

# **AN OUTLOOK OF AN EFFECTIVE MIDLANDS STATE UNIVERSITY “MSU” COUNCIL**

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Zimbabwe Leadership Forum

# Presentation Outline:




- Defines corporate governance and its sources, and constitutional pillars; and
- Discusses –
  - ▣ What MSU is.
  - ▣ The definition of a MSU Council member
  - ▣ Types of MSU Council members
  - ▣ How the MSU Council should be composed and structured for effectiveness.



Discusses –

- Qualities, roles, responsibilities and duties of MSU, its Chair, MSU Council members, and the Vice Chancellor (“VC”)
- Role of MSU Council members and Chair at Council meetings
- MSU’s evaluation for effectiveness.
- Conclusion

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- **The presentation will be candid, robust; frank.**
  - **It will allow an informed question and answer session at the end.**

# The Approach

## □ Reviews & will be referring to:-

- The MSU Act (Cap 25:21 and Ordinances)
- Strategic Plan:
- Zimbabwe's Constitution
- CGF for State Enterprises & Parastals
- Sample of Council Minutes
- MSU's Organogram
- Public Finance Management Act
- ZimCode
- Companies Act (Cap 24:03)
- Zim Asset Document

# PART ONE

Setting the Scene

# Introduction



- The central importance of good governance to all sectors of the economy is now clearer than ever. The crisis which beset our financial system has highlighted how dangerous a tick-box approach can be.
- Each and every Council member needs to embrace its values, and apply them to the particular needs and circumstances of their organisation.
- Good governance is essential for the success of any organisation and is now more important than ever.
- Council members play a vital role in serving their causes and communities. They bring passion and commitment as well as skills and experience to the organisations they lead.


# What is Corporate Governance?

- A system through which powers are exercised and shared by different stakeholders and groups to ensure the achievement of an entity's goals.
- ***"... an internal system encompassing policies, processes and people which serves the needs of shareholders and other stakeholders, by directing and controlling management activities, with good business savvy, objectivity, accountability and integrity..."*** by Gabrielle O'Donovan.



# Corporate Governance:

- is a set of processes, customs, values, codes, policies, laws and structures, governing the way a corporate is directed, controlled and held accountable. ***See Clause 1.3, Corporate Governance Framework for State Enterprises and Parastatals (“CGF for SEPs”), Nov 2010, Page 4***
  
- ensures that –
  - organizations are run properly
  
  - goals are achieved
  
  - funds are managed with high standards of propriety and probity.

- 
- Distilled from the above definitions, corporate governance is therefore a system by which companies or entities are directed and controlled in order to achieve their goals.
  - Professor and Judge Mervyn King in his book "***the Corporate Citizen***" (2006) at Page 2, loosely defines corporate governance as "...***the governance of any entity***".

# Corporate Governance:



- ▣ Ensures that –
  - organizations are run properly
  - goals are achieved
  - funds are managed with high standards of propriety and probity.

# Corporate Governance-:

- **Improves an Institution`s** integrity
- Helps to **instill discipline**
- **Promotes credible stakeholder** satisfaction and protection of their interests.
- Restores economic sanity
- **Effective tool** against **corruption.**
- Guides **behavior** where the law is ambiguous,
- **Helps building sustainable** entities
- **Regulates terms of office** for power hungry Council Members
- Promotes succession planning

# Why this Induction on Corporate Governance

- Operations of State Enterprises and Parastatals ("SEPs") – are below expectation because of weak corporate governance and unethical practices. ***His Excellency The President – Page V of CGF for SEPs.***
- Corporate governance - necessary to complement legislation governing respective SEPs and the Public Finance Management Act, Cap 22:19 ("PFM"). ***His Excellency The President – Page VI of CGF for SEPs.***
- Investment flows favour regions characterized by good corporate governance over those with poor governance practices. ***Former Right Hon Prime Minister M Tsvangirai, Page VII of CGF for SEPs.***
- The ability to attract investment and capital by SEPs depends on adherence to good corporate governance practices. ***Former Hon G Moyo, MP at Page XI of CGF for SEPs.***

# Sources of Corporate Governance

- Three (3) sources for Corporate Governance exist:
  - Law – common and legislation
  - Best Practice Codes
  - Books
- **Law**  
For this presentation :
  - The New Zimbabwe Constitution
  - MSU Act Chapter
  - Companies Act (“Cap 24:03”)
  - Compliance with the law is compulsory. Corporate governance premised on the law operates on a “comply or else” basis.

# Sources of CG for MSU

- 2 categories – external and internal – Law and Best Practise Codes
  - ▣ Law external
    - Common law
    - Statute law - Acts
      - The 2013 Constitution
      - Companies Act (“Cap 24:03”)
      - Section 174 of the Criminal Law (Codification & Reform Act) (“Cap 9:23”)



- Best practice Codes

- External

- ZimCode and ZIMASSET

- Internal

- Policy/ circulars/ manuals issued by MSU




# Codes



- Most developed countries and those in emerging markets have adopted best practice codes, e.g. Combined Code in the UK, Cromme Code in Germany and the King 1, 2 & 3 Codes in South Africa, and the

In Zimbabwe:

- CGF SEPS, November 2010
- The National Code on Corporate Governance Zimbabwe (“Zimcode”)
- CGF for SEPs – a derivative of the Zimcode.
- Provisions of the latter prevail where the two conflict.
- Zimcode – recommends that some provisions of CGF for SEPS be enacted into law.

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- These codes are voluntary and are enforced by the owners of the legal entities.
  - Most of them operate on "***a comply or explain***" approach. ***E.g. Para 6.10 of CGF for SEPs, Page 27 or an apply or explain approach – see Cap 7 para 1.5 of Zimcode.***
  - The Media also plays a part in highlighting good or bad practices but only if it reports professionally and responsibly.

# Law & Codes – any link?

- There is a link between law and voluntary codes as sources of corporate governance.
- Countries in the SADC Region have tended to adopt a hybrid approach whereby they have followed the “**comply and explain**” approach but have enshrined some of the principles in law to assist in enforceability.
- The law sets minimum legal standards which constitute the foundation upon which voluntary codes for best practice are built.
- Voluntary Codes raise the bar on corporate governance principles above the prescriptions of the law.
- ***“There is always a link between good governance and compliance with the law. Good governance is not something that exists separately from the law and it is entirely inappropriate to unhinge good governance from the law.”***  
See King III Page 7.

# Books



- Books in the Region have been written to help an indepth understanding of corporate governance principles from a practical stand point.
- ***Corporate Governance – Non Executive Directors' Independence – Fact or fiction (2008) by C F Dube***


# Corporate Governance Parties



- Shareholders – those that own the University, in your case the line or responsible Minister representing the Government of Zimbabwe as defined in the CGF for SEPs at Page 30
- MSU Council members – guardians of the University's assets for the shareholder.
- Vice Chancellors, Registrar, Librarian, Bursar and Senior Administration Staff– those who use the University's assets.

# PILLARS OF CORPORATE GOVERNANCE



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- Accountability
  - Fairness
  - Transparency
  - Independence
  - Sustainability
  - Good Council practices
  - Control environment
  - Council commitment

## □ The critical ones:



### □ **Accountability** – ensures that:

- ▣ All Parties to the University are accountable
- ▣ The VC and the senior staff are accountable to the Council
- ▣ The Council is accountable to the Line Minister
- ▣ Self accountability is equally important – to one's conscience.



# Transparency



- Ensure that all decisions made and actions taken are **transparent** – they must not be found wanting whenever monitoring & evaluations / checks and balances are done.
- Accurate disclosure on all material matters, including the financial situation and performance of the entity, relevant political matters , discipline on acts of misconduct, etc.
- Financial statements must be prepared in accordance with best practise.
- Ensure that high quality annual reports are published.
- All processes must be done transparently and appropriately



**Fairness** – enjoins you to:

- Protect Stakeholders rights
- Treat all stakeholders including minorities equitably.
- Provide effective redress for violations.

# Independence

- Ensure that procedures and structures are in place so as to minimize or avoid completely conflicts of interests.
- The Council must have independent non-executive Council members and advisors, i.e. those “**who are free .... In both reality and appearance from a material relationship, which materially affects or interferes with one’s capacity to act independently**”? See Corporate Governance Non-Executive Director’s Independence – Fact or Fiction – Dube Page 31, 2008.

# Good Council Practices



- Clearly defined roles and authority of stakeholders.
- Duties and responsibilities of the Council Members are understood.
- Council is well structured.
- Appropriate composition and mix of skills.
- Appropriate Council procedures.
- Council self evaluation and training conducted.

# Control Environment


- Internal control procedures must be in place.
- Risk management framework must be present.
- Disaster recovery systems must be in place.
- Media management techniques must be understood.
- Independent external auditors must be appointed to audit the entity's financial statement.
- Internal audit function must be appreciated and the internal auditor must be appointed.

# Council Commitment

- Ensure that the Council discussed corporate governance issues and has created a corporate governance committee.
- Ensure a corporate governance improvement plan has been created for the entity.
- Ensure appropriate resources are committed to corporate governance initiatives – NOT an After thought!
- Ensure policies and procedures have been formalized and distributed to relevant staff.
- Ensure that a code of ethics has been developed.

# CG Messages from ZimAsset

- His Excellency enjoined government ministries and agencies to champion the Results Based agenda in Zimbabwe
- Accelerated implementation of 3Ps ( Private Public Partnerships to fund national projects (see *para 3.6.1 (vii) 3.8(xiii) , 6.1 & 7.5.1(vi)*)
- Public sector entities to be guided by RBM and RBB which emphasise achievement of tangible results of high quality from limited resources
- Govt agencies
  - ▣ Need to be re-invented to improve general administration governance and performance management (see *para 7.6.1*)

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- Those whose mandates are to provide an oversight role are to lead the formulation and implementation of economic blue prints (see *para 7.6.1*)
  - must ensure that their governance systems are people friendly, offer quality service, tackle corruption and foster good corporate governance and help implement ZimAsset (see *para 6.2 & 7.6.3(v)*)
  - Must launch and publish client and service charters and introduce performance contracts for senior officials and re-orient public sector employees to enhance performance



# Constitutional Pillars – what the new Constitution says about corporate governance

- **Chapter 1, Section 3 (1) (h) and (2) (g):**
- 3 (1) Zimbabwe is founded on respect for the following values and principles –
- ... (h) good governance;.....
- (2) The principles of good governance, which bind the State and all institutions and agencies of government at every level, include –
- ... (g) transparency, justice, accountability and responsiveness;...

## Chapter 2, Section 9(1):

- 9(1) The State must adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level and in every public institution, and in particular –
  - (a) appointments to public office must be made primarily on the basis of merit;
  - (b) measures must be taken to expose, combat and eradicate all forms of corruption and abuse of office by those holding political and public offices.

## Chapter 9, Sections 194, 195, 196,197 and 198: Section 194

- (1) Public administration in all tiers of government, including institutions and agencies of government, and government-controlled entities and other public enterprises, must be governed by the following principles –
- (a) a high standard of professional ethics must be promoted and maintained;
  - (b) efficient and economical use of resources must be promoted;
  - (d) services must be provided impartially, fairly, equitably and without bias;
  - (f) public administration must be accountable to Parliament and the to the people;
  - (h) transparency must be fostered by providing the public with timely accessible and accurate information;

- (i) good human-resource management and career development practices, to maximize human potential, must be cultivated;

- (j) public administration must be broadly representative of the diverse communities of Zimbabwe;

- (k) employment, training and advancement practices must be based on merit, ability, objectivity, fairness, the equality of men and women and the inclusion of persons with disabilities;



## □ **Section 198**

An Act of Parliament must provide measures to enforce the provisions of this Chapter including measures-


- (a) requiring public officers to make regular disclosures of their assets;
- (c) specifying the standards of good corporate governance to be observed by government-controlled entities and other commercial entities owned or wholly controlled by the State.
- (d) providing for the disciplining of persons who contravene the provisions of this Chapter or of any code of conduct or standard referred to in paragraph (b).

## □ Section 308

- (2) It is the duty of every person who is responsible for the expenditure of public funds to safeguard the funds and ensure that they are spent only on legally authorized purposes and in legally authorized amounts.
- (3) It is the duty of every person who has custody or control of public property to safeguard the property and ensure that it is not lost, destroyed, damaged, misapplied or misused.
- (4) An Act of Parliament must provide for the speedy detection of breaches of subsections (2) and (3) and the punishment of persons responsible for any such breaches and, where appropriate, the recovery of misappropriated funds or property.

# Who is MSU?


- A body corporate ... capable of performing all acts that body corporate may by law perform. **See *Section 3 of MSU Act.***
- Legal fiction – no eyes, no ears – intangible.
- But –
  - ▣ has perpetual succession
  - ▣ Is sovereign – sole owner of its assets and no leader
  - ▣ Its Chairperson is leader of its Council while VC is leader of its staff

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- Immortal but inanimate until Council members are appointed.
  - Permitted by law to do things natural persons can do – i.e. its Council members and academic staff. (See CF Dube (2008) Page 18.)



# Types of public entities

- My research reveals that there at least five (5) types of public entities.
  - First, is the entity created by an act of Parliament which pursues matters of national interest and development including profit making and wealth creation as some of its objectives. e.g. the GMB.
  - Second, is an entity which is created by an Act of Parliament which pursues social objectives in the national interest with little or no profit and wealth creation objectives. e.g. the State Universities.
  - Third, is one created by an Act of Parliament in which the state and other private entities are shareholders in terms of the Act creating the entity. e.g. the ZMDC and MMCZ.
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- Fourth, is an entity created by an Act of Parliament pursuant to international conventions e.g. the Redcross Society of Zimbabwe which was established in terms of the Geneva Convention to act inter alia on behalf of all victims of conflict.
  - Fifth, is one registered in terms of the companies Act of Zimbabwe Chapter 24:03 in which the state is a significant shareholder usually coming through commercialization, privatization and listing on the Zimbabwe Stock Exchange e.g. the Rainbow Tourism Group Limited up to say 2002. Air Zimbabwe and the Cold Storage Commission seem to follow the same route

# MSU Council Members - Who are you?



Definition

# MSU Council Members - Who are you?

## Definition

- Your Act defines as .....
- Section 2 of the Companies Act of Zimbabwe, Chapter 24:03 defines a company director as a person occupying the position of a director "... by whatever name he may be called".
- Accordingly it is not the name by which a person is called, but the position he or she occupies and the functions and duties he or she performs which determine whether or not he or she is a director. **See *Dube supra Page 19.***


# Types of Council members



- Broadly there are two types – Executive (inside) and non-Executive (outside) members.
- Executive members deal with the day to day running of the University
- Non-Executive members
  - ▣ are not part of staff
  - ▣ they discharge oversight functions and are expected to bring a wider perspective and robust independence to the Council's deliberations and decision making processes.

## There are three (3) types of non-Executive members.


- Independent
  - Non-Independent
  - Lead or Senior Independent
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- An independent non-executive member is one with no material relationship with MSU **N.B.** For one to be truly independent, one should enjoy freedom, in both reality and appearance, from a material relationship, which materially affects or interferes with one's capacity to act independently. ***See Dube supra Page 31,(2008)***


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- In MSU's case there is an executive Council member in the name of the VC:
    - The VC is an ex-officio member of the Council..
    - The rest of you are outside council members being non executive members of MSU appointed in terms of the MSU Act
    - VC and Pro VC are ex-officio members of the Council


## Take note that best practice directs that:

- SEPs Boards should have appropriate expertise and skills mix and board members should be “...*competent individuals with integrity and relevant complimentary expertise and experience*”. **See Para 3.2.1 of CGF for SEPs Page 8.**
- Tenure of Board and its members – not to be affected by removal of the line or responsible Minister. **See Paras 3.7.3 & 3.7.4 of CGF for SEPs supra Page 13.**
- SEPs Boards should take into account the need for gender balance. **See Para 3.2.2 of CGF for SEPs, Page 8. Section 10 (1)(r) of Cap 25:20 is silent on** this unlike the ZIMSEC Act which stipulates a maximum of four ladies



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- SEPs Board members should not serve for more than two successive terms on the same board “...*except in exceptional circumstances as determined by the responsible Minister*”. **See CGF Supra Para 3.2.4, Page 8 NB:**
  - The ZimCode prescribes three – four year terms as maximum – thresholds to be exceeded only in exceptional circumstances which are defined.

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- SEPs Board members should not be serving on more than **one** State Enterprise or Parastatal at any given time.
  - MSU Council should not be dominated by a single individual or a group of individuals.
  - MSU Council should have an appropriate balance between Executive and non-Executive members – it should have a good mix of **coalface knowledge** (the inside MSU Council members) and **outside practised abilities** (the outside MSU Council members). Not the case as discussed above.

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- Not less than fifty percent (50%) of MSU's Council members should be non-Executive MSU Council members, if their collective views are to carry weight in discharging their independence enhancing functions.
  - Not less than thirty percent (30%) of MSU's Council members should be truly independent non-MSU Council members with no material relationship with MSU.
  - The roles of Chairman and VC of MSU should be kept separate.
  - MSU should operate through committees, e.g. audit, compensation, etc all with Non Executive members being in the majority and chaired by a non-Executive member who is truly independent in the sense already defined.
  - The committee system of MSU is healthy. It allows for a detailed analysis of issues and promotes well thought out recommendations made to the full MSU membership.

# Council Member Selection and Appointment



- All Council members should be appointed through a formal, robust and transparent process that reflects broadly the diversity of the stakeholders
- It is the Council's responsibility to recommend members for appointment
- Where appropriate, a nomination committee should be established with clear terms of reference on how to invite and recommend the nomination of new Council members by the MSU Council and their election or re-election by members

## PART TWO

# “TO GET RESULTS, LEADERSHIP MATTERS”

*DR HENRY CLOUD – BOUNDARIES FOR LEADERS, 2013*

**QUALITIES, ROLES, RESPONSIBILITIES AND DUTIES**

# What must Council Members do for effectiveness?

□ You must shun the following corporate sins / shadow casters/toxic behaviours -:

1. Self concern
2. Over conformance ,
3. Pride,
4. Arrogance ,
5. Corruption,
6. Power abuse,
7. Managed/selective corporate disclosures ,
8. Self centeredness,

**\*\*\*\*We deal with each in turn**

# A corporate sin of **self interest**

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- ❑ When leaders fail to exercise their duty of good faith to act in the best interests of the organization and all its stakeholders – the inclusive approach to corporate governance.
- ❑ When one acts in furtherance of their own interests as opposed to the interests of the incapacitated entities they lead or work for.
- ❑ When leaders act out of greed to increase personal wealth; and
- ❑ All this amounting to fraud on the incapacitated person they represent as business leaders and all its stakeholders. Some classic examples are the Enron case, Lobels, etc.

# A corporate sin of **self concern**

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- Occurs when fear impedes one from making a good and right decision.
- Occurs when executives are fearful that something adverse may happen to them and that fear drives them to act in conflict with the best interests of the companies they work for and all its stakeholders.



# The corporate sin of **over conformance**

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- As business executives, move away from being merely administrative and focus on the enterprise side of the business.
- A surfeit of administration dilutes enterprise.
- The rule book can stifle enterprise development for your companies and can be very expensive.

# The corporate sin of **pride**

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- This sin rides on ego protection – refusing to correct a clearly wrong decision because of the consequences of finding that it has egg on your face.
- Failure to act because of damaged pride is not acting in the best interests of the businesses you lead.
- When you commit a mistake, virtue ethics urge you to first acknowledge the mistake, correct it and then learn from it.

# The corporate sin of **arrogance**

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- This corporate sin finds anchor in a misplaced belief of one's own correctedness or righteousness.
- We must always embrace correction, through other people's interventions.
- There is no monopoly on knowledge nor is there monopoly to accessing information and interfacing with life changing experiences.
- It is health for business leaders to subject their decisions and choices to a critical evaluation by others.

# The corporate sin of **corruption**

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- ❑ Involves betrayal of trust, fiduciary responsibilities and stewardship.
- ❑ Commonly defined as misuse of public power for private benefit or misuse of trust for personal gain.
- ❑ Means failure to act according to one's duties.
- ❑ Sanitized as "rent seeking behavior involving actions .... 'taken by individuals and groups to use political process to plunder the wealth of others'".
- ❑ Sanitized also as "altruistic sinning" – committing wrong for the general good.
- ❑ Empowers those with money and disenfranchises those without.

# The corporate sin of **power abuse**

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- ***“Power corrupts and absolute power corrupts absolutely”*** by Lord Acton.
- ***“The only reason people are just is because they lack the power to be unjust”*** by Glangion.
- Power comes with the absolute temptation to do evil and with minimal obligations to do good.
- Remember the more power we have the more likely others will comply with our wishes.

# The corporate sin of **selfishness or self centeredness.**

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- This manifests itself through-
  - ▣ greed and narcissism, e.g. giving yourselves as business leaders too many privileges like many cars.
  - ▣ eating in private dining rooms
  - ▣ travelling around in chauffer driven cars and jets.
  - ▣ unjustifiable income gaps between top management and ordinary followers.

- ▣ Inconsistent treatment of employees, treating those of the inner circle differently from those of the outer circle.
  
- ▣ Fielding friends in Councils to ensure favourable corporate decisions.
  
- ▣ **The list is endless.**

# The corporate sin of **managed/selective corporate disclosures**

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- Coalface executives have more access to information than any other person in the organization.
- Do you reveal what you know, when, to whom and in what fashion?
- Coalface executives have more access to information than any other person in the organization.



- ❑ Managed disclosure of favourable information about corporate success has been the source of corporate failures and personal downfall of business executives.
- ❑ Business executives attempt to hide the truth to protect themselves.
- ❑ **NB Shun all these 9 heinous corporate sins please!**

In my view, all these sins result due to failure to observe **the Nine CVs of Leadership**"

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- ❑ **curiosity**
- ❑ **creativity**
- ❑ **communication**
- ❑ **character**
- ❑ **courage**
- ❑ **conviction**
- ❑ **charisma**
- ❑ **competence and common sense.**

# To act professionally...

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- Requires competence in one's field of endeavor, and a permanent commitment to quality performance in that field all in a spirit of dedication for the greatest good.
- Taking into account the interests of all who may be affected by the business decision which you make before making it.

# Curiosity

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- An ethical and professional leader must be curious and expansive, seeking input from a wide range of people including the contrarians.
- He must listen to people outside the “**yes sir**” crowd in his inner circle.
- ***“Smart leaders believe only half of what they hear. Discerning and creative leaders know which half to believe”*** by John C Maxwell

## 2. Creativity



- **Creative** – a good director must be creative – he must be willing to try something different, i.e. think outside the box.
- Leadership is all about managing change – things change and a leader must be creative and adaptive.

# Communication

70

- This underpins an open leader who does not hide the bad news or motivate followers with fear.
- This leader speaks the truth even when it is hard to hear, and inspires followers by asking them to share in the obligations of democracy.
- Communication is not *“about running off at the mouth or spouting sound bites”*. Communication starts with telling the truth even when it is painful to do so.
- Credibility precedes great communication.

- Convey credibility to your audience by showing that you believe what you say and live what you say.
- ***“Educators take something simple and make it complicated. Communicators take something complex and make it simple”*** by John C Maxwell.

# Character

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- Mother of integrity, virtue and honesty – be a **straight shooter** – saying what you really think and never fudge the truth to please anybody.
- An effective business leader must be a person of character i.e. knowing the difference between right and wrong and having the guts to do the right thing.
- Your character determines who you are. Who you are determines what you see. What you see determines what you do. So you can never separate the character of a leader from his actions.
- ***“A man of character does not ask a single soldier to die for a failed policy”*** like what George Bush did in the Iraq war. ***See Lee Iacocca Page 8.***



# Courage

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- Means overcoming fear in order to do the right thing.
- Creating ethical environments even when faced with opposition from superiors and subordinates.
- ***“Courage is contagious – when a brave man takes a stand, the spine of others are stiffened”***, by Billy Graham.
- A leader must be courageous, i.e. a commitment to sit down at the negotiating table and talk.
- Courage in the business leadership sense is not bravado. It means taking a position even if it makes one unpopular.

# Conviction

- Conviction means commitment and passion.
- Commitment starts in your heart, then it is tested by action, then it opens the door to achievement.
- A leader must have conviction – “***fire in your belly***” – ***Lee Iacocca 2008 Page 9*** – passion to get something done.
- Commitment is the enemy of resistance, for it is the serious promise you make to press on, to get up, no matter how many times you are knocked down.

# Charisma

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- An ethical and professional leader must be charismatic – a quality that makes people want to follow you, the ability to inspire and generate trust.
- It means “**other mindedness**” i.e. thinking about others, their concerns before thinking about yourself.

# Competence

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- An ethical and professional business leader must be competent – he has to know what he is doing.
- A leader must have a certain level of knowledge to be competent and that knowledge should be spread across the skill domains.
- Much more importantly he must surround himself with people who know what they are doing.

- An ethical and professional leader must be creative – he must be willing to try something different, i.e. think outside the box.
- Leadership is all about managing change – things change and a leader must be creative and adaptive.
- ***“Smart leaders believe only half of what they hear. Discerning and creative leaders know which half to believe”*** by John C Maxwell


# Crisis




- The biggest **C** however represents **Crisis** – Council Members should be made into leaders and not born leaders. Leadership forged in times of crisis sticks.
- In sum, effective Council Members must be “... curious, creative communicators”. They must be people of “...character, courage, conviction, competence and must have common sense”. **See Lee Iacocca 2008 Page 12.**

## Roles/Functions of MSU Council members

- MSU's Council members functions/roles span wide and run deep – cannot cover all. In this presentation – will pick important ones.
- MSU Council members have both statutory and non statutory roles and functions to play.
- As for the non statutory functions; the MSU Council member:
  - Determines MSU's purpose (vision & mission) and values known as the corporate objective, statements – you are on the front of centre on this. Your strategic plan is comprehensive. **See CGF for SEPs Para 6.5, Page 26.**
  - Sets strategy to achieve purpose – this has been done.
  - Exercises leadership, enterprise, integrity and judgment for MSU to prosper. This is on course?

- 
- Ensures establishment of systems (procedures, policies and practices) to protect the assets and reputation of MSU
  - Approves monitors and evaluates the implementation of strategies, policies and business plans.
  - Identifies key risk areas and key performance indicators in order to generate stakeholder value.
  - Ensures that technology and systems used by MSU are adequate to run its business viably
  - Is the MSU website current and relevant to the new terrain?




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- Ensures MSU complies with all relevant laws, regulations and best business practice. Is MSU complying with the law in the discharge of its functions?
  - Establishes succession plans for executive MSU members and other senior management.
  - Regularly assesses MSU's own performance and effectiveness as a whole, that of individual MSU members.
  - MSU's statutory functions and powers are spelt out in **....of MSU Act These are a must read.**

# Duties of MSU Council members



- A duty is an act or omission expected to be performed by one in accordance with the moral dictates of the office or position he or she holds.
- There are broadly three (3) types of duties – common law, statutory and moral.
- The common law duties of MSU's Council members are basically the time honoured four (4) - good faith, care, skill and diligence.

# Good faith - means a member of the MSU Council must:



- Honestly apply his mind and act in the best interests of MSU at all times.
- Ensure that there is no conflict between his interests and those of MSU.

# Care – means a MSU Council member must:

- Act with a degree of care expected of a reasonable person caring for assets of what Mervyn King calls “**an incapacitated person**”. MSU is an incapacitated person. It is a legal fiction acting through natural persons being its council members.
- Be a good steward of MSU’s assets. Use of MSU’s assets by members for personal interest is **not** allowed.
- Honestly apply his mind in making a decision in regard to the enterprise side of MSU’s business operations.

**Skill** – means a MSU Council member must:




- Apply his ***practised abilities*** in MSU's interests.
- Use his ***practised abilities*** to add value to the debate around the table especially in making a business judgment call.

**Diligence** – means a MSU Council member must:


- Do his homework and come to the decision making table fully informed about the issues to be decided upon.
- Understand the issues and information given to him – he must study the pack furnished to him to be able to meaningfully participate at the MSU's Council meetings.
- The ZIMCODE also deals with Moral Duties of leaders-


# The Role of MSU's Chairman

- Directs MSU meetings, AGMs and EGMs.
- Must have an input in the finalization of the agenda so as to have a clear understanding of the objectives of the meetings he chairs.
- Must know the strengths and weaknesses of each MSU member. Difficult, but he must try.
- Acts as conciliator between MSU Council members – he/she must lead the MSU council in discussion, reasoning and decision making
- Must ensure that the meeting pack has information couched in understandable language – **no jargon** should be used.

- 
- Must be a good listener; he must be the last person to enter the debate and the last person to express a view on an issue.
  - Must have the skill to draw the threads of a discussion together so that a fabric is woven of the discussion which when inspected will show that Council members truly applied their minds to the issues.




- 
- Must liaise with Chairpersons of every MSU committee.
  - Must ensure that MSU members operate as a team, but should encourage creative tension between them to allow for effective debate in the boardroom.
  - Must try and facilitate a meeting twice a year of outside Council members only without management being present to discuss performance issues concerning management and the business.
  - Must know his rights and duties when chairing both the MSU and general meetings.

- 
- Must interface with stakeholders of MSU on a need to know basis.
  - Must ensure that MSU regularly evaluates itself.
  - Must be the MSU's spokesperson.

# Role of MSU Council Members at Council Meetings

MSU members must be aware of the following when attending MSU Meetings:


- That every Council member is a human being subject to human frailties. He comes to the decision making table with **past prejudices** and **present needs**.
- MSU members should shun a mindless quantitative compliance with governance codes or rules in making decisions which affect the entity. They should simply seek guidance from the codes but never be enslaved by them. Flexibility is key in the decision making process.

- 
- Asking intellectually naïve questions and seeking explanations in clear language free of the business or industry jargon, helps to build an informed discussion which leads to informed decisions.
  - There is what is called the power of influence. MSU Council members should be on the lookout for shifting coalitions driven by topical and perceived self interest, control exercised through force of personality, the granting or withholding of favours and to remember always to decide what is to be decided guided by nothing else but what would be in the interests of MSU.

# Responsibilities of MSU Council members



- A responsibility is an obligation to ensure that certain tasks are performed both by the person who bears the responsibility as well as others.
- Council members have the obligation to ensure that the following tasks are performed:
  - Ensure that each Council member of has time to devote to the entity.
  - Each Council member is informed about the financial, social and political milieu in which MSU operates.
  - Each MSU Council member is satisfied that he or she is in a position to make informed decisions.

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- Each member of the MSU Council must be prepared to disagree with fellow Council members if necessary in the interests of MSU.
  - Each member of the MSU Council must act independently of any outside fetter or instruction.
  - MSU's Council members should obtain independent professional advice if in doubt about any aspect of their duties.
  - Each MSU Council member must ensure that confidential matters of MSU are treated as such and not divulged to anyone without the authority of MSU.
  - Each Council member of MSU must ensure that MSU prepares annual budgets against which MSU's performance can be monitored


# The role of Committees

- Assist MSU, not substitute the MSU.
- Focus on specialised Area of Responsibility e.g. Audit/Internal controls, Remuneration, Nomination, Finance and Risk. **See Para 3.1.2 of CGF for SEPs supra Page 15.**
- MSU Council cannot shield behind Committees.
- Terms of reference for Committees-role, function, reporting procedures and authority must be clear.
- Transparency and disclosure to MSU Council
- Best practice directs non-executive members of the MSU Council to be in the majority and a truly independent non-executive MSU Council Member to be Chair.

# The role of MSU's VC

- ❑ The VC is MSU's chief academic administrative and disciplinary officer.
  - ❑ With general responsibility for maintaining and promoting the efficiency, effectiveness and MSU's **good order**
- ❑ In terms of Paragraph 3.1.5 of CGF for SEP, page 16, the VC:
  - Should develop strategies, policies, budgets and business plans for consideration and approval by MSU.
  - Should run the entity efficiently and effectively in accordance with strategic decisions of MSU.
  - Run the University – implement the strategy.



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- Ensure that MSU's daily operations are appropriately controlled.
  - Represent MSU on stakeholder interface meetings, including the media.
  - Must have a written contract of employment.


# How Council Members Should Relate with its Stakeholders

- The MSU Council must be clear on how ***it relates*** with the VC and the Administration Staff.
- Council Members are different from MSU's Management of which the VC is part, in that:
  - Council members direct, which is a “**brains on activity**” focused on showing the way ahead and giving leadership.
  - Council members' role is a reflective one. It concentrates on strategy - it provides strategic, objective and reality based guidance.

- Council members bring panache, visibility and authority to the University and set the right tone at the top.
- MSU's Administration on the other hand, manages, which is a "**hands on activity**" focused on action, crisis resolution and the maintenance of systems.
- Council members maintain a helicopter vision while the Administration Staff keeps the tractor vision or the corporate feel of the University.
- Council members do not have to police the activities of management. ***"It is unrealistic, to expect a part timer, however gifted or diligent, to be able to have the facts necessary to police a full time executive nor should we expect it. It is however realistic to expect the full time executive to be honest, competent, ethical and committed to the business"*** by Gary Rivlin's article "Looking for more than a few good Directors – New York Times July 4 2004 Page 69.

- The relationship between Council Members and the Administration Staff should be cordial, supportive but watchful.

- It must be nurtured by a climate of respect, trust and candour and must ride on a partnership built on mutual respect. ***“The Board of Directors chooses the CEO and delegates to him or her, the responsibility for running the company. Thus, begins a hopefully productive, albeit complex relationship. The Board’s role in this relationship is to first understand and approve of the CEO’s strategies and plans then to monitor the execution of those plans and periodically evaluates the results. Finally the Board must decide whether, when and how it should intervene. How the Board executes its role is critical to the success of the relationship and ultimately of the business”*** Corporate Governance by John L, Colley JR and others (2004) Page 133.

- 
- Council members must not micromanage. If they do they will find it difficult to hold the VC accountable for poor results.
  - They may be blamed for those poor results as well.
  - Council members must strive to find the right balance of remaining proactive in carrying out their responsibilities without interfering.
  - You must learn to function effectively on a continuous basis.
  - One sure way to achieve this is to create robust, objective, collaborative and mutually beneficial relationship with your stakeholders.

# Importance of chairman's role

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- The role of the chairman is central to an effective Council and that's never been more evident than right now
- The chairman is the lead of the Council and the person who above all other Council members **can make or break a Council's effectiveness**
- Council should not appoint a chairman with an assumption that they will change once they are in the post.
- It is far better to recognise when the chemistry is wrong and appoint someone else

# For noting

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- A good chairman can never turn a bad entity into a good one, or perform well using weak executives.
- Equally no entity can achieve long-term performance without a great chairman at the helm, one who has the right mix of skills to complement the executive team
- He is the key to achieving successful outcomes for investors and understanding the value in the entity

# Characteristics of a good chairman

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- Understanding the different personalities around the boardroom table
- Recognising the contributions that each Council member can make
- Acknowledging that each individual might have their own agenda
- It is vital that the chairmen get to know each Council member on a personal level in order to do this effectively
- It is important to bring a degree of humility and candour to this role



# Characteristics of a good chairman

105

- A good chairman is :
  - a co-ordinator
  - a facilitator
  - Qualified,
  - Adopt a consultative approach,
  - Pro-active and not reactive
  - Consistent
  - Someone who promotes corporate understanding and behaviour
  - Inspirational
  
- **But**
- not the fountain of all knowledge

# Characteristics of a poor chairman

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- Poor chairmen;
  - are aloof
  - Overly opinionated
  - Domineering
  - Unable to control the Council
  - Poorly informed about the business
  - Afraid of honest appraisal

# A good VC-:

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- Ensures co-operative ethos in the Administration team,
- Empowers staff,
- Is Pro-active and not reactive
- Consistent
- Delegates authority,
- Promotes corporate understanding and behaviour
- Inspirational
- Up to date knowledge

# A poor VC

108

- Does not monitor staff enough to know the strengths and weaknesses of staff.
- They fail to bring about improvements in the organisation.
- They are unable to delegate and spend far too much time on routine paperwork.
- They fail to assess whether the organisation is giving good value for money.
- They create a lack of a sense of purpose through their weak leadership.
- They fail to give clear objectives and targets thereby causing staff to waste time and energy.
- They add to discipline problems by not laying down clear rules

# The role of Committees



- Assist the Council not its substitute.
- Focus on specialised Areas of Responsibility e.g. Audit/Internal controls, Remuneration, Nomination, Finance and Risk.
- Council cannot shield behind Committees.
- Terms of reference for Committees-role, function, reporting procedures and authority must be clear.

## Audit Committee

- Detailed Analysis of Past Year and Planning
- Forum for Critical Accounting Issues and Policies
- Internal controls and consider Matters of Risk
- External Audit Issues and Report
- Review going concern Basis (Regulatory, legal & tax matters)

# Remuneration/ Compensation Committee



- Human Resources and Executive Benefits/ Incentives
- Remuneration of Council members and Senior Administration Staff
- Senior staff appointments

# Nomination Committee





- Focus primarily on non executive Council Members appointment issues
- Set criteria for selection
- Coordinate and supervise Council Evaluation Processes
- Look at issues Council member re-election/appointment.






## □ Council Culture

- 
- How can a group of intelligent individuals act so foolishly when they join together as a Council?
  - How can a group with varying degrees of talent become an exceptional Council?

- 
- Council Culture reflects the human side of association governance:
    - ▣ the unwritten rules that influence how the Council operates,
    - ▣ the chemistry between Council members,
    - ▣ the basic assumptions
    - ▣ Interpersonal relationships
    - ▣ Harassment
  - The tone at the top – the chair, the VC

- 
- Our real dilemma, however, is not knowing what we don't know. Yet, knowing such a difference exists could enable us to act upon our ignorance by taking a giant step towards an ethics/principle centred organization" (Charlie Connolly 2004)

Organizational culture is a commonly held –in-the-mind framework of organizational members.

This framework contains basic assumptions and values. These basic assumptions and values are taught to new members as the way to perceive, think, feel, behave, and expect others to behave in the organization.

Edgar Schein (1999) says that organizational culture is developed over time as people in the organization learn to deal successfully with problems of external adaptation and internal integration. It becomes the common language and the common background.

*So culture arises out of what has  
been successful for MSU*

■ WHAT  
■ CULTURE ARE  
YOU DRIVING?



Culture starts with leadership, is reinforced with the accumulated learning of the organizational members, and is a powerful (albeit often implicit) set of forces that determine human behaviour.

An organization's culture goes deeper than the words used in its mission statement. Culture is the web of tacit understandings, boundaries, common language, and shared expectations maintained over time by the members.

# Culture starts with the Council



- Independence : Objectivity
  - ▣ “Club” or Professional Advice?
- Committee Structure : Agenda
  - ▣ Probe for issues or “what’s for dessert”?
- Nominating Process : who selects / what criteria
  - ▣ Best qualified: or best friends?
- Time dedicated : Time really available?
  - ▣ This Council: or one of two dozen?
- Compensation : cash or stock
  - ▣ Do it for income: or do it for value contributed?
- Philosophy : VC “RULES” : or the Hired Hand
  - ▣ VC in charge: or is the Council?



# What are the impediments to monitoring business performance?

Lack of tools and processes providing early warning signs

Amount and type of company information

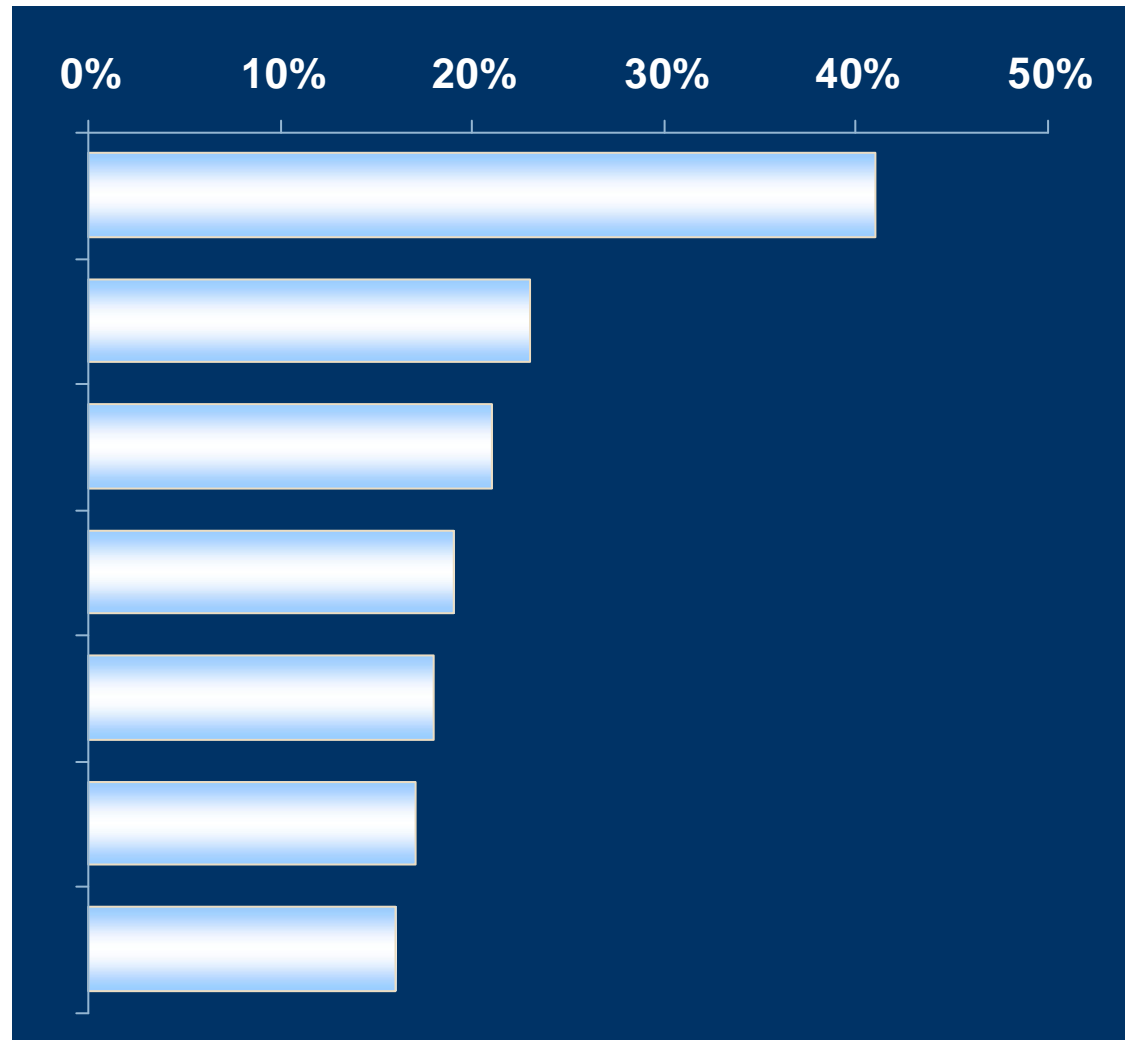
Board culture

Insufficient operating management discussions

Directors do not have enough time

Willingness of Directors to challenge the CEO

Lack capabilities within Board of Directors



# PART THREE

**EVALUATION AND EFFECTIVENESS**


# Council Evaluation For Effectiveness

- ***“The board of Directors, the one body with the most power to influence the company, is most often randomly selected, rarely critically evaluated and almost never held accountable”*** Spencer Stuart CA -2002.
- Recent research, demonstrates that testing and evaluating non-Executive Director effectiveness is not a common practice in Zimbabwe, Kenya and Zambia.
- In the few companies in Zimbabwe where it is done, the exercise does not appear to be transparent, independent and objective.
- And yet, it is a must to test and evaluate your Council for effectiveness. It assists Councils to know their weaknesses collectively and individually and to address strategies for improvement.

# The Council should –



- regularly assess its performance and effectiveness as a whole and the performance and effectiveness of Council committees, individual Council Members and the chief executive officers;
- set and achieve objectives for the continuous improvement in the quality and effectiveness of its performance, including its performance during a crisis;
- undertake a formal and rigorous annual evaluation of its own performance, its committees and individual Council Members, which should be externally facilitated every three (3) years.

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- The process can only be possible once the roles and functions Council members are determined and a set criterion established against which the evaluation is done.
  - Candid discussion should dominate the process.
  - The process should be done formally once a year and the Council should sign a performance agreement with the Registrar for the period of appointment.
  - How should the valuation be done – must be done in accordance with guidelines developed by the Council

# What should be evaluated?



## Strategic Issues

- Planning and objectives
- Risk evaluation and process for Council review
- Human resources and senior management succession
- Relations with shareholder and stakeholders

# Governance and leadership




- Compliance and ethical framework
- Council structures and composition
- Leadership of the Council
- Council functions

# Council Monitoring and Oversight



- Meeting processes and agenda formulation
- Financial and operational reporting
- Role of Council committees and Council contribution



- 
- ***“Directors are sensitive about board evaluations. Some believe there is an element of voluntary service and that their contributions should be gratefully received and not questioned”.*** Job Kihumba – author of the Kenyan Code of Corporate Governance.

# What action is taken?



- After the appraisal process, what action should be taken is difficult. The solution lies in training and coaching Council members who are found to be deficient. Again equally difficult in real life.
- Normally the Chairperson talks to the individual Council member concerned in private where it is hoped the deficiencies are highlighted and the corrective measures intended to be taken fully explained.


# Liabilities of Council Members




- If a problem occurs in the work of the University, the ultimate responsibility rests with the Council Members.

## A Director incurs personal liability if he/she:


- Causes loss to the University by acting unlawfully or outside of its purposes and/or powers.
- Commits the University to debts which amount to more than its assets (wrongful trading).
- Commits the University to take on a debt when knowing that the University would not be able to pay it back (reckless trading).
- Commits the University to act fraudulently (fraudulent trading).
- Acts negligently (which can be an act or a negligent omission to act).

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- ▣ Allows a conflict of interest to develop where personal gain or gain for a family member or a friend is obtained at the expense of the University.
  - ▣ Fails to comply with the law.


- 
- However Council Members who act in good faith and make mistakes in the process cannot be held responsible for the consequences of their mistakes – the judgment call principle.
  - The Courts too have the power to relieve the Council Members from liabilities where they have acted honestly and reasonably.
  - It is unlikely that you will be held personally liable if you always:
    - ▣ Act reasonably.
    - ▣ Comply with your governing document and the law.
    - ▣ Take appropriate professional advice when you do not know enough to make a decision where you are required to by law.

# Common Problem Areas for Council Members

- ❑ Insufficient range of skills and training within the Council of Council Members.
- ❑ Poor relationship and/or lines of communication between the Chair and other Council Members.
- ❑ Inadequately trained Council Members.
- ❑ Inadequate monitoring of employees – Charitying them too much.
- ❑ Insufficient financial and other information being provided on a regular basis to Council Members.
- ❑ Council Members relying on everyone else to get it right.

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- ❑ Failure to maintain the entity's independence.
  - ❑ Lack of basic internal administrative and financial controls.
  - ❑ Poor accounting systems.
  - ❑ Failure to keep bank funds or specific project funding (technically referred to as restricted funds) separate from general funds available for the University's internal purposes, (technically called unrestricted funds).
  - ❑ No or insufficient risk assessment and risk management.



- 
- ❑ Poor complaints handling procedures.
  - ❑ Poor organizational development (either growing too fast or too slowly).
  - ❑ Council Members not understanding the University business.
  - ❑ Poor communications and/or Council Members failure to meet often.
  - ❑ **N.B.** It is important for all of you to be aware of such failings in order to take steps to avoid them.

# CONCLUSION



- Relationships between Councils of Public Enterprises and their shareholders and their management are easy to define in “**form**” but difficult to practise in “**substance**”.
- For all Councils, leading corporate entities, MSU included, is a journey and not a destination as advised by Professor and Judge Mervyn King.
- Councils deal with uncertain future events and in carrying out their duties; they have to make decisions from a foundation of intellectual honesty within the pillars of fairness, accountability, responsibility and transparency.

# Quotable quotes....

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- “while leadership as a discipline is very, very important, the personal and interpersonal sides of leadership are every bit as important as the great leadership themes of vision, execution, strategy and the like. For what actually happens is that no matter how great a vision or strategy, the leader must get it all done with and through people”
- ***Dr Henry Cloud –Boundaries for Leaders, 2013***



I thank YOU!