**Legal and Financial Due Diligence in Zimbabwe**

**Due Diligence – An overview**

The word ‘’diligence’’ appears three (3) times in the Companies and Other Business Entities Act *Chapter 24:31* (hereinafter, “the Act’’). It first appears under section 17 of the Act where the Companies Office or Registrar of Companies is absolved of any liability arising from failure by Companies Office employees to exercise diligence in carrying out their duties. Section 54(1) on duty of care and business judgement rule requires managers and directors of companies and private business corporations to conduct themselves in a manner that a diligent business person would do under similar circumstances. ‘’Diligence’’ also appears under Section 220(1) of the Act where it provides for corporate governance guidelines to public companies in that board charters should include diligence conduct by board members in reviewing materials. The Cambridge dictionary defines ‘’due diligence’’ as ‘*’action that is considered reasonable for people to be expected to take in order to keep themselves or others and their property safe’*’. It follows that due diligence is closely linked to the duty of care and business judgement rule of directors and mangers as given in Section 54(1) of the Act.

 **Performing due diligence**

The duty of care and business judgement rule calls upon management and the board to act in good faith where decision making should be done in the best interests of the company. Due diligence requires application of care, skill and attention, attributes that management and board members should possess. The barometer of performance is that of a diligent person, which means management and board members should be fully aware of a business’s income earning structure to provide meaningful direction to its strategy and operations.

**Sources of reliable information for due diligence**

Decisions that protects an organisation’s interests, other people, property as well as the decision makers themselves should be based on reliable information and credible sources. Independent auditors, lawyers and independent experts provide reliable information to management and the board, which they can rely on with regards to legal and financial due diligence where complex decisions are required. Decisions to do with irregular transactions, partnerships, investments, buy-outs, take-overs and mergers where value is not easily ascertainable require expert advice in terms of analysis, drafting and interpretation. The ever-changing economic and legal landscape in Zimbabwe which has seen evolvement of local currency to the current Zimbabwe Gold (ZiG), use of multi-currency system, blocked funds and/or legacy debts and various statutory instruments supporting the same, makes it imperative for management and directors to seek and use reliable information in order to make sound decisions. Company boards should comprise of members who possess the various skills which would make it possible for proper legal and financial due diligence where required.

**Fulfilling due diligence role**

In Zimbabwe, due diligence should be fulfilled by meeting the prescribed measuring barometer that of conduct expected of a diligent person under similar circumstances. Management and the board should perform due diligence and consult when in doubt. There is need to act in the best interests of the organisation, avoid personal interest and/or conflict of interest, be fully informed and believe that judgement is in the best interest of the company. The key aspect is for management and the board to ensure that there is no indemnification from company by-laws or articles of association as well as the Act. Appreciation of relevant articles in the print and electronic media, summaries of recent legislation and statistical data on inflation and exchange rates all help achieve the set barometer for due diligence.

**Conclusion**

The national code on corporate governance in Zimbabwe of 2014 includes due diligence as part of the role and function of the board under chapter 3. The due diligence role is infused with the concept of *Ubuntu/Hunhu* which should be the guiding principle for management and the board. It calls for directors to be knowledgeable about a company’s operations and operating environment. The central role of the Company Secretary should ensure that management and board members are well developed through induction and continuous development seminars to positively impact on the organisation’s performance. Legal and financial due diligence in Zimbabwe remains key to overall success of an organisation.