



Corporate Governance and Compliance in Botswana: Issues and Challenges

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ABSTRACT

Purpose -This paper investigates the extent of compliance with international best practice corporate governance principles by Botswana Unified Revenue Service (BURS), a State Owned Enterprise (SOE). The researchers wonder why in this modern day and age, architects (parliamentarians) of the Act of parliament which brought about governance structures of BURS, chose to depart from what is considered international best practice governance as recommended under codes of best practice corporate governance such as the King Code 2002. Second, the researchers also wonder whether the departure was by design or an oversight on the part of the architects of BURS governance structure.

Design/methodology/approach - *Using content analysis, the BURS Act 2004 and the King Code 2002 are content analysed to draw parallels between governance structures recommended by the two governance instruments.*

Findings – *The findings of this study indicate a low level of compliance with international best practice corporate governance by BURS.*

Practical implications - *The researchers conclude that divergence of governance structures of BURS from international best practice has the potential to breed inter alia; incompetence, corruption, maladministration, dominance, cronyism and ultimately a weak institution.*

Originality/value – *Prior literature tends to investigate governance practices of public listed companies. This study contributes to governance literature by examining governance practices of a state owned enterprise which came into existence through an act of parliament.*

Keywords : *Corporate Governance ;Parastatal Organisation ; State Owned Enterprise/Parastatal ; Governance Structure ; Board of Directors.*

Paper type Case study

1. INTRODUCTION

Best practice corporate governance principles such as the UK Combined Code (2003), the South African King Report (commonly known as King Code) (1994, 2002, 2009), Organisation of Economic Cooperation and Development (OECD) principles of corporate governance (2004), Commonwealth Association of Corporate Governance Principles (CACG) (1999) among others, consider the board of directors as the focal point of corporate governance in a company. The board is also tasked with the responsibility to collectively provide effective corporate governance that involves managing the relationships between the management of the company, its board, its shareholders and other relevant stakeholders.

As such, various factors, such as size, composition, culture (e.g. Haniffa and Cooke, 2002, 2005) qualifications of directors, appointment and remuneration among others, may therefore influence the effectiveness of the board in its oversight functions (Beasley, 1996). In addition, the board guides and monitors the business and affairs of the company

on behalf of the shareholders by whom they are elected and to whom they are accountable (King Report, 1994, 2002, 2009). It [board] also has the responsibility to set the company's strategic aims, supervise the management team and report to the owners of the company on their stewardship (Cadbury Committee, 1992).

The researchers argue that in Botswana, the ability of boards of directors of state owned enterprises ("SEOs")/parastatal organisations to effectively discharge their oversight functions is severely compromised. This contention is elicited by the governance structures of SOEs which are prescribed by Acts of Parliament which 'gave birth' to these corporations. The researchers maintain that recommendations from the Botswana Unified Revenue Service (BURS) Act (2004a) [in particular] are in conflict with international best practice corporate governance as recommended under the UK Combined Code (2003), the King Code (1994; King Report, 2002; King Report, 2009), Organisation of Economic Cooperation and Development (OECD) principles of corporate governance (2004), Commonwealth Association of Corporate Governance Principles (CACG) (1999) *inter alia*. Perhaps the architects/parliamentarians of the BURS Act (2004) never intended the governance structure of BURS to meet such high standards of governance because it [BURS] is a creation of an Act of the parliament of Botswana (mandatory). The researchers ponder why in this modern day and age, the architects of the BURS Act (2004), chose to depart from what researchers [in corporate governance] consider international best practice governance as recommended under codes of best practice corporate governance (e.g. Aguilera and Cuervo-Cazurra, 2004). The researchers also wonder whether this departure was an error of judgement on the part of the Botswana parliamentarians or it was a deliberate act to uphold poor governance practices of lack of; independence, transparency, accountability and responsibility; cronyism in management of SOEs, weak monitoring systems, payment of facilitation fees [bribes] and external influence by politicians prevalent in many SOEs in the African continent (Okeahalam, 2004).

To this end, this paper seeks to; *first*, generate debate on the ability of governance structures, in particular boards of directors of SOEs to effectively discharge their oversight functions.

Second, the researchers endeavour through this debate, to [possibly] influence changes to corporate governance structures of SOEs in Botswana by demonstrating the possible weaknesses in corporate governance, stemming from the governance structures of SOEs as recommended by Acts of Parliament. Third, the researchers hope that this debate may influence parliamentarians in future to consider the implications for the entire country, of crafting governance structures (through Acts of Parliament) which concentrate power in the hands of a single individual. Finally, the researchers hope that the debate may conscientise architects of Acts of parliament that, poor governance practices may create negative perceptions in the minds of local and international investors on the appropriateness of a country as a safe and suitable destination for investment capital, ultimately scuppering efforts geared towards foreign direct investment (FDI).

In order to generate this debate, the paper quantitatively investigates the extent of divergence between the BURS Act (2004) and the King Code (2002) through a self-constructed checklist (See appendix 1: the South African King Code Checklist (SAKCC)). The SAKCC contains 44 corporate governance provisions based on the five main sections of King Code (2002) covering: boards and directors, risk management, internal audit, integrated sustainability reporting and accounting and auditing. The BURS Act (2004) prescribes the governance structure of BURS as follows; from board appointment and removal, board composition, director qualification, remuneration, tenure of directors, duties and responsibilities of directors among others. The researchers hasten to caution that this paper does not seek to question the legality and or lack thereof of the BURS Act (2004) as instituted by the Parliament of Botswana under the system of parliamentary democracy.

State Owned Enterprises (SOEs) or parastatal organisations, are arm's length corporate entities established to pursue public policy and commercial objectives (Bozec, 2005, p. 1922). SOEs may be wholly owned by federal government or provincial government and are similar to private firms in the way they operate and function. Unlike public limited corporations, SOEs do not have major CG control devices such as a market for corporate control and they are normally monopolies. SOEs don't have shares issued to the public and are thus not exposed to pressure from the stock market (risk of takeover) (Bozec, 2005, p. 1929). They are financed wholly or in part from state resources, normally get the state as guarantor if funded from external sources, hence no pressure from creditors.

BURS, a Botswana SOE, was chosen for this study because the organisation is critical to the economy of the country through its tax collection service. According to BURS (2015) over the past five years, tax revenue as a proportion of Gross Domestic Product (GDP) has been more or less stable at around 20% and tax revenue as a proportion of government budget has been increasing consistently since 2005/06, signifying the growing importance of the tax revenue in the economy (BURS, 2015). As such, BURS is an important integral component in economic development of Botswana. Revenue collected by BURS goes towards construction of infrastructure such as schools, roads, hospitals and other physical infrastructure and also towards human resource and social development of the people of Botswana. The researchers considered it important to investigate governance structures of BURS in line with international best practice taking into account the critical role it plays in the economy of Botswana.

The King Code (2002) is used as a standard for best practice corporate governance for the following reasons; first, although Botswana has a code of corporate governance, [the Botswana Code of Corporate Governance (BCCG) of

2013], the BCCG Code was developed long after the BURS Act of (2004). Second, the BURS Act (2004) was developed two years after the second review of the first King Report (1994). In a way the second King Report (2002) could have been used as guide to develop the BURS Act (2004). Third, companies in Botswana tend to adopt codes from other countries in an endeavour to address corporate governance issues. In particular, the South African King Report is generally used as a standard for best practice corporate governance in Botswana. Fourth, several companies doing business in Botswana are headquartered in South Africa, hence are required by their head offices to adhere to the King Code of South Africa. In a way, the appropriateness of the King Code (2002) as a standard for best practice corporate governance in Botswana is therefore not in doubt.

The rest of the paper is organized as follows. In Section 2 we outline BURS governance structure as prescribed by BURS Act (2004). In Section 3 the literature and theoretical framework is surveyed. Section 4 deals with methodology while Section 5 presents empirical results and section 6 discusses BURS governance structure and potential governance problems. Concluding remarks are in Section 7.

2. ABOUT BURS

BURS is a quasi-independent SOE whose mandate is ‘to perform tax assessment and collection functions on behalf of the Government and to take appropriate measures to counteract tax evasion on the one hand, and to improve taxpayer service to a much higher level on the other’ (BURS, 2004b). BURS derives its mandate from the BURS Act (2014) (the Act). It is a body corporate capable of suing and being sued at law (BURS Act 17 of 2004, ss 3). In fulfilment of its mandate the BURS Act has empowered BURS to: Administer and enforce the revenue laws; Promote compliance with the revenue laws; Take such measures as may be required to improve service given to taxpayers with view to improving efficiency and maximizing revenue collection; Take such measures such as may be required to counteract tax fraud and other forms of tax evasion; Advise the Minister on matters relating to the administration and collection of tax; and Perform such other functions in relation to tax as the Minister may direct (BURS, 2014).

BURS is headed by a commissioner general whose task is to ensure that BURS executes its mandate as stipulated by the Act. BURS has two core business units, the Internal Revenue Division (IRD) which is headed by a Commissioner Internal Revenue (CIR) and is charged with the responsibility of administration of Income Tax, Value Added Tax and Capital Transfer Tax. The division is also mandated with other functions like debt management, taxpayer audit, investigation and collection of intelligence information and risk analysis. The second core unit of BURS, Customs and Excise collects customs and excise duties, import value added tax and other levies. It also has the responsibility of facilitating legitimate imports and exports, protection of Botswana society against cross-border crime and combating unfair and harmful trade practices (BURS, 2014).

2.1 Governance Structure as Stipulated by the BURS Act (2004)

BURS is governed by a board of directors [ideally] and according to section 6 of the Act, the board is responsible for the direction of the affairs and operations of BURS. BURS board appointments are the prerogative of the minister as stipulated in section 7 of the Act.

The board consists of a chairperson who *shall* be the Secretary of Financial Affairs of the Ministry of Finance and Development Planning (“MFDP”), a representative from the Ministry of Trade and Industry and a Commissioner General who shall assume the role of chief executive officer (CEO). In addition the board consists of a representative from Bank of Botswana (central Bank of Botswana) and three members appointed from the private sector on the basis of ‘knowledge of and experience in, financial affairs, economics, business and legal affairs’ (see ss 7 (1)(e)). However, the Act does not stipulate criteria and or qualifications of; the Secretary of Financial Affairs of the Ministry of Finance and Development Planning, representative from the Ministry of Trade and Industry, and representative from Bank of Botswana. In total, the board shall consist of seven members and may appoint a vice chairperson of the board. All other appointments are done [ultimately] by the Minister of Finance and Development Planning (the Minister).

Functions of the BURS board of directors are stipulated in section 8 of the Act. The Act is thin on the powers and functions of the board. The powers of the board are limited to administrative and operational matters. Specifically it addresses the right of the board to demand specific information from the commissioner general, giving direction to the commissioner general with respect to operational policies and implementation thereof and approval of structures necessary to discharge BURS functions and approval of a code of conduct for BURS.

The Act (see ss 8(2)) specifically prohibits the board from intervening in the determination of any tax assessment; tax liability and tax appeal by any taxpayer but does not stipulate who has to deal with such matters. Board members have tenure of office of four years and may be reappointed at the end of their term (see ss 9). Disqualification of board members is dealt with under section 10 of the Act which stipulates that board members may be disqualified if declared bankrupt, convicted of a criminal offence within and without the jurisdiction of Botswana, has a record (proven) of tax evasion, has become an employee of BURS or actively engaged in politics either by holding party political office, election to either local authority or national assembly (see ss 10 (1) (a) to (e)).

Removal of board members is the prerogative of the Minister under whose portfolio BURS falls as stipulated by section 11 of the Act. Removal of board members could be effected for several reasons such as absence from (without reasonable cause) three consecutive meetings of the board, inefficiency, physical or mental incapability which may hinder a member from discharging their duties, contravention of the BURS Act, unprofessional conduct as pronounced by relevant bodies and failure to declare interests in accordance with section 13 of the Act (see ss 11(1) (a) to (g)). Although the Act does not stipulate criteria for appointment of board members except under section 7(1) (e), it categorically stipulates that all appointments are the prerogative of the Minister (see ss 7 (1) and ss 12). Section 13 of the Act requires board members to disclose their interests with respect to matters before the board if they have direct or indirect interest.

With regard to board meetings, the Act stipulates that the board has the leeway to regulate its own proceedings under section 14 (1) and that the board should meet at least four times a year (e.g. ss 14 (2)). Section 14 (4) empowers the board chairperson to convene an extraordinary meeting of the board if he/she deems it necessary to do so. Similarly under the same section, three or more board members may request the board chair to convene an extraordinary meeting of the board. Section 14 (5) stipulates that the quorum at any board meetings shall be four members and that board decisions shall be that of the majority of board members at that meeting (see section 14 (7)). In terms of board committees the Act mandates the board to appoint committees of a general or special nature as determined by the board (see ss 15 (1)). This gives the board an opportunity to appoint various board committees if they deem it necessary to do so.

Remuneration of board members is subject to the approval by the Minister as stipulated under section 17, while appointment of board secretary is done by the board (ss 18). The secretary will be accountable to the board for his/her functions. The board has the ultimate authority to appoint (for a four year term), determine the remuneration of the board secretary and terminate his/her appointment as per section 21 (1) to (3). In addition to appointing the board secretary the board has the authority to appoint the BURS auditors (section 28 (2)).

Section 22 of the Act stipulates that the commissioner general or chief executive officer shall be appointed by the Minister on recommendation from the board for a period of 5 years which may be renewed if the Minister (not the board) deems it necessary to do so under section 24 (1). Clearly, the Minister has the ultimate authority as to who gets appointed to this position. The Minister also has the ultimate authority on termination of the commissioner general's appointment under section 24 (2). BURS as a government entity is financed through appropriations from Parliament (see ss 26 (1)).

In terms of reporting, BURS should report to the Minister six months after the end of the financial year by submitting a report of its operations, auditor's report accompanied by audited accounts (ss 29 (1)) which shall be tabled before the Botswana Parliament by the Minister within three months of receiving the report (ss 29 (3)). The Act is not clear as to who between BURS board and BURS management reports to the Minister.

While section 8 (2) stipulates non-interference of the board in the determination of any tax assessment, tax liability or tax appeal by any tax payer, section 31 of the Act on the other hand seems to suggest otherwise. However, it qualifies the involvement of board members on determination of exemption, mitigation deferment or remission of any tax by stipulating that approval should be sought from the Minister before such actions could be taken.

3. LITERATURE & THEORETICAL FRAMEWORK

3.1 Literature Review

Literature on corporate governance generally tends to focus on governance practices of public listed corporations. For instance, researchers both in the developed and developing world have examined compliance with best practice corporate governance codes and firm outcomes. However, most studies on compliance with international best practice corporate governance have been conducted in the developed world such as in the UK (see Arcot et al., 2010; Conyon and Mallin, 1997; MacNeil and Li, 2006; Weir and Laing, 2000), Germany (see Talaulicar and v. Werder, 2008; Werder et al., 2005), Portugal (see Alves and Mendes, 2004) and Spain (see Fernández-Rodríguez et al., 2004) and developing world (e.g. Cyprus by Krambia-Kapardis and Psaros (2006)) and South Africa (e.g. Deutsche Bank, 2002; KPMG, 2003; KPMG, 2004; KPMG, 2005; KPMG, 2006; Magang, 2012; Ntim, 2009; Ntim et al., 2012).

Few studies have examined corporate governance practices of SOEs. For instance Bozec (2005) examines boards of directors, market discipline and performance of SOEs in Canada for the period 1976 to 2000. Using a sample of 25 SOEs from across industrial sectors, Bozec (2005) conducts a regression analysis of the relationship between performance and board characteristics. The study finds a positive relationship between product market competition and firm performance, no relationship between board committees (e.g. remuneration and nomination) and performance. The study also finds a negative relationship between audit committee and performance. The findings of the study lends support to the argument that, exposure of companies to competitive environment enhances effectiveness of boards.

Bozec (2005) focusses on SOEs in a developed country; as such findings from Canada may not necessarily be applicable to a developing country, like Botswana given the politico, socio and economic differences between these countries. The researchers are not aware of studies which have examined corporate governance practices of SOEs specifically focussing on Acts of parliament which created SOEs. As such this paper seeks to contribute to the dearth of literature on corporate governance in Botswana by specifically researching corporate governance of SOEs and Acts of parliament which created these institutions.

3.2 Theoretical Framework

BURS Act (2004) is a creation of the Botswana Parliament. Similar to the UK, Botswana follows a parliamentary system of governance. Under this system of governance citizens elect representatives to a legislative parliament to make the necessary laws and decisions for the country (Strøm, 2000). Lijphardt (1984; 1992) defines parliamentarianism as a form of constitutional democracy in which executive authority emerges from and is responsible to legislative authority. This system of governance was borne in modern day Britain (Strøm, 2000). Accountability between the principal and agent under parliamentarianism is indirect. For instance the prime minister (or president) and his/her cabinet are accountable to any majority of the members of parliament (who in turn are accountable to the voters or principals) and can be voted out of office by the latter through a vote of no confidence (Steffani, 1979 cited in Strom 2000). Parliament directly represents the people/electorate (principals) and thus acts as agents of the people/electorate and or principals. The chain of delegation under this system of governance is arranged as follows; (1) from voters to elected representatives/parliamentarians, (2) from legislators to executive branch in particular to the head of government, (3) from the head of government to heads of different executive departments (ministers) and (4) from heads of different executive departments to civil servants (Strøm, 2000). According to Strøm (2000) civil servants ultimately implement public policy under the parliamentary system of governance.

In the context of BURS the agency relationships as per the system of parliamentary democracy are as follows; (1) the electorate/people are the principal owners of BURS while the parliamentarians are their agents (first line of delegation), (2) the head of government/president is the agent of parliamentarians (second line of delegation), (3) the ministers (in particular MFDP) are agents of the head of executive/president (third line of delegation) and (4) BURS management is the agent of the executive in particular MFDP (fourth line of delegation). This creates a single long chain of delegation with multiple links where a single principal delegates to a single or multiple noncompeting agents.

Conventional agency theory maintains that the interests of the agent and those of the principal never fully converge because of divorce of ownership and control which leaves management free to run the company as it saw fit (Berle and Means, 1932). Managers of contemporary publicly held organisations are not the owners and as such will always maximise their own utility as per the classical economics view of man (Burton, 2000). Literature suggests several mechanisms to try and align the interests of the agents with those of the principals e.g. outcome based contracts (Fama, 1980), use information systems to curb agent opportunism (Fama, 1980; Fama and Jensen, 1983), performance contracts, managerial labour market (Eisenhardt, 1989) among others. This remedy is used in the context of a company where the chain of delegation is from the shareholders to the board of directors and to management. Ultimately shareholders may have an opportunity to remove incompetent directors and senior management through a vote at annual general meetings (“AGMs”).

In the context of BURS the owners/electorate do not have the luxury to hold AGMs because of the system of parliamentary democracy (Strøm, 2000). Instead, their first line of agents [parliamentarians] are tasked with the responsibility of interrogating on their behalf the report tabled before parliament by the Minister in accordance with provisions of section 29 (2) (d) of the Act. Clearly, taking agency theory argument of non-convergence of the interest of agent and principals, it is logical to conclude that in a long chain of delegation under a parliamentary democracy non-convergence of interests between the owners and the managers is even greater.

4. RESEARCH DESIGN & METHODOLOGY

This study seeks to generate a debate on whether BURS governance structure as determined by the Act creates a room for impropriety, mismanagement, nepotism, dominance and or corruption. The study, attempts to do this by investigating the extent of divergence of BURS governance structure from recommendations from best corporate governance principles such as the King Code (2002). The second King Report of 2002 is chosen in particular because BURS Act came into existence in 2004. As such, the architects of BURS Act could have used King 2 Report as a guide if indeed they subscribed to what is deemed to be best practice corporate governance.

First, a checklist based on King Code (2002) (SAKCC) is constructed by syntactically¹ using the separations created by the King Code Commissioners generate a list of all the recommendations from the five main sections (themes) of the

¹ Using the separations created by the King Code Commissioners such as words, sentences, or paragraphs/main topics. Stemler, Steve (2001). An overview of content analysis. Practical Assessment, Research & Evaluation, 7(17). Retrieved June 11, 2015 from <http://PAREonline.net/getvn.asp?v=7&n=17> .

Code resulting in 44 provisions. Second, the BURS Act (2004) is content analysed and each section coded (using a *priori*² coding from the Code) in terms of the five main themes; Theme 1 - Boards and Directors, Theme 2 - Risk Management, Theme 3 – Accounting and Auditing, Theme 4 - Integrated Sustainability Reporting (see Appendix 2: BURS Content Analyses Template) . Third, using the SAKCC and BURS Content Analysis³ Template, a value of “1” is awarded if any of the 44 corporate governance provisions of the Code is found to have a latent meaning (e.g. an interpretive reading of the symbolism of the underlying physical data) similar to any section from the BURS Act (2004) and “0” otherwise. Four, conformance index is then computed, with zero (0 per cent) to fifty (50 per cent) indicating divergence by the Act from the Code while 51 to 100 per cent indicating conformance with the Code.

Five, a discussion based on conformance index/misalignment and suppositions arising from non-conformance is then generated to try and draw parallels between the board characteristics as recommended by the Act and as recommended by the King Report (2002).

The researchers adopt a simple dichotomous weighting scheme for the corporate governance provisions for the reasons noted in the literature by Ntim, Opong, Danbolt & Thomas (2012) and Magang (2012). The simple dichotomous weighting scheme may not be able to capture the relative significance of the various corporate governance provisions (Marston and Shrides, 1991; Beattie et al., 2004; Barako et al., 2006) but are adopted for the following reasons as noted by Ntim et al. (2009). First, no rigorous theoretical framework on which weights could be correctly assigned to different corporate governance provisions has been developed; as such an unweighted coding scheme avoids a situation whereby the SAKCC is excessively biased towards a particular set of corporate governance provisions (Marston and Shrides, 1991; Botosan, 1997; Owusu-Ansah, 1998). Second, prior literature indicates that the use of weighted and unweighted indices tend to give similar results (Owusu-Ansah, 1998; Barako et al., 2006). Further, dichotomously scoring disclosures in annual reports is supported by theoretical and empirical literature (e.g. Marston and Shrides, 1991; Meek et al., 1995; Collet and Hrasky, 2005; Beattie and Thomson, 2007; Tsamenyi et al., 2007; Henry, 2008; Ntim et al., 2012 and Magang, 2012).

The King Code (2002) was considered to be relevant in this instance because it is touted as the best code in the sub-Saharan region with regard to best practice governance (Mangena, 2008). Secondly, the King Code borrows heavily from the Cadbury Code (1992) which is also considered to be the international blue print with regard to best practice corporate governance (Mallin, 2004). Third, most countries in the sub-Saharan region (including Botswana) which have developed their own codes tend to borrow more from the code. As such best practice governance guidelines as prescribed by the King Code (2002) do not differ much with those developed in other sub-Saharan countries; hence the Code may be used as a blue print of best practice corporate governance in Botswana.

EMPIRICAL RESULTS

Results of scores from the SAKCC checklist are presented in Table 1: SAKCC BURS Scored. As per results from Table 1, BURS Act (2004) conforms to 20% of the provisions from Boards and Directors (THEME1), 0% for THEME2 –Risk Management, 33.3% of provisions from Accounting and Auditing (THEME3) and 14.3% of provisions from THEME4 – Integrated Sustainability Reporting. Overall, the BURS Act of (2004) conforms to 15.9% of the 44 provisions from the King Code (2002).

Table 1: SAKCC BURS Scored			
Prov#			
	1. Board and Directors (THEME1) Provisions	Score	Score %
1	Does the Act mandate separation of roles of CEO/MD and board chairman (ROLEDU6)?	1	
2	Does the Act recommend that the chairperson of the board be an independent non-executive director?	0	
3	Does the Act recommend categorisation of capacity of each director accordingly e.g. Executive, non-executive & independent non-executive. (CAPDIR8) (Man.)	0	
4	Does the Act recommend that the role of chairperson be held by an independent non-executive director?	0	

2 Weber, R. P. (1990). Basic Content Analysis, 2nd ed. Newbury Park, CA.

3 Holsti, O.R. (1969). Content Analysis for the Social Sciences and Humanities. Reading, MA: Addison-Wesley.

5	Does the Act recommend that BURS appoint an audit committee? (AUDC9) (Man.)	1	
6	Does the Act recommend that the audit committee be chaired by an independent non-executive director? (AUDINEDC10)	0	
7	Does the Act recommend that the qualifications of BURS directors be disclosed in the annual report? (DIRQUAL12)	0	
8	Does the Act recommend that the experience of directors be disclosed in the annual report? (DIREXP13)	0	
9	Does the Act recommend appointment of audit committee members who are financially literate? (Qualifications) (AUFLIT14)	0	
10	Does the ACT recommend that BURS appoint a remuneration committee? (REMCOM15) (Man.)	0	
11	Does the Act recommend that the remuneration committee be chaired by an independent non-executive director? (REMCINED16)	0	
12	Does the Act recommend that the remuneration committee consist entirely of independent non-executive directors? (REMINEDS16)	0	
13	Does the Act recommend that details of directors' remuneration be disclosed in the annual report? (DIRREM18)	0	
14	Does the Act recommend that BURS board appoint an appointment/nomination committee? (NOMCOM19)	0	
15	Does the Act recommend that the appointment committee be chaired by an independent non-executive director? (NOMCINED20)	0	
16	Does the Act contain a statement/policy of how board appointments are made? (BAPP21) (Man.)	1	
17	Does the Act have a corporate code of conduct on conflict of interest relating to directors and management? (CCCOND22)	1	
18	Does the Act recommend that the board directors of directors to take independent professional advice? (DIRPAD23)	0	
19	Does the Act recommend that BURS disclose/include in the annual report a statement of how performance evaluation of the board, its committees and its directors? (PERFEV24)	0	
20	Does the Act recommend that gender sensitivity be taken into account in the appointment of board members? (DIVERSE25)	0	
21	Does the Act recommend the minimum frequency of board meetings per year? (BOARDMEET27)	1	
22	Does the Act recommend frequency of meetings of audit committee per annum? (AUDMEET28)	0	
23	Does the Act recommend frequency of meetings of remuneration committee per annum? (AUDMEET28)	0	
24	Does the Act recommend frequency of meetings of nomination/appointment committee per annum? (AUDMEET28)	0	
25	Does the Act mandate that BURS annual report contain a list of individual attendance by directors? (DIRATTEND31)	0	
	Total Score for Theme 1	5	20%
	2. Risk Management (THEME2)		
26	Does the Act recommend that BURS should have risk management strategy? (RISKMAN32)	0	
27	Does the Act recommend that BURS should have a risk committee? (RISKCOM33) (Man.)	0	

28	Does the Act mandate that BURS disclose the number of meetings of the risk committee in the annual report? (MEETRISK34) (Man.)	0	
29	Does the Act recommend or mandate that BURS should have sound internal control system. (ICS35)	0	
30	Does the Act mandate that BURS should have a risk appetite. (RISKAPP36)	0	
31	Does the Act mandate that BURS should disclose a statement on the risk assessment and adequacy of risk management and internal control systems in the annual report? (RISKASSES37)	0	
32	Does the Act mandate that there be a statement on key risk areas? (KEYRISK38)	0	
33	Does the Act mandate that there be a statement on key performance indicators? (STATEKPIS38)	0	
34	Does the Act mandate that BURS should have a confidential reporting process (whistle blowing) covering fraud and other risks? (WHISBLOW40)	0	
	Total Score for Theme 2	0	0%
	3. Accounting and Auditing (THEME3)		
35	Does the Act mandate that BURS should have an internal audit function? (INTAUD41)	1	
36	Does the Act mandate that BURS disclose the amount paid to external auditors? (AUDPAY42)	0	
37	Does the Act mandate that BURS report on the details of non-audit services rendered by the external auditor? (NONAUDSERV43)	0	
	Total Score for Theme 3	1	33.3%
	4. Integrated Sustainability Reporting (THEME4)	0	
38	Does the Act mandate BURS to have a code of ethics? (CODEETHIC44)	0	
39	Does the Act mandate that BURS should disclose that it has developed and implemented standards and practices in the company based on code of ethics. (STATSCODE45)	0	
40	Does the Act mandate BURS to comply with corporate social investment? (CSI46)	0	
41	Does the Act mandate BURS to invest in human capital development/skills training? (CHCD49)	0	
42	Does the Act mandate BURS to implement a policy on HIV/AIDS? (HIVAIDS51)	0	
43	Does the Act mandate BURS to implement a policy on environmental management? (CEM52)	0	
44	Does the Act mandate BURS to implement a policy on health and safety practices? (CH&S53)	0	
	Total Score for Theme 4	1	14.3%
	Summary for All Themes		
	THEME1	5/25	20.0%
	THEME2	0/9	0.0%
	THEME3	1/3	33.3%
	THEME4	1/7	14.3%
	TCI (Total Conformance Index)	7/44	15.9%

The results from Table 1 indicate a high degree of non-conformance with best practice corporate governance principles by the BURS Act (2004). This is not surprising because the Act is a mandatory piece of legislation crafted by the Botswana parliament to pursue public policy through BURS.

However, when compared with prior literature which investigated compliance with King Code provisions by publicly listed corporations, the results indicate a high contrast. For instance Ntim *et al.* (2012) finds an aggregate compliance of 61% with all King Code provisions for a five year period from 2002 to 2006 for a sample of 169 firms drawn from JSE listed companies. Similarly, Magang (2012) finds an average compliance index of 40.6% in 2002 using a sample of 136 JSE listed firms and a compliance index of 74.2% for the same sample in 2008. The main evidence that emerges from this investigation indicates that the BURS Act of 2004 does not conform to international best practice corporate governance as per the contention of the researchers as evidenced by an overall conformance index of 15.9% (or 7 provisions out of 44). These results therefore confirm the researchers' contention that BURS governance structure does not conform to international best practice such as the King Code (2002). As such, non-conformance with international best practice corporate governance has the potential to breed poor governance practices.

The next subsections attempt to discuss the ramifications of non-compliance of the BURS Act to international best practice by examining selected sections of the Act.

5. DISCUSSION & ANALYSIS

5.1 Board Appointments

The BURS Act of 2004 is crafted in such a way that the Minister of Finance and Development Planning has absolute decision making authority with respect to appointment of board members (see ss 7 (1) and ss 12). This arrangement is contrary to recommendations from best practice corporate governance principles (e.g. King Code, 1994, 2002), because BURS board appointments are done by a single individual (e.g. the Minister). There are a number of potential problems which may arise as a result of this system of appointment as mandated by the Act.

First, in a modern corporation and in accordance with company law, members (shareholders) have voting rights which include deciding on who will sit in the board of directors (King Code, 1994, 2002, 1999). In the context of BURS, the voting rights of owners/electorate are ceded to a single individual (the Minister). Notwithstanding the parliamentary system of governance which gives the Minister the power to be the ultimate appointing authority, this raises the questions of how possible it is that a single individual could objectively represent accurately the views of multitudes of BURS owners (the electorate)!

Second, the Act presumes that any entity appointed to the position of Minister of Finance and Development Planning, will be competent enough (e.g. technical and expertise) to evaluate and select individuals of the right skill, expertise and experience suitable for the exact demands of the task at hand (board member of BURS). This aspect is worsened by the fact that in Botswana there is no requirement for minimum academic qualification for those seeking to vie for any elective posts (see the Electoral Act, 2004). Also appointments to ministerial portfolios are not always based on an individual's technical background. For instance, a lawyer may be appointed to a portfolio on education or a medical doctor appointed to a ministerial portfolio on trade and in a worst case scenario an entity without any minimum academic qualification appointed to a ministerial post. As such entities appointed to ministerial posts may not necessarily possess the skill, competence and expertise in the area of corporate governance to enable them to execute their responsibilities diligently with regard to appointing suitable candidates for directorship positions in parastatals like BURS. The King Code (2002) places emphasis on the qualifications of directors as one of the attributes which may influence the effectiveness of the board in its oversight functions.

Third, the blanket authority bestowed by the Act on the Minister also raises agency problems of commission or sabotage, when the agent takes some positive action contrary to the will or interest of the principal (Strøm, 2000), (e.g. parliament and by extension the voters). The Minister may (unbeknown to him) select the wrong candidates who do not have the most appropriate skills, expertise and competence. Alternatively the Minister may handpick individuals on the basis of patronage (e.g. friendship, tribe mate or even paramours) and not skill and competence. This problem is further exacerbated by the fact that the Act does not provide for the requisite skills and competence of the members so appointed (except in the case of ss 7 (1) (e)). As a result this may result in ineffectiveness and lack of independence on the part of BURS board. Ultimately the board may fail to discharge its oversight role. Further, the individuals appointed may feel that they owe their loyalty to the Minister hence fail to act in the best interest of both BURS and the electorate/voters.

In order to address this shortcoming, appointments to BURS board could be done through a select parliamentary committee which the Minister should be a member of. Since parliamentarians directly represent voters (owners), this approach is close to a shareholder-wide vote, often held at a general shareholder meeting when directors are appointed to company boards.

Fourth, the Act presumes that the minister is not a self-interested individual (Eisenhardt, 1989) but rather a good steward who pursues a sense of worth, altruism, a good reputation, a job well done, a feeling of satisfaction and a sense of purpose in accordance with stewardship theory (Donaldson and Davis, 1994). It assumes that he/she will at all-time act in the best interests of the corporation and ultimately the principals/electorate. Essentially, the Act gives the

Minister, who is number three in the chain of delegation under parliamentary democracy the status of a principal (the electorate). Ultimately, appointees' [to the positions of director] owe their allegiance to the Minister and not the corporation in line with best practice corporate governance principles. This compromises the corporate governance pillar of independence which advocates for corporate executives to be free from influence (King Code, 2002).

5.2 Board Chair

Section 7 of the Act also mandates that the chairperson shall be the Secretary of Financial Affairs of the Ministry of Finance and Development Planning. The recommendation from section 7 of the Act contravenes recommended best practice corporate governance as per the King Code (2002) with regard to appointment of board chair. Best practice (King Code, 2002) recommends that board chair should be appointed by board members on a full time or part time basis.

The Act presumes that any individual appointed to the position of Secretary of Financial Affairs of the Ministry of Finance and Development Planning necessarily has the requisite skills, competence and acumen to hold the position of board chair of BURS. This assumption may not necessarily hold taking into account that appointments to top government posts [as is the case in most developing countries] may be based on patronage, friendship and or ruling political party affiliation (Okeahalam and Akinboade, 2003). As such incompetent, unqualified and undesirable individuals often get appointed in important positions in government. This practice prevalent in most developing countries (including Botswana), ultimately cause public institutions to gradually get weaker. As a consequence, weak institutions, led by partisan individuals fail to deliver on their mandate. In a worst case scenario, they cater to the vested interest groups, sometimes in return for monetary or other benefits.

In the context of BURS, the board of directors may be headed by an individual who may not have the right skills and competence, but a mere ruling party sympathiser. In this case, the oversight functions of the board and the system of checks and balances may be hopelessly compromised resulting in a weak institution which fails to deliver on the important mandate of tax collection resulting in dire consequences for the country.

In order to align appointment of BURS board chair with best practice, the board may be given the prerogative to select a chair among board members as is the case with regard to selection of deputy board chair in accordance with best practice governance principles such as the King Code (1994, 2002, and 2009).

5.3 Board Composition

The King Code (2002) recommends that the majority of directors on the board should be NEDs, independent of management so that shareowner interests (including minority interests) can be protected. This suggests that the King Code expects companies with more NEDs to have better corporate governance practices than those with fewer NEDs.

The Act however does not stipulate the capacity of directors in terms of whether they are executive, non-executive or independent non-executive directors in accordance with international best practice (e.g. King Code, 1994, 2002). As such, it is not clearly delineated as to who monitors who as far as the governance of BURS is concerned. Board composition and director designations should be clearly delineated and disclosed accordingly to enhance the oversight function of the board of directors.

5.4 Removal of Board Members

Section 11 of the Act, empowers the Minister to remove directors from office under certain circumstances such as; absence from (without reasonable cause) three consecutive meetings of the board, inefficiency, physical or mental incapability which may hinder a member from discharging their duties. This recommendation creates a stranglehold on the BURS board by the Minister. In addition, the recommendation creates an arrangement whereby board members may feel that they owe their allegiance to the Minister. The Board is not in a position to remove (but recommend for removal to Minister) a non-performing board member. The Minister is not obligated to act on the recommendation from the BURS board. As such, he/she may disregard the recommendation from the BURS board. It is therefore clear that the BURS governance structure as mandated by the Act gives the Minister unfettered powers with regard to governance of BURS.

Board removals could also be affected though the board without shareholder approval as recommended by King Code III (2009). BURS board could be empowered to vote to remove non-performing board members. This procedure could greatly reduce the stranglehold by the Minister on the BURS Board. Alternatively, the Act could be amended to recommend that board removals be done through a select committee of parliament with input from the board.

5.5 Remuneration of Board Members

The stranglehold by the Minister on BURS is also evident in operational decisions pertaining to remuneration of board members. For instance, BURS board of directors is not empowered to decide on matters relating to remuneration of board members. Remuneration of board members is subject to the approval by the Minister as stipulated under section

17. This is in contrast to best practice governance as recommended by the King Code (2002) whereby the board through a remuneration committee decides on matters pertaining to remuneration of directors.

The Act further constrains BURS in terms of its day to day activities. As an example, BURS is constrained from raising loans from any source in or outside Botswana because the organisation must seek approval from the Minister and not the board (see section 26 (3)). Similarly, BURS is mandated to seek approval from the Minister before investing funds which are not immediately required for the performance of its functions (section 26 (4)).

This structural arrangement has the potential to render BURS ineffective and unable to take advantage of business opportunities which may arise in its day to day business because of the requirement to seek approval from the MFDP. The structure of BURS has the potential to render BURS management incompetent in this era of volatility of commodity prices which requires expeditiousness in decision making.

5.6 Reporting

The Act stipulates that 'BURS should report to the Minister six months after the end of the financial year by submitting a report of its operations, auditor's report accompanied by audited accounts (section 29 (1)).' It is not clear as to whether, BURS management, or the board of directors reports to the Minister. Reporting requirements as per best practice corporate governance principles (King Code, 2002) are such that, management of corporations report to the board of directors, which in turn reports to the shareholders. If it is BURS management which must report to MFDP then what role does BURS board play apart from making recommendations on various aspects to the Minister in an advisory capacity!!

Second, financial reports contain technical details which require expert knowledge in the area of finance, accounting and economics. As discussed in section 5.1, the Minister may not be proficient in these areas to comprehend the content of the report. Further, this begs the question of, "What really is the purpose of BURS board of directors when the Minister performs all the board functions such as, appointment, removal, decisions on mundane daily routines of BURS?"

5.7 Implications of BURS Governance Structure on the Pillars of Best Practice Governance (Suppositions)

The dominance of BURS governance structure by the Minister has the potential to render BURS a '*toothless bulldog*' in its tax revenue collection endeavours. For instance BURS management may be reluctant to pursue big businesses owned by highly placed individuals in the Botswana society with power of money, influence and political connections to the ruling elite, who engage in illicit activities which fall within the ambit of BURS. For instance, if an individual with a high social class and has political connections to the ruling elite, is entangled either personally or through his/her business enterprises in undesirable activities e.g. **contraband**, drug-trafficking, money laundering, tax evasion *etc.*, they may use their political connections to escape being sanctioned by government agencies (including BURS) responsible for combating such unlawful acts. In the case of BURS, officials may be fearful of losing their jobs and or being demoted because the influential errant entity (ties) may use their political connections to frustrate the efforts of BURS officials to indict them for their wrong doing(s).

This supposition is premised on the governance structure of BURS which gives ultimate authority to a single individual to appoint board members. The well connected social elite may request [because they have access] the ultimate appointing authority of BURS [the Minister who also doubles as his/her ally] to impede the efforts of BURS officials to take legal action against them. This is made possible by the fact that the BURS board chair (Secretary of Financial Affairs in the Ministry of Finance and Development Planning) is as per the Act a subordinate of the Minister, the Commissioner General (or BURS CEO) is appointed by the MFDP (*at-least ultimately*) and owes allegiance to the Minister and that all board appointments [and removals] are ultimately done by the Minister. The board appointees are therefore not free from the Minister's influence and may not have the nerve and or courage to challenge his/her decision(s) for fear of reprisal. Consequently, this governance structure has the potential to reduce BURS to a weak and ineffective organisation, where corporate governance pillars such as board independence, fairness, honesty, accountability among others are not observed.

In a worst case scenario, the structure has the potential to reduce BURS to an organisation which tends to chase after '*the small man*' with no political clout, the power of money and a high social status while leaving the social elite with political connections to trample over BURS rules and regulations with impunity.

6. SUMMARY

This paper attempts to demonstrate that BURS governance structure and possibly governance structures of other state owned enterprises do not conform to international best practice corporate governance principles as recommended by the King Code (2002). First, using a checklist to investigate the extent of non-conformance between the BURS Act of 2004 and King Code (2002), the paper concludes that there is a high degree of non-conformance to international best practice

corporate governance. The paper also finds that BURS Act gives the Minister unlimited powers of appointment, dismissal and mundane decisions pertaining to the day to day activities of BURS. Perhaps, governance structures for BURS and also other state owned corporations were not intended to meet international best practice by their architects (parliamentarians). If they were not meant to meet international best practice (as decreed by the architects), do governance standards obtaining in these corporations (SOEs) conform to best practice as per the views of owners/principals (electorate) of these corporations? If not, what remedies are available to the owners/principals of these corporations to ensure adherence to best practice? From an agency theory perspective, the long chain of delegation under a parliamentary democracy brings about non-convergence of interests between the principals (owners/electorate) and the agents and or agents of agents in the case of BURS and other SOEs. Unlike in a public limited corporation, the principals do not have an opportunity to demand accountability from their direct agents (parliamentarians) annually at the AGM. This only happens once every four or five years depending on the frequency with which elections are held in the country.

Second, when the BURS Act was developed in 2004, several international best practice corporate governance principles had been developed such as the Cadbury Code (1992), Greenbury Code (1995), Hampel Report (1998), and Higgs Report (2003) which were later combined to form the UK Combined Code (2003). In addition the South African King Code (1994 and 2002) was in existence. As such, the architects of BURS Act of 2004 could have drawn from international best practice to craft governance structures which embrace good governance. For instance, the architects could have crafted governance structures which promote independence, transparency, accountability, responsibility and fairness among others. However, these principles were overlooked by the Botswana Parliament in favour of a governance structure which gives unfettered powers to an individual e.g. the Minister of Finance and Development Planning under whose portfolio BURS falls. This is surprising given that, in recent years one of the strategies to try and increase private sector involvement in her economy, Botswana has been on the drive to attract foreign direct investment (FDI) by actively wooing investors through Botswana Investment and Trade Centre (BITC)⁴ to come and invest in Botswana. For instance, some of the attributes which had been touted as indicators of Botswana as a safe and suitable destination for investment capital include inter alia: *stable economy, low inflation, low corruption, low tax regime etc.*

The researchers contend that failure to demonstrate that the country subscribes to international best practice by for instance developing Acts modelled along international best practice corporate governance, will defeat the drive to attract FDI. Further, governance structures which concentrate power in the hands of a single individual create an unfavourable perception in the minds of investors ultimately leading to a *nosedive* in the level of confidence investors have about Botswana as a safe and suitable destination for investment capital.

Third, this paper makes recommendations with regard to enhancing BURS governance structure and possibly governance structures of other SOEs as follows; (1) appointments to BURS board could be done through a select parliamentary committee. The Minister may be part of the committee because BURS falls under his/her portfolio. Since parliamentarians directly represent voters (owners), this approach is close to a shareholder-wide vote, often held at AGMs when directors are appointed to company boards. (2) BURS board of directors should be empowered (through an amendment of the Act) to enable it to function in accordance with international best practice. (3) Reporting at BURS should be structured such that management reports to the board of directors, which in turn reports to the select parliamentary committee responsible for BURS. (4) BURS management and the board of directors should be empowered to deal with decisions relating to fundraising for BURS and investment of BURS funds. (5) The Act should also be amended to empower BURS to retain a certain percentage of the revenue generated from its tax collection activities as opposed to receiving an amount appropriated by Parliament (ss. 26 of the Act). This recommendation has the potential to grant some level of autonomy to BURS. The recommendation may also motivate BURS employees to effectively discharge their mandate because an increase in revenue collected will translate into an increase in revenue for BURS and ultimately an increase in resources to carry out organisational objectives.

These recommendations, have an overall effect of making BURS an effective organisation which is not hampered by status power, political connections and or money power in its tax collection endeavours.

Future research could investigate governance structures of other revenue authority organisations across the Southern African Development Community (SADC) region to determine whether these are crafted along similar lines of those of BURS. Secondly, future research could attempt to investigate why architects of Acts of Parliament favour governance structures which give unfettered power(s) to a single individual (e.g. the Minister under whose portfolio a SOE falls).

⁴ BITC is a parastatal/SOE formed to promote, encourage and facilitate export development and promote, attract, encourage and facilitate local and foreign investment promotion in Botswana (BITC Act, 2011, ss 16). BITC seeks to position Botswana as an investment destination of choice for both local and international investors. Among its responsibilities it seeks to develop new competitive investment and trade promotion models and to have Botswana as an investment destination of choice (BITC, 2015).

Research could also attempt to investigate Acts of other SOEs in Botswana to determine whether they also concentrate power in a single individual.

A limitation of the present study is that it investigates adherence to international best practice at BURS based on a comparison between what is mandated by the Act and a comparison with the King Code (2002) which is self-regulatory. In practice, what is mandated by the Act may not necessarily be the practice at BURS and vice versa. An empirical investigation of what obtains at BURS could give more insights on the extent of departure/convergence with international best practice.

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Appendices

Appendix 1: South African King Code Checklist (SKCC) 2002			
Board and Directors (THEME1)	Pg. No.	Key Words	Measurement
1. Does the Act mandate separation of roles of CEO/MD and board chairman (ROLEDU6)?	2.3.3 pp 24	Board Chairman/CEO/MD, Directorate, Directors	A binary number of 1 if the roles of chairperson and CEO/MD of a firm are split at the end of its financial year, 0 otherwise.
2. Does the Act recommend that the chairperson of the board be an independent non-executive director?			
3. Does the Act recommend categorisation of capacity of each director accordingly e.g. Executive, non-executive & independent non-executive. (CAPDIR8) (Man.)	2.4.3 pp 24	Directors, directorate	A binary of 1 if a narrative that classifies directors into executive, non-executive and INEDs is disclosed in the firm's annual report at the end of its financial year, 0 otherwise.
4. Does the Act recommend that the role of chairperson be held by an independent non-executive director?			
5. Does the Act recommend that BURS appoint an audit committee? (AUDC9) (Man.)	3.3 pp 33	Committees, audit	A binary of 1 if a list of audit committee members is disclosed or a narrative on the audit committee members is disclosed and 0 otherwise.
6. Does the Act recommend that the audit committee be chaired by an independent non-executive director? (AUDINEDC10)	3.3.2 pp 33	Committees, audit, chair	A binary of 1 if the audit committee chair is categorised as an INED and 0 otherwise
7. Does the Act recommend that the qualifications of BURS directors be disclosed in the annual report? (DIRQUAL12)	2.4.2 pp 26	Directors, qualification, directorate	A binary of 1 if the qualifications of directors are disclosed under their profile in the annual report or 0 otherwise.
8. Does the Act recommend that the experience of directors be disclosed in the annual report? (DIREXP13)	2.4.2 pp 26	Experience, directors directorate	A binary of 1 if the experience of directors is disclosed in the annual report and 0 otherwise.
9. Does the Act recommend appointment of audit committee members who are financially literate? (Qualifications) (AUFLIT14)	2.4.2 pp 26	Audit, committees, qualification	A binary of 1 if the audit committee members have financial qualifications (accounting/financial/business) qualifications and 0 otherwise.
10. Does the ACT recommend that BURS appoint a remuneration committee? (REMCOM15) (Man.)	2.5.2 pp 28	Remuneration, compensation, committees	A binary of 1 if a list of remuneration committee members or a narrative is disclosed in the annual report and 0 otherwise.

11. Does the Act recommend that the remuneration committee be chaired by an independent non-executive director? (REMCINED16)	2.5.2 pp 28	Remuneration, compensation, committee, chair, directors	A binary of 1 if the audit committee chair is categorised as an INED in the annual report and 0 otherwise.
12. Does the Act recommend that the remuneration committee consist entirely of independent non-executive directors? (REMINEDS16)	3.1 pp 190	Remuneration, compensation, committee, directors	A binary of 1 if the list of remuneration committee members consists entirely of INEDs and 0 otherwise.
13. Does the Act recommend that details of directors' remuneration be disclosed in the annual report? (DIRREM18)	2.5 pp 28	Remuneration, compensation, directors	A binary of 1 if director remuneration is disclosed in the annual report and 0 otherwise.
14. Does the Act recommend that BURS board appoint an appointment/nomination committee? (NOMCOM19)	4.1 pp 197	Nomination, appointment, selection, committee	A binary of 1 if a nomination/appointment committee or a narrative is disclosed on the committee and 0 otherwise.
15. Does the Act recommend that the appointment committee be chaired by an independent non-executive director? (NOMCINED20)	4.1 pp 197	Nomination, appointment, selection, chair	A binary of 1 if the audit committee chair is an INED and 0 otherwise.
16. Does the Act contain a statement/policy of how board appointments are made? (BAPP21) (<i>Man.</i>)	4.1 pp 197	Board appointments/selection	A binary of 1 if a narrative on board appointments is provided (where there is no nomination committee) and 0 otherwise.
17. Does the Act have a corporate code of conduct on conflict of interest relating to directors and management? (CCCOND22)	9.1 pp 41	Code of Ethics, Code	A binary of 1 if a narrative on the code of conduct/ethics is disclosed in the annual report and 0 if otherwise.
18. Does the Act recommend that the board directors of directors to take independent professional advice? (DIRPAD23)	2.1.7 pp 24	Professional advice, board training	A binary of 1 if a narrative stating that the board has an agreed procedure whereby directors may take independent professional advice, if necessary, at the company's expense and 0 otherwise.
19. Does the Act recommend that BURS disclose/include in the annual report a statement of how performance evaluation of the board, its committees and its directors? (PERFEV24)	2.8 pp 31	Performance evaluation/assessment, director evaluation	A binary of 1 if a narrative on the evaluation of the performance and effectiveness of a firm's board as whole individual directors is disclosed in the annual report, or otherwise.
20. Does the Act recommend that gender sensitivity be taken into account in the appointment of board members? (DIVERSE25)	7.1 pp 127	Directorate, diversity, board, directorate	A binary of 1 if the board of directors consisted of a combination of any number of black and white directors at the end of the financial year, 0 otherwise.
21. Does the Act recommend the minimum frequency of board meetings per year? (BOARDMEET27)	2.6 pp 30	Board meetings, frequency	A binary of 1 if a narrative stating that the board met four times or more during the financial year, 0 otherwise.

22. Does the Act recommend frequency of meetings of audit committee per annum? (AUDMEET28)	2.7 pp 30	Board committee meetings, audit, frequency	A binary of 1 if a narrative of frequency of meetings of the audit committee is disclosed in the annual report, 0 otherwise.
23. Does the Act recommend frequency of meetings of remuneration committee per annum? (AUDMEET28)	2.7 pp 30	Board committee meetings, remuneration, frequency	A binary of 1 if a narrative of frequency of meetings of the remuneration committee is disclosed in the annual report, 0 otherwise.
24. Does the Act recommend frequency of meetings of nomination/appointment committee per annum? (AUDMEET28)	2.7 pp 30	Board committee meetings, appointment/nomination/selection, frequency	A binary of 1 if a narrative of frequency of meetings of the appointment/nomination committee is disclosed in the annual report, 0 otherwise.
25. Does the Act mandate that BURS annual report contain a list of individual attendance by directors? (DIRATTEND31)	2.6 pp 30	Board meetings, frequency	A binary of 1 if a narrative of director attendance is disclosed in the annual report, 0 otherwise.
2. Risk Management (THEME2)			
26. Does the Act recommend that BURS should to have risk management strategy? (RISKMAN32)	2.1 pp 77	Risk management, strategy	A binary of 1 if a narrative on a system of total process of risk management, which includes a related system of internal control, is disclosed in the annual report, 0 otherwise.
27. Does the Act recommend that BURS should have a risk committee? (RISKCOM33) (Man.)	7.1 pp 77, 209	Risk management committee, risk committee	A binary of 1 if a narrative on a dedicated risk management committee is disclosed in the annual report, 0 otherwise.
28. Does the Act mandate that BURS disclose the number of meetings of the risk committee in the annual report? (MEETRISK34) (Man.)	7.4 pp 77, 211	Risk committee, meetings	A binary of 1 if a narrative on the frequency risk committee meetings is disclosed in the annual report, 0 otherwise.
29. Does the Act recommend or mandate that BURS should have sound internal control system. (ICS35)	3.1 pp 78	Internal control, controls	A binary of 1 if a narrative on the structure, work and authority flows, people and management information system is in place, is disclosed in the annual reports, 0 otherwise.
30. Does the Act mandate that BURS should have a risk appetite. (RISKAPP36)	3.1.2 pp 78	Risks, tolerance, appetite	A binary of 1 if a narrative on either termination, transfer, acceptance (tolerance) or mitigation through a system of appropriate internal controls is disclosed, 0 otherwise.

31. Does the Act mandate that BURS should disclose a statement on the risk assessment and adequacy of risk management and internal control systems in the annual report? (RISKASSES37)			A binary of 1 if a narrative which demonstrate that the company has dealt comprehensively with the issues of risk management and internal control e.g. appropriate disclosure on matters such as risk tolerance and the risk management process in the annual report, 0 otherwise
32. Does the Act mandate that there be a statement on key risk areas? (KEYRISK38)	81	Key risk areas, risks, risk management	A binary of 1 if a narrative containing a list of risks faced by the company is disclosed in the annual report, 0 otherwise.
33. Does the Act mandate that there be a statement on key performance indicators? (STATEKPIS38)	80	Key performance indicators, risk management, key risks	A binary of 1 if narrative which indicates that the firm has identified key risk areas and key performance indicators of the company and monitor these factors as part of a regular review of processes and procedures to ensure the effectiveness of its internal systems of control, 0 otherwise.
34. Does the Act mandate that BURS should have a confidential reporting process (whistle blowing) covering fraud and other risks? (WHISBLOW40)	81	Whistle, confidential reporting, hot line	A binary of 1 if a narrative stating that there are established easily accessible “whistle-blowing”/hot line/confidential reporting channels, 0 otherwise.
3. Accounting and Auditing (THEME3)			
35. Does the Act mandate that BURS should have an internal audit function? (INTAUD41)	4.1 pp 128	Internal audit, audit	A binary of 1 if a narrative stating the existence of an internal audit function, 0 otherwise.
36. Does the Act mandate that BURS disclose the amount paid to external auditors? (AUDPAY42)	126	Audit fee, external auditors, audit payment	A binary of 1 if the amount paid to external auditors is disclosed in the financial statements (income statement), 0 otherwise.
37. Does the Act mandate that BURS report on the details of non-audit services rendered by the external auditor? (NONAUDSERV43)	126	Non-audit services, audit services	A binary of 1 if a narrative is disclosed in the annual reports indicating the kind of services rendered by auditors over and above the normal audit services, 0 otherwise.

4. THEME4 Integrated Sustainability Reporting			
38. Does the Act mandate BURS to have a code of ethics? (CODEETHIC44)	pp 101	Code, ethics, conduct	A binary of 1 if a narrative which shows the existence of a clearly defined and documented code of ethics, stating the principles, norms, and standards that a firm promotes for the guidance and conduct of its activities, internal relations and interactions, with external stakeholders in accordance with established values, is disclosed in the annual report, 0 otherwise.
39. Does the Act mandate that BURS should disclose that it has developed and implemented standards and practices in the company based on code of ethics. (STATSCODE45)	Pp 102	Standards, codes, ethics	A binary of 1 if a narrative explaining what is acceptable, and not acceptable practice, or stating corporate ethical standards, stating how ethical infringements are identified, talks of promotion of ethical conduct, or how conflicts are resolved; is disclosed and 0, otherwise.
40. Does the Act mandate BURS to comply with corporate social investment? (CSI46)	pp 117	Social, investment	A binary of 1 if a narrative explaining the type of community investment and amount of money spent of the project, or expenditure of a social nature is disclosed, 0 otherwise.
41. Does the Act mandate BURS to invest in human capital development/skills training? (CHCD49)	Pp113-115	Kills training, skills development	A binary of 1, if a narrative stating expenditure on development of staff/staff training or a policy on skills development, 0 otherwise.
42. Does the Act mandate BURS to implement a policy on HIV/AIDS? (HIVAIDS51)	Pp109	HIV/AIDS	A binary of 1, if a narrative stating the existence of an HIV/AIDS policy, assistance rendered to HIV/AIDS projects or participation of the company on HIV/AIDS national projects, 0 otherwise.
43. Does the Act mandate BURS to implement a policy on environmental management? (CEM52)	Pp106	Environment management	A binary of 1, if a narrative stating environmental management issues addressed or expenditure towards environmental management, 0 otherwise.
44. Does the Act mandate BURS to implement a policy on health and safety practices? (CH&S53)	Pp106	SHE, health, safety	A binary of 1, if a narrative explaining the integration of business processes and safety, health, and environmental management is disclosed, 0 otherwise.

Appendix 2: Burs Content Analysis Template

CG Theme (Code)	BURS Act
Board Appointment	ss 7 (1) Board members “shall be appointed by the Minister”
Board Size	ss 7 – Seven members
Board Composition	1. ss 7 (1) (a) the Secretary of Financial Affairs of the MFDP
	2. ss 7 (1) (b) representative of ministry of Trade and Industry
	3. ss 7 (1) (c) a Commissioner General/CEO
	4. ss 7 (1) (d) a representative of BoB
	5. ss 7 (1) (e) 3 members appointed from private sector based on knowledge of and experience on financial, economics, business or legal affairs
Board Chair	ss 7 (1) (a) the Secretary of Financial Affairs of the MFDP
Board Vice Chair	Elected by BoD from existing members – ss 7 (2)
CEO/CG	Appointed by the Minister on recommendation by BoD – ss 22 (1)
Terms of conditions of CEO/CG	Approved by the Minister on recommendation by BoD – ss 22 (2)
Duties of CEO/CG	Section 23
Tenure of CEO/CG	5 years subject to renewal for a second term – ss 24 (1)
Removal of CEO/CG	By the Minister on recommendation from BoD – ss 24 (2)
Powers & Functions of BoD	Limited to administrative and operational matters; requesting information from CG, giving direction w.r.t. operational policies & implementation of policies and approval of BURS structures, admin issues & approval of code of conduct – ss 8 (1) (a) to (e).
Tenure of Office	4 Years may be for members appointed from private sector. May be renewed for another term – ss 9
Disqualification from BoD	ss 10 – bankruptcy, criminal activity, tax evasion, employee of BURS except under ss 7(1)(a) and (c), political activity
Removal & Resignation from BoD	ss 11 – empowers the Minister to remove member for absence without reasonable cause in three consecutive meetings of the board, inefficiency, physical or mental incapability contravention of the BURS Act, unprofessional conduct as pronounced by relevant bodies and failure to declare interests in accordance with section 13 of the Act (see ss 11(1) (a) to (g)).

Removal & Resignation from BoD	ss 7 (1) (e) 3 members appointed from private sector may resign by giving 30 days' notice or members' period of appointment expires.
Disclosure of Interest	Board members required to do so – by ss 13 of the Act. Penalty P10,000 or 1 jail term or both.
Frequency of Board Meetings	4 Times a year – ss 14 (2)
Meetings	Board Chairperson may convene an ordinary meeting – giving 7 days' notice – ss 14 (3)
Board Proceedings	Board Free to regulate its proceedings – ss 14 (1) & ss 14 (9)
Board Quorum	4 members – ss 14 (5)
Board Decisions	By majority of board members present – ss 14 (7)
Board Committees	Board may appoint committees as it deems fit – ss 15(1)
	Board may delegate its work to board committees – ss 15 (2)
	Board shall appoint chairman of each committee – ss 15 (3)
External Expert Advice	Board may co-opt persons to render advice during proceedings – ss 16(1)
Board Remuneration	Board payments (allowances) subject to approval by the Minister – ss 17.
Board Secretary	Appointed by the BoD – ss 18
Functions Board Secretary	Reports to BoD – ss 19, 20 & 21
Funding of BURS	Parliament Appropriations – ss 26 (1)
Sourcing External Funding	Subject to approval by the Minister – ss 26 (3)
Investment of Extra Funds by BURS	Subject to approval by the Minister – ss 26 (4)
Reporting	BURS/Revenue Service shall report to the Minister within six months of end of financial year – ss 29 (1). Report on the operations of BURS, auditors report and audited financial accounts – ss 29 (1).
Confidentiality	Ss – 32 (1)