidelines make provision for risk management and they give good detail about what risk management entails.[57]

Pursuant to section 125 of the Banking and Financial Services Act, there is also the Banking and Financial Services Risk Management Guidelines of September, 2008. These Guidelines set out the minimum requirements for risk management systems and frameworks that Financial Service Providers (FSP) are required to have in place. The Guidelines are in line with international best practices. For this reason, the Bank of Zambia will require each FSP to put in place an independent risk management structure that concentrates fully on the risk management function and develop its own comprehensive Risk Management Programme (RMP) tailored to its needs and circumstances.[58]

The types of risks dealt with in the Guidelines are, operational risk[59], credit risk[60], strategic risk[61], liquidity risk[62], market risk[63], legal risk[64] and reputational risk[65].

2.2.6 The Bank of Zambia Act

The Bank of Zambia Act[66] establishes the Bank of Zambia[67]. The functions[68] of the Bank of Zambia, include;

[57]Guideline 13.

[58]Guideline 5.0.
[59]Guidelines 6.0.
[60]Guideline 7.0.
[61]Guideline 8.0.
[62]Guideline 9.0.
[63]Guideline 10.0.
[64]Guideline 11.0.
[65]Guideline 12.0.
[66]Cap 360 of the Laws of Zambia.
[67]Section 3.
[68]Section 4.

1. The formulation and implementation of monetary and supervisory policies that will ensure the maintenance of price and financial systems stability so as to promote balanced macro-economic development.
2. To licence, supervise and regulate the activities of banks and financial institutions so as to promote the safe, sound and efficient operations and development of the financial system.
3. To act as adviser to the Government on matters relating to economic and monetary management.
4. To support the operation of an efficient exchange system.

The Bank of Zambia supervises licenced institutions to assess their condition and monitor their compliance to the applicable laws. This is carried out through a risk based supervision framework.[69]

2.3THE INSTITUTIONAL FRAMEWORK FOR CORPORATE GOVERNANCE IN ZAMBIA.

2.3.1 The Institute of Directors of Zambia

The Institute of Directors of Zambia (IODZ) was launched on 7th April, 2000. The IODZ is a leadership forum, committed to the development of members through education and training and exchange of information in order to enhance the quality of leadership and corporate governance in the public and private sectors in Zambia.[70]

The Institute promotes sound corporate governance principles and ethics in order to ensure proper management, control and accountability for affairs of private and public enterprises in the country and in the process, preserve and secure the interests of all the stakeholders.[71] The objectives[72] of the IODZ are to:-

[69] Bank of Zambia Corporate Governance Guidelines, November 2006, last paragraph of the introduction, 2.
[70]http:// www.iodzambia.org/. (accessed on 22nd September, 2012)
[71] Stakeholders in so far as IODZ is concerned include shareholders, employees, management and the community as a whole.
[72] http://www.iodzambia.org/(accessed on 22nd September, 2012).

1. promote excellence in corporate governance;
2. represent the interests of directors and facilitate their professional development in support of the economic well being of the country;
3. enhance the standard and effectiveness of directors through information and education on their legal, moral, financial and general rights and obligations in respect of their companies, shareholders, employees, management and the community as a whole.
4. inculcate the highest standards of ethics amongst directors; and
5. provide an effective voice for company directors in public affairs and for that purpose take a continuing and effective interest in legislation, economic and social matters to ensure the preservation of basic commercial freedoms and to prevent the abuse of such freedoms.

Director Training and Development continues to be one of the core activities of the Institute. The Institute conducts training workshops and seminars on corporate governance and emphasis is placed on the role and responsibilities of the board of directors, strategy formulation, the role of chief executive officers as well as the accountability of the board of directors for risk management.[73]

2.3.2 The Lusaka Stock Exchange

The Lusaka Stock Exchange (LuSE) was established with preparatory technical assistance from the International Finance Corporation (IFC) and the World Bank in 1993. The Exchange opened on 21st February, 1994. In its first two years of operation, the LuSE was funded by the United Nations Development Programme (UNDP) and the government of Zambia as a project on financial and capital market development in Zambia under the multi component private sector development programme.[74]

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[73] This was point was clearly brought out by the Executive Director of IODZ, Mrs Sabina Luputa, in an interview with the author of this research paper on 24th July, 2012 at the IODZ offices in Lusaka, Zambia

[74] http://www.pangaeapartners.com/luseinfo.htm. (accessed on 13th April, 2012).

The LuSE is expected to attract foreign portfolio investment through recognition of Zambia and the region as an emerging capital market with potentially high investment returns.[75] The operations of the LuSE are governed by the Securities Act.

LuSE provides a place where buyers and sellers of shares can transact and LuSE ensures that both buyers and sellers get the best possible price. It is therefore an efficient, orderly and transparent market for shares and other securities.[76]

2.3.3 The Securities and Exchange Commission

The Securities and Exchange Commission (SEC) is established under the Securities Act,[77] it is a body corporate and it is the securities market regulator. It was established in 1993 and is responsible for the supervision and the development of the capital market as well as the licensing, registration and authorisation of financial intermediaries, issuers of debt and equity instrument and collective investment schemes respectively.[78]

The core functions[79] of the SEC are;

1. To promote high standards of investor protection, integrity of industry, self regulation of industry players, orderly growth and development of industry as well as the operation of a free, orderly and informed market.
2. To licence and supervise industry players, industry activities – exchanges and settlement, approve constitutions and by-laws of players and to safeguard the interests of investors.
3. To ensure compliance and reform and enforce regulation as well as to co-operate with other regulatory bodies.

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[75] Ibid.
[76] Understanding the Stock Exchange, Lusaka Stock Exchange, 1.

[77] Cap 354 of the Laws of Zambia, Section 3 (1).
[78] http://www.sec.gov.zm/ (accessed on 23rd September, 2012).
[79] Securities and Exchange Commission 2012-2015 Strategic Plan, 3.

One of the strategic objectives[80] of the SEC is to employ and deploy the best practice approaches and methods for efficient and effective supervision of the Zambian capital markets. Under the strategic objectives is listed the following;

(a) to establish effective self regulatory organisations in the capital markets;
(b) to move the capital markets to risk based supervision;
(c) to establish effective licensing and monitoring of licensees' adherence to conditions; and
(d) to establish effective supervision content and coverage of activities.

Another objective is to have efficient and transparent transactions and trading in the market.

2.3.4 The Bank of Zambia

The Bank of Zambia (BOZ) regulates and supervises the banking sector. Its functions[81] are as follows:-

1. To formulate and implement monetary and supervisory policies that will ensure the maintenance of price and financial systems stability so as to promote balanced macro-economic development;
2. to promote efficient payment mechanisms;
3. to licence, supervise and regulate the activities of banks and financial institutions so as to promote the safe, sound and efficient operations and development of the financial system;
4. to act as banker and fiscal agent to the Republic;
5. to support the operation of an efficient exchange system; and
6. toact as adviser to the Government on matters relating to economic and monetary management.

The mission of the bank is to formulate and implement monetary and supervisory policies that achieve and maintain price stability in the Republic of Zambia.[82]

2.3.5 The Patents and Companies Registration Agency

[80] Ibid, 5-6.

[81] Section 4, Bank of Zambia Act, Cap 360 of the Laws of Zambia.
[82] http://www.boz.zm/ (accessed on 24th September, 2012)

The Patents and Companies Registration Agency (PACRA) is a body corporate established[83] under the Patents and Companies Registration Agency Act.[84] Amongst its functions, PACRA administers the Companies Act.[85] There is appointed a Registrar of the Agency, who is also the Chief Executive Officer.[86] It is with PACRA that all the relevant disclosure documents of a company, such as the annual accounts and reports and the annual returns are filed and this must be in accordance with the provisions of the Companies Act.

2.3.6 The Zambia Institute of Chartered Accountants

The Zambia Institute of Chartered Accountants (ZICA) is a self regulated membership body for the Accountancy profession in Zambia. It was established under the repealed Public Accountants (Registration) Act[87] and it continues to exist under the Accountants Act.[88] Its primary mandate is to promote the accountancy profession, through the regulation of accountancy practice and education in Zambia.[89]

ZICA has issued a notice[90] to listed companies and public sector organisations on the appointment of accountants to the audit committees and the work of internal auditors. The notice states, inter alia, that;

> In line with good corporate governance principles, listed Companies, Public Sector organisations and government agencies should appoint Fellow or Associate Members of the Zambia Institute of Chartered Accountants to serve on the corporate boards/Audit Committees in order to have appropriate advisory services. It is in the interest of the corporate bodies involved to

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[83]Section 3.
[84]No. 15 of 2010.
[85]Section 5 (1) (a). It also administers the Registration of Business Names Act, the Patents Act, the Trade Marks Act, the Registered Designs Act and the Companies (Certificates Validation) Act.
[86]Section 14 (1).

[87]Cap 597 of 1982.
[88]Cap 390 of the Laws of Zambia, 1995.
[89]http:// www.zica.co.zm/
[90] Guidance Note (REV 1). Available on www.zica.co.zm/practice_guidance_note_1-audit_committee.pd.(Accessed on 26th September, 2012).

> appoint people of high standing professionally to ensure that they have both an in-house advisors and non-executive directors on financial matters of the organisation. This is also in line with guidance from the International Federation of Accountants (IFAC).
>
> Further, in compliance with good corporate governance practices, it is now mandatory that all listed corporate bodies and public or statutory bodies and other public interest entities should establish audit committees to protect public interest. We wish to commend government for leading the way by establishing audit committees at all government ministries and statutory bodies. In this regard, we recommend that the Chairperson of the Audit Committee shall be a Chartered Accountant registered with the Institute.

The Audit Committee is a very important committee in so far as corporate governance is concerned because it is the committee that deals with matters of risk, where a separate risk committee has not been established by the company.

One of the main roles of the audit committee is to review the company's internal control and risk management systems, unless the role is assigned to a separate board risk committee or taken on by the full board.[91]

2.4 Conclusion

From the discussion above, it can be seen that Zambia has made significant strides in terms of putting in place a legal, regulatory and institutional framework for corporate governance generally. However, more needs to be done in terms of keeping up with international trends in so far as risk management and disclosure are concerned.
The next chapter examines the governance element of risk management and disclosure in view of their importance in relation to listed companies and corporate governance.

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[91] Brian Coyle, Corporate Governance Study Text, 6th ed, (London: ICSA Publishing, 2009), 166.

3.0 CHAPTER THREE - RISK MANAGEMENT, RISK DISCLOSURE AND CORPORATE GOVERNANCE

3.1 Introduction

This chapter considers and examines risk management, internal control and risk disclosure in view of their importance in so far as corporate governance is concerned and this is in relation to listed companies. The chapter also considers and discusses the findings of the analysis carried out in relation to the annual reports of various listed companies in light of the governance elements of risk management and risk disclosure.

3.2 Risk Management and Internal Control

Risk management is the process by which risks are managed alongside all other aspects of the business. Risks are abundant and take numerous forms. Risks can be reduced and controlled up to a point, but they cannot be entirely eliminated, nor should organisations seek to do so. The organisation that is willing to take the risk may well be the one that succeeds overall. Risk management is the process that identifies risks and classifies them in some way so that they can be assessed and prioritised. Risk management is therefore a control mechanism for ensuring that overall risk magnitude stays within acceptable limits.[1]

Internal control is the process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.[2]

Linsley and Shrives define risk disclosure as follows:-

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[1] Alexander Roberts, Dr William Wallace and Neil Mc Cure, Strategic Risk Management, Edinburgh Business School (Herriot-Watt University, 2003) 1/31.
[2] http://www.cosco.org/resources.htm. (Accessed on 21st October, 2012)

> Risk disclosure is informing the reader about any opportunity or prospect, or of any hazard, danger, harm, threat or exposure that has already impacted upon the company or may impact upon the company in the future or of the management of any such opportunity, prospect, hazard, harm, threat or exposure.[3]

3.3 The importance of internal control, risk management and risk disclosure

According to the Turnbull Guidance,[4]a company's system of internal control has a key role in the management of risks that are significant to the fulfilment of its business objectives. A sound system of internal control contributes to safeguarding the shareholders' investment and the company's assets. A company's objectives, its internal organisation and the environment in which it operates are continually evolving and, as a result, the risks it faces are continually changing. A sound system of internal control therefore depends on a thorough and regular evaluation of the nature and extent of the risks to which the company is exposed. Since profits are, in part, the reward for successful risk-taking in business, the purpose of internal control is to help manage and control risk appropriately rather than to eliminate it.

Naidoo[5] observes that risk is an inherent and unavoidable element in the conduct of any business. Risks are uncertain future occurrences which, left unchecked, could adversely influence the achievement of the companies objectives. Taking and managing calculated risks is necessary for companies to create profits and hence grow shareholder value. In today's volatile corporate environment, the management of business risk is a strategic issue which is becoming increasingly important for boards of directors and senior management.

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[3] P. Linsley and P. Shrives, The British Accounting Review, Risk Reporting: A Study of Risk Disclosures in Annual Reports of UK Companies, (2006), 389.
[4] Financial Reporting Council, Internal Control, Revised Guidance For Directors On The Combined Code (UK: October, 2005) 3, paragraphs 1 and 4.
[5]Ramani Naidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009), 225 – 226.

In so far as risk disclosure is concerned, investors need information about the risk factors that affect a company in order to assist them in their central activity of estimating the size, timing and certainty of cash flows. The traditional financial statement with its focus on recent historic profits and cash flow performance in the short term does not satisfy this need.[6] According to Beretta and Bozzolan,[7] shareholders and stakeholders require listed companies to create more transparency about risks in their annual reports. This information can give them prospects about the future performance and the sustainability of value creation drivers.

The disclosure of risk information follows two main tendencies, one for financial risk and the other for non financial risk. These two types of risk are separate. The main difference being that one can be quantified easily, while the other cannot. Financial risk information assists the reader of an annual report in assessing the financial statement and other quantitative information within the annual report. Non financial risk information cannot be quantified, but can be described by making use of the narrative sections of the annual report. [8] The reporting of non financial risk involves the exclusively qualitative description of risks that cannot be quantified, and therefore do not have any relationship to the financial statements themselves, but more generally to the company as a whole.[9]

Solomon and Solomon [10] canvassed the views of an extensive sample of institutional investors in the UK to find out what their preferred or ideal framework was for corporate risk disclosure. Their views are important and influential given that the size of their stake in UK listed companies has grown substantially. The sample comprised the four main types of investment institution: Pension funds, investment trusts, unit trusts and insurance companies. One important finding from the survey was that

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[6] M.G.H Meijer, " Risk Disclosures in Annual Reports in Dutch Listed Companies During the Years 2005-2008," (Masters thesis in Business Administration, University of Twente, 2011), 16.

[7] Sergio Beretta and SaverioBozzolan, A Framework for the Analysis of Firm Risk Communication, The International Journal of Accounting, Vol 39, Issue 3, (2004). Available on http://www.sciencedirect.com/article/pii.(Accessed on 13th November, 2012).

[8] Sami Souabni, Predicting an Uncertain Future: Narrative Reporting and Risk Information, (ACCA: 2011), 3.

[9] Ibid, 5.

[10] Jill Solomon and Aris Solomon, Corporate Governance Accountability, (West Sussex: John Wiley & Sons Ltd, 2004), 135 – 137.

institutional investors endorsed the improvement in corporate risk disclosure and viewed such disclosure as decision useful. The statement that received the highest mean average response concerned the relevance of risk disclosure to investors' portfolio investment decisions. The investors evidently felt that better risk disclosure improved their investment decisions. Further, the statement suggesting that the current state of risk disclosure by UK companies is inadequate, received support from the respondents, indicating that attention needed to be paid to this area. The results also indicated that the current voluntary framework of disclosure should be maintained. The institutional investors clearly preferred a voluntary to a regulated framework.

Coyle[11] observes that risk management is relevant to corporate governance in two ways:

1. It is the responsibility of the board of directors to look after the assets of their company and to protect the value of their shareholders' investment. This includes a duty to take measures to prevent losses through error, omission, fraud and dishonesty.
2. It is also argued that the board of directors should be responsible for making sure that all risks are managed properly and the board should be satisfied that a management system is in place for monitoring and controlling these risks.

The importance of risk management for a company is that a failure to monitor, control and contain risk could lead to financial collapse.

Risk can be divided into the following main categories:

1. Market Risk – means the risk of losses in on and off balance sheet positions arising from movements in market prices, including foreign exchange rates.[12] Simply put, market risk takes the form of exposure to adverse market price movements, such as fluctuations in the share price or the rate of exchange and interest rate increases.[13]
2. Credit risk- stems from the possibility that a third party might fail to honour its contractual commitments to the company.[14] It is the risk to earnings or capital

[11] Brian Coyle, Corporate Governance Study Text, 6th ed. (London: ICSA Publishing, 2009), 220-221.
[12] Bank of Zambia Risk Management Guidelines for Financial Service Providers regulated by Bank of Zambia, 3.0, 4.
[13] Ramani Naidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009),226.
[14] Ibid.

that a counterparty, issuer or borrower will not settle an obligation for full value, either when due or at anytime thereafter.[15]

3. Operational risk – means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events.[16]

4. Reputational risk– arises when an unanticipated event threatens to damage a company's reputation and cause it to lose public goodwill.[17]

The classic example of the consequences of reputational risk is that of the British Petroleum (BP) oil spill in the gulf of Mexico on 20th April, 2010. In its Annual Report of 2010[18] in its business review, under the section on risks factors the report states that:

> The Gulf of Mexico oil spill has had and could continue to have a material adverse impact on BP.There is significant uncertainty in the extent and timing of costs and liabilities relating to the Incident, the impact of the Incident on our reputation and the resulting possible impact on our ability to access new opportunities. There is also significant uncertainty regarding potential changes in applicable regulations and the operating environment that may result from the Incident. These increase the risks to which the group is exposed and may cause our costs to increase. These uncertainties are likely to continue for a significant period. Thus, the Incident has had, and could continue to have, a material adverse impact on the group's business, competitive position, financial performance, cash flows, prospects, liquidity, shareholder returns and/or implementation of its strategic agenda, particularly in the US. We recognized charges totalling $40.9 billion in 2010 as a result of the Incident. The total amounts that will ultimately be paid by BP in relation to all obligations relating to the Incident are subject to significant uncertainty and

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[15] Bank of Zambia Risk Management Guidelines for Financial Service Providers regulated by Bank of Zambia, 3.0, 3.
[16] Ibid, 4.
[17] Ramani Naidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009),227.
[18] http://www.bp.com/liveassets/bp...uk...AR_Form20F_Risks.pdf (Accessed on 6th October, 2012), 27.

the ultimate exposure and cost to BP will be dependent on many factors. Furthermore, the amount of claims that become payable by BP, the amount of fines ultimately levied on BP (including any determination of BP's negligence), the outcome of litigation, and any costs arising from any longer-term environmental consequences of the oil spill, will also impact upon the ultimate cost for BP. Although the provision recognized is the current best estimate of expenditures required to settle certain present obligations at the end of the reporting period, there are future expenditures for which it is not possible to measure the obligation reliably. The risks associated with the Incident could also heighten the impact of the other risks to which the group is exposed as further described below…

5. Business volume risk – stems from changes in demand or supply or from increased competition.[19]

Naidoo[20] observes that there is also a relatively new category of risk and this is sovereignty or country risk.This occurs where the government nationalises or expropriates a company. The risk of this is particularly high in those companies that are a major aspect of the country's economy such as oil and minerals.

There are many different types of risk that companies face, each company faces a different risk profile and their prioritisation of these risks is likely to vary. Hence in the case of banks and financial institutions, the Bank of Zambia Risk Management Guidelines of September 2008, include risk such as:
Liquidity risk – which means the risk that a Financial Service Provider (FSP) will not settle an obligation for full value without incurring unacceptable losses.[21]
Strategic risk – means the risk to earnings or capital arising from adverse business decisions, improper implementation of those decisions.[22]

[19]Ramani Naidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009),227.
[20] Ibid.
[21] Bank of Zambia Risk Management Guidelines for Financial Service Providers regulated by Bank of Zambia, 3.0, 4.
[22] Ibid.

Legal risk – means the violations of non compliance with laws, rules, regulations or prescribed practices or when the legal rights and obligations of parties to a transaction are not well established.[23]

In the case of Financial Service Providers (FSP's), risk management is an important issue and it is mandatory. In Zambia, the Risk Management Guidelines for Financial Service Providers of 2008 are very comprehensive in so far as FSP's are concerned. Financial Service Providers are defined as a commercial bank, financial institution or financial businesses.[24]

3.4 Risk disclosure and corporate governance

According to Stathis Gould,[25] risk disclosure is an awkward debate for company leaders but one which will have to be faced increasingly in the future. The focus over the last few years has been on ensuring an effective internal risk management framework. Now the focus is turning to how much you can tell investors about the outcomes of the risk management process.

Corporate risk disclosure represents an important, specific category of corporate disclosure. One of the main developments in the area of corporate disclosure for UK companies, linked to the general agenda for corporate governance reform, has been an increasing emphasis on corporate risk disclosure.[26] This was highlighted by the publication of the Turn bull Report[27] which focuses attention on this crucial aspect of the Turnbull framework for internal control. Emphasis on the reporting stage of the internal control[28] system is essential, both for corporate accountability and for the future success of the business.[29] The Cadbury Report of 1992, also highlighted the

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[23] Ibid.

[24] Ibid, 3.0.

[25] International Federation of Accountants, Managing Risk to Enhance Shareholder Value article entitled, 'Is Better Risk Disclosure the Next Step for Your Company' (International Federation of Accountants: 2002), 51.

[26] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 129.

[27] The Turnbull Report of 1999 (Internal Control: Guidance for Directors on the Combined Code). It set out best practice for internal control in UK listed companies. It was reviewed in October, 2005.

[28] Risk management is part of internal control.

[29] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 129

relevance of risk disclosure to the corporate governance agenda by suggesting that validating the company as a going concern and improving the disclosure of internal control should lead to improvements in the communication links between investors and their investee companies.[30] Further, if the aim of company management is to reduce the cost of capital by raising confidence in the market, then the communication of risk management policies must be a significant factor.[31] By ensuring frequent and relevant corporate disclosure, shareholders are in a better position to monitor company management.[32]

It can be said therefore, that disclosure of risk related issues is fundamental to the principles of accountability and transparency as this is a key element in good corporate governance.

3.5 Principles of effective risk management

Coyle[33] observes that there are four basic elements to risk management for both external and internal risks:

1. risk identification;
2. risk evaluation;
3. risk management measures; and
4. risk control and review.

In their research, Solomon and Solomon[34] summarized the Turnbull framework for internal control into a diagram which showed several stages of an ideal internal control framework. However, in this research paper the author will tabulate the stages represented by the diagram in point form as follows;

(e) Identification stage – identification and prioritization of relevant risks;

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[30] Ibid.
[31] Ibid.
[32] Ibid, 121.
[33] Brian Coyle, Corporate Governance Study Text, 6th ed. (London: ICSA Publishing, 2009), 231.
[34] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 126 - 127, figure16.1.

(f) Estimation stage – estimation of potential impact of these sources of risk;
(g) Developmental stage – development of risk management strategy tailored to specific risks and consideration of costs;
(h) Implementation stage – implementation of chosen risk management strategy;
(i) Evaluation stage – evaluation of the effectiveness of risk management strategy;
(j) Disclosure stage[35] – disclosure of risk management strategy, its effectiveness and a predictive discussion of the company as a going concern;
(k) Interpretive stage– interpretation of disclosed information by stakeholders;
(l) External feedback stage– feedback from stakeholders (particularly institutional investors) and in the midst of the identification and evaluation stage is the internal feedback stage – feedback from managers to the board and internal audit.

3.6 The role of the board in risk management

Reviewing the effectiveness of internal control is an essential part of the board's responsibilities. The board will need to form its own view on effectiveness based on the information and assurances provided to it, exercising the standard of care generally applicable to directors in the exercise of their duties. Management is accountable to the board for monitoring the system of internal control and for providing assurance to the board that it has done so.[36]
Board members are accountable to shareholders. Accountability – including all the issues surrounding disclosure and transparency – is what provides the legitimacy to the classic model public company.Shareholders elect directors to run companies on their behalf – *ipso facto*, boards are accountable to shareholders for their actions. Boards should engage in a two way dialogue with their key stakeholdersand use their acquired knowledge as part of their strategic planning and risk management process.Decisions based on a better understanding of stakeholders' needs, reduce the risks associated with the external environment and helps secure competitive advantage.[37]

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[35] However, Turnbull provided remarkably little detail concerning the format of disclosure within the system of internal control.
[36] Financial Reporting Council, Internal Control, Revised Guidance For Directors On The Combined Code (UK:October 2005) 9, paragraph 24.
[37] International Federation of Accountants, Managing Risk to Enhance Shareholder Value, article by Richard Sharman and Tim Copnell, entitled, 'Risk Management, Performance from Conformance –

3.7 The audit committee

Listed companies are expected to have in place an audit committee. The audit committee's role and responsibilities include monitoring the integrity of the company's financial statements and any formal announcements relating to the company's financial performance. It also reviews the company's internal control and risk management systems, unless this role has been assigned to a separate board risk committee or taken on by the full board.[38]

3.8 Current level of risk disclosure in Zambian listed companies

The author studied the annual reports of twenty listed companies. This involved a few annual reports of 2010, almost all the ones for 2011 and those of 2012 that were available. The annual reports were accessed by a physical visit to LuSE and analysis of the annual reports available there,[39]other annual reports were available and obtained from the LuSE website,[40] whilst others were found at PACRA[41] and others were downloaded from the particular companies websites.[42]

These were as listed below:

<u>2010</u>

Zambia Consolidated Copper Mines – Investment Holdings Plc (ZCCM – IH)

Puma Energy Limited Plc

Zambia Bata Shoe Company Plc

Zambeef Products Plc

<u>2011</u>

The Practical Application of Corporate Governance and Risk Management' (International Federation of Accountants: 2002), 4.

[38] Brian Coyle, Corporate Governance Study Text, 6th ed. (London: ICSA Publishing, 2009), 166.
[39] This was done on 9th October, 2012.
[40] http:// www.luse.co.zm (Accessed on 8th and 9th October, 2012).
[41] The physical visit and analysis of the annual reports available at PACRA was done on 11th October, 2011.
[42] This was done on 12th October, 2012.

Zambia National Commercial Bank Plc (ZANACO)
Standard Chartered Bank (Z) Plc (Stanchart)
Metal Fabricators of Zambia Plc (ZAMEFA)
Investrust Bank (Z) Plc
Lafarge Cement (Z) Plc
British American Tobacco (Z) Plc
Zambian Breweries Plc
Zambia Sugar Plc
National Breweries Plc
Copperbelt Energy Corporation Plc
First Quantum Minerals Plc
Cavmont Capital Holdings Plc
Zambeef Products Plc
Shoprite Holdings Limited Plc
African Explosives Zambia Limited Plc

2012
Pamodzi Hotels Plc
Real Estates Investments Zambia Plc
Shoprite Holdings Limited Plc
Zambia Sugar Plc
National Breweries Plc

From the author's analysis it was observed that there were a number of variations in the form or manner in which information in the annual reports was presented. Two of the companies presented integrated reports in accordance with the King Code of Governance (King III), being subsidiaries of South African companies.[43]However, the following were common place in all the reports analysed, although they may have been referred to by different names. In no particular order, these are essentially the following:

[43] Shoprite Holdings Limited , under which Shoprite Zambia falls and AECI under which African Explosives Limited falls.

1) The Chairman’s statement or report;
2) Managing Director’s report;
3) The Composition of the Board of directors;
4) The Director’s report;
5) The corporate governance statement or report;
6) The statement of Director’s responsibilities;
7) The report of Independent auditors;
8) The financial statements; and
9) The notes to the financial statements.

50% of the companies had a statement on risk and risk management; this was disclosed under the section entitled directors’ report or in the corporate governance statement or report, for most this was by way of a generalised and brief paragraph or two. Those that prepared integrated reports were very clear and detailed and there was a richness to the risk information disclosed.

All the companies whose annual reports were analysed, had an audit or risk committee in place. In one of the companies, this responsibility was placed under the Treasury department whose mandate it is to deal with audit and risk. Some of the companies had in place a Director, Manager or Departmental Head for risk.

All the companies whose annual reports were analysed had detailed notes to the financial statements in which they disclose their financial risk management. Bearing in mind that each company faces a different risk profile, there were those financial risks which were disclosed and are essentially common to all the listed companies. These include, credit risk, market risk, liquidity risk, interest rate risk, price risk, foreign exchange risk and currency risk. This brings them into accordance with the new International Financial Reporting Standards (IFRS 7), which is a legal requirement.

The accounting standard IFRS 7 requires entities to provide disclosures in their financial statements that enable users to evaluate the significance of financial instruments, the nature and extent of risks arising from them and how entities manage those risks.[44]

It was observed by the author that there is more emphasis placed on financial risk disclosures as opposed to non financial risk disclosure. The directors of the company are responsible for the preparation of the annual accounts.[45] However, there is definitely a need to broaden the risk factors to be disclosed beyond just the financial ones.

The Association of Chartered Certified Accountants (ACCA) report[46] stated thus:

> In our joint view,disclosure of broader risk-related issues isfundamental to the principles of accountability and transparency. Companies that hide behind a narrow definition of corporate governance and risk will be doing themselves a disservice as the ability of stakeholders to penetrate that shield increases. As both Shell and Nike have found, openness is definitely the best policy when it comes to developing sustainable long-term relationships with stakeholders.

According to Gould,[47] whatever your view on risk reporting, investors cannot make a very informed judgement from bland disclosures as to whether a company has a sound system of internal control. Even if there is a statement to the effect, 'We have an effective internal control procedure included in the annual report. Such statements although benignare meaningless, giving no indication whether an effective continuous risk management process is in place. Nor do detailed descriptive statements demonstrate whether a company is actually aware of, and understands, the material risks facing the business. These too can be argued to be of very limited relevance to

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[44] http://icaew.com/en/library/subject-gateways/accounting-standards/ifrs-7. (Accessed on 17th October, 2012).
[45] Cap 388 of the Laws of Zambia, section 164.
[46] The Turnbull Internal Control and Wider Aspects of Risk, Article entitled, 'Accountability, transparency, corporate social responsibility: a new mantra for a new millenium,' (London: 2000)5.
[47] International Federation of Accountants, Managing Risk to Enhance Shareholder Value article entitled, 'Is Better Risk Disclosure the Next Step for Your Company' (International Federation of Accountants: 2002), 53.

investors. But at least they can convey an acknowledgement of the importance of risk management in terms of the success in the organisation.

Gould[48] further observes that the debate on disclosure always gravitates on one major issue – how to strike a balance between too much disclosure and too little. He suggests that thebest way forward will be to allow those companies taking the lead to create market pressure on others to improve. It will increasingly become the case that poor quality dialogue could damage reputation.

According to Mr Charles Mpundu,[49]risk management, is important from a governance perspective as it enhances a company's business. In terms of risk disclosure, the company must give enough information to give comfort to the stakeholders, but not too much so as to undermine the company, it is important to strike a balance and it must always be remembered that the company is in business and therefore should not be naïve to the extent of giving a competitive advantage to the company's competitors.

Commenting on the appropriate levels of disclosure, Mrs Priscilla C. Sampa[50] stated that it must be borne in mind that the LuSE Listing Rules emphasise good corporate governance and they also provide for the need for listed companies to make adequate disclosures in order to enhance transparency. The provisions of the LuSE Code supplement the Listing Rules. The LuSECode is on a 'comply or explain' approach. She also pointed out that most of the companies listed on the LuSE are multinational corporations and they comply with codes of corporate governance in their countries of origin. Further that the Zambian stock market is a small and fairly young market and the LuSE Code provisions provide a voluntary framework wherein any non compliance must be explained. She put forth that to require a mandatory regime would not be ideal as has proved to be the case in the United States of America under

[48]Ibid, 56.

[49]Mr Mpundu is the Director General of the National Pension Scheme Authority (NAPSA) and he is also an expert in risk management and is a Trainer under IODZ in that regard. This was in an interview with the author on 3rd September, 2012, at the NAPSA Offices in Lusaka.

[50] Mrs Sampa is the Legal Counsel and Company Secretary at LuSE. This view was expressed in an interview with the author of this research paper on 9th October, 2012 at the LuSE offices in Lusaka.

the Sarbanes-Oxley Act (SOX) which has received criticisms for being too onerous and an administrative burden and raising the costs of compliance.

The LuSE also has implemented an initiative whereby it gives awards for good corporate governance to those listed companies that practice good corporate governance. These awards encourage listed companies to comply with the LuSE Code.

In December, 2006, the Report On The Observance Of Standards and Codes (ROSC), corporate governance country assessment for Zambia[51] was released.[52] The goal of the ROSC initiative is to identify weaknesses that may contribute to a country's economic and financial vulnerability. Each Corporate Governance ROSC assessment reviews the legal and regulatory framework, as well as practices and compliance of listed firms, and assesses the framework relative to an internationally accepted benchmark. Corporate governance frameworks are benchmarked against the OECD Principles of Corporate Governance.[53] Country participation in the assessment process and publication of the final report are voluntary.

The ROSC prepared a summary of observance of the OECD Corporate Governance Principles, this is in terms of whether the particular principle has been fully implemented, broadly implemented, partially implemented, not implemented or is not applicable. Under the principle of disclosure and transparency and in particular the area of disclosure of foreseeable risk factors, the report revealed that in the case of Zambia, this was only partially implemented.[54] From the research conducted by the author, it appears that the status quo has not changed much as to the disclosure of foreseeable risk factors, this is still only partially implemented, although there is detailed disclosure of the financial risks pursuant to the IFRS 7.

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[51] This assessment of corporate governance in Zambia, was conducted in September to December, 2006 by Alexander Berg, Catherine Hickey and VidhiChhaochharia of the Corporate Governance Department of the World Bank as part of the ROSC Program.
[52] By the end of June, 2010, 71 assessments had been completed in 59 countries around the world.
[53] The World Bank Report on the Observance of Standards and Codes (ROSC), Corporate Governance Country Assessment for Zambia (World Bank: December, 2006) on the overview page of the report, paragraph 6.
[54]Ibid, 12 and 30.

According to Beretta and Bozzolan,[55] the quality of risk disclosures does not only depend on the quantity of disclosure but also on the content and the richness of the disclosed information. They further observe that, shareholders and stakeholders require listed companies to create more transparency about risks in their annual reports. This information can give them prospects about future performance and the sustainability of value creation drivers. An organisation has to deal with the stakeholders need for information. Stakeholders need information about all aspects of the organisation, including risks, to make sound judgments.

3.9 Conclusion

This chapter has examined and considered the governance elements of risk management and risk disclosure. The chapter also analyses a number of annual reports for Zambian listed companies in order to determine if the governance elements of risk management and disclosure were taken into account. It was observed that most companies had only put a brief and generalised paragraph or two in relation to matters of risk management. However,in terms of financial risk disclosure there was extensive and detailed reporting. Therefore more emphasis is placed on financial risk disclosures as opposedto non financial risk disclosure.

The next chapter is a comparative analysis of corporate governance and the governance element of risk management and disclosure from the perspective of South Africa, United Kingdom and Zambia. A brief analysis from the United States of America in terms of the Sarbanes-Oxley Act (SOX) is also discussed. The purpose of the comparative analysis, is to consider what the prevailing situation is in the discussed jurisdictions and to draw the relevant lessons from there, as regards international best practice.

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[55] Sergio Beretta and SaverioBozzolan, A Framework for the Analysis of Firm Risk Communication, The International Journal of Accounting, Vol 39, Issue 3, (2004). Available on http://www.sciencedirect.com/article/pii.(Accessed on 13th November, 2012).

4.0 CHAPTER FOUR - COMPARATIVE ANALYSIS OF THE GOVERNANCE ELEMENTS OF RISK, RISK MANAGEMENT AND RISK DISCLOSURE – SOUTH AFRICA, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA.

This chapter gives a comparative analysis of corporate governance and the governance elements of risk management and disclosure from the perspective of South Africa, the United Kingdom and Zambia and brings out the similarities and differences between Zambia and the jurisdictions analysed in order to draw the necessary lessons thereto. Further, a fairly brief mention shall be made from the United States of America in terms of the Sarbanes-Oxley Act (SOX).

4.1 South Africa

4.1.1 The Companies Act

The Companies Act,[1] of South Africa, provides, *inter alia*, for the incorporation, registration, organisation and management of companies, the capitalisation of profit companies, the registration of offices of foreign companies carrying on business within the Republic, definition of the relationships between companies and their respective shareholders or members and directors.[2]

Two types of companies may be formed and incorporated under the Companies Act,[3] namely profit companies and non profit companies. A profit company is a state owned company[4] or a private company which is not state owned and its memorandum of incorporation prohibits it from offering any of its securities to the public and restricts the transferability of its shares.[5] There is also a personal liability company[6] and a public company, in any other case.[7]

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[1]No. 71 of 2008.
[2]The Preamble to the Act.
[3]Section 8 (1).
[4] Section 8 (2) (a).
[5] Section 8 (2) (b)
[6] Section 8 (2) (c)
[7]Section 8 (2) (d).

In Zambia the Companies Act,[8] also lists two types of companies, namely a public company or a private company. Private companies are in three categories, namely, a private company limited by shares, a company limited by guarantee, or an unlimited company.[9]

Part C of the South African Companies Act[10] is the part dealing with transparency, accountability and integrity of companies. It is under this part that it is stipulated that a company must keep accurate and complete accounting records in one of the official languages of the Republic.[11] Each year, a company must prepare annual financial statements within six months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting.[12] The annual financial statements of a company must *inter alia* include a report by the directors with respect to the company's state of affairs, the business and profit or loss of the company, or of the group of companies, if the company is part of a group,[13] including any matter for the shareholders to appreciate the company's state of affairs and any prescribed information. The annual financial statements must be presented to the first shareholders meeting after the statements have been approved by the board.[14]

Under the Zambian Companies Act,[15]the directors of a company are mandated to prepare the annual accounts after the end of each financial year of the company. In the annual accounts is included a balance sheet as at the end of the financial year just ended, being a balance sheet that gives a true and fair view of the state of affairs of the company as at the end of that financial year.[16]The directors prepare the annual accounts in conjunction with the directors' report which is with respect to the state of the company's affairs.[17] Therefore there is a similarity between the two Acts in so far

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[8]Cap 388 of the Laws of Zambia, Section 13 (a) and (b).
[9] Section 13 (b) (i), (ii) and (iii).
[10] This part runs from sections 23 to 34.
[11]Section 28.
[12]Section 30.
[13]Section 30 (3) (b) (i) and (ii).
[14]Section 30 (3) (d).
[15]Section 164 (1).
[16]Section 164 (1) (b).
[17]Section 176 (1).

as the annual financial statements or annual accounts are concerned, in respect of the directors' report disclosing the state of the company's affairs.

Under the South African Companies Act[18] as is the case under the Zambian Companies Act,[19] there is the requirement to file in annual returns in the prescribed form.

Under the South African Companies Act,[20] a public company must also comply with additional or extended accountability requirements set out under Chapter 3 of the Act.[21] Every public company must appoint an audit committee, therefore the appointment of an audit committee is mandatory and it is a statutory committee.[22] However, under the Zambian Companies Act, there is no provision relating to the appointment of an audit committee. However, like its South African counterpart, the Zambian Companies Act provides for the appointment of an auditor,[23] it must be noted though that the purposes of appointing an audit committee and auditor are distinct.

The audit committee has clear statutory accountabilities.[24] The primary purpose of the audit committee is to provide in-depth focus on financial issues which are crucial to the company but which often cannot be fully dealt with by the board. The audit committee plays an important role in ensuring that adequate accounting records are maintained, that an effective system of internal controls exists, that reporting by the company is comprehensive and reliable and that the company generally complies with the principles of good governance.[25]

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[18]Section 33.
[19]Section 184.
[20]Section 34.
[21] Chapter 3 is titled enhanced accountability and transparency. Sections 84 to 94.
[22]Section 84 (4) (c).
[23]Section 90 of the South African Companies Act and Section 171 of the Zambian Companies Act.
[24]Section 94 (7).
[25]Ramani Naidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009), 143.

The directors of the company are accountable to the shareholders and they present the annual reports and accounts at the Annual General Meeting (AGM). The AGM is the mechanism through which the shareholders exercise their authority to govern.

In the South African Companies Act, this is referred to as a shareholders' meeting,[26]Ramani Naidoo[27] observes that the terminology under the old Act, in terms of which shareholders' meetings were referred to either as extraordinary general meetings or annual general meetings, has now been amended by the 2008 Act. Shareholders' meetings are now simply general meetings or annual general meetings.

The Act[28] provides that a public company must convene an annual general meeting of its shareholders initially, no more than 18 months after the company's date of incorporation. At a minimum, the following business must be transacted at the annual general meeting; presentation of the directors' report, presentation of audited financial statements for the immediately preceding financial year and presentation of an audit committee report.[29]

In terms of the Zambian Companies Act,[30] a company shall hold an annual general meeting, within three months after the end of each financial year of the company and the annual accounts are tabled at the AGM.

The South African Companies Act,[31] codifies, but does not replace, the common law duties of directors. According to the Act, a director of a company must perform the functions of director –

(a) in good faith and for a proper purpose;
(b) in the best interests of the company; and
(c) with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those

[26]Section 61.
[27] Corporate Governance, 2nd ed, (Durban: Lexis Nexis, 2009), 7
[28]Section 61 (7) (a) and (b).
[29]Section 61 (8) (a).
[30]Section 138 (1).
[31]Section 76 (3).

carried out by that director and having the general knowledge, skill and experience of that director.

In Zambia, the duties of directors are not codified under the Companies Act, but they are imposed by the common law.

4.1.2 The Johannesburg Stock Exchange Listing Requirements

The Johannesburg Stock Exchange(JSE) Listing Requirements[32] (the Listing Requirements) set out the continuing obligations. The scope of this section is that it sets out certain of the continuing obligations that an issuer is required to observe once any of its securities have been admitted to listing. Observance of continuing obligations is essential for the maintenance of an orderly market in securities and toensure that all users of the market have simultaneous access to the same information. There is also the provision for the general obligation of disclosure,[33] with respect to price sensitive information.

The LuSE Listing Requirements also provides for continuing obligations, therefore once a company has been listed on the LuSE it must observe the continuing obligations as provided for under the Listing Requirements.[34] There is also provision for extensive guidelines on the disclosure of price sensitive information.[35]

According to the JSE Listing Requirements,[36] every issuer shall, within six months after the end of each financial year andat least fifteen business days before the date of the annual generalmeeting, distribute to all holders of securities and submit to the JSE a notice of the annual general meeting andthe annual financial statements for the relevant financial year. The annual financial statements as seen earlier on in this paper contain the directors' report which details the company's state of affairs.

[32] Section 3.
[33] Section 3.4.
[34] Section 3.
[35] Practice Notes 3 (1.3), 3.4 (a).
[36] Section 3.19.

The LuSE Listing Requirements[37] mandate every listed company to distribute to all shareholders and submit to the Secretariat; a notice of annual general meeting and the annual financial statements for the relevant year. Contained in the annual financial statements, is the directors' report which details the state of the company's affairs.

The JSE Listing Requirements[38] deal with corporate governance. Further, all issuers must, in compliance with the King Code appoint an audit committee.[39] All issuers must in compliance with King Code appoint a remuneration committee and if required, given the nature of the business and composition of the board of directors, a risk and nomination committee. In contrast, the LuSE Listing Requirements do not expressly state the committees to be established by a company.

4.1.3 The King Code of Governance for South Africa - King III

The third report on corporate governance in South Africa became necessary because of the new Companies Act no. 71 of 2008 and changes in international governance trends.[40] South African listed companies are regarded by foreign institutional investors as being among the best governed in the world's emerging economies.[41] King III is on an 'apply or explain' basis. According to King III, the apply or explain regime shows an appreciation for the fact that it is often not a case of whether to comply or not, but rather to consider how the principles and recommendations can be applied.[42] It is the legal duty of directors to act in the best interests of the company. In following the 'apply or explain' approach, the board of directors, in its collective decision making, could conclude that to follow a recommendation would not, in the particular circumstances, be in the best interests of the company. The board could decide to apply the recommendation differently or apply another practice and still achieve the objective of the overarching corporate governance principles of fairness, accountability, responsibility and transparency.[43]

[37] Section 3.23.
[38] Section 3.84.
[39] Section 3.84 (d).
[40] King Code of Governance for South Africa (Institute of Directors in Southern Africa: 2009), 4.
[41] Ibid, 6.
[42] Ibid.
[43] Ibid.

The LuSE Code is also based on the principle of good governance and includes the concepts of efficiency, transparency, effectiveness and accountability.[44] The LuSE Code is on a comply or explain basis, which means that listed companies must comply with it or explain any non compliance.

In terms of application, King III applies to all entities regardless of the manner and form of incorporation or establishment and whether in the public, private sectors or non-profit sectors. The principles have been drafted so that every entity can apply them and in doing so, achieve good governance.[45] The LuSE Code applies only to listed and quoted companies.

King III is drafted in such a way that it clearly brings out the governance element, the principle(s) and the recommended practice. Detailed implementation guidance and tools are provided in the Practice Notes to the Code. Thus under governance element 3 which deals with the audit committee, it is provided that that the board should ensure that the company has an effective and independent audit committee.[46] The recommended practice states that listed companies and state owned companies must establish an audit committee.[47] The audit committee should be an integral component of the risk management process.[48] The charter of the audit committee should set out its responsibilities regarding risk management.[49]

The LuSE Code[50] provides for the establishment of board committees and it states that the board must appoint appropriate board committees, and at least must have an audit and remuneration committee with active participation from non executive directors. Therefore we can see from this part that the establishment of an audit

[44] LuSE Corporate Governance Code, Foreword.
[45] King Code of Governance for South Africa (Institute of Directors in Southern Africa: 2009), 16. King III states that each principle is of equal importance and together forms a holistic approach to governance. Consequently, substantial application of the Code and the Report does not achieve compliance.
[46] Principle 3.1.
[47] Recommended practice 3.1.1.
[48] Principle 3.8.
[49] Recommended practice 3.8.1.
[50] Part C.

committee is mandatory and this shows the importance of this committee in corporate governance.

King III introduces the governance element known as governance of risk[51] in place of the narrower risk management used in King II. According to Naidoo,[52] risk governance includes the total system and process of risk management. It includes the development and implementation of a policy and plan for a systematic, disciplined approach to evaluating and improving the effectiveness of risk management as well as the related internal control, compliance and governance processes within the company. It is therefore a broader term than risk management which forms part of the day-to-day responsibilities of management.

Under the governance of risk, the principle is that the board should be responsible for the governance of risk.[53] The recommended practice includes the requirement that a policy and plan for a system and process of risk management should be developed.[54] The induction and ongoing training programmes of the board should incorporate risk governance.[55] The board should ensure that the implementation of the risk management plan is monitored continuously.[56]The risk committee or audit committee should assist the board in carrying out its risk responsibilities.[57] The board should appoint a committee responsible for risk.[58]

In terms of risk, King III has also provided for the governance elements of risk assessment, management's responsibility for risk management, risk assurance, risk response, risk monitoring and risk disclosure.

Under risk disclosure, the principle is that the board should ensure that there are processes in place enabling complete, timely, relevant, accurate and accessible risk

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[51]Governance element 4.
[52]Ramani Naidoo, Corporate Governance, 2nd ed, (Durban: Lexis Nexis, 2009),225.
[53]Principle 4.1.
[54]Recommended Practice 4.1.1.
[55]Recommended Practice 4.1.4.
[56]Recommended Practice 4.1.9.
[57]Principle 4.3.
[58]Recommended Practice 4.3.1.

disclosure to stakeholders.[59] The recommended practice[60] is that undue, unexpected or unusual risks should be disclosed in the integrated report and that the board should disclose its view on the effectiveness of the risk management process in the integrated report.

King III recommends integrated sustainability performance and integrated reporting to enable stakeholders to make an informed assessment of the economic value of the company. By issuing integrated reports, a company increases the trust and confidence of its stakeholders and legitimacy of its operations. It can increase the company's business opportunities and improve its risk management. By issuing an integrated report internally, a company evaluates its ethics, fundamental values and governance, and externally improves the trust and confidence which stakeholders have in it.[61]

The LuSE Code makes provision for risk management but it is not as robust in its requirements as King III is.

4.2The United Kingdom

4.2.1 The Companies Act 2006

The United Kingdom (UK) Companies Act, 2006 provides for the incorporation of different types of companies. There are, limited and unlimited companies.[62] A company may be limited by shares[63] or by guarantee.[64]If there is no limit on the liability of its members, the company is an unlimitedcompany.[65] A distinction is also made between public and private companies.[66]The Act describes aprivate company as any company that is not a public company,[67] whereas apublic company is a company limited by shares or limited by guaranteeand having a share capital.There are also

[59]Principle 4.10.
[60] 4.10.1 and 4.10.2.
[61] King Code of Governance for South Africa (Institute of Directors in Southern Africa: 2009), 12.
[62]UK Companies Act 2006, Section 3.
[63]UK Companies Act 2006, Section 3 (2).
[64]UK Companies Act 2006, Section 3 (3).
[65]UK Companies Act 2006, Section 3 (4).
[66]UK Companies Act 2006, Section 4.
[67]UK Companies Act 2006, Section 4 (1).

community interest companies. In this regard, a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company[68] and a company limited by guarantee and having a share capital may become a community interest company.[69] In Zambia, the Companies Act under section 13 sets out the types of companies that can be incorporated and like the UK, there are public companies and private companies. The private company can be limited by shares or by guarantee or it can be an unlimited company. The difference though is that under the Zambian Companies Act there are no community interest companies.

The UK Companies Act, 2006 has codified the duties of directors. The scope and nature of general duties is that they are owed by a director of acompany to the company.[70]The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.[71]
The directors' duties which have been codified are:

1. duty to act within powers;[72]
2. duty to promote the success of the company;[73]
3. duty to exercise independent judgment;[74]
4. duty to exercise reasonable care, skill and diligence;[75]
5. duty to avoid conflicts of interest;[76]
6. duty not to accept benefits from third parties;[77] and the
7. duty to declare interest in proposed transactions or arrangements.[78]

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[68]UK Companies Act 2006, Section 6 (1) (a).
[69]UK Companies Act 2006, Section 6 (1) (b).
[70]Section 170.
[71]Section 170 (3).
[72]Section 171.
[73]Section 172.
[74]Section 173.
[75]Section 174.
[76]Section 175.
[77]Section 176.
[78]Section 177.

In Zambia, directors' duties have not been codified in the statute but have been left under the common law.

In the UK, every public company must hold a general meeting as its annual general meeting ineach period of six months beginning with the day following itsaccounting reference date.[79]Chapter 4 of the Act, provides for the annual accounts. The directors of a company must not approve accounts unless they are satisfied that they give a true and fair view of the company'sassets, liabilities, financial position and profit or loss.[80] The directors' report is part of the annual accounts.

The Zambian Companies Act, also has provision for the preparation by the directors of the annual accounts and reports[81] and there is the tabling of the same before the members in the AGM.[82]

Section 415 of the UK Companies Act provides for the duty to prepare directors' report, thus the directors of a company must prepare a directors' report for each financialyear of the company.[83] In terms of the general contents of the directors' report, the directors report for the financial year must state; the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company in the course of the year.[84]

The Zambian Companies Act,[85] also makes it mandatory for the directors of the company to prepare a directors report.

Under the UK Companies Act, the directors' report must contain a business review, unless the company is subject to the small companies' regime.[86]

The purpose of the business review is to inform members of the company and help them assess how the directors have performed their duty, under section 172, which is the duty to promote the success of the company.[87] The business review must contain a fair review of the company's business and a description of the principal risks and

[79]Section 336 (1).
[80]Section 393 (1).
[81] Zambia Companies Act, Section 173.
[82] Zambia Companies Act, Section 183.
[83]Section 415 (1).
[84]Section 416 (1).
[85]Section 176.
[86]Section 417 (1).
[87]Section 417 (2).

uncertainties facing the company.[88] In this regard, it can be seen that there is a statutory requirement to disclose the principal risks and uncertainties facing the company.

The Zambian Companies Act does not have a provision for a business review as is the case with its UK counterpart, thus disclosure of risk factors are not part of the statutory framework but rather fall under the provisions of the LuSE Code.

Every company must send a copy of its annual accounts and reports for each financial year to every member of the company, to every holder of the company's debentures and every person who is entitled to receive notice of general meetings.[89] The accounts and reports are communications from the directors to the members, thus the Act requires their circulation to members. The directors must file the accounts and reports with the Registrar.[90] By delivery to the Registrar, the accounts and reports become public documents.[91] Annual returns must also be delivered annually to the Registrar by the company.[92]

Equally, the Zambian Companies Act requires that the annual accounts and reports be circulated to members[93] and that the same are filed with the Registrar.[94]

4.2.2 The Listing Requirements

A company seeking to have its shares traded on the main market of the London Stock Exchange (LSE), must first have them admitted to the 'Official List' of securities which is maintained by the Financial Services Authority (FSA) acting in its capacity as the UK Listing Authority (UKLA). The main purpose of this regulation is to secure proper disclosure of information about the company at the time its shares are offered

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[88]Section 417 (3).
[89]Section 423 (1).
[90]Sections 441 and 442 (2) (b).
[91] Paul L. Davies, Principles of Modern Company Law, 8th ed, (London: Sweet & Maxwell, 2008), 747
[92]Section 854.
[93]Section 182.
[94]Section 186.

to the public, the UKLA is also empowered to impose on listed companies, rules governing their conduct thereafter. Such listing rules relate mainly to the orderly conduct of the public share market, but they also contain rules regulating the internal affairs of companies, which thus supplement the provisions of the Companies Act and the common law of companies.[95]

Issuers must comply with all listing rules applicable to them.[96] An issuer is defined by the Listing Rules as any company or other legal person or undertaking (including a public sector issuer), any class of whose securities has been admitted or is proposed to be the subject of an application for admission to the Official List of the UK Listing. Chapter 9 the Listing Rules sets out certain of the continuing obligations which a listed company is required to observe once any of its securities have been admitted to listing. Observance of the continuing obligations is essential to the maintenance of an orderly market in securities and to ensure that all users of the market have simultaneous access to the same information.[97]

A company must issue an annual report and accounts.[98]The annual report and accounts must have been prepared in accordance with the issuer's national law and, in all material respects, with United Kingdom Generally Accepted Accounting Principles, United States Generally Accepted Accounting Principles or International Accounting Standards[99] and be published as soon as possible after the accounts have been approved and in any event within six months of the end of the financial period to which they relate.This ties in with the provisions of the Companies Act, 2006.

In terms of corporate governance, a company incorporated in the UK must include in its annual report and accounts a narrative statement of how it has applied the provisions of the UK Corporate Governance Code and give reasons for any non compliance.[100]

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[95] Paul L. Davies, Principles of Modern Company Law, 8th ed. (London: Sweet & Maxwell, 2008), 17.
[96]Listing Rule 1.1.
[97]Listing Rules, Chapter 9 on continuing obligations.
[98]Listing Rule 12.41.
[99]Listing Rule 12.42.
[100] Listing Rule 12.43 A.

4.2.3 The UK Corporate Governance Code

The UK Corporate Governance Code is a set of principles of good corporate governance aimed at companies listed on the London Stock Exchange. It is overseen by the Financial Reporting Council (FRC) and its importance derives from the Financial Services Authority (FSA) Listing Rules. The Listing Rules themselves are given statutory authority under the Financial Services and Markets Act, 2000 and require that public listed companies disclose how they have complied with the Code and explain where they have not complied with the Code, in what the Code refers to as comply or explain.[101]

The UK Corporate Governance Code was formerly known as the Combined Code.[102]The Code is essentially a refinement of a number of different reports and codes concerning good corporate governance, hence the previous reference to it as the Combined Code. The new name for the Combined Code became effective on 29th June, 2010.[103]The reports that form part of the UK Corporate Governance Code are the Cadbury Report of 1992, the Greenbury Report of 1995 and the Hampel Report of 1998. The Hampel Report was the third report on corporate governance in the UK in a space of about six years and it was at this point where it was decided that accepted principles and best guidelines of the previous two reports and the Hampel Report should be brought together into a single code. The Code was produced by a Committee on Corporate Governance in 1998 and adopted by the London Stock Exchange. It was included in the UK Listing Rules as an appendix, although it did not form part of the Listing Rules themselves.[104]
The Combined Code was subsequently given to the FRC who published a revised version in July 2003.[105] The Code was revised again in 2008,[106] 2010 and recently

[101]http://en.wikipedia.org/wiki/UK_Corporate_Governance_Code. (Accessed on 10th November, 2012).
[102]http://www.icaew.com/en/library/subject-gateways/corporate-governance/codes-and-reports/uk-corporate-governance-code. (Accessed on 27th December, 2012)
[103] http://www.pwc.com /gx/en/corporate_reporting/assets/pdfs/best_practice_2009_Jan_2010.pdf. (Accessed on 27th December, 2012)
[104] Brian Coyle, Corporate Governance, ICSA Study Text, 6th ed. (London: ICSA Publishing), 269.
[105]Ibid, 272.

effective 1st October 2012, the FRC has issued the 2012 UK Corporate Governance Code.[107]

Among the main principles of the Code is that of accountability.[108] This principle states that the board should present a fair, balanced and understandable assessment of the company's position and prospects.[109] The supporting principle is that, the board's responsibility to present a fair, balanced and understandable assessment extends to interim and other price sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements.

The directors should explain in the annual report their responsibility for preparing the annual report and accounts and state that they consider the annual report and accounts, taken as a whole, is fair, balanced and understandable and provides the information necessary for shareholders to assess the company's performance, business model and strategy.[110]

In so far as risk management and internal control[111] is concerned, the main principle states that the board is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems. The Code provision[112] is that the board should, at least annually, conduct a review of the effectiveness of the company's risk management and internal control systems and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls.

In respect of audit committees and auditors,[113] the main principle is that the board should establish formal and transparent arrangements for considering how they should

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[106] http://www.bsa.org.uk/docs/corporategov/bsa_guidance_Sept08.pdf. (Accessed on 27th December, 2012)
[107] http://www.frc.org.uk. (Accessed on 27th December, 2012).
[108] Section C.
[109] C1.
[110] Code Provisions, C.1.1.
[111] C2.
[112] C.2.1.
[113] C3.

apply the corporate reporting, risk management and internal control principles and for maintaining an appropriate relationship with the company's auditors. The code provisions are that the board should establish an audit committee of at least three, or in the case of smaller companies, two independent non-executive directors.[114]

The main role and responsibilities of the audit committee should be set out in written terms of reference and should include, to review the company's internal financial controls and unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems.[115] A separate section of the annual report should describe the work of the committee in discharging its responsibilities.[116]

The LuSE Code like the UK Corporate Governance Code is on a comply or explain basis. The LuSE Code also makes provision for risk management but not in the comprehensive manner done by the UK Corporate Governance Code.

4.3 The United States of America: Sarbanes-Oxley Act, 2002

A significant development in internal control and corporate governance was introduced by the Sarbanes-Oxley Act (SOX), 2002, following the collapse of Enron and other US corporate scandals.[117] SOX aims to restore the public confidence in both public accounting and publicly traded securities, to ensure ethical business practices through heightened levels of executive awareness and accountability and it also aims at enhanced financial disclosures.[118] Whereas corporate governance issues in other countries have been introduced largely as voluntary measures for listed companies, the Act introduces corporate accountability legislation.[119] The preamble to the SOX is

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[114]C.3.1.
[115]C.3.2.
[116]C.3.8.
[117] Brian Coyle, Corporate Governance, ICSA Study Text, 6th ed. (London: ICSA Publishing), 235.
[118]Information available on http://en.wikipedia.org/wiki/Sarbanes-Oxley_Act.(Accessed on 17th November, 2012).
[119] Brian Coyle, Corporate Governance, ICSA Study Text, 6th ed. (London: ICSA Publishing), 295

that it is an Act to protect investors by improving the accuracy and reliability of corporate disclosuresmade pursuant to the securities laws, and for other purposes.

Among its numerous provisions SOX provides for the establishment of a Public Company Accounting Oversight Board,[120] increased disclosures of financial information,[121]strict requirements for the audit committee.[122] Chief among its provisions is the controversial section 404 (a) which directs the Securities and Exchange Commission (SEC) to prescribe rules requiring companies who are SEC registrants to include an internal control report in their annual report. The accuracy of the report must be personally certified by the Chief Executive Officer and the Chief Financial Officer.[123] However, section 404 applies to internal control over financial reporting only, whereas in the UK the review of internal control covers all types of internal control – operational controls, compliance controls and risk management, in addition to financial controls.[124] This is the view of internal control in Zambia as well.

SOX has introduced an overly complex regulatory environment in US financial markets. It has received strong criticisms in the US on the ground that its requirements are taking up too much valuable management time and resources and its has substantially added to administrative costs and its has been blamed for discouraging foreign companies from listing their shares in the US and choosing alternative financial centres such as London, where the regulatory burden is much lower.[125] The enactment of SOX also led to a number of companies abandoning their listed status to go private in an attempt to escape the tough legal and regulatory environment.[126] However in 2006, in response to the criticisms, the SEC introduced some new guidelines which were aimed at easing the regulatory and compliance burden of section 404

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[120]Section 101.
[121]Section 401.
[122] Sections 201 to 209.
[123]Section 302.
[124] Ibid,237.
[125] Ibid.
[126]Ramani Naidoo, Corporate Governance, 2nd ed (Durban: Lexis Nexis), 267.

4.4 Integrated Reporting

Integrated reporting became a requirement for the JSE listed entities from 1 March, 2010 by virtue of King III and listed companies arerequired to issue an integrated report as of that date or to explainwhy they are not doing so. In order to facilitate the adoption, the Integrated Reporting Committee of South Africa released a framework discussion paper on 25th January, 2011. This Committee was chaired by retired Supreme Court Judge Mervyn. E.King S.C.

King III defines integrated reporting as;

> a holistic and integrated representation of the company's performancein terms of both its finance and its sustainability.

There has been a growing recognition that a change is needed in the way organisations report to their stakeholders. There is a growing move towards integrated reports both nationally and internationally.

In the discussion paper[127] it is stated that the overarching objective of integrated reporting is to enable stakeholders to assess the ability of an organisation to create and sustain value over the short, medium and long term. The users of an organisation's integrated report should be able to determinefrom the report whether the organisation's governing structure has sufficiently applied its collective mind in identifying the social, environmental, economic and financial issues that impact on the organisation's business, and whether these issues have been appropriately incorporated into its strategy.

An integrated report is not simply an amalgamation of the financial statements and the sustainabilityreport. It incorporates, in clear language, material information from these and other sources to enablestakeholders to evaluate the organisation's performance and to make an informed assessment aboutits ability to create and sustain value. An

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[127] Framework For Integrated Reporting and the Integrated Report Discussion Paper of 25th January, 2011, 1-2.

integrated report should provide stakeholders with a conciseoverview of an organisation, integrating and connecting important information about strategy, risks and opportunities and relating them to social, environmental, economic and financial issues. By its very nature an integrated report cannot simply be a reporting by-product. It needs to flow from the heart of the organisation and it should be the organisation's primary report to stakeholders.[128]

According to the discussion paper[129] the benefits of integrated reporting include:
- The process of producing an integrated report is an excellent means for the leadership ofthe organisation to gain an in-depth understanding of the organisation's strategy and how itaffects and is affected by environmental, social, financial and economic issues. The processalso helps to improve the internal awareness of these issues and the impact they have on theorganisation.
- The report provides a holistic view of the organisation and is useful to any stakeholder who hasa longer term interest in the organisation enabling them to make an informed assessment ofits ability to create and sustain value.
- The increased transparency of the report, which contains both the positive and negative issuesand challenges, can result in greater trust and confidence in the organisation and an enhancedreputation among stakeholders.
- Risk management can be enhanced because organisations will consider risks from anintegrated perspective.
- The leadership's ability to demonstrate its effectiveness, coupled with the increase in transparency, could result in a lower cost of capital to the organisation.

To achieve the stated objectives of integrated reporting and the integrated report the discussion paper[130]identifies suggested elements to be included in the integrated report among which is a description of the risks and opportunities that are material to the organisation's current and anticipated activities. These risks and opportunities are identified based on a review of financial, social, environmental, economic and governance issuesand trends, an assessment of the organisation's material impacts on

[128] Ibid.
[129]Ibid, 4.
[130]Ibid, 7.

financial, social, economic and environmental systems, and a review of its relationships with key stakeholders.[131]

4.5 The business review

Davies[132] observes that the requirement for a business review reflects the perception that shareholders and investors need more than financial data to understand fully the prospects of the company. They need also to be able to gauge the quality of the company's relationships with those upon whose contributions or cooperation the success of the company depends (sometimes called 'stakeholders'). For stakeholders as well, this information may be useful even if company law itself gives them no particular platform from which to take action on the basis of the information.

The review required is a balanced and comprehensive analysis of the development and performance of the company's business during the financial year and the position of the company's business at the end of that year.[133]

The author had occasion to analyse the format taken by the business review in so far as risk management and risk disclosure are concerned and it was observed that the information disclosed was not merely bland disclosure in the form of a generalised brief paragraph or two but rather there was a richness and quality to the information disclosed.[134]

From the author's analysis, the integrated report and business review provide for better corporate reporting. Capital markets need the right information to be delivered in the right format at the right time and with content that the markets believe. By taking the first steps towards better business reporting, companies can bring greater

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[131] Ibid.

[132] Paul L. Davies, Principles of Modern Company Law, 8th ed. (London: Sweet & Maxwell, 2008), 736-737.

[133] Section 417 (4).

[134] http://www.bp.com/liveassets/bp...uk...AR_Form20F_Risks.pdf. (Accessed on 6th October, 2012)

transparency, clarity, consistency and reliability to their corporate information. Therefore Zambia should consider adopting a more current form of corporate reporting as is the case with South Africa through integrated reporting and the UK through the business review.

4.6 Conclusion

This chapter has examined and considered corporate governance and the governance elements of risk management and disclosure by way of a comparative analysis of South Africa, the United Kingdom and the United States of America in relation to Zambia. Zambia has much to learn from South Africa and the United Kingdom in terms of their corporate governance framework and the governance elements of risk management, risk disclosure, transparency and corporate reporting. There is also much to learn from the consequences of an approach of corporate accountability legislation such as that taken by SOX. It would be worthwhile to include those aspects which are beneficial and practical to implement within the Zambian context and which ultimately enhance transparency in listed companies.

The next chapter considers and discusses the findings of the research and it also makes the necessary conclusions and recommendations based on what has been discussed in the first four chapters.

5.0 CHAPTER FIVE - SUMMARY, RESEARCH FINDINGS AND RECOMMENDATIONS

5.1 Introduction

This chapter summarises the research, it discusses the research findings and it draws conclusions based on the findings. Recommendations from what has been examined and discussed in the preceding chapters are also made.

5.2 Summary

The aim of the study was to examine the case for enhanced transparency in Zambian listed companies with the focus being on the governance elements of risk management and risk disclosure. The questions that the research sought to answer were as follows:

1. Why are the governance elements of risk management and risk disclosure important for listed companies and should they be voluntary or mandatory?
2. Are the governance elements of risk management and risk disclosure incorporated into the corporate governance framework in Zambia?
3. What form should this disclosure take; should it be contained in an integrated report or in the directors' report as a business review?

Chapter one discussed the general background, definition and importance of corporate governance. It also discussed the concepts of transparency and disclosure in the context of corporate governance as well as the theories of corporate governance. The statement of the problem was given in that chapter and it was stated that under the Zambian Companies Act,[1] which constitutes the principal statutory framework for

[1] Cap 388 of the laws of Zambia.

corporate governance in the country, the governance element of risk management and risk disclosure are not provided for. This is most notable from sections 175 to 181 which are the provisions relating to the Directors Report which are the key provisions in respect of disclosure concerning the state of affairs of a company. This is compounded also by the fact that the Lusaka Stock Exchange Corporate Governance Code is notcomprehensive and does not adequately supplement the Companies Act in relation to the governance elements of risk management and disclosure. In this regard, there is clearly a gap in our jurisdiction because international best practice incorporate governance as regards risk management and disclosure now places a legal obligation on companies to disclose the principal risks and uncertainties they face as well as to disclose how those risks are being managed.

The methodology employed in the research was desk research through the reading of various literature, legislation, codes of corporate governance and reports. Interviews were also conducted with key informants from relevant institutions and internet research was conducted. Further, information was obtained by way of conducting physical searches at relevant institutions such as the Patents and Companies Registration Agency (PACRA) and Lusaka Stock Exchange (LUSE).

Chapter two examined and discussed the legal and regulatory framework for corporate governance in Zambia. The legal framework consists of the Companies Act, which is the principal statutory framework for corporate governance, the Securities Act, the Lusaka Stock Exchange Listing Requirements, the Lusaka Stock Exchange Corporate Governance Code, the Banking and Financial Services Act and the Bank of Zambia Act.

The institutional framework for corporate governance in Zambia consists of the Institute of Directors of Zambia, the Lusaka Stock Exchange, The Securities and Exchange Commission, the Bank of Zambia, the Patents and Companies Registration Agency and the Zambia Institute of Chartered Accountants.

From the discussion in that chapter it was established that Zambia, has made significant strides in terms of putting in place a legal, regulatory and institutional framework for corporate governance generally. However, it was noted that more needs to be done in terms of keeping up with international trends and best practice.

Chapter three examined and considered the governance elements of risk management and risk disclosure in view of their importance in so far as corporate governance is

concerned.The disclosure of risk information follows two main tendencies, one for financial risk and the other for non financial risk. These two types of risk are separate. The main difference being that one can be quantified easily, while the other cannot. Financial risk information assists the reader of an annual report in assessing the financial statement and other quantitative information within the annual report. Non financial risk information cannot be quantified, but can be described by making use of the narrative sections of the annual report. [2] The reporting of non financial risk involves the exclusively qualitative description of risks that cannot be quantified, and therefore do not have any relationship to the financial statements themselves, but more generally to the company as a whole. It was in this chapter that an analysis of the current levels of risk management and risk disclosure was done. In this chapter it was observed by the author that more emphasis is placed on financial risk disclosures as opposed to non financial risk disclosures. It was established in this chapter that the debate on disclosure always gravitates on one major issue – how to strike a balance between too much disclosure and too little.

Chapter four examined and considered corporate governance and the governance elements of risk management and disclosure by way of a comparative analysis of South Africa, the United Kingdom and the United States of America in relation to Zambia. Zambia has much to learn from South Africa and the United Kingdom in terms of their corporate governance framework and the governance elements of risk management, risk disclosure, transparency and corporate reporting. There was also much to learn from the consequences of an approach of corporate accountability legislation such as that taken by SOX. It was noted that it would be worthwhile to

[2] Sami Souabni, Predicting an Uncertain Future: Narrative Reporting and Risk Information, (ACCA: 2011), 3.

include those aspects which are beneficial and practical to implement within the Zambian context and which ultimately enhance transparency in listed companies.

5.3 Research findings

1. The research revealed that the governance elements of risk management and risk disclosure are important for listed companies, particularly in today's volatile corporate environment. In demonstrating the importance of risk management, Naidoo[3] observes that; the tougher economic climate in which companies now operate means that a company's very survival can be threatened by unmanaged and unrecognised risks, and companies can no longer commit their resources to fighting fires and dealing with the consequences of unmanaged and unrecognised risks. If anything this would be a wasteful use of valuable resources which could otherwise be used to provide value-added input elsewhere in the organisation. Proper risk management and internal control processes are important ways to safeguard the company's assets and investments, support the company's business objectives, and ensure the sustainability of the company's business under normal as well as adverse operating conditions.

Risk disclosure is important because it enhances transparency and it also allows the company's stakeholders to have a clear picture of the state of the company's affairs. This disclosure ought to be sufficient, timely and accurate. Davies in quoting the European Commission's High Level Group of Company Law Experts[4] observes that;

> Information and disclosure is an area where company law and securities regulation come together. It is a key objective of securities regulation in general to ensure that market participants have sufficient information in order to participate in the market on an informed basis. Where the relevant security is a share in a company, the information required from a securities regulation

[3]RamaniNaidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009), 230.
[4]Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe (Brussels, November 4, 2002) Ch II.3. Quoted in Paul L. Davies, Principles of Modern Company Law, 8th ed, (London: Sweet & Maxwell, 2008), 903-904.

point of view overlaps with the information to be provided from a company law perspective.

According to King III, the company is integral to society, particularly as a creator of wealth and employment. In the world today, companies have the greatest pools of human and monetary capital. These are applied enterprisingly in the expectation of a return greater than a risk free investment.[5] It goes on to observe that, the first priority of stakeholders of a company is the quality of the company's products and services, the second priority is the trust and confidence that the stakeholders have in the company.[6] It further states that relationships with stakeholders can only be built and maintained if the company provides complete, timely, relevant, accurate, honest and accessible information. This helps with building and maintaining the trust and confidence of stakeholders.

As to whether the governance elements of risk management and disclosure should be voluntary or mandatory, the research has shown that in Zambia, the LuSE Code is a voluntary code which is on a comply or explain basis. As discussed earlier, comply or explain means that the listed companies must comply with its provisions or explain any non compliance. Therefore, those companies that do not comply must explain any non compliance. From the perspective of LuSE it is preferred that the corporate governance elements of risk management and disclosure be kept voluntary and on a comply or explain basis. To follow the corporate accountability legislative route would be too costly for listed companies especially in view of the fact that the Zambian stock market is fairly young and small.

2. In relation to the question of whether the governance elements of risk management and risk disclosure are incorporated into the corporate governance framework in Zambia, the findings were that the governance element of risk and risk management are not incorporated into the Companies Act as a statutory requirement but they are found under the LuSE Code.[7]The LuSE Code is fairly brief in so far as

[5]King Code of Governance for South Africa, (Institute of Directors Southern Africa, 2009), 8.
[6]Ibid.
[7] Part G.

the governance element of risk is concerned but it captures the essence of risk management. However, in terms of risk disclosure all that is required is that the board should include a statement on risk management in the annual report. The LuSE Code is not as comprehensive and robust in its requirements under the governance elements of risk management and risk disclosure as are its counterparts, King III of South Africa and the UK Corporate Governance Code.

The author found that of the annual reports analysed, 50% of the companies had a statement on risk and risk management, this was disclosed under the section entitled directors' report or in the corporate governance statement or report, and for most this was by way of a generalised and brief paragraph or two. In contrast, the two that prepared integrated reports were very clear and detailed and there was a richness to the risk information disclosed. This was in relation to the non financial risk disclosure.

It was found that all the companies whose annual reports were analysed, had detailed notes to their financial statements, in which they disclosed their financial risk management. This was done in line with the International Financial Reporting Standards (IFRS 7), which is a legal requirement. Therefore, it was observed and concludedthat there is more emphasis placed on financial risk disclosures as opposed to non financial risk disclosure.

The Report on the Observance of Standards and Codes (ROSC), Corporate Governance Country Assessment for Zambia was released in December, 2006 and under the principle of disclosure and transparency and in particular the area of disclosure of foreseeable risk factors, the report revealed that in the case of Zambia, this was only partially implemented.[8] From the research, the finding is that the

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[8]Pages 12 and 30.

status quo is still as it was in 2006 in that there is only partial implementation of disclosure of foreseeable risk factors and this can perhaps be attributed to the fact that the LuSE Code is a voluntary code which is on a comply or explain basis. This means that companies are to comply with its provisions or explain any non compliance.

3. The research also found that currently the disclosure is made in the directors' report which is a standard practice and it has been found that in so far as non financial risks are concerned, this will usually be in done in a brief and generalised paragraph or two. However, the disclosure of financial risks is more detailed as it is done in accordance with IFRS 7 in which there are detailed notes to the financial statements.

The accounting standard IFRS 7 requires entities to provide disclosures in their financial statements that enable users to evaluate the significance of financial instruments, the nature and extent of risks arising from them and how entities manage those risks.[9]

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[9] http://icaew.com/en/library/subject-gateways/accounting-standardss/ifrs-7. (Accessed on 17th October, 2012).

The starting point is to acknowledge that there is an urgent need to improve corporate reporting in Zambia, particularly is so far as risk reporting and disclosure are concerned. Presently all that is required according to the LuSE Code is that the board should include a statement on risk management in the annual report. As has been discussed earlier there is the approach of integrated reporting as is the case with South Africa or that of the business review as is the case in the UK. It was observed that those companies that prepared an integrated report were far more detailed in their risk disclosures and there was also a richness and quality to the information disclosed. The author did also have occasion to analyse the format taken by a business review as required under the UK Companies Act and found that even under the business review there was a richness and quality to the information disclosed. This a stark contrast to the scenario prevailing presently in Zambia whereby the risk disclosure is by means of a brief generalised paragraph or two. However, this can be attributed to the fact that all that is required by the LuSE Code is that the board should include a statement on risk management in the annual report.

4. The research also found that the audit committee is a very important committee in so far as corporate governance is concerned as it is the committee that deals with risk management and internal controls in a company, particularly a listed company. In Zambia, the current situation is that there is no statutory requirement for a company to have an audit committee, but the requirement for listed companies to have an audit committee is found under Part C1 of the LuSE Code. In comparison the South African Companies Act under section 94 makes it mandatory for every public company to have an audit committee and as such in South Africa, the audit committee is a statutory committee.

5.4 Recommendations

In view of the above findings, the following recommendations are made:

1. It is recommended that more resources should be invested in the mission of the IODZ so that it can better carry out its mandate in training board directors and raising awareness as regards the importance of risk management, risk disclosure and good corporate governance generally, as well as contributing to corporate governance reform in Zambia

2. It is also recommended that that there is need for the disclosure of broader risk-related issues as this is fundamental to the principles of accountability and transparency. Therefore listed companies should not simply narrow their focus to financial risk disclosure but also to non financial risk disclosure. In so doing, the directors must ensure that when it comes to non financial risk disclosures, they strike a balance and disclose enough information to give the stakeholders a clear picture of the state of the company's affairs, but not too much so as to put the company at a competitive disadvantage.

3. There is also the need to improve the quality of corporate reporting in the annual report. The information should be of high quality, because high quality information will have a positive influence on the investment decisions of capital providers and other stakeholders.[10] High quality risk disclosure in annual reports should be encouraged as it can give reassurance to the stakeholders that the company is robust and well managed. To quote ICSA Director of Policy Seamus Gillen;[11]"Stakeholders generally, and shareholders in particular, cannot make a judgment about the quality of the company's strategy if there is not a strong narrative on the risks to that strategy, and the way in which sound risk management can provide further opportunity. We need to see a more compelling, linked-up narrative."
Good risk reporting can underpin confidence in the company and amongst stakeholders and as such companies should not view it simply as box ticking compliance exercise.

4. There is need for improvement in compliance in so far as the listed companies are concerned and this requires a change in corporate culture on the part of the listed companies themselves. It is equally important that directors discharge their duties under the common law effectively and oversee compliance with legislation and the LuSECode.It is therefore recommended that the LuSEmust continue to sensitise listed companies and encourage them to comply with all the provisions of the LuSECode

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[10] M.G.H Meijer, "Risk Disclosures in Annual Reports in Dutch Listed Companies During the years 2005-2008," (Masters thesis in Business Administration, University of Twente, 2011), 10.
[11]Governance and Compliance , The ICSA Magazine, August, 2013, 17.

for the sake of good corporate governance. Therefore the initiative by LuSE to give corporate governance awards to those listed companies that do well in corporate governance is commendable as this will encourage compliance. In 2010, the award for good corporate governance was given to Shoprite Holdings Limited[12] whilst the 2011 award was given to Zambia National Commercial Bank Plc.

5. Given the importance of risk management, it is recommended that, in its overall governance or management of risk, the board of directors must continually monitor the implementation of risk management policies and ensure that regular reviews are undertaken for the purpose of making the required disclosure on risk management in the annual report.

6. It must be noted that the LuSE Code was published and came into effect in 2005, seven years ago. During this time there have been significant developments in the international corporate governance realm, particularly in respect of risk management and disclosure, which Zambia needs to incorporate into the LuSE Code and even the Companies Act. The South African Code of Governance, King III has been revised and updated three times since its inception, hence there has been King I, King II and presently King III. The UK Corporate Governance Code has been updated numerous times as has been discussed earlier on in the research paper. It would be prudent for Zambia to learn from these jurisdictions and update and revise the LuSE Code so that it can reflect the international trends and best practice in corporate governance generally.

7. It is recommended that the Zambian Companies Act be amended to make provision for every public company to appoint an audit committee, so that the audit committee becomes a statutory committee as opposed to it merely being part of a voluntary code given its importance in the management of risk and internal control.

8. It is also recommended that the directors' report be required to contain a business review as is the case under theUK Companies Act, 2006. This would

[12]LuSE Fact Book, 2010/2009, 37.

necessitate that an amendment be effected to the Companies Act and it can be done along the lines of section 417 of the UK Companies Act, 2006 which makes provision for the disclosure of foreseeable risk factors in the business review which forms part of the directors' report. A business review would be much more practical and less costly in the context of Zambia as opposed to the integrated report which is likely to have a fairly higher administrative cost to it. According to the report by Deloitte Global Services Limited,[13] integrated reporting sounds wonderful in theory but executing the concept can present difficulties and it is perceived by the business community as unnecessarily burdensome mandated reporting. The report goes on to observe that only one country has mandated comprehensive fully integrated reporting to date, that is South Africa[14] where all listed companies must abide by the King III Code on corporate governance by providing an annual integrated report.

Under King III, integrated reporting and disclosure encompass transparency and accountability and the recommended practice is *interalia*, that the board should delegate to the audit committee to evaluate the sustainability of disclosures.

It is important to note however, that codes of good governance are generally thought to be more effective than legislation such as SOX in promoting fundamental corporate governance reform and improving corporate behaviour despite their general lack of enforcement mechanisms. Since codes are voluntary, they are more flexible than laws and regulations, and can respond to changing business circumstances. They nevertheless send a clear signal that corporate governance is being taken seriously. Corporate governance is not however, a preserve of a few and we need to guard against present codes evolving into overly bureaucratic frameworks, incapable of being interpreted or applied without the intervention of handsomely paid consultants.[15] Therefore, King III advises that Populist calls for more legislative corporate governance reform must be treated with the appropriate caution. The cost of compliance is burdensome, measured both in terms of time and direct cost. Further,

[13]Integrated Reporting.A better view? September, 2011.
[14]King Code of Governance for South Africa, King III(Institute of Directors Southern Africa, 2009. Governance element 9 on integrity and disclosure.
[15]RamaniNaidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009), 267.

the danger is that the board and management may become focussed on compliance at the expense of enterprise.[16]

5.5 Conclusion

It can be concluded that the case for risk management and risk disclosure is an important and relevant consideration in our Zambian context. This requires that the law and policy makers in so far as corporate governance is concerned regroup in order to revise and update the LuSE Code and the Companies Act in order to keep abreast with international best practice in corporate governance reform as has been discussed earlier. There is also a need to improve upon the current institutional framework in corporate governance such as strengthening institutions such as the Institute of Directors of Zambia. As Solomon[17] observed, policy makers, practitioners and theorists have adopted the general stance that corporate governance reform is worth pursuing, supporting initiatives such as splitting the role of chairman and Chief Executive, introducing non executive directors and increasing the quality and quantity of corporate disclosure *inter alia*.

However, in pursuing this corporate governance reform, Naidoo,[18]cautions that countries must be vigilant not to sanctionthe development of governance codes beyond what is practical, realistic and necessary for good governance.

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[16]King Code of Governance for South Africa, (Institute of Directors Southern Africa, 2009), 5 & 8.
[17] Jill Solomon and Aris Solomon, Corporate Governance and Accountability (West Sussex: John Wiley & Sons Ltd, 2004), 61.

[18]RamaniNaidoo, Corporate Governance, 2nd ed. (Durban: Lexis Nexis, 2009), 267.

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