

# BIDPA Working Paper 71

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## Ordinary Shareholders' Rights Protection in Botswana

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**BOTSWANA INSTITUTE FOR DEVELOPMENT POLICY ANALYSIS**





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## **BIDPA**

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## ABSTRACT

This study seeks to examine institutional frameworks that exist in Botswana to protect the rights of ordinary shareholders. There is no literature on the subject matter in the context of Botswana; hence this study attempts to fill in the literature gap. The study uses a variety of data collection methods, such as semi-structured interviews, the Choppies case study and lessons learnt from other jurisdictions. Findings reveal that ordinary shareholders' rights protection involves the use of institutional frameworks. In Botswana, existing frameworks are not adequate to protect ordinary shareholders' rights. Furthermore, the study shows that ordinary shareholders in Botswana are mainly exposed to risks of losing their investments, partially or entirely, in case of non-compliance to regulatory requirements as shown by the reduction in Choppies' stock price from P1.20 to P0.40 between years 2012 and 2018. The study suggests that the existing institutional frameworks should be reviewed to ensure adequate protection of ordinary shareholders' rights.

**Keywords:** Ordinary Shareholders' Rights; Institutional Framework; Botswana  
**JEL classification codes:** G23; G28

# 1. INTRODUCTION

Internationally, it is recognised that the level of investors' confidence in any given market is determined by the strength of the institutional framework. Lack of shareholder protection in the local market may result in capital flight to countries where markets provide such needed security and confidence. Thus, market laws and regulations need to be conscious about protecting the rights of shareholders. Generally, shareholders' rights include, but are not limited to, entitlement to view financial statements of the company, voting and the right to sell and buy securities at their will. Issues of law enforcement and corporate governance should also be closely monitored and evaluated to ensure that shareholders' rights are protected at all times. Specifically, shareholders must be protected from expropriation, which arises from the agency arrangement made between shareholders (principals) and company managers (agents). Expropriation of firm profits, especially by managers of listed firms, in alignment with their own interests, is a quintessential example of the violation of the expected relationship between firm principals and agents. It mostly arises when principals are inadequately protected by legal and regulatory institutions, from the malicious acts of agents. This is mostly true when laws and regulations discriminate between majority and minority (ordinary) shareholders. Majority shareholders (which may include managers) appear to be more protected than the minority shareholders based on their voting and/or decision-making power.

In Botswana, the institutional framework for capital investment is explained by market structure as well as legal and regulatory instruments. Market structure, as shown in Figure 1, depicts the three main institutions that are tasked with investors' rights protection; the Non-Bank Financial Institutions Regulatory Authority (NBFIRA), Botswana Stock Exchange (BSE) and Companies and Intellectual Property Authority (CIPA). Both NBFIRA and BSE are overseen by the Ministry of Finance and Economic Development (MFED). CIPA reports to the Ministry of Investment, Trade and Industry (MITI). Laws and regulations that exist to protect shareholders' rights in Botswana include: the Securities Act of 2014 (NBFIRA, 2019), Companies Act of 2003 (CIPA, 2019), Code of Best Practice on Corporate Governance (BSE, 2019a), BSE Equity Listings Requirements (BSE, 2019b) and Guidance for Listed Companies (BSE, 2019c). Although these institutional arrangements exist in Botswana, World Bank Group (WBG) indicators (WBG, 2019) ranked Botswana poorly, compared to its counterparts in the region on issues of minority shareholders' protection. For instance, Botswana's score (60) was below the scores of South Africa, Mauritius and Kenya of 80, 78 and 92 respectively. However, Botswana's score is above the Sub-Saharan Africa average score of 38.5. In addition to this comparatively low score in protecting minority investors, current market and industry developments characterised by suspension of some firms from the BSE listings expose shareholders to significant market risks. Thus, the study seeks to establish the extent to which ordinary shareholders' rights are protected in Botswana by the legal and regulatory framework and provide policy recommendations on what can be done to better protect the ordinary shareholders' rights in Botswana.

There is no literature on the subject matter in the context of Botswana; hence this study attempts to fill the literature gap.

## STUDY PROBLEM STATEMENT

Recent developments in the local stock market, such as suspension of one of the listed firms and its impending delisting, expose shareholders to risks of losing their investments, partially or entirely. In cases where there is insufficient institutional protection and liquidation, this tends to impoverish ordinary shareholders, who are usually more exposed to the negative effects of market risks.

## SPECIFIC OBJECTIVES

1. To examine the stock market institutional frameworks (laws, regulations and institutional structure) in relation to protecting the rights of ordinary shareholders in Botswana.
2. To find out if these laws and regulations are adequate and enforced.
3. To establish the role of listed companies in protecting ordinary shareholders' rights-the case of Choppies.
4. To learn lessons from other jurisdictions regarding ordinary shareholders' rights protection.
5. To suggest policy implications towards ordinary shareholders' rights protection in Botswana.

This paper is arranged such that section 2 presents the study's background. Section 3 is about literature review. In section 4 we describe the methodology. Section 5 presents findings and discussions. In Section 6 we make conclusions and policy implications drawn from the study are presented in Section 7.

## 2. STUDY BACKGROUND

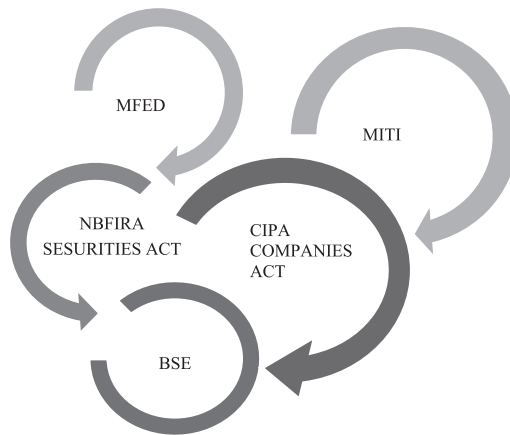
### 2.1. STRUCTURAL FRAMEWORK FOR SECURITIES REGULATION IN BOTSWANA

The securities market structural framework in Botswana (as illustrated in Figure 1) is composed of three institutions that were set up by Acts of Parliament: the Non-Bank Financial Institutions Regulatory Authority (NBFIRA), Botswana Stock Exchange (BSE) and Companies and Intellectual Property Authority (CIPA). NBFIRA was established by the NBFIRA Act of 2006 and its main mandate is to regulate and enforce compliance to set standards in order to safeguard the stability, fairness, efficiency and effectiveness of the non-bank financial sector. The Botswana Stock Exchange was established by the BSE Act of 1994 and it is the sole capital market at which local and foreign companies are listed in Botswana. BSE ensures that publicly listed companies comply with prescribed



standards to ensure a fair and efficient market. The Exchange has a set of compliance requirements which provide both the pre- and post-listing requirements that must be adhered to by the issuers of listed securities. The emphasis is to ensure issuers disclose as much information to the public and investors so that the latter can make informed investment decisions. CIPA was established by Companies and Intellectual Property Authority Act of 2011 to promote and enable full protection of the rights of investors and right holders. CIPA is a parastatal under the Ministry of Investment, Trade and Industry (MITI), whilst NBFIRA and BSE are overseen by the Ministry of Finance and Economic Development (MFED). It is clear from their mandates that all these institutions are tasked with ensuring market fairness, transparency and efficiency, which ultimately promotes the protection of ordinary shareholders' rights.

**Figure 1: Institutional Structure for Securities Regulation in Botswana**



## 2.2. LEGAL AND REGULATORY FRAMEWORK PERTAINING TO SHAREHOLDERS' RIGHTS PROTECTION IN BOTSWANA

Botswana's shareholders' rights are currently addressed by two legal instruments; the Companies Act of 2003 housed at CIPA and the Securities Act of 2014 housed at NBFIRA. The former concerns itself with shareholders' rights within a company formation. The Companies Act includes minority shareholders under section 164 subsection (1) which states "*any member of a company, who complains that the affairs of the company are being conducted in a manner that is oppressive to some part of the members (including himself), may make an application to the court for an order under this section.*" This effectively gives all shareholders the right to petition company decisions, that they may deem unfavourable, before the court. The Securities Act, have provisions for regulatory institutions to provide enforcement of proper conduct by listed companies. Part 3, Section 10, subsection 3 of the Securities Act states "*A securities exchange may impose such fines, penalties or other remedies for any contravention of members' requirements, as provided under section 12 of the Securities Act*". Within this Act, the regulators are empowered

to litigate listed companies for non-compliance (this includes for actions that affect ordinary shareholders' rights). Punitive actions against non-compliant listed companies may include fines, suspension and de-listing.

Over and above the legal instruments (Securities Act and Companies Act), there are several regulations formulated by the Botswana Stock Exchange aimed at protecting shareholders' rights through regulating stock market brokers and listed companies. The organisation believes in strong corporate governance ethos within the listed market space. BSE has a number of regulatory publications that serve to maintain fair and efficient dealings in securities. These regulatory instruments include: (i) BSE Equity Listings Requirements; (ii) Guidance for listed companies; and (iii) The BSE Code of Best Practice on Corporate Governance. The BSE Equity Listings Requirements dictate that a company can be delisted after 6 months of non-compliance, *"If the securities continue to be on the Default Board for a period in excess of six (6) months from the date of transferring the Securities of the listed company to the Default Board, the BSE shall refer the matter to the Listing and Trading Sub-Committee for a determination. The Listings and Trading Sub-Committee shall enquire into the matter and may take either of the following decisions:*

1. *Grant time for the listed company to comply with the requirements subject to a suspension being imposed on the company's securities if it does not comply within the stipulated period.*
2. *Suspend the Company forthwith pending a decision to terminate the listing of the company's securities on the BSE."*

The BSE Code of Best Practice on Corporate Governance requires firm management to secure effective and efficient business systems, comply with legal and ethical standards as well as manage risks: *"The Board should have a formal schedule of matters specifically reserved to it for decision, including inter-alia:*

- *Secure effective information, control and audit systems*
- *Ensure compliance with legal/ethical standards*
- *Ensure prevention and management of risks."*

The BSE Guidance for Listed Companies commits the BSE to overall supervision and monitoring of listed companies, to ensure a long-term sustainable investment environment and corporate governance disclosure and performance; *"We voluntarily commit, through dialogue with investors, companies and regulators, to promoting long-term sustainable investment and improved environmental, social and corporate governance disclosure and performance among companies listed on our exchange."*

However, the institutional structure and the legal and regulatory framework present challenges in upholding ordinary shareholders' rights protection. The institutions are

not governed under one ministry and this may pose governance issues and lack of coordination of these institutions as far as ordinary shareholders' rights protection is concerned. On the other hand, the legal and regulatory instruments appear more general and not explicit on what exactly must be done to protect the rights of the ordinary shareholders.

### 2.3. BOTSWANA RANKINGS ON MINORITY INVESTORS' PROTECTION

The World Bank Group (WBG, 2019) measured the protection of minority investors internationally through a set of indicators (depicted in Table 1). The data was collected from a questionnaire administered to corporate and securities lawyers and is based on securities regulations, company laws, civil procedure codes and court rules of evidence. These scores are a simple average of the scores for the extent of conflict of interest regulation index and the extent of shareholder governance index. It is evident from Table 1 that Botswana scores better (60.0) than the average of Sub-Saharan African countries (38.5) in protecting minority investors. Compared to its Southern African Development Community (SADC), Botswana's performance is lower than South Africa (80.0), Kenya (92.0) and Mauritius (78.0), but higher than Namibia (56.0). In the Ease of shareholder suits index (1-10), Botswana ranks lowest at 3 compared to South Africa, Namibia, Mauritius and Kenya at 8, 6, 9 and 9, respectively. The Extent of disclosure index reflects that Botswana's performance (7) is at par with Mauritius and the United States, but below South Africa (8) and Kenya (10). The WBG report implies that a combination of factors, including better enforcement and implementation of legislative frameworks, better coordination of regulatory institutions and clear mandates of regulatory institutions, lead to enhanced protection of ordinary shareholders in those markets.

**Table 1: WBG Botswana Rankings**

Countries	Protecting Minority Investors Score	Extent of disclosure index (0-10)	Ease of shareholder suits index (0-10)
Botswana	60	7	3
South Africa	80	8	8
Namibia	56	5	6
Mauritius	78	7	9
Kenya	92	10	9
Sub-Saharan Africa	38.5	5.5	5.5
United States	71.6	7	9

Source: WBG, 2019.

### 3. BRIEF LITERATURE REVIEW

Due to the recent spate of corporate scandals globally, the importance of adherence to corporate governance principles to address agency problems arising between shareholders and their managers (principals-agent theory) has become a subject of debate among researchers. The principal-agent theory describes the relationship between business principals and their agents; and it is used to understand potential conflicts between the two entities. An important assumption of the theory is that the interests of the principals and the agents are not always aligned. The arrangement is such that the principals delegate decision-making to their agents with the assumption that the latter will act in the best interests of the former. Unfortunately, the shareholders' expectations are not always met by the managers and these conflicts lead to law suits. A number of financial economics studies corroborate the importance of protecting ordinary shareholders' rights from the agents through the legal system. Diverse traits of individual jurisdictions' financial systems vary on how well the laws and regulations in these jurisdictions protect outside investors. Some of the distinguishing characteristics are: the breadth and depth of the capital markets, new securities issued pace, dividend policy and corporate ownership structures (Porta et al., 2000; Jensen and Meckling, 1976). According to Jensen and Meckling (1976), the centrality of investor protection in understanding and addressing many of the issues in different jurisdictions' stock markets should be pursued.

Lack of adherence to the highest standards of corporate governance by managers worsens the conflicts between principals and their agents, and leads to a problem of investor expropriation (La Porta et al., 2000), also referred to as self-dealing or tunnelling. Specifically, those who control a corporation, whether they are managers, controlling shareholders, or both, can use their power to divert corporate wealth to themselves, without sharing it with the other investors, particularly the minority. The new emphasis on self-dealing is reflected in both theoretical and empirical work. Modern theory of corporate finance focuses on the ability of corporate insiders to divert corporate wealth to themselves, reflected in the "private benefits of control" studies (Grossman and Hart, 1988; Hart, 1995; Zingales, 1995). Empirically, such diversion of resources from firms to their controllers has been investigated in several contexts (La Porta, et al., 2003; Glaeser, et al., 2001; and Akerlof and Romer, 1993).

The extent of non-compliance may lead to a varying degree of expropriation among firms, and is usually not communicated to the shareholders accurately (La Porta et al., 2000). They also argue that the expropriation of ordinary shareholders is extensive in many countries around the world. Shleifer and Vishny (1997) observe that self-dealing or investor expropriations varies across individual firms and it can be observed in many forms. It can include executive perquisites to excessive compensation, transfer pricing, taking of corporate opportunities in the firm to possibly unqualified family members and friends and overpaying of firm executives, self-serving financial transactions such as directed equity issuance or personal loans to insiders, and outright theft of corporate assets.

## 4. METHODOLOGY

This paper applies a qualitative analysis approach to address the research questions. The study uses a variety of data collection methods: primary, secondary sources as well as a case study and lessons learnt from other jurisdictions. Primary data collection was based on semi-structured interviews with open-ended questions (refer to BOX 1 and BOX 2) that allow for in depth focus and one-on-one conversational communication with key stakeholders (informants). Purposive sampling was used to pick the interviewees. Key stakeholders involved high profile individuals from organisations that are tasked with the responsibility of: (i) formulating laws and regulations on investor protection; (ii) overseeing the implementation and enforcement of laws and regulations in the securities' market; and (iii) implementation of laws and regulations (firms and brokers), among others.

Secondary data was collected from existing literature and official documents and websites containing laws and regulations of Botswana in relation to ordinary shareholders' rights protection. The main legal and regulatory documents reviewed include the Securities Act, Companies Act, Guidance for Listed companies and Equity Listings Requirements, among others.

The Choppies Group is used as a case study in this paper. Choppies is a retail store listed on the BSE. The Choppies case is a historical incident in Botswana that involves a listed company and affects a lot of ordinary shareholders. The case study will provide an in-depth and multi-faceted understanding of the extent to which ordinary shareholders' rights at Choppies retail store were protected by laws and regulations following its suspension from the local stock market. The case study approach offers additional insights into what gaps exist in Botswana's institutional frameworks.

Lessons learnt from other jurisdictions were derived from literature on some best practices from the United States, Mauritius and South Africa. United States is used as a benchmark since Botswana aspires to be a high income country. Mauritius and South Africa are SADC countries (just like Botswana) and have some best practices in minority shareholders' rights protection that Botswana can learn from.

### **BOX 1: Interview questions for regulators**

1. What ordinary shareholders' rights exist in Botswana?
2. What regulatory duty does your organisation have in as far as ordinary shareholders' rights protection is concerned?
3. Is expropriation by "insiders" a real problem in Botswana's capital markets?
4. What do you think are some of the reasons for expropriation by insiders in public companies listed on the BSE?
5. Could expropriation pose a threat to the soundness and stability of the nation's capital markets?
6. What role does your organisation have to play in ensuring that ordinary shareholders are protected from insider expropriation?
7. Given the current regulatory framework, what challenges exist in ensuring ordinary shareholders' rights protection?
8. Going forward, what should be done to ensure that ordinary shareholders' rights protection is enhanced?

### **BOX 2: Interview questions for implementers/companies**

1. What regulatory frameworks exist in your organisation to protect ordinary shareholders' rights?
2. Do you view corporate governance rules as an important aspect of shareholder protection?
3. How do you understand the agency problem in as far as the shareholders' rights are concerned?
4. Does insider expropriation exist in Botswana?
  - a. If yes, to what extent?
  - b. Can it be a threat to the success of a business?
5. What regulatory frameworks exist in Botswana to protect ordinary shareholders' rights?
6. What could be done better to improve the regulatory frameworks that seek to protect ordinary shareholders' rights?

## 5. FINDINGS AND DISCUSSIONS

In this section we seek to answer this study's research questions (objectives) using information from: semi-structured interviews (legal and regulatory framework adequacy and enforcement); the Choppies case study; and lessons learnt from other jurisdictions regarding ordinary shareholders' rights protection.

### 5.1. LEGAL AND REGULATORY FRAMEWORK ADEQUACY AND ENFORCEMENT

Botswana does have legal and regulatory statutes (Companies Act, Securities Act and BSE regulations) that seek to protect shareholders' rights. However, these instruments include limited discussions, particularly on the protection of ordinary shareholders' rights. Whilst the Companies Act gives shareholders the right to protest against mistreatment by company agents by way of litigation, minority shareholders are disadvantaged since they usually do not have sufficient financial (or voting) power to petition against majority shareholders (who include agents). This provision does not acknowledge that the ordinary investors would have lost some wealth when non-compliant companies are delisted or suspended from the BSE. The Securities Act, on the other hand, shows that punitive actions must be taken by the BSE against non-compliant listed companies in pursuit of protecting shareholders' rights. Unfortunately, it was observed during the interviews that there is lack of resource capacity at NBFIRA to enforce laws and regulations necessary to protect shareholders' rights. Apparently, there is only one qualified officer at NBFIRA who is dedicated to the surveillance of the capital market activities. Moreover, there is no electronic surveillance system at NBFIRA that would automatically detect suspicious trading activity on the local bourse. NBFIRA is charged with regulating the entire spectrum of non-banking financial institutions, including the capital and stock market, hence there is a serious resource constraint to discharge such a huge task.

BSE regulations do not give any remediation tools for misappropriation once it has occurred. In cases where firms deal maliciously with their shareholders, mostly through expropriation of returns, and ends up liquidated, the BSE is limited in the extent to which it can provide compensatory aid to shareholders. It is a requirement for insiders of a company to report any significant deals that the insiders themselves or the company are getting into. Cases where there is insider trading involving managers and affecting shareholders (including ordinary shareholders) negatively, are handled by NBFIRA as the ultimate regulator of the capital market. The BSE emphasises that their regulatory work in protecting ordinary shareholders is predicated on disclosure. The industry players are of the view that the legal instruments are inadequate in protecting ordinary shareholders in Botswana. For instance, Companies Act, Section 98, subsections 1 and 3 give the power of convening an extraordinary general meeting and voting during that meeting, to majority shareholders over ordinary/minority shareholders. Moreover, they

argue that there is incoherence in the regulation interpretation and enforcement by the regulators; pointing out that the market regulators are working in silos and negatively compete with one another.

### 5.1. CHOPPIES CASE STUDY

Choppies is a Botswana listed company that previously traded as CHOPPIES on the BSE and CHP on the Johannesburg Stock Exchange (JSE). Choppies listed on BSE in 2012 and its initial public offering was PI.15. In 2018, Choppies failed to hold its annual general meeting. It was later reported through the local media in Botswana (Mmegi, 2019; Sunday Standard, 2019; Gazette, 2019, Gazette, 2019b) that there was some misappropriation of profits by Choppies' Chief Executive Officer (CEO) and some accounting irregularities regarding bulk sales and inventory. Apparently, the CEO loaned other related companies some monies without the Board's or the shareholders knowledge. However, this was expectedly refuted by the Choppies Group CEO during the interview. On March 2018, Choppies failed to publish its financial statements; contravening section 3.21(b) of the BSE Listing Requirements. Johannesburg Stock Exchange then suspended Choppies for failure to release financial statements. This led to Choppies share price falling from PI.25 to P0.40 in September 2018. On November, 2018, the BSE followed suit, suspending the trading of Choppies shares because of the failure to comply with BSE Listing Requirements. Court cases on insider trading were then launched against the Choppies CEO, who is the largest single majority shareholder. Furthermore, the Choppies Board of Directors suspended the Choppies' CEO. Nonetheless, the CEO won the court case. Thereafter, the CEO was reinstated by the majority shareholders (including management).

This case illustrates non-compliance to corporate governance standards by Choppies management. De-listing statute within the BSE Listing Requirements in section 13.2 subsection (a)(iv), states that if a company has been suspended and does not rectify its transgression in order to comply within 6 months of suspension, then the Listings and Trading sub-committee can take action to de-list the firm. To date, more than 6 months after suspension, it is not yet clear why Choppies has not been de-listed from BSE nor its suspension lifted. Furthermore, the rights of the minority shareholders were not legally protected when the CEO was reinstated by the majority shareholders (including himself). The losses incurred by ordinary shareholders are therefore taken simply to be part of the inherent risks of stock market investing, even though they are a result of broken "rules of the game" - weak adherence to corporate governance standards by Choppies managers.

### 5.2. LESSONS FROM OTHER JURISDICTIONS

In the United States, the Securities and Exchange Commission (SEC) is the main regulator of capital market activities, including the protection of ordinary shareholders from expropriation by insiders. SEC was created by the Securities Exchange Act of 1934



(SEC, 2018). SEC's mission is to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation. *"As more and more first-time investors turn to the markets to help secure their futures, pay for homes, and send children to college, our investor protection mission is more compelling than ever"*. This mission extends to increasing public trust in the capital markets through establishing uniform disclosure of information on public securities. The agency remains an independent institution of the United States federal government and enforces the Securities Act of 1933, which is equivalent to Botswana's Securities Act under the custodianship of NBFIRA.

Institutional powers of SEC extend to being able to bring civil action in a U.S. District Court, or an administrative proceeding which is heard by an independent administrative law judge. However, the SEC does not have criminal authority and therefore it refers criminal matters (such as insider trading) to state and federal prosecutors. Further to SEC, the United States established the Securities Investor Protection Corporation (SIPC) through the Securities Investor Protection Act of 1970 (SEC, 2012) to protect investors against misappropriation of funds and securities. The SIPC maintains a fund that compensates investors in the occurrence of such incidents, *"...in a liquidation, SIPC replaces the missing stocks and other securities when it is possible to do so."*

In Mauritius, the Financial Services Commission (FSC), which was established in 2001 (FSC, 2010), is the regulator of non-bank financial services firms, including securities exchanges. One of the Commission's aims is to suppress crime and malpractices so as to provide protection to members of the public investing in non-banking financial products. The FSC operates within a legal framework that allows it to take disciplinary action against those listed firms that contravene the statutes of investor protection as outlined in the legal framework. This gives the regulatory institution legal powers to enforce protection of shareholders. Like in Botswana, the Financial Services Commission works under the supervision of the Ministry of Financial Services and Good Governance in Mauritius and has similar institutional strength. However, from the interviews (specifically with NBFIRA), it was highlighted that enforcement and implementation of regulatory dictates is much better in Mauritius than it is in Botswana.

South Africa has the JSE, as the only licensed exchange in the country. There is a Financial Sector Conduct Authority (FSCA) which oversees and supervises the activities of the JSE. Legal and regulatory instruments that govern JSE are the Financial Markets Act 2012 (FSCA, 2019a), Financial Intelligence Centre Act 2001 (FSCA, 2019b) and JSE Rules and Directives. Unlike the NBFIRA of Botswana, the FSCA of South Africa is an independent body from the government of South Africa. The Financial Market Act (section 6C, part 3b) requires regulatory bodies to consult with each other and share risk assessments in relation to securities companies, *"The Authority and supervisory authorities that have entered into supervisory co-operation arrangements in terms of subsection (1) must consult with each other and share risk analysis assessments and information to support the identification, assessment and mitigation of risks to markets and investors."*

## 6. CONCLUSIONS

From the literature, ordinary shareholders' rights protection involves the use of institutions, legal and regulatory frameworks. The protection of ordinary shareholders' rights builds trust and ensures that there is increased participation of different stakeholders in the stock market. This increased participation brings vibrancy to the stock market by improving liquidity. Furthermore, protecting shareholders is usually a function of information disclosure; ensuring that firm managers disclose as much information as is needed for shareholders to make the best decisions concerning their investments. In Botswana, existing institutional frameworks are not adequate to protect ordinary shareholders. The study revealed that existing laws in Botswana, both the Securities Act and the Companies Act of Botswana, are important legal instruments towards the protection of shareholders' rights. However, from engagements with industry experts and regulators themselves, it is apparent that the two legal instruments could be amended to add clauses that specifically and explicitly spell out and ensure protection of ordinary shareholders' rights.

Learning from other jurisdictions, unlike NBFIRA which has a broader mandate of regulating all non-banking financial institutions, the SEC's sole mandate is to be a primary regulator of the securities market. Moreover, SEC, FSC and FSCA are independent regulatory authorities.

United States has the SIPC fund that compensates investors in the occurrence of misappropriation of funds and securities in case of liquidation and this arrangement shows commitment towards protecting the rights of shareholders at large from poor corporate governance standards. From South Africa, there is legal requirement for regulators to share risk analysis assessments of securities companies. This legal relationship enhances disclosure and promotes adherence to corporate governance standards.

## 7. POLICY IMPLICATIONS

There is an opportunity for expropriation and breach of corporate governance standards by listed companies in Botswana. Therefore, there is need to (i) Review laws and regulations to adequately address the issue of ordinary shareholders' rights protection in Botswana and to ensure that non-compliance to requirements is punished without delay to avoid loss of wealth to shareholders, and (ii) Empower NBFIRA with sufficient resources to effectively and efficiently regulate the securities market.

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