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CORPORATE GOVERNANCE IN STATE-OWNED ENTERPRISES

BY

NIMROD OUPA MBELE

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DOCTOR OF PHILOSOPHY

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CORPORATE GOVERNANCE

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UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

PROMOTER: PROFESSOR A MCLENNAN

AUGUST 2015

DECLARATION

STUDENT NUMBER: 92 12 96 9w

I declare that this doctoral thesis titled **Corporate Governance in State-Owned Enterprises** is my own work and that to the best of my knowledge, it has not been previously submitted for degree purposes at any other institution of higher learning; all the sources consulted have been duly acknowledged by means of complete reference.

_____ _____

NIMROD OUPA MBELE **DATE**

_____ _____

SIGNED **DATE**

STATEMENT OF SOURCES

To the best of my knowledge and belief, the work presented in this thesis is original, except as acknowledged in the text. All sources cited in the study have been acknowledged, and no attempt has been made to project the contributions of other researchers and authors as my own. Furthermore, the material has not been submitted, either in whole or part, for a degree at this or any other University

DEDICATION

I dedicate this thesis to my beloved two children; Masetjhaba and Lehlohonolo Mbele.

I also humbly and respectfully dedicate this research project to the following persons posthumously:

My late (paternal) grandfather, Hlaha Mbele, and
My late maternal grandmother, Mosela Mma-Nthame Mohale

ACKNOWLEDGEMENTS

This thesis is the product of inordinate hours of toil and deliberation which inadvertently diverted my attention from family and friends over a long period of time. I am infinitely grateful to **God Almighty**, whose numinous presence and protection guided me throughout this exegetic journey.

I further express my most sincere and unequivocal love for my late mother, Masetjhaba Mbele, for her unwavering love and for planting the indefatigable seed of self-esteem in my being. I remain eternally grateful for her relentless courage and inspiration.

I am greatly indebted to my principal supervisor, Professor Ann McLennan, for her prolific and insightful guidance, perseverance and incisive comments on the drafts of this thesis. She has been the quintessential manifestation of humility and intellectual versatility throughout this study, reinvigorating me during copious moments of pessimism. Significant matters of clarity would have been obfuscated without her meticulous attention to detail.

I am truly indebted to the sterling work by Dr E K Taole, who spent countless hours reading the numerous drafts of this thesis ***pro bono.*** His academic input, professional advice, and morale-uplifting acumen inspired me to overcome numerous obstacles and the fear of the unknown throughout this challenging process. The level of presentation in this exegetic project owes much of its existence to his unflinching determination to see the study reach its ultimate completion and submission.

I extend my admiration of the support provided by my sisters, Mmaditsietsi and Mmabotle, as well as my younger brother, Impiayifani Mbele. Their spirit of togetherness is a pillar of strength and fortitude that keeps us united in spite of the earthly trials and tribulations.

Ntja tsa Mme, Matebele, Nina bo Khubone, bo Mpemba, bo
Ntuli, Ngithi ngiyabonga ngakho konke eningenzele khona.

I bequeath my special and dignified admiration of my family, particularly my children, Masetjhaba and Lehlohonolo, for their unwavering support and perseverance. They have earned for themselves the virtues of tolerance and understanding, given the loss of all the material comforts they have been deprived during the years of my solitary confinement to my studies; and may this serve as an inspiration in their lives.

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ABSTRACT

Following a plethora of scandals in both the public and private sectors, corporate governance has become the subject of contentious debates in the public domain over the past decade As a result, codes of good practice in the form of Cadbury, Greenbury, Turnbul, Hempel, Higgs, Sarbanes-Oxley Act (SOX) and Bosch Commission were ushered in different parts of Europe, Australia and the United States of America (USA). In South Africa, the King Commission on Corporate Governance was developed and subsequently modified for State Owned Enterprises (SOEs). Despite the progress noted, the SOEs environment remains in distress as boards and management struggle to maintain a balance between legislative compliance and performance. It is in the latter context that the study was inspired by the boards of the South African Broadcasting Corporation (SABC) and the Electricity Supply Commission (Eskom) respectively struggle to actualise sound corporate governance practices in order to deliver shareholder value.

As part of the qualitative research approach, primary data collection was conducted by means of comprehensive face-to-face interviews with board members and senior management at the two above-mentioned organisations. In total, 30 (thirty) board members and senior managers were interviewed. In addition, secondary data was collected in the form of records, strategy reports, business plans, and memos written to participants. In analysing qualitative interview data, the study utilised content analysis and cross-case analysis methods, on whose basis five themes were derived, namely: legislation and regulations; the interface between board and management; the role of the board in strategy development; performance monitoring of the board; as well as the organisational funding model.

The findings of the study include: fragmented and convoluted legislation; blurring of lines between management and governance; a weak board performance monitoring culture; unclear prioritization of social policy agenda, and inadequate funding to support social policy programmes, such as infrastructure. The policy reviews create leadership instability and accentuate distrust between boards and senior managers. This study further emphasizes limitations of the theoretical frameworks underpinning corporate governance in SOEs, and also advances detailed understanding of the corporate governance issues facing SOEs.

Key Words: State Owned Enterprises; Corporate Governance; Legislation; Regulations; Compliance; Boards; Performance, Monitoring and Evaluation.

LIST OF ABBREVIATIONS USED IN THE STUDY

ADG	ACTING DIRECTOR-GENERAL
AG	AUDITOR-GENERAL
ANC	AFRICAN NATIONAL CONGRESS
APFR	ACCELERATED POLICY FRAMEWORK ON RESTRUCTURING OF SOES
BBC	BRITISH BROADCASTING CORPORATION
BCCSA	BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA
CAPEX	CAPITAL EXPENDITURE
CBC	CANADIAN BROADCASTING CORPORATION
CEO	CHIEF EXECUTIVE OFFICER
CODESA	CONFERENCE FOR A DEMOCRATIC SOUTH AFRICA
DFI	DEVELOPMENT FINANCE INSTITUTIONS
DG	DIRECTOR-GENERAL
DOC	DEPARTMENT OF COMMUNICATION
DPE	DEPARTMENT OF PUBLIC ENTERPRISE
DTT	DIGITAL TERRITORIAL TELEVISION
EPP	ELECTRICITY PRICING POLICY
ESKOM	ELECTRICITY SUPPLY COMMISSION
FM	FREQUENCY MODULATION
FOSKOR	PHOSPHATE DEVELOPMENT CORPORATION

FXI	FREEDOM OF EXPRESSION INSTITUTE
GCEO	GROUP CHIEF EXECUTIVE OFFICER
GDP	GROSS DOMESTIC PRODUCT
GEAR	GROWTH, DEVELOPMENT AND REDISTRIBUTION
HR	HUMAN RESOURCES
ICASA	INDEPENDENT COMMUNICATION AUTHORITY OF SOUTH AFRICA
IMCC	INTER-MINISTERIAL CABINET COMMITTEE ON THE RESTRUCTURING OF STATE ASSETS
IOD	INSTITUTE OF DIRECTORS
IPP	INDEPENDENT POWER PRODUCERS
ISCOR	IRON AND STEEL CORPORATION
MBC	MALAYSIAN BROADCASTING CORPORATION
MBO	MANAGEMENT BY OUTCOMES
MYPD	MULTIPLE YEAR PRICE DETERMINATION
NAB	NATIONAL ASSOCIATION OF BROADCASTERS
NERSA	NATIONAL ENERGY REGULATOR OF SOUTH AFRICA
NFA	NATIONAL FRAMEWORK AGREEMENT
NNR	NATIONAL NUCLEAR REGULATOR
NP	NATIONAL PARTY
OECD	ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
PAIA	PROTECTION OF ACCESS TO INFORMATION ACT (OF 2000)

PFMA	PUBLIC FINANCE MANAGEMENT ACT OF 1999, AS AMENDED
PRC	PRESIDENTIAL REVIEW COMMITTEE
PWC	PRICE WATERHOUSE COOPER
RDP	RECONSTRUCTION AND DEVELOPMENT PROGRAMME
SAA	SOUTH AFRICAN AIRWAYS
SABC	SOUTH AFRICAN BROADCASTING CORPORATION
SARHA	SOUTH AFRICAN RAILWAYS AND HARBOURS ADMINISTRATION
SASOL	SOUTH AFRICAN COAL, OIL, AND GAS CORPORATION
SCOPA	STANDING COMMITTEE ON PUBLIC ACCOUNTS
SOEKOR	SOUTHERN OIL EXPLORATION CORPORATION
SOEs	STATE OWNED ENTERPRISES
SOX	SARBANES-OXLEY ACT
USA	UNITED STATES OF AMERICA

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1 CHAPTER 1: OVERVIEW OF THE STUDY

1.1 INTRODUCTION

The main purpose of the study is to investigate the prevalent corporate governance challenges at the South African Broadcasting Corporation (SABC) and the Electricity Supply Commission (Eskom) as State-Owned Entities (SOEs) respectively. The fact that the Public Finance Management of Act (PFMA) of 1999 (as amended) classifies Eskom and SABC as Schedule 2 entities emphasises that these are major public entities. Khoza and Adam (2005) correctly indicated that SOEs (also referred to as parastatals or public entities) – as enterprises or institutions that are directly or indirectly controlled by the State – make a vital contribution to the reconstruction and transformation of both society and the economy.

Controversies are replete in most SOEs (including the SABC and Eskom), despite their intended noble role. This has necessitated State intervention as these SOEs threaten the State's fiduciary responsibility and contribution to society's socio-economic upliftment. This claim (the extant controversies) is confirmed by the leadership disputes at the SABC during the period 2007, 2011, 2012, 2013 and 2014. These disputes resulted in changes in the CEO (Chief Executive Officer) and Board structures of the organisation. Similarly, tensions between the Board and the CEO at Eskom characterised its governance challenges, as the CEO was later paid a R2 million performance bonus in the same year of his dismissal (2014). Such a state of affairs is paradoxical, since non-performance had characterised the concerned CEO's term of office. Following the departure of the affected CEO, the SABC Board's Chairperson also resigned amidst R85 million lawsuits by the former CEO against the organisation (Mail & Guardian On-Line, 24 January 2010).

In both of the above-cited cases, the Boards and management of these entities were sternly criticised by the public and constituent stakeholders for bringing the organisations into disrepute, and dereliction of duty by not delivering on shareholder value. In light of these challenges, President Zuma established the Presidential Review Committee (PRC) to investigate the SOE landscape in its entirety. As part of its mandate/terms of reference, the PRC also scrutinised issues borne out by the separation of SOE ownership and control. For example, the SABC shareholding is assigned to the Ministry of Communication, while the Ministry of Public Enterprises oversees Eskom. Issues of institutional arrangement between line function department and SOEs, together with legislation, policies and procedures, do impact on corporate governance practices. Furthermore, the

controversies surrounding the relationship between Boards and management of SOEs affect the extent to which the mandate and strategy of the SOEs are executed. In its conceptual form, corporate governance relates to the manner in which SOEs are managed, controlled and held to account. Accordingly, this study – in its conceptualisation, research design and research methodology – embarked on a corporate governance framework characterised by a five-point trajectory:

- Firstly, the regulatory environment was referred to in respect of applicable legislations and regulation underpinning the operations and functioning of the SABC and Eskom respectively;
- Secondly, the study assessed the interface between Boards and management in the context of legislation and regulation determined by the shareholder by means of the shareholder compact;
- Thirdly, the study examined the impact of the interaction between Boards and management insofar as SOE policy development and implementation is concerned;
- Fourthly, the study sought to establish the extent to which the performance of the Boards is managed by the shareholder, as well as the implications of such performance management on shareholder value; and
- Lastly, the study interrogated funding issues in relation to the mandate of the SOEs.
- The above-mentioned performance areas raised pertinent corporate governance issues. These performance issues thus formed the critical basis for the conceptual framework of the study. On the basis of the latter, this study's contention is that corporate governance issues are indivisible from the applicable legislation, the interaction between Boards and management, the strategy development processes, as well as Board performance monitoring and funding requirements.

This study employed multiple theoretical frameworks in the analysis of the identified corporate governance challenges, with emphasis on the separation of ownership and control. In this regard, the study considered the following four theoretical paradigms as providing the congenial rationale in describing and explaining the prevailing corporate governance challenges afflicting SOEs:

- The principal-agency theory;
- The stewardship theory;
- The new public management theory; and
- The stakeholder theory.

The use of a multiple theoretical framework recognises that no single theory is by itself sufficient in explaining the complex nature of corporate governance in the SOE environment. Authors such as Ndiweni (2008) argue that social and cultural contexts have a bearing on corporate governance. This claim gives credence to multiple theoretical frameworks, which are used to explain the nuance, 'corporate governance' and its social, economic and political ramifications. Despite the study's limitations (explained later in the current chapter), the multiple theory perspective accentuated the agency theory's writ large importance in the analysis of the dynamic nature of the relationship between the principal (shareholder) and the agent (Board/management). The agency theory is largely based on an inherent conflict of interest brought about by the separation of ownership and management. This line perspective (of the centrality of the agency theory in the separation of ownership and management) could be extended to the SOE sphere, as the ownership and management structure, processes and systems are susceptible to divergent and conflicting interests. It is the study's contention that, in addition to existing legislative and regulatory mechanisms, other conflict resolution measures are needed to guide and manage the conflict of interest processes.

The SOEs' governance challenges are explained mainly through the agency theory's principal-agent framework. This study avers that the agency theory is a cornerstone in terms of conceptualising the complex nature of the relationship between Boards and the executive management of SOEs. This theory advocates for a tighter legislative control and monitoring process of the agents by the principal/shareholder. In line with agency theory presupposition, this study moves from the premise that agents as stewards of the SOEs may not necessarily be acting in the best interest of the principal or shareholder due to the inherent conflict of interest resulting from to the separation of ownership and management of SOEs. It is on this basis that the conceptual framework recognised the pillars of governance, namely, legislation and regulations, strategy development, performance monitoring and funding regime for SOEs.

1.2 THE BACKGROUND/CONTEXT OF THE RESEARCH PROBLEM

The State's fiduciary role in the development of the economy is a universal phenomenon, and not unique to South Africa. SOEs or parastatals are legal entities that are established by the government in order to participate in commercial activities on behalf of the government. The SOE could therefore be either wholly, or partially owned by government and is fundamentally earmarked solely to participate in commercial activities.

As early as 1994, the newly elected democratic government focused on the restructuring of State Owned Enterprises. Accordingly, one of the critical issues to be addressed was that of improving corporate governance, ethics and probity within the SOE sector (Ministry of Public Enterprise, 2000). The need for the restructuring of SOEs was recognition of the extent to which previous governments have been involved in the economy through SOEs. According to the African National Congress (ANC) policy discussions paper on SOEs and Development Finance Institutions (DFIs), there are currently 576 SOEs in South Africa, accounting for 8% of the Gross Domestic Product (GDP) (ANC, 2013: 12). This number (8%) demonstrates the instrumentality of SOEs in the development of the economy, as well as the urgent need for their restructuring in order to ensure their optimal performance.

Prior to 1994, the National Party (NP) government – predecessor to the current ANC government – was equally instrumental in the formation of some of the current SOE landscape. For example, the first SOE to be created was the South African Railways and Harbours Administration (SARHA) in the late 1800s. The period between 1948 and 1994 witnessed the establishment of public entities such as the Electricity Supply Commission (Eskom), the Southern Oil Exploration Corporation (Soekor), Phosphate Development Corporation (Foskor), the South African Iron and Steel Corporation (Iscor), and the South African Coal, Oil, and Gas Corporation (SASOL), to mention but a few (ANC, 2012: 13). As part of the erstwhile apartheid regime's SOE architecture, the SABC was established in 1936 with radio services offered in English and Afrikaans, and later in the African languages of isiZulu, isiXhosa, Sesotho and Setswana. In accordance with the white supremacist apartheid ideology that was institutionalised in 1948, black people were viewed in the context of their tribal or ethnic origins. According to O'Meara (1996; 41), South Africa was regarded as God-given enclave for the white Afrikaner nation to safe-guard against the twin perils of British cultural and economic imperialism on the one hand; and the 'back sea' of the African majority on the other. Against this backdrop, it is then conceivable for the SABC to entrench apartheid ideology in its quest for the control of the 'hearts and minds' of the overwhelming majority of the population.

The creation of SOEs in apartheid South Africa created conditions for skewed developmental trajectories, irregular infrastructure in terms of service delivery, and a host of structural socio-economic problems, the kind of which engendered a post-1994 era replete with many of the SOEs struggling to become relevant to the political and economic imperatives of the new post-democratic dispensation. In an attempt to realise the ideals of equity, equality, and redress as enshrined in the

South African Constitution, the ANC government embarked on restructuring the SOEs' governance systems in pursuit of ideals associated with a developmental state. Gumede (2009: 4) argues that the developmental state and its ideals belongs to a model many East Asian nations pursued after the Second World War in order to rapidly modernise their ravaged economies.

It is useful to reflect briefly on the notion of governance, as it has informed the evolution of the nuance 'corporate governance' as it is known today. In OECD (Organisation for Economic Co-operation and Development) terms, 'governance' is conceptually synonymous with public administration systems that are based on the rule of law, rational specialisation of tasks, transparency and accountability mechanisms, as well as a professional and highly skilled public service. These elements are considered as the building blocks of good governance (OECD, 2002: 9). It is the researcher' contention that the afore-cited OECD perspective is made to manifest by the manner in which the private sector and the SOEs are managed, directed and held accountable. For instance, all economic stakeholders are expected to comply with the sacrosanct dictates of the rule of law. In a similar vein, transparency and accountability find expression through legislation and regulation.

The post-1994 governance restructuring initiatives have been documented in government policy documents such as the 1994 Reconstruction and Development Programme (RDP); the 1996 Growth, Development and Redistribution (GEAR) and National Framework Agreement (NFA); the 1999 Inter-Ministerial Cabinet Committee on the Restructuring of State Assets (IMCC); and the 2000 Accelerated Policy Framework on Restructuring of SOEs (APFR). The APFR addresses the following critical issues: government's vision on restructuring; the economic and social effects of transformation; promoting appropriate regulatory frameworks; and improving corporate governance, ethics and probity (Ministry of Public Enterprises, 2000: 1). The salience of the governance and management of SOEs such as Eskom and the SABC were further illustrated by the establishment of the Presidential Review Committee (PRC) by President Jacob Zuma in 2010. The President conceded that prior reviews did not adequately address issues such as the legislative mandates, ownership models, governance and management reporting and accountability frameworks; as well as funding requirements of the SOEs. As the majority shareholder, the government is committed to ensuring that SOEs are properly governed and managed for purposes of addressing historically apartheid-induced imbalances, and to ensure that SOEs deliver on the developmental mandate.

The ownership, governance and management challenges of the SOEs are not unique to South Africa. However, the dominating discourse involving performance of SOEs is based on their inefficiency, maladministration, and at worst, fraud and corruption. Issues relating to maladministration, corruption, rent-seeking and ultimately non-delivery point to weakness in the governance arrangement and ownership model. Despite this popular perception – encouraged by both the corporate media and contemporary conventional wisdom – a number of SOEs have been proved to be managed and governed efficiently. Singapore Airlines for instance, often voted the best airline in the world, is an SOE with 57% owned by the government holding company Temasek Holdings, whose sole shareholder is the Singapore Ministry of Finance. Despite the challenges facing SOEs, however, there are many examples of well-run and performing SOEs. Similarly, highly respected world-class companies such as the Bombay Transport Authority of India, the Brazilian regional jet manufacturer EMBRAER, the French car manufacturer Renault, and the Korean steel-maker POSCO all initially succeeded as SOEs, with the state still exercising critical influence in the case of EMBRAER and Renault (United Nations DESA, 2007).

1.3 THE PROBLEM STATEMENT

The research problem is located within the premise of the need for SOE transformation, considering that these institutions are pivotal to furthering the developmental agenda of the State. Following the demise of apartheid, initiatives to transform the SOE sector were undertaken in 1994, 1999, and 2011 by means of changes in the legislative environment intended to address structural inequality and to promote good governance practices. Notwithstanding these noble intentions, the policy changes accruing from the legislative sphere created instability due to the response time associated with the realisation of the impact of policy changes, especially in complex environments.

Corporate governance theories accentuate the virtues of transparency, accountability, honesty, and integrity as the pillars of acceptable administration standards in both the public and private sectors. Notwithstanding these virtuous pillars, the ownership and governance structure of the public SOE is more complex than that of the private sector variant. The complexity of the SOE environment is reinforced by the frequency of policy changes. Adherence to expected corporate governance standards becomes more difficult to achieve in the context of factors such as the changing environment and the sheer size of SOEs; as well as the complex legislative environment and its associated bureaucracy. Despite the problematic SOE environment, their Boards and management are still expected to deliver on the diverse, contradictory mandates of SOEs that are often not

properly funded. Various theoretical frameworks have been incorporated in the study in order to describe and explain the nature of SOE transformation (as the identified research problem) and the attendant or suggested approaches towards the resolution of this research problem.

As much as the regulatory and policy environment have become the primary catalysts of change, the unintended consequences could occur in the form of engendering a culture of fear and instilling distrust between, and among the very custodians of SOEs. The agency theory advocates for tighter control mechanisms in the form of legislation and regulation, in order to mitigate trust issues and the associated risk emanating from the separation of SOE ownership and control. However, no amount of legislation and regulation suffices to create an environment of trust. Instead, relations are likely to deteriorate as a result of the ever-changing environment. The implication is that stewards of SOEs have failed to act in the best interests of the shareholder, hence besmirching reports of corruption and maladministration continues to proliferate the public domain.

The reality is that South Africa's Constitution is built on consultation ethos, which means that SOE custodians such as Boards and executives should promote a culture of consultation. In a nascent democracy such as South Africa, stakeholder theories – which advocate consultation – are a Constitutional and remedial imperative. Conversely, consultation may limit management's capacity to act decisively on deviant behaviour – this claim is informed by the fact that organisations can be viewed as political systems. According to Eisenhardt and Zbaracki (1992), organisations are political systems in that the collective memberships in those organisations have common goals, but hold different views to achieve those goals. The implication of these divergent views is that management in organisations is likely to be paralysed by protracted decision-making processes. The theoretical and practical governance challenges facing SOEs necessitate that speedy solutions be found in order to obviate the disruptive effects of copious decision-making processes. Such an orientation would ensure that South Africa's socio-economic development is catapulted in an upward trajectory, as the opposite would be cataclysmic, given the recent negative ratings the country has attracted from reputable international financial institutions.

1.4 THE RESEARCH AIM/PURPOSE

There exists a relationship between the aim (purpose or general/broader intention) and objectives of a study on the one hand, as well as the research problem/ the problem statement, the research questions, as well as the data collection and analysis methods on the other. However, the aim/purpose and 'objectives' of a study are conceptually inter-related, but mutually exclusive as well (Henning,

2005: 1). As a research metaphor, the aim/purpose of a study refers to the extent to which the more general or broader intention(s) of the research/investigation and the researcher have been mutually achieved. Accordingly, the data collection methods and the concomitant findings/results in a study act and serve as mechanisms according to which the achievement or otherwise of the aim(s) or purpose(s) of the study could be determined or assessed. In further clarifying the level of conceptual differentiation between the aim/purpose and objective(s) of an investigation, Fouche (2002: 107) illuminates:

> "However, confusion exists among … authors as to whether exploration, description and explanation are the purpose/goals of the research, objectives of the research or in some instances, even types of research. Authors thus differ on the level of conceptualisation on which the typology is placed and, therefore used. Arkova & Lane (1983: 11-13) were, however, among the first authors in the field of social work research to explicitly state that any fully scientific endeavours in social work should have at least one of three primary objectives: to explore, to describe, or to explain".

Based on the differentiation of aim/purpose and objectives referred to above, the general/broader intention or purpose of the study is to:

- Explore and describe SOE governance challenges, and recommend remedial approaches to address these challenges.

1.5 THE RESEARCH OBJECTIVES

As opposed to the aim, goal, or purpose of a study, which relates to "the broader, more abstract conception" of the mechanisms devised to achieve the desired outcomes (Fouche, 2002: 107); the objectives of a study specifically refer to "the more concrete, measurable and more speedily attainable conception" of the mechanisms devised to attain the desired outcomes (Fouche, 2002: 107). Arising from the latter assertion then, it is irrefutable that a research objective is distinguishable from a research aim, goal, or purpose by its (research objective's) concrete nature (as opposed to the abstract feature of an aim, goal, or purpose); its specific measurability (as opposed to generalised scoping); as well as the immediacy of results/findings (as opposed to findings that are not time-specific, leading to anachronistic, mundane, or irrelevant research undertaking). Henning (2005: 1) and Kreuger and Neuman (2006: 23) concur with the view posited by Fouche (2002: 107) above; that is, the description and characterisation of an objective.

In the current study then, the following have been identified as the most profound objectives, and form a synergistic link with the study's significance, the research problem, the research questions, and the data collection and analysis processes (Katzenellenbogen & Joubert, 2007: 106):

OBJECTIVES

- To describe and explain the conceptual/theoretic aspects of corporate governance in the context of SOEs;
- To describe and explain SOE corporate governance challenges, with specific reference to the SABC and Eskom; and
- To recommend remedial measures to control the identified SOE corporate governance challenges.

1.6 THE RESEARCH QUESTIONS

The articulation of the pertinent research questions in this study was intended to construct meaning and highlight the inter-relatedness and continuum between the research problem, the research aim and objectives, the significance of the study on one hand; as well as the research design and methodology on the other (Babbie & Mouton, 2001: 53). The latter author maintains that research problems are often formulated in the form of research questions as a means of focusing on the research problem. Such focus assists in giving direction and meaning to the study.

The major focus of this study is on exploring issues of legislation, institutional relationships based on the rule of law, and the extent to which SOEs' governance structures – such as the Board and executives – promote good governance practices such as accountability, transparency and financial probity.

The main research question is: why is corporate governance a challenge for SOEs? Accordingly, the following research questions were viewed as pertinent to the study due to their thematic association with, both the research topic and its attendant research processes:

- What is the nature of SOE corporate challenges and to what extent is corporate governance affected by these challenges?
- What is the role of Boards and management in relation to strategy development?
- How is the performance of SOE Boards monitored?
- How are SOEs funded, and how does this affect their corporate governance?

1.7 THE SIGNIFICANCE OF THE STUDY

The significance, justification, or motivation of the study relates mainly to the extent of its relevance or usefulness in the scientific corpus of knowledge, to the institutions that may be affected or benefit from the study, as well as its general contribution to society's development or upliftment (Babbie & Mouton, 2001: 53).

The restructuring and review processes of the SOEs in 1994, 1999, 2000, and 2011 under President Zuma accentuated the disjuncture/gaps in their governance, ownership and management models. The Presidential Review Committee recognised the structural, systemic and policy gaps in the governance and ownership of SOEs. Against this backdrop, this study seeks to make a contribution to SOE governance policy, practice and theory.

1.7.1 Significance relating to the SOE policy domain

The researcher asserts that the diverse and complex nature of SOEs affects the realisation of policy intentions becoming immediately realisable. The situation becomes even more exacerbated by the regularity of changes occurring in the policy environment.

The study envisages that its outcomes (in respect of its findings and recommendations) do contribute to better understanding of the inherent intricacies associated with the separation of SOE ownership and management. The study further proposes alternative approaches to the identified intricate dynamics. In addition, the study also seeks to close the gap between policy development and implementation within the publicly funded SOE sector. Policy development focuses on formal structures, processes and systems. The study's findings highlight the dynamics introduced by constant changes in the policy environment, and the extent to which these changes adversely impact on organisational stability.

1.7.2 Significance relating to practice

King (1994: 1) defines corporate governance as "simply the systems by which companies are directed and controlled". The notion of directing and controlling companies signifies the criticality of internal management processes and systems that ensure alignment between interests of the shareholder and management in an organisation. The implication is that Board and management should, adjust and align internal processes with the new policy imperatives, and this often takes time. Internal changes with regard to operational requirements on any policy changes have a direct bearing

on skills, capacity and competencies. By means of the primary and secondary reviews, the research highlighted a deeper understanding of the complex nature of the SOEs' governance and management arrangements, and the extent to which these arrangements impact on corporate governance. It is in the latter context that this study sought to assess progress made at the SABC and Eskom in relation to the research problem (that is, SOE corporate governance transformation). Useful information should be provided to Board members and executives to internalise the findings and implement recommendations where appropriate.

1.7.3 Significance relating to theory

The study employed multiple theoretical perspectives in order to enhance better understanding of the complexities associated with the governance and management of SOEs. The agency theory on principal-agent frameworks provided the most cogent approach in terms of conceptualising the relationship between Board members and the executive management of SOEs. The essence of this theory is premised on its focus on formal components of corporate governance, such as structures, processes and systems for reporting, accounting, monitoring and evaluating the performance of the agents by the shareholders.

1.8 STUDY ASSUMPTIONS

Whereas paradigms and conceptual/theoretic frameworks provide a research approach or boundaries), research assumptions provide the value-free principles according to which the research paradigm, approach, or boundaries were guided or arrived at. Van der Walt and Van Rensburg (2010: 22) illuminate further that assumptions are basic principles that are assumed to be true, without proof or verification. Assumptions could be ontological (patterned sets of the researcher's view of reality); epistemological (assumptions about knowledge of reality); axiological (assumptions inspired by appreciation of the researcher's collective efforts during the entire research process; or rhetoric (assumptions based on the researcher's art of persuasion in respect of writing and speaking to a particular audience); (Van der Walt & Van Rensburg 2010: 22).

The research was conducted within a constructivist/ interpretative paradigm, with its orientation towards advancing multiple realities contracted by human beings (Henning, 2005: 103). The assumption in this study is that SOE ownership and governance models affect corporate governance practices, and that Board members and executive management will reflect corporate governance issues based on their own experiences. The notion of multiple realities suggests that officials'

knowledge and experiences at Board level are shaped by a number of factors, such as the interpretation of mandates, governance arrangements, leadership and organisational culture. In the light of this framework, it could be argued that corporate governance will reflect different cultures and experiences. Qualitative research was employed on the basis that multiple realities are themselves informed by contextual or environmental issues (Mouton, 2001: 113). The experiences of Board members and managers at SABC and Eskom were reflective of specific internal dynamics and relationships between different stakeholders. The key philosophical assumption on which qualitative research is based is that reality is constructed by individuals interacting with their social worlds (Miller & Brewer, 2003: 116). Social reality may be used in understanding the meaning people (i.e., Board members and executive management) have constructed in order to make sense of their experiences and view of the world.

Ontology is a branch of philosophy that addresses the nature of reality, driven by the question "what is there to know?" and allows the researcher to theorise about research, make explicit assumptions about the interconnectedness of the manner in which things are related in the world; and locates the research in the literature. On the other hand, meta-theoretical assumptions are not testable but focus on the human being and society, and have a philosophical origin. Although they do not allocate any epistemic pronouncements, they do influence the research decisions. From a naturalistic phenomenological perspective, reality is socially constructed and there are multiple realities of phenomena in society (Creswell 2009: 195). The following ontological assumptions are made in this study:

- Multiple realities of individuals are central to the description, exploration and meaning of corporate governance as experienced in SOEs; and
- Knowledge of lived experience can be known through the descriptions of the Board members' experiences regarding implementation of corporate governance, as well as contextual challenges which complicate the intended implementation; and
- The lived experiences or social reality of Board members, government officials, and executive management enabled the researcher to understand the complexity and diversity of such social realities.

The separation between ownership and management sophisticates the complexity and dynamism of SOEs. Ownership of SOEs resides with citizens, who confer power to the State to advance its social and economic mandates by means of democratic processes. Management of the SOEs is vested in

officials whose interests are assumed to be aligned to those of the State. The complication of corporate governance in SOEs is underscored by a number of legislation and regulations which are subject to multiple interpretations. Consequently, the complicated regulatory environment affects the speed with which decisions could be taken in the value chain. The epistemological assumption in this case is that corporate governance must be understood as a system of interrelated faculties (Henning et al., 2004: 20). Epistemological assumptions are testable, offer epistemic pronouncements about the research field, and give shape to the conceptual framework. The researcher is required to make a thorough study of existing theoretical pronouncements in the literature on the subject of research in order to be able to state his/her theoretical assumptions (Van der Walt & Van Rensburg, 2010: 22). In this regard, relevant assumptions applicable to the study are as follows:

- An individual participant could reflect and state his/her experience, feelings and emotions regarding the corporate governance in a particular context; and
- The natural settings of participants will enable participants to express their experiences freely and unhindered.

Methodological assumptions are related to the researcher's view of the nature and structure of science and research in a specific discipline, with the main concern premised on obtaining knowledge from the selected research participants, as well as defining the nature of the relationship between the researcher and the participants. Semi-structured interviews allowed the participants to transcend perceptual boundaries and offered more insights, which enriched the outcome of the empirical phase of the study. Henning et al. (2004: 20-26) regard meta-theoretical perspectives as important in research.

1.9 LIMITATIONS OF THE STUDY

The limitations identified in this study do not in any way attenuate the exegetic significance, value and integrity of this research project in both its theoretical and empirical approaches. The study did not include the views of the line function department, in order to obtain first-hand information relating to SOE accountability. The SOE governance structure is elaborate, which implies line function departments' critical role in the process of interfacing with Boards through the shareholder compact. The engagement with the Boards and management was confronted with issues that were still under review. *Ipso facto,* the participants were not at liberty to discuss or disclose such information, notwithstanding the information's direct bearing on corporate governance. The

implication is that the researcher could not access all the records due to the sensitive nature of issues and resolutions adopted. However, such loss on the study's literature review was minimal, considering that public documents – in spite of their importance as sources of information – may not present the entire picture as some issues are kept out of the public domain.

Furthermore, some of the interviewees withdrew from the study despite the researcher's commitment to maintaining a high level of ethical standards and professionalism. Others re-located elsewhere, thereby making it difficult to conduct interviews. Remedial course of action in the latter regard involved the sampling of additional Board members and executives in order to ensure a theoretical saturation; that is, a stage at which data collection no longer brings additional insights to the research question (Glaser & Strauss, 1976 in Thompson, 2008).

1.10 STRUCTURE OF THE THESIS

For logical concatenation and coherence, the chapters of the thesis have been structured as follows:

1.10.1 Chapter 1: overview of the study

This chapter outlines and locates the centrality of local SOE governance challenges in the context of the research problem, the research aim/purpose and objectives, the research questions, the research design and methodology, as well as the study's limitations. In this regard, the chapter presents the scientific, technical, and the empirical domains of the research topic; while also collating these three domains into an analytically-conducive framework on whose basis the findings and conclusions of the study were reached. The SABC and Eskom have been specifically identified as the two SOEs whose examination presents the study with a case study perspective for both the research design and methodology

1.10.2 Chapter 2: literature review

The chapter mainly reflects on the challenges facing SOEs in respect to corporate governance. The review of relevant literature addressed: definitions of corporate governance; the history of corporate governance; debates on the importance of corporate governance; a critical review of governance and ownership models; and theoretical frameworks on corporate governance. Since corporate governance is underpinned by rules of engagement, the chapter focuses on legislation and regulations governing the SABC and Eskom.

This chapter recognises that the separation between the ownership and management of SOEs is characterised by a number of principal-agency challenges. The chapter fundamentally assumes that SOE stewards (that is, Boards and management) may not necessarily act in the best interest of the shareholder. Similarly the shareholder interest may not be adequately articulated, resulting in confusion and the possible blurring of reporting mechanisms. The outcome of the literature review assisted in the thematic and synergetic shaping of the conceptual framework and research methodology of the study.

1.10.3 Chapter 3: research design and methodology

This chapter presents the research questions to be answered and data collection based on the case study method as part of a qualitative research approach, which included: in-depth interviews and documentary reviews of relevant materials such as annual reports, commissioned reports, policies and procedures and Board charters. Although the research method involves two cases (the SABC and Eskom), the research does not seek to conduct a comparative analysis, but to secure generalisation, lessons learnt, and the implications of these on governance and management of these two entities. The prevailing discourse is therefore a quest to understand governance and management arrangements, and to explore different ways through which corporate governance could be enhanced. These issues were explored by means of semi-structured interviews, which afforded the researcher a chance to probe further and thus gain deeper understanding of governance challenges at the SABC and Eskom.

1.10.4 Chapter 4: the SABC and Eskom in perspective

This chapter presents an overview of the SABC and Eskom, as well as the findings and outcomes of interviews held with Board members and executive managers of both SOEs respectively. Data presentation and discussions are guided by the conceptual framework underpinned by the following themes: legislation and regulation; the interface between Board and management; the Board's performance monitoring; and the funding regime of SOEs.

1.10.5 Chapter 5: significance of corporate governance in SOEs

This chapter used the conceptual framework explained in Chapter 2 and Chapter 3 to integrate the findings of both case studies, and to discuss and analyse these findings with the view to highlighting common trends. The finding on each of the themes is also juxtaposed with the research questions in order to ascertain the extent to which the research questions were answered. A reflection on the

research questions is meant to assist the reader to determine how the research questions were answered and the implications on corporate governance in SOEs.

1.10.6 Chapter 6: conclusions, findings, recommendations, and future research

The overall concluding chapter reflects on the purpose of the study and how the research questions were answered. A synopsis of each chapter is also provided vis-à-vis its objectives and how these link back to the research questions and the conceptual framework.

1.11 CONCLUSIONS

The critical role of SOEs in the economy and their role in advancing the developmental agenda of the state is pivotal to exploring and understanding the need for transformation in the SABC's and Eskom's corporate governance challenges even after the demise of apartheid. The performance of many SOEs remains in distress despite a number of restructuring initiatives since 1994. The complex nature of the SOE environment required a review of the legislative environment in order to clarify mandates and funding issues. A revamped legislative environment would assist in alleviating and managing the contradictions between the State's developmental agenda and commercial imperatives.

Flowing from the complex institutional arrangements, the research problem's formulation centred on the ability or inability of the SOEs to deliver on their mandate, compounded by the challenges engendered by the separation between ownership and control. The key argument is that separation of ownership and control brings about what the agency theory refers to principal-agency problems. This framework presupposes that agents may not share the same value systems and goals as the shareholders and, as a result, there is a need to enhance controls.

2 CHAPTER 2: LITERATURE REVIEW

2.1 INTRODUCTION

The previous chapter provided the context of the study and its intended aims and objectives. As part of the background, reference was made to national and international SOEs regarding how the state used them to pursue a developmental agenda. Notwithstanding the role of SOEs in the economy, reference is made to governance and management challenges which subsequently triggered transformation. Issues raised in the previous chapter steered the direction and orientation of the literature review.

This chapter is divided into two sections, the first of which deals with the following issues: definitions, history of corporate governance, importance of corporate governance, governance and ownership models, Boards' performance and leadership and theoretical frameworks on corporate governance. The second part highlights legislation and regulations as the basis for corporate governance in South Africa and how this environment impacts on SOEs, reporting and accountability.

2.2 CORPORATE GOVERNANCE

The notion of corporate governance has been defined and analysed from different perspectives, the implication being that consensus on a common definition has not been achieved. Academics and business practitioners approach corporate governance from either its internal or external perspectives. Arguably, these perspectives are not ideology-free, considering the inherent levels of contestation and tension between and amongst stakeholders.

According to Bhatta (1997), the term 'corporate governance' originates from the activities of companies operating in the private sector, which is geared to maximising profits or some other yardstick of success, such as the Economic Value Added criterion. Monks and Minow (1995: 1), arguably two of the foremost authorities on the subject of corporate governance, define corporate governance as the "relationship among various participants in determining the direction and performance of corporations". They proceed to list three primary participants in corporate governance, i.e., the shareholders, the management, and the Board of directors.

Corporate governance has been described as 'simply the systems by which companies are directed and controlled' (King, 1994: 1), whilst for Wixley and Everingham (2002: 1), it is more concerned with the structures and processes associated with management, decision-making and control in

organisations. The Department of Public Enterprise released the protocol on Corporate Governance, which defines corporate governance as the embodiment of a process and system by which corporate enterprises are directed, controlled and held to account (DPE, 2001: 3). The OECD Principle of Corporate Governance (2004) describes 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 Means (1932) and Fama and Jansen (1983), corporate governance refers to the set of internal and external controls that reduces the conflict of interest between the managers and shareholders deriving from the separation of ownership and control. These definitions imply that an individual's goals are not necessarily reconcilable with those of the corporations'. Similarly, the goals of the SOEs may differ from those of society. This means that the agenda of shareholders (principal), executives (agents) and Board members cannot be assumed as being in harmony. It is therefore important to develop standards with respect to structures, policies, processes and procedures in order to ensure consistent applications and accountability by the Board and executives respectively.

This study assumes that despite varying definitions of corporate governance, practitioners and academics alike concur that corporate governance seeks to protect the interest of the shareholders without undermining those of the stakeholders. In the context of the SOEs, the Boards are the custodian of corporate governance and represent the interest of the shareholders and other stakeholders in pursuit of developmental and economic goals.

The literature review highlights governance quality as the most critical variable in promoting development around the world. For example, the development crisis in Africa has been described as a "crisis of governance" (World Bank, 1998), and South Asia's massive human deprivation is rooted in poor governance (HDC, 1999). This study recognises that, despite the popularity of the term governance, it remains elusive as it holds different meanings to different people. Academics, practitioners and scholars in different disciplines do not seem to agree. According to Oluwo and Sako (2002: 13), some authors regard governance as concerned with rules of conducting public affairs, while others see it as steering and controlling public affairs. For the purpose of this study, both perspectives are relevant as they reflect the applications of rules of engagement for SOEs,

implied in which are issues relating to the institutional arrangement between and among the key players.

Hyden (1992) maintains that governance has become popular in the international development community, where it is now common in most organisations. In delineating governance, Hyden (1992) defines the concept as 'conscious management of regime structures with the view to enhance legitimacy of the public realm'. In its generic sense, governance refers to the task of running a government or any other entity, for example an organisation (Hyden, 1992: 5). Interest in governance varies however. For example, students in comparative politics are concerned with the 'rules of the game' in bringing about change from communism to democracy, thus governance tends to be associated with regime change (Hyden, 1992: 15). In international literature, governance emerged after the collapse of communism and the bipolar world order, in which context interdependence was increasingly seen as characteristic of the world and helpful in creating commonly accepted norms, rules and patterns of behaviour that facilitate international cooperation (Holsti, 1992).

Kooiman (1995) further captures the complexities associated with governance, viewing governing as not only involving singular actions but processes in which several actors often participate. The emphasis of governance is on 'interaction' between and among different role players. An interactive governance approach argues that many actors in different positions and levels of society are involved (Kooiman, 1998: 3). This framework resonates with the spirit of this study in that governance is linked to the values and interest of citizens, legislative choices governing SOEs, Boards and executive management. As Kooiman (1998) has pointed out, governance emphasises on the interaction between and among different role players, with these interactions being based on the predetermined rules of engagement. According to Hyden (1992), the ultimate aim of governance is to realign and manage relations between the state and citizens with a view to enhancing the legitimacy of the public realm. For this to happen, however, governance must be operationalised in a way that recognises different social actions. Regarding the SOEs, a similar approach is relevant in that corporate governance is ultimately about realigning and managing relations between the shareholding ministry, Boards and the executive management of the SOEs. This realignment enhances the legitimacy of SOEs in the public realm.

The corporate governance scandals noted at the SABC and Eskom are as a result of misalignment between the interests of different role players; hence the legitimacy of these SOEs has been challenged. It can also be argued that governance scandals or crises result from poor articulation or

non-adherence to rules of 'engagement'. This refers to the understanding of the legislative and regulatory environment, processes and procedures – essentially rules of engagement deal with corporate governance principles such as responsibility, honesty, accountability and transparency. These values must be observed, implemented and monitored by the entire governance value chain – line function ministry (Department of Communication and Department of Public enterprise), Board members and the executive managers of SOEs.

2.2.1 The evolution of corporate governance

The previous section alluded to the intensity and the evolution of governance. Corporate governance, on the other hand, is a fairly recent issue (Kendall & Kendall, 1998: 15). The adoption of private sector discourse in defining or describing state involvement in the market is also a new phenomenon. While this is the case, it is important to reflect on how corporate governance evolved in the private sector and how it influenced the public management theories over time. The history of governance has been characterised by tensions between ownership and control. Kendall and Kendall (1998) maintain that governance issues arise whenever a corporate entity acquires a life of its own - that is, whenever ownership of an enterprise is separated from its management. Shakespeare's Merchant of Venice illustrates a classic case of ownership and management tensions, as at this stage of evolution, corporate governance practices were already in sight, considering how the oversight role was exercised over those delegated with the task of running the venture (Tricker, 2000: 2). Similarly, King (2002) maintains that corporate governance has been practiced for as long as there have been corporate entities and yet the study of the subject is less than half a century old. The argument goes on to suggest that the term 'corporate governance' was scarcely used until the 1980s. This line of argument is supported by Tricker (2000) who indicated that the twentieth century had seen massive growth in serious management thought, but that corporate governance was until recently, overlooked.

In a similar vein, Morck & Steier, 2005) argues that major institutional changes require major disruptions, such as wars or disasters which weaken the elite sufficiently enough to interrupt its control of state. One critical historical moment was the Great Depression of the 1930s, when different countries set in different directions shaped today's differences in corporate governance. Such crises activated different responses in different countries. For example, in Sweden the effects of depression led to social democracy, in Germany, National Socialism and in Italy, Fascism (Morck & Steier (2005: 38). The merit of this argument is that corporate governance is an important determinant of economic power and thus a key plank of reform in many political ideologies.

Tricker et al. (2000) also asserts that important theoretical and practical dimensions have been developed for the management of finance, marketing, operations and other aspects of the modern organisation, yet little concern has been shown for the role of the Board of directors. The argument is extended to other branches of management, such as strategic management, that also assumed prominence without clearly positioning or articulating the role of the Board. King (2002) maintains that although the theoretical exploration of the subject is relatively new, the practice of corporate governance is ancient. Tricker (2000) drew attention to the importance of the link between organisation, environment and Board power. Three other significant developments occurred in corporate governance thinking: i) in the United States of America (USA), with the emphasis on independent outside directors and audit committees; ii) in Europe, with the promulgation of the two-tier Board; and iii) on both sides of the Atlantic, in debates about stakeholder notions.

According to Cheffins (2015), since the 1932 publication of Adolf Berle and Gardiner Means' *The Modern Corporation and Private Property*, shareholder passivity created latitude for top executives of U.S. public companies. Cheffins (2015: 2) further argues that it was only in the 1970s that debates in the United States about managerial accountability, Board structure and shareholder rights began to be explicitly channelled through the term "corporate governance." The 1970s also saw a questioning of the role of the major corporation in society. Broadly, the argument was made that public companies have responsibilities beyond their strictly legal duty to their shareholders

In the 1980s, the market-driven, growth-orientated attitudes of Thatcherism and Reaganite economics overshadowed broader stakeholder concerns. It has been argued that the director's responsibility to increase shareholder value was reinforced. The profit-performance model became the basis for the privatisation of state-owned enterprises in sectors such as rail, coal, electricity, gas and water in the United Kingdom and, gradually, around the world (OECD, 1997). The debate on privatisation has a number of theoretical underpinnings, the profit model being one of them, with serious implications for the Boards in terms of performance as it became apparent that performances in most state-owned enterprises were poor.

In the United Kingdom, the report of the Committee chaired by Sir Adrian Cadbury (1992) on the financial aspects of corporate governance majorly influenced thinking about corporate governance. The Cadbury Report as it was later known played a significant role in influencing thinking around the world. Other countries followed with their own reports on corporate governance. These included the Vienot Report (1995) from France and the King Report (1995) from South Africa. As with the Cadbury Committee Report, these reports focused particularly on the potential for abuse of corporate

power. Similarly, they called for greater conformity and compliance at Board level, recommending the use of audit committees as a bridge between Board and external auditor, the wider use of independent outside, non-executive directors, and the separation of the role of chairman of the Board from chief executive. These reports thematically focus on checks and balances to avoid executive domination of decision-making, and to protect the rights of shareholders, particularly minority shareholders. The research determines if these developments continue or have a profound impact on the design of corporate governance structures, processes, and systems of accountability and oversight of the SOEs.

2.2.2 Essential principles of corporate governance

In order to make sense of the legislative and regulatory environment, it is important to discuss key concepts and principles associated with public finance raised in the Constitution and other Acts. Concepts such as efficiency, effectiveness, transparency, accountability, monitoring and evaluation are synonymous with the disciplines such as Management, Economic and Finance. Corporate governance concerns the way in which entities are governed, managed and held to account. Therefore, concepts such as responsibility, transparency, accountability, monitoring and evaluation of the resources are inextricably linked with corporate governance.

In the context of democracy, political representatives, and bureaucrats must account for their actions in carrying out their responsibilities. Accountability serves as an alignment measure between the principal's expectations and the agent's delivery. This means that those entrusted with the public goods or entities must display responsibility when performing their functions. According to Cloete (1986), their conduct should be beyond reproach so that they will be able to account for their acts in public. McGee (2002) argued that accountability also involves constructing suitable systems that allow for decision-making in a context that promotes honesty and productivity. South Africa's system of government includes the executive, legislative and judiciary. All these have different accountability mechanisms as dictated by the Constitution. Accountability is therefore a personal obligation, not only of the appointed departmental accounting officer, but of all other officials as well. Each public office bearer is expected to display a sense of responsibility in executing his/her official duties and even beyond that, namely to display absolutely irreproachable ethical behaviour (Gildenhuys, 1993). The law requires that Board members and executive managers of SOEs provide information to those being served (xxxx). For example, Chapter 2, Section (32) of the Constitution promotes access to information as a way of promoting accountability. Doherty and Horne (2002)

indicate that accountability is not about apportioning blame or praise. It raises fundamental questions about the purpose and practice of the public service organization. SOEs such as the SABC and Eskom are serving the interests of the broader public with respect to educational programming which entrenches democratic values and providing a source of energy for growing the economy, respectively. Serving the country via the Constitution means that accountability forms the bedrock of good governance. SOEs' activities such as the shareholder compact and strategic plans also make reference to 'good' governance. In the context of the legislative and regulatory frameworks, good governance refers to compliance requirements as expected by the National Constitution. The concept associated with good governance includes but is not limited to discipline, accountability, fairness, responsibility and transparency. The King II (2002) and King III (2009) reports make reference to these characteristics.

2.2.2.1 Transparency and public finance

As stated earlier, SOEs are the delivery arm of the State, which means government officials are expected to act in the best interest of the public. Acting in the best interests of the public means that bureaucrats and SOEs management must be guided by the laws of the country. Chief among these is the Constitution of the Republic. For example, Chapter 2, Section (32) of the Constitution deals with access to information. It posits that everyone has the right to information held by the state and its organisations. This means SOE officials do not have a choice but to comply with the Constitutional requirements. Adherence to such requirements is indicative of a transparent outlook required from SOEs. According to Sekoto and Van Straaten (1999) openness and transparency promote a customer-focused approach by placing citizens in a position where they can contribute to the improvement of service delivery by obtaining the correct information to enable them to assess the government's performance.

Taking a cue from the Constitution, it is important to locate transparency, openness and accountability in the context of the Public Finance Management Act of 1999. The PFMA is one of the most important pieces of legislation passed by the first democratic government in South Africa. The Act promotes good financial management to maximise service delivery through the effective and efficient use of limited resources. This means that public officials and the SOE management have the responsibility to ensure that the limited resources in their care are managed properly. In part, proper management must address the issue of transparency and accountability in line with the prescripts of the Constitution and the PFMA, amongst others. Similarly, transparency is critical for

good corporate governance in that stakeholders can make a meaningful analysis of the company's actions, its economic fundamentals and the non-financial aspects pertinent to that business (IoD, 2002). The notion of transparency, accountability and indeed effective financial management, are the critical components of good corporate governance. However, the majority of government departments, and indeed the SOEs, are battling to live up to the Constitutional mandate. In part, the challenge in managing resources relates to the institutional technical capacity and/or the organisational culture and leadership which promote these values.

The establishment of Performance Monitoring and Evaluation (M&E) processes underscores the importance of transparency and accountability, and these values and principles finds expression in the Constitution and PFMA. Arguably, M&E is a policy analytic method used to produce information about past causes and consequences of policies. Ismail, Bayat and Meyer (1997) argue that government should, during and after the policy implementation phase, monitor and evaluate the overall performance of its policies to get an idea of the effectiveness and efficiency aspects of policies and programmes. It also serves to indicate what objectives and outcomes have been achieved and what the shortcomings are. It is therefore a necessary corrective tool as they ensure accountability of public resources.

The issue of M&E is also woven into a number of pieces of legislation and regulations. For example, reporting requirements specified in sections 32 and 40(4) of the PFMA require that expenditure and revenue information for all programmes be provided each month to the National Treasury. The significance of M&E is also captured in the formation of the Department of Performance, Monitoring and Evaluation (PME) in 2010. According to the Presidency (RSA, 2011), the PME objective is to provide a mechanism for improving management practices in departments and SOEs. In translating this vision into reality, the PME has partnered with other Departments, such as the Department of Public Service and Administration (DPSA), National Treasury, provincial Treasuries, the Office of the Auditor General, the Office of the Public Service Commission, and the Offices of the Premiers, to carry out the assessments and to offer support to departments to develop and implement action plans that address identified areas of weakness (The Presidency; Department of Performance Monitoring and Evaluation, 2011). The researcher also argues that despite the legal requirements and the monitoring and evaluation (M&E) of finances in general remain an essential element in managing the performance of any spending agency. Without sound M&E, processes and

systems embedded in formal performance management systems, the shareholders cannot hold management accountable; which means effective management and governance cannot be possible.

Chapter 2, Section (32) of the Constitution addresses access to information. It proposes that information held by the state, or any information held by another person and is required for the exercise or protection of any rights, be accessible to everyone by right. Access to Information - this piece of legislation has a direct compliance bearing on the SOEs. This means should any individual or party require information regarding the activity of the SOE, they should have access to such information and non-disclosure amounts to Constitutional transgression. Lines of reporting and accountability already burden SOEs. While the value of transparency and accountability is appreciated, it must be done in a coordinated manner. Multiple reporting comes at a cost. As a result, it increases administration and the financial burden on the side of the SOEs.

2.2.3 The significance of corporate governance in SOEs

The role of the SOEs in furthering the agenda of a developmental state in setting the direction and pace of economic development and social cohesion is well documented (UNCTAD, 2007; Leftwich, 1996; Johnson, 1982). The most basic element of the developmental state is a "major preoccupation … to ensure sustained economic growth and development on the back of high rates of accumulation, industrialisation and structural change" (UNCTAD, 2007: 60). This section looks at how a developmental state uses the SOEs to stimulate economic growth. In a similar vein, the study argues that although they are critical instruments for development, their performance has been and will continue to be of great concern, unless good corporate governance practices are institutionalised.

The state ownership of SOEs remains significant in middle and lower income countries, despite extensive privatisation over the past decades. Globally, SOEs account for 20% of investment and 5% of employment. In Africa, they produce around 15% of GDP, in Asia 8% and in Latin America 6%, whereas in Central and Eastern Europe the sector remains significant, accounting for 20 to 40% of output (World Bank, 2006: 1). Based on these figures, it is clear that the state plays an important role in the economy, however this has sparked fierce debate. At a theoretical level, support for state intervention has been derived from various notions of market failure, although regulatory failures also needed to be considered (OECD, 2005).

According to the World Bank, state intervention and ownership have been advocated as an alternative to regulation, especially for natural monopolies. It was believed that through these

industries, direct government ownership would allow for greater economies of scale and more efficient pricing (World Bank, 2006; OECD, 2005). In practice, the state ownership in many countries went beyond natural monopolies as enterprises were nationalised as a means to better labour relations as part of bringing productivity into state hands. Despite their popularity, the overall performances of many SOEs have been disappointing. The argument presented by the World Bank is that many have been less productive than their private counterparts and have been used by politicians to create patronage and reward their supporters. The need to support failing SOEs has also distorted the financial systems and monetary policy, at times contributing to wider macroeconomic crises (World Bank, 2006).

The fiscal burden had reached serious levels by the end of 1980s, and was contributing to the deterioration of the fiscal situation. A spiral of increasing public deficit, rising interest rates and growing inflation had reached alarming proportions and needed to be brought under control (OECD, 2005). Starting in the late 1970s, many countries began reforms aimed at enhancing SOE performance and by the 1980s and early 1990s; extensive restructuring had become a norm in the public sector. Choang and Lopez- de-Silanes (2007) and the World Bank (2005) indicated that the decades of reform had made clear that the fundamental problem in governance was responsible for poor performance. Although some of the state-owned enterprises were successful, it became clear that companies with dispersed shareholders present significant challenges to governance and require a developed institutional framework. It is against this backdrop that the OECD Steering Committee on Corporate Governance was asked to develop a set of non-binding guidelines and best practices on corporate governance of state-owned enterprises (OECD, 2005).

The inherent ‘principal agency problem’ in SOEs has been buttressed by the international corporate governance scandals. According to Lipman and Lipman (2006), good corporate governance helps to prevent corporate governance scandals, mismanagement and fraud. There is evidence that good corporate governance produces economic benefit to an organisation. One can argue then that risk management is increasingly becoming a key element of good corporate governance. Although strong governance may not prevent corruption, it can ensure the early detection and elimination of acts of corruption. To reiterate this point, Khoza and Adam (2005) argue that SOEs provide the state with the means to direct investments in order to redress past imbalances and to create the infrastructure required to stimulate economic growth. In order to achieve these objectives, state-owned enterprises need to be efficient, well run and in a position to deliver on the government’s mandate.

2.2.4 Governance and ownership models of SOEs

The corporate governance issues and challenges noted at the SABC and Eskom point to contestations of the current model of corporate governance in the country. The Presidential Review Committee instituted by President Jacob Zuma in 2010 bears testimony to these issues as it was set up to investigate, inter alia, the impact of governance models on SOE performance in South Africa. This study recognises the importance of governance models as variables worth considering, as they have implications on how the SOEs perform. The literature review on the OECD and non-OECD countries points to three main types of governance models, namely, centralised, decentralised and dual models (World Bank, 2006), analysed with a view to explicate their implications on corporate governance globally and in South Africa.

2.2.4.1 Centralised, decentralised, and dual models

According to Vagliasindi (2008), the centralised model has often resulted from recent implementation of a privatisation programme. In this model, most SOEs have been put under the responsibility of one ministry or agency (World Bank, 2006). The case in point is the Ministry of Finance (Denmark, the Netherlands and Spain) or the Ministry of Industry (Norway and Sweden), which is used to preside over the most important SOEs. The main advantage of this model is the clear accountability of SOEs to the government and the ability for government to exert fiscal supervision and to form a coherent policy. The downside of this model is the likelihood that the designated ministries will command sectoral expertise (i.e., energy or telecommunication). In the absence of sound sectoral expertise within the line function ministry, the performance and monitoring of SOEs is likely to suffer. The line function ministries are designed to provide oversight to avoid the principal-agent problems. Effective oversight is practical, provided the ministry has the technical capacity not only to develop performance agreements with the Boards, but also to enforce them through a rigorous monitoring system.

Vagliasindi (2008) posited that the decentralised governance model is characterised by a situation in which the Line Ministry exercises the ownership function, a model said to have been prevalent in Eastern European countries, such as the Czech Republic, Poland and Hungary, prior to their transition to a market economy. Key challenges noted with this model of governance relate to the separation of ownership and regulation, and the risk of government interference in the day-to-day management of the SOEs. This model has serious implications for the Board as the custodian of

corporate governance, as it likely to be pressured to address or play a political role rather than a professional role.

The dual model is common among developing countries such as South Africa, Mexico, and Turkey (Vagliasindi, 2008; World Bank, 2006). In a dual model, both the sector ministries and 'common' (i.e., finance) ministries are responsible for exercising ownership rights. Different ministries may also have the right to nominate representatives to the Board. Similarly, dual responsibilities may include the approval of major transactions and strategic plans as well. Although the dual model is practiced in South Africa, its success hinges on a strong governance arrangement between different ministries, without which a lack of capacity to hold the Board accountable may lead to multi-principal agency problems. However, risks associated with this model can be addressed through formal contractual arrangements between senior officials and ministries to reinforce accountability, and so bridge the political and administrative interface (Vagliasindi, 2008).

In South Africa, the President enters into a performance agreement with the line function Ministers, who are in turn expected to sign a performance contract with an SOE through the Board chairperson. The Department of Performance, Monitoring and Evaluations (PME) was established in 2010 to provide a mechanism for improving management practices in departments. In translating this vision into reality, the PME has partnered with other departments, such as the Department of Public Service and Administration (DPSA), National Treasury, provincial Treasuries, the Office of the Auditor General, the Office of the Public Service Commission, and the Offices of the Premiers, to carry out the assessments and to offer support to departments to develop and implement action plans that address identified areas of weakness (The Presidency; Department of Performance Monitoring and Evaluation, 2011). These measures affirm the importance of performance monitoring, however issues relating to agency problems remain, considering the multiple reporting framework which binds SOEs to function in compliance mode.

2.2.5 Ethics and corporate governance

The literature review on agency theory points to the harsh reality of the importance of incentives and self-interest in organisational thinking. The theory also proposes that much of organisational life, whether desirable or not, is based on self-interest (Eisenhardt, 1989). This philosophy resonates with that behind the proposed study, as self-interest of individuals/agents will continue to flourish to the detriment of the SOEs unless strategies on ethics and ethical behaviour are pronounced.

South Africa currently faces enormous challenges in its efforts to achieve sustainable human development, and this study therefore seeks to establish the importance of SOEs in fostering a government developmental agenda. However, many countries around the world, including South Africa, are marred by claims of corruption, maladministration and fraud in SOEs. Therefore, pursuit of good corporate governance for SOEs cannot be divorced from ethics and ethical behaviour. Hondeghem (1998) argues that ethical behaviour is essential for an effective and stable political-administrative authority as well as for social and economic structures. The ethical behaviour in the public sector and in SOEs calls upon the line ministries and Boards to provide leadership.

In an attempt to thwart the unethical behaviour, governments have promulgated legislation to safeguard the interest of the shareholder, an approach that gives credence to Aristotle's view that humans are not inherently virtuous and that ethics must be taught and practiced. In addition, virtues are acquired by first exercising them and people become just by doing just acts (Singer, 1994). Kant, who concurs with Aristotle, argued that ethics were not derived from human feelings. Ethics can be identified by the use of reason (Singer, 1994). For example, since public officials in South Africa operate in a diverse society, their ethical convictions and accountability to the general public will inevitably be tested.

2.3 THE THEORETICAL/CONCEPTUAL FRAMEWORK OF THE STUDY

The theoretical perspective/framework of this study provided the researcher with a context for organising the examination of the identified research problem and its attendant data collection processes (Creswell, 2009: 15). The researcher was able to organise ideas that demonstrated the study as a logical extension of current knowledge by organizing a theoretical framework, based on theories, conceptual paradigms, or assumptions.

The conceptual framework itself is informed by issues raised in the literature review. At the outset, the researcher looked at different definitions of corporate governance and was captivated by how Berle and Means (1932) and Fama and Jansen (1983) defined it. They defined corporate governance as a set of internal and external controls that reduce the conflict of interest between the managers and shareholders deriving from the separation of ownership and control. On this basis I looked at legislation and regulation, policies and procedures governing SOEs. As a consequence of addressing the interface between Board and management I looked at strategy development and it impact act on corporate governance. Similarly, the review looked at performance monitoring of Boards as well as funding mechanism for SOEs. The afore-mentioned themes: legislation and regulation, interface

between Boards and management, strategy development, Boards' performance monitoring and funding of SOEs constitute the conceptual framework. Each of these themes is discussed.

The conceptual framework cited above leans towards theories which accentuate human behaviour, especially those in the position of power and trust. For example, the Agency theory recognises conflict of interest borne out the separation of ownership and control or management. Similarly, stewardship theory recognises inherent good shared by those in the position of power. Stakeholder theory brings to life, the Constitutional values and ethos with regard to consultation and participation in decision making processes. Theories informing the study were carefully considered, based on their strengths and possible contributions vis-à-vis corporate governance of SOEs.

The manner in which the SOEs are controlled, managed and held to account can be explored within a number of theoretical and conceptual frameworks. This thinking is supported by Mallin (2007) in that many disciplines have influenced the development of corporate governance, and as a result, the theories that have fed into it are varied. Against this backdrop, the study used the following theories, namely, agency theory; stewardship theory, stakeholder theory, public choice theory and new public management theory.

The use of multiple theories is recognition that no one theory is sufficient for understanding, evaluating or designing governance structures. Corporate governance in SOEs encapsulates a number of pieces that are complex in their own right. The implication is that reliance on just one perspective is unlikely to be rewarding in practical terms for understanding, designing or even improving corporate governance systems. The SOE environment is complex and dynamic and therefore required an interdisciplinary, holistic, theoretical approach based on the theories mentioned below; that is, the agency theory, the stewardship theory, the stakeholder theory, the public choice theory, and the new public management theory.

2.3.1 The agency theory and corporate governance

Twenty years into democracy, South Africa's SOEs environment has seen many corporate governance scandals in both private and public sectors. Incidents of price collusion in the build up towards the 2010 FIFA World Cup have revealed how the construction companies colluded by fixing the process and this has had a devastating effect on small construction companies as they could not compete. In putting this issue into perspective, the City Press, dated 16 November 2014, revealed that about R7.5 billion profit is what seven of South Africa's construction companies stood to earn by allegedly colluding on tenders for the country's 2010 World Cup stadiums. Companies

alleged to have rigged tenders for six World Cup stadiums allegedly agreed to price a R17.5 billion profit margin into their bids, the margin being significantly higher than usual profit margin in the constructions sector. Equally, SOEs such as the SABC, Eskom, South African Airways (SAA), Transnet and Denel have also had their share of malpractice, fraud and corruption in management and at Board level. These incidents call for interrogation at all levels as the impact undermines political and economic stability.

The size of SOEs, coupled with the separation of ownership and management, introduces dynamics in terms of governance and management. Huge economic risks become inevitable when the interests of the shareholders and stakeholders are irreconcilable or aligned. The World Bank (1998) noted that the development crisis in Africa has been described as a "crisis of governance". The agency theory has been chosen for this study as it has made a contribution to organisational thinking, especially with regard to information or how it can or must be treated. According to the agency theory, information is a commodity; it has a cost and therefore can be purchased (Eisenhardt, 1998). It also relates to organisational risk and how it must be managed. These contributions are pertinent to the SOEs, considering a number of contestations and tensions surrounding their existence.

Agency theory has its roots in economic theory, and was articulated by Alchian and Demsetz (1972) and developed by Jensen and Meckling (1976). Authors such as Arrow (1971) and Wilson (1968) have explored and written extensively on the notion of risk sharing among individuals or groups. According to this literature, a risk sharing problem arises when cooperating parties had different attitudes toward risk. Eisenhardt (1998) indicates that agency theory broadens this risk sharing to include an agency problem which occurs when cooperating parties have different goals based on the division of labour. The agency theory presents a global agency relationship in which one party (principal) delegates work to another party (agent).

This theory also explores this relationship through the metaphor of a contract (Jensen & Meckling, 1976). According to Lane (1993), the principal agent starts from a contractual perspective, and the contractual agreement establishes a hierarchical relationship between the contractual parties. One party, the principal, is given the right to instruct the other (agent), who promises to work to promote the interest of the principal. The principal-agent perspective highlights the possibility of contractual failures, hence risk mitigation strategies are sought in order to control the agent. The need to employ a control mechanism points to conflict of interest in instances where the agent may not be compliant with the contract. Based on the conflict of interest, Lane (1993) notes a governance problem emerging in the public sector, namely adverse selection and moral hazard. The former arises when

the agent has information which is inaccessible to the principal, which also means that the agent may misrepresent information to its advantage in negotiating the contract. The latter arises when the principal cannot observe the action taken by the agent but evaluates its performance based on those actions.

Similarly, agency theory is used in the context of SOEs to analyse the relationships between the different stakeholders (i.e., Board and executive management). The entire governance chain is explained through the metaphor of contract between and among the cooperating parties. Borrowing from agency theory, separation of ownership and control must be managed through contract as the cooperating parties may have different goals based on division of labour. For example, the interest of the Board members may not be aligned to those of the shareholding ministry. Similarly, the interest of the Board may not be reconcilable with those of the executive management of the SOEs. The OECD definition of corporate governance succinctly captures this outline as a "set of relationships between a company's, management, its Board, its shareholders and other stakeholders" (OECD, 2004). To manage any institutional relationship, there must be rules, and diffuse ownership of SOEs calls for tighter rules and regulations considering divergent interest. Colley, Jacquiline, Doyle, Logan and Stettinius (2003) pointed out that it is inconceivable for conflict of interest to occur when the organisation is owner-managed.

The implication is that SOEs are bound to experience conflict of interest based on a division of labour that results from the separation of ownership and management. Given the inherent conflict of interest between agent and principal, the agency theory puts forward a mechanism to align the interests of the owner with that of the executives. It also deals with a controlling mechanism designed to prevent acts which are not aligned with the principal interest, such as fraud, corruption or shirking on the part of executives (agent). This essentially translates into Board structures, rules on strategy setting and the strategic decision making process, reporting and controlling mechanisms and managing risk as an indispensable element of business.

Although agency theory presents the Board as one of the control mechanisms, it continues to treat management with suspicion. The overall argument is that information asymmetry (deception) is bound, as the principal and the agent have access to different levels of information (Mallin, 2007). In practical terms, this means that the principal (line department and Boards) are in a disadvantaged position because the agent (management) has more information or may decide to withhold specific information from the Board. The theory is that under conditions of incomplete information and uncertainty, a situation which characterises most organisations, two agency problems arise: adverse

selection and moral hazard. Adverse selection is the condition under which the principal cannot ascertain whether the agent has accurately represented his/her ability to do work for which s/he is paid. Moral hazard is the condition under which the principal cannot be sure whether the agent has put in maximum effort (Eisenhardt, 1989). Therefore, contracts between the line department and the Boards and between the Boards and executive management respectively are designed to secure the interest of the shareholders. This means that a governance value chain must comprise people with the technical skills and capacity to monitor the contract. For example, at the departmental level, the division charged with oversight must possess sufficient skills and capacity to monitor the Board's performance. Equally, the Boards must possess the necessary technical skills and competencies to monitor the performance of management.

Inherently, this theoretical view is based on the belief that 'agents' are more self-interested than altruistic and cannot be trusted to act in the best interest of others, but rather maximise their own utility (Coase, 1937). In an attempt to mitigate such risks, agency theory advocates the control mechanism in the form of Boards to monitor and prevent any problems that may be brought about by principal-agency relationship (Mallin, 2007). Authors such as Perow (1968) maintain that agency theory has established the importance of incentives and self in organisational thinking. Organisational life is based on self-interest, hence a need to establish governance structures, processes and systems to safeguard the interest of the shareholder. Governance structures impact on contracts between shareholder and agents (Demsetz, 1983; Fama, 1980; Fama & Jensen, 1983), and include Boards. This approach is particularly relevant in the context of SOEs, where the risks abound due to the complex nature of the institutional arrangements between line function department, Boards and executive management.

In the context of a young democracy, it is important to outline rules of engagement for Boards and management. Rules of engagement constitute an attempt by shareholders to secure returns on investment on assets managed by Boards and management. Notwithstanding the need for tight controls, which is the position maintained by agency theory, trust issues cannot be secured via this approach alone. Changes in governance and legislation over the past 20 years are meant to align the interest of the shareholders and those of agents, however incidents of corruptions, malpractice, fraud and wasteful expenditure continue. This suggests there is a need to look at other mechanisms to safeguard the interest of the shareholders.

2.3.1.1 The relationship between the conceptual framework and agency theory

The agency theory posits that conflicts of interest emerge when ownership is separated from management. Berle and Means (1932) argued that separating ownership and management in organisations leads to the diluting of shareholder power, a relative weakness in the shareholder control that affords management greater control and, according to the agency theory, this promotes the interest self-serving managers (Jensen & Meckling, 1976). In the anticipation of divergence of interest between the shareholder and agents, Boards are seen as instruments which protect the interest of the shareholder.

As mentioned earlier, the conceptual framework is based on the following pillars: legislation and regulatory framework as basis for interface between Board and management and Board performance monitoring and evaluation. The linkages between the conceptual framework and agency theory can be justified along the following lines. 1) Legislation such as the PFMA, and the Companies Act protect the interest of the shareholders and therefore adherence is key; 2) Risk management presupposes that organisations, through the Boards, have the responsibility to manage the resources and mitigate risks associated with the separation of ownership and management – Boards are entrusted with this function as they are the custodians of corporate governance; 3) The mandate of the SOEs finds expression not only in the legislation but also through the Shareholder Compact hence the need for monitoring and evaluation. As pointed out earlier, the shareholder compact forms the basis for accountability of the Boards and management on how the resources are being used.

The M&E rests at different levels: Parliament through portfolio committees and regulatory bodies such as ICASA and NERSA; at the Board level through the Shareholder Compact. The thread which cuts across these different structures is borne out of the separation of ownership and management which, according to the agency theory, presents conflict of interest between the shareholder and agent. Based on this arrangement, it is imperative that shareholders entrust structures such as the Boards to provide strategic leadership and to enforce compliance.

2.3.2 The stewardship theory

The 20-year period into democracy questions the extent to which public officials are acting in the best interest of the shareholder. The SOEs and general public sector administration has seen a wide range of criticism against corruption, maladministration and fraud. These incidents highlight limitations of stewardship theory as it presumes that public officials are not only motivated by money but also driven by intrinsic values of public common good. The prevailing “culture” of

consumption and self-serving by some of the public officials suggest weaknesses in the control environment for which agency theory advocates.

As Berle and Means (1932) and Fama and Jansen (1983) argued, corporate governance is about internal and external controls that reduces the conflict of interest between shareholders and managers. Taking this argument further, internal controls assume policies and procedures borne out of legislation and regulation. Boards and managers, in their capacity as the stewards, then translate the legislation and regulation into policies and procedures and manage them. Over the past years into democracy South Africa has seen a deterioration of stewardship ethos, hence corruption, maladministration and fruitless and wasteful expenditure dominate public discourse. Despite these limitations, stewardship theory remains a valuable framework for this study.

Although the agency theory forms the basis for analysing the institutional relationship between the line department, Boards and the executive management, it has limitations. These warrant exploration of other theories which could explain the complexities associated with governance of the SOEs. It is against this backdrop that scholars such as Perrow (1986) and Davis, Schoorman and Donaldson (1997) have been critical of the agency theory perspective. The basis of the criticism is largely because of the limited ability to explain the sociological and psychological mechanism inherent in the principal-agency relationship. Davis, Schoorman and Donaldson (1997) developed the stewardship theory of management as a counter strategy to agency theory. As noted above, the agency problem revolves around individual 'agents' who consider themselves only as individuals, without any other meaningful attachments. However, stewardship theory holds that individuals in management positions do not primarily consider themselves as isolated individuals but rather as part of the firm. For Tian and Lau (2001), stewardship theory focuses on developing mutual trust and cooperation between principal and steward, the implication being that managers, including those in the SOEs, seek other ends besides financial ones and this may include a sense of worth, altruism, a good reputation and a sense of purpose. The stewardship theory holds that managers inherently seek to do a good job, maximise company profits and bring good returns to shareholders. They do not necessarily do this for their own financial interest but because they feel a strong duty to the organisations. The steward manager maximises the performance of the organisation, working under the premise that both the steward and the principal benefit from a strong organisation. This model provides an alternative lens through which the relationship between the Board and the executives of the SOE can be explored. The inherent assumption presented by stewardship theory is that executives of SOEs can maximise the performance of the organisation.

The main differences between agency theory and the stewardship theory are in the following aspects. First, the underlying assumption of agency theory is that managers will behave rationally, opportunistically and in a self-serving way, while the stewardship theory assumes they are trustworthy and cooperative. Second, it leads to different implications from those of agency theory, which emphasises monitoring and control instead of relying on trust and relationship-building between the principal and steward. Third, the focus of agency theory is on the independence of different groups (Boards, committees) which might lead to goal conflict, whereas the stewardship theory focuses on understanding and identification between them to achieve 'goal alignment' (Wicaksono, 2009).

The researcher acknowledges values driven through the stewardship theory in the sense that managers as stewards of SOEs also seek to maximise the performance of the organisation, for mutual benefit. However, reliance on stewardship without adequate control as advocated by the agency theory can be disastrous for any organisation. The corporate governance challenges in many SOEs, including the ones under study, point to the weakness of stewardship approaches. The challenge lies in finding the delicate balance between the control environment and the entrepreneurial environment – the latter refers to space accorded to managers to exercise different and innovative approaches in discharging their responsibilities.

2.3.3 The stakeholder theory

Stakeholder engagement has become central to South Africa's democracy – a political dispensation which distinguishes itself from an apartheid regime based on racial and ideological hegemony. In accentuating this point, the preamble to the Constitution reads "we the people of South Africa, Recognise the injustice of our past; Honour those who suffered for justice and freedom on our land; Respect those who worked and developed our country". Central to the new Constitution is the Bill of Rights which recognises rights such as Freedom of association, freedom of expression and labour relations, to mention but a few. The salient points of stakeholder theory are that consultation and participation are particularly relevant in South Africa's labour and political movement.

The two previous theories provided a useful frame of reference and dimensions through which governance of SOEs can be viewed and analysed. The stakeholder theory is rooted in the management discipline of the 1970s, further developed by Freeman (1984) to incorporate corporate accountability to a broad range of stakeholders. The term 'stakeholders' refers to groups of constituents who have a legitimate claim on the firm (Freeman, 1984; Pearce, 1992), as opposed to

agency theory wherein the managers (agents) are working for and serving the shareholders. The stakeholder theorists suggest that managers in organisations have a network of relationships to serve, including suppliers, employees and business partners.

In the context of SOEs, the citizenry have a legitimate claim on them as they are theoretically the owners. The World Bank (2006) buttressed the complications associated with SOE ownership by stating that it is not as clear cut as the ownership of a private business and thus giving credence to stakeholder theory. The essence of the argument is that firms are embedded in a network of stakeholders. Mallin (2007) proposes that stakeholder theory takes into account a wider group of constituents rather than focusing on shareholders. Benn and Dunphy (2007) give a broad definition of stakeholder: "[any] group or individual who can effect or is affected by the achievement of the organisations is one which at least satisfies but preferably adds value for all stakeholders but not just shareholders." In South Africa, the labour market is governed by a series of legislation which recognises a collective bargaining process. The unions' role is therefore at the heart of labour market policies which recognise stakeholders' involvement in decision-making processes.

The proponents of stakeholder theory contend that the traditional Anglo-American view of the organisation is too narrow in that it focuses on shareholders. Consequently, it should be extended to embrace the interest of other groups associated with the organisation, including employees and community groups (Keasey, Thompson & Wright 2005). Stakeholder theory has influenced the governance structure of the state-owned enterprises, for example, the composition of the SOE Board is derived from different constituencies, such as civil society and business. Including a wider stakeholder constituency in key decision-making structures and processes is an acknowledgement of the limitations of an Anglo-American model of governance that favours the shareholders.

Mallin (2007) noted that traditional stakeholder theory argues that managers of firms should take into account the interest of all stakeholders (employees, unions) in a firm, but because theorists refuse to outline trade-offs against the interest of each of these groups, there are no defined measurable objectives and this leaves managers unaccountable for their actions. Benn and Dunphy (2007) have argued that despite the importance of stakeholder engagement in creating a sustainable organisation, the theory is limited by its adequacy in addressing equitable management risks. The difficulty of accountability from the perspective of the stakeholder theory has been eloquently advanced by Bergkamp (2002, in Benn & Dunphy, 2007). The key argument here is that if organisations are accountable to multiple stakeholders, genuine accountability will be lost. This view

is shared by the World Bank, namely those in situations in which organisations have ill-defined objectives, accountability can be easily lost.

2.3.4 The public choice theory

According to Butler (2012), intellectuals have long placed great faith in government and its institutions. From Plato onwards, the concern has always been how to get the right people into office and most importantly getting them to focus on doing the right things. Arguably, the main concern is, and has always been, the ability of public officials to act logically and rationally and in the public interest. The reality is that the public is not homogeneous and therefore their interests vary and change over time. The institutions of government, such as SOEs, are subjected to an ever changing political environment which makes it difficult to operate. Public Choice theory offers a useful insight on how collective decisions are made, hence it forms part of the theories informing the study.

Butler (2012) argues that Public Choice is often referred to as a school of economics as it uses the methods and tools of economics to explore how politics and government works. An economic approach is a useful approach as government seeks to benefit the public, through profits generated in the private sector and indeed through SOEs as some function along private sector models. The leading proponents of Public Choice theory (Buchanan & Tullock) applied the economic view of human beings systematically through government institutions to show how legislators and officials use the political processes, such as lobbying, and at worse, manipulation, to advance their private interest as they do in the market place. This view is held by the researcher, hence mitigation strategies such as regulations are needed to insulate SOEs against those who pursue their interest at the expense of the public.

The researcher believes that public choice theory played an important role in shaping debates that contributed to the restructuring of SOEs. At the heart of public choice theory is the behaviour of bureaucrats, who are seen to be driven by personal as opposed to a collective interest in implementing government policies efficiently and effectively (Schwartz, 1994). During the 1980s, governments in industrialised countries, such as New Zealand, Australia, Denmark and Sweden, tried to reduce the growth of their public sector and reduce fiscal deficit by replacing bureaucratic methods in the provisioning of government goods and service with market-oriented methods (Schwartz, 1994). The architect of restructuring sought to insulate the state from rent-seeking citizens and bureaucrats by introducing a competitive ethos, incentives and better working conditions.

Economists have designed opportunity cost as one of the concepts used by the public choice theorists. This concept is essentially about what one sacrifices (time or effort) in anticipation of reward later on (benefit). Public Choice theory is about applying such economic concepts in terms of how collective decisions are made in areas such as the design and workings of Constitutions, election mechanisms, political parties, interest groups, lobbying, bureaucracy, parliaments, committees and other parts of the governmental system (Butler 2012). The mandates of the SOEs are as economic as any other private entity in that they too involve a choice between costs and benefits, not just financial costs and benefits, but, more broadly, between whatever has to be sacrificed and whatever is gained as a result. For example, the mandate of the SABC is to educate, inform and to entertain South Africans. The notion of educations relates to the concept of opportunity cost in that educating society is more of a long term endeavour. The long term economic benefits of education is that of an educated populace and this require immediate sacrifices.

The argument presented by Public Choice scholars is that the decision-makers are as self-interested as anyone else. Essentially, it looks at the way individual motivation affects the outcome of the collective decisions. This argument is pertinent to the study as the agenda(s) of executives and Board members are not necessarily in unison. This implies that given a chance, officials can pursue a narrowly defined or ill-defined public interest oriented goal. The PWC report and the Public Protectors report on the SABC maladministration, corruption and fraud is indicative of how some of the Board members and executives can pursue agendas that are not in the public interest. Some of the Board members, and indeed executives, are motivated by greed, hence they manipulate the tender processes to enrich themselves. In the same vein, it cannot be assumed that self-interest amounts to being selfish. It is not unthinkable to assume leaders and managers care about their organizations, projects they work on or even the community they serve.

The lessons from Public Choice theory is that individuals in the public space will not behave differently from those operating in the private sector. The common denominator between the two spectrums is how individuals use political processes to influence the outcome of collective decisions. This particular insight is useful in shedding light in terms of how public officials behave under the guise of public interest. Therefore as part of the transformation of the SOEs, there is a need to insulate the state organs from rent-seeking, bureaucrats and citizens by introducing regulations and a competitive ethos, incentives and better working conditions.

2.3.5 The new public management theory

The debate on good governance and its requirements has, over the past decades, provided an impetus for new approaches to public sector management reforms. Good governance emerged as one of the key ingredients for good public management as it emphasised accountability and responsiveness to customer needs. According to the World Bank, it requires a public service that is efficient, reliable, and accountable to the public. These claims are informed by the survey by the OECD (1993a), which concluded that new management techniques and practices involving market-type mechanisms are being used to bring about changes in the management of public services in countries that have widely varying governance, economic and institutional environments.

From this scenario, authors such as Hood (1991), Dunleavy and Hood (1994), Pollitt (1993) and Ferlie et al. (1996) maintain that market-related practices and management techniques have conventionally been labelled the 'new public management' (NPM) or the 'new managerialism'. According to Rhodes (1996), managerialism refers to introducing private sector management methods to the public sector and stresses professional management, explicit standards and closeness to the customer. Although NPM has evolved over time, Moore et al. (1994, p. 13) argue that its "… central feature … is the attempt to introduce or simulate, within those sections of the public service that are not privatised, the performance incentives and the disciplines that exist in a market environment". The assumption is that private sector practices and techniques can deliver the public sector from its inherent demise. Critics see the NPM as a market-based ideology, invading public sector organisations with previously counter-cultural values (Laughlin, 1991). However, others (Ashburner, 1994) regard it as a management hybrid with a continuing emphasis on core public value, albeit expressed in a new way. Either way, most agree that NPM should be seen as a breakthrough in the public sector management (Dunleavy, 1991; Hood, 1994).

Variants of NPM such as good governance, performance contracting and outsourcing have affected the restructuring of the SOEs. According to UNRISD (1999), concepts such as governance and contracting out have become common policy options in developed and developing countries, with the latter being adopted as an instrument to reform state-owned enterprises (SOEs), and granting SOE managers more operational freedom while holding them accountable for the performance of the enterprises through a system of rewards and sanctions (UNRISD, 1999).

The private sector practices and control mechanisms come against the backdrop of bureaucratic failures of public administration as politicians (as principals) face the task of creating organisational

arrangements (incentives, sanctions and monitoring) that minimise the costs of the undesirable behaviour of agents and of the activity undertaken to control it (Weimer & Vining, 1991). In addition, bureaucracy has harmful restraints that need to be removed to improve performance and encourage innovation. Essentially, there are too many rules limiting initiative, resulting in good people being trapped in bad systems (Osborne & Gaebler, 1992). In the final analysis, the proponents of NPM argue that the line which divides the public and private sectors will diminish or be blurred because the same good management practices will be found in both sectors (UNRISD, 1999). This policy orientation had a profound influence in shaping the SOEs' governance and management practices.

2.4 THE LEGISLATIVE ENVIRONMENT OF STATE-OWNED ENTITIES

Legislation and regulations are the cornerstones of corporate governance because they outline the rules of engagement in relation to ownership and management of the SOEs. The SABC and Eskom are governed by a series of legislation which includes overarching legislation such the National Constitution, PFMA, Companies Act. Over and above the generic legislation, there is specific legislation and regulations such as the Broadcasting Act, the Eskom Act and regulatory provisions articulated by NERSA and ICASA respectively. The intention is not only to flag these issues but also to demonstrate the complex nature of the corporate governance environment of the SOEs. .

Legislation and regulations are the cornerstones of corporate governance because they outline the rules of engagement in relation to ownership and management of the SOEs. This section of the literature review is dedicated to legislative and regulatory frameworks governing SOEs in South Africa. Reference to overarching legislation such National Constitution, PFMA and Companies Act will be made. Over and above the generic legislation, the section references specific legislation and regulations such as the Broadcasting Act and Eskom Act and regulatory provisions articulated by NERSA and ICASA respectively. The intention is not only to flag these issues, but also to demonstrate the complex nature of corporate governance environment of the SOEs.

2.4.1 The Constitutional perspective

The general election in 1994 led to the establishment of a political dispensation based on the universal franchise. The hallmark of the new political environment is the National Constitution that was adopted in 1996. As the highest law in the country, it provides the legal foundation for the existence of the Republic, articulates the rights and duties of its citizens and defines the structure of the government, including those of the SOEs. The SOEs constitute an important delivery arm of the

State therefore, human rights must feature prominently. The human rights culture was a deliberate act of the ANC-led government, considering the historical past that was characterized by racial discrimination. In an attempt to reverse decades of racial injustices, the Constitution had to place emphasis on the human issues. This orientation features in the Preamble with its stated intention of establishing "a society based on democratic values, social justice and fundamental human rights". In buttressing these values, Chapter 2 of the Constitution makes reference to rights such as equality, freedom of expression and association, political and property rights, housing, health care, education, access to information, and access to courts. The mandates of the SABC and Eskom are bound by these provisions, which means governance and management policies and procedures must reflect the same values systems as enshrined in the Constitution.

Another issue given prominence by the Constitution of the Republic of South Africa is that of language. For example, Section 6 of the Constitution states that everyone has the right to use the language and participate in the cultural life of his or her choice. This aspect of the Constitution has more bearing on the SABC mandate than on Eskom. As the public broadcaster, the SABC is expected to honour, amongst others, section 6 of the Constitution by making sure that information and programmes are disseminated in all official languages. The immediate implications for the SABC relates to the articulation of the mandate and matching funding arrangements. To ensure alignment between the organizational activity and the Constitution or other key legislation for that matter, issues of institutional capacity in terms of technical skills are critical. In addition to technical requirements, Constitutional desires must be accompanied by adequate financial resources.

2.4.2 The PFMA perspective

Following from the Constitution, SOEs are expected to align their strategic, operational and financial plans with the Public Finance Management Act (PFMA) of 1999. The PFMA addresses the Constitutional requirements as stated in chapter 13 section 216 (1) and these relate to the establishment of a National Treasury whose role is to prescribe and ensure both transparency and expenditure control in each sphere of government, by introducing generally recognised accounting practices and uniform expenditure classifications; and uniform treasury norms and standards (Constitution of Republic of South Africa 1996). Given the centrality of financial management, especially in the context of limited resources, the PFMA is an important piece of legislation passed by the first democratic government in South Africa. The Act promotes the objective of good financial management in order to maximize service delivery through the effective and efficient use of limited resources.

The PFMA represents a shift away from the Exchequer Act 66 of 1975, which previously governed public financial management in the public sector. The shift was designed to transform the environment that was characterised by rule orientation divorced from strategic planning where capital resources and liabilities were not properly managed. During the Exchequer environment, Treasury's resources were devoted to exercising micro-control on mundane matters referred to it and insufficient attention was given to strategic management of public finances as it relates to efficiency and effectiveness. In short, there was insufficient practice of functional financial management of public resources in government as a whole. It places greater emphasis on accountability for results (outputs and outcomes). Arguably, its aim is to improve the operational efficiency of government spending, referred to as the value-for-money concept. Other external factors in the global economy are driving the pursuit of value for money. Abedian (2004) maintains that in a world where capital markets are becoming increasingly integrated, fiscal governance in a country is becoming a key indicator, which is scrutinised by foreign investors in assessing a country's risk.

By means of the PFMA, the National Treasury is empowered to determine the financial management framework and set the norms and standards that are applicable to all spheres of government. The Constitution also accords the Treasury with the responsibility to oversee other organs of state in all spheres of government. One should also look at the powers accorded to Treasury in the context of the institutional arrangement between the line function departments and the SOEs. In terms of the PFMA, the head of treasury is the Minister of Finance. The active role played by Treasury in managing the affairs of the SOEs increases the accountability and reporting requirements of the SOEs. It must be borne in mind that SOEs report and account to the line function ministry. For example, the Minister of Communication oversees the SABC and by virtue of PFMA, Treasury becomes an integral part of reporting and accountability requirements for the SOEs. This arrangement is referred to as dual governance model. This model is common among developing countries, such as South Africa, Mexico, and Turkey (Vagliasindi, 2008; World Bank, 2006).

Similarly, dual responsibilities may also include the approval of major transactions and strategic plans. To illustrate the powers vested in Treasury, Chapter 6 section 49(3), indicates that Treasury may approve or instruct another functionary of a public entity to become an accounting authority. Although the dual model is practiced in South Africa, its success hinges on a strong governance arrangement between different ministries, without which a lack of capacity to hold the Board accountable may lead to multi-principal agency problems. However, risks associated with this model

can be addressed through formal contractual arrangements between senior officials and ministries to reinforce accountability, and so bridge the political and administrative interface (Vagliasindi, 2008).

The Auditor General (AG) represents yet another layer of governance structure whose role is to oversee the financial management affairs of the SOEs. The duties and powers of the AG find legitimate expression in the PFMA. In terms of Chapter six, section 6 (a), the AG can investigate any public entity or audit financial statement. Section 63 (3) instructs the line function Minister who is responsible for an entity in respect to which the AG issues a report to the National Assembly. The role of the AG cannot be denied, considering multiple agency problems in managing and governing the SOEs. The recent report by the Public Protector on the SABC is indicative of corporate governance challenges experienced by the SOE. Notwithstanding the need for the AG's roles and responsibilities, such functions are raised in the context of multiple reporting and accountability frameworks. These oversight structures have administrative and cost implications which, unless they are properly coordinated, can affect the operations of the SOEs.

In addition to the Constitution and the PFMA, SOEs are governed by the Companies Act of 2008. This means SOEs and the private sector are subject to similar regulations in terms of governance structure, management, reporting and accountability. Despite the need to regulate SOEs through the Company Act, their design, mandates and accountability frameworks are fundamentally different to those of the private sector. Nonetheless, the purpose of the Act is to promote development of the South African economy by encouraging entrepreneurship, creating flexibility and simplicity in formation and maintenance of companies and encouraging transparency and high standards of corporate governance, recognising the broader social role of enterprises (Department of Trade and Industry, 2011).

As indicated earlier, the SOEs are not designed the same as the private sector organizations. First, the State is the major shareholder, which means they are likely to be bailed out should they perform poorly. The case in point is the SABC – it received more than a billion Rand following financial losses incurred in 2008/09 financial year. Similarly the South African Airways received financial injections following massive losses in 2012/13 financial years. This insulation and protection is unique to the SOEs. Second, the position of the directors is subject to multiple regulations – PFMA, and Company Act and the Protocol for Corporate Governance in the Public Sector determines the roles and functions of the Board members. This scenario complicates the task of determining the precise duties, functions and rights of any individual director. For example, the directors of SOEs

incorporated under the Companies Act are subject to the provisions of that Act. Therefore, they are held to a standard that is similar to that of directors of companies in the private sector. However, due to their sheer size and governance structures, the mandates of the directors of the SOEs are more than their private sector counterparts. The major difference is the reporting, which is based on complex institutional arrangement. This includes the line function department, Treasury, AG, Parliament and the general public through the Promotion and Access to Information Act. These requirements are exceptionally different and some go beyond the ordinary duties of directors provided by the Companies Act of 2008.

Sub-section 5.2.1.1 of the Protocol for Corporate Governance in the Public maintains that the PFMA is the principal Act promulgated by the Government to stipulate in detail the rules and regulations related to financial management. As a follow up, sub-section 5.2.1.4 of the same document indicates that the PFMA governs financial matters of SOE's, all other legislation is subordinated to it. The problem with this formulation is that it inherently creates a great deal of uncertainty. This is because the question of whether conflict exists between the two Acts requires sophisticated legal interpretive work.

Notwithstanding the need for the SOEs to comply with the Constitution, PFMA, and Companies Act, the SOEs are also governed by their founding legislation. For example, the SABC is a statutory entity governed in terms of the Broadcasting Act of 1999, while Eskom is governed by the Eskom Conversion Act 13 of 2001. The primary objective of the Broadcasting Act is, among others, to establish and develop a broadcasting policy for the Republic in the public interest and for that purpose to contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society; safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa (Department of Communication 1999). In order to address these requirements, the Act covers a wide range of issues which include, but are not limited to the following: South African Broadcasting System; Classification of Broadcasting Services; Public Broadcasting Service And Charter Of Corporation. These activities bear heavily on the management and governance of the SABC as they represent the core business. The magnitude of this mandate can be delivered effectively if the legislative and regulatory environment is coherent. The environment is however, characterized by duplication and weak policy coordination. The PRC recognized some of the shortcomings and proposed changes and alignment.

2.4.3 The regulatory perspective

Whereas the Constitution and the PFMA serve as pillars to ensure SOE functioning, the regulatory perspective ensures SOE compliance to the legal and corporate tenets of SOE functioning. For example, the SABC is being regulated by the Independent Communications Authority of South Africa (ICASA), while Eskom is regulated by the National Energy Regulator of South Africa (NERSA). The political dynamics associated with a plural society, such as South Africa, require the services of a regulator. The function of a regulator is to balance the interest of the SOEs and those of the society it services. The discussion vis-à-vis the role of the regulator are also explained through theoretical frameworks. As a result, theories such as public interest theory are used to shed light in terms of different dimensions of regulations. In the final analysis, the idea is to demonstrate challenges posed by regulation to SOEs.

NERSA is a regulatory authority established as a juristic person in terms of Section 3 of the National Energy Regulator Act of 2004. Its mandate is to regulate the electricity, piped gas and petroleum pipelines industries in terms of the Electricity Regulation Act of 2006, and the Gas Act of 2001 (NERSA Annual Report 2011/12: 8). The activities of NERSA are underpinned by the following regulatory principles; transparency; neutrality; consistency and predictability, independence; accountability and integrity. These principles will be unpacked later on in this section. The discussions on the role of NERSA take place in the context of the National Planning Commission Diagnostic Report released on 09 June 2011. This report identified a 'combination of rising energy prices, a desire for energy security and the threat of climate change to continue to drive changes in the way societies work'. This means the activities of NERSA vis-à-vis Eskom must be viewed in terms of social and economic imperatives. Therefore, it follows that the energy sector, broadcasting sector or transport services for that matter, contributes strongly to the productivity of an economy and extends the range of activities accessible to consumers. This means the strategic nature of SOEs and indeed activities of the private sector cannot be left to the market. The market forces have proven to provide a fertile ground for inequalities due to the fact that public goods are not accessible to all. This particular need grew strongly, after the series of corporate governance scandals, which rocked public and private sector alike. Subsequently, governments throughout the world intensified regulatory frameworks as the market failed to secure goods in a transparent, fair and equitable manner. Therefore, governance through economic regulation is useful particularly in countries such as South Africa, where inequality and unemployment is high. The key argument is that if the

economic sectors (i.e. energy) are regulated and transparency created, public confidence can be created.

According to Posner (1974), a major challenge to social theory is to explain the pattern of government intervention in the market. As part of the economic regulation, he makes reference to two main theories of economic regulation, namely public interest theory and capture theory. The former holds the view that regulation is supplied in response to the demand of the public for the correction of inefficient or inequitable market practices. It means that those in power, that is government officials, are not necessarily advancing the cause of the public but their own or those of a powerful lobby group. Therefore governance through regulation is meant to diffuse opportunistic tendencies by bureaucrats and other public officials to ensure the prevalence of the public goods. Posner (1974) maintains that one assumption behind this theory is that economic markets are extremely fragile and function inequitably. Therefore, left alone, distortions abound. This assumption necessitated government intervention in the economy through regulations.

It could be argued that public choice theory played an important role in shaping debates that contributed to the restructuring of SOEs. At the heart of public choice theory is the behaviour of bureaucrats, who are seen to be driven by a personal as opposed to a collective interest in implementing government policies efficiently and effectively (Schwartz, 1994). During the 1980s, governments in industrialised countries such as New Zealand, Australia, Denmark and Sweden tried to reduce the growth of their public sector and reduce fiscal deficit by replacing bureaucratic methods in the provisioning of government goods and service with market-oriented methods (Schwartz, 1994). The architects of restructuring sought to insulate the state from rent-seeking citizens and bureaucrats by introducing a competitive ethos, incentives and better working conditions.

These legislative and regulatory challenges are not unique to South Africa. It could be argued that countries across the globe are constantly comparing their frameworks to assess their own weaknesses and to devise mechanisms to reform the SOEs regulations. This assertion is illustrated by guidelines on Corporate Governance developed by the Organisation for Economic Co-operation and Development (OECD). These guidelines provide member and non-member countries with policy experience, identify and share good practice and coordinate domestic and international practices. The benchmarking exercise is important. However, a blanket approach can miss out on country specific social and economic conditions. South Africa may share similar features with developing countries but its social, economic and political landscape will determine a unique

approach to corporate governance reforms based on the international experience. One of the principles which governs or should govern regulation is prudence. NERSA and ICASA official documents, such as the annual report and strategic plans, make reference to concepts such as independence and prudence. The prudent regulator recognizes empirical approaches to regulatory analysis and a reasoned approach to structural and regulatory change. This means, social and economic data on issues such as unemployment, economic growth and affordability must be taken into account in regulating the market. Independent and critical sources of information, such as neutral academic studies can provide instructive value.

Independence from various political interests is another essential characteristic of a good regulator. Beecher (2008,) maintains that good regulators are generally non-ideological, non-dogmatic, and without agenda or parochial motive. Given the political context and importance of their position, the regulator cannot be apolitical, but whether elected or appointed, their service in office should be impartial, unbiased, and nonpartisan - not just with respect to political parties, but to all parties of interest. Similarly, Parker (1999) argues that a well-functioning regulatory system is one that balances accountability, transparency and consistency. Accountability requires that the regulatory agencies are accountable for the consequences of their actions, operate within their legal powers, and observe the rules of due process when arriving at their decisions (e.g. to ensure that proper consultation occurs). Transparency relates to regulatory decisions being reached in a way that is revealed to the interested parties. The third process which provides regulatory legitimacy is consistency. He further argues that inconsistent regulatory decisions undermine public confidence in a regulatory system.

On the one hand, this claim gives credence to how NERSA dealt with an Eskom request to increase the electricity tariffs by sixteen percent. On the other hand, the regulator role is premised on the assumption that legislation is uncontested and SOE's mandates are clearly defined and funded accordingly. The provision of electricity or lack thereof has adverse political implications for the ruling party. Participants mentioned that in a process leading up to elections, Eskom was instructed to keep lights on 'at all cost'. This meant that routine maintenance had to be short circuited or abandoned. To make matters worse, Eskom had to rely on an emergency diesel fired power station based in Cape Town as opposed to normal coal stations. The political interference or instructions eroded Eskom's balance sheet, hence it requested an increase in the tariffs to cover the cost of doing business. Over and above the political directive to keep the lights on at all cost and ailing infrastructure, Eskom wrestles with coal suppliers whose pricing index is above inflation. The

overall argument presented by the participants is that the regulator may not recognise costs associated with political directives.

In the final analysis, SOEs grapple with escalating costs of doing business, political interference, blurred mandates and the State acting as regulator. This situation means that because the regulator is the organ of State, it cannot be immune from the social, economic and political challenges of the country.

2.5 THE INTERNAL DYNAMICS OF SOE FUNCTIONING

The legislative environment of state-owned entities referred to in sub-section 2.4 above provided the external context according to which the self-same state-owned entities are held accountable to both the State and the tax-paying public, in order to yield optimum shareholder value. In this regard, the leadership, management, and relevant operational variables of SOE functioning are discussed with the view to examining the extent to which the various strata of these public entities are deliver (or do not deliver) on their mandate. Accordingly, corporate governance becomes the pivotal sphere within which the delivery mandate could be adequately interrogated and discussed.

2.5.1 Boards of state-owned enterprises

This study avers that issues relating to Boards of the SOEs should, among others, centre surround different Board structures with the view to suggest an appropriate Board governance model. The literature on the Boards of SOEs speaks of the Anglo-Saxon model which is based on unitary Boards and the continental model which based on two tier Boards governance systems (Wei, 2003; Tricker, 1984; Jacoby, 2000; Wixley & Everingham 2002). The unitary Board or one tiered system is being practiced in the Anglo-Saxon world, whereas the two-tiered Board system is predominantly practiced in continental Europe in countries such as Germany. Owing to its colonial history, it is not surprising that South Africa's governance system is based on the Anglo-Saxon model which is a unitary Board system. The proponents of the Anglo-Saxon model of the Board system such as King, maintain that the unitary Boards remains appropriate for South Africa companies including SOEs given the positive interaction and diversity of views of Board members (Wixley & Everingham, 2002). In the same breath, there is no unwillingness for a two tier governance system. However, it is said that it will have serious ramification in terms of the company structure in South African law and corporate governance. The critics of the Anglo-Saxon governance model point to a number of challenges. For example, Spisto (2005) argues that the problem with one-tier Board systems is that it is required to fulfil two incompatible corporate functions, namely shareholders and employees.

From a continental European perspective, (Wixley & Everingham, 2002) argue that different patterns of governance developed – these are best illustrated by a two-tier Board system – a supervisory Board and a management Board system. The former is said to have no executive powers but has the authority to appoint or remove a manager of the Board. The management Board on the other hand is responsible for the on-going management of the entity and with the responsibility of reporting to the supervisory Board at regular intervals. A number of corporate challenges in the 1980s and 1990s, both in South Africa and abroad, pointed to serious deficiencies in the Anglo-Saxon model of corporate governance as practiced (Wixley & Everingham, 2002). The deficiencies had serious implications for SOEs as governance structure is modelled on a unitary system based on the Anglo-Saxon system.

After a careful examination of the two governance models, this study gravitates towards the two tiered model practised in Germany. This decision is based on the corporate governance challenges and unique political culture of South African society. It can be argued that the unitary Board system has not been able to resolve principal-agency problems hence there have been challenges between Boards and senior management of the SOEs. This study asserts that considering the value of social consensus which has been successful in Germany, it is in the best interest of South Africa to engage unions and other stakeholders as part of the advisory Boards system.

The performance of state-owned enterprises could not be divorced from the functionality and leadership of the Board. Khoza and Adam (2005: 49) have succinctly captured this point when they argue that "in any organisation, good corporate governance is ultimately about effective leadership". The two tiered Board system will enhance the quality of decisions made by Boards considering the diversity of view. The researcher concurs with this assertion but cautions against a simplistic analysis on what constitutes leadership in the context of state-owned enterprises. It is therefore argued that effective leadership depends on the following issues: objectives of the state-owned enterprise, composition of the Board, selection and appointment of Board members and delegation of authority. All these issues are underpinned by complex, dynamic and diverse interaction between different actors (i.e. management, ministries and Boards). According to Kooiman (1995), these interactions not only reflect the complexity, dynamism and diversity of our society, they are themselves complex, dynamic and diverse.

Whilst seeking to provide insight on leadership, the study highlights some of the complex and dynamic issues that are brought to bear on the governance structure of state-owned enterprises and implications thereof. Given the SOEs policy objectives, the Boards are responsible to the

company and all its shareholders. In practice, the duties of SOEs' Board members may not be clear (World Bank, 2006).

An SOE's leadership potential is often limited by the delegation of authority. According to the World Bank (2006), the legal framework frequently gives the state special powers. For example, the Protocol on Corporate Governance in the State-owned Enterprises by the South Africa Department of Public Enterprise lists a number of areas of responsibilities for the Board. Sub-ection 5.1.5.1.1 of the protocol states that it is the Board that has "absolute responsibility for the performance of the SOE and is fully accountable to the shareholders for such performance" (PDE, 2002: 8). However, the Executive Authority is charged with the oversight of the SOE and chooses the chief executive officer, albeit with consultation with the Board (World Bank, 2006).

The delegation of authority in respect to nominating the chief executive by the Board is also noted among the OECD countries. For example, in countries such as Belgium, France, Mexico and Turkey, the Boards are not in charge of nominating the chief executive. In France, in the largest SOE, chief executives are nominated by Presidential decree in accordance with the ownership entity that proposes candidates based on their competency (OECD, 2005). Based on this observation, it can be argued that the legal framework can have adverse implications for the entity leadership's ability to discharge its mandate. This is one of the issues which was raised during data collection, as it addresses the external factors that hinder or promote effective Board leadership.

2.5.1.1 Composition of boards of state-owned entities

There are a number of variables that emerge when assessing the performance of SOEs, the most critical of which relates to Board composition. Frederick (2011) maintains that the types of Board members sought after have experience of industry and financial expertise. In a similar vein, Wixley & Everingham (2002) argue that effectiveness depends on the people involved. The strand of these arguments is that technical expertise, such as mergers and acquisitions, constitute an important aspect of selection. Above the technical requirements, "accordingly, each SOE should be headed and the Boards should comprise executive and non-executive directors, of whom preferably the majority should be non-executive directors, thus ensuring independence and objectivity in decision making" (DPE 2002: 9). Independence remains one of the most sought after characteristics of good governance. According to Frederick (2011), the problem of achieving the benefits of independence is overly restrictive and mechanical, and so hinders prospects of finding individuals capable of

objective thought as the outcome. He argues that greater emphasis should be placed on the capacity of the individual to contribute in an objective and unbiased manner. On the other hand, the World Bank's (2006) view is that independent views within the SOEs are difficult to achieve because the Board representation includes elected officials, civil servants and employees. Although the elected officials represent the interest of the state as 'owner' there is a greater chance of conflict of interest that could compromise loyalty to the SOE. Similarly, civil servants under instruction from the state are unlikely to contribute to open-minded discussions and generally lack the experience to function as their peers at executive level (Frederick, 2011). The overall argument is that if the Board composition does not represent required skills, experience and, most importantly, a sense of independence, the functionality is likely to be affected.

2.5.1.2 The role of the board in strategy development

The interface between Board and management is driven by the organizational mandate which gives rise to a need for the organizational strategy. The term Strategy is derived from the Greek word 'strategia' which in general, is "the science or art of military command as applied to the overall planning and conduct of large scale combat operations" (Robert, 1997, p. 22). More than three thousand years ago, Sun Tzu, a Chinese general and philosopher, wrote a book about strategy called "The Art of War". As a study of the anatomy of organisations in conflict, the Art of War applies to competition and conflict in general on every level from the interpersonal to the international (Clearly, 1988: vii). Sun Tzu provided the following reasons for a generals' success: "The General who wins a battle makes many calculations in his temple before the battle is fought. The general who loses a battle, makes but few calculations beforehand" (Narayanan & Nath, 1993: 248). In as much as strategic planning secures victory for the army, strategic planning in organisations plays a similar role as managers explore difficult management terrain to secure returns on investments.

The concept of strategy has been adopted from the military and adapted for use in the private and public sectors. It is on this basis that the public sector applies a similar management discourse to achieve its objectives. SOEs operate in a highly complex terrain and therefore strategy becomes an integral part of how governments, through the activities of SOEs, achieve their developmental objectives. Based on the Public Finance Management Act of 1999, Treasury issued regulations which guide the SOEs in terms of strategy and operational plan development. Section 93-96 of the National Treasury Regulations affirms the need for SOEs to have strategic, operational and corporate plans.

The complex nature of SOEs has bearing on the organizational leadership. In as much as the military success or failure is determined by decisions based on the opponents' strength or weakness, organizations, including SOEs, succeed or fail based on assumptions made about sustainability, financial performance, and growth. The issue of strategy is inextricably linked with leadership at departmental and entity level. The classic I Ching posits that "leaders plan in the beginning when they do nothing", and "Leaders consider problems and prevent them."(Clearly, 1988: xxxv). The challenge for Board members and managers is to balance conformance and with performance. The Board's performance tasks as laid down in the King Reports on corporate governance include leadership and strategic direction, approving business plans, and monitoring performance. At the same time, the Board is required to protect the company's assets and reputation, ensure compliance with laws, and identify and manage key risks. These issues relate to the need to plan with a view to comply, but also to manage the business risks during the operations.

The literature on strategy and leadership suggests a need for role clarification – the Protocol of Corporate Governance in the public sector maintains that "The Board should formulate, monitor and review corporate strategy, major plans, risks…" (DPE, 2002: 9) By the same token, the King II report states that the Board should "… determine the strategy to achieve its purpose and to implement its values in order to ensure that it survives and thrives" (IoD, 2002: 46). Based on the delegation of authority from the line department, it is evident that Boards, as representatives of shareholders, should play a critical role in strategy formulation, however, determining what that role should be is a different matter (Nadler, Beverly, Behan, Mark &Nedler, 2006: 130). The role of the Board in strategy development remains one of the highly contested issues in the public and private sectors. Recent corporate governance scandals across sectors have escalated oversight debates, thus putting the Boards under the spotlight regarding their role as custodians of corporate governance.

Wixley and Everingham (2002: 1) defined corporate governance as being more concerned with the structures and processes associated with management, decision-making and control in organisations. Based on these perspectives it can be argued that Boards of SOEs must play an integral part in strategy development. However, Nadler et al. (2006) suggest that the role that the Board should play is another matter. In probing the role of the Board and debates surrounding this matter, the study engages two schools of thought, namely 'passive' and 'active' (Golden & Zajac, 2001). The idea behind the probe is to determine appropriate roles to ensure that Boards of SOEs can make a positive difference in steering organisations along a developmental path.

The *passive* school views Boards as rubber stamps (Herman, 1981) and as tools of top management (Pfeffer, 1972) whose contribution is to satisfy the requirements of company law (Stiles & Taylor, 2001). This line of thinking assumes that Boards' decisions are to a greater extent subject to management control, particularly to that of a powerful CEO (Mace, 1971). On the other hand, the *active* school of thought sees Boards as independent thinkers who shape the strategic direction of their organisations (Davis & Thomson, 1994; Frankelstein & Hambrick, 1996; Walsh & Seward, 1990). This study gravitates towards the former, however, questioning the independence aspect of the SOE Board members.

The question arises: Is it practical for the SOEs' Boards to be independent or exercise independent judgement? Independence remains one of the most sought after characteristics of good governance, and according to Frederick (2011), the problem of achieving it is overly restrictive and mechanical, and as a result it hinders prospects of finding individuals capable of the objective thought which should be the final outcome. His argument is that greater emphasis should be placed on the capacity of the individual to contribute in an objective and unbiased manner. On the other hand, the World Bank's (2006) view is that independence within the SOEs is difficult to achieve because the Boards' representation includes elected officials, civil servants and employees. The assumption is that constituent representation is not ideologically free, hence the difficulty in obtaining objectivity. Although the active school of thought is ideal, it remains a challenge for SOEs' Boards to play a meaningful role and challenge the decisions of management.

Henceforth, the study presents strategic management theories in the context of the Board's role in strategy development. Lorsch and MacIver, (1998) and Vance (1983) assert that Boards are a legal faction dominated by management. Berle and Means (1932) argue that separation of ownership and control leads to a diffuse ownership situation in which the power of the shareholder becomes diluted. In situations in which shareholder control is weaker, management is afforded greater control and it is on this basis that agency theory argues that management will become self-serving (Jensen & Meckling, 1976), and the Board assumes a passive role. The passive role of the Board in strategy development can also be explained through the agency theory on information asymmetry (deception) between management and the Board (Eisenhardt, 1989). Kevin (2003: 8), maintains that by virtue of their internal position the management develops an intimate knowledge of the business, putting the non-executive members in a disadvantageous position. At face value, Board members may appear vulnerable to management manipulation of information. However, seasoned Board members can overcome information asymmetry through Board subcommittees. As part of the governance

structures, the Board committees play a pivotal role in quality assurance as they meet regularly. It can be argued that although Board may not develop strategy, they nonetheless must approve it. Diligent Boards cannot approve strategy without asking pertinent questions to which management must provide answers. Strategy development is therefore an iterative process which recognises the role played by Boards and management.

On the continuum of Board engagement, from passivity at one extreme to interference at the other, Nadler et al. (2006) ask where the high performing Board should position itself. How does a Board transcend its legacy as a rubber stamp for management's initiatives without micro-managing management? The key reason most Boards eventually micro-manage lies in the separation of ownership and management noted by agency theory. The disillusionment of Boards and lack of trust of management can be explained through the agency theory, in that the agent (management) can be self-serving (Jensen & Meckling, 1976). The other explanation, drawn from agency theory (Eisenhardt 1989), is the information asymmetry between the executive and non-executive Board members. Access to correct and relevant information in relation to how the SOE's business operates can hamper the meaningful role of the Boards in strategy development.

While recognising the value of information and the agency theory's regard of information as a commodity, the researcher equally recognises value presented by management based on their intimate understanding of managing the entity. This approach finds expression in stewardship theory (Davis, Schoorman & Donaldson, 1997), in that management is not entirely opportunistic but rather motivated by "a need to achieve, to gain intrinsic satisfaction through successfully performing inherently challenging work, to exercise responsibility and authority and thereby gaining recognition from peers and bosses" (Donaldson, 1990: 375). Ultimately, Boards of SOEs cannot independently develop an organisational strategy without the support of management. However, the relationship between both must be based on trust, without which, clear and delineated delegation of authority and the role of the Board will range from passive to interfering.

2.5.1.3 Boards' performance monitoring

Legislative compliance is one indicator that acts as a benchmark for performance evaluation of the SOEs. However, compliance is not the only indicator, hence there is a need for SOEs to transcend the compliance mode and operate on a performance mode. In the same vein, concern about SOE performance is not new. As part of a first wave of reforms during the 1970s and 1980s, policymakers, donors and international financial institutions made a major effort to improve SOE

performance while maintaining public ownership. Although performance monitoring of SOEs is imperative, considering fiscal constraints and the need to improve efficiency, robust monitoring remains a challenge. One of the greatest challenges facing SOEs is to define or clearly articulate the strategic goals. Vagliasindi (2008, p. 4) writes that in practice, SOEs' strategic goals are difficult to define, due to the presence of multiple and sometimes conflicting objectives and multi-principals; namely, different control organs within the public sector with different priorities and perceptions of what the strategic goals should be. The problem is complicated by SOE management not facing any credible threats for non-performance from the external environment in which it operates. The threat of takeover or bankruptcy based on poor performance is non-existent and there is a lack of a monitoring instrument. The managers of the SOEs are insulated against the harsh environment which characterises the operations of the private sector. Continued state equity injection and finance deficits have created perverse incentives for managers of SOEs and perpetuated soft-budget constraints (Vagliasindi, 2008p.4). These issues show a need to consider how to improve the performance evaluation and monitoring of SOEs through line function departments and Boards.

In South Africa, the creation of a dedicated Ministry of Performance Monitoring and Evaluation within the Presidency Office in 2009 signalled a new phase in the development trajectory of the M&E system (IEG World Bank, 2010). This Ministry was preceded by the Cabinet's approval of the National Evaluation Policy Framework (NEPF) in 2005, the main purpose of which was to promote quality evaluations that could be used to learn how to improve the effectiveness and impact of government (Department: Performance Monitoring and Evaluation, 2011). The Shareholder Compact signed between the line function department and the Boards of the SOEs remains at the heart of evaluation of the Boards and indeed for entire organisations. In terms of the Treasury Regulations issued in terms of the Public Finance Management Act No. 1 of 1999, as amended by the PFMA Act 29 of 1999, the accounting authority (Boards of Eskom and SABC respectively) must, in consultation with its executive authority (line function Ministers), annually conclude a Shareholder Compact. The Shareholder Compact documents key performance measures and indicators to be attained by the public entity as agreed between the accounting authority and the executive authority. The researcher avers that the Shareholder Compact serves as the basis for aligning the interests of the shareholder, Boards and executive managers and other stakeholders. The quest for alignment and control mechanisms finds expression in the agency theory principal – agent framework. As alluded to earlier and based on the agency theory proposition, conflicts of interest abound when there is separation between ownership and management. The Shareholder Compact is designed to encapsulate the fundamental characteristics of 'good' governance which include, but are

not limited to: discipline, accountability, fairness, responsibility and transparency. The King II (2002) and King III (2009) reports make reference to these characteristics. For example, Boards and management alike must account for and justify their actions to the shareholders and stakeholders. Similarly, the Boards of the SOEs should ensure that they give a fair consideration to the legitimate expectations to all stakeholders in the company. The challenges noted in the SOEs, including the SABC and Eskom, suggest that some of these characteristic of good governance may find expression in the Shareholder Compact but this remains a challenge in terms of implementation.

Gumede (2009) argues that at the core of a developmental state is a need for efficient, well-coordinated and skilled employees. This assertion recognises that M&E is an extremely complex and skill-intensive endeavour, hence the line function department must be run efficiently to ensure the SOEs and their Boards are held to account. The establishment of Performance Monitoring and Evaluation emphasises the importance of transparency and accountability, and the application of these principles is ideal against the downward spiral of public confidence in SOEs' leadership due to internal conflict between the Boards and the executive management. However, a streamlined reporting system is needed. The reality of SOEs is that the political environment necessitates multiple layers of reporting, with some processes running parallel. The overall argument is that while such a reporting mechanism improves accountability, the downside is that it diverts managers and the Boards away from management and service delivery and towards compliance.

This study is based on a premise that the interests of the principal and agent diverge, a cornerstone of the agency theory (Eisenhardt, 1989: 132). Based on the divergent interest, risks abound, especially for SOEs. This study therefore explores the inherent risks based on divergent interests between principals and agents. The concept of risk management is not new to the public service, as the basic principles of service delivery Batho Pele, 1997 indicate the need for sensible and practical risk management to support the attainment of government objectives. From the agency perspective, prudent risk management means introducing mechanisms which police the explicit and implicit contract between principal (line department/Board) and agents (management). These include structures such as Board and its committees (Demsetz, 1983; Fama, 1980; Fama & Jensen, 1983). Khoza and Adam (2005) indicate that the Boards of the SOEs are the custodians of corporate governance, and as a result, risk management features high on their agenda.

The national and international corporate governance scandals renewed the need for sound risks strategies and robust internal controls. In view of principal agent problems, risks associated with managing and governing the SOEs are dealt with through Boards and committees. The majority of

SOEs have properly constituted Boards and committees and yet risks continue to haunt organisations. In attempting to understand such a contradiction, this study draws a distinction between performance and compliance approaches to risk management. According to Frederick (2011: 13), the question of "conformance versus performance" refers to the two principal ways that Boards view their roles. First, there is a need for Boards to conform to rules and comply with the directives of the state owner. Second, performance is equally important. The Boards are concerned with both. However, before the heightened attention to governance in the 1990s, many Boards of directors, even in the private sector, were primarily focused on compliance checking.

In the South African context, the compliance part of risk management is supported by section 38 of the Public Finance Management Act of 1999, which states that the accounting officer must maintain efficient and effective financial systems and risk management internal controls. Similarly, the King 2 Report (2002: 98) makes reference to the Board as the custodian of risk management in that it should formulate the risk strategy and policies. The SOEs' Boards must institute a comprehensive system of control to mitigate an organisation's risk and ensure monitoring takes place. A comprehensive risk management strategy hinges on the Board's ability to conform to a legislative framework (i.e. PFMA), but as importantly, the Boards must focus on performance. The latter remains a challenge for SOEs' Boards, considering the myriad accountability frameworks.

South Africa employs a dual ownership model (Vagliasindi, 2008; World Bank, 2006), in which both the sector ministries and 'common' (i.e. Treasury) ministries are responsible for exercising ownership rights. Essentially, the SOEs report to their line function ministries but also to the Treasury in terms of resource allocation. The complexities of a dual model have been accentuated by the introduction of the Department of Performance Monitoring and Evaluation. Risk associated with this model can be addressed through formal contractual arrangements between senior officials and ministries to reinforce accountability. Performance contracts between the Presidents and line function Ministers are signed, but risk remains high, considering diverse lines of reporting and accountability.

This study argues that the SOE's leadership potential is often limited by the delegation of authority. According to the World Bank (2006), the legal framework frequently gives the state special powers. In South Africa, the Protocol on Corporate Governance in the State-owned Enterprises lists a number of areas of responsibilities for the Board. For example, sub-ection 5.1.5.1.1 states that the Board has "absolute responsibility for the performance of the SOE and is fully accountable to the shareholders for such performance" (PDE, 2002, p. 8). However, it is the Executive Authority

charged with the oversight of the SOE that chooses the chief executive officer, albeit with consultation from the Board (World Bank, 2006). This arrangement makes it difficult for the Board to exercise 'absolute responsibility' for the performance of the SOEs. The risk associated with this arrangement is that CEOs of the SOEs are likely to undermine the authority of the Board, particularly if they have a cordial relationship with the Minister.

2.5.1.4 Leadership of board committees

Corporate governance cannot be divorced from the activities of the Board committees, as they are the life blood of any corporation, including the SOEs. This assertion is derived from the complications which result from the separation of ownership and control. According to the agency theory, under the simple condition of complete information, the principal has full knowledge of the agent's behaviour, and a contract based on this is most efficient (Eisenhardt, 1985). The reality is that separation of ownership and management has introduced an environment in which the agents have access to information which the principal does not have. The relative weakness of the shareholder in controlling management results in greater management control and this is likely to promote self-serving (Jensen & Meacking, 1976). In an attempt to monitor and protect the interest of the shareholders, agency theory suggests the Board and its committees prevent divergence of interest. The King Report (2002) also recognised the role of committees, stating that "at a minimum, each Board should have an audit committee and remuneration committee". Similarly, the PFMA contains specific provisions relating to corporate governance of SOEs, for example, section 77 states that the audit committee must comprise at least three persons, the majority of whom should be external members.

In light of inherent conflict of interest and information asymmetry (deception) between management and Board, the audit committee is the principal governance watchdog in private and public sector companies, and was the first to gain broad acceptance (Wixley & Everingham, 2002). According to Wixley and Everingham (2002), this recognises both the scarcity of time of the whole Board and the need for a more direct focus by directors, with specialised knowledge on certain important governance issues.

From this perspective, both Board and sub-committee can be used as a device to serve shareholder interests (Fama & Jensen, 1983). This philosophy is sound, in that it is through Board committees that the shareholder is likely to gain rich information, thus bridging the gap between information in possession by management and the Board. In agency theory, information is like a commodity that

could be purchased, an environment that elevates the role of formal information system such as budgets and management by outcomes (MBO) (Eisenhardt, 1989).

2.5.1.5 Integrity of chairpersons of the board

The reviews of Boards and their performance have over time focused on best practice in issues such as Board structure, Board composition and procedures. The assumption is that this will lead to better outcomes. Frederick (2012) points to a growing recognition that behavioural issues are integral to the function of the Board. A Board needs intangible qualities such as interpersonal skills, the ability to communicate, diplomacy and leadership. The qualities are rarely teased out in the appointment process, even though it is possible.

The role of chair should not be one of dominating but rather of seeking to achieve maximum participation from Board members, so that it can function as effectively as possible (Wixley & Everingham, 2002). The general consensus is that the chairperson of the Board holds the key to determining its effectiveness (Anderson & Anthony, 1986). For Fredrick (2011), the role of the SOE chair is more challenging than that of the chair of the private sector, given the difference between the public and private cultures. On several occasions, the SOE's strategic goals are difficult to define, due to the presence of multiple and sometimes conflicting objectives and multi-principals. SOE management thus finds itself accountable to and monitored by a shifting coalition of interest groups, consisting of politicians, bureaucrats, labour unions and a plethora of other stakeholders (Vagliasindi, 2002). This challenge makes it difficult for the chairperson to maintain the loyalty of the SOEs as they are appointed by the shareholding Minister. Despite these differences, a growing tide of legislation and the tightening of governance codes are placing more pressure on the Boards. The complexities and governance pressures associated with SOEs require specific skills and the capacity to build, motivate and diffuse conflicts. The chair of SOEs must also have an interface between the state, Board and executive (Frederick, 2011).

The functionality of the chairperson of SOEs is also linked to the Board structure (unitary or two-tiered). Events in the 1980s and 1990s seriously drew into question the applicability and adequacies of the Anglo-Saxon unitary Board system. The strand of the argument here is that above the multiple-agency challenges of the SOEs, the unitary Board structure conflates the challenges. Spisto (2005) argues that the problem with one-tier Board systems is that they are required to fulfil two incompatible corporate functions, namely, for shareholders and employees. Based on this complication, it can be argued that the position of the chairperson may become more precarious as

he or she is likely to promote the interest of the shareholder. Limitations of the Anglo-Saxon unitary model are further exposed, hence a need for a two-tiered Board system as practiced in Germany and Norway. This can also be justified on the basis of the South African Bill of Rights and related legislation.

2.5.1.6 Boards' and directors' appraisal

Heath and Norman (2004) maintain that the separation of ownership and control in modern corporations generates the potential for a free-rider between managers and shareholders. Beyond the multiple agency problems associated with governance, the SOEs are also confronted with the issue of free riders, that is, people (Board member in this context) who benefit without contributing as much as other people (other Board members). The free rider problem can partly be explained by an absence of rigorous assessment of Board's performance. The European Governance Report (2011) found that before the financial crises which saw the downfall of major international corporations, evaluation of Boards and their effectiveness was limited and patchy. For many Boards it had become a mechanical, questionnaire-driven, box-ticking exercise that reflected low priority and value being placed on it.

The King Report I (1994: 67) maintained that institutional investors were starting to insist on annual Board reviews. Citing the Russell Reynolds Association survey in 1997 in the USA, the King Report recognised that "the quality of the company's Board has become an important evaluation". While it is difficult to prove a direct link between a Board's effectiveness and company's profits, a Board that knows it will be regularly monitored is more likely to focus its attention on good corporate governance issues. As the King Report pointed out, once this culture has been entrenched, it is difficult for the CEO or any other director to dominate the Board or to avoid being held to account.

In the South African context, the Protocol on Corporate Governance for Public Sectors is clear on the issue of performance assessment, maintaining that the Board should, on an annual basis, review its size, mix of skills, expertise and experience, and other qualities in order to measure its performance levels in relation to the requirements of the shareholder. In this regard, the performance of the entire Board, the chairperson, the CEO and each individual director should be assessed (DPE, 2002). While the principle of performance assessment is laudable, challenges will arise, especially in situations in which the Boards of SOEs are performing poorly. The issue of Board assessment is investigated to determine the application of good practice but, most importantly, how the Boards and the line departments use the outcome of the assessment.

2.5.1.7 Interface between board and management

The very existence of SOEs, such the SABC and Eskom, is underpinned by a series of legislative frameworks, which accentuate compliance issues in view of the separation of ownership and control. Merle and Means (1932) argued that this separation in a corporation, together with growth in its share capital, leads to a diffuse ownership situation in which the power of the shareholder is diluted, thus providing an environment for managers to become self-serving (Jensen & Meckling, 1976). This is one of the factors contributing to management control and one which draws from the agency theory (Eisenhardt, 1989) on information asymmetry between executive and non-executive directors. A similar argument can be made that the line function ministry does not have access to the same information as the Boards, although they act on the shareholders' behalf. It is on this basis that Jensen and Meckling (1972) used the metaphor of contract, a relationship that establishes the hierarchy between the contracting parties. This line of thinking acknowledges divergence of interest between all parties concerned, and must be managed through a legally binding contract to ensure compliance.

Kendall and Kendall (1998) hold the view that corporate governance should be recognised as a set of standards that aims to improve the company's image, efficiency and effectiveness, and social responsibility. The underlying assumption is that adherence to the standards of corporate governance will underpin market confidence, integrity and efficiency, and hence promote economic growth and financial stability (OECD, 2004). This line of thinking suggests a need for compliance with generally accepted predetermined standards of corporate governance. This issue leads to the unpacking of compliance, i.e., what it is and how it relates to governance.

Compliance is a complex and malleable concept, however, stated simply it involves the identification 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 are based on the legislative and policy framework in which companies operate. Essentially, this means that the operations of the SOEs must comply with the necessary legislative and regulatory frameworks. A Joint Ad-hoc Committee on Corporate Governance (2006) maintained that there were three pillars upon which the architecture of good corporate governance rests in South Africa, namely the King Reports on Corporate Governance, the Public Finance Management Act (PFMA) and the Companies Act. The Protocol of Corporate Governance in the Public Sector states that PFMA must be observed by SOEs' governing bodies and management (DPE, 2002). The multiple agency problems mean the shareholder must use a contract to manage the performance agents. For example, in South Africa

(DPE, 2002), a shareholding Minister enters into a shareholder compact with the Board for accountability purposes, and one which outlines the strategic objectives, policies, financial, technical and other key performance indicators and reporting requirements. Through it, the ministry must monitor the extent to which the Board as a whole, and individual directors, achieve the objectives and effect remedial action.

In supporting the compliance issues, the King Report maintains that the governance of entities can be on a statutory basis, or as a code of principles and practices (King III Report, 2009). The SOEs, such as Eskom and the SABC, are established through an act of parliament and therefore it is mandatory for them to comply. The King Report also goes on to say "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). Based on this assessment, it is clear that good corporate governance is essentially a compliance issue. Good governance is also about managing possible divergence of interest by putting in place measures to safeguard the interests of the shareholders.

2.5.1.8 External control mechanisms

The SABC is a statutory entity governed in terms of the Broadcasting Act of 1999, while Eskom is governed by the Eskom Conversion Act 13 of 2001. As a public broadcaster, the former's mandate is to provide information, education and entertainment to the people of South Africa (SABC Annual Report 2008/9). As public entities, the SABC and Eskom are also subject to the Public Finance Management Act (1999), the terms of which oblige them to ensure prudent management of financial resources in line with corporate governance principles. As a broadcaster, the *SABC* operates in an environment regulated by the broadcasting regulator, Independent Communication Authority of South Africa (ICASA). On the other hand, *Eskom* is regulated by the National Energy Regulator of South Africa (NERSA) and the National Nuclear Regulator (NNR).

In supporting the afore-mentioned statement, Khosa and Adam (2005) argued that good corporate governance is shaped by the principles on which a company's corporate governance practices are based and the legislative and policy framework in which it operates. As Khoza and Adam (2005) have pointed out, the importance of appropriate legislation and policy provides the basis for effective corporate governance which cannot be underestimated. Chapter I of the OECD principles on Corporate Governance states that: "the legal and regulatory framework for state owned enterprises should ensure a level playing field in markets where state owned enterprises and private sector

companies compete in order to avoid market distortions" (OECD, 2005: 18). The main argument here is that if the legal and regulatory framework is not consistent or coherent, it could lead to market distortion and undermine the accountability of both management and the state as owner. The principle of accountability is one of the seven characteristics of good corporate governance. In line with this principle, individuals or groups in a company who make a decision and take actions on specific issues need to be accountable for them (IoD, 2002).

One of the critical issues raised under the legal and regulatory framework is the separation between the state's ownership function and control functions. According to the OECD guidelines, the state often plays a dual role of market regulator and the owner of the SOE with commercial operations. Another important case is that using the SOEs as industrial policy can result in confusion and conflict with the ownership function. Therefore, separation will enhance transparency in defining the objectives and monitoring performance (OECD, 2005). Similarly, the principle of transparency is critical for good corporate governance in that stakeholders can make a meaningful analysis of the company's actions, its economic fundamentals and the non-financial aspects pertinent to that business (IoD, 2002).

International best practice as articulated in guidelines on corporate governance of state-owned enterprises as adopted by the OECD states that government should "develop and issue ownership policy that defines the overall objectives of state ownership, the state's role in the corporate governance of state-owned enterprise, and how it will implement its ownership policy." (OECD, 2005: 23). The argument here is that in most instances there are multiple and contradictory objectives of state-owned enterprises that lead either to passive conduct of ownership or excessive intervention. In a similar vein, it has been argued that when the objectives of the firm are ambiguous or conflicting, managers may run the organisation in the manner they deem fit. Conversely, governments themselves may also abuse discretion that comes with weakly-defined objectives (World Bank, 2006). It has been indicated that the importance of spelling out the objectives for SOEs has been acknowledged, hence shareholder performance agreements, which can be regarded as contracts between the SOEs and government as a shareholder (Khoza & Adams, 2005).

The OECD maintained that the organisation of the exercise of ownership rights within the state administration varies from one country to another and was dependant on the traditional administrative privatisation waves of the 1980s and 1990s, as well as on recent reforms carried out in regulation and management of state-owned assets (OECD, 2005). This trajectory suggests that there are different types of organisation linked to ownership function. The ownership forms for the

SOE can generally be put into one of the three categories: the centralised model, decentralised model, or the dual model (OEDC, 2005; World Bank, 2006). The most traditional is said to be the decentralised model, in which state-owned enterprises are under the responsibility of relevant ministries. According to the OECD (2005), this model was used in former socialist economies, such as Czechoslovakia, Poland and Hungary, prior to their transition to a market economy. However, this ownership model persists today in a few OECD countries, such as the Slovak Republic, Finland and, to a lesser extent, Germany. The main drawback resulting from such an arrangement is the difficulty in clearly separating the ownership function from other state functions, particularly the regulatory role and industrial policy (OECD, 2005).

On the other hand, the centralised model is more recent and characterised by a strong centralisation of the ownership function. In supporting the argument for this shift, the World Bank (2006) pointed to a global trend for less reliance on a purely decentralised model, with many countries establishing a single ownership entity or coordinating body, in most cases the ministry of finance. Countries such as Chile, Indonesia, Jordan, Peru, and Singapore all have what is essentially a centralised model (World Bank, 2006). Although the usefulness of a coordinating body in standardising certain guidelines and procedures for SOEs is widely accepted, centralised control of SOEs is controversial. The World Bank (2006) maintains that it promises corporate governance of SOEs by creating one highly competent body responsible for entities. On the other hand, critics have expressed deep scepticism in having a monolithic ownership entity, especially for countries with larger and more complex state sectors. Such an entity is seen as a potential bureaucratic monster, wasting resources and acting as a magnet for corruption (World Bank, 2006).

In the case of the dual model, two ministries share the ownership responsibility for SOEs. Among the OECD countries the model is widely used in countries such as Greece, Italy Korea, Mexico, and New Zealand (OECD, 2005). It is also being practiced in non-OEDC countries, such as Brazil, India, Kenya and South Africa (World Bank, 2006). In India, the SOEs are overseen by specific ministries, however the Department of Public Enterprise issues guidelines and a number of government bodies have an oversight role. Similarly, in South Africa, the Department of Public Enterprises develops policies and processes for the governance of SOEs and directly oversees six major enterprises, while line ministries are responsible for the rest. It is also important to note that in South Africa. the National Treasury has also an oversight role over SOEs (World Bank, 2006).

2.6 CONCLUSION

The literature review highlighted the centrality of corporate governance as the foremost determinant of the efficacy of SOEs in respect of the contending paradigms between their ownership and control. Legislation and regulation are recognised as the critical externally-driven mechanisms designed to ensure and enforce the separation of ownership 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), as well as regulation, are a mechanism 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) metamorphological 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 aided also in illustrating the complex nexus between Board and management dynamics on the one hand, and delivery mandates on the other.

Notwithstanding the need for legislation and regulation, SOEs are confronted with multiple, fragmented 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 practicing a culture of good governance standards.

The primary concern of the following chapter is the practical/empirical aspects of the study, as opposed to the mainly theoretically-driven aspects produced by the literature. This chapter (chapter 3) discusses and explains the design and methods of research employed in the study.

3 CHAPTER 3: RESEARCH METHODOLOGY, DESIGN AND METHODS

3.1 INTRODUCTION

The previous chapter addressed a plethora of literature review on corporate governance trends and patterns nationally and internationally. Hart (1998) illuminates that literature reviews serve to distinguish what has been done from what needs to be done in order to make a meaningful contribution to the existing corpus of knowledge in a particular field of study, synthesising and gaining new perspectives. By means of the literature review, the researcher was able to establish why corporate governance has assumed prominence recently in South Africa and indeed, internationally. In the South African corporate landscape, different versions of King Reports demonstrate how South Africa seeks to address corporate governance challenges by means of law and codes of good practice. At the international level, the researcher highlighted the Cadbury Report on Corporate Governance, the Greenbury Report on Corporate Governance, and the Higgs Report on Corporate Governance, to mention but a few. The researcher was also able to interrogate and dissemble the notion of corporate governance from a variety of theoretical perspectives. Accordingly, the researcher argued that the agency theory was more suited to explaining some of the intricacies of corporate governance by placing a premium on control mechanisms due to the separation of ownership and control. Legislation, regulations, policies and procedures are designed to align the interest of the shareholders and those of the managers. Although controls are desirable, their paucity is based on their inability to guarantee performance. As a result, issues such as leadership and organisational culture are equally important in fostering accountability and transparency amongst Boards and management alike.

This chapter is dedicated to the research design and methods utilised in the study. Fundamentally, literature reviews assist in shaping the research design and methodology as they shed light in terms of approaches needed, based on the types of issues and the identified research questions.

3.2 RESEARCH DESIGN

According to Mouton and Babbie (2001), research design refers to a plan or blueprint of how the researcher intends to conduct the research, whilst for Leedy and Ormrod (2002), it is a complete strategy of approach on the central research problem. The central questions of a research design are the types of questions which the researcher seeks to answer. In this study, the researcher is concerned with the “how and why” of corporate governance challenges at the SABC and Eskom.

Mouton (2001: 55) illuminates further that the concepts 'research design' and 'research methodology' conjure different meanings to different social scientists and academic/professional researchers – depending on the particular intellectual paradigms or perspectives of a particular scholarly community of practice or "academic tribe" (Becher & Trowler, 2001: 4). Such a view is further supported by academic scholars such as Van der Walt and Van Rensburg (2010: 22). Mouton (2001: 55) states also that some researchers opt for the usage of 'research design' and 'research methodology' as two interrelated, but separate research concepts; while others prefer to use the terms in a synonymous manner. In the latter context then, the two concepts would be viewed as similar, but interchangeable. For purposes of procedural clarity in this study, 'research design' and 'research methodology' have been used complementarily as two interrelated but separate research terms.

In this study, research design (which has been used complementarily with research methodology as two interrelated but distinct research terms) specifically relates to the more general action plan of the paradigmatic or theoretically-oriented strategies utilised to conduct the investigation (Mouton, 2001: 55, 114). The research design is further regarded as "the management plan of the study" (Henning, 2005: 142), since it provides an outline of action, processes, and procedures to be followed in the realisation of both the study's aim and objectives, as well as the resolution of the stated research problem as articulated by the researcher (Mouton, 2001: 56, 114).

The study investigated the SABC and Eskom by describing and exploring the challenges of corporate governance as experienced by these entities. One of the main questions is: Why is corporate governance a challenge at the SABC and Eskom? Yin (1994) points out that a case study is the preferred strategy when "how" and "why" questions are posed. Part of the design was to undertake an extensive literature review to explore, describe and interpret the phenomenon of corporate governance in the context of SOEs. The theoretical categories that qualitative researchers use to explore, explain, interpret and understand the social world are in the form of grounded theory. The literature review was used as the basis for developing questions earmarked for government officials, Board members and executive management of the SOEs respectively.

3.2.1 Triangulated research design

The concept of triangulation is derived from cartography and trigonometry to refer to the use of multiple data collection methods in ensuring the scientific integrity of the data. According to Willis (2007), triangulation is often not regarded as a good 'fit' for qualitative research as it was not

designed for qualitative purposes. In supporting this claim, Denscombe, (2007) indicates that the notion draws on trigonometry and the geometric laws associated with triangles. According to Neuman (2000) it is used by qualitative and quantitative researchers to observe something from different angles or viewpoints, thus obtaining a fix on its true location. In the final analysis, the study combined various methodological techniques to improve accuracy.

In tandem with the conceptual framework, data on specific themes, for example, role of the Board in strategy development, was collected from Board members and senior management respectively. As part of the triangulation processes, document review and analysis were conducted in order to determine whether or not information from different sources is reinforced. Based on the outcome of interviews and document analysis, the study was able to make claims from multiple perspectives as the information obtained was viewed and verified from different points of view. This approach is endorsed by Hansen (2006), who argues that combining multiple sources of data in the same project allows the researcher to compare data over time, and that it is possible to compare interview data with documents. By means of triangulation, the researcher was able to explore and explain corporate governance experiences from different perspectives of Board members and executive managers.

Nueman (2000) argues that triangulation is used to observe something from different angles to improve overall product accuracy. The implication of this statement is that if one observes something from one perspective, the chances are that the story can only be told from one perspective and that view may not be entirely accurate. It is on this basis that 30 (thirty) participants were interviewed in order to increase levels of accuracy. Fundamentally corporate governance issues reflected the individual's views and orientations and this can be a potential bias. It was therefore important to have a large sample of respondents to mitigate risk associated with bias. Triangulation also assisted in mitigating skewed information as some participants can offer what the researcher wants to hear. Therefore combining interviews and documentary reviews enhanced the validity and reliability of the study.

Additionally, the multiple methods afforded by the triangulated data collection and interpretation processes were useful in distinguishing between relevant and irrelevant information. The study's research design embraces aspects of triangulation in that literature-based data collection enhanced the qualitative element, while the quantitative component was enhanced by means of the interviews questionnaire as the most fundamental research instruments. Furthermore, the three-fold dimensions of triangulation enhanced and maximised its appropriateness to the study. The three-fold dimensions

refer to data triangulation, method triangulation, and investigator triangulation, and are explained briefly below (De Vos et al., 2002: 365).

Data triangulation relates to the use of multiple sources of data and information in the study in order to obtain various perspectives for the purpose of validating the study's findings, conclusions, and recommendations. Method triangulation on the other hand, refers to the specific data collection instruments or tools employed in the realisation of the study's aim and objectives, as well as the concomitant resolution of the stated research problem (De Vos et al., 2002: 365). The complexity of the subject matter under investigation necessitated that the qualitative literature- or reference-based aspects of the investigation be complemented by both empirical and other quantitative mechanisms such as the utilisation of the questionnaire as the primary data collection mechanism. To a greater or lesser degree (depending on the nature of the questionnaire's involvement or engagement of the respondents), the latter added more value and facilitated a participatory component of the study. In itself, the engagement of multiple perspectives and stakeholders reinforced researcher neutrality.

Investigator triangulation refers to the utilisation of two or more trained researchers in the analysis and interpretation of pertinent collected data, in order to authenticate the study, as well as its consequent findings/results and recommendations (De Vos et al., 2002: 365). For congenial purposes of this study, the questionnaire – prior to its finalisation – underwent a rigorous quality assurance process with the researcher's utilisation of the professional services of experts such as the academic supervisor of the current study.

3.2.1.1 Qualitative research design

Brink (2006) argues that qualitative methods focus on aspects of meaning, experience and understanding, and that the study of human experience is approached from the viewpoint of research participants. The study was conducted by means of in-depth interviews with participants drawn from governance and management portfolios in both cases. Qualitative research follows a holistic approach to reality, and thus recognises that human realities are complex (Munhall, 2001). As the researcher, I am keen on the "why and how" aspects of corporate governance experiences. It is on this basis that one of the questions was "why corporate governance poses a challenge in SOEs?"

3.2.1.2 Descriptive research design

Case study research constitutes one form of descriptive study. As the name suggests, description, by means of the use of case study enables one to perform in-depth study of an individual or group of

individuals. According to Burns and Grove (2001) and Polit and Beck (2004), descriptive studies are employed to paint a picture of situations in natural settings. In both cases (SABC and Eskom), the researcher was keen on the participants' description of their environment in relation to corporate governance. Phrases such as "always watching your back", "everyone buys newspaper to establish what has been said about us" are important for this research. These are some of the words used to describe the SOE corporate governance environment by some of the sampled respondents.

3.2.1.3 Contextual research design

State-Owned Enterprises are vast and different in many respects. Others operate in transport, energy and so on. Implied in the diversity are contextual issues which must be recognised in order to make a proper assessment. According to Neuman (2000), qualitative researchers emphasise the social context for understanding the social world, with the meaning of a social action or statement depending on the context in which it appears. The SABC and Eskom have different contextual environments, and this would inevitably shape participants' articulation of corporate governance issues.

3.2.1.4 Exploratory research design

Polit and Beck (2004) and De Vos et al., (2002: 365) assert that exploratory research examines the different dimensions of a phenomenon and is useful for exploring phenomena about which only vacuous understanding exists. The exploratory design was important since it shed light on the various ways in which the phenomenon of corporate governance manifested itself. In the context of this study, the researcher found it useful to investigate corporate governance challenges at the SABC and Eskom by exploring the governance value chain. It was on this basis that departmental officials, Board members and executives managers were engaged, with the intention of exploring corporate governance from different perspectives.

3.2.1.5 Explanatory research design

Corporate governance in SOEs is complex and varies from one context to the other. The variation brings about a need to explain some of the phenomena associated with SOE corporate governance. Explanatory research design is therefore appropriate, as it seeks to connect ideas to understand cause- and-effect factors. This means the study is enabled to explain what is going on within each environment of the phenomenon. Essentially, explanatory research design examines how things come together and interact. The study also seeks to explain why corporate governance is a challenge

for SOEs. The latter orientation is intended to create better understanding and lays the basis for accurate explanation.

3.2.1.6 Rationale for triangulated research approaches

For purposes of optimising the validity, credibility, and reliability of the study, both qualitative and quantitative research perspectives were utilised in order to enhance the complementarity of approaches, to establish efficiency in the research process, as well as to expand the study beyond its perceived or real conceptual limitations (Polit & Beck, 2004). These triangulated (combined qualitative and quantitative) approaches were utilised due to the complexity of the subject matter necessitating that quantitatively derived evidence be complemented and supported with descriptive discussion relating to the multiple layers of variables prevalent on the research sites. Both the concurrence and complementarity of statistical information and descriptive discussions provided narrative coherence and logic, taking into account the range of stakeholders consulted in the study during the actual questionnaire implementation stages. Furthermore, the dual/complementary approach (of the combined qualitative and quantitative) perspectives optimised the availability of data and information concerning topical or controversial issues which would perhaps remain 'hidden', vacuous, or take long to be brought to open and systematic scrutiny.

3.3 RESEARCH METHODOLOGY AND METHODS

Brannen (2009) contends that 'research methodology' and 'research methods' are two distinct nuances, however often they are used interchangeably by researchers of various intellectual or scholarly persuasions. According to the above-cited author, 'research methodology' is referred to as a thinking tool; that is, the world view (paradigm) that influences the researcher's researcher presentation of a research question and the decision on the methods and data analysis to be employed. Research methodology articulates and focuses on the strategies, course of action, processes, or the design informing the choice and use of particular methods, while linking the choice and usage of research methods to the desired outcome. On the other hand, 'research methods' are the specific activities or "doing tools" that indicate the manner in which the data is collected and analysed.

There are a number of research methodology designs based on specific research problems, for example, Creswell (1998) lists three major research designs, namely quantitative, qualitative and a mixed research design. This research is housed in a qualitative research paradigm. Authors such as Merriam (1987, 2002), Creswell (1998), and Leedy and Ormrod (1998) have identified traditions

within the qualitative approach, such as, biography, phenomenology, grounded theory, ethnography, and case study.

The study explored corporate governance challenges by means of the qualitative design, which involves an approach or strategy that allows for different thematic views, and gives participants a more open-ended way of giving their views and demonstrating their actions (Henning, van Rensburg & Smit, 2004). Accordingly, the case study method is useful as it uses interviews and appropriate written and/or audio-visual material in order to understand the phenomenon being investigated. Secondly, case study method was used as it allows the researcher to categorise and interpret data in terms of common themes. In supporting this claim, Leedy and Ormrod (2005) have argued that qualitative research is used to answer complex questions about the nature of phenomena, often with the purpose of describing and understanding them from the participants' point of view. Therefore, by engaging the Board members and executive managers of SOEs, the study seeks to understand corporate governance from the perspective of those who engage and deal with governance issues. Board members and executives are governed by a web of legislation and regulations which are not only difficult to comprehend but also challenging, given the social and political environment. The researcher employed the case study approach as it recognises complex issues, such as legislation, regulation, performance and monitoring of the custodians of corporate governance in SOEs. As Mill (2006) has pointed out, to ensure a strong research design, researchers must choose a research paradigm that is congruent with their belief about the nature of reality.

3.3.1 Methodological assumptions

According to Van der Walt and Van Rensburg (2010: 22), methodological assumptions are related to the researcher's view of the nature and structure of science and research in their discipline. The main concern is how knowledge is obtained from participants and what the relationship between the researcher and the participants is. Thus, the researcher believes that the research should be functional and the knowledge gained applied in practice. Semi-structured interviews allowed the participants an opportunity to respond beyond the limits of the interview guidelines, thus offering more insights.

Henning et al. (2004) regard meta-theoretical perspectives as important in research. Ontology is a branch of philosophy that deals with the nature of reality, driven by the question "what is there to know?" and allows the researcher to theorise about research, make explicit assumptions about the inter-connectedness of the way things are related in the world and anchor the research in the literature.

Meta-theoretical assumptions are not testable but deal with the human being and society, and have a philosophical origin. Although they give no epistemic pronouncements, they do influence the research decisions. From a naturalistic perspective, there are multiples of socially constructed reality of phenomena in society. The following ontological assumptions are made in this study: first, multiple realities of individuals are central to the description, exploration and meaning of corporate governance as experienced in SOEs. Second, knowledge of experience can be known by means of the descriptions of the Board members' experiences of how corporate governance was implemented, its challenges and also contextual issues which made it difficult. Third, individuals' (Board members, government officials and executive management) experiences enabled the researcher to appreciate the complexity and diversity of social realities.

Epistemological assumptions are testable, offer epistemic pronouncements about the research field, and give shape to the conceptual framework. The researcher is required to make a thorough study of existing theoretical pronouncements, in the literature, on the subject of research in order to be able to state his/her theoretical assumptions (Botes, 1995:6). In this regard, relevant assumptions to the study are as follows: i) an individual participant can reflect and state his/her experience, feelings and emotions regarding the corporate governance in the particular context; and ii) the natural settings of participants will enable participants to express their experiences freely and unhindered.

3.3.2 The case study research method

The notion of a case study has been explored by a number of researchers who emphasised different case study features. For example, Stake (1998) avers that the object of the case is more crucial to case than the methods of investigating the case. On the other hand, researchers such as Yin (1994) and Merriam (1994), place more emphasis on the method and the techniques that constitute a case study. Despite these paradigmatic differences, there is a lot in common among these researchers, such as their assertion that the case study should be complex, the investigation should take place in its natural setting, and should be contemporary. The SABC and Eskom have almost similar corporate governance challenges in terms of their complexities and contemporary nature. There is therefore a need to seek practical solutions, considering the role they are expected to occupy in the socio-economic reconstruction and development project of the nascent South African democratic dispensation.

Yin (1994) mentions that the case study method is the preferred strategy when "what", "how" and "why" questions are posed. The purpose of a case study approach is to understand one person or

situation in great depth. By means of a semi-structured interview process, the researcher was able to engage the participants on pertinent issues on corporate governance. The SABC and Eskom experienced almost similar corporate governance challenges and this led to conflict between the Board members and executive managers. The gravity of corporate governance challenges were severe at the SABC as the situation led to the resignation of successive Boards and an exodus of executives. The conflict between Board members and executive managers had serious financial implications as the entity had to seek government intervention by means of a loan secured from Nedbank.

There are several qualitative approaches to research in naturalistic inquiry, including ethnography, ethnomethodology, case study, grounded theory, and phenomenology (Morse & Field 1995). All the approaches profess that human beings are central to understanding social phenomena. The corporate governance challenges at SABC and Eskom are complex and varied and this requires a research approach which provides in-depth understanding. Case study methods provide insight into specific phenomena. Yin (2003) states that in general, case studies are the preferred strategy when "how" or "why" questions are being posed in the event that the investigator has little control over events and the focus is the contemporary phenomenon within some real-life experience. This orientation puts the emphasis on context and life experience, which forms the basis to justify its use as it considers factors such as the effects of the environment. In justifying the use of case study, Rowley (2002) argues that case studies are therefore a valuable way of looking at the world around us. The researcher embraces this view as corporate governance of the SOEs can be viewed from a case study point of view to make sense of what is happening in relation to corporate governance in the SOE sector.

The case study approach was chosen as the researcher seeks to better understand *why* Board members and executive managers were experiencing difficulties in carrying out the mandate of the SABC and Eskom without serious governance issues prevailing. It is also befitting to seek deeper understanding in terms of *how and why* the line function departments and Boards of these entities allowed the situation to deteriorate. The case study research approach also provided an extensive literature review in the exploration, description, and interpretation on the phenomenon of corporate governance in the context of SOEs.

As in the phenomenological context, case researchers are interested in describing phenomena as experienced by participants in a manner that is judged socially acceptable by the researcher. Any participant who has lived by means of a particular experience is qualified to present his or her

feelings and emotions about the phenomenon. It is on this basis that Board members and executive directors were engaged on corporate governance issues, as their relationship is distinct and yet mutually reinforcing.

3.3.2.1 Justification of the case study approach

The case study approach is one of the five research paradigms applicable to a qualitative study (Cant, Gerber-Nel, Nel & Kotzé, 2003: 30). The latter authors define a case study as an exploratory research technique that intensively investigates existing records of one or a few situations similar to the research problem under investigation. De Vos (2002:274) and Miles and Huberman (1994: 25) elaborate further that a case study is exploratively and situationally bound to time and place. Furthermore, the case study also allows for the usage of multiple data sources (Baxter, 2008).

The two cases share a number of characteristics, and yet remain fundamentally different in terms of their mandate. Firstly, as parastatals, they are governed by a series of legislation and regulations. Secondly, the state's shareholder interest is overseen and driven by the line function Ministry of Public Enterprise. Thirdly, they operate in a complex social and political environment where different interest groups lobby for preferential treatment despite legislated mandates. Despite these similarities, the two entities have distinct mandates that are funded differently.

The usefulness of qualitative research in this study was that it lends itself to a debate between inductive and deductive approaches. According to Neuman (2000) theorise embracing an induction mode observe the empirical world and reflect on what is taking place, while also enhancing increased abstract thinking, moving towards theoretical concepts and propositions. This study subscribes to inductive approaches, as it seeks to understand how corporate governance is being experienced by Boards and executive managers. The rationale is that Boards and management have distinct roles and experiences. By means of the interviews, observations, and literature review, the researcher was able to inductively formulate a wholesome picture based on the experiences of Boards and management, and these images and expressions informed theory which help explain the governance problems afflicting the SOEs. Cassell and Symon (1998), Leedy and Ormrod (2005), and Merriam (1998) maintain that the term 'induction' refers to the process by which observers reflect upon their experiences of the social phenomenon, then attempt to formulate relevant explanations. Based on this explanation, the study was not meant to test any theory, but to build towards one from observation and intuitive understanding gained in the field. Goetz and LeCompte

(1984: 4, in Merriam, 1998) indicate that in contrast to deductive researchers who "hope to find data to match theory, inductive researchers hope to find a theory that explains their data".

An advantage of the qualitative method in exploratory research is the open ended or semi-structured questionnaire, which provides an opportunity for the participants to respond in their own words as opposed to other surveys in which this is limited. By means of an open-ended data collection instrument, the researcher had an opportunity to probe issues such as the role of the Board members in relation to strategy development, composition of the Boards, skills and competencies and performance management systems. The interaction between the researcher and interviewee provided an opportunity to clarify issues whilst at the same time improving the richness of data.

As Mill (2006) has pointed out, in order to ensure a strong research design, researchers must choose a research paradigm that is congruent with their belief about the nature of reality. Creswell (1998) indicates that qualitative research affords the researcher an opportunity to build a complex and holistic picture by capturing the detailed views of informants. This study recognises the importance of this approach in that, by means of interviews with Board members and executives, the expectation was that complexities around corporate governance would be dissembled.

3.4 DATA COLLECTION

Data collection is generally regarded as the precise and systemic gathering of both theoretical and empirical information relevant to the research problem, the research purpose and the specific objectives, the study's significance, as well as the pertinent research questions (Burns & Grove, 2006: 40). In addition, the data collection process conforms to the research methodology of the study; in which case the research methodology then "focuses on the research process and the kind of tools and procedures to be used" (Mouton, 2001: 56). Since the study assumes the form of a qualitative, exploratory, descriptive, and contextual research design, the researcher's understanding of the participants' perspectives and experiences during the data collection phase was greatly enhanced by this eclectic approach.

The quality of the data collection process complemented "the logic of research" (Mouton, 2001: 114). The "logic of research" itself entails the nature of the evidence on the one hand, and the processes involved in the acquisition of such evidence, on the other. The data collection process in the study focused on both the theoretic and empirical/practical aspects of the research topic and all its attendant research variables; such as the research problem, the research objectives, the research questions, the motivation of the study, as well as the methods and procedures applied during the data

collection processes. The above-mentioned considerations are in consonance with the maxim: "The worth of all scientific depends heavily on the manner in which the data was collected and analysed" (Babbie & Mouton, 2001:563).

3.4.1 Theoretical data collection

Theoretically-generated data collection processes relate to the secondary forms of evidence obtained by the researchers from written and electronically available (non-human) sources and artefacts (Babbie & Mouton, 563). In that regard, theoretic information was obtained mainly from the review of relevant literature on the research topic, including electronic databases and search engines. Data and information obtained thus relate to the input and contribution of other scholars and experts in the field of corporate governance in the context of SOEs. Furthermore, the theoretically generated data informed the researcher on contemporary and past theories, trends, and practices in the realm of the research topic; as well as the hiatus (if any) on existing SOE corporate governance knowledge, and future research intended to attenuate such identified gaps.

3.4.1.1 Document review

Literature review is utilised in the data collection process in order to support existing data where needed, and to confirm the researcher's interpretation of data with existing knowledge on the research subject. The findings of the study are then discussed in the light of relevant literature conducted by other researchers in this field of knowledge (SOE corporate governance).

Babbie and Mouton (2001: 565-566) and Mouton (2001: 4-6, 90-91) ascertain that there exists a distinction between literature review and scholarship review. Literature review focuses mainly on the bibliographic referencing of consulted sources of data and information. This study, then, does not necessarily concern itself with the mere provision of a comprehensive bibliography of the relevant literature consulted for the entire study, which mainly locates the study "... in the context of the general body of scientific knowledge" (Babbie & Mouton, 2001: 565). It is for the latter reason that the list of references (bibliography) has been provided immediately after the last chapter of this study; that is, before the List of Appendices. The comprehensive list of references itself was continuously pared – increasing or decreasing as "the weight of evidence" (Mouton, 2001:114) unfolded according to the nature and content/substance of the sources of information that had a direct or peripheral bearing on specific and general aspects of the study. The literature featuring in this category included both data and information from which direct reference was made and indicated by quotation marks, as well as data from which indirect reference (paraphrasing) was made

– all of which contributed in varying degrees, to the development of the research topic, the method(s) of enquiry, and the resultant episodes of analysis and interpretation.

The secondary data was sourced from the line departments, Board members and executive members of the SOEs in the form of Board charters, memos and annual reports. As the term implies, secondary data is essentially 'second-hand', however it is useful in complementing the limitations of the primary data. This took the form of strategic plan documents, articles of association, Board charters, and shareholder compacts between SOEs and their respective departments, commissioned reports, annual reports and the auditor-general's reports.

The Shareholder Compact is one of the crucial secondary data sources analysed. In terms of Treasury Regulations issued in terms of the Public Finance Management Act of 1999, as amended, the accounting authority (Boards of Eskom and SABC respectively) should, in consultation with its executive authority (line function Ministers), annually conclude a Shareholder Compact. The Shareholder Compact documents key performance measures and indicators to be attained by the public entity as agreed between the accounting authority and the executive authority. Such a documentary source of information was therefore a *sine qua non* reading, and its contribution to the literature landscape on SOE corporate governance challenges could not be underestimated.

3.4.2 Empirical data collection

The empirical phase of the study refers to 'the fieldwork' conducted 'outside' of the study's literature-based theoretic, abstract, or conceptual terrain. Accordingly, the empirical is concerned with the real-life, practical, or 'lived experiences' of the research subjects in the context of the phenomenon being studied. In such a situation, the *inductive* approach to data collection facilitated and enhanced the centrality of the SABC and Eskom as points of reference from which generalizability or trend-centred characteristics could be inferred and translated to other public SOEs affected by the self-same corporate governance challenges – albeit in dissimilar contexts and effects (Mouton, 2001:113). This centripetal (inductive) aspect of the empirical domain of local SOE trends was also valuable to the extent that it also served as a deductive basis for *comparability* with international trends and experiences insofar as SOE corporate governance is concerned. It is in this regard that the respondents (especially those meeting the selection/inclusion criteria for interview purposes) – in their respective capacities as practitioners in the 'field' – provided the human, personal, or emotional interactive side of the investigation; which could not have been easily established by means of the 'non-human' review of literature. Cast in this mode (of both inductive

and deductive reasoning), the empirical component of data collection provided a continuum between the research problem and the research objectives on one hand, as well as the congenial data collection processes on the other (Holosko, 2001: 266).

The research methodology in this study focused on the actualization of data collection processes that accorded a pragmatic/practical and empirical premise to the investigation. Accordingly, the semi-structured interviews and the questionnaire administration constituted the two foremost empirical data collection instruments. Furthermore, the empirical context of the study sought to elicit the "social reality" of the respondents (Holosko, 2001: 265). The empirical phase of the study then, is a determinant of whether or not the means (research process) justify the end (the resolution of the research problem as supported by the evidence of the findings) (Fouche, 2002: 106).

3.4.2.1 Semi-structured interviews

One of the most important hallmarks of qualitative research is the technique of in-depth interviews, used to explore a number of issues and help uncover the participants' understanding and perspectives. Furthermore, the primary aim of designing semi-structured interviews is to ensure standardisation. The essential element of standardised methods of data collection is that each participant was asked the same question so that responses are comparable by means of the sample (Sapsford & Jupp, 2006). These perspectives are particularly useful in exploring social phenomena, or as a toll to "gather descriptive data in the subject's own words so that the researcher can develop insights into how subjects interpret some piece of the world" (Polit & Beck, 2008). This is also argued by Taylor and Bogdan (1984), who regarded encounters between the researcher and informants as directed towards understanding the latter group's perspectives on their social and organisational lives, experiential elements and their 'situatedness' in society.

Furthermore, authors such as Crookes and Davis (1998) and Bogdan and Biklen (2007), indicate that much qualitative data is gathered by means of an interviews, regarded as "purposeful conversation between two or more people" (Bogdan & Biklen, 2007: 103). The rationale for a series of interviews with senior government officials, Board members and executive managers of SOEs is premised on the fact that such conversation are directed by one person in order to obtain information from another. This study recognises different sources of data collection for a qualitative research study, viz. interviews, observations and documents (Merriam, 2002; Yin, 2003; Creswell, 1998; Crookes & Davis, 1998). This study included interviews with senior government officials, Board members and executive managers of SABC and Eskom, recognising different types of interviews; namely, semi-

structured or opened-ended interviews (Willis 2007). In order to elicit as much information as possible to a point of saturation during these interviews, the researcher employed a semi-structured interview schedule in order to allow a free-flow of information based on specific themes (e.g. governance and ownership models). Given the powers vested in their respective portfolios, interviews were conducted with Board members and the executives of SOEs. This cohort of organisational leadership represents the custodianship of corporate governance. In essence then, the semi-structured interviews with the

Above-mentioned cohort served to establish and explore their social reality within their familiar work environs.

The interviews were advantageous in that social and organisational explanations and arguments could be contextually constructed. Furthermore, interviews establish depth, nuances, complexities and complementarity of data (Mason, 2002). Information obtained from the participants was audio-recorded and analysed following the transcription process. The analysis was intended to facilitate data/information congruence, variations, and insights into the research questions.

3.4.2.2 Questionnaires and their administration

The study sought to answer the complex questions about corporate challenges at the SABC and Eskom. Pursuant to this ideal, a total of 30 (thirty) Board members and executives at the SABC and Eskom respectively were interviewed. An open-ended interview questionnaire was used to collect data on pre-determined themes. The duration of interviews ranged between 45 (forty five) and 60 (sixty) minutes. The open-ended questionnaire enabled the researcher to solicit and further probe the views of Board members and executive managers. The questionnaire was used as the primary empirical data collection tool and self-reporting mechanism intended to elicit relevant and usable information obtained by means of the written responses of selected respondents in relation to the predetermined themes, namely: legislative frameworks, role of Boards and management in strategy development, performance monitoring and the funding regime of the sampled SOEs (Burns & Grove, 353: 2011). In addition to the qualitatively-oriented interviews, the development and administration of the questionnaire enhanced the more quantitatively-oriented aspect of the research design. During the development and administration of the questionnaire, the following factors were borne in mind by the researcher:

- Respondents were informed that there were no correct or incorrect responses;

- Ethical issues were taken into serious consideration by not divulging respondents' identity (thus guaranteeing their privacy, anonymity, and confidentiality;
- Questionnaire items were sensitive to issues of race, gender, ethnicity, and cultural practices;
- Both close- and open-ended questions were included to respectively facilitate unrestricted, but direct responses;
- All the critical questionnaire variables were thematically linked to SOE corporate governance challenges in the context of legislative frameworks, role of Boards and management in strategy development, performance monitoring and the funding regime of SOEs; and
- The researcher personally collected the completed questionnaires for perusal and further analytic attention.

As a data collection instrument, the questionnaire constituted the critical research instrumentation that provided the quantitative/statistical context for the interpretation and analysis of the collected data. The measurability of numerical data obtained from the elicited questionnaire responses was utilised to obtain information and translate it to the lived experiences of the sampled respondents as representatives of the larger universe of SOEs (Neuman, 2011), in order to to reach reasonable and legitimate conclusions and the ability to generalize findings in similar contexts (Burns, Groove & Gray, 2013: 25).

As a printed embodiment and self-reporting mechanism designed to elicit written information from the sampled respondents, the developed questionnaire was advantageous in that:

- The closed- and open-ended questionnaire items consistently focused on the critical aspects associated with legislative frameworks, the role of Boards and management in strategy development, performance monitoring and the funding regime of the sampled SOEs (Leedy & Ormrod, 2010: 194);

- There was less opportunity for researcher bias (de Vos et al., 2011: 190), as the respondents completed the questionnaires on their own, without any interference from the researcher; and

- The development and administration of the questionnaire was relatively inexpensive, due to the fact that the researcher personally typed, printed, and reproduced the questionnaires which were distributed to the respondents during the actual study.

Notwithstanding the above-cited questionnaire advantages, Gary (2004) cites the following questionnaire-related disadvantages:

- The standardised nature of the questionnaires accommodates little space for any misinterpretation of items by respondents. This could be partially solved by piloting the questions on a small group of students or at least friends and colleagues prior to the questionnaire's actual administration;
- Respondents may answer superficially, especially if the questionnaire takes long to complete;
- Superfluous questions should be avoided, as they may exhaust the respondents' patience or concentration;
- Respondents may not be willing to answer the questions or reveal detailed information they consider not useful to them;
- Questionnaires, like many other evaluation methods, occur after the event, and participants may forget important issues; and
- In the event that respondents were not carefully selected, some questionnaire items may be above the subject and practice levels of the respondents.

3.4.3 Sampling and sampling procedures

There is consensus among researchers that sampling constitutes an important feature of research methodology, and is essential for the general conclusions that the researcher draws from the study. Sampling refers to the process of selecting the sub-set of the designated population in order to represent the entire population (Brink, van der Walt & van Rensburg, 2006: 124). The most important aspect of sampling is that the study should yield findings that inspire confidence to both the target audience and to the general public (Miles & Huberman, 1994). In order to inspire confidence and appropriate relevance, legitimacy, and authenticity, this study utilised a case study approach in order to appreciate corporate governance issues in the context of the universe of local SOEs. Consequently, it targeted Board members and senior executive managers at the SABC and Eskom to share their views on prevalent corporate governance challenges. Non-probability sampling was opted for, according to which the characteristics or variables to be observed were selected on the basis of the researcher's purposive judgment concerning the usefulness and representativity of these characteristics in respect of SOE corporate governance challenges (Babbie 2007: 182).

3.4.3.1 Sampling/study population

The population is the entire group of persons or objects (universe) that are of interest to the researcher, and so must meet the criteria required for the investigation (Brink, 2006). Meanwhile, Babbie and Mouton (2001) and Brink (2006), describes a sampling/study population as the

aggregation of elements from which the sample is selected. For purposes that are congenial to the study, Departmental officials, Board members and executive managers were part of the study population of the SOE corporate governance universe.

3.4.3.2 Sample size

The sample size refers to the number of study participants in a sample (Polit & Beck 2006: 509). Participants meeting the eligibility criteria were included on a voluntary basis. The qualitative researcher tries to collect information that is representative of the range of experiences, perspectives and behaviours relevant to the research question. The most important aspect to remember is that "the logic of purposeful sampling is different from the logic of probability sampling" (Patton 1990:185 in Ulin et al 2005: 55). Therefore, small purposive samples were ideally suited for qualitative inquiry. For the researcher, it is crucial to describe, justify, and explain small-sample selection so that others could judge its strengths and weaknesses. "Exercising care not to over-generalize from purposeful samples, while maximizing to the full advantage of in-depth, purposeful sampling, will do much to alleviate concerns about small sample size" (Patton 1990: 186, cited in Ulin et al 2005:55).

The researcher considered the sample size in order to make a substantial claim on the epistemological value of the study. However, there are no established criteria or rigid rules for sample size in qualitative research, but it is determined by the nature of the research study (Holloway & Wheeler, 1996; Patton, 2002). Sandelowski (1995) corroborates the latter view, ans mentions that adequacy of sample size in qualitative research is relative. This situation raises the question: *What constitutes an appropriate sample?* Glaser and Strauss (1967), Strauss and Corbin (1998), and Thomson (2008) believe this question is answered by theoretical saturation; that is, the point at which new data no longer brings additional insight to the research. Lincoln and Guba (1985, in Merriam, 1998) also emphasise the importance of 'saturation' or 'redundancy', the key argument being that in a purposive sample, the size is determined by informational considerations. This research was therefore guided by 'saturation' or redundancy, considering the fact that no additional or new information came forth, or was presented by the participants. Therefore, the number of participants was also determined in accordance with the criterion of saturation of information. This is the point in the study according to which the researcher begins to hear the same information repeatedly being reported and he/she no longer learns anything new (Babbie 2007: 305).

Since the universal population of SOE Board members, executives and senior managers is a statistically large number that may pose quantification challenges, a portion of the representative population is sufficient to help examine the characteristics, opinions, and experiences of the larger population or universe (Polit & Beck 2008: 767). For purposes of this study, a total of 30 (thirty) Board members and senior executive managers from both the SABC and Eskom were sampled for participation in the study. The selection of these participants is based on the belief that they would

provide information that has been "lived" by other members of the SOE universe excluded from participating in the study in accordance with the exclusion criteria..

3.4.3.3 Sampling techniques/methods

Sampling techniques/methods are classified as either probability or non-probability (Neuman, 2011; Bryman, 2012). Probability sampling is based on the idea that the probability of selection of each respondent is known, while the probability of selection is not known in non-probability sampling (Polit and Beck 2012). The probability techniques include simple random, systematic sampling, stratified sampling, and cluster sampling; while the non-probability techniques include convenience sampling, quota sampling, snowball sampling, and judgment sampling. Probability sampling is advantageous in that the sampling error can be calculated. This error is the degree to which a sample might differ from the population. When inferring to the general population, results are reported with an approximated sampling error. In non-probability sampling, the degree to which the sample differs from the population remains unknown. (Polit and Beck 2012). In the event of non-probability sampling, members are selected from the population in some non-random manner.

According to Polit and Beck (2004), the sampling process involves the selection of a portion of the population to represent the entire population. This involves the selection of a sample on the grounds of existing knowledge of the population. As Crookes and Davis (1998) noted, purposive sampling is concerned with the "hand-picking" of individuals by the researcher, based on certain pre-defined criteria. They are relevant to the topic and possess specific information about which the researcher has sufficient knowledge in studying the phenomenon of interest. For Leedy and Ormrod (2005), purposive or judgement sampling is used in the event that the researcher selects individuals or objects that will yield the most desired information about the topic under investigation. Similarly, Patton (1990, cited in Merriam, 1998: 61) argues that "the logic and power of purposeful sampling lies in selection of information rich cases for study in depth". Other proponents maintain that it is useful in information-rich cases from which one can learn great issues of central importance to the purpose of the study.

In this study, purposive/judgement sampling was opted for, due to the researcher's own judgement of inclusive representativity; that is, the researcher's critical assumption of similarities (for purposes of the generalisability or transferability of findings) between the selected SOE representatives, despite their disparate institutional and intellectual cultures. The researcher's judgement became

very crucial in determining minimum factors of variability, *ergo*, maximum grounds for similarity (Sarantakos, 1998: 141, 151; Strydom & Delport, 2002: 333-334).

According to Creswell (2003), data collection includes setting the boundaries for the study, which means being able to identify the critical role players. In so doing, this researcher engaged government officials within the relevant ministries, Board members and executive management of SOEs. Located within a qualitative research paradigm, the data collection procedures were aligned to this tradition. It is on this basis that a purposive and non-probability sampling procedure for the qualitative phenomenological research was used. This approach gave the researcher the freedom to choose and to conduct in-depth interviews with research participants who have experienced the governance and management of the SOEs. The investigator believes that the participants were able to fully describe their experiences and thus contribute to the purpose and objectives of the scientific investigation

3.4.3.4 Sampling criteria

The notion of sampling criteria refers to the extent to which the research participants do, or do not meet the pre-selected traits or characteristics intended to advance the research objectives (Polit & Beck 2004: 218; Strydom & Delport 2002: 334). The research participants could either be included or excluded from participation in the study according to the pre-requisite criteria. The characteristics essential for participation in the research are generally listed according to the required sampling criteria. In this study, these criteria were developed from the research problem, the research purpose, the research design, as well as the conceptual and operational definitions of the study variables. The sampling criteria may include characteristics such as the ability to write, read, communicate in a particular language, and age of the participants (Grove et al 2013:357; Polit & Beck 2012: 515).

I. Inclusion Criteria

Inclusion criteria refers to the specific characteristics or qualities that research participants should possess in relation to the sampled respondents or research population/universe. Polit and Beck (2010: 306) illuminate further that inclusion criteria is a determinant of a person's suitability to membership of a particular sample population/universe.

The selection of the participants in this study was purposively implemented by the researcher. In that regard, the following participants were eligible for participation in the study, based on their experience, expertise and the role they play within their respective organisations:

- Government officials in the Department of Communications and the Department of Public Enterprises;
- Board members and executive managers employed by the SABC; and
- Board members and executive managers employed by Eskom.

The snowballing technique was used to access additional participants meeting the same selection criteria, in the event that the identified original participants were unavailable due to one reason or the other (Baker, 1988). The researcher implemented the snowballing effect by asking the participants to name additional people whom they considered knowledgeable in the subject field being investigated. It was at this juncture of the study that the researcher recognised that social networks form an integral part of the research process, especially in the event that the phenomenon being investigated is unknown.

II. Exclusion Criteria

Exclusion criteria specifies the characteristics that participants or lack in order to be included in the study, as outlined in the study protocol (Polit & Beck, 2012: 727). The following factors were considered in the exclusion of respondents in this study:

- Non-governmental officials; and
- Board members and executives not employed by either Eskom or the SABC.

3.5 DATA ANALYSIS

The importance of data analysis is acknowledged by numerous authors, particularly in the event that data is transformed into information that has meaning and contributes to knowledge production. This transformation is achieved in the event that different techniques and methods are used to analyse data as collected from various settings (Bogdan & Biklen, 2007; Creswell, 2003; Crookes & Davis, 1998). Brink (2003) shares a similar view to that of Bogdan and Biklen (2007), that in qualitative research, data analysis and interpretation commences during the data collection phase and continues after it. As the process of data collection and analysis unfolded, a mental picture based on the issues was picked up. On the other hand, Polit and Beck (2010: 463) add that the purpose of data analysis, regardless of the type of data or underlying research tradition, is to organize, to provide structure, and to elicit meaning from the data Neumna (2000) adds further that in general, data analysis means a search for patterns – recurring behaviours, objects or body of knowledge. Similarly, the analysis of each theme (e.g. legislation and regulation) is meant to establish patterns of behaviour, objects or

body of knowledge in as far as corporate governance is understood and applied within organisations studied.

In supporting the conceptual framework, data collection and the subsequent analysis is based on identified themes, namely legislative and regulatory environment, relationship between the Board and management, role of the Board in strategy development, monitoring of Board performance and funding models.

3.5.1 Thematic content analysis

Anderson (2007) defines thematic content analysis as a descriptive presentation of qualitative data. In sub-section 3.4.2.1, the study indicated that information from participants was collected by means of interviews. Thematic content analysis allows the researcher to group issues in order to obtain the collective views of the participants. The study employed this analytic approach as the interview instruments were designed such that information from the participants could be categorised into different themes for ease of analysis. The presentation of the interview transcript along themes (i.e. namely legislative and regulatory environment) facilitated a process of cross-case analysis in terms of responses from different participants.

3.5.2 Cross-cases analysis

Yin (2003) describes a number of data analysis techniques, which include time-series analysis, logic models, and cross-case techniques. For purposes of this study, the focus is on cross-case analysis. This data analytic method is germane, as it complements thematic content analysis mentioned earlier. The cross-cases method assisted the researcher to identify common features, and to describe and interpret possible solutions based on the research questions from Board members and senior executive managers. The rationale for the involvement of the cross-case analysis is not necessarily about comparison between two cases. In the context of this study, cross-case analysis enables the researcher to delineate factors that may have contributed to the outcomes of the case.

The process of data analysis was preceded by a validation process, according to which participants were required to validate the transcript before the analysis could take place. This process was also used as an opportunity to engage the participants on areas which had gaps or needed clarity. It must be noted not all participants provided insights on the transcript, some cited time constraints, while others were just not interested but were quick to say: “I can’t wait to see the final product”, “You are doing important work”, and “We need Ph D graduates on such topics

All interviews were audio-recorded and transcribed verbatim. Additional information concerning interviews was carefully noted. Thereafter, data from the interviews was also coded into what Creswell (2002) and Mason (2002) refer to as “chunks” and an indexing system respectively. The latter process is based on the conceptual framework identified above. For example, the conceptual framework made reference to legislative compliance, strategy development, and monitoring and evaluation. These themes collate different aspects of the research and make sense of the outcomes. The approach to data analysis is aligned to what Bogdan and Biklen (1982) define as "working with data, organising it, and breaking it into manageable units, synthesising it, searching for patterns, discovering what is important and what is to be learned, and deciding what you will tell others". Epistemologically, these categories and themes were also used to support knowledge claims or evidence.

3.5.3 Data quality management

Data management is largely premised on the extent to which the integrity of the research was established by means of ensuring that the collected data and the research instruments (e.g. questionnaire and semi-structured interviews) enhanced the quality of the investigation. In this regard, reliability, credibility, and validity of the research insteruments are critical factors in establishing such integrity and acceptable quality assurance standards of research.

3.5.3.1 Reliability/consistency

Reliability refers to the consistency or stability with which the research instrument produces similar outcomes could be repeated elsewhere under the same circumstances as those that prevailed at the original research sites (Leedy & Ormrod, 2010: 28), Gibbs, 2007: 100). The repeatability or consistency of the study and its attendant research instrument constitute the basis for its generalizability.

3.5.3.2 Credibility

Credibility refers to the researcher’s confidence in the truth value of the collected data and its interpretation (Polit & Beck, 2008: 39). Credibility is also established by employing multiple sources of information and data (Polit & Beck, 2008: 39). In this study, literature review and the empirical aspects of interviewing and questionnaire administration ensured that the study established a credibility base for itself.

3.5.3.3 Validity

Validity is the degree to which an instrument measures what it is supposed to measure (Maree, 2012). Validity could be internally or externally established. Internal validity "refers both to how well a study is conducted (research design, operational definitions used, how variables were measured, what was or was not measured, etc.), and how confidently one can conclude that the observed effect(s) were produced solely by the independent variable and not extraneous ones. In descriptive studies (correlation, etc.) internal validity refers only to the accuracy or the quality of the study (e.g., how well the study will be carried out)" (Polit & Beck, 2012). On the other hand, external validity "represents the extent to which a study's results can be generalized or applied to other people or settings, without veering off all data collection processes from the objectives of the study" (Polit & Beck, 2012).

As Neuman (2000) has correctly pointed out, all social researchers want their measures to be reliable and valid. The SABC and Eskom play an important role in the economy so any research on such entities must be reliable and valid. The findings on these cases can be used to address corporate governance challenges in SOEs in order to elevate their performance. In this context, reliability means consistency and validity refers to truthfulness. The qualitative researcher thus needs to demonstrate that the study is credible (Badenhorst, 2008b).

Both positivistic and naturalistic paradigms strive to ensure that the research results meet scientific, rigorous and robust requirements, if the findings are to be significant. Of the two paradigms, positivism has an upper hand based on the research outcome which did not recognise multiple realities. The naturalistic paradigm which is the prism by means of which this research is conducted recognized that the research environment is influenced by different factors and therefore the idea of multiple realities cannot be ignored.

The work of Guba and Lincoln (1985) ensured that qualitative research findings enjoy respectability and confidence in the scientific community. The above-cited authors developed strategies, procedures and a list of criteria to evaluate the integrity of qualitative research findings, namely credibility, transferability, dependability and conformability, and these were employed to enhance the trustworthiness of this study. Table 3.1 below provides a description of the strategies and activities conducted for the study.

TABLE 1 Description of the strategies and activities conducted for the study

STRATEGY	EVALUATIVE QUESTION	CRITERIA	APPLICABILITY
Credibility	In the credibility test, there is correspondence between the way the participants actually perceive social constructs and the way the researcher portrays their viewpoints or, in the words of Babbie and Mouton (2001), "there is compatibility between the constructed realities that exist in the minds of the participants and those that are attributed to them".	• Prolonged engagement • Peer examination • Authority of the researcher • Data Triangulation • Method Triangulation	• Researcher worked for many hours with raw data from transcribed interviews • The research was discussed with a colleague, a supervisor and co-supervisor. • The Researcher had a Master's degree and had acquired experience in qualitative research and attended methodology classes at Wits School of Governance in 2011. • Interviews were conducted with 30 participants • Data were generated by means of interviews and document analysis.
Dependability	Refers to the stability of data over time and under different conditions.	• Audit trail	• A full description of the research method and methodology was provided.
Transferability	Refers to the extent to which the finding can be applied in other	• Sample • Dense description	• A purposive sampling method was used. • Peer checking by defense forum and in

STRATEGY	EVALUATIVE QUESTION	CRITERIA	APPLICABILITY
	contexts or with other participants.	• Peer evaluation & investigator triangulation • Code-recode procedure	consultation with the supervisor. • Independent checking by colleagues and supervisor . Consensus discussion between researcher and independent coder.
Confirmability	This refers to the degree to which the findings are the product of the focus of the inquiry and not of the biases of the researcher, that is, data and their interpretation are not the figments of the researcher's imagination. It also refers to the neutrality of the data, such that there would be agreement between two or more independent people about the data's relevance and meaning.	• Audit trail	• The researcher used raw data from the interviews with the participants. • Data analyses and conclusions were formulated.

3.6 ETHICAL CONSIDERATIONS

This study acknowledged that the use of a predominantly qualitative research methods has ethical implications. As Merriam (2002) has pointed out, "good research" is conducted in an ethical manner. For Punch (2000), qualitative data collection procedures should be organised both to maximise the quality of data and to deal with issues related to access and ethics. Punch (2002) further stresses further the importance of gaining the informed consent of the participants. In addressing this particular issue, the researcher engaged the participants in an open and transparent manner, observing their human rights by informing them that the study was a purely academic exercise and therefore the results may not be published without their prior informed consent.

Secondly, the privacy, anonymity, and confidentiality of the participants were to be respected by the researcher throughout the study. In addressing this concern, the researcher guaranteed their anonymity by means of signed confidentiality forms. A third ethical concern relates to ownership and control of data. As pointed out above, the study is academic in nature and therefore no material would be published without the prior consent of the participants. In anticipation of the public gaining access to the thesis via a library or by other means, the researcher concealed the identity of the participants.

Fourthly, ethical concern relates to possible bias emanating from the researcher's networks. As pointed out above, the researcher leveraged networks to gain access to some of the Board members. This arrangement had potential ethical implications which required consideration. For example, personal networks limited openness on the part of the interviewees. Conversely, interviewees open up more and sometimes, exaggerate issues. It is important to indicate that not all interviewees were known to the researcher and a strategy such as triangulation was used to validate information.

3.7 RESEARCH LIMITATIONS

In any field of study, research is characterised by its own limitations, and this requires the researcher to devise mitigation strategies. In the context of this research, the following challenges were encountered, namely: access to interviewees and access to information. A number of interviews were cancelled at the last minute due to the ever-changing schedules of the participants. In instances where interviews took place, participants chose public places such as restaurants. As expected, the noise levels were high and this made it difficult for effective transcription.

The issues of trust on the side of participants were real, despite assurance that issues being investigated were purely driven by academic requirements. In instances where lack of trust

was an issue, participants were not entirely forthcoming with information. There were also instances where participants wanted to speak "off the record", meaning they did not want to be quoted. The researcher had to observe such requests, although the content of "off the record" discussions would have added value to the integrity of the study.

Some of the participants withdrew completely, citing personal reasons. In anticipation of such challenges, the researcher used the snowballing approach and personal networks to access additional Board and executive members of identified SOEs. The downside of networks is that interviewees could present information in a biased manner or simply tell the researcher what he wants to hear.

3.8 CONCLUSION

This chapter described the research design, methods of data collection and analysis, triangulation, research limitations, trustworthiness, and ethical considerations. These variables were considered as they are appropriate and relevant for qualitative research approaches. The next chapter discusses the regulatory and legislative environment.

4 CHAPTER 4: CORPORATE GOVERNANCE AT THE SABC AND ESKOM

4.1 INTRODUCTION

The previous chapter discussed the role of legislation and regulation in the governance and management of the SOEs. The intention was to flag the complex nature of legislation and regulation on the corporate governance of the SOEs. Reference to overarching legislation such the National Constitution, PFMA, Companies and Access to Information Act was made. In addition to generic legislation, specific legislation and regulations such as Broadcasting Act and Eskom Act and regulatory provisions by NERSA and ICASA were also articulated.

This chapter presents an overview of the SABC and Eskom and the findings and outcomes of interviews held with Board members and executive managers of the SABC and Eskom respectively. Data presentation and discussions are guided by a conceptual framework which is underpinned by the following themes: Legislation and regulation; interface between Board and management; Board's performance monitoring; and funding regime for SOEs. The nature of SOEs make up is such that Boards and management must contend with political and market pressures. These pressures manifest in how management and leadership of the SOEs deal with corporate governance issues. Before delving into data findings and discussions, it is important to remind the reader of the research questions.

The main research question is: why is corporate governance a challenge for SOEs?

Following the main research question, this thesis posits three sub-questions; each question seeks to understand the implications of these challenges.

- The first sub-question sought to understand the nature of governance and how SOEs see it from a corporate governance perspective.
- The second sub-question sought to understand how SOEs were being monitored and held to account by the shareholder. At the heart of this research question, lies the effectiveness of the monitoring mechanism.
- The third sub-question sought to understand the interface between the Board and management on issues such as strategy development. The interface between the two structures also sought to interrogate how the mandate of the SABC and Eskom is funded and implications for sustainability.

4.2 HISTORICAL OVERVIEW OF THE SABC

The historical overview of the SABC is manifested by two ideologically disparate epochs. The first, the apartheid era, was characterized by the SABC functioning as an organ of the

state; that is, created by the state, and thus serving the racist propaganda project of the self-same state. This propagandist and oppressive era of the SABC culminated in 1994, which is the year in which a democratic dispensation necessarily reconfigured the erstwhile functioning of the SABC as a servant of the NP government. The second phase of the SABC's existence manifested itself in the post-1994 era, which is characterised the constitution based on human rights.

4.2.1 The SABC during the apartheid era

The history of the SABC has been characterized by the politics of the apartheid regime which was notoriously known for lack of editorial independence and public accountability. The National Party (NP) government used the SABC as its mouthpiece to promote its own propaganda. During the NP regime, governance and management of the SABC was not transparent and accountability to the general public was not endorsed. Tleane and Duncan (2003) and Hachten and Giffard (1984) maintain that the NP approach to broadcasting did not cater for other racial groups as it was only interested in its propaganda.

The dawn of Constitutional democracy based on a universal franchise necessitated the review and transformation of the SABC from being a government mouthpiece to a public broadcaster entrusted with values enshrined in the Constitution. Essentially, prior to 1994, broadcasting was primarily regulated by the Broadcasting Act, 1976. In terms of this provision, the NP's government had exclusive control over broadcasting policy formulation and regulations. The implication is that SABC has been managed and controlled in a manner which was appropriate for a state broadcaster as opposed to public broadcaster. As a State broadcaster, corporate governance principles such as transparency, accountability, ethics and probity were violated.

The SABC was established by the South African government in 1936 with radio services offered first in English and Afrikaans. In 1950, the SABC launched its first commercial radio service, Springbok Radio. Between 1950 and 1960 the SABC saw the full scale introduction of radio services for African languages with separate stations broadcasting distinct ethnic identities. According to Orlik (1978), South African broadcasting has been dominated by the SABC which was incorporated into a network of cultural, economic and political institutions by which the NP secured hegemony in 1950's with English and Afrikaans as privileged languages. During the 1980s the shift by the NP towards neo-liberal free market economic policies led to commercialization of various parastatals that had monopoly in sectors such as telecommunication, energy and transport (Howitz, 1994). Following this trend, the SABC was reorganised along commercial lines in 1991. According to Currie and Markvitz (1993), this move was seen to be entrenching ownership and control patterns in South Africa. In the

same vein, ICASA asserts that a public broadcasting service is required because leaving broadcasting entirely to the market would result in programmes which would not reflect accurately what even well-informed sources would want to buy. If broadcasting is driven entirely by the market it would be responsive only to the aggregate of individual decisions by consumers as expressed in their purchases (ICASA 2003).

It was on this basis that the African National Congress (ANC) objected to the restructuring of the SABC prior to a political settlement. The ANC position culminated in the publication of a media Charter in January 1992 (Teer-Tomasselli, 1993). The ANC Media Charter advocated for a pluralist approach which recognized the right to receive and disseminate information as a basic requirement for democratic citizenship and participation (African National Congress, 1992). Essentially the NP did not want the ANC to have unfettered control of the airwaves and on the other hand the ANC did not want the NP to maintain control. This dilemma is said to be responsible for the birth of the Independent Broadcasting Act – According to Friedman (1993) the establishment of the IBA was one of the concrete measures settled during the Conference of Democratic South Africa (CODESA) in 1992.

The focal point of the struggle was to have an independent SABC Board. This ideal remained elusive during the apartheid era and even during Constitutional democracy. Authors such as Colley, Doyle, Logan and Stettinuis (2003) and King II and III reports indicate that Board independence can be guaranteed by the majority of Board members being non-executive directors. The SABC Board is constituted along the best practice in that the majority of Board members are non-executive, however the Board independence has been questioned. To illustrate this, the Public Protector Report entitled "When Governance and Ethics Fail" alluded to the structural inefficiency, maladministration, fraud and corruption throughout the SABC governance and management. Arguably these findings are not new, as the corporate governance crisis dates as far back as 2007. Since then, the SABC has had three Boards, two interim Boards, and six CEOs' resignations. The perpetual corporate governance challenges cannot be divorced from the editorial policy which has often been the subject of heated debate and contestation between Board structures and senior management. This point is elaborated shortly.

4.2.2 The SABC in the post-apartheid era: 1994-2013

In seeking to overcome the apartheid legacy, broadcasting policy in 1994 sought to transform the SABC into a politically independent and financially viable public broadcaster that is supportive of a diverse country. The role of the SABC in transforming society has always been an integral part of the country's opposition to colonialism and the apartheid regime. The National Party government acknowledged that the SABC played an important role for the

dissemination of the Afrikaans language, culture, and ideology (Horwitz, 2001). The SABC was therefore a test case for negotiating disparate ideological conflicts (Teer–Tosmali 2001).

According to media reports, mass resignations by Board members were attributed to political interference. It was reported that one of the Board members (Susan Vos) complained in Parliament about political interference. These views were also echoed by another Board member who resigned – Susan Vos – who told the Mail and Guardian that at the heart of the crisis is the ministerial interference in Board decision-making and the functioning of the SABC, which has become extremely problematic, (Mail & Guardian, 2013). These claims were nonetheless denied by the Minister of Communication – it is reported that when she appeared before the communications parliamentary portfolio committee on 19 March 2013, the Minister denied having been part of any political interference in the running of the Board.

The SABC Board eventually succumbed to internal in-fighting over the appointment of the acting Chief Operating Officer. The final rift appeared when the Chairperson (Dr Ngubane) and his Deputy (Mr. Thami ka Plaatjie) wrote a letter saying that Hlaudi Motsoeneng would continue to act as COO and the rest of the Board disagreed (Daily Maverick, 3 September 2013). Subsequently, the Chairperson and his deputy resigned after the Board held a special meeting to remove the acting chief operating officer, Mr. Hlaudi Motsoeneng. It was reported that the then Minister of Communication, Ms. Dina Pule, tried to persuade the pair to withdraw their resignations but President Zuma had in the meantime, accepted and thanked them for their tenure at the SABC.

In early 2004, the SABC unveiled the final version and the new editorial policy which became effective on April 1 2004. These policies cover news, editorial, programming, local content, education, universal service and access among others. Implementing and accounting for these policies was supposed to be accomplished through regular professional development measures, and voluntary and mandatory upward referral mechanisms (SABC Editorial Policies, 2004).

Notwithstanding this noble position, the editorial policy has become a centre of controversy between the Chief Executive Officer (Ms Lulama Mkhodo) and the Head of News and Current Affairs (Mr. Phil Molefe). The disputes centered on the interpretation and the implementation of the editorial policy. On the one hand, the CEO avers that in her capacity as the accounting officer she must access the news diary whenever she needed it. On the other hand, head of news and current affairs is the custodian of the editorial policy and in his view, the CEO can access the diary but he maintains the final say on what must be broadcast. This contestation led to the suspension and termination of the Head of News and Current Affairs.

The editorial policy is a powerful instrument which can be used to further political objectives if the broadcaster loses independence. The political undertones found expression when the head of news was accused of being impartial when reporting the aftermath of President Zuma's trip to South Korea. Those opposed to the head of news claimed that the President's footage was given a "20-second sound bite" that did not provide any context to the trip. In addition, he was accused of providing members of the opposition party (i.e. Malema) plenty of airtime at rallies in Tzaneen and at Wits University, where Julius Malema accused President Zuma of being a dictator. (Mail & Guardian, April 2012). In response to this claim, Molefe argued that, editorial policy emphasizes a need for balanced reporting.

In the midst of this controversy, the Board maintained that interpretation of the editorial policy by the CEO was correct. The argument presented by the Board is that the CEO is ultimately accountable and therefore accessing and sanctioning the news diary was within her jurisdiction. The issues raised above are indicative of inconsistencies and incoherent interpretation of critical policies within the organization. The consequences of this situation led to colossal corporate governance challenges and instability, and loss of legitimacy and credibility of the Board and senior management. The report by the Public Protector entitled "When governance and ethics fails" is a testimony of what can go wrong when the organizational leadership is in disarray.

The focal point of the struggle at the SABC is the question of independent as well as sound management. This ideal remained elusive during the apartheid era and even during Constitutional democracy. Despite the prescriptive legislation, the SABC Board and management has been involved in legal tussles which resulted in resignations and the dissolution of Boards and a massive exodus of senior management. Leadership instability was accentuated by a R1.4-billion loan secured by Minister of Finance, Pravin Gordhan, in 2009. Since 1999, the SABC has not recovered from the infighting and legal battles. Details of the SABC are found in chapter two and five.

4.3 THE LEGISLATIVE AND REGULATORY FRAMEWORKS OF THE SABC

Pronouncements of legislation encapsulate the mandate of the SOEs and therefore it is important to determine whether the mandate is understood by Board and management. Participants alluded to the National Constitution, the Public Finance Management Act (PFMA), the Company Act, and the Broadcasting Act of 1999 as legislative frameworks governing the operations of the SABC. The views expressed by the participants were captured as follow:

> *"The mandate of the SABC is to Educate, Inform and Entertain. The emphasis for the public broadcaster is to inform the public about our democracy, we need*

> *citizens that are informed. They need to be aware of what is happening, they need to know what the government is up to and international news. Therefore, SABC's is to entrench democracy". (**Board Member D: January 2013**)*
>
> *"The mandate of the SABC is to inform, educate and entertain and this enshrined in the Constitution of the country and from the Constitution is then acted in the act of parliament. In terms of the Broadcasting Act, the SABC is mandated to provide services that will educate the South Africa people about the country's and its diverse culture". **Executive Member H: June 2013***
>
> *"You know it is understood, the SABC's mandate is to provide a public broadcast services to South Africans" (**Exco Member A: December 2012**)*

The views expressed by Board members and executive managers' points to a broader understanding of the mandate of the SABC. All the participants conceded that the SABC's mandate is broad, and that there was no other entity whose mandate is to inform, educate and entertain. The mandate of the SABC was articulated in comparison with other broadcasters, especially the private broadcasters whose mandate was commercially driven.

The analysis of the information above points to the way in which the SABC was conceptualized. The manner in which an entity is conceptualized has a bearing on how it delivers on its mandate. The mandate of the SABC is to educate, inform and entertain South Africans. As pointed out earlier, the mandate of the SABC owes its existence to the National Constitution. Despite the broad and diverse nature of the mandate, section 195 (1) of the Constitution provides that all public administration and management in all spheres of government should be efficient and effective in terms of resources, as well as be economically viable and accountable. As expected, the Constitution plays a crucial role in setting principles of financial management in the public sector. The SOEs are therefore expected to deliver their mandate in line with the PFMA and the Constitution. Notwithstanding the need for the SABC to deliver on its mandate, one of the key findings is that the broadness of the mandate is not feasible under the current legislative framework. Central to my argument is that the public mandate in terms of non-commercial programmes must be addressed differently from commercial programmes or income driven imperatives.

The commercial imperative relates to the ability of the SABC to generate revenue whereas the public mandate relates to non-income generating activities, such as children's programmes. This position is articulated in section 9 of the Public Broadcasting Act of 1999. This section of the Act indicates that the corporation consists of two separate operational entities, namely, public service and commercial service (Department of Communication, 1999).

The argument is that the SABC mandate was not properly conceptualized as it is broad and inherently contradictory. In supporting this argument, the researcher draws from participants' positions on the same point.

> *"When lining up programmes for public mandate, question will arise about the returns on investment. If you push public mandate you get a pat on the shoulder but come performance management time, you are asked the question: Where are the returns? This situation lends its self where the executives find themselves between devil and deep blue sea – should I carry out the public mandate or profit is expected of me" (**Exco Member H: June 2013**)*

> *"You know there are so many unwritten rules on how this company must be run. For instance the DA would present certain things, ANC would present certain things, the shareholder compact and articles of associations might specify things. There are a lot of grey areas, which allows personalities or personal view where you get interference or even political interference" (**Board Member C: May 2013**)*

> *"Every single person has an opinion on how you would or should have executed a particular task. And in having that opinion they are oblivious to the enabling or disabling environment, to them it is just cut and dry" (**Exco Member A: December 2012**)*

The views expressed by the participants point to some of the limitations in respect to the legislation, and this suggest weaknesses with regard to how the SABC was conceptualized. These limitations have a bearing in terms of how the SABC is governed and managed. The Board of the SABC is expected to ensure that management adheres to the provisions of the Act whilst at same time expects the corporation to be financially viable. These contractions suggest a need to review the legislation as it relates to the funding of the mandate.

The assessment of the views and discussions coming from the participants points to inherent contradictions of a public broadcaster driven by commercial imperatives. The funding or limitations are dealt with in the section on funding and sustainability. In the meantime, one is compelled to probe the fundamental imperatives of the public broadcaster. The public broadcaster strives to serve the public by establishing and maintaining a national identity and culture, upholding democratic values such as freedom of expression. The SABC is expected to deliver this mandate in all 11 official languages. In order for the SABC to fulfil its mandate, it is expected to be free of political interference and economically independent.

It was established that Board members and management alike complained about political interference and lack of funding to execute the public mandate. A question could be posed: *How can we explain political interference while the SABC is governed by the legislative and governance frameworks*? Judging by the outcome of the interviews, it is possible that governance and legislative mechanisms are not adequately adhered to. The Public Protector's

Report entitled: *When Corporate Governance and Ethics Fail*, alluded to allegations on corruption, fraud and maladministration at Board and at management level.

Notwithstanding the existence of the legislative frameworks on governance, the argument worthy of pursuing is the implication of public mandate in the context of fiscal constraints. The SABC is implementing a public mandate through the income generated from commercial streams and this creates tensions at Board and management. The tension is clearly illustrated by the interviews with one of the Exco members where they were asked about the bottom line. This suggests an inconsistent policy position by government when it comes to public broadcasting. According to the Freedom of Expression Institute (2008), the most important factor in the SABC's instability could be attributed to the government's twists and turns in its policy on parastatals. The Freedom of Expression Institute maintains that in the period following the appointment of the 1993 Board, attempts were made under the management of Zwelakhe Sisulu to transform the SABC from a state broadcaster to a public broadcaster in line with the Reconstruction and Development Programme (RDP), and a great deal of progress was made in this regard.

The neo-liberal or market driven approach to public broadcasting under Zwelakhe and Matlare led to a public backlash against the SABC in 2002, resulting in changes to the Broadcasting Act in the form of the Broadcasting Amendment Bill. At the centre of the backlash was the issue of editorial policy of which the Department of Communication was not pleased, as the SABC was perceived to be compromising public programming in favour of commercial streams. Essentially the debates at the SABC were centred on commercialization and transformation - the era of Peter Matlhare was defined as the commercialization period as he succeded in generating revenue. When Matlhare was replaced by Advocate Dali Mpofu in 2007, he oversaw the implementation of a new strategy called 'Broadcasting for Total Citizen Empowerment (SABC Annual Report, 2007) (Freedom of Expression Institute 2008).

As pointed out earlier, the policy shift within a short space of time had implications for the Board and executive management alike. For example, the new strategy under Dali Mpofu had implications for the editorial policy and the Charter. Arguably, the central tenet of the charter and editorial policy is the issue of freedom of expression, journalistic creativity and Board independence. These ideals are difficult to achieve – as noted during Dali Mpofu's reign and his successors at the institution grappled with the management of the editorial policy and Board independence. According to the Freedom of Expression Institute (2008), independence is not achieved through legislative guarantees alone. There is a need to appoint Board members with dissimilar views as this guarantees independence.

On one hand, an executive committee member indicated there is no clear direction as questions about the public mandate and the bottom line are asked. These sentiments were echoed by another Board member by making reference to unwritten rules on how the company must be run. The implication is that whilst the SABC subscribes to written rules in the form of statutes, there are also unwritten rules. One also gets a sense of strong lobby groups or pressure groups who seeks a preferential audience with the SABC structures. The articulation of the pressure groups does not always relate to formal processes. Arguably, it is on this basis that some of the Board members are of the view that even formal rules have grey areas as they are subject to a number of interpretations.

The participants acknowledge the existence of the legislative framework as the mechanism which governs the operations of the SABC. This suggests that the operations of the SABC cannot be divorced from the legal and regulatory frameworks. Their acknowledgement is expressed as follows

> *"I guess in our case firstly is our Constitution……it covers everybody, similarly there is the South African Broadcasting Act. Like any other public entity we are also subject to the Public Finance Management Act. Briefly that's where we are coming from".* ***(Board Member B: December 2012***
>
> *"In terms of legislation, there is the Companies Act, Public Finance Management Act, Treasury regulations and the Constitution. We also have the program on Corporate Governance". (****Board Member C: November 2012****)*
>
> *"You call it a legislative framework in fact I would rather call it an institutional framework which will include both formal and informal institutions. The formal institutions would be the laws and various statutes, those are the formal institutions. The informal institutions are the societal dynamics……. people like to think they come from formal institutions and some are just sheer criminal. That is what I think one of the key problem, is the immediate problem*". **(Board Member A: November 2012**

The participants are aware of the major legislative frameworks which governs the SABC. This argument is supported by the articulation of the Constitution, PFMA, Company Act, and South African Broadcast Act. At legislation and policy level, there seem to be a wider consensus of the overall legislative and governance frameworks. However, policy articulation is often met by a hostile contextual environment such as the organizational culture, poor leadership, lack of skills and competencies to drive strategy. High staff turnover and leadership instability at the SABC cannot only be explained through the formal components of legislation, policies and processes. For the purpose of enriching the findings, I discuss major components derived from the views expressed by the participants.

The Constitution of South Africa, 1996 (Act of 108 of 1996) is the cornerstone of South Africa's political landscape as it laid down rules of engagement for different spheres of

government and government departments. SOEs are catered for as they account to the line function department whose mandate is derived from the Constitution. Accordingly, section 215 states that all spheres of government must promote transparency, accountability and effective financial management. The notion of transparency, accountability and indeed, effective financial management, are the critical components of good corporate governance. However, the majority of government departments and indeed, the SOEs, are battling to live up to the Constitutional mandate. The reference to the Constitution suggests that the leadership of the SABC is cognizant of the foundations of the enabling legislation, such as the South African Broadcasting Act.

The Constitution also prescribed the establishment of a national treasury to ensure transparency and accountability in terms of all government expenditures. For example, section 216(1) of the Constitution requires the national legislation to establish a national treasury. Essentially, PFMA prescribes the accounting norms and standards. The overall aim of the PFMA is to improve the operational efficiency of government spending and to strive for value for money. Notwithstanding the role played by the PFMA in ensuring that SOEs are held to account, there is a need for alignment and coordination in order to avoid duplication.

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

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

4.4 GOVERNANCE AND MANAGEMENT OF THE SABC

Before presenting the findings and discussions, it is important to provide insight on how governance and management at the SABC is structured. Fig 5.1 - This diagram seeks to illustrate the SABC's governance and the management landscape of the SABC.

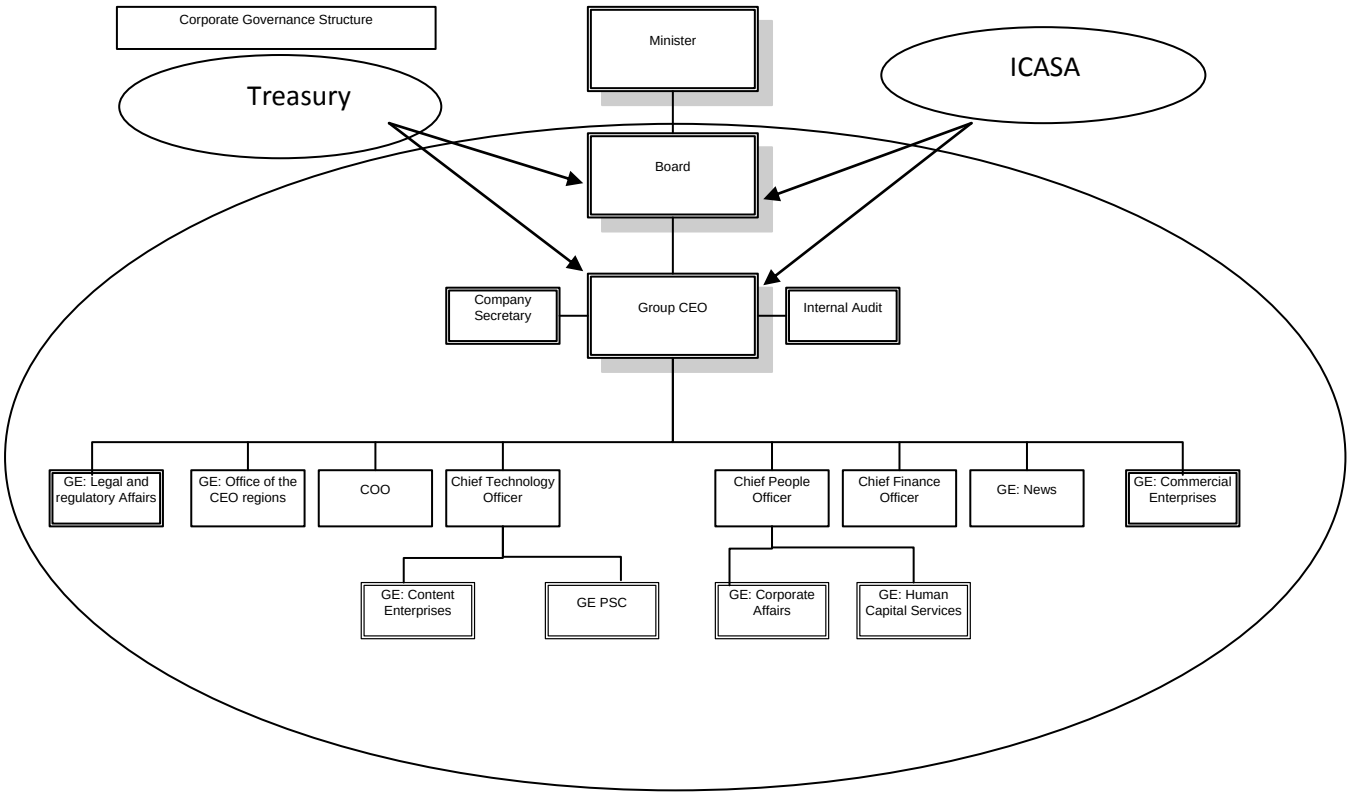


FIGURE 1 GOVERNANCE AND MANAGEMENT STRUCTURE OF THE SABC

This overview of the SABC landscape suggests that corporate governance in SOEs can be analysed at two levels, namely at the macro and micro level. The former relates to oversight activities which sit outside an organization. Oversight activities find expressions in legislation such as the PFMA and Companies Act and these are discussed in detail shortly. In addition, SOEs are subject to regulation managed by the regulatory bodies such as ICASA and Parliamentary standing committees. Since the external bodies have powers over the entities such as the SABC, non-compliance constitutes transgression, which has implications for corporate governance. The SOE's legislation and regulatory environment is different to that of private sector companies whose governance structure does not include the line function Minister (i.e. Communication), Treasury or parliament for that matter.

The micro relates to the internal governance arrangements and this includes Board and senior management in different portfolios. Whereas macro analysis relates to the external factors, the micro analysis confines the relationship to Board and senior management in different portfolios. Arguably, the two environments have different permutations for the public and private sector. In the private sector, companies are overseen by politicians and reporting and accountability is predominately limited to shareholders. The preceding statement coupled with the graphic illustration below is intended to bolster the argument regarding the complexities of governing and managing SOEs as compared to the private sector.

4.5 INTERFACE BETWEEN THE SABC BOARD AND MANAGEMENT

This finding relates to the theme on the interface between Board and management. The environment which defines the relationship between the two structures is multifaceted and dynamic. Issues of the mandate are not only broad but they are contested as there are different interpretations. Participants alluded to different aspects of the mandate, for example there are issues on what *constitute education, entertainment or information*. The point is that management and Boards held different views on these issues, subsequently tensions ensued through different organizational platforms. These issues are further compounded by the contestation between public policy imperatives as in infrastructure rollout, corporate social responsibility programmes whilst pursuing commercial imperatives. While the participants acknowledged the developmental agenda of government, they nonetheless expressed concerns with regards lack of resources to support these initiatives.

In addition, Boards and management must also contend with shareholder participation in the SOEs governance and operations. The participants acknowledged the role to be played by the shareholding Minister. Despite this acknowledgement, they differed sharply as there were claims or either interference or participation. The former suggest undue influence or directive by the shareholder while the latter recognizes the legislative or formal framework which governs the shareholding Minister.

Over and above the formal legislative processes, the participants also made reference to informal networks of which some are said to be ‘criminal’. Informal networks refer to personal connections between executives, government officials or politicians. The criminal aspect of these networks suggests that formal process and procedures are being undermined. The view expressed by these participants suggests that informal networks are equally powerful to a point where they are allowed to co-exist with formal structures.

The views expressed Board members make a distinction between formal and informal structures. This distinction is underpinned by social capital theory and it suggests that organizations comprise formal and informal components. According to authors such as Subramaniam, Steward, and Shuman (2013: 947) corporate governance in the public sector has been divided into two complimentary components, namely a formal or hard component and an informal or soft component. They suggest that the formal component comprises frameworks, structures and processes while the informal component is concerned with organisational culture and employee behaviour. The formal structures have largely been explained through agency theory and more research suggests a wider recognition of the informal component as an alternative lens by means of which corporate governance could be

explained. This research appreciates this perspective, as it recognises the influence of the informal component, especially in the South African context.

Social capital theory refers to "social networks, the reciprocities that arise from them, and value of these for achieving mutual goals" (Schuller, Baron & Field, 2000, p. 1) or "norms and networks that facilitate collective action" (Woolcock, 2001, p. 9). The theoretical debates around the concept of social capital, has largely been attributed to three authors, namely Pierre Bourdieau, James Coleman and Robert Putnam. The view expressed by Bourdieau was how social capital, along with other forms of capital, was used to perpetuate and entrench class privileges.

Similarly, the participants acknowledged a wide range of regulatory environments which regulate the activities of the SABC. Chief among these was the Independent Communication Authority of South Africa (ICASA). This question on the regulatory environment yielded a mixture of responses from Board members and management respectively. Participants mentioned the role of ICASA in its capacity as the regulatory authority whose mandate is to regulate issues such as compliance with the license conditions of the organization in order to fulfil its public mandate. It must be noted that all participants acknowledged the importance of the regulatory environment. The general view among the participants is that ICASA focuses on the licence conditions, relating to content, language diversity, advertising time. To illustrate this point, below are some of the views shared by participants;

> "*They are not involved they are more on the licensing side ensuring we have kept the tapes, adherence to the language, content ensuring that we keep to the requirements. So they are not really involved only on the operations side*". **Executive Member: I July: 2013**)
>
> *"Another executive indicated that although ICASA monitors the silence conditions lack of capacity and resources undermines their authority as monitoring is done incorrectly". (***Executive Member G: July 2013***)*

Over and above understanding the regulatory environment, the researcher sought to understand the implications of the regulations on reporting and accountability of the SABC. This question brought to light different views. Below are some of the views expressed by participants:

> "*From the PFMA there is huge reporting that is required – there lot reporting required from our stakeholder and from mandate perspective and how we report" she further went on to say "There is also huge business information system upgrade that is required within our business in order to deliver reports systematically - at the moment lot of staff, information is manually done and it takes time to produce".* **Executive Member B: February 2013)**

-*"Sometimes it takes away your attention, you will find that a colleague overlooks something's because of a number of reports*". **Board Member C: December 2013**

"ICASA to a certain degree apply strict rules in terms of how SABC operates. It is unfortunate that very important decisions are being delayed at ICASA, for example issuing of licence to launch 24 hour news at SABC". **Senior Manager. November 2013)**

The participants are aware of the need for the SABC to be regulated by ICASA. It is important to emphasise that participants are not fundamentally opposed to regulation per se, but merely reflected on reporting requirements by different state organs. The overall indication is that there is a need for consistency in reporting as different state organs (ICASA, Department of Communication, Auditor-General, (AG) parliament, Treasury, portfolio committees, Standing Committee of Public Accounts, (SCOPA), require information differently, and, as a result, managers spend time manipulating the information to address the needs of these organs. The issue of reporting fundamentally calls for clarity between and among oversight stakeholders as lack of clarity has the potential to undermine good governance. Below are some of the oversight structures involved in the governance affairs of the SABC.

The importance of ICASA as an independent body must be emphasized considering the Constitutional imperatives in the broadcasting environment. ICASA regulates the activities of the SABC in order to promote the public good in the space of sound and broadcasting. By virtue of granting the SABC broadcasting licence to the SABC it goes without saying that the SABC is obliged to provide reports against which the licence is granted. In addition, the SABC is governed by the Charter which is derived from the Broadcasting Act. Accordingly, reporting to ICASA is therefore different from any other entities purely because of how it is designed. The role of the regulator cannot be over emphasized as it guarantees broadcasting services to the public. Despite this worthy cause, it must be stated that reporting requirements must be coordinated in order to reduce the administration cost and improve efficiency.

Over and above ICASA, the SABC is subject to Auditor-General (AG) compliance requirements. The AG authority over the SABC derives its existence from section 188 of the Constitution. Accordingly, the AG is required to report on the finances of all national, provincial and local government administrations and has the discretion to audit any institution that receives money for a public purpose. As a public entity, the SABC is subject to policies governing government departments in all three spheres of government. Section 181(2) of the Constitution asserts that the AG is independent, and that the powers and functions of the office should be exercised without fear, favour or prejudice. In line with this assertion, McGee (2001) highlights the importance of independence.

Furthermore, the governance model is such that National Treasury provides oversight on the fiscal position of all entities in line with the PFMA of which it is the custodian. Section 261 of the national Constitution requires the legislation to establish a National treasury whose function is, among others, to introduce the norms and standards and to prescribe measures to promote transparency and accountability. By virtue of deriving its existence from the national Constitution, National Treasury through the provisions of the PFMA is empowered to determine the financial management framework for organs of State, including the SOEs. The thrust of my argument is that while treasury regulations are commendable in ensuring uniformity in terms of reporting and accounting, the SOEs have multiple other compliancd requirements. Against this backdrop, it can be argued that seamless reporting systems should be investigated with a view to ensuring that Boards and senior management of SOEs focus time and energy in delivering the services. The current environment is burdensome; as a result it affects performance

The Standing Committee on Public Accounts is yet another oversight structure which derives its existence from the Constitution. This committee is established in terms of section 55 of the national Constitution. I would argue that this committee is yet another oversight structure whose function is to review the audit reports conducted by the AG. The role of this committee is critical in probing the reports presented by the AG and in summoning Board members and senior managers of entities to account for policy deviation and incidents of malpractice cited. The thrust of my argument is that while oversight function is desirable, it imposes an administrative burden on SOEs as they account and report to a number of organs.

This finding relates to the theme of the interface between Board and management. It must also be taken in the context of delegation of authority. As the custodians of corporate governance, the Board is ultimately responsible and accountable for everything within the organization. However, for practical purposes, day-to-day management is delegated to the CEO who then further delegates to his or her senior management team. Under the circumstances, reporting is a major deliverable for management and Board respectively.

The role of the Board in steering the organization, based on the principle of transparency, accountability and due diligence, has become a cornerstone of good corporate governance. The corporate governance scandal noted in the private and public sectors intensified the debate on quality versus quantity. The report produced by the Chartered Institute of Management (CIMA) entitled, *Performance reporting to Boards*: *guide to good practice* contextualizes the anxieties of managers when reporting to the Boards. The thrust of the argument is that post the Enron debacle, discussion focused on the Board's performance as custodians of corporations. This argument is considered not surprising given the fact that the

company's survival depends on the Board decisions. The Board operation is intertwined with management, which means for Boards to make good decisions, reports must be provided timeously and the quality must not be questionable. Some of the characteristics of quality reporting include, but are not limited to relevance, integration, in perspective and timely. King II Reports (2002) qualifies integration by stating that it would be achieved gradually as the company develops an understanding of the intricate relationships and issues associated with stakeholder reporting.

The above mentioned characteristic features of reporting are relevant to entities such as the SABC. Quality of reports are time consuming and what makes matters worse is that SOEs report and account to multiple stakeholders. Line function departments, Treasury, Standing Committee on Public Accounts (SCOPA), AG, Parliament and civil society organizations via the Promotion of Access to Information Act have different reporting standards and requirements. SOEs are expected to generate reports and account to these bodies on how state resources are being used. The point I would like to underline is that quality of information hinges on a number of variables. Among key variables, one can include technical skills and the capacity of managers, availability of IT related systems to package different information requirements.

To illustrate the point on variability which contributes to questionable quality of reports, Business Day, dated 08th February 2014, revealed that the report, compiled by PwC following a request by Parliament's communications portfolio committee in 2013, shows that the SABC lacks key skills from executive management. Among other things, the PwC report revealed that 60% of the SABC's executive and senior managers do not meet the minimum strategic thinking skills for executives; 56% were unable to demonstrate adequate levels in solving problems and making decisions; and 15% demonstrated only marginal competence in strategic thinking; and 35% of the group did not consider the financial information provided to them as a skills test during the audit (Business Day, 08 February 2014). In the light of the PwC report, it can be argued that the SABC Board was compromised in terms of quality decisions. Similar arguments can be extended to other oversight structures and this can, in part, also explain the antagonistic relationship between the Board and management. The interviews with Board members and managers alike pointed to issues of trust. It can also be argued that the environment is characterized by lack of trust between managers and Board members and is likely to affect the quality of reports, at worst; acts of sabotage cannot be ruled out.

As a public broadcaster, the SABC has the sole mandate for providing public radio and television broadcasting services throughout the country. There are private broadcasters, but

none with the reach and sheer number of listeners and viewers. This makes the SABC a powerful tool with which to reach the voting population. Under the circumstances, it can be argued that the possibility of the SABC swaying votes is inherently political as different stakeholders and pressure groups would like to influence programming through the Board and management. The overall political environment contributed largely on the chaos that saw no less than six CEOs in the past six years. Amidst all this instability, the SABC was hit by large losses which required a government bailout guarantee of R1.47bn.

The debacle between the Board and management is multi-dimensional hence the researcher sought to explore both sides, namely, the Board's and management respectively. Below are views expressed by the Board as they relate with management on a number of issues on the quality of information;

> "*Sometimes the quality of information is not correct and this creates frustration for the Board hence there are many meetings, trying to resolve issues, quality of information is key"* **Board Member F: July 2013**
>
> *"I had a serious issue with us having too many meetings, when go to meetings every week or twice a week then you knows something is wrong. Because of time constraints we sometimes get the report on the eve of the meeting so you don't have the time to go through it and the quality is also poor"*. **Board Member D: June 2013**
>
> *"It is very clear on paper, I think it is due to the frustration that the Board faces when it is trying to take a decision. There just isn't enough information – the also understand that they have an obligation in terms of the mandate for e.g. to provide these services and they want to find out from management, where are the areas what is our penetration, can you identify and they do not get the information"*. **Exco Member A: December 2012**)

Based on the views expressed by the participants, it has been noted that the relationship between the Board and executive management deteriorated to a point where there was a high turnover among executive and Board members. As early as 1999 to 2006, the SABC witnessed high turnover at Board and management level. In terms of the Act, the Board members are appointed for a five year period, however, none of the Board appointed since 1999 completed their tenure, equally none of the CEOs completed their tenures. This situation called for interrogation as the organisation constantly experienced corporate governance challenges.

The researcher suggests a number of possible explanations which can explain the tensions between the Board and management at the SABC. The first point relates to the appointment of the CEO, the second, to interference in the administration of the corporation.

The Presidential Review Committee established by President Jacob Zuma, recognized the need to clarify the appointment of the CEO. As per the Protocol for Corporate Governance in

the Public sector, the Board should appoint the CEO in consultation with the shareholder (DPE, 2000). The researcher argues that ideally, the Board as the custodian of corporate governance should appoint the CEO – however the current method results in the Board being marginalized, especially when the CEO has a good relationship with the Minister. Latest developments are that the appointment of the CEO shall be done by the Minister in agreement with cabinet, at the recommendation of the Board (Presidency, 2013). This situation does not change the position and the authority of the Board – the Board represents the interest of the shareholder and therefore it must appoint the CEO. This process is likely to avoid tensions between the chairperson and the CEO.

The issue of Board interference in management affairs was cited frequently. The Board members also expressed concerns with the quality of information obtained from management. Against this backdrop, I sought to explore the underlying tensions between these two structures. One of the issues raised by the Board members relates to frequency of meetings. The argument presented by three Board members suggest an anomaly as the Board and its committees can only meet not more than six times per year. The frequency of the Board meetings is linked to lack of capacity and the high vacancy rate at senior management level. The researcher posits that under this kind of environment, Board members can be seen to be interfering in management matters. It should be noted that Boards are ultimately accountable to the shareholder and therefore it can be argued that lack of capacity and high turnover can affect productivity and quality of the output.

The researcher's argument here is that the Board of the SABC could not have escaped perceptions about interference as management could not address issues which typically reside in the management sphere of competency. This argument finds solace on the fact that 60% of the SABC did not possess minimum requirement for strategic thinking. The PwC report also found out that 56% of senior managers were unable to demonstrate adequate levels in solving problems and decisions making. Under the circumstances, it is not surprising that Board members were seen to be interfering.

It emerged that some of the Board members had applied for positions as executives and could not secure these. For example, Advocate Mahlati and Pippa Green became Board members following their failure to secure positions as executives. The views expressed by executive managers are that Board members who did not succeed in becoming executives, did not forgo their intention as a result their engagement with management was not constructive.

The SABC is a R5 billion turnover company which relies on external service providers to deliver on its mandate. One of the plausible causes of tension between Board members and management is the role of the Board in relation to the issuing of tenders. The Price

Waterhouse Cooper (PwC) report painted a bleak picture in terms of how some of the Board members did not disclose their interest in relation to the corporation. Conflict of interest, or failure to declare these interests, is indicative of the breakdown in trust, loyalty and care.

It emerged that some of the Board members are consultants or manage their own businesses. It emerged that the majority of Board members are consultants whose income is determined by a number of sittings. The implication is that more sittings translate to an increased earning particularly for Board members who are self-employed. This position suggests that those who are fulltime elsewhere are unlikely to push for a series of meetings because of commitments to their employer.

It is on this basis that Board members who are consultants were often accused of meddling in affairs of management in order to justify meetings and income. There is merit in both sides of the argument. For example, Board members who are employed elsewhere do not have control over their time as they have organizations to manage and reports to produce. Under these circumstances it can be argued that such Board members will have a lower propensity to frequent the SABC. However, the same argument cannot be extended to Board members who are self-employed. Those who are self-employed have control over their time and, as a result, the likelihood of being seen frequently at the SABC is high. Despite the incentives for the self-employed to orchestrate meetings, the Board and management of the SABC failed to exercise diligence and control over the resources. This position owes its existence from a number of audit reports including that of the Public Protector entitled "*When corporate governance and ethics fails*". The Public Protector's report made damning revelations and allegations on corruption, fraud and maladministration at Board and at management level.

> *"When I joined the organisation, there were lots of professors – when you have Vice Chancellor caliber in your Board, the likelihood of creating a crisis to come back and claim the sitting allowance is zero – because he has council to chair, senate to report to and his team to supervise".* ***Executive Member F: June 2013***
>
> *"The SABC has well-crafted documents. Delegation of authority framework is very clear – however problem lies in the implementation. The problem is largely due to the blurring of lines between the Board and executive and goes back 5 – 8 years. In this period we have seen the growing tendency by the Board to become involved in executive operational responsibilities" (**Executive Member H: June 2013**)*
>
> *"Some of the Board members initially applied for jobs as executives and upon failure took positions as Board members. The ambitions of being executive lingered as a result it created tensions. Those who felt could do a better job than executives saw a need to create crisis so that they can justify interference" **(Executive Member: June 2013)***

The views expressed by some of the participants, support the finding on Board members who are consultants. There is nothing untoward when Board members are consultants, provided they declare their interest. Equally there is nothing wrong when Board members apply for executive positions. Despite this disposition, seeds of uncertainty is likely to be created when Board members are seen to be creating 'crises' to justify their intervention.

The Board's performance depends, among others, on the quality of decisions. In the final analysis, Boards are the custodians of corporate governance and therefore they are expected to act with care, diligence and with honesty. The amount of responsibility and accountability resting on the Boards cannot be taken for granted as the implications for noncompliance can be serious. It can be argued that if management is perceived to be submitting inadequate or poor quality information, the consequences are dire for the Board as they might take incorrect decisions.

Board members alluded to the poor quality of information provided to the Board. In the light of the PwC report on the skills and capacity depository at the SABC, it is not surprising to note concerns about the poor quality of information presented to the Board. The PwC report presented a disturbing finding in relation to management capacity and competency. According to Business Day, dated 08 February 2014, the PwC report revealed that 60% of the SABC's executive and senior managers do not meet the minimum strategic thinking skills and 56% of senior managers were unable to demonstrate adequate levels in problems solving and decisions. These findings points to institutional capacity and capability to address corporate governance issues. The quality of information is critical in ensuring that the Board takes proper decisions that are seen to be in the best interest of the organization. Unfortunately, such decisions cannot be reached when an organization operates below par in terms of critical requirements.

The researcher also argues that changes in the Companies Act, and institutionalization of corporate governance codes of good practice have increased the vulnerability of Board members. The risk exposure is higher as they can be sued in their personal capacity should they fail to exercise due diligence and loyalty to the organization. As the custodian of the entity, the ability to discharge their fiduciary duties hinges on the quality of information. Below are views expressed by Board members in relation to context and quality of information and this it impact on decision making:

> *"At times, management fails to appreciate pressures we are experiencing as Board, they tend to take things personal when information is requested. When information reaches you can't make sense of it".* ***(Board Member G: July 2013)***

> *"You have article of association, shareholder compact, delegation of authority and other documents. These documents guide the relationship between the Board and management. However in practice things are different. In the absence of a rapport, these documents are used to settle scores but when the rapport is positive, people to tend to overlook them". (**Board Member F: July 2013.)***
>
> *"We have delegation of authority that was revised and approved by the Board in 2009. However due to leadership instability and the fact that many senior managers were in acting position, you find a situation where everything was escalated to the Board". (**Exco Member; H: July 2013)***

The views expressed by Board members point to weakness in terms of information provided by senior managers. Arguably, this issue puts a strain between the Board and managers. At one level, one can speak about a performance management system which is lacking. On the other hand, one can speak about contextual issues which affect the performance of the senior managers. Three senior managers alluded to a high vacancy rate at an executive level. They also made reference to an environment characterized by fear. High turnover at senior level meant that most decisions could not be taken by those in acting positions, hence such decisions were escalated to the Board. On the other hand, the Board complained about the quality of reports presented. In the context of flux especially at Board and management level as noted at the SABC, issues of trust, skills requirements and leadership vacuum will result in perpetual poor performance. The reality is that the Board depends on management for information for decision making purposes and if trust issues become a going concern, a leadership crisis is inevitable. Authors such as Das and Teng (1996) explains the interface between Board and management as situations as relational risk. In their view relational risk is defined as ''the probability and consequences of not having a satisfactory cooperation'' (Das and Teng 2001a: 253). This approach is useful in understanding corporate governance issues and challenges at the SABC.

The issue of trust between management and the Board is central to the success of any organization. The complex nature of the SOEs governance and management structure is based on dependence. At macro level, the Board depends on management to execute strategy and to report on a monthly and quarterly basis as prescribed by the PFMA. At micro level, the CEO depends on senior management to execute the operations in line with the Board's expectations. The organizational structures, processes and systems recognize the complexities hence the division of labour is outlined to ensure consistency and alignment. Despite the formal process and procedures, trust remains the cornerstone of human existence. Where trust prevails, there is a sense of cooperation, reduced conflict and effectiveness. The

situation at the SABC is contrary to the norm. The trust deficit is illustrated by one of the Board members who questioned the quality and quantity of information presented to the Board. Management is said to present voluminous information and because of lack of trust, the perception is that such acts are disingenuous. The implication is that management deliberately submits voluminous information not to assist, but to confuse the Board. This situation is captured by authors such as Mallin (1997) when argued that information asymmetry is bound as the Board and agents have access to different levels of information.

The expressions captured below illustrate tensions and disunity between the Board and management. Lack of trust seems to permeate the organization, hence a number of resignations among senior managers. Under these circumstances, it could be argued that the trust deficit is large:

> *"There are cliques with certain Board members, some Board members have a cozy relationship with executives. Then there are some that reserve Board positions for their own people so that they can have one on 1".* **Exco member E: May 2013**

> *"In terms of relationships I think in my time there it appeared to be strained relations. There was no doubt before the relationships were much more cordial, but during my time we worked a lot on repairing relations meaning that there were strained relations". **Exco Member C: February 2013***

> "I *think that one of the problems that I had with management is that will give you a lot of documents and most of it was not relevant or not concise enough. Management would also try to cover up, and the best way to cover up is to give a lot of documentation. I don't believe that some of the managers were worth their salt*". **Board Member A: October 2012**

The relationship between the Board and management is subject to a number of challenges. Conflicts abound due to a number of factors which may affect quality of information, lack of trust, political interference and conflict of interest. All these issues call upon the Board to act decisively in order to bring about stability, coherence and synergy. I would also venture a view that leadership is seen when the organization is experiencing turbulences – the PwC and the Public Protector's Report painted a bleak picture of the SABC Board and management.

The views expressed by one of the executive managers points to an unhealthy relationship between Board members and some of the executive managers. This type of relationship creates tensions and trust issues between Board members and the executive managers. In such an environment, it may become difficult for the Board to provide leadership that is seen to be unbiased and indeed in the best interest of the entity. Below are views expressed by some of the research participants.

> *"In my view, I think there was a time when the department felt that the executives at the SABC were not giving them proper information, truthful information".* ***Exco Member C: February 2013***

> *"Many executive managers resigned from the organization because they were disillusioned with the state of affairs. The company's image is continually damaged as a result of bad publicity"*. **Exco member** D: **February 2013**

Resignation of senior managers and the executive derails the attainment of strategic objectives of the organization. The massive exodus of people in senior positions creates paralysis as issues that would ordinarily be dealt with at management level are suddenly escalated to Board level. The more the Boards deal with operational matters, the more tensions escalate and this not only affects the morale of the organisation, but also the public image.

4.6 ROLE OF THE BOARD AND MANAGEMENT IN STRATEGY DEVELOPMENT

The role of the Board in strategy development remains one of the highly contested issues in the public and private sector. Recent corporate governance challenges across sectors have escalated this debate, thus putting the Boards under the spotlight regarding their role on strategy development as custodians of corporate governance. The question of the role of the Board and management vis-à-vis strategy development sought to crystallize role clarification.

This question generated a wide range of responses, at one level, some of the participants saw strategy generation as the role of the Board. On the other hand, others saw it as the responsibility of management**.** The researcher is of the view in the absence of role clarification, the relationship between the Board and management will remain turbulent as the strategy holds any organization together. Below are views expressed by Board members and senior management on their understanding with regards to strategy development:

> "*The responsibility for the development of a strategy in a nominal sense is the responsibility of the Board but in practical sense you delegate that function to the CEO….don't forget the Board is responsible for everything including cleaning floors".* **Board Member A: December 2012**

> *"I think the Board. In such an environment of the SABC a lot of that is pre-determined. You have legislation, shareholder compacts and you have strategy guidelines. So the Board is responsible for all that"***. Executive Member *C: February 2013***

The following contradicting views were expressed:

> *"The Board responsible for the mandate of the SABC while the management is charged with the duty of drafting the strategy".* **Executive member**

> *"The Board of the SABC is confused between strategy and corporate plan, there is clear distinction between the two"*. **Executive Member E: May 2013**

> *"It has been a bit of a challenge, the reason why I say is because of the environment the organization operating. I would not necessarily say the organization has a strategy, I can tell you what supposed to happen from a process perspective and how it works".* **Senior Official (GM Level) B: February 2013**

> "*In the SABC, it is still confusing because one hears about the turnaround strategy but the management is not involved"*. **Senior Manager E: February 2013**

The situation at the SABC was compounded by the financial crisis in the 2008/9 financial year. Executive managers reflected on the role of National Treasury when it guaranteed the organization a financial bailout. This situation had a number of implications on the organizational strategy as the emphasis was on financial recovery and sustainability. One of the conditions for the financial bailout (R1, 4bn) was a turnaround strategy.

This situation had a number of negative implications for the Board and senior managers vis-à-vis normal processes in relation to strategy development. Consequently, a monitoring task team made up of the Department of Communication, Treasury and senior managers, was constituted to oversee the loan secured by government through Treasury from Nedbank. The executives at the SABC expressed concerns over the turnaround strategy and the overall organizational strategy. The turnaround strategy appears to have focused mainly on the financial systems and processes.

One of the executives argued that in her view, the turnaround strategy is part of the main strategy and failure to recognize the synergies is an opportunity lost. Her views were expressed thus:

> "*The turnaround strategy to me is part of the main strategy. The turnaround strategy does not talk at the landscape etc. The SABC is missing opportunities as time goes by because of not forward planning*". **Executive Member D: March 2013**

It also appears that not all senior managers were in the loop in term of the dictates of the turnaround strategy and this issue questions the leadership of the Board and the cohesiveness of the entire executive management.

> *"To illustrate this point, one of the executives said "In the SABC it is still confusing because one hears about the turnaround strategy but the management is not involved"*. **Executive Member H: March 2013**

The issues raised here suggest that strategy development is the Board competence but it is delegated to senior managers to develop and present to the Board for integration and to finally approve. The views expressed by Board members and senior managers points to the shareholder compact as the basis for guidance, however these processes is not well articulated

and followed. This point was eloquently presented by one of the executive managers when he said

> "*In theory, we are meant to have a strategic intent from the shareholder that should drive the process. But strategy is about long term, so we have as executive development strategy for the Board to approve. The Board gives serious amount of input and then it is given to the minister to approve*".

Board members and executive managers conceded, although not all of them, that strategy development is the function of the Board but delegated to managers. The general sense is that policy documents articulate the roles and responsibility of Boards and management in respect to strategy development.

The executives at the SABC expressed concerns over the turnaround strategy and the overall organizational strategy. There seems to be discord between the organizational strategy and turnaround strategy. One of the exco members indicted that strategy appears to have focused mainly on the financial systems and processes.

There is a sense among the executive and Board members that organizational strategy is derived from the shareholder compact. The general view from the participants is that management, by virtue of being operational, consider that their role is to develop the strategy and present it to the Board. The Board will subsequently interrogate the strategy and eventually approve it when all elements brought before management are reflected in the final version. Once the strategy is approved in line with the shareholder compact, the Board will assume ownership.

4.7 SABC FUNDING MODEL AND IMPLICATIONS FOR SUSTAINABILITY

This question was underpinned by a need to understand how the mandate of the SABC is funded. Consequently, the researcher sought to understand the alignment between strategy and the funding mechanism. The overall argument here is that the strategic intent and mandate of any SOE must be aligned with the funding strategy – disjuncture between strategy and how it is being financed is likely to undermine the performance and cause a rift between the Board and management. It is on this basis that participants were asked this critical question on funding.

The SABC Annual Report for 2008/09 outlines the funding mechanism for the SABC mandate in respect to the provisioning of information, education programming and the entertainment of the people of South Africa. The SABC is reported to rely almost solely on advertisements to fund its operations with 80% of its funding coming from advertising; 18% from licence fees and 2% from Government. A cursory analysis shows that advertising plays an important role in sustaining the operations of the SABC.

The researcher avers that heavy reliance on advertising as a revenue stream is susceptible to market turbulence and, as a result, is risky. The market led philosophy in delivering the public mandate programming is problematic, especially in the context of a developing country such as South Africa. In supporting this argument, Teer-Tasmali (2001) maintains that financial difficulties of public broadcasters has led to greater expenditure and diminished income and South Africa is no exception as it relied on commercial streams to subsidize public programming. The financial woes of the SABC are exacerbated by aging infrastructure – the frequency mode (FM) was built in 1960's and 1970's and needs repair or replacement. In the meantime, the migration from FM analogue to satellite technology is ideal but requires a capital outlay which is also subject to foreign exchange rates.

The annual report noted that the SABC failed to mitigate the decline in revenue and to contain cost. Under the circumstances, the shortcoming of the government contribution is exposed, especially during market turbulence when advertisers are cutting down on marketing. Equally, income generated through TV licences has proved to be unsustainable as payments are inconsistent and overall compliance is very low. The researcher seeks to consider these issues in order to capture the authenticity of the funding model as one key issue which plunged the SABC into a financial crisis following the slump in advertisement revenue from 2009 to 2010/11.

The views expressed by all the participants at the SABC pointed to dilemmas in relation to how the entity is being funded. The mandate of the SABC is to inform, educate and to entertain the South African citizen. This broad mandate is funded through a commercial stream, licences and a government subsidy. The funding arrangement at the SABC was juxtaposed to other broadcasting entities such as the British Broadcasting Corporation (BBC). The overwhelming view expressed by the participants is that funding is not proportionate with the mandate. It was mentioned that BBC is funded 100% through taxes and government grants. In the case of the SABC 80 % of revenue is generated through advertisement, 18% from licence fees and 2% from government. Below are views expressed by Board members and executive managers on the issue of funding:

> "If *you look at typical first world public broadcaster such as BBC, they are funded 100% and there is no advertisers operating in that space, all operation are 100% government funded*". **Executive Member B: February 2013**
>
> "*I don't think government understood exactly what that meant because at end of the day government did not support the SABC financially"*. **Executive Member F April 2013:**
>
> *"Government had enormous control over the SABC, made inordinate demands on SABC and put absolutely no cent into SABC except a few projects sponsored by government".* **Board Member A: December 2012**

The implication is that SABC will inevitably rely on the commercial stream to fund the public mandate, such as education and information dissemination. To buttress this point, the officials made reference to issues such as elections and the soccer world cup. In his view, government had to pay a lot of money for advertising space to cover this and it came at the expense of regular advertisers. Operationally, this meant that credit notes had to be passed to companies as advertisement space is negotiated in advance. This situation affected the cash flow, and as a result, contributed towards power struggles and contestations between Board members and executive management.

The issue of a disproportionate funding regime is said to have serious consequences in terms of the SABC fulfilling its mandate. The implication is that Board and senior management straddle between financial viability imperatives and the public broadcasting imperatives. The public broadcaster programmes run at a loss as they are not income generating. To illustrate this point, one of the executives indicated that as part of the public mandate, the broadcaster runs at a loss when it comes to children's programmes. The implication is that due to limited funding and competing priorities, the quality of programming becomes compromised whereas in an environment where government funding is 100%, Boards and executive managers have a greater leverage to procure quality programmes.

The researcher suggests that poor funding affects governance of any entity, especially in a highly politicized environment such as the SABC. The 2008/9 financial crisis meant that the SABC was not able to play a meaningful role vis-à-vis the developmental agenda of government. A continued financial challenge also suggests that SABC's public mandate in relation to Digital Territorial television (DTT) infrastructure investment cannot be achieved. The implication is that the SABC digitization venture is likely to suffer due to lack of funding.

The funding arrangement at the SABC does not compare well with its European counterparts, such as the British Broadcasting Corporation (BBC) which is funded 100% by government through grants and taxes. In the case of the SABC 80 % of revenue is generated through advertisement, 18% from licence fee and 2% from government. Reliance on advertising is susceptible to markets turbulence. Equally, advertisers compete for prime space which is secured months in advance. This arrangement suggests a need for proper planning as the limitation is indicative of problematic conceptualization. The primary and empirical data points to weaknesses in funding and suggest that SABC funding was not properly conceptualized, hence tensions between Board members and executive managers. This claim is supported by statements such as the government making inordinate demands on the SABC without matching funding.

4.8 THE BOARD'S PERFORMANCE MONITORING

All matters relating to corporate governance at the SABC is ultimately the responsibility of the Board. The Board is constituted and operates in accordance with the Broadcasting Act and is incorporated in accordance with the Companies Act, as well as within the structures dictated by the Memorandum and Articles of Association (Annual Report 2009/10). The Memorandum further states that as part of the Board's obligations, (1) the Board must keep records of the financial affairs, (2) submit to the Minister within four months after the end of the financial year, the annual financial statement and (3) monitor the activities of management (SABC Memorandum, 2005).

It has been established through legislation and the regulatory environment that the shareholder is concerned with appropriate returns on investments and ensuring the financial viability of SOEs. Consequently, the researcher is concerned with the ability of line departments and Boards of SOEs to monitor the performance of the SABC. The researcher is also cognizant of the fact that government as shareholder in SOEs faces a range of risks including financial, reputational and political. Against this backdrop, performance monitoring by the overnight structures such as Board, line function departments and parliament cannot be overemphasized as failure to hold Boards accountable, compromises the attainment of social and economic objectives.

The functions and powers of SOE Boards in South Africa could be found in the enabling legislation. It is on this basis that the researcher moves from the premise that governance structures (i.e. line function department and Boards) play a critical role in providing strategic leadership in line with the legislative framework, parliament portfolio committees, Protocol on Corporate Governance, which encapsulates the principles contained in the King III Report on Corporate Governance and the shareholder compact. The overall argument is that line function departments, and the Board's failure to provide oversight and leadership will manifest in poor corporate governance at entity level.

The principle of monitoring was conceded as an important variable for good corporate governance. Although the participants did not disagree on a need for monitoring there were, nonetheless, a number of arguments with regard to the application and effectiveness of the monitoring and evaluation of SOEs performance, particularly in respect to the shareholder compact.

Parliament plays an important role in monitoring the functionality of SOEs. This is done through various portfolio committees. For example, in the case of the SABC, the portfolio committee on communication will pay such oversight function. As one of the Board members declared, these committees are empowered to summon Boards and executive management of

SOEs to account on specific issues of national importance. The Board members conceded that portfolio committees play an important role in holding SOEs accountable.

Over and above the parliament and its portfolio committees, SOEs are held to account by the regulatory bodies. In the case of the SABC, ICASA regulates a range of matters including South African content quotas and determines and monitors compliance by the SABC with its license (Annual Report 2009/10). The role of ICASA in respect to monitoring is also articulated.

> *"The monitoring of the Board and executive is done by treasury for instance. The structures are there, because SABC was operating under the guarantee conditions stipulated by the National Treasury. Should there be any deviation from the PFMA, the treasury will intervene as it has done recently when SABC was in financial trouble. SABC is presently under the microscopic eye of the treasury and may not spend as it wishes".* ***Exco Member G: April 2013***

> *"ICASA will look at the license conditions, relating to content, language diversity, advertising time. So the issues would be around sports of national interest. So from where they sit they will ensure that SABC are meeting the requirements. The Broadcasting Act says that the authority to closely monitor that the SABC is able to fulfill its conditions".* ***Senior Manager: April 2013***

Line function departments, such as the Department of Communication, represent the interest of the shareholder and therefore they play a critical role in interfacing and monitoring the Board on all legislative and operational matters. The (Presidency 2009) maintains that national government, acting through the Minister of Communication, is ultimately responsible for achieving all obligations relating to the use and protection of broadcasting resources. The SABC is a national asset, therefore, through the Board, the Minister of Communication will have to employ mechanisms to safeguard this resource. Monitoring is therefore an integral part of the line function Department to ensure that the Minister acts in accordance with the Broadcasting Act.

The SABC financial crisis in 2009/10 highlighted the importance of oversight across all levels. The Department of Communication and the Board of the SABC have the capacity and capability to provide oversight and lack of leadership was exposed by the corporation's financial crisis which compelled the shareholder to intervene through the national Treasury. All participants conceded that the SABC Board and management credibility and leadership was seriously questioned at the "rot" happened under their leadership. The R1 billion financial bailout from Treasury was reported to have introduced tighter control measures that include regular management reports**.**

> "*In the past very little was done in terms of monitoring, but Treasury is currently very involved because of governments guarantee*". **Executive Member G: November 2012)**

> "*There was R1 billion at stake which is guaranteed. The guarantee was there to keep the SABC up float, so that it could pay back in three years to five years".* **Executive Member: November 2012)**

Compliance refers to regulatory compliance as prescribed by the ICASA Act of 2000, as amended in 2006. For example, section 15 of the ICASA Act of 2006 makes reference to registration of licences and managing of enquiries. All participants conceded that ICASA plays a role in terms of monitoring the SABC's adherence to licencing conditions.

Treasury compliance refers to prescripts of the Public Finance Management Act of 1999. Participants acknowledged that National Treasury allocates funds to the SABC to fulfill its mandate. Although Treasury is expected to provide oversight through PFMA, the views expressed by participants was that in the past, monitoring by Treasury was slight – the situation changed in the 2009/10 financial year when the SABC experienced the financial crisis. Treasury involvement in securing loans from Nedbank introduced a series of conditions; among these was Treasury involvement in management at the SABC through task committees.

Over and above the formal reporting and oversight lines, it emerged that SOEs are subjected to a number of informal reporting lines. Board members were vociferous in articulating the contestations which manifest in the informal reporting lines and interference by politicians in the governance and management of the SABC.

> "*There are also shoddy characters and you are not sure where they exactly fit in the system, they are in a background they summon you to meetings, there just too many players and the accounting lines were very blurred and confused and underpinned by unexplained political overtone.....so we were not quite happy with the relationship with the shareholder, the accounting lines were blurred with too many players and I can't mention their names but I will when you switch off the tape".* **Board Member B: December 2013**

> *"Interference is when the Board makes a decision and then the CEO says this is going to interfere and then runs to the politicians and they come in and ask for justification. The other example in interference is that management takes a decision and interacts directly with the politicians, the minister or department without the Board knowing and that is clear interference"***. Board Member A: October 2012**

> *"You know there are so many unwritten rules on how this company must be run, for instance the DA would present certain things, ANC would present certain things, the shareholder compact specifies that articles of association might specify things. There are a lot of grey areas, which allows personalities or personal view where you get interference or even political interference. There are a lot of grey areas, which allows personalities or personal views where you get interference or even political interference".* ***Board Member – C: March 2013***

The views expressed by the Board members is that, although monitoring takes place via legislated channels, the SABC is also subjected to a wide range of political interference which compromises the independence of the Board. A strong sense of informal networks with political undertones has a bearing on governance and the management of the SABC.

The term 'other' players refers to either politicians or individuals who are not part of the SABC formal reporting and accountability structures. The views expressed by the participants suggest that the SABC is infested with other players. This claim is accentuated by statements such as shoddy characters operating in the background. The 'characters' are powerful enough to summon Board members to meetings. The views expressed by one of the Board members points to a plethora of requests or demands from different political parties. The contestation for a public platform and interference paralyzes governance and management.

Accountability and reporting refers to formal channels and communication by entities. For example, the SABC reports and accounts to the Minister of Communication, as well as to the portfolio committee on Communication. Internally, accountability and reporting has its own protocol. For example, the CEO reports and accounts to the Board through the chairperson. It was indicated that on numerous occasions, the Board would take decisions and when management is not content with such decisions, matters will be escalated to the politicians without the Board's knowledge. This environment blurred the lines of reporting and accountability.

The Protocol on Corporate Governance in the Public Sector dictates that the Boards must appraise the performance of the chairperson on an annual basis. In the same vein, they recognize the importance of the Board in order to assess the effectiveness of the entire Board and its committees (DPE 2002). The SABC Board Charter makes provision for the Board to be reviewed at least once a year. The Charter also articulates the need for the performance of Board committees, the Chairperson, Group CEO and the Company Secretary to be reviewed annually. The review process is facilitated by the Company Secretary and the Remuneration committee (SABC Charter 2006).

This question sought to establish if the Board of the SABC is being subjected to an appraisal system in line with protocol. Board appraisal serves as a yardstick to determine the functionality levels or, at worst, dysfunctionality of an organisation. In the absence of a formal appraisal system for the Board as a whole, and individual Board members, the shareholder cannot make an informed decision on whether the Board performs properly or not. Fundamentally, the Board is entrusted with the implementation of the shareholder compact via the organizational strategy and the business plan. This scenario suggests that any

form of Board assessment will have to be located within the framework of the shareholder context, strategy and the business plan. As a result, the researcher will reflect on the said variables to establish the trend at the SABC.

Based on the above, it has been established that as a matter of principle, the SABC governance structures must be subjected to review or appraisal. Notwithstanding this commonly held principle, its application is a different matter. In responding to questions on Board assessment, all participants acknowledged the need for the governance structures to be appraised regularly to mitigate risks and to enhance performance. It emerged that, although this principle was commonly shared, they had different experiences on how this was applied. Below are expression noted during the interview on this matter:

> *"I was there for two years and in that time there was no evaluation done. This was meant to be done but did not happen".* ***Board Member D: November 2013***
>
> *'There was no appraisal, I can tell you in seconds"* ***Board Member B: December 2013***
>
> *"I was there for two years and there was no report, unless it was a wishy-washy report'.* ***Exco Member C: February 2013***
>
> *"When I came through the auditors were looking for the Board assessment, I was led to believe it was done and only to find it has not been done, nobody took responsibility"* ***Exco member E: May 2013***

Issues raised by the participants point to non-compliance in line with the protocol of good governance in the public sector and the SABC charter. This has implications for the institutional leadership both at line function level and at Board level. Firstly, the line function department must provide oversight by ensuring the functionality of the Boards. The outcome of internal or external appraisal provides the shareholder with confidence with regard to the Board's functionality. The researcher asserts that if the shareholder can access the outcome of the appraisal, especially in situations where the codes of good governance are breached, this may contribute towards effective risk management.

Equally the Board chairperson must provide leadership by ensuring that principles enshrined in the charter are implemented. The situation depicted by the outcome of the interviews point to shortcomings of this point. One of the Exco members indicated that she was led to believe that Board appraisal was done only to discover it was not done. This claim suggests that trust among the senior managers and Board suffered as a result of lack of trust.

It was also necessary to probe factors which affected the Board performance – insight on this critical aspect of governance can play a role in shaping or influencing recommendations. The researcher moves from the premise that Board performance is dependent on a number of internal and external factors.

As a public broadcaster operating in a liberal environment, characterised by egalitarianism, the Constitution of the SABC is confronted by challenges and demands imposed and by different stakeholder and lobby groups which constantly seek to advance their own political agendas. This atmosphere is further compounded by the role of the state at the SABC as the sole shareholder. The interests of the shareholder are represented by the line function department whose mandate is to provide administrative and political oversight.

The Board of the SABC is the custodian of the shareholder; hence the appointment of the Board is subject to political influence. The SABC Board members in their capacity as non-executives are appointed by the President of the Country for a period of five years. This appointment is derived from the Parliamentary Portfolio Committee on Communication which selects Board members. The views shared by some of the Board members suggest a need to empower the line function Minister to appoint the Board as they are directly accountable to him/her. This view gives the impression that the Minister of Communication does not have sufficient powers to discipline Board members that are not performing. The extent to which the line function minister is sufficiently empowered can address the accountability loop especially when it comes to non-performance. In a media statement dated 21 May 2013, the former Minister of Communication (Ms Dina Pule) was cited saying it was a challenge for her to be accountable when she did not appoint the Board. The argument presented by the Minister has merit in the sense that Board members operate in a political environment which means they are likely to pay homage to the person who appointed them. This situation is similar to the appointment of SOEs CEO. Although the appointment of the CEO is done in consultation with the Board, it remains the prerogative of the Minister to appoint the CEO. This situation allows the Board members and CEO to align themselves with the appointing principal. The downside of Board members being appointed by the President is that reporting and accountability is presumed to be dual. In the case of the Board, the minister can be undermined by the chairperson, particularly when the chairperson is politically influential. Likewise, the chairperson of the SOEs can also suffer the same fate when the CEO has a personal relationship with the minister. It is difficult to manage such a relationship as it carries a number of political undertones which can be intimidating. It was on this basis that the former Minister of Communication contemplated approaching the parliamentary portfolio committee on communications with a view to exploring the amendment to the Broadcasting Act. To illustrate this point, below are some of the views expressed by the participants;

> *"The Board is being paralyzed by the political influence in the organisation".* ***Senior Manager I: November 2012***

> *"Influence from various stakeholders, political parties, is rife - they expect that once their people are elected will influence decisions - business is always solicited*" ***Exco Member December 2013***

Information deduced from the above quotation is indicative of how power and political influences can play a role in shaping governance and management of SOEs. Political influence in SOEs is inevitable as the state remains a shareholder. Notwithstanding this reality, SOEs must perform and deliver on their mandate. However the economic performance is unlikely to be resolved when the political pressure is high.

4.9 CONCLUSION

Through the conceptual framework, this research presented and discussed critical issues affecting corporate governance at the SABC. As part of the conceptual framework, themes on legislation and the regulatory framework point to governance complexities of the SOE. As public broadcaster, the SABC carries a huge mandate in terms of educating, entertaining and information sharing to all South Africans. The execution of this mandate is characterised by political undertones, multitude of legislative framework, leadership vacuum, lack of trust between Boards and management, lack requisites skills and competency at management level and market force imperatives which must be contend with. These variables have bearing on corporate governance and therefore any attempt to remedy corporate governance will have to deal with these issues in a systematic and coherent fashion. The trajectory of any remedial actions should assume long term as it takes time to develop leadership cadres capable of entrenching and sustaining corporate governance values.

4.10 HISTORICAL OVERVIEW OF ESKOM

The discovery of diamonds in Kimberley and the proliferation of mines throughout South Africa served as the impetus for industrial development. Electricity became the hallmark for development, consequently, in September 1922, the union Parliament passed the Electricity Act, No 42 of 1922 (Conradie & Schmidt, 2000). The central theme of the Act was the creation of a national electricity utility – it was to 'stimulate the provision, whenever required, of cheap and abundant supply of electricity' (Conradie & Schmidt, 2000, p. 73). This philosophy reflected the view of its principal authors, Sir Robert Kotze and Hendrick van der Bijl. Conradie and Schmidt (2000) also maintain that the Electricity Act of 1922 laid the foundation for the sound and orderly development of electricity supply in South Africa through the establishment of Electricity Supply Commission (Escom) in 1923. According to Conradie and Schmidt (2000), the second major matter the Electricity Act dealt with was the creation of an Electricity Control Board. This structure became the cornerstone of the governance of Eskom as we know it today.

Under the leadership of its first Chairperson, Eskom grew in leaps and bounds, and within a short period of time, van der Bijl was able to fulfil his promise that South Africa was assured of sufficient inexpensive power for its fast-growing industries in the 1940's and into 1970's. However, in the period of 1970's, Eskom had to contend not only with the growth in electricity demands and the poor performance of its new plants, but also sharp increases in the price of electricity. Despite the good intentions of Eskom's founding forebears, the utility was no longer operating at cost and yet demands continued to grow although the utility's ability to borrow money, especially from overseas, dried up (Conradie & Schmidt, 2000).

Consonant with the 1922 Electricity Act, ESCOM was established as a relatively autonomous entity, not subject to any form of parliamentary oversight, financial controls or state auditing. Importantly, ESCOM would produce and supply electricity neither for profit or loss. In this context, new generation and distribution capacity needed to be created at the lowest possible cost. This was to be done either through a new build programme or acquisitions to facilitate a 'cheap and abundant' supply of electricity. In pursuit of this 'abundant supply', ESCOM made decisions with far-reaching economic consequences. Its continued accommodation of mining and industrial interests enabled it to grow into an absolute monopoly by 1948. However the rapid growth of industry in 1950's to 1960's meant ESCOM needed to build new capacity. In order to keep up with the growth in electricity demands, Eskom had to borrow, however, the country's political standing, due to apartheid policies, compromised credit ranking, and, as a result, it became difficult to raise loans. Similarly, it became difficult to raise loans internally as the entity had to compete with other borrowers and the extraordinary drive for capital expenditure drove up interest rates (Conradie & Schmidt, 2000). Eskom responded in two ways, first, by postponing aging plants and thereby saving on input costs, and second, by seeking new markets. Attempts to create such markets included the provision of electricity to black households, so-called 'homeland' states and neighbouring countries. An additional new market was created through supplying electricity to the energy intensive industries, such as smelters (Greenpeace 2012). In 1986, further changes were legislated when Hendrik van der Bijl's cherished principle of no profit, no loss was scrapped. Conradie and Schmidt (2000) indicate that this move put Eskom's activities on a proper business footing.

Since its inception in 1923, Eskom has undergone major changes. According to Greenpeace (2012), the utility has seen periods of almost complete autonomy, greater regulation, rolling blackouts, and massive electricity price hikes. Eskom's electricity production is almost entirely dependent on coal and it remains mostly responsive to mining and large corporations and continues to invest in large-scale, centralised electricity generation. However, the country simultaneously faces a host of major development challenges, exacerbated by the legacy and

structures of apartheid. These include a huge gap between rich and poor, lack of infrastructure, high levels of urbanisation and unemployment, and huge backlogs in service delivery to the majority of South Africans. It is possible that, through the State, it can address the country's historical imbalances by ensuring the provision of electricity infrastructure to rural households, closing the gap between rich and poor and by addressing inequality through progressive legislation such as Broad Based Black Economic Empowerment (BBBEE) and employment equity, to mention but a few

In 2002, Eskom was converted into a public company in terms of the Eskom Conversion Act (13 of 2001). As a public entity, Eskom is overseen by the Department of Public Enterprise (DPE), who in turn appoints the Board to act as principal on behalf of the shareholding minister. The Board delegates certain functions to management and accounts to the shareholder. In addition, Eskom is subject to other legislative framework, such the National Constitution, Public Finance Management Act, Companies Act, the National Environmental Management Act, to mention a few.

As stated earlier, the period of 1970s and 1980's saw a global crisis in the capitalist economy and this led to a change in global economic policy. In this period, the neoliberal ideology characterised by the rule of the market, deregulation and privatisation became a norm in countries such as Britain and the United States of America. Due to a political climate characterised by consumer boycotts and economic embargoes, the South African state started to adopt some neoliberal principles as the economy failed to recover significantly through the 1980s. The role of the state in the economy was deregulated and reduced. This was done through various means, including privatising state owned companies such as Eskom.

The period 1990's ushered in a new political dispensation premised on universal franchise, redress and economic recovery. The ANC led government inherited a country on the brink of economic ruin due to years of an apartheid political system. Therefore the objectives of the post-apartheid government clearly influenced the actions of Eskom in fundamental ways. Transformation in terms of employment equity, addressing past discrimination and, more recently, broad based black economic empowerment, have all been appropriately high on the state's agenda. Similarly, it was crucial that the discriminatory patterns of service delivery be addressed post-1994. While some of Eskom's actions were no doubt an accommodation of the new government's developmental needs, Eskom's growing commercial motivation also played a role. The corporatisation of Eskom and a need to run the entity on a commercial basis while delivering developmental objectives suggested policy contradictions which were never clarified or addressed. The co-existence of public policy vis-à-vis the provisioning of electricity infrastructure and supply of electricity to poorer communities and the need to

pursue commercial imperatives proved difficult for the governance and management of Eskom.

4.11 THE LEGISLATIVE ENVIRONMENT OF ESKOM'S FUNCTIONING

The study pointed out that in South Africa, the legislative environment has a hierarchy, with the laws passed by parliament and these have powers over regulations and rules. Corporate governance is therefore a matter of compliance with the prevailing rules and regulations as expressed by the Companies Act, PFMA, Eskom Conversion Act of 2001, Constitution of the Republic of South Africa of 1996 and the Public Service Act of 1994. The alignment and compliance with rules of engagement is supported by authors such as Tricker (2012) and King III Report 2009). According to Tricker (2012), companies are the creation of the law, and as a result, they depend on company law for their existence and continuity. This means that companies must stay within the company law of the jurisdiction in which they are incorporated. This position is not unique to Eskom, as it is expected to operate within the realm of the law which has been articulated earlier.

This overview suggests that corporate governance in SOEs could be analysed at the macrocosmic and microcosmic levels. The former relates to oversight activities located outside an organisation. Oversight activities find expression in legislation such as PFMA and Companies Act and these will be discussed in detail shortly. Eskom is subject to regulation overseen by the National Energy Regulation of South Africa (NERSA) and Parliamentary standing committees. Since the external bodies have powers over entities such as Eskom, noncompliance constitutes a transgression which has implications for corporate governance. Findings will be presented to show how the Board and management engages with compliance issues and how these affect corporate governance and most importantly, how the leadership addresses such challenges.

The researcher would also argue that complexity of governance in SOEs is different to that of private sector companies whose governance structure does not include additional structural layers such as line function Minister (i.e. Public Enterprises), Minister of Energy and Treasury and parliament respectively. At this level, the challenges are mainly on coordination and turnaround time on decisions affecting entities. Fundamentally, governance of SOEs can be seen at macro and micro level. The former relates to the interface between ministers and parliament on matters relating to Eskom, whereas microcosmic analysis relates to the interface between the Board and senior management on matters of governance, regulatory and performance matters expressed by the Minister and Parliament. The presentation of the findings highlight such permutations in order to illustrate the complex nature of the SOE as compared to the private sector environment.

The participants alluded to the Companies Act, Public Finance Management Act (PFMA), Promotion of Access to Information Act and the Promotion of Administrative Justice Act. Over and above the legislation, the rules of engagement for SOEs are defined by a number of regulations which extend and amplify the law. In underlining this point, the King III Report (2009) asserts that there is always a link between good governance and compliance to the law. This means that Eskom's good governance endeavours is not something which exist separately from law. The researcher reflected on this imperative as one of the indicators of good corporate governance, namely legislative and regulatory compliance.

Section 6 of PFMA Act No 1 of 1999 articulates a wide range of issues pertaining to the public entities. For example, section 49 of the Act deals with Accounting Authority, while sections 50, 51, articulate the fiduciary duties of the Accounting Authority, responsibility of the accounting authority and the annual budget and corporate plan of schedule 2 entities respectively. Eskom is also subject to a number of provisions encapsulated in the Companies Act No 71 of 2008. For example, Chapter 2 Part B and F, of the Act, deals with matters such as Memoranda of Incorporation (MoI), the legal status of companies, as well as the governance of companies respectively.

The 2012 Annual report also makes reference to the aforementioned pieces of legislation – in addition Eskom is guided on best practices by King III and the *Protocol on Corporate Governance in the Public Sector*, as well as the international guidelines (Annual Report 2011). Based on this, it is apparent that Eskom's governance and management is underpinned by a series of laws. Inherent in the legislation are issues of ownership and control – the ownership of SOEs is dispersed.

The separation between ownership and control calls for the contractual agreement between the shareholder and agent. In order to address the inherent conflict of interest brought about by the separation between ownership and control, the shareholder compact acts as a mechanism through which the shareholder can be guaranteed that governance and management is aligned. The Protocol on Corporate Governance in the Public Sector shareholder compact describes an agreement regulating the relationship between the Shareholder and the Board (DPE 2002). In a similar vein, the National Treasury (2002) maintains that the shareholder's compact represents an agreement between government as the majority shareholder of the public entity and the Board of directors of the public entity. The process of managing the relationship between the line department and Board of Eskom is done via the shareholder compact.

> *"The relationship is based on the legislation and shareholder compact, so we expect them to operate in a way that satisfies the requirements of the shareholder, which is to promote government objectives".* ***Board Member E: May 2013)***

> *"Remember the Board operates under a number of directives. In terms with the shareholder compact only the Board signs a Shareholder compact with the shareholder. The shareholder compact then gives the Board a mandate to say this is what we want you to be doing. The shareholder compact is now reviewed annually".* ***(Board Member B: May 2013)***

> *"In terms of the PFMA the accounting authority must annually agree on a compact with the executive authority. So, the strategic intent of government through the Minister is very much in line with your shareholder intent".* ***(Board Member C: June 2013)***

In the context of the SOEs, the shareholder is government and it is represented by the line function minister who oversees the legislative compliance and operational performance of the Board. In the case of Eskom, the government is the sole shareholder and it is represented by the Minister of Public Enterprises (Eskom Integrated Report, 2012). Eskom is therefore expected to be managed and governed in line with legislation such PFMA, Treasury Regulation, related legislation and the Protocol on Governance in the Public Sector.

The findings of this research on legislation and the regulatory environment highlighted the importance of the shareholder compact which acts like a glue which keeps the shareholder and management together. The general expectation is that entities must deliver in line with the government objectives. What is implied in delivering according to government objectives is that, firstly government has vigorous monitoring and evaluation systems through which it can measure the performance of the Board. Secondly, the line function department have the technical capacity to interrogate and engage with the monthly and quarterly reports submitted by the Board. Thirdly, it assumes that government officials and the politicians can institute corrective measures when deviations occur.

The legislative and regulatory theme brought about uniformity among the participants in terms of what the Board is expected to do via the shareholder compact. The general view is that the shareholder compact is a platform through which the Board derives its legislated authority and accountability. This expectation presupposes that SOE leadership understand and interpret the mandate the same way the shareholder does. The view held by government

officials also assumes that SOE leadership is stable and therefore there will be no crisis in terms of meeting the objectives of government. The reality is that SOEs are complex and due to the complexities, leadership and management tend to be dynamic and any changes affect corporate governance.

The ability for the line function department to engage and to advise SOEs on governance and reporting matters hinges on the institutional capacity within the department. The government officials did not articulate the technical capacity to advise either the Board or managers on matters relating to the execution of the shareholder compact.

As pointed our earlier, the shareholder compact "means an agreement regulating the relationship between the Shareholder and the Board" (DPE 2002, p. 5). The agreement is a critical document as it sets the environment of shareholder rights and regulations for the management and operational issues relating to SOEs. Participants acknowledged that the shareholder compact is not cast in stone hence it is reviewed on an annual basis. The reviews provide the shareholder with the opportunity to assess the gains against the targets. The Board and management are also afforded an opportunity to engage the shareholder on salient points reflected in monthly and quarterly reports.

On paper the governance arrangement appears solid and above aBoard, however reality spells a different texture. The nature of SOEs is political, which means political undertones finds expressions in what the Board and management does. In South African politics, the post-apartheid government under the leadership of the ANC made significant progress in transforming the country into democracy founded on the values of human dignity and the rule of law. Notwithstanding these achievements, governance remains a challenge – this claim is based on a number of investigations by the Public Protector and other agencies. In some cases, the investigations points to cronyism, nepotism, corruptions and fraud levelled against senior managers in SOEs. Generally speaking, issues relating to lack of adherence to corporate governance standards are often associated with one party dominant democracy as in the case in South Africa. Nevertheless, nature of a democratic system, regardless of party dominance being strong or weak, such dominance requires maintenance and strategy without the use of force or fraud (KAS; 2006).

4.12 THE REGULATORY ENVIRONMENT OF ESKOM'S FUNCTIONING

NERSA is an entity under the Department of Energy whose mandate is policy development in the energy sector. Its mandate is to regulate the electricity, piped gas and petroleum pipelines industries in terms of the Electricity Regulation Act, 2006, the Gas Act, 2001 and the Petroleum Pipelines Act, 2003. (NERSA Annual Report, 2011/12). As part of the Multi-Year Price Determination (MYPD), Eskom must submit proposals on tariffs for NERSA to

consider and approve. My argument is that although the regulator plays an important role in regulating electricity, it is important to ensure proper coordination between NERSA, Department of Energy and Eskom. Key to my argument is that in the absence of clear coordination, Eskom's planning and execution of its strategy is likely to face challenges which ultimately may affect how the entity is managed and governed.

The participants acknowledged the role of NERSA in regulating electrify tariffs to promote fair and just tariffs especially in the context of high unemployment and poverty in the country. As part of the State machinery, NERSA must be seen to be protecting the interests of the consumers by curbing rising electricity costs and alleviate Government's triple challenges of poverty, inequality and unemployment. (NERSA Annual Report: 2011/12). In the same vein, NERSA is expected to acknowledge the financial position of Eskom in relation to massive capital projects needed to upscale electricity supply to boost economic development. Essentially, the regulator is expected to find a balance between the interests of financially hard-pressed consumers while, at the same time, recognising the need for Eskom to meet the growing demand of electricity against the backdrop of ailing infrastructure which require a massive financial injection.

In accordance with the PMFA guidelines, Eskom's revenue path is determined through the Multi-Year Price Determination (MYPD) that is submitted to NERSA for adjudication and determination. The MYPD is designed to spread the increase over a three year period in order to allow greater tariff certainty while securing revenue to fund capital and operational expenditures. Following the lapse of Multi-Year Price Determination 2 in March 2012, Eskom had to submit its application to NERSA in order to determine the country electricity price adjustment for the next period and its tariff structures. Basically, this means the extent to which Eskom undertakes its strategic and operational directions, such activities are subject to NERSA's approval. This point has been illustrated by the gap between what Eskom requested and what NERSA approved. For example, in 2013 and as part of the MYDP processes, Eskom requested a 16% tariffs increased but NERSA only approved 8%.

It could be asked: *What are the governance implications of a reduced hike for Eskom's strategic planning?* As expected, Eskom had to revise a host of strategy related issues as they were based on the assumption that 16% tariff increase would be approved. What is emerging is that the complex nature of the institutional arrangement has a bearing on the operations of Eskom. The irony is that NERSA and Eskom are agencies whose mandate is to contribute towards the developmental agenda of the state. Against this backdrop, one can argue that coordination of activities between Eskom and the Department of Energy are paramount, given the economic role played by Eskom. The economic impact of Eskom's activities are

underscored by NERSA's tight monitoring on tariffs increase. Business Day, dated 20 January, indicate that in 2013, NERSA capped Eskom tariff price hikes at an average of 8% a year over the next five years, which was already above the rate of inflation. In the same article, the head of NERSA is reported to have argued that costs Eskom passed on to its customers were incurred "prudently and efficiently". Additional costs incurred because of poor management would not be allowed. The discrepancy between what Eskom required vis-à-vis what NERSA approved is indicative of misalignment or lack of coordination.

The manner in which the tariffs issue was handled suggests weaknesses in terms of institutional arrangements which results in poor coordination. Below are views expressed by the participants on the role of NERSA role vis-à-vis the strategic intent of Eskom.

> *"I think it depends entirely on the outcome of the Multi-Year Price Determination (MYDP), – remember, that Eskom does not decide what its revenue path is going to be, it is decided by NERSA".* ***(Board Member: E June)***

> *"In the same vein -there is huge Black Economic Empowerment (BEE) agenda which Eskom must address - whether Eskom can full that mandate without the financial ability is something which must be taken into account". (****Board Member: G June****)*

> *"NERSA is an independent body which conducts benchmarks on the efficiency of electricity cost and it makes certain assumptions about what is fair." (Executive* ***Member: D****)*

The responses cited above point to the complex nature of the regulatory environment. I would also argue that regulations are meant to cushion the economic hardship brought about by increased tariffs, especially for poorer households. While the balancing act between Eskom's strategic and operational requirements continues, evidence suggests a need for proper coordination. The views expressed by the participants also brings to the fore issues such as benchmarking, planning and efficiencies required to ensure attainment of the developmental agenda of the State.

The SOEs are by their nature designed to further the interest of the State by investing in programmes which the private sector consider too risky or too expensive to undertake. The role of SOEs in the economy highlights the importance of clarity of the SOE mandate. The issue of the mandate and clarity thereof, is critical as the execution of such mandate has a bearing on corporate governance. If this argument holds, it is therefore important that the shareholder, Board and management have a similar understanding and expectations. The

participants were in unison as they saw Eskom as a conduit for advancing the social and economic agenda of the state.

The mandate of Eskom was eloquently defined by all the stakeholders, in that they all maintained Eskom's legislative mandate is aligned with the developmental agenda of the state through generation and distribution of electricity to industry and households. Through these activities, Eskom is able to stimulate and enhance economic development needed by the State to address the historical imbalances through the Black Economic Empowerment initiatives as well as offering bursaries to historically disadvantaged youth. The views expressed by the participants are that Eskom's activities are indeed aligned to the developmental agenda of the state.

Chalmers Johnson is widely considered as a person who coined the notion of a developmental state. Johnson defined the developmental state as a state that is focused on economic development and takes necessary policy measures to accomplish that objective. He argued that Japan's economic development had much to do with the vision and intervention by bureaucrats, particularly those in the Ministry of International Trade and Industry (MITI). According to Woo-Cunnings (1999, p. 1) the "developmental state is shorthand for seamless web of political, bureaucratic, moneyed influence that structure economic life in capitalist Northeast Asia". South Africa adopted a similar philosophy hence it considers itself as a developmental State. Below are views expressed by the participants and this shows how Eskom support the developmental agenda of the state:

> *"In a way, it is because Eskom has programme on youth development. This programme is meant to develop young engineers. The company makes funding in the form of bursaries and mentorship support". (**Board Member: C: July**).*
>
> *"Yes they were, if the Board did not concern itself with the development of country then we would not be talking about the world class entity or commercially entity". (**Board member: H July**).*
>
> *"There is huge BBE agenda which Eskom must ensure that it is done in coal and mining initiatives. Whether Eskom can full that mandate without the financial ability is something which must be taken into account". (**Board Member: E).***

The views expressed by the participants imbue elements of the developmental State. Central to the notion of a developmental State are developmental legislation policies delivered through SOEs. In 1994, the ANC led government inherited a country divided along racial and class lines. Transition to an equitable and just society is modelled around East Asian countries such as Japan, South Korea, Taiwan and China where the State used a series of measures to achieve its goals. The social and economic successes of Asia have drawn global

attention to the developmental state as a possible model for developing countries. In South Africa, the government sees this as a possible panacea to the country's social, economic and institutional crises.

The ANC led government emulates the policy trajectory of the East Asian countries such as Japan, South Korea, Taiwan and China. In these countries, the notion of a developmental state was characterized by having strong state intervention. This policy orientation influenced the South African state to intervene in the economy through, among others, SOEs such as Eskom and the SABC to foster a developmental agenda. It is on this basis that participants conceded that SOEs are instrument of development which government has at its disposal to implement its policies. Notwithstanding the need for the state to intervene in the economy, Woo-Cunnings (1999) warn that a developmental state can be good and bad. He argues that it can be "good" that is effective especially in terms of comparative institutional economics. In the same vein, the developmental state can be bad from the perspective of corruption and collusion. The recent report by the Public Protector on government departments and entities are indicative of principal agency problems with which the state must come to terms.

The post 1994 government resolved to redress the historical imbalances created by the Apartheid government. As per the BBE Act, the term ''black people'' is a generic term which means Africans, Coloureds, Indians and Chinese of South Africa origin. The notion of Black Economic Empowerment is aligned with the developmental agenda of the state in that, through the legislation such as the Black Economic Act of 199 as amended, the state seeks to redress the historical imbalances. SOEs, such as Eskom, are expected to promote equality by targeting the historically marginalised community through different facets of the Act, for example, skills development, preferential procurement and enterprise development are among the key drivers of equity.

The post-1994 political landscape is engineered to bring about an equitable society. Against this backdrop, government embarked on a number of policies and programmes aimed at redressing the historical imbalances. In order to deal with the legacy of Apartheid, direct intervention in the distribution of assets and opportunities was deemed desirable and the central pillar of this intervention became Black Economic Empowerment (BEE, now referred to as B-BEEE, Broad-Based BEE). The BEE Commission (2001:2) described BEE as follows:

> "*It is an integrated and coherent socio-economic process. It is located within the context of the country's national transformation programme, namely the RDP (Reconstruction and Development Programme). It is*

> *aimed at redressing the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa's national and economic resources to the majority of the citizens. It seeks to ensure broader and meaningful participation in the economy by black people to achieve sustainable development and prosperity*".

There is no doubt that SOEs play a critical role in promoting the ideals of the state. However, there is a need to clarify the social and economic aspect of the mandate. Some of the Board members made reference to commercial imperatives which Eskom cannot ignore. Words such *world class entity, financial viability* points to leadership aspirations for Eskom. These aspirations come at a cost in terms of capital outlay and financing the new infrastructure.

4.13 GOVERNANCE AND MANAGEMENT OF ESKOM

Eskom is one of the SOEs in South Africa and it overseen by the line function Minister, who is also the shareholder on behalf of the State. In terms of the Protocol of governance in the public sector, the Minister appoints Board members for a period of five years to oversee governance and management of the entity on behalf of the State. Consequently, Eskom is overseen by 12 Board members appointed for a period of five years. The figure below illustrates Eskom governance and management structure:

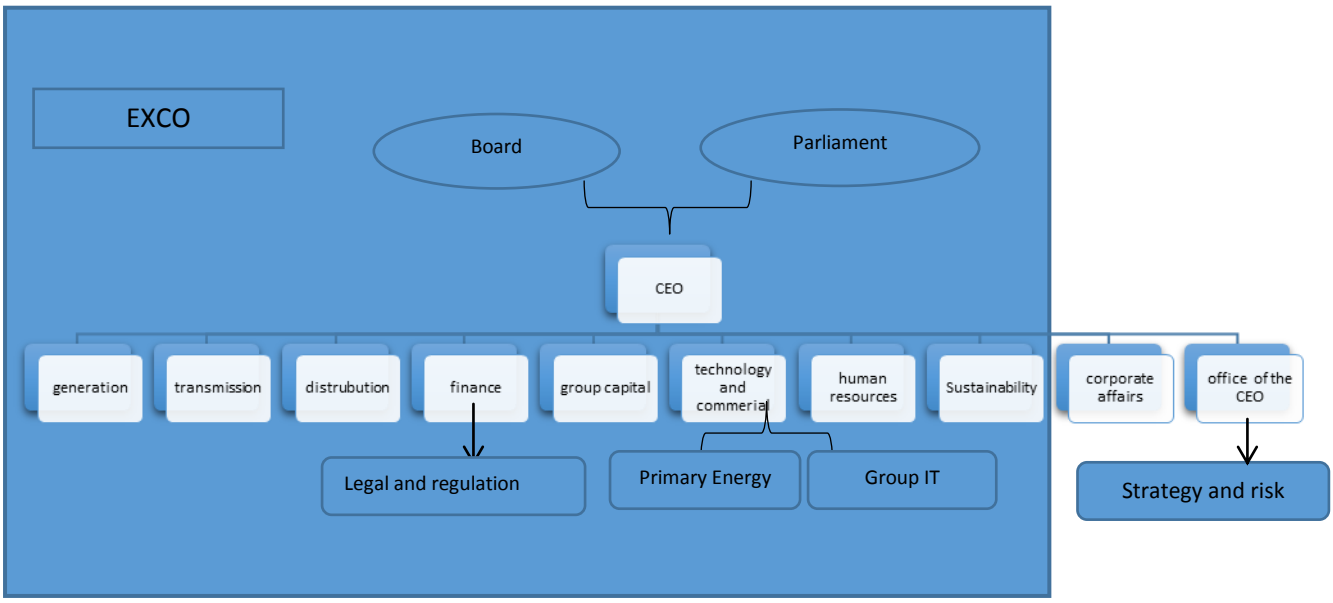


FIGURE 2 ESKOM'S GOVERNANCE STRUCTURE

(Source: Eskom website /Company information 2015)

The interface between the line function Minister and the Board of Eskom is managed through the shareholder Compact – the Compact, as often referred to, is a contract which spells out the Minister's expectations with regard to Eskom's strategic intent and key performance areas (DPE 2000). The shareholder compact is the basis for the Board's quarterly reporting on key functional areas such as policies, financial, technical and other key performance indicators and reporting requirements. Eskom's performance against targets set out in the shareholder Compact is monitored through the submission of quarterly and annual reports.

4.14 INTERFACE BETWEEN THE ESKOM BOARD AND MANAGEMENT

This theme is designed to probe the relations between Board and management in the context of legislative and regulatory frameworks. The study notes that the environment of the SOEs Boards is more complex compared to private sector counterparts. The complexity is illustrated by a number of acts, regulations, policies and procedures. This environment is also characterised by equally complex reporting and accountability frameworks. For example,

Boards of the SOEs report and are accountable to line function ministers, treasury, the Auditor-General, Public Protector, and Parliament. This terrain has implications for leadership as it is expected to navigate and provide guidance, despite the complexity. The participants conceded that the Board and its chairperson in particular, is instrumental in leading and guiding the entity. For example, through its chairperson, the Board interfaces with the Minister and other stakeholders, such as Parliament. This acknowledgement sets the tone in terms of how the Board interfaces with management. The failure for the Board chairperson to hold the Board together has far reaching implications on the entire organisation.

The study postulates that the relationship between the Boards of SOEs and management transcends the description between an employee and his or her manager. The relationships are underpinned by a series of legislation and codes of good practice. In the context of the SOE, the structural relationship is governed by, among others, PFMA, the Protocol for Corporate Governance. According to the Protocol for Corporate Governance in Public Enterprises, the Board has absolute responsibility for the performance of the SOE and is fully accountable to the shareholder for such performance (DPE, 2000). The implication is that the Board delegates a number of functions to management without abdication of responsibility. Notwithstanding issues pertaining to delegation, fundamentally the Board must have full confidence that management, through the CEO, is responsive to all strategic issues presented to him/her.

Monks and Minow (2008) argue that the existence of the Board is based on the premise that they oversee management, select executives who will do the best job and dismiss them when they do not. Their argument goes on to say that, in theory management serves the Board, however the reality is often the opposite. Colley, Doyle, Logan and Stettinius (2003), support this claim by stating that as a matter of practice, the Board delegates most decisions to management, either formally or informally, consequently senior management has the authority to make day to day decisions. The researcher concurs with this supposition, considering the fact that management knows the operations of a company better than the Board. Therefore, it means that the Board is dependent on management, particularly through the CEO, to obtain accurate, timely and material information for the purpose of decision making. This situation paints a complex picture in terms of corporate governance.

Eskom is building additional power stations in order to address the demand of electricity supply needed to fuel economic development. The construction of Medupi power station in Limpopo Province has been overwhelmed by a number challenges which, among other items, questions the relationship between CEO and Board, and in particular, its chairperson. A

dysfunctional relationship between the Board and the CEO of an entity spells disaster as it has the potential to compromises delivery of major projects. This point is demonstrated by the article which appeared in the Sunday Times: Business Times and subsequently the Financial Mail, dated 11 August 2013. In this article, the former Minister of Public Enterprises, Ms Barbara Hogan, argued that the breakdown in corporate governance played a major role in the Medupi disaster, as a result, there were massive overruns with serious financial implications - Medupi will cost R100bn more than originally budgeted for. She was quoted saying there was a "completely dysfunctional relationship" between the Eskom Board, chaired by Bobby Godsell in 2008 and 2009, and CEO Jacob Maroga, which led to the departure of both men at a critical phase of the Medupi project (Financial Mail, 11 August 2013).

The then Chairperson of Eskom, Mr Bobby Godsell, conceded that the Board is ultimately responsible, however, he maintained that it (the Board) cannot do management's job (Financial Mail, 11 August 2013). The same article further went on to say Mr Godsell said his Board's interrogation of Eskom's executive team was what brought things to a head with Mr Maroga (CEO). "There was a general concern that management had not been sufficiently responsive to Board concerns about a range of issues, including capital expenditure projects." (Financial Mail 11, 2013) This piece of evidence illustrates the importance of the relationship between the chairperson and the CEO. According to Tricker (2012), the relationship between the CEO and the chairperson is the most crucial, most sensitive and most subtle in the organisation. The relationship is crucial because these two positions are the most important roles in the organisation. Typical clashes may arise due to strong personalities, and interference in the management of the organisation. Essentially, the relationship between the chairperson and the CEO is prone to a number of challenges with the potential to affect governance and management affairs of the organisation.

Participants acknowledged the importance of the shareholder compact as a defining feature which permeates the entire organisation. Equally, the participants agreed on other delivery points which emanate from the shareholder compact, namely the strategic plan and operational plans. Broadly speaking there is a consensus among government officials, Board members and executive management, concerning the framework which underpins the operation of Eskom. Despite the consensus, the relationship between the Board and the executive managers was characterised by tensions. I would argue that tensions between the Board and management is normal and also serves as a balancing act. However, the difference lies in the magnitude of the tensions and most importantly, how the leadership addresses such.

Interviews with management revealed a lack of trust especially when it relates to information submitted to Boards. Board members are said to question the integrity of information coming from management. The underlying tone was that management is not providing the Board with accurate information. On the other hand, management viewed the Board's quest for information on a regular basis as an attempt to find loopholes in order to institute disciplinary measures. Essentially, members of the senior management team were insecure about their jobs hence the perception about rejection. It was interesting to note that both sides (i.e. Board and management) conceded to tensions. It was equally interesting to note how the attitude of Board and management was said to have changed following a team building workshop facilitated by the Board.

In probing leadership qualities necessary to decipher tensions and bring about normality, participants were united about the role of the Board chairperson. The chairperson of Eskom was reported to be firm and yet fair when dealing with organisational challenges. The general view from senior managers and Board members is that leadership of the chairperson and a series on Boarding workshops provided a platform through which the entire Eskom leadership could work collectively. Below are some of the views expressed by Board members as well as executive managers in relation to how the two structures interfaced and some of the challenges experienced and their implications for corporate governance:

> *"It will always be strenuous, because the Board has expectations and these are set out in the Boards mandate to the executives, the executives on the other hand have different understanding".* ***(Exco Member A: April 2012)***
>
> *"The relationship is cordial because they are very cooperative. However there are hiccups when for they don't deliver and taking Board member's comments as attack on their capabilities hence you see some friction but on the whole it is fine" (****Board Member D:May 2013****)*
>
> *"The relationship between the Board and management is cordial but it started off rocky. When the Board started, the perception from management was that we were going to remove them from office. This perception was not real or accurate however it planted a seed of distrust between us. You must also remember that as new Board we needed information from time to time and this quest fuelled insecurities or fears of management…..these were completely unfounded".(****Board Member C: 2013).***

The views expressed by Board members and some of the executive management affirm the inherent tensions between the Board and management. I would argue that management and

Board comprises individuals from different cultural and racial backgrounds. These variables have the potential to breed conflict especially in a competitive and complex environment which characterise the operations of the SOEs. In emphasising this point, I argued that the legislative environment of the SOEs is convoluted; as a result, trust issues become central between the Board and management. Tricker (2012) argues that trust typically, refers to the fiduciary duty owed by directors to their shareholders. The issue of trust and consistent communication to the stakeholders underscores the importance of the relationship between Board members and management as a team. If the Board members do not trust information presented by management, the hallmark of good corporate governance is compromised.

Business Day, dated 10 March 2014, captures the disjuncture between the Board chairperson and CEO on electricity supply challenges. The chairperson of the Board, Mr Tsotsi, was cited saying there is no power crisis in the country and therefore South Africa should continue doing "business as normal". This position was sharply contrasted by Eskom's CEO who argued that the situation amounted to a crisis. My fundamental argument is that leadership is about creating public confidence that Eskom will continue to keep the lights on and challenges in respect to electricity supply, should be communicated uniformly by management and Board. The manner in which chairperson and CEO handled the electricity crisis suggests there is a trust deficit and communication breakdown between the two. This situation creates a perception that Eskom is not managed and controlled properly and that is a governance matter which must be resolved.

One of the contentious issues facing SOEs is the appointment of the CEO and Board members respectively. Arguably, governance and management malfunctioning in most SOE can be attributed to this point. Notwithstanding this challenge, the State is expected to play an active role in the appointment of the CEO. The role of the State is buttressed by the investigation of SOEs by a Presidential Review Committee whose mandate was to address challenges associated with the appointment of the CEO. The fundamental question which all the stakeholders seeks to answer is who should appoint the CEO – is it the Board or the shareholder.

In an article dated 11 August 2013, the former Minister of Public Enterprise, Ms Barbara Hogan, was quoted as saying "The problem with state-owned enterprises is when a political party and the President decide it is their prerogative to appoint CEOs. You can get this disjuncture in corporate governance which is very, very damaging for what happens thereafter." On the other hand, the Protocol on Corporate Governance for State Owned Enterprises, argues that the Board should appoint the chief executive officer in consultation with the shareholder (DPE 2000). The Presidential review committee reinforce this point by

stating that the appointment of the CEO shall be done by the Minister in concurrence with Cabinet, at the recommendation of the Board (Presidency 2013). I would argue that, despite the pronouncement by the Presidential Review Committee, the Boards of SOEs remains weak for as long they do not appoint the CEO. This logic is supported by the argument which says, the Board is ultimately accountable to the Minister on whatever happens to the entity and therefore it is proper for the Minister to empower the Board. In support of this claim, the King III Report (2009) says the Board should appoint the CEO and provide input on senior management appointments, such as the Chief Financial Officer and Chief Operating Officer.

Participants conceded that the relationship between Boards and management will always be problematic. One of the major reasons is the distinction between the executive and non-executive directors and their roles as members of the Board (DPE, 2002; Tricker 2001; Wixley & Everingham 2002). However, for operational reasons, role distinctions are made for directors and non-executive directors (Non-executive director refers to Board members). Accordingly, each SOE should be headed and controlled by an effective and efficient Board, comprising executive and non-executive directors (DPE, 2002). Wixley and Everingham (2002) affirmed this point by stating that in terms of common law duties, the director stands in a fiduciary relationship with regard to the company. This means a director is in a position of trust and is therefore obliged to act in the interest of the company. The implication is that whatever the directors are doing (executive or non-executive) they must act in the best interest of the company. The views expressed in the protocol is that Boards of the SOEs should formulate, monitor and review corporate strategy, major plans of action, risk policy, annual budgets and business plans of the SOE. In a vein, the King Reports (2002 and 2009) outline the function of the Board to include policy development, review corporate strategy and review and approve budgets.

Despite the division of labour between the director and non-executive directors, the governance and management lines are often blurred. The blurring of lines between governance and management happens because of the overlapping of roles and responsibilities. It is therefore conceivable to argue that blurring of lines can result in tensions between directors and non-executive directors. It can also be argued that the tensions between the directors and non-executive directors are inevitable. The inevitability of the tensions could stem from a number of fronts, firstly directors of the company have access to more information than the non-executive directors and therefore any engagement may not have the same reference point. By the same token, the directors may not be able to provide the Board with quality information needed to make decision. The concept of quality is highly

subjective and therefore, unless the Board defines quality standards, management will always be found wanting and this may cause tensions.

The public image of the SOEs or any institution for that matter must be seen in a positive light, considering the fact that owners and shareholders are diverse and often separated from managers. This situation has implications for leadership in terms of how they manage the internal and external perception. According to Otara (2011), in organisations, perceptions of leaders, managers and employees shape the climate and the effectiveness of the working environment. Essentially, a perception is the way people interpret their experiences. There is no doubt that Board members, executives and workers alike would like to display a positive image, but whether this principle holds in reality is a different matter.

Perception is a process by which organisms interpret and organise sensation to produce a meaningful experience of the world (Linday & Norman, 1977). The issue of perception must be viewed in the context of a division of labour between the Board and executive managers of the SOE. The following authors; Fama and Jensen (1983), Jensen and Meckling (1976) argue that the oversight role of the Board is at the heart of the contractual approach of the firm based of the shareholder primacy and the economic purpose of the firm. Although the contractual relationship exists, perception remains an important part, purely because of the separation between ownership and control. This means that if a Board member or executive is confronted with a particular situation, that person will interpret the situation based on his or her prior experience. However, what an individual interprets or perceives may be substantially different from reality. The fact that executives at Eskom were at some point under the impression that the Board was out to remove them from office created tensions which destabilised the relationship and to some extent harmed the business.

Limited time and accuracy of the information are among critical factors which contribute towards a negative perception between the Board and management. It has been noted and acknowledged that due to limited time that even the most diligent outside directors spend on Board-related work severely restricts their ability to become deeply familiar with the company, unlike operational directors who are constantly immersed in the company business (Nadlier, Behan & Nadlier 2006). It is conceivable that Board members could have felt alienated by the executives and there are a number of reasons which could explain this perception. Chief among these is that Board do not possess sufficient information to make informed decisions. On the other hand, Board members could assume that executives are deliberately withholding information in order to compromise the credibility of the Board. Essentially, the negative perception can either come from the Board or management and

either way, the outcome of such perceptions must be dealt with swiftly as they have the potential to simmer and create organisational instability.

The principal-agent theory contends that managers will be tempted to prioritize personal benefits over shareholder return (Jensen & Meckling, 1976). Since ownership in most large companies is dispersed, particularly of the SOEs, it was deemed necessary to mitigate risk largely due to lack of trust between the shareholder and the agent. Trust has become the currency through which the society judges how office bearers carry themselves. Below is how the concept of trust is unpacked and its implications for corporate governance.

According to Harrison, Innes and Zwanenberg (2003), in recent times, the world and societies have experienced high profile scandals that bear witness to the betrayal and crisis of trust in theology, business and politics. To date, different facets of society have felt the betrayal of trust, for example, child abuse cases in the Catholic Church, fraudulent practices of the directors of Enron, Vodaworld, Arthur Anderson and John Major's moral indiscretions in political life in Britain are some of the cases that have rattled public conscience.

Mollering (2006) describes different approaches toward trust, namely rationalist, rational choice and economic. The rationalist perspective expresses the selective nature of trust and posits that a person can only trust certain people within reason. This view is based on the probability that a person will perform an action that is beneficial or at least not detrimental to another whom he or she trusts enough to consider engaging in some form of cooperation. According to Mitsztal (1996), the most important aspect of trust in a rational choice setting is that participation in collective action depends on the satisfaction of individual preferences and consists of choosing that action that is most likely to produce the highest "utility" for the actor. At the general level, economic theories regard trust as reasonable when the trustee is trustworthy, which means that the trustee will not act opportunistically. It encompasses the "type of expectations that alleviate fear that one's exchange partner will act opportunistically" (Mollering 2006, p. 25).

Trust is a relational concept, consisting of a relationship between a trustor and a trustee, with the former expecting favorable intentions and actions on the part of the latter. In the works of Mollering (2006), a trustor has positive expectations of the intention or behavior of a trustee in that the trustee will not undermine the interest. There is therefore, "openness towards each other". The suspension of vulnerability and uncertainty occupies a central place in the understanding of trust. This suspension enables actors to have positive expectations of others. Trustor and trustee need to be seen to be embedded in systems and structures consisting of

social relationships, rules and resources that have a strong constraining and empowering influence (Mollering, 2006).

The SOEs also operate in an environment where society places a premium on reputation and trust. The Board members and executives of the SOEs must always be mindful of their conduct and perceptions carry the same weight as the truth. The importance of reputations is further emphasised by Mitsztal (1996) who regards reputation as the basis for trust because it allows the possibility for one person to trust another by providing some information about the character of that person (the sort of person we are dealing with).

In addition, reputation is esteemed as it facilitates the reliability of social surroundings by helping people to decide who they can empower to act in their interest and also promotes cooperation by enhancing the probability of carrying out promises. Although it is open to manipulation and stereotyping, trust and reputation are viewed as a means of reducing the complexity and ambiguity of social reality (Mitsztal, 1996).

The separation between ownership and management places trust as an apex priority and a point of reference between the shareholder and the agent. The Board members cannot perform their fiduciary duties in an environment characterized by lack of trust. Equally, senior executives cannot perform their fiduciary duties and responsibility in an environment riddled with mistrust. It is therefore imperative for the Board in its capacity as the custodian of corporate governance to set a tone which the entire organization will emulate.

4.15 ROLE OF BOARD AND MANAGEMENT IN STRATEGY DEVELOPMENT

The interface between the Board and management is underpinned by corporate governance requirements. One of the requirements is a corporate strategy and its delivery thereof. Role clarification between the Board and management is important in managing risks and to ensure performance against the strategy. In the absence of role clarification, accountability lines become blurred, resulting in poor performance. In mitigating such risks, the Protocol for Corporate Governance in the Public Sector asserts that the Board must formulate, monitor and review corporate strategy (DPE 2000). The PFMA also articulates the roles and responsibility of the Accounting Authority (Boards) and accounting officers (CEOs). For example, chapter six of the PFMA argues that the accounting authority must submit corporate plans in the prescribed format covering the affairs of that public entity or business enterprise for the following three financial years (National Treasury, 2010).

The need for compliance is central as the state seeks a return on investment in order to further its developmental agenda – this suggests that Board and management must create a good image in terms of how the state assets are managed. This view is supported by Lipman and

Lipman (2006) when they argued that perception of good management is an important ingredient of the image of an organisation. According to Lipman and Lipman (2006), there is evidence that good corporate governance produces direct economic benefits to the organisation. It can be argued that delineation of roles and responsibilities between the Board and management is an essential ingredient for corporate governance practices. Against this backdrop, it is imperative that Eskom is perceived in a good light as evidence suggests a positive correlation between a well-managed entity and the economic benefits.

In the light of the above, I sought to establish whether role clarification existed at Eskom and whether it is understood consistently by the Board and executive management alike. In the same vein, I also sought to understand the instrument used to articulate the division of labour between governance and management domains. My view is that although the legislation and codes of good practice may exist, it takes more than a proclamation to secure good governance. Proclamation of good governance must be accompanied by sound management and leadership.

The division of labour between the Board and management is defined by the delegation of authority document. The Eskom delegation framework relates to, among others, the powers of the Board – it is stated that the Board is empowered to exercise all powers and authority to lead, control, and ensure effective management of Eskom and delegate any or all of such powers to officials or committees. The delegation also acknowledges the Board's roles in relation to the company laws and the Public Finance Management Act of 1999 (Eskom Delegations, 2007).

The participants acknowledged the importance of role clarification between the Board and management on all matters, including strategy development. The delegation of authority was cited as the instrument which not only outlines the financial delegation but also on matters pertaining to strategy development. The quotes below illustrate the consensus among the Board members and executive managers:

> *"We have a delegation framework that is written and very clear although currently they are under review because the strategy has changed as well as the business as well". (**Exco Member: 2013**)*
>
> *"The delegation is being reviewed at the moment, there will be another one approved in a month. The current one clearly outlines the roles and responsibilities of the shareholders, Board and EXCO". (**Exco Member: 2013**)*
>
> *"The delegation of authority is subject to an annual review to establish relevance and it is aligned the shareholder compact". **(Exco Member; 2013)***

The feedback received from the participants is indicative of a functional organisation in the sense that management and Board have a separate but mutually reinforcing role and responsibilities. The Protocol on Governance document states that the Board must formulate, monitor and review corporate strategy (DPE, 2000). While there is evidence of compliance in terms of documented rules of engagement, my assertion is that governance in SOEs is complex and therefore leadership competency at operation and strategic level will always be tested.

The researcher also sought to understand how the Board and management deal with the issue of strategy formulation. Participants made reference to the corporate plan framework – this framework contains information regarding the organisation's strategic thinking, direction and actions. In line with the Protocol in Corporate Governance document, the corporate plans should be prepared to cover a period of three years. These plans are meant to spell out in detail the strategy of the SOE, and how it hopes to achieve the stipulated strategic objectives (DPE 2000).

The activities contained in the corporate plan can only be delivered provided the organisation has clear roles and responsibilities. It is on this basis that questions on role clarification were asked. Below are the views expressed by the participants:

> *"The Board has an expectation that the business plan is developed by executives and brings it to the Board for approval". (**Exco Member A: April 2013**)*
>
> *"I think is both, because how are we going to monitor or evaluate the strategy if we not involved and have no insight in terms of what informed the strategy". (**Board Member D: May 2013**)*
>
> *"The strategy is developed in conjunction with the executives – the role of the Board is to provide direction and management must implement – the process of strategy development is interactive, we have workshops and one on one discussion with executive management until the final product is develop". (**Board Member C: May 2013**)*
>
> *"So if you ask who developed the strategy, depending on how you use the word develop. The Board will not go and do the detailed work, the Exco does". (**Exco Member B: June 2013)***
>
> *"Exco is best positioned to developed the strategy because they understand the company more than the Board – development therefore sit with exco but the acceptance of the strategy is the responsibility of the Board – the determination*

*of whether the strategy fly or not is the responsibility of the Board". (**Board member F: July 2013**)*

The assessment of the response suggests inconsistencies in terms of who is responsible for strategy development. Some of the Board members saw the strategy development being the role of the Board while others saw it as management's responsibility. While others saw it as Board and management competency, it can be argued that although governance and management is not mutually exclusive, there a need for Board and management to have a common understanding as to who is responsible for strategy development. Lack of clarity may create confusion and lack of accountability. Insofar as the protocol for corporate governance is concerned, the Board should formulate, monitor and review corporate strategy (DPE 2000). According to Gregory and Simms (1999) most governance guidelines and codes of best practice assert that the Board assumes responsibility for the stewardship of the corporation and emphasise that Board responsibilities are distinct from management responsibilities. Their argument goes on to say other guidelines specify the function of the Board – reference was made to countries such as Canada (Dey Report), France (Vienot Report), Malaysia (Report on Corporate Governance) and South Africa (King Report).

The SOEs such as Eskom operate within the ambit of the National Constitution of 1996 and Public Finance Management Act of 2000. The interface between the Board and management is therefore guided by the prescripts of the Constitution, PFMA and the Protocol on Corporate Governance in the Public Sector. As the custodians of corporate governance, the Board must retain full and effective control over the SOE and monitor management closely in implementing Board plans (DPE 2000). The delegation of authority framework is an instrument which the Board uses to ensure division of labour and accountability between different management and governance structures.

The participants acknowledged the importance of role clarification between the Board and management on all matters, including strategy development. The delegation of authority was cited as the instrument which not only outlines the financial delegation but also on matters pertaining to strategy development.

The protocol corporate governance in the public sector is prescriptive in terms of the role of the Board. It maintains that the Board of the SOE has absolute responsibility for the performance of the SOE and is fully accountable to the shareholder for such performance (DPE 2002: p 10). In promoting accountability in line with the treasury regulations the Board should develop a clear delegation of authority and communicate it as such. Delegation is carried through by a number of structures which the Board should establish. For Example, at Eskom there are a number of committees inter alia risk, remuneration and or human resources

development to mentioned but a few. SOEs in South Africa are not without basic corporate governance guidelines and standards; however challenges are mainly on application. In part, the implementation of delegation of authority has political undertones. Furthermore, application of delegation can be compounded by interpretations, availability of skillsets and competency at Board and at management level.

The views expressed by the participants suggest that Eskom is able to manage the implementation of strategy using the delegation of authority framework. The complex nature of SOEs such as Eskom makes it imperative to institute delegation of authority. Against this backdrop, it can be argued that delegation is a necessary driver of efficiency and operational effectiveness. On the one hand, if delegation is properly done, it saves time and improves productivity. On the other hand, poor delegation can cause frustration, create confusion and delay productivity. Essentially, delegation of authority is a prerequisite for the successful implementation of results-based management.

To be accountable for results, managers have to be duly empowered through the clear delegation of authority in all areas, including, and in particular, human resources management (Ortiz, Gorita & Vislykh, 2004).

There is also evidence to suggest that the delegation formwork at Eskom is a "living" document. This claim is supported by statements such as "annual review". The reviews are needed in order to ensure that policies reflect the mission of the entity as set forth by management. The review is also important to ensure compliance with the legal standards and requirements.

The relationship between the Board and management is fundamentally about leadership. The Board and its structures and committees must provide leadership to ensure the objectives of the organisations are met. In the same vein, Naidoo (2002) and Tricker (2012) concede that although the Board delegates certain decisions making powers to a committee, the Board is not absolved from its responsibilities by virtue of delegations. According to Naidoo (2002), the Board of directors is responsible for the strategic direction of the company, and therefore, ultimately responsible for ensuring the success of the company whilst management is primarily responsible for giving effect to the strategy defined by the Board. The sheer responsibility of the Board vis-à-vis governance cannot be discharged without effective leadership at Board and committee level.

The participants conceded that the Board and sub-committee is critical in ensuring that Eskom performs in line with its mandates. Wixley and Everingham (2002) and Tricker (2012) mention the Board committees as instruments of leadership. King III Report

developed this point by stating that good corporate governance is essentially about effective, responsible leadership. The researcher's view is that responsible leadership recognises the complex and dynamic nature of SOE governance and the need to work through Board sub-committees. In the light of inherent conflicts of interest and information asymmetry (deception) between management and Board, the audit committee is the principal governance watchdog in private and public sector companies, and was the first to gain broad acceptance (Wixley & Everingham, 2002). According to Wixley and Everingham (2002), this recognises both the scarcity of time of the whole Board and the need for a more direct focus by directors, with specialised knowledge on certain important governance issues. The participants also acknowledged that committees such as Audit and Risk, Procurement, Finance and Transformation are functional.

The King Report (2002) also recognised the role of committees, stating that "at a minimum, each Board should have an audit committee and remuneration committee". Similarly, the PFMA contains specific provisions relating to corporate governance of SOEs, for example, section 77 states that the audit committee must comprise at least three persons, of whom the majority should be external members. The general view is that the Board's responsibility is to ensure compliance with legal and regulatory requirements.

4.16 THE ESKOM FUNDING MODEL AND ITS IMPLICATIONS FOR SUSTAINABILITY

SOEs cannot fulfil their mandate unless the strategy and related activities are properly resourced. That is why I included funding as one of the themes worthy of considering as it has bearing on corporate governance. I posit that strategic plans and operational plans require a host of resources and this include, but are not limited to, the following; financial resources, human resources, technological resources and technical skills. The existence of any SOE underscores the developmental agenda of the state and therefore the mandate of SOEs such as Eskom must be appropriately funded. Eskom plays an important part in assisting the State to address the historical imbalances with regard to the provision of electricity. In the same vein, Eskom is expected to be financially viable, which means its operations must adhere to commercial imperatives. The need for commercial viability also finds expression in Chapter 8 of the Public Finance Management Act of 1999. Accordingly, it asserts that the Accounting Authority of a schedule 2 entity, such as Eskom, may borrow or issue a guarantee. Arguably, the extent to which Eskom can borrow depends on how much money it can raise through electricity tariffs. As indicated earlier, the revenue of Eskom is determined by NERSA. My argument highlights the complex nature of the environment which is characterised by social and political forces. These factors have a direct bearing on Eskom's operations. As expected,

Eskom's leadership must manage the coexistence between social and commercial imperatives.

The tensions between the two requirements proved to be unsustainable; hence President Zuma initiated the review of the SOEs. The review was among others, established to address the question of whether SOEs are responding appropriately to the developmental State agenda. This implies that the state is concerned about the catalytic role for development. As the shareholder in Eskom, it is necessary for the state to reflect on the governance and funding model of the SOE in order to ascertain efficiency and effectiveness in entities such as Eskom.

In comprehending the issues cited above, I solicited the views of Board members and managers on Eskom's mandate vis-à-vis funding. My assertion is that one cannot talk of Eskom's funding without addressing the institutional relationship between the Department of Energy, NERSA and the Department of Public Enterprises. The debates should also be looked into in the context of Eskom massive R350-billion new-build programme, fund repayment and interest on the borrowing and investment-grade credit ratings. These variables are key in assessing the extent to which the funding model is appropriate or sufficient to pursue the state developmental agenda.

There is general consensus among participants that Eskom's strategy is funded through borrowing, state equity and income generation through selling of electricity to municipalities. Participants made reference to the Public Finance Management Act of 1999 (PFMA) as one of the laws guiding Eskom's financial matters. According to the Protocol for Corporate Governance in the Public Sector, PFMA is the principal Act promulgated by the Government to stipulate the rules and regulations related to financial management and reporting to be observed by SOE governing bodies and management (DPE 2000).

In line with the PMFA guidelines, Eskom's revenue path is determined through the Multi-Year Price Determination (MYPD) that is submitted to NERSA for adjudication and determination. The MYPD is designed to spread the increase over a three year period in order to allow greater tariff certainty while securing revenue to fund Capex and operational expenditures. Following the lapse of Multi-Year Price Determination 2 in March 2012, Eskom had to submit its application to NERSA in order to determine the country electricity price adjustment for the next period and tariff structures (Eskom MYDP 3: 2013/14). According to MYPD 3, Eskom five year revenue request translates to an average electricity price increase of 13% a year for Eskom's own needs, plus 3% to support the introduction of the Independent Power Producers (IPP). The proposed tariff increase is based on a need for an electricity price transition to cost reflective levels to support a sustainable electricity

industry that has resources to maintain and build new generating capacity. In the same vein, the proposed electricity increase price in South Africa tripled over the previous five years, and, at three times the annual South African inflation rate, would further double the price of electricity over the next five years - giving an increase of six times over the 10-year period. Similarly Eskom is also looking at reducing costs, with a target of at least 10 billion rand over three years. (Moneyweb 04, 2013).

Eskom's funding model is compounded by misalignment between policy design and execution. On the one hand, the policy environment is guided by the Department of Energy through its agency, namely, NERSA. On the other hand, the Department of Public Enterprises is responsible for policy execution through entities such as Eskom. The current institutional arrangement has wide implications for the operation and sustainability of Eskom. For example, these institutions brought together by, among other, policy imperatives – the case in hand is the Electricity Pricing Policy (EPP). This policy was issued by the Department of Energy in 2008. The EPP deals with a number of variables which included, but was not limited to, the following; cost reflectivity, cross subsidisation, dedicated networks, distribution systems, energy charges, standard charges and replacement cost (DME, 2008). In the circumstances, it can be argued that any policy provisions are subject to a number of interpretations as entities are likely to reflect and interpret any policy based on their mandate.

The Board members emphasised the independence of NERSA as a regulatory body whose mandate is to intervene in the market by regulating electricity prices. Although this issue was not contested, the participants had different views when it comes to the Electricity Pricing Policy (EPP) as interpreted by NERSA and Eskom respectively. Eskom's submission through the MYDP was based on its aspiration, based on its Capex and operational requirements over the next three to five years. The proposed 16% electricity increase by Eskom was rejected by NERSA. The general view held by Board and management is that NERSA should develop policy to determine the fairness of tariffs, however the majority of Board members are of the view that NERSA has failed to execute its own policy vis-à-vis electricity cost reflectivity. The overall argument presented by Eskom Board and management alike is that Eskom's financial crisis is inextricably linked to the implementation of the cost reflective tariffs. If the policy on cost reflectivity was implemented, the tariffs levied on consumer, Eskom financial woes would have been avoided.

There are a number of internal and external factors which influenced the pricing determination. In respect to external factors, participants made reference to consumer affordability and high unemployment in the country. In terms of the internal factors, the participants alluded to capital expansions and operational requirements. The internal

dimensions were also driven by how management interpretation of the EPP policy was overseen by NERSA. Below are views expressed by the participants on how NERSA deals with Eskom based on the proposed electricity increases.

> *"NERSA is an independent body which conducts benchmarks on the efficiency of electricity cost and it makes certain assumptions about what is fair. Eskom applied to NERSA based on its aspirational objectives and NERSA have to say, are you prudent, and are you efficient and cost-effective within the parameters of policy". (**Board member E: June 2013**).*
>
> *"We filed an application and it based on our understanding of the EPP, NERSA then responded to our application based on their understanding of the policy - there is alignment, however the issue is whether we interpret the policy the same way. NERSA also argue that their decision is based on their understanding and interpretation of the policy". (**Exco member: C: June 2013**)*
>
> *"Our view is that NERSA have miscalculated certain things wrong, but we will not ask for the review of the decision". (**Exco Member: June 2013).***

The key finding here is that MYPD 3 revealed the unintended policy consequences as it relates to how the EPP was interpreted. The outcome of this interpretation led to Eskom receiving half (8%) of what it requested. Over and above the differences in the interpretation of the policy, I would argue that South Africa's economy played a major role in shaping or influencing the position of NERSA. The country's high unemployment rate, coupled with persistent skills shortages, meant that Eskom's tariffs increases had to be grounded on this social and economic reality. Any perceived and unjust tariffs would have political and social ramifications hence NERSA had to carefully weigh its options. NERSA's dilemma is indicative of the complex nature of the SOE environment and how 'unpopular' decisions can adversely affect the social, economic and political dimensions of the society. As part of its mandate, NERSA must hold public hearings in order to solicit views from different formations of the public. In the light of the country's high unemployment rate and rising costs, Eskom tariffs were met with anger and frustration which adversely affected NERSA public hearings processes. What is noted here are the external factors which have a bearing on Eskom's corporate governance framework. Essentially, Eskom's corporate governance activities cannot be divorced from the social and economic environment as it affects every citizen.

4.17 THE BOARD'S PERFORMANCE MONITORING

Data presentation and analysis on the Board's evaluation is critical, considering the Board's role as the custodian of corporate governance in SOEs. In the South African context, the Board's appraisal processes are institutionalised through different legislation and codes. The government issued the Government Wide Monitoring and Evaluation Framework in 2007 to ensure that government departments and public entities become more effective in their operations. According to the Presidency (2000), the monitoring and evaluation can assist the public sector in evaluating its performance and in identifying the factors which contribute to its service delivery outcomes.

The Protocol for Corporate Governance in the Public Sector also recognises the importance of monitoring or appraising of the chairperson and Board performance. The Board should appraise the performance of the chairperson on an annual basis. Equally the Board should, on an annual basis, review and evaluate its required mix of skills and experience in order to assess the effectiveness of the entire Board and its committees. The Protocol further asserts that assessment should seek to measure the extent of achievement by the Board as a whole, and of individual members, of the set performance objectives and targets of the SOE, which include shareholder objectives as contained in the shareholder compact, using key performance indicators developed for this purpose. (DPE: 2000).

In establishing the alignment between policy pronouncement and actual practice, the researcher engaged the Board members and executive managers. This engagement sought to establish if the leadership of Eskom manages risk through Board evaluation. If the Board is not appraised, the shareholder may not know the extent to which the organisation deals with the strategic, operational and financial risks. Equally, the shareholder may not know the extent of the misalignment between the Board's practices and the mandate. The Board appraisal is therefore at the heart of corporate governance. Below are the views expressed by the participants in relation to the monitoring of the Board's performance in the context of the shareholder compact, strategic and operational plans:

> *"Brian (CEO) and I have an external view that is, every committee and every Board members performance must be assessed in a mature but brutal nature. We have started these discussions on how we can improve ourselves and everyone is taking it in a positive way".* **(Exco Member C: April 2013)**

> *"The Board was evaluated by the external service provider and that was ice breaker as this was a new Board. The outcome of the first evaluation, brought out tensions, perception and negativity people had about one other.*

*Subsequently we had another Board meeting to facilitate relationship building". (**Board Member D: May 2013)***

*"The Board was assessed by the external service provider. I was shocked to see report as it made so many assumptions about the performance of the Board. I would have expected the service provider to verify some of the non-performance claim they made but they did not. We registered our dissatisfaction about the findings". (**Board Member E: May 2013)***

The views expressed by the Board members and executive committee members suggest pockets of good practice as there is acknowledgement that Board evaluation is undertaken. The consensus among the participants is indicative of the fact that the Board faces a number of governance challenges which require compliance. In supporting this view Kiel, Nicholson and Barclay (2005) maintain that when a company is facing governance issues, or a Board is seeking to improve its performance, there is rarely a single issue that requires review. Their argument goes on to say, the vast majority of governance concerns are in fact the result of the interplay between individual skills, experience, motivation, the relationship between the Board and management and the effectiveness of supporting governance policies, procedures and processes.

Similarly, the King Report (1994) maintained that institutional investors were starting to insist on annual Board reviews. Citing the Russell Reynolds Association survey in 1997, in the USA, the King Report recognised that "the quality of the company's Board has become an important evaluation". Against this backdrop, it can be argued that evaluation of the SOEs Boards has increasingly become the cornerstone of good governance, as the Board members are evaluated on a number of variables – as Kiel, Nicholson and Barclay (2005) have correctly pointed out, Board evaluation must consider a number of factors, for example, the relationship between Board and management and the effectiveness of processes and systems supporting governance.

One of the Board members mentioned the issue of external Board evaluation. According to Kiel, Nicholson and Barclay (2005), another commonly stated objective for Board evaluation is to identify any skills gaps on the Board. The external evaluators are better positioned to provide objective assessment of the skills composition of the Board members. Arguably this view is particularly important in fostering Board independence. Frederick (2011) argues that independence remains one of the most sought after characteristics of good governance. His argument is that greater emphasis should be placed on the capacity of the individual to contribute in an objective and unbiased manner.

The evaluation of the Board's subcommittee is equally important considering the fact that committees are supportive of the Board function. The evaluation of the committee ought to address issues such as skills, competencies and the relationship with management. The sub-committee enables the Board to address different aspects of the organisational functionality for example, human resources and remuneration, finance, audit and risk management, to mention just a few.

The subcommittee evaluation is also useful in managing group dynamics. Colley, Doyle, Logan and Stettinius (2003) assert that a Board is a group of human beings and as such, is subject to all dynamics found in any group. In the context of group dynamics, evaluation can also focus on leadership capabilities. Since the Board also performs through subcommittees, leadership from non-executive managers cannot be over-emphasised. If the Board lacks leadership, it is apt to make mistakes when confronted with difficult decisions.

4.18 CONCLUSION

This chapter presented and discussed findings of the SABC and Eskom respectively. The discussions were presented in line with the conceptual framework guidelines. For example, the theme on legislation and regulation flagged complexities and implications of having diverse legislation that is fragmented. Equally, the theme on the interface between Boards and management highlighted perpetual tensions between Boards and management. A lack of trust and the inability of leadership to resolve tensions suggest deeper conceptual and operational issues worthy of being considered in future. The area on strategy development proved to be a challenge for Board and management despite delineation of responsibilities. Similarly, funding of the SOE strategy remains a contested issue as it raised different expectations between and among different stakeholders. For example, the SABC and Eskom are expected to roll out infrastructure programmes to aid the developmental agenda of the state and yet funding is not made available. This issue questions the conceptual design issues surrounding SOEs and the legitimacy of expectations from the stakeholders.

In as far as the Board assessment is concerned, discussions points to a broader understanding of the need for a periodic Board performance assessment. The analysis suggests that despite the knowledge and understanding of Board assessment imperatives, the reality is that Eskom and the SABC remains in distress. At the SABC, a leadership vacuum and subsequent intervention by national treasury puts issues in perspective as to why assessments were not carried out over a period. On the other hand, Eskom Boards were assessed in line with good governance practices and yet it remains in crisis. The indication is that unless the outcome of performance is taken seriously, such excises shall remain a tick box approach, without any value added to the shareholder. Corporate governance is not only about adherence to rules,

most importantly, it is about performance and return of investment. If Board members are not performing, the shareholding Minister must take action by removing non-performers from office. This assertion presume that the Shareholding Minister is visible, active and in control of the situation. In the absence of visible and active leadership on the side of the shareholding Minister, Board assessment becomes a mere compliance without any value added.

5 CHAPTER 5: SIGNIFICANCE OF CORPORATE GOVERNANCE IN STATE-OWNED ENTERPRISES

5.1 INTRODUCTION

The previous chapter presented the findings of the two case studies, namely; the SABC and Eskom respectively. The presentations and discussions of these case studies were guided by the conceptual framework, which recognized the following pivotal pillars of corporate governance: the legislative and regulatory environments; the interface between Boards and management of SOEs; the role of the Board in strategy development; monitoring of Boards' performance; and the funding regimes for SOEs. The researcher noted that in spite of the conceptual framework providing insights on corporate governance, the implementation of sound corporate governance in SOEs rests on a number of factors. These include, but are not limited to the requisite skills set, strong lobby groups, short term (as opposed to long term) planning, and fear of voter backlash due to unfulfilled promises made earlier to the electorate. Essentially, corporate governance in SOEs should recognize the dynamic social, political and economic variables characterising the SOE environment.

This chapter highlights the significance of corporate governance in SOES. Firstly, the research objectives and research questions are reflected on. Secondly, the research questions are juxtaposed with the research findings in order to determine the extent to which they collectively add value to the intended outcomes of the study. The chapter also recognizes the unintended consequences of the legislative framework, such as the challenges posed by the diverse and vast nature of legislation, as well as the focus on short-term, rather than long-term organisational planning. These issues are further compounded by political promises to electorate and pressures of in every five-year cycle by the Minister responsible for SOEs. A multi-perspective approach to corporate governance is therefore necessary, as it ensures that discussions on the findings are looked at from the theoretical, practical and policy perspectives.

As a matter of emphasis, the research objectives (appearing in Sub-section 1.5 (pp. 7-8) of this study) were articulated thus:

- To describe and explain the conceptual/theoretic aspects of corporate governance in the context of SOEs;
- To describe and explain SOE corporate governance challenges, with specific reference to the SABC and Eskom; and
- To recommend remedial measures to control the identified SOE corporate governance challenges.

In addressing the above-cited objectives, the following pertinent research questions were posed (as appearing in Sub-section 1.6 (pp. 8-9) of this study):

Question 1: Main Research Question: What is the nature of SOE corporate challenges, and to what extent is corporate governance affected by these challenges?

This question sought to establish factors which account for corporate governance challenges at both the SABC and Eskom. The questions on corporate governance are fundamentally about 'rules of engagement' as defined by the principal for agents in order to institutionalise compliance.

The separation of ownership and control of SOEs is underpinned by the legislative and regulatory environments. The emphasis on legislation and regulation indicates the need for compliance, as the separation of ownership and control of SOEs brings about conflict of interest which should be managed by applying 'the rules of engagement' as stipulated by the responsible Minister in accordance with compliance as articulated in the Constitution, PFMA, founding Acts (i.e. Broadcasting Act and Eskom Act) and applicable regulatory bodies (i.e. NERSA and ICASA). Legislative and regulatory compliance are considered as the hallmark of good governance, as they are helpful in narrowing the 'schism' between the shareholders and managers. Notwithstanding the importance of legislation and regulations owing to the separation of ownership and control, the researcher is more concerned with the complex nature of the legislative and regulatory environments, as well as the impact on the performance of the SOEs. Such environmental variables complicate performance, as the focus is on non-standardised and uncoordinated compliance, reporting and accountability.

Question 2: What is the role of Boards and management in relation to strategy development?

In the context of applicable legislation and regulations, this question interrogates the nature and intricacies of the relationship between the Board and management. In this study, an understanding of the intricacies of such relationships was achieved by a review of issues such as applicable legislation, the shareholder compact, and delegation of authority. Although there are clearly defined protocol issues, the interface between the Board and management is often characterized by tensions emanating from the blurring of lines between governance and management, and unfulfilled expectations on the part of the Board. One of the critical competencies interrogated was the roles of the Board and management in relation to strategy development within their respective organisations.

Question 3: How is the performance of SOE Boards monitored?

This question sought to establish whether or not the Boards of SOEs are appraised in accordance with international best practice. Furthermore, it is important to know the extent to which the results of the appraisal are incorporated into the organisational planning processes.

The powers vested in the Boards elevates the Board members to positons of custodianship corporate governance within SOEs. The SOE Boards operate in a highly complex environment, necessitating regular appraisal of the Board, its chairperson and the sub-committees.

Question 4: How are SOEs are funded, and how does this affect corporate governance?

The implementation of the SOE mandate and strategy should be accompanied by an appropriate funding model. In the event that there is disequilibrium between the funding model and the mandate requirements (social and commercial imperatives), SOEs are most likely to find themselves in a precarious position. The unmatched expectations could breed tensions and conflict for the Board, management and the oversight structures, such as Parliament. Eskom's revenue stream depends on NERSA's determination, which is subject to the social and economic performance of the country. Eskom's expansion programme could not be divorced from the economic reality of the consumers. This means external factors such as regulation, political and civil pressure, concomitantly have a direct bearing on corporate governance. Similarly, the SABC finds itself in a dire situation. On the one hand, it should deliver programmes which entrench democratic values as part of its social mandate. On the other hand, it should also pursue commercial activities to ensure the financial tractability of the corporation. The tensions between dual mandates and funding have the propensity to affect governance and management instability.

The research findings demonstrate areas of commonality and differences between the two cases. Accordingly, areas of common findings are discussed, followed by a discussion on areas of dissimilarity in the findings associated with the SABC and Eskom respectively. In their thematic contexts, areas of common findings include: convoluted legislation and regulatory environment; and lack of trust between Board members and executive managers. The issue of trust or lack thereof manifests in the manner in which Board members and executive managers related on issues such as strategy development, reporting, and accountability. There are also challenges with regards to weak monitoring and evaluation of Board members. In respect of funding, strategy is predominantly underpinned by marked imperatives, notwithstanding that these two entities are expected to carry out the developmental agenda of the State with no appropriate funding.

5.2 A CONVOLUTED LEGISLATIVE FRAMEWORK

Operations of SOEs and private companies cannot be dislocated from law, which presupposes that legislation and regulations are the cornerstone of good governance. SOEs such as the SABC and Eskom are governed by multiple legislation and regulations. Although legislation provides guidelines on the Board's and management's reporting and accounting mechanisms, the sheer volume of different legislation makes governance and management a daunting task. SOEs are expected to report and account to oversight structures such as the respective line function Department, the National Treasury through the PFMA, the Auditor-General, and Parliamentary committees. The need for reporting and accountability assures the shareholders that agents – such as the Boards and management – deliver in accordance with the rules of engagement. Notwithstanding the need to report and to account, one could not overlook the cost and productivity implications associated with this model of governance.

According to Vagliasindi, (2008) and the World Bank (2006), a dual model of governance consists of more than one oversight structure. Such a model is problematic in that it assumes SOEs' oversight structures have similar mandates, and therefore, the required information could be uniform. The reality is that each of the oversight structures perform specific Constitutional functions that have a direct bearing on corporate governance. For example, in terms of Section 32 of Chapter 2 of the Constitution, everyone has the right of access to information held by the State or any other person, provided that such information is required for the exercise or protection of a right. Similarly, the Promotion of Access to Information Act of 2000 (PAIA) was enacted to give effect to this section of the Constitution (Khoza & Adam, 2005). The ramifications of this Act, and indeed the Constitution, on corporate governance could not be underestimated.

One of the compliance requirements for SOEs is underpinned by the Public Finance Management Act. In both cases (SABC and Eskom), participants expressed concerns with regard to the onerous compliance requirements of the PFMA. The PFMA is a generic piece of legislation governing the entire public sector. The reality is that SOEs fulfil different mandates. Some are designed for commercial reasons, while others are meant to address social imperatives. These configurations have a direct bearing on corporate governance. Regardless of imperatives underpinning the governance and operations of the SOEs, they are required to be operated in accordance with the dictates of corporate governance. In supporting this claim, Khoza and Adam (2005) mention that PFMA does not provide a mechanism for SOEs to apply for total or partial exemptions from its provisions. SOEs, such as Eskom and the SABC, are designed to fulfil commercial imperatives and therefore a one-size-fits-all approach is problematic in the sense that the need to operate efficient businesses is not fully appreciated.

Legislation has a dualistic context in which it could be understood. Firstly, legislation could refer to the process of law-making by a body authorized to make laws, as well as the law(s) that are enacted by that body. Secondly, the rule of law implies that laws are enacted transparently and enforced justifiably without fear or favour across all sectors of society. The rule of law is fundamental to any democratic order (Awah 2013). Consequently, the expectation from the legislators is that legislation should be complied with by all concerned. In the context of the SOEs, there is an inherent expectation that Boards and management will actively enforce the applicable laws. It is on this basis that participants at Eskom and at the SABC alluded to the legislative and regulatory environments governing their SOEs respectively. This knowledge suggests awareness and understanding of 'the rules of engagement' -vis-à-vis corporate governance. At the SABC, the legislative environment includes, but is not limited to, the following: Constitution of the Republic of South Africa, 1996 as amended; The Broadcasting Act, 1999 as amended; The Independent Communications Authority of South Africa (ICASA) Act, 2002 as amended; The Electronic Communications Act, 2006 as amended; Companies Act, 1973 as amended; and various regulations determined by the regulator, ICASA. The sheer amount of legislative compliance required from the SOEs has implications on efficiency and effectiveness of service delivery.

According to IOD (2009), there is always a link between good governance and legal compliance. Essentially, good corporate governance is not something that exists separately from the law, and it is entirely inappropriate to dislodge corporate governance from the law. This assertion justifies the existence of the law in the context of the separation between ownership and control, which recognizes the inherent problems the shareholders should contend with. The agency theory succinctly addresses the separation between ownership and control, as it attempts to deal with divergence of interest between the shareholder and the agents. Eisenhardt (1998), avers that the agency theory presents a global agency relationship in which one party (shareholder) delegates work to agents (Boards or management).

Legislation is the best form of defence provided by the shareholder. Recent occurrences at the SABC are an attempt by the shareholder to arrest divergence of interest through legislation. Although it is acceptable to protect the interest of the shareholder through legislation, the cost of compliance could become astronomical. The latter claim is supported by Fama and Jensen (1983), who argue that agency costs include the costs of structuring, monitoring, and bonding a set of contracts among agents with conflicting interests. Agency costs also include the value of output lost bas a result of the costs of fulfilling enforcement of contracts exceeding the benefit. The quantitative amount of compliance expected from SOEs such as the SABC is staggering, as there are a number of agencies involved with governance and oversight matters. While legislative compliance is necessary and reassuring to the shareholder, a

fragmented legislative environment – characterised by regular policy changes – could become counter-productive; especially for SOEs in a democracy that is *in status nascendi* such as South Africa. The SOE environment has witnessed a number of policy reviews since 1994. In the space of 20 years, there has been four policy changes. Despite these changes, SOE performance has remained an extant challenge. It could be argued that frequent policy changes has engendered unintended consequences, especially in the realm of strategy and operations of SOEs.

In the same vein, Eskom is equally subjected to a plethora of legislation. In 2002, Eskom was converted into a public company in terms of the Eskom Conversion Act (13 of 2001). Authors such as Khoza and Adam (2005); King III Report; (2009) DPE; (2000), Kendall and Kendall; (1998) argued that the manner in which SOEs are governed, managed and held to account is a complex process and is underpinned by a series of different legislation, treasury regulations, policies and procedures. In the absence of standardised approaches to the legislative environment, it becomes difficult for Boards and management to act consistently.

In addition to the founding legislation, Eskom is governed by other pieces of legislation and other compliance instruments, such as the Companies Act, the Public Finance Management Act (PFMA), Shareholder Compact and Materiality Framework; the King Report on Corporate Governance, as well as by various determinations by the Auditor-General, Parliament and Treasury, the National Environmental Management Act, the Competition Laws, labour laws and tax legislation. The governance legislation also compounds the already-congested regulatory landscape. In accordance with the Electricity Regulation Act, NERSA) is the duly authorized regulatory body for Eskom's financial and administrative viability.

Notwithstanding the need for legislation and regulations, the study found that the PFMA is often unclear and, its implementation bureaucratic. Consequently, there absence of clarity has inadvertently rendered decision-making as a preserve of the Board. The blurring of lines between governance and management is central to corporate governance challenges at the SABC and Eskom. However, at the SABC, this particular challenge is exacerbated by high Board and management costs. A leadership vacuum at management level further complicates the application of legislation and regulation governing the SABC.

5.3 A CONTESTED REGULATORY ENVIRONMENT

The SABC and Eskom are monopolies, therefore regulations are necessary to serve the interests of the consumer. Potential market failures call for regulation to create competition in order to promote efficiencies for the benefit of the general public. Regulators such as NERSA and ICASA are therefore established to strike a balance between the interests of society by treating a public utility's customers fairly, while also treating the regulated firm's investors fairly. While the provision of electricity and broadcasting services are prioritised by the ANC government, regulators should also recognize the social and economic challenges facing the country. NERSA's attempt to balance its priorities is indicative of the austere social and economic conditions facing South Africa. For instance, Eskom was not granted the 16% tariff increases during the last tariff review cycle. The implication of NERSA's decision had devastating effects on Eskom's balance sheet, as their financial projections were based on 16% tariffs increase which means that costs could not be recovered. The nature of the institutional arrangement between Eskom and NERSA in terms of planning and execution of such plans also needs to be aligned in order to address any shortcoming proactively. The interpretation of the Electricity Pricing Policy (EPP) is the case in point, hence the delay by NERSA.

SOE mandates of SOEs are not only broad, but inherently contradictory and impact on corporate governance. During the tenure of then Minister of Public Enterprises, Minister Gigaba, the study participants alluded to a directive of keeping the lights on at all cost. This particular decision compromised the Board and management of Eskom from the commercial and viability point of view. The position adopted by Minister Gigaba then could be explained choice interrogates the extent to which the motivations of individuals affect the outcome of their collective decision-making. This theory, therefore, rejects the idea that politics is a process by which individuals somehow discovers what is truly in the public interest. The fundamental argument presented by the public choice theory is that decision-makers' are imbued more with self-interest than public interest. The study agrees with this assertion, as the policy directive by the Minister coincided with the national election of 2013.

The ANC government, through the shareholding Minister, could not allow Eskom Board and management to take decisions without influencing the outcome of those decisions. Eskom was likely to apply commercial reasons as opposed to politically motivated reasons in making decisions on when or how to keep lights on. Based on the Minister's directive, keeping the lights on meant the parastatal had to depend on diesel engines in Cape Town, which was a costly venture. NERSA, on the other hand, does not fully appreciate the management predicament when adjudicating over the tariffs submissions. Such decisions have financial

implications on Eskom, thus compounding the clarity of the mandate. The study highlights the confusion created by Ministerial directives and NERSA adjudication processes, which threaten the long-term financial viability of Eskom. These inputs create tensions within the organisation as Board and management are likely to be uncertain which aspects of the mandate to implement.

SOEs are expected to be financially viable and desist from constantly requesting financial rescue from the State. Financial viability necessitates that SOEs should establish their most reliable source of revenue without depending on the State's financial rescue. For example, the SABC revenue stream is market-driven in the sense that it depends on the scale of advertisers. If a company's advertisement budgets decreases, as it has during 2010/11, it means the public broadcaster's income is reduced. Similarly, Eskom's increased tariffs are highly contested, considering the economic considerations for the poor and the political considerations of the ruling party on the impact of exorbitant tariffs. In addition to a restricted revenue base, SOEs are further subjected to regulations and the general public whose interest and expectations are different from the State. All these factors have had different permutations for the Board and management. It is therefore important that clarity is sought with regard to which aspect of the mandate should take precedence. Once this clarity is obtained, it should be communicated to different stakeholders in order to avoid unnecessary pressure on the Board and management of the organisation.

Linked to the issue of the convoluted legislative and regulatory environment is the issue of multiple reporting. It has been noted that SOEs report to multiple oversight entities which include parliamentary portfolio committees, National Treasury, line function departments and general public mainly through the civil society organisations. Reporting and accountability are the cornerstone of good governance. However, multiple reporting is time-consuming. Information from these entities is not homogenous, and is required at different intervals and in different formats. Therefore, communication and reporting efficiency are the critical success factors of productivity within the reporting system. SOEs find it difficult to balance the interest of all the stakeholders without compromising effectiveness and efficiency. The SABC was particularly affected in this regard as the majority of its senior managers were in acting positions, which means the entity could not produce credible information. The skills audit report also found that SABC managers are not appropriate leaders as their management skills and competencies are questionable.

Legislation such as the Promotion of Access to Information Act of 2000 and different provisions of the Constitution are indicative of the features of a democratic State. However, such legal and regulatory interventions bring about an increased administrative burden of the

SOEs. The implication of such Acts is that SOEs should be seen to be responsive to queries brought before the Board or its management. In the context of a strong civil society movement, SOEs are pressured to respond to all allegations of corruption and mismanagement, thus increasing the administrative burden. In both cases, a trust deficit was mentioned as one of the factors which affected the collegiality and professional outlook of the SOEs. The Board and management at the SABC and Eskom respectively, conceded that lack of trust has affected governance and the management relationship. It is worth mentioning that whilst the reasons behind trust issues were different, the consequences were the same in that SOEs did not perform to the required optimum levels..

The issue of trust should be understood in the context of the separation of ownership and control. The agency theory provided a framework by means of which the principal could hold the agent accountable. The delegation of authority framework could be viewed as a control mechanism used by the principal to hold the Board and management accountable. In both cases, of the SABC and Eskom, the study participants spoke of the delegation of authority frameworks – which are documents that provide guidance on material and non-material matters. The application of such a framework is questionable, considering the number of investigations conducted on the SABC. For example, the skills audit report, compiled by PWC (Price Waterhouse Cooper) following a request by the parliamentary communications portfolio committee in 2013, shows that the SABC is deficient in key skills from executive management the lowest strata of management – a situation that may hamper the broadcaster's digital migration process, among other crucial operations (Business Day, 04 February 2014). The self-same report also showed low levels of managers' competency. For example, 60% of the SABC's executive and senior managers do not meet the minimum strategic thinking skills for executives; and 56% were unable to demonstrate adequate problem solving and decision-making levels. It could be concluded that high staff turnover and low competency levels will render delegation ineffective as senior managers do not have the requisite skills and competencies to give cogent effect to the minimum executive and managerial skills requirements.

The low management competencies, high turnover among senior managers, and fear of expulsion explain the reasons for some of the Board members complaining about the series of meetings being held regularly, instead of implementing operational and executive duties. Three Board members expressed concerns as their services were required frequently. In spite of the establishment of the norm of Board and sub-committee meetings, the sub-committee chairpersons found themselves at the corporation more frequently than expected. The view from management is that fear of expulsion and the high vacancy rate at senior management

levels led to indecisiveness. Hence, the Board meeting so frequently on matters which ordinarily should be addressed by managers themselves.

While the delegation exists, the quality of the information destined for the Board has been found questionable. The Board necessarily expressed their frustration on the quality of the information – suggesting that without the necessary quality of information, the Board's decisions may not be appropriate. Management on the other hand, expressed similar concerns in that they regarded information provided to the Board as being of poor quality. Lack of trust between the two parties could also be derived from expressions such as "informal networks" and "shady characters operating in the background". The researcher has noted that despite formal statutes, policies and procedures within organisations, one could not assume that organisations functioned in a vacuum. Any contestations of power, authority, and influence could be deliberated outside the formal governance structures. Such contestations have a bearing on the quality of leadership at Board and management levels. The chairperson of the Board should set the delivery tone and foster a culture of unity among the Board members and throughout the organisation. Since organisations do not operate in a vacuum, one could not ignore the influence of 'informal networks', or the ability of members to use external influences to leverage certain intentions within the organisation. The success or failure of the informal networks depends on the quality of the leadership in harnessing collective wisdom and finding ways and means to address such incidents of discontent. In the final analysis, trust is an important part of building viable organisations. This means Board members and executive managers should be seen to be above reproach.

5.4 FULLY ENGAGED BOARD MEMBERS AND 'ENTERPRENEURIAL' BOARD MEMBERS

In the context of the study, a distinction is made between fully engaged Board members and those who are fully engaged in their own companies or formal business ventures. Fully engaged Board members refer to non-executive Board members who are employed as executives in other companies. Entrepreneurial Board members are those Boards members who are fully engaged in their own companies or other formal business ventures. The rationale behind the distinction is informed by power dynamics introduced by these categories. The significance of the distinction is that fully engaged Board members are more likely to act as stewards, as opposed to entrepreneurial Board members who may be motivated by pecuniary interests. It also means, that fully engaged Board members are less likely to harbour ambitions of being employed as executives. The implications of the distinction between the two types of Board members manifest themselves in the section below.

Tensions between the Board and management were frequent at the SABC and at Eskom. These tensions suggest that Board and management view issues differently. Central to these tensions is either the issue of access to information, or the quality and standards of information needed. Colley, Jacqueline, Doyle, Logan and Stettinius (2003) mention that it is inconceivable for conflicts of interest to occur in owner-managed organisation. This means SOEs will inherently manifest tensions, by virtue of the complex ownership and management structures. In this regard, the agency theory accentuates the centrality of information. Mallin (2007) argues that information asymmetry is bound to occur as the Board and management have access to different levels of information. In the light of the complex organisational configuration, the inevitability of information asymmetry will affect corporate governance on the basis that the quality of decisions made is correspondingly dependent on the quality of information supplied. The tensions between Board and management are context-specific and vary from one organisation to another. Khoza and Adam (2005) have correctly pointed out that corporate governance is ultimately about effective leadership. In the context of SOEs, issues of effective leadership are buttressed by the complex institutional arrangements between Boards and management, notwithstanding the effects of a fragmented legislative environment.

The tensions between Boards and management in both cases are also a manifestation of lack of trust. It is worth mentioning that that lack of trust between Board members and executives were more pronounced at the SABC than at Eskom. Nonetheless, trust issues at any level affect productivity and requisite organisational calls for activation of ethical and moral values. According to Jaque (2005), the notion of 'requisite' means a good organisation in the sense that it is decisively efficient in getting the desired work done and also providing secure feelings of satisfaction and trust for everyone employed. The notion of requisite organisation is challenged when it comes to the SABC, in that 'entrepreneurial Board members' were accused of instilling fear, insecurity and instability among executives.

Trust is fundamentally important in human interaction. Instances that evoke insecurity will inevitably affect performance. Executive participants at the SABC expressed strong views that some of the Board members harboured ambitions of becoming executives within the organisation, as a result they were prone to question most of the decisions without offering solutions. The disharmony between Board members and executive managers has negative implications on discipline, transparency, independence, accountability, and fairness. In making sense of the latter repertoire of values, King II (2002) defined transparency as the ease with which an outsider is able to make a meaningful analysis of the company's actions, its economic fundamentals, and non-financial aspects pertinent to businesses.

The atmosphere of suspicion between the SABCs Board members and senior managers were exacerbated by the reports from parliament's Standing Committee on Public Accounts (SCOPA), the Auditor-General, and the Public Protector, among others. For the period 2009/10, the AG's report on the SABC's governance and management highlighted weaknesses in the control environment, as well as incidents of mismanagement. The SCOPA further revealed that two SABC Board members were directors or members of two companies that had received approximately R17 million as payment for work done for the SABC. The AG also found that 7 (seven) of the 51 (fifty one) tenders had not been approved in terms of the Delegation of Authority Framework. Of the seven tenders, four were obtained with the Head of Audience Services approving R112 million. Similarly, the Public Protector's 2014 report revealed incidents which implicated the Board and management on issues of trust, accountability, honesty, and integrity. Although no Board members were implicated in mismanagement and corruption, it is important to highlight the dynamics which could be linked to entrepreneurial Board members, albeit not conclusively.

The other salient criticism relating to 'entrepreneurial' Board members premised on remuneration – which has implication on trust. Conversely, this matter did not manifest itself writ large at Eskom, as the Board fees are structured in a standardised manner. King II (2002) and King III (2009) reports on corporate governance clearly articulate the manner in which Board remuneration should be addressed. Companies should adopt remuneration policies for executives that create value for the company over the long term. The Board fees at the SABC appear to be astronomical in relation to executive management. For example, the annual reports for 2011/12, 2012/13 and 2013/14 indicate an increase of Board fees. This situation gives credence to the claim that entrepreneurial Boards introduced dynamics which were motivated by self-interest. Davis, Schoorman and Donaldson (1997) developed the stewardship theory of management as a counter strategy to the agency theory. The agency problem revolves around individual 'agents' who consider themselves only as individuals without any other meaningful attachments. However, the stewardship theory holds that individuals in management or in governance positions for that matter, do not primarily consider themselves as isolated individuals, but rather as part of the firm. In the interest of transparency, Board members and managers alike are expected to comply with all the company policies. At the SABC, declaration of interests is lodged in the group CEO's office. The SABC's Annual Report (2010/11) ascertains that a number of employees were found to have interests in companies that could not be supported by signed declarations of interest. For that reason, it is conceivable for Board members to solicit additional income when remuneration is subject to a number of sittings. Therefore, the entrepreneurial Board

members give credence to the agency theory's contention of self-interest transcending the general good or welfare of the public.

As far as the SABC case is concerned, the sampled research participants indicated that tensions are normal when they occur as they suggest that Board and management view issues differently. The other view is that tensions are good in the sense that they provide checks and balances on governance issues. The tensions between the Board and management act as an acid test for leadership. The Board chairperson's ability to galvanize support of the Board on pertinent issues is critical. Equally, the leadership of individual Board members managing the sub-committees of the Board carries similar responsibility.

At Eskom, the general sense by the Board and management is that the chairperson wields significant power and respect. However, the same could not be said for the SABC. For example, the Boards chaired by Mkhondo and Ngubane, respectively, were alleged to have displayed poor leadership, which ultimately led to the collapse of the Board and resignations of senior executives. The common thread between the Board led by Mkondo, and the Board led by Ngubabe is that the majority of the Board members were self-employed. In principle, there is nothing untoward when Board members are entrepreneurs and running their own consultancies. The reality is that SABC is a R5 billion rand institution which relies on service providers through a tendering process in order to achieve its objectives. Under these circumstances, the temptations to interfere in management matters are far greater, as Board members are susceptible to pressure from lobby groups with business interests on the outcome of their tender bids. The Auditor-General's report for the period 2009/10 on the SABC's governance and management is indicative of the manner in which weak controls enabled Board members and senior managers to conduct business with the entity without declaring their own business interests.

The Board's charter allowed for chairpersons of a sub-committee to receive extra allowances, but also makes recommendations to the Board on which bid should be endorsed. This situation was reported to have created tensions between Board members and executives, as some of the Board members advocated for the establishment of additional sub-committees in order to secure additional income. Management and some of the Board members did not recognise such motives as altruistic, other than financially-driven.

This particular finding resonates with the position maintained by the agency theory, the stewardship theory, and public choice theory respectively. Jensen and Meckling (1976) and Alchian and Demsetz (1972) outlined a variety of explanations concerning the dilemmas faced by the 'principal' who employs an 'agent' to act on his or her behalf. As applied in corporate governance, the theory suggests a fundamental problem associated with the

separation of ownership and control. Since the owners/shareholders are distant (not part of the day-to-day management), the shareholders will employ professional executives to act on their behalf. In tandem with neo-classical economics, the fundamental assumption informing this theory is that the agent is likely to be self-interested and opportunistic. To a greater or lesser extent, the agency theory best explains the deviant behavior of some of the Board members and executives who, by virtue of their actions, did not act in the best interests of the shareholder. In the context of the SABC, the agency theory's 'agency cost' – cost arising from creating incentives that align the interest of the shareholder with those of the shareholder owner – are not working optimally. The amount of perceived or real corruption suggests that incentives provided are far from alignment with the shareholders' interests. The allegation of the abuse of power by the acting COO and chairperson who deceived parliament about her qualifications is indicative of colossal challenges and leadership dilemma.

The colossal challenges of governance and management dilemmas at the SABC and, to a lesser extent, at Eskom, question the diligence of Boards and managers as stewards of the SOEs. In applying this theory, reference has been made reference to Davis, Schoorman and Donaldson (1997), and Perow (1986). These authors' views were at variance with the agency theory. And argued that managers did not necessarily pursue self-interested and self-serving motives. In the light of the PWC's and Public Protector's reports, managers are found wanting as stewards.

5.5 ROLE CLARIFICATION OF BOARDS AND MANAGEMENT

Role clarification between Board and management is potentially destructive if not properly managed. The development of the organisational strategy is often at the centre of controversies between the Board and management. In his analysis of *Art of War* by Sun Tzu, a Chinese general and philosopher, Clearly (1988) identified that the anatomy of organisational conflict is motivated by competition. Accordingly, strategy development and implementation is viewed as the forte of an organisation.

In both cases of the SABC and Eskom, participants pointed out that strategy development was the responsibility of the Board and management. Correspondingly, Wixley and Everingham (2002) argue that strategy formulation is usually regarded as the responsibility of the executive management, while the Board brings in greater objectivity and a range of experience to the organisational tasks to be performed. This latter argument is rational, in that management is more knowledgeable about the business as compared to the Board. Eisenberg (2007) supports this position by mentioning that Boards do not manage because they are institutionally unable to do so as they typically meet only six to twelve times a year.

Although the division of labour might be clarified between the Board and management, the environment characterising strategy development is not the same between private sector and public sector organisations. Such dissimilarity in the division of labour has a direct impact on corporate governance. The study participants were in agreement as to who does what in relation to strategy development between Boards and management. Notwithstanding the consensus between and among the participants, the difficulty does not lie on how the strategy is developed, but on the extent to which the strategy addresses the mandate of the entity. The mandates of the SOEs are vast and this creates challenges for Boards and management to execute, especially from a funding perspective. For example, the mandate of the SABC is to educate, inform and to entertain South Africans. In order to achieve this goal, the SABC's strategy uses or depends on advertisements, revenue, TV licences and government subsidies; which induces a predicament of the entity in relation to the funding of the strategy. The fact that more than 80% of revenue is derived from commercial activities, 18 % from TV licences, and 2% is from government in the form of subsidy; it is an illustration of the SABC's strategy being hamstrung by lack of resources. This debates goes beyond the division of labour between Board and management, it encapsulates the practical implications of strategy implementation and how this relates to the mandate. The SABC receives only 20% from the public purse to fulfill an extraordinary mandate; that is, to educate, inform and entertain the country.

Similarly, the participants at Eskom reinforced the point that strategy development is the preserve of management, in collaboration with the Board. The strategy of any SOE is derived from its mandate, which means that discussions on strategy should focus on clarity of the mandate, funding, and the economic circumstances of consumers. Eskom's mandate is to "keep the lights on" and at some point the government policy was to keep lights on at all costs. This particular policy directive was actively carried out during the tenure of Minister Gigaba as the shareholding Minister. In the meantime, Eskom's massive R350-billion new-build programme is behind schedule, and this has negative implications on the existing infrastructure as the entity could not cope with high electricity demand, hence the novel idea of 'load shedding'. Eskom's strategy implementation is subject to NERSA regulations' on whose basis a number of variables are considered in determining the electricity pricing structure. One of the critical aspects is affordability from the perspective of the consumers. This creates a dilemma for Eskom, as the entity is expected to keep the lights on at all costs; while on the other hand, NERSA is concerned with the affordability of the consumers. This contradiction is worsened by the institutional arrangements between the Department of Energy and the Department of Public Enterprise. The former is responsible for policy design in terms of the energy infrastructure roll-out programme, while the Department of Public

Enterprise is responsible for policy implementation through Eskom. The afore-mentioned institutional arrangements have a bearing on strategy development and implementation. Despite a broader understanding of the division of labour between Boards and management, the issue of strategy implementation has proved to be far more complex and affects corporate governance at institutional level.

In both cases of the SABC and Eskom, study participants were able to articulate and refer to statutes and policies which sanctioned strategy development. Statutes, policies and procedures could not implement themselves, which means the interface between Boards, management and other stakeholders should be reinforced by mutual trust. It could be argued that an environment characterised by lack of trust and perceived poor quality of information from management, as well as a perceived lack of strategic direction from Boards, will affect the performance of any entity. The point is illustrated by the fact that in both cases, participants were able to articulate relevant statutes and protocols in terms of strategy development, and yet the relationship between management and Board remained fractious.

5.6 A WEAK PERFORMANCE MONITORING CULTURE

The concept of leadership has been extensively written about in recent articles, and yet a common definition is still elusive. Over two and half thousand years ago, Sun Tzu wrote that leadership is a matter of intelligence, trustworthiness, humanness, courage and firmness (Cleary, 1988). Management philosophies have explored the concept of business leadership from a number of perspectives. Authors such as Khoza and Adam (2005), maintain that in any organisation, good corporate governance is ultimately about effective leadership, and effective leadership bears the characteristics mentioned above by Clearly (1988).

The intention here is to establish whether or not the SABC and Eskom Boards' performance is being assessed in accordance with the Protocol for Corporate Governance in the Public Sector and the King Codes of good corporate governance. The role of the chairperson and the performance monitoring of the Board as a collective are an integral part of good governance, as the outcome of the assessment could be used to address the identified organisational limitations. Through the assessment, the Board is able to address the internal and external factors affecting its performance. In the context of the SOEs, one would expect reports on how the Board functions in relation to delivery against the shareholder compact, strategic plans and operational plans, the review of the policy environment, as well as risk mitigation.

In the South African corporate governance context, the Board's appraisal is viewed against the national monitoring and evaluation framework. The South African government issued the government-wide Monitoring and Evaluation Framework in 2007. The purpose of this policy framework is to ensure that government departments and public entities become more

effective in their operations. It is therefore envisaged that monitoring and evaluation could assist the public sector in evaluating its performance and in identifying the factors which contribute to its service delivery outcomes (The Presidency, 2000). The Protocol for Corporate Governance in the Public Sector also recognizes the importance of monitoring or appraising the chairperson's and Board's performance. The Board should appraise the performance of the chairperson on an annual basis. Similarly, the Board should, on an annual basis, review and evaluate its required mix of skills and experience in order to assess the effectiveness of the entire Board and its committees (DPE, 2000).

The question on the Board's appraisal yielded a mixture of response in both cases. At Eskom for instance, all Board members indicated the Board's performance was conducted by external service providers. This is indicative of a well-entrenched performance management culture within the organisation. In contradistinction, the views expressed by Board members at the SABC suggest that assessment of the Boards led by Mkonza and Ngubane respectively, were not evaluated as the corporate environment was not 'normal'. The tensions between the Board and management, especially with the group CEO, resulted in Boards not completing their terms of office. The following group CEOs resigned as a result of a continuous culture of tensions: Dali Mpufu, 2007-2009; Solly Makwetla suspended and resigned, 2009 -2011; Phil Molefe (Acting group CEO, suspended and resigned, 2013.

5.6.1 Weak monitoring and evaluation of the board's performance

Regular Board evaluations are widely recommended as a means of monitoring and improving the performance and effectiveness of the Board (Khoza & Adam, 2005). Similarly the King reports place emphasis on the appraisal of the Board (Wixley & Everingham, 2002). The need for the monitoring of Boards of SOEs could not be over-emphasized, considering the value of the assets they manage and the social impact thereof. Eskom and the SABC are entrusted with billions of Rands and therefore, evaluations are not merely about compliance, but also about affirming the Board's application of its fiduciary duties. In addition, Board evaluation also accentuates the shareholders' risk tolerance on the part of the executive authority/shareholding Minister. The study argues that the shareholding Minister should insist on the evaluation of the Board. In addition, the outcome of the independent assessment should be made public. The current practice is that reports on the Board appraisal are not made public, which defeats the point about transparency and accountability.

It is important to reflect on the basis for assessment in the first place. Based on the shareholder compact, all the SOEs, including the SABC and Eskom, are expected to enter into a performance agreement with the Board. The shareholder compact is the framework through which the shareholder obtains assurances on how the Board and management expect

to deliver on their mandate. According to the Protocol of Governance in the Public Sector, the Board assessment should seek to measure the extent of achievement by the Board as a whole and the individual executive members, of the set performance objectives and targets of the SOE. Such targets should include shareholder objectives contained in the shareholder compact, using key performance indicators developed for this purpose (DPE, 2000). In agreement with the argument by Fama and Jensen (1983), the role of the Board is to serve the shareholder with information which could be used to monitor the performance of the executives and non-executive Board members. The SABC's staff turnover made it difficult to provide the shareholder with relevant information, as the organisation remained in semi-perpetual crisis. For example, the 2010 SABC Annual Report mentioned that key management positions were vacant or filled in acting capacities. These positions included group CEO, COO, Group HR, and Group Internal Audit (SABC Annual Report, 2010/11). Similarly, the 2013 Annual Report makes a repetition of vacancies in a number of senior positions as well.

A weak Board performance management culture prevails at the SABC and at Eskom. Notwithstanding similarities in terms of the study's finding, the reasons for this culture varies greatly. For example, the SABC has been characterised by a leadership vacuum at ministerial, Board, and senior management levels. In 2009, for example, President Zuma appointed retired General Siphiwe Nyanda as Minister of Communications. The latter was embroiled in bitter tensions with the Director General (DG) of Communication, which contributed to his (Minister's) demise – hardly 18 months into the post. President Zuma subsequently reshuffled his cabinet and replaced Minister Nyanda with Minister Padayachie , Minister Dina Pule – who was subsequently dismissed due to improper conduct – and finally, Minister Yunus Carrim as the replacement of Minister Pule. In the space of four years, the SABC had five Ministers! Under these circumstances, Board evaluations become immaterial as the organisation was constantly in a state of flux. It came as no surprise when participants indicated that a state of paralysis characterised Board appraisals. The instability and poor performance at the SABC could therefore not be de-linked from the dysfunctional image of the Department of Communications.

The weaknesses in the Board performance assessment highlight the importance of the principal-agent theory. The agency theory values information as it provides the shareholders with clearer understanding on the nature of the organisation's performance. As the shareholders are not part of the day-to-day organisational management, access to correct and reliable information becomes valuable currency. The extent to which the agency theory is concerned with the gap between governance and management justifies the Board's monitoring. This orientation assumes executives and Board member are inherently self-

serving, hence the need to institute monitoring. The need for control and access to information is meant to empower the shareholder with regard to what the agent is actually doing, and to curb agent opportunism (Eisenhardt, 1989). Fama and Jensen (1983) have accentuated the value of information in organisations, such as the role information plays in controlling the behaviour of managers. It is not surprising that the SABC experienced a series of corporate governance scandals, as the shareholder did not obtain accurate and credible information until it was too late. This state of affairs agrees with the supposition held by the agency theory that when the shareholder has the information about the agent, the agent is more likely to behave in the interest of the shareholder. What happened at the SABC proves that the shareholder did not have access to information, hence incessant incidents of corruption and maladministration were recorded.

On the other hand, Eskom displayed standard practices in terms of the Board being monitored by the external body. Although the researcher did not have access to the evaluation report, it could be argued that the Board's performance was placed under stringent scrutiny, and measures put in place to address the identified shortcomings. It could also be argued further that Board assessment also serves as a yardstick through which the Board operations and independence could be gauged. It was through the Board's appraisal that the Board was able to address the misconception management had about the Board. As indicated earlier, lack of trust between the Board and management constrained the relations and by means of the Board appraisal, corrective measures were identified and implemented.

Notwithstanding that the Board's performance assessment was successfully conducted in 2013 and 2014, the utility did not escape failures to deliver electricity. During the period 2010-2014, Eskom had to apply the novel notion of 'load shedding', due to the electricity supply's inability to reciprocate the demand. The public's confidence in Eskom's leadership was severely dented, to the extent that the President of the Cape Chamber of Commerce and Industries was quoted as saying "The Eskom disaster has now become a brake on the economy and the only long-term solution will be to find new managers for the utility, preferably in the private sector. There comes a time when even governments have to admit to their failures and find a better way" (Business Report, 26 November 2014). The study recognizes the Board's failures to execute its core business of securing an uninterrupted electricity supply. Although skills and competencies are worthy considerations as part of monitoring, the Eskom challenges transcends mere skills and the competencies of Boards and management.

Khoza and Adam (2005) have correctly pointed out that most shareholders have goals in mind, the company's growth and financial viability. The two authors above argue further that

government may have conflicting objectives with regards to SOEs. It may require maximum returns, excellent productivity, and maximum investment in infrastructure. It is the author's contention that therein lies a major contradiction, which has nothing or little to do with skills and competencies of the Board. The shareholder should set up the shareholder compact with a clearer understanding of the tradeoff between commercial interest and public policy programmes. Although an either/or approach may not be applicable or desirable, considering the competing priorities, the Board should be monitored on clearly-defined objectives irrespective of its skills or competency profiles.

The Eskom predicament could also be viewed through the complex institutional arrangements affecting corporate governance. According to the Greenpeace Report (2012), South Africa has historically followed a heavily capital- and energy-intensive developmental trajectory, based almost entirely on coal. This pathway has been driven by resource extraction and the development of a connected set of interrelated economic activities termed the 'Minerals-Energy Complex', with Eskom as its fulcrum. This Complex consists of mining, minerals processing, the energy sector and linked industries. The current institutional arrangements between the Department of Energy, the Department of Mining and Mineral Resources, and the Department of Public Enterprises are a quintessential reflection of the Minerals-Energy Complex. Although these departments are interrelated, they have different mandates, reporting lines and accountability frameworks. In discussing the implications on Eskom's Board, participants alluded to the bureaucratic nature of the relationship to appoint, according to which decisions at ministerial level could take between six to eight months to implement. The study contends that this point has very little to do with the Board's skills or competencies. On the contrary, it relates largely to the appropriateness of the configurations, and whether these promote efficiency. At this juncture, the indication is that Eskom's delivery mandate and monitoring thereof should also be reflective of other organisational factors.

The article in *Business Day* of 12 March 2015 reflects the corporate governance challenges and power dynamics at Eskom. In the article, the chairperson of Eskom is quoted as saying: "Eskom CEO Mr. Tshediso Matona and three other senior executives have been suspended to allow for an inquiry into the operations of the utility". In the same article the chairman was reported saying the independent probe would look at a number of the challenges facing the utility, citing "poor performance of generation, delays in building new plants, and cash flow issues". The CEO, Mr Matona took up his new position from 1 September 2015, hardly six months into his position, and he was suspended. The issues cited by the chairperson are typical corporate governance issues that have been extant for a while, resulting in the country enduring protracted and unprecedented episodes of 'load shedding'. The nexus between the

Department of Energy, the Department of Public Enterprises, and the National Treasury is contextualised by different ministries with different levels of administrative fiat, ethos and priorities. Therefore, the development of seamless integration of research and decision-making processes requires high-level coordination and technical capacity to address overlapping and contradicting strategic issues which ultimately affect performance. The fact that Eskom resorted to 'load shedding' suggests an absence of these variables.

There is no substitute for Board appraisal, as it constitutes an integral part of good corporate governance of SOEs. In the case of both the SABC and Eskom, it was established that the Board's performance against the shareholder compact and strategic and operational plans was monitored. However, leadership crises at the SABC meant that regular monitoring of the Board's performance did not take place. The Agency theory explains the relationship between the principal and agent through the metaphor of a contract (Eisenhardt, 2006). In the context of the SOEs, the shareholder compact is the actual contract. However, due to the confusing objectives and competing priorities, Boards could not be successfully monitored. The SOE environment is also characterised by leadership changes at ministerial, Board, and executive levels. The high turnover creates accountability challenges which in turn, affect corporate governance at entity level.

5.7 MARKET-LED FUNDING REGIMES AT THE SABC AND ESKOM

Lack of funding emerged as a key challenge for the SABC as a public broadcaster at the same time as corruption and mismanagement were being reported by the Auditor-General and the Public Protector. This means while there are confirmed incidents of mismanagement, one could not ignore the limitations of the current funding model and the effects of such limitations on corporate governance. Essentially, the funding of the SABC activities is not proportional to its mandate. The SABC effectively receives only 20% of its funding from the tax payer, but is expected to fulfil an extraordinary mandate of educating, informing, and entertaining its country-wide viewership. Teer-Tomaselli (2005) attests that traditionally, the hallmark of a public broadcaster is not to depend on commercial streams of revenue. Revenue needs to be supplemented by advertising and State allocations. This argument is supported by funding arrangements for other public broadcasters such as the British Broadcasting Corporation (BBC), the Canadian Broadcasting Corporation (CBC) and the Malaysia Broadcasting Corporation (MBC), all of which are 100% publicly funded by means of licence fees.

Board members and senior managers affirmed that disproportionate funding allocation is a source of tension as there are different expectations between the Board, senior managers and the shareholder. Financial viability is one of the key performance indicators. However, it

should be viewed in the context of applying seamless funding streams. Notwithstanding the need for seamless funding streams, the PWC and the Public Protector reports cited incidents of poor financial management, corruption and fraud. Despite weak management controls, the major shortcoming relates to a disproportionate funding regimes. Arguably, the latter constitutes a major factor which underscores corporate governance issues at the SABC.

Overt and heavy reliance on advertising as a revenue stream is susceptible to market turbulence and, as a result, is risky. The philosophy of market-led delivery of the public mandate is problematic, especially in the context of a developing country such as South Africa. In supporting this argument, Teer-Tomaselli (2001) maintains that the financial difficulties experienced by public broadcasters has led to greater expenditure and diminished income, and South Africa is no exception as the country relied on a commercial stream to subsidise public programming. The financial woes of the SABC are exacerbated by aging infrastructure – the frequency mode (FM) was built in the 1960s and 1970s. There is therefore a need to repair or replace this anachronistic broadcasting medium. In the meantime, the migration from FM analogue to satellite technology is ideal, but requires capital injection, which is also subject to foreign exchange rates.

The Annual Report of (year) noted that the SABC failed to mitigate the decline in revenue and to contain costs. Under the circumstances, the shortcoming of the government contribution is exposed, especially during market turbulence when advertisers are cutting down on their marketing campaigns. Furthermore, income generated through TV licences has proved to be unsustainable as payments are inconsistent and overall very low. Over-reliance on the markets has contributed significantly to the SABC's financial crisis following the slump in advertisement revenue from 2009 to 2010/11.

It is on the basis of the underperformance of SOEs that the Presidential Review Committee was established by President Jacob Zuma in 2011 to establish ways and means by which SOEs such as Eskom and SABC could respond to the developmental agenda of the State in a more meaningful manner. The resort to interventions such as the PRC suggests that SOEs are not properly structured and funded, thus creating governance and management challenges, as a result of which the State does not recoup returns on investment needed to drive its developmental agenda.

As part of the integrated approach, Eskom's income streams are generated through tariffs, borrowing, equity, and income generation through selling of electricity to municipalities. These integrated three models have a knock-on effect if the chain is broken. For example, lenders and credit ranking agencies require a sound regulatory environment which promotes cost recovery and efficiency. If the regulatory environment does not inspire certainty,

confidence, and consistency, the ability of Eskom to borrow independently from State support could be threatened. NERSA's challenges in addressing Eskom's proposed tariffs are indicative of market led approaches' fallibility, especially in a politically charged country like South Africa. The country's economic performance makes it difficult for market-led approaches to go unchallenged.

Consonant with the PMFA guidelines, Eskom's revenue path is determined through the Multi-Year Price Determination (MYPD) that is submitted to NERSA for adjudication and determination. The MYPD is designed to spread the increase over a three-year cycle in order to allow greater tariff certainty, while securing revenue to fund Capex (capital expenditure) and operational expenditures. Following the lapse of Multi-Year Price Determination 2 in March 2012, Eskom had to submit its application to NERSA in order to determine the country's electricity price adjustment and tariff structure for the next cycle (Eskom MYDP 3, 2013/14). According to MYPD 3, Eskom's five year revenue request translates to an average electricity price increase of 13% a year for Eskom's own needs, plus 3% to support the introduction of the Independent Power Producers (IPP). The proposed tariff increase is based on the need for an electricity price transition to cost effective levels in order to support a sustainable electricity industry that has resources to maintain and build new generating capacity. In the same vein, the proposed electricity increase price in South Africa tripled over the previous five years, and at three times the annual South African inflation rate.

As far as Eskom is concerned, the role of NERSA as a regulating body is critical, since Eskom's electricity price is regulated through a Multi-Year Price Determination (MYPD) – MYDP is a three-year time period between submissions. The regulator considers a number of variables in adjudicating the price determination – global economic recession, especially in the trading countries, plays in important determinant of price hikes as this affects the country's performance against the goals of the National Growth Plan in addressing poverty, unemployment, and inequality. The pattern has been that Eskom's submissions could not be granted in the light of the above-mentioned variables. In the same vein, Eskom's ability to meet the electricity demand is subject to NERSA approval, based on its processes.

5.8 CONCLUSION

The complexity of corporate governance in SOEs is compounded by multiple legislation its concomitant different reporting and accountability requirements. Consequently, the current legislative and regulatory environment puts more emphasis on compliance, and less on performance. This argument highlights the limitations of the agency theory, which is the dominant conceptual paradigm relating to policy decisions on protecting the interest of the

shareholder. The unintended consequences of this 'protectionism' is that it encourages government bailouts and therefore unsustainable.

As much as compliance is necessary, it discourages Boards and management from focusing their energies on delivery. The intensity of compliance also diminishes role clarification between Boards and management. In an environment where Boards meet more than the stipulated requirement as in the case of the SABC, tensions abound; which is indicative of an unhealthy organisation in which management is unsure of taking decisions which ordinarily reside in their sphere of competence as most are either in acting positions or lack confidence. Their fear of reprisals is premised on the belief that their decisions could be used against them.

Ironically, while the culture of compliance dominates the SOEs performance discourse, the evaluation of the Board's competency is not pursued with the same rigor. At the SABC, leadership vacuum manifested in a high turnover of senior managers as well as at Board level. Similarly, Board assessment at Eskom were purported to have been carried out, and yet the company was plagued with challenges associated with 'load' shedding' and slow delivery of new plants. This demonstrate that the Board's assessment is a matter of compliance and not necessarily about performance.

The research also noted high dependence on markets to fund the mandates of SOEs. Over-reliance on the market proved to be problematic when it comes to 'unfunded' mandates. Eskom and the SABC are expected to implement the developmental agenda of the State, and yet there is no proportionate funding. This challenge is further compounded by adverse social and economic conditions such as high unemployment and inflation. These issues fundamentally question the appropriateness of the funding model and sustainability thereof.

In the final analysis, corporate governance and its application could not be separated from social, economic and political environments. The post-apartheid political environment has been dominated by a single party, which has brought about peculiar governance challenge. The researcher has noted that successive investigations into the inappropriate behaviour of Boards and executives alike is shaped or influenced by the social and political landscape at that point in time. Against this backdrop, it is naïve to ignore social and political pressures imposed by citizens on SOE leadership, and how the politicians concede to lobbyists' demands. This assertion is informed by inherent tensions between the political and economic imperatives with which SOEs should contend. The extent to which the Boards and management of SOEs navigate these issues is a matter of decisive and consistent leadership.

6 CHAPTER 6: FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

6.1 INTRODUCTION

The previous chapter integrated, discussed, and analysed the spheres of both similarity and dissimilarity concerning corporate governance challenges affecting the SABC and Eskom. In doing so, the chapter thematically incorporated the conceptual framework as a mode of incorporating theory with empirical evidence. The findings on each of the themes were juxtaposed with the research questions in order to ascertain the extent to which the research questions were answered.

Chapter 1 provided the historical provenance of both the SABC and Eskom and their strategic relevance in furthering the developmental agenda of the State. The chapter highlighted the broader purpose/aim of the study, which is to investigate corporate governance challenges at the SABC and at Eskom. These two SOEs were selected for this exegetic 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 and management remained a serious challenge confronting these pristine SOEs. Media and independent commissioned reports characterised the two SOEs as highly inefficient. The public was therefore sceptical of, and fundamentally questioned the viability governance and management practices and ethos of these SOEs.

Chapter 2 provided a metamorphological perspective of corporate governance in the private sector and its ultimate incorporation in the SOE sector. Throughout the review, the separation of ownership and management was centripetal (as opposed to centrifugal) to corporate governance variables. The ownership and management of SOEs is engulfed in a legislative and regulatory environment whose policies and procedures have a bearing on the turn-around and quality of decision-making.

The key argument is that conflict of interest are an inevitable consequence of the separation of ownership and management in any entity, let alone SOEs. In mitigating the inherent risks associated with the separation between ownership and control, legislation and regulations were presented as instruments which align perceived conflict of interests by prescribing and defining ‘the rules of engagement’ between the shareholders and managers. The study found that the application and interpretation of the rules of engagement proved to be complex and dynamic, considering the voluminous amount of legislation and regulation affecting the SOEs; the broad mandates; as well as the weak institutional arrangement between shareholder, boards and management.

In shedding light on the issues above, different governance and ownership models were interrogated, namely: the centralised model, the decentralised model, and the dual model. Of these models, it was discovered that South Africa embraces a dual model, with different ministries assuming oversight functions. For example, in addition to the line function department (eg, Communication), the National Treasury also plays an oversight function over the SOEs. The salient feature of the dual model is that its success depends on a strong governance arrangement between different ministries, without which a lack of capacity to hold the Board accountable may lead to multiple principal agency problems. The South African SOE environment is further complicated by a regulatory environment which is susceptible to political pressure amidst high unemployment and inflation rates.

The review also found that corporate governance is not a new phenomenon, but gained currency due to corporate outrage in the private sector, the kind of which subsequently led the international bodies such as the Organisation for Economic Co-operation and Development (OECD) to issue codes of good practice and principles of good corporate governance. In the United Kingdom, the thinking about corporate governance was much influenced by the report of the Committee chaired by Sir Adrian Cadbury (1992) on the financial aspects of corporate governance. South Africa followed the international trend by instituting good corporate governance through the King Reports. Despite these changes, the governance and management of SOEs remains complex, due to a plethora of legislation and regulations aimed at reconciling the interest of the shareholder and those of the stakeholders.

Notwithstanding the need to emulate the private sector corporate governance methodologies, this study argues that governance arrangements, ownership and control measures of the SOE's are more complex, compared to those of the private sector. The complexity of the SOE environment means that no single theory could explain corporate governance challenges. However, the agency theory attempts to explain the challenges associated with the separation of ownership and control more than any of the identified theoretical paradigms in the study. The ownership of the SOEs is dispersed as the entire nation has a stake in all the SOEs. Although the government instituted reporting and accountability frameworks for SOEs, it is difficult for entities to operate as the citizens are not fully conversant with the protocol issues due to dispersed ownership and sometimes contradictory reporting requirements. The politicisation of the appointment processes has revealed a weakness in the control mechanisms in the form of the Board and management of the SOEs. The unintended consequence of a politicised appointment process affects the independence and credibility of the Board.

Given the inherent tensions or misaligned value systems between the shareholder and managers, the agency theory provided a useful framework for understanding the need for institutionalised control measures in the form of legislation and regulations. However, its philosophical orientation is limited, explaining the psychological and sociological imperatives that drive the attitudes of the agent. Agents are not only driven by selfish financial and material gains as the agency theory would suggest. There is evidence to suggest that managers (agents) could be equally concerned about the well-being of the company, and could therefore, pursue altruism and a sense of purpose. The challenge in this regard is premised on finding a balance between controls and allowing managerial competence to flourish.

Chapter 3 focused on the usage of qualitative research design and methodology, as well as the rationale for such a paradigmatic orientation. According to Leedy and Ormrod (2005), qualitative research is used to answer complex questions about the nature of phenomena, often with the purpose of describing and understanding the phenomena from the participants' point of view. As part of the qualitative approaches, the case study method allowed the researcher to ask "why" questions from the perspective of participants – the Board members and senior executive managers. By means of the case study, participants were able to provide the research with information from multiple perspectives as reflected by their own personal experiences.

In its pursuit to answer the complex questions concerning corporate challenges at the SABC and Eskom, a total of 30 Board members and executives at the SABC and Eskom were interviewed. An open-ended ended interview questionnaire was used to collect data on pre-determined themes. The duration of interviews ranged from 45 to 60 minutes. By including the open ended questionnaire, the researcher was able to solicit and probe views from Board members and executive managers in a predetermined thematic mould encompassing legislative frameworks, the role of Boards and management in strategy development, as well as the performance monitoring and funding regime for SOEs.

Chapter 4 presents an overview of the SABC and Eskom, as well as the findings and outcomes of interviews held with Board members and executive managers of both SOEs respectively. Data presentation and discussions are guided by the conceptual framework underpinned by the following themes: legislation and regulation; the interface between Board and management; the Board's performance monitoring; and the funding regime of SOEs

Chapter 5 emphasised the conceptual framework explained in Chapter 2 and Chapter 3 in order to integrate the findings of both case studies, and to discuss and analyse these findings with the view to highlighting common trends. The findings on each of the themes is also juxtaposed with the research questions in order to ascertain the extent to which the research questions were answered. A reflection on the research questions is meant to assist the reader to determine how the research questions were answered and the implications on corporate governance in SOEs.

Chapter 6 is the overall concluding chapter, and reflects on the purpose of the study and how the research questions were answered. A synopsis of each chapter is also provided vis-à-vis its objectives and how these link back to the research questions and the conceptual framework.

Findings pertaining to each theme assisted in crystallising the deeper understanding of the complex nature of the SOE environment. For example, the theme on legislation and regulation highlighted the implications of compliance in the context of convoluted legislation and regulation. Similarly, the theme on the interface between boards and management echoed similar views by highlighting issues such as extensive mandates, multiple reporting and accountability, political interference, a creeping culture of fear, and the trust deficit between management and Boards.

This study set out to conclude by harnessing different sections of the thesis to establish better understanding of reasons associated with the challenges of corporate governance in the SOE sector. Discussions and activities in each chapter contributed towards the understanding of the study's purpose, research methods, data analysis and interpretation and basis for conclusion.

6.2 SYNTHESIS OF THE KEY FINDINGS

Corporate governance is not only about compliance, but should also about the performance of Boards and management. Although the performance management systems exists in the public sector, it is difficult to hold Boards and management accountable due to legislation and the broad corporate mandates. Convoluted legislation, coupled with rigid institutional arrangements between line function department, Boards and executive management further undermines the effective performance of SOEs. While regulatory structures such as NERSA and ICASA are in place, it is difficult to maintain a balance between consumer affordability and financial sustainability of these entities. In the final analysis, the SABC and Eskom are expected to be financially viable, and financial bailouts due to inadequate funding create

negative publicity. High unemployment and the inflation rates make it difficult for regulators to operate efficiently, especially in a politically charged environment such as South Africa's.

Multiple reporting and accountability are issues linked to extensive legislation and regulation. South Africa follows a dual or multiple governance model, and this creates delays due to the bureaucratic nature of government. The interface between Treasury, the Department of Public Enterprise and the Department of Energy is complex and is susceptible to political undertones characterized by different agendas. The downside is that SOEs such as Eskom are caught in the middle, as a result of which delivery is affected.

In the absence of coherent legislation and clearly delineated roles and responsibilities between Boards and management, trust issues abound. Although both entities have delegation of authority and materiality frameworks in place, there are challenges with regard to application, especially in the context of PFMA.

The study highlighted the implications of broad mandates and disproportionate funding. The SABC and Eskom are expected to be financially viable, and yet funding is limited. These entities are also expected to advance the developmental agenda of the State in terms of infrastructure investment. While SOEs are expected to advance the developmental agenda of the State, there is the challenge of priorities, and how these are communicated to external stakeholders.

6.3 SIGNIFICANCE/CONTRIBUTION OF THE STUDY

The research findings have several theoretical, legislative/policy and practical implications. Each of these implications is meant to assist different aspects of the SOEs' strategic and operations requirements. At a theoretical level, multiple theories were presented and the agency theory was used as a prism. Notwithstanding its contributions, the complex nature of the SOE environment suggests that more work is needed to further understand the SOEs. At the policy level, this study highlighted many policies and procedures which have a bearing on the delivery of Eskom and the SABC. Equally, policy levels must be translated into practice by the boards and management. These implications represent the contributions of the study which are expected to benefit the existing body of knowledge within the policy and management field.

6.3.1 Theoretical/conceptual significance

The separation of ownership and control of the SOEs is underpinned by a complex institutional arrangement and a series of legislation and regulations designed to align the interest of the shareholder and those of agents. This outlook has a number of theoretical implications which contribute to the existing body of knowledge on corporate governance for

SOEs. To recall, the main research was the question "why corporate governance is a challenge for SOEs". In pursuit of this question, a number of theoretical frameworks were employed, namely stewardship theory, stakeholder theory and agency theory. Of these theories, the agency theory was considered an appropriate framework to address this particular question.

The relevance of agency theory gained traction as it deals with risk mitigation strategies emanating from the separation of ownership and control. The ownership of SOEs is dispersed – the State is the custodian of SOEs as it represents citizens, who are technically the owners. In return, the State appoints the line function minister(s) to provide policy guidelines and oversight. In South Africa, a dual model of governance is applied, according to which two ministries share the ownership responsibility for SOEs. This model is widely used in countries such as Greece, Italy Korea, Mexico, and New Zealand (OECD, 2005). It is also being practiced in non-OEDC countries, such as Brazil, India, and Kenya (World Bank, 2006). In India, the SOEs are overseen by specific ministries, however the Department of Public Enterprise issues guidelines and a number of government bodies have an oversight role. Similarly, in South Africa, the Department of Public Enterprises develops policies and processes for governance of SOEs and directly oversees six major enterprises, while line ministries are responsible for the rest of the enterprise ecology. It is also important to note that in South Africa, the national Treasury also has an oversight role over SOEs (World Bank, 2006).

In the context of the separation of ownership and control, the agency theory postulates that institutional arrangements between the shareholder and agents must be managed and controlled. This theory proceeds from the premise that the shareholder may not realise returns on investment, unless the agents are monitored and controlled by means of legislation. The agency theory's orientation and background has its roots in economic theory, exposed by Alchian and Demsetz (1972) and developed by Jensen and Meckling (1976). The legislation and policy environment in South Africa is indicative of the agency theory's economic perspective in relation to risk management. As the shareholder, the State is willing to bear the risk, but does not have the necessary skills and time to manage the entity. As a result of this shortcoming, a contract is created, according to which the agent (manager) will manage the entity on behalf of the shareholder. The agency theory presents a global agency relationship in which one party (principal) delegates work to another party (agent). This theory also explores this relationship through the metaphor of a contract (Jensen & Meckling, 1976). According to Lane (1993), the principal agent starts from a contractual perspective, and the contractual agreement establishes a hierarchical relationship between the contractual parties.

One party, the principal, is given the right to instruct the other (agent), who promises to work for the promotion of the interest of the principal.

Inherently, this theoretical view is based on the belief that 'agents' are more self-interested than altruistic and cannot be trusted to act in the best interest of others, but rather maximise their own utility (Coarse, 1937). In an attempt to mitigate such risks, agency theory advocates the control mechanism in the form of boards to monitor and prevent any problems that may be brought about by the principal-agency relationship (Mallin, 2007). Authors, such as Perow (1968), maintain that agency theory has established the importance of incentives and self in organisational thinking. Organisational life is based on self-interest, hence a need to establish governance structures, processes and systems to safeguard the interest of the shareholder. Governance structures impact on contracts between shareholder and agents (Demsetz, 1983; Fama, 1980; Fama & Jensen, 1983), and include boards. This approach is particularly relevant in the context of SOEs, where the risks abound, due to the separation of ownership and control. The ownership of SOEs rests with different ministries (i.e. Treasury and Communication in the case of SABC and Treasury and Public Enterprise in the case of Eskom) hence it is referred to as a dual ownership model. Management of these entities is assigned to boards which report and account to line function departments and treasury. The ownership and management of SOEs is not linear, hence it is regarded as complex, because in a dual ownership situation, there are different rules of engagement in relation to reporting and accountability. The agency theory will posit that given the separation of ownership and control and the diverging risk profiles of participating parties, it cannot be expected that agents will act in the interest of the shareholder. Under these circumstances, moral hazards and the opportunistic behaviour of self-interest of managers will guide their actions. In the context of this study, this claim holds, considering a number of cases of maladministration and corruption reported at the SABC and Eskom.

However, the study has shown the complex nature of the SOE environment which means a pure economic approach is not enough to explain certain behavioural and cultural inclinations of either boards or executive managements. Social and political variables are forces to reckon with when it comes to the SOE environment. This means operations of the SOEs cannot be divorced from the social and political imperatives which manifest in the institutional arrangement between line function departments, boards and regulatory bodies. In support of this claim, authors such as Kante (2005) and Perrow (1986) argue that the agency theory approach is detached from reality and this leads to an oversimplified way of characterizing and solving problems within the organizational setting. Similarly, proponents of a humanistic approached such as Ghoshal (2005) and Brennan (1994) argue that agency theory's unrealistic and faulty assumption combined with the shareholder primacy view may result in

managers (agent) pursuing amoral or even illegal activities. In the South African context, Steward of SOEs (i.e. board and management) have given credence to Agency theory claims in terms of inherent disconnect between shareholder and agents interest. Twenty years into democracy, South Africa's SOEs environment has witnessed many corporate governance scandals in private and public sector, this means divergent interest could not be contained.

6.3.2 Regulatory and policy significance

The results from this research could assist regulators and SOEs themselves to understand how the nature of institutional arrangements affects corporate governance practices. The regulatory role played by NERSA and ICASA is inherently political – regulators by design govern, and an act of governing is political. In a Constitutional democracy such as South Africa, the operations of ICASA and NERSA derive their mandate from the National Constitution. This means regulations must address the principle of social justice, equity and equality. As political instruments of government they must work prudently, independently and ethically. South Africa is a politically charged environment and this makes it imperative for regulators to act independently from political interest; even from those to whom they feel obligated. This means, given the political context and import of their positions, NERSA and ICASA must be apolitical, their services should be impartial, unbiased and nonpartisan.

The extent to which ICASA and NERSA can act prudently, hinges on access to credible information in order to make determinations that relate to issues of social justice. The nature of the institutional arrangement between SOEs and their regulator allows for information asymmetry – which means regulators may not have access to all the information in terms of how Eskom or the SABC perform. In the absence of correct and relevant information, the regulator may not act fairly on the side of the entity or the public. The regulator must also advocate for additional resources for SOEs to discharge their mandate. For example, the SABC funding depends on the advertisers and this environment makes the entity susceptible to the market. Under the circumstances, the regulator's prudence is compromised because the entity cannot fulfil its mandate. Similarly, when it comes to Eskom, political pronouncements by the Department of Energy have severe financial implications, which undermine the financial viability of Eskom.

6.3.3 Practical socio-economic significance

Through the primary and secondary reviews, the research brought about a deeper understanding in terms of the complex nature of the SOEs' governance and management arrangements and how these impact on the corporate body. Through the conceptual framework, the thesis was able to highlight governance and management challenges borne

out of the separation of ownership and control at Eskom and the SABC. As part of the findings, the implications are packaged along themes which formed the bedrock of the conceptual framework namely; the interface between boards and management, the legislative and regulatory framework, boards' performance monitoring and funding arrangements for SOEs.

Legislation and regulations are meant to guide boards and management vis-à-vis the interest of the shareholder. This scenario has the following governance and management permutations. Firstly, boards and management interface regularly, which means decision making processes can be expedited. However, when it comes to the endorsement of boards' decisions by parliament or amendment legislation, it takes longer for determination - changes to legislation are subject to bureaucratic processes, which by their nature are slow. For example, in the case of the SABC, the appointment of the group CEO is done via parliament and the President. Equally at Eskom, the Minister is responsible for the appointment of the CEO, in consultation with the board. These processes take months to finalise; this creates instability within the organisation. The level of influence which the Ministers have on the appointment of senior executives further creates leadership instability. The leadership vacuum at management level "operationalize" the boards as decisions which ordinarily fall within management competence are escalated to boards. The role of the board is to develop policy and provide oversight consistent with legislation and regulations.

Secondly, the research made reference to a convoluted legislative environment with competing priorities. Boards and management at the SABC and Eskom are required to report and account to different oversight structures. The nature of questions which management is expected to respond to by parliament or the AG is detailed and vary. This means a substantial amount of time is needed to prepare these reports – which compliance is required, much legislation makes performance difficult to achieve, given resource constraints. The theme on the interface between the boards and management has, among others, dealt with strategy development. Strategy is like a glue which binds the organisation together. The rationale behind this question was to establish the delineation of responsibility between the board and management. In both cases, participants were aware of the process leading to strategy development and expectation. In addition to providing clarity between boards and management, strategy execution is resource intensive, which means its execution must be accompanied by adequate funding to address strategic and operational requirements. Issues relating to strategy development proved to be complex when factoring in resources. The manner in which SOEs are conceptualised, finds expression in legislative and regulatory frameworks. Funding of the SOEs is legislated, which means inconsistencies noted at the SABC and Eskom cannot be addressed by the boards alone. For example, in the case of

Eskom, the appointment of the CEO is the prerogative of the line function and in the case of the SABC, the President features higher than the Minister as he appoints the CEO and the board. A delay in the appointment of the CEO or the board affects the efficiency and effectiveness of any strategy. Such delays also affect reporting and accountability – in the context of a leaderless organisation, decision making is delayed and this affects delivery.

As part of the conceptual framework, funding was considered a major issue facing SOEs. The outcome of the study points to misalignment between funding and the mandate of the SOEs. Fundamentally, misalignment and inconsistencies between mandate and funding brings to light the issue of how SOEs are conceptualised. For example, the mandate of the SABC is to educate, inform and entertain South Africans in all the official languages. This mandate is broad and therefore requires substantial funding from the State. The current reality is that 80% of the operational funding for the SABC comes from advertising. Reliance on market led income streams is susceptible to market fluctuations. Fluctuations in the market can adversely affect budgeting for programming and this undermines the broadcaster's mandate. At governance and political level, boards and management find themselves in a difficult situation when the broadcaster is not generating sufficient revenues to subsidise public programmes.

Similarly, Eskom is expected to provide electricity at "all costs" and remain financially viable. This inherent contradiction exerts undue pressure on boards and management as there are costs associated with the provisioning of electricity. Political pronouncements by line Ministers and government officials often fail to take into account the financial implications of such utterances. When questions are asked about disappointing financial returns, there is often no recognition of the impact of political pronouncements. Eskom's financial situation is worsened by high input costs, such as coal, and challenges associated with ailing infrastructure. Escalating coal prices, labour union strikes during construction of new power stations (i.e. Medupi), delays in appointing the CEO and reduced tariffs have a bearing on funding which the board and management must resolve. This scenario illustrates the complex nature of the SOE environment which questions the funding model for Eskom.

6.4 RECOMMENDATIONS

Key recommendations are extracted from thematic discussions and findings which emanate from the research questions. Following this pattern, this study advances the repertoire of recommendations mentioned below.

6.4.1 Standardized SOE legislative framework

Myriad legislation with different reporting and accountability requirements, for example, the SABC and ESKOM are governed by the following legislation; Constitution, Companies Act, Public Finance Management Act and founding legislation (i.e. Eskom Conversion Act and South African Broadcasting Act). In addition to a convoluted and complex environment, SOEs report to oversight structures such as Line function departments, Parliament portfolio committees (e.g. SCOPA), and the Auditor-General. These structures fulfill different Constitutional mandates, which at times lack clarity or worse, are conflicting with founding legislation. The unintended consequence of the myriad legislation is that SOEs leadership gravitates towards a compliance mode and undermines performance. Although a performance management system is done via the shareholder compact signed between boards and line function Minister, the above mentioned oversight structures demand their share in terms of reports. The type of information required by oversight structures is not consistent, this makes it difficult for SOEs to pre-package information. In addition to onerous compliance, there are management competencies or lack thereof and this makes performance difficult to achieve.

To reduce information asymmetry and onerous reporting and accountability requirements, there is a need to standardized the legislation which governs SOEs. Additionally, a standardized approach to reporting accountability is meant to harmonise the institutional arrangement between and among oversight structures. This particular recommendation will also assist SOE's boards and management to focus on performance without compromising on compliance.

6.4.2 Impact of regulations on SOEs performance

The study found that regulators (NERSA or ICASA) operate independently, as they should. Furthermore, the study discovered that a regulatory environment is necessary to protect the interests of the consumers while ensuring that SOEs remain financially viable. In the case of Eskom however, the institutional arrangement between the departments of energy, public enterprise and NERSA is not only complex, but breeds information asymmetry as well. NERSA is an entity under the Department of Energy whose mandate is to develop policy vis-à-vis energy security while, on the other hand, the Department of Public Enterprise is responsible for execution of the energy policy via Eskom. The political dynamics born out of high unemployment, impending national elections and ageing power station infrastructure further complicate Eskom's corporate governance practices. In addition to this, political rhetoric in the form of "keeping the lights on at all cost" further compromises Eskom's financial viability. The cost of keeping the lights on means relying on expensive power stations and NERSA questions this when making price increase determinations. Similarly, the

research found that NERSA, amongst others, does not regulate Eskom on developmental aspects (i.e. infrastructure development) but on its core business (i.e. electricity generation and distribution). Fundamentally, the regulator does not consider costly political rhetoric by Minister (s) when making the price determination.

In the case of Eskom, the regulator should assume a wider interpretation of the mandate – a wider definition of the mandate encapsulates a State developmental agenda which falls outside Eskom's core business (i.e. energy supply). This recommendation will ensure that NERSA fully understands the need for Eskom to fund infrastructure which ultimately addresses the developmental objectives of the State.

In the case of the SABC, ICASA should advocate for additional funding as the current funding is limited. Funding limitations mean ICASA cannot add value should the SABC lack the required funding for its programmes.

6.4.3 Multiple reporting

The study has found that reporting at Eskom and SABC is conflated – these SOEs report to different Ministry's with different mandates and reporting requirements. (i.e. line function Ministry, Treasury and the Department of Energy in the case of Eskom). The complex nature of the institutional arrangements has a bearing on decision making processes, particularly at Ministerial level. This claim was acknowledged by board members and executive managers alike. The central argument is that decisions which require endorsement by another Minister (i.e. Treasury or Energy) cannot be activated efficiently due to, among other factors, time constraints. The unintended consequences of this arrangement are as follows: Firstly, Treasury officials assume greater powers given their strategic oversight function – which means the principal Ministry's position of leadership is overshadowed. Secondly, in instances where decisions are delayed, the principal Ministry's credibility suffers even though they have no control on policy matters which are located outside their Ministry. The case in point is the interface between the Department of Energy and the Department of Public Enterprise. The dual mandate is premised on the assumption that oversight ministries have sufficient capacity to examine and expedite decisions that have a bearing on other ministries.

It is recommended that the capacity of the supportive Ministry (i.e Treasury or Energy) be amplified to ensure that decisions requiring the Minister's approval are attended to without undue delays. This aspect can be addressed through a service level agreement between different Ministries. Such an agreement should address, among other issues, the turnaround time. A more radical recommendation is to streamline all sector specific SOEs under a single ministry, which in turn implies the removal of the Department of Energy.

6.4.4 Conflicting mandates and trust issues between boards and management

The research established that the mandates of both Eskom and the SABC were not only broad, but also lacked clarity in terms of prioritization. The perceived contradictions centered on whether entities should pursue commercial imperatives or public policy imperatives. Although entities such as Eskom and the SABC are expected to embrace and implement the developmental agenda of the State, these entities are nonetheless expected to be financially viable. It is therefore important that clarity is sought with regard to which aspect of the mandate must take precedence. Once this clarity is obtained, it must be communicated to different stakeholders (i.e. Parliament, Line function department, Treasury, AG) in order to avoid undue pressure on the board and management.

The interface between boards and management is characterized by a lack of trust. On one hand, boards held the view that information supplied by management was either poor in quality or inadequate to warrant effective decision making. Conversely, management accused boards of interference. At the SABC, trust issues are aggravated by claims that management would deliberately mislead the board by providing inadequate information. Trust issues were also attributed to the fact that the majority of board members at the SABC are self-employed and as a result deliberately create chaos to justify a sitting fee.

At the SABC, the conflict between boards and management was also attributed to the inconsistent interpretation and implementation of the editorial policy. The CEO, on the one hand, averred that in her capacity as the accounting officer she should have had access to the news diary whenever the need arose. The head of news and current affairs, however, regarded himself as the custodian of the editorial policy and accordingly. As such, he maintained that the CEO could access the diary but the final say on what must be broadcast was his.

In both cases, trust issues were attributed to the perceived mandate of the board to dismiss some of the executives, as well as failure by management to observe communication protocols. Some of the executives had a "cosy" relationship with either the board members or the Minister. This environment led to the discrepancy of information provided. Information asymmetry and, worse, leaking of information also led to massive resignations of either board members and/or executives.

Based on the abovementioned findings, the following recommendation is made; trust issues can be overcome provided there is clarity on the organizational policies.

6.4.5 Fulltime boards versus self-employed/entrepreneurial boards

The study found that the majority of board members, particularly at the SABC, are self-employed. In principle, there is nothing untoward in having consultants sitting on the boards

because they bring in required technical skills and experience, which is the basis for their employment. Where there have been incidences of conflict of interest and board interference, complaints (management) were laid against such board members. In the context where the SOEs outsource services, this environment can breed self-interest, not only among board members, but also among senior managers. It is not surprising that the PwC report and the Public Protector Report found that some members did not declare their interest, while doing business with the corporations.

The following recommendation is proposed; firstly, board members' fees must be fixed – this is currently the case at Eskom. This approach will discourage board members from creating crises to justify interventions with the expectation of payment. Secondly, recruitment and selection of self-employed boards should be encouraged; however rigorous screening processes should be followed. This particular recommendation is aimed at reducing the incidence of conflict of interest given the fact that a substantial amount of work is outsourced.

6.4.6 Limitations of funding models

Commercial activities account for the SABC's revenue 80%, 18 % from TV licences and 2% from government in the form of a subsidy. This means that SABC public programmes are expected to be subsidized by income from advertising. In theory, this model is feasible, provided the SABC is capable of generating sufficient revenue. However, due to the vulnerability of the market, pressure from advertisers, competition with other TV stations (i.e. E TV) and a culture of non-payment of TV licences by the public, the market led funding model is not viable. It is therefore recommended that SABC funding be increased from 2% to 80%, in line with best international practices. This funding model will allow the SABC to broadcast educational programmes and other public policy related programmes without relying on the market.

With respect to Eskom, funding requirements border on the institutional arrangement between the departments of energy, public enterprises and NERSA. The interface between the two departments is problematic in the sense that decisions which require the respective Ministers' endorsement is subject to their availability. Time lag on critical decisions is likely to affect the efficiency of the board and management administration. The interface between NERSA and Eskom vis-à-vis the Multi-Year Price Determination (MYPD) is also subject to time. As an independent regulator, NERSA follows its own consultation processes before making a determination. The interface between Eskom and NERSA requires proper planning and coordination in order to ensure that submissions from Eskom and the turnaround time in terms of feedback from NERSA is efficient. These issues have a bearing on governance and

management in relation to budgeting processes. Therefore the planning and coordination of activities is critical.

6.4.7 Performance monitoring and evaluation

In the cases of both the SABC and Eskom, participants acknowledged the need for board evaluation against the shareholder compact. Two forms of evaluations were presented, namely internal self-assessment and externally administered assessment. The external evaluators are said to be better positioned to provide objective assessments of the skills composition of the board members. However, at the SABC, the board has been in a state of flux for almost four years; as a result no effective evaluation has taken place. High turnover at board level is attributed to factors such as the role played by the Minister in appointing the board and CEO, lack of clarity in terms of policies (i.e. editorial policy), the culture of noncompliance (conflict of interest) among board members and political interference. Since these factors have a bearing on the functionality of the boards, recommendations are therefore meant to address these shortcomings.

The line function Minister, (i.e. Minister of Communication) should be empowered to appoint board members. An empowered Minister will become responsible for the selection, but also take full accountability for non-performance. As far as appointment of the CEO, boards should be equally empowered to assume full reasonability. This particular recommendation will stabilize the board and executive leadership of entities.

As for the editorial policy, it cannot be left to the MD of current affairs, all the policies are the responsibilities of the board, who in turn delegate to the CEO. A delegation framework is required to ensure a consistent application of the policy.

6.5 LIMITATIONS OF THE STUDY

Research of this magnitude has limitations which are worth considering. Firstly, access to board members and senior executives was characterized by challenges associated with time and locations for interviews. Some of the interviews took place in restaurants where the noise levels were high. Although interviews were transcribed verbatim, audio quality was often poor, as a result more time was spent capturing and doing follow ups. Secondly, the study did not dissemble all legislation which impacted the SOE environment. Thirdly, the impact of dual oversight (treasury and line department) has not been fully interrogated to comprehend the impact on corporate governance.

6.6 AREAS FOR FURTHER RESEARCH

Corporate governance in SOEs is a recent phenomenon, particularly in the public sector. Although it is modelled along the private sector practices vis-à-vis organisational structures,

process and systems, it is nonetheless different and complex. The complexity of corporate governance in SOEs is underpinned by factors such as a great deal of legislation, regulations and policy reviews and changes of government strategic policy orientation. Any transformation or restructuring of the SOE landscape presents an opportunity for areas of research on issues such as legislation, regulation and performance monitoring and the evaluation of the entity against the shareholder compact.

The institutional arrangement between line function departments, boards, SOEs and regulatory bodies such as NERSA and ICASA, presents an opportunity to streamline reporting and accountability frameworks. The study presented a series of challenges borne out of the institutional relationships between the SOE boards and management and these relate to the external environment.

The findings and recommendations of the research study are limited to the SABC and Eskom. It is envisaged that this research will assist other SOEs to understand the complex nature of corporate governance. In addition, it is hoped that this research will further enhance interest for research in this particular discipline.

The current research could be extended to include the interface between shareholders and boards. This interface can shed light on how the shareholder engages the boards on areas such as the shareholder compact, performance monitoring and evaluation. This area of the institutional arrangement is an exciting area of research and will contribute to the overall improvement of oversight and performance monitoring of the boards.

6.7 CONCLUSION

This research set out to establish why corporate governance is a challenge for the SABC and Eskom. This view was inspired by a series of corporate governance problems reported via media and commissioned investigations by different Constitutional oversight bodies. The following represented pillars of the conceptual framework: interface between boards and management based on legislative and regulatory frameworks, performance monitoring of boards, funding regimes for SOEs. In presenting a seamless integration of the thesis, the research questions were informed by the literature review and conceptual framework.

Fundamentally, the research question posed by the study asked why it is that corporate governance is a challenge for SOEs. The results are supportive of agency theory supposition on the implications of the separation of ownership and management. However, the depth and complexity of the SOEs' environment could not be adequately addressed by agency theory. The results show that corporate governance in SOEs is much more complex and dynamic as compared to the private sector. In part, the legislative and regulatory framework is

fragmented and this renders weaknesses in the conceptualization of the SABC and Eskom. In support of this claim, the results also show that Eskom and the SABC have broad mandates which lend themselves to contradictions in terms of reporting and accountability of the SOEs. The indication is that multiple reporting and accountability frameworks create undue pressure for boards and management.

The results also show that both the SABC and Eskom are inadequately funded; this mismatch between mandate and funding requirements questions the conceptualization of these entities. These contradictions manifest in a wide range of strategic and operational dimensions which ultimately render the organisations ineffective. Decisive leadership on the part of line function Department coupled with coherent legislative framework is needed as the current environment breeds culture of mistrust and fragmentation in approaches which affect corporate governance. Despite the need for a coherent legislative and regulatory environment, sound institutional arrangement between line function department, Treasury, and the Department of Performance Monitoring and Evaluation must be looked into as information asymmetry undermines planning, execution and accountability corporate governance.

In the final analysis, the thesis identified research limitations and subsequently provided recommendations on the manner in which these limitations could be addressed.

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APPENDIX A: INTERVIEW SCHEDULE FOR BOARD MEMBERS

Interview Schedule for Board Members

Name of the interviewee_____

Date of interview _____

Place of the interview _____

1 Legislative compliance (PFMA and Company Act)

What are the legislation and regulation governing the entity?

Are these understood by boards and senior management?

What are legislative and regulatory challenges on Eskom governance?

Is this mandate reconcilable with the developmental agenda of the state? If yes what are the challenges?

2 Interface between board and management

In your view what is the relationship between board and management?

What are the main activities which underpins the relationship between board and management?

What are reporting challenges facing boards and management in executing mandate?

What are the accountability challenges facing management in executing its mandate?

What is the nature of delegation of authority between boards and management?

How effective is the application of delegation?

What are challenges relating to delegation and what has been done to address these?

3 Role of management in strategy development

What is the role of the board in strategy development?

What informs strategy development and how articulate is the process?

What are the challenges associated with strategy development and implementation?

4 Board Performance monitoring

How is the board performance being monitored?

What are the critical areas of board evaluation?

Is the board providing sufficient or effective oversight?

Are the board subcommittee well capacitated and do they provide leadership

What are the challenges associated with board performance?

5 Funding and sustainability

How is the strategy and operation of Eskom funded?

How does regulation (NERSA/ICASA) influence funding of the entity

What impact does NERSA/ICASA processes (planning and execution) have on funding and sustainability?

APPENDIX B: INTERVIEW SCHEDULE FOR EXECUTIVES

Interview Schedule for Executive Members

Name of the interviewee_____

Date of interview _____

Place of the interview _____

1 Legislative and governance

1.1 How would you define the mandate of the SABC/Eskom?

_____
_____
_____
_____
_____

1.2 In your view is this mandate clearly articulated and understood by the executives?

_____
_____
_____
_____

1.3 In your view is this mandate clearly articulated and understood by the executive members?

_____
_____
_____

1.4 Is this mandate reconcilable with the developmental agenda of the state? If yes what are the challenges?

_____
_____
_____
_____

1.5 Want are the implications of legislation and regulation on corporate governance?

_____
_____
_____
_____

1.6 What is your take on the delegation of authority between the board and the executive members?

_____
_____
_____
_____

1.7 What is your understanding of the function of the Shareholder Compact?

1.8 How the activities of the Shareholder Compact are being monitored

1.9 Board charter (governance mechanics/instruments)

1.9.1 What is your take/understanding on how the board charter has been developed?

1.9.2 What are the challenges associated with delegation of authority and delineation of responsibility between the board and management

1.9.3 What mechanisms are in place to address the limitations of the delegation of authority?

1.9.4 What is the practical implications of these instruments on corporate governance (compliance and performance)

2 Strategy development

2.1 SOEs must develop strategy in order to address the performance requirements – in you your view what is the role of the board/management in development of strategy?

2.2 How is the strategy implementation of the SABC/Eskom being financed and what are the challenges?

2.3 In you view, what are the things which the board and its subcommittee is supposed to be doing but not doing ?

3.4 In your view what are the things which the board and its committee doing but not supposed to be doing?

3 Interface between board and management

3.1 How would you define the relationship between the board and the executive management? **(Strategy, delegation, monitoring)**

3.2 Based on you experience is the Board being provided with enough relevant information in a timely to perform responsibilities.

3.3 In your view do committee Chairs provide appropriate leadership for the committees to fulfil their roles?

3.4 In you view do the Board Co-Chairs provide appropriate leadership for the Board to fulfil its responsibilities?

4 Board Performance Monitoring and evaluation

4.1 How is the performance of the board of SABC/Eskom being monitored?

4.2 What procedures have been established for quarterly reporting to facilitate effective performance monitoring, evaluation and corrective action?

4.3 What is the role of national Treasury in the, monitoring of board?

4.4 What is the role of ICASA /NERSA in monitoring the board's activities?

4.5 What are the implications of multiple reporting?

4.6 What are the internal factors which affect the performance of boards?

4.7 What are the external factors which affect the board performance?

5 Funding and sustainability

5.1 What is the current funding model?

5.2 In your view is funding sufficient to address the mandate?

5.3 Which aspects of the mandate are problematic in relation to funding arrangement?

5.4 What are implications of the funding model on the operations?

5.5 What is the impact of funding on the relationship between board management and other stakeholders?

Thank you for your participation