

**THE IMPACT OF POLITICAL INTERFERENCE IN STATE-OWNED COMPANIES:
A CASE STUDY ON SABC**

By

LIMAKATSO ALIX-MARY QHOBOSHEANE

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SUPERVISOR: PROF E. SNYMAN-VAN DEVENTER

DECLARATION

I, Limakatso Alix-Mary Qhobosheane 2014139717, declare that “ **THE IMPACT OF POLITICAL INTEFERENCE IN STATE OWNED COMPANIES: A CASE STUDY ON SABC**” is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of a complete list of references.

Signed.....

Limakatso A.Qhobosheane

Date.....

ABSTRACT

Subsequent to numerous corporate scandals worldwide, corporate governance of state owned companies (SOCs) has been a topic of interest in almost every household. As a result of these corporate failures, a number of countries adopted different codes with a view of safeguarding against similar events. Notwithstanding efforts by countries to develop guidelines on good corporate governance, the state of SOCs remains in agony. This mini-dissertation therefore tries to sketch out governance challenges facing the South African Broadcasting Corporation (SABC).

The mini-dissertation examined the impact of political interference in the running of the SABC, the legislative framework governing the SABC in order to assess its effectiveness and a brief overview of the SABC with a view to understand how the SABC is run and how it ended up being in the current crisis. The findings of the study include but not limited to poor leadership, irregular appointment of board members, and lack of autonomy by the board of directors and inefficient regulatory framework at the SABC. The study concludes that the SABC is characterised by corruption and lack of accountability which have been found to be barriers to implementing good corporate governance. In addition, the atmosphere at the SABC was found not conducive to the features of good corporate governance. The SABC is also subjected to numerous and complex legislation which sometime conflict with each other and hinders the SABC from executing its mandate.

Key Words; Corporate Governance, State Owned Companies, SABC, Legislation and Boards

LIST OF ABBREVIATIONS

- AA Affirmative Action
- ACGN African Corporate Governance Network
- ANC African National Congress
- BCCSA Broadcasting Complaints Commission of South Africa
- BEE Black Economic Empowerment
- CEO Chief Executive Officer
- COO Chief Operations Officer
- CODESA Conference of Democratic South Africa
- COSATU Congress of South African trade Union
- DA Democratic Alliance
- ECTA Electronic Communications and Transactions Act
- FSD Frequency Spectrum Directorate
- GDP Gross Domestic Product
- GLC Government-Linked Companies
- IBA Independent Broadcasting Act
- IIA Institute of Internal Auditors
- IODSA Institute of Directors Southern Africa
- MOI Memorandum of Incorporation
- NAB National Association of Broadcasting
- NP National Party
- OECD Organisation for Economic Co-operation Development
- PAIA Promotion of Access to Information Act
- PFMA Public Finance Management Act
- PRASA Passenger Railway Agency of South Africa
- PSB Public Service Broadcasting

- PWC PricewaterhouseCoopers
- SABC South African Broadcasting Corporation
- SASAC State-Owned Assets Supervision and Administration Commission
- SATRA South African Telecommunications Authority
- SOC State-Owned Companies
- SOE State-Owned Enterprises
- UK United Kingdom
- WSOLLC Wholly State-Owned Limited Liability Company

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CHAPTER 1

OVERVIEW OF THE STUDY

1.1 Introduction

The corporate governance of state-owned companies (SOCs) has been on the forefront of public and political debate. This is due to a number of scandals and corporate failures in both public and private sectors that had occurred. Examples of such scandals are the collapse of some huge companies such as Enron, WorldCom and Tyco International in 2001.¹ Enron and WorldCom, for example, had non-executive directors at that time.² As Nevondwe,³ puts it due to a number of corporate failures, there have been serious adverse effects which include among others: job losses, loss of revenue and loss of investor confidence. In view of the above contention, many countries around the world developed a number of guidelines on good corporate governance. In South Africa for example, the King Commission on Corporate Governance was developed and was subsequently modified for SOCs. In addition, South African Government emphasised the need for SOCs to observe good corporate governance in their dealings.⁴ McGregor⁵ pointed out that, the Government's mandate for SOCs is to provide essential services to the public with a view of contributing significantly to the social needs and development of the economy. The government's mandate on the other hand, is to make sure that SOCs uphold principles of good corporate governance and that they deliver the services as expected.⁶

¹ Kamal 2010:211.

² Kamal 2010:211.

³ Nevondwe 2014:661.

⁴ Nevondwe 2014:661.

⁵ McGregor 2014:6.

⁶ Du Toit et al 1998:185.

Despite the efforts noted above, the SOCs' environment remains in distress. This is attributable to a number of factors to name but a few, political interference in the running of the SOCs. Classical and most recent examples of political interference in SOCs can be seen in South African Airways, ESKOM, SABC, Post Office and PRASA. In addition, the role-players needed to ensure good corporate governance in SOCs remains unexplored. The mini thesis therefore intends to address this gap by giving an overview of role-players needed to ensure good corporate governance which could ultimately be beneficial to the executive and management of SOCs to overcome the challenges they face. The mini-thesis will also add to the current body of knowledge as this is a relatively under-explored topic. The study has therefore been initiated by the current political interference in the SOCs.

Rossouw have addressed SOCs as companies which do not observe principles of good corporate governance because their boards are not independent and competent which are some of the core principles of corporate governance.⁷ He further pointed out that, not only are SOCs' boards not properly constituted but also their positions and those of executive are politically influenced.⁸ Fourie⁹ suggests that in most cases, there is hostile relationship among the shareholders, the boards, and CEO in cases where there is political interference. In terms of the functioning of the board, questions such as, who hire the CEO, have to be asked. One may wonder whether it is the board, the shareholder minister or the cabinet and what are the best practices globally and which works better?

Against the above background, it is consequently imperative to investigate the prevalent corporate governance challenges at the SABC as the SOE. It is vital to note that from the period of mid-2000s to date, the situation at the SABC has been predominantly an unstable one. This so because the Board had been appeasing politicians at the expense of public interests.¹⁰ This observation will be done paying attention to the fact that, there have been clashes between management and the board at the SABC which needed state

⁷ Rossouw 2005:96.

⁸ World Bank 2014:2.

⁹ Fourie 2013:2.

¹⁰ Fourie 2013:2.

intervention. In addition, focus will be made to the fact that there have been a number of resignations by board members as a result of political interference on the board specifically as regards the appointment of the SABC's CEO.¹¹ A typical example can be seen from SABC where the Chairperson of the SABC Board and his Deputy in 2013 resigned as a result of political interference in respect of the appointments of the Board and Executive.¹² The battles between the board and management of SABC adversely affect the extent to which the mandate and strategy of the SABC as SOE is executed.

The above controversies at the SABC characterised its governance challenges and problems. The above view is supported by the Public Protector¹³ when she investigated allegations of bad corporate governance practices, abuse of power and the unprocedural appointment of Hlaudi Motsoeneng at the SABC.¹⁴

In essence, Kanyane¹⁵ asserts that governance is all about procedures that have to be followed by every establishment in the process of decision making. These processes include decisions on who to include in decision making process and in the execution of such. It is also about accountability for the results of the decisions made. It should be noted however that there is a huge difference between governance and government. Government is found in governance and vice versa. In the words of Kanyane,¹⁶ government is nothing in the absence of governance. Good corporate governance therefore demands from the shareholder, boards, management and employees of the state-owned companies to demonstrate honesty, transparency, ethics and integrity in the conduct of their corporate affairs.

¹¹Fourie 2013:2.

¹² Fourie 2013: 3.

¹³ Public Protector South Africa 2013/2014.

¹⁴ Public Protector South Africa 2013/2014.

¹⁵ Kanyane 2015:29.

¹⁶ Kanyane 2015:2.

It suffices to note that in this mini-thesis, the words state-owned companies, state-owned enterprises and parastatals are used interchangeable and the same meaning has been assigned to them.

1.2 Problem Statement

Recently, the corporate governance of SOCs has become a subject of political interest in South Africa. Lately, there is a problem of political interference in the running of SOCs and as a result, the integrity of the SOCs is compromised. In principle, SOCs should function free from political interference in order to yield desired outcomes. Among the governance issues is the appointment of board members. It is therefore worth investigating the impact of political interference in the SOCs as it significantly hampers productivity, efficiency and profitability. It is also vital to explore reasons for corporate governance in SOCs. The mini-thesis will attempt to improve on the management of the SOCs, that is, whether there is a need for the reform of legislation to address SOCs problems and challenges.

1.3 Structure of the Dissertation

The dissertation has been structured as follows:

Chapter 1 presents an overview of the study: It also outlines the problem statement. An attempt to define corporate governance and state-owned companies will be made.

Chapter 2 is devoted largely on challenges faced by SOCs with specific reference to political interference. Literature on the subject matter is explored in order to understand the corporate governance of SOCs and challenges faced by them. A brief overview of historical developments of corporate governance in South Africa and state-owned companies has been made. The chapter also discusses the reasons for corporate governance in state-owned companies. A critical overview of role players needed to ensure good corporate governance in SOCs will be made. Lastly, the chapter focuses on legislative framework governing SOCs in South Africa.

Chapter 3 starts by presenting a brief overview of the history of the SABC. The chapter also outlines the corporate governance and the SABC. The legislative framework governing SABC is explored in an endeavor to understand how the SABC is regulated.

Chapter 4 focuses on the best international practice for SOCs with a view of determining which best practice could be adopted by SOCs in South Africa.

Finally, chapter 5 presents the findings and discussions based on the research questions and the purpose of the study. In addition, conclusions and recommendations are highlighted in this chapter. That is, conclusions and recommendations based on the purpose of the study and how the research questions were answered.

1.4 Outline of the Research Topic and key questions to be answered

The mini-thesis seeks to investigate the impact of political interference in SOCs with specific reference to the SABC. This will be done by paying attention to the prevailing situation at the SABC. The mini-thesis will consider the effectiveness of the legislative framework that deals with corporate governance of SOCs.

The mini-thesis will further give an overview of role-players needed to ensure good corporate governance in state-owned companies. The study will answer the following research question:

- a) What is the impact of political interference in SOCs?
- b) What are the reasons for corporate governance in SOCs?
- c) Who are role-players needed to ensure good corporate governance in SOCs?
- d) How efficient is the legal framework to uphold good corporate governance on SOCs, is there a need for improvement of such legislative framework to address SOCs problems and challenges?
- e) What are the best practices globally and which one should be adopted?

SABC has been selected as the main focus of this mini-thesis due to the current corporate governance challenges it faces.

1.5 Definition of Concepts

1.5.1. Corporate Governance

The term “corporate governance” is explained as being subject to narrow and broad meanings which are associated to shareholder and stakeholder view point.¹⁷Therefore, corporate governance revolves around the discussion on whether management should run the corporation exclusively in the interests of shareholders or whether it should take into account the interests of stakeholders.

The narrow interpretation of corporate governance is about the relationships *inter alia* between executive, board of directors and shareholders.¹⁸ It can also be inclusive of the relationship between the company’s stakeholders and the public at large. However, broad definition of corporate governance is about rules, laws, regulations, and practices that enable the companies to be more efficient in the performance of its obligations.¹⁹ This includes being able to attract capital, generate profit, and comply with the legal framework governing it.

In terms of literature, corporate governance appears to have been first used by Eells to signify “the structure and functioning of the corporate institution”.²⁰ McGregor²¹ is of the view that in order for good corporate governance to be practiced, there are five elements which have to be present namely: -

- that the structures, methods and procedures are present
- that the board must have the right combination of intelligence, knowledge and skill
- sound and comprehensive Legal and Regulatory framework

¹⁷Braendle & Kostyuk 2007:2.

¹⁸ Rossouw 2002:406-407.

¹⁹ Rossouw 2002: 407.

²⁰Braendle & Kostyuk 2007:6

²¹ www.usb.ac.za/.../can%20State%20Owned%20Companies%20Succeed.pdf.

- through knowledge of the principles of sound corporate governance and practice of those principles.

Corporate governance has its roots in separation of ownership and control.²² According to the OECD²³ corporate governance refers to a system by which companies are managed and controlled. The above definition encompasses policies and procedures that have to be followed by role-players in order to help the organisations to achieve its intended goals. As a result of the above, transparency and accountability would be enhanced.

According to Naidoo²⁴ corporate governance has become a prominent issue around the world; however, its definition is another subject of discussion as it has been assigned many definitions by different authors. Corporate governance has been defined as the system of rules and norms which are likely to be institutional market in the area pursuing different categories of stakeholders, shareholders, management, public administration, personnel dependent and consumers.²⁵ In contrast Mongalo²⁶ describes corporate governance as the way in which companies are directed and controlled. In this description, the emphasis is on those structures which play a significant role in corporate decision-making.

Naidoo²⁷ agrees with the above assertion in that; she describes corporate governance to mean the way in which companies are managed and controlled. She further emphasises that corporate governance incorporates the following:

- the designing of a system of checks and balances and monitoring such to make sure that there is a balanced exercise of power within a company;
- culture of compliance by the company with its regulatory framework;
- accountability of companies to the community in which it runs a business.

²² Naidoo 2002:2.

²³ OECD 1999 and 2004.

²⁴ Naidoo 2002:1.

²⁵ Bostan & Grosu 2010:91.

²⁶ Mongalo 2003:173.

²⁷ Naidoo 2002:1.

From the above definition, one can gather that corporate governance is about the responsible leadership of companies. This responsibility includes being transparent, answerable and accountable towards the company.

The current corporate governance has resulted in the splitting up of ownership and control. Basically, the interests of the people who control the company vary significantly from those who own the company.²⁸ Traditionally, the separation of ownership and control has been assumed as the main problem of corporate governance. Other authors such as Cochran and Warwick (1988) describe corporate governance as

“.....an umbrella term that includes specific issues arising from interactions among senior management, shareholders, boards of directors and other corporate stakeholders”.

Corporate governance has managed to attract massive attention from different scholars who define it in different ways. Some view corporate governance as the way of exercising the power of the corporation. Corporate governance has been explained by Young²⁹ as “the system by which companies are directed and controlled”. He further explained that the board of directors has a mandate to ensure that SOCs uphold principles of corporate governance. That is, since the board of directors is the agent of the shareholder, they should run the companies in a manner that the shareholder would be satisfied in order to enhance the image of the companies.

In as far as OECD³⁰ is concerned; corporate governance is all about maintaining a balance between the goals of the public and those of the individuals and economic and social goals. In doing so, it reassures the efficient use of the resources and accountability. Corporate governance also entails the establishment of an environment which is conducive for companies to flourish. Corporate governance is therefore all about processes, procedures, practices and systems that have to be followed by a corporation.

²⁸ Okeahalam & Akinboade 2003:2.

²⁹ Young 2010:139.

³⁰ OECD 1999 and 2004.

The primary principle of good corporate governance is that; it is the shareholder's responsibility to elect the board of directors whose then responsibility is to appoint top management.

Simply put, corporate governance refers to the systems and procedures established with the intention to protect the interests of the stakeholders for the direction and management of the companies. It further embraces the roles and rights among the stakeholders of the company.³¹

It is however important to note that; in order to have good or quality corporate governance, the government, board, executive and all other partners or stakeholders should have the ability, knowledge and integrity to make and carry out sensible decisions in the interests of the shareholders, company and stakeholders including the public at large.

1.6 State-Owned Companies

A State-Owned Company has been defined under the Public Finance Management Act 1 of 1999 (PFMA). The Act uses the term "national government business enterprise". Section 1 thereof, defines a SOC as an entity which:

- a) is a juristic person under the ownership and control of the national executive;*
- b) has been given financial and operational power to carry on a business activity;*

The Companies Act 71 of 2008 on the other hand, uses the term state-owned company. This has been explained under section 1 as "an enterprise that is registered in terms of the Companies Act and either

- a) Is listed as a public company in schedule 2 or 3 of the PFMA;*
- b) Is owned by a municipal as provided in the Municipal Systems Act 32 of 2000 and is otherwise similar to an enterprise.*

³¹ Centre of European Policy Studies 1995 (CEPS).

It is prudent to indicate that SOCs fall within the sphere of Public Finance Management Act. Based on the above information, SOCs must comply with additional provisions over and above the Companies Act.

SOEs were first introduced in South Africa with a view to provide efficient and affordable services to the nation. It is vital however to point out that this idea may only be in theory because in reality, many SOEs serve the interests of the political party in power. This in itself creates governance problems. A mention must be made however that it is not every SOEs that is corrupt but rather, it is that political interaction that undermines the economic and social rationale of the SOCs. The government of South Africa exercise control over these SOEs, these SOEs may find themselves pursuing goals which are contrary to their mandate. It is further noted that when SOEs were first introduced in South Africa, they were not intended to be profit making entities.

In addition, Khoza and Adam³² define SOEs as institutions which are directly or indirectly controlled by the state and that these enterprises contribute significantly to the country's economy and the society as a whole. The above idea is supported by World Bank³³ by arguing that in Africa SOEs contribute meaningfully to the gross domestic product (GDP) as they represent 15 percent of the GDP. He further articulates that the value of SOEs lies in their potential to provide efficient, reliable, and affordable critical products and services. The importance of SOEs cannot therefore be overestimated.

The above definition denotes that, SOCs play a crucial role in providing essential services thereby contributing significantly to the economy of the country. For companies to perform exceptionally well, good corporate governance has to be in place and must be practiced. Good corporate governance provides the regulatory framework for acceptable practice, strategic direction and sound business judgment. As SOCs are primarily owned and led by Government, government departments and boards of companies are partners in providing corporate governance to ensure their success.

³² Khoza & Adam 2005: 124.

³³ World Bank 2004.

1.7 Conclusion

This chapter has started by briefly giving an introductory overview of corporate governance and SOCs with a view to understand these concepts in detail. Subsequently, in its introductory part, it has introduced problems facing SOCS with specific reference to the issue of political interference. In addition, it has incorporated problem statement and objectives of the study.

CHAPTER 2

BACKGROUND

2.1 Introduction

This chapter will deal with the historical development of corporate governance of state-owned companies (SOCs). This will be done with a view to understand the corporate governance of state-owned companies and the challenges they are facing. Reference will be made to political interference which seems to be a core problem facing SOCs and hindering their development.

Legislative framework governing SOCs will be looked into and specifically, the PFM Act 1 of 1999, Companies Act 71 of 2008, the Constitution of South Africa 108 of 1996 and the King Codes. An overview of role players that are needed to ensure good corporate governance in SOCs is also presented.

2.2 Historical Development of Corporate Governance in South Africa

The concept of corporate governance was institutionalised by the agency problem that resulted in the division of ownership and control.³⁴ This implies that owners of the companies no longer controlled the management of companies, the responsibility for control moved to the directors of the company in directing and controlling the affairs of the company. The problem created by this situation was that, it was assumed that directors of companies could abuse their control function to their advantage and to the detriment of the owners. As a result of the separation of control and ownership, corporate governance was then introduced with a view to safeguard that the agents of the owners of companies control companies in the best interests of the shareholders of the company.³⁵

In South Africa, corporate governance has been a reasonably well-developed concept since the establishment of King Committee in 1992 which was under the umbrella of the

³⁴ Naidoo 2002:2.

³⁵ Naidoo 2002:2.

Institute of Directors of Southern Africa (IODSA).³⁶ Corporate governance was first institutionalised in 1994 with the publication of the first King Report on Corporate Governance.³⁷ It established recommended standards of conduct for boards and directors of listed companies, banks and certain state-owned enterprises. These developments were according to the African Corporate Governance Network 2016 (ACGN) as a result of a growing appreciation among markets participation in South Africa of the high standards of governance required for corporate entities to operate with credibility in international markets.³⁸ This was also due to re-admission of South Africa into the global economy following its transition to a fully-fledged democracy in the early 1990s.³⁹

Historically, South Africa's corporate governance has followed an Anglo-American model or approach.⁴⁰ After 1994, there were economic liberalisation programmes, and transformation towards economic and social policies such as Affirmative Action (AA) and Black Economic Empowerment (BEE) programmes.⁴¹ These programmes required corporate entities to comply with them. The King Report I gave effect to what constitutes good corporate governance in both private and public sectors. King I was highly influenced by the Cadbury Report in the United Kingdom (UK) in 1992. King I therefore offered a framework of governance which was appropriate for South Africa as well as economic role-players needed in South African economy.

Owing to other developments that were taking place in South Africa in the 1990s, there was a need for the regulation of a variety of areas of business practices in South Africa. In view of the above assertion, a number of new legislation was enacted to address this concern. For instance, the Public Finance Management Act (PFMA)⁴² was promulgated with a view to establish financial management of public sector institutions. The Protocol

³⁶Calkoen 2013:304.

³⁷ Naidoo 2002:2.

³⁸ ACGN 2016:69.

³⁹ Naidoo 2002:11.

⁴⁰ ACGN 2016:69.

⁴¹ ACGN 2016:69.

⁴² Public Finance Management Act 1/1999.

on Corporate Governance in the public sector was also issued. The purpose of this Protocol was to set out guidelines for good corporate governance in public sector. King II was introduced and its intended role was to influence reform of legislation as it promoted corporate integrity. King II was designed in such a way that core areas of good corporate governance for companies, boards and other stakeholders are identified.

The Companies Act⁴³ as amended in 2011 as well as the Companies Regulations 2011 has further added to the strength of corporate governance for corporate entities. In terms of the Act, public companies and SOCs are required to have audit committee which has at least three non-executive directors.⁴⁴ The shareholder would be responsible for the appointment of such three non-executive directors. The Act further sets out the statutory functions of the audit committee.

With the drive to improve corporate governance in South Africa, King III was introduced in 2010. It was introduced due to changes in international trends regarding corporate governance as well as the proposed introduction of Companies Act.⁴⁵ So, South Africa had to keep in touch with the changing and modern trends in corporate governance. Additionally, South Africa had to be responsive to the new corporate governance concepts.

Due to changes in the international sphere with regard to corporate governance, King Report IV was issued in November 2016 and it became applicable in April 2017. King Report IV was introduced with a view to add on King Report III which has been revised to bring it in accord with global corporate governance trends.⁴⁶ King Report IV applies to organisations irrespective of their form or manner of incorporations.⁴⁷ King IV is outcome oriented as it places accountability on the governing body which is the board in the case of companies to attain the governance outcome of an ethical culture.⁴⁸

⁴³ Companies Act 71/ 2008.

⁴⁴ Companies Act:sec 94(2).

⁴⁵ Calkoen 2013: 304-305.

⁴⁶ <http://www.corpgov.deloitte.co.za> (accessed on the 01 July 2017).

⁴⁷ [http://www.iodsa.co.za/?page=About KingIV](http://www.iodsa.co.za/?page=About+KingIV) (accessed on the 01 July 2017).

⁴⁸ <http://www.corpgov.deloitte.co.za> (accessed on the 01 July 2017).

This is in accordance with the present-day global trends which aim to promote more accountability and transparency. Further to that, the implementation of the Code should contribute to the sustainability and performance of the company. In this way, it is clear that King IV aims to establish a balance between conformance and performance. It is worth noting to state that King Report IV has replaced King Report III in its entirety in that, the 75 King III principles have been merged into 16 principles.⁴⁹

The spirit of King IV is focused on:

- sustainable development
- integrated thinking
- corporate citizenship
- stakeholder inclusivity
- company's role and responsibility in society

This philosophy is based on 3 paradigm swings in corporate governance:

- From financial capitalism to inclusive capitalism
- From short-term capital markets to long-term, sustainable capital markets
- From silo reporting to integrated reporting

2.3 Importance of Corporate Governance in State-Owned Companies

Owing to a number of corporate failures that have taken place globally, corporate governance has become a substantial theme in the business world. There is widespread acknowledgment that corporate governance can contribute to the economic success of companies.⁵⁰ When corporate governance is correctly applied, it can be an important competitive advantage that is used to maximise a company's performance; increase a

⁴⁹ <http://www.corpgov.deloitte.co.za> (accessed on the 01 July 2017).

⁵⁰ Armstrong 2003:12.

company's prospect to boost capital investment.⁵¹ It can also enrich corporate responsibility and improve the reputation of companies which in turn can attract local and foreign investors.⁵² From a purely practical perspective, good corporate governance makes good business sense. As such, investors are likely to invest their money in companies which have a sound reputation of corporate governance practices. This view is supported by Smerdon⁵³ by stressing that companies with high values of corporate governance were worth significantly to investors than those with little governance standards. This is evident from the research that was conducted by McKinsely in 1996, "Putting Value on Corporate Governance" where he found that 66 percent of investors put a higher value on well-governed companies.⁵⁴ From the above discussion, it seems good governance matters since investors generally believe it matters and are apparently prepared to invest in such companies.

In the words of Naidoo,⁵⁵ companies which implement good corporate governance practices are at lower investment risk than those that have few or no governance controls in place. Based on the importance of corporate governance, it remains an indispensable element for nurturing trust and business confidence. According to the World Bank, SOEs play a vital economic role notwithstanding their geographical location and the extent of their economy. This is evident from a survey that was conducted in 2009 by OECD which provides that, in 2006, SOEs accounted for 20 percent of investment and 5 percent of employment. In Africa however, SOEs created about 15 percent of gross domestic product.⁵⁶

Corruption and unethical behaviour remains serious problems in SOEs and can adversely impact on the financial strength of the companies. For example, in 2008/2009 financial year, the SABC lost around R910 million due to unethical behaviour and corrupt

⁵¹Okeahalam & Akinboade 2003:4.

⁵² Rossouw 2005:95.

⁵³ Smerdon 1998:13.

⁵⁴ Smerdon 1998:13.

⁵⁵ Naidoo 2002:7.

⁵⁶ World Bank 2014.

practices.⁵⁷ Consequently, SABC was forced to seek financial assistance from elsewhere. Additionally, corrupt practices can negatively impact investor perceptions, lead to inappropriate allocation of scarce resources, and constrain overall economic and financial growth. Rossouw⁵⁸ maintains that, good corporate governance practices can be used as a preventative measure to corruption and unethical business practices that scars business image. It can further enrich integrity, transparency and accountability in companies.

2.4 Role-Players needed to ensure good corporate governance in SOCs

In effecting a system of good corporate governance, it is imperative that companies embrace the principle of 'substance over form', not merely by paying lip service to the concept. The employment of good corporate governance practice may entail a change in mindset and in prevailing practices. In addition, there are role-players who are needed to ensure a good regime of corporate governance. To put it in the words of Naidoo⁵⁹ "*the life of corporations without proper corporate governance would be poor, nasty, brutish and short*".

2.4.1. Role of the Board of Directors

According to Baysinger and Butler⁶⁰ the board of directors is an important part of the governance structure of large business corporations. Companies should be led by a board which is effective and efficient that has sufficient competence to both direct and manage the company.⁶¹ This is because a board is supposed to safeguard the wealth and properties of the company as accordingly designated to direct and manage the business of the company.⁶² From the above assertion, one can infer that the board should consist of the right combination of knowledge and expertise in order to observe sound

⁵⁷ Department of Communications South Africa 2016.

⁵⁸ Rossouw 2005:95.

⁵⁹ Naidoo 2002:154.

⁶⁰ Baysinger & Butler 1985:101.

⁶¹ Frederick 2011:15.

⁶² John & Senbet 1998:373.

principles of corporate governance. This means that, since the board is the centerpiece to the corporate governance system of the company, it is eventually in control of the dealings of the company and for ensuring performance by the company.⁶³ Board plays the central function in the governance of SOEs.⁶⁴ The implication here is, the board has the final responsibility for the performance of the SOEs and has the power to make decisions that determine performance.⁶⁵ The board's monitoring role is an important aspect of corporate governance as it acts as the intermediary between the state and the SOE on behalf of the owners.

For effectiveness of the board in its monitoring role, it has to comprise of the right mix and be autonomous. The board must be made up of a balance of executive and non-executive directors. John and Senbet⁶⁶ maintain that, the board would be more independent if there is equilibrium of non-executive and executive directors. The above implies that there should be a sense of balance between non-executive and executive directors such that board decision making process is not dominated by anyone. In addition, literature suggests that outside directors promote shareholders' interests.⁶⁷ This shows that there is a need to have a mix of directors so as to enhance the interests of the shareholder. It should be noted however that, the effectiveness of the board is not solely by its composition, it may also be affected by its administrative structure. Here, what is being referred to is that, the committee structure of the board and directors' roles within the committees. It is proposed that a committee structure should comprise of specialised roles to improve the board's performance in its productivity and monitoring role.

To appreciate the role of board of directors in ensuring good corporate governance in SOCs, it is crucial to highlight that, the board is viewed as a the most important tool that the shareholder can use to exercise control on top management.⁶⁸ The board plays an

⁶³ Young 2010:139.

⁶⁴ Frederick 2011:11.

⁶⁵ John & Senbet 1998:374.

⁶⁶ John & Senbet 1998: 386.

⁶⁷ John & Senbet 1998: 363.

⁶⁸ John & Senbet 1998:373.

important role of monitoring to ensure good corporate governance. In essence, the board must give strategic direction to the company and must appoint the CEO.

From the above discussion, one can gather that there is a need for the board which is independent, effective and well constituted in order for it to be able to uphold good principles of corporate governance. Another factor that emanates from the discussion is that, the board seems to be playing an important role of monitoring performance. Above all, the board should make sure that the company complies with all the laws, regulations, codes of good conduct and all other laws which are incidental to the corporate governance of the SOCs. This means that, the companies rely heavily on the board for proper performance of the company. It can therefore be concluded that without a properly constituted and independent board, sound corporate governance is not ensured. It is therefore proper to conclude that the board plays a key role in guaranteeing good corporate governance in SOCs.

2.4.2. Role of Internal Audit

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It supports an organization to achieve its objectives by bringing a systematic, disciplined approach to appraise and improve the efficiency of risk management, control and governance processes.⁶⁹The King Report II encourages companies to use the combination of external and internal auditors in order to obtain efficient audit processes. This idea is supported by a number of professional bodies who believe that such mixture offers more efficient and effective audit coverage.⁷⁰ On the other hand, others believe that internal auditors should not attend to matters which external audit has interest in.⁷¹

⁶⁹ Smerdon 2007:284.

⁷⁰ Institute of Internal Auditors 2004:3.

⁷¹ Bostan & Grosu 2003:490.

The mix of both internal and external auditors increases the effectiveness of audits as the two types have different strengths.⁷² For instance, internal auditors spend almost all their time working for the same company and consequently have a better understanding of the company as a whole. This allows internal auditors to see things that external auditors would not see during their visits.⁷³ However, the Institute of Auditors⁷⁴ admits that external auditors work for several companies and as a result of this, they are exposed to a wider variety of financial issues, therefore, external auditors are more likely to notice and solve issues that internal auditors have not dealt with before.

A comprehensive audit role is viewed as fundamental to good corporate governance.⁷⁵ Additionally, internal audit is viewed as a major part of corporate governance. Internal audit assists top management and the board to discharge their duties in particular, those duties involving safeguarding the assets, risk management, operation of adequate controls and reliability of financial statements.⁷⁶ This means that internal audit's risk management role forms an important part of an organisation's management function. It also helps to enrich audit committee effectiveness by serving as a resource to the boards of directors. As the environment of the SOEs is changing, internal audit is required to proactively adapt to the changing business demands.⁷⁷ The internal audit's role, given its influences over the management control, assumes a front importance within the corporate governance.⁷⁸ The King Report II recommends that it is essential for every company to have an efficient internal audit which has the following attributes:⁷⁹

- has complete support of the board and management;
- has a well-defined role;
- reports directly to audit committee meetings

⁷² The Institute of Internal Auditors 2004:3.

⁷³ The Institute of Internal Auditors 2004:3.

⁷⁴ The Institute of Internal Auditors 2004:4.

⁷⁵ Naidoo 2002:72.

⁷⁶ Smerdon 2007:284.

⁷⁷ Radasi & Barac 2015:96.

⁷⁸ Bostan & Grosu 2010:97.

⁷⁹ Naidoo 2002 and IOD 2002.

- has unlimited contact with the chairman of the company and the audit committee; and
- be autonomous

One of the main emphases of internal auditing, as it relates to corporate governance, is assisting the audit committee to execute its obligations successfully. This may comprise of reporting serious internal control problems, confidentially apprising the audit committee on the competences of strategic managers, proposing questions or topics for the audit committee's meeting agendas and coordinating with the external auditor and management to make sure that the committee gets valuable information.⁸⁰

Internal auditing plays a vital part in monitoring and evaluation of the effectiveness of the organisation's risk management processes.⁸¹ Chun⁸² on the other hand regards internal auditing as an incorporated part of the process of accountability. Its objective is to guarantee and promote the effective performance of accountability assumed by the management of a company. According to Chun,⁸³ three conditions are essential for accomplishing the objects of internal audit, these being impartiality, organisational status and fairness.

Visser and Erasmus⁸⁴ define internal audit as an independent appraisal function within an organisation for the review of activities as a service to all levels of management. Therefore, internal audit is a control which measures, assesses and reports upon the efficacy of internal controls.

It can be implied from the above argument that internal audit plays a vital role in ensuring good corporate governance because it is itself part of corporate governance. So, based on the significance of internal audit, it is crucial to emphasise that every company should have internal audit department which is constituted with competent and well conversant

⁸⁰ IOD 2002.

⁸¹ Institute of Internal Auditors 2004.

⁸² Chun 1997:247.

⁸³ Chun 1997:247.

⁸⁴ Visser & Erasmus 2002:330.

people who are not easily compromised because of their critical function. So, if the company has a sound internal audit function, good corporate governance is guaranteed.

2.4.3. Role of Audit Committee

From the corporate governance's perspective, audit committee is seen as the most important committee of the board as it acts as channel of communication between the board, management, internal and external audit functions of the company and can help obtain objectivity between the auditors and management.⁸⁵ To illustrate the importance of audit committee in the corporate governance of state-owned companies and the role played by it, the Companies Act 71 of 2008, Treasury Regulations of 2011 and Public Finance Management Act 1 of 1999 provide for the establishment of the audit committee in SOCs and provide for the functions of the committee thereof. The above goes to demonstrate that indeed audit committee is central to the corporate governance of state-owned companies by virtue of it being provided for under the purview of the provisions of the Companies Act and PFMA.

The audit committee plays a role of guaranteeing that proper accounting records are maintained, an effective system of internal controls are in place and that the company generally complies with the principles of good corporate governance.⁸⁶ In addition, the audit committee should analyse the functioning of internal control system, the operation of the internal audit function within the company, the risk areas of the company's business, the soundness and correctness of the financial information provided by management, and the company's compliance with its legal and regulatory obligations. The Audit Committee should in terms of King II not include the chairman of the board. It should however consist of a majority of independent non-executive directors who are knowledgeable in financial issues. In terms of principle 3.1 of King Report III; the board should voluntarily appoint an effective and independent audit committee consisting of at

⁸⁵ ACGN 2016.

⁸⁶ Smerdon 2007:294-296.

least three members. It further provides that there should be some kind of basic level of knowledge and experience in audit membership.⁸⁷

It is worth noting that the independence of the audit committee is the cornerstone of its effectiveness when overseeing a company's financial reporting integrity.⁸⁸ The audit committee should monitor and review the effectiveness of the internal audit activities and should ensure that the external auditors are accountable to the audit committee.⁸⁹

2.4.4. Role of External Audit

Just like Internal audit and Audit Committee, the external audit plays a key role in the corporate governance of SOCs. External audit helps to ensure the reliability of financial reports. This is why the audit opinion gives an added credibility to the financial reports of the company. Additionally, it is the responsibility of the external audit to help enhance the audit committee effectiveness.⁹⁰ The external auditors have the responsibility to validate the information presented by directors and examine that they equitably and precisely signify the position of the company.⁹¹ The importance of external audit cannot be measured in the corporate governance of state-owned companies. This is because, the role played by it, is very critical in that, it ensures that proper accounting standards are complied with. Again, external audit acts as a watch dog.

From the foregoing, it is evident that for good corporate governance to be safeguarded, a company requires an external audit function which is independent and objective in order to accomplish its function of being a watch dog. Further to the above, it is obvious that the link between internal and external auditors is of significance for the efficiency and effectiveness of audits within a company.

⁸⁷ Wyngaard 2010:106.

⁸⁸ Smerdon 2007:291.

⁸⁹ Smerdon 2007:298.

⁹⁰ Mihret 2011:67.

⁹¹ Naidoo 2002:109.

2.4.5. The Role of the Shareholder

The Shareholder's role in ensuring good corporate governance is an important role in that, it is liable for drawing up the ownership policy and high-level objectives for the SOEs.⁹² The government as the shareholder of SOCs has to watch over them and assure that SOCs uphold sound principles of corporate governance in accordance with best practice. Owners of SOCs seeks to elect the appropriate candidates to a board, they set clear goals, monitor company performance and provide capital to fund expansion. This important role played by the shareholder may be hampered by multiple actors in the SOCs.

The role of the shareholders in governance is to make sure that governance structure is in place. In addition, the shareholder has to appoint the directors and the auditors.⁹³ What remains to be answered here is whether the shareholder indeed exercise its role of appointing the directors.

The King Report II calls for companies to motivate shareholders to actively participate in the affairs of the company and must also be prepared to involve institutional investors in discussion of appropriate matters. In addition, companies are obliged by the King Report II to encourage shareholders to attend all relevant company meetings.

2.4.6. The Role of Executive

Executive management has been defined as people who recommend a strategy and who are accountable to the board for implementing the strategic plan.⁹⁴ Executive management is a critical part of governance regime as it is responsible for the implementation of the strategy and board policies on risk and control. In addition, they meet compliance targets which are central to sound principles of corporate governance. According to Smerdon,⁹⁵ the role of the management was reinforced in the Smith Report

⁹² OECD 2005.

⁹³ The Cadbury Report (1992), para 2.5 gives a quite neutral definition of corporate governance, highlighting the importance of shareholders and boards of directors.

⁹⁴ www.oecd.org/daf/corporateaffairs/wp.

⁹⁵ Smerdon 2007:324.

para 5.7 where management has been explained as being responsible for the identification, assessment, management and monitoring the system of internal control and for providing assurance to the board that it has done so. Accordingly, executive management should have the necessary knowledge, skills and information to monitor the system of internal control.

2.5 Political Interference

The government as the shareholder of SOCS have been widely criticised for undue political interference in SOCs.⁹⁶ The above assertion still continues even today. Political interference is one of the contributing factors to SOEs' corporate governance problems. Arguably, SOEs' existing problems are as a result of interference from the ruling parties and bureaucrats.⁹⁷ The above is true because politicians have power to use SOEs as a tool in carrying out their agenda.

Governments exercise control over SOCs through ministers, as a result, excessive ministerial intervention have a tendency to weaken the capability of the board to make sound business decisions *as per* Principle 2.14 of the King II which provides that the board must always act in the 'best interests of the company'. The minister may make decisions founded on political requirements of his party other than on the best interests of the SOE. Again, excessive political intervention significantly hampers the companies from being professional. For instance, members of the board may be compromised in making decision because their appointment is influenced by the politicians.

A recent example can be seen from the case of *SABC V DA*,⁹⁸ in this case, the appeal which was dismissed arose as a result of failure by the SABC and the Minister of Communications to execute the findings by the Public Protector where the Public Protector advised that: disciplinary action against Hlaudi Motsoeneng be instigated for his dishonesty, abuse of power and improper conduct etc.....This was after the Public

⁹⁶ OECD 2005.

⁹⁷ Kamal 2010: 214.

⁹⁸ (393/2015) [2015] ZA SCA 158.

Protector had received a number of complaints from former SABC employees. Those complaints related to the alleged irregular appointment of Mr Hlaudi Motsoeneng, as the Acting Chief Operations Officer (the Acting COO) as well as bad administration relating, *inter alia*, to human resources, financial management, governance failure and the irregular interference by the then Minister of Communications, Ms Dina Pule, in the affairs of the SABC. The Public Protector then investigated those allegations and thereafter issued a report entitled '*When Governance and Ethics Fail*'. In her report, the Public Protector concluded that there were '*pathological corporate governance deficiencies at the SABC*' and that Mr Motsoeneng had been allowed '*by successive boards to operate above the law*'.

The Public Protector also required the Minister and the SABC Board to submit a schedule relating to the execution of the proposed remedies and that such action should reach finality within a period of six months. Despite the recommendations by the Public Protector's, the SABC Board and the Minister without informing the Public Protector, decided to appoint Mr Motsoeneng as the permanent COO of the SABC.

Feeling distressed by the appointment of Mr. Motsoeneng, the Democratic Alliance (DA), (political party), decided to apply to the court for the suspension and setting aside Mr Motsoeneng's appointment. It argued that based on the findings of the Public Protector in relation to Mr Motsoeneng and the clear requirements for the appointment of the COO, his appointment to that position was irrational and unlawful.

While SOEs board may lay claim to having independent board, this may be in theory only where undue political influence is involved, such directors might be given a place at the board by virtue of their political connections rather than for their professional skills and experience.⁹⁹ Some of the classical effects of political interference are the changing of the board with change in political power. This is one of the challenges faced by SOEs as board continuity is key to appropriate corporate governance of SOEs.

⁹⁹World Bank 2014:15.

Boycko¹⁰⁰ is of the view that State-owned enterprises are inefficient because instead of focusing on the productivity of the company, they concentrate on appeasing politicians thereby addressing their interests. For example, politicians are interested in maintaining political support through employment policies, they care only about the votes of those whose jobs are in danger and seek to satisfy labour unions which are often considered as having a significant influence on political parties.¹⁰¹ Similarly, SOEs are regularly asked to redirect their production in politically desirable rather than economically attractive regions.

From the above argument on political interference, it is apparent that SOEs are used by the ruling party or politicians as a tool to drive their political desires. It suffices to say that, while political intervention may be apparent in the day to day running of the SOEs, the government on the other hand appears not to have fulfilled its oversight role of ensuring the sound governance of SOEs according to best practice. In addition, it is clear from the foregoing discussion that the government as the main or probably the only shareholder of the SOC, disregard the independence of the board as the board would sometimes choose the decisions that is in favour of the government in order to secure their re-appointment into the board positions instead of making decisions which are in the best interest of the company as provided for under Principle 2.14 of the King II. The impression I gather from the discussion is that politicians acts inactively with regard to corporate governance so as to protect themselves against criticism.

2.6 Legislative Framework of SOCs

It has been emphasized by many scholars that legislation and regulation are the cornerstones of corporate governance because they outline the rules within which SOEs should operate. In addition, the World Bank shares the same feeling by maintaining that a clearly comprehensive and overhaul legislative framework is essential for SOEs for communicating key expectations to the shareholders, boards and all other role-players.¹⁰²

¹⁰⁰ Boycko 1996:309.

¹⁰¹ Boycko 1996:309-311.

¹⁰² World Bank 2014.

The South African State-Owned Companies were previously regulated by the Companies Act 46 of 1926 and Companies Act 61 of 1973 respectively. The above Acts has since been repealed, now, SOCs are regulated by the Companies Act 71 of 2008. Prior to the Companies Act 71 of 2008, a policy on the restructuring of State-Owned Companies was introduced in 1999 by the government of South Africa. This policy on restructuring of SOCs was known as the Accelerated Agenda towards the Restructuring of the State-Owned Enterprises. The purpose of the policy frame work was to enable the government to co-ordinate thinking on how to restrict and contain the excesses of the SOCs. The South African SOCs are also subject to the King Code of Governance Principles and the King Report on Governance for South Africa (King III). All these King Reports are aimed at promoting good corporate governance in SOCs. Kanyane¹⁰³ notes that the South African legislative framework under which SOEs operate is all over the place and often conflicting with each other. As such, it does not facilitate the execution of fiduciary duties satisfactorily. That is, the current legislative and policy framework seems to constraints the SOEs from performing their developmental, strategic and socio-economic functions and it is overlapping. In addition, Kanyane¹⁰⁴ pointed out that SOEs are subjected to different acts thereby exposing them to different treatment. For instance, the Companies Act¹⁰⁵ provides that the shareholder should appoint an audit committee of an SOC while PFMA¹⁰⁶ on the other hand entails that the board is responsible for the appointment of audit committee.

SOEs are also subject to Treasury Regulations 16 which makes provision for national and provincial government institutions to enter into public-private partnership agreements. It is now important to look at the following legislative framework:

¹⁰³ Kanyane 2015:29.

¹⁰⁴ Kanyane 2015:29.

¹⁰⁵ Companies Act 71/2008.

¹⁰⁶ PFMA 1/1999.

2.6.1. Constitution

The Constitution of South Africa is the supreme law of the land and if any other law is inconsistent with it, that other law shall to the extent of its inconsistency be *null and void*. The constitution establishes basic human rights and freedoms. The South African Constitution recognizes the importance of corporate governance in that, section 195 provides that, *'Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: (a) A high standard of professional ethics must be promoted and maintained. (b) Efficient, economic and effective use of resources must be promoted. (c) Public administration must be development-oriented. (d) Services must be provided impartially, fairly, equitably and without bias.*

Section 41 of the Constitution further recognizes the principle of good corporate governance in that, it requires all governmental institutions, companies and all organs of State to, amongst other things, 'secure the wellbeing of the people of the Republic', to 'provide effective, transparent, accountable and coherent government', to 'respect the constitutional status, institutions, powers and functions of government in the other spheres' and not to exercise their powers and functions in a manner that encroaches upon the institutional integrity of government in another sphere. In essence, section 41 of the Constitution postulates that all spheres of government and all organs of State must co-operate with one another and must assist and support one another.

2.6.2. Public Finance Management Act

The Public Finance Management Act is an important piece of legislation because it promotes good financial management for the companies in order to maximize service delivery through effective and efficient use of the limited resources. This means that it is the responsibility of the SOEs management and public officials to safeguard the use of national resources. In actual fact, proper management include but is not limited to being transparent and accountable as these components are crucial in good corporate governance. In addition, the issue of transparency, accountability and effective management of financials are the core components of corporate governance.

Coming now to the legislative provisions that deal specifically with corporate governance issues under the PFMA, section 49 deals with the accountability of the Board of the SOC. Section 50 on the other hand provide for the functions the board of the SOC. That is, it provides *inter alia* that the board of an SOC must exercise outmost care to ensure reasonable protection of the assets and records of then SOC. The above entails the idea that the board must act with integrity and honesty in the affairs of the company and in doing so; they must take into account the best interests of the SOC in the discharge of their duties. Section 51 further deals with the functions of the board but in particular, the prominent function is that, the board should ensure that there are in place, effective, efficient and transparent finance and risk management controls. Additionally, the board should ensure that the system of internal audit is under the direction of the audit committee. The audit committee, in terms of the Treasury Regulations 2011, must be elected by the board and must comprise of majority of non-executive directors. According to section 77 of the PFMA, the audit committee should have at least three persons.

2.6.3. Companies Act of 2008

The Companies Act 71 of 2008 was enacted in 2008 but was however implemented in April 2011. This was owing to a number of factors which hindered its coming into effect. According to the Department of Trade and Industry, the Companies Act has been modernized and brought into line with international best practices.¹⁰⁷ The Companies Act has further been harmonized with other South African legislation such as the Promotion of Access to Information Act (PAIA) and Electronic Communications and transactions Act (ECTA).¹⁰⁸ The Act encourages high standards of corporate governance in that;

Section 66(1) (2) provides that an SOC must have a board, which has the authority to exercise all the powers and perform any of the functions of the SOC, except if limited by the Companies Act or Memorandum of Incorporation (MOI). The board of an SOC should comprise at least three directors. Furthermore, Section 72(4) read in conjunction with

¹⁰⁷ Department of Trade and Industry 2010.

¹⁰⁸ Du Plessis 2012:49.

Regulation 43 provides that the board of an SOC must establish a social and ethics committee.

In an effort to observe high standards of corporate governance, Section 76 sets out standards within which directors' conduct should be. It goes further to provide that such conduct should be in line with common law duties, viz. to act in good faith and for proper purpose, in the best interest of the company and with the expected degree of care, skill and diligence.

Under section 94(2), the audit committee has been provided for and that the audit committee must be elected by the shareholders at the annual general meeting. However, section 94(4) and (5) determine that membership of the committee must consist of at least three members who are directors of the SOC and independent as described. Section 94(4) specifies that each member of an audit committee must be a director of the SOC. Section 94(5) determines that members must satisfy any requirements the minister may prescribe as necessary to ensure that any such committee, taken as a whole, comprises persons with adequate relevant knowledge and experience.

Section 94 (7), *inter alia*, sets out the duties of the audit committee such as the duty to nominate the external auditor; to determine auditor fees and terms of appointment; to ensure that the appointment of the auditor complies with the provisions of the Companies Act and any other legislation.

The above provisions indicate legislative requirements for sound corporate governance by companies in South Africa. Additionally, the provisions support the view that the Companies Act recognizes high standards of corporate governance.

2.7 Conclusion

Corporate governance in South Africa was introduced due to a growing need around the world for the businesses to uphold good corporate governance. Thus far, it seems clear that the institutionalisation of corporate governance in South Africa was influenced by the publication of King Report I which was to the effect that, businesses should observe high

standards of corporate governance. Another factor that inclined further developments of corporate governance in South Africa was due to developments in the business sector and around the world in relation to corporate governance trends. As a result of these developments in corporate governance, the PFMA and Companies Act were enacted with a view to address these requirements. Lastly, it suffices to note that King II and III were issued to improve corporate governance in South Africa.

On the issue of importance of corporate governance, it can be briefly concluded that corporate governance can significantly contribute to the economic success of companies when it is correctly applied. Naidoo rightly said that “*the life of corporations without proper corporate governance would be poor, nasty, brutish and short*”. Based on this statement, one can infer that indeed corporate governance is an important and critical concept in the business world. Lastly, one can conclude that corruption and lack of ethics can hamper the integrity of businesses.

The board of directors, internal audit, external audit, audit committee, executive and shareholders play a key role in ensuring good corporate governance of SOCs. It has further indicated that, each of the role-players should exercise due diligence his or her role of upholding good principles of corporate governance because if they compromise there would be serious consequences of corporate failure.

In as far as political interference is concerned; one can conclude that politicians are only worried about their status within the society. That is, politicians want to look competent to the voters and as a result, they tend to divert the country’s resources into the direction which is likely to benefit them politically. Thus far, it seems clear that politicians care about their chances of being re-elected. One crucial point I have also noted is, political interference impact negatively on the performance of the SOCs and that the integrity and the independence of the board is predominantly compromised as the desires of politicians are only observed and the corporate governance of such SOCs is left hanging. Finally, the government seems to have forgotten about its mandate of nominating and appointing board members through transparent procedures because when selecting board

members, they focus more on political preferences rather than on expertise. It can therefore be summed-up that political interference will always hinder the development of SOCs unless something is done about it.

Coming now to the legislative framework of SOCs, literature has shown that the Companies Act, PFMA, the Constitution and the King codes play a vital role in the corporate governance of SOCS. This is further supported by the view that legislation and regulation are the cornerstones of corporate governance because they outline the rules within which SOEs should operate. The SOCs in South Africa are subjected to a number of legislations which are sometimes in conflict with each other. For example, in terms of the Companies Act, the shareholder should appoint an audit committee of the SOC while PFMA on the other hand entails that the board is responsible for the appointment of audit committee.

A note has also been taken that, due to exposure to different legislations, SOCs are subjected to different treatments. Let's take for example the Companies Act, it provides that the shareholder is responsible for the appointment of the board and the board on the other hand, has the power to appoint the CEO. This is not the case with the SOCs as the cabinet is responsible for approving the CEO's appointment. This in itself, renders the board's decision meaningless. Although there is inconsistency in as far as the Companies Act and the PFMA, the spirit behind the Acts is still the same. That is, observing high standards of corporate governance.

In a nutshell, this chapter has provided the legislative framework governing the SOCs in general and went further to show the importance of corporate governance together with role-players needed to ensure good corporate governance of SOCs. It also incorporated the historical developments of corporate governance in South Africa.

CHAPTER 3

CASE STUDY ON SABC

3.1 Introduction

Nowadays, the atmosphere in which businesses operate has become very difficult yet vibrant at the same time and in response to this, it has become vital for businesses to respond faster than the competition. One way this can be achieved, is by encouraging good governance within business entities. According to the Open Society Institute,¹⁰⁹ in South Africa, the SABC has been identified as the leading news operation. Open Society Institute state that around 29 million South African people listen to one of the SABC's 18 radio stations while about 17 million people tune in to the three free to air television channels almost every day. The above view is confirmed by Bromse when he indicated that the SABC "is by far the largest and most influential broadcaster in South Africa – in terms of reach, size, overall audience figures, number of channels, and share of advertising market."¹¹⁰

The SABC has been noted as important because it is a public broadcaster that is capable of offering citizens unique and thoughtful programming aimed at upholding the interests of all stakeholders without any favour. Moreover, the SABC is important for the reason that it offers opportunity of programming that is inclusive and aimed at firming up democracy.¹¹¹

This chapter will therefore present a brief overview of the history of the SABC. The chapter will also outline the governance of the SABC so as to fully appreciate the challenges the corporation is facing. The legislative framework governing SABC is explored in an endeavour to understand how the SABC is regulated and whether there is a need to review the existing legal framework.

¹⁰⁹ Open Society Institute 2010: 125

¹¹⁰ Bromse 2016:1

¹¹¹ Skinner 2011:1

3.2 Historical overview of the SABC

The year 1936 saw the introduction of the SABC by the government of South Africa. It offered its services in both English and Afrikaans.¹¹² It is vital to note that television started to broadcast in 1975 in the cities. On a national level, the SABC began to broadcasting in the early days of 1976.¹¹³

The SABC has been a state broadcaster till 1994, during that period; the SABC was serving the interests of the apartheid regime. In the same way, the ruling government used the SABC solely to advance its ideology. Thus, radio and television were used to further the interests of the white people. The SABC was transformed into a public broadcaster in the 1990s from being a mouthpiece of the ruling government. It was during this time that the SABC was “identified as one of the crucial pioneers for a free and fair election”.¹¹⁴

The SABC has been transformed into a public company and it is a government entity¹¹⁵ in accordance with the PFMA 1 of 1999. It is vital to note that as a government entity, the government is the only shareholder of the SABC.¹¹⁶ The Act¹¹⁷ introduced a charter establishing the corporation’s “independence” and the right to “freedom of expression.”

Commercial radio known as Springbok was introduced in 1950. Between the period of 1950 and 1960, radio services for African languages were introduced in SABC with different stations broadcasting distinct ethnic identities. It seems that the broadcasting in South Africa has been conquered by the SABC which was able to cater for the interests of distinct and diverse cultures.

The 1980s saw the move headed for neo-liberal free market economic policies by the NP which led to commercialisation of various parastatals that had monopoly in sectors such

¹¹² Bromse 2016:1.

¹¹³ Bromse 2016:2.

¹¹⁴ Bromse 2016:2.

¹¹⁵ PFMA 1 /1999; schedule 2.

¹¹⁶ Right2 Know Discussion Document 2011:17, Bussiek 2005:59 and Broadcasting Act 4 of 1999.

¹¹⁷ Broadcasting Act 4 of 1999.

as telecommunication, energy and transport.¹¹⁸ In 1991, the SABC was modernised along commercial lines following the above move by NP. It is worth indicating that this move by the NP was seen as to be entrenching ownership and control patterns in South Africa.

Historical overview of the SABC is demonstrated by two ideologically different eras. The first being, the apartheid era, which was characterised by the SABC functioning as an organ of the state; that is, created by the state, and thus serving the racist propaganda project of the self-same state.¹¹⁹ This oppressive era of the SABC culminated in 1994, which is the year in which a democratic dispensation necessarily reconfigured the old functioning of the SABC as a servant of the NP government. The second phase of the SABC's existence manifested itself in the post-1994 era, which is characterised by the constitution based on human rights.

3.2.1. The SABC during apartheid

As has already been alluded to above, the history of the SABC has been characterised by the politics of the apartheid regime which was known for lack of editorial independence and public accountability. The NP government used the SABC as its spokesperson to promote its own interests.¹²⁰ During the NP regime, governance and management of the SABC was not transparent and accountability to the general public was not recognized. This approach was criticised by many authors in that it does not cater for other racial groups since it was only interested in its propaganda.¹²¹ In the same manner, ICASA¹²² argued that it is essential to have a public broadcasting service. It continued to state that, it would be inappropriate to leave broadcasting exclusively in the hands of the market as it would end up being abused to the extent of neglecting the interests of other people.

It was on this basis that the African National Congress (ANC) objected to the restructuring of the SABC prior to a political settlement. The ANC position ended in January 1992 when

¹¹⁸ Barnett 1998:6-7.

¹¹⁹ Bussiek 2005:129.

¹²⁰ Horwitz 2001:20.

¹²¹ Herbst 2013-BizCommunity.com, Horwitz 2001:121 and Duncan 2003:

¹²² ICASA 2003.

media Charter was put out.¹²³ The ANC Media Charter advocated for a pluralist approach. The charter was all about the acknowledgment of the right to obtain and distribute information as a basic requirement for autonomous citizenship and involvement.¹²⁴ In actual fact the NP did not want the ANC to have full and unrestricted control of the SABC and on the other hand the ANC was against the idea of control by the NP. This dilemma is said to be responsible for the birth of the Independent Broadcasting Act (IBA) – According to Barnett¹²⁵ the establishment of the IBA was one of the concrete measures settled during the Conference of Democratic South Africa (CODESA) in 1992.

The beginning of Constitutional dispensation based on a universal permission necessitated the review and conversion of SABC from being a government agent to a public broadcaster entrusted with values enshrined in the Constitution. Basically, prior to 1994, broadcasting was primarily regulated by the Broadcasting Act 64 of 1976. In terms of this Act, the NP's government had exclusive control over broadcasting policy formulation and regulations. The inference here is that SABC has been managed and controlled in a manner which was appropriate for a state broadcaster as opposed to public broadcaster. As a State broadcaster, governance principles such as transparency, accountability, ethics and justice were violated.

3.2.2. The SABC after apartheid

In seeking to overcome the apartheid inheritance, broadcasting policy in 1994 sought to convert the SABC into a sovereign public broadcaster that is financially well-off and that is supportive of a diverse country. The role of the SABC in transforming society has always been an integral part of the country's opposition to colonialism and the apartheid regime. The NP government acknowledged that the SABC is an important role-player in the distribution of the Afrikaans language, culture, and apartheid philosophy.¹²⁶

¹²³ Teer-Tomasselli 1993:227

¹²⁴ African National Congress 1992.

¹²⁵ Barnett 1993:9.

¹²⁶ Horwitz 2001:121.

With the birth of Independent Broadcasting Authority (IBA), it was charged with regulating the broadcasting business in the country which was previously regulated by the Home Affairs department. The launch of the IBA was an important accelerative step for the broadcasting in South Africa as constitutional independence was ensured. In June 2000, the IBA and the South African Telecommunications Authority (SATRA) were combined into Independent Communications Authority of South Africa (ICASA). ICASA was therefore administered by ICASA Act 4 of 1999. At this time, the focus of both the ruling and opposition parties evolved around the SABC as the most influential voice in the broadcasting of the news and information.

2004 saw the introduction of the new SABC editorial policy. The purpose of these policies was to name but a few: to cover news, editorial, programming, local content, education, universal service and access.¹²⁷ In order to see the implementation of these policies, the SABC was required to engage in continuous trainings for skills development and other measures that could help to see the execution of the policies.

As has already been alluded to previously that the SABC was changed into a public company in 2004,¹²⁸ it is critical to highlight that in June 2005, the SABC was relicensed and in accordance with section 10,¹²⁹ the new licence reflected reform of the corporation into a commercial and a public broadcasting service.¹³⁰ Further to the above; the objective of the Act¹³¹ was to create and improve a broadcasting policy which is in the best interest of the society regardless of race.

3.3 Corporate governance and the SABC

Based on the rapidly increasing scale and activity of corporations, the importance of governance of business entities has become very significant. It is argued that since these businesses have lasting impacts on the societies in which they operate as well as on the

¹²⁷ SABC Editorial Policies 2004.

¹²⁸ SABC Annual Report 2014/2015.

¹²⁹ Broadcasting Act 1 / 1999.

¹³⁰ www.nab.org.za (accessed on 20 -07-17).

¹³¹ Broadcasting Act 4 /1999.

economy, it is critical for these businesses to observe governance principles. It is further claimed that the impact is also on how business entities are governed, their objectives and responsibilities.¹³²

According to Nevondwe, Odeku and Tshoose¹³³ governance of business entities has become a centerpiece of attention and of utmost importance to the directors, shareholders and to the society as well. The notion of corporate governance is not exclusively limited to private sector only, in view of that, it is the public sector's responsibility to also confine its businesses within corporate governance constraints towards improving their efficiency, effectiveness, accountability and reputation.

Having regard to the above articulation, corporate governance is therefore premised on principles such as leading business with integrity, fairness, transparency, making all the necessary disclosures and decisions, complying with rules and regulations, being accountable and responsible towards the stakeholders.¹³⁴

As far as governance is concerned at the SABC, a number of concerns have been raised lately. Among other concerns raised relates to poor governance. Parliament complained about non-accountability by the SABC. In support of this view, the parliament specified that, it had looked at evidence from audit and other reports of poor financial and other management controls.¹³⁵

The most critical issue that was raised by government, parliament and members of the public relates to the obvious failure to effectively hold the SABC to account. In view of the above, the Parliament said that there is a need to clarify roles and to draw the demarcation line for accountability purposes. The Parliament is of the opinion that if the line of accountability is drawn, it would be easy to understand the functions between the SABC and the Minister as shareholder, ICASA and Parliament. The Broadcasting Act together

¹³² Nevondwe, Odeku & Tshoose 2016: 261.

¹³³ Nevondwe, Odeku & Tshoose 2016: 261.

¹³⁴ Rossouw 2005:101.

¹³⁵ Parliamentary Inquiry into the SABC.

with the Public Finance Management Act 1 of 2000 provides a framework for the reporting lines for the SABC, Parliament, Government and ICASA.

In 2013, SABC was alleged not to have followed due process in the editorial policy. Broadcasting Act 4 of 1999 requires the SABC to develop the news and editorial policies. It further provides that it is the responsibility of the SABC to make sure that the public participate in the development of the policy. This is done by engaging the public to comment and give their own opinion on the policies.¹³⁶

Since mid-2000s to date, the SABC has been under constant governance and financial challenges. These include hitches with boards and CEOs and on-going problems with the SABC's oversight structures, including the ministry, parliament and South Africa's independent regulator, and ICASA. Despite prescriptive legislation, the SABC Board and management has been involved in legal tussles which resulted in resignations and the dissolution of Boards and a massive exit of senior management. According to Duncan,¹³⁷the SABC's problems are attributable to a number of internal and external factors. Duncan blames external factors such as political interference and internal factors such as corruption, conflict between the board and CEO, and vacuum in leadership to the current mess SABC is in. Edward¹³⁸ is of the opinion that, the consequences of these factors bring bad governance at the SOE which ultimately undermines the integrity, public confidence and effective service delivery in the system of governance. The impression that one gathers is that, the constitutional requirements are not always adhered to by the SOEs. Section 195(1)¹³⁹ requires that high standards of professional ethics must be promoted and maintained.

Leadership instability was highlighted by a R1.4-billion loan secured by Minister of Finance, Pravin Gordhan, in 2009. The leadership clashes and the continuous lack of a

¹³⁶ Minister of Communications Address to Ad Hoc Committee 2016.

¹³⁷ <http://www.ru.ac.za/highwayafrica/articles/nane,80191,en.html> (accessed on the 17-08-2017)

¹³⁸ Edwards 2007:29.

¹³⁹ Constitution of South Africa 108 / 1996.

steady leadership impacts negatively into the staff's performance whose work time and again keeps being demoralised by a lack of clear lines of command, combined with insecurity about what the future holds. At the end of the day, the quality of programming is compromised. According to Boseman,¹⁴⁰ it is important to have effective leadership as it reduces instances of corruption. Boseman is of the opinion that an effective leader has the ability to lead an institution to flourish in service delivery. What Boseman means is that: in order for an institution to flourish, it needs good leadership. It can therefore be inferred that SABC lacks an effective leadership as dictated by Boseman hence why it has leadership instability which resulted in financial loss. Ineffective and unethical leadership has been described by Pillay as an impediment to good governance.¹⁴¹

During 2008/2009 financial year, the SABC lost around R910 million due to unethical behaviour and corrupt practices.¹⁴² Consequently, SABC was forced to seek financial assistance from elsewhere. Since 1999, the SABC has not recovered from the infighting and legal battles. The Financial Mail reviewed the SABC's 2008 results and started off by stating that "if the SABC was a listed company, its shareholders would have abandoned it long ago. A culture of wasteful expenditure, misappropriation of funds, theft and rocketing costs appears to have become entrenched."¹⁴³ Motlounge is unfortunately not alone in the negative view of the SABC. This gives the impression that the SABC is far from recovering from the financial crises it is facing. This has been confirmed by several media reports. In one report, it was reported in March 2017 that the SABC is now funding its activities from its reserves.¹⁴⁴ In another report, it was indicated that Hlaudi Motsoeneng left SABC "on the brink of collapse" in that, he appointed too many people in positions they are not needed thereby leaving SABC in financial crisis.¹⁴⁵ To this end, Motlounge also reported that "profits for the year 2008 fell to an embarrassing R38.4 million

¹⁴⁰ Boseman 2008:36.

¹⁴¹ Pillay 2004:587.

¹⁴² Department of Communications South Africa. 2016.

¹⁴³ Motlounge 2008:54.

¹⁴⁴ News24 March 2017 (SABC faces collapse).

¹⁴⁵ Citizen.co.za/news/south/Africa (Hlaudi left SABC on brink of collapse).

before tax."¹⁴⁶ In its review of the state-owned-entities, the Presidential Review Committee¹⁴⁷ came to a conclusion that most of the SOEs are poorly governed and dysfunctional. SABC is not immune to this criticism.

The main point of the struggle was to have an independent SABC Board. This ideal remained subtle during the apartheid era and even during constitutional democracy. Authors such as John and Senbet¹⁴⁸ and King Reports II and III indicate that Board independence can be guaranteed by the great number of Board members being non-executive directors. The SABC Board is constituted along the best practice in that the greatest number of Board members is non-executive directors; however the Board's independence has been questioned in many occasions. To illustrate this point, the Public Protector Report entitled "When Governance and Ethics Fail"¹⁴⁹ alluded to the structural inefficiency, maladministration, fraud and corruption throughout the SABC governance and management. Arguably, these findings are not new, as the corporate governance crisis dates as far back as 2000s since then; the SABC has had a number of Boards, interim Boards, and CEOs' resignations. The continuous governance challenges cannot be separated from the editorial policy which has often been the subject of heated debate and contestation between Board structures and senior management.

The SABC Board eventually surrendered to internal in-fighting over the appointment of Motsoeneng as the acting COO. The final rift appeared when the Chairperson (Dr Ngubane) and his Deputy (Mr. Thami ka Plaatjie) wrote a letter saying that Motsoeneng would continue to act as COO and the rest of the Board disagreed.¹⁵⁰ Subsequently, the Chairperson and his deputy resigned after the Board held a special meeting to remove Mr Motsoeneng. It was reported that the then Minister of Communication, Ms. Dina Pule,

¹⁴⁶ Motloun 2008:54.

¹⁴⁷ Presidential Review Committee- State-Owned-Entities-[http://www.policy.org.za/articles/report-of-the-Presidential review –Committee-on-state-owned-entities-may 2013](http://www.policy.org.za/articles/report-of-the-Presidential-review-Committee-on-state-owned-entities-may-2013).

¹⁴⁸ John & Senbet 1998:373.

¹⁴⁹ Public Protector South Africa 2013/2014.

¹⁵⁰ Daily Maverick 3 September 2013.

tried to persuade the two to withdraw their resignations.¹⁵¹ However, they had already resigned at that time.

According to several media reports, mass resignations by Board members were attributed to political interference.¹⁵² This fact has been alluded to in chapter 2 that political interference is one of the contributing factors to SOEs governance problems.¹⁵³ SABC is not an exemption to this problem as it has been reported that one of the Board members at the time (Susan Vos) complained in Parliament about political interference. These views were also supported by another Board member who resigned and had told the Mail and Guardian that the SABC's core problem is with regard to ministerial interference in the affairs of the Board and running of the SABC, which has become exceptionally challenging for the SABC to comprehend.¹⁵⁴ These claims were nonetheless denied by the Minister of Communication – it is reported that on 19 March 2013, the Minister appeared before the Communications Parliamentary Portfolio Committee and had denied ever politically interfering in the affairs of the SABC Board. In 2013 also, the Chairperson of the SABC Board and his Deputy resigned as a result of political interference with regard to the appointments of the Board and Executive.¹⁵⁵

As Burger¹⁵⁶ puts it, constant conflicts and political interference indicates a worrying pattern of poor governance which affects the independence of the board. He further states that if this kind of events keep on occurring, they are likely to jeopardise the functioning of the board and impact on its credibility. For good governance purposes, the board's independence is crucial for proper performance and strategic direction.

Having regard to the above discussion, it is clear that the SABC has lost its credibility as a PSB; thus, the main challenge for the SABC is to restore its credibility. In addition, the SABC's crisis of credibility comes with a crisis of professionalism. Here, less experienced

¹⁵¹ Daily Maverick 3 September 2013.

¹⁵² Fourie 2013:3.

¹⁵³ OECD 2005.

¹⁵⁴ Mail & Guardian 2013.

¹⁵⁵ Fourie 2013:3.

¹⁵⁶ Burger 2006:1-20.

people have replaced the more experienced staff at the SABC, due to the mass departure of staff that the SABC has experienced. As a result, the inability to retain its professionals or acquire new professionals, points to an inadequate management strategy at the SABC.

Fourie¹⁵⁷ noted among other things that, the SABC is guilty of mismanagement, corruption and nepotism, as well as a drop in the quality of their news and documentaries. The case of *SABC v DA*¹⁵⁸ which has been discussed in detail in previous chapters is a clear example of how the SABC is guilty of mismanagement and corruption. The tension between the SABC board and management adversely affect the extent to which the mandate and strategy of the SABC as SOC is executed. These events taking place at the SABC are in violation of the clear principles of good governance. According to the Institute of Directors in Southern Africa,¹⁵⁹ good governance is basically about leadership that is competent, leadership that upholds justice, leadership that is responsible and leadership that is both transparent and answerable. From the foregoing discussion, it is evident that SABC does not live up to the principles of good governance. For the SABC to overcome the challenges it is facing, Cady and Soukup¹⁶⁰ are of the opinion that factors such as dominant personalities, egos, group factions, mismatch of skills and styles, and an absence of a sense of direction play a major part on the dysfunctionality of an institution. Accordingly, the biggest problem to be overcome is the interpersonal relationships between Board members in order to have an optimally functioning institution. A non-harmonious relationship between the Board and the CEO affects the stability and functionality of an institution. The governance of SOEs requires harmony and convergence of the decision-made and the decision implementation in order to have a positive outcome. It thus requires that the Board and the CEO should be in accord, at all times. The above observation has been confirmed by Bongani Khumalo, who resigned from the SABC Board in 2015. He stated that the problems at the SABC were due to attitudes and behaviour".¹⁶¹

¹⁵⁷ Fourie 2003:153.

¹⁵⁸ (393/2015)[2015]ZA SCA 158.

¹⁵⁹ Institute of Directors in Southern Africa 2002:19.

¹⁶⁰ Cady & Soukup 2008:46.

¹⁶¹ Minister of Communications address to ad hoc Committee 2016.

3.3.1. Mandate of the SABC

It is crucial that the SABC execute its mandate in order to achieve its goals. Generally, from a layman's point of view, the mandate execution is indicative of an organisation's efficiency and effectiveness. The ability to execute an institutional mandate is however dependent on effective leadership which is in a harmonious relationship with its implementing body as led by the CEO.

The SABC's mandate as a Public Broadcaster is provided for in the legislation, Regulations, Policies, Codes of Conducts and License conditions,¹⁶² to name but a few, the Constitution of South Africa 108 of 1996 as amended; Broadcasting Act 4 of 1999 as amended; ICASA Act 13 of 2000 as amended; and The Electronic Communications Act 36 of 2005 as amended. ICASA Regulations have summarised in clear terms the obligations of ICASA that emanates from the Broadcasting Act. ICASA Regulations are responsible for determining the licence conditions for the SABC's four television channels and eighteen radio stations. Section 8¹⁶³ states that the SABC is responsible to fulfil the broadcasting needs of all South Africans as per the dictates of the Charter. The Charter is provided for under chapter IV of the Broadcasting Act (as amended) The SABC is thus enjoined to perform the following:

- make sure that its services are accessible all over the country;
- inform, educate and entertain;
- make services available in all official languages;
- reflect both the unity and diverse cultural and multi lingual nature of South Africa and all of its cultures and regions to audiences;
- provide programming for children, women, youth and people with disabilities;
- broadcast national, developmental and minority sports;
- develop talent and showcase South African content;

¹⁶² SABC Annual Report 2016:23.

¹⁶³ Broadcasting Act 4 / 1999.

- provide independent news of high quality standards.

In the performance of its mandate, the SABC is also guided, among others, by: Public Finance Management Act (PFMA), 1 of 1999 as amended; the Companies Act 71 of 2008 as amended; The King Code of Governance for South Africa 2009; South African National Treasury Regulations, The SABC's Delegation of Authority Framework; Basic Conditions of Employment Act 75 of 1997, as amended; Labour Relations Act 66 of 1995, as amended; Employment Equity Act 55 of 1998, as amended; The Preferential Procurement Policy Framework Act 5 of 2000 as amended; and The Skills Development Act 97 of 1998, as amended. Further to prescriptive legislation, the SABC Board is responsible for managing and controlling the business of the SABC as envisaged in the Memorandum of Incorporation (MOI), and codified in the shareholder compact. Adhering to statutory law and policies means that compliance is guaranteed.

According to several print media, the SABC is not able to execute its mandate. This was indicated in a letter in June 2014 from the Congress of South African Trade Unions (COSATU) addressed to Ms Zandile Tshabalala, the Chairperson of the SABC Board then. COSATU claimed that the SABC is unable to fulfil its mandate due to the fact that the SABC is stuck in obvious governance and financial predicaments at the top management.¹⁶⁴ Further to the above, the SABC has reported in its financial year 2015/2016 that it is unable to execute its public mandate as it is burdensome and puts it at the disadvantage. This was confirmed by a loss of M411 million in the financial year 2015/2016.

3.3.2. Structure of the SABC

The SABC structure is characterised by both governance and oversight structures. These structures have vague and sometimes contradicting mandates, roles and functions. It has been argued that; in order to ensure good governance at the SABC, it is imperative to accurately spell out the roles and functions for both oversight and governance structures.

¹⁶⁴ Vavi 2014.

In addition, clear lines of accountability should be drawn.¹⁶⁵ The SABC's oversight structures have been widely criticised as exceptionally weak.¹⁶⁶ These structures are inclusive of parliament, the ministry, the regulator and the SABC board. Skinner argued that the Minister of Communications Faith Muthambi have directly colluded with Hlaudi Motsoeneng when he appointed him as the chief operations officer even though the Public Protector had already issued a report regarding appointment of Motsoeneng.

Skinner continues to state that the parliament's attitude to defer filling vacant board positions at the SABC left the board flimsy and inadequate. The majority of studies have indicated that a vacant leadership position puts a strain on the effectiveness of an institution. Institutional performance has been shown to be at its lowest when there is an absence of a person giving direction.¹⁶⁷ The ICASA on the other hand has on a number of occasions refused to address censorship issues which started during the days of the head of SABC news Snuki Zikalala and the blacklisting disaster that dates as far back as 2006.¹⁶⁸ On the other hand, Motsoeneng has also engaged in populist politics, in that, he gathered support from musicians and artists to back his unfounded ideology that all SABC radio station should play 90 per cent local music.

3.3.3. Board Appointments at the SABC

SABC is faced with many governance challenges; however, the key challenge is in relation to the board appointment. According to the Broadcasting Act 4 of 1999, the President has extensive power over the appointment of board members. This however may have adverse effects on the independence of the board as the President is likely to appoint people who are politically affiliated to his political party. The Act further confers on the President the power to remove board members from office. According to Hunter¹⁶⁹

¹⁶⁵Right 2 know Campaign Discussion Document 2011:18.

¹⁶⁶ [www.wits.ac.za/news/latest news](http://www.wits.ac.za/news/latest-news) (accessed on the 23/08/2017).

¹⁶⁷ <http://dx.doi.org/10.2139/ssrn.219129>.

¹⁶⁸ Bromse 2016:2.

¹⁶⁹ Hunter 2006:38.

it seems that the SABC's entire existence is driven and tainted by political affiliations and expectations from government.

Another repercussion that politically motivated appointments have is that, people who have no expertise are appointed as board members. This befits the whole purpose of the Companies Act which requires high standards of governance. This view is supported by Bussiek¹⁷⁰ who argues that members of the board should have the necessary knowledge and expertise to fulfil their duties. For example, in 2007, SABC board was headed by Dali Mpfu who had neither knowledge nor expertise in broadcasting, media or communication.¹⁷¹ To place someone who has no broadcasting knowledge to head SABC is not only absurd but unfounded too. This is because lack of such knowledge compromises constructive decision to be made by such a person. The CEO's lack of expertise in media is likely to bring in behavioural efficiency problems within the institution. Mthombothi once said in a review of the SABC: "An organisation that held so much promise at the dawn of our democracy has descended into an amusing circus, at the beck and call of whoever holds (or is seen to hold) political sway... Skills and competence don't matter anymore; political connectivity is everything in landing a cushy job."¹⁷²

The Public Protector¹⁷³ embraces a similar view and reckons that Hlaudi Motsoeneng was also appointed to head the SABC even though his credentials were questionable. In terms of the Companies Act¹⁷⁴ among other provisions; it stipulates the standards of directors' conduct. I therefore come to a conclusion that directors who voted for the appointment of Mr Motsoeneng were clearly in violation of this provision. The above has also been confirmed by the skills audit report which was conducted by PricewaterhouseCoopers (PwC) in 2014. The report revealed that 60 per cent of

¹⁷⁰ Bussiek 2005:39.

¹⁷¹ SABC Annual Report 2006/2007 and Thabane & Snyman Van Deventer 2018:17.

¹⁷² Mthombothi 2008:8.

¹⁷³ Public Protector South Africa 2013/2014 and Thabane & Snyman Van Deventer 2018:17.

¹⁷⁴ Companies Act 71/2008.

executive and senior managers lacked strategic thinking skills. The report went further to show that there were fraudulent certificates in the employees' personal files.¹⁷⁵

During parliamentary inquiry into the crisis at the SABC, Bongani Khumalo, who resigned from the board in 2015 after several clashes with the Minister of Communications said that the issues at the SABC were not necessarily about the organisational structure, but about "attitudes and behaviour".¹⁷⁶ Khumalo is of the view that parliament has to take responsibility for the crisis at the SABC. He further advised that in order to avoid the present situation at the SABC, Board members should be appointed on merit and that they should be properly trained on corporate governance issues. He maintains that, political interference by the Minister brings about bad governance practises such as Motsoeneng's appointment, resignations by board members, serious allegations of corruption and waste of resources.

3.3.4. Challenges facing the SABC

There are various problems facing the SABC with regard to the current crisis that the SABC has. It is argued that the SABC's problems are attributable to the four strategies. That is, the government's strategy to turn SABC into a company in order to relieve the state from funding it has contributed to the SABC's crisis in that, the move had landed SABC into institutional instability as it had inherently a confused mandate. SABC's reliance on commercial funding made it vulnerable to elite capture.

The strategy to increase control of the SABC to government so as to keep SABC on side of the government has also been blamed as one the causes of the present crisis. The articles of association of the SABC give the Minister of Communications excessive control over the SABC thereby exposing SABC to unbearable levels of ministerial interference under the pretence of oversight. This was highlighted when the minister seized the board's right to appoint the SABC's top management positions. This had serious

¹⁷⁵ PricewaterhouseCoopers 2014.

¹⁷⁶ Minister of Communications address to ad hoc Committee 2016.

repercussions for the SABC's editorial objectivity because the CEO is also the editor-in-chief and the COO has taken control of the news and current affairs. This provision defied the doctrine of separation of powers and functions between SABC and executive which is contrary to the provisions of the Broadcasting Act which provide that the board should control its own affairs.

For accountability and transparency purposes, there should be a clear separation of functions of the duties performed by the CEO and the Chairperson. The CEO must be answerable to the Board. The CEO must only make those decisions that have been authorised by the Board, and not usurp functions of the Board.¹⁷⁷ It is worth noting to state that for good governance purposes, the most important relationship in governance is that between the Board and the CEO.

The strategy to save costs: The strategy to centralise SABC's operations made it less accessible to its audience. With this strategy, the SABC closed a number of provincial and regional offices and reduced its local content when its financial position was weak.

The last strategy is with regard to reducing public accountability. It is argued that in the absence of substantive accountability, there is a room for corruption. This the SABC has experienced as well. The four strategies have been criticised for bringing structural weaknesses at the SABC.

Apart from the above strategies, there are other challenges facing the SABC. Duncan¹⁷⁸ is of the view that the initial policy process and resultant policies are to blame for the crisis. Duncan asserts that the policy process and resultant policies were not exploratory enough in detailing the future of public service broadcasting (PSB). In particular, the cross-subsidisation of the SABC, of its commercial arm to its public service arm, was "a disastrous policy choice", that does not work. Duncan¹⁷⁹ further contends that without serious investment in public funds to fund the SABC, PSB in South Africa will not grow.

¹⁷⁷ Principle 2.15 King report III.

¹⁷⁸ www.mg.co.za/article/2007-03-06-2007-its-time-for-a-new-board-at-the-sabc.

¹⁷⁹ www.mg.co.za/article/2007-03-06-2007-its-time-for-a-new-board-at-the-sabc.

According to Duncan, all of this is policy chaos when it comes to the SABC, that there hasn't, since the transformation of the SABC Board in 1993, been a clear line of demarcation that can take us towards the establishment of a proper public broadcaster. So, I think that policy and legislation is characterised by incoherence at best and chaos at worst.

Another problem is the high level of staff departures from the SABC, which has seen the institution lose numerous senior staff members.¹⁸⁰ The SABC has not been able to prevent this loss, which is indicative of a human resource management failure, which in turn is indicative of a governance failure at the SABC.

In addition, there has been a display of SABC Board members interfering in the day-to-day operations of the SABC and thus, making decisions where SABC management should be making decisions.¹⁸¹ Hence, this interference by the SABC Board members indicates that the SABC Board has misconstrued its role at the SABC, which in itself is a governance failure.

The SABC is operating within serious funding constraints, which inhibits the SABC from fulfilling its public mandate; the continued financing of local content will become problematic in the future. It is vital to state that the financing of local content is an especially important challenge that the SABC will have to cope with, as its local content provision is a central aspect of what makes the SABC distinct from other broadcasters.

Further challenges for the SABC, are firstly, winning public trust, where the public has complete trust in the SABC. Winning public trust is difficult to do, as South African society is so diverse. Secondly, the challenge for the SABC is to remain relevant to the public. Thirdly, the SABC must stay abreast of technological developments. The high costs of new technologies are incompatible with the SABC's revenue generation as it is in terrible financial position.

¹⁸⁰ www.mg.co.za/article/2007-03-06-2007-its-time-for-a-new-board-at-the-sabc.

¹⁸¹ www.mg.co.za/article/2007-03-06-2007-its-time-for-a-new-board-at-the-sabc.

Given the challenges facing the SABC that have been identified in this mini-dissertation, it can be seen that the challenges facing the SABC are not just external, but internal as well. Hence, the SABC seems to be dealing with a double-edged sword. Although the SABC may not be able to control the external challenges that it faces, it can control and possibly solve the internal problems it faces, if it can find the solution to do so.

3.4 Legislative Framework governing the SABC

The previous chapter has alluded to the general legislation governing SOCs in South Africa. Since SABC is classified as an SOE, such legislation applies to it as well. It is therefore important to have a look at the legislation which directly governs SABC.

3.4.1. Broadcasting Act perspective

SABC is regulated by the Broadcasting Act 4 of 1999; this Act was replacing Act 73 of 1976. In terms of the Broadcasting Act 4 of 1999, the SABC has been converted into a limited liability company with a share capital and is subject to regulation by the Companies Act 71 of 2008, although Section 7¹⁸² is cognise of the fact that the normal rules for companies will need to be altered to take into account the unique character of the SABC as a corporation.

It is worth noting to indicate that the law that governs the SABC does not satisfactorily guarantee the SABC's independence from the government or its accountability to the public. Consequently, it hampers the institution from fulfilling its Public Service Broadcasting (PSB) responsibilities.

As far as the Broadcasting Amendment Act 64 of 2002 is concerned, the SABC is obliged to deliver a broadcasting service that symbolises fairness and unity. Furthermore, the SABC must comply with its license conditions as imposed by ICASA. Hence, the SABC must provide a broadcasting service, which consists of full-spectrum programming that is inclusive of all South Africans; programming that is fair, balanced, and honest.¹⁸³ In

¹⁸² Companies Act: sec 7.

¹⁸³ ICASA License Conditions 2005.

addition, the principal editorial principles that strengthen the SABC, according to the SABC Editorial Charter, are equality, editorial independence, nation building, diversity, human dignity, accountability, and transparency. However, the extent to which the SABC strives to adhere to and fulfil these editorial values and the regulations stipulated in the Broadcasting Act is of key interest and of crucial importance to issues of democracy in South Africa.

It is of great significance to point out that the Broadcasting Act 4 of 1999 is responsible for SABC's governance challenges in that it has too many critical gaps or flaws. Firstly, it provides that the government is the sole shareholder of the SABC but it fails to make it clear that the government does that on behalf of the Public. Secondly, under the Act, the Minister is responsible for determining the SABC's Memorandum and Articles of Association without consulting the public as is required. Further to the above, the Act is silent on a Shareholders' Compact which the Minister signs without engaging the public. The abovementioned documents give the Minister excessive powers in terms of appointments of executive directors to the Board, input in terms of corporate plans etc. In the end the SABC's independence is compromised. The Broadcasting Act contains serious gaps in relation to who appoints the executive Board members. An additional problem pertains to the Broadcasting White Paper which calls for the creation of "public" and "public-commercial" divisions within the SABC. The division is intended to warrant financial viability, with the commercial arm funding the public arm. Largely, it appears there is insufficient protection of the SABC's independence both from commercial and government pressure.

Section 37 of the 1999 Act provides for the establishment of a Frequency Spectrum Directorate (FSD) within the Department of Communications. The FSD is in charge for the development of policy in relation to the radio frequency spectrum and for ensuring that the spectrum is used in an efficient manner to meet the needs of all users. Pursuant to Section 38 of the 1999 Act, the Minister must establish the South African Broadcast Production Advisory Body to advise him or her on how to develop local television and

radio production. This clearly overlaps with the role of the SABC in developing local talent and in providing programming in all official languages.

Just like other broadcasters, the SABC is obliged to abide by to a Code of Conduct for Broadcasters that is approved by ICASA. Being a member of the National Association of Broadcasters (NAB), the SABC is subject to the rules of the Broadcasting Complaints Commission of South Africa (BCCSA), which make sure that broadcasters observe minimum standards of programme content.

A fundamental principle of the SABC's Charter is based on freedom of expression, creative programming and independence. The SABC Board controls the affairs of the SABC and is explicitly mandated to protect the above articulated freedom and independence.

It can therefore be inferred that the scope of SABC's programming should be in accordance with the dictates of Charter, in so doing, the SABC will have to maintain highest standards of performance. This is so as to sustain public trust in the SABC. In this regard, the SABC staff has to understand that in order to meet the requirements of the legislation and constitutional protection of the SABC's independence, highest standards of performance will be expected from them.

3.4.2. Constitutional perspective

The Constitution¹⁸⁴ also prescribed the establishment of a national treasury to ensure transparency and accountability in terms of all government expenditures. For instance, section 216(1) of the Constitution¹⁸⁵ obliges the national legislation to establish a national treasury. In essence, PFMA prescribes the accounting norms and standards. The overall aim of the PFMA is to improve the operational efficiency of government spending and to strive for value for money. Notwithstanding the role played by the PFMA in ensuring that

¹⁸⁴ Constitution of South Africa108/1996.

¹⁸⁵ Constitution of South Africa108/1996.

SOEs are held to account, there is a need for alignment and coordination in order to avoid duplication.

3.4.3. Companies Act perspective

The Companies Act 71 of 2008 came into effect in 2011 and as a result, all companies, including the SOEs, are expected to comply. Legislative changes have a direct bearing on how organizations are governed and managed. Although it takes a while for the effects of the Act to be felt entirely, Boards and management are nonetheless required to align governance processes and procedures. For example, Memorandum of Incorporation and Articles of Association are the two main drivers of corporate governance that must change to reflect the new dispensation. Any changes must also be reflected in how the Board and management internalise them. I would argue that changes have practical dimensions, which means all dimensions brought about by legislative changes must be considered and this may take time.

In the same vein, the Board and management must ensure that changes in the Companies Act¹⁸⁶ are also aligned to the King Reports on corporate governance. These changes are necessary, however they make governance and management of the SOEs much more complex as there are a number of Acts to which they must adhere to. The overall argument is that SOEs governance requirements are onerous and this makes performance a challenge.

3.4.4. Ministerial perspective

In the context of the SOEs, the shareholder is government and it is represented by the line function minister who oversees the legislative compliance and operational performance of the Board. In the case of SABC, the government is the sole shareholder and it is represented by the Minister of Communications. The SABC is clearly subject to regulation by Parliament, which has power to alter or repeal its enabling legislation. It is

¹⁸⁶ Companies Act 71/2008.

of great value to state that the Minister of Communications also has power over the SABC.¹⁸⁷ This is because SOEs are catered for as they account to the line function department whose mandate is derived from the Constitution. Accordingly, section 215¹⁸⁸ states that all spheres of government are responsible for the promotion of transparency, accountability and effective financial management. The notion of transparency, accountability and indeed, effective financial management, are the critical components of good corporate governance. However, the majority of government departments and indeed, the SOEs, are battling to live up to the Constitutional mandate. The reference to the Constitution suggests that the leadership of the SABC is cognisant of the foundations of the enabling legislation, such as the South African Broadcasting Act.

The Minister has various roles within the SABC; however, the most prominent on the list is with regard to the development of broadcasting policy development.¹⁸⁹ The Minister has the authority to approve the magnitude of funding provided by the commercial to the public service operation, as recommended by the Board. Furthermore, the Minister has power to approve any financial regulations drawn up by SABC, after consultation with the Minister of Finance, and to approve surplus fund investment. In consultation with the Minister of Finance, the Minister is vested with the responsibility to determine the total value and number of shares in SABC and must, approve any borrowing by the SABC. The Minister may also guide the SABC as to how it should prepare its Annual Report and statements.

3.4.5. ICASA's regulation of the SABC

ICASA was established as an independent regulator in 2000 by the Government of South Africa with the view to regulate both telecommunications and broadcasting sectors in the public interest. In terms of the Broadcasting Act 1 of 1999; ICASA is mandated with a crucial role of monitoring and enforcing compliance to the SABC Charter by the SABC.

¹⁸⁷ Broadcasting Act 1 /1999.

¹⁸⁸ Constitution of South Africa 108 / 1996.

¹⁸⁹ Broadcasting Act: sec 3 (2).

The Electronic Communication Act 2005 also provides that ICASA is assigned to safeguard the integrity and viability of the SABC and ensure that it services specific needs. The Act further states that ICASA should not interfere in commercial activities of the SABC in its regulation. ICASA also issues regulatory documents that the SABC is required to adhere to. These documents includes but not limited to the South African music content regulations, the South African television content and local content quotas. ICASA performs these tasks by monitoring the SABC television and radio licence. ICASA has jurisdiction to investigate and entertain complaints about non-compliance of the SABC with the terms and conditions of the licenses.

The SABC is subject to licence conditions and regulations established by ICASA. The White Paper and Broadcasting Act further obliges the SABC to apply for new licences and point out that the public services of the SABC must be predominantly responsible for delivery on public interest goals set in policy. Public commercial services on the other hand have to comply with the legal framework set for privately owned commercial services while observing “the values of the public broadcasting service in the provision of programmes and service”. ICASA’s content regulations set out the minimum requirements for public and commercial services for radio and television.

It seems that ICASA, despite the challenges it faces, is trying significantly to facilitate the SABC to fulfil its public mandate, as can be seen with the stringent license conditions created for the SABC. However, ICASA is restricted in its ability to regulate the SABC adequately due to a flaw in the ICASA Act. Such a discrepancy is a legislative flaw.

Having had a look at the legislation governing the SABC, it is worth noting to indicate that the Broadcasting Act and the ICASA Act generate key flaws in legislation. The Broadcasting Act empowers the President to appoint the SABC Board. The consequences of such a flaw in policy have already been explored in the previous sections. In addition, the Broadcasting Act does not allow the statutory Charter to be renewed on a regular basis. Consequently, the Charter is unable to keep up-to-date with the changing broadcasting environment, which may result in it being unsuitable to

address particular issues or problems that the SABC may have. What is more, the Charter may be unsuitable for the South African context, as much of the Charter originates from the BBC Charter. These flaws in the Broadcasting Act can be seen to be exacerbating the SABC's governance crisis. Furthermore, the ICASA Act restricts ICASA's jurisdiction over the SABC to primarily the institution's license conditions. Hence, any transgressions of the SABC's internal policies go unaccounted. Consequently, the ICASA Act also exacerbates the SABC's governance crisis. Such detrimental flaws in legislation thus hinder the SABC from fulfilling its public service responsibilities.

Section 1¹⁹⁰ adds to this confusion, this is so as it defines 'public service broadcasting' as any service, including a commercial service, operated by the SABC, while Section 9(1)¹⁹¹ provides for a distinction between the 'public service' and 'commercial service' operated by the SABC. In accordance with the licensing, the IBA is required to distinguish between 'public', 'commercial' and 'community' broadcasting services.

3.5 Conclusion

In this chapter a brief overview of the SABC was provided, starting with the initial establishment of the institution in 1936, the introduction of television to South Africa and the transformation along with the political democracy after 1994. The present day situation was described in order to provide a framework for the underlying issues relating to the study.

This chapter has deliberated on critical issues affecting governance at the SABC. The legislative framework governing the SABC has pointed out governance complexities. For instance, as a result of being subject to a number of legislations, the SABC carries a huge mandate and sometimes the Acts overlap which makes it almost impossible for the SABC to fully execute its mandate.

¹⁹⁰ Broadcasting Act 4/1999.

¹⁹¹ Broadcasting Act 4/1999.

A note has also been taken that there is a lot of political interference at the SABC which contributes to governance challenge. Further to that lack of competence by some board members has displayed a governance problem.

The most critical part of this chapter pertains to structure of the SABC as it revealed, internal structures being the result of political interference so, these structures are important in understanding the political tensions and the environment in which the SABC operates. The corporate governance and the SABC is also important in that, it gives a clear picture of the problems faced by the SABC.

CHAPTER 4

INTERNATIONAL BEST PRACTICE

4.1 Introduction

International organisations such as the OECD and the World Bank have created a number of policies for the corporate governance of SOEs as best practice. Typical examples are the OECD Guidelines for State-Owned Enterprises and the World Bank Toolkit for State Owned Enterprises.

One of the research questions which this chapter seeks to answer is what are the best practices globally and which one should be adopted. The chapter will therefore focus on approaches adopted by Singapore and China so as to determine which model South Africa should adopt for its SOCs.

4.2 Singapore

Singapore's SOCs are referred to as government-linked companies (GLCs). The GLCs contribute significantly to the economic development of Singapore. It is worthwhile to indicate that the shares of Singapore's GLCs are held by Temasek Holdings Pte Ltd which is a wholly owned subsidiary of the Ministry of Finance. The government of Singapore established a holding company between itself and the GLCs with a view of shielding the GLCs from political influence and to strengthen their commercial direction. Temasek today controls around 23 of Singapore's largest companies, which collectively account for almost 40 percent of Singapore's total market capitalisation.

Temasek has further attained a total shareholder return of 16 percent annually since its launch in 1974. Temasek attains this by using a number of strategies such as issuing bonds and using market benchmarks to structure incentive compensation for its managers.

The Board of directors of Temasek is known for its independence in that; it is highly professional and non-political in its orientation. It is interesting to note that it is composed

of a majority of independent, private-sector directors, 3 of whom are non-Singapore nationals. There is no ministerial representative on the board. It is also important to emphasise that approximately 40 percent of the staff of Temasek consist of non-Singapore nationals.

In order to avoid the risk of being politically driven, the government of Singapore has created a highly observable and comprehensive regulatory framework. The aim here is to impede the government from abusing its position as the shareholder of the GLCs. For example, a number of legal constraints are imposed on Ministry of Finance's rights as a shareholder. For example, the Singapore Constitution provides that Minister of Finance's appointment, reappointment or removal of Temasek directors must be approved by the President of Singapore.¹⁹² Moreover, Temasek's Articles of Incorporation provide that its board of directors has power to decide on the amount of dividends to be paid to the government.

Due to the fact that Singapore relies heavily on independent directors, this is some kind of protection from political influence. The listed GLCs in Temasek are required to comply with Singapore's Code of Corporate Governance, which clearly provides best practices for public companies on a "comply or explain" basis.

4.3 China

The State Owned Entities in China are under the direct control of a holding company known as "wholly state-owned limited liability company" (WSOLLC). A WSOLLC has one shareholder being the State-Owned Assets Supervision and Administration Commission (SASAC) which was introduced in an endeavor to consolidate control over all SOEs. SASAC's mandate includes but is not limited to appointing, removing and setting remuneration of top SOE executives and drafting regulations on the management of state-owned assets.

¹⁹² The President is the head of state, who cannot be a member of a political party at the time of his or her election and may not have served in the government for at least 3 years prior to his/her election.

It is imperative to note that before the creation of SASAC, SOEs were under the control of specific line ministries. Interesting to this is; China has adopted the Singapore holding company structure.

4.4 Conclusion

Having had a comparative analysis of Singapore and China as best international practice for the corporate governance of SOCs, I can therefore conclude that it seems SOCs are better managed when they are under a direct control of a holding company backed by restrictive legislative framework. It has been noted further that political interference plays a major role in implementing sound corporate governance as such; there is a need to have independent directors to safeguard such a risk.

In a nutshell, Singapore is the international best practice for the corporate governance of SOCs that countries can draw inspiration from. Due to a number of benefits that Singapore offers, it is therefore a preferred model for the corporate governance of SOCs. This is evident from the fact that China has also adopted Singapore's approach.

CHAPTER 5

FINDINGS, DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The spread of corporate governance has been the most important development in businesses around the world. Corporate governance is very much work in progress. This means that good corporate governance still needs to be encouraged within businesses and must not be seen as a tick box. In recent years, corporate governance has caught the public imagination as the most important aspect of businesses which can contribute to the economic success of companies. Additionally, a central claim made by advocates of corporate governance is that; it is particularly an important competitive advantage that is used to maximize a company's performance; increase a company's potential to encourage capital investment. The literature highlighted the centrality of corporate governance as the foremost determinant of the efficacy of SOCs.

This chapter concerns itself with the findings, discussions, conclusions and recommendations based on the research questions and the purpose of the study. The objectives set in chapter one will be reviewed and confirmed to have been dealt with in the respective chapters.

5.2 Findings and Discussions

A study of corporate governance within SOCs shows that the problems faced by the SABC are influenced by both external and internal factors. In the instance of external factors, the prevailing vacuum in leadership is concerning. Administrative difficulties are also apparent at SABC.

It has been found that in the absence of the elements of good governance, which are meant to be constraints, checks and balances, there was an increase in unauthorised, irregular, fruitless and wasteful expenditure which resulted in weak corporate governance

at the SABC. For example Dali Mpfu was accused of having spent R144 million between April 2006 and March 2008 without proper contracts being in place. He also allegedly paid an amount of R7million to Siemens before a contract was in place.¹⁹³

5.2.1. SABC's Top Management

It has been revealed that the SABC is clearly an organisation where top management who is supposed to guide the organisation appears to be in the position where they first need to sort out their own political issues before being able to properly attend to the organisation at large. It is crucial to note that corporate governance mechanisms should not be seen as a tool to prevent unethical behaviour by top management. Nonetheless, they can help to detect such activity by top management in advance. Where corporate governance system is weak, it can be vulnerable to abuse.

5.2.2. The SABC Board of Directors

Due to the essential nature of corporate governance as a business aspect,¹⁹⁴ its importance for corporate success as well as for social welfare cannot be overstated. The role of a company's board of directors is to watch over the corporate management with a view of protecting the interests of shareholders. However, the SABC's board of directors was found to lack autonomy. As such, it impacted negatively on its effectiveness as an independent board is fundamental to good corporate governance. As such, the issue of how to reinforce the directors' ability and determination to challenge questionable dealings through corporate managers was raised. Ultimately, it resulted in the SABC being run in the interests of politicians and not for the benefit of the corporation. Political appointment of directors at the SABC made it difficult to ensure that there is accountability as directors' integrity was compromised in that people who lacked skills were appointed to the SABC's Board.

¹⁹³ Flanagan 2008:1.

¹⁹⁴ Dibra 2016:283.

Corporate governance was found to be weak in almost all aspects at SABC. Thus, the board is composed of a number of people who lacks moral character and who over and over again are prepared to engage in fraudulent activities. This was the foundation of the companies' corporate governance failure.

The system of checks and balances that support corporate governance needs to function effectively. However, careful checking and monitoring structures within the SABC's governance frameworks laid it bare to the abuse of power and fraudulent activity.

One striking finding pertains to poor leadership at the SABC. This is apparent from the financial report of 2014/15 which was characterised by lack of financial control. Leadership has been regarded as a major role player in preventing corruption¹⁹⁵. It is therefore significant to have effective leadership within SOCs.

Corruption accompanied by lack of accountability for maladministration and corrupt practices have been found to be barriers to implementing good corporate governance at the SABC. Granting of contracts, tendering, political interference, bribery and money laundering were reported as areas where corruption is more prevalent.¹⁹⁶

5.2.3. Political interference

The study has discovered that personal connections between executive, government officials or politicians are apparent at the SABC. This network connection suggests that proper procedures and processes are being undermined and that the integrity and the independence of the board is predominantly compromised as the desires of politicians are only observed and the corporate governance of such SOCs is left hanging. Additionally, the doctrine of separation of powers seems to have been overlooked as the shareholder minister interferes in the internal operation of the SABC. This view was also observed by Thabane and Snyman Van Deventer¹⁹⁷ when they said that political

¹⁹⁵ Kroukamp 2014:1413 & Naidoo 2012:31.

¹⁹⁶ ACGN 2016:77.

¹⁹⁷ Thabane & Snyman Van Deventer 2018:23

interference goes against the principles of the doctrine of separation of powers as the authority of the board is highly weakened thereby rendering it a mere rubber stamp.

Generally, the environment at SABC is characterised by lack of trust between managers and board. Due to the fact that political leaders and senior managers use public office for personal gain, the motivation to remain honest has been weakened.¹⁹⁸

5.2.4. Legislative Framework governing the SABC

Notwithstanding the need for legislation and regulation, SABC was found to have been confronted with multiple, fragmented legislation and regulations with varying reporting and accountability requirements. It is therefore clear that the regulatory framework in place at the SABC is inefficient. This is because it has pointed out governance complexities and different treatment. For instance, as a result of being subject to a number of legislations, the SABC carries a huge mandate and sometimes the Acts overlap which makes it almost impossible for the SABC to fully execute its mandate. Boards and management thus have to navigate a complex external environment questioned by internal leadership as well as cultural dynamics riddled by political inference in the name of interventions. Eventually, SOEs are expected to add to their value by infusing and practicing a culture of good governance standards. The government's failure to implement effective solutions to resolve inefficiency can only make the crisis worse.

5.3 Conclusions

The main objective of this mini-dissertation has been to investigate the prevalent corporate governance challenges at the SABC, impact of political interference within SOCs with specific reference to the SABC. An analysis of the importance of corporate governance in SOCs, historical development of corporate governance in South Africa, the role players needed to ensure good corporate governance within SOCs, legislative framework governing SOCS, role of the board of directors, shareholders, audit committee

¹⁹⁸ Kroukamp 2014:1415.

and internal and external auditors were among other topics explored in this study. An overview of critical issues affecting governance at the SABC was dealt with as well as the historic overview of the SABC. The examination of the mandate of the SABC has been looked into. Lastly the scrutiny of the legislative framework governing the SABC as an SOE has also been covered.

Based on the findings of the study, it is concluded that practice of good corporate governance within businesses especially SOCs is essential for the success of the business. That is, the implementation of good corporate governance should be seen as a continuing process of improvement. It can be concluded that, it is critical that government as a shareholder of SOCs, should maintain its focus on the long-term strategic goal of creating ownership policies that guide on how SOCs should be run in an ethical manner.

It cannot be denied or ignored that implementation of good corporate governance can contribute to enhanced economic efficiency. From the analysis, it can further be concluded that sound corporate governance is vital for the well-being of a company and that integrity is key to good governance. In *SABC V Mpofu*,¹⁹⁹ the court emphasised that “integrity is a key principle underpinning good corporate governance and that good corporate governance is based on a clear code of ethical behavior and personal integrity exercised by the board, where communications are shared openly”.²⁰⁰

5.4 Recommendations

Having observed the findings and conclusions based on the objectives of the study above, I would therefore recommend that:

- the state should be conversant and active owner and establish clear ownership policy which warrant that the governance of SOCs is carried out in a transparent

¹⁹⁹ (2009) 4 ALL SA 169 (GSJ).

²⁰⁰ Cassim 2012:473.

and accountable manner with the degree of professionalism and effectiveness. This is also recommended by OECD²⁰¹ as best practice.

The ownership policy should clearly define the overall objectives of state ownership, role in the corporate governance of SOC and how it will implement its ownership policy.

- the government as the shareholder must not to be involved in the day to day management of the SOC.

This means that the government must allow SOC boards to exercise their responsibilities and respect their independence. Further to that, the government should provide board of directors with greater powers and the autonomy to exercise their powers and improve board structure in order to ensure that they have required skills to realise their objectives.

- the shareholder should make sure it elects board members who have the qualities of integrity, competence, responsibility, accountability, fairness and transparency. In addition, the nomination of board members should be through transparent processes based on competence and experience and should act in the best interests of the company as a whole.²⁰² This is because irregular appointment attracts local and foreign criticism. A number of countries have established a clear process for the nomination of SOC boards. For instance, Singapore has established how the nomination process of directors should be.
- ensuring the independence of board members including shielding them from political intervention. That is, the government should dodge nominating a political board.
- clarity on state's ownership function in ensuring SOC boards to create shared vision for the governance reforms. Ernest and Young²⁰³ is of the opinion that; one of the challenges facing SOCs is clarifying the role of government as shareholder as opposed to its representation on the board of directors and its role as policy

²⁰¹ OECD 2005:13.

²⁰² Thabane & Snyman Van Deventer 2018:24.

²⁰³ Ernst and Young 2010:10.

maker. For example, the influence of state representation can be limited to nomination of the CEO or can be extended to the nomination process of the board members from a given percentage. It has been argued that this lack of clarity in the government's role is not only true at board level. It also seems to be true in terms of shareholder rights.

- it is recommended that a monitoring agency be set up to administer the running of SOCs in South Africa. An inspiration can be drawn from either Singapore or China. For example China has established the State Owned Assets Supervision and Administration Commission of State (SASAC) to administer the ownership, supervision and monitoring of SOEs. Singapore on the other hand formed a separate company, Temasek Holdings that functions as the major ownership and monitoring agency for SOCs.
- another possible recommendation could be partial privatisation and listing the company on the financial markets. This could help a great deal as listing provides a barrier against the state intervention.²⁰⁴ Further to that, SOCs would be obliged to comply with the King Reports which encourage high standards of corporate governance.
- Boards and Ministers overseeing these entities must take full responsibility and be held accountable by parliament for these basic failures.
- it is also recommended that independent directors should be nominated to the board. This will act as a kind of shield for the commercial orientation and political independence. An inspiration from Singapore can be drawn in this regard. The listed GLCs in Singapore are subject to Code of Corporate Governance, which offers best practices for public companies on a “comply or explain” basis. The Code is to the effect that at least 1/3 of the board of a listed company should be autonomous.
- there is a need to restructure the overlapping legislative framework so as to give SOCs some independence which will empower them to achieve their mandate.

²⁰⁴ Ernst and Young 2010:11.

Excessive regulations further tend to impair the ability of the board to make commercially sound decisions.

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