

# **AN ANALYSIS OF CORPORATE GOVERNANCE IN STATE-OWNED ENTERPRISES (SOEs) IN COMPLIANCE WITH THE KING CODE PRINCIPLES OF GOOD GOVERNANCE**

by

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## **ABSTRACT**

Basic values and principles governing public administration is determined by section 195 (10) of the Constitution, 1996 (Act 108 of 1996). These principles require for example, the following:

- That professionalism is important;
- The resources must be used effectively, efficiently and economically;
- Public administration should be executed accountably; and
- Information must be transparent and the community must be provided with speedy and quality information.

Schedule 1, 2 and 3 of the Public Finance Management Act, 1999 (Act 1 of 1999) provides lists of the various types of SOEs in South Africa. Recent incidents, media reports, and new developments within the three major strategic SOEs – namely the South African Broadcasting Corporation (SABC), the Electricity Supply Commission (Eskom), and South African Airways (SAA) – raise alarm. Furthermore, these SOEs need to be examined to determine whether they comply with business ethics, management principles, and guidelines provided by the King Codes.

The study described the contextualisation of the three major strategic SOEs, namely the SABC, SAA, and Eskom, and their strategic role as chief elements that convey social merchandise and ventures to guarantee personal satisfaction for every single South African. The study highlighted the broader purpose/aim of the research, which was to analyse corporate governance compliance with the King Codes of good corporate governance at Eskom, the SABC, and SAA.

This study also aimed to establish whether the board of directors of these three major strategic SOEs comply or do not comply with the King III and IV codes and their principles of good governance. The governance oversight role of the South African National Treasury, parliamentarians, and the Department of Public Enterprises (DPE) that promotes good and sound governance in SOEs was therefore examined. Furthermore, this study also sought to determine the main barriers to the successful implementation of legislative measures with reference to the Public Finance Management Act (PFMA) and to explore the role of the board of directors as a legal structure that governs SOEs and their fiduciary duties. The robust debate surrounding

the dark clouds over board members, leadership, ethics, morals, corruption, state resources looting, and instability in the SABC, SAA, and Eskom were investigated.

**Keywords:** state-owned enterprises; corporate governance; compliance; King Code; principles; legislation; regulations; boards; leadership; ethics and control.

## **DECLARATION**

I, Linda Edward Mbambo, hereby declare that this extensive mini-dissertation for the Programme in Governance and Political Transformation at the University of the Free State (Bloemfontein) is my own original work and has not been submitted by me or any other individual at this or any other university. I also declare that all reference materials used for this study were properly acknowledged.

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**SIGNED:**

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## LIST OF ABBREVIATIONS

ACSA	Airports Company South Africa
AFS	Annual financial statements
AGSA	Auditor-General of South Africa
All	Africa Integrity Indicators
APE	<i>Agence des Participations de l'Etat</i>
Armcor	Armaments Corporation of South Africa
CEO	Chief executive officer
CFO	Chief financial officer
COO	Chief operating officer
COSATU	Congress of South African Trade Unions
CPI	Corruption Perception Index
DA	Democratic Alliance
DME	Department of Minerals and Energy
DPE	Department of Public Enterprises
dti	Department of Trade and Industry
Eskom	Electricity Supply Commission
FDI	Foreign direct investment
FMPPI	Framework for Managing Programme Performance Information
GAAP	Generally Accepted Accounting Principles
GDP	Gross domestic product
GTA	Gauteng Tourism Authority

HDC	The Mahbub ul Haq Human Development Centre
HRM	Human Resource Management
ICASA	Independent Communications Authority of South Africa
IFRS	International Financial Reporting Standards
IIAG	Ibrahim Index of African Governance
IoDSA	Institute of Directors of Southern Africa
IPP	Independent Power Producer
IRBA	Independent Regulatory Board for Auditors
ISA	International Standards on Auditing
IT	Information technology
JSE	Johannesburg Stock Exchange
KPI	Key performance indicator
LTTS	Long-Term Turnaround Strategy
MEC	Member of the Executive Council
MEGA	Mpumalanga Economic Growth Agency
MOI	Memorandum of Incorporation
MP	Member of Parliament
NACD	National Association of Corporate Directors
NDP	National Development Plan
Necsa	South African Nuclear Energy Corporation
NERSA	National Energy Regulator of South Africa
NHBRC	National Home Builders Registration Council
OECD	Organization for Economic Co-operation and Development

PFMA	Public Finance Management Act
RBIDZ	Richards Bay Industrial Development Zone
ROI	Return on investment
RSA	Republic of South Africa
SAA	South African Airways
SABC	South African Broadcasting Corporation
SABS	South African Bureau of Standards
SACCA	South African Cabin Crew Association
SARS	South African Revenue Services
SCM	Supply chain management
SCOPA	Standing Committee on Public Accounts
SOE	State-owned enterprise
TV	Television
UK	United Kingdom
USA	United States of America
WGI	World Governance Indicators

# **CHAPTER 1: BACKGROUND AND INTRODUCTION**

## **1.1 CONTEXTUALISATION**

### **1.1.1 Introduction**

The government of the Republic of South Africa, via the Public Enterprises department, has made it absolute evident that it anticipates State Owned Entities (SOEs) to work as per strict corporate administration standards (Alphonse 2011:1-3).

According to Mokoena (2005:4), there have been numerous hypotheses and data in the collection of learning in regards to the standards of sound corporate administration and moral authority. Numerous nations have made codes, rules and enactment on good corporate administration and morals. In addition, different corporate organization programs being made and utilized in the execution of organization codes by various foundations and organizations (Aguilera and Cuervo-Cazurra 2009:376-387).

Notwithstanding all these corporate governance advancements and execution activities, different heartbreaking corporate dissatisfactions, caused by misleading individual practices and delicate corporate cultures, continue straight up till today (Solomon 2007:31-46). These corporate disappointments and dissatisfactions have brought about genuine monetary outcomes with grave financial ramifications of occupational misfortunes, loss of income, breaking down of annuity saves, loss of investor's certainty, et cetera. (Holliday, Schmidheiny and Watts 2009:12-38). Ethics is a basic and fundamental pillar for authority and once it is associated truly in the entire administration structures, it can bring in outcomes that prompt good corporate administration that promotes and advances obligation, straightforwardness as well as the responsibility (Székely and Knirsch 2005:441-449).

In 1994, after the administration change, the state found that the most essential mechanism for conveying service delivery and implementation strategies was in reality State Owned Enterprises (SOEs), and their centralized regulated and administration did not rely upon any systematized measures or prescribed rules.

These SOEs were made in different various ways and are subject to a broad variety of enactment and statutory bodies' directions. A portion of these SOEs, indeed, went



about as self-ruling entities, having not had substantive bearing or control from the past government for an extensive stretch of time. South African SOEs shape a basic section of vital enterprises that drive the economy by giving component inputs. Three key data sources – control utility, transportation, and broadcast communications – are overwhelmed by SOEs. Without these key SOEs, tourism, data innovation (IT), and assembling parts, inter alia, couldn't work or work viably.

These segments are chief drivers of the economy formal sector and oblige the principal part of monetary advancement. The status of South Africa's SOEs and the level of potential privatization have been the subject of exuberant verbal confrontation and showdown inside government and civil society since the first democratic elections in 1994. Given the phenomenal part of the SOEs, the need to oversee and manage formal sector work opportunity levels and aptitudes maintenance and the civil argument on the responsibility for key financial assets, a way of modifying was received. This methodology fundamentally saw the need to instruct viability to the SOEs, while in the meantime guaranteeing that social and infrastructural targets were met.

In such a special situation, the most ideal administration and control of SOEs transformed into a basic piece of the reconstructing procedure. The degree of this task cannot be overestimated, given the aggregate size of SOEs and their responsibility to the "Gross Domestic Product" (GDP). The SOEs are key substances that pass on various social products and enterprises to ensure individual fulfillment for each and every South African. The primary production of the King Report in 1994 and the second in March 2002, have given further power to the issues of governance in SOEs, and in addition in the full extent of business enterprises.

### **1.1.2 Legislation**

Government presented a rebuilding arrangement system called the "Accelerated Agenda towards the Restructuring of State-owned Enterprises". The arrangement structure was intended for empowerment of the state to coordinate ideas on the most proficient method to confine and have the abundance of SOEs. Moreover, the idea behind it was to enhance corporate administration and ensure morals and honour.

The other critical legitimate system or imperative legitimate structure is the King codes of good corporate administration and the King reports on good corporate administration for South Africa. The King III Report was released on the 1st of September 2009 and became effective on the 1<sup>st</sup> of March 2010. It is in this manner imperative to take note of that every one of these reports – King I, II, III, IV, and V – are meant to advance good corporate administration in South Africa (Andreasson 2011:647-673).

Notwithstanding, the King III Report ended up vital as a result of the reviewed Companies Act of 2008 and its amendments made in global governance patterns (Ackers 2009: 1-17). King III Report firmly articulated that, it is applicable to almost all organisations, paying little respect to the way and type of consolidation or foundation, regardless of whether it is a public sector in general, private sector, or non-profit organisations (Fikelepi, 2011:9). The piece of legislation replaced the Companies Act of 1973 and became effective on 1 May 2011. The 2008 Companies Act, as the vehicle of good corporate administration in the Republic of South Africa, was approved into law on the 8th April 2009 by the head of the state and published in the government *Gazette* (Notice No. 421) No. 32121 (Nagdee, 2013:85-95).

The Companies Act of 2008, Section 34(1) clearly states that:

“In addition to complying with the requirements of this Part, a public company or state-owned company must also comply with the extended accountability requirements set out in Chapter 3.”

“Chapter 3” of the Companies Act dealt with the improved responsibility and straightforwardness of the organizations including SOEs. Notwithstanding, “it remains to be seen how the Policy Framework on Restructuring of State-owned Enterprises in South Africa of 2012 will address the issue of good governance” (Ewelukwa 2011:513-522). This is mainly due to the fact that one of the reasons necessitating the huge scales restructuring of people in the public enterprises is the failure of organs of state on good corporate governance. (Van Basten 2007:35-36). In this manner, the primary point is to guarantee there is appropriate oversight to contain and diminish overabundances so as to lessen defilement and extortion with the goal that the stakeholders and community at large can benefit in service delivery through SOCs (Werther and Chandler 2010:21). The rest of the study manages issues identifying with what

constitutes corporate administration and the impact of corporate morals and qualities on corporate governance.

### **1.1.3 Ethics in corporate governance**

The recognition of morals is winding up more vital as societies understand its significance (Lloyd & Mey 2010:218-265). Schoeman (2014:1) states that ethics ought to include all matters that are relevant to responsibility and straightforwardness in SOEs as this Act as a controlling instrument in the advancement approach in organisations. MacDonald (2010:41) attests that “morals can be characterized as the basic, organized examination of how we ought to act specifically, how we ought to compel the quest for self-intrigue when our activities influence others”. MacDonald (2010:41) contends that “for practical purposes, ethics means providing reasoned justification for our choices and behaviour when it affects others, and reasoned justification for our praise or criticism of other people’s behaviour”.

Verlaquez *et al.* (1987:623-637) characterize morals as a branch of theory which tries to deliver issues identified with ideas of good and bad. Some of the time it can be alluded to as good reasoning and can be comprehensively separated into four branches of knowledge, which are meta-morals, unmistakable morals, regulating morals, and connected morals (Verlaquez *et al.* 1987:623-637). In an endeavour to characterise morals, Verlaquez *et al.* (1987:623-637) consider two aspects that ought not to be seen as morals. They propose that ethics is not really acting as per one’s feeling, because in some cases one’s sentiments about a specific matter may lead one to act in a specific way that is unscrupulous. As indicated by Khoza (2012:1-4), there is an initiative fundamentally that compels adherence to sound ethics as ethics is a column for good authority in the general public.

Khoza (2013:1) additionally encourages that "ethics" and "profound quality" are ideas which are regularly utilized reciprocally or as equivalent words; while a moral issue is an ethical issue.

To an expanding degree, nonetheless, the expression "morals" is connected to particular zones of profound quality, for example, prescription, business, the earth, et cetera. In good business practice, where experts are included, an overseeing authority will commonly create a code of morals for its individuals (Khoza 2013:1). "Morals" in

this context can be seen as a subset of profound quality worried about the ethical commitments identifying with the act of a calling or train. Then again, a few logicians, from Socrates to Bernard Williams, utilized "morals" in a wide sense to allude to intelligent responses to the inquiries: "How do I live? What is my cardinal sense of bad and good if we acknowledge this wide feeling of morals, at that point profound quality turns into a subset of morals worried about commitments? The building establishment towards the rebuilding of SOEs was principally to involve new, inventive, and different techniques for bona fide strengthening" (Ministry of Public Enterprises 2002:63-86).

This restructuring was intended to develop strategies for an alternative services delivery that include broadened ownership, training, procurement, and self-management opportunities for black individuals, women, and the disabled, through direct involvement in SOE administration (Ministry of Public Enterprises 2002:25-50). Unfortunately, poor leadership, which was regularly exposed in the media, has caused this point of restructuring not to become possible (Schoeman 2014:41).

#### **1.1.4 Irregularities**

Inconsistencies in the granting of tenders exhibit a more noteworthy arrangement of debasement and extortion in SOEs and it has turned into a scourge inside the bureaucratic organization in South Africa. "This might be because of the way that government officials may have a high ground toward SOE" s (Vavi 2014:1-3). This sentiment was also enchoed by Vavi (2014:1-3), "the former secretary-general of the Congress of South African Trade Unions (COSATU), in his letter to the executive of the South African Broadcasting Corporation (SABC) Board", setting out the federation's concerns. Vavi (2014:1-3) contended that "the authority fights at the SABC and the non-appearance of any steady initiative at the best channels down to the staff, whose magnificent work is regularly undermined by absence of clear lines of charge joined with vulnerability about what's to come".

A portion of the concerns raised by Vavi was that, "since 2007, the SABC has had three boards of chiefs, two interim boards, six (CEOs), innumerable abdications by load board members, genuine assertions of defilement, and wastage of assets". As indicated by Mbo and Adjasi (2013:6), "political pioneers are ordinarily under the confusion that they are serving people in general; in any case, their essential intrigue

while in office is to serve themselves and their colleagues”. The consistency in administration and moral authority aptitudes assume a crucial part in the expert association with lawmakers (Mafunisa 2008:84).

The essential thinking of the King III Report (2009) rotates around initiative, maintainability, and corporate patriot (Cassim *et al.* 2011:3). On the other hand, leadership issue as outlined in the King III (2009) requires the board of directors to provide effective leadership based on ethical principles (Dubrin 2012:178). Morals or uprightness is the cornerstone of and main reason behind corporate administration (Brown 2005:30). The motive behind the morals of the corporate governance, which places more emphasis on the directorate to make sure that the association is in compliance and run morally, the association would pick up the fundamental underwriting from those impacted by and affecting its operations (Walker and Sego 2008:102-111). “An ethical corporate culture constitutes more than social generosity or charitable endowments” (Zadek, Evans and Pruzan 2013).

The courts discovered ubuntu-batho is profoundly established in our general public. The quality values ought to help by informing corporate decisions made by executive directors in SOEs. Appropriate and helpful discourse would empower better results in the basic leadership decision-making exercise. The court furthermore decided that trustworthiness is a key standard supporting great corporate administration. There must be ethical and moral conduct in dealings with fellow board members. These dealings must be managed in such a way as to guarantee due process and affectability. Great corporate administration relies upon an unmistakable code of moral conduct and individual trustworthiness honed by sheets, where exchanges are shared genuinely. There are no opportunities in this environment for shrouds and knives. Important decisions are not made in scurry or in outrage.

#### **1.1.5 Control**

The South African Constitution of 1996 highlights the significance of good corporate administration (Ashton, Patrick, MacKay & Weaver 2006:449-456). Section 195 manages crucial qualities and rules that oversee public organization (Dorasamy 2010:2087-2096). As far as this section is concerned, there must be an elevated requirement of expert morals. Truth be told, this standard must be progressed and

kept up. "These norms and standards apply to organs of state and open organizations [Section 195(2) of the Constitution 1996]. This isn't stunning, given the history and the approach of the new South African democratic regime".

The Constitution manages the legislature in the greater part of its structures, both through government offices and organs of state (counting SOEs), to stick to standards of good administration (Hart 2002:235-290). SOEs such as the SABC are included in the definition of "organ of state". It is consequently that the arrangements of the Constitution, and also the enactment established in wording thereof, are relevant to SOEs [Goodman Brothers (Pty) Ltd v Transnet Ltd 1998 (4) SA 989 (W)].

The South African Constitution apprehend certain rights that additionally have an immediate bearing on the corporate administration of SOEs. The Public Finance Management Act (PFMA) (No. 1 of 1999) as amended was declared to offer effect to Chapter 13 of the Constitution. As per the then Minister of Finance, Trevor Manuel, and the point of the PFMA was to modernize the arrangement of monetary administration in the general population segment (Manuel 2003:1). It speaks to a major break from the past administration of murkiness, various leveled frameworks of administration, poor data, and powerless responsibility. The PFMA has laid the basis for a more compelling corporate administration structure for the public sector.

The Constitution forces various general commitments on all organs of state to advance agreeable administration (Chaskalson 2000:193-2004). (Okpaluba 2003:331-348) asserts that: "Specifically, organs of state associated with intergovernmental debate are required to make every effort to settle the dispute and exhaust all other remedies before approaching the courts of law." Khoza and Adam (2005:13-30) is of the opinion that: "This does not prevent organs of state seeking relief from the courts and is therefore a workable model."

In SOEs, as different associations, great corporate administration is eventually about powerful authority (Vaughn and Ryan 2006:504-512). An association relies upon its board to give it bearing, and the chiefs need to comprehend what their position of authority involves (Van nook Berghe and Levrau 2004:461-478). Khoza and Adam (2005) is of the opinion that: "The governance power ... of leadership in SOEs isn't generally understood."

Khoza and Adam (2005:49) state:

“In the case of state-owned enterprises, this problem may be magnified: here one needs to consider the respective roles not only of the Board and management, but also the role of government as a shareholder. It is critical that there is an understanding by government, in its capacity as shareholder, of its leadership role in directing and guiding the state-owned enterprise. The concept of a shareholder performance agreement can assist in clarifying the respective roles of the Board and shareholder. The solution begins with a proper understanding of what leadership means to the Board and to the shareholder.”

In light of the above, it appears that there is a gap since there are currently new developments in South African SOEs, including constant changes in leadership and negative reports in the public domain. According to Thomas (2012:448-470), “while political mediation in the operational running of each SOE is clear, the government shows up not to have satisfied its oversight role of guaranteeing the sound corporate administration of SOEs as per best practices”. “While SOEs seem to conform to outside administration requests, consistence to inward, self-directed governance seems to be poor”. Current study therefore conducts further examination and trace the progress made thus far and seek a remedy to the situation to close the gap in terms of the current status in the state of affairs of the three major strategic SOEs.

New developments in the SABC, SAA, and Eskom have raised the big question of how these SOEs escape or divert from what is expected of them in order to comply with the laws, principles, codes, and guidelines. The King III Report (2009) requires boards to guarantee that organizations consent to all pertinent and applicable laws and that they consider adherence to non-restricting guidelines, codes, and benchmarks as far as Principle 6.1 of the King III Report of 2009 (Gevers 2012:3).

A consistence culture ought to be supported through administration, which sets up the fitting structures, instruction and preparing, correspondence, and the estimation of key execution pointers (KPIs) important to consistence as far as the standards in the King III Report's (2009) passages 21 and 91. The board has an obligation to find a way to guarantee the distinguishing proof of laws, principles, codes, and gauges that apply to the organization (King III Report 2009 passages 11 and 90). Points of interest must be uncovered by the board in its necessary provide details regarding how it has released

its obligation to build up a viable consistence system and process as far as Principle 6.1.2 of the King III Report (2009).

The King III Report (2009) clearly outlined the requirements for the board and each individual chief to have a working appreciation of the effect of the suitable laws, guidelines, codes, and measures of the organization and its business to the extent Principle 6.2 of the King III Report (2009) is concerned. It is basic for executives to adequately satisfy their trustee commitments and their commitment of care, skill, and industriousness to the best preferred standpoint of the association, according to Principle 6.2.2 of the King III Report (2009). Consistence chance, which is the dangers of damage rising up out of non-adherence to the law and controls, to the organisation's plan of action, targets, notoriety, going concern, partners, connections, or maintainability, ought to shape the preparation of necessary pieces of the organisation's risks administration as far as Guideline 6.3 of the King III Report (2009) in passage 14.90.

The King III Report (2009) "proposes that the board delegates somebody to deal with the implementation of an effective compliance framework and process as far as Principle 6.4 of the King III Report (2009) is concerned". A free or independent, reasonably talented, and suitably skilled compliance personnel must be appointed in this regard (Le Roux 2010:25-27). The personnel ought to gain access, and connect routinely on, procedure-consistency matters of concern with the governing body or potentially the relevant governing council and administration official as far as Principle 6.4.7 of the King III Report (2009) is concerned. In spite of the fact that the CEO may select a consistence officer to aid the execution of the consistence work, it should be ensured that responsibility for the top managerial staff stays with the CEO, as far as Principle 5, section 23.91 of the King III Report (2009) is concerned.

Corporate governance encapsulates procedures and frameworks by which SOEs are coordinated, controlled, and considered answerable. Notwithstanding authoritative necessities in light of SOEs' empowering enactment, and the Companies Act, corporate administration concerning SOEs is connected through the statutes of the PFMA and runs on par with the *Protocol on Corporate Governance* (hereafter referred to as the Protocol), which exemplifies the standards outlined in the King II Report on Corporate Governance (2002). The SOE's administration oversight powers are



constitutionally vested in parliament, the boards and the officials. Parliament hones its part by evaluating the execution of SOEs by analyzing their yearly monetary statements.

The Standing Committee on Public Accounts (SCOPA) studies the yearly money related declarations and the audit reports of the Auditor-General of South Africa (AGSA); and the Portfolio Committee hones oversight over the administration conveyance execution of SOEs and, in that limit, reviews the non-monetary information contained in the yearly reports of SOEs and is worried about organization movement and enhancing budgetary advancement. The official specialist as proprietor/investor is worried about suitable profits of ventures and guaranteeing the monetary reasonability of SOEs.

The relevant official specialist goes about as an investor, while the Minister of Finance and the National Treasury are responsible for money related oversight. Moreover, the legislature is additionally the policymaker, worried about procedure execution of organization movement and goes about as the controller. These commitments are vested in Cabinet as the policymaker, the capable clergyman (official specialist) and his/her specialization, and from time to time the arrangement division (i.e. investor administration of Eskom vests with the DPE, while approach vests with the Department of Minerals and Energy [DME]).

Oversight by the official expert lays on the prescripts of the PFMA. The PFMA speaks to/offers master heading to the official expert for oversight powers with particular reference to the corporate plans, investor's compacts, and quarterly reports. The official specialist also can choose and remove the leading body of a SOE. It ought to in like manner ensure that a fitting mix of authority and non-official administrators are assigned and that CEOs have the vital aptitudes to coordinate the SOEs.

Investor oversight is spread between various investor workplaces, while course of action divisions, which, in a couple of illustrations are not the investor office, facilitate the approaches. The governing body of a SOE is the oversight body of the SOE. The board has an out and out commitment with respect to the execution of the activities of the SOE and is completely in charge of the execution of the SOE. Administration standards with respect to the responsibility and obligation of SOE boards are outlined in the Protocol and the PFMA as amended.

The Constitution gives powers to the National Assembly and Provincial Legislatures with an oversight responsibility over their different or individual officials. Segment 55(2) of the Constitution deals with the powers of the National Assembly, and states that the National Assembly should suit a framework to (1) guarantee that each and every official organ of state in the national hover of government is mindful to it; and (2) to keep up oversight of the national authority master, including the execution of institution, and any organ of the state. Segment 42(3) of the Constitution enriches the National Assembly with the capacity to research and regulate official exercises. Besides, segment 92(3)(b) of the Constitution, requires that individuals from Cabinet must supply Parliament with full and general reports concerning matters under their control. The test confronting individuals from Parliament (MPs) is to enhance the capacity of the policy/parliamentary committees to hold Departments and SOEs answerable for their execution, utilizing their strategic plans, spending records, and yearly reports in accordance with generally recognized accounting practise.

The PFMA offers impact to budgetary administration that places a more unmistakable use obligation with directors and makes them more in charge of their execution. It is left to the Ministers, Members of the Executive Council (MECs), or the official (Cabinet) to decide organization dissatisfactions. The National Assembly and the general overseeing bodies are vested with the capacity to regulate the SOEs and the Executive. Yearly reports allow Parliament to survey the execution of an office toward the end of the monetary year.

As for departments before the year 2000, there was no oversight over non-monetary related organization conveyance execution, and offices just tabled their budgetary clarifications and review reports, rather than giving a yearly report. In any case, changes since the foundation of the PFMA and the Public Service Act (No. 103 of 1994) requires the supervisor of each division, who may in like manner be the official specialist of a SOE, to table a yearly report in the council within a period of 6 months before the end of each budgetary year. Section 65 of the PFMA requires the official expert to table the yearly reports for SOEs for which they are dependable before 30<sup>th</sup> September consistently, which is a half year after the budgetary year-end of SOEs.

This recommends yearly reports should be tabled by Parliament at least month after the accounting officer has gotten them from the SOEs. Since it would be inconceivable

for the National Assembly to practice legitimate oversight over their Executives by investigating all execution parts of the 35 National Departments and ±250 National Public Entities, Parliamentary committies were made to empower oversight role. This section empowers advisory group individuals to become specialists in various fields and invest more energy in doing the real oversight work.

SCOPA performs the duty of evaluating the review reports of AGSA. This board of trustees plays the basic and particular part of being the defender of public monies. Fulfilling said obligation, the board of trustees should focus on the following aspects:

- concerns raised in the general report of AGSA;
- the concerns of cash related fedelity as featured in the survey report or divulged in the organization report or notes to the budgetary explanations;
- consistence adherence with the Treasury controls, Public Finance Management Act, the board review, and the company report issued by the accounting officer;
- monitoring and evaluation of events of overconsumption and instances of unapproved utilize;
- interrogation and identifying unpredictable, unbeneficial, and inefficient consumption;
- the elements of hazard administration frameworks; and
- corporate administration of divisions, open substances, and established foundations.

Given their inclusion and contribution in the authoritative, spending plan, and in-year checking forms, portfolio councils practice oversight of the administration conveyance execution of SOEs. Portfolio boards of trustees satisfy the duty of looking into non-monetary data contained in the yearly reports of SOEs. These advisory groups should practice oversight with respect to whether substances have conveyed on the administration conveyance responsibilities they had made in their corporate plans. They should likewise consider the SOEs' money related execution with a specific end goal to build up an all-encompassing comprehension of the SOEs' execution.

To offer impact to this part, these advisory groups center on the considerations of the SOE's yearly reports:

- The particular nature of the yearly reports made by divisions and SOEs;
- The budgetary, profitable, and ampleness of organization movement as estimated by execution pointers showed in the yearly reports;
- Evaluating organization's illumination with reference to why the component's organization movement execution did not achieve the goals set out in the corporate plans;
- Administration delivery equity and
- Evaluating the conditions that provoked budgetary underperformance and the impact this had on organization movement and the measures taken by organization to change the situation.

The National Assembly portfolio councils are accountable for controlling the appropriate national division for which they are dependable. SOEs reply to an official expert (investor service) and their yearly reports are submitted to both the Public Accounts Committee and the pertinent portfolio board by the Executive Authority. In a perfect world, the oversight system ought to give an entire picture of a SOE's execution, enveloping subsidizes, its structures, its HR, and its administration conveyance execution. In addition, the rehearsing of the SOE's order ought to in like manner be investigated to ensure that methodology targets are being met. While SCOPA focuses on money related issues and the portfolio advisory group focuses on strategy and administration conveyance, the sharing of information between them is fundamental.

#### **1.1.6 The role of AGSA**

AGSA is a state establishment responsible to the National Assembly. As far as segment 188 of the Constitution, the Auditor-General must review and give an account of the records, money related articulations, and budgetary administration of all national and common divisions, all regions, and some other organization or bookkeeping substance required by national and commonplace enactment. In such manner, AGSA must submit review reports to the significant lawmaking body. SOEs are organizations/substances through which the official conveys on administrations. Departmental targets should join the administration conveyance focuses of SOEs answered to their official experts. The yearly investor's reduced archives the assentions between the SOE and the official expert on KPIs.

## **1.2 PROBLEM STATEMENT**

Recent incidents, media reports, and new developments within the three major strategic SOEs – the SABC, SAA, and Eskom – raised alarm and should be examined to understand and determine whether these SOEs comply with corporate ethics, principles, and values as set out in the King reports.

Corporate administration typifies techniques and structures by which corporate endeavors are facilitated, controlled, and thought about capable. Corporate organization in South Africa was systematized by the creation of the King Report on Corporate Governance in November 1994, which was supplanted by the King III Practice Notes of 2013. “The inspiration driving the King reports is to propel the most dumbfounding standards of corporate administration in South Africa. The Code of Corporate Practices and Conduct contained in the King reports applies, *entomb alia*, to SOEs and offices that fall under the PFMA”.

The Protocol was at first appropriated in 1997 with a view to ingrain the norms of good administration in the SOEs and this convention constitutes an extensive redress thereof in light of the King Code and worldwide advancements. Properly, dissimilar to the King Code, which covers an extensive variety of components in both the private and open area, the Protocol endeavors to provide guidance especially to individuals in people in general part, considering the extraordinary order of the SOEs, which incorporates the accomplishment of the social, political, and monetary destinations of the administration. It is additionally seen that since the King Code is of general application, there are distinctive specific open segment related issues, which may not be totally tended to and require being tended to in the Protocol. It can be understood that in all conditions the norms of the convention endeavor to open up and does not supplant the King Code. The Protocol should be perused in conjunction with the King Code .

The legislature, as a noteworthy investor in SOEs, faces a broad assortment of dangers related with the activities of SOEs, including budgetary, reputational, political, and operational dangers. It is the obligation of each official specialist (in whom the fundamental commitment with respect to appropriate SOE oversight and duty to Parliament rests) to ensure that these threats are recognized, decreased, and supervised. In such a way, a key essential of SOEs is to report and record their

execution to the correlated official expert with respect to money related and non-budgetary issues, and meanwhile, keep up self-sufficiency in the release of their commitments, free from ordinary interruption by the official specialist. Remembering the true objective to ensure that there are no certifiable or obvious hostile conditions and that SOEs achieve the administration's wide-approach targets and ensuring that the SOEs work beneficially and satisfactorily, the legislature should need to clarify its desires and imagined relationship with SOEs in the Protocol, investor's compacts, and strategy structures for SOEs as released by the applicable Executive authorities every now and then.

SOEs work inside the structure of an assortment of enactment, including, inter alia, the PFMA (which is a piece of the administration's more extensive system to enhance monetary administration in people in general segment), the Companies Act, and the important enactment under which SOEs work. It is subsequently essential that executives of SOEs create working knowledge of this structure to guarantee that SOEs conform to their legitimate commitments.

In light of the implementation of the above corporate governance and legal and policy frameworks, escalating evidence of corruption, mismanagement, and related corporate administration transgressions in SOEs, machinery that can advance development in underdeveloped countries, now seem, by all accounts, to be worldwide marvels (West 2006:433). Nicholl (2006:214-28) proposes that while the public sector isn't basically in charge of financial aggressiveness, poor administration inside this sectors unavoidably affects this process. "The reactions of stakeholders to administration transgressions, nonetheless, are starting to mobilize governments into tending to operations at SOEs with a specific end goal to change them into associations that advance national competitiveness" (Parker 1999:213-35; Dockery and Herbert 2000:80-92; Crawford Costello, Pollack and Bentley 2003:443-8).

As it appears that corporate administration transgressions at SOCs "in Republic of South Africa have been very much pitched in the prevalent press, it seems as if there has been no undertaking to file the possibility of such practices against best practices of public subsidized entities". This study seeks to bridge the gap to answer the questions about the idea of the real issues that warrant consideration and to further seek answers to better understand what went wrong and how these problems may be

solved moving forward. The current study seeks to find answers concerning the nature of practices that seem to be defeated by weak adherence to best practices in these SOEs. The study also aims to suggest how the parliament portfolio committee can improve the capacity of the policy to ensure implementation and compliance.

### **1.2.1 Research questions**

In light of the above, the present study seeks to answer the following question: Does the three major South African SOEs implement and fully comply with the principles of the King Code on Corporate Governance to ensure sound corporate governance ethics and principles?

The above question can be further broken down into more specific questions, as follows:

- Are these three major strategic SOEs aligned with the seven principles as set out in the King III Report (2009)?
- Do parliamentarians, the DPE, and Treasury play a role in oversight and enforce compliance through legislative frameworks?
- Should government grant to fund these SOEs be declared as wasteful expenditure?
- What can be done to remedy the situation and assist these SOEs in order to enforce adherence to principles of compliance?
- What is an effective role of the board of directors in promoting good corporate governance and sustainability in these major strategic SOEs, and are they failing to execute their governance duties over these SOEs?

### **1.2.2 The anticipated contributions of the study**

The study might add value to the field of knowledge of corporate governance at State-owned enterprises.

Secondly, the results of this study can help to reduce costs at a starting point in case of juvenile SOEs. They might have similar questions with regard to corporate governance. Thirdly, the study might gain insight and create awareness of the challenges facing these three major strategic SOEs, especially concerning damning

media reports and publications in the public domain. Fourthly, the study might provide insight to current robust debates on the burning issues of leadership, ethics, morals, corruption, looting of state resources, and instability in the SABC, SAA, and Eskom. Lastly, the study will make final recommendations regarding the powers and rights of executive authorities when embarking on intensive processes to appoint board members.

### **1.3 AIM AND OBJECTIVES OF THE RESEARCH**

The overall objective of the study is to analyse corporate governance in the three major strategic SOEs – the SABC, SAA, and Eskom – with specific reference to compliance with the King Code’s principles of good governance.

Furthermore, specific aims of the study include:

- to determine if progress has been made thus far in terms of compliance and functionality after the release of the Public Protector’s report (2016), AGSA’s report (2016), and damning reports by different media houses on these three major strategic SOEs;
- to establish whether the three major strategic SOEs’ boards of directors complied with the King III Report (2009) and its principles of good corporate governance;
- to examine the governance oversight role of South African Treasury, parliamentarians, and the DPE in promoting sound governance in SOEs;
- to determine the main barriers to the successful implementation of legislative measures with reference to the PFMA; and
- to explore the role of the board of directors as a legal structure governing SOEs and their fiduciary duties.

### **1.4 THE RESEARCH METHOD**

In order to familiarize himself with the research topic under investigation, the researcher intensively studied relevant literature. The fundamental main sources of data were the Public Protector’s reports, journal articles, library books, newspapers, policy documents, departmental circulars, and published annual reports. Data



gathered from electronic media, for example, TV, radio, and the Internet was likewise utilized.

The qualitative approach was adopted in conducting this research. Analyses of in-depth published reports were used as the data-collection technique. The qualitative research method was used because it involves descriptive detail that would describe what exactly the current state of what three major SOEs in South Africa is and whether they comply with the Code of Ethics as enshrined in the King code of corporate governance.

The principle purposes behind the utilization of the qualitative approach in conducting this research are as per the following:

- To guarantee that the genuine encounters of the sources are reflected, along these lines exposing "individuals' lived encounters", which is a major normal for subjective information (Miles and Huberman 1994:10).
- To uncover research findings that depend on a specific setting keeping in mind the end goal to encourage understanding and to dodge wild speculations (cf. Marshall and Rossman 1995:43-44).
- "Qualitative research "is suitable for analysing the needs of the socially disadvantaged and in developing policies and innovation plans for developing communities" (Lemmer 1992:294).
- Because of its dependence on talked words instead of numbers, the subjective approach does not fit research into issues, for example, the control of information related with subjective research, which may prompt contortion of research discoveries.
- The study will be executed "using the qualitative research approach" (Schurink and Schurink 2001:101-306), "and more specifically the symbolic interactionist approach" (Denzin 1989:10).

## **1.5 RESEARCH DESIGN**

The research design picked inside the qualitative range was grounded hypothesis, with a literature review as indicated by grounded hypothesis rules. Grounded hypothesis has a particular arrangement of principles and a procedure to encourage information investigation, which are bolstered by diagnostic enlistment and cross-

referencing. Grounded theory is simply the discovery of emerging patterns in data. Grounded theory is the generation of theories from data (Glaser 2015 in Walsh *et al.* 2015:581-599) and is a general research method (and thus is not owned by any one school or discipline) that guides researchers on matters of data collection and details rigorous procedures for data analysis.

Grounded theory is a research tool that enables researchers to seek out and conceptualise the latent social patterns and structures of the area of interest through the process of constant comparison. In this study the researcher initially used an inductive approach to generate substantive codes from the data, later developing a theory to suggest to the researcher where to go next to collect data and which more focused questions to ask. This is the deductive phase of the grounded theory process. Grounded theory is an approach for developing theory that is “grounded in data systematically gathered and analyzed” (Strauss & Corbin 1994:217-285).

### **1.5.1 Data collection**

The researcher collected data from published documents, including annual reports, the Public Protector’s reports, and media citations. The data were collected from different sources within the last five years. The data detailed separate incidents from these three major strategic SOEs; which assisted the research since it is related to public interest as it generally appears that there was an increase in incidences during the 2002-2016 term. This term was in this manner chose for this research.

A system of best practices was formulated, in light of the standards embodied in “The Guidelines on Corporate Governance of State-Owned Enterprises” (Organization for Economic Co-operation and Development [OECD] 2005:37-38). “Where practices were known to out rightly negate those upheld in these rules because of the government regulatory condition, such issues were restricted toward the start (for example, the hiring of CEOs by government). Issues that related to issues that could be depended upon to be found in the normal course of business (for example, workers unrest in light of salary transactions, a common place practice in South African business), which could be symptomatic of poor organization, were not considered”.

Against this framework, two optional main sources of information were used to assemble the data: the 2009-2016 yearly reports of the three essential key SOEs, and

print media articles that related to these SOEs. Data gathering occurred as documentation, important literature review, books, and public domain sources. Analysis documentation, audited financial statements, online accessible information made an essential contribution to applying the comparative investigation techniques.

### **1.5.2 Information/Data analysis**

The data collected from the SOEs' yearly reports were used to analyse the terms of compliance and good practice (evidence of an annual external audit). The data that was analysed was for the period 1 Jan. 2009 to end of 31 Dec. 2016. Every one of the 14 848 articles that identified with the three noteworthy key SOEs and that showed up in the SA English language publishing media aggregated by The News Monitor, were perused. Content examination was attempted by classifications created utilizing the OECD (2005/2006) system. Rehashed occurrences of a similar transgression were recorded as a solitary episode. This strategy, "in light of the content examination methodology of Franzosi (1987:5-16), has turned out to be compelling in social event the information required for an investigation, for example, the present study" (Danso and McDonald 2001:115-137; Magzamen, Charlesworth and Glantz 2001:154-160; Clarke, Evenett and Lucenti 2005:1029-56).

The information coding to "assign units of meaning" (Miles and Huberman 1994:58) helped with contrasting and extricating normal information over the three SOEs to determine subjects (Whitehead and Kotze 2003:79). The circumstances a discrete episode was referred to be likewise noted as a method for measuring public intrigue and potential reputational harm.

### **1.5.3 Data capturing**

Information from different sources, especially from documents in the public domain (e.g. pictures, articles, documentaries, educational material, and books) that may have been produced by or used by members of a culture or social setting, were captured by utilizing note-taking, and this was bolstered by intellectual mapping. To guarantee the understandability and consistency of note-taking, an electronic organization was drawn up in advance in light of the Cornell Note-taking System (Pauk 1989:1). Subjective mapping was utilized to show the connections between ideas, and in

addition the crude certainties contained in the notes. This technique for information capturing helped with abridging data, combining data from various research sources, and in organizing complex information (Swann and Newell 1994:3-11).

#### **1.5.4 Layout of the chapters**

This research report is separated into six parts:

**Chapter 1:** This chapter includes a discussion of the background of the study, the research problem, the aim and objectives of the study, the research method used in the study, and the research design.

**Chapter 2:** The second chapter focuses on the literature review on corporate governance in SOEs. New developments and the current operational status of three major strategic SOEs, in relation to compliance with legislation, are investigated. The legal framework includes the PFMA and the King I, II, III, and IV reports. Definitions of important concepts are also provided in this chapter.

**Chapter 3:** This chapter investigates new developments, operational status and leadership in Eskom, the SABC and SAA. The discussion on the SABC also includes an interim report of the ad hoc committee, compliance and control. The following issues were also emphasised: Governance oversight role over SOEs annual reports; the Auditor-General of SA (AGSA); real essence of risk management; compliance with key legislation and the oversight role of the executive authority.

**Chapter 4:** This chapter highlights the leadership, practices, principles, and governance outcomes in SOEs with reference to compliance with laws, rules, codes, and standards.

**Chapter 5:** In this chapter, audit reports are analysed to attempt to identify specific reasons why SOEs did or did not adhere to the principles of the King Codes.

**Chapter 6:** The last chapter is devoted to a summary of the previous chapters. The findings of the research and recommendations with specific reference to management, other recommendations, and recommendations related to Eskom, the SABC and SAA also forms part of this chapter.

## **1.6 CONCLUSION**

Chapter one explained the background and motivation of the research. The problem statement and method that were followed in conducting this research were also explained.

In the second chapter, the literature review on corporate governance in SOEs is highlighted. New developments and the current operational status of the three major strategic SOEs, in relation to compliance with legislation, are also investigated. This legal framework includes the PFMA and the King I, II, III, and IV Reports. Definitions of important concepts is also provided in chapter two.

## **CHAPTER 2: LITERATURE REVIEW**

### **2.1 INTRODUCTION**

Issues brought up in the previous chapter guided the direction and orientation of the literature review. Unlike exploratory research, descriptive studies are “based on some past comprehension or previous understanding of the nature of the research problem” (Zikmund 2003:55). This literature review aims to help build deeper understanding on current knowledge available and which is significant to the research problem.

This chapter deals with the following issues: definitions of important concepts of corporate governance, corporate governance indices, governance protocol and legal and institutional frameworks. Internal governance challenges and non-compliance issues in South African SOEs also received attention. The chapter furthermore highlights governmental governance efforts in South Africa and other BRICS countries.

### **2.2 CORPORATE GOVERNANCE**

The notion of corporate governance has been characterised and examined from different points of view; the implication being that consensus on a typical definition has not been achieved. Academics and business experts approach corporate governance from either its internal or external perspectives. Ostensibly, these points of view are not ideology-free – considering the innate levels of contestation and pressure between and among stakeholders.

According to Bhatta and Gonzales (1997:1), the term “corporate governance” stems from the exercises of organisations working in the private sector, which are adapted to boosting benefits or some other measuring stick of achievement; for example the Economic Value Added criterion. Monks and Minow (1995:1), ostensibly two of the first experts on corporate governance, define corporate governance as the “relationship among various participants in determining the direction and performance of corporations”. They identify three primary participants in corporate governance, i.e. the shareholders, the management, and the board of executives.

Corporate governance has been portrayed as “essentially the frameworks by which organizations are coordinated and controlled” (King I Report 1994:1), while for Wixley and Everingham (2002:1), it is more concerned with the structures and procedures related to administration, basic leadership, and control in the organisation. The DPE discharged the Protocol, which defines corporate governance as the embodiment of a process and system by which corporate enterprises are coordinated, controlled, and considered responsible (DPE, 2001:3). The OECD's *Principle of Corporate Governance* (2004) portrays it as

“a set of relationships between a company's management, Board, shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined”.

According to Berle and Gardiner (1932) and Fama and Jensen (1983), corporate governance alludes to the arrangement of internal and external controls that reduce the irreconcilable circumstances between the managers and shareholders stemming from the detachment of ownership and control. These definitions imply that an individual's objectives are not reconcilable with those of corporations. Similarly, the objectives of SOEs may differ from those of society. This implies that the plan of shareholders (principal), executives (specialists), and board individuals cannot be accepted as being in agreement. It is in this way imperative to develop principles as for structures, strategies, procedures, and systems with the specific end goal to guarantee steady applications and responsibility by the board and executives respectively.

This study assumes that, notwithstanding changing definitions of corporate governance, experts and academics alike agree that corporate governance seeks to protect the interest of the shareholders without undermining those of the shareholders. With regard to SOEs, boards are the overseers of corporate governance and represent the interest of the shareholders and other stakeholders in pursuit of developmental and economic objectives.

The literature review highlights governance quality as the most basic variable in advancing development around the globe. For instance, the development crisis in Africa has been portrayed as a “crisis of governance” (World Bank 1997), and South

Asia's huge human hardship is rooted in poor governance (Mahbub ul Haq Human Development Centre (HDC) 1999). This review perceives that, in spite of the notoriety of the term "governance", it remains slippery as it holds diverse implications for various people. Academics, professionals, and scholars in various disciplines do not appear to agree on this view. According to Oluwo and Sako (2002:13), a few authors view governance as concerned with tenets of directing open undertakings, while others view it as steering and controlling public affairs. With the end goal of this review in mind, both perspectives are relevant as they reflect the applications of rules of engagement for SOEs, suggested in which are issues identifying the institutional game plan between and among the key players.

Kooiman (1995:1) captures the complexities related to governance, viewing governance as including particular activities as well as procedures in which a few performing artists regularly participate. The emphasis of governance is on "cooperation" between and among various role players. An intelligent governance approach contends that numerous performing artists in various positions and levels of society are involved (Kooiman 1998:3). This framework resounds with the core of this review in that administration is connected to the qualities and enthusiasm of natives, authoritative decisions administering SOEs, boards, and official administration. As Kooiman (1998) called attention to, governance underscores the connection between and among various role players, with these collaborations founded on foreordained standards of engagement.

According to Hyden (1992), a definitive point of governance is to realign and manage relations between the state and citizens with a view to enhance the authenticity of the public realm. For this to happen, governance must be operationalised in a way that perceives distinctive social activities. With respect to SOEs, a comparative approach is applicable in that corporate administration is at least about realigning and overseeing relations between the shareholding service, boards, and the official administration of the SOEs. This realignment enhances the legitimacy of SOEs in the general public realm.

The corporate governance scandals and embarrassments noted at the SABC and Eskom are therefore of misalignment between the interests of various role players; consequently, the legitimacy of these SOEs has been tested. It can likewise be



contended that governance scandals or crises result from poor articulation or non-compliance to standards of “engagement”. This alludes to the understanding of the legislative and regulatory conditions and procedures – essentially rules of engagement – to manage corporate governance standards and principles; for example obligation, trustworthiness, responsibility, and transparency. These qualities must be observed, implemented, and monitored by the whole administrative value chain – line function ministry (Department of Communication and DPE), board members, and the executive supervisors of SOEs.

### **2.2.1 Conceptual and theoretical framework: Governance versus government**

To a great extent, governance is a process and structure in which institutions on each level settle on choices to make sense of who to incorporate into the procedure of basic leadership and decisions implementation. Who must settle on the individual or people to be considered responsible and in charge of the aftereffects of the execution of choices that influence various distinctive actions? (Ristovska 2013:242) It ought to be borne as a main priority that conveyance goods and services by SOEs. The governance system set-up should be receptive to the necessities of individuals, networks, and society when all is said in done (Kanyane 2010: 81). It ought to be noticed that there is a contrast amongst governance and government.

The last is found in the previous and not a different way. Without administration, government remains an unfilled shell. From one viewpoint, administration infers the ensured legitimate and administrative plans by which governments hone their capacity and in addition the related instruments for open responsibility, lead of law, commitment, suitability, straightforwardness, morals, trustworthiness, and national cooperation (Laking 2002:268; Kanyane 2008:97). The expression "administration" begins from the Greek verb *kubernao*, meaning "to control".

Pretorius (2015:240) battles that good administration is the controlling of society through systems and organizations between governments, enterprises, and common society affiliations. As shown by Mubangizi and Ile (2015:78-79), great administration extends the limit of people in general area to the guidelines that make a honest to goodness, powerful, and proficient structure for the direct of open arrangement. It

recommends directing open issues in a straightforward, participatory, responsible, and impartial way.

It includes viable investment in broad daylight policymaking, the regularity of the lead of law and a self-sufficient legal, institutional adjusted administration through segment of powers, and convincing oversight associations like that of France. The French Government Shareholding Agency (Agence des Participations de l'état, APE) is a national association inside the Ministry of Economy reported in 2004. Its fundamental objective is to go about as an investor for the French government with the particular ultimate objective to develop the French government's benefits and lift the estimation of its stakes. As a checking apparatus, APE works with the prepared workplaces required in drawing up the understandings which tie these organizations and associations to the administration. Archbishop steadily screens the idea of administration in the elements in its portfolio and has effectively contributed in raising the benchmarks of those elements (APE 2011:8,13).

Government is the state managerial hardware principally utilizing administration to ensure compelling administration conveyance. Agreeing with this view, Verdeyen and Van Buggenhout (2003:48) see corporate administration as a model of standards supervising frameworks of the basic leadership process and the instruments of control and obligation of SOEs or exclusive organizations. The guidelines are identified with standards; for instance, revelation, receptiveness, straightforwardness, data, interest, legitimisation, and governing rules.

Therefore, the quality consequences of SOEs must be accomplished if corporate administration issues, for instance responsibility, definitive cutoff, and inside activities, are exceedingly sorted out. It is in this way basic to underscore that great corporate administration requires investors, sheets, administrators, and workers of SOEs to demonstrate validity, straightforwardness, morals, and honesty in the lead of their corporate endeavors. SOEs need to grasp new changes to be ideally practical.

As per Hilb (2004:76,98), elements must be intentionally organized, managed, and clearly controlled in an entrepreneurial and moral way in a specific setting. This approach attempts to cover the esteem introduction from both the investors' and accomplices' perspective. A widely inclusive framework is required for the bearing and control of substances that endeavor to organize components of responsibility,

remuneration, and answering to guarantee dynamic working of the board on a basic level and by and by (Hilb 2004:76,98).

### **2.2.2 Indices of the corporate governance**

Organizations use internal control to reduce costs and improve effectiveness. Internal control also incorporate managerial cooperation, help to identify risks, identify training needs and provide information needed in appraisals of staff. These inward controls influence firm execution and the outcome is important. Different investigations have tried to create lists of the nature of corporate administration; for instance, the World Governance Indicators (WGI), the Ibrahim Index of African Governance (IIAG), and Africa Integrity Indicators (AII).

Stout (2007:800) asserts that good corporate governance is related to good corporate control. Risks are identified early and allows management to act pro-actively. Bhagat, Bolton and Romano (2008:1808) is of the opinion that there is no "best" measure of good corporate administration – the best administration establishments appear to depend on the setting of standards and on private organizations' specific conditions.

## **2.3 PROTOCOLS AND LEGAL ISSUES OF CORPORATE GOVERNANCE**

### **2.3.1 The Constitution of Republic of South Africa**

South Africa, as different nations, has endeavored to change the SOE scene. Chabane (2010:1) stated in May 2010, that the President of South Africa, transparently detailed the plan of the Presidential Review Committee on State-Owned Enterprises to survey the part of SOEs. Disregarding these elements being indispensable drivers of the formal part of the economy, given the weight of financial development as the essential components that pass on various social products and ventures to ensure the personal satisfaction to each South African, the SOEs' authoritative and approach structures are divided. This obliges the substances in their undertakings to respond as successfully as possible to the financial improvement command of a state.

The Constitution of the Republic of South Africa (No. 108 of 1996) encourages each South African to consistency and accommodates particular measures to change authentic lopsided characteristics. The implementation of specific laws and regulations

address this sacred objective (Bronstein and Olivier 2011:196). The Constitution means to destroy the apparatus of politically-sanctioned racial segregation and to change society in all districts, from instruction to expressions of the human experience, and from medicinal services to the equity framework. Key characteristics and standards found in the Constitution have offered endorsement to approaches of governmental policy regarding minorities in society, dark monetary strengthening, sexual introduction esteem, and ecological strategy. These guidelines and qualities characteristically affect authorizations and methodologies that influence SOEs.

### **2.3.2 The King Reports gives an account of corporate governance**

The main convention on corporate administration, insinuated as King I, was distributed in 1997. The King II Report on Corporate Governance followed in 2002, and the King III Report was distributed in 2009. The King IV Report was distributed in 2016. The King Reports suggest examples of good leadership for boards and executives of listed organizations, bank establishments, certain SOEs, and other public, private, and non-profits organisations. They incorporate not only financial and regulatory aspects, but advocated also an incorporated approach that included all partners, including SOEs. The objective is to give rules on the execution of corporate administration, proposing an unfaltering standard that SOEs can follow. In spite of the way that the King reports don't pass on genuine weight, they are by the by an applicable tradition to improve administration in corporate and open associations in South Africa.

## **2.4 THE LEGAL FRAMEWORKS**

### **2.4.1 The legislative framework**

The PFMA (No. 1 of 1999) expects to anchor obligation and sound administration of the income, use, resources, and liabilities of open part establishments. It applies to government divisions; open substances (counting SOEs) recorded in plans 1, 2, and 3; sacred foundations; Parliament; and the commonplace lawmaking bodies. The PFMA indicates the guardian obligations and general obligations of representing bodies, heads of divisions, bookkeeping officers, executives, and individuals from sheets or the bookkeeping experts, and subsequently suits individual hazard in situations where there is a potential break of administrative obligations.

The purpose of the PFMA is to

- “regulate financial management in the national government and provincial administration”;
- “ensure that all revenue, expenditure, assets, and liabilities of those governments are managed efficiently and effectively”;
- “provide for the responsibilities of persons entrusted with financial management in those legislatures”;
- “accommodate matters associated with the PFMA”; and
- “secure transparency, accountability, and sound administration of the income, consumption, resources, and liabilities of the institutions to which the PFMA applies”.

Regardless of the way that the PFMA totally covers all territories of public finance, sections 46 through 86 are of particular importance for money related administration issues. Every open substance regulated by the PFMA must have a bookkeeping specialist, which must be responsible for the motivations behind the PFMA. This is ordinarily the board. Be that as it may, if there is no board, the statutory speaking to body fills in as an "expert". In extraordinary conditions, the applicable treasury may affirm or train that another body fill in as the bookkeeping expert for that open element. Bookkeeping specialists must guarantee that precise books, records, money related articulations, and other statutory reports are arranged and exhibited.

SOEs or public companies, particularly those recorded under timetables 1, 2, and 3 A-C, have a place under PFMA order; for instance Eskom, Telkom, Transnet Limited, the SABC, Denel, the National Home Builders Registration Council (NHBR), the South African Bureau of Standards (SABS), and SAA. This in like manner applies to common SOEs, for example, the Gauteng Tourism Authority (GTA), Phakisa Major Sport Events and Development Corporation, the Richards Bay Industrial Development Zone (RBIDZ), and Mpumalanga Economic Growth Agency (MEGA).

The Companies Act of 2008 and the PFMA of 1999 as modified, among others, control these substances in conjunction with different directions that have specific part or individual administrative needs. Having said that, the South African administrative and strategy system under which SOEs work is divided and conflicting and along these lines does not energize the tasteful execution of guardian obligations. Apparently, the

current authoritative and strategy system forces SOEs to play out their improvement, key, and financial capacities.

SOEs (plan 1, 2, and 3 a-c) are moreover subject to plenty of authoritative systems emerging from Treasury Regulation 16, which makes arrangement for national and commonplace government foundations to go into open private association understandings. Studies led by the DPE point out congruencies between the PFMA and the Companies Act. It is moreover fundamental to express that the Companies Act and the PFMA did not at first plan to consider the specific issues confronting open elements on a regular commence as they fill in as stopgap measures (SOEs Policy Dialog Report 2012:10).

For example, the Companies Act plainly stipulates that investors choose the board, and the board thus designates the CEO; yet this is an issue for SOEs in light of the way that Cabinet underwrites the CEO's arrangement, in like manner rendering the choice of the board frail. The Companies Act, commended for its arrangements in administering from the littlest to the greatest organizations, is welcome; be that as it may, sadly, the playing fields are still unlevelled as all elements work under different acts presented to different medications. While it is basic to audit the enactment, it's anything but a panacea to fix each one of the ills persisted by SOEs.

Another hindrance confronted by SOEs is that privately owned businesses appreciate working in the focused condition of the Companies Act. In any case, SOEs believe that it is outrageous to match these exclusive organizations, as they have to work inside the PFMA's conditions, which have every one of the reserves of being steadfast. The upper hand of the SOEs is ruined by the strict standard working conventions of the PFMA. For instance, SAA thinks that it's difficult to work on a proportionate adjust with private carriers. "Exactly when the element sets its needs, the political choice kicks in and stipulates that the state wants to fabricate its trade relations with one of the African nations on the landmass" (SOEs Policy Dialog Report 2012:10). The the company is by then constrained to ensure that there is a course to the specific goal, independent of its productivity. Benefit and financial improvement are contrary here.

According to the SOEs Policy Dialog Report (2012:10) when the route is unsustainable because of benefit misfortunes, it prompts bailouts from the state, which creates new challenges for its now overstretched focus. In the event that corporate and social

intentions are not legitimately adjusted, the potential exists for capital misfortune because of political premiums and social duties at play that dislodge benefit and corporate venture targets. SAA, now exchanged from the DPE to fall under the National Treasury, is a valid example. The three SOEs – SAA, the SABC, and Eskom, which are the fundamental drivers of an economy in trouble, agitated by administration complexities – are presently regulated by Deputy President Cyril Ramaphosa (Statement on the Cabinet Meeting 2014:3) because of their particular administration and asset limit challenges.

Are SOEs expected to straddle the separation amongst corporate and social conditions? The issue of harmony amongst corporate and social venture goes under the spotlight here. There are SOEs which must do both, yet it is an alternate ball game by and large. On the off chance that a SOE, for instance, is contributing monetarily, given it a chance to work as a business undertaking. On the off chance that there is an office that relies upon allotments from the fiscus, it must be set up appropriately. Exceptional financing allotment for network commitments of a sensible scale is unquestionably alluring yet this ought to be obvious from the beginning, to abstain from building up SOEs on wrong intentions of various clashing commands, which is a formula to make these open substances flop at last. As indicated by Balkaran (2008:4), the disappointment of SOEs is established in the numerous and clashing destinations commanded to them. Nellis and Kikeris (1989:667) clarify that administrations frequently proclaim that their SOEs must work in a business, productive, and gainful way, however in the meantime, they demand that SOEs must:

- provide goods and services at prices less than cost-covering;
- serve as creation centres of employment;
- receive their supplies from state-sanctioned suppliers; and
- choose plant locations on political rather than commercial grounds.

Besides, government officials and specialists don't work as benefit persuaded investors. Instead of impacting SOEs to grow arrangements and diminishing costs, they anticipate SOC's to pursue non-commercial goals. The legislature makes hostile conditions that undermine the nature of the approach. For example, without independent control, the administration can escape with controlling and directing a division especially helpless to political weight, which adds up to loss of benefits and

the production of exponential vulnerabilities. Consistency and consistency are approaches to progress overall single SOE administration principles and sanctioning. Along these lines, there should be no harm in making establishment especially went for SOEs.

The 2007 report by Rondinelli, titled "Can Public Enterprises Contribute to Development? A Critical Assessment and Alternatives for Management Improvement", in like manner suggests the manner in which that open proprietorship for these substances in their current circumstance has continued puts South Africa at danger in the overall budgetary space except if the headway, change, administrative, authoritative, administration, and possession issues are settled (Rondinelli 2007:13).

## **2.5 THE INSTITUTIONAL FRAMEWORKS**

The state, through the appropriate political minister, designates (and ousts) individuals from South African SOE boards alongside their CEOs. While the board may propose a contender for the position of CEO, it is eventually government, who is regularly the primary or critical investor that settles on this choice. This institutional essential unavoidably darkens the duty regarding execution between the board and the investor when the board has no bona fide expert over a CEO who is at last accountable for the operational organization of the association. Rossouw (2005:1) takes note of that political connections routinely exhort board and senior administration appointments. Howard and Seth-Purdie (2005:56) term this training "political patronage" caused by, as Williams (2010:35) noted, attempts by the board to "please the stakeholder".

Minichilli, Gabrielsson & Huse (2007) state that the selection of the correct level and blend of people with the required aptitudes supports the performance of the board and its accountability. At the point when such selections are driven by political thought processes, it can be normal that ability, competency, and independency are compromised as "politicians and bureaucrats [...] tend not to complete their task as per the interests of society as real owners" (Kamal 2010:214). In support of this view, Quinn (2008:84) reflects "that when political elites both oversee and own the most vital economic sectors in the country, such resources are often used to accomplish here and now individual and political objectives [at the cost of] long-term economic ones".



Thus, Vagliasindi (2008:4) declares that these practices result in the "unquestionable part of board individuals [being] to ensure the enthusiasm of their services, a task routinely conflicting with bringing adequacy improvements". Maybe the part of government should be to set destinations and execution focuses for SOEs, delegate chiefs to the board, and screen the execution of both the venture and the board with expert for the execution of the element abiding with the board (Vagliasindi 2008). Consequently, the "OECD" (2005) view as "best practice" that the directors, and not the state, should have the ability to delegate and oust the CEO close by the full commitment and responsibility for the running of the SOE in absence political hindrance. South African government appointment system features the prerequisite for SOE responsibility; also taking note of, in evident irregularity with current practice, the requirement for SOEs to lead business autonomously from the state (DPE 2002).

Firmly connected to responsibility is the issue of transparency, including the revelation of hazard, to the general population as a definitive proprietor of SOEs. Kamal (2010) proposes that an absence of transparency inside SOEs, because of their political nature, brings about general society having little "social control" over these entities and enables wasteful aspects to develop. As SOEs are ordered to advance the social targets of a developing countries, for instance through employment creation and the provision of essential assets, their essential goal ought not to be to amplify profits (Khongmalai, Tang and Siengthai 2010).

However, Williams (2010) suggests that the financial models that prevail in the SOE sector are based on a profit motive which means services should be delivered at the lowest cost to benefit the country. It is not disputed that SOEs should be required to operate efficiently. However, any excess income after expenditure should be used to reduce the costs of the services provided or invested to ensure that SOEs do not need to be subsidised by government in the form of "bailouts" or the provision of guarantees to enable borrowing.

In such manner, Williams (2010) takes note of how the South African power utility, Eskom, is managing a ten-year investment backlog, and Transnet, the national supplier of cargo administrations, with thirty years of under-investment in infrastructure. Such practices that convert into government financial intercession can bring about out of line rivalry (Nicholl 2006) and impediment the private sector.

The wrong financial models that SOEs are compelled to utilize are likewise connected to their improper tax collection. Williams (2010) reports that in the vicinity of 2001 and 2010, Eskom paid an expected R84 billion in expense to the legislature and further transmitted to government another R7.8 billion in dividends. While Kamal (2010) takes note of the all inclusive issues of conflicting destinations, political obstruction, and absence of transparency that by and large win in SOEs, Rossouw (2005) demonstrates that the absence of powerful administrative and institutional systems to advance good benchmarks of corporate governance are deficient in Africa overall.

## 2.6 GOVERNANCE INTERNAL CHALLENGES

Organizational transgressions and shock over the way in which South African State-owned Enterprises are controlled, are all well documented (Khumalo 2009; Furlonger 2010) and can be viewed as symptomatic of "vital laziness" (Williams 2010:34) in an economy that prerequisites to battle on a general stage. Such practices involves loss of money, related authority conviction (Pressly 2009) and a nonappearance of confidence in SOEs by a wide margin of scholars and community members (Ensor 2010). Such transgressions include:

- **“lack of leadership**, obvious in conflict between the administrator and the CEO (Klein 2010), senior authority opportunities and an absence of progression planning (Williams 2010), unsteadiness in official authority (Klein 2010), prolong in senior management appointments (Ensor 2010), and political deployment and corruption” (Kenny, 2010);
- **“inappropriate bonuses**, including over the top pay and benefits to official chiefs and board members regardless of SOE underperformance” (Theunissen 2010);
- **“mismanagement of assets**, apparent in poor long haul methodology advancement (Kenny 2010), poor financial responsibility (Naidu 2009), and unprofitable or inefficient use” (Sergeant 2009); and
- **“board anomalies**, showed in detachment or numbness of organization undertakings (Cutting and Kouzmin 2000), sporadic participation of gatherings and over the top simultaneous board arrangements” (Webb 2007), “absence of adherence to fiduciary obligations” (Cutting and Kouzmin 2000), pay off and defilement (Brown 2009), conflicts of interest (Mkhabela 2009), delicate gear

(Mkhabela 2009), “and absence of standard board evaluation” (Ingley and Van der Walt 2002).

Despite growing administration measures, there is negligible confirmation that the administration of South African SOEs has upgraded after some time. Dalton and Dalton (2006:5) allude to the non-appearance of progress to a "lost fixation" where helper parts of the best administrative staff (for instance bit of the representing body and of board warning advisory groups, CEO/chief structure, and board measure) beat "process issues" relate to the tone of the lifestyle and to a noteworthy number of the unobtrusive issues that are difficult to check. Dalton and Dalton (2006) propose that “while structure is essential for boards sufficiency, it isn't attractive without any other individual to guarantee board achievement or accomplishment”.

## **2.7 DIFFERENT THEORIES IN SOEs’ CORPORATE GOVERNANCE**

Various theories have been used to examine and analyse the compliance of entities and the factors that hamper enterprise performance. The concept of strategic management is frequently used to examine the performance of enterprises and various theories and schools. Hypotheses are utilised to inspect the key administration of enterprises. Given this plethora of theories and schools, this review concentrates on hypotheses of strategic management; to be specific, institutional theory to explain the impact of institutions on enterprise strategies in developing countries (Hoskisson, Eden, Lau & Wright 2000).

The review explores whether these theories can likewise be utilised to clarify the accomplishment of a portion of the fruitful SOEs in South Africa in light of three noteworthy, vital SOEs. Institutional theory has a focal role in dissecting the execution techniques of enterprises in developing countries because of the more grounded impacts of government and societal impacts than in developing countries (Hoskisson *et al.* 2000). Once a market begins developing, the agency theory and resource-based perspective turns out to be more imperative (Hoskisson *et al.* 2000).

Developing countries are described by fundamental and comprehensively pervasive changes that influence the exercises and conduct of firms (Peng, Wang & Jiang 2007).

Rondinelli (2007: 21) contends that there is expanding proof that most open substances either don't contribute emphatically to advancement, or play out their open administration works inadequately and wastefully. The appraisal of SOEs in South Africa, which directs that they are powerless against obligation loads, underinvestment, devaluation of advantages, corporate administration entanglements, and debasement issues, to specify however a couple, affirms Rondinelli's (2007:21) contention. These difficulties undermine and baffle the state's expectations to accomplish development and advancement destinations. SOEs in South Africa work inside a structure of numerous bits of enactment, which are now and again in strife with the expansive key push of the state. As there are varying perspectives and patterns around standards and practices of SOEs, this examination gives a survey of notable issues rising up out of the authoritative, administration, and human factor viewpoints of SOEs.

### **2.7.1 Institutional theory**

Institutional theories advance the significance of the embedded historical organisational position and the institutional coercive pressure on organisations to change (Erakovic & Wilson 2005). Understanding the nature of organisations and their stages of systematisation helps organisations to adjust their institutional and strategic objectives (their objectives systems) with their structures and where such objectives change, for instance changes in the environment, to adjust the organisational structure as needed, keeping in mind the end goal to streamline and use such changes towards accomplishing predominant and sustainable performance (Rhenman 1973).

The new institutionalism theory sees organisational environment involving differing types of institutions representing the value and meaning of dynamics in society (Scott 1987; DiMaggio & Powell 1991). These external establishments have a noteworthy impact on the versatile options available to organisations. (Scott 1987; DiMaggio & Powell 1991). New institutionalism moves past talking about why organisations matter and examines how establishments matter (Peng *et al.* 2008). Highlighting the way in which institutions matter was a cross-examination of a clear basic supposition of old institutionalism that appeared to show a static domain and stable institutional components (DiMaggio & Powell 1991).

The effect of an organisation's environment is resounded by advocates of the new institutional theory (Sims & Quatro 2003; Abdul-Aziz, Jaafar, Nuruddin & Lai 2010) who argue that in examining hierarchical change, the emphasis ought to be on organisations in sectors, rather than individual organisations (Greenwood & Hinings 1996). In this manner, Selzwick (1996) recognises an organisation and an institution and states that an organisation is institutionalised when it is mixed with value beyond prevalent technical requirements (Selwick 1996).

In South Africa, this found its application in the developments on the corporate governance regime presented by the new Companies Act and the King III Report (2009). The emphasis is on aggregate choices in financial procedures contrasted with only focusing on financial clarifications (Sims & Quatro 2003). Such concentration is critical for SOEs where the government as shareholder is not concerned just with profit expansion but rather has extra public interest and public policy concerns (Smith 2003).

In discussing how institutions matter, the new institutionalism starts from a preface of organisational change resulting from path-dependent change in the institutional environment (Brinton, Smelser & Swedberg 1995). Path dependence alludes to "the lock-in effects stemming from initial conditions on subsequent development and change in the institutional condition" (Nee 2003). The fundamental presumption is that institutions matter in determining the performance of organisations and countries (Brinton *et al.* 1995).

Accordingly, the process of institutionalisation is situated in a wide environment and has a less internal focus as is the case with the old institutionalism (Lowndes 1996). SOEs (particularly large ones) are especially affected by their inability to adjust to the changing institutional condition since such failure may cause declining industrial output, which may have a progressively far-reaching influence on the whole economy (Brinton *et al.* 1995).

Despite discussions around old and new institutionalism, both schools of thought identify human conduct to be key to change and its effect on organisations (Rutherford 1995).

Correspondingly, organisational theory can be seen as revolving around human conduct, especially that of organisations' leadership in relation to enhancing

organisational performance (Barzelay & Gallego 2006). While organisations may react to external institutional pressures from their environment, this is by all accounts not the only source of hierarchical change (Greenwood & Hinings 1996), since internal technical pressures may have an equal impact on influencing change in an organisation (Kraatand 1996).

In analysing the performance of SOEs and aiming to find principles that will contribute towards the improvement of such performance, organisational change and the drivers of such change become critical. Institutional hypothesis (both the old and new institutionalism) gives bits of knowledge to understanding not only change, but also the features of organisations that urge change and reactions to such pressure for change (March & Olsen 2006). This contributes to highlighting the discrete examples in the institutional environment that bolster particular organisational structures, for example SOEs (Nee 2003).

Eventually, institutionalism (both schools are reconciled) explores connections between environmental (market) impacts and internal capabilities, showing that a competitive environment influences the value of an organisation's particular institutions, for example culture (Ingram & Silverman 2000). To exploit its environment for optimum performance, an SOE may consider conforming its organisational shape to the institutional environment (Ingram & Silverman 2000).

Consequently, with a proper market structure, SOEs' institutional developments can possibly provide a source of maintained competitive advantage (Ingram & Silverman 2000). Seeing that SOEs are operators for the government's public policy initiative, they can be seen as agents (Garson 1998). Facilitating the institutional game plan of an organisation depends on the presumption of a principal agent relationship, which is based on agency theory.

## **2.8 STATE-OWNED ENTERPRISES (SOEs)**

SOEs can be optimally functional, as will be examined in more prominent detail in relation to SOEs in developing countries in Asia and Latin America, and in addition South Africa itself (Chang 2007). In developed countries such as Austria, France, Norway, and Germany, SOEs were regularly at the cutting edge of industrial modernisation (Chang 2007). This component of the SOE's role and commitment to

economic growth and development has been broadly utilised by developing countries (e.g. Singapore, Malaysia, Taiwan, South Korea, Vietnam, and Brazil).

SOEs are a piece of a state's investment and economic development policy and are frequently needed for long-term investment and advancement, to enhance private sector exercises (Chang 2007). Chang (2007) sets out different theoretical pursuits for the existence of SOEs, which include the following:

- **Natural monopoly:** Where the specialised prerequisites of an industry are to such an extent that just a single provider may exist. Subsequently, the restraining infrastructure provider may produce at less than socially ideal levels and fitting syndication rents. Cases: railroads, power, and so forth.
- **Capital market failure:** Private sector investors may decline to invest resources into industries that have high risks or potentially long incubation periods, since capital markets have a natural predisposition towards short-term gains and do not like risky large-scale projects with long development periods.
- **Externalities:** Where private sector investors do not have the incentive to invest resources into industries which benefit different businesses without being paid for the administration. Examples are steel and chemicals. Strangely, South Africa privatised its steel sector by imposing a business-maker model, while in other developing countries, petrochemical SOEs have been the most fruitful SOEs.
- **Equity:** Profit-seeking firms in enterprises that provide essential products (e.g. media communications, power, and transport) may decline to serve less beneficial clients, for example destitute individuals or individuals living in remote areas (Chang 2000).

As public policy instruments intended to address certain areas in the economy, where there is restricted to no private sector activity, and as facilitators of economic activity, SOEs are not supposed to boost profit (Lawson 1994). The public investment and state ownership bring about various goals, curious requirements, and diverse shareholder representatives, which create challenges in modelling SOEs (Lawson 1994). Due to this contention of state intervention in SOEs by the government, Erakovic and Wilson (2005) argue that SOEs' organisational behaviour is external.

### **2.8.1 Non-compliance in South African SOEs**

Developing compliance underpins the view that debasement adversely impacts investments and financial development in creating nations (Mauro 1995; World Bank 1997; Adams and Mengistu 2008). Transgressions in SOEs, vehicles that can propel improvement in immature nations, now make an impression of being overall wonders (West 2006:43). Nicholl (2006:214-28) suggests that while general society segment isn't responsible for monetary aggressiveness, poor administration inside this division unpreventably interrupt this procedure. The response of partners to governance transgressions, in any case, are preparing governments to keep an eye on operations at SOEs with a particular true objective to transform them into organisations that propel national rivalry (Parker 1999:213-35; Dockery and Herbert 2000:80-92; Crawford et al. 2003:443-8).

As corporate administration corruption at SOEs in South Africa have been especially announced in the prevalent media, there has been no undertaking to benchmark such practices against the accepted procedures expected of freely financed elements. In this way, the general focus of this investigation was to record, over a time of five years, the nitty gritty events of corporate administration irregularities (nature and degree) at three significant South African SOEs. Transgressions were reviewed using "The Guidelines on Corporate Governance of State-Owned Enterprises" (OECD, 2005) as a legislative framework. Survey depends on the organization challenges stood up to by the creating business area in BRICS countries, a social affair in which South Africa took part in 2011 (realizing the "S" being added to the BRIC acronym).

The first responsibility that this case-based review makes is one of lifting a prudent dialog on corporate governance at these three SOEs from public rhetoric (cf. Moerdyk 2009; Williams 2010) to a more significant appreciation of the way the noteworthy issues warrant thought. Besides, the review in like manner begins to add to the uncommon academic literature base on open corporate administration in Africa when all is said in done, and on South African SOEs particularly. In this way, Khongmalai et al. (2010) observe how most surveys on corporate governance are arranged inside the private sector, also, Tsamenyi, Enniful-Adu and Onumah (2007) express that corporate governance has just gotten constrained thought in developing nations.



Likewise, Rwegasira (2000) recommends that, by and large, worldwide governance discusses maintain a strategic distance from African economies. Vaughn and Ryan (2006) observe the central position of authority that South Africa plays on the African mainland. With its fuse as the delegate of Africa in the BRICS gathering (Standard Bank 2011), it is all the more basic that administration in South African SOEs is addressed, remembering the true objective to propel the "democratization of overall administration" (Standard Bank 2011:4) expected of the nation through such incorporation. Wang et al. (2009:106) define globalization as "the technique by which the world's economy is changed from an arrangement of national and local markets into a set of national and regional markets that work without national points of confinement".

Globalization empowers private sector organizations to move operations to nations where good corporate governance and sound moral practices are seen to win in business. Different investigations (cf. Ahunwan 2002; McKinsey and Co. 2002; Armstrong 2003) take note of "how impression of defilement adversely affect global outside direct speculation (FDI) to creating nations". In such manner, Rossouw (2005:95) states "that there has been an acknowledgment in Africa that sound corporate governance can pull in nearby and remote speculation and can deflect defilement and dishonest business rehearses that 'scar Africa's business picture'". Nonetheless, Transparency International's (2010) report "positioned South Africa in 54th place within an example of 178 nations as far as saw debasement in 2010. While the 54th place does not show up, at first glance, to be too much negative, the crude score of 4.5 for South Africa is still notably beneath that of Denmark, New Zealand, and Singapore – nations that tie in the lead position (saw to be the minimum degenerate social orders) with a score of 9.3 each .

### **2.8.2 Government efforts**

South Africa has conferred itself to a 6% development direction, as noted in the "Accelerated and Shared Growth Initiative of South Africa" (AsgiSA) (Behar 2006). In this way, the South African government is of the opinion that SOEs are basic to the national economy, particularly for the delivery of power, transportation, and media correspondences (DPE 2002). Such financial related duties by SOEs in these sectors

appears to mirror a worldwide example in developing nations (OECD 2005; Khongmalai *et al.* 2010).

Moreover, “in the post-1994 democratic period in South Africa, there has been an organized exertion in both public and private sector to transform the strategy for cooperating to reflect more noticeable popular government and breadth in the economy that beforehand dismissed the dominant part of South Africans”. Castells (2001) asserts that “the dedication of government to this exertion is to develop and shield fundamental foundation, to a great extent”, by means of SOEs as “instruments of social advancement” (Williams 2010:34).

All inclusive, Adam, William and Percy (1992) and Cook and Kirkpatrick (2003) observe the commitment by SOEs in under-develop countries to diminishing aberrations in pay, growing business, and adding to the improvement of the area. Given the central part that SOEs play in achieving the financial points of the legislature, and remembering the ultimate objective to ensure their positive responsibility regarding the intensity of the nation, it is basic that SOEs are particularly controlled with reasonable responsibility and straightforwardness in respect of the administration [and] assignment [...] of vital state resources” (Molefe 2006:2). McLellan (2009) ventures to express that society expects no not as much as the good governance of this segment.

“The King four reports about Corporate Governance” (Institute of Directors of Southern Africa [IoDSA] 1994, 2002, 2009) “solidly influence corporate governance in the South African private and public sectors”. Regardless, administration of State Owned Enterprises, specific controlled according to the PFMA, as reexamined (1999) and the related Protocol (DPE 2002). Van der Nest, Thornhill and De Jager (2008:546) trust that the presentation of this enactment has acquainted stricter measures with actualize standards of corporate administration in SOEs, especially through upgraded financial administration that structures the establishments of sound administration conveyance and general responsibility regarding the advancement of the economy.

In any case, in the course of recent years, strong solid worries about administration transgressions at SOEs have been uninhibitedly imparted (Pressly 2009). Such transgressions can be seen from two viewpoints: inside the setting of the institutional framework (transgressions that ascent because of the manner by which the SOE

condition is remotely sorted out by government) and from the perspective of inner organization (transgressions over which the SOE has some quick control).

### **2.8.3 Corporate governance in SOEs (BRICS countries)**

Prior to the consideration of South Africa into the alliance of driving creating markets, Brazil, Russia, India, and China were all around known as the BRIC countries, portrayed by quick money related improvement. These countries all in all spoke to 33% of the FDI inflow to making countries in 2006 and constitute huge trading accessories with the United States of America (USA) and the EU (Wan 2010). SOEs in the BRIC countries, as in South Africa, are requested to address national targets (Gazetov Ditrikh, Kotliarova and Skripichnikov 2005; Ralston et al. 2006; De Castro and Brandão 2007; Wang et al. 2009; Gopa Kumar 2010; Sprenger 2010).

They constitute a basic bit of the economy in most strategic fields, for instance, control in Brazil (De Castro and Brandão 2007); structure, exchanges, extraction of typical resources, the military-present day complex, and financial benefits in Russia (Sprenger 2010); sections related to control, collecting, mining, and improvement in India (Gopa Kumar 2010), and, in China, fragments overseeing unrefined materials, petrochemicals, media interchanges, and saving money (Ralston et al. 2006; Wang et al. 2009).

An expansive number of the administration issues noted at SOEs in South Africa in like manner occur inside SOEs in substitute BRICS countries. De Castro and Brandão (2007) detail the deficit crisis in Brazilian SOEs, which required government mediation, and Gopa Kumar (2010:11) observes the chronicled occasion of "wiped out open undertakings" in India that, genuinely, have required government help. Monopolistic SOE practices, government security, and the headway of out of line monetary circumstances provoking a hosing of improvement are represented in Russia, where around 38% of SOEs welcome some kind of government financial reinforce (Sprenger 2010).

In such way, Boardman and Vining (1989) and Goldeng, Grunfeld and Gabriel (2008) discuss the underperformance of Russian SOEs against their private division accomplices, the last which indicate more conspicuous smoothness in keeping an eye on contention. Gopa Kumar (2010) observes the chronicled underperformance of

SOEs in India as evaluated against private division associations. Concerning Chinese SOEs, Wang et al. (2009) raise issues of operational redundancies, bureaucratic stagnation, and general powerlessness to address change that still plagues SOEs in that country. Tan and Wang (2007:150) incorporate that Chinese SOEs are commitment ridden yet with powerful "repackaging" and government credits, are up 'til now controlled by parent associations who benefit financially from the new plans.

Nonappearance of straightforwardness in SOE objectives and outlandish SOE independence in setting such targets are noted in Russia (Standard and Poor's 2005). In such way, Gazetov et al. (2005) highlight the nonattendance of coordination between government specialists in making synergistic strategies among significant SOEs. The route toward government naming it delegates to sheets in Russia needs straightforwardness and board individuals are consistently dormant and non-contributing individuals (Sprenger 2010) who are sometimes reshuffled (Gazetov *et al.* 2005). Gopa Kumar (2010) alludes to the following key administration challenges for SOEs in India:

- "Lack of consciousness of the corporate administration structure by government and political pioneers ;
- Lack of board education in corporate administration ;
- Lack of straightforwardness in divulgence of data ;
- Fragmented boards structure ;
- Lack of divulgence of execution assessments of directors";
- Entrenched self-intrigue; and
- Gradual resistance to change".

Sprenger (2010) observes that SOE executives in Russia often fill in as channels for decisions made at senior government levels and communicates that the rule issues of SOE sheets relate to:

- absence of a "unified" legitimate structure inside which to work;
- unclear duties of board individuals;
- adverse motivating forces for administrators;
- great "protectionism by government";
- poor transparency; and
- blurred limits between the legislature as the regulator and proprietor of SOEs.

In such manner, Belikov (2009:42) recommends that CEOs need to "control tenets and connections" with a specific end goal to deliberately coordinate these organisations. Besides, government authorities serving on Russian SOE boards have minimal motivating force to change and don't deliberately screen or control the execution of SOE managers (Belikov 2009).

Facilitate issues incorporate government delegates on SOE boards taking decisions based on self-interest as opposed to in light of a legitimate concern for more prominent's benefit (Sprenger 2010). Chiu, Hui and Lai (2007) and Yang (2008) likewise note administrative self-intrigue and the absence of motivations for SOE chiefs to expand profits in China. Also, Tan and Wang (2007) feature the conflict between state possession and oversight of the working of SOEs alongside the absence of portrayal of minority investors on SOE boards. Tan and Wang (2007) additionally take note of that poor administration hones in Chinese SOEs incorporate improper exchange of advantages, theft of corporate resources through insider dealings, adornment of financial archives, stock value control, and nepotism.

What is clear from the literature review is that the point of administration at SOEs inside the BRICS coalition is overwhelmingly ruled by thinks about on Chinese SOEs. Ralston et al. (2006) and Girma and Gong (2008) feature the key push to impact reform in Chinese SOEs, including:

- giving more prominent "operational" self-sufficiency to SOEs;
- offering, rewarding execution; proving improved efficiencies;
- reforming;
- educating;
- scrutinising "boards" and panel operational;
- subscribe and adopting universal accounting best practices; and
- non negotiable trained budgetary planning.

## **2.9 CONCLUSION**

Corporate Governance is characterized as an "set of relationships" between an establishments' administration, the Board, investors and different stakeholders. Corporate governance is additionally portrayed as how organizations are coordinated

and controlled. What's more corporate administration is seen as an arrangement of frameworks, standards, and procedures by which an organization is administered. They give the rules to how the endeavor can be coordinated and controlled such that it can satisfy its objectives and goals. It should include esteem. Corporate governance is about individuals collaborating with items and innovation, and individuals communicating with frameworks. Governance on a fundamental level is about human instinct.

As to SOEs, boards are the administrators of corporate governance and speak to the enthusiasm of the investors and different partners in quest for formative and monetary targets. In absence of governance, government remains an unfilled shell. SOEs need to grasp new changes to be ideally suitable.

Different studies have tried to create records of the nature of corporate governance; for instance, the "World Governance Indicators (WGI), the Ibrahim Index of African Governance (IIAG), and Africa Integrity Indicators (AII)". Every one of these records associates good corporate administration with great corporate execution. Corporate governance "protocols" and legitimate issues were featured in this chapter. The first convention on corporate administration, implied as King I, was distributed in 1997. The King II Report on Corporate Governance followed in 2002, and the King III Report was distributed in 2009. The King IV Report was distributed in 2016. The reports prescribe norms of lead for sheets and chiefs of recorded organizations, bank establishments, certain SOEs, and other public, private, and non-benefit entities. They incorporate money related and administrative viewpoints, as well as supporter a joined approach that incorporates all accomplices, including SOEs. The objective is to give rules on the execution of corporate administration, proposing a consistent standard that SOEs can take after.

Despite expanding administrative mechanisms, there is minimal verification that the administration of South African SOEs has enhanced after some time. Despite the King Codes, administration of SOEs, specifically, is controlled by the PFMA, as changed (1999) and the related Protocol on Governance (DPE 2002). Poor corporate administration isn't a disconnected issue in South Africa, but at the same time is a test in different nations, for example, the BRICS nations. A considerable lot of the

administration issues learned at SOEs in South Africa likewise happen inside SOEs in alternate BRICS nations.

Gopa Kumar (2010) observes the recorded underperformance of SOEs in India as evaluated against private claimed associations. Gopa Kumar (2010) moreover bases on the going with key organization challenges for SOEs in India: Lack of cognizance of the corporate organization framework by government and political pioneers; Lack of board planning in corporate organization and Fragmented board structures. Sprenger (2010) “saw that SOE officials in Russia every now and again fill in as conductors for decisions made at senior government levels and communicates that the essential issues of SOE boards relate to ill defined commitments of board member and Protectionism by government”. Ralston et al. (2006) and Girma and Gong (2008) highlight the essential push to affect change in Chinese SOEs, including to give more conspicuous operational self-control to SOEs.SOEs.

Notwithstanding the need for legislation and regulation, SOEs are confronted with multiple, fragmented pieces of legislation and regulations with varying reporting and accountability requirements. 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 practising a culture of good governance standards.

In the next chapter Eskom, the SABC and SAA will be highlighted as well as the governance oversight role over SOEs.

## **CHAPTER 3: ANALYSIS OF ESKOM, THE SABC, SAA AND THE GOVERNANCE OVERSIGHT ROLE OVER SOEs**

### **3.1 INTRODUCTION**

The previous chapter provided the literature review of the study and its intended aims and objectives. As a component of this background, reference is now made to three major strategic SOEs in particular – Eskom, the SABC, and SAA – regarding compliance to the King Code principles on good corporate governance. Following a plethora of scandals and transgressions in both the public and private sectors, corporate governance has turned into a subject of quarrels and debates in the public domain over the past two decades.

In South Africa, the King Report on Corporate Governance was developed and subsequently altered or modified for SOEs. Regardless of the progress made, the SOEs' condition remains in distress as boards of directors and management battle to maintain a balance between legislative compliance and SOE performance. It is the latter context that motivated the study and it was further inspired by the boards of Eskom, the SABC and SAA, who all struggle to actualise sound corporate governance practices in order to deliver shareholder value as per their mandate.

### **3.2 NEW DEVELOPMENTS IN ESKOM**

The pending investigation after the *State Capture Report* released in 2016 by then Public Protector Advocate Thuli Madonsela raised eyebrows on matters of good corporate governance at Eskom. It was shown in public records that many incidents took place at Eskom, including a dysfunctional board of directors, maladministration, irregularities, and poor management. The power utility has given employees the assurance that it will do everything possible not to shed jobs while the Coal Transportation Forum heads to court over Independent Power Producers (IPPs) after the forum brought traffic to a halt in Pretoria in March 2017 when about 100 truck drivers slowly drove into the city. Notwithstanding the attention paid to Eskom over the major payment irregularities, including Impulse International in 2015, the stepdaughter of acting CEO, Matsheka Koko, was granted contracts worth more than R1 billion in any case. Failure to investigate the evidence by Eskom brings up issues with respect to whether the organisation secured unique or special treatment from the power utility.



Impulse International was allowed eight contracts worth R1 billion from the division Koko headed after his stepdaughter, Koketso Chomo, was designated as the director in April 2016 and was a recipient of a trust with much interest for the organisation. It is asserted that Koko harassed some of Eskom's fundamental contractors to award the contracts to Impulse International. Be that as it may, Koko fervently denied the assertions and said he requested that Chomo step down as director and trustee when he got some answers concerning her role in the issue. As of late, Eskom appointed a law firm, Cliffe Dekker Hofmeyr, to investigate the allegations (*Sunday Times* 2017).

In any case, it has become visible through sources that Eskom's assurance and forensic department was requested to investigate Impulse International's dealings from as far back as December 2015. Allegations of providing deceitful timesheets were conveyed to Impulse International when they conducted quantity surveying work at the Medupi Power Station for Eskom's contractor, PB Power, between 2014 and 2015. They presented a demand for investigation, yet it went nowhere. They wanted to see this investigated in light of the fact that they have heard that the company is probably going to be effective in its request to be granted an additional six-month extension for its services at Medupi.

An email exchange between Eskom authorities in March uncovered that "Impulse was blamed for submitting and being paid for solicitations in 2015 for a considerable length of time after its contract had lapsed" (*Business Day* 2017).

The email further said:

"What's more, it likewise happened that various Impulse quantity surveyors showed up not to have done work they guaranteed to have done, and therefore PB Power brought in Turner and Townsend to audit the work and timesheets, which had been submitted and found with noteworthy discrepancies."

It then concluded that there could be "adequate narrative confirmation, held by PB to demonstrate the deceitfulness under the watchful eye of court".

The CEO of Impulse International, Pragasen Pather, said that he was unaware of the claims to forward deceitful timesheets. He said he can confirm that there were no cases against Impulse International. Suggesting that the company was still on Eskom's preferred provider list, it is business as usual. In 2015, PB Power was in a

payment dispute that debilitated the reasonability of business to a point where salaries were not paid to employees and a decision was made either to apply pressure or be liquidated, but the dispute was settled when PB Power paid Impulse International what was due to it.

When inquired as to why Eskom proceeded with the agreement considering the investigations under way, its representative stated: “Disclosing the scope of the investigation is dangerous to the objective of the investigation itself, thusly we are not at freedom to do as such.” (*Business Day* 2017)

### **3.2.1 Current operational status**

In spite of the current credit downgrading of the state utility, it was still able to secure a large portion of its subsidies in March 2017. Standard and Poor’s Global and Moody’s brought down its long-term corporate credit rating on Eskom from B+ to BB- after the country’s downgrade to junk status in April 2017. According to Phasiwe (*Business Day* 2017), in line with the execution of Eskom’s funding plan, 72% of the current fiscal year’s subsidising adding up to R72 billion will be secured before the end of April and thus far the subsidising necessity for the 2017/2018 financial year has not been bargained. Eskom’s Phasiwe stated: “In the short term we have raised about 72% of our capital requirements for the next two years” (*Business Day* 2017).

### **3.2.2 Leadership in Eskom**

The new acting CEO, Mr Matshela Koko, was appointed after the shocking resignation of Mr Brian Molefe immediately after the release of the *State Capture Report* by the Public Protector in November 2016. This is evidence of instability and poor governance in the power utility, which has been cited by the recent downgrade to junk status by major rating agency Fitch and Poor & Standard. Leadership instability seems to continue after observing recent incidents in Eskom, including the implication that CEO Matshela Koko’s stepdaughter allegedly benefitted from contracts amounting to R1 billion at the parastatal.

In April 2017, Eskom announced an inquiry into acting CEO Matshela Koko after the Ministry of Public Enterprises took a decision to probe the serious allegations against him. The Eskom board was ordered by Minister Lynne Brown to probe its acting CEO

over the R1 billion contract claims and instructed the board to conclude its investigation soon. Koko welcomed the decision, saying the claims have been damaging Eskom's reputation. The DPE's Colin Cruywagen stated that Minister Brown has given Eskom clear instructions on how to deal with the allegations against its acting CEO (*Business Day* 2017).

### **3.3 NEW DEVELOPMENTS IN THE SOUTH AFRICAN BROADCASTING CORPORATION (SABC)**

#### **3.3.1 Interim report of the “Ad Hoc Committee on the SABC Board Inquiry into the fitness of the SABC board”**

The Ad Hoc Committee on the SABC Board Inquiry (in the future alluded to as "the Committee") enquired about the wellness of the SABC board according to the National Assembly determination of 3 November 2016 as takes after:

The National Assembly settled the Committee to ask, inter alia, about the wellness of the SABC board to release its obligations as recommended in the Broadcasting Act (No. 4 of 1999) and some other relevant enactment. This followed after widespread concerns from the general public about the SABC's capacity to practice its mandate as the public broadcaster. Furthermore, the board could never again assemble quorate gatherings as a few non-official board individuals had been expelled or had surrendered. There is by all appearances proof that the SABC's essential command as a national open telecaster has been imperiled by the absence of administration and administration inside the SABC, which at last added to the board's powerlessness to release its trustee obligations.

The SABC has therefore veered off from its order as general society supporter, and from giving a stage and a voice to every single South African to take an interest in the fair regulation of the Republic. The SABC has additionally neglected to give an essential stage to network association, instruction, and excitement that mirrors the rich and various social legacy of South Africa. In accordance with segment 15A(1)(b) of the Broadcasting Act, the Committee was accused of inquisitive into the capacity of the SABC board to release its obligations as endorsed in the Broadcasting Act. Its terms of reference were constrained to considering the:

- SABC's financial status and sustainability;
- SABC's response to Public Protector Report No. 23 of 2013/14: *When Governance and Ethics Fail*;
- SABC's response to recent court judgements affecting it;
- SABC's response to the Independent Communications Authority of South Africa's (ICASA) June 2016 ruling against the decision of the broadcaster to ban coverage of violent protests;
- the current board's ability to take legally binding decisions following the resignation of a number of its non-executive board members;
- the board's adherence to the Broadcasting Charter;
- the board's ability to carry out its duties as contemplated in section 13(11) of the Broadcasting Act ;
- human asset related issues, for example, administration structures, arrangements of officials, and the terminations of administrations of the influenced administrators; and
- decision-production procedures of the board (National Assembly 2017).

As far as the determination, the Committee proposed to finish its business, and answer to the National Assembly by 28 February 2017.

### **3.3.2 Current operational status**

Amid the review of monetary articulations for the year finished 31 March 2016, the accompanying material vulnerabilities were noted which cast noteworthy questions on the element's going concern suspicions:

The money stores of the SABC have been falling apart over the most recent two years. In 2014, money and money counterparts added up to R1.4 billion. This diminished to R1 billion out of 2015 and R874.7 million in the current budgetary year. Incomes need to increment essentially all together for the SABC to come back to gainfulness. The money adjusts after year-end have weakened. The bank adjusts moved from R874.7 million toward the finish of March 2016 to R837.8 million toward the finish of April 2016. This speaks to a 4.2% diminishing in multi month. The adjust diminished further in May to R703.8 million, which is a 16% abatement. The adjust after the review report additionally demonstrated a critical lessening in real money stores to R 548.7 million

(per Systems Applications and Products general record), which is a 22% decline (AGSA 2016).

This aggregates to a decline of 37% in trade out only four months. Incorporated in the cash reserves at year end is the Government Grant restricted cash of R167.4 million, which is for conditional digital migration, and not for the operational utilization of the entity (AGSA 2016).

Income expanded marginally, with operational consumption expanding quicker than income, which gives occasion to feel qualms about the planned net benefit of R3.4 million for the 2016/2017 budgetary year. Besides, the SABC detailed repeating misfortunes for the past money related years. Misfortunes are driven by representative costs, broadcasting expenses, and flag and conveyance costs. Proficient and counseling expenses expanded altogether, by 45% (AGSA 2016).

### **3.3.3 Leadership in the SABC**

President Jacob Zuma has recently confirmed the appointment of five members to the interim board of the SABC. The members will serve for a period of six months. They are Khanyisile Kweyama, John Matisson, Mathatha Tsedu, Febe Potgieter-Gqubule, and Krish Naidoo. Kweyama and Tsedu will serve as chairperson and deputy chairperson respectively.

### **3.3.4 Compliance**

The findings of the Committee's investigation on the fitness of the SABC board reveal that the "SABC failed to comply with the applicable laws and regulations in its financial management". AGSA noted occurrences of rebelliousness with laws and directions. The accompanying cases were recognized:

- "Financial statements submitted for auditing were not prepared in accordance with International Financial Reporting Standards (IFRS) as required by Section 55(1)(b) of the PFMA and Section 29(1)(a) of the Companies Act. Material misstatements identified by auditors were subsequently corrected, but the uncorrected material misstatements and supporting documents that could not be provided resulted in the financial statements receiving the qualified opinion."

- “Goods, works or services were not procured through a procurement process which is fair, equitable, transparent, and competitive as required by section 51(1)(a)(iii) of the PFMA. Sufficient appropriate audit evidence could not be obtained that the procurement systems or processes complied with the requirements of a fair SCM [supply chain management] system as envisaged in Section 51 (1)(a)(iii) of the PFMA.”
- “Section 51(1)(b)(ii) of the PFMA requires that effective steps are taken to prevent irregular, fruitless, and wasteful expenditure.”
- “Proper control systems to safeguard assets were not implemented as required by Section 50(1)(a) of the PFMA which states that the accounting authority must exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity.”
- “Disciplinary steps were not taken against officials who made and permitted irregular, fruitless, and wasteful expenditure as required by Section 51(1)(e) (iii) of the PFMA” (Parliament Ad Hoc Committee 2016).

### **3.3.5 Control**

The SABC has since 1994 turned into a critical medium through which flexibility of articulation is acknowledged, as conceived in the Constitution and the Charter of the Corporation contained in Chapter IV of the Broadcasting Act. The SABC assumes a vital part in adding to majority rule government, the improvement of society, sexual orientation balance, country constructing, the arrangement of training, and reinforcing the profound and good fiber of society by guaranteeing a majority of news, perspectives, and data, and giving an extensive variety of stimulation and instruction programs. The SABC has throughout the most recent ten years, be that as it may, encountered a plenty of difficulties coming about because of a crumple of good administration.

The pastor's part, duties, and expert are gotten from segments 91(2), 92(3)(b), and 96(2) of the Constitution; areas 2.1, 2.2, and 2.3 of the Executive Ethics Code; and segments 13(b), 17(1)(c)(i)(ii), 17(2)(e), and 17(3) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act of 2001.

Witnesses proposed that the priest now and again meddled in the board's business in the pretense of considering the SABC responsible to the investor delegates, and in

this manner ignored the board as the essential instrument to advance responsibility. This was most striking in the conditions encompassing the changeless arrangement of Mr Motsoeneng as head working officer (COO) not long after the pastor took office in July 2014 (Parliament Ad Hoc Committee 2016).

Proof from witnesses, including the pastor, uncovered that in numerous examples the Broadcasting Act was ignored as the key demonstration overseeing the issues of the general population telecaster. Despite segment 8A (5) of the Broadcasting Act, arrangements of the Companies Act were in a few occurrences given inclination. This was apparently done to enable the priest to end up associated with the SABC's operational issues. Numerous witnesses additionally offered proof to show how the Memorandum of Incorporation (MOI) had been utilized to trump the Broadcasting Act, for an indistinguishable reason from specified previously.

As indicated by section 13 of the Broadcasting Act, the arrangement of the board administrator and the agent director, and that of the official and non-official chiefs, rests with the president, on the suggestion of the National Assembly. Segment 15(1) of the Broadcasting Act enables the president to expel a part from office by virtue of wrongdoing or powerlessness to play out his or her obligations. This segment additionally enables the president to evacuate board individuals if an advisory group of the National Assembly makes an antagonistic finding and suggests that a part be expelled from office. These arrangements were neglected in the rejection of Ms Kalidass, Mr Lubisi, and the late Ms Hope Zinde (National Assembly 2017).

### **3.4 NEW DEVELOPMENTS IN SOUTH AFRICAN AIRLINES (SAA)**

The Johannesburg Labor Court conceded SAA an interdict against striking South African Cabin Crew Association (SACCA) individuals on 26 April 2017. Michael van As, for SAA, quickly showed up in court before the issue was put off until 23 June. SACCA neglected to meet a due date of 13:00 to challenge the forbid. The SAA applied to have its striking Cabin group staff come back to work quickly. SAA's affirmation expressed that the strike was unprotected and it asked for that a request be conceded by the court to keep workers from taking an interest in the strike.

The application likewise asked for that a request be made for SACCA to shun empowering and advancing investment in the strike. SACCA approached the court for

a postponement to record its own court papers to challenge the SAA application. Notwithstanding, they neglected to meet this due date. Travelers with SAA were prompted that the carrier's lodge group were on strike and picketing outside the SAA workplaces at OR Tambo International Airport (Traveller24 2017). The airline received a notification of plan to strike on Tuesday. While arrangements are in progress with respect to feast stipends for lodge team, the carrier expressed it was doing everything conceivable to discover shared opinion as well as a settlement on issues. It is additionally setting up systems "to help any administration disturbances" (News24 2017).

### **3.4.1 Current operational status**

SAA has revised its budgeted loss forecast for 2016/2017 to R3.5 billion from an earlier estimate of R1.7 billion, as per documents sent to parliamentarians in March 2017. In a question sent to the SAA board from the Standing Committee on Finance, which has oversight of the state-owned airline, the committee assumed that SAA had reduced its operating losses for the year under review. It asked: "How sustainable is this reduction should the external economic environment become unfavourable?" The SAA board responded, clarifying that "the company has not reduced its losses for the year under review". The board admitted that the budgeted loss for 2016/2017 was set at R1.7 billion but the revised forecast refers to an expected loss of R3.5 billion (Standing Committee on Finance 2017).

The board stated that the company will focus on growing its revenues and continue to apply cost-compression initiatives. The board further stated that "[i]t operates in a very competitive industry and the company is aware of the risks from external factors to its business and the airline industry" (Fin24 2017). In September, the government granted SAA an additional going-concern guarantee of R4.7 billion, increasing its total guarantees to R19.1 billion. In its 2017 budget review, National Treasury said that "SAA has used R3.5 billion of a R4.7 billion going-concern guarantee, with the remainder likely to be used in 2017/2018".

Democratic Alliance (DA) MP Alf Lees told Fin24 that the added loss "will represent a real cash loss as it will not contain the R1.9 billion Airbus deal impairments that contributed to the R4.9 billion loss in the 2014/2015 year" (Fin24 2017).



“It is a massive increase of a R2 billion increased loss when compared with the R1.5 billion loss declared in the 2015/2016 year.” The question here is whether this loss was massaged down to make the old SAA board – and Ms Dudu Myeni, the chair, in particular – look like they were making good progress? The new board of SAA has clearly not been able to turn SAA around or even just stem the massive losses. The board is hamstrung by the poor and incompetent leadership of its chair, Dudu Myeni (Fin24 2017).

### **3.4.2 Leadership in SAA**

The process of appointing a new CEO for SAA is expected to be finalised by September 2017. This was revealed in a letter sent to the Speaker of the National Assembly, Baleka Mbete. In the letter seeking permission to delay tabling SAA’s corporate plan, former Finance Minister Pravin Gordhan said: “[It] is anticipated that the process of appointing the chief executive officer (CEO) will be concluded by the end of March 2017” (Fin24 2017). Gordhan was supposed to table the plan for the 2017/2018 to 2019/2020 financial years to Parliament under the Money Bills Amendment Procedure and Related Matters Act of 2009. According to Gordon (2017), with the assistance of the restructuring adviser and restructuring officer, the SAA is currently undertaking a review of its long-term strategy and corporate plan, which is expected to be completed by the end of June 2017.

Gordhan asked Mbete for permission to table the 2017/2018 financial year plan before the end of March and the remainder before the end of July. According to DA Deputy Finance spokesperson (Lees 2017), the minister’s request for approval of a deviation in the tabling of SAA’s corporate plan and the fact that the appointment of the CEO is yet to be finalised are indicative of the turmoil and legacy complications created by the previous board with Dudu Myeni at the helm.

## **3.5 THE GOVERNANCE OVERSIGHT ROLE OVER SOEs**

### **3.5.1 Orientation**

The previous chapter provided a review of existing literature and highlighted the centrality of corporate governance as the foremost determinant of the efficacy of SOEs in respect of the contending paradigms between their ownership, compliance, and

control. According to the King principles, good corporate governance entails upholding fair market competition and maintaining traceable evidence, which in the three major strategic SOEs are so problematic. In such manner, transgressions including the absence of adherence to laws or controls, surpassing orders, taking part in anticompetitive acts, lack of oversight role, and mismanagement were documented for all three SOEs.

In this chapter the researcher also seek answers to the question of the role of Parliament in terms of fulfilment and compliance.

The King III Report (2009) addresses many of the same areas that were addressed in the King II Report (2002). There is an increased focus on sustainability, risk management, IT, internal audit, remuneration, alternate dispute resolution, business rescue, and fundamental and affected transactions. The King III Report (2009) also introduces new requirements regarding the independence and remuneration of directors.

It turns out to be certain that not just a change of legislation is expected to address SOEs' problems and challenges, but also the human factor that requires maturity and passionate insight to run the undertakings of SOEs from a leadership and managerial perspective (SOEs Policy Dialog Report, 2012:11). Castro (2007:272) emphasises that political interference and irreconcilable circumstances result in excessive employment, poor decisions regarding products and areas, absence of investments, and poorly characterised motivating forces for managers.

In a swift shift of approach, the King III Report (2009) moved from a “comply or clarify” way to deal with an “apply or explain” approach. This enables directors to infer that following prescribed practices in the King III Report (2009) is not really to the greatest advantage of the company. Along these lines, companies may stray from a recommended practice and still comply with the larger corporate governance principles of fairness or decency, responsibility, obligation, and transparency. Proper compliance will nevertheless require a clarification of how the principles and proposals were applied; or if not applied, the explanations behind not doing so.

Basically, this chapter intends to deal with the role of the governance oversight over the major strategic SOEs. The function of the National Treasury, the governing body,

SCOPA, the DPE, and bookkeeping experts are put under broad examination. Corporate governance encapsulates procedures and frameworks by which SOEs are coordinated, controlled, and considered responsible. Notwithstanding administrative prerequisites in light of an SOE's empowering enactment, and the Companies Act, SOEs' corporate governance is connected through the statutes of the PFMA and keep running couple with the Protocol, which encapsulates the standards contained in the King gives an account of corporate administration.

Area 55(2) of the Constitution tends to the components that National Assembly should give to guarantee responsibility; and to keep up oversight of any organ of state. Area 42(3) of the Constitution, which empowers the National Assembly to explore and direct official activity. Likewise, area 92(3)(b) of the Constitution necessitates that Cabinet individuals must outfit Parliament with full and standard reports concerning matters under their control.

The test going up against MPs is to upgrade the limit of the approach/parliamentary advisory groups to consider divisions and SOEs responsible for their execution, using their indispensable plans, spending records, and yearly reports as the commence. The PFMA offers effect to money related organization that places a more imperative use obligation on bosses and makes them more in charge of their execution. It is left to the clergyman/MEC or the Executive (Cabinet) to decide organization frustrations. The National Assembly and the customary law-production bodies are vested with the ability to regulate the SOEs and the Executive.

### **3.5.2 THE YEARLY REPORTS**

Political interference and irreconcilable circumstances in the SOE sector is not unique to South Africa. In Italy the constant political interference in SOEs – including railways, postal services, and public transport, among others – has fundamentally hampered their profitability, proficiency, and productivity. Thus, the World Bank has presumed that, in developing markets, a banking sector dominated by SOEs poses a risk to economic development and stability, as preferential lending and patronage create market distortions and drive away private competitors (Wong 2009:2).

The *SOEs 37 African Journal of Business Ethics* (2015) should oppose the enticement of political interference and conflict of interest for them to flourish. On that score, the

Italian government and different countries where political interference is an issue, for example South Africa, can gain from the example of, *inter alia*, Sweden and the United Kingdom (UK) where safeguards are set up to upgrade their capacity to regulate SOEs at a careful distance (Wong 2009:2).

Strict adherence to and implementation of corporate governance principles are required. While one perceives that in the developing countries there might be socio-economic initiatives that a government needs to embrace and actualise through SOEs, the latter ought to have clear transparency, accountability, and engaged decision-making functions on these issues. The capacity of successful SOEs in countries, for example China, India, Malaysia, and Indonesia, to adjust viably between government socio-economic orders and keeping up aggressive and fiscally profitable SOEs requires scrutiny.

### **3.6 THE AUDITOR-GENERAL OF SOUTH AFRICA (AGSA)**

In Chapter 1, the role of AGSA as a state organization responsible to the National Assembly was placed under the spotlight. In light of the role as outlined in chapter 1, this brings the unanswerable question of why does the three major strategic SOEs do not comply.

This again raises the issue of what the role of the legislature is after they received these audited and examined financial reports, either qualified or unqualified. The role of AGSA is clear in this manner in execution of its obligations. The departments and SOEs are establishments or entities through which the Executive conveys administrations. Departmental targets ought to merge the administration conveyance focuses of SOEs that solution to their official specialists.

“The annual shareholder’s compact documents the understanding between the SOE and the executive authority on KPIs”. According to the *2015/2016 Consolidated Report on National and Provincial Review Outcomes*, AGSA audited ten of the 21 noteworthy public entities.

“Of these SOEs audited, the Armaments Corporation of South Africa (Armcor) was the only SOE with an unqualified audit view conclusion (maintained from the earlier year). The Independent Development Trust again received a disclaimer of review,

while SAPO and the SABC again received qualified audit reports. The rest of these SOEs had material findings on compliance, which prevented them from achieving a clean audit” (AGSA 2015/2016).

Airplane terminals Company South Africa (ACSA) also had discoveries on their execution report. ACSA, the South African Nuclear Energy Corporation (Necsa), and SAPO presented their monetary articulations late and the review of South African Express was in advance because generally accommodation of review data. As shown by this report, the budgetary maintainability remained the vital worry for the SOEs (AGSA 2016/2017).

According to the AGSA *Consolidated Report on National and Provincial Review Outcomes (2015/2016)*, vulnerabilities regarding the capacity of some SOEs to proceed with operations likewise deferred the reviews as AGSA required proof confirmation that they could be represented as a going concern. As demonstrated by the report, the tasks and review results of the SOEs were unfavorably impacted by shortcomings in initiative and administration; for instance, trickiness at board level, opening in key positions, inadequate hazard administration, and poor checking and oversight of monetary and execution organization and real obtainment or procurement forms.

Twenty-seven audits were not finished and could not be completely incorporated into this general report, of which 18 were still in advance at the date of this report. The essential reason behind this was non-accommodation or late accommodation of money related articulations and information. Nonetheless, some audits were postponed because of contradictions on accounting matters (AGSA 2015/2016).

### **3.6.1 The real essence of risk management**

AGSA states that the genuine pith of risk management review results, as appeared above, gives a feeling of the quality of responsibility in government – whether the executive and administration are serious about good financial and performance management and respecting the law, as indicators of their commitment to the principle of accountability to the citizens of the Republic of South Africa. In a public sector environment, where the government basically has a monopoly on certain areas of service delivery (for example defence, education and training, health, and water and

sanitation), assigned obligations to carry out programmes are often applied by management and leadership with noteworthy levels of prudence (AGSA 2015/2016:16).

Because of unsupervised caution, the fundamental teaching of internal controls is bypassed. At the point when oversight does not practise its legislated responsibility, such conditions create prolific ground for degenerate movement to thrive. Contained in the financial statements of various departments and entities with negative audit outcomes are numerous components with such attributes, particularly in the supply chain and accounting control disciplines (AGSA 2015/2016:16).

### **3.6.2 Compliance with key legislation**

As indicated by AGSA (2015/2016), there has been a change in consistence with key enactment as the quantity of auditees with no material discoveries on consistence has expanded from 27% to 33% since 2013/2014. The rebelliousness rate, in any case, is too high and requires earnest consideration. The territories AGSA evaluated that have shown some adjustment in this period were acquirement and contract administration (moreover suggested as SCM) for open substances from 32% to 25% with disclosures and the idea of submitted budgetary articulations for the two divisions and open elements from 62% to 52% and 52% to 37% separately.

The departments insignificantly enhanced their consumption administration and hazard administration from 36% to 25% and 24% to 13% individually. There has been little change in different territories. Unusual utilization or unpredictable consumption has expanded around 40% since 2013/2014 to R46.36 billion – the development from the prior year was an expected 80%. The essential clarification behind the development in unpredictable use was the obstruction against stock system organization establishment. Unpredictable use speaks to use brought about towards the securing of merchandise and ventures without following suggested forms. The controls that should be set up in the obtainment technique are from the protected requirements of SCM, as set out in area 217 of the Constitution. At the purpose of review obtainment, AGSA tests the use of existing procurement forms as insisted by the substance subject to the review.

### **3.6.3 Oversight role of the executive authority**

In South Africa, a lack of coordinated and integrated plans from SOEs and a powerlessness to balance the government's diverse roles as policymaker, regulatory entity, and investor, is evident (Fikelepi 2010:115). The executive assumes different roles in its association with the SOEs. The administration as a proprietor and speculator is stressed over acquiring a reasonable profit for ventures, and ensuring the monetary viability of SOEs. On the other hand, the administration as policymaker is stressed over the vital usage of administration conveyance. In conclusion, the legislature as the controller is worried about the business practices of SOEs, esteeming structures, and the interests of "consumers".

## **3.7 CONCLUSION**

Legislation and regulation are recognised as the critical externally driven mechanisms designed to ensure and enforce the separation of ownership, compliance, and control in the public SOE sector. The overarching argument is that promulgation of generic legislation (such as the Constitution, PFMA, and Companies Act) and specific founding legislation (such as the Broadcasting Corporation Act and Eskom Conversion Act, No. 13 of 2001), as well as regulation, are mechanisms designed to address the inherent conflict of interest caused by separating ownership and management of SOEs. Regulations serve to protect the interests of consumers, while simultaneously ensuring SOE financial viability.

The (externally oriented) meta-morphological terrain of corporate governance, together with the cognate conceptual/theoretical context derived from the review of relevant literature, assisted both the study and the researcher in the (internally oriented) logical concatenation and coherent arrangement of emergent themes. They also aided in illustrating the complex nexus between board and management dynamics on the one hand, and delivery mandates on the other.

As a component of this background, reference is now made to three major strategic SOEs in particular – Eskom, the SABC, and SAA – regarding compliance to the King Code principles on good corporate governance. In South Africa, the King Reports I-IV on Corporate Governance was developed and subsequently altered or modified for SOEs.

## **ESKOM**

The pending investigation after the *State Capture Report* released in 2016 by then Public Protector Advocate Thuli Madonsela raised eyebrows on matters of good corporate governance at Eskom.

## **THE SABC**

In line with section 15A(1)(b) of the Broadcasting Act, the Ad Hoc Committee on the SABC Board was charged with inquiring into the ability of the SABC board to discharge its duties as prescribed in the Broadcasting Act. Its terms of reference were limited to considering the :

- *SABC's money related status and maintainability;*
- *SABC's reaction to Public Protector Report No. 23 of 2013/14: When Governance and Ethics Fail;*
- *the board's ability to take legally binding decisions following the resignation of a number of its non-executive board members;*
- *the board's adherence to the Broadcasting Charter;*
- *decision-making processes of the board (Parliament Ad Hoc Committee 2016).*

Furthermore, the “SABC reported recurring losses for the 2016/2017 financial years”.

The findings of the Committee's investigation on the fitness of the SABC board revealed that the “SABC failed to comply with the applicable laws and regulations in its financial management”.

“Financial statements submitted for auditing were not prepared in accordance with International Financial Reporting Standards (IFRS) as required by Section 55(1)(b) of the PFMA and Section 29(1)(a) of the Companies Act”.

## **SAA**

New developments in South African Airlines (SAA) revealed that “in Johannesburg the Labour Court granted SAA an interdict against striking South African Cabin Crew Association (SACCA) members on 26 April 2017”.



In regard with its current operational status the SAA board responded by clarifying that “the company has not reduced its losses for the year under review”, that is for 2016/2017.

The governance oversight role over SOEs includes the role of the Auditor-General. “In terms of Section 188 of the Constitution of South Africa, the Auditor-General (AGSA) must audit and report on the accounts, financial statements, and financial management of all national and provincial departments, all municipalities, and any other institutions or accounting entities required by national and provincial legislation”.

“The departments and SOEs are establishments or entities through which the Executive delivers services”. According to the *2015/2016 Consolidated Report on National and Provincial Review Outcomes*, AGSA audited ten of the 21 noteworthy public entities.

The Airports Company South Africa (ACSA) furthermore had discoveries on their execution report. As indicated by this report, the budgetary sustainability remained the principal concern for the SOEs (AGSA 2016/2017).

## **CHAPTER 4: THE PRINCIPLES OF LEADERSHIP AND PRACTICES OF SOEs**

### **4.1 INTRODUCTION**

In the previous chapter, it was asserted that not just a change of legislation is expected to address SOEs' problems and challenges, but a human factor that requires maturity and passionate insight to run the undertakings of the SOEs from a leadership and managerial perspective is also needed (SOEs Policy Dialog Report 2012: 11). Castro (2007:272) stresses that political interference and irreconcilable circumstances result in excessive employment, poor decisions on product or service delivery, absence of investments, and not well-characterised motivating forces for managers. The issue of the lack of an oversight role over SOEs which led to non-compliance by leadership in Eskom, the SABC, and SAA, came under the spotlight.

"Governance transgressions over which South African SOEs have some directed, are very much recorded" (Khumalo 2009; Furlonger 2010) and can be viewed as symptomatic of "vital torpidity" in an economy that must contend on a worldwide stage (Williams 2010:34).

Such practices have brought about loss of a financial confidence to investors (Pressly 2009:1) and an absence of certainty in SOEs by expansive partner groupings (Ensor 2010). Such corruption incorporates bad administration, obvious in misunderstanding between the director and Chief Executive Officer (Klein 2010:5), top authority opportunities and an absence of progression arranging (Williams 2010), shakiness in official initiative (Klein 2010:65), unexpected delay in recruitment process (Ensor 2010:15), and cronyism and cadre deployment (Kenny 2010:85).

Therefore, this chapter intends to highlight the principles of good leadership practices. Principles include compliance with laws, rules, codes, and standards. According to AGSA's (2015/2016) consolidated report, the underlying drivers of the previously mentioned shortcomings in budgetary and execution administration and the poor review results were because of poor administration. Bookkeeping officers, CEOs, and senior supervisors did not react with the expected direness to AGSA's messages about tending to dangers and enhancing inside controls (AGSA 2015/2016).

The AGSA report also underlined that there has been some change in authority and administration controls, in spite of the fact that there was a slight backslide in the money related and execution administration controls throughout ongoing years. There was, be that as it may, a vital change in the status of information development controls in the course of recent years in each one of the three concentration regions – security organization, client get to administration, and IT progression (AGSA 2015/2016).

As indicated by AGSA's (2015/2016) consolidated report, vacancies and precariousness of key ranks of bookkeeping officers, CEOs, (CFOs), and managers of SCM units affected the money related and execution administration of auditees and could essentially impact review results. The security in these key positions has extraordinarily enhanced in the course of recent years, yet the development rate in the situation of accounting officers since 2013/2014 was of worry, with little change in the places of CEOs and heads of SCM units. Change in keeping an eye on opportunities in the places of CFOs was empowering (AGSA 2015/2016).

The consolidated report, at a general level, expressed that the overwhelming part of auditees had frameworks set up for revealing and investigating transgressions or conceivable misrepresentation (e.g. approaches, sets of accepted rules, and systems for revealing extortion). More often than not, examinations concerning claims and unapproved, unpredictable, unbeneficial, and inefficient use were led. Regardless, this did not have the coveted impact of diminishing unapproved, sporadic, unfruitful, inefficient use, misrepresentation and inappropriate lead coordinate (AGSA 2016:10). Inadequate steps were taken to recoup, discount, underwrite, or support unapproved, sporadic, useless, and inefficient use of the year under survey and earlier years, as mandatory by the PFMA (No. 1 of 1999).

According to AGSA's (2015/2016) consolidated report, the Auditor-General has also continued giving an account of administration pointers of possible deception or ill-advised direct in the SCM forms for examination, without quite a bit of an outcome as the cases continue expanding.

## **4.2 PRINCIPLES OF GOOD LEADERSHIP FOR SOEs**

Corporate governance was set up on an arrangement of morals (Young and Thylil 2008), or "the arrangements of generally shared qualities and standards that are

communicated and arranged" (Fleming and McNamee 2005:137). Francis and Armstrong (2003:376) express that corporate administration managed "moral theory, qualities and standards of conduct that guide a company's conduct inside society". Corporate organization interlinks the associations between the administration of the association, its board, and its far reaching investor accomplices through the arranging of targets and their strategies for achievement close by the seeing of execution "(OECD 2004)" in ways that are "ethically strong" "(Fleming and McNamee 2005:137)".

Rossouw (2009:6) progresses the idea of "the governance of morals", an idea that catches the way in which organisations are morally represented, and incorporates, among others, the progression of code of ethics and precepts of lead, the planning of sheets of executives and staff concerning morals, and the endeavor of reviews on ethics.

Over the prior years, astuteness in regards to the essential for expanded duty out in public sector organisation has realized the OECD assuming a main part in making rules for moral practice in this segment, essentially, however not just, for its member nations. The aggregate standards are perceived worldwide as one of the twelve fundamental mainstays of universal monetary steadiness (Fülöp, Span, Pop, and Popa 2010). Thereafter, standards specific to SOEs yet changed in accordance with general norms, were presented inside the "Guidelines on Corporate Governance of State-Owned Enterprises" "(OECD 2005)".

#### **4.2.1 "Principle guideline 1: The corporate governance framework"**

As per the "Guidelines on Corporate Governance of State-Owned Enterprises" (OECD 2005), this standard tends to address the basic requirement for the lawful and administrative structure within where State-Owned Entities work to ensure that market competition exists with a specific end goal to stay away from showcase mutilations. According to Seith-Purdie and Howard (2005:5) they reiterate that "powerful administration should ensure the advancement of frameworks to screen the adequacy of such an administration structure".

#### **4.2.2 “Principle guideline 2: Key ownership functions”**

This principle sees the probability of organization by government as the proprietor or basic theorist of SOEs and endorses that SOEs should have operational freedom to achieve their goals as delineated and checked by the lawmaking body. It is the dedication of the gathering to ensure sound and clear structure to induce the whole course of action interests of SOEs. In such a way, Howard and Seith-Purdie (2005) add to the fundamental thought of the plans of the board individuals to ensure a sound level and mix of aptitudes. Van der Walt et al. (2006) recommend that board amalgamation is controlled by the presence time of the affiliation, the key conditions in which it works, and the likelihood of proprietorship structures and their nuts and bolts for organization and execution.

#### **4.2.3 “Principle guideline 3: Equitable treatment of shareholders”**

This standard keeps up the favorable circumstances everything considered, their sensible treatment, and their relative access to corporate information. It endorses legitimacy towards and dynamic correspondence and discourse with each cash related pro and sponsorships joint effort by minority theorists. Lu, Zhong and Kong (2009) noted that such treatment of financial specialists ought to drive their coordinated effort in noteworthy decisions and their straightforwardness of making demand, keeping up their capability to applicable data that could influence their essential leadership.

#### **4.2.4 “Principle 4: The role of stakeholders”**

Associates are a more extensive get-together than scholars and are ones who ought to be seen by SOEs as having a legitimate concern in the issues of the organisation. Ferrell (2004) implies an accomplice as resembling any identifiable social event or individual whereupon the affiliation is needy for its survival. Monetary authorities, speculators, delegates, clients, and providers are for the most part named basic accomplices (Clarkson 1995). Clarkson (1995) likewise incorporates that people in general partner gathering includes governments and groups "which give framework and markets, whose laws and directions must be gone along [with], and to whom expenses and commitments are normal".

Werther and Chandler (2004) watch the solid reliance between an association and its accomplice groupings and the effect that the wickedness to these associations can have on the survival of the association. In such a way, SOEs are encouraged to from time to time give insights with respect to their partner connections and to build up an inner code of ethics that takes cognisance of associate rights. Lu et al. (2009) underline the vitality of the revelation of issues that could affect stakeholders; for example, delegate points of interest, driving force designs, and the way by which ecological issues are tended to.

#### **4.2.5 “Principle guideline 5: Disclosure and transparency”**

The above principle includes issues such as, for example, the need for persistent yearly uncovering, sound accounting and inspecting models, a yearly autonomous outer review, and full exposure of hazard factors “(Guidelines on Corporate Governance of State-possessed Enterprises 2005)”.

#### **4.2.6 “Principle guideline 6: Responsibilities of the board of directors”**

This principle depicts critical elements of the board, for example, responsibility to government, including the yearly evaluation of its operational; considered sensible treatment of whole investors; checking of affiliation; objectivity and opportunity of judgment; obtaining reasonable data; the capacity to name and remove the CEO; and the establishment of particular chambers to help the board in its work. Close models made by the USA-based National Association of Corporate Directors (NACD 2009) other than underscore the central part that the heap up plays in oversight and obligation, including ensuring that the appointed officials are skilful and given as appeared in both the time they accommodate the affiliation and their dynamic respect for the principle work.

### **4.3 URGENCY OF GOOD LEADERSHIP**

The NACD's (2009) models stresses that the prerequisite for board activity should be free and objective and for it to demonstrate respectability, morals, and responsibility that set the tone of the corporate culture. In such way Balasubramanian (2009) notes that the sufficiency and objectivity of a board can be evaluated on a very basic level by watching what number of the general population are not changed in accordance

with any ideological social occasion, and Dalton and Dalton (2006:6) include the prerequisite for "opportunity of soul" and "furthermore helper independence". "In the corporate organization talk about, the piece of the board has gone under examination in districts, for instance, synthesis (Kesner and Dalton 1985; Michie and Oughton 2001), specialist (Thomas 1994), evaluate (Peng et al. 2003), commitment with respect to interior control and survey (Giroux and McLelland 2003; Xie, Davidson and DaDalt 2003), and obligation in regards to danger organization" (Crawford and Stein 2004).

In any case, "it is periodically the more unnoticeable and less quantifiable factors inside block culture that impact stock achievement". "Such cases turn around developing accommodating common contention" (Bendixen and Thomas 2000), "setting up open channels of correspondence" (Coulson-Thomas 1994), "esteeming the dedication all things considered (Bendixen and Thomas 2000), and board part respectability" (Conger, Finegold and Lawler 1998). "With regards to the importance of the last point, Dalton and Dalton (2006:7) observe that "no measure of keenness in regards to suitable process can beat officials who keep up less dependability, regard, validity, and respect for others".

Considering, McLellan (2009:10) suggests that sound corporate organization of SOEs joins with respect to the connection between association, consistence, and definitive culture; setting up reasonable structures to push great administration; knowing when to utilize boards, gatherings, and levels of authority; watching and satisfactorily overseeing antagonistic conditions; dealing with the needs of various partners; and applying and checking the estimations of the association.

#### **4.4 STANDARDS OF CORPORATE GOVERNANCE IN RELATION TO COMPLIANCE**

The very presence of SOEs, such as Eskom, the SABC and SAA, is underpinned by a series of legislative frameworks, which highlight compliance issues in perspective of the separation of ownership and control. Berle and Gardiner (1932:66) contended that this separation in a corporation, together with development in its share capital, prompts ownership circumstances in which the power of the shareholder is weakened. In this way a situation is created for managers to wind up plainly self-serving (Jensen &

Meckling 1976). This is one of the elements adding to effective management control. (Eisenhardt 1989)

A comparative contention has been made that the line function ministry does not have access to the same data as the boards, in spite of the fact that they act on behalf of shareholders. It is on this premise that Jensen and Meckling (1976) utilised the metaphor of the contract, a relationship that builds up the hierarchy between the contracting parties. This line of speculation recognises the disparity of enthusiasm between all parties concerned, and should be overseen through a lawfully restricting contract to ensure compliance.

Kendall (1998) holds the view that corporate governance should be perceived as a set of standards that aims to enhance the organisation's image, efficiency, effectiveness, and social obligation. The underlying assumption is that adherence to the benchmarks of corporate governance will support market certainty, integrity, and efficiency, and consequently advance economic growth and financial steadiness (OECD 2004). This line of thinking proposes a need for compliance with generally accepted predetermined corporate administration. This issue prompts the unpacking of compliance, i.e. what it is and how it identifies with governance.

Compliance is an unpredictable and malleable concept; nonetheless, expressed basically, it includes recognisable proof of criteria with which the organisation must comply. Khoza and Adam (2005) indicate that good corporate governance is shaped by the principles and practices that depend on the legislative and policy framework in which organisations operate. Basically, this implies that the operations of SOEs must comply with the essential legislative and regulatory frameworks. A joint ad hoc committee on corporate governance (2006) stated that there are three pillars whereupon the design of good corporate administration rests in Southern Africa, in particular, the King reports on corporate governance, the PFMA, and the Companies Act.

The *Protocol on Corporate Governance in the Public Sector* expresses that the PFMA must be observed by SOEs' governing bodies and administration (DPE 2002). Different organisational issues mean the shareholder must utilise a contract to manage the performance agents. For instance, in South Africa (DPE 2002), a shareholding minister goes into a shareholder's compact with the board for accountability purposes,



one which outlines the vital goals and strategies, and financial, specialised, and other key execution indicators and reporting requirements. Through it, the ministry must screen the degree to which the board overall, and individual executives, achieve the SOE's objectives. They must take remedial action if and when needed.

In supporting the compliance issues, the King III Report (2009:43) maintains that the governance of entities can be on a statutory basis, or as a code of principles and practices. SOEs, such as Eskom, the SABC and SAA, are established through an act of parliament and therefore it is mandatory for them to exercise compliance by adhering to principles and all legislative frameworks. The King III Report (2009:43) also states that "there is always a link between good governance and compliance with law". The core of this argument is that board members of SOEs have legal duties, grouped into two categories: (i) duty of care, skill, and diligence, and (ii) fiduciary duties (King III Report 2009:7). In light of this, good corporate governance is obviously basically a compliance issue. Once more, good governance is about overseeing possible divergence of interest by setting up measures to safeguard the interests of the shareholders.

#### **4.5 FUNCTIONAL LEADERSHIP**

Functional leadership refers to the specific roles of how government and companies practise corporate governance (McGregor & Routledge 2014:15-16). The ability of a minister to lead and deal with a departmental director-general or for a chairperson of an organisation to relate with various government departments is not the same as political leadership. The same applies to the working relationship between the board, whose job it is to represent the CEO, whose occupation it is to deliver solid outcomes. Political leadership sets the standards and national goals.

Functional leadership also means the genuine practice of good corporate governance. The nature of administration and the working relationship between the diverse parties will decide how well and how rapidly any initiatives are probably going to succeed. Their decisions will determine the effectiveness of the work of the presidential committee on SOEs (McGregor & Routledge 2014:16).

#### **4.6 THE KING II REPORT: SEVEN CHARACTERISTICS OF GOOD CORPORATE GOVERNANCE**

The King II Report (2002:11-12) on Corporate Governance identifies what can be regarded as the seven characteristics of good corporate governance, namely:

- “Discipline – being the dedication by an organisation’s senior administration to cling to conduct that is all around perceived and acknowledged to be right and legitimate.
- Transparency – being the simplicity with which the outsider can make important investigation of an organisation’s activities, its monetary essentials, and non-financial-related viewpoints correlated to that business.
- Independence – the degree to which systems have been set up to limit or stay away from potential irreconcilable situations that may exist.
- Accountability – individuals or groups in an organisation, who make decisions and take actions on particular issues, should be responsible for their decisions and actions.
- Responsibility – relates to conduct that takes into consideration restorative activity and for penalising mismanagement.
- Fairness – being a system inside the organisation that considers to adjust in considering every one of those that have an enthusiasm for the organisation and its future.
- Social responsibility – being an all-around oversight organisation that will know about, and reacts to, social issues, putting a high need on moral benchmarks. It is a good corporate citizen who moves progressively towards being non-discriminatory, non-exploitative, and capable with respect to environmental and human rights issues”

#### **4.7 KING III AND IV PRINCIPLES, PRACTICES, AND GOVERNANCE OUTCOMES**

The principle under which a practice recommendation is made in the King Code serves as a guide to direct all organisations on what they should set out to achieve with implementing the practice. The application is however voluntarily. Principles are built on each other (King IV Report 2016:25).

Practices are recommended at a maximum level of good corporate governance and should be adapted taking in account the size, resources and complexity of the organisation. In so doing the objectives of the organisation can be achieved (King IV Report 2016:25).

Governance outcomes are the benefits that could be reaped in the event that the underlying principles of good governance are applied successfully (King IV Report 2016:25).

In South Africa, a blended arrangement of corporate administration was made over some time. A couple of practices of good administration have been administered (for example in the Companies Act of 2008) in parallel with the King codes on corporate administration. In case there is a conflict among order and the King codes, the law wins. Great administration, in any case, does not exist freely on the law. The courts consider each huge factor in choosing the reasonable standard of direct for those accused of administration commitments.

The more comprehensively proposed practices in codes of administration are received, the more probable it is that a court would respect conduct that fits in with these practices as meeting the required standard of care. Thus, the arrangements of deliberate codes of administration advance into statute to wind up in some part of the point of reference based law. Thus, the failure to meet an arrangement of corporate administration rehearses, however not administered, may conjure risk. King IV does not address a vital take-off from the philosophical underpinnings of King III.

King III consisted of 75 principles. These 75 principles in King III have been replaced with 17 principles in King IV. The main difference between King III and King IV is that application of the principles is assumed in King IV. The main objective of King IV is to enhance good governance (King IV Report 2016:31).

“Ideas that were presented by King III (2009:88) and prior adaptations of the report, for example ethical and effective leadership, have been refined in the King IV Report (2016)”. King IV advocates incorporated thinking, which assesses the availability and interdependencies between the scopes of structures that influences an organisation’s capacity after some time”. Incorporated speculation supports the majority of the following aspects:

- Seeing the association as a central bit of society and along these lines as a corporate subject;;
- Partner inclusivity;
- Sustainability improvement; and
- Coordinated revealing.

King report (IV) was, like King (III), “drafted for application by all organisations”. “Additional sector supplements have been presented in King IV with the motivation behind giving high-level guidance and bearing on how the King IV Code ought to be interpreted and applied by an assortment of sectors and organisational types”.

#### 4.7.1 Leadership, ethics, and corporate citizenship

Principle 1.1 of the King IV Report (2016:33) states that “the governing body should lead ethically and effectively”. Individuals from the overseeing body ought to separately and on the whole develop the accompanying qualities and show them in their conduct:

- **“Independence:** Members of the governing body should act with independence of mind in the best interests of the organisation.
- **Inclusivity:** Members of the governing body should consider and balance the legitimate and reasonable needs, interests and expectations of all stakeholders in their decision-making in the best interests of the organisation.
- **Competence:** Members of the governing body should individually and collectively assume responsibility for the continual development of their competence to govern effectively.
- **Diligence:** Members of the governing body should be diligent in performing their duties and devote sufficient time to the organisation’s affairs to exercise well-considered judgement.
- **Informed:** Members of the governing body should, in order to discharge their duties, take steps to ensure that they have sufficient working knowledge of the organisation, its industry, the economic, social and environmental context in which it operates as well as of the significant applicable laws, rules, codes and standards. To that end the governing body should ensure that its members have, subject to following protocol established by the governing body,

unrestricted access to professional advice and the organisation's information, records, documents, property, management and staff.

- **Courage:** Members of the governing body should have and exercise the courage to act with integrity and honesty in taking risk for reward in all decisions in the best interests of the organisation. “

#### **4.7.2 Compliance governance**

Principle 1.3 of the King IV Report (2016:34) states that: “The governing body should ensure that the organisation is a responsible corporate citizen. The governing body should provide strategic direction for the organisation to be a responsible corporate citizen and to respond appropriately to the economic, social and environmental outcomes of its activities.”

According to the suggested practices, "the administering body ought to acknowledge responsibility for the administration of consistency with material laws. They should grasp non-limiting rules, codes, and models by setting the bearing for how consistency should be grasped and tended to in the association. The representing body ought to affirm arrangement that discloses and offers impact to its course on consistence. It ought to perceive which non-confining rules, codes, and principles the association has grasped. The representing body ought to likewise appoint administration obligation with respect to use and execution of fruitful consistence administration. The representing body should work on advancing oversight of consistence and, particularly, guarantee that it gets comes about the accompanying:

- Compliance being appreciated for the responsibilities it makes, and also for the rights and security it bears;
- Compliance administration taking a comprehensive point of view of how pertinent laws and non-limiting rules, codes, and norms identify with each other;
- Continual checking of the administrative conditions and appropriate responses to changes and improvements; and
- The directing body ought to think about the need to acquire irregular free affirmation on the viability of consistence administration.

The accompanying imperative issues ought to be considered in connection to the administration of consistency; key areas of focus amid the detailing time period; moves

made to screen the ampleness of consistence administration and how the outcomes were tended to; and planned areas of future core interest:

- “Material or repeated regulatory penalties, sanctions or fines for contraventions of, or non-compliance with statutory obligations, whether imposed on the organisation or on members of the governing body or officers, should be disclosed; and
- Details of monitoring and compliance inspections by environmental regulators, findings of non-compliance with environmental laws, or criminal sanctions and prosecutions for such non-compliance should be disclosed” (King III Report 2016)

#### **4.8 ETHICAL VALUES BY MANAGEMENT LEADERSHIP OF SOEs**

The focus of this research is essentially on compliance and the upholding of moral esteem by the management leadership in SOEs. Erasmus & Wordsworth (2004) asserts that the more extensive idea of morals has not been plainly characterised throughout the years. It has not been easy for legislative makers and researchers to determine the exact meaning of ethics. Against this foundation, Komba and Vermaak (2012:3510-3518) is of the opinion that ethics mean: “an arrangement of tenets that characterize good and bad conduct and that help people recognize truth and belief, choose how such issues are characterized and what ethical standards apply to the circumstance”.

Lloyd and Mey (2010:218) states that “unethical employees, in this case managers, will hamper an organisation’s endeavours to be universally focused”. Holding dishonest representatives in charge of the SOEs’ directorship is self-destructive to the administration of the organisation and may subsequently cause low morale among junior employees at the lower level.

Similarly, subordinates might be energised by pioneers inside the SOEs who subscribe to moral principles. This will affect genuineness and trust in the organisation (Joseph 2000). It is in the vein of Joseph's affirmation that the, use of ethics outlines the quintessence of good. Morals recognition is ending up more essential as societies understand its importance (Lloyd & Mey 2010:218-265). Schoeman (2014:41) asserts that morals should envelop more concerning issues that are appropriate to

responsibility and straightforwardness in SOEs as this will fill in as a directing mechanism in the policy implementation inside the organisation.

The building foundation towards the restructuring of SOEs was for the most part to involve new, initiative, and differing procedures for *bona fide* strengthening (Ministry on Public Enterprises 2002:63-86). This revamping was planned to make systems for an elective administration conveyance that consolidate enlarged possession, preparing, obtainment, and self-administration open doors for dark individuals, ladies, and the disabled (Ministry of Public Enterprises 2002:25-50). Deplorable awful leadership, which is consistently uncovered in the media, has not made this point of restructuring to be acknowledged (Schoeman 2014:41).

Mbo and Adjasi (2013:6), states that “political leadership is for the most part under the misconception that they are serving the general society. Regardless, their fundamental interest while in office is to serve themselves and their partners”. Compliance in administration and good initiative capacities accepts a fundamental part in the expert association with lawmakers (Mafunisa 2008:84). It must be at the highest point of the need list that the general population ought to have confide in the corporate administration of SOEs. They fill in as the vehicles toward the South African formative state (Thomas 2012:449). “Various SOEs have a morals hotline as a measure to address any kind of moral transgressions” (Hamman and Schild 2008).

These standards, as affirmed by Schoeman (2014), can guarantee that an affiliation's code of ethics can make a positive obligation towards making an ethical working environment. Ethics activity, as plot in King III (2009:5), centers on organization, supportability, and corporate citizenship (Cassim et al. 2011). On the issue of organization, the King III Report (2009:5) requires the directing body to give convincing activity in context of good foundations (Dubrin 2012:178). Ethics or unwavering quality is the foundation of and purpose for corporate organization (Brown 2005:30). A moral corporate culture constitutes more than social generosity or supportive enrichments (Zadek et al. 2013). Walker and Sego (2008:102-111) affirm that:

“[t]he reasoning behind the ethics of corporate governance, which requires the board of directors to ensure that the company is run ethically, is that, as this is achieved, the company would earn the necessary approval from those affected by and affecting its operations.”

Proper and profitable exchange would engage better outcomes in the essential authority process. This kind of organization is upheld by the thinking of ubuntu-batho. The time is more ideal than wrong to join the viewpoints of umuntu ngumuntu ngabantu in the King codes of good administration.

#### **4.9 CONCLUSION**

This chapter highlighted the leadership practices, principles, and governance outcomes in SOEs with reference to issues of compliance with laws, rules codes, and standards.

The “OECD *Principles of Corporate Governance*”, first of its kind was published in 1999, have been described as a “universal benchmark” again as a “reference tool” for sound corporate governance”. “These collective principles are recognised worldwide as one of the 12 basic pillars of international financial stability. Principles particular to SOEs yet adjusted to general standards, were introduced within the *Guidelines on Corporate Governance of State-Owned Enterprises*” (OECD 2005). These directive guiding principles act as an imperative aspect in terms of analysis in current study:

- The corporate governance framework;
- Key ownership functions;
- Equitable treatment of shareholders;
- The role of stakeholders;
- Disclosure and transparency; and
- Duties and functions of the boards.

Sound corporate administration of SOEs fuses esteeming the association between administration, consistence, and hierarchical culture. This incorporates building up fitting structures to propel great administration; knowing when to use boards of trustees, groups, and levels of leadership; checking and successfully supervising hopeless circumstances; managing the wants of different partners; and applying and observing the estimations of the organization. Good leadership is needed urgently.

A joint ad hoc committee on corporate governance (2006) stated that there are three pillars whereupon the design of good corporate governance rests in South Africa, in particular the King reports on corporate governance, the PFMA, and the Companies



Act. Standards of corporate governance in relation to compliance is vested in these three basic documents.

In light of this, good corporate governance is obviously basically a compliance issue. Once more, good governance is about overseeing possible divergence of interest by setting up measures to safeguard the interests of the shareholders. Board members of SOEs have legal duties, grouped into two categories: (i) duty of care, skill, and diligence, and (ii) fiduciary duties (King III Report 2009:7). In light of this, good corporate governance is obviously basically a compliance issue. Once more, good governance is about overseeing possible divergence of interest by setting up measures to safeguard the interests of the shareholders.

Functional leadership refers to the specific roles of how government and companies practise corporate governance. Functional leadership also means the genuine practice of good corporate governance.

The King II Report on Corporate Governance identifies what can be regarded as the seven characteristics of good corporate governance, namely:

- ❖ Discipline;
- ❖ Transparency;
- ❖ Independence;
- ❖ Accountability;
- ❖ Responsibility;
- ❖ Fairness; and
- ❖ Social responsibility.

The King IV Report requests careful utilisation of the King IV Code and of its endorsed practices to be translated and connected in a way that is fitting for the association and the segment in which it works. Watchful application harnesses the benefits of corporate administration in light of an honest to goodness worry for the association.

In South Africa, a blended arrangement of corporate administration was made over some time. A couple of practices of good administration have been administered (for

example the Companies Act of 2008) in parallel with the King codes on corporate administration.

The King IV Code contains guidelines, practices, and states that the governing body should lead ethically and effectively:

“Governance outcomes are the benefits that organisations could realise if the underlying principles – and therefore, ultimately, good governance – are achieved. These governance outcomes are: ethical culture, good performance, effective control, and legitimacy”.

Standards exemplify the desires of the adventure towards great administration. They direct what associations should endeavor to accomplish by the utilization of administration practices.

Principle 1.1 of the King IV Report states that the representing body should lead morally and adequately. The overseeing body ought to likewise assign governance duty regarding usage and execution of successful compliance management.

Ethical leadership, as outlined in King III, centres on leadership, sustainability, and corporate citizenship. On the issue of authority, the King III Report requires the administering body to give powerful initiative in perspective of moral establishments. Morals or reliability is the establishment of and reason behind corporate administration.

## **CHAPTER 5: ANALYSIS OF AUDIT REPORTS OF SOEs IN RELATION TO COMPLIANCE WITH THE KING CODES**

### **5.1 INTRODUCTION**

In chapter 5 audit reports of ESKOM, the SABC and the SAA will be investigated in an attempt to identify specific shortcomings in SOEs. Other shortcomings will also be identified and noted.

In the previous chapter, the leadership, practices, principles and governance outcomes in the State-Owned Entities with reference to compliance with Laws, Rules, Codes and Standards was unpacked in details. In this chapter audit reports are analysed trying to identify specific reasons why SOEs did or did not adhere to the principles of the King Codes.

According to Maisela Ka Mdluli (2017:1), much has been said and reported about the collapse of corporate governance at SOEs, but it could never have been imagined that the problems at the SABC were so deep and of such unimaginable and alarming proportions. Maisela Ka Mdluli (2017:1) reported that the most damning evidence was presented by various witnesses at the proceedings of the parliamentary ad hoc committee probing the fitness of the SABC board to hold office. He further states that it was inconceivable that one man, the erstwhile COO, as alleged, could wield such unfettered powers under the watch of the governing body, in what the King IV Report (2016) calls a board of directors, undoubtedly the governing body (Maisela Ka Mdluli 2017:1).

It is clear that the very presence of SOEs, such as Eskom, the SABC and SAA is underpinned by a series of legislative frameworks, which highlight compliance issues in perspective of the separation of ownership and control. Berle and Gardiner (1932:66) contend that this separation in a corporation, together with development in its share capital, prompts ownership circumstances in which the power of the shareholder is weakened; in this way creating opportunities for managers to wind up plainly self-serving (Jensen & Meckling 1976:20).

This is one of the elements of management control and one which draws from the agency theory (Eisenhardt 1989) on data asymmetry among executive and non-executive directors. In this context, Chapter 5 scrutinises each of these major SOEs' audit reports for the past three years to determine or conclude the specific reasons why each enterprise did or did not adhere to the principles of the King Codes.

AGSA's 2014/2015 consolidated report showed that lacking results for poor performance and transgressions were a root cause of poor audit outcomes, which resulted in 42% of the 309 auditees not acquiring clean audits (47% of the departments and 39% of the public entities). Leaders and authorities who intentionally or carelessly overlook their obligations and ignore enactment should be unequivocally regulated through performance management and by enforcing legislated consequences for transgressions. If they are not held accountable for their actions, the perception is created that such behaviour and its results are acceptable and tolerated (2014/2015 AGSA consolidated report).

The 2014/2015 reviews again affirmed shortcomings in the performance management of senior management. The insufficient reaction to SCM transgressions, possible fraud and unfortunate monetary behaviour, and unapproved, irregular, fruitless, and wasteful expenditure plainly demonstrate an absence of consequences for transgressions. The PFMA and its regulations clearly stipulate that matters such as unauthorised, irregular, unprofitable, and wasteful expenditure increased in the 2014/2015 financial year (*Consolidated General Report on National and Provincial Audit Outcomes for 2014/2015*). It further states that 90 abuses of the SCM framework (counting fraud and improper conduct) and charges of financial misconduct should be investigated and appropriate action taken based on the outcomes of the investigation. The enactment stipulates that clear strides should be taken because of demonstrated or suspected financial misconduct and a duty to track and trace when such expenditure has been made.

The purpose of the AGSA audits was firstly to test whether the enacted steps were taken by auditees in 2014/2015 to address the previous year's unapproved, irregular, fruitless, and wasteful expenditure. Secondly, the claims and reports of conceivable abuse of the SCM system and financial misconduct were investigated. The report delineates the degree of the resistance that AGSA detailed per type of transgression;

“material findings” implies that the non-compliance was significant to the point that AGSA reported it in the review reports of those entities, while “with findings” implies that there was non-compliance, yet to a lesser degree (not material).

## **5.2 AGSA REPORT TO PARLIAMENT ON THE SABC BASIS FOR QUALIFIED OPINION**

According to AGSA’s report to Parliament on the SABC (2015), the SABC and group-generated income from television (TV) licenses fees, which ought to be distinguished once the acknowledgment criteria are met as per the International Financial Reporting Standards IFRS 18: Revenue. The SABC did not record revenue on an accrual basis, as required by the accounting standard, but instead recorded the revenue on a cash basis. Moreover, the SABC utilised agents to collect money for TV licences without receiving any confirmation report from an independent auditor to confirm the precision of the sum paid over to the SABC by the respective agents.

According to AGSA’s report to Parliament on the SABC (2015), due to the absence of satisfactory systems to keep records of TV licence fees on a collection premise, AGSA was not able to obtain adequate audit evidence for the required accrual change in accordance with the cash amount expressed at R913 396 000 (2013: R927 882 000) in note 26 to the consolidated and separate budgetary proclamations. AGSA was not able to confirm the right sum by elective means. Thus, AGSA was also not able to decide if any adjustments in accordance with the TV licences income resultant from the accumulation of income not yet interpreted related to other receivable balances and any hindrance thereof. Notes 14 and 26 to the consolidated and separate financial statements were fundamental in the audit process.

AGSA was likewise not ready to decide on the significant effect that the required adjustments would have on the loss for the current period and in addition the retained income for the earlier period. This restriction similarly applies to the relative figures in the consolidated and separate financial statements.

### **5.2.1 Deferred tax, tax payable, and income tax**

According AGSA's report to Parliament on the SABC (2015), the SABC excluded unpaid TV licences fees in its annual financial statements as reported in section 6 of the report (money premise of accounting was finished). Therefore, AGSA was not able to obtain adequate and appropriate review confirmation to determine the precision of the sum included as gross income in the tax computation with regard to the unpaid TV licence fees. AGSA was not able to confirm the precision of this sum by performing elective techniques as expressed in passage 6 of the report.

In addition, the SABC's tax computation incorporates a conclusion asserted with regard to the unpaid TV licence fees on the premise that the aggregate sum is dubious as to its recoverability. The measure of this conclusion could not be affirmed by supporting proof as expressed in passage 7 of the report. The aggregate sum included as the unpaid TV licence fees were deducted as far as segment 11(j) of the Income Tax Act is concerned. AGSA was not able to obtain an adequate audit providing for the sum guaranteed as the deduction in the tax computation of SABC.

AGSA was also not able to establish whether adjustment in accordance with the sum claimed as a doubtful debt deduction in the tax computation was vital. Because of the above, AGSA was not able to decide if any further adjustments in accordance with income tax (note 33), tax payable (note 35), and deferred tax (note 21) expressed at R158 413 000 (2014: R105 683 000), R282 033 000 (2014: R354 746 000; 2013: R69 034 000), and R296 702 000 (2014: R117 702 000; 2013: R50 886 000) respectively in the consolidated and separate financial statements, were fundamental. AGSA was also not able to decide on the important effect that any further required adjustment would have on the disclosure in notes 4, 21, 33, and 35, the misfortune for the period, and the retained surplus. This impediment similarly applies to the relative figures in the consolidated and separate financial statements (AGSA report to Parliament on the SABC 2015).

### **5.2.2 Irregular, fruitless, and wasteful expenditure**

AGSA's report to Parliament on the SABC (2015) emphasised that section 55(2)(b)(i) of the PFMA requires that the SABC incorporates particulars of irregular, fruitless, and wasteful expenditure in the notes to the annual financial statements. Note 43 of the

consolidated and separate financial statements was misquoted, including that the SABC decreased the unpredictable expenditure detailed in the earlier year (opening balance) due to the original tax clearance certificates being subsequently obtained. After the submission of original tax clearance certificates, AGSA found that they did not match the dates when the audit viewed that irregular expenditure was made.

According to the *SAA Group Integrated Annual Report of 2015*,

“without raising a material discovering, they attract thoughtfulness regarding the exposure in Note 46 to the yearly budgetary proclamations on page 166, sporadic consumption to the estimation of R5.4 million and vain and inefficient use to the esteem value of R7.3 million that have been identified and reported in terms of section 55(2)(b)(i) of the Public Finance Management Act”.

According to AGSA’s report to Parliament on the SABC (2015), the non-compliance in terms of the prior year’s audit still resulted in irregular expenditure. The removal of these items from the opening balance resulted in an understatement of the opening balance by a projected R272 017 070. It further stated that the SABC incurred expenditure in contravention of the SCM requirements for both the current and prior years, which were not included in the irregular expenditure note. Additionally, the understatement amounted to R6 882 259 and R2 044 680 for the current and prior years respectively (AGSA report to Parliament on the SABC 2015).

The SABC brought about fruitless and wasteful expenditure, which could have been avoided had solid inner controls been set up in the earlier year. This led to fruitless and wasteful expenditure, with an opening balance being downplayed by R514 088. This was identified in the earlier year’s audit and the disclosure note was not updated in the current year (AGSA report to Parliament on the SABC 2015).

In addition, supporting records to the estimation of R23 933 478 to test the compliance against SCM regulations were not provided for audit purposes. This was due to the SABC not having sufficient systems in place to keep total records of compliance, and irregular, fruitless, and wasteful expenditure. Because of this absence of systems, AGSA was not able to confirm the amount of irregular, fruitless, and wasteful expenditure to be unveiled by elective means. Subsequently, AGSA was not able to decide if any further adjustments in accordance with irregular, fruitless, and wasteful

consumption, as revealed in note 43 to the consolidated and separate financial statements, were essential. “This restriction similarly applies to the comparative figures disclosed in the consolidated and separate financial statements” (AGSA report to Parliament on the SABC 2015).

According to the independent auditor’s report to Parliament and the investor – Minister of Public Enterprises (2017) – area 55 (2) (b) (i) of the PFMA requires the element to uncover in a note to the united and separate money related proclamations particulars of all sporadic utilize that happened in the budgetary year. The Eskom Group did not have an adequate framework for recognizing and seeing all sporadic consumption. There were likewise no alluring choice systems that AGSA could perform to get sensible affirmation that all sporadic utilization had been authentically recorded in note 52 of the solidified and separate monetary proclamations. “In this way, the Independent Auditors was not ready to decide whether any adjustments were essential to the balance of irregular expenditure expressed at R2 996 million (2016: R348 million) in the consolidated and separate financial statements.” (Independent Auditors’s Report to Parliament and the shareholder – Minister of Public Enterprises 2017).

The independent auditor conducted the Eskom review according to the International Standards on Auditing (ISA). The Eskom Group's obligations under those standards are moreover depicted in the examiners' duties regarding the review of the solidified and separate budgetary articulations area of the AGSA report. Inspectors are free of the gathering according to the Independent Regulatory Board for Auditors Code of Professional Conduct for Registered Auditors (IRBA code) and other autonomy requirements suitable to performing reviews of money related proclamations in South Africa. They have fulfilled their other good duties as per the IRBA code and according to other good requirements proper to performing surveys in South Africa (independent auditor’s report to Parliament and the shareholder – Minister of Public Enterprises 2017).

### **5.2.3 Qualified opinion**

According to the AGSA report to Parliament on the SABC (2015), AGSA excluded the possible effects of the matters described on the basis for qualified opinion paragraphs:



“The consolidated and separate financial statements present fairly, in all material respects, the financial position of the South African Broadcasting Corporation (SOC) Limited and its subsidiaries as at 31 March 2015, and their financial performance and cash flows for the year then ended, in accordance with the International Financial Reporting Standards, and the requirements of the PFMA and the Companies Act of South Africa”.

Additionally:

“In Eskom the IRBA code was consistent with the International Ethics Standards Board for Accountants’ code of ethics for professional accountants (parts A and B). The independent auditors believe that the audit evidence they have obtained in Eskom was sufficient and appropriate to provide a basis for their qualified opinion” (independent auditor’s report to Parliament and the shareholder – Minister of Public Enterprises 2017).

#### **5.2.4 Emphasis of matters and uncertainties**

While Eskom's consolidated and separate money related proclamations are set up on the going-concern preface as revealed in note 3.2, the calculations rely upon examinations of future execution and are vital to assessing the appropriateness of the premise embraced for the preparation of the financial statements.

As demonstrated by the report, the key judgment regions were considered by the board in choosing the legitimacy of the going-concern introduce, including Eskom's and South Africa's FICO assessment, availability of sponsoring, the gathering's income assurance by the National Energy Regulator of South Africa (NERSA), income, spending plan, and conjecture. In like manner, the assumptions used for surveying the relevance of ordering monetary articulations on the going-concern commence are seen as basic and thus a key audit matter. At Eskom, material misfortunes, non-specialized wage misfortunes as revealed in note 52.3(c) to the solidified and separate money related articulations, and material influence incidents of R1 268 million (2016: R1 217 million) were acquired. These developed for the most part from meter altering and sidesteps, unlawful associations with the power organize,

and illegal appropriating of intensity (free examiner's answer to Parliament and the investor – Minister of Public Enterprises 2017).

The autonomous evaluator's answer to Parliament and the investor – the Minister of Public Enterprises (2017) – recognized and surveyed the threats of material misquote of the merged and separate budgetary proclamations. The threat of not distinguishing a material misrepresent is a direct result of extortion that may include intrigue, imitation, purposeful oversights, distortions, double dealings, or the absence of inside controls. As indicated by this report, it is critical to comprehend inner controls. Review systems that are fitting considering the present situation should be actualized – a supposition on the ampleness of general society substance's internal controls (free reviewer's answer to Parliament and the investor – Minister of Public Enterprises 2017).

Moreover, it is critical to assess the suitability of the bookkeeping arrangements utilized and the sensibility of bookkeeping gauges and related divulgements made by the bookkeeping expert (autonomous evaluator's answer to Parliament and the investor – Minister of Public Enterprises 2017). The Independent Auditor furthermore finished up, in light of the review prove that uncertainty exists. It was likewise uncovered that material vulnerability exists. The board is required to attract consideration to the auditor's report to the related exposures in the money related articulations with respect to the material vulnerability or, if such disclosures are lacking, to change the sentiment on the monetary explanations.

The autonomous evaluator for Eskom has made conclusions in perspective of the information open to the inspector at the date of the reviewer's report. Nevertheless, future occasions or conditions may make an open element quit working as a going concern, survey the general introduction, structure, and substance of the monetary articulations, including the disclosures, and whether the money related proclamations address the shrouded trades and occasions in a way that achieves sensible introduction and secure appropriate review proof with regard to the financial information of the entities or business exercises within the group to express an opinion on the consolidated financial statements.

Independent auditors are responsible for the direction, supervision, and performance of the group “(independent auditor’s report to Parliament and the shareholder – Minister of Public Enterprises 2017)”.

According to AGSA’s report to Parliament on the SABC (2015) (reference note 40), the SABC was a defendant in a number of lawsuits. At the time of the report, the ultimate outcome of these matters could not be determined, and no provision for any liability that may result was made in the consolidated and separate financial statements (AGSA report to Parliament on the SABC 2015).

#### **5.2.5 Restatement of corresponding figures**

According to AGSA’s report to Parliament on the SABC (2015) note 4 to the consolidated and separate financial statements, the corresponding figures for the year ended 31 March 2014 and the opening parity as at 1 April 2013 were repeated because of errors found amid the period ending 31 March 2015 in the consolidated and separate financial statements of the SABC.

There could be an occurrence as was uncovered in the Eskom Group’s consolidated financial statements, note 49. In Eskom, the comparing figures for the earlier periods have been rehashed to amend errors because of not representing certain appropriation resources. These were produced by outsiders and exchanged to the gathering in prior periods at, and for the year finished, 31 March 2017.

#### **5.2.6 Allowance and impairment of trade receivables**

According to AGSA’s report to Parliament on the SABC (2015), note 14 of the financial statements revealed material losses to the amount of R94 874 000 (2014: R96 988 000).

#### **5.2.7 Additional matters**

AGSA has drawn attention to many issues. The AGSA assessment was also not altered with regard to this issue. Different reports are required according to the Companies Act. As a major aspect of the AGSA audit of the consolidated and separate financial statements for the year ended 31 March 2015, AGSA perused the executive’s

report, the review advisory group's report, and the SABC secretary's authentication with the end goal of determining whether there are material irregularities between these reports and the evaluated financial statements. These reports are the obligation of the individual preparers. In view of perusing these reports, AGSA did not distinguish material irregularities between these reports and the audited financial statements. AGSA thus communicated a qualified opinion.

According to AGSA's report to Parliament on the SABC (2015), these reports were not audited and, in a similar manner, no sentiment was expressed on above reports. A report about other legitimate and administrative prerequisites was conducted. As per the Public Audit Act of South Africa (No. 25 of 2004) and the general notice issued in wording thereof, AGSA has a duty to report findings on the reported execution data against predetermined objectives. AGSA also has a duty towards internal control. The objective of the AGSA audits was to identify reportable findings as described under each subheading but not to gather evidence to express assurance on these matters. Accordingly, AGSA did not express an opinion or conclusion on these matters (AGSA report to Parliament on the SABC 2015).

### **5.3 PREDETERMINED OBJECTIVES**

According to the AGSA report to Parliament on the SABC (2015), AGSA performed procedures to confirm the value and dependability of the revealed execution data. The following selected vital objectives were exhibited in the annual performance report of the public entity for the year ended 31 March 2015: The main objective was to guarantee a fiscally economical organisation through income growth and cost control (2015:28-29). Secondly, the objective was to retain and grow share audience by addressing the requirements and desires of multicultural masses and specialty gatherings of people. This was conducted in all official South African dialects (2015:28-29). The third objective was to obtain and plan compelling and quality programming traversing a scope of types and meeting order targets crosswise over conventional and emerging broadcast and digital media platforms (2015:28-29). The fourth objective was to ensure a suitable and solid innovation foundation for the creation and delivery of broadcast programming, computerised media substance, and supporting commercial revenue generation (2015:28-29). AGSA assessed the reported performance data against the general criteria of usefulness and unwavering quality.

According to AGSA's report to Parliament on the SABC (2015), it assessed the value of the detailed execution data to decide if it was introduced as per the National Treasury's annual revealing standards and whether the reported performance was reconcilable with the arranged strategic goals. AGSA performed tests to determine whether indicators and targets were well defined, verifiable, specific, measurable, time bound, and relevant, as required by the National Treasury's Framework for Managing Programme Performance Information (FMPPI).

AGSA additionally evaluated the unwavering quality of the reported performance data to decide if it was legitimate, precise, and complete. The material findings with regard to chosen key objectives for the SABC were included in their main objective. This is to guarantee a financially sustainable organisation through income growth and cost control. AGSA did not distinguish any material findings on the convenience of the reported performance data for this key objective.

The FMPPI requires auditees to have proper systems to collect, order, check, and store performance data to guarantee legitimate, accurate, and complete reporting of genuine accomplishments against planned goals, indicators, and targets. AGSA was not able to acquire the data and clarifications; hence it considered it important to satisfy itself with regard to the unwavering quality of the reported performance data. This was due to the fact that the auditee could not provide adequate evidence in help of the detailed execution data and the auditee's records not allowing the application of optional audit procedures (AGSA report to Parliament on the SABC 2015).

SAA's *Integrated Annual Report* (2016) states that the entity performed strategies to acquire prove with respect to the value and dependability of the revealed execution data. The targets included income, cost pressure, monetary manageability, and operational benefit, refinement of the Long-Term Turnaround Strategy (LTTS), HR, obtainment, client center, compelling inward control, and hazard administration. The association evaluated the revealed execution information against the general criteria of significant worth and resolute quality. In addition, SAA assessed the usefulness of the reported performance data to decide if it was presented in accordance with the National Treasury's annual reporting standards and whether the reported performance was reliable and in line with the planned goals.

SAA additionally performed tests to decide if indicators and targets were characterised, irrefutable, particular, quantifiable, time bound, and important, as required by the National Treasury's FMPPI. The organisation surveyed the dependability of the reported performance data to decide if the data were legitimate, precise, and complete. They did not distinguish any material findings on the usefulness and dependability of the reported performance data for the chosen goals (SAA 2016).

#### **5.4 COMPLIANCE WITH LEGISLATION**

AGSA has performed techniques to obtain proof that the SABC and its auxiliaries complied with appropriate laws and regulations with respect to financial matters, financial management, and other related issues. AGSA discovered that on material findings there was inconsistency in relation with particular issues in main relevant legislative frameworks and regulations outlined in the general notice tabled before AGSA. Effective, productive, and transparent internal controls were not in place. The procedures of performance checking, estimation, audit, and reporting in connection with performance data and administration were not set up as required by section 51(1)(a)(i) of the PFMA.

According to the SAAs *Integrated Annual Report* of 2016, the entity performed strategies to acquire proof that people in general entity has consented to appropriate laws and controls in regards to monetary issues, budgetary administration, and other related issues. SAA did not recognize any occurrences of material resistance with particular issues in key relevant laws and directions as set out in the general notice issued as far as the Public Audit Act of South Africa.

As per the Public Audit Act of South Africa and the general notice issued in wording thereof, SAA has a duty to report discoveries on the revealed execution data against foreordained targets. SAA must provide details regarding chosen goals introduced in the Integrated Annual Report, resistance with enactment, and inner control (SAA 2016). AGSA performed tests to distinguish reportable discoveries as portrayed under every subheading except not to assemble confirmation to express affirmation on these issues. Appropriately, SAA did not express a feeling or conclusion on these issues (SAA 2016).

#### **5.4.1 Annual financial statements performance report and annual report**

The financial statements submitted for evaluation were not set up as required by the IFRS. They also did not adhere to full and appropriate records as required by section 55(1)(a) and (b) of the PFMA. Section 29(1)(a) of the Companies Act is also applicable here. Material misstatements of exchange and different receivables, programmes, film and games rights, income tax, and different disclosure matters distinguished by the auditors in the submitted financial-related proclamations were revised along these lines. However, the uncorrected material errors and supporting records that could not be provided caused that the financial statements receiving a qualified audit sentiment (AGSA report to Parliament on the SABC 2015).

#### **5.4.2 Procurement and contract management**

According to AGSA's report to Parliament on the SABC (2015), "[c]ontracts and quotations were awarded to suppliers whose tax matters had not been declared by the South African Revenue Services [SARS] to be in order, as required by Preferential Procurement Regulations 35". Furthermore, the "goods, works or services were not procured through a procurement process which is fair, equitable, transparent and competitive as required by the PFMA section 51(1)(a)(iii)" (AGSA report to Parliament on the SABC 2015).

According to AGSA's report on Eskom to Parliament and the investor – the Minister of Public Enterprises (2017) – the products, works, or administration were not generally secured through an obtainment procedure which was reasonable, impartial, straightforward, and aggressive, as required by area 51(1)(a)(iii) of the PFMA. Additionally, contracts were granted to and citations acknowledged from bidders in view of particular focuses that were not computed as per the necessities of the Preferential Procurement Policy Framework Act and its directions (Eskom free evaluators' answer to Parliament and the investor – Minister of Public Enterprises 2017).

Contracts and quotations awarded to suppliers whose tax matters had not been declared by SARS must be in order as required by Treasury Regulation 16 A9.1(d) and the Preferential Procurement Regulations (SAA 2016).

### **5.4.3 Expenditure management**

The accounting authority expert did not find a way to anticipate irregular expenditure, and fruitless and wasteful use, as required by section 51(1)(b)(ii) of the PFMA. The accounting records for expenditure were not complete and accurate, as required by section 28(1) of the Companies Act. This is also recommended in the Companies Regulations 25(3) (AGSA report to Parliament on the SABC 2015).

According to AGSA's report on "Eskom to Parliament and the shareholder – Minister of Public Enterprises" (2017) – convincing steps were not taken to counteract sporadic consumption, as required by area 51(1)(b)(ii) of the PFMA. The full level of the sporadic utilize couldn't be estimated, as appeared in the purpose behind capacity passage. Effective steps were not taken to turn away unbeneficial and inefficient consumption signifying R547 million, as uncovered in note 52 to the yearly money related articulations, in revocation of segment 51(1)(b)(ii) of the PFMA (AGSA 2017).

### **5.4.4 Asset management**

Legitimate control frameworks to protect and maintain resources were not sufficiently executed, as required by section 50(1)(a) and 50(1)(c) of the PFMA (AGSA report to Parliament on the SABC 2015).

### **5.4.5 Revenue management**

Compelling and proper strides were not taken to collect all cash due, as required by section 51(1) (b) (i) of the PFMA. The SABC's bookkeeping records for revenue were not complete and accurate, as required by section 28 of the Companies Act and recommended by Companies Act Regulation 25(3)(c) (AGSA report to Parliament on the SABC (2015).

### **5.4.6 Consequence management**

Adequate audit proof could not be obtained that viable and appropriate disciplinary strides were taken on all occasions against authorities who incurred or potentially allowed irregular expenditure and fruitless and inefficient expenditure. This is required by section 51(1)(e)(iii) of the PFMA (AGSA report to Parliament on the SABC 2015).



The SABC does not comprise separate operation entities, specifically a public service and commercial service division. It did not have satisfactory bookkeeping and authoritative frameworks set up to guarantee that the enterprise worked in separate operation entities. This is required by section 9 of the Broadcasting Act (No. 4 of 1999) (AGSA report to Parliament on the SABC 2015).

According to AGSA's report on Eskom to "Parliament and the shareholder – Minister of Public Enterprises" (2017) – the bookkeeping expert is in charge of "other data". Other data involves data incorporated into the board's report, the review advisory group's report, and the organization secretary's testament, as required by the Companies Act. Other data does exclude united and isolate money related proclamations (Eskom free reviewers' answer to Parliament and the investor – Minister of Public Enterprises 2017). Besides, the autonomous review feeling of the budgetary proclamations and discoveries on the detailed execution data and consistence with enactment don't cover other data. The evaluator likewise does not express a review assessment or any type of confirmation conclusion subsequently (Eskom autonomous inspectors' answer to Parliament and the investor – Minister of Public Enterprises 2017).

Regarding the review, the examiner's commitment was to scrutinize the other data and, in doing as such, consider whether the other data substantially clashes with the combined and separate monetary proclamations. The picked enter execution territories showed in the execution report as far as the investor compact section of the board's report is concerned gives the impression of being materially misstated. In the event of the work the auditor has performed, other information acquired preceding the date of this current auditor's report; the auditor inferred that there was a material misstatement of the other information. The auditor was required to report that reality. The independent audits have nothing to report in such a manner "(Eskom independent auditors' report to Parliament and the shareholder – Minister of Public Enterprises 2017)."

## **5.5 INTERNAL CONTROL**

AGSA considered internal control applicable to its audit of the financial statements, and provided details regarding predetermine objectives and compliance with laws and

regulations. The issues reported in the audit report under the essentials of inner control are constrained by critical insufficiencies. This caused the findings on predetermined objectives and the discoveries on compliance with laws and regulations incorporated into this report (AGSA report to Parliament on the SABC 2015).

According to SAA's *Integrated Annual Report* (2015), "they considered inner control important to their review of the consolidated and separate financial statements, annual performance report, and consistence with laws and regulations. Besides, SAA did not distinguish any insufficiencies in internal control that auditors considered adequately noteworthy for incorporation in this report" (SAA 2015).

According to the Eskom "independent auditors' report to Parliament and the shareholder – Minister of Public Enterprises" (2017) – they considered interior control applicable to their audit of the consolidated and separate financial statements, execution regarding the shareholder's compact section of the board's report, and compliance with enactment. However, the goal was not to subsequently express any type of confirmation. The issues detailed were constrained due to the huge lack of internal control that caused the reason for the non-clean audit. The findings on the execution, as far as the shareholder's compact section is concerned, should include the discoveries on compliance with enactment incorporated into the report.

## **5.6 GOVERNANCE**

According to AGSA's report to Parliament on the SABC (2015), the audit committee did not adequately review the annual financial statements and the annual performance report against compliance with the relevant reporting framework (AGSA report to Parliament on the SABC 2015). Furthermore, material matters were noted that required amendment on the annual financial statements submitted for audit (AGSA report to Parliament on the SABC 2015). This was due to the lack of in-depth understanding of the financial frameworks by the members that attended the audit committee when the annual financial statements were submitted for review (AGSA report to Parliament on the SABC 2015).

According to the SAA 2015/2016 annual report, the legal, risk, and compliance audit was aimed at enhancing governance by utilising instruments that encourage the execution and upkeep of administration and hazard administration best practices. The

obtaining of the administration, hazard, and consistence instrument was concluded and was actualized in the 2016/2017 monetary year. In the year under audit, consistence procedure and controls radiating from the consistence chance structure supported in the before year were regulated. The structure tends to identify administrative risks related to non-compliance with administrative prerequisites.

Implementation of the methods of control has been an enduring procedure of applying consistence also, chance administration to the SAA Group. The Group Compliance Policy was embraced and gotten by the SAA Group. A Risk-based Compliance Plan, molded by the consistence chance profile, i.e. high-chance order, was made and is being executed. The administrative universe was characterized in the before year, following an association wide commitment process in which each and every material law was perceived. This was to outline the aggregation of far reaching procedures to ensure consistence, which thus bolster moexecution and upkeep of organization and danger organization best practices. The getting of the organization, peril, and consistence instrument was closed and was completed in the 2016/2017 fiscal year. In the year under review, consistence strategy and controls emanating from the consistence chance structure upheld in the before year were regulated monitoring and outcomes for resistance.

A “reasonable viewable pathway on universal controls was established, which was starting to convey positive outcomes. Being aware of compliance prerequisites empowers SAA to address them more proactively”. SAA continues monitoring PMFA resistance, locally and all around. A diminishment in worldwide resistance was noted. The SAA board consistently watches the utilization of the PFMA rebelliousness design and also watching the PFMA tracker to record resistance.

According to the Eskom independent auditors’ report to Parliament and the shareholder – Minister of Public Enterprises 2017 – the independent auditor has a duty to report material discoveries on the consistence of the general public entity with particular issues to key enactment (Eskom independent auditors’ report to Parliament and the shareholder – Minister of Public Enterprises 2017). The independent auditor performed procedures and identified findings but gathered no evidence to express assurance (Eskom independent auditors’ report to Parliament and the shareholder – Minister of Public Enterprises 2017).

In the financial year under review, the group conducted investigations concerning anomalies, misrepresentation, and defilement inside the procurement condition. At the announcing date, certain examinations were all the while progressing. The material discoveries that were perceived distinguished that an autonomous expert examined assertions of bungle and affirmations of irregularities in the quality organization office [note 52.1(h)] (Eskom “independent auditors’ report to Parliament and the shareholder – Minister of Public Enterprises” 2017).

## **5.7 ROOTED PERSPECTIVE ON CORPORATE GOVERNANCE FAILURE**

According to the AGSA report to Parliament on the SABC (2015), the Public Protector led an investigation on different issues relating to the SABC and issued the report to the body of the SABC on 17 February 2014. The body of the SABC remarked on the report and issued their comments through the Minister of Communications on 21 July 2014. At the time, the conclusion of the report was still uncertain.

According to SAA’s *Integrated Annual Report* (2016), “in the financial year under audit SAA utilised the administrations of an independent consulting firm to direct an examination concerning alleged irregularities and misrepresentation. At the reporting date, these examinations were still ongoing”.

“In the financial year under review, the group conducted investigations concerning anomalies, misrepresentation, and defilement inside the acquisition environment. At the reporting date, certain investigations were still ongoing. The material findings that were recognised identified that an independent consultant investigated allegations of mismanagement and allegations of inconsistencies in the quality administration department [note 52.1(h)] (Eskom independent auditors’ report to Parliament and the shareholder – Minister of Public Enterprises 2017).”

According to Maisela Ka Mdluli (2017:1), the executive must fully shoulder the blame for allowing a person of questionable credentials to run a public asset, a national key point for that matter, like a feudal lord running his own fiefdom. It is common knowledge that the SABC is governed and controlled by a governing body. Top management derives its mandate from the Broadcasting Act, Companies Act, and various laws and prescripts. The PFMA also comes to mind, according to Maisela Ka Mdluli (2017:1).

The Companies Act of 2008, which replaced the 1973 Companies Act, among other provisions, stipulates the guidelines for directors' conduct. Additionally, there are other precedent-based laws and statutes that stipulate the obligations and duties of directors. For instance, the director is prohibited by law to intentionally harm the organisation and its subsidiaries.

It is Maisela Ka Mdluli's view that the directors who voted for the appointment of the erstwhile COO are clearly in violation of this section of the Companies Act, which states that the director of a company, when acting in the capacity of a director, must do so in good faith and for a proper purpose. He/she must also act in the best interest of the company with specific respect to care, and what is reasonably expected from such a person (Maisela Ka Mdluli 2017:1). Furthermore, his view is that the approval of the Multichoice deal is a case in point. The directors could surely not have acted within the letter and spirit of the aforementioned provisions of the Companies Act, and there must be consequences (Maisela Ka Mdluli 2017:1).

The Companies Act stipulates a business judgment test that expresses that a CEO, on the occasion where he or she has found a way to be educated, and has no material monetary interest, will not be at risk for breaking obligation. If a decision was taken to the greatest advantage of the organisation, that executive will not be prosecuted. Despite what might be expected, a CEO who lacks honesty as well as acts in a despicable manner must face the consequences.

The King III Code (2009:9) further alludes to principles and recommended practices that the board should provide. Effective leadership based on ethical foundation is recommended as good practice. Moral leaders should guide the strategy and operations to construct a sound economic business basis; consider short- and long-term effects of the strategy on the economy, society, and the earth; work together morally; and consider the effect of the organisation on internal and external stakeholders (Maisela Ka Mdluli 2017:3).

The aforementioned cannot be said of the SABC board as reported. It should be noted that "comply or explain" does not mean one must violate corporate governance principles as long as one can explain. The executives have a legal obligation to act to the greatest advantage of the organisation. The directors must comply to and clarify principles, which may not be to the greatest advantage of the organisation. The

organisation may apply it differently or apply another policy which can still achieve the objective of certain corporate governance principles such as fairness, accountability, responsibility, and transparency (Maisela Ka Mdluli 2017:3).

It is of particular importance that the calibre of individuals to serve on the boards of the incoming SABC is acceptable. The King IV Report (2016:42) highlights this in its principles and practices. Indeed, even before going to the standards and practices, the very meaning of corporate governance for King IV's (2016) reason for existing is fascinating, which is characterised as the exercise of ethical and effective leadership by the governing body towards the achievement of ethical culture, good performance, effective control, and legitimacy.

The other King IV feature that is of vital importance and more relevant to this discussion, is the inclusion of sector supplements. These supplements are carefully fit to suit a sector-specific environment, for example the legislative framework. The sectors secured are municipalities, non-profit organisations, retirement assets, small and medium enterprises, and SOEs. The primary reason for the supplements was to give direction on how King IV ought to be interpreted and connected by different segments and entities in their distinctive legislative environments.

One critical point raised by one of the individuals from the ad hoc committee was that what occurred at the SABC would not have been permitted to occur in an organisation listed on the stock exchange. What rings a bell are the stringent measures forced on listed organisations by various stock exchanges. In the JSE, for instance, certain prescribed practices and standards of King III are mandatory and failure to comply has genuine repercussions, including delisting.

## **5.8 CONCLUSION**

Chapter 5 scrutinises the three major SOEs' audit reports for the past three years to determine the specific reasons why each company did not adhere to the principles of the King Codes and other applicable acts.

The audit reports revealed specific shortcomings of the execution of corporate governance in the selected three SOEs. Examples of these shortcomings are as follows:

## Eskom

- ❖ According to AGSA's report on Eskom to Parliament and the shareholder – the Minister of Public Enterprises (2017) – “the goods, works, or service were not always procured through a procurement process which was fair, equitable, transparent, and competitive, as required by section 51(1)(a)(iii) of the PFMA. Moreover, contracts were awarded to and quotations accepted from bidders based on preferential points that were not calculated in accordance with the requirements of the Preferential Procurement Policy Framework Act”.
- ❖ The Eskom Group fail to produce a sufficient working procedure for distinguishing and perceiving most fruitless expenditure. Host of tangible evidence that all sporadic consumption was legitimately documented in “note 52 of the consolidated and separate financial statements”. Subsequently, the independent auditor was not able to determine if any adjustments were important to the balance of irregular expenditure.
- ❖ The independent auditor's report to Parliament and the shareholder – the Minister of Public Enterprises (2017) – distinguished and assessed the dangers of material misstatement and other losses. These losses originated because of fraud, forgery, intentional omissions, misrepresentations, deceptions, and the lack of interior controls.

## SABC

- Los of income tax due to unpaid TV licences. According to AGSA's report to Parliament on the SABC (2015), there were no satisfactory systems to keep records of TV licence fees. AGSA was not able to obtain adequate audit evidence for the required accrual change in accordance with the cash amount expressed at R913 396 000 (2013: R927 882 000). AGSA was not able to confirm the correct figures.
- According to AGSA's report to Parliament on the SABC (2015), the non-compliance in terms of the prior year's audit still resulted in irregular expenditure.

- The SABC brought about futile consumption, which could have been avoided had solid inner controls been set up in the earlier year. This led to fruitless and wasteful expenditure.

## SAA

- According to the *SAA Group Integrated Annual Report* of 2015, AGSA “draws attention to the disclosure in Note 46 to the annual financial statements on page 166. Irregular expenditure to the value of R5.4 million and fruitless and wasteful expenditure to the value of R7.3 million have been identified and reported in terms of section 55(2)(b)(i) of the Public Finance Management Act”.
- The financial statements for SAA 2016, submitted for evaluation, were not set up as required by the IFRS. They also did not adhere to full and appropriate record keeping as required by section 55(1)(a) and (b) of the PFMA.
- Section 29(1) (a) of the Companies Act is also applicable here. Material misstatements of exchange and different receivables, programmes, film and games rights, income tax, and different disclosure matters distinguished by the auditors in the submitted financial-related proclamations were revised along these lines. However, the uncorrected material errors and supporting records that could not be provided caused that the financial statements received a qualified audit opinion (AGSA report to Parliament on the SABC 2015).

Other shortcomings identified include:

- Asset management: Legitimate control frameworks to protect and maintain resources were not sufficiently executed, as required by section 50(1)(a) and 50(1)(c) of the PFMA (AGSA report to Parliament on the SABC 2015).
- Revenue management: Compelling and proper strides were not taken to collect all cash due, as required by section 51(1)(b)(i) of the PFMA. The SABC’s bookkeeping records for revenue were not complete and accurate, as required by section 28 of the Companies Act and recommended by Companies Act Regulation 25(3)(c) (AGSA report to Parliament on the SABC (2015)).
- Consequence management: Adequate audit proof could not be obtained that viable and appropriate disciplinary strides were taken on all occasions against authorities who incurred or potentially allowed irregular expenditure and



fruitless and inefficient expenditure. This is required by section 51(1)(e)(iii) of the PFMA (AGSA report to Parliament on the SABC 2015).

The abovementioned discussion indicates that not adhering to the principles of the King III and King IV Codes, PFMA and Companies Act might lead to very serious issues. It is important for SOEs to follow the principles of the King Codes and applicable laws. Although it is not compulsory to adhere to the King Code principles, they should be applied thoroughly by management to avoid irregular expenses. In contrast, companies listed on the JSE are subject to strict standards and practices and it seems that they perform better than SOEs such as Eskom and the SABC.

Chapter 6 presents the conclusions, findings and recommendations of the study.

## **CHAPTER 6: CONCLUSIONS, FINDINGS AND RECOMMENDATIONS**

### **6.1 INTRODUCTION**

The previous chapter extensively discussed and analysed the audit reports of three major strategic SOEs – the SABC, Eskom, and SAA – in relation to compliance with the King Codes' principles of good governance. It appeared that if the principles of the King III and King IV codes are not adhered to, it might lead to serious consequences.

Again, it is important for SOEs to follow the principles of the King Codes. Although it is not compulsory to adhere to these principles, they should be applied thoroughly by management. In contrast, companies listed on the JSE are subject to strict standards and practices and it seems that they perform better than SOEs such as the SABC.

Recent incidences, media reports, and new developments within the three major strategic SOEs raise alarm, and it should be further examined to understand and determine whether these SOEs are complying with corporate ethics, principles, and values as set out in the King Code on good corporate governance.

In order to provide a thorough analysis of the above problem, the present study sought to answer the following question: Do the three major South African SOEs implement and fully comply with the King Codes, Companies Act, PFMA and Protocols on corporate governance in ensuring sound corporate governance ethics and principles?

This question gave rise to the following secondary research questions:

- Are these three major strategic SOEs aligned with the seven principles as set out in the King III Report (2009)?
- Do parliamentarians, the DPE, and Treasury play a role in oversight and enforce compliance through the legislative framework?
- Should government grants in funding these SOEs be declared wasteful expenditure?
- What can be done to remedy the situation and rescue these SOEs in order to enforce adherence to the principles of compliance?

- What is an effective role of the board of directors in promoting good corporate governance and sustainability in these major strategic SOEs? Are they failing to execute their governance duties over these SOEs?

In order to provide the findings of this concluding chapter, the research problem was investigated and based on the conclusions, findings and set of recommendations is put forward. This chapter is divided into three sections:

- Section 1 provides the conclusions of the various chapters;
- Section 2 outlines the findings of the study in two phases: the findings on the analysis of corporate governance in the SOEs in compliance with the King codes' principles of good corporate governance in South Africa, and the second phase of this section focuses on the findings based on compliance with legal and legislative frameworks; and
- Section 3 provides the recommendations.

## **6.2 STUDY CONCLUSIONS**

### **Chapter 1**

Chapter one explained the background and motivation of the research. The problem statement and method that were followed in conducting this research were also explained.

### **Chapter 2**

Corporate Governance is defined as a “set of relationships” between an institutions’ management, the Board, shareholders and other stakeholders. Corporate governance is also described as how companies are directed and controlled. In addition, corporate governance is viewed as a “set of systems, principles, and processes by which a company is governed”. ““They provide the guidelines to how the enterprise can be directed and controlled in such a way that it can fulfil its goals and objectives. It should add value. Corporate governance is about people interacting with products and technology, and people interacting with systems. Governance at heart is about human nature”.

With regard to SOEs, boards are the overseers of corporate governance and represent the interest of the shareholders and other stakeholders in pursuit of developmental and economic objectives. Without governance, government remains an empty shell. SOEs need to embrace new changes to be optimally viable.

Various studies have endeavoured to develop indices of the quality of corporate governance; for example the World Governance Indicators (WGI), the Ibrahim Index of African Governance (IIAG), and Africa Integrity Indicators (AII). Each of these indices connects good corporate governance with good corporate performance.

Corporate governance “protocols” and legal issues were highlighted in this chapter. The first protocol on corporate governance, alluded to as King I, was published in 1997. The King II Report on Corporate Governance followed in 2002, and the King III Report was published in 2009. The King IV Report was published in 2016. The reports recommend standards of conduct for boards and directors of listed companies, bank institutions, certain SOEs, and other public, private, and non-profit entities. They include not only financial and regulatory aspects, but also advocate an incorporated approach that includes all partners, including SOEs. The goal is to provide guidelines on the implementation of corporate governance, proposing a steady standard that SOEs can follow.

Notwithstanding expanding authoritative measures, there is minimal confirmation that the administration of South African SOEs has enhanced after some time. Despite the King Codes, administration of SOEs, specifically, is directed by the PFMA, as overhauled (1999) and the related Protocol on Governance (DPE 2002). Poor corporate administration isn't a separated issue in South Africa, but at the same time is a test in different nations, for example, the BRICS nations. A considerable lot of the administration issues noted at SOEs in South Africa likewise happen inside SOEs in alternate BRICS nations. Gopa Kumar (2010) takes note of the verifiable underperformance of SOEs in India as estimated against private segment organizations. Gopa Kumar (2010) additionally centers around the accompanying key administration challenges for SOEs in India: Lack of familiarity with the corporate administration system by government and political pioneers; Lack of board preparing in corporate administration and Fragmented board structures. Sprenger (2010) noticed that SOE executives in Russia frequently fill in as courses for choices made

at senior government levels and expresses that the fundamental issues of SOE sheets identify with indistinct obligations of board individuals and Protectionism by government. Ralston et al. (2006) and Girma and Gong (2008) feature the vital push to impact change in Chinese SOEs, including to give more noteworthy operational self-sufficiency to SOEs.

Notwithstanding the need for legislation and regulation, SOEs are confronted with multiple, fragmented pieces of legislation and regulations with varying reporting and accountability requirements. 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 practising a culture of good governance standards.

### **Chapter 3**

Legislation and regulation are recognised as the critical externally driven mechanisms designed to ensure and enforce the separation of ownership, compliance, and control in the public SOE sector. The overarching argument is that promulgation of generic legislation (such as the “Constitution, PFMA, and Companies Act”) and specific founding legislation (such as the Broadcasting Corporation Act and Eskom Conversion Act, No. 13 of 2001), as well as regulation, are mechanisms designed to address the inherent conflict of interest caused by separating ownership and management of SOEs. Regulations serve to protect the interests of consumers, while simultaneously ensuring SOE financial viability.

The (externally oriented) meta-morphological terrain of corporate governance, together with the cognate conceptual/theoretical context derived from the review of relevant literature, assisted both the study and the researcher in the (internally oriented) logical concatenation and coherent arrangement of emergent themes. They also aided in illustrating the complex nexus between board and management dynamics on the one hand, and delivery mandates on the other.

As a component of this background, reference is now made to three major strategic SOEs in particular – Eskom, the SABC, and SAA – regarding compliance to the King Code principles on sound corporate administration. In the Republic of South Africa,

the King Reports I-IV on Corporate Governance was developed and subsequently altered or modified for SOEs.

### ESKOM

The pending investigation after the *State Capture Report* released in 2016 by then Public Protector Advocate Thuli Madonsela raised eyebrows on matters of good corporate governance at Eskom.

### THE SABC

In line with section 15A(1)(b) of the Broadcasting Act, the Ad Hoc Committee on the SABC Board was charged with inquiring into the ability of the SABC board to discharge its duties as prescribed in the Broadcasting Act. Its terms of reference were limited to considering the:

- SABC's financial status and sustainability;
- SABC's response to Public Protector Report No. 23 of 2013/14: *When Governance and Ethics Fail*;
- the board's ability to take legally binding decisions following the resignation of a number of its non-executive board members;
- the board's adherence to the Broadcasting Charter;
- decision-making processes of the board (Source).

Furthermore, the SABC reported recurring losses for the 2016/2017 financial years.

The findings of the Committee's investigation on the fitness of the SABC board revealed that the SABC failed to comply with the applicable laws and regulations in its financial management.

Financial statements submitted for auditing were not prepared in accordance with International Financial Reporting Standards (IFRS) as required by Section 55(1)(b) of the PFMA and Section 29(1)(a) of the Companies Act.

### SAA

New developments in South African Airlines (SAA) revealed that in Johannesburg the Labour Court granted SAA an interdict against striking South African Cabin Crew Association (SACCA) members on 26 April 2017.

In regard with its current operational status the SAA board responded by clarifying that “the company has not reduced its losses for the year under review”, that is for 2016/2017.

The governance oversight role over SOEs includes the role of the Auditor-General. In terms of Section 188 of the Constitution of South Africa, the Auditor-General (AGSA) must audit and report on the accounts, financial statements, and financial management of all national and provincial departments, all municipalities, and any other institutions or accounting entities required by national and provincial legislation.

The departments and SOEs are establishments or entities through which the Executive delivers services. According to the *2015/2016 Consolidated Report on National and Provincial Review Outcomes*, AGSA audited ten of the 21 noteworthy public entities.

Airports Company South Africa (ACSA) additionally had findings on their performance report. As indicated by this report, the budgetary sustainability remained the principal concern for the SOEs (AGSA 2016/2017).

## **Chapter 4**

This chapter highlighted the leadership practices, principles, and governance outcomes in SOEs with reference to issues of compliance with laws, rules codes, and standards.

“The OECD *Principles of Corporate Governance*, first issued in 1999, have been described as a “universal benchmark” and a “reference tool” for sound corporate governance”. “These collective principles are recognised worldwide as one of the 12 basic pillars of international financial stability. Principles particular to SOEs yet adjusted to general standards, were introduced within the *Guidelines on Corporate Governance of State-Owned Enterprises*” (OECD 2005). These standards fill in as a basic structure for analysis in this investigation:

- The corporate governance framework;

- Key ownership functions;
- Equitable treatment of shareholders;
- The role of stakeholders;
- Disclosure and transparency; and
- The boards of director's duties and responsibilities.

Good corporate organization of State Owned Enterprises consolidates esteeming the association between administration, consistence, and authoritative culture. This incorporates setting up suitable structures to propel great administration; knowing when to use boards of trustees, groups, and levels of leadership; observing and successfully supervising beyond reconciliation circumstances; managing the wants of different partners; and applying and checking the estimations of the association. Good leadership is needed urgently.

A joint ad hoc committee on corporate governance (2006) stated that there are three pillars whereupon the design of good organization administration rests in SA, in particular the King reports on corporate governance, the PFMA, and the Companies Act. Standards of corporate governance in relation to compliance is vested in these three basic documents.

In light of this, good corporate governance is obviously basically a compliance issue. Once more, good governance is about overseeing possible divergence of interest by setting up measures to safeguard the interests of the shareholders. Two main functions, which form an integral part of corporate governance and which the board is responsible, are as follows: (i) strategic direction; and (ii) responsibility for the control of the company (King III Report 2009:20). In light of this, good corporate governance is obviously basically a compliance issue. Once more, good governance is about overseeing possible divergence of interest by setting up measures to safeguard the interests of the shareholders.

“Functional leadership refers to the specific roles of how government and companies practise corporate governance”. Functional leadership also means the genuine practice of good corporate governance.

The King II Report on Corporate Governance identifies what can be regarded as the seven characteristics of good corporate governance, namely:



- ❖ Discipline;
- ❖ Transparency;
- ❖ Independence;
- ❖ Accountability;
- ❖ Responsibility;
- ❖ Fairness; and
- ❖ Social responsibility.

The King IV Report requests careful utilisation of the King IV Code and of its prescribed practices to be interpreted and applied in a way that is appropriate for the organisation and the sector in which it operates. Careful application bridges the advantages of corporate governance in light of a legitimate concern for the organisation.

## **Chapter 5**

Chapter 5 scrutinises the three major SOEs' audit reports for the past three years to determine the specific reasons why each company did not adhere to the principles of the King Codes and other applicable acts.

The audit reports revealed specific shortcomings of the execution of corporate governance in the selected three SOEs. Examples of these shortcomings are as follows:

### **Eskom**

- ❖ According to AGSA's report on Eskom to Parliament and the shareholder – the Minister of Public Enterprises (2017) – the goods, works, or services were not always procured through a procurement process which was fair, equitable, transparent, and competitive, as required by section 51(1)(a)(iii) of the PFMA. Moreover, contracts were awarded to and quotations accepted from bidders based on preferential points that were not calculated in accordance with the requirements of the Preferential Procurement Policy Framework Act.
- ❖ The Eskom company appears failing to hold enough evidence of proper system with its structure and management in spending mechanism and perceiving all irregular expenditure. The clear evidence that all sporadic consumption was

legitimately recorded in “note 52 of the consolidated and separate financial statements”. Subsequently, the independent auditor was not able to determine if any adjustments were important to the balance of irregular expenditure.

- ❖ The independent auditor’s report to Parliament and the shareholder – the Minister of Public Enterprises (2017) – distinguished and assessed the dangers of material misstatement and other losses. These losses originated because of fraud, forgery, intentional omissions, misrepresentations, deceptions, and the lack of interior controls.

### The SABC

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- According to AGSA’s report to Parliament on the SABC (2015), the non-compliance in terms of the prior year’s audit still resulted in irregular expenditure.
- The SABC brought about futile consumption, which could have been avoided had solid inner controls been set up in the earlier year. This led to fruitless and wasteful expenditure.

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games rights, income tax, and different disclosure matters distinguished by the auditors in the submitted financial-related proclamations were revised along these lines. However, the uncorrected material errors and supporting records that could not be provided caused that the financial statements received a qualified audit opinion (AGSA report to Parliament on the SABC 2015).

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The abovementioned discussion indicates that not adhering to the principles of the King III and King IV Codes, PFMA and Companies Act it might lead to very serious issues. It is important for SOEs to follow the principles of the King Codes and applicable laws. Although it is not compulsory to adhere to the King Code principles, they should be applied thoroughly by management to avoid irregular expenses. In contrast, companies listed on the JSE are subject to strict standards and practices and it seems that they perform better than SOEs such as Eskom and the SABC.

### **6.3 FINDINGS**

In South Africa, an SOE, whether partially or wholly owned by the state, plays a vital role in government activities. The government mandate for SOEs, as articulated in the NDP and other policy statements, is to provide infrastructure services and to help

improve social and economic conditions. As a key or sole shareholder in the SOE, the government has the responsibility to ensure not only that it delivers on its central mandate of providing sound infrastructure for the country's economic and social needs, but also that it and its organs of state are well run and that investments yield the required results .

The study provided the contextualisation of the three major strategic SOEs, namely the SABC, SAA, and Eskom, and their strategic role as principal entities that deliver social goods and services to ensure quality of life for all South Africans. The study highlighted the broader purpose/aim of the research, which was to analyse corporate governance compliance with the King codes of good corporate governance at Eskom, the SABC, and SAA.

These three SOEs were selected for this exercise mainly due to their strategic importance in the socio-economic development of the country and society in its broader sense. Notwithstanding the strategic role of these SOEs, the study found that governance, control, and management remained a serious challenge confronting these major strategic SOEs. Media and independent commissioned reports characterised the three SOEs as highly inefficient. The public was therefore sceptical of, and fundamentally questioned, the viability of the governance and management practices and ethos of these SOEs.

Corporate governance embodies procedures and frameworks by which corporate enterprises are coordinated, controlled, and considered responsible. Corporate administration in South Africa was systematised by the production of the first King Report on Corporate Governance in November 1994, which was superseded by the King III Report of 2009. The motivation behind the King III Report is to advance the most astounding norms of corporate governance in South Africa. The government, as a major shareholder in SOEs, faces an extensive variety of risks related to the operations of SOEs; including financial, reputational, political, and operational risks.

Currently, different government divisions, either mutually or independently, are depended with investor portrayal for the benefit of the administration, with oversight obligation regarding the SOEs for which they are capable. The biggest office is the DPE, which is in charge of vitality, mining, assembling, and transport, together with the particular practical divisions. There are different divisions, for example, Trade and

Industry, and Agriculture, Communications, Defense, Forestry and Fisheries, which are likewise in charge of particular SOEs. The aggregate structure of SOEs is under survey and is experiencing impressive change.

## **6.4 RECOMMENDATIONS**

### **6.4.1 Management recommendations**

The following recommendations in respect of management are made:

- ❖ Based on the findings, as shareholder representatives the directors have the responsibility to provide “strategic direction, alignment of priorities to national growth, and creating an efficient, competitive, and responsive economic infrastructure.” (Mbo and Adjasi 2013:6).
- ❖ People who serve on the board of directors must be independent and have lesser interest in matters of politics. Appointment must be made after a sifting process, in which criminal records, competence, and checks and balances are investigated;
- ❖ The directors of an SOE should ensure the development of business strategies, policies, and procedures, and monitor the implementation thereof.
- ❖ The directors of an SOE should ensure that:
  - the SOE’s activities are conducted so as to minimise any divergence of interests between the SOE and the shareholder;
  - SOEs are managed in the best interests of the SOEs, shareholders, and other stakeholders; and
  - SOEs and their officers maintain the highest standards of integrity, accountability, and responsibility.
- ❖ Parliamentarians, the DPE, and National Treasury must play an active role in ensuring that an oversight role is exercised and hold CEOs, Director-generals, and the board accountable for their decisions during their term of office;
- ❖ Disciplinary steps should be taken if ethical standards were not kept and lead to irregular expenditure;

- ❖ As in government, good corporate administration gauges request initiative with honesty and specialists cooperating at the most abnormal amounts to settle on fruitful choices for more noteworthy's benefit;

#### **6.4.2 Other recommendations**

Other recommendations include:

- SOEs are business orientated; therefore, the main aim for conducting business is to gain profit. These SOEs must conduct business as profitable businesses. If they fail to do so, the government must sell a portion of the shareholding to private entities;
- These SOEs must implement the King Codes' principles holistically, and evaluation tools must be formulated in order to send early warnings to stakeholders to tackle problems earlier and as soon as possible to avoid bailouts; and
- "Although the shareholder oversight role is well established in terms of the regulatory framework for financial management and corporate governance, there is a recognised need for continued organisational and technical improvement, together with recruitment of additional skills to deepen strategic and technical capability." (Du toit 2005:7).

#### **6.4.3 Recommendations related to Eskom, the SABC and SAA**

Recommendations related to Eskom, the SABC and SAA include:

- ✓ Goods, works and services should be procured through a procurement process;
- ✓ A sufficient system should be implemented for managing all irregular expenditure. Irregular expenditure should be kept as low as possible;
- ✓ A risk management unit should be implemented where issues such as fraud, forgery, misrepresentations and intentional omissions can be investigated;
- ✓ All cash and revenue due should be recovered and monitored on a daily-, weekly basis. Strict control measures should be in place to avoid theft. Debt recovering procedures and bookkeeping records should be accurate;
- ✓ The audit committee should take care of all audit reports and see to it that mishaps don't occur again;

- ✓ Fruitless and wasteful expenditure should be reduced to the absolute minimum. Adequate training to all staff members is of the utmost importance;
- ✓ Financial statements should be prepared according to general accounting standards for example GAAP and IFRS;
- ✓ Material errors and lack of supporting records should be avoided. This is to avoid receiving qualified audit reports; and
- ✓ Internal control frameworks should be in place to adhere to section 50(1)(a) and 50(1)(c) of the PFMA.

As recommended by the King Codes, the board must have a charter setting out its responsibilities, which should be disclosed in its annual report. At a minimum, the charter should confirm the board's responsibility for the adoption of strategic plans and monitoring of operational performance and management. Determination of policy and processes to ensure the integrity of the SOE's risk management and internal controls, communication policy, director selection, orientation, and evaluation should also receive attention.

The required standards of disclosure should be satisfactory and, in particular, timely disclosure is to be made by SOEs for accurate information. This may affect the shareholder's value or may influence the government's decisions in relation to SOEs.

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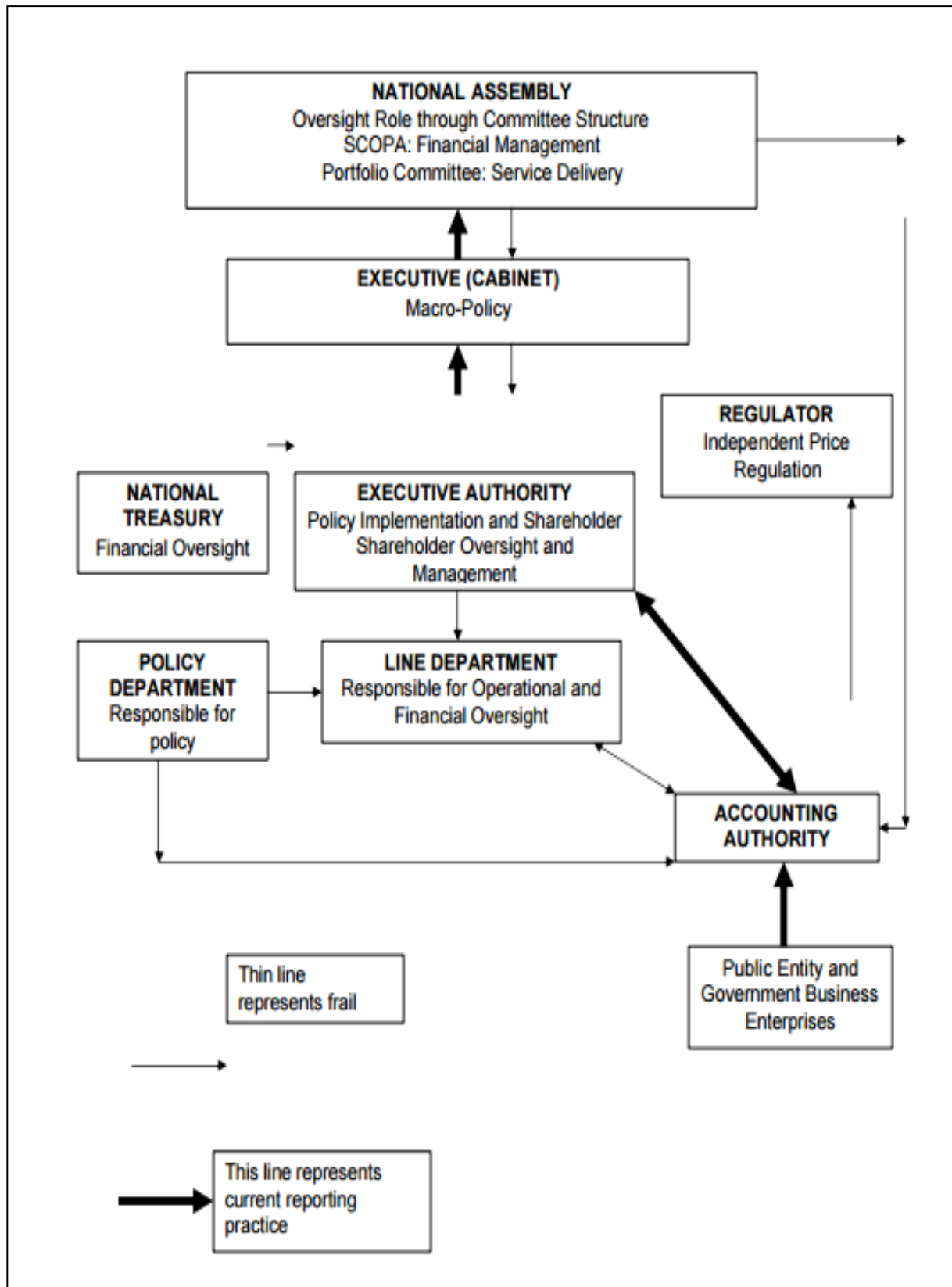
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# ANNEXURE A:

## OVERSIGHT MANAGEMENT OF STATE-OWNED ENTITIES



Source: Du Toit (2005)